

OVERSIGHT OF THE DEPARTMENT OF JUSTICE

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

MARCH 1, 2023

Serial No. J-118-5

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CONTENTS

OPENING STATEMENTS

	Page
Durbin, Hon. Richard J.	1
Graham, Hon. Lindsey O.	3

WITNESS

Garland, Hon. Merrick B.	4
Prepared statement	78
Responses to written questions	98

APPENDIX

Items submitted for the record	77
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OVERSIGHT OF THE DEPARTMENT OF JUSTICE

WEDNESDAY, MARCH 1, 2023

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

The Committee met, pursuant to notice at 10 a.m., in Room 216, Hart Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Whitehouse, Klobuchar, Coons, Blumenthal, Hirono, Booker, Padilla, Ossoff, Welch, Graham, Grassley, Cornyn, Lee, Cruz, Hawley, Cotton, Kennedy, Tillis, and Blackburn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chair DURBIN. This meeting of the Senate Judiciary Committee will come to order.

Today marks the Senate Judiciary Committee's first oversight hearing of the 118th Congress. Last Congress, we held more than a dozen oversight hearings and honored the Committee's historic constitutional responsibility to provide oversight to the agencies of our Government.

It is this responsibility under Article I of the Constitution that serves as a check and balance on the executive branch, whether the President happens to be Republican or Democrat.

Attorney General Garland, welcome. This is the third time you've appeared before this Committee. You have many pressing responsibilities. I should say, as Attorney General, you have many pressing responsibilities, and I appreciate your taking the time to be here today. There are so many subjects under your jurisdiction worthy of close examination, which I'll turn to a few in a moment. But we shouldn't take for granted that we now have a Department of Justice with a renewed dedication.

When you were sworn into office 2 years ago, the Department was embroiled in scandal. You committed to restoring its independence, and I believe you've kept your word. I expect that we'll hear accusations today from some of my Republican colleagues to the contrary, such as weaponization of the Justice Department.

The reality is you have recommitted the Department to serving the American people and not the personal interests of any one political figure. You've taken the appropriate steps to ensure that investigations are not overshadowed by politics.

You have not interfered with the investigation of the President's son by the U.S. attorney for the District of Delaware, a holdover who was appointed by President Trump.

You have not interfered with the special counsel investigation initiated by Attorney General Barr into the origin of the FBI investigation of the Trump campaign ties to Russia.

And most recently, you've appointed two special counsels to investigate any potential mishandling of classified documents in the possession of former President Trump or President Biden.

Unfortunately, too many of my colleagues have turned a blind eye to the actual weaponization of the Justice Department during previous administrations.

Take one example. President Trump and his allies attempted to co-opt the Department into overturning the results of the 2020 election, a relentless campaign that this Committee exhaustively documented in "Subverting Justice," a 394-page report.

But your actions in the last 2 years should reassure the American people that the Justice Department should not and does not operate as the servant of any President.

The Justice Department has important constitutional responsibilities. It must protect the civil rights of the vulnerable. It must respond to threats to our Nation, both domestic and international. It must hold accountable those who violate the laws passed by Congress. We have discussed before, and I will certainly hear again today, some issues of critical importance to the American people.

More than 6,800—6,800 Americans have died from gunfire in the first 2 months of this year. There have been at least 94 mass shootings, more than one every single day this year, in America. I look forward to hearing how the Department is using new tools that Congress approved in the Bipartisan Safer Communities Act to quell this violence.

In March 2021, FBI Director Wray testified under oath before this Committee that the threat of domestic terrorism is metastasizing throughout this country. I look forward to hearing your response to that extremist threat.

We'll discuss the importance of full implementation of the bipartisan First Step Act, which is showing meaningful progress in responsibly reducing recidivism and making our criminal justice system fairer.

And we'll discuss the importance of preserving America's civil rights and protecting them from attacks on their bodily autonomy, especially after the Supreme Court *Dobbs* decision.

The sunset of Section 702 of the Foreign Intelligence Surveillance Act this year provides an opportunity to implement much-needed reforms to keep America both safe and free, and the Department must continue to hold steadfast to the principles of equity and access, despite resistance from those who are threatened by an even playing field.

As more citizens face greater impediments to exercising their constitutional right to vote, and then there's an increase in incidents of hate violence, the Department must defend America's bedrock values.

At this point, I turn to my colleague, and the Ranking Member on the Senate Judiciary Committee, Senator Graham.

**OPENING STATEMENT OF HON. LINDSEY O. GRAHAM,
A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA**

Senator GRAHAM. Thank you, Mr. Chairman. Welcome, Mr. Attorney General. Appreciate you coming to the Committee. And thank you, Mr. Chairman, for having the hearing.

So, here's sort of the other side of the story. When you ask Americans, "Are we on the right track as a nation?", about 70 percent of them say no. Now, why?

I think there's a feeling in this country that we're losing control of our streets, that crime is increasing, and the world is a very dangerous place, and people don't feel safe anymore.

You talk about the number of deaths from gun violence, certainly something we should be concerned about.

But let me tell you something we all should be concerned about. Rebecca Kiessling, a mother who testified yesterday, lost two sons to fentanyl overdose. They were buying, I think, a Percocet pill, and it was laced with fentanyl, and they died from taking one pill. Both of them. She said, as I quote, "This is a war. Act like it. Do something."

So, 106,000 people died from drug overdoses, 70,000 from fentanyl last year, and it's getting worse. The leading cause of death for Americans age 18 to 45 is death by fentanyl poisoning. What are we doing? What is that something? So, I hope we'll recommit ourselves, Mr. Chairman, at this hearing, to do something, to act like we're at war, because we are.

Foreign terrorist organization designation for the Taliban—that's a good thing. Other groups—how about making drug cartels in Mexico and other places foreign terrorist organizations under U.S. law so we can go deeper and prosecute those who help these people poison America?

So, the bottom line, we're adrift as a nation. We're not taking the crime problem as seriously as we should. The world is on fire.

[Posters are displayed.]

Senator GRAHAM. We say that Putin's engaged in crimes against humanity. I agree with that statement. But we're not giving jets to the Ukrainians to defend themselves against the crime. So, we've got to up our game.

And I hope, by this hearing, we will have a recommitment to convince the American people that we're going to keep you safe, that we're going to have policies to deal with the poisoning of America from fentanyl, that we're going to hold Mexico and other countries accountable, that most of this stuff comes from China, and enough is enough. We're going after those who are killing our kids from fentanyl.

Gitmo. This administration let two detainees out of Gitmo. There's 30-something left. The recidivism rate is about 25, 34 percent, depending on who you ask. Now is not the time, after Afghanistan, to be letting people who've been in jail for 20 years, because they're so dangerous, out of jail.

And I hope this administration will not empty Gitmo. Because the worst thing we could do right now is let people go who have been involved in terrorist activities, who are still a danger or enemy combatants under international law, because of the passage of time.

So, Mr. Chairman, we all want to work with you on this side, but there is no strategy that I can discern about how to deal with the poisoning of Americans through fentanyl.

Most Americans are worried about the rise in crime, and we need to reassure them we get it, that we're going to do better. That Schedule I designation for fentanyl expires at the end of the year. Mr. Chairman, I know you don't want that to happen. Senator Cotton's been ahead of this before any of us.

So, if you put arsenic in a pill, knowing somebody's going to take it, why aren't you charged with—you would be charged with murder. If you lace a pill with fentanyl, which is probably more lethal than arsenic, why aren't you charged with murder?

We're going to have to deter those who are killing young people in America.

We're going to have to put countries on notice that you're with us or you're against us when it comes to this scourge of fentanyl.

We're going to have to control our border.

We're going to have to come up with a rational immigration policy.

We're going to have to change our asylum laws, because everybody in the world believes if they get one foot in America, they never leave.

On many fronts, law and order has broken down here at home, and the world is in chaos. China is watching what we do in Ukraine. And the question for all of us, are we doing enough to combat the threats that we're all living with? And I would say we're woefully inadequate in dealing with the threats that exist against America at home and abroad. And maybe this Committee, in a bipartisan fashion, can do something about it. Thank you.

Chair DURBIN. Thank you, Senator Graham.

Let me lay out the mechanics of today's hearing. After I swear in the Attorney General, he'll have 5 minutes to provide an opening statement. We have his written statement for the record.

There will be a first round of questions, and each Senator will have 7 minutes. Please try to remain within your allotted time.

Following the first round of questions, if there's an interest in a second round, Senators will have an additional 3 minutes each.

I now would ask the Attorney General to please stand and raise his right hand.

[Witness is sworn in.]

Chair DURBIN. The record reflects that the Attorney General answered in the affirmative, and now you're invited to proceed with your opening statement.

STATEMENT OF HON. MERRICK B. GARLAND, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Attorney General GARLAND. Good morning, Chair Durbin, Ranking Member Graham, and distinguished Members—got it. Thank you. Appreciate it. Good morning, Chair Durbin, Ranking Member Graham, and distinguished Members of this Committee.

Every day, the 115,000 employees of the Justice Department work tirelessly to fulfill our mission to uphold the rule of law, to keep our country safe, and to protect civil rights.

Every day, our FBI, ATF, and DEA agents and our deputy U.S. marshals put their lives on the line to disrupt threats and respond to crises.

Every day, Department employees counter complex threats to our national security. They fiercely protect the civil rights of our citizens; they pursue accountability for environmental harms; they prosecute crimes that victimize workers, consumers, and taxpayers; and they defend our country's democratic institutions.

And every day, in everything they do, the employees of the Justice Department adhere to and uphold the rule of law that is the foundation of our system of government.

Thank you for an opportunity to discuss our work.

First, upholding the rule of law. When I began my tenure as Attorney General, I said it would be my mission to reaffirm the norms that have guided the Justice Department for nearly 50 years. I did so because those norms matter now, more than ever, to our democracy.

The health of our democracy requires that the Justice Department treat like cases alike and that we apply the law in a way that respects the Constitution. It requires that, as much as possible, we speak through our work and our filings in court so that we do not jeopardize the viability of our investigations and the civil liberties of our citizens. And the survival of our democracy requires that we stand firmly against attempts to undermine the rule of law, both at home and abroad.

I am proud of the work that the Department has done on each of these fronts. We are strengthening the norms that protect the Department's independence and integrity. We are securing convictions for a wide range of criminal conduct related to the January 6th attack on the Capitol.

We are disrupting, investigating, and prosecuting violence and threats of violence, targeting those who serve the public. And we are working closer than ever with our Ukrainian partners in defense of democracy, justice, and the rule of law. We will continue to do so for as long as it takes.

Second, keeping our country safe. The Justice Department is using every resource at our disposal to keep our country safe. We are working to counter, disrupt, and prosecute threats posed by nation-states, terrorist groups, radicalized individuals, and cyber-criminals.

And, together with our partners across the country, we are continuing to combat the rise in violent crime that began in 2020. All 94 of our U.S. Attorney's Offices are working alongside their State and local partners to pursue district-specific violent crime reduction strategies.

The Department's grant-making components are providing financial assistance to local law enforcement agencies. At the same time, they are supporting community-led violence intervention efforts. And our law enforcement components are working with State, local, Tribal, and territorial counterparts to apprehend the most dangerous fugitives and seize illegal drugs and illegal guns. For example, last year, DEA and its partners seized enough fentanyl-laced pills and powder to kill every single American.

We are also aggressively prosecuting the crimes that inflict economic harm on the American people. We are prioritizing the prosecution of schemes that impact older Americans and vulnerable populations, as well as schemes involving pandemic and procurement fraud.

In our corporate criminal enforcement, we are prioritizing and securing individual accountability, and we are vigorously enforcing our antitrust laws. Our enforcement actions have already resulted in the blocking or abandonment of mergers that would have stifled competition and harmed consumers.

Third, protecting civil rights. Protecting civil rights was a founding purpose of the Justice Department, and it remains an urgent priority. The Department's storied Civil Rights Division has been at the forefront of efforts to protect the right to vote, ensure constitutional policing, and enforce Federal statutes prohibiting discrimination in all of its forms.

But now, protecting civil rights is also the responsibility of every Justice Department employee, every single day.

We are working across components to combat hate crimes and improve hate crimes reporting.

In the wake of the Supreme Court's decision to overturn *Roe* and *Casey*, the Department has pulled together to protect reproductive freedom under Federal law.

And the Department recognizes that communities of color, indigenous communities, and low-income communities often bear the brunt of harm caused by environmental crime, pollution, and climate change, so we are prioritizing cases that will have the greatest impact on the communities most burdened by those harms.

I am proud of the work of the Department's employees, the work they have done to uphold the rule of law, to keep our country safe, and to protect civil rights. The Department's career workforce has demonstrated extraordinary resilience after years of unprecedented challenges. They have conducted themselves with the utmost integrity, without regard to any partisan or other inappropriate influences. And they have done their work with a singular commitment to the public we all serve.

The employees of the Justice Department are dedicated, skilled, and patriotic public servants. It is my honor to represent them here today. Thank you for the opportunity to testify. I look forward to your questions.

[The prepared statement of Attorney General Garland appears as a submission for the record.]

Chair DURBIN. Thanks, Attorney General. You grew up in Lincolnwood, Illinois, if I'm not mistaken, at least part of your life?

Attorney General GARLAND. That's true.

Chair DURBIN. That's not far from Highland Park, is it?

Attorney General GARLAND. That's also true.

Chair DURBIN. And we know what happened last Fourth of July when the people of Highland Park gathered for a Fourth of July parade. A gunman went on the roof of a business downtown and fired off 83 rounds into the crowd in 60 seconds.

Even the armed good guys, the policemen who were there trying to protect the public, had trouble locating that person and cer-

tainly, and sadly, could not have the time to respond to what he had done until it was finished.

When he was finished, there was an 8-year-old, Cooper Roberts, who will be paralyzed for life. There was a young man, 2-year-old Aiden McCarthy, who became an orphan because both of his parents were killed. Seven total lives were lost, 50 people were injured.

It is hard for me to imagine that some disciple of originalism believes that our Second Amendment envisioned what happened in Highland Park. To think that there is a weapon out there, a military-style weapon, and the rounds and clips that are available to fire off multiple rounds into innocent crowds, just, to me, makes little or no sense when you read the basic language of the Second Amendment.

And so Congress did something, and I want to credit Senator Cornyn for being a participant in this effort—a leader in this effort, with Senator Murphy of Connecticut, to try to pass a bill to make it better.

The Bipartisan Safer Communities Act addressed issues of straw purchasing, which we have discussed before—the terrible death of Ella French, a Chicago policeman, because of the straw purchase made in the State of Indiana—and this situation, with the shootings of innocent individuals in Highland Park. I'd like to ask you, what have you seen, if anything, that's changed for the better since we passed our law?

Attorney General GARLAND. I think it's a very important law, and I'm grateful to the Members who sponsored it and to the overall Congress that passed it. It's done several things for us.

First of all, it has, as you said, established a stand-alone crime for straw purchasing and a stand-alone crime for trafficking in illegal weapons. We have already—

Chair DURBIN. Are these being prosecuted?

Attorney General GARLAND. Yes. In both cases, we have already brought trafficking cases. I think we've already had two gun trafficking cases and several straw purchasing cases as a consequence of this law.

In addition, the law provided for enhanced background checks for people under 21, and we have largely completed the process of making those possible, so that juvenile records that disclose prohibited conduct and make somebody a prohibited possessor would now be identified. That's another thing we've done.

The statute also provided funds under the Byrne program and additional programs for violence intervention, and for helping States deal with red flag laws so that people who have been subject to a court order barring them from obtaining a gun, we would be able to get those kind of systems provided. And we've already given out grants in both of those areas.

Chair DURBIN. Senator Graham basically challenged me, and I accept the challenge, to show as much concern about the gun deaths, show as much concern about fentanyl deaths in this country, and I want to do that.

He noted, I believe—correct me if I'm wrong—that the number one cause of death of people 18 to 45 is drug overdose. I don't know if it's fentanyl, specifically, but drug overdose. And I know that re-

ality. But the number one cause of death to children under the age of 18 is gun violence in America, too. We can do both. We must do both.

So, let's address the fentanyl issue for a minute. We had a hearing in this Committee 2 or 3 weeks ago which talked about the social media platforms and what they are peddling to Americans, particularly to our children across America. There were mothers sitting near where you're sitting today who brought color photographs of their children who died as a result of their trafficking of information on social media.

And there's little or no responsibility accepted by these platforms. Section 230 absolves them from civil liability when they broadcast things which harm children, whether it's bullying or harassment or something as basic as this choke challenge, which unfortunately claims the lives of children, as well.

I think there was a general consensus on this Committee, which is saying something, that we need to do something about the social media platforms.

And I coincidentally had a meeting just a day or two later with Anne Wigham from the Drug Enforcement Agency. She described for me the sale on the internet and social media platforms of phony drugs.

Senator Graham made the reference to a person who thought they were buying Percocet and bought fentanyl and died as a result of it. I asked her how common this was. She said, "Very common."

And they—the sellers even have valet services where they will physically deliver boxes of these phony drugs to people at their homes, on their porches. This is out of hand. Do you believe that we need to do more to regulate and control the use of social media platforms that are currently exploiting families and children across America?

Attorney General GARLAND. Senator, I agree with both you and Senator Graham with respect to how horrible this situation is. I have personally met with the families of children and teenagers and young adults and even the elderly who have taken these pills, often thinking that they're taking Adderall or Oxycodone or Percocet, a prescription drug, but when, in fact, it is filled with fentanyl. And as the DEA administrator's testimony demonstrated, 6 out of 10 of those pills are a fatal dose.

The cartels that are creating these pills and that are distributing them within the United States are the most horrid individuals you can imagine. And unfortunately, they are doing it on social media, advertising as if they are prescription pills. So, the DEA has a program of going out to the social media companies and urging them to advise DEA when they see this and advising—

Chair DURBIN. Ms. Wigham told me that when they approach the social media and ask for the algorithms so that they can get to the root cause of this death and destruction, these social media platforms plead Section 230 and refuse. What do we do?

Attorney General GARLAND. Well, I think we do have to do something to force them to provide information, to search their own platforms for sales of illegal drugs. This is a—

Chair DURBIN. I tell you, I mean, I don't want to put words in your mouth, but I think Section 230 has become a suicide pact. We

have basically said to these companies, “You are absolved from liability. Make money.” And they’re at it, in overtime, and deaths result from it, and we have a responsibility.

I think the Committee really spoke to it. We may see it differently, but on a bipartisan basis. And I’ve spoken to Senator Graham, and I want to make sure that when we agree, it also is publicized. We both feel very strongly that this Committee needs to be a venue to take on this issue. I hope we have your support and the support of the President when we do that.

Attorney General GARLAND. You certainly have our support with respect to finding a better way to get the social media companies, whether it’s civil or criminal, to take these kind of things off their platforms, to search for them, to not use algorithms that recommend them. I totally agree with that, Senator.

Chair DURBIN. Thank you. Senator Graham.

Senator GRAHAM. Thank you. Again, welcome, Attorney General. I’m going to do something maybe a bit different. I’m going to try to find consensus where we can—see how far we go.

Do you agree that the Wagner organization associated with Russia should be a foreign terrorist organization under U.S. law?

Attorney General GARLAND. I think they are an organization that’s committing war crimes, an organization that’s damaging the United States. I think they’ve already been designated as a transcon—

Senator GRAHAM. Yes—

Attorney General GARLAND [continuing]. As a—

Senator GRAHAM [continuing]. Criminal—yes, some—

Attorney General GARLAND. Yes, TCO. I’m trying to get the—

Senator GRAHAM [continuing]. I want to go up a notch. Are you okay with that?

Attorney General GARLAND. I understand this is a quest—the way in which determinations are made with respect to terrorist organizations come through the State Department. They have to make determinations of what the consequence is for countries that have them in them.

Senator GRAHAM. Do you object to me trying to make them a foreign terrorist organization—

Attorney General GARLAND. I think—I don’t object—

Senator GRAHAM. Thank you.

Attorney General GARLAND [continuing]. I think, though, that I would defer in the end to the State Department—

Senator GRAHAM. I’ve got you—

Attorney General GARLAND [continuing]. On this.

Senator GRAHAM. Yes. Well, I bet we’ll all come together on that one.

Fentanyl. Fentanyl deaths are more than gun and accident deaths, combined, in the United States. Did you know that?

Attorney General GARLAND. Yes, sir.

Senator GRAHAM. I mean, this is—how would you describe the fentanyl problem in America?

Attorney General GARLAND. It’s a horrible epidemic—

Senator GRAHAM. Okay.

Attorney General GARLAND [continuing]. But it's an epidemic that's been unleashed on purpose by the Sinaloa and the New Generation Jalisco cartels.

Senator GRAHAM. Okay. Let's just stop and absorb that for a moment. It's a horrible epidemic. It kills more people than car wrecks and gun violence, combined. The question is, what are we going to do about it? Under current law, fentanyl loses its Schedule I status by the end of the year. You oppose that, I assume?

Attorney General GARLAND. I certainly do. All fentanyl-related—

Senator GRAHAM. Okay.

Attorney General GARLAND [continuing]. Drugs should be permanently on the schedule.

Senator GRAHAM. Do you support mandatory minimums for people dealing in fentanyl?

Attorney General GARLAND. I think we already have mandatory minimums for people dealing—

Senator GRAHAM. Do you think they should be increased?

Attorney General GARLAND. I think we have more than enough ability now to attack this problem.

Senator GRAHAM. Well, would you agree with me, whatever we have is not working?

Attorney General GARLAND. Well, I—

Senator GRAHAM. Whatever we're doing is not working.

Attorney General GARLAND. I agree with that because of the number of deaths—

Senator GRAHAM. Yes. So—

Attorney General GARLAND [continuing]. That you pointed out, so the—

Senator GRAHAM. So, just keep an open mind that what we've got on the books is not working. If somebody gave a pill to another person with arsenic or ricin, could they be charged with murder? Because that will kill you.

Attorney General GARLAND. Absolutely.

Senator GRAHAM. Okay. If somebody gave a candy-shaped pill full of fentanyl, could they be charged with murder?

Attorney General GARLAND. Well, they can be charged with drug trafficking leading to death. I don't think the statute says murder—

Senator GRAHAM. Okay.

Attorney General GARLAND [continuing]. But it does say—specifically aims at that.

Senator GRAHAM. Yes.

Attorney General GARLAND. We have brought prosecutions—

Senator GRAHAM. Yes.

Attorney General GARLAND [continuing]. I know, having discussed—

Senator GRAHAM. So—

Attorney General GARLAND [continuing]. This with the U.S. attorney in Colorado and the U.S. attorney in the Southern District of New York.

Senator GRAHAM. So, Senator Cotton's got a proposal to dramatically increase the penalties associated with fentanyl. I'd like to

work with you and the Chairman, if we could, to find a bipartisan solution to this problem, to create deterrence that doesn't exist.

Mexican drug cartels. Should they be designated foreign terrorist organizations under U.S. law?

Attorney General GARLAND. Yes, I think it's the same answer I gave before. They are already designated in any number of ways and sanctioned by the Treasury——

Senator GRAHAM. Would you oppose some of us trying to make them foreign terrorist organizations?

Attorney General GARLAND. I wouldn't oppose it, but again, I want to point out there are diplomatic concerns. We need the assistance of Mexico in this, and designating——

Senator GRAHAM. Is Mexico helping us effectively with our fentanyl problem?

Attorney General GARLAND. They are helping us, but they could do much more. There's no question about that.

Senator GRAHAM. Well, if this is helping, I would hate to see what not helping looks like.

Attorney General GARLAND. Well, I think——

Senator GRAHAM. So, the bottom line for me is they're not helping, and we need to up our game when it comes to fentanyl.

Gitmo. Are you familiar with the Gitmo prison?

Attorney General GARLAND. I haven't been there, if that's what you're asking. I'll——

Senator GRAHAM. No, I mean, but you know that we have foreign terrorists——

Attorney General GARLAND. Yes——

Senator GRAHAM [continuing]. Housed there? Is that right?

Attorney General GARLAND. I certainly do.

Senator GRAHAM. Do you agree with me that under the law of war, an enemy combatant, properly designated, can be held to the end of hostilities?

Attorney General GARLAND. Yes. That's the law both of the Circuit I was——

Senator GRAHAM. Right.

Attorney General GARLAND [continuing]. On before, and the Supreme Court.

Senator GRAHAM. Right. So, do you agree with me that ISIS and Al Qaeda is still at war with us?

Attorney General GARLAND. Yes, I do.

Senator GRAHAM. So, you agree that anybody associated with these organizations could be held indefinitely if they present a risk to the American people?

Attorney General GARLAND. I think they could. I think that the determination of whether they present a risk and how they should be dealt with is a determination to be made by the Defense Department, and the——

Senator GRAHAM. Yes.

Attorney General GARLAND [continuing]. Defense Department is making——

Senator GRAHAM. But legally——

Attorney General GARLAND [continuing]. Those determinations.

Senator GRAHAM [continuing]. They can be held as long as they're a risk, and that could be for the rest of their lives. Correct?

Attorney General GARLAND. I think that's right. It obviously depends on the facts——

Senator GRAHAM. Right.

Attorney General GARLAND [continuing]. Of the determination.

Senator GRAHAM. I totally agree. Do you believe Russia is committing crimes against humanity?

Attorney General GARLAND. I do.

Senator GRAHAM. Okay. That's a pretty bold statement. Should we create an international court to support charges of a crime of aggression? Do you support that idea?

Attorney General GARLAND. So, the United States supports what is now being developed in The Hague, sponsored by Eurojust, looking into the possibility of creating that court.

There are concerns that we have to take into account with respect to how it might deal with our own service members and other circumstances. We have to be sure that the appropriate guardrails are up, but we support any number of different ways in which war crimes, crimes against humanity, and the potential for crimes against aggression are investigated.

Senator GRAHAM. I'd like to work with you in that regard. I think that's something we could do.

Attorney General GARLAND. I would be happy to.

Senator GRAHAM. When it comes to Federal prisons, are you aware that 1,200 prisoners are requesting to be sent from a male prison to a female prison?

Attorney General GARLAND. I'm not, no.

Senator GRAHAM. Okay. What is our policy when it comes to allowing a male prisoner to be transitioned into a female prison?

Attorney General GARLAND. I think if you're generally asking the question of how trans people are dealt with in the Bureau of Prisons, my understanding is that these are—determinations about where they're placed or where people are placed, in general, have to do with individualized determinations regarding the security of that individual and the management of the prison. These are done on a case-by-case basis. That's my understanding.

Senator GRAHAM. Are you aware of any policy guidelines that they use to make that determination?

Attorney General GARLAND. I think there is a policy guideline along the lines that I just said, that they are——

Senator GRAHAM. I would like for the Bureau of Prisons to send it to us. Are you concerned that if a biological male is sent to a female prison, that could be a risk to female prisoners?

Attorney General GARLAND. I think every person in prison has to be dealt with with dignity and respect, that determinations of the safety questions you're talking about have to be made on an individualized basis and not categorically.

Senator GRAHAM. Finally, let's end where we started. Fentanyl. If this drug is killing more Americans than car wrecks and gun violence, combined, do you believe that the policies we have today in effect are working?

Attorney General GARLAND. I've been involved in the problem of drug crime and drug trafficking for more than 40 years, including——

Senator GRAHAM. That's not my question. It's not how long you've been involved. Are they working?

Attorney General GARLAND. They are not stopping fentanyl from killing Americans, if that's the question you're asking.

Senator GRAHAM. Would you say they're woefully inadequate to the task?

Attorney General GARLAND. We are putting all the resources that Congress provides to us into doing this. The DEA is doing—we are starting at the precursor level, when precursors are sent from China to Mexico. We are then working on—

Senator GRAHAM. Well, but—

Attorney General GARLAND [continuing]. Attacking the labs.

Senator GRAHAM. My time is up. Mr. Attorney General, they're not working. And we're going to help you, if you'll work with us, to give you more tools. I hope you will meet us in the middle. Thank you.

Attorney General GARLAND. Happy to have more tools, Senator.

Chair DURBIN. Before recognizing another colleague, I want to apologize, in my reference to the DEA administrator. Her name is Anne Milgram, and I mispronounced it, so I want, for the record, to clarify that.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman, and thank you, Attorney General, for being here. I appreciate it. Good to see you.

Methane is probably the—one of the most dangerous greenhouse gases. We see plumes of it, miles long, floating across the United States. It takes multiple levels of enforcement—Federal, State, local, and private—to address these massive leaks. What can you tell me you are doing to assure that there is that coordinated multijurisdictional enforcement operation in place?

Attorney General GARLAND. You are exactly right. And we now have the benefit of overhead commercial satellites which are able to actually see methane with respect to the infrared spectrum.

So, we are in the process of establishing a working group, between our Environment and Natural Resources Division in the Justice Department, the EPA, the Interior Department, and affected U.S. Attorney's Offices across the country, to make use of the tools, the scientific tools we have, and also some of the funding that was provided in the Bipartisan Infrastructure Act.

Senator WHITEHOUSE. That is good news, and I hope that that effort will include advisory participation from State law enforcement, from local law enforcement, and from private litigant experts in this space.

Attorney General GARLAND. All of our work in the law enforcement field involves partnering with State and local law enforcement. Always happy to have expertise provided, but our law enforcement working groups are confined to law enforcement, as a general matter.

Senator WHITEHOUSE. I just got a document from an insurance publication that says, I'm just reading here, "At least 1,375 climate change-related lawsuits have already been brought in the United States." These include suits filed by local municipalities and by States—Rhode Island is one of them—as well as shareholder suits.

Given all of that Government litigation taking place in this space, I would ask you, is there anyone looking at Federal DOJ involvement in that area, in the Department of Justice? And if so, who is that person?

Attorney General GARLAND. So, I really don't, as a general matter, want to describe our internal decision-making processes. On these, I can assure you that the Environmental and Natural Resources Division has taken a very close look at this question. But beyond that, I really can't say.

Senator WHITEHOUSE. Okay. Well, you may recall that the last time the Department of Justice took a really close look at this question, they got the standard of decision wrong. They applied a criminal standard of review to civil litigation. So, I hope that the seriousness of the look that's been taken, what I would like to call an honest look, is actually, in fact, taking place, because the record from before your time is not very convincing.

Attorney General GARLAND. I agree with you, Senator, that the criminal standard, beyond a reasonable doubt, is not appropriate for fraud cases.

Senator WHITEHOUSE. Yes.

Attorney General GARLAND. Correct.

Senator WHITEHOUSE. And——

Attorney General GARLAND. I'm sorry, for civil fraud cases.

Senator WHITEHOUSE. Civil fraud cases. Correct. Criminal cases.

Congress, right now, is on the wrong side of a bunch of OLC opinions that relate to Executive privilege. And there are some specific ones that relate to so-called "absolute immunity" that are on the books at OLC that have been specifically rejected in quite forceful language by actual Article III judges, and yet those OLC opinions are still on the books. They're still available to other agencies who are making determinations about whether to block congressional oversight based on those OLC opinions.

I would like to ask you—let me go back a step. OLC says that they don't ordinarily review opinions of their own even after they've been discredited by Article III judges, unless they've been asked. And you're one of the people who can ask them. So, I'm asking you, will you ask them to review the OLC opinions that are now publicly on the books, of the Department of Justice, that have been discredited by specific findings of Article III judges? They relate to absolute immunity.

Attorney General GARLAND. So, my understanding of the long-standing process at OLC is not to reevaluate old opinions unless they are now relevant for a current controversy.

Senator WHITEHOUSE. That's the problem.

Attorney General GARLAND. And I also believe that their process is that if a court of ultimate jurisdiction determines that they are wrong, then they will evaluate it. My understanding of the cases——

Senator WHITEHOUSE. So, Ketanji Brown Jackson was one of the authors of one of the opinions that said the OLC opinions were wrong. She's a pretty credible judge, I think. She's now sitting on the United States Supreme Court. And those OLC opinions hang out there for review by other executive agencies, even if there's no direct ask to the Department that would trigger that OLC review.

Attorney General GARLAND. So——

Senator WHITEHOUSE. It's sort of like executive branch jurisprudence that sits on its own, independent from Article III jurisprudence. And somehow we've got to figure out how to connect those two things, because at the moment, you have OLC opinions that appear to be flat-out wrong, by the determinations made by those whose job it is to say what the law is, the Article III judges, and there's no effort to ask them, in that fairly unique circumstance, to go back and fix it.

Attorney General GARLAND. So, again, I think all the circumstances you're talking about, about individual judges, sometimes a single judge on a court of appeals, sometimes a judge speaking in dicta, but no decision—if there were a decision of the United States Supreme Court that was inconsistent, or of a court of appeals, I believe OLC would reevaluate.

Otherwise, there are lots of judges who criticize OLC opinions, and the Justice Department—as a former judge, that's perfectly appropriate for Article III judges to do, but we have to allocate our resources to cases which are active cases, and that's what OLC does.

Senator WHITEHOUSE. Well, I will continue to pursue this because I think it is wrong for OLC to insist on developing its own jurisprudence that is separate from and independent from what Article III judges decide.

And if the only way you can change an OLC opinion, which is controlling on the entire executive branch, is to get the Supreme Court to overturn it, then you've created a really lasting obstacle to the proper separation of powers in our Constitution. So, to be continued. Attorney General, thank you for being here today.

Attorney General GARLAND. Thank you.

Chair DURBIN. Thank you, Senator Whitehouse. Senator Grassley.

Senator GRASSLEY. At last year's FBI oversight hearing, Wray committed to protecting whistleblowers that have approached my office about wrongdoing at the Department, and the FBI. Do you commit to me, this Committee, and the Senate as a whole that any retaliatory conduct against whistleblowers will be disciplined?

Attorney General GARLAND. I do, Senator. And you know well, more than any other Member of this Committee, that I've been a staunch supporter of whistleblowers and of the False Claims Act, all during the entire period of my role as a judge, as well.

Senator GRASSLEY. I'm going to set up a hypothetical fact pattern for you and ask you to tell me how you would handle it.

The Justice Department and the FBI received information from over a dozen sources. That's the first one.

Second, those sources provide similar information about potential criminal conduct relating to a single individual.

And third, that information was shared with the Department and FBI over a period of years.

According to Department policy and procedures, what steps would the Department take to determine the truth and accuracy of the information provided by those sources?

Attorney General GARLAND. I'm sorry. These are whistleblower—so, they're internal sources? Is that what you're saying? I'm not sure.

Senator GRASSLEY. It doesn't matter where it comes from. Just the fact that I want to know. You got that information, how would you go about handling it?

Attorney General GARLAND. Yes. So, reports of wrongdoing are normally reported to whatever the appropriate Department component is. It might be a U.S. Attorney's Office in the district in which it allegedly took place. It might be directly to FBI components and to FBI task forces.

In cases involving whistleblowers, of course, there are specific provisions for making complaints to the Inspector General's Office or the Office of Professional Responsibility or the Inspections Division of the FBI.

Senator GRASSLEY. Recent lawfully protected whistleblower disclosures to my office indicate that the Justice Department and the FBI had, at one time, over a dozen sources that provided potentially criminal information relating to Hunter Biden. The alleged volume and similarity of the information would demand that the Justice Department investigate the truth and accuracy of the information.

Accordingly, what steps has the Justice Department taken to determine the truth and accuracy of the information provided? Congress and the American people, I think, have a right to know.

Attorney General GARLAND. So, as the Committee well knows from my confirmation hearing, I promised to leave the matter of Hunter Biden in the hands of the U.S. attorney for the District of Delaware, who was appointed in the previous administration.

So, any information like that should have gone—or should, or should have gone to that U.S. Attorney's Offices and the FBI squad that's working with him. I had pledged not to interfere with that investigation, and I have carried through on my pledge.

Senator GRASSLEY. In April 2022, you testified to Senator Hagerty that the Hunter Biden investigation was insulated from political interference because it was assigned to, as you just now told me, to the Delaware Attorney's Office.

However, that could be misleading, because without special counsel authority, he could need permission of another U.S. attorney, in certain circumstances, to bring charges outside the District of Delaware. I'd like clarification from you with respect to these concerns.

Attorney General GARLAND. The U.S. attorney in Delaware has been advised that he has full authority to make those kind of referrals that you're talking about or to bring cases in other jurisdictions if he feels it's necessary. And I will assure that if he does, he will be able to do that.

Senator GRASSLEY. Does the Delaware U.S. attorney lack independent charging authority over certain criminal allegations against the President's son outside of the District of Delaware?

Attorney General GARLAND. He would have to bring—if it's in another district, he would have to bring the case in another district. But as I said, I have promised to ensure that he's able to carry out his investigation and that he be able to run it. And if he needs to

bring it in another jurisdiction, he will have full authority to do that.

Senator GRASSLEY. If you provided the Delaware U.S. attorney with special counsel authority, isn't it true that he wouldn't need permission of another U.S. attorney to bring charges?

Attorney General GARLAND. It's a kind of a complicated question. If it—under the regulations, that kind of act he would have to bring to me, to the Attorney General. Under the regulations, those kind of charging decisions would have to be brought. I would then have to, you know, authorize it and permit it to be brought in another jurisdiction. And that is exactly what I promised to do, here, already, that if he needs to bring a case in another jurisdiction, he will have my full authority to do that.

Senator GRASSLEY. Has the Delaware U.S. attorney sought permission of another U.S. Attorney's Office, such as in the District of Columbia or in California, to bring charges? If so, was it denied?

Attorney General GARLAND. So, I don't know the answer to that, and I don't want to get into the internal elements of decision-making by the U.S. attorney, but he has been advised that he is not to be denied anything that he needs. And if that were to happen, it should ascend through the Department's ranks. And I have not heard anything from that office to suggest that they are not able to do everything that the U.S. attorney wants to do.

Senator GRASSLEY. Well, let me give you my view. If Weiss, the U.S. attorney there in Delaware, must seek permission from a Biden-appointed U.S. attorney to bring charges, then the Hunter Biden criminal investigation isn't insulated from political interference, as you publicly proclaimed.

If the Justice Department received information that foreign persons had evidence of improper or unlawful financial payment paid to elected officials or other politically exposed persons, and those payments may have influenced policy decisions, would that pose a national security concern and demand full investigation? And when Wray was here, he seemed to answer that question in—that it was a national security concern. I want your opinion.

Attorney General GARLAND. In the way that you're—if I follow the question exactly right, if it's an agent of a foreign government asking someone and paying someone to do things to support that foreign government in secret, yes, I definitely think that would be a national security problem.

Senator GRASSLEY. Okay. My last question is, do—whistleblowers have confidentially asserted that the DOJ's public integrity unit—I think I'm going to leave that question for another round. Thank you, Mr. Chairman.

Attorney General GARLAND. Thank you, Senator.

Chair DURBIN. Thanks, Senator Grassley. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Attorney General Garland, for being here. I know a major goal of yours was working to build morale in the Department, filling a number of the jobs. And I want to personally thank you for the work of the U.S. Attorney's Office in Minnesota and our U.S. Attorney Andy Luger, who I know you know.

And he actually, at his swearing-in, announced a major strategy to address violent crime that directed Federal law enforcement to

prioritize cases, including carjackings—we’ve had a rash of those cases in Minnesota—and the trafficking of firearms.

Under his leadership, every Federal prosecutor—as you are aware, in your leadership—in the office will now take on violent crime cases. Can you talk about how the Department’s approach to focusing on violent crime is centered on partnerships with local agencies and what you’re doing?

Attorney General GARLAND. Yes. I want to begin by saying that we well recognize that there is a terrible problem of violent crime. Very first—and the reason violent crime is important to the Federal Government is because it makes it impossible for people to go about their ordinary lives and carry out their civic responsibilities and their family responsibilities without fear.

So, the Department is very seized with this problem, and one of the very first things I did after becoming Attorney General—this was, I think, in May, is to establish an anti-violent crime strategy, which involves the kind of partnerships that you’re talking about and the kind of individual, district-by-district determination that U.S. Attorney Luger has made in his own district as to what is most necessary in that district to fight violent crime.

Senator KLOBUCHAR. Mm-hmm.

Attorney General GARLAND. Our plan involves three sets of partnerships. One is among all Federal law enforcement, FBI, DEA, Marshals, ATF, and Homeland Security and other agencies, so that there is no turf fighting, that we all work together in joint task forces, that those partnerships at the second level be expanded to State and local law enforcement, police, and sheriffs.

There are not enough Federal law enforcement in the world to deal with the problem of violent crime. This is largely a State and local issue and problem, and they are our force multipliers, and we are their resource and expertise multipliers. So, in every jurisdiction, the U.S. attorney is responsible for creating a task force of Federal and State.

And then finally, there has to be relationships with the community. As a former violent crime prosecutor myself, I know we don’t get witnesses to testify in violent crime cases unless the community trusts us. The community doesn’t trust us if law enforcement doesn’t engage with them, show that we’re being honest and transparent about our work, and, through our funding mechanisms, provide grants for violence interruption and violence intervention.

Senator KLOBUCHAR. Okay. Thank you.

Attorney General GARLAND. And that, in a nutshell, is the violent crime program.

Senator KLOBUCHAR. Thank you for the thorough answer. I’m going to just now do a bit of a rapid round follow-up on some of these.

Attorney General GARLAND. Sure.

Senator KLOBUCHAR. You mentioned law enforcement. You noted in your testimony that the COPS Office has dedicated \$224 million to help law enforcement.

Senator Murkowski and I have long championed the COPS Hiring Program through the COPS Reauthorization Act. I assume you continue to support that and continue to support the work that

needs to be done to address police officer recruitment and retention issues.

Attorney General GARLAND. Absolutely. In the previous fiscal year, I think we had \$100 million to distribute, which we did, for COPS hiring, for recruitment and retention.

In the next fiscal year, we expect over \$200 million for the same purpose. We know how difficult police departments are—how much difficulty they’re having with respect to recruitment and retention, and we are trying to do everything we can, both in terms of grants and in terms of expertise, to help.

Senator KLOBUCHAR. Okay. Very good. Minnesota—currently a backlog of around 3,800 DNA cases awaiting testing. Senator Cornyn and I are working together on the Debbie Smith Act. And would that help law enforcement have the tools they need? This—actually, these numbers just came out yesterday, so it’s very timely.

Attorney General GARLAND. Yes. No, absolutely, I think that needs to be reupped, and we are very strongly supportive of providing more funds to State and locals for DNA rape kits and forensic analysis or the like.

Senator KLOBUCHAR. Okay. I want to leave 2 minutes for anti-trust, so just one quick other follow-up. Senator Capito and I asked what steps the Department has taken to stop the trafficking of fentanyl on the dark web. I know some of my colleagues have asked about fentanyl. Any update you want to give on that? Or you could give it in writing afterwards.

Attorney General GARLAND. Well, I’ll give you more detail in writing.

As you know, we had a major takedown of two different dark web websites, which were trafficking in fentanyl, and we are continuing to investigate using our cyber tools to take those websites down and to arrest the operators.

Senator KLOBUCHAR. Okay. Thank you. Senator Grassley and I worked together on passing, as you know, the changes to the merger fees. It was kind of a lot of drama at the end of the year, and we’re very pleased that that went through and it had, I think, 88 Senators supporting an amendment at the end of the year on the budget. And I assume you’re going to use those resources in a good way, as they start coming in.

But I really wanted to focus on some of the legal changes we’d like to see. Senator Lee and I were pleased the Venue bill passed that he led. And I know we also have a bill on the marketing side on Google. We’re going to be having a hearing coming up on that topic. And I know the Department recently announced a new anti-trust case against Google for its blocking of competition in digital advertising.

But could you talk a little bit about, beyond that, what you think legal changes, law changes would be helpful as we’re seeing a changing internet economy? And on the privacy kids’ side, which Senator Durbin asked about, we haven’t seen any changes to our laws.

But also on the antitrust side, on the marketing, on the self-preferencing of their products, whether it’s Amazon or Apple, we haven’t seen changes.

And Senator Blackburn and Senator Blumenthal have worked together on the App Store bill. Talk about what you'd like to see to give you the tools to better combat the issues that we're seeing.

Attorney General GARLAND. So, first, gratitude for the merger fees increase. It gives us the opportunity to staff up and be able to have enough lawyers and economists to oppose private sector, which has way more than we do. And we still have fewer antitrust employees than we had in the 1970s, the last time I was in the Justice Department. With respect to the——

Senator KLOBUCHAR. Yet you have the biggest companies the world has ever seen, to try to deal with.

Attorney General GARLAND. Yes.

Senator KLOBUCHAR. Yes. Okay.

Attorney General GARLAND. Exactly. On the legislation side, we have supported—I think it's called the Online Choice—American Innovation and Online Choice Act.

Senator KLOBUCHAR. Very good.

Attorney General GARLAND. Did I get it right? Yes.

Senator KLOBUCHAR. Yes.

Attorney General GARLAND. Thank you. And the Open Apps Act—I think that's close to the correct title. We've had testimony by Assistant Attorney General Kanter with respect to the Open Apps Act.

We are always interested in working with Congress to modernize the antitrust laws to take account of the kind of network effects and two-sided platforms that we now have in our high-technology companies.

Senator KLOBUCHAR. Well, thank you. And, of course, you join a number of Republicans, as well as the NFIB has made this a huge priority in terms of passing these bills. Thank you.

Chair DURBIN. Attorney General, of course, Senator Klobuchar has a recommendation for your reading pleasure on the subject of antitrust. Senator Cornyn.

Attorney General GARLAND. As Senator Klobuchar would say, channeling Taylor Swift, I know that, "all too well."

[Laughter.]

Senator KLOBUCHAR. Thank you for bringing up the Ticketmaster hearing that Senator Lee and I conducted. I'm sure we will have follow-up in writing, or maybe Senator Lee could ask a question about that. Thank you.

Attorney General GARLAND. I can't match all of Senator Lee's quotes on this one, but I'm pretty familiar with Taylor Swift, so I'll do my best.

Chair DURBIN. Now you've got us started. Senator Cornyn.

Senator CORNYN. Attorney General Garland, you, of course, served in the judiciary for many years and before you became Attorney General—let me just ask, do you prefer to be called General Garland or Judge Garland?

Attorney General GARLAND. Well, the Senators of this Committee can call me anything that they want.

Senator CORNYN. Well, we will, with all appropriate respect.

Attorney General GARLAND. I appreciate that part.

Senator CORNYN. Are you familiar with the strategy of the transnational criminal organizations that are flooding migrants

across the border, overwhelming Border Patrol and other law enforcement authorities so that then the drug traffickers can move illicit drugs across the border? Are you familiar with that, what—

Attorney General GARLAND. I—

Senator CORNYN [continuing]. I would call a business model?

Attorney General GARLAND. I am, and I set up—I specifically directed the establishment of a task force on anti-smuggling and anti-human trafficking, for just the reason you said. It involves our Civil Rights Division, our Criminal Division, and the U.S. Attorney's Offices all along the border, as well as our offices in the Northern Triangle countries and Mexico.

Senator CORNYN. I think you and I had this conversation earlier, maybe at your confirmation hearing, but I think the Attorney General has the toughest job in Government, I believe, because you have to wear two hats.

You are the chief law enforcement officer of the country, and you are also a political appointee and a member of President Biden's Cabinet. But I think you also told us at the hearing, your confirmation hearing, you repeatedly said that the executive branch cannot simply decide, based on policy disagreements, that it will not enforce the law. Is that still your position?

Attorney General GARLAND. Yes, it is, Senator.

Senator CORNYN. On September the 11th, 2001, we lost about 3,000 Americans to a terrorist attack. We declared a war on terror. The Congress issued an authorization for the use of military force. If you took the size of an average 737, or a passenger jet, today holds between 145 and 185 passengers.

If you were to rack up all of the deaths that we've seen as a result of drugs coming across the southwestern border as a result of this successful business model that the cartels have employed, you would be talking about the equivalent of a passenger jet per day crashing, killing everyone on board.

I have been just astonished at the lack of sense of urgency to deal with this issue. It seems we've become so desensitized to it that that sense of urgency is simply gone. But I will tell you that it's directly related to the open border policies of the Biden administration, where people continue to come across the border, turn themselves in to a broken asylum system or simply get away from law enforcement, because they're overwhelming the Border Patrol's capacity.

This is intentional, as you acknowledge. It's a business model of the cartels, and they are getting rich, and students like those parents who I met with last week in Johnson High School in Hays County, Texas, right outside of Austin, are losing their sons and daughters to fentanyl overdoses because of exactly this successful business model by the cartels.

I want to ask you a little bit about the prosecution policies of the Garland Attorney General's Department of Justice. Sort of the bedrock standard for prosecuting crimes has historically been that the prosecutor should pursue the most serious, readily provable offense, and that that's been the bedrock of policy for—over decades. We know that Eric Holder, when he was Attorney General, changed that standard.

And specifically what I want to ask you is about two different memos that you've issued to prosecutors with regard to mandatory minimum sentencing. And specifically, in the charging memo, one of the charging memos, you said, "The proliferation of provisions carrying mandatory minimum sentences has often caused unwarranted disproportionality in sentencing and disproportionately severe sentences."

Now, just to be clear, mandatory minimum sentences are statutory. Correct? In other words, they're passed by Congress and signed into law by the President.

Attorney General GARLAND. Yes, that's right.

Senator CORNYN. And here, you suggest that prosecutors should not enforce or charge defendants with a crime which carries a mandatory minimum under certain circumstances. Correct?

Attorney General GARLAND. It's not—it's not exact—if I can just have a moment to explain. I'm very familiar—

Senator CORNYN. No, well, if you'd just answer the question.

Attorney General GARLAND. Yes.

Senator CORNYN. So, the memo says, specifically—I'll just read it to you. It said, "For this reason, charges that subject a defendant to a mandatory minimum sentence should ordinarily be reserved for instances in which the remaining charges would not sufficiently reflect the seriousness of the defendant's criminal conduct, danger to the community, harm to victims, or other considerations outlined above."

So, basically, your charging memorandum says that prosecutors can exercise their discretion to charge less than the most serious offense because you don't like the mandatory minimum sentences that Congress has passed. Correct?

Attorney General GARLAND. No, Senator. This is a question of allocating our resources and focusing them on violent crime. Later on in—

Senator CORNYN. I thought you said—I thought you said that your job was to enforce the law without regard to policy differences.

Attorney General GARLAND. It's not a question of policy differences. It's a question of the resources we have—

Senator CORNYN. You don't have enough money? You don't have enough people?

Attorney General GARLAND. We don't have enough people. We don't have enough money. We don't have enough jails. We don't have enough judges. But—

Senator CORNYN. Well, you've arrogated to yourself the decision to make policy by saying that, in spite of the fact that there are mandatory minimum sentences for many of these drug crimes, which are now causing untold death and destruction across America, you're telling prosecutors, "Don't charge those if they involve a mandatory minimum sentence."

Attorney General GARLAND. With respect, Senator, the memorandum makes clear that that general analysis doesn't apply in violent crime, doesn't apply in drug trafficking, doesn't apply in cases in which there's injury.

Senator CORNYN. So, you're cherry picking which cases that you will charge with a mandatory minimum sentence—

Attorney General GARLAND. I—

Senator CORNYN [continuing]. And not applying them uniformly and charging the most serious crime that can be proven at trial.

Attorney General GARLAND. If we apply it to every single crime, we will not be able to focus our resources on violent crime and significant drug trafficking, on the cartels, on the people who are killing people with fentanyl. So, the purpose here is to focus the attention of our prosecutors and agents on the things that are damaging the American people in the largest possible respect. That's what the—this policy says.

Senator CORNYN. At 108,000, roughly, Americans who died as a result of drug overdoses last year—71,000, roughly, of fentanyl overdoses, do you consider your current policies successful?

Attorney General GARLAND. We—as I said in answer to another question, we have a huge epidemic of fentanyl problem created by intentional acts by the cartels. We are doing everything we can within our resources to fight that. We have our DEA working to prevent transfer of precursors into Mexico, to capture the labs, to extradite the cartel leaders, to arrest them in the United States.

We are focusing on fentanyl with enormous urgency. I have personally twice traveled to Mexico to try to get greater cooperation from the Mexicans on exactly the problem you're talking about. I have separately talked twice in person with the Mexican attorney general for exactly the problem that you're talking about.

We are focusing on this with enormous urgency. This is a priority of the Justice Department, but this is a whole-of-Government problem. The border is the responsibility of the Department of Homeland Security. We do what we can do with respect to the jurisdictions that we have.

Chair DURBIN. Thank you, Senator Cornyn. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. Let me begin by thanking you, Mr. Attorney General, and all of the very dedicated professionals, all of the employees of the Department of Justice, for the great work that they do, day in and day out, a lot of it underappreciated. I say that as an alumnus of the Department of Justice, a former United States attorney.

But the work that you and your team have done to restore the confidence and trust of the American public in our Department of Justice, I think, is one of your enduring contributions.

Let me begin with areas where I think we have a high level of bipartisan agreement. First of all, on the Wagner Group, Senator Graham and I are the principal sponsors, along with Senator Whitehouse, of a measure to declare the Wagner Group a foreign terrorist organization. You would agree that, assuming that the State Department goes along with us, that it is worthwhile doing?

Attorney General GARLAND. Look, Mr. Prigozhin, who runs this thing, is, in my view, a war criminal. And maybe that's inappropriate for me to say, as a judge before getting all the evidence, but I think we have more than sufficient evidence at this point for me to feel that way.

And I believe that that group, which is responsible for the attacks on Ukrainians in the Donbas, including by bringing in prisoners from Russian prison camps as cannon fodder—it's just—it's unfathomable, what they are doing, and everything we can do to stop them, we should do.

Senator BLUMENTHAL. Senators Whitehouse and Graham, and I, have been working on aiding Ukrainian prosecutors in bringing to justice those war criminals, not only Prigozhin, but others who tied the hands of women and children behind their backs, shot them, buried them in mass graves, which I have visited among my three trips to Ukraine. Can you commit the Department of Justice will support the Ukrainian prosecutor who is hard at work right now in trying to bring to justice those war criminals?

Attorney General GARLAND. Not only will I commit, but I'll tell you, I have done that. I've met twice in person with the current prosecutor general, Prosecutor Kostin. I met in Ukraine with the previous prosecutor general. We have established a war crimes task force in the Justice Department to assist.

Our forensic agents are on the ground now in Ukraine to assist, to teach, to assist in the development of the forensics necessary to do those. I have met with Eurojust and Europol to work on the—to help them develop the kind of infrastructure necessary to prosecute these cases.

Senator BLUMENTHAL. Thank you.

Attorney General GARLAND. You have our wholehearted support in your efforts here.

Senator BLUMENTHAL. Thank you. Next week, Senator Hawley and I are going to have a hearing on Section 230 reform, the first of a number of hearings that I hope will lead to legislation. I hope it will be bipartisan legislation.

The Solicitor General, in her argument on *Gonzalez*, I think made a number of important points on differentiating third-party content from platform design.

In other words, Section 230 could cover content that users post, but when YouTube or others design their products in specific ways that cause harm or take steps to amplify or change content, that goes beyond the intent and the statutory language of Section 230, one example of the ways that I think we can achieve steps toward Section 230 reform.

Another is the EARN IT Act, which Senator Graham and I have sponsored, and we will introduce it again this year. I recognize that these are general principles. I hope the Department of Justice will support this effort.

I hope that you will, as well, support efforts to take action against monopolistic endeavors like Ticketmaster. I understand that you commented briefly on it. Can you confirm that Ticketmaster is under investigation now?

Attorney General GARLAND. So, the Department doesn't confirm or deny the existence of these kinds of investigations until they reach an overt stage, as you know from your time as a U.S. attorney.

But as I told Senator Klobuchar, we know, quote, "all too well," closed quote, the importance of competition in this industry, as in all other industries. And so you can be confident that in all of our work we approach it with an understanding that highly concentrated industries are a problem for competition.

Senator BLUMENTHAL. In that concentrated situation, where power is concentrated and you have violation of consent decrees

twice, wouldn't it be appropriate for the Department of Justice to investigate?

Attorney General GARLAND. As I say, I really am happy to talk in a hypothetical, that in a case where someone violates the consent decree, of course, it would be appropriate to investigate. But I just don't want to talk about individual investigations and whether they're ongoing.

Senator BLUMENTHAL. Let me ask you, the American public right now is hearing about investigations involving COVID, the sources of COVID in China, conclusions with low confidence, high degree of confidence.

Can you, as an official in charge of intelligence and interpretations of intelligence, explain to the American people what it means for there to be low confidence or higher confidence when there are conclusions about, for example, the sources of COVID? Whether it came from natural sources in China or from a lab leak? What does that designation mean?

Attorney General GARLAND. I would have to say, to my knowledge—I mean, these are labels that are applied by the intelligence community, so while I read the results, I'm not sure I can exactly define it.

But I believe it is just as you would think, that if asked to make a decision and say yes or no, you say yes or no depending on the degree of confidence that you have that your yes-or-no answer is correct. So, low confidence means you think the answer is yes, but you don't have high—you know, you have low confidence in it. Medium is medium. You might answer, "We don't know at all," but that's not what—that's not what you're asking about.

Senator BLUMENTHAL. So, it's more than a hunch or a guess, but not quite—

Attorney General GARLAND. Yes.

Senator BLUMENTHAL [continuing]. Something to take to the bank.

Attorney General GARLAND. Yes. So, there's a lot of criminal law, ranging from Terry stops to probable cause to convictions. I don't think there is any law in the intelligence community that defines those, specifically.

Senator BLUMENTHAL. You wouldn't sanction a search or an arrest based on low confidence?

Attorney General GARLAND. Well, search and arrest require probable cause. That's all I can say about that.

Chair DURBIN. Thank you, Senator Blumenthal.

Senator BLUMENTHAL. Thank you.

Chair DURBIN. After Senator Lee asks, we're going to take a brief intermission. Senator Lee.

Senator LEE. Thank you, Attorney General Garland. I want to echo briefly what Senator Klobuchar described. I hope you'll look at our letter and investigate thoroughly those issues.

As you know, I've long respected you and I've long respected your Department. I have become concerned recently that, notwithstanding the great men and women who serve and have served for generations in the Department of Justice, there are some things that lead me to wonder whether some actions are being politicized within the Department.

One example of this relates to 18 U.S.C. § 1507.

[Poster is displayed.]

Senator LEE. Ever since the leak of the *Dobbs* opinion and then the issuance of the *Dobbs* opinion by the Supreme Court last summer, we've had protesters who have been showing up at the homes of Supreme Court Justices, carrying signs, picketing, shouting.

It's very clear that they're trying to influence, in one way or another, those serving on the United States Supreme Court, trying to influence jurisprudence. And yet not one person, to my knowledge, has been prosecuted for such things under 18 U.S.C. § 1507.

About 2 weeks ago, this Committee invited some officials from the Department of Justice to brief Committee staff on protests at the Justices' homes and ask about any arrests that have been made or might be made for people engaged in that behavior. The briefers came to the briefing and informed staff that they hadn't read Section 1507. I assume you've read it, of course.

Just wondering why the Department would schedule such a briefing on a statute without having read it and, especially, why no actions have been brought under Section 1507 for these actions. I've got a lot to cover, so, can you answer that in one or—

Attorney General GARLAND. I'll try to answer—

Senator LEE [continuing]. Two sentences?

Attorney General GARLAND [continuing]. All these questions—

Senator LEE. Well, no, just—

Attorney General GARLAND [continuing]. Together.

Senator LEE [continuing]. Just tell me, am I right in concluding that you haven't brought any charges under 1507?

Attorney General GARLAND. So, I don't know the answer to that.

We have—the thing that mattered—and as soon as the *Dobbs* draft leaked, I ordered the marshals to do something that the United States Marshals had never in history done before, which was protect the Justices' homes, residence, and lives, 24/7. No Attorney General had ever ordered that before, and no Justice Department had ever done that before. We sent more—

Senator LEE. Which is terrific. That's—

Attorney General GARLAND. Thank you.

Senator LEE [continuing]. Fantastic.

Attorney General GARLAND. So, I'm—

Senator LEE. I'm talking about 1507.

Attorney General GARLAND [continuing]. Getting to the why. So, we sent more than 70 U.S. Marshals for this purpose. Those marshals' priority is protection of the lives of the Justices and their families. They are onsite, but their priority job is protection.

That is why, when someone did come to assault Justice Kavanaugh, he had to go away from where they were, because there were two marshals in front of the house, and eventually he self-reported himself. The marshals have been advised, and they know—the marshals on the ground—they have full authority to arrest people under any Federal statute, including that Federal statute, but they have to make the determination on the ground whether they can do that in a manner that is safe and able to protect their main mission.

Now, there are also State and local entities which have similar authorities and which I understand the Supreme Court Marshal

has asked them to do this, as well. I don't know whether they have done any of those things.

Senator LEE. Okay. Thank you. I'd love to follow up with you more on that later. It is concerning to me when you show up at the home of a public official, you're sending the message of implicit violence.

You're sending the message, "We know where you sleep. We know where you and your family are most vulnerable." And it's very concerning to me.

I assume you're aware of the overly aggressive arrest and prosecution of Mark Houck, who is a pro-life activist and father of seven in Philadelphia, based on the fact that he had pushed a protester—a protester, or a Planned Parenthood escort, rather—as he was demonstrating outside of an area in the Philadelphia region.

[Poster is displayed.]

Senator LEE. He pushed this person, after this person got in the face of his 12-year-old son and was yelling vile, insulting, demeaning, implicitly threatening things, denigrating his father, denigrating his faith, and yelling vile, sexually suggestive things to his 12-year-old son. So, he shoved him.

And then before they knew it, Mr. Houck was facing FACE Act prosecutions. A highly militarized group of DOJ law enforcement showed up to enforce a warrant. They showed up at about 7 a.m. on a Friday morning. And, as his—Houck's wife put it, "A SWAT team of about 25 came to my house with about 15 vehicles and started pounding on the door and then had about 5 guns pointed at my husband, myself, and basically my kids."

This concerns me. You know, Mr. Houck ended up facing these charges, and, not surprisingly, the jury acquitted him of that. I'm just wondering how—it doesn't seem justifiable, to me, to have that overwhelming show of force for conduct like that.

In the meantime, in 2022, and for the first couple of months of 2023, DOJ has announced charges against 34 individuals for blocking access to or vandalizing abortion clinics.

And there have been over 81 reported attacks on pregnancy centers, 130 attacks on Catholic churches since the leak of the *Dobbs* decision, and only 2 individuals have been charged. So, how do you explain this disparity by reference to anything other than politicization of what's happening there?

Attorney General GARLAND. The FACE Act applies equally to efforts to damage, blockade clinics, whether a pregnancy resource center or whether they're a pregnancy resource center or whether they are an abortion center. It applies equally in both cases, and we apply the law equally.

I will say you are quite right. There are many more prosecutions with respect to the blocking of the abortion centers, but that is generally because they are—those actions are taken with photography at the time, during the daylight, and seeing the person who did it is quite easy. Those who are attacking the pregnancy resource centers, which is a horrid thing to do, are doing this at night, in the dark.

We have put full resources on this. We have asked—put rewards out for this. The Justice Department and the FBI have made outreach to Catholic and other organizations to ask for their help in

identifying the people who are doing this. We will prosecute every case against a pregnancy resource center that we can make. But these people who are doing this are clever and are doing it in secret. And I am convinced that the FBI is trying to find them with urgency.

Senator LEE. Okay. I see my time's expired. Mr. Chairman, I'd like to submit for the record a copy of a letter sent by Representative Andy Biggs from Arizona regarding a case involving Philip Esformes, an individual who was granted clemency by the prior administration and who's now apparently being prosecuted. I hope to discuss this in a subsequent round.

Chair DURBIN. Without objection, it will be entered in the record. [The information appears as a submission for the record.]

Chair DURBIN. We're going to recess for 5 minutes. The Committee stands in recess.

[Whereupon the hearing was recessed and reconvened.]

Chair DURBIN. The Committee will resume. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chair. Attorney General, as we've discussed on prior occasions, we know that hate crimes in many United States cities are at their highest level since the FBI began collecting data in the 1990s.

Los Angeles alone has seen almost 700—well, saw almost 700 hate crimes in the year 2022, its highest total ever. Hate crimes are also known to be widely underreported, so the real numbers are very likely to be much higher.

Now, hate crimes based on antisemitism, in particular, are rising at alarming rates. According to the Center for the Study of Hate and Extremism at California State University, San Bernardino, Los Angeles faced 80 antisemitic hate crimes from January to October of last year, a nearly 10 percent increase over the previous year.

And this past month, Federal prosecutors charged a 28-year-old man with hate crimes after he fired at two Jewish men as they walked home from their synagogue in Los Angeles.

So, my question is this, do we have adequate resources being devoted to hate crime investigation and prosecution, and are there any solutions that you believe we should be considering to help us help you do this job?

Attorney General GARLAND. I'm grateful for the question. And obviously, if anybody ever wants to give me more resources in any area of the Justice Department's responsibility, I'm happy to take them.

We have been focused like a laser on hate crime since I first came into the Department. I think my memorandum to the Department to develop an anti-hate crime task force was one of the very first memorandums I issued. As we were making our developments in that respect, the anti-hate crime act was passed by the Congress, providing us with additional funding, which was very helpful.

I've established a hate crimes coordinator in the Department, and each of our U.S. Attorney's Offices is on the case, looking into these matters. And the FBI has elevated hate crimes and civil rights violations into their highest band of threats. So, I would say we are examining this with the highest degree of urgency that's

possible, and we are putting our resources of our Department into stopping these heinous acts.

Senator PADILLA. Okay. I appreciate that. In addition to resources, if there are specific policy changes or initiatives that you'd like for us to consider——

Attorney General GARLAND. I'd be——

Senator PADILLA [continuing]. Please bring them forward.

Attorney General GARLAND. My staff would be happy to work with yours if you have ideas in this regard. I think we're pretty—right now, I feel like we have the statutes and techniques required, but there's always room for improvement in everything, and we would be happy to work with you in that regard.

Senator PADILLA. A second area I wanted to raise is the issue of labor exploitation of children, and, in particular, migrant children. I'm hoping you caught a recent New York Times report of their investigation which put a spotlight on the vast use of migrant child labor across States and across industries. I was particularly alarmed to learn that some of these children are working full adult shifts in food processing facilities, in factories—after school.

Children are being placed in occupationally dangerous situations where they're putting their lives at risk and given little break from grueling work. And many of these children were formerly under the care of the Department of Health and Human Services as unaccompanied minors but have not received adequate follow-up services once released to the care of a sponsor. And I ask consent to enter this article into the record.

Chair DURBIN. Without objection.

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

Senator PADILLA. Now, the Biden administration on Monday did announce that it will direct agencies to crack down on the use of child labor. And as part of the new initiative, it's the Department of Labor who will investigate and enforce penalties on these unscrupulous employers and make criminal referrals as needed.

Now, the Department of Labor is also going to lead an inter-agency task force to combat child labor exploitation. So, my question is, will the Department of Justice be coordinating with the Department of Labor on criminal referrals and possibly join this inter-agency task force?

Attorney General GARLAND. We—of course. I read the same article that you're talking about. I was horrified by the reporting.

Our Criminal Division and our Civil Rights Division are reaching out to the Labor Department and HHS to try to be of assistance as much as possible. There's only a limited number of criminal statutes that would apply.

I would point out we do have a forced labor task force which has been very active, in general, and it includes problems with respect to children, obviously. And I met with them just yesterday, and they have assured me that they would be reaching out, as well.

Senator PADILLA. Okay. I look forward to following up on that. But I also can't help but acknowledge some of the dynamics that lead to these situations. Right?

We know that, from the private sector, we've heard that there is a need to address the demand for workers. There's a workforce

shortage in America today across a number of industries and sectors.

There's a reported 11 million unfilled jobs, many of which have historically been filled by immigrants, you know, permanent, temporary. But we've seen migration numbers drop in recent years.

So, with no migrants to fill these jobs, since 2018, the U.S. Department of Labor has seen a 69 percent increase in children being employed unlawfully by companies.

So, it seems like employers, particularly unscrupulous employers—they're going to find their workers somewhere, and if they're not finding them through traditional, lawful means, children become the victims.

Further disturbed by proposals I see from Republican legislators in States, including Iowa, Ohio, Arkansas, and others, where they're proposing to loosen child labor laws. That's not the solution here—proposing 14- and 15-year-olds work in meat coolers, industrial freezers, and other environments.

This cannot be the answer to our Nation's labor problem. So, I absolutely look forward to following up with you on this crackdown of unlawful child labor in the United States. My time is up, but I'll have some further follow-up questions in the second round, I hope. Thank you.

Attorney General GARLAND. Thank you.

Senator PADILLA. Mr. Chair.

Chair DURBIN. Thank you, Senator Padilla. We're on a roll call, just to alert the Members, and Senator Cruz is next.

Senator CRUZ. Thank you, Mr. Chairman. General, welcome. As you know, as I observed at your confirmation hearing, you had built a long record on the Federal court of appeals and a reputation of being relatively nonpartisan. And so I had hopes that your tenure as Attorney General would continue that record.

I have to say, I'm deeply disappointed in what the last 2 years have shown. In my judgment, the Department of Justice has been politicized to the greatest extent I've ever seen in this country. And it has done a discredit to the Department of Justice, to the FBI, and to the administration of law in this country.

Let me start with a simple question. General Garland, is it a Federal crime to protest outside of a judge's home with the intent of influencing that judge as to a pending case?

Attorney General GARLAND. The answer to that is yes, but I also want to, at least, respond to your characterization of the Department—

Senator CRUZ. Sure.

Attorney General GARLAND [continuing]. Which I vigorously disagree with. I believe the men and women of the Department pursue their work every single day in a nonpartisan and an appropriate way.

Senator CRUZ. General Garland, there are thousands of men and women who do that. And I'll tell you, I hear from prosecutors at the Department of Justice, I hear from agents at the FBI who are angry that it is treated as the enforcement arm for the DNC instead of upholding the law in a fair and evenhanded manner.

So, you are right. There are thousands of men and women that are doing the job. But it is the political leadership that you're responsible for.

So, you just said, yes, it's a crime to protest at the home of a judge—same goes for jurors, by the way—with the intent of influencing a case.

But in the wake of the leak of the *Dobbs* decision, when rioters descended at the homes of six Supreme Court Justices, night after night after night, you did nothing.

[Poster is displayed.]

Senator CRUZ. The Department did nothing. When extremist groups like Ruth Sent Us and Jane's Revenge openly organized campaigns of harassment at the homes of Justices, you sat on your hands.

When these same groups posted online information about where the Justices worship or their home addresses or where their kids went to school, you again sat on your hands and did nothing. Your failure to act to protect the safety of the Justices and their families was an obvious product of political bias. You agree with *Roe v. Wade*. You disagree with the *Dobbs* decision. And the Department of Justice under this President was perfectly happy to refuse to enforce the law and allow threats of violence.

And as you know, those threats finally materialized with Nicholas Roske, a 26-year-old man from California who traveled across the country, was arrested outside the home of Justice Kavanaugh, armed with a handgun, a knife, and burglary tools, and he said he came there to kill Justice Kavanaugh because he was enraged by the leaked opinion.

Now, of course, you're prosecuting that individual for attempted murder. But did you bring even a single case to enforce this law or did the Department of Justice decide this law doesn't apply if it's harassing Justices for an opinion we don't like?

[Poster is displayed.]

Attorney General GARLAND. When the *Dobbs* draft was leaked, I did something no Attorney General in the history of the Department had ever done before. For the first time in history, I ordered United States Marshals, 24/7, to defend every residence of every Justice.

Senator CRUZ. Judge Garland—as a judge, you're familiar with asking counsel to——

Attorney General GARLAND. I'm——

Senator CRUZ [continuing]. Answer a question.

Attorney General GARLAND. I am ans——

Senator CRUZ. Has the Department of Justice enforced this statute? Have you brought a single case against any of these protesters threatening the Justices under 18 U.S.C. § 1507? Have you brought even one?

Attorney General GARLAND. Senator, you asked me whether I sat on my hands. And, quite the opposite, I sent——

Senator CRUZ. Okay. Let me——

Attorney General GARLAND [continuing]. Seventy United States Marshals——

Senator CRUZ. Let me try again.

Attorney General GARLAND [continuing]. To defend—and let me—

Senator CRUZ. Has the Department of Justice brought even a single case under this statute? It's a yes-no question. It's not a give a speech on the other things you did.

Attorney General GARLAND. The job of the United States Marshals is to defend the lives of the—

Senator CRUZ. So, the answer is no.

Attorney General GARLAND [continuing]. Is to defend the lives of the Justices, and that's their number one priority. They have full—

Senator CRUZ. Why are you unwilling to say no? The answer's no. You know it's no. I know it's no. Everyone in this in this hearing room knows it's no. You're not willing to answer a question. Have you brought a case under this statute? Yes or no?

Attorney General GARLAND. As far as I know, we haven't, and what we have done is defended the lives of the Justices with—

Senator CRUZ. So, how do you decide—

Attorney General GARLAND [continuing]. Over 70 U.S. Marshals.

Senator CRUZ. How do you decide which criminal statutes the DOJ enforces and which one it doesn't?

Attorney General GARLAND. The United States Marshals know that they have full—

Senator CRUZ. Okay. I recognize you want to give a separate speech.

Attorney General GARLAND. No, I don't want to give a—

Senator CRUZ. How do you decide which statutes you enforce and which ones you don't?

Attorney General GARLAND. The marshals on scene make that determination, in light of the priority of defend—

Senator CRUZ. The marshals do not make a determination over whether to prosecute. You, the Attorney General, make a determination. And you spent 20 years as a judge, and you're perfectly content with Justices being afraid for their children's lives. And you did nothing to prosecute it. Let's shift—

Attorney General GARLAND. That is a—

Senator CRUZ [continuing]. To another area.

Attorney General GARLAND. Can I answer the question?

Senator CRUZ. No. You cannot.

Attorney General GARLAND. The Attorney General—

Senator CRUZ. You have refused to answer the question.

Attorney General GARLAND. I am answering your question. The Attorney General—

Senator CRUZ. How did you choose not—

Attorney General GARLAND [continuing]. Does not decide whether to arrest—

Senator CRUZ. How did you choose not to enforce this statute?

Attorney General GARLAND. The marshals on scene—

Senator CRUZ. The marshals don't make that decision.

Attorney General GARLAND. They do make the decision of whether to make an arrest.

Senator CRUZ. To prosecute someone? No, they don't.

Attorney General GARLAND. If they make a—if they make a—

Senator CRUZ. The marshals do not have prosecution authority.

Attorney General GARLAND. If they make an arrest, then it goes to the——

Senator CRUZ. All right, let's——

Attorney General GARLAND [continuing]. Marshals.

Senator CRUZ [continuing]. Change topics, because our time is limited.

We've also seen, across the country, violent attacks at crisis pregnancy centers by similar left-wing terrorist groups, including one graffiti of a firebombed building said, "Jane was here."

[Poster is displayed.]

Senator CRUZ. There have been attacks all over the country, and yet the Department of Justice has not brought these violent criminals to justice.

You contrast that—if you're a violent criminal and you attack a crisis pregnancy center, that is not a priority in the Biden Department of Justice.

Contrast that to Mark Houck, who's a pro-life activist. He's a sidewalk counselor and he had an altercation with someone who allegedly interfered with his son's personal space and threatened his son, and he pushed him. Now, in an ordinary world, pushing someone would be maybe a simple misdemeanor assault, but not under the Biden Department of Justice.

If you're a pro-life activist, what can you expect? Well, in this instance, according to Mr. Houck's wife, two dozen agents clad in body armor and ballistic helmets and shields and a battering ram showed up at his house, pointing rifles at his family.

[Poster is displayed.]

Senator CRUZ. Why do you send two dozen agents in body armor to arrest a sidewalk counselor who happens to be pro-life, but you don't devote resources to prosecute people who are violently firebombing crisis pregnancy centers?

Attorney General GARLAND. It is a priority of the Department to prosecute and investigate and find the people who are doing those firebombings. They are doing it at night and in secret. And we have found—we have found one group, which we did prosecute. We are——

Senator CRUZ. You found one. How many have there been? How many attacks have there been?

Attorney General GARLAND. There have been a lot. And if you have any information specifically as to who those people are, we would be glad——

Senator CRUZ. Let me ask you something.

Attorney General GARLAND. We would be glad to have that information.

Senator CRUZ. Did you personally authorize 20 agents going to Mr. Houck's house?

Attorney General GARLAND. I——

Senator CRUZ. And he offered to turn himself in through counsel, but you didn't want that. The Department of Justice wanted to make a show of it. Did you personally authorize it? And do you want to apologize to Mrs. Houck and her seven children for being terrorized?

Attorney General GARLAND. Decisions about how to do that are made at the level of the FBI agents on scene and in——

Senator CRUZ. Did you know about it?

Attorney General GARLAND. I did not know about it until—the way you’re describing it, and my understanding is the FBI disagrees with that——

[Gavel is tapped twice.]

Attorney General GARLAND [continuing]. Description.

Senator CRUZ. Was it a mistake?

Chair DURBIN. The Senator’s time has expired. I’m going to allow the witness to respond to any of the questions that were asked.

Senator CRUZ. Was it a mistake?

Chair DURBIN. I’m going to chair the Committee, Senator. I’m sorry, you’re not. I’m going to——

Senator CRUZ. You said you’d allow him to respond. I’ve repeated the question I asked, which is, was it a mistake to send——

Chair DURBIN. You——

Senator CRUZ [continuing]. Twenty agents to arrest him at the——

Chair DURBIN. You had——

Senator CRUZ [continuing]. Crack of dawn?

Chair DURBIN. You had your time and more than any——

Senator CRUZ. You just said you’d allow him to respond. You just said, “I’m going to allow him to respond to the question,” so I repeated the question. Was it a mistake?

Chair DURBIN. You ask the questions——

Senator CRUZ. That was the pending question.

Chair DURBIN [continuing]. You want to ask. I’ll ask the questions I want to ask.

Senator CRUZ. That’s the question I had already asked.

Chair DURBIN. Well——

Senator CRUZ. You just said you’d let him respond.

Chair DURBIN. I’m going to let him respond right now.

Senator CRUZ. Good.

Chair DURBIN. Please don’t interrupt him. Thank you.

Attorney General GARLAND. Decisions about how to do tactical arrests are made by the FBI agents in the field. The FBI has publicly stated that it disagrees with the description you gave of what happened in that example. I don’t—I—that’s the best I can answer.

Chair DURBIN. At this point, we’re going to go to Senator Ossoff.

Senator OSSOFF. Thank you, Mr. Chairman. Attorney General, good morning.

Last year, with Senator Grassley, I introduced and passed into law bipartisan legislation that requires the DOJ and the Bureau of Prisons to strengthen and upgrade security systems at BOP facilities across the country. This includes the closed circuit camera systems, public address systems, intercom systems.

Through extensive investigation of failures at the BOP, we’ve identified the inadequacies of these security systems as posing a threat not just to inmates and staff, but to the broader community. This implicates public safety.

And, indeed, we found that, at U.S. Penitentiary, Atlanta, failures of systems like this one allowed widespread criminal conduct within the facility, escapes from the facility, putting the entire southeast region at risk. And that’s in the words of the BOP’s own internal investigators.

Our bill is now law, and the Department has a deadline upcoming next month to present a plan to Congress for upgrades to strengthen these security systems at Federal prisons. So, my first question for you, Attorney General, is whether the Department is on track to meet that deadline.

Attorney General GARLAND. Senator, first I want to say we're grateful for the work you and your Committee did on this matter. And I know that you've met with the Director of the Bureau of Prisons, who is adopting the recommendations that you've made. I believe we are on track to satisfy the requirements of the statute, but I'd be very happy to be sure that she or our staff meet with your staff to ensure that your expectations are being met.

Senator OSSOFF. Well, thank you, Attorney General. And I've worked diligently to develop the kind of trusting relationship with the new Director. She has a task ahead of her to reform a bureaucracy that's been mismanaged with significant human costs as a result, long predating your tenure.

And I want to suggest that it's a necessary condition of demonstrating that the Department's taking this seriously, that this deadline be met and that we move forward expeditiously to strengthen these security systems.

Remaining on the subject of conditions in prisons, the Department announced in September of 2021 that it was conducting a civil investigation, a pattern-of-practice investigation into conditions of confinement in Georgia's State prisons.

So, that was about 18 months ago. And the abysmal conditions in Georgia's State prisons, which, as in the case of Federal facilities, threaten public safety in the surrounding communities and are a major public safety hazard—those failures of management, in my view, in Georgia's State prison system, are appalling. They're life threatening and have, I believe, resulted in loss of life, and they undermine community safety.

So, I want to ensure that the Department remains committed to seeing that investigation through and bringing results that can be made public and result in change.

Attorney General GARLAND. So, the Civil Rights Division is charged with these pattern-of-practice investigations. They are very committed to ensuring that the conditions are changed that you're talking about. These pattern-of-practice investigations normally do end in a public report to the State agency involved and to the public at large. I don't know the specifics of how this investigation is going, but I can assure you the Civil Rights Division is fully behind this investigation.

Senator OSSOFF. But the investigation is ongoing? It's proceeding, and it's going to get a result. Yes?

Attorney General GARLAND. Yes.

Senator OSSOFF. Thank you. An additional investigation I led last year concerned the Department's implementation of the Death in Custody Reporting Act. And one of the disturbing findings was that reporting under this statute, known as DCRA, had undercounted, by at least almost 1,000 deaths—the deaths in State and local custody.

And in our engagements with the Department, it came to my attention—and I was dismayed—that the Department is not making

DCRA data available to the public. I'm going to ask unanimous consent, Mr. Chairman, that this report from the Leadership Conference and POGO, titled "A Matter of Life and Death: The Importance of the Death in Custody Reporting Act," be entered into the record.

Senator WHITEHOUSE [presiding]. Without objection.

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

Senator OSSOFF. And I want to ask you, Attorney General, whether the Department will commit to making DCRA data available to the public.

Attorney General GARLAND. So, first, on the first part of your question, we're obviously having trouble getting full reporting. This has to be voluntary on the part of the States. I believe the statute did give us some appropriations which we were able to use as incentives for more reporting. We're very charged with the importance of doing that.

I have to say, I don't—I'm not familiar with the specifics of DCRA. If it provides for public reporting of the numbers we have, then we should be providing it. I don't know whether it does or not. I just am not familiar with it at that level.

Senator OSSOFF. You've got a lot on your plate, Attorney General. I recognize that. This is a serious concern for me and for the Senate. And I did not, after those investigations, come away with the impression that there was sufficient attention at a high level being committed to ensuring that this is being fixed. So, will you commit to getting up to speed and taking this matter personally into your portfolio?

Attorney General GARLAND. I will. You now have high-level attention, if you didn't have it before.

Senator OSSOFF. Well, I think—good. I think we should have gotten that based upon the results of the investigation last year. I appreciate that commitment today. This needs to be fixed. Folks are dying in prisons and jails. The public needs to know who's dying, where they're dying. You, at the Department, need to know who's dying, where they're dying, in order for you, for example, to bring the kinds of civil rights enforcement that you're pursuing in Georgia.

Let's talk about domestic violence for a moment. The Crime Victims Fund, as you know, is a critical resource for the funding of domestic violence shelters, child advocacy centers, and other nonprofits. And, you know, I'm hearing consistently from providers of victim services in Georgia that awards from this fund are still much lower than previous years, due to some issues with VOCA reauthorization.

Will you work with my office and commit a member of your team to meet with my staff, to make sure that we're identifying every opportunity to increase the resources for victims and survivors of domestic violence in Georgia and across the country and that we are expediting the provision of those resources? Because lives are literally on the line in my State and nationwide.

Attorney General GARLAND. Yes, I will. The VOCA fix was very helpful in allowing us to put deferred prosecution, delayed prosecution, nonprosecution agreements into the VOCA fix. We do, by the

way, believe that we're on track to be fiscally responsible all the way through 2024.

Senator OSSOFF. Thank you. And with my colleagues' indulgence, one final question for you. Senator Grassley and I have introduced legislation again, this Congress—it passed the Senate last Congress, we need to get it through the Senate and the House, this Congress—to strengthen Federal protections against the sexual abuse of children and to crack down on predators who use online services to target children for trafficking, for the production of child sex abuse material, and other heinous crimes. We need to make sure that the law keeps up with technology.

And we're seeing, in Georgia and across the country, children are targeted routinely and exploited online. Will you commit that—

Senator WHITEHOUSE. If you could keep it brief, because Senator Hawley and others are waiting.

Senator OSSOFF. Thank you, Mr. Chairman.

Senator WHITEHOUSE. Both you and the Attorney General.

Senator OSSOFF. Will you commit to ensuring that this remains a top priority for the Department of Justice?

Attorney General GARLAND. Yes, I will.

Senator OSSOFF. Thank you, Attorney General.

Senator WHITEHOUSE. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Attorney General Garland, let me just ask you, does your Department have a problem with anti-Catholic bias?

Attorney General GARLAND. Our Department is—protects all religions and all ideologies. It does not have any bias against any religion of any kind.

Senator HAWLEY. Well, you could have surprised me, because given the resources that you are expending and the, apparently, intelligence assets that you are deploying against Catholics, it appears, and other people of faith, while simultaneously turning a blind eye while people are executed gang style on the streets of our cities, including in my home State, your answer, frankly, surprises me.

Let's talk about the Mark Houck case, for example. You've been asked about this already today, and frankly, your answers really astound me. This is a case where a Catholic pro-life demonstrator, father, was accused of disorderly conduct in front of an abortion center. The local prosecutor, the Philadelphia District Attorney, who is a Democrat, a liberal, very progressive, declined to prosecute. There was a private suit that got dismissed.

And then after all of that, your Justice Department sent between 20 and 30 armed agents in the early morning hours to the Houcks' private residence to arrest this guy, after he had offered to turn himself in voluntarily.

[Poster is displayed.]

Senator HAWLEY. Here's the photo once again. You can see the long guns. You can see the ballistic shields. You can see that they're wearing bulletproof vests.

Why did the Justice Department do this? Why did you send 20 to 30 SWAT-style agents and a SWAT-style team to this guy's house when everybody else had declined to prosecute and he'd offered to turn himself in?

Attorney General GARLAND. Determinations of how to make arrests under arrest warrants are made based—by the tactical operators in the district. They are not——

Senator HAWLEY. But you've surely looked into it by this point. Right?

Attorney General GARLAND. They——

Senator HAWLEY. You know the answer, surely.

Attorney General GARLAND. They——all I know is what the FBI has said, which is that they made the decisions on the ground as to what was safest and easiest. They——

Senator HAWLEY. So, you're——

Attorney General GARLAND [continuing]. Do not agree with your description of what happened on the scene.

Senator HAWLEY. You don't agree with my description? I'm pointing——

Attorney General GARLAND. I didn't say——

Senator HAWLEY [continuing]. Out what the photo is. There are agents here who have long guns and ballistic shields.

Let's take a look at the hardened criminals that your Justice Department sent these armed agents to go terrorize on that morning. [Poster is displayed.]

Senator HAWLEY. Here they are. Here they are at mass. Here's the seven children with Mr. Houck and his wife.

In this early morning, they were all at home. Mrs. Houck has said repeatedly the children were screaming. They feared for their lives. You've got these agents demanding that he come out. They've got the guns, she said, pointing at the house and at them. He has offered to turn himself in. And this is who you go to terrorize.

What's really interesting to me is this seems to directly contradict your own memorandum about the use of force at the Justice Department. You say officers may use only the force that is objectively reasonable to effectively control an incident. Are you telling me that in your opinion as Attorney General, it was objectively necessary to use 20 or 30 SWAT-style agents with long guns and ballistic shields for these people?

Attorney General GARLAND. What I'm saying is that decisions about how to go about this were made on the ground by FBI agents.

Senator HAWLEY. You're saying you don't know?

Attorney General GARLAND. I'm saying what I just said, that those——

Senator HAWLEY. Which is that you're abdicating responsibility?

Attorney General GARLAND. I'm not abdicating responsibility.

Senator HAWLEY. Then give me the answer.

Attorney General GARLAND. The——

Senator HAWLEY. Do you think, in your opinion—you are the Attorney General of the United States. You are in charge of the Justice Department, and yes, sir, you are responsible.

Attorney General GARLAND. The——

Senator HAWLEY. So, give me an answer.

Attorney General GARLAND. The FBI does not agree with your description.

Senator HAWLEY. I'm not asking about the FBI. You are the Attorney General. Give me your answer. Do you think that it was ob-

jectively reasonable—and they followed your guidelines [holds up documents] in sending 20 to 30 armed agents to terrorize these people? Yes or no?

Attorney General GARLAND. The facts I have, which are those presented by the FBI, are not consistent with your description.

Senator HAWLEY. So, you think it was reasonable?

Attorney General GARLAND. I'm saying the facts are not as you describe.

Senator HAWLEY. What, that the children weren't there? That there wasn't—

Attorney General GARLAND. No, the—

Senator HAWLEY. That there weren't long guns there?

Attorney General GARLAND. The facts—

Senator HAWLEY. That there weren't agents? What wasn't—what do you dispute? What's the factual premise you dispute?

Attorney General GARLAND. The FBI—

Senator HAWLEY. Be specific.

Attorney General GARLAND [continuing]. Has said they don't agree with your description of—

Senator HAWLEY. Be specific. They don't agree with what?

Attorney General GARLAND. Of how many agents, of the agents who were there, and of what their roles were. They don't agree.

Senator HAWLEY. Do you know the jury—

Attorney General GARLAND. That's all I can say.

Senator HAWLEY [continuing]. In this case acquitted Mr. Houck, as I'm sure you're aware. Do you know how long it took them?

Attorney General GARLAND. I am aware, and we respect the decision of the jury.

Senator HAWLEY. Do you know how long it took them?

Attorney General GARLAND. I don't know.

Senator HAWLEY. One hour. One hour. Philadelphia District Attorney declines to prosecute. The private suit's dismissed. You use an unbelievable show of force with guns that, I just note, liberals usually decry. We're supposed to hate long guns and assault-style weapons. You're happy to deploy them against Catholics and innocent children? Happy to.

And then you haul him into court, and a jury acquits him in 1 hour. I just suggest to you that that is a disgraceful performance by your Justice Department and a disgraceful use of resources.

I notice a pattern, though. The FBI field office in Richmond, on the 23rd of January of this year, issued a memorandum in which they advocated for, and I quote, "the exploration of new avenues for tripwire and source development against traditionalist Catholics"—it's their language—"including those who favor the Latin Mass." Attorney General, are you cultivating sources and spies in Latin Mass parishes and other Catholic parishes around the country?

Attorney General GARLAND. The Justice Department does not do that. It does not do investigations based on religion. I saw the document you have.

Senator HAWLEY. What'd you do about it?

Attorney General GARLAND. It's appalling. It's appalling. I'm in complete agreement with you. I understand that the FBI has withdrawn it and is now looking into how this could ever have happened.

Senator HAWLEY. How did it happen?

Attorney General GARLAND. That's what they're looking into. But I'm totally in agreement with you. That document is appalling.

Senator HAWLEY. I'll tell you how it happened. This memorandum, which is supposed to be intelligence, cites extensively the Southern Poverty Law Center, which goes on to identify all of these different Catholics as being part of hate groups.

Is this how the FBI, under your direction and leadership, is this how they do their intelligence work? [Holds up documents.]

They look at left-wing advocacy groups to target Catholics? Is this what's going on? I mean, clearly, it is. How is this happening?

Attorney General GARLAND. The FBI is not targeting Catholics. And, as I've said, this is an inappropriate memorandum, and it doesn't reflect the methods that the FBI is supposed to be using—should not be relying on any single organization without doing its own work.

Senator HAWLEY. Let me just ask you, as my time expires here, a very direct question. How many informants do you have in Catholic churches across America?

Attorney General GARLAND. I don't know, and I don't believe we have any informants aimed at Catholic churches. We have a rule against investigations based on First Amendment activity, and Catholic churches are obviously First Amendment activity.

Senator HAWLEY. Well——

Attorney General GARLAND. But I don't know a specific answer to your question.

Senator HAWLEY. You don't know the specifics of anything, it seems. But apparently, on your watch, this Justice Department is targeting Catholics, targeting people of faith, specifically for their faith views. And, Mr. Attorney General, I'll just say to you, it's a disgrace.

Chair DURBIN [presiding]. Senator Coons.

Senator COONS. Thank you, Chairman Durbin. Thank you, Attorney General Garland, for your leadership of the Department and for testifying here today. I appreciate all you're doing to restore to your order—excuse me, to restore to your office its critical role in our constitutional order.

Violent crime is a concern many Members of both parties have raised today in this oversight hearing. I just want to share with you that my hometown of Wilmington, Delaware, which had had a longstanding challenge with violent crime, and, in particular, murders, saw significant decreases over the last few years. Murders were down 58 percent in the past year, to a 15-year low. Shootings were down 30 percent. Robberies were down 20 percent.

And in meeting with the mayor and chief of police recently, when I spoke with them, they credited Federal and local law enforcement partnerships, including, in particular, group violence intervention strategies, as being central to their successful efforts. Congress and the Biden administration have together given \$200 million to fund these programs for the first time. Why do you think investments in things like violent intervention strategies have been so effective?

Attorney General GARLAND. So, I appreciate your asking that. I was just in St. Louis and East St. Louis to look into the way in which these violence intervention strategies have been effective.

They are part of our whole-of-Department approach to violent crime, which involves both law enforcement and support for State and local law enforcement and grants to State and local law enforcement, but also grants to communities to prevent the violence in the first place.

There are many kinds of these community violence interruption programs and intervention programs. They generally rely on having credible messengers of people who the community trusts for any number, a variety of reasons, who go into the community, try to explain to the community that the police are on their side, that they need to be witnesses, be supportive, and to develop trust between law enforcement and the communities. That's the bottom line of all this.

Senator COONS. That's certainly what we've seen in Wilmington. And frankly, our chief of police just went to St. Louis to be their new chief of police, and I wish him well.

I co-lead the Law Enforcement Caucus with Senator Cornyn of Texas. One of the things we've recently been talking about is the NICS Denial Notification Act, which Senator Cornyn and I led last year, the President signed into law.

It requires Federal law enforcement to notify State and local authorities when someone fails a background check, when they lie and try to buy a gun. It's been in place since September, and we've already seen 44,000 denial notifications go to local law enforcement. Can you just speak briefly to the value of this information for local law enforcement, to prevent dangerous individuals from being able to acquire weapons?

Attorney General GARLAND. This particular example is really the nub, here. Somebody who is not lawfully allowed to get a gun, who goes to try to get one anyway—I'd say there is a higher probability that person wants to do something nefarious with that gun. And now, thanks to this legislation, the State and local police will know about that and will be able to investigate to determine what it was that person was about to do with an unlawful weapon.

Senator COONS. It's something that the sheriffs and the local chiefs in Delaware have been very excited about, and I look forward to working with you to make sure that it's fully and promptly implemented.

I am chairing the Intellectual Property Subcommittee of this Committee in this Congress, and as you know, I'm very concerned about the threat of foreign nations to our innovation and our intellectual property.

I think it's important that our response to this is coordinated across the whole Government, so I was glad to learn about your collaboration with the Department of Commerce, in particular on the Disruptive Technology Strike Force. Could you just speak to your strategy, jointly with the Secretary of Commerce, for protecting American innovation in coordination with other agencies?

Attorney General GARLAND. Right. Well, on that particular task force, it's very focused on new technologies, AI, for example, very advanced microchips which could be very dangerous, obviously, in the hands of an adversary, which are being exported and are evading export controls.

So, we're working with the part of the Commerce Department which enforces export controls and, on our side, on our National Security Division, to identify these kinds of transfers and to prevent them from happening.

You know, a very good example is what's happened on the battlefield in Ukraine. We're getting some of the quadcopters and other kinds of drones, and even some of the missiles that are landing in Ukraine turn out to have parts that came from American manufacturers, and we have to find out how they were able to evade our export controls.

Senator COONS. Well, thank you. I look forward to working with you on that and to strengthening our protections for copyright violation, patent, trademark, trade secret violation.

I've led, with Senator Wicker, now, for some time, a bipartisan bill to address the counterproductive practice of debt-based driver's license suspensions.

The county police department I had the opportunity to supervise commented on a number of occasions, in the decade I was in county government, that being essentially a collections agency for the courts was the least constructive use of their time, to have traffic stops really just based on an outstanding request for a warrant or a request for police action based on a failure to pay certain fines and fees.

Last year, Delaware took steps to repeal these suspensions of driver's licenses and became a national leader on access to justice for the poor. And I appreciate this administration's work to restore the Office for Access to Justice, which previously, under President Obama, had issued a best practices letter on such fines and fees and how they impact those who simply cannot afford to pay low-level fines.

Can you speak to your priorities for this office, the Office for Access to Justice, and the opportunity it has to help lead on fines and fees, whether by convening relevant stakeholders or reissuing a best practices letter?

Attorney General GARLAND. Well, I'll start with the fines and fees. I think the additional and maybe the most pernicious aspect of taking away someone's license is then they can't be employed. They can't go to their job, where they would make the money necessary to repay the fines and fees. So, I know that's an underlying basis of your concern and of the concern for these statutes.

The Office for Access to Justice has been re-created. I've appointed a Director. One of the things that the Office does is serve as an organizing unit for the Legal Aid roundtable, which has been reinvigorated across the Government for assistance, for providing pro bono work and legal assistance for the poor, who are otherwise unable to really do the most basic legal tasks because they just can't afford it.

It's also the center of the Justice Department's own pro bono efforts. Justice Department employees every day provide pro bono legal services to help veterans fill out the necessary forms, to help people with their wills, to help service members with respect to their debts, and various other things. And that's another organizing section of this Office.

Senator COONS. Well, thank you, Mr. Attorney General. I look forward to working with you and with that Office. We were just one vote shy of getting this bill into law at the end of last year, and I look forward to partnering with you on finding ways to reduce these driver's license suspensions and debt and fee issues. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Coons. Senator Cotton.

Senator COTTON. Mr. Attorney General, I want to explore the dangerous crisis at our southern border and your role in causing that crisis. Asylum traditionally is reserved for people who face things like religious persecution, persecution for their political beliefs, or violence because of their race or ethnicity.

In June of 2021, you changed the Department's asylum rules so they could apply to individuals with significant gang violence in their home country. Is that 2021 interpretation still in place?

Attorney General GARLAND. It is. It reinstates a previous interpretation the Department had had, of the same asylum rules. Yes.

Senator COTTON. Okay. Do you know the most recent murder rate in Honduras?

Attorney General GARLAND. I'm sure it's enormously high.

Senator COTTON. It's 36 per 100,000 people. What about Colombia?

Attorney General GARLAND. I don't know.

Senator COTTON. Twenty-three per 100,000. Guatemala?

Attorney General GARLAND. Again, I don't know, but I believe it's quite high.

Senator COTTON. Seventeen per 100,000. What about Mexico, right across our southern border?

Attorney General GARLAND. I also think it's very high.

Senator COTTON. Twenty-eight per 100,000. So, I have to say, since you rewrote the rules of asylum based on the perceived degree of violence in these countries, I'm a little surprised you didn't know those. But let's look a little bit closer to home. Do you know the murder rate in New Orleans last year?

Attorney General GARLAND. I don't, but I want to be clear. This wasn't based on violence. This was based on threats specifically to individuals, on gangs, where the country was unable to protect the person. That's what it was about.

Senator COTTON. So——

Attorney General GARLAND. It wasn't about violence, in general.

Senator COTTON. Well, okay. Well, you're partly responsible for protecting Americans, so let's say Honduras' government can protect its own people, except for 36 out of every 100,000, for murders. Guatemala, 17 out of every 100,000. The murder rate in New Orleans last year was 70 for every 100,000. What about St. Louis?

Attorney General GARLAND. Again, it was very high, I think.

Senator COTTON. Sixty-eight per 100,000. What about Baltimore?

Attorney General GARLAND. Also very high.

Senator COTTON. Fifty-eight per 100,000.

Attorney General GARLAND. Yes.

Senator COTTON. Should American citizens in places like New Orleans and Baltimore and St. Louis begin to seek asylum in countries like Honduras and Guatemala, under your asylum principles?

Attorney General GARLAND. Again, I'm saying that the principle here is protection of specific individuals who are being threatened by the gang and where the local country is unwilling or unable to protect them.

Senator COTTON. So, is the United States Government and the city governments of St. Louis and Baltimore and New Orleans unwilling or unable to protect its—

Attorney General GARLAND. I don't believe—

Senator COTTON [continuing]. Own citizens?

Attorney General GARLAND. I don't believe they're unwilling. They are doing everything that they can. We're supporting them in every way they can. The examples that you're talking about are ones where they are unwilling to protect from gangs.

Senator COTTON. So, Mr. Attorney General, one of the reasons we have a crisis at our border, where we have illegal aliens running to our Border Patrol, not away from our Border Patrol, is this interpretation of asylum. That anyone, anywhere, who lives in a dangerous or poor country can come here and seek asylum as opposed to seeking it, as is traditionally the case, for things like persecution on religious belief or political practice.

But let's move on, Mr. Attorney General. I want to go back—

Attorney General GARLAND. Okay. That's not the standard. I want to be clear.

Senator COTTON. I want to come back to a question that Senator Cornyn started. Your unprecedented memo in December of 2020 to direct your prosecutors not to pursue the most serious, readily provable offense. I have gotten numerous, numerous contacts in my office from your prosecutors who are shocked that you have overturned this decades-long bipartisan standard. You said this was about allocating resources. What resources are you talking about?

Attorney General GARLAND. No prosecutor—

Senator COTTON. I—

Attorney General GARLAND. No prosecutor was directed to not bring a case—again. In fact—

Senator COTTON. Your memo specifically says if they feel that it's not warranted—or only if the other offenses are not sufficient, they should not pursue what has been the standard for decades.

Attorney General GARLAND. I'm well—

Senator COTTON. Generations of U.S. attorneys and their assistants—

Attorney General GARLAND. I'm well aware of the standard because I helped write the standard originally when the first—

Senator COTTON. Because it was a Carter—

Attorney General GARLAND [continuing]. Principles of—

Senator COTTON [continuing]. Administration standard.

Attorney General GARLAND. That's right.

Senator COTTON. Not specifically known for being tough on crime.

Attorney General GARLAND. It—well, it was the first time the principles of prosecution were reduced to a book which explained what they were. It was included in it. Every assistant U.S. attorney is able to use their discretion to bring these kinds of cases. No one's being directed to not do anything.

Senator COTTON. You specifically said that they should not pursue the most serious, readily provable offenses in cases where mandatory minimums are present because it's not warranted. You specifically said that.

Attorney General GARLAND. But I said——

Senator COTTON. That's the law. What does manda—what does mandatory mean?

Attorney General GARLAND. I'm trying to say that——

Senator COTTON. Does it mean that prosecutors get a choice not to pursue it——

Attorney General GARLAND. The——

Senator COTTON [continuing]. And rewrite the law in that way?

Attorney General GARLAND. The memorandum said that cases of violent crime, which is specifically what you're asking me, are ones where, in fact, it's most likely that they should be bringing the highest and——

Senator COTTON. Is it——

Attorney General GARLAND [continuing]. Mandatory minimums.

Senator COTTON. Is it your assertion here that drug trafficking is not a violent crime?

Attorney General GARLAND. No, and——

Senator COTTON. It's built on an entire foundation and edifice of violence.

Attorney General GARLAND. Yes, and it includes an exception, in the same memorandum we're talking about, for significant drug trafficking as well as for violent crime. That's right.

Senator COTTON. What—what—your specific answer, I wrote it down here, I was so surprised by it. You said to Senator Cornyn, "This is about allocating resources." What resources are we allocating?

If one of your assistant U.S. attorneys has some criminal lowlife who could be charged with 12 offenses, but they don't charge the 2 most serious, readily provable offenses because of your memorandum, they're still charged with 10 offenses. They have to go to grand jury, they have to go to trial, they have to have a presentencing report, they have to have a sentencing hearing.

How is that conserving resources, that you don't charge them with the most serious, readily provable offenses that would lock these lowlives up for the longest time possible?

Attorney General GARLAND. The lowlives that you're worried about and have expressed worry about, the drug—large drug traffickers, the violent criminals, they are to be charged to the max.

Senator COTTON. I ask again, what resources were you talking about? You said to Senator Cornyn, specifically, it was about allocating resources. What resources?

Attorney General GARLAND. Those include our investigators and how much we have to investigate in order to establish the requirements for mandatory minimums, the prosecutors who have to prove those cases, the judges who have to try those cases, and the jails that have to hold those cases, those individuals, for longer terms.

Senator COTTON. Well, if jails are—I don't see how jails could be a problem. You only have 158,000 prisoners now. Ten years ago, it was 219,000. Do you need more prisons?

Attorney General GARLAND. Well, I think that——

Senator COTTON. Senator Kennedy's an appropriator. I bet he could get you more prisons.

Attorney General GARLAND. Well, I think many of the Senators have complained that the jails are too filled, that they're overcrowded, that we're not able to provide the level of protection and security for guards and for prisoners that we would like.

But that is not what this is about. Again, I want to be clear. The memorandum was crystal clear that they are to charge the most serious, provable offense in cases involving violent crime and drug trafficking.

Senator COTTON. Okay, let's turn to another example of you overriding Congress' will. Congress has repeatedly decided to impose stiffer penalties for crack cocaine than powder cocaine, done originally at the request of Members of the Congressional Black Caucus, voted for by Senators like Senator Durbin, the Chairman of this Committee. Ten years ago, they made changes to that. They specifically kept the ratio higher, and they didn't make it retroactive.

Now, you have directed your prosecutors, when they are dealing with crack cocaine, to charge it as if it was powder cocaine, something that this Congress has repeatedly refused to do, which we refused to do as recently as December when Senator Booker tried it on the floor and I blocked it. How do you explain overriding Congress' decision on this distinction between crack and powder cocaine to suit your own policy preferences?

Attorney General GARLAND. The longstanding rule is that the Department of Justice uses its discretion in which charges to bring, regardless of which ones are available, which ones are to bring—every bit of evidence we have is that there's no difference between powder and crack. Governor Hutchinson testified—

Senator COTTON. Those are legislative—

Attorney General GARLAND [continuing]. To that.

Senator COTTON. Those are legislative—those are legislative decisions. Those are not prosecutorial decisions. If this Congress wants to do it, maybe it will one day. Maybe I'll be outvoted. But those are legislative decisions. Those are not prosecutorial decisions.

You said at your confirmation hearing that you had to follow the law as it was written, that the executive branch could not rewrite the law. What you're doing is rewriting the law. It's not a single prosecutor out on the front lines making one decision. You're directing every Federal prosecutor to override the law that has been written by Congress.

Attorney General GARLAND. Using our discretion as to which charges to bring in which circumstances, which ones are appropriate—that's what we're doing. That's the longstanding history—

[Gavel is tapped three times.]

Attorney General GARLAND [continuing]. Of prosecutorial discretion in the United States.

Chair DURBIN. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. Mr. Attorney General, aloha.

Attorney General GARLAND. Aloha.

Senator HIRONO. As I've sat listening to some of the questions, the phrase "badgering the witness" comes to mind. But I commend you for the calm way that you have comported yourself at this hearing.

You have been accused of selective prosecution around the abortion issues. I want to note that since 1977, anti-choice extremists have been responsible for 11 murders, 26 attempted murders, 42 bombings, 194 arsons, and thousands of other criminal incidents by anti-choice extremists.

And, of course, we should prosecute all violence and threats of violence by those on both sides of the abortion issue, but isn't it the case that our prosecutorial focus should be on the most violent acts, Mr. Attorney General?

Attorney General GARLAND. I'll just say, look, we prosecute without respect to ideology, but we do focus on the most violent acts, the most dangerous actors, the cases that are most likely to lead to danger to Americans. But we don't care what the ideology of the person who is threatening that act or who is taking that act. We will prosecute, regardless.

Senator HIRONO. That is what I would expect of any Attorney General who observes the rule of law and who abides by it, regardless of whatever the religion, all of that. So, that is what I expect from the Attorney General.

In the wake of the Supreme Court's, in my view, disastrous ruling in *Dobbs*—because that ruling has led to fear and chaos all across the country, and abortion is now a crime in over a dozen States, but it is not a Federal crime—what affirmative steps is the Department taking to ensure that States are not infringing women's constitutional right to travel across State lines for whatever purpose?

Attorney General GARLAND. We do not see anything in the *Dobbs* case to suggest in any way that States can interfere with travel between States. In fact, at least one of the Justices made clear that that was not within the scope of *Dobbs*. And so we are looking closely.

I'm not familiar with any State that has tried to criminalize interstate travel, but if there were, we would make the appropriate filings. We have supported the Veterans Department and the Department of Defense in their policy decisions to support people to travel out of State to receive the necessary reproductive care.

Senator HIRONO. Well, Mr. Attorney General, there are people who are trying to make it ever harder for persons who get pregnant in this country to be able to access abortion services and other reproductive services.

In fact, we are awaiting a decision by a Federal judge in Texas whether or not he should impose a national injunction on the use of mifepristone, which is the drug that is most often used for early stage abortion. It's also a drug that is used to treat miscarriages in the early stages.

So, you have a Federal judge that is about to impose this kind of an injunction. It would affect every State in the country, including all those States like Hawaii, which was among the first to decriminalize abortion. So, I would say that the efforts do not stop there, so whatever you can do to make sure that women in this

country know that they can travel to other States to get whatever services that they seek.

The Department awards billions of dollars in grants to State, local, and Tribal law enforcement each year. The Department also operates joint task forces and provides access to forensic and surveillance resources. This sort of collaboration can be good when put to good use fighting criminals who prey on our communities.

But these resources could also be used against women seeking reproductive care. I have just sent a letter to the President expressing my concerns about the use of these Federal funds by local law enforcement to basically hunt down women who are seeking abortion. So, how is the Department working to ensure that States and local partners do not use Federal resources to enforce State laws restricting women's access to reproductive care?

Attorney General GARLAND. On your first question, just to be clear, we have filed in support of the FDA in the lawsuit—mifepristone lawsuit that you're talking about, and we are hopeful that the result will not be the one that you're concerned—that you described.

Senator HIRONO. Well, there was judge shopping, to make sure that it's this particular Texas judge who would get this case.

Attorney General GARLAND. We have—we have filed the appropriate briefs—

Senator HIRONO. Please respond.

Attorney General GARLAND [continuing]. In that case.

Senator HIRONO. Thank you.

Attorney General GARLAND. On the second question, I personally haven't looked into it. I don't know the answer to that. So, if we could have some people in the Department get back to your staff on that, I'd be happy to do that.

Senator HIRONO. Thank you very much. With a perspective that these kinds of Federal resources should not be used by States to go after women who are seeking reproductive services, I hope that is the perspective that you bring to the issue.

I want to get to the issue of domestic terrorism and white supremacy. Last fall, our colleagues on the Homeland Security and Governmental Affairs Committee released a report on the Federal response to domestic terrorism.

In it, they noted that—I quote, “National security agents now identify domestic terrorism as the most persistent and lethal terrorist threat to the homeland,” end quote. They also explained that, quote, “This increase in domestic terror attacks have been predominantly perpetuated by white supremacists and anti-government extremist individuals and groups,” end quote.

This fits with a recent Department of Homeland Security assessment that the country, quote, “remains in a heightened threat environment,” end quote, and that some of the potential targets include, quote, “faith-based institutions, the LGBTQ community, schools, and racial and religious minorities.”

Do you agree that white supremacist terrorists pose a significant threat to our country and especially to racial and religious minorities and the LGBTQ+ community?

Attorney General GARLAND. Yes. As the FBI reported in that report you're talking about, racially motivated violent extremists as

a group are the most dangerous of the domestic violent extremist groups, and within that, the white supremacists are the most dangerous and most lethal. Yes.

Senator HIRONO. So, what more can the Department do to combat this rise in these kinds of domestic terrorist activities?

Attorney General GARLAND. Well, we've allocated a significant amount of resources for this purpose. Our—the National Security Division has stood up a domestic violent extremist unit to further track and try and interdict these actions. The FBI is treating this with enormous seriousness of purpose, and we are going to do everything we can to deter and prosecute.

Senator HIRONO. Thank you. Mr. Chairman, I think my time is up. Thank you.

Chair DURBIN. Thank you, Senator Hirono. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman. Thank you, General, for being here. Good afternoon.

Attorney General GARLAND. Thank you.

Senator KENNEDY. I read this somewhere. I don't remember who said it, but—or wrote it, but I remember it. It was once observed that a parent who stops loving their children—if a parent stops loving their children, the children will not stop loving the parent. The children will stop loving themselves. I know we can agree that we should encourage parents to be involved in their kids' lives.

Attorney General GARLAND. Absolutely.

Senator KENNEDY. And I'm sure we can agree that we should encourage parents to make their kids do their homework.

Attorney General GARLAND. Yes, although there's sometimes some resistance to that.

Senator KENNEDY. Right. Right. And to make sure they get sleep at night so they can be ready for school.

Attorney General GARLAND. Yes.

Senator KENNEDY. Here's what I'm—I've always been confused about. Didn't you understand the chilling effect that it would have to parents when you issued your directive, when you directed your Criminal Divisions and your Counterterrorism Divisions to investigate parents who were angry at school boards and administrators during COVID?

Attorney General GARLAND. Senator, if you'd just give me a moment to put the full context. I did not do that. I did not issue any memorandum directing the investigation of parents who were concerned about their children. Quite to the contrary.

The memorandum that you're talking about says at the very beginning of the memorandum that vigorous public debate is protected by the First Amendment. And the kind of concerns that you're talking about, as expressed by parents, are, of course, completely protected.

The memorandum was aimed at violence and threats of violence against a whole host of school personnel. It was not aimed at parents making complaints to their school board, and it came in the context of a whole series of other kinds of violent threats and violence against other public—

Senator KENNEDY. Well—

Attorney General GARLAND [continuing]. Officials.

Senator KENNEDY. Well, let's walk through this. Your directive to your Criminal Division and your Counterterrorism Division came in a response to a letter from the National School Boards Association. Did it not?

Attorney General GARLAND. In part to the letter, and in part to news reports of—

Senator KENNEDY. Mm-hmm.

Attorney General GARLAND [continuing]. Violence and threats—

Senator KENNEDY. And—

Attorney General GARLAND [continuing]. Of violence.

Senator KENNEDY [continuing]. And the National School Board Association said these parents ought to be investigated under the Patriot Act as potential domestic terrorists.

Attorney General GARLAND. And you'll notice, Senator, that I said nothing like that in my—

Senator KENNEDY. I understand, but—

Attorney General GARLAND [continuing]. Memorandum.

Senator KENNEDY [continuing]. That's what the letter said. Didn't it?

Attorney General GARLAND. There was a reference to that in the letter—

Senator KENNEDY. All right.

Attorney General GARLAND [continuing]. Something I disagree with.

Senator KENNEDY. And your employees helped them write the letter. Didn't they?

Attorney General GARLAND. I don't know anything to suggest that that's true.

Senator KENNEDY. I think—

Attorney General GARLAND. No. I don't—

Senator KENNEDY [continuing]. It is true.

Attorney General GARLAND. Well—

Senator KENNEDY. And the White House helped them write that letter. Didn't they?

Attorney General GARLAND. I don't—I don't know—I have no knowledge about that, but certainly I don't know anything about my employees—

Senator KENNEDY. And so—

Attorney General GARLAND [continuing]. Helping write that letter.

Senator KENNEDY. So, you get this letter from the National School Boards Association asking you to investigate parents, that your employees helped write and that the White House helped write, and you issue a directive to your Criminal Division and to your counterintelligence—or Counterterrorism Division to start investigating parents who are angry. What did you think was going to happen?

Attorney General GARLAND. I say again, Senator, that I—nothing in my memorandum says to investigate parents who are angry. Quite the opposite. It says that the First Amendment protects that kind of vigorous debate. The only thing we wanted was for an assessment to be made out in the field about whether Federal assistance was needed to prevent violence and threats of violence.

Senator KENNEDY. Well, one of your field off—that's not the way your Department implemented your directive. One of your field offices actually opened an investigation. You set up a website and a hotline to report parents, and a——

Attorney General GARLAND. I——

Senator KENNEDY [continuing]. State——

Attorney General GARLAND [continuing]. I don't think—we didn't set up a specific hotline about this——

Senator KENNEDY [continuing]. A——

Attorney General GARLAND [continuing]. This was a reference——

Senator KENNEDY [continuing]. A State Democratic——

Attorney General GARLAND [continuing]. To the FBI's hotline.

Senator KENNEDY [continuing]. Party official contacted you. They said that some Republicans were inciting violence by expressing public displeasure with school districts' vaccine mandates. And one of your field offices opened an investigation, which is a permanent part of their record.

Attorney General GARLAND. Senator, I don't know anything about this specific thing that you're talking about. They used to say——

Senator KENNEDY. You really ought to——

Attorney General GARLAND. They used to say, in high school, "This is going to be on your permanent record." I don't believe there is any such thing with respect——

Senator KENNEDY. Oh, I——

Attorney General GARLAND [continuing]. To this.

Senator KENNEDY. I think there is at the FBI, General, and——

Attorney General GARLAND. Well——

Senator KENNEDY [continuing]. You and I both know there is. There was a lady in—a mom in Michigan. She has a special needs kid, and the kid was doing pretty well. And she got upset with her local school board over its closures and virtual learning policies, and she went to the meeting, and she made an intemperate comment. She accused them of being a bunch of Nazis. Why would the FBI open an investigation of her?

Attorney General GARLAND. And I don't know anything about the specifics of the case, but accusing people of being Nazis, while I find bad, is certainly not criminal. It's totally protected——

Senator KENNEDY. No——

Attorney General GARLAND [continuing]. By the First Amendment.

Senator KENNEDY [continuing]. I mean, I think——

Attorney General GARLAND. And I've said that over and over again. This is not the first time we've——

Senator KENNEDY. But that's not——

Attorney General GARLAND [continuing]. Discussed this.

Senator KENNEDY. That's not what your Department did.

Attorney General GARLAND. Well, I—this is about the third time I'm being asked about the same memorandum, and each time I've said, and I hope that the Senators would go ahead and advise their constituents in the same way, that this is not what we do. We are not in any way trying to interfere with parents making complaints——

Senator KENNEDY. But——

Attorney General GARLAND [continuing]. About the education of their children.

Senator KENNEDY [continuing]. But don't you understand, General—and I believe you, but don't you understand that this looks like you were just giving in to the teachers' unions and politicizing the disagreement, the honest disagreements? I mean, we only—as a result of some of our school board policies, we only experienced the largest learning loss for our kids in modern history. Don't you think parents had a right to be upset?

Attorney General GARLAND. Absolutely.

Senator KENNEDY. Instead of—what is a—I mean, you implemented—what's a threat tag?

Attorney General GARLAND. I didn't implement the threat tag. What you're talking about there is a part of internal FBI operations.

Senator KENNEDY. Yes, you——

Attorney General GARLAND. As far as I can——

Senator KENNEDY. You directed your folks, though, to open threat tags on these parents——

Attorney General GARLAND. I didn't——

Senator KENNEDY [continuing]. And investigate them.

Attorney General GARLAND. Yes, I did not direct that. My understanding from testimony by the FBI is that when somebody makes a complaint and it involves—if somebody gives a tip that a school official is being threatened, then there's—in order to look at trends, they mark it as a tip involving a school official.

They make—they have the same set of threat tags with respect to a complaint that suggests somebody is making a threat against a Supreme Court Justice. These aren't complaints. These are tips of violence or threats of violence.

Senator KENNEDY. A threat tag on a parent for being concerned at a school board meeting?

Attorney General GARLAND. It's not on the parent. It's not on whoever—it's on to indicate that a threat was made against, or at least alleged that a threat was made against a school board member or a school official or a teacher or a school. Some of these turned out to be bomb threats.

Senator BLUMENTHAL [presiding]. Senator——

Attorney General GARLAND. So——

Senator BLUMENTHAL. Senator Kennedy, we're going to have a second round of questioning. On behalf of——

Senator KENNEDY. I understand.

Senator BLUMENTHAL [continuing]. Chairman Durbin, who has gone to vote, I'm going to call on——

Senator KENNEDY. You're blaming it on Durbin. I understand. I apologize for going over.

Senator BLUMENTHAL. I take full responsibility.

Senator KENNEDY. Thank you, General.

Senator BLUMENTHAL. Senator.

Senator BOOKER. Thank you, Senator Kennedy, for the grace, and thank you very much for being here. I just want to confirm, because I've heard some misstatements. Fentanyl is permanently scheduled at Schedule II. Correct?

Attorney General GARLAND. Yes. The discussion is about fentanyl analogues.

Senator BOOKER. So, let's go to fentanyl analogues. Fentanyl analogues are scheduled now at Schedule I. They are not expiring this year. Fentanyl analogues are Schedule II, the expiration date for which is at the end of 2024. Correct?

Attorney General GARLAND. It might be the fiscal year. I'm not sure exactly, but—

Senator BOOKER. But it's—

Attorney General GARLAND [continuing]. I believe—

Senator BOOKER [continuing]. In the year—it's not 2023. It's at the end of the year 2024.

Attorney General GARLAND. Yes, I—

Senator BOOKER. Fiscal or not?

Attorney General GARLAND. I'm not exactly sure of the time. I know that there's a short time on this, and we believe it should be reupped.

Senator BOOKER. Okay. I want to jump into the Executive order from President Biden on policing. It took really important steps to ensure that Federal law enforcement agencies are engaging in the best practices to make themselves and the public safer.

Some of these policies the Department has adopted and is making great progress on, including limitations on chokeholds; guidelines for no-knock warrants, which is extraordinarily dangerous for police officers themselves; and a cleaner standard for the use of deadly force.

Even the Trump EO, though, included the need for us to have a database that is, I guess, called an accountability database, to serve as a repository for officer misconduct records within the next 8 months, which is now this past January. Trump's Executive order, which was issued in June of 2020, also directed the Attorney General to create such a database to collect this information. What's the status now on that?

Attorney General GARLAND. Yes, there's a working group run by the Deputy Attorney General to stand this up. As you can imagine, there are difficulties with respect to getting reporting and also difficulties with respect to defining when a determination has been made. But we are seized with this, and we are working full speed ahead to get this done.

Senator BOOKER. I'm grateful and hope we can continue to communicate on that. It's invaluable. And the EO directed you to encourage State and local agencies to contribute to the database. How's that going?

Attorney General GARLAND. Yes. We are—we have made outreach to all the major law enforcement organizations who do support this proposition. We are making outreach to State and local law enforcement. We are making progress. I can't really say more than that at this point, not because I don't want to say, but because I don't know.

Senator BOOKER. Okay. The Biden administration, in cooperation with the Congress acting in a bipartisan manner, has put significant amounts of money into the COPS grant program.

In fact, I think under the last Congress, it was one of the highest amounts of money given to programs that help local police depart-

ments. Really proud that President Biden did that. I'm just curious what processes are in place to ensure that the funds are being used for intended purposes? Does the Department audit those grants?

Attorney General GARLAND. Yes. Whenever a Government agency gives out grants, there's always a risk. And so we have pretty tight—very tight auditing and review processes for these grants.

Senator BOOKER. And do you have the resources you need to adequately audit the grants, in your estimation, or is that something that Congress might act to give you more resources to—

Attorney General GARLAND. Well, I'm going to say again to you what I've said before. Whenever anybody wants to offer me more resources, I'm happy to have them. But I think we're capable of doing what the Congress wanted us to do, with the resources we have right now.

Senator BOOKER. I appreciate that wise response.

In December of 2021, you said the Department would exercise its discretion to ensure that people released on home confinement under the CARES Act would not unnecessarily return to prison.

My experience—I've been visiting prisons since I was a law student, and I usually go in and ask wardens, who are often tough men and women who really are about the protection of their officers, the community at large.

And I always ask, "Are there people here that are a waste of taxpayer money?" And they will often tell me stories about elderly folks, infirm folks, but here, now, we had a pandemic, as you know, and there was a release program with really high standards to meet for anyone being released. And I appreciated your comments on this matter in the past.

I just want to ask, can you confirm that the Department will not revoke individuals released under the CARES Act for minor violations? We always know there are so-called status violations, where somebody might cross a county line or do something that is a technical violation, which is often minor. They're not a threat to public safety.

Can you confirm, again, that the Department will not revoke individuals that are released under the CARES Act for these so-called status violations, once the public health emergency expires?

Attorney General GARLAND. Yes. So, just to give the full context, the CARES Act allowed us to put people in home confinement who we ordinarily would not have been able to do because of the length of time remaining on their sentence. A question was raised whether those people would have to go back after the expiration, which is now going to be in May, I believe.

The Office of Legal Counsel, interpreting the statute, found that they would not have to go back, that all that was necessary was that the Attorney General put them into home confinement—when I say the Attorney General, I mean the Justice Department and the Bureau of Prisons—and that they could remain, subject to what the normal rules are on having to go back.

So, if somebody commits the kind of violations that would normally require somebody to go back to prison from home confinement, those would apply, but no special rules to people who came under the CARES Act.

And let me also say, in support of what you said, there has now been enough time to have statistical data on recidivism, and it's found that the people out on the CARES Act—the number of serious crimes committed is extremely tiny and not of concern.

Senator BOOKER. All right. On July 16th—my last question, my penultimate question. On July 16th, 2022, you said that the Justice Department is examining marijuana policy and will be addressing the issue in the days ahead.

And in October 2022, President Biden urged an expeditious review of the schedule of cannabis and directed individuals federally incarcerated for cannabis possession be expunged. What is the current state of the review of cannabis at the Justice Department, and when can we expect policy changes on this important issue?

Attorney General GARLAND. I think everything that you said is correct. The President commuted sentences, and this is still working its way through the system to get the final certificates of commutation, but that is accomplished.

The HHS is working on the question of scientific analysis of marijuana, and within the Department we are still working on a marijuana policy for the Department. I have to say that the crack-powder thing came first in my list of things that had to be done first, but that was accomplished, as you already know.

And I think that it's fair to expect what I said at my confirmation hearing, with respect to marijuana policy, that it will be very close to what was done in the Cole Memorandum—Deputy Attorney General Cole in the Obama administration. We're not—we're not quite done with that yet.

Senator BOOKER. Well, I'm very eager to hear more about that, and I'm hoping that you can get that reviewed. They're complicated policies, as more and more States—

[Gavel is tapped twice.]

Senator BOOKER [continuing]. Red and blue, are moving. It'd be good to hear that as quickly as possible.

And I just would like you to respond, for the record, there are some scurrilous statements out there that you're dissatisfied with your chief of staff and would like him to be replaced by his eldest son. So, if you could respond on the record for me at some point about that.

Attorney General GARLAND. The only—the only bad mark in his résumé is that he worked for you once, so—

Senator BOOKER. Yes.

[Laughter.]

Senator BOOKER. Thank you, sir.

Chair DURBIN [presiding]. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. And Mr. Attorney General, thank you for your time today.

Listening to the questions and the answers and your responses, what is coming clear to me as I listen to this is that, basically, in your DOJ, the Biden DOJ, there are two tiers of justice.

There are one for people with conservative values, for parents, for people of faith. And then there is another tier of justice that applies to the Washington liberal elites, political elites. And what I want to do is dig down a little bit on how you and the Department have applied this discretionary form of justice.

It's something that concerns Tennesseans, and when I'm across the State—we have 95 counties. I visit each of them every year. And, Mr. Attorney General, that comes up quite a bit. Much of it has come up in relation to the *Dobbs* decision, and the attacks and the violence there has increased from groups on the far left. It has not increased from pro-life groups.

And since the *Dobbs* leak, there have been 70 pro-life pregnancy centers that were targeted. Only two of these activists have been indicted. There are 25 individuals that have been indicted under the FACE Act in just 5 months. So, you see the disparity there.

I appreciate you said that most of these attacks are carried out at night and that the protests take place during the day. So, you say it's easier to identify and go after people that are carrying out a peaceful protest during the day rather than a firebombing at night. Is that correct?

Attorney General GARLAND. If I could just say I wish you would assure your constituents in all the counties that the Justice Department does not treat people in the way that——

Senator BLACKBURN. Okay.

Attorney General GARLAND [continuing]. Is described.

Senator BLACKBURN. Well, then, let's——

Attorney General GARLAND. We treat like cases alike. We do not have one view for——

Senator BLACKBURN. Okay. Then let's talk about a specific case in Tennessee, the Hope Clinic. Are you familiar with that?

Attorney General GARLAND. I'm not familiar with it, specifically.

Senator BLACKBURN. Okay. The Hope Clinic for Women is a pregnancy resource center in Nashville. And currently you have gone out of your way to prosecute 11 individuals in Tennessee under the FACE Act. And, are you aware that this clinic was the subject of an attempted firebombing with a Molotov cocktail?

Attorney General GARLAND. So, we are very concerned about these kind of firebombings, and I agree with you, they're happening——

Senator BLACKBURN. Okay.

Attorney General GARLAND [continuing]. Around the United States. The FBI has put its resources into this. We are investigating it in every way. We've offered rewards for anyone who has information.

Senator BLACKBURN. Then let's talk about how these groups get classified. When we talked about the way parents of children were treated and because they were concerned over what was being taught in schools—Senator Kennedy just went through that with you—you applied domestic terrorism as a term in couching that activity.

Now, under Federal law which you have cited, this is how you term domestic terrorism, and I'm quoting, “activities that involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State.” So, under that definition, would you agree that firebombing a crisis pregnancy center constitutes an act of domestic terrorism?

Attorney General GARLAND. I would say yes, but I want to, again, disagree with your earlier characterizations. There was no

memorandum about parents complaining to their school boards, and there was——

Senator BLACKBURN. Well, I'm talking about bombing—firebombing pregnancy centers now.

Attorney General GARLAND. I understand. And there was no reference in that memo to using——

Senator BLACKBURN. So, you would agree that——

Attorney General GARLAND [continuing]. Domestic terrorism.

Senator BLACKBURN [continuing]. Bombing—firebombing a——

Attorney General GARLAND. Where it's a—yes. Firebombing where——

Senator BLACKBURN. That that would be domestic terrorism?

Attorney General GARLAND. It's at least domestic violent extremism.

Senator BLACKBURN. Okay. So, then, let's talk about the far-left group Jane's Revenge, because they claimed responsibility for that. They went so far as to spray paint their name on the wall. So, do you intend to prosecute them?

Attorney General GARLAND. We intend, if we find them, to do that. There is a——

Senator BLACKBURN. Oh, so you can't find them?

Attorney General GARLAND. If you have information about those groups, we would——

Senator BLACKBURN. Well, that is——

Attorney General GARLAND [continuing]. Be happy to——

Senator BLACKBURN. That is your job——

Attorney General GARLAND. That's right, and we——

Senator BLACKBURN [continuing]. To go after——

Attorney General GARLAND [continuing]. Are putting heavy resources into this. We have found a group——

Senator BLACKBURN. So, you would say——

Attorney General GARLAND [continuing]. That—that's——

Senator BLACKBURN [continuing]. They're a domestic terrorist organization?

Attorney General GARLAND. I would say it depends on——

Senator BLACKBURN. Jane's Revenge.

Attorney General GARLAND. It depends on——

Senator BLACKBURN. Who took——

Attorney General GARLAND [continuing]. The people——

Senator BLACKBURN. Who took credit for this, spray painted their name on the wall.

Attorney General GARLAND. We have——

Senator BLACKBURN. Let me——

Attorney General GARLAND. We have——

Senator BLACKBURN. Let me ask you a couple of questions before my time runs out. We've talked a little bit today about the targeting at the Justices' homes. Have you released any type of memorandum that explicitly condemns the acts of intimidation outside of the Supreme Court Justices' homes?

Attorney General GARLAND. I have directly instructed the Marshals Service to send over 70 United States Marshals to prevent acts of violence and threats of violence outside those——

Senator BLACKBURN. Have you done a memo?

Attorney General GARLAND. I don't need to do a memo——

Senator BLACKBURN. Okay.

Attorney General GARLAND [continuing]. Because I spoke directly to the marshals about this topic.

Senator BLACKBURN. All right. Have you watched any of the footage of the protesters outside the Justices' homes?

Attorney General GARLAND. Unless I caught it on the news, I haven't specifically watched it.

Senator BLACKBURN. Are you investigating any of those individuals? You said, you know, you investigate protesters because they do their activity in the light of day, and most of the firebombings and things take place at night. But I would think the FBI knows how to investigate crimes that take place at night.

Attorney General GARLAND. As I explained, we've—our principal responsibility here is to protect the lives of the Justices. We've put United States—

Senator BLACKBURN. But you haven't watched any of that footage.

Attorney General GARLAND. United States Marshals are on scene, watching what happens on scene.

Senator BLACKBURN. Do you think that that any of those individuals that were protesting at the Justices' homes were there for any reason other than to try to intimidate the Justices?

Attorney General GARLAND. The marshals' job is to protect the lives of the Justices, and they will arrest people who they think are threatening the lives of the Justices. That's their job.

Senator BLACKBURN. Thank you, Mr. Attorney General. I have to say, people in Tennessee talk a lot about their frustration. They want to trust the DOJ. They want to be able to trust their Government. They are very concerned about what appears to be, by actions, two tiers of justice, and this is something that they do not see as equal treatment under the law. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Blackburn. Senator Welch.

Senator WELCH. Thank you very much, Mr. Chairman. Mr. Attorney General, I appreciate the work you've been doing on election infrastructure and security.

We have our town meeting in Vermont next week. We're pretty proud of that. You raise your hand and decide publicly how you're going to vote, or you can do it privately.

And I just wanted to ask you about the Department of Justice. You have taken important steps to protect election workers and the right to vote, and that includes by establishing the Election Threats Task Force. Let me ask you, what steps did the Department take in the 2022 election to defend our democracy in the election workforce, and are there any lessons learned that can help us going forward?

Attorney General GARLAND. So, we have, as you note, established an Election Threats Task Force aimed at investigating threats against State and local election workers. The FBI has been tracking those kind of threats that come in on their tipline and making those investigations. There have been a number of prosecutions and convictions regarding those threats. I'm not sure if that fully answers the question, but that's what we're doing.

Senator WELCH. That's good. You know, there's—from here, from time to time, there's threats to local election officials that might

happen in one State and then it might be another. What things can you do to be helpful in responding to specific threats against election workers?

Attorney General GARLAND. Yes. So, obviously, the first line of defense are State and local law enforcement. What we bring to this is a particular—both resources and legal tools that can be used to track the use of the internet to make those threats, emails to make those threats, text messages, telephone calls to make those threats.

And that's a lot of what we do, is to help the State and locals identify the source of those threats and then to go out and knock on doors and investigate, you know, whether violence was actually contemplated.

Senator WELCH. And you have the resources that you believe you need in order to make certain that our elections are safe and sound?

Attorney General GARLAND. I think we have the resources that we need to investigate these threats to the people who are really the foundation of our democracy—volunteers, who are, you know, running our elections. That's the way we do things in the United States.

And, of course, State and local elected officials are also being threatened, but so, also, are the volunteers who are election judges, you know, put the ballots in the boxes, etc.

Senator WELCH. All right. Thank you. The other area I wanted to talk to you about was, broadly speaking, antitrust, but specifically how it's impacting our healthcare system.

My view is that one of the big challenges we have with affordable and accessible healthcare is the cost. And there's a number of factors that are driving up the cost, and I think that includes some anticompetitive activities.

For examples, you know, hospital consolidation is a big issue. When you go to the hospital and you get one of those bills, you just can't believe it. If you get out healthy, when you get the bill you're going to be sick.

And consolidation of physician practice groups—Big Tech and private equity—private equity companies bought up all of these human resource companies when we had the need for these visiting nurses and just exploded the rates, and it pulverized the budgets of our small hospitals in rural America.

And just last month, The Wall Street Journal reported that CVS would purchase primary care provider Oak Street Health, broadening CVS's market domination as a parent entity and a pharmacy benefit manager.

Now, I know you can't speak specifically about any particular case, but there's a consolidation trend and market power trend that I think is escalating these prices, to the detriment of the taxpayer, to employers who are working hard to provide employer-sponsored healthcare, and obviously to individuals.

In the past year, the DOJ has taken steps to update its antitrust guidance and has heard from patients and providers and advocates about how to bolster antitrust enforcement.

I want to just give you an opportunity to tell us your view on this and the role you see—the Antitrust Division of the Department of

Justice, making certain that we have competitive pricing or trying to get some semblance of competitive pricing.

Attorney General GARLAND. I appreciate the question. We have tried, since I've been Attorney General, to reinvigorate the Antitrust Division to more urgently evaluate mergers and to bring cases against exclusionary behavior by dominant firms.

Thanks to the Hart-Scott-Rodino merger filings fees legislation that was passed, we now have more money that we can use to build up again the resources of the Department.

As I mentioned earlier, I was stunned to learn when I came to the Department that there were fewer lawyers and economists in the Antitrust Division than there were when I first entered the Justice Department in 1979. And you can imagine this—

Senator WELCH. That's amazing.

Attorney General GARLAND. It's amazing, and particularly when you think of how big the companies are now.

Senator WELCH. Yes.

Attorney General GARLAND. So, we're doing two things in the merger field, of course.

On the very large mergers, which are subject to Hart-Scott-Rodino, we are doing a very careful scrub and making determinations of whether we should challenge it.

But I think what you're talking about is also quite important, which are smaller markets, but are still what economists call relevant markets, where the price is affected, regardless of whether it's a nationwide roll-up, if it's a roll-up of healthcare providers in one entity and really the only place that people who need healthcare locally can provide it. So, we have brought and will continue to examine those kinds of cases, as well.

You are—you know, the bottom-line theory about antitrust is if there are multiple players in the market, they will compete with each other and we will get the best pricing, marginal cost being the price where it meets the supply curve. But that's not the case where you have dominant firms where there's only a few places to go. And in those situations, price will almost always be above the competitive price.

Senator WELCH. Okay. Thank you very much, Mr. Attorney General, and thank you for your service on the bench before. And, Mr. Chairman, I yield back. Thank you.

Attorney General GARLAND. Thank you, Senator.

Chair DURBIN. Thank you, Senator Welch. You're the first to do that. Senator Tillis.

Senator TILLIS. I was actually going to thank Senator Welch for that. I think, Mr. Chair, we probably ought to have 4-minute rounds so we have a reasonable chance of them getting done in 7 minutes.

General Garland, I guess I'm your ticket to lunch. I've just got a—

Attorney General GARLAND. Oh, good.

Senator TILLIS [continuing]. Couple of questions to ask you. In your opening statement—I'm sorry I had to come in and out. I wanted to spend most of my time in the hearing.

You have 115,000 people working in the DOJ, and I think most of them are great people—purpose, service driven, and I thank

them for their work. But we're not all angels. We probably have some that need to be held accountable.

And you made a comment about returning to some of the norms that maybe have drifted, over time, or our focus on them. Can you briefly describe to me a couple of those where you see positive trending?

Attorney General GARLAND. Yes. I think the most important is the principle that we treat like cases alike, that we don't have one rule for Democrats or Republicans; rich, poor; powerful, powerless; based on ethnicity.

Another important norm is that we decide our criminal investigations and affirmative civil law enforcement investigations without any interference from the White House or, frankly, from the Congress, that these decisions are made on the merits without any policy or political interference.

Senator TILLIS. I think one thing that would be helpful for you—I'm a data-driven person. I think one of the things that would be helpful for you is to try, to the extent that you can, to measure, you know, some of those, so that you come back equipped with data to maybe refute some of the misconceptions about your priorities.

I want to talk briefly about my favorite subject when I get on law enforcement [holds up cell phone]. Have you seen the 3.12 march? All right, this is a sub-page.

Attorney General GARLAND. March 12th?

Senator TILLIS. I'll shoot you a link. This is—

Attorney General GARLAND. Okay.

Senator TILLIS [continuing]. A sub-page that's been out there for a while. It's actually a sub-page from ActBlue, which is the largest aggregation engine for many of my colleagues on the other side of the aisle for hard-dollar contributions to their campaigns, which I don't begrudge. We have an equivalent platform.

What's notable about this is, this is still on the website. They're trying to raise \$1.312 million. They've already received contributions. They keep it on the website.

And let me just tell you what the run's about. They say, "Why 3.12 miles? Because 3.12 equals ACAB, and ACAB equals All Cops Are Bastards." This is out there.

I wish—I know that the vast majority of my Democratic colleagues do not embrace that. Some of them may.

But I think it's time to remove this website and to remove this crap that they're trying to talk about law enforcement.

In 2020 and 2021, I introduced a bill called Protect and Serve, and it was specifically focused on increasing penalties for law enforcement officers who were assaulted or murdered.

Not getting into any sort of policy recommendations, but it seems to me at a time when we're having dramatic reductions in people willing to go into the academies, where we're seeing mayors get elected out of office because of community safety and maybe a little bit too much soft on law enforcement, and when we demonize law enforcement, we are really hurting ourselves.

I know the FBI is doing relatively well with recruiting, but we're not doing well in local and State agencies. So, can you see, with respect to the implementation—we've talked about increasing penalties in other places. Can you talk to me about the merits or con-

cerns you would have if we're successful with getting Protect and Serve passed this Congress?

Attorney General GARLAND. Every day I meet with law enforcement—our own law enforcement agencies.

Multiple times a year, I meet with the national leaders of State and local law enforcement, police chiefs, sheriffs.

And multiple times during the year, I travel all around the country to our U.S. Attorney's Offices, where I meet with the State and local law enforcement agencies. They are the ones who are on the front lines every day.

Senator TILLIS. And they're getting killed.

Attorney General GARLAND. And, I should have added, I've been to many memorials. I've been to all the memorials that happen every year. I've sat—I've stood and sat at the bedside of Federal law enforcement agents who've been shot. I've been to a memorial for a Federal law enforcement agent who was killed. I'm well aware of the risks that they run to protect us. We are extremely supportive of law enforcement.

Senator TILLIS. Yes, but what I'd like you to—

Attorney General GARLAND. Well—

Senator TILLIS. I'm sorry to interrupt you.

Attorney General GARLAND. Yes. No, no.

Senator TILLIS. It's not my style. But what I'd like to do is really get some feedback. We are going to file the bill again. We do have interest from the Democratic side. I'm always interested in policy that makes it easier to implement.

So, we would like to get a commitment to take a look at this and give us advice on things that could improve it or potential unintended consequences.

Attorney General GARLAND. Abs—

Senator TILLIS. I don't see any, but I would like to get that commitment.

Attorney General GARLAND. Absolutely. We will be happy to do that. I do want to say I agree with your problems about recruitment and retention. That's why we gave out \$100 million under the COPS grant, just for that purpose. And we're going to do another \$200 million this coming year.

Senator TILLIS. Now I want to talk a little bit about—I'm going to submit some questions for the record on various topics and look forward to your response.

But in my remaining time, I want to talk about the implementation of the Bipartisan Safer Communities Act, or what I think your Department—and I like the term—calls BSCA. I had a discussion with ATF earlier this week, and, you know, it has been described as a once-in-a-generation bill.

That bill went from the initial meeting that I attended to the time that we were voting on the Senate floor in 30 days. That required a lot of hands-on involvement by the Senate Members on both sides of the aisle that brought that about.

What's very important to me, unless we want another generation to pass before we're able to make reasonable progress, is the implementation of this bill. I'm curious. I'm not going to get into specifics because I think I'd rather do it justice by just submitting them—questions for the record.

I want to know about States that have applied for and been provided the Extreme Risk Protection Orders. It was very clear that we wanted minimal standards for due process. We don't want to reward States—and incidentally, there are red States and blue States—that I don't think have adequate due process protections for the person who may be denied their Second Amendment rights.

So, we want to go through the grant streams, the approvals that have occurred at that time, and whether or not it satisfies the letter or the spirit, and the congressional record that I'm very familiar with. It was last June that we got it done.

I also want to compliment NICS with their implementation of the enhanced background checks. We need to make sure that they're following, again, the letter and the spirit of the law with respect to the length of time and having a "proceed" presumption if we don't have meaningful information in the first 3 days, and then the final "proceed" order in the next 10 days.

Trudy and the folks out at NICS have done a great job, and we've found some really good outcomes from that, that we need to share better with the public.

The last thing I want to leave you—I'm over time. I can't believe it, Mr. Chair. The last thing I want to leave you with is, I would like to get a breakdown of the 17 cases under the straw purchasing and trafficking language in the bill.

And I'm particularly interested—I heard at least one alluded to gang organization that it was brought up on. We need to see that that bill, I think, is going to age well. That's why I supported it, why I'd be willing to pursue other ones, as long as I can go back to the people that I worked with to vote for the bill and say that the spirit and the contours of that legislation has been implemented faithfully. Thank you.

Attorney General GARLAND. I'll be happy—

[Gavel is tapped.]

Attorney General GARLAND [continuing]. To do that. I'll have our staff talk directly with yours, to be sure we're answering exactly the questions you're asking.

Senator TILLIS. Thank you.

Chair DURBIN. Thanks, Senator Tillis. We're going to take a 10-minute recess, and if there is to be a second round—and that depends on the presence of Members when we return, and they will be recognized in the order that they appear here.

I note that Senator Cornyn has got an early bird rule. But let's take a 10-minute recess and come back.

[Whereupon the hearing was recessed and reconvened.]

Chair DURBIN. The Committee will come to order. As I mentioned at the outset, there's a second round of 3 minutes, which will be strictly enforced. You will hear the gavel at 3 minutes.

I'm going to wait and save my questions to the very last. And so I begin this round of questions—the second round of questioning. Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman, and thank you again, Attorney General. I'm going to go to a topic that was addressed earlier by Senator Blumenthal and Senator Graham, and that is the question of the freezing, seizing, and forfeiture of Russian oligarch and kleptocrat assets.

One of the problems that we are running into is that, for the highly valuable assets that can be seized from the Russian oligarchs, like massive yachts or Fabergé eggs, or other works of very expensive art, the value is well above \$500,000.

And right now, we have an administrative forfeiture procedure that applies for assets that are valued only up to \$500,000. Above that, you have to go through a different procedure.

The nutshell way that I think about this is that the simpler administrative forfeiture procedure allows the Government to proceed in rem against the asset, and people have to show up if they have a claim to the asset. It's a little bit like what the Department of Justice did with botnets.

They had a proceeding in rem against the botnet, and anyone who laid claim to that botnet and asserted a right not to have it taken down—they were welcome to show up in court and present themselves. They probably would have gone off in handcuffs, but they certainly had that right.

With respect to the assets above \$500,000 that are associated with the Russian oligarchs who are associated with the really criminal war that Putin has launched into Ukraine, we would like to see the law changed.

Senator Graham supports this. Senator Blumenthal and I support this. We have legislation to support this.

And I just wanted to take my moment here with you to make sure that you and I, the Marshals Service, your forfeiture offices, are all properly aligned so that we can move quickly to get this changed.

At the moment, having to identify the owner of an asset—which is often hidden in Russian-nesting-doll layers of faraway bank accounts, shell corporations, Cyprus holding companies—really puts a major crimp in our ability to proceed fairly.

And I don't think there's any national interest or public interest in having Russian oligarchs who've supported this war treated better than American citizens, simply because their assets are more valuable.

So, would you please tell your team to greenlight working with us to get this bill passed quickly out of this Committee and into legislation on the floor?

Attorney General GARLAND. As you can imagine, I'm wholeheartedly in favor of the team working with you on this. As you know, we recently, thanks to the work of the Congress, were able—I was able to certify for transfer to Ukraine the money that was seized from one oligarch, Malofeyev, and most recently, our Task Force KleptoCapture succeeded in forfeiting \$75 million from Viktor Vekselberg.

They have done an enormous amount of work to find nesting within nesting within nesting of shell corporations. It would be easier if that weren't required. So, we'd be happy to work with your team on this. Yes, of course.

Senator WHITEHOUSE. Thank you very much. Thank you, Chairman.

Chair DURBIN. Thank you, Senator Whitehouse. Senator Grassley.

Senator GRASSLEY. Thank you, Mr. Chairman. Thank you, General Garland, for being here.

My first question is a follow-up to a line of questioning you had with Senator Cotton. You told this Committee that, quote, “the executive branch cannot simply decide, based on policy disagreements, that it will not enforce a law at all,” end of quote.

Then you released a December 16th, 2022, memo instructing prosecutors to disregard the law that established sentencing differences between cocaine and cocaine base. Your decision not to enforce the law ended congressional discussions at that particular point for a compromise.

If DOJ claims that it will ignore the law by declining to prosecute a law that grew out of a bipartisan compromise forged in this Committee, it’s hard to see how Members can trust the Department about following any further bipartisan deals.

So, I’m going to ask you, would you withdraw your memo so that a meaningful legislative discussion can resume? And if you don’t have agreement with me, why wouldn’t you do that?

Attorney General GARLAND. Senator, I want to be clear. We’re not, in any case, saying that we won’t enforce the law. In all the examples that we’re talking about here, people are being prosecuted for violation of the Controlled Substances Act. It’s only a question of what sentence we will seek, and this has been a matter of prosecutorial discretion.

We do not in any way limit the judge. We have to honestly tell the judge what the drug was and what the amount was, but this goes to the question of what we will charge and seek. But we are charging these people with violations of the Controlled Substances Act.

Senator GRASSLEY. On another point, the Department of Justice charged Nicolás Maduro with narcoterrorism and drug trafficking offenses, and the Office of Foreign Assets Control sanctioned him.

Since then, the Biden administration has released \$3 billion in foreign Venezuelan assets and authorized Chevron to drill. Does the Department of Justice still consider Nicolás Maduro a fugitive of U.S. justice? And, if so, do you commit to diligently pursue his arrest?

Attorney General GARLAND. To be honest, Senator, I really don’t have any information. I know who Maduro is, obviously, and I know that he was charged. I don’t know what his current status is. I’ll be happy to look into that for you, though, Senator.

Senator GRASSLEY. Will you answer in writing?

Attorney General GARLAND. Of course. Of course.

Senator GRASSLEY. Okay. This will have to be my last question. I have strong concerns about competition problems in different areas of the economy. Example, I’ve conducted oversight and drafted legislation to address abuses in pharmaceutical, agriculture, and high-tech industries. Can you tell us what the antitrust priorities are for the—

[Gavel is tapped.]

Senator GRASSLEY [continuing]. Justice Department under your leadership? And are your resources following that priority?

Attorney General GARLAND. Yes. So, our priority are both to prevent increased concentration in industries that are already con-

centrated. Agriculture is a very good example. Pharmaceutical is another very good example—therefore to closely look at the mergers and think—and to investigate them.

And our other priority, and closely related, is exclusionary conduct by dominant firms. And we are doing quite a bit of that kind of work, as referenced by some of the cases, you know, we've filed. They're also—we're also looking at criminal violations of the price-fixing statute, and others.

With respect to resources, this is an area where we can always use more resources. We are faced on the opposite side with companies with virtually unlimited resources.

I express gratitude for the Senate and the House for the Hart-Scott-Rodino fees bill, Merger Fees bill, which has given us more money to even up the playing field a little bit.

Chair DURBIN. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman. Thank you, again, Mr. Attorney General. I want to thank you for the supportive comments you've made about the Open App Markets Act.

As you know, I'm hoping that the Department of Justice will support us, because right now we have a duopoly in the mobile apps stores—Apple, Google—and this measure would stop those two companies from exacting rents and boxing out competitors. I'm hoping that the Department of Justice will support this measure.

Attorney General GARLAND. Well, as I said, Senator, Assistant Attorney General Kanter has already testified in support of the bill, so we hope to be able to get the administration on board, as well. But he has already, and that represents my views, as well.

Senator BLUMENTHAL. Thank you. I want to talk about the Foreign Intelligence Surveillance Act—

Attorney General GARLAND. Yes.

Senator BLUMENTHAL [continuing]. Specifically Section 702. Not exactly the topic of major inquiry here, but enormously important.

Attorney General GARLAND. Yes.

Senator BLUMENTHAL. And without going into any classified information, that provision, I believe, was instrumental in preventing major catastrophic aggression against our Nation and also helping our allies, like the Ukrainians, with intelligence that was extremely critical to pushing back the Russians and knowing what they needed to know on the battlefield. Could you comment on the importance of reauthorizing Section 702?

Attorney General GARLAND. Yes. Senator, this is a statute that I wasn't—we didn't have, the last time I was at the Justice Department, so I really didn't know what to expect when I came in this time.

I will tell you that every morning I have an all-threats briefing with the FBI, with an intelligence community briefer with our National Security Division.

An enormously large percentage of the threats information that we're receiving comes from 702 collection. All the examples that you're talking about—Ukraine, threats by foreign terrorist organizations, threats coming in from adversaries, from China, from North Korea, from Iran, from Russia.

A lot of what we do in the area of cyber, and particularly in ransomware investigations of finding out who is behind the

ransomware investigation and sometimes of obtaining the keys, comes from information that is, at least, part fed by Section 702.

We would be intentionally blinding ourselves to extraordinary danger, in my view. And this is not a view that I jumped on—you know, I've always held. This is something I've learned as I've been at the Department.

Senator BLUMENTHAL. And blinding—

[Gavel is tapped.]

Senator BLUMENTHAL [continuing]. Our allies, as well. Thank you.

Attorney General GARLAND. Oh, yes, and our allies, as well. Yes.

Chair DURBIN. Senator Cornyn.

Senator CORNYN. General Garland, I'm sure you will agree with me that the independence of the Federal judiciary is one of the crown jewels of our form of Government. And historically, Federal judges have had a hard time defending themselves against attacks of various kinds.

And I just want to raise with you my concerns that we're seeing not only attacks like those from former staffers of this Committee who happen to now be on the outside, in special interest groups, saying that now when reporters cover the story of cases being decided by a judge, they ought to cite the partisan affiliation of that judge, and saying that's it's important to say, for example, it's not just Chief Justice Roberts—or say that he's a Republican, not a conservative-leaning Justice.

This is happening in the press. It's happening on social media. As you've already discussed with some of my colleagues, this has led to political protests at the Justices' homes and even a threatened assassination of a member of the Supreme Court of the United States.

But unfortunately, it's not just limited to the outside partisan rabble rousers. It includes speeches made by United States Senators on the floor of the Senate. Mr. Chairman, I'd ask unanimous consent that a copy of this speech, dated February 16th, be made a part of the record.

Chair DURBIN. Without objection.

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

Senator CORNYN. This is a speech by a United States Senator trying to discredit a judge—happens to be in Texas, Matthew Kacsmarek, that Senator Cruz and I recommended and who was appointed and now serves with lifetime tenure as a Federal judge—calling him a lifelong right-wing activist, a partisan ideologue, an anti-abortion zealot.

And he goes further to say that, regardless of how Judge Kacsmarek may decide this particular case, that it will inevitably be affirmed by the activist Fifth Circuit Court of Appeals, and then surely rubber-stamped by the United States Supreme Court.

I find this sort of rhetoric, particularly by a United States Senator, to be appalling, and I wonder if you will join me in condemning that sort of attack on the independence of the Federal judiciary.

Attorney General GARLAND. When I first got on the judiciary, I and several of my colleagues pounded our heads against the wall, trying to get the reporters to stop—and this is more than 25 years

ago—to stop reporting the name of the President who appointed us and the—or the party.

Unfortunately, this is a battle that has not been won and, I don't think, obviously, given the authority of the First Amendment and its importance, is one that we're not going to be able to win. I come from a kinder and gentler era and a kinder and gentler Court, even in terms of the way the members of the Court treat themselves. I—

Senator CORNYN. But, General Garland, you are the—

Attorney General GARLAND. I don't know what else to say.

Senator CORNYN [continuing]. Chief law enforcement officer of the United States.

Attorney General GARLAND. Yes.

Senator CORNYN. Will you condemn it?

Attorney General GARLAND. Yes, I am against divisive rhetoric of all kinds, but I do not have authority in this matter. As you know, the Speech and Debate Clause—

Senator CORNYN. You have—you have moral—

[Gavel is tapped.]

Senator CORNYN [continuing]. Authority.

Attorney General GARLAND. My moral authority is against divisiveness from all sides and all quarters, and for all arguments to be made on the merits. That—

Chair DURBIN. Senator—

Attorney General GARLAND. That is my moral authority.

Chair DURBIN. Senator Lee.

Senator LEE. That's the concern that I've got, is that you don't seem to condemn the divisiveness if it's on the left.

I want to go back briefly to the text of Section 1507. Section 1507 is pretty darn clear. I personally don't see how anyone could protest outside the home of a Supreme Court Justice, especially while engaging in issue advocacy related to a case that they've taken or are currently hearing, that doesn't violate 18 U.S.C. § 1507.

So, the fact that you've put U.S. Marshals Service in charge of protecting their homes—great. The fact that not a single arrest has been made, not a single set of charges have been made, is very disconcerting. As is the fact that even if the marshals don't choose to make an arrest there, which is stunning to me that they haven't—but even if they hadn't, there's video footage. You can identify folks. You've proven your ability to do that.

And the fact that you're not bringing that is deeply disturbing to me, as it was when, on the day of the *Dobbs* decision, the Department of Justice took what I believe was a pretty unprecedented step of issuing a scathing statement, not just saying “we disagree” or “we're disappointed with the outcome,” but making arguments that I believe called into question the legitimacy of the Court.

I have never seen the Department of Justice do that.

It is cause for additional concern when I see people like Philip Esformes, having received clemency, is now having to face the prospect of being prosecuted again after having received clemency by a prior President.

Add all this up with the fact that, by the end of this year, we're going to see the expiration of Section 702 of the Foreign Intelligence Surveillance Act. The Department's already asking and

chomping at the bit to be asking us to simply reauthorize that, notwithstanding the fact that there are all kinds of examples of how this has been politicized, how Section 702 has been misused.

The current standard for a warrantless backdoor search of the content of communications of Americans, American persons, is “reasonably likely to return evidence of a crime.” But the ODNI’s recently declassified semiannual report, released on December 21st of 2022, reports all kinds of noncompliant searches.

These are just the ones we know about, just the ones that the ODNI report was able to identify, involving U.S. persons, including the searches of prospective FBI employees, members of a political party, individuals recommended to participate in the FBI Citizens Academy, journalists, and even a Congressman.

The politicization of the Department is a problem, and——

[Gavel is tapped.]

Senator LEE [continuing]. You can tell your Department not a chance in hell we’re going to be reauthorizing that thing without some major, major reforms. Your Department is not trusted because it has been politicized. I know you are a good person. You have the ability to rein it in. I ask that you do so promptly.

Chair DURBIN. Thank you, Senator Lee. Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman. General Garland, the Department of Justice should enforce the law regardless of politics. I do not believe that has been what is happening, the last 2 years.

Among other things, I believe you very much want to indict Donald J. Trump. Toward that end, the Department of Justice has leaked that DOJ is investigating and intends to indict Hunter Biden. The purpose of those leaks, I believe, was to set the predicate for an indictment of Trump, to say, “Look how evenhanded we are. We’re indicting a Biden. We’re indicting a Trump.”

Those leaks are not law or enforcing the law. They are politics. Did you know about the leaks about the Hunter Biden investigation?

Attorney General GARLAND. I don’t know about the leak that you’re talking about, and I’m not—leaks are in violation of our regulations and our requirements, so the answer is——

Senator CRUZ. But the leaks are consistently on one side of the aisle, advancing one political agenda. As you know, the FBI raided Donald Trump’s Mar-a-Lago home, and subsequent to that raid, there have been multiple leaks about what was discovered there, including a photograph of documents that were discovered there. Did you know about the leaks from that——

Attorney General GARLAND. The photo——

Senator CRUZ [continuing]. Raid?

Attorney General GARLAND. The photograph was a filing in court in response to a motion filed by Mr. Trump. It was not a leak.

Senator CRUZ. So, you’re testifying there haven’t been leaks about the Trump raid and investigation?

Attorney General GARLAND. I’m responding to the point about the photo——

Senator CRUZ. Do you know about the leaks that have occurred concerning the——

Attorney General GARLAND. I’ve read the leaks.

Senator CRUZ [continuing]. Trump investigation?

Attorney General GARLAND. They are inappropriate. We also don't know where they come from. Witnesses on the——

Senator CRUZ. But what's interesting is, when the shoe was on the other foot, I believe your intention, and I believe it's a political intention to indict President Trump, became infinitely harder when classified documents were discovered repeatedly at President Biden's multiple residences.

According to the public record, those were first discovered on November 2d, 6 days before the prior election. Department of Justice was notified on November 4th, and yet, miraculously, there was no leak about the classified documents at President Biden's home.

When it politically benefited the effort to go after and charge Donald Trump, DOJ leaked. When it potentially harmed the Democrat President, DOJ did not leak. Does that strike you as, at all, a double standard?

Attorney General GARLAND. Leaks under all circumstances are inappropriate, and they were not directed by anyone in the Justice Department.

Senator CRUZ. Well, let me say, in particular on Hunter Biden, I very much hope that an investigation of Hunter Biden is focused not just on his own personal substance——

[Gavel is tapped.]

Senator CRUZ [continuing]. Abuse issues but on connections to his father and potential corruption. That is the matter of public concern and why people are concerned.

And it was striking that the leak that came out from DOJ suggested this is just going after some poor—poor person struggling with drugs, instead of looking at the very real evidence of corruption. Will you commit that the investigation will actually examine the public corruption aspect and not simply scapegoat Hunter Biden as an individual?

Attorney General GARLAND. I can't comment about the investigation other than to say that all the matters involving Mr. Hunter Biden are the purview of the U.S. attorney in Delaware. He's not restricted in his investigation in any way.

Senator CRUZ. Well, you don't——

Chair DURBIN. Senator Hawley.

Senator CRUZ [continuing]. Comment here, but then you leak at the——

[Gavel is tapped.]

Senator CRUZ [continuing]. Same time.

Chair DURBIN. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman. Attorney General Garland, you said in our last exchange that it's your practice to defer to FBI agents in the field when it comes to investigations, apprehensions of subjects. I was interested, given your answer, to read in this morning's Washington Post that the FBI is saying that you overruled them when it came to raiding ex-President Trump's personal residence.

Washington Post reports this morning, "Showdown before the raid," that senior FBI officials who would be in charge of leading the search resisted doing so as too combative and then proposed instead to seek Trump's permission to search his property.

These field agents wanted to shutter the criminal investigation altogether in early June, The Post reports, but they were overruled by main DOJ. So, I guess in light of your earlier testimony just this morning, my question is, how often do you overrule FBI field agents for political purposes?

Attorney General GARLAND. I've skimmed that article. That's not—that's not an accurate reflection of what the article says, and I'm not able to comment on the investigation. My comment earlier was about tactics on the ground in particular——

Senator HAWLEY. Wait——

Attorney General GARLAND [continuing]. Cases.

Senator HAWLEY [continuing]. Wait, wait, wait, wait, wait. You said it's not—and I'm reading to you from the article, quote, "Senior FBI officials who would be in charge of leading the search resisted the plan as too combative and proposed instead to seek Trump's permission to search his property, according to four people who spoke on condition of anonymity to describe a sensitive investigation," end quote.

Attorney General GARLAND. Again, I have to say I'm not able to describe the investigation. I will say, as a general matter and at a high level of generality, that in my experience, long experience as a prosecutor, there is often a robust discussion, and in the end—and it's encouraged among investigators and prosecutors——

Senator HAWLEY. Attorney General, my time is very——

Attorney General GARLAND [continuing]. And a decision is made.

Senator HAWLEY. My—yes, and you made the decision.

Attorney General GARLAND. That's not——

Senator HAWLEY. Right? You said you did.

Attorney General GARLAND. No, I'm sorry. What I said was I approved the decision.

Senator HAWLEY. So, you didn't make the decision——

Attorney General GARLAND. I approved——

Senator HAWLEY [continuing]. To raid——

Attorney General GARLAND. I approved the decision to seek a search warrant after probable cause was found——

Senator HAWLEY. Overruling the FBI agents who did not want to do so. Did you talk about this with the White House beforehand?

Attorney General GARLAND. The memorandum does not—that Washington Post article does not say what you're saying. I'm sorry. And I'm not able to describe this in any further detail.

Senator HAWLEY. Well, I think given that, Mr. Chairman, I'll just ask that this entire article be entered into the record.

Chair DURBIN. Without objection.

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

Senator HAWLEY. And we can read for ourselves. I invite people to go and look. It says exactly that FBI field agents did not want to conduct the raid, and they were overruled by DOJ.

So, it doesn't seem to me, Attorney General, that the FBI has a lot of confidence in you, because what they're doing, clearly, is trying to distance themselves from your decisions. They're out there leaking left, right, and center, and saying, "It wasn't us. We didn't want to do it. He made us do it." What's that say about their confidence in your leadership?

Attorney General GARLAND. Well, the previous Senator said that they're leaking all in favor of the left. Now you're saying they're leaking all in favor of the right.

Senator HAWLEY. I'm asking——

Attorney General GARLAND. I don't——

Senator HAWLEY [continuing]. You my question.

[Gavel is tapped.]

Senator HAWLEY [continuing]. Answer my question, based on this evidence. Don't dissemble, Attorney General.

Chair DURBIN. Time has expired.

Senator HAWLEY. Answer my question.

Chair DURBIN. Time has expired. Senator Cotton.

Senator COTTON. Mr. Attorney General, I want to return to the illegal protest outside of Supreme Court Justices' homes last summer. It's plainly unlawful to protest outside of a judge's home to influence the outcome of a pending case.

You testified earlier that as far as you know, no charges have been brought against those protesters, but you never really explained why. Why have no charges been brought against those protesters?

Attorney General GARLAND. The decision about making arrests is left to the marshals on scene. Their principal——

Senator COTTON. Marshals are——marshals are law enforcement officials. They're not prosecutors. I did not say arrests. I said charges.

Attorney General GARLAND. There can't be——

Senator COTTON. These people were not criminal masterminds.

Attorney General GARLAND. There has to be——

Senator COTTON. They posted videos of themselves on their social media accounts. They advertised the protests in advance. It is possible to arrest someone for an offense after the offense has occurred. Is it not?

Attorney General GARLAND. It is, and we're——

Senator COTTON. Why did you not send anyone to arrest those protesters in the days after the protests?

Attorney General GARLAND. We're allocating our resources toward protecting the lives of the Justices and their families. Decisions have to be made on the ground as to what is the best way to protect those lives.

Senator COTTON. Mr. Attorney General, do you not think that it would perhaps provide a deterrent effect if you arrested some of these criminal protesters and charged them and threw them in Federal prison?

Attorney General GARLAND. We are trying to protect the lives of the Justices. That is our principal priority.

Senator COTTON. Again, I'm not——

Attorney General GARLAND. And——

Senator COTTON. I'm not saying——

Attorney General GARLAND [continuing]. I'm leaving it to the Marshals Service to make determinations on the ground. They have to make determinations about what they see on the ground.

Senator COTTON. Look, consider the efforts your Department has put into tracking down everyone who was even on the Capitol grounds on January 6th, 2021. You've dedicated a million of man

hours to study videotape, to do forensic analysis of computers and devices, to go knock and conduct interviews.

You can't allocate just a few agents to look at people's social media account, to say, "They were present outside of a Justice's home. We're going to go arrest them and charge them"? It's a black-letter violation of the law.

Attorney General GARLAND. Our priority is violence and threats of violence and protection of the lives of the Justices, and that's what we're doing.

Senator COTTON. Again, these are not criminal masterminds. They posted pictures and videos of themselves protesting. You could probably go arrest one today from a cold start. Why can't you do that?

Attorney General GARLAND. Saying again, our purpose is to protect the lives and safety of the Justices. That's how we're allocating resources.

Senator COTTON. You sent the FBI, as several Senators pointed out, to do a early morning raid on Mark Houck's home, in front of his children, for the grave crime of singing hymns and saying prayers outside of an abortion clinic, charges of which he was acquitted by a jury of his peers within an hour. You can't send the FBI to track down anybody who was protesting outside the home of a Supreme Court Justice?

Attorney General GARLAND. And I want to be clear. Our purpose here is to protect the lives and safety of the Justices.

Senator COTTON. I think the answer is——

Attorney General GARLAND. That's why we're doing that.

Senator COTTON. The answer is that you are sympathetic to the protesters, that you didn't like the decision the Justices were about to issue. I think we all know what you would do if a bunch of conservative protesters were outside the home of a Democratic-appointed Justice——

[Gavel is tapped.]

Senator COTTON [continuing]. To the Supreme Court.

Attorney General GARLAND. No one has ever been——

Senator COTTON. You're sympathetic——

Attorney General GARLAND [continuing]. Arrested under——

Senator COTTON. You're——

Attorney General GARLAND [continuing]. That statute——

Senator COTTON. It's a simple black-letter——

Attorney General GARLAND [continuing]. Under those circumstances.

Senator COTTON [continuing]. Legal violation. You will not send a single agent to conduct a single arrest and charge them on something that they have zero defense for. It's because you're sympathetic to left-wing protesters.

Chair DURBIN. Senator Blackburn.

Senator BLACKBURN. Thank you, Mr. Chairman. And Mr. Attorney General, I want to go back to what we discussed earlier, with the two tiers of justice. And the answers you've given us, you're very subjective in how you approach decisions. You don't seem to be rules based in how you make these decisions.

As a matter of fact, you come across as being very political in the decisions that you make, and politicizing your work is something that really offends most Tennesseans.

But I want to ask you about this two tiers of justice, particularly in the way you've responded to congressional oversight investigations.

The House Judiciary Committee recently requested that you turn over documents relating to the special counsel investigation of President Biden's mishandling of classified documents, but your DOJ so far has stonewalled the House request, claiming you can't turn over documents on an open matter.

Now, let's compare that with your decision, obviously very subjective, to fully cooperate with document requests from the House January 6th Committee. Your FBI had no problem at all turning over documents and information to that Committee, even though they related to an open investigation.

Do you see this comparison here? Do you appreciate this? This is a prime example of two tiers of justice, your two-tier system, who you're going to cooperate with and who you are not.

So, why have you cooperated with the document requests that were made from Democratic-led Committees, but you have refused Chairman Jordan, and you have refused the House Judiciary Committee when they are requesting documents that pertain to President Biden's mishandling of classified documents?

Attorney General GARLAND. So, we greatly respect the oversight responsibilities of the Committees of the Congress, and at the same time, we have to protect our ongoing investigations. I do not believe we turned over information to the January 6th Committee about ongoing—

Senator BLACKBURN. Mr. Attorney General—

Attorney General GARLAND [continuing]. Investigation—

Senator BLACKBURN [continuing]. Your responses—you give one set of responses for Republicans, another for Democrats. You have one tier of justice for people that are conservatives and another for those that are on the left.

You told me earlier that you didn't know who Jane's Revenge is. They are all over Twitter. I'm going to do you a favor. I am going to send you a letter with a whole lot—

[Gavel is tapped.]

Senator BLACKBURN [continuing]. Of Twitter and different feeds to help you in that investigation for the Hope Clinic.

Chair DURBIN. Thank you, Senator Blackburn. Senator Graham has told me he's on the way, so I'm going to take my 3 minutes now. Run the clock, please.

First, there was a reference made earlier to the drug war, the war-on-drugs legislation of about 25 or 30 years ago. As a Member of the House, I voted for it. It was an overreaction to crack cocaine, a nominally new narcotic that scared us to death. It was cheap, it was addictive, it was lethal and heavily damaging. And we did what most people do in reaction to such phenomena. We raised the penalty to an unimaginable height. The sentencing penalty went from 1-to-1 to 100-to-1.

The net result is exactly the opposite of what we had hoped for. The price of the drug on the street went down, the usage went up,

and we filled Federal prisons, primarily with African-American prisoners. It backfired on us.

I don't want to make that same mistake, again, when it comes to fentanyl. It's a deadly, dangerous situation. And I hope that just the initial reaction of getting tough in sentencing and mandatory minimums is not a sum and substance of all that we do.

The second point I'd like to make is, it is interesting to try to step back and follow what you face today, in terms of the resources of the Government protecting elected officials. When it comes to Supreme Court Justices, we hear from the other side, "You just didn't do enough. You've got to do more." And I can understand that sentiment.

But when it comes to school board members, the fact that you would send out a memo suggesting that they may be in danger at a school board meeting has been translated into some invidious diminution of the freedom of speech in this country.

I think you have to make a decision on a daily basis, as Attorney General, where you're going to apply the resources of the Government. I hope that you share, and I believe you do, the bottom line that violence is unacceptable from either side, politically, at any circumstance. And I think if we use that standard and use it objectively, that it's going to be an effective standard for the future.

The last point I'll make to you here should be said again. It was said at the outset. You have authorized special counsel to investigate the classified materials both at President Biden's home as well as former President Trump's home, special counsels that have some independence by their designation. Could you explain why you did that?

Attorney General GARLAND. Yes, to the extent I've already publicly explained why we appointed special counsel in those two cases. With respect to President Trump, he had announced that he was a candidate for President, and President Biden had indicated that he would be a candidate.

I thought that's an extraordinary circumstance and well fitting within the regulations to provide a level of independence and accountability that fit within the purpose of the special counsel regulations.

Chair DURBIN. Thank you. I think I've just used my 3 minutes, so I'm going to try to set an example. Senator Graham, take it away.

Senator GRAHAM. Number one, you deserve a Purple Heart for being here all day.

Attorney General GARLAND. Thank you.

Senator GRAHAM. So, really, I've enjoyed working with you and your team regarding Ukraine oligarch seizures, and I want to compliment you. You all have done a really good job of going after oligarchs, and hopefully we can seize some of their assets and send it to the Ukrainian people.

And I want to help work with you as much as we can, create some international tribunal to let Putin and his cronies know, "You're going to pay a price here. There's no forgiving and forgetting in this war. You picked a fight. You picked the wrong fight." And they need to pay a price. Do you agree with that?

Attorney General GARLAND. I do.

Senator GRAHAM. Okay. Now, some areas of disagreement. There are four States—Arkansas, Mississippi, South Dakota, and Utah—and more are coming, that have enacted legislation that regulates certain medical and surgical interventions on minor children, 21, 18, whatever the State is, regarding transgender surgeries and puberty-blocking medical procedures.

Your office wrote a letter, March 31st, 2022, to States, suggesting that if a State passed a law saying, you know, banning medical procedures to transition minor children, that they may be running afoul—the State may be running afoul of the Equal Protection or Due Process Clause of the Fourteenth Amendment. Is that your position?

Attorney General GARLAND. So, the Department believes that all people in the United States are entitled to be treated with dignity and respect, that the situation that you're talking about has to be evaluated by doctors, by families—

Senator GRAHAM. Well, I mean, I—

Attorney General GARLAND [continuing]. By the individuals, and they have to make those determinations.

Senator GRAHAM. But States have passed laws. Okay? We have 50 States here. They have passed laws, and more are coming, prohibiting this procedure because the State in question believes that allowing transition medical procedures on a minor is a life-altering event and it shouldn't be done until you're older so you can really better appreciate what you're doing.

States have taken that view, and I think more of them will take that view. Is it the position of the Department of Justice that such laws are unconstitutional?

Attorney General GARLAND. The position is that categorical across-the-board prohibitions on certain kinds of surgeries and not others have to be evaluated on a case-by-case basis, and the Civil Rights Division will do that with respect to each of the laws that they are talking about when the time comes.

Senator GRAHAM. Okay. So, the bottom line is, the four laws in question—have you looked at the laws in Arkansas, Mississippi, South Dakota, and Utah?

Attorney General GARLAND. I haven't. I don't know whether—

Senator GRAHAM. Well, do me a favor—

Attorney General GARLAND [continuing]. The Civil Rights Division has.

Senator GRAHAM [continuing]. And just look at them and get back to me and answer my question. Are they constitutional in the eyes of Department of Justice? Thank you.

[Gavel is tapped.]

Senator GRAHAM. I did it in 3 minutes.

Chair DURBIN. Three seconds.

I appreciate the Attorney General appearing before the Committee, and the record of the hearing will remain open for a week.

Questions for the record may be submitted by Senators before 5 p.m. on Wednesday, March 8th. Attorney General Garland, please provide these answers on a timely basis.

With that, the hearing is adjourned.

[Whereupon, at 2:09 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

Submitted by Senator Padilla:

The New York Times, article 283

Submitted by Senator Cornyn:

Wyden, Hon. Ron, floor speech 300

Submitted by Senator Lee:

Biggs, Hon. Andy, letter 311

Submitted by Senator Hawley:

The Washington Post, article 315

Submitted by Senator Ossoff:

Leadership Conference Education Fund and Project On Government Oversight, report
<https://www.govinfo.gov/content/pkg/CHRG-118shrg52249/pdf/CHRG-118shrg52249-add1.pdf>



Department of Justice

STATEMENT OF

**MERRICK B. GARLAND
ATTORNEY GENERAL**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

AT A HEARING ENTITLED

“OVERSIGHT OF THE UNITED STATES DEPARTMENT OF JUSTICE”

PRESENTED

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Good morning, Chair Durbin, Ranking Member Graham, and distinguished members of this Committee. Thank you for the opportunity to appear before you today to discuss the priorities and work of the Justice Department.

The mission of the Justice Department is to uphold the rule of law, to keep our country safe, and to protect civil rights. Every day, the 115,000 employees of the Justice Department work tirelessly to fulfill each of those responsibilities. I am proud of the work we have done on each of these fronts since I last appeared before you.

I. Uphold the Rule of Law. The rule of law is the foundation of our system of government. Upholding the rule of law is the priority of every Justice Department employee, every single day. The essence of the rule of law is that like cases are treated alike: that there not be one rule for the powerful, and another for the powerless; one rule for Democrats and another for Republicans; one rule for friends, another for foes; one rule for the rich, another for the poor; or different rules depending on one’s race or ethnicity. The integrity of our legal system is premised on adherence to the rule of law. In order to have confidence in our Department and in our democracy, the American people must be able to trust that we will adhere to the rule of law in everything that we do.

II. Keep Our Country Safe. The Justice Department is committed to using every resource at our disposal to help protect the safety of our communities. We continue to work to counter the foreign-based threats from nation-states, terrorist groups, radicalized individuals, and cyber criminals that seek to undermine our democratic and economic institutions and to sow fear among our people. And we continue to work to counter persistent domestic-based threats. Those include violent crime and gun violence, which undermine communities’ trust in the rule of law; drug poisonings and overdoses that shatter families; domestic violent extremist acts aimed at undermining our democratic institutions; and corporate crime and fraud that threaten our economic institutions. Our support of and partnerships with state, local, Tribal, and territorial law enforcement agencies across the country are central to this work.

III. Protect Civil Rights. Protecting civil rights was a founding purpose of the Justice Department and remains an urgent priority today. The Department's Civil Rights Division has been at the forefront of our efforts to protect the right to vote; prevent and prosecute hate crimes; ensure constitutional policing; build trust between law enforcement and the communities they serve; enforce federal statutes prohibiting discrimination in all its forms; and expand access to justice, including for veterans, servicemembers, and military families. Now more than ever, protecting civil rights is not only the obligation of the Civil Rights Division, but it is the responsibility of every Justice Department employee, every single day.

I. UPHOLDING THE RULE OF LAW

The first core, co-equal priority—to uphold the rule of law—is rooted in the recognition that to succeed and retain the trust of the American people, the Justice Department must adhere to the norms that have been part of its DNA for over forty years. In the wake of Watergate, Attorneys General Edward Levi, Griffin Bell, and Benjamin Civiletti developed and formalized guidelines to ensure the Department's adherence to the rule of law and to restore public confidence in its work.

The norms they established included policies intended to protect the independence of the Department from partisan influence in law enforcement investigations; to strictly regulate communications with the White House; to establish guidelines for FBI investigations and for the use of compulsory process in investigations regarding the press; to ensure respect for the professionalism of DOJ's lawyers, agents, and staff; and to set out principles to guide the exercise of prosecutorial discretion.

When I began my tenure as Attorney General, I said it would be my mission to reaffirm those policies as the principles upon which the Department operates.

Since then, the Justice Department has reinforced and, where appropriate, updated and strengthened policies that are foundational for longstanding Departmental norms.

For example, we strengthened our policy governing communications between the Justice Department and the White House, and the White House did the same. That policy is designed to protect the Department's criminal and civil law enforcement decisions and its legal judgments from even the appearance of political or other inappropriate influences.

We also issued a new policy to better protect the freedom and independence of the press. A free press is vital to the functioning of a democratic system under the rule of law. The policy we adopted restricts the use of compulsory process to obtain information from, or records of, the news media. The Justice Department strongly values a free press, and we are committed to protecting the First Amendment and the journalists who rely on it to keep the American people apprised of the workings of their government.

A. Protecting Our Country's Democratic Institutions

Upholding the rule of law includes protecting our country's democratic institutions. The Justice Department's investigation into the January 6, 2021, attack on the Capitol is one of the largest and most expansive investigations in our history. So far, that investigation has resulted in the arrest of more than 985 defendants for their alleged roles in the attack. We have secured convictions for a wide range of criminal conduct on January 6 as well as in the days and weeks leading up to the attack. Our work is not over.

I have great confidence in the investigators and prosecutors who are undertaking these cases. They are doing exactly what they are expected to do: making careful determinations about the facts and the applicable law in each individual case.

The Justice Department is committed to ensuring accountability for those criminally responsible for the January 6 assault on our democracy. And we remain committed to doing everything in our power to prevent this from ever happening again.

B. Protecting Those Who Serve the Public

We have all seen that Americans who serve and interact with the public at every level—many of whom make our democracy function—have been unlawfully targeted with threats of violence and actual violence. Judges, prosecutors, U.S. Senators and Representatives, school personnel, police officers, federal law enforcement agents, election officials and election workers, journalists, flight crew members, and local elected officials have all been threatened or attacked. That is dangerous for people's safety. And it is deeply dangerous for our democracy.

In 2022, the Department charged more defendants in criminal threat cases than in any year in at least the last five. Those have included investigations and prosecutions of individuals for making terrifying threats of violence to Members of Congress. In October 2022, the Department secured the guilty plea of an individual for threatening to kill a member of Congress. In December 2022, the Department charged and arrested an individual for allegedly repeatedly making calls to U.S. Senators and members of the House of Representatives in which he left voicemails threatening bodily harm. Most recently, in February 2023, the Department secured the guilty plea of an individual for making interstate threats to a member of Congress.

The Justice Department will continue to investigate violence and illegal threats of violence, disrupt that violence before it occurs, and hold perpetrators accountable.

C. Defending the Rule of Law and Ensuring Accountability for War Crimes

The Justice Department has taken a series of actions in response to Russia's unprovoked and unjust invasion of Ukraine. In March 2022, the Department launched Task Force KleptoCapture (TFKC) to further leverage the Department's tools and authorities to combat efforts to evade or undermine U.S. sanctions. TFKC is staffed with attorneys, agents, analysts, and professional staff from across the Department who are experts in sanctions and export control enforcement, anticorruption, asset forfeiture, anti-money laundering, national security investigations, and foreign evidence collection. TFKC has already taken several actions to freeze and seize the assets of sanctioned Russian oligarchs and indict individuals for violations of U.S. sanctions and for evasions of export controls.

On December 29, 2022, the President signed into law the Additional Ukraine Supplemental Appropriations Act of 2023. That Act authorizes the Department to conduct certain transfers of forfeited Russian oligarch assets to the Department of State to remediate the harms of Russia's invasion of Ukraine. In February 2023, I authorized the first-ever transfer under this new authority. The funds were identified, seized, and forfeited through the efforts of the agents, attorneys, and analysts working with TFKC.

The Department has also launched a War Crimes Accountability Team to centralize and strengthen the Department's ongoing work to hold accountable those who have committed war crimes and other atrocities in Ukraine. The Justice Department and our partners stand with the people of Ukraine and will pursue every avenue of accountability to bring to justice those responsible. In January 2023, the President signed into law the Justice for Victims of War Crimes Act, which enables the Department to prosecute war criminals present in the United States regardless of where the offense occurs.

The Department is deeply appreciative of the work of its attorneys and of Congress for their continued dedication to this cause. We will continue to use all of the Department's authorities to hold accountable Russian oligarchs and others who seek to evade U.S. sanctions, as well as to hold accountable those who break our laws, threaten our national security, and harm our allies.

II. KEEPING OUR COUNTRY SAFE

Keeping our country safe is the second core, co-equal priority of the Justice Department. The Department is committed to mobilizing its resources to protect the American people from all threats—foreign and domestic—while safeguarding our civil liberties.

Congress has provided critical resources for the Department to strengthen its national security and law enforcement capacities, to focus our efforts on disrupting threats to our country, and to build deeper and even more effective partnerships, both here at home and around the world. Today I would like to highlight five significant areas of the Justice Department's efforts to keep our country safe: (A) countering foreign and domestic terrorism; (B) protecting national security and countering cyber threats and crime; (C) combating violent crime and gun violence, including by supporting state and local law enforcement while building public trust; (D) disrupting drug trafficking networks and preventing overdose deaths; and (E) protecting Americans from economic harm.

A. Countering Foreign and Domestic Terrorism

Keeping our country safe includes countering new and emerging terrorism threats. We are doing all we can to protect the American people from terrorism in all its forms—whether originating from abroad or at home—and doing so in a manner that is consistent with our Constitution and the rule of law.

Our whole-of-Department commitment to countering terrorism includes our 94 U.S. Attorney's Offices; our law enforcement components, including the FBI; our grant-making offices; and our litigating divisions, including the National Security Division, the Civil Rights Division, and the Criminal Division.

We remain vigilant in the face of the continuing danger of attacks by foreign terrorist organizations. In July 2022, the Department announced the sentence of life imprisonment imposed by a court for a member of the Islamic State of Iraq and al-Sham (ISIS), a designated foreign terrorist organization, following conviction for conspiring to provide material support resulting in death. In addition to serving as a fighter and personally executing two Syrian soldiers on behalf of ISIS, the defendant served as a lead translator in ISIS's propaganda production and as the English-speaking narrator on multiple violent ISIS videos. Prior to this, in May 2022, the Department announced the conviction by a jury of a New York man who was a high-ranking member of ISIS. Convicted of conspiring to provide material support and providing it to ISIS, he held many responsibilities within the organization, including recruiting foreign fighters; trafficking foreign fighters from the West through Turkey and into Syria; and obtaining weapons, military equipment, maps, money, and false identifications for ISIS fighters.

Our FBI field offices and U.S. Attorney's offices also remain vigilant in regard to countering the threat of domestic terrorism. The FBI has also enhanced training provided to our state, local, Tribal, and territorial partners, while the Department's Civil Rights and National Security Divisions are working together more closely than ever. In February 2022, the Department announced convictions stemming from a domestic terrorism plot to attack energy facilities in furtherance of a racially or ethnically motivated violent extremist—white supremacist ideology—and to damage the economy and stoke division in our country. As part of this conspiracy, each defendant planned to attack power grids with powerful rifles to cost the government millions of dollars and cause civil unrest. The defendants also had conversations

about how the possibility of months-long power outages could cause war—including a race war—and induce the next Great Depression.

In all our efforts, the Justice Department is guided by our commitment to protecting civil liberties. The Department has been clear that expressing a political belief or ideology is protected by the First Amendment. But illegally threatening to harm or kill another person is not. We will use every appropriate tool at our disposal to deter and disrupt such illegal acts and to hold accountable perpetrators of those crimes.

B. Protecting National Security and Countering Cyber Threats and Crime

Together with our international partners and other federal law enforcement agencies, the Justice Department is committed to investigating, prosecuting, and otherwise disrupting threats to America's national and economic security.

With respect to nation-state threats, the governments of the People's Republic of China, Russia, Iran, and North Korea are becoming more aggressive and more capable in their malign activity than ever before. A year ago, the Department announced its broader strategy for countering nation-state threats. That strategy is threat-driven, focusing on the areas where the Department's authorities can have the most impact in combating the greatest threats to our national security, including those in the context of transnational repression; foreign malign influence; cyber; espionage; and theft of technology and intellectual property. The Justice Department will not tolerate attempts by any foreign power to undermine the rule of law upon which our democracy is based. And we will continue to fiercely protect the rights guaranteed to everyone in our country.

In recent years, malicious cyber actors have posed an increasing and constantly evolving threat. Nation-states have used cyber operations to target critical infrastructure, compromise our networks and supply chains, and cause significant economic harm. Cyber criminals have launched ransomware attacks that have also targeted critical infrastructure, including government facilities and key businesses, as well as hospitals and medical centers, putting patients' lives at increased risk during the COVID-19 pandemic.

The Justice Department is using every resource at its disposal to meet the cybercrime threat. For example, in January 2023, the Justice Department dismantled an international ransomware network responsible for extorting and attempting to extort hundreds of millions of dollars from victims in the United States and around the world. This ransomware group—known as "Hive"—used malicious software to hold digital systems hostage and demand a ransom. They targeted critical infrastructure and some of our nation's most important industries. In August 2021, they targeted a hospital with a ransomware attack that prevented the hospital from accepting new patients at a time when COVID-19 surged in communities across the country. Since July of last year, we also provided assistance to more than 300 new Hive victims around the world, helping to prevent approximately \$130 million in ransom payments.

The Department will continue to work both to prevent these attacks and to support victims who have been targeted. And together with our international partners, we will continue to disrupt the criminal networks that deploy these attacks.

To ensure that our efforts to keep our country safe from nation-state, cyber, and other threats remain informed by the most valuable and timely intelligence, the Justice Department strongly supports reauthorizing section 702 of the FISA Amendments Act. Section 702 is an indispensable tool for protecting American national security. Section 702 permits the U.S. government to collect foreign intelligence information about non-U.S. persons reasonably believed to be outside the United States. It is subject to robust targeting, minimization, and querying procedures to protect the privacy and civil liberties of U.S. persons. In protecting our national security, the Department is guided by our commitment to protect the civil rights of the American people.

C. Combating Violent Crime and Gun Violence, Supporting State and Local Law Enforcement, and Building Public Trust

(1) Combating Violent Crime and Gun Violence

The Justice Department is committed to addressing the rise in violent crime that began in 2020. In May 2021, the Justice Department launched a comprehensive anti-violent crime strategy rooted in our partnerships—partnerships among the federal law enforcement agencies that assist in the fight against violent crime; partnerships with the communities harmed by violent crime; and partnerships with the state, local, Tribal, and territorial law enforcement agencies that protect those communities every day.

As part of that strategy, all 94 of our United States Attorneys' Offices are working with their partners in state and local law enforcement to develop and implement district-specific, anti-violent crime policies.

And each of our law enforcement components is working with its state, local, Tribal, and territorial counterparts to seize deadly drugs and guns used in crimes and to apprehend dangerous fugitives.

For example, last year DEA and our law enforcement partners concluded a four-month operation that resulted in the removal of 36 million lethal doses of fentanyl from American communities.

The FBI also conducted a four-month operation in partnership with local and state law enforcement agencies. Together, we seized more than 2,700 firearms used in crimes, disrupted hundreds of violent gangs and criminal enterprises, and arrested thousands of alleged violent criminals and gang members.

Our U.S. Marshals continue to work alongside state and local law enforcement to apprehend the most dangerous fugitives. Last summer, and then again this year, U.S. Marshals conducted two, 30-day anti-violent crime operations in which they apprehended approximately 2,300 dangerous fugitives in communities nationwide.

And our ATF agents are part of multi-agency, multi-jurisdictional violent crime task forces across the country. That includes the five cross-jurisdictional strike forces I launched in 2021 to crack down on illegal gun trafficking. And ATF's Crime Gun Intelligence Centers coordinate comprehensive crime gun tracing and ballistics evidence analysis.

As part of our efforts to combat gun violence, in April 2022, the Department finalized its "frame or receiver" rule to address the proliferation of ghost guns used in violent crimes. That rule makes it harder for criminals and other prohibited persons to obtain untraceable firearms. Most recently, in January 2023, the Department issued a final rule clarifying that when manufacturers, dealers, and individuals use stabilizing braces to convert pistols into shoulder-fired rifles with a barrel of less than 16 inches—commonly referred to as a short-barreled rifle—they must comply with longstanding federal statutes that impose heightened requirements on those rifles. This rule underscores that firearm manufacturers, dealers, and individuals cannot evade these important public safety protections simply by adding accessories to pistols that transform them into short-barreled rifles.

The Justice Department has taken several significant enforcement actions to disrupt illegal gun trafficking operations. The Department is diligently working to implement the Bipartisan Safer Communities Act (BSCA), a historic piece of legislation that will aid in the effort to reduce gun violence. In January 2023, the Eastern District of New York announced a seven-count indictment charging several individuals with allegedly conspiring to illegally traffic more than 50 firearms under new gun trafficking provisions of the BSCA.

We also continue to support community-led efforts that are vital to preventing violence before it occurs. Earlier this year, the Department announced the investment of over \$231 million for the Department's Byrne State Crisis Intervention Program, which funds state crisis intervention court proceedings. Among other things, those funds will allow communities to implement the extreme risk protection order laws and programs that we know save lives. The Department has made strengthening Project Safe Neighborhoods (PSN) part of its violent crime reduction strategy. In May 2022, the Justice Department hosted a virtual, two-day national summit on reducing violence and strengthening communities. The summit convened more than 500 prosecutors, federal and local law enforcement officials, and community partners working under the auspices of PSN and the National Public Safety Partnership (PSP). Like PSN, PSP is a Department-led initiative that supplements enforcement efforts with community engagement. PSP provides training, technical assistance, and other resources from the Department's enforcement and grantmaking components to address violent crime challenges in communities. More than 50 cities have participated in this effort.

The Department—through its Office of Justice Programs, or (OJP)—has also announced \$100 million in community violence intervention grants to help communities across the United States. These resources will develop and expand the infrastructure needed to build community safety through cross-agency collaborations, the expansion of community-based organizations, and technical assistance—all of which will help prevent and reduce violent crime.

The Department’s Office on Violence Against Women (OVW) plays an important role in preventing and reducing violent crime. OVW administers 19 VAWA programs and \$700 million in funding to support effective strategies for reducing domestic and dating violence, sexual assault, and stalking. OVW has been successful by funding evidence-based practices—such as legal assistance for victims, protection order enforcement, victim advocacy, specialized law enforcement and prosecution units, and access to medical forensic examinations. For example, a swift police response to sexual assault and thorough investigation may make it more likely that a case will be referred to a prosecutor, accepted for prosecution, and result in a conviction. Victim-centered prosecution is also associated with lower incidence of re-abuse. OVW grants such as the Improving Criminal Justice Responses to Domestic Violence, Dating Violence, Sexual Assault, and Stalking Grant Program; the Rural Sexual Assault, Domestic Violence, Dating Violence, and Stalking Assistance Program; and the Legal Assistance for Victims Grant Program combat these violent crimes across every state and territory.

OVW is now implementing the many important updates to VAWA made by Congress in last year’s reauthorization. For example, in September 2022, on the 28th anniversary of the original authorization of VAWA, the Department announced \$224.9 million in grants designed to enhance services and justice solutions for victims of sexual assault, domestic violence, dating violence, and stalking. In February 2023, OVW announced funding to help Tribes across the country, including in Alaska, implement special Tribal criminal jurisdiction.

(2) Supporting State and Local Law Enforcement

The Justice Department recognizes that our state, local, Tribal, and territorial law enforcement partners bear the brunt of keeping our communities safe. We also recognize the toll that takes on law enforcement officers. We are committed to doing everything in our power to provide our local law enforcement partners with the resources they need and deserve.

Through our VALOR officer safety and wellness initiative, we continue to provide trainings, research, and guidance on preventing violence against law enforcement and supporting officer wellness. The Justice Department, in consultation with the Department of Health and Human Services, is also drafting guidance on best practices for addressing officer wellness and suicide prevention, which includes support for officers experiencing substance use disorders, mental health issues, or trauma from their duties. We have met with over fifty stakeholder groups, and we have heard them underscore what we know to be true—that addressing and providing tools for officer wellness is critical to agencies’ ability recruit and retain high-quality candidates who reflect the communities they serve.

We are also committed to addressing challenges in officer recruitment and retention. Both OJP and our Office of Community Oriented Policing Services—the COPS Office—are continuing to work on a number of programs and initiatives focused on supporting, recruiting, and retaining officers. Consistent with Executive Order 14074, we are developing guidance regarding best practices for State, Tribal, local, and territorial law enforcement agencies seeking to recruit, hire, promote, and retain highly qualified and service-oriented officers.

Last year, we awarded more than \$139 million in funding for the COPS Hiring Program to enable law enforcement agencies across the country to hire additional full-time law enforcement professionals. In the coming year, we will award even more, with over \$224 million dedicated to the COPS Hiring Program.

In October 2022, the Department announced more than \$370 million in grants—awarded by OJP—to fund state, local, and Tribal crime and violence reduction efforts and evidence-based strategies that support law enforcement operations; improve officer safety, health, and wellness; and build trust with communities.

(3) Building Public Trust

Public trust is essential to public safety. The Justice Department is committed to fostering trust and legitimacy between law enforcement and the communities we serve.

Toward that end, in May 2022, the Department updated its use-of-force policy for the first time since 2004. We also posted the new policy on our website for the first time. This Department-wide policy is in line with current best practices, core principles, and training at the highest standards of federal law enforcement. The new policy institutes a number of changes, including an affirmative duty for officers to prevent or stop any officer from engaging in excessive force or any other use of force that violates the Constitution, federal laws, or Department policies on the reasonable use of force. The policy also requires officers to be trained in, recognize, and act upon an affirmative duty to request and/or render medical aid, as appropriate. It further requires officers to be trained in and to deploy when feasible de-escalation tactics and techniques.

In June 2021, the Department’s federal law enforcement components were instructed to develop plans specific to their unique missions to expand the use of body-worn cameras. In September 2021, the Department issued the first-ever Department-wide directive limiting the use of “chokeholds” and “no-knock” warrants. Under the policy, the Department’s law enforcement components may not use “chokeholds” and “carotid restraints” unless deadly force is authorized, or “when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.” Law enforcement components are generally limited to using “no-knock” warrants only in situations where an agent has reasonable grounds to believe that knocking and announcing the agent’s presence would create an imminent threat of physical violence to the agent and/or another person. These efforts build on a range of existing efforts to strengthen police-community partnerships.

The Department has also launched other key initiatives designed to support best practices and advance constitutional policing in America. For example, in March 2022, the Department launched a new Collaborative Reform Initiative, which offers multiple levels of support for law enforcement agencies seeking assistance. Collaborative Reform is designed to build trust between law enforcement agencies and the communities they serve; improve operational efficiencies and effectiveness; enhance officer safety and wellness; and develop and disseminate evidence-based, promising, and innovative public safety practices. Additionally, in April 2022, the Department announced the creation of the National Law Enforcement Knowledge Lab—a free training, technical assistance, and resource hub for law enforcement. This initiative is intended to promote constitutional policing, improve public safety, and build trust in communities across the country, and it is designed to adapt to the needs of law enforcement agencies and communities over time. In addition, as required by Executive Order 14074, we are working to establish a National Law Enforcement Accountability Database, a centralized repository of official records documenting instances of law enforcement officer misconduct and decertification, as well as commendations and awards. We have increased participation in the FBI's National Use-of-Force database and published quarterly reports. The Department is also developing standards for determining whether an entity is an authorized, independent credentialing body for law enforcement agencies, including that the entity requires agencies to have policies in line with certain aspects of Executive Order 14074, and leveraging our grant-making authority to encourage and support our state and local partners in adopting the best practices identified in the implementation of the Executive Order.

Last year, I announced the selection of Colette Peters as Director of the Federal Bureau of Prisons. Under her leadership, BOP is working to ensure the rehabilitation, health, and safety of incarcerated individuals; a safe and secure work environment for correctional staff; and transparency and accountability across federal detention facilities. As part of that effort, BOP is working to fully implement the First Step Act and Executive Order 14074 including by increasing programming to prepare individuals for successful reentry.

Through collaboration with our federal agency partners, and extensive stakeholder engagement with law enforcement and civil rights groups, we will continue to develop policies and best practices that will help state and local law enforcement agencies and the communities they serve.

D. Disrupting Drug Trafficking Networks and Preventing Overdose Deaths

The Justice Department is working tirelessly to get deadly fentanyl out of our communities and to dismantle and hold accountable the violent cartels that put it there.

According to the Centers for Disease Control and Prevention, approximately 107,000 people in the United States died of drug overdoses in 2021. And about two-thirds of those deaths involved synthetic opioids—primarily fentanyl. Fentanyl is 50 times more potent than heroin. Just two milligrams of fentanyl—the amount that could fit at the tip of a pencil—is a potentially lethal dose. Many people taking fentanyl do not know they are taking it. Violent drug cartels are manufacturing and moving fake pills that are designed to look exactly like brand name drugs. Instead, the fake pills contain deadly amounts of fentanyl. The DEA has seen a sharp increase in the deadliness of fentanyl-laced fake prescription pills across the country. In 2022, six out of 10 fentanyl-laced, fake prescription pills that were seized contained a potentially lethal dose.

These deaths are tragic. Too many lives have been lost to drug poisoning and overdoses. Too many families—too many communities—have been shattered by this crisis.

In response, the Justice Department is using every tool at our disposal to save lives and get fentanyl out of communities. This includes dismantling the violent cartels that flood communities with poison and dedicating our resources to addressing the public health challenges of addiction and drug use.

The Department's agents and prosecutors are working with state, local, Tribal, and territorial partners to conduct investigations in communities across the country. In 2022, the DEA and its law enforcement partners seized more than 50.6 million fentanyl-laced, fake prescription pills. That is more than double the amount seized in 2021. The DEA has also seized more than 10,000 pounds of fentanyl powder. Together, these seizures represent more than 379 million potentially deadly doses of fentanyl. That much fentanyl could kill every single American.

We are also working closely with our partners at home and abroad to disrupt narcotics trafficking, improve information sharing, and increase drug seizures. DEA is focusing its efforts on disrupting the two cartels that are responsible for significant quantities of fentanyl crossing the U.S.-Mexico border: the Sinaloa and Jalisco New Generation Cartels.

Earlier this year, I joined President Biden and other cabinet members in Mexico City for meetings with our counterparts in the Mexican government.

There, among other things, we discussed dramatically stepping up our countries' joint efforts to combat fentanyl trafficking. This includes disrupting the flow of precursor chemicals coming from the People's Republic of China to Mexico, and dismantling the clandestine labs where cartels use those chemicals to synthesize fentanyl in Mexico.

And in districts across the country, our agents and prosecutors are working every day to bring to justice those who endanger our communities with deadly drugs.

In addition to our enforcement efforts, we are committed to helping communities meet the public health challenges of addiction and substance abuse.

Last year, OJP announced grant awards totaling more than \$340 million to address the overdose epidemic.

Those awards will support drug and treatment courts; residential treatment programs; prevention and harm reduction services; recovery support; services for opioid-affected youth; and community-based strategies that improve continuity of care.

The Department also supports efforts in Congress to permanently schedule certain fentanyl-related substances as Schedule I drugs under the Controlled Substances Act, to ensure the effective law enforcement and prosecution of the sale and use of these substances.

Finally, the Department is taking action to hold accountable corporate entities that exacerbated the opioid crisis by violating the law. We are pursuing litigation against two corporations that we allege distributed or dispensed prescription opioids without the oversight that the Controlled Substances Act and its implementing regulations require. The Department calls upon responsible companies—whether pharmacies, chemical companies, drug manufacturers and distributors, or social media companies—to join us in our fight to overcome this deadly public safety and public health crisis.

E. Protecting Americans from Economic Harm

Corporate malfeasance hurts consumers, depletes pensions, bankrupts organizations, and harms governments. Fraud, theft, corruption, bribery, environmental crime, market manipulation, and anticompetitive agreements threaten the free and fair markets upon which our economy is based. And corporate crime weakens our economic institutions by undermining public trust in the fairness of those institutions. Failing to aggressively prosecute such crimes diminishes our democratic institutions by undermining public trust in the rule of law. The Justice Department is aggressively prosecuting these crimes and holding accountable those who perpetrate them.

(1) Combating Fraud and Abuse

The Justice Department remains committed to using every available federal tool—including criminal, civil, and administrative actions—to safeguard the integrity of taxpayer-funded programs.

Settlements and judgments under the False Claims Act exceeded \$2.2 billion in the fiscal year ending September 30, 2022. The government and whistleblowers were party to 351 settlements and judgments, the second-highest number of settlements and judgments in a single year.

The Department's Healthcare Fraud Unit has over 70 federal prosecutors who investigate and prosecute egregious fraud schemes amounting to billions of dollars in fraud each year. The Department is prioritizing the investigation and prosecution of: schemes that impact older adults

and vulnerable populations; COVID-19 pandemic fraud cases; prosecutions of telemedicine and genetic testing fraud schemes; crimes committed by major health care providers that operate in multiple jurisdictions; newly emerging schemes targeting Medicare Part C; opioid diversion and distribution schemes, which can result in overdoses or new patients becoming addicted to controlled substances; and fraud arising from addiction treatment facilities and sober homes.

In May 2021, I established an inter-agency task force to combat pandemic fraud. Led by Deputy Attorney General Lisa Monaco, that team of nearly 30 agencies has lowered the barriers to information sharing related to COVID fraud and has increased the flow of data between agencies. This has resulted in investigative leads that have led to prosecutions. As of December 31, 2022, the Justice Department had seized over \$1.3 billion in relief funds that criminals were attempting to steal, and had charged over 1,800 defendants with crimes in federal districts across the country since the start of the pandemic.

The COVID-19 pandemic also ushered in a new wave of exploitative practices targeted at older Americans. The Department is committed to combating scams and fraudulent schemes that target older adults. Between September 2021 and September 2022, the Department pursued approximately 260 criminal and civil cases involving more than 600 defendants to protect older adults from fraud and exploitation. Last October, I announced we were intensifying our efforts nationwide to protect older adults, including by more than tripling the number of U.S. Attorney's Offices participating in our Transnational Elder Fraud Strike Force. This Strike Force, which was created in 2019, is dedicated to disrupting, dismantling, and prosecuting foreign-based fraud schemes that target older Americans.

(2) Combating Corporate Crime

The Department's top priority for corporate criminal enforcement is securing individual accountability by investigating and prosecuting those who profit from corporate malfeasance. And over the past two years, the Department has fortified its corporate crime enforcement—first by convening an advisory group to understand how to deter crime, prevent recidivism, and protect victims, and then by issuing guidance aimed at accomplishing those goals.

We have secured convictions of individuals as well as guilty pleas against corporations—both domestic and foreign—and have imposed independent corporate monitors where necessary to protect the American people and shareholders.

The Justice Department will continue to pursue justice for the victims of these crimes, including workers, consumers, investors, and others, and we will hold accountable those who break the law.

(3) Vigorous Enforcement of the Antitrust and Consumer Protection Laws

Anticompetitive practices hurt the American people—consumers, workers, and producers alike. And they hurt the American economy. No matter the industry and no matter the company, the Justice Department is vigorously enforcing our antitrust laws. Our enforcement actions have resulted in the blocking or abandonment of six mergers that would have further consolidated industries; have led to tens of millions of dollars in restitution for workers who were harmed by a wage-fixing conspiracy; and have reinvigorated criminal enforcement of the Sherman Act by bringing prosecutions for labor-market allocation, wage fixing, bid rigging, and procurement fraud. We are engaged in active litigation against technology companies, airlines, and insurance companies whose conduct or proposed mergers we believe violate the law. We will continue to aggressively protect consumers, safeguard competition, and work to ensure economic fairness and opportunity for all.

Beyond traditional antitrust enforcement, the Justice Department is committed to using criminal, civil, and administrative actions to protect consumers. The Department will work to ensure the safety of food, medicines, and consumer products, and will safeguard consumer information from unlawful acquisition and use. Using the full array of our civil and criminal enforcement tools, we will hold accountable those who make fraudulent or misleading representations in the marketing of goods, especially where such conduct risks consumer harm.

In December 2022, Congress enacted several important improvements to the antitrust laws as part of the Consolidated Appropriations Act of 2023. These improvements include the Merger Filing Fee Modernization Act, which updates the threshold for statutory filing fees in merger enforcement to ensure that they reflect current market realities. It also includes the Foreign Merger Subsidy Disclosure Act, which protects American national security by requiring merging parties to disclose any subsidies they receive from foreign adversaries. Finally, the Act includes the State Antitrust Enforcement Venue Act, which empowers state antitrust enforcers by exempting state enforcement of the antitrust laws from the transfer and consolidation process applicable to private, multidistrict litigation.

The Justice Department strongly supports efforts by Congress—including the American Innovation and Choice Online Act—to promote competition in digital markets by passing legislation to prohibit certain anticompetitive practices by dominant online platforms. The Department also supports broader legislative efforts to provide the Department with the most effective tools to promote competition on an economy-wide basis.

III. PROTECTING CIVIL RIGHTS

Protecting civil rights is the third core, co-equal priority of the Justice Department. Now, more than ever, protecting the civil rights to which every American is entitled is the responsibility of every one of our attorneys, investigators, law enforcement agents, and staff.

A. Protecting Voting Rights

The Justice Department remains committed to vigorously protecting voting rights with the enforcement powers we have. The Department has increased the number of enforcement attorneys in the Civil Rights Division to scrutinize new laws that curb voter access or discriminate against Black voters and other voters of color. The Department has filed lawsuits across the country to protect the right to vote. It has also filed statements of interest and amicus briefs in the Supreme Court, federal district courts, and federal appeals courts across the country to weigh in on critical questions. Through this work, the Department has sought to address discriminatory voting laws, to protect language access at the ballot box, and to ensure that voters with disabilities are able to exercise the right to vote. And the Department has worked to provide guidance and outreach to state and local election officials and the public about federal voting rights laws.

The Justice Department stands ready to work with Congress to provide all necessary support to develop and advance federal legislation to protect voting rights—including legislation that would restore critical tools to help protect the fundamental right to vote.

B. Combating Hate Crimes

Hate crimes inflict immediate devastation and lasting fear not only on individuals, but on entire communities. The Justice Department is working tirelessly to investigate and combat hate crimes and hate incidents, which have significantly increased in recent years.

The Department's work to combat hate crimes has led to the convictions of the three men who targeted and killed Ahmaud Arbery because he was a Black man jogging on a public street. It led to the conviction of an individual who, motivated by racist and xenophobic beliefs about the COVID-19 pandemic, targeted and attacked an Asian family at a supermarket in Midland, Texas. It led to the conviction of a man for a series of arsons targeting Catholic, Methodist, and Baptist churches. And in July 2022, it led to the indictment of a defendant for federal hate crime and firearms offenses following the horrific attack on the Black community in Buffalo that killed 10 persons and injured three others.

The Department is also working to improve hate crime reporting, which will in turn promote more effective prevention and prosecutions of these crimes. The Department is building and solidifying police-community trust so community members will report hate crimes to authorities.

Last September, the Justice Department officially launched the United Against Hate program in U.S. Attorney's Offices across the country. The program brings together community groups, federal hate crimes prosecutors, and law enforcement at every level to build trust and strengthen coordination to combat hate crimes and hate incidents by helping individuals learn to identify, report, and prevent hate crimes. We have already launched the training in 39 offices, and it will be offered in all 94 by the end of this year.

This fiscal year, the Department will award close to \$30 million in grants to support state and local agencies in investigating and prosecuting hate crimes, in addition to grants to improve hate crime reporting. This includes grants allocated under the Jabara-Heyer NO HATE Act to fund state-run hate crime reporting hotlines and support law enforcement agencies' transition to the National Incident-Based Reporting System (NIBRS), which is now the data collection mechanism for the FBI's annual Uniform Crime Reporting Program. The entire Justice Department is hard at work maximizing our collective tools to prevent, deter, and respond to hate crimes because we believe that all people in this country should be able to live without fear of being attacked because of where they are from, what they look like, whom they love, or how they worship.

Last year, the Justice Department's COPS Office released a new hate crimes recognition-and-reporting training specifically aimed at line-level officers. The training will increase state and local law enforcement officers' ability to identify when an incident is a hate crime or hate incident. This will lead to better reporting of these incidents.

C. Advancing Constitutional Policing

The Justice Department is committed to holding accountable those who violate the Constitution, and to safeguarding the civil rights of everyone in our country.

Last year, the Department obtained convictions of four former Minneapolis police officers for their roles in the death of George Floyd. The Justice Department will continue to seek accountability for law enforcement officers whose actions, or failure to act, violate their constitutional duty to protect civil rights.

Congress gave the Justice Department the authority to conduct civil pattern-or-practice investigations, which look beyond individual incidents to assess systemic failures. Those investigations allow the Department to determine whether a police department has a pattern or practice of unconstitutional or unlawful policing. The Justice Department has initiated pattern-or-practice investigations into police departments across the United States to focus on whether the departments engage in systemic violations of the Constitution or federal law. The Department has also taken a series of actions to ensure that the remedies for pattern-or-practice violations—including consent decrees—are fair, transparent, and effective.

The Department has also taken important steps to increase the efficiency and efficacy of consent decrees and monitorships. In 2021, I asked Associate Attorney General Vanita Gupta to undertake a review of monitorships associated with pattern-or-practice investigations and settlements. During that review, the Department heard from law enforcement leaders about how to make those arrangements more effective. At the conclusion of that review, the Associate Attorney General recommended, and I agreed to, a set of 19 actions to improve monitorships.

D. Protecting Reproductive Rights

Over 50 years ago, the Supreme Court decided *Roe v. Wade*, holding that the right to an abortion was protected by the Constitution. In the decades that followed, the Court repeatedly recognized and reaffirmed that right. For nearly half a century, that right was an essential component of women's liberty in this country. But last summer, the Court overturned *Roe* and renounced this fundamental right. In doing so, it also upended the doctrine of *stare decisis*, a key pillar of the rule of law.

The Justice Department is committed to protecting and advancing reproductive freedom.

In July 2022, the Department established the Reproductive Rights Task Force, formalizing the Department's ongoing work to protect reproductive freedom under federal law. The Reproductive Rights Task Force is monitoring any state laws and enforcement actions that threaten to infringe on federal protections of reproductive rights, and identifying appropriate responses to those actions, including affirmative and defensive litigation where appropriate. The Department is also advising federal agencies on legal issues related to reproductive health and enforcing federal laws to protect those seeking reproductive health care.

We are also continuing to offer technical assistance to Congress on federal constitutional questions related to reproductive health care.

The Department strongly supports efforts by Congress to codify Americans' reproductive rights, which it retains the authority to do.

E. Advancing Environmental Justice and Tackling the Climate Crisis

In May 2022, the Department established its first-ever Office of Environmental Justice (OEJ), which serves as a central hub for our efforts to advance our comprehensive environmental justice enforcement strategy.

Through improved information sharing and coordination, OEJ helps DOJ components expand investigation and enforcement actions in overburdened and underserved communities suffering from harm caused by environmental crimes, pollution, and climate change. For example, OEJ played an essential role in the Department's work to address the long-standing failures in the public drinking water system of the city of Jackson, Mississippi. In November 2022, the Department filed a complaint against Jackson, and—following an agreement between the Department, the city of Jackson, and the State of Mississippi—the court entered a stipulated order that will stabilize the water system and build confidence in the system's ability to supply safe drinking water to the system's customers.

* * *

The Justice Department has worked tirelessly to uphold the rule of law, to keep our country safe, and to protect civil rights. And we will continue to do so.

I am extremely proud of the work the Department's employees have done to advance that mission, and I am extremely proud of the way they have done that work.

The employees of the Justice Department are the most dedicated, skilled, and patriotic public servants with whom I have ever had the opportunity to work. Many of them put their lives on the line every day to serve our country.

They conduct themselves with the utmost integrity, and with a singular commitment to the public we serve. It is my honor to work alongside them.

Thank you for the opportunity to testify today. I look forward to your questions.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

**Hearing before the Senate Committee on the Judiciary
 Oversight of the Department of Justice**

March 1, 2023

SENATOR BLUMENTHAL

Question for Attorney General Garland

As you know, in December 29, 2022, Congress passed the Fairness for 9/11 Families Act as part of the omnibus spending bill. The support of the Department of Justice in passing this legislation was enormously helpful. As intended, this bipartisan legislation would provide a catch-up payment for thousands of 9/11 victims, spouses and dependents who were excluded from the U.S. Victims of State Sponsored Terrorism Fund when it was first established in 2015.

The Fairness for 9/11 Families Act does not include a specific deadline for when payments from that appropriation will be made. The only information to date was posted on the United States Victims of State Sponsored Terrorism (USVSST) Fund website on January 27, 2023 but does not contain any timeline for issuance of payments. As I understand it, the USVSST Fund already has all information necessary to calculate payments and has been allotted additional staff to process the applications during 2023.

1. Could you please provide a timeline, and some guidance to the Committee, for how and when the funds that were appropriated in the Fairness for 9/11 Families Act will be distributed?

Response: The Fairness for 9/11 Families Act, enacted on December 29, 2022, directed the Special Master to make lump sum catch-up payments to certain 9/11-related claimants from the U.S. Victims of State Sponsored Terrorism (USVSST) Fund, in amounts equal to those calculated by the Comptroller General, Government Accountability Office (GAO).¹ The legislation also appropriated funds for use only as "such sums necessary" to make these payments; GAO had estimated they would total approximately \$2.7 billion.

¹ See U.S. Government Accountability Office, *GAO-21-105306: U.S. VICTIMS OF STATE SPONSORED TERRORISM FUND: Estimated Lump Sum Catch-Up Payments*, August 11, 2021, <https://www.gao.gov/assets/gao-21-105306.pdf>

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

On April 10, 2023, the USVSST Fund issued letters informing eligible 9/11-related claimants of their lump sum catch-up payment amounts.² On April 20, 2023, the USVSST Fund began issuing the payments. The USVSST Fund advises that it has issued over 90 percent of 9/11-related lump sum catch-up payments within one month after sending payment amount letters to eligible claimants. The USVSST Fund continues to issue 9/11-related lump sum catch-up payments on a rolling basis.

² See Press Release, U.S. Dep’t of Just., Department Announces Total Distribution of Over \$6B to Victims of State Sponsored Terrorism (April 10, 2023), <https://www.justice.gov/opa/pr/justice-department-announces-total-distribution-over-6b-victims-state-sponsored-terrorism>.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

SENATOR JOHN CORNYN
Questions for Attorney General Merrick Garland

- 1. I asked you as a part of your confirmation about properly obtaining compensation for victims of human trafficking, specifically in the form of fines levied on perpetrators. You replied “I understand there have been challenges to securing funds from criminals who are responsible for these horrific offenses. If confirmed, I will seek to expand and further efforts to obtain funding for victims, who often lack resources to obtain needed services.”**
 - a. Please explain with specificity how the Department has improved securing these funds from criminals, as well as the expansion of efforts to obtain funding for victims.**

Response: Protecting and vindicating the rights of vulnerable individuals is central to the Department’s mission. Traffickers exploit their victims’ labor, services, or coerce them to engage in sex acts, including the sexual exploitation of children, for the traffickers’ profit, often leaving these victims with next to nothing. In order to rebuild their lives and access supportive services, victims and survivors need access to financial remedies to secure necessary services and opportunities to restore their financial independence.

Available financial remedies include: court-ordered restitution under 18 U.S.C. § 1593 for victims of Chapter 77 human trafficking crimes; court-ordered restitution under 18 U.S.C. § 2429 for victims of sexual exploitation crimes; and Special Assessments levied under 18 U.S.C. § 3014 and paid into the Crime Victims Compensation Fund. The Department may also use asset forfeiture to recover property that can be converted into funds that can be applied toward compensating crime victims. *See* 18 U.S.C. § 1594(f)(1).

To enhance the Department’s overall capacity to protect human trafficking victims and survivors and assist them to secure financial remedies, the Department’s National Strategy to Combat Human Trafficking³, released January 31, 2022, calls for expanded outreach and training to enhance the Department’s ability to secure and enforce restitution orders. The Department is actively implementing measures to fulfill these high-priority directives under the Strategy. During the past year, the Department has convened eight trainings for investigators and prosecutors on strategies for conducting effective financial investigations in cases involving human trafficking and related violations, and has included training on restitution, forfeiture, and other financial remedies in all major human trafficking trainings to enhance law enforcement capacity to secure financial relief for trafficking victims and survivors. The Department has

³ *See* U.S. Dep’t of Just., *National Strategy to Combat Human Trafficking*, January 2022, <https://www.justice.gov/opa/press-release/file/1467431/dl>

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

developed additional on-demand training resources on effective use of financial penalty provisions.

2. **When the BOP Director was before the committee, I submitted questions for the record about whether individuals in BOP custody had access to support services if they are victims of sexual abuse, including hotline services. Those questions were not responded to. The last time the BOP answered questions related to these services was in 2021. The former BOP Director testified that they "certainly encourage [prisoners] to come forward, whether it's by staff or the use of the hotline, to report things of that nature." The Prison Rape Elimination Act, 42 U.S.C. § 15601 et seq., requires prisoners both to have access to an external reporting mechanism and access to support services.**

a. Is the former BOP Director's testimony accurate?

Response: Bureau of Prisons (BOP) advises that all those incarcerated in BOP facilities have access to both internal and external methods to report sexual abuse. Because the Department and BOP are committed to eradicating sexual misconduct by staff in federal prisons, the Department has worked with the BOP to develop additional options and supports since the time of that testimony. The Department will continue to work with the BOP to ensure that staff who engage in this behavior are held accountable, to bring criminal charges where appropriate, and to implement the reforms needed to deter it.

b. Do all federal prisoners have access to both of these things?

Response: BOP advises that support services exist for all incarcerated individuals within the BOP system to report sexual abuse and to seek crisis intervention and emotional support following an instance of sexual abuse.

- **Reporting:** BOP advises that all those incarcerated in BOP facilities have access to both internal and external methods to report sexual abuse. Internally, individuals can report to any staff member, verbally or in writing through email or paper forms. They can report sexual abuse through filing an Administrative Remedy and contacting the BOP's Office of Internal Affairs. Individuals in custody are also able to report sexual abuse directly to the Department's Office of the Inspector General using email or postal mail. Those e-mails cannot be accessed by BOP staff. The family members of incarcerated individuals can email a report of sexual abuse through the public website, which includes a page allowing users to "Report a Concern."⁴ Additionally, the Department's Office on Violence Against Women, in partnership with its Bureau of Justice Assistance, funded

⁴ See Federal Bureau of Prisons, *Report a Concern*, <https://www.bop.gov/inmates/concerns.jsp>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

the Urban Institute to develop a comprehensive plan for the design and implementation of an additional service line for survivors in local, state, Tribal, and federal confinement facilities. All allegations of sexual misconduct are taken seriously and investigated.

- **Support Services:** The first line of emotional support services for individuals incarcerated in a BOP facility who have experienced sexual abuse is mental health assistance from mental health providers at the facility or from another facility as necessary. BOP advises that incarcerated adults in all facilities have access to the National Sexual Assault Hotline. Additionally, many institutions have a memorandum of understanding with community advocacy agencies to provide support services to incarcerated adults.

c. What efforts has the BOP made to ensure those in custody have access to support services?

Response: The first line of emotional support services for individuals incarcerated in a BOP facility who have experienced sexual abuse is mental health assistance from mental health providers at the facility or from another facility as necessary. BOP advises that incarcerated adults in all facilities have access to the National Sexual Assault Hotline. Additionally, many institutions have a memorandum of understanding with community advocacy agencies to provide support services to incarcerated adults. BOP's staff have also collaborated with the Urban Institute, which has received funding from the Department to develop a comprehensive plan for the design and implementation of a service line for incarcerated individuals to access services external to BOP.

d. How many prisoners have access to emotional support services? How many facilities provide them?

Response: BOP advises that all incarcerated adults in all BOP facilities have access to some form of emotional support services.

e. How many prisoners have access to hotline support services? How many facilities provide them?

Response: BOP advises that all incarcerated individuals have access to the National Sexual Assault Hotline as it is a national service. Each institution is responsible for developing the procedures to allow the adults in custody to access this service. Additionally, BOP's staff have collaborated with the Urban Institute, which has received funding from the Department to develop a comprehensive plan for the design and implementation of a service line for incarcerated individuals to access services external to BOP.

f. How many prisoners have access to other kinds of support services, including accompaniment to forensic exams?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: BOP advises that an individual can have a BOP employee accompany them to a forensic examination. This individual is typically the facility psychologist but can be another staff member. Facilities that have a memorandum of understanding with a community advocacy agency can connect with that agency to arrange for a crisis support individual to accompany the individual to the forensic examination.

g. What steps has BOP taken to ensure that female inmates are protected from sexual abuse?

Response: The Department has zero tolerance for sexual misconduct, including by BOP employees. It is a top priority to prevent and root out sexual misconduct, and this is an issue that requires a whole-of-Department response. The Department has prioritized prosecution of these cases. In July 2022, the Deputy Attorney General established a working group to conduct a comprehensive review of the Department's response to allegations of sexual misconduct by BOP staff and to develop recommendations for improvement. In November 2022, the working group submitted a report to Department leadership that included more than 50 recommendations to better protect the safety and wellbeing of those in BOP custody and better hold accountable those who abuse positions of trust, including by enhancing prevention, reporting, investigations, prosecutions, and employee discipline.⁵ Coming out of that work, the Deputy Attorney General also formed a standing advisory group that continues to track implementation of these recommendations. Among other duties, the Deputy Attorney General instructed the advisory group to form teams to tour six women's facilities throughout the country. These Sexual Assault Facility Evaluation and Review (SAFER) Teams completed their tours of the facilities in the summer of 2023 and provided findings and recommendations for follow-up to the Deputy Attorney General.

According to BOP, other ongoing efforts include:

- All BOP investigators have received trauma-informed and victim-centered investigations training;
- BOP's Director sent out a BOP-wide message reiterating the gravity of sexual misconduct and the zero-tolerance policy for sexual abuse of any kind;
- BOP hired a new Prison Rape Elimination Act (PREA) Coordinator;
- BOP's Women and Special Populations Branch has been proactively visiting all BOP facilities with women in custody to conduct snapshot cultural assessments and make recommendations for both local and national enhancements in gender responsiveness and sexual safety;
- BOP is working with other federal partners to implement a national hotline for the use of those in their care, along with their families and representatives, to report sexual abuse; and

⁵ <https://www.justice.gov/dag/page/file/1549051/download>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

- BOP is developing a video for incarcerated women regarding reporting options and sexual safety.

In March 2023, the Deputy Attorney General visited Federal Correctional Institution, Dublin, which had been the location of sexual misconduct committed by several former BOP employees who were later prosecuted. The Department has continued to assess the progress toward improving the culture at various women's institutions and monitor BOP's implementation of the Department's Sexual Misconduct Working Group's recommendations. This work includes in-person visits by the Deputy Attorney General or her staff to various women's facilities throughout the country.

h. What changes have been made since the OIG's 2018 recommendations on female prisons?

Response: BOP advises as follows: Program review guidelines were developed and implemented in 2018 to ensure compliance with the Female Offender Manual. BOP's Women and Special Populations Branch (WASPB) added additional positions to create dedicated points of contact for women, pregnancy/postpartum/parenting, transgender individuals, veterans, aging and disabled, and community stakeholder engagement, as well as positions to provide direct support and guidance for special populations in each region. A 24-hour mandatory program titled "Warden and Institution Executive Staff Management of Female Offenders" is facilitated by The Moss Group to ensure executive leadership in institutions housing incarcerated women receive gender-responsive and trauma-informed care skills training. Resolve trauma treatment is offered in all female institutions, and six additional gender-responsive programs have been developed to address trauma. A National Policy and Program Coordinator gathers, maintains, and prepares monthly pregnancy and postpartum reports and tracks and monitors each incarcerated pregnant woman to ensure she is evaluated for interest and eligibility in pregnancy programs. The BOP administers a voluntary questionnaire to gather feedback for each incarcerated woman in postpartum status. The Female Offender Manual mandates access to feminine hygiene products for all incarcerated women. Compliance is assessed during program review and during Women's Institution Cultural assessments conducted by WASPB. The Female Offender Manual also requires that gender-responsive programs be provided for women in pretrial detention.

i. Do female prisoners in BOP custody have adequate access to counseling and care?

Response: BOP advises as follows: Staff in the psychology services departments provide a wide variety of assessment and treatment services designed to address mental health concerns and promote opportunities for self-improvement within all BOP institutions that house female offenders. These individuals are screened upon arrival to the institutions for mental health problems, suicidal thoughts, history of abuse or trauma, risk for potential abusiveness or victimization, substance use history, and other risk factors. At intake, they are advised how to

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

obtain mental health services, counseling, and care during their incarceration. In addition, there are several avenues of communication established within BOP institutions to inform the inmate population of available mental health services, evidence-based programming, and groups, as well as ways to contact staff in the psychology services department for mental health concerns.

J. Are there currently effective avenues for female prisoners to take to report sexual abuse or rape?

Response: BOP advises as follows: All incarcerated adults in BOP facilities have access to both internal and external methods to report sexual abuse. Upon arrival at the institutions, at the time of intake screenings, and through admissions and orientation procedures, incarcerated individuals are informed of ways to report sexual abuse or rape to any staff member, either orally or in writing through email or paper forms. They are informed that an individual can also report sexual abuse through filing an Administrative Remedy, can confidentially email the Department's Office of Inspector General using the Sexual Abuse Reporting Mailbox (which cannot be accessed by BOP staff and officials), and can write to the Department's Office of Inspector General using paper mail. Information is also disseminated to incarcerated individuals through posters indicating ways to report sexual abuse, which are posted in the inmate housing units and other inmate traffic areas throughout the institutions.

3. The Debbie Smith Act is a cornerstone of our efforts to end the rape kit backlogs.

a. How is DOJ working to administer, and what progress is DOJ making on reducing the rape kit backlog nationwide?

Response: The Office of Justice Programs (OJP) advises as follows:

Efforts to reduce the sexual assault kit backlog and otherwise increase the capacity of publicly funded crime labs across the United States are vastly important public safety priorities for the Department. The Department has two complementary relevant flagship grant programs: the National Sexual Assault Kit Initiative (SAKI) and the DNA Capacity Enhancement for Backlog Reduction (CEBR) Program, which is authorized under the Debbie Smith Act. Both programs assist state and local governments in their efforts to reduce their sexual assault kit backlogs and increase the capacity for publicly funded crime labs to process DNA samples for entry into the Federal Bureau of Investigations (FBI) Combined DNA Index System (CODIS).

Thanks to the support of Congress, in Fiscal Year (FY) 2022, OJP awarded more than \$130 million to help state, local, and Tribal governments process more DNA samples and improve investigations and prosecutions of sexual assault cases involving sexual assault kit evidence. In addition, in FY 2022, the Department funded over \$12 million in forensic science research and development which improves crime lab capabilities and reduces forensic backlogs. Over the years, these site-based awards and associated training and technical assistance have helped

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

identify and test hundreds of thousands of sexual assault kits and find serial violent offenders. In addition, OJP’s National Institute of Justice (NIJ) published *Best Practices for DNA Laboratory Efficiency* in May 2022.⁶

From FY 2015 through FY 2022, more than \$320 million has been awarded under SAKI, supporting 82 state and local jurisdictions to enhance the capacities and capabilities of state and local jurisdictions. SAKI sites represent 30 statewide jurisdictions and 52 municipal jurisdictions that collectively cover approximately 60 percent of the U.S. population. SAKI has been instrumental in resolving thousands of cases of sexual assault, homicides and developing insights about serial offending behaviors. To date SAKI has resulted in over 85,000 kits tested to completion, yielding 35,061 new CODIS uploads, resulting in approximately 16,468 CODIS hits, including more than 11,146 DNA matches to individuals who have two or more convictions for violent crimes, and more than 2,500 convictions. These impacts will continue to aid investigation and crime prevention practices.

The CEBR Program increases the number of forensic DNA and DNA database samples processed for entry into CODIS. Since 2005, funding from the CEBR Program has directly supported testing of nearly 1.5 million forensic cases, including the testing of sexual assault kits and homicide cases. With more than 615,000 forensic DNA profiles uploaded to CODIS, CEBR funding has contributed to approximately half of the 1,226,160 profiles in CODIS to date. CEBR funding is responsible for over 290,000 CODIS hits, which is nearly half of the 637,830 CODIS hits to date.

4. The last National Strategy on Child Exploitation Prevention and Interdiction was published in 2016. By law, it should be updated every two years. This was codified in the PROTECT Our Children Act of 2008, introduced by then-Senator Biden.

a. When is the updated strategy expected?

Response: The Department’s 2023 National Strategy for Child Exploitation Prevention and Interdiction Report was submitted to Congress on June 13, 2023.

⁶ National Institute of Justice, *National Best Practices for Improving DNA Laboratory Process Efficiency*, May 26, 2022, <https://nij.ojp.gov/topics/articles/best-practices-dna-laboratory-efficiency>.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

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

Questions for the Record for the Hon. Merrick Garland, Attorney General of the United States

1. Since January of 2021, how many prosecutions has the Department of Justice brought under 18 U.S.C. § 1507?

Response: In May 2022, the Attorney General took the unprecedented step of directing the U.S. Marshals Service (USMS) to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows:

During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. Their first priority is to protect the life and safety of the Justices and their families. As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the justices.” In February 2024, the Director further testified that “The Attorney General’s order was very clear, actually, crystal clear. Protect the lives of the Justices. He made sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety.”⁷ In 2022, a federal grand jury returned an indictment charging a man who allegedly traveled from California to Maryland with the intent to kill a Justice of the United States Supreme Court. The Executive Office for United States Attorneys (EOUSA) has not identified any prosecutions brought under § 1507 during this timeframe.

2. Since January of 2021, how many arrests have been made for a purported violation of 18 U.S.C. § 1507?

⁷ *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary, 118th Cong. (Feb. 14, 2024)* (testimony of Director Ronald L. Davis);

Questions for the Record
Senate Committee on Judiciary
"Oversight of the United States
Department of Justice"
March 1, 2023

- a. **If the number of arrests made under 18 U.S.C. § 1507 exceeds the number of prosecutions, please provide the reasoning behind each decision not to pursue a Section 1507 prosecution.**

Response: In May 2022, the Attorney General took the unprecedented step of directing the U.S. Marshals Service (USMS) to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

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3. **Has the Department of Justice sought any legal opinion, from OLC or otherwise, related to the constitutionality of 18 U.S.C. § 1507?**

Response: The Department has not determined that §1507 is unconstitutional.

4. **Has any component of the Department of Justice been given trainings on 18 U.S.C. § 1507 since January of 2021? If so, please forward the materials used in such trainings, and any video or audio recording, if made.**

Response: In May 2022, the Attorney General took the unprecedented step of directing the U.S. Marshals Service (USMS) to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS further advises as follows: The USMS Director's direction to USMS employees from the start has been to prioritize the safety and security of the Justices and their families. This direction is translated into operational guidance provided to Deputy U.S. Marshals assigned to the

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

protective mission at the Justices' homes. The guidance is provided by the USMS Judicial Security Division and USMS Office of General Counsel, helping ensure that front-line deputies have clear, consistent direction based on the operational environment. During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission.

5. On January 23, 2023, the Richmond, Virginia FBI Field Office produced a briefing memorandum which apparently targeted traditionalist Catholics, stating such Catholic groups "were increasingly composed of 'Racially or Ethnically Motivated Violent Extremists'" and that such Catholic groups presented opportunities for "tripwire" and "source development." When asked about this memorandum at your March 1, 2023 hearing, you repeatedly referred to it as "appalling" and stated that the FBI is looking into how such a memorandum came to be produced.

a. Is Stanley Meador, the Special Agent in Charge (SAC) of the Richmond Field Office that issued this briefing memorandum, still in charge of the Richmond Field Office?

Response: Yes.

b. Has SAC Meador, or any other agent affiliated with this memorandum, been disciplined in any way, or ordered to undergo training?

Response: Attorney General Garland and FBI Director Wray have publicly and strongly rejected the intelligence product. The FBI advises as follows: As previously explained, the January 23 Domain Perspective failed to meet FBI standards, and the FBI took steps to immediately remove it from their official system of record upon learning of the document. The FBI also has provided legal, intelligence tradecraft, and domestic terrorism terminology refresher training for relevant personnel, and reminded personnel to follow existing standards and guidance on working domestic terrorism matters and appropriate tradecraft when producing intelligence products. The FBI also conducted a review of the process preceding the creation of the January 23 intelligence product.

6. For the third time this year, your Department of Justice has filed a motion to transfer venue to move a case out a single judge division in Texas,⁸ arguing that remaining in such a division would harm "the public's interest in the fair administration of justice." This is beyond the pale and I am surprised the Department of Justice would

⁸ *Texas v. DHS*, 23-cv-00007 at Doc. 5; *Utah v. Walsh*, 2:23-cv-00016 at Doc. 15; *Texas v. Garland*, 5:23-cv-00034 at Doc. 10.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

make such an outrageous argument, let alone adopt what appears to be a practice of making such motions.

a. Did you know that your Department of Justice was making such motions?

i. If so, did you approve this litigation tactic?

Response: The Department’s professionals who make such decisions do so in consideration of the facts and the law and do so in an objective manner consistent with Departmental policies. Without commenting on this or any other particular matter, the Department makes many filings every day, and the Attorney General does not review all of them.

b. Will the Department continue to make such motions in the future?

Response: Department attorneys will make transfer of venue motions when doing so is consistent with the facts, the law, and Departmental policy.

c. Do single judge divisions carry the imprimatur of second class status among the district courts?

Response: No.

d. Do the judges in such divisions discharge their duties less fairly and less rigorously than judges in multi-judge divisions?

Response: Where the Department has filed a transfer of venue motion in district court, the Department’s filing outlines the rationale for each motion.

e. Has the Department of Justice made similar motions to transfer venue in single judge divisions located in Democratic states, such as Utica, New York or Rutland, Vermont?

Response: Department attorneys make transfer of venue motions in any jurisdiction when doing so is consistent with the facts, the law, and Departmental policy. Where the Department has filed a transfer of venue motion in district court, the Department’s filing outlines the rationale for each motion.

7. How many Bureau of Prisons (BOP) prisoners that were born male are presently housed in female BOP facilities?

Response: BOP advises that as of October 4, 2023, there are ten transgender females housed in BOP female facilities.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

a. How many of these prisoners were previously convicted of sexual crimes or are registered sex offenders?

Response: BOP has stated the following: "All requests for gender-affirming placement are evaluated by the BOP. The BOP assesses each request on a case by case basis to protect the safety of the individual being considered for transfer as well as the safety of others at the potential location of transfer. The BOP will consider factors including, but not limited to, an inmate's security level, criminal and behavioral/disciplinary history, current gender expression, programming, medical, and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. This review therefore takes into account their prior convictions, including for sex offenses, when making a placement assessment. For as long as the BOP has been making these assessments, BOP is unaware of any instances of sexual assault in a female facility by transgender individuals approved by the BOP to transfer to a female facility consistent with their gender identity."

8. How many BOP prisoners that were born male are currently applying for transfer to a female BOP facility?

Response: BOP advises that as of October 19, 2023, there are 196 transgender individuals in BOP facilities who have requested a gender affirming transfer and/or gender affirming surgery; 169 of which are transgender females.

a. How many of these applicants were previously convicted of sexual crimes or are registered sex offenders?

Response: BOP has stated the following: "All requests for gender-affirming placement are evaluated by the BOP. The BOP assesses each request on a case by case basis to protect the safety of the individual being considered for transfer as well as the safety of others at the potential location of transfer. The BOP will consider factors including, but not limited to, an inmate's security level, criminal and behavioral/disciplinary history, current gender expression, programming, medical, and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. This review therefore takes into account their prior convictions, including for sex offenses, when making a placement assessment. For as long as the BOP has been making these assessments, BOP is unaware of any instances of sexual assault in a female facility by transgender individuals approved by the BOP to transfer to a female facility consistent with their gender identity."

9. Since January of 2021, how many incidences of sexual assault have been committed by male-born BOP prisoners housed at women's facilities?

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

Response: BOP advises that there have been no reported criminal sexual assaults committed by transgender female incarcerated individuals while in BOP facilities.

- a. How many of the accused perpetrators were previously convicted of a sexual offense?**

Response: BOP advises that there have been no reported criminal sexual assaults committed by transgender female incarcerated individuals while in BOP facilities.

10. The National School Boards Association (NSBA) sent you a letter on September 21, 2021, asking for parents of students to be investigated as domestic terrorists. You issued a letter on October 4, 2021, doing just that, ordering the FBI to convene meetings to discuss “strategies” to address the purported “disturbing spike in harassment, intimidation, and threats of violence” against school board members.

- a. Given that the NSBA subsequently withdrew their letter, apologized, and expressed regret for sending the letter, do you now concede that sending your October 4, 2021 memorandum was a mistake?**
- b. Your October 4, 2021 memorandum was never actually withdrawn. Do you plan on withdrawing it now that the basis for this memo—that is, the September 21, 2021 NSBA letter—has itself been withdrawn?**

Response to a–b: The October 4, 2021, memorandum was about addressing violence and threats of violence against school administrators, board members, teachers, and staff. The memorandum made clear in its opening paragraph that “spirited debate about policy matters is protected under our Constitution, [but] that protection does not extend to threats of violence or efforts to intimidate individuals based on their views.” The one-page memorandum called for the Department to convene meetings within 30 days with federal, state, local, Tribal, and territorial law enforcement partners to discuss strategies for addressing violence and violent threats against school officials. Those meetings were convened.

11. On August 3, 2019, Patrick Crusius opened fire at a Walmart in El Paso, Texas, killing 23 people, and injuring 23 more. Based on his own writings, Crusius committed the mass killing out of his hatred for Hispanics. Despite these egregious facts, you decided not to seek the death penalty, doing so, according to the Wall Street Journal, over the recommendation of career prosecutors.

- a. Since becoming Attorney General, how many cases did you overrule the recommendation of career DOJ prosecutors as to whether to impose the death penalty? Please list these cases.**

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: The Department's policies and procedures for deciding whether to authorize a capital prosecution are contained in the Justice Manual (9-10.000, *et seq.*) and are followed in capital-eligible cases. Pursuant to that process, each case considered by the Attorney General includes recommendations from different levels of the Department, from career prosecutors and appointees, including the U.S. Attorney for the district where the case is being prosecuted, persons on the Attorney General's Review Committee on Capital Cases, and the Deputy Attorney General.

The Committee consists of attorneys from the Office of the Deputy Attorney General, attorneys from the Office of the Assistant Attorney General for the Criminal Division, senior prosecutors from the National Security Division, and Assistant U.S. Attorneys from various districts across the country.

Ultimately, the Attorney General makes a decision on each capital-eligible case after considering input from these various sources. Pursuant to Justice Manual 9-10.050, "[t]he decision-making process preliminary to the Department's final decision is confidential. Information concerning the deliberative process may only be disclosed within the Department and its investigative agencies as necessary to assist the review and decisionmaking process."

12. During the second round of questioning on March 1, 2023, I asked you about leaks at the Department of Justice.

- a. Is it appropriate for any Department of Justice employee, other than an official spokesman, to leak or reveal investigatory information to anyone not involved in the investigation?**

Response: All employees of the Department of Justice must adhere to 28 U.S.C. 50.2, Release of Information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings, as well as the Department's Confidentiality and Media Contacts Policy, Justice Manual §§ 1-7.000 *et seq.*, the Federal Rules of Criminal Procedure, and all relevant statutes.

- b. Have you ever authorized any Department of Justice employee, other than an official spokesman, to speak to the media regarding an investigation?**

Response: All employees of the Department of Justice must adhere to 28 U.S.C. 50.2, Release of Information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings, as well as the Department's Confidentiality and Media Contacts Policy, Justice Manual §§ 1-7.000 *et seq.*, the Federal Rules of Criminal Procedure, and all relevant statutes.

13. You held a press conference on August 11, 2022 concerning the search of Mar-a-Lago, where you announced that you personally approved the decision to seek a search warrant for the residence. On the same day, the Washington Post published

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

a story that described classified documents relating to nuclear weapons were among the items sought in the search. The story credited "people familiar with the investigation." The New York Times published a story on August 22, 2022 noting the number of classified documents seized by the FBI. The story credited "multiple people briefed on the matter." It also described how the government had recovered more than 300 documents with classified markings since President Trump left office, crediting the same source.

- a. Do you have any knowledge regarding to whom the Washington Post referred to when it credited "people familiar with the investigation," as a source?
- b. Do you have any knowledge regarding who the New York Times referred to when it credited "multiple people briefed on the matter," as a source?
- c. Did you, or anyone on your leadership team, authorize any Department of Justice employee, other than an official spokesman, to speak to the Washington Post, New York Times, or other media outlets on this matter?
- d. Do you have any knowledge of leaks, authorized or unauthorized, from employees working on the investigation regarding former President Donald Trump's handling of government documents?
- e. Are you currently investigating the source of the leaks that have resulted from the search at Mar-a-Lago?
- f. If you became aware of such a leak, what action or procedures would you follow?

Response to a–f: All employees of the Department of Justice must adhere to 28 U.S.C. 50.2, Release of Information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings, as well as the Department's Confidentiality and Media Contacts Policy, Justice Manual §§ 1-7.000 *et seq.*, the Federal Rules of Criminal Procedure, and all relevant statutes. Violations may result in referrals to the Office of the Inspector General, the Office of Professional Responsibility, and in certain cases, to federal prosecutors.

14. You have appointed Jack Smith and Robert Hur as special counsels for the investigations into former President Trump and President Biden's handling of classified documents.

- a. What criteria did you use to select Jack Smith?
- b. What criteria did you use to select Robert Hur?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response to a–b: Jack Smith was appointed to serve as Special Counsel on November 18, 2022. Robert Hur was appointed to serve as Special Counsel on January 12, 2023. Mr. Smith and Mr. Hur were appointed consistent with the Special Counsel regulations. Consistent with 28 C.F.R. Section 600.3, each is "a lawyer with a reputation for integrity and impartial decisionmaking, and with appropriate experience to ensure both that the investigation will be conducted ably, expeditiously, and thoroughly, and that investigative and prosecutorial decisions will be supported by an informed understanding of the criminal law and Department policies."

15. The Office of Legal Counsel's issued a memo on October 16, 2000 that stated, "the indictment or criminal prosecution of a sitting President would unconstitutionally undermine the capacity of the executive branch to perform its constitutionally assigned functions."

a. If Special Counsel Robert Hur decided to indict President Biden while in office, could he do so under Department policy?

b. Would you interfere in any decision by Special Counsel Hur to indict President Biden?

Response to a–b: Office of Legal Counsel memoranda represent the legal determinations of the Department. Pursuant to 28 C.F.R. Section 600.7(a), the Special Counsel must "comply with the rules, regulations, procedures, practices and policies of the Department of Justice."

16. According to Ryan-Marie Houck, the wife of sidewalk counselor Mark Houck, the FBI sent two dozen agents, clad in body armor, and equipped with rifles, helmets, and shields, to arrest Mr. Houck, doing so despite Mr. Houck's offer to self-surrender. During the arrest the agents are alleged to have pointed rifles at Mr. and Mrs. Houck.

a. Do you believe that it was a mistake to send such an overwhelming display of force to arrest Mr. Houck?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

SENATOR DICK DURBIN
Committee on the Judiciary on
“Oversight of the Department of Justice”
Questions for the Record
March 8, 2023

Questions for Merrick Garland, Attorney General, Department of Justice

- 1. The First Step Act (FSA) required the Justice Department to establish a risk and needs assessment system for incarcerated individuals. Under this system—which is called PATTERN—individuals with minimum and low-risk scores earn credits for early release at a higher rate than those with higher risk scores, and only those with minimum and low scores can receive a sentence reduction. Data indicates that the PATTERN system continues to over-predict recidivism for Black, Hispanic, and Asian Americans, an issue that I have been raising for years. Last November, Senator Grassley and I wrote you a letter that again raised concerns about racial disparities in the PATTERN system.**
 - a. What steps has the Department taken to reduce these racial disparities and ensure the risk assessment system is more “dynamic,” so that incarcerated individuals who put in the work can reduce their risk scores over time?**

Response: The Bureau of Prisons (BOP) advise as follows: In March 2023, NIJ, in consultation with BOP, completed its second annual revalidation of the risk assessment tool, PATTERN. This past year, BOP has also successfully implemented the revised PATTERN version 1.3, including the new “cut points”—announced in the First Step Act Annual Report published in April 2022—for PATTERN’s risk level categories under the “general tool.” These new cut points have helped mitigate various racial and ethnic disparities associated with prior risk level categories and enhance opportunities for eligible individuals to earn time credits that accrue toward prerelease custody and supervised release, while maintaining public safety. Last year, NIJ and ATJ engaged with stakeholders, including hosting two external engagement sessions to solicit feedback on PATTERN. That input is informing the Department’s continued efforts in the coming year to reduce racial disparities associated with PATTERN.

- 2. The FSA allows individuals who participate in recidivism-reduction programming to earn time credits towards early release. After several false starts, it seems these provisions are finally starting to function as intended. As of December 28, 2022, the Justice Department calculates that approximately 12,000 people have received the benefits of Earned Time Credits. However, as Senator Grassley and I said in our November 2022 letter, the Bureau of Prisons’ Earned Time Credit auto-calculator continues to assign and retract credits without adequate explanation or opportunities for review and appeals.**

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

a. Will the Justice Department commit to an audit of the Earned Time Credit auto-calculator and to allowing appeals for individuals who believe their Earned Time Credits have been calculated incorrectly?

Response: In November 2022, BOP finalized a new policy for awarding earned time credits, which informs incarcerated individuals and staff of the process for earning, documenting, applying, forfeiting, and restoring time credits pursuant to the statute. Through the new policy, the BOP Director exercised her discretion to make several changes to how BOP calculates time credits, including to increase the availability of time credits for individuals who participate in evidenced-based programming or productive activities, consistent with the First Step Act. According to the BOP, BOP's automated calculation of credits for individuals promotes consistency, allows BOP to provide accurate calculations on a routine basis, and allows individuals in custody to track their time credits and prepare for prerelease from custody.

The Department is committed to ensuring that earned time credits are awarded in accordance with the FSA and BOP policy. As of January 28, 2023, BOP reports as follows: More than 13,500 individuals had been released earlier from Residential Reentry Centers (RRCs), home confinement (HC), and secure facilities based on receiving credits under the FSA. An estimated 3,800 individuals have been placed in an RRC or HC and have a projected release method based on the application of earned time credits. In addition, approximately 10,650 individuals currently in secured custody are expected to receive an earlier release date or transfer to pre-release custody based on the application of earned time credits.

3. A provision in the CARES Act, which Senator Grassley and I championed, gave the Federal Bureau of Prisons expanded authority to safely transfer individuals to home confinement during the Covid-19 Emergency Period, and for 30 days following its termination. This program has been a tremendous success. Of approximately 12,000 people who have been released on early home confinement under the CARES Act since March 2020, only 19 (less than 0.2 percent) were returned to prison for committing a new offense.

a. What does the success of the CARES Act home confinement program demonstrate about how to safely reduce incarceration rates in our criminal justice system?

Response: BOP advises as follows: BOP's core mission is to ensure safe prisons, humane correctional practices, and rehabilitation opportunities so that people reenter society as good neighbors. Consistent with the FSA's emphasis on transitioning individuals to a community setting, the Department has expanded the use of home confinement for individuals who do not pose a danger to the community. Since the enactment of the CARES Act on March 26, 2020, BOP advises that it has placed approximately 13,000 individuals in home confinement under

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

CARES Act authority, and of those, less than one percent have been returned to secure custody due to new criminal conduct.

BOP further advises as follows: With appropriate contracts and resources in place, community confinement can be a safe step to support a successful transition to reentry. Existing laws, such as the Second Chance and First Step Act, include statutory criteria on who is eligible for earlier placement in community confinement settings such as home confinement or residential reentry centers. The CARES Act, for the first time in BOP history, allowed the agency to transition individuals to community confinement for much longer periods than permitted under prior legal authority. BOP reports that data establishes that in all but a small fraction of cases, the individuals have been successful in those community settings.

4. The Department's Civil Rights Division is tasked with conducting "pattern-or-practice" investigations to address serious systemic issues involving excessive force, discriminatory policing, and any other constitutional violations by law enforcement agencies. This is an important responsibility in light of officer-involved killings that have exposed failures in certain agencies' policies and practices. Last year, President Biden issued an Executive Order focused on encouraging effective, accountable policing to enhance public trust and public safety.

a. What progress has the Department made in implementing the President's directive to strengthen communication with state attorneys general to help identify relevant data and information from the public that can assist in these federal pattern-or-practice investigations?

Response: The Department's law enforcement agencies, the Civil Rights Division, and the Office of Justice Programs (OJP) advise as follows:

The implementation of President Biden's Executive Order 14074 "Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety" is a priority for the Department, and it is part of the Department's broader work that includes enforcement, funding, training, and technical assistance to support constitutional policing and strengthen police-community trust. Over the last year, the Department has worked diligently to implement over 90 deliverables of the Executive Order. Some examples include the completion of reports on the Department's Implementation of the Death in Custody Reporting Act of 2013; the Department's review of the transition of State, Tribal, local, and territorial law enforcement agencies to the National Incident-Based Reporting System (NIBRS); and the Department's efforts to ensure that restrictive housing in Federal detention facilities is used rarely and applied fairly. The Department's law enforcement agencies and the OJP have also reviewed their programs and authorities to prohibit the transfer or purchase of weapons and equipment from the controlled equipment list identified in the Executive Order. The Department continues to work

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

with our Federal, State, Tribal, local, and territorial law enforcement agency partners to improve the submission of data to the FBI National Use-of-Force Data Collection.

In terms of federal pattern-or-practice and civil rights investigations, the Department strengthened communication with State Attorneys General on pattern or practice investigations.

As far as strengthening communication with state attorneys general to help identify relevant data and information from the public that can assist in these federal pattern-or-practice investigations, State Attorneys General, to date, have not been heavily involved in pattern or practice investigations of police misconduct. There are, however, efforts to expand their role. Specifically:

- Attorneys General in California, Colorado, Illinois, Nevada, and Virginia have statutory authority to conduct pattern or practice investigations. Except for California, this authority is fairly recent.
- Attorneys General in some states may have general or common law authority to conduct such investigations. For example, New York's Attorney General launched an investigation of stop and frisk practices in New York City under her general authority. Such systemic suits, however, are infrequent.
- In June 2020, 18 State Attorneys General wrote to Congressional Leadership seeking legislation to expand federal pattern or practice investigatory authority to the states.

The Civil Rights Division has taken steps to strengthen its relationships with State Attorneys General across the board, and specifically as to pattern or practice investigations.

- In the fall of 2021, the Civil Rights Division's Special Litigation Section formed a working group with State Attorneys General that have pattern or practice or similar authority.
- The Special Litigation Section conducted a training in December 2021 for State Attorney General offices. Although it predated the Executive Order, the session reinforced the relationship with State Attorneys General and spurred an ongoing dialogue between them and the Section through telephone calls and email exchanges.
- The Special Litigation Section has continued to assist State Attorneys General through individual consultations with lawyers from those offices, as needed.

The Special Litigation Section plans to hold an additional training on pattern or practice investigations in 2023, although the date has not been set.

Questions for the Record
Senate Committee on Judiciary
"Oversight of the United States
Department of Justice"
March 1, 2023

SENATOR FEINSTEIN

**Oversight of the Department of Justice
Attorney General Garland
U.S. Department of Justice
Questions for the Record
Submitted March 8, 2023**

- 1. *Victims of Crime Act* grants are the primary source of government funding for victim service organizations. The balance in the Crime Victims Fund (CVF), which supports these grants, is critically low due to several years of low deposits. Despite passage of the *VOCA Fix to Sustain the Crime Victims Fund Act of 2021*, which helped substantially increased deposits to the CVF, deposits remain substantially lower than their historical average.**
- a. Members of DOJ leadership have made public statements⁹ about reducing penalties to encourage corporations to self-report criminal violations and to encourage cooperation with investigations. How have these policy changes impacted the type and amount of penalties assessed, and how in turn have these changes impacted deposits into the Crime Victims Fund?**

Response: On September 15, 2022, the Department issued a memorandum entitled, "Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group" (the Monaco Memorandum), which set forth a directive for the Department components who prosecute corporations to review policies on corporate voluntary self-disclosure. The Monaco Memorandum instructed components without a written policy to draft and publicly share such a policy.

On January 17, 2023, the Criminal Division revised the Division's Corporate Enforcement Policy, which provides incentives for companies that voluntarily self-disclose misconduct, cooperate with the government's investigation, and fully remediate. In order to receive a benefit under this policy, companies must fully disgorge and repay all ill-gotten gains, which, because of the Victims of Crime Act (VOCA) Fix, are remitted to the Fund whether through a non-prosecution (NPA) or deferred prosecution agreement (DPA).

On February 23, 2023, the Voluntary Self-Disclosure (VSD) policy for U.S. Attorneys' Offices (USAO) was published. According to the policy, in exchange for meeting the standards for voluntary self-disclosure, full cooperation, and timely remediation, absent the presence of an

⁹ Assistant Attorney General Kenneth A. Polite, Jr. *Delivers Remarks on Revisions to the Criminal Division's Corporate Enforcement Policy*, DOJ (January 17, 2023) & *Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group*, DOJ (September 15, 2022)

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

aggravating factor, the USAO may choose not to impose a criminal penalty, and in any event will not impose a criminal penalty that is greater than 50% below the low end of the U.S. Sentencing Guidelines fine range.

The revised Criminal Division Policy and U.S. Attorney's Office Voluntary Self-Disclosure Policy were recently implemented and cannot yet be quantified.

- b. You also said in your introduction that the Justice Department is prioritizing individual accountability in corporate white collar cases, rather than corporate accountability. How has this prioritization impacted deposit levels for the Crime Victims Fund?**

Response: The Department remains committed to addressing violations of law by corporations and, in doing so, remains focused on holding individuals accountable where appropriate. This means that the Department will hold individuals who break the law accountable, regardless of their position, status, or seniority, and will not permit culpable individuals to hide behind the corporate veil. This commitment to holding individuals accountable does not come at the expense of corporate accountability. The Monaco Memorandum issued in 2022 and the policies promulgated for the U.S. Attorneys' Offices in response to that memorandum demonstrate those priorities by incentivizing companies to cooperate by making evidence and witnesses available to allow the Department to have the best opportunity to hold individuals and corporations accountable.

- c. What is the Justice Department doing to ensure that policy changes regarding prosecution prioritization do not reduce deposits into the Crime Victims Fund?**

Response: Since enactment of the VOCA Fix, the Department notified all litigating components of the changes resulting from the VOCA Fix, modified the Department's debt collection tracking system to ensure that monies collected from DPAs and NPAs are deposited into the Fund, and provided training and guidance to ensure the VOCA Fix Act is implemented appropriately. In addition, the Department continues to advise litigating components of the availability of the Fund as a repository for fines, amounts paid pursuant to DPAs and NPAs, and other penalties. Indeed, OVC has met with the Department components responsible for the largest contributions to the Fund to highlight the importance of these resources and the support they provide crime victims. For example, fund resources can be used to support counseling, shelter, reimbursement of lost wages, medical care, funeral expenses, and other critical supports to victims and survivors of crime. OVC has briefed the Antitrust Division, Criminal Division, Attorney General's Advisory Committee of U.S. Attorneys, and Executive Office for U.S. Attorneys. OVC has also met with line prosecutors to emphasize the importance of the Fund, and how the funds impact victim assistance programs in their districts.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

The correlation between Fund deposits and criminal investigations is complex, and the amount of deposits into the Fund in a given year are not an indication of the Department's approach to criminal corporate accountability. To the contrary, the Department's dedicated prosecutors and investigators work tirelessly to combat white collar crime committed by individuals and corporations alike. For example, financial penalties from criminal antitrust violations are the Fund's primary funding source. However, criminal antitrust investigations take time, as the life cycle of a major cartel investigation is typically around five years. The successful prosecution of antitrust cartels may lead to clusters of settlements in a given year as co-conspirators decide to seek resolution around the same time, resulting in the Antitrust Division collecting large criminal fines and penalties some years and limited fines and penalties in other years.

d. What is the Justice Department doing to ensure that decreased deposits into the Crime Victims Fund do not negatively impact grants made to victim service providers?

Response: The Department is grateful for Congress's efforts to pass the VOCA Fix. According to the Office for Victims of Crime (OVC), since FY 2018, the Crime Victims Fund (Fund) balance has declined by 74 percent and the obligation cap has been lowered. As a result, the allocations for all states and territories have decreased. Since enactment of the VOCA Fix in 2021 through April 2023, nearly \$1 billion was deposited into the Fund from NPAs and DPAs – a direct result of the VOCA Fix and the Department's efforts to increase deposits into the Crime Victims Fund. When the VOCA Fix passed in 2021, courts were still experiencing delays and recovering from the impacts of the pandemic, resulting in a corresponding delay in many prosecutions. As courts resume normal processes, the Department anticipates seeing the full effects of the law.

OVC is the office within the Department responsible for administering the Fund. OVC has met with other offices within the Department, including the offices responsible for the largest contributions to the Fund (Antitrust Division, Criminal Division, and the Executive Office for U.S. Attorneys) to discuss the Victims of Crime Act, and the resources and support provided to victims stemming from case fines and penalties. OVC has also met with the Attorney General's Advisory Committee of U.S. Attorneys, the Antitrust Division, the Environment Natural Resources Division, the Environmental Protection Agency, and the Executive Office for United States Attorneys leadership on the importance of the Fund, and how it affects victim assistance programs in their districts. This engagement with U.S. Attorneys facilitates further understanding and awareness of the Fund.

Additionally, the Department recognizes that keeping the Fund solvent is essential to providing crime victims with compensation and assistance critical for emotional, physical, and financial support in the aftermath of crime. The Department has a robust training curriculum that emphasizes the availability of the Fund as a repository for fines, amounts paid pursuant to DPAs and NPAs, and other criminal monetary penalties. In addition to trainings and guidance set forth

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

in the Justice Manual, the Department has published a number of resource materials to assist prosecutors in ensuring that asset recovery is taken into consideration at every stage of a criminal prosecution. Moreover, the Department actively informs prosecutors of any legislative changes that impact the Fund. For example, the Department immediately implemented and educated prosecutors on the changes made by the VOCA Fix Act.

2. Thank you for your leadership in implementing the *Preventing Online Sales of E-Cigarettes to Children Act*. Under this law, any person or business that sells, transfers or ships e-cigarettes must now register with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

a. To date, how many sellers of e-cigarettes have registered with ATF?

Response: The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) administers the Prevent All Cigarette Trafficking (PACT) Act, 15 U.S.C. § 375 et. seq., which similarly bars the shipment of untaxed tobacco and Electronic Nicotine Delivery Devices (ENDS) in violation of state law. The PACT Act requires distributors to register with ATF, states, and localities where these products are shipped into, and report sales into these jurisdictions.¹⁰ The PACT Act also requires distributors who engage in delivery sales to comply with state and local tax, and regulatory laws involving the distribution of ENDS to minors.¹¹ According to the ATF, there are currently 1,117 ENDS delivery sellers registered with ATF.

b. How has ATF coordinated with state and local governments to support the enforcement of state registration requirements and seller compliance with tribal, state, and local taxes on e-cigarette products?

Response: According to the ATF, ATF coordinates with state and local governments to support the enforcement of state registration requirements and seller compliance with Tribal, state, and local taxes on e-cigarette products in a number of ways, to include but not limited to:

- ATF assisted the United States Postal Service (USPS) in promulgating the updates to USPS PACT Act regulations after electronic nicotine devices (ENDS) were added to the PACT Act.
- ATF has initiated bimonthly meetings with the Food and Drug Administration (FDA) regarding coordinating enforcement efforts involving the illegal distribution of ENDS, focusing on illegal sales to underage consumers.
- ATF Special Agents, auditors, and attorneys are working with the Consumer Protection Branch in the Department as well as state authorities on criminal investigations involving the illegal distributions of ENDS.

¹⁰ See 15 U.S.C. § 376.

¹¹ See 15 U.S.C. § 376a.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

- ATF meets regularly with the National Association of Attorneys General (NAAG) on PACT Act ENDS related issues.
- ATF attended the national convention of the Federation of State Tax Administrators and presented on the amendments to the PACT Act involving ENDS.
- ATF receives nominations from State Tax Officials regarding ENDS distributors who are not in compliance with the PACT Act and has placed these nominations on the PACT Act non-compliant list.
- ATF updated its web page to provide the public with guidance regarding the ENDS Amendments to the PACT Act.¹²
- ATF conducts outreach to the ENDS industry and has appeared at industry seminars to provide guidance and promote voluntary compliance with the PACT Act.

c. Has ATF provided updates to its list of retailers who are not compliant under the updated tobacco regulations and shared with delivery carriers and the Attorney General of each state? Of these noncompliant retailers, how many were noncompliant due to the delivery or sale of e-cigarette products?

Response: One of the primary enforcement tools under the PACT Act is the List of Unregistered or Noncompliant Delivery Sellers (non-compliance list), authorized under 15 U.S.C. § 376a(e), which allows ATF to bar any common carrier from shipping tobacco or ENDS on behalf of any person who has been placed on the list. ATF receives and investigates nominations for the list from state, local, and Tribal governments and distributes the list every four months to anyone ATF believes can promote the effective enforcement of the PACT Act, which includes the State Attorney Generals, the tax administrators of every State, the USPS, common carriers, credit card companies, and other Federal agencies involved in the regulation of tobacco law firms representing tobacco distributors.

ATF advises that currently there are 79 domestic entities and 391 international entities on the PACT Act non-compliance list. While ATF has placed numerous ENDS distributors on the list, ATF does not categorize companies placed on the list by the type of product they distribute.

Under the PACT Act, there are criminal and civil penalties if a person knowingly distributes tobacco, or ENDS sold by a party on the non-compliance list. The maintenance and distribution of the non-compliance list has resulted in multiple companies reforming their business activities to comply with state law and has prevented millions of dollars in tax evasion. During recent years, in Massachusetts, ATF investigations have led to the successful prosecutions of a dozen defendants involved in PACT Act violations. Additionally, ATF has settled several civil cases involving violations of the PACT Act and the Contraband Cigarette Trafficking Act (CCTA). This has resulted in the companies agreeing to come into full compliance with the CCTA and

¹² See ATF.gov at <https://www.atf.gov/alcohol-tobacco/prevent-all-cigarette-trafficking-pact-act>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

PACT Act and pay civil fines under the PACT Act, cumulatively forfeiting millions of dollars in illegal proceeds under the CCTA.

3. After the enactment of the *Preventing Online Sales of E-Cigarettes to Children Act*, any electronic device that aerosolizes and delivers cannabidiol (CBD), tetrahydrocannabinol (THC), and other substances that are used to create the psychological effects of cannabis are now regulated with the same ATF requirements as e-cigarettes.

a. How is the Justice Department coordinating with the Food and Drug Administration to understand the landscape of state regulation of cannabis products and better inform federal regulation exercised under the Administration's existing authorities?

Response: ATF takes the position that because ENDS is defined in the PACT Act, at 15 U.S.C. § 375(7)(A), as "any electronic device that, through an aerosolized solution, delivers nicotine, flavor, or any other substance to the user inhaling from the device," cannabis vapes are regulated under the PACT Act.¹³

ATF has communicated this position to industry members that distribute cannabidiol ENDS. In Indiana, ATF conducted an enforcement action leading to the seizure of ENDS from traffickers who legally purchased the ENDS on the East Coast and then illegally transported them to Indiana in violation of the PACT Act.¹⁴ ATF also issued a letter to a distributor of ENDS intended for cannabis consumption indicating that ATF is considering placing that company on the PACT Act non-compliance list. While the illegal distribution of Cannabis ENDS is regulated by the PACT Act, DEA and the FDA maintain primary enforcement authority.

¹³ See ATF.gov Frequently Asked Questions (FAQS) regarding Electronic Nicotine Delivery Systems, *available at* <https://www.atf.gov/qa-category/electronic-nicotine-delivery-systems-ends>, specifically "Are non-nicotine vapes such as cannabidiol (CBD), tetrahydrocannabinol (THC) and etc. also regulated as ENDS?" *available at* .

¹⁴ In accordance with 21 U.S.C. § 881, the Attorney General has the authority to seize, forfeit, and remit or mitigate the forfeiture of property. The Attorney General has delegated to the Director of ATF, without a time limit, administrative seizure and forfeiture authority under title 21, United States Code. See Final Rule 2012R-9P, "Authorization to Seize Property Involved in Drug Offenses for Administrative Forfeiture," 80 Fed. Reg. 9987 (February 25, 2015).

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

RANKING MEMBER LINDSEY O. GRAHAM
Questions for the Record of Attorney General Merrick Garland
U.S. Senate Committee on the Judiciary
“Oversight of the Department of Justice”
Submitted March 8, 2023

Resource Allocation

- 1. On October 27, 2021, in response to a QFR regarding Task Forces, you stated on page 50 that one of the task forces created since you became Attorney General included: “A dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judges, and Members of Congress, formed to assess the most prevalent threats and recommend measures to further strengthen the Department’s efforts to deter and combat those threats.” Please provide the following information:**
 - A. What date was the Task Force created?**
 - B. Please provide the Task Force’s leadership structure.**
 - C. How many full and part-time personnel have been assigned to the Task Force since it began?**
 - i. Of that number, how many are DOJ Trial Attorneys?**
 - ii. Of that number, how many Assistant United States Attorneys (“AUSAs”) are detailed to the Task Force?**
 - a. Of those AUSAs, how many are in person and how many are remote?**
 - b. Of those AUSAs, at which U.S. Attorney’s offices are they employed?**
 - iii. Of that number, how many paralegals are assigned to the Task Force?**
 - iv. Of that number, how many legal assistants are assigned to the Task Force?**
 - v. Of that number, how many contractors are assigned to the Task Force?**

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

- vi. Of that number, please identify how many law enforcement personnel (and the identities of their respective agencies) are assigned or detailed to the Task Force?
- D. Given the unlawful behavior by protestors in front of several Justices' homes last summer, as those very Justices were deliberating the *Dobbs* case, how, if at all, did this Task Force respond to the protests outside the Justices' homes after the leak of the draft *Dobbs* opinion?
- E. What are the essential elements to prove a violation of 18 U.S.C. §1507?
- F. What steps, if any, did this Task Force take to ensure that 18 U.S.C. §1507 was understood and that agents on the ground were aware of this statute's applicability during the time that the Justices still had the *Dobbs* matter under advisement?
- G. Given the nature of the protests, including the shouts and signs, and that the protests occurred at the Justices' homes while the Justices still had the *Dobbs* matter under advisement, do you agree that there was proof beyond a reasonable doubt to find that the protestors had the "intent of influencing any judge...in the discharge of his duty," in violation of 18 U.S.C. §1507?
- H. Had a draft opinion of *Obergefell v. Hodges* legalizing same-sex marriage been leaked, would you have enforced violations of 18 U.S.C. §1507 against people similarly protesting in front of the homes of Justices Kennedy, Sotomayor, Ginsburg, Breyer, and Kagan?
- I. Please define "peaceful protest".
- J. Please provide the USA-5 data for all AUSAs detailed (in person and remote) to the Task Force.
- K. Please provide the USA-5 equivalent for DOJ Trial Attorneys assigned to the Task Force.

Response to A–K: In March 2021, the Department formed a dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judges, and Members of Congress to assess the most prevalent threats and implement measures to further strengthen the Department's capacity to deter and combat those threats. Composed of components across the Department, the Task Force promulgated helpful recommendations. For example, one of the Task Force's recommendations was the creation of a permanent Judicial Security working group to discuss matters of judicial security. That group has been established and includes leadership from the U.S. Marshals Service (USMS), the Administrative Office of the U.S. Courts, the Judicial

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Conference, as well as the Deputy Attorney General's Office. It meets on a regular basis to address these issues.

In May 2022, the Attorney General took the unprecedented step of directing the U.S. Marshals Service (USMS) to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows: During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. Their first priority is to protect the life and safety of the Justices and their families. As the USMS Director has said, "The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals' number one priority is to protect the Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn't compromise the lives and safety of the Justices." In February 2024, the Director further testified that "The Attorney General's order was very clear, actually, crystal clear. Protect the lives of the Justices. He made sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety."¹⁵ In 2022, a federal grand jury returned an indictment charging a man who allegedly traveled from California to Maryland with the intent to kill a Justice of the United States Supreme Court.

2. Please provide answers to the following questions regarding DOJ's allocation of resources for the investigation and prosecution of all January 6th matters, including misdemeanors and felonies:

A. Since the events of January 6, 2021 ("January 6th") at the U.S. Capitol, how many total federal prosecutors have been assigned to work on January 6th cases?

i. Of that total number, how many are DOJ Trial Attorneys?

ii. Of that total number, how many are AUSAs from the DC-U.S. Attorney's Office?

¹⁵ *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

- iii. Of that total number, how many are AUSAs detailed from other districts?
 - a. Of those AUSAs, how many are or were in person and how many are or were remote?
 - b. Of those AUSAs, please list the specific districts and dates of detail.
- B. Since the events of January 6, 2021 ("January 6th") at the U.S. Capitol, how many legal support staff have been assigned to work on January 6th cases?
 - a. Of that total number, how many paralegals, including those detailed from other districts, have been assigned to January 6th cases?
 - b. Of that total number, how many legal assistants, including those detailed from other districts, are assigned to January 6th cases?
 - c. Of that total number, how many contractors, including those detailed from other districts, are assigned to January 6th cases?
- C. Since the events of January 6, 2021 ("January 6th") at the U.S. Capitol, please state how many law enforcement personnel have been assigned or detailed to January 6th cases? Please include the identities of their respective agencies.
- D. Please provide the USA-5 data for all DC-U.S. Attorney's Office AUSAs who have worked on January 6th cases.
- E. Please provide the USA-5 data for all AUSAs detailed (in person and remote) who have worked on January 6th cases.

Response to A–E: The Department is committed to ensuring accountability for those criminally responsible for the January 6, 2021, assault on our democracy. The violence and destruction of property at the U.S. Capitol building on January 6 showed a deliberate and inexcusable disregard for our institutions of government and the orderly administration of the democratic process. In the aftermath of the attack on the Capitol, the Department was faced with one of the largest, most complex, and most resource-intensive investigations in its history. The United States Attorney's Office for the District of Columbia (USAO-DC) and its law enforcement partners have worked tirelessly to investigate and prosecute those responsible for the attack.

At the time, the USAO-DC and its law enforcement partners faced significant challenges in responding to these cases, including the number of matters, the unusual nature of the offenses, and an unprecedented deadly pandemic. The Department quickly recognized the need for a more

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

sustainable solution to address the ongoing challenges posed by January 6. The USAO-DC reports that it established a dedicated team within its office to streamline its operations and enhance its ability to efficiently prosecute the high volume of cases. The USAO-DC now has a designated section to handle January 6 cases, which, as of May 2023, currently consists of approximately 70 full-time Assistant United States Attorneys and Special Assistant United States Attorneys and approximately 77 full-time support staff, including contractors. More than fifty percent of the support staff who work on the January 6 prosecutions are assigned to our Discovery Unit. Additional support is provided by attorneys and support staff from around the Department. While some of these additional attorneys and support staff were not dedicated full time to these cases, they performed work related to one or more of these cases, and USAO-DC leadership devotes significant time to overseeing the section.

As of May 2023, the USAO-DC reports that in total, since January 6, 2021, over 250 attorneys have worked on January 6 cases. Of those attorneys, some were full-time, some were part-time, some were detailees, and some were assigned on an ad hoc basis. Over this time period, there have been more than 1,100 defendants arrested in nearly all 50 states and the District of Columbia. Additional responsive statistics are available on the Capitol Breach Investigation Resource Page.¹⁶

The latest Capital Breach updates can be found at: [Capitol Breach Investigation Resource Page | USAO-DC | Department of Justice](#).¹⁷ A detailed snapshot of the investigation can be found by clicking the “latest update” link under the Capitol Breach Response section.

Charging Memos

3. **Your December 16, 2022, charging memos announce a policy that federal prosecutors should charge fewer offenses that carry a mandatory minimum sentence, and that this policy “applies with particular force in drug cases.” However, your policy makes no exception for fentanyl, fentanyl-analogue, or fentanyl related substance cases. Assume the following hypothetical: A person possesses with intent to distribute a mandatory minimum triggering amount of fentanyl or fentanyl-analogue, but this person has no significant criminal history, no gun, no violence, no use of minors, no death or serious bodily injury, and no ties to cartels or large-scale criminal organization. Would an AUSA be in violation of your new policy if he charged that person with a violation of 21 U.S.C. 841(b)(1)(A) or (b)(1)(B), and sought a mandatory minimum sentence?**

Response: The December 16, 2022, charging memorandum regarding drug cases states: “As stated in the General Policies Memorandum, ‘charges that subject a defendant to a mandatory minimum sentence should ordinarily be reserved for instances in which the remaining charges ...

¹⁶ <https://www.justice.gov/usao-dc/capitol-breach-cases/>.

¹⁷ <https://www.justice.gov/usao-dc/capitol-breach-investigation-resource-page>

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

would not sufficiently reflect the seriousness of the defendant's criminal conduct, danger to the community, harm to victims' and 'such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation.¹⁸'

It further states: "in cases in which Title 21 mandatory minimum sentences are applicable based on drug type and quantity, prosecutors should decline to charge the quantity necessary to trigger a mandatory minimum sentence if the defendant satisfies all of the following criteria:

- The defendant's relevant conduct does not involve: the use of violence, the direction to another to use violence, the credible threat of violence, the possession of a weapon, the trafficking of drugs to or with minors, or the death or serious bodily injury of any person;
- The defendant does not have a significant managerial role in the trafficking of significant quantities of drugs;
- The defendant does not have significant ties to a large-scale criminal organization or cartel, or to a violent gang; and
- The defendant does not have a significant history of criminal activity that involved the use or threat of violence, personal involvement on multiple occasions in the distribution of significant quantities of illegal drugs, or possession of illegal firearms.¹⁹

4. **Using the same hypothetical, what if a U.S. Attorney's Office, in an effort to aggressively address fentanyl, had a policy that such a defendant would always be charged with a mandatory minimum, so long as the proof demonstrated beyond a reasonable doubt that the defendant possessed a sufficient quantity of fentanyl? Would you consider such a local policy to be in violation of your December 16, 2022 charging policy?**

Response: As stated above, the December 16, 2022, charging memorandum regarding drug cases states: "As stated in the General Policies Memorandum, 'charges that subject a defendant to a mandatory minimum sentence should ordinarily be reserved for instances in which the remaining charges ... would not sufficiently reflect the seriousness of the defendant's criminal conduct, danger to the community, harm to victims' and 'such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation.²⁰'"

It further states: "in cases in which Title 21 mandatory minimum sentences are applicable based on drug type and quantity, prosecutors should decline to charge the quantity necessary to trigger a mandatory minimum sentence if the defendant satisfies all of the following criteria:

¹⁸ Memorandum from Attorney General Merrick Garland on Additional Department Policies Regarding Charging Pleas, and Sentencing in Drug Cases (Dec. 16, 2022) https://www.justice.gov/d9/2022-12/attorney_general_memorandum_additional_department_policies_regarding_charges_pleas_and_sentencing_in_drug_cases.pdf

¹⁹ *Id.*

²⁰ *Id.*

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

- The defendant's relevant conduct does not involve: the use of violence, the direction to another to use violence, the credible threat of violence, the possession of a weapon, the trafficking of drugs to or with minors, or the death or serious bodily injury of any person;
 - The defendant does not have a significant managerial role in the trafficking of significant quantities of drugs;
 - The defendant does not have significant ties to a large-scale criminal organization or cartel, or to a violent gang; and
 - The defendant does not have a significant history of criminal activity that involved the use or threat of violence, personal involvement on multiple occasions in the distribution of significant quantities of illegal drugs, or possession of illegal firearms.²¹
5. **Would the possession with intent to distribute (or distribution, or conspiracy to distribute) a mandatory minimum triggering quantity of fentanyl alone justify charging an offense carrying a mandatory minimum sentence?**

Response: As stated above, the December 16, 2022, charging memorandum regarding drug cases states: "As stated in the General Policies Memorandum, 'charges that subject a defendant to a mandatory minimum sentence should ordinarily be reserved for instances in which the remaining charges ... would not sufficiently reflect the seriousness of the defendant's criminal conduct, danger to the community, harm to victims' and 'such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation.'²²"

It further states: "in cases in which Title 21 mandatory minimum sentences are applicable based on drug type and quantity, prosecutors should decline to charge the quantity necessary to trigger a mandatory minimum sentence if the defendant satisfies all of the following criteria:

- The defendant's relevant conduct does not involve: the use of violence, the direction to another to use violence, the credible threat of violence, the possession of a weapon, the trafficking of drugs to or with minors, or the death or serious bodily injury of any person;
- The defendant does not have a significant managerial role in the trafficking of significant quantities of drugs;
- The defendant does not have significant ties to a large-scale criminal organization or cartel, or to a violent gang; and
- The defendant does not have a significant history of criminal activity that involved the use or threat of violence, personal involvement on multiple occasions in the distribution of significant quantities of illegal drugs, or possession of illegal firearms.²³

- a. **During the hearing, you repeatedly said that this policy was focused on ensuring that DOJ's resources are appropriately used. How would an AUSA**

²¹ *Id.*

²² *Id.*

²³ *Id.*

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

charging a non-mandatory minimum quantity under Title 21 constitute a better use of resources than simply charging the factually accurate type of controlled substance and quantity that triggers a mandatory minimum sentence?

Response: The December 16, 2022, memorandum reaffirms “the priority the Department has placed on focusing our prosecutorial resources on combating violent crime.”²⁴ By using mandatory minimums and other prosecutorial tools to target these serious public safety threats, the Department is seeking to apply the most serious penalties to the most serious offenders.

b. Do you think fentanyl traffickers are more or less likely to sign a cooperation plea agreement when charged with offenses that carry mandatory minimum sentences or when they’re charged with offenses that carry no mandatory minimum sentence?

Response: The decision to cooperate with the government is a significant one that involves many different considerations for each individual defendant.

c. Your new policy authorizes and encourages federal prosecutors to be factually inaccurate in charging instruments in order to comply with your directive to avoid charging offenses that carry mandatory minimum offenses or in treating cocaine base cases as if they were cocaine hydrochloride cases. Given that your policy encourages prosecutors to regularly charge factually inaccurate drug types and/or drug quantities, what professional responsibility risks does your new policy create for federal prosecutors?

Response: The policy does not authorize or encourage prosecutors to be factually inaccurate. To the contrary, the December 16, 2022, memorandum states: “prosecutors must always be candid with the court, the probation office, and the public as to the full extent of the defendant’s conduct and culpability, including the type and quantity of drugs involved in the offense and the quantity attributable to the defendant’s role in the offense, even if the charging document lacks such specificity.”²⁵

d. Did you consider how your policy affects the Rules of Professional Conduct, especially Rule 3.8 – Special Duties of a Prosecutor?

Response: Nothing in the memorandum is inconsistent with the Rules of Professional Conduct, including Rule 3.8.

²⁴ *Id.*

²⁵ *Id.*

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

- e. **Prior to implementing this policy of generally seeking charging instruments (indictments, information, complaints) that fail to state accurate drug types and/or quantities, did you consult with the Office of Professional Responsibility and/or DOJ's Professional Responsibility Advisory Office? If so, what concerns, if any, were expressed?**

Response: By requiring federal prosecutors to be candid with the court, the probation office, and the public about the facts of each case, the memoranda are consistent with the Rules of Professional Conduct. Federal prosecutors are instructed to comply fully with their ethical and professional responsibility obligations.²⁶

6. **Your December 16, 2022, charging memo states: "The Department will develop and implement a software program that enables real-time, trackable reporting by districts and litigating divisions of all charges brought by the Department that include mandatory minimum sentences" ("real-time tracking program"). Please answer the following questions about this real-time tracking program:**

- a. **Is the purpose of this real-time tracking program to encourage U.S. Attorney's Offices and DOJ litigating components to charge more or fewer offenses that carry mandatory minimum sentences?**

Response: The Department is in the process of updating the United States Attorneys' case management system to track information on the number of defendants charged and convicted of offenses carrying mandatory minimum sentences. Such information will assist Department leadership in assessing the implementation of the December 16, 2022, memoranda.

- b. **Can you assure me that the use or lack of use of mandatory minimums will play no role in the performance evaluation of any federal prosecutor, U.S. Attorney's Office, of DOJ litigating component?**

Response: Federal prosecutors are evaluated annually based on performance work plans developed with their supervisors. The work plans and the evaluations are conducted by an immediate supervisor in accordance with Department personnel policies.

- c. **Have you instructed, or do you intend to instruct, the Executive Office of U.S. Attorneys Evaluation and Review Staff (EARS), to use data from this real-time tracking program in conducting their EARS evaluations of U.S. Attorney's Offices?**

²⁶ See Justice Manual 1-4.010.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: The EARS teams review a wide variety of materials and data when conducting reviews of U.S. Attorneys' Offices. That has traditionally included data from the United States Attorneys' case management system.

d. Will you provide me, on a quarterly basis, data harvested from this real-time tracking program, including raw statistical data?

Response: The Department is in the process of updating the United States Attorneys' case management system to track information on the number of defendants charged and convicted of offenses carrying mandatory minimum sentences, in order to assist Department leadership in assessing the implementation of the December 16, 2022, memoranda.

e. How much is DOJ spending on this real-time tracking program?

Response: The Department is using existing resources to update the United States Attorneys' case management system to track information on the number of defendants charged and convicted of offenses carrying mandatory minimum sentences. Those resources are also used for the regular operation and maintenance of the system.

f. Does DOJ have similar real-time tracking systems in place to monitor violent crime and fentanyl/fentanyl-analogue indictments? If not, why not?

Response: The United States Attorneys' case management system includes general information on the charges filed and outcomes of criminal cases. Additionally, the Department publishes an annual statistical report on the work of the United States Attorneys' Offices.²⁷

Men in Women's Bureau of Prison (BOP) Facilities

7. During the hearing, I asked if you were aware that there were approximately 1200 biological male inmates seeking to be reclassified to female facilities within the BOP. You stated that you were unaware of that statistic. You further stated that BOP reclassification decisions for such inmates are made on a case-by-case basis, taking into account security concerns, but that all inmates will be treated with "dignity and respect." Please answer the following questions:

a. Do biological males have XY chromosomes?

Response: The National Institutes of Health's National Human Genome Research Institute states in its X Chromosome Infographic: "Typically, biologically female individuals have two X

²⁷ See <https://www.justice.gov/media/1279221/dl?inline>

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

chromosomes (XX) while those who are biologically male have one X and one Y chromosome (XY). However, there are exceptions to this rule.”²⁸

b. Do biological females have XX chromosomes?

Response: The National Institutes of Health’s National Human Genome Research Institute states in its X Chromosome Infographic: “Typically, biologically female individuals have two X chromosomes (XX) while those who are biologically male have one X and one Y chromosome (XY). However, there are exceptions to this rule.”²⁹

c. Are there objectively valid reasons to house biological male inmates separate from biological female inmates within the BOP? If so, what are those reasons?

Response: BOP Program Statement 5200.08, “Transgender Offender Manual,” provides that housing unit assignments “will consider on a case-by-case basis that the inmate placement does not jeopardize the inmate’s wellbeing and does not present management or security concerns.”

d. Please provide any formal or informal BOP policy that guides the decision-making process for placement of biological males in female BOP facilities.

Response: BOP Program Statement 5200.08, “Transgender Offender Manual,” addresses housing assignments.³⁰

e. How many inmates with XY chromosomes are presently housed in BOP facilities with inmates who have XX chromosomes?

Response: BOP reports that as of October 2023, there are 10 transgender females housed in BOP female facilities.

f. Is it your position that, in this context, “dignity and respect” includes?

i. Believing a biological male inmate’s subjective claim that he’s a female?

Response: Director Peters has stated that BOP takes into account transgender individuals’ “views as well as everyone’s views on where they think that they can be better served from a

²⁸ <https://www.genome.gov/about-genomics/fact-sheets/X-Chromosome-facts>.

²⁹ *Id.*

³⁰ See <https://www.bop.gov/policy/progstat/5200-08-cn-1.pdf>.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

safety security perspective or a programming and treatment perspective. And we take safety and security of the assignment of those individuals very seriously.”³¹

ii. Providing a biological male inmate with medications to alter his appearance in order to accommodate his subjective claim that he’s a female?

Response: Director Peters has stated that BOP has “a policy...to rely on a community standard of health care and make individualized decisions” and that BOP relies on “a community standard of care to make individualized medical decisions based on what is appropriate for that individual on a case by case.”³²

iii. Providing surgeries, such as genital castration or chest implants, to accommodate a biological male inmate’s subjective claim that he’s a female?

Response: Director Peters has stated that BOP has “a policy...to rely on a community standard of health care and make individualized decisions” and that BOP relies on “a community standard of care to make individualized medical decisions based on what is appropriate for that individual on a case by case.”³³

iv. Providing and dispensing condoms in female BOP facilities that house biological male inmates in the same cells as biological female inmates?

Response: BOP has reported that it does not provide condoms to incarcerated individuals in BOP facilities.

v. Providing birth control pills to biological male inmates who claim to be female?

Response: BOP has stated as follows: BOP trains employees to understand the complexities of housing individuals who are transgender inside BOP facilities. BOP has an official decision-

³¹ *Hearing on Oversight of the Fed. Bureau of Prisons Before S. Comm. on Judiciary*, 118th Cong. at (Sept. 12, 2023) (statement of Colette Peters, Dir., Fed. Bureau of Prisons), <https://www.judiciary.senate.gov/committee-activity/hearings/09/13/2023/oversight-of-the-federal-bureau-of-prisons>.

³² *Hearing on Oversight of the Fed. Bureau of Prisons Before S. Comm. on Judiciary*, 118th Cong. at 15-16 (Sept. 12, 2023) (statement of Colette Peters, Dir., Fed. Bureau of Prisons), <https://www.judiciary.senate.gov/committee-activity/hearings/09/13/2023/oversight-of-the-federal-bureau-of-prisons>.

³³ *Hearing on Oversight of the Fed. Bureau of Prisons Before S. Comm. on Judiciary*, 118th Cong. at 15-16 (Sept. 12, 2023) (statement of Colette Peters, Dir., Fed. Bureau of Prisons), <https://www.judiciary.senate.gov/committee-activity/hearings/09/13/2023/oversight-of-the-federal-bureau-of-prisons>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

making body on all issues affecting the transgender population. It meets monthly to offer advice and guidance on unique measures related to treatment and management needs of transgender inmates and/or inmates with gender dysphoria, including training, designation issues, and reviewing all transfers for approval. Clinical guidance on the most current research-driven clinical medical and psychiatric care of transgender inmates will be provided at the direction of BOP's Medical Director. The bottom line is that BOP must ensure the safety of the transgender individual, other incarcerated individuals, and BOP employees.

vi. Providing feminine hygiene products to biological male inmates who claim to be female?

Response: BOP advises that standard items are provided to female inmates and inmates identified in BOP records as transgender females.

8. **At a staff-level meeting with U.S. Marshals Service and FBI Officials on February 16, 2023, representatives of those agencies could provide no justification as to why protestors at the homes of Supreme Court justices have been neither arrested or prosecuted for violation of 18 U.S.C. § 1507 ("Section 1507"), which makes it a crime to picket, parade, or otherwise demonstrate near a residence occupied by a judge when doing so with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing the judge in the discharge of his or her duty. Please respond to the following**
 - A. **Is it true that zero individuals have been arrested for alleged violations of Section 1507 at or near the residences of Supreme Court Justices?**
 - B. **Do you admit that protestors have held signs stating, inter alia, "Don't Like Me At Your House? Get Out [sic] My Uterus"³⁴?**
 - C. **Do you deny that protestors have chanted phrases such as "no privacy for us, no peace for you,"³⁵ as indicated in Supreme Court Marshal Gail Curley's letter to Virginia Governor Glenn Youngkin dated July 2, 2022?**
 - D. **If DOJ sought to criminally charge protestors under Section 1507, would the signage or statements referenced above be relevant facts?**

¹ *Abortion protests: Security tightened around court justices*, available at <https://www.bbc.com/news/world-us-canada-61382289>.

² Letter from Gail Curley to Glenn Youngkin, July 2, 2022, available at <https://twitter.com/katieleebarlow/status/1543335497350668302?s=20>.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

E. Could the signage or statements references above be sufficient to establish a protestor’s “intent of influencing [a justice] in the discharge of his [or her] duty”?

F. If a protestor located at the residence of a justice exclaims that the justice will have “no peace” if the justice does not rule in the manner they wish, has the protestor violated Section 1507?

G. Why have no prosecutions been brought under Section 1507?

Response to A–G: In May 2022, the Attorney General took the unprecedented step of directing the U.S. Marshals Service (USMS) to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows:

During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. Their first priority is to protect the lives and safety of the Justices and their families. As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the Justices.” In February 2024, the Director further testified that “The Attorney General’s order was very clear, actually, crystal clear. Protect the lives of the Justices. He made sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety.”³⁶

In 2022, a federal grand jury returned an indictment charging a man who allegedly traveled from California to Maryland with the intent to kill a Justice of the United States Supreme Court. In that instance, Deputy U.S. Marshals fulfilled their protective responsibility by standing their post and protected the Supreme Court Justice from potential harm.

While the Department cannot speculate on hypotheticals, as a general matter, the decision regarding whether to initiate prosecution and what specific statutes to charge is dependent on the totality of circumstances, consistent with the Principles of Federal Prosecution, set forth in § 9-

³⁶ *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

27.000 of the Justice Manual. In addition, as a matter of policy, the Department generally does not comment about specific allegations of misconduct.

H. Is it the position of DOJ that Section 1507 is facially unconstitutional?

Response: The Department has not determined that § 1507 is unconstitutional.

I. Is it not true that that five Supreme Court protestors were indicted under Section 1507 in 2015, pleaded guilty, and were sentenced to terms of probation?³⁷

Response: In April 2015, the U.S. Attorney’s Office for the District of Columbia filed a criminal information charging five individuals who had interrupted a Supreme Court oral argument with two misdemeanor offenses, one of which was a § 1507 violation. The defendants pleaded guilty in 2017.

J. Is it not true that Section 1507 was a basis for the arrest of three Supreme Court protestors in November 2022?³⁸

K. The criminal complaint against these three protestors, Emily Archer, Nicole Enfield, and Dianne Baker, contains a charge only for violation of 40 U.S.C. § 6134, and not for Section 1507.³⁹ Please explain why these three protestors were not charged with a 1507 violation.

Response to J–K: On November 2, 2022, three individuals were arrested by the Supreme Court police after interrupting a Supreme Court oral argument. The U.S. Attorney’s Office for the District of Columbia subsequently filed a criminal complaint charging the individuals with violating 40 U.S.C. § 6134. As stated above, the decision to initiate prosecution and what specific statutes to charge is dependent on the totality of circumstances and falls within federal prosecutors’ discretion, consistent with the Principles of Federal Prosecution.

L. Have you or any of your subordinates had conversations with the U.S. Attorneys for the Eastern District of Virginia or the District of Maryland regarding the potential of bringing charges under Section 1507 against protestors at the homes of Supreme Court justices.

³ See 99Rise protestors charged with Class A misdemeanor in federal court, available at <https://www.washingtonpost.com/news/voxxh-conspiracy/wp/2015/04/06/99rise-protesters-charged-with-class-a-misdemeanor-in-federal-court/>; Judgments filed August 9, 2017, U.S. District Court for the District of Columbia Docket No. 15-cr-48.

⁴ Women disrupt Supreme Court arguments to protest Dobbs decision, available at <https://www.cnn.com/2022/11/02/politics/women-disrupt-supreme-court-protest-dobbs/index.html>.

⁵ Criminal Complaint filed Nov. 3, 2022, U.S. District Court for the District of Columbia Docket No. 22-mj-00241.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

Response: The USMS, like the Department’s other law enforcement components, routinely coordinates with U.S. Attorneys’ offices around the country on charging decisions.

M. Has the FBI investigated any potential Section 1507 violations related to protest at the home of Supreme Court Justices?

Response: Standard Department policy is not to confirm or deny the initiation or existence of any investigation.

N. During your testimony, you indicated that the Deputy U.S. Marshals posted at the residences of Supreme Court justices have full authority to enforce federal law, thus suggesting that it would be within the purview of the USMS to enforce Section 1507.

i. Please provide examples of instances in which the U.S. Marshals Service has effectuated arrests for obstruction of justice-related charges.

Response: One example of an instance involving a USMS arrest for obstruction is referenced in *United States vs. Leung*, 360 F.3d 62, 66 (2d. Cir. 2004).

ii. At the staff briefing on February 16, 2023, USMS Deputy Director of Judicial Security Jennifer Armstrong indicated that enforcing Section 1507 was not the purview of the Marshals Service, as their primary mission was to ensure the physical security of the justices.

1. Was Ms. Armstrong mistaken?

Response: The USMS states that its top priority is to protect the Justices, their families, and their property. As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the [J]ustices.”

2. How do you explain the discrepancy between your testimony suggesting that the Deputy U.S. Marshals are free to make arrests under Section 1507, and Ms. Armstrong’s statements that it would be outside the scope of their duties to effectuate such arrests?

Response: As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the

Questions for the Record
Senate Committee on Judiciary
"Oversight of the United States
Department of Justice"
March 1, 2023

Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn't compromise the lives and safety of the [J]ustices."

- iii. **If it were alleged that associates of a criminal defendant were engaging in efforts to intimidate jurors in a criminal case, would the U.S. Marshals Service be the primary agency responsible for investigating these allegations?**

Response: The investigating agency would depend on the circumstances around the allegation, the location, and the resources available.

O. Is obstruction of justice protected by the First Amendment?

Response: No.

Disparate Enforcement of FACE ACT

- 9. **In the early morning of September 23, 2022, a large swath of FBI agents arrested Mark Houck at his home in eastern Pennsylvania, following Mr. Houck's indictment for violating the FACE Act. Mr. Houck was later acquitted by a jury of his peers, after only an hour of deliberations.**

A. Please indicate the number of FBI Agents present for the arrest of Mr. Houck.

- i. **Is it true that the FBI agents who effectuated the arrest of Mr. Houck carried ballistic shields?**
- ii. **Is it true that the FBI agents who effectuated the arrest of Mr. Houck brandished firearms?**
- iii. **Is it true that the FBI agents who effectuated the arrest of Mr. Houck brandished long-guns?**

Response to A(i)-(iii): Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

Questions for the Record
Senate Committee on Judiciary
"Oversight of the United States
Department of Justice"
March 1, 2023

B. On July 29, 2015, former Congressman Chaka Fattah, along with a number of associates were indicted on racketeering charges.⁴⁰ Mr. Fattah was later convicted and sentenced to 10 years in prison.⁴¹

a. For purposes of the criminal indictment in the above-referenced case, was Mr. Fattah arrested at his home by the FBI?

Response: Without reference to any particular matter, the FBI has stated that, in general, determinations of how to make arrests under arrest warrants are made by operational personnel on the ground in accordance with standard policies and procedures.

C. If he was not, please described the circumstances under which Mr. Fattah was taken into custody. For example, was he permitted to voluntary surrender?

Response: Without reference to any particular matter, the FBI has stated that, in general, determinations of how to make arrests under arrest warrants are made by operational personnel on the ground in accordance with standard policies and procedures.

D. On January 29, 2019, Philadelphia City Council member Robert Henon was indicted on bribery charges.⁴² Mr. Henon was convicted and sentenced to three and a half years in prison.⁴³

a. News reports indicate that rather than being arrested, "Henon's lawyer, Brian McMonagle, made arrangements for Henon to turn himself in a day early."⁴⁴ Is it correct that Mr. Henon was permitted to voluntarily surrender?

Response: Without reference to any particular matter, the FBI has stated that, in general, determinations of how to make arrests under arrest warrants are made by operational personnel on the ground in accordance with standard policies and procedures.

⁴⁰ Indictment filed July 29, 2015, U.S. District Court for the Eastern District of PA Docket No. 2:15-cr-00346.

⁴¹ Former Congressman Chaka Fattah Sentenced to 10 Years in Prison for Participating in Racketeering Conspiracy, available at <https://www.justice.gov/opa/pr/former-congressman-chaka-fattah-sentenced-10-years-prison-participating-racketeering>

⁴² Indictment filed Jan. 29, 2019, U.S. District Court for the Eastern District of PA Docket No. 2:19-cr-00064.

⁴³ Ex-Philly City Councilmember Bobby Henon sentenced to 3½ years in prison, available at <https://www.inquirer.com/news/live/bobby-henon-sentencing-prison-john-dougherty-philadelphia-20230301.html>

⁴⁴ Philadelphia City Councilman Bobby Henon Pleads Not Guilty To Federal Corruption Charges, available at <https://www.cbsnews.com/philadelphia/news/philadelphia-city-councilman-turns-self-in-following-federal-indictment-involving-john-dougherty-ibew-local-98-union-members/>

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

- E. Please indicate the circumstances under which former District Attorney R. Seth Williams was taken into custody following his March 21, 2017 indictment in U.S. District Court for the Eastern District of PA Case No. 2:17-cr-00137-PD.**

Response: Without reference to any particular matter, the FBI has stated that, in general, determinations of how to make arrests under arrest warrants are made by operational personnel on the ground in accordance with standard policies and procedures.

- F. Please admit or deny that Mr. Houck’s attorney contacted the U.S. Attorney’s office in the Eastern District of PA offering to voluntarily surrender.**

- a. Who decided that Mr. Houck should not be permitted to the voluntary surrender?**

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

- G. Why was Mr. Henon and/or Mr. Fattah – two prominent Democratic politicians – permitted to voluntarily surrender, while Mr. Houck was not?**

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

- H. Under what circumstances are indicted individuals permitted to voluntarily surrender?**

Response: Without reference to any particular matter, the FBI has stated that, in general, determinations of how to make arrests under arrest warrants are made by operational personnel on the ground in accordance with standard policies and procedures.

- I. Does permitting non-violent offenders to voluntarily surrender not comport with your May 20, 2022 Memorandum, which emphasizes de-escalation tactics.**

Response: Without reference to any particular matter, the FBI has stated that, in general, determinations of how to make arrests under arrest warrants are made by operational personnel on the ground in accordance with standard policies and procedures.

- J. Why was a prosecutor from Washington, DC sent to assist with the prosecution of Mr. Houck?**

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

a. Is it because the U.S. Attorney’s Office was not deemed competent to handle this prosecution, which amounted to at most simple assault?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

b. Does it reflect the priority of enforcing the FACE Act against pro-life advocates?

Response: The Civil Rights Division advises as follows:

Without reference to any particular matter, Congress enacted the FACE Act in 1994 in response to an increase in violence toward providers and patients of reproductive health services. Notably, the FACE Act does not distinguish among types of reproductive health services. As the Department states on its website, “The FACE Act is not about abortions. The statute protects all patients, providers, and facilities that provide reproductive health services, including pro-life pregnancy counseling services and any other pregnancy support facility providing reproductive health care.”⁴⁵ Working with state and local law enforcement partners, the Department will investigate and, where supported by the facts and the law, prosecute the use of force, threats of force, or obstruction intended to interfere with reproductive health care. Federal or state civil actions, in certain circumstances, can also be filed by either the government or private individuals to obtain remedies not available through a criminal prosecution.

The Department’s Civil Rights Division, along with U.S. Attorneys’ Offices around the country, prosecutes FACE Act violations. The prosecutions rest on the straightforward proposition—that violence, threats of violence, and obstruction intended to interfere with reproductive health care have no place in the national discussion of reproductive health care. Since the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, the Department has received multiple reports of potentially unlawful conduct directed at pregnancy centers, their staff, and their patients. Federal authorities are investigating these reported incidents and are working to identify the perpetrators. In January 2023, the Department secured indictments against two Florida residents for allegedly spray-painting threats on pregnancy centers in the State. A superseding indictment at the end of March 2023 added two defendants. As in every investigation, the Department will follow the facts and the law wherever they lead and will take appropriate action at the conclusion of these ongoing investigations, which may include prosecution under the FACE Act.

Since the *Dobbs* decision, the Department has met with pro-choice groups and pro-life groups to discuss the protections under the FACE Act. The Department urged them to encourage

⁴⁵ U.S. Dep’t of Just., *Protecting Patients and Health Care Providers* (May 22, 2023), <https://www.justice.gov/crt/protecting-patients-and-health-care-providers>.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

reproductive health care providers, whatever the nature of their services, to report to the FBI any violence or threats of violence they encounter.

K. Is it not true that the Philadelphia District Attorney’s Office declined to prosecute Mr. Houck for the incident charged by the U.S. Attorney’s Office?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

a. Is it not true that the Philadelphia DA could have charged Mr. Houck for assault and/or battery under Pennsylvania law?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

10. On October 17, 2022 date, Congressman Chip Roy sent a letter to DOJ requesting copies of a FOIA request response related to FACE Act prosecutions.⁴⁶

A. Will you turn over the requested FOIA response documents to Congressman Roy?

Response: The Department responded to Representative Roy’s inquiry on December 6, 2022.

B. Please provide me with the statistics on all prosecutions under the FACE Act since its enactment in 1994, including indication of whether the reproductive healthcare facility involved was an abortion provider, or a non-abortion-referring crisis pregnancy center, or of a different nature.

Response: The Civil Rights Division reports that since January 1994, the Department has charged more than 98 cases involving 162 defendants with FACE Act-related violations.

⁴⁶ See Press Release, Chip Roy, House of Representatives, DOJ stonewalls congressional demands for FACE Act prosecution data, (October 26, 2022), <https://roy.house.gov/media/press-releases/doj-stonewalls-congressional-demands-face-act-prosecution-data>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Regulating Gender Transition Procedures for Minors

11. On March 31, 2022, DOJ issued guidance asserting that states and localities could be in violation of a slew of federal anti-discrimination laws (including Section 1557 of the Affordable Care Act, Title IX, and Section 504 of the Rehabilitation Act) should they bar access to "gender-affirming care."

A. Is it your view that states could have no compelling interest in regulating gender transition procedures for minors?

Response: Protecting civil rights was one of the founding purposes of the Justice Department. This remains central to our mission. The Department is committed to protecting the civil and constitutional rights of all Americans, including those of transgender people. The Department is dedicated to protecting the rights of all youth, including transgender youth.

B. Is it not true that your letter of March 31, 2022 suggested that states could lose funding under various federal laws if they regulate gender transition procedures for minors?

Response: Protecting civil rights was one of the founding purposes of the Justice Department. This remains central to our mission. The Department is committed to protecting the civil and constitutional rights of all Americans, including those of transgender people. The Department is dedicated to protecting the rights of all youth, including transgender youth. According to the Civil Rights Division, it wrote to state attorneys general in March 2022 to emphasize that transgender youth, like all individuals, are protected from unlawful discrimination under federal law. These protections come from the due process and equal protection clauses of the Constitution, in addition to federal statutes and regulations.

C. Is Arkansas Act 626 of 2021 unconstitutional or otherwise contrary to federal law? If so, why?

Response: The Department submitted a statement of interest and an amicus brief in the *Brandt v. Rutledge* (now *Brandt v. Griffin*) litigation challenging Act 626 and in the appeal to the Eighth Circuit. Those filings outline the Department's views.

D. If Utah Senate Bill 16 of 2023 unconstitutional or otherwise contrary to federal law? If so, why?

Response: The Department has not publicly addressed this bill, and standard Department policy is not to comment on or confirm the existence of any pending investigations or otherwise discussing our internal deliberative processes. The Department's views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

our legal filings, including those in the *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

E. Is the South Dakota House Bill 1080 of 2023 unconstitutional or otherwise contrary to federal law? If so, why?

Response: The Department has not publicly addressed this bill, and standard Department policy is not to comment on or confirm the existence of any pending investigations or otherwise discussing our internal deliberative processes. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

F. Is the Mississippi House Bill 1124 of 2023 unconstitutional or otherwise contrary to federal law? If so, why??

Response: The Department has not publicly addressed this bill, and standard Department policy is not to comment on or confirm the existence of any pending investigations or otherwise discussing our internal deliberative processes. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

G. Do you agree that some individuals regret decisions made as minors to undergo gender-transition procedures?

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Department will continue to work tirelessly to make real the promise of equal justice under the law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

H. Do you agree that the use of puberty blockers by pre-pubescent children can cause sterilization?

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Department will continue to work tirelessly to make real the promise of equal justice under the

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender people are reflected in our legal filings, including those in the *Brandt v. Rutledge* (now *Brandt v. Griffin*) litigation.

I. Do you agree that the use of puberty blockers by pre-pubescent children can create health risks related to bone-density?

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Department will continue to work tirelessly to make real the promise of equal justice under the law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

G. Do you agree that there exists discord within the American medical community as to the appropriate screening and safeguards prior to the use of gender-transition procedures?⁴⁷

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Department will continue to work tirelessly to make real the promise of equal justice under the law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

J. Are you aware that a recent whistleblower alleges that gender transition procedures at St. Louis Children’s Hospital are “permanently harming” children in “morally and medically appalling” procedures with little oversight?⁴⁸

i. Is DOJ investigating these whistleblower allegations?

⁴⁷ *The Battle Over Gender Therapy*, available at <https://www.nytimes.com/2022/06/15/magazine/gender-therapy.html>.

⁴⁸ *Whistleblower lifts lid on St. Louis kids gender clinic: ‘Morally and medically appalling,’* available at <https://nypost.com/2023/02/09/whistleblower-lifts-lid-on-st-louis-kids-gender-clinic/>.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

Response: As described in Justice Manual § 1-7.400, standard Department policy is not to comment on or confirm the existence of any pending investigations.

K. Are you aware that national health boards in Sweden and Finland that restricted access to puberty suppressants for minors?

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Justice Department will continue to work tirelessly to make real the promise of equal justice under the law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

i. Is it the position of DOJ that similar restrictions enacted in the U.S. would be unconstitutional or otherwise contrary to federal law?

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Department will continue to work tirelessly to make real the promise of equal justice under the law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

L. Could any of the above-referenced facts establish a compelling basis for a state to restrict gender-transition surgeries for minors?

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Department will continue to work tirelessly to make real the promise of equal justice under the law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Requirements of 40 CFR 266.506 (b)(3)

12. Pursuant to report language included in the Consolidated Appropriations Act, 2023 can you provide a detailed explanation of DEA's interaction with stakeholders on how to meet the requirements of 40 CFR 266.506 (b)(3)?

Response: The DEA states as follows: DEA has been engaging and continues to engage with relevant industry stakeholders on this issue. DEA has had one on one with engagement industry members to review their products for controlled substance destruction. In order to continue this important discussion, DEA published an Advance Notice of Proposed Rulemaking to facilitate the receipt of substantive information from industry stakeholders.⁴⁹ DEA is currently drafting this ANPRM and is working to publish it as expeditiously as possible. It is DEA's hope that information provided in response to this notice will assist DEA in identifying additional methods and technology to meet the requirements of federal regulation.

Crime Victims Fund

13. Deposits into the Crime Victims Fund (CVF) have plummeted in recent years. We passed the VOCA Fix to Sustain the Crime Victims Fund Act unanimously in 2021 with the understanding that the decrease in deposits was due primarily to an increased reliance on deferred prosecution and non-prosecution agreements. While the VOCA Fix has increased deposits, comprising two-thirds of deposits in Fiscal Year 2022, overall deposits into the CVF are still substantially lower than their annual average between Fiscal Years 2007 and 2017, before the precipitous drop that began in Fiscal Year 2018. While the Office for Victims of Crime administers VOCA, decisions impacting deposits are not within OVC's purview. These questions should be answered by the components within DOJ whose actions directly impact deposits.

- a. What are the trends and variables that have led to such a substantial decrease in monetary penalties being deposited into the Crime Victims Fund, even after the VOCA Fix? Please address the quantity of cases being both prosecuted and settled, the monetary penalties associated with those cases, changes to DOJ staffing, changes in DOJ enforcement priorities, the impact of the COVID-19 pandemic, changes in DOJ guidance, changes in DOJ practice, and any other changes that have or may have impacted deposits.**

Response: The Criminal Division and Office of Justice Programs advises as follows:

⁴⁹ Controlled Substance Destruction Alternatives to Incineration, 88 Fed. Re. 74379 (proposed Oct. 31, 2023)
<https://www.federalregister.gov/documents/2023/10/31/2023-23984/controlled-substance-destruction-alternatives-to-incineration>

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Providing services and support for victims is a top priority for the Office of Justice Programs (OJP). In FY 2024, the President's Budget requested an obligation cap of \$1.2 billion for victim programs supported by the Crime Victims Fund (CVF). The proposed reduction in FY 2024 seeks to align spending with estimated projections for revenue to protect the balance of the Fund over the long term so that it can continue to serve victims in the years ahead. In recognition of the critical importance of the Fund's programs to support victims of crime, the proposed funding strategy represents the most effective means to maximize funding for the Fund in a sustainable manner.

Additionally, criminal monetary penalties, by their very nature, are difficult to collect. Criminal defendants may be incarcerated or deported, with no assets for making payments on these assessments. According to litigating offices within the Department, the government's ability to collect fines has also been frustrated with some interpretations of 18 U.S.C. § 3572 that require the imposition of a payment schedule at sentencing in every case, rather than requiring such imposition only upon a finding that it is in the interest of justice to do so. These interpretations frustrate the government's efforts to quickly recover penalties from delinquent defendants for deposit into the CVF. As a result of this misinterpretation, minimal payment schedules imposed at sentencing cannot thereafter be changed, except by the court and upon a showing of a substantial change in the defendant's economic circumstances.

The correlation between Fund deposits and criminal investigations is complex, and the amount of deposits into the Fund in a given year are not an indication of the Department's approach to criminal corporate accountability. To the contrary, the Department's dedicated prosecutors and investigators work tirelessly to combat white collar crime committed by individuals and corporations alike. The Office of Justice Programs reports that financial penalties from criminal antitrust violations are the Fund's primary funding source. However, criminal antitrust investigations take time, as the life cycle of a major cartel investigation is typically around five years. The successful prosecution of antitrust cartels may lead to clusters of settlements in a given year as co-conspirators decide to seek resolution around the same time, resulting in the Antitrust Division collecting large criminal fines and penalties some years and limited fines and penalties in other years.

b. What actions is DOJ taking to increase deposits into the Crime Victims Fund, and what more can DOJ do to increase deposits? What barriers exist to increasing deposits?

Response: The Department is grateful for Congress's efforts to pass the VOCA Fix in 2021. According to the Office for Victims of Crime (OVC), since FY 2018, the Crime Victims Fund (CVF) balance has declined by 74 percent and the obligation cap has been lowered. As a result, the allocations for all states and territories have decreased. Since enactment in 2021 through April 2023, nearly \$1 billion was deposited into the CVF from NPAs and DPAs—a direct result of the VOCA Fix and the Department's efforts to ensure maximum deposits into the Fund. When

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

the VOCA Fix passed in 2021, courts were still experiencing delays and recovering from the impacts of the pandemic, resulting in a corresponding delay in many prosecutions are thus delayed. As courts resume normal processes, and cases are tried, the Department anticipates seeing the full effects of the law.

The OVC is the office within the Department responsible for administering the CVF. OVC states that it has met with other offices within the Department, including the offices responsible for the largest contributions to the Fund (i.e., Antitrust Division, Criminal Division, and the Executive Office for U.S. Attorneys) to discuss the Victims of Crime Act, and the resources and support provided to victims stemming from case fines and penalties. OVC has also met with the Attorney General's Advisory Committee of U.S. Attorneys, the Environment Natural Resources Division, the Environmental Protection Agency, and the Executive Office for United States Attorneys on the importance of the Fund and how it affects victim assistance programs. This engagement with U.S. Attorneys will continue regularly to facilitate further understanding and awareness of the Fund.

Additionally, the Department recognizes that keeping the Fund solvent is essential to providing crime victims with compensation and assistance critical for emotional, physical, and financial support in the aftermath of crime. The Department has a robust training curriculum that emphasizes the availability of the Fund as a repository for fines, amounts paid pursuant to DPAs and NPAs, and other criminal monetary penalties. In addition to trainings and guidance set forth in the Justice Manual, the Department has published a number of resource materials to assist prosecutors in ensuring that asset recovery is taken into consideration at every stage of a criminal prosecution. Moreover, the Department actively informs prosecutors of any legislative changes which impact the Fund. For example, the Department immediately implemented and educated prosecutors on the changes made by the VOCA Fix Act.

c. Are there other authorizing changes Congress should consider to increase deposits into the Crime Victims Fund?

Response: The Department would welcome the opportunity to work with Congress to discuss other authorizing changes Congress should consider to increase deposits into the Crime Victims Fund.

Illegal Gambling

14. Illegal sports books and casinos are readily accessible on the internet to every American, including minors. Access through the dark web is not required to find these sites. Instead, they come up at the top of search results.

a. What is DOJ's level of concern about illegal sports books and casinos, and what is it doing to address the issue?

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

Response: Criminal Division advises as follows: It continues to be the policy of the Department to prosecute internet gambling companies that operate in violation of federal law. This includes enforcing laws that protect our financial systems, such as bank fraud and money laundering. Further, the Department continues to prioritize the most egregious conduct, including conduct tied to organized crime, or conduct in which gambling activity is part of a larger criminal scheme. In compliance with state laws that prohibit gambling by minors, online gambling sites generally require electronic visitors or site users to attest to their status as an adult before being permitted entry to the site. Where gambling businesses violate state laws prohibiting wagering by minors, which in turn becomes a violation of the federal definition of “illegal gambling business,” it is the Department’s policy to prosecute, where appropriate, such businesses for conducting illegal gambling businesses by knowingly allowing minors to gamble, whether on-line or in-person.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

SENATOR CHARLES GRASSLEY
Questions for the Record
“Oversight of the Department of Justice”
March 8, 2023

1. During the hearing, I asked you about whether U.S. Attorney Weiss is truly independent from politically appointed Justice Department officials in the Hunter Biden criminal matter. Specifically, I asked about his ability to make charging decisions without getting permission from President Biden’s political appointees. In response, you stated that U.S. Attorney Weiss has been “advised that he has full authority to make those kind [sic] of referrals that you’re talking about or to bring the cases in other jurisdictions if he feels it’s necessary. And I will assure that if he does he will be able to do that.” You also stated that U.S. Attorney Weiss has “full authority” to bring a case in another jurisdiction and “he’s been advised that he is not to be denied anything that he needs.”¹

With respect to the Hunter Biden criminal matter, please answer the following:

- a. Has the IRS recommended criminal charges against Hunter Biden? If so, when?
- b. Was an IRS Special Agent’s Report issued recommending criminal charges against Hunter Biden? If so, when and is the Justice Department involved?
- c. Did the Justice Department Tax Division recommend criminal charges against Hunter Biden? If so, when and was the recommendation accepted?
- d. Has the Justice Department ever decided that certain investigative steps could not be taken by U.S. Attorney Weiss?
- e. Were investigative steps, such as the execution of search warrants, service of subpoenas and/or interviews of witnesses or subjects proposed by investigative agencies but denied by the Justice Department?
- f. Has the Justice Department denied a request for the use of grand jury subpoenas?
- g. Procedurally, has U.S. Attorney Weiss’ office had sole authority on the issuance and timing of service of grand jury subpoenas or have there been occasions where Justice Department Tax Division personnel have asserted control over the process?
- h. Has the Justice Department Tax Division approved, declined or given discretion to U.S. Attorney Weiss’ office to initiate criminal proceedings against Hunter Biden?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

- i. **Has the Justice Department denied an interview of Hunter Biden by IRS agents?**
- j. **Were investigators' questions intended for subjects or witnesses limited in topic and scope to prevent questions related to President Biden?**

Response to a–j: Special Counsel Davis Weiss was appointed on August 11, 2023, and provided a transcribed interview to the House Judiciary Committee on November 7, 2023.

Consistent with the Special Counsel regulations, at the conclusion of Mr. Weiss' work, he will provide the Attorney General with a report explaining the prosecution or declination decisions reached by him. As with each Special Counsel, who has served since the Attorney General has taken office, the Attorney General is committed to making as much of the Special Counsel's report public as possible, consistent with legal requirements and Department policy.⁵⁰

- 2. **Since 2016, how many case opening requests did the Justice Department Public Integrity Section send to the FBI's Washington Field Office? Of those, how many targeted Republicans? Taxpayer dollars appropriated by Congress paid for those decisions, will you commit to producing that data to the committee?**

Response: The Department does not track the political affiliation of individuals investigated. It is Department policy that partisan politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges.

- 3. **Since August last year, I've sent you three letters based on protected whistleblower disclosures about political bias infecting Justice Department and FBI decision-making.² I've also sent you a letter based on whistleblower disclosures about sexual misconduct by Department officials.³ The Department hasn't challenged the accuracy of those disclosures. Accordingly, why haven't you provided me responsive letters and document productions?**

Response: The Department is committed to cooperating with information requests from Congress, consistent with Executive Branch confidentiality interests. On November 25, 2022, the FBI responded to your several letters regarding allegations of political bias within the FBI.

- 4. **As you are aware, a number of whistleblowers have alleged to my office that the FBI gave preferential treatment to the Biden family by shutting down investigative**

⁵⁰See Speech, U.S. Dep't of Just., Attorney General Merrick B. Garland Delivers a Statement (Aug. 11, 2023), <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-statement>

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

activity and sources with respect to potentially criminal information on Hunter Biden.⁴

First, it's been alleged that the FBI developed information in 2020 about Hunter Biden's criminal financial and related activity. It is further alleged that in August 2020, FBI Supervisory Intelligence Analyst Brian Auten opened an assessment which was used by a FBI Headquarters ("FBI HQ") team to improperly discredit negative Hunter Biden information as disinformation and caused investigative activity to cease. Based on allegations, verified and verifiable derogatory information on Hunter Biden was falsely labeled as disinformation.

Importantly, it's been alleged to my office that Mr. Auten's assessment was opened in August 2020, which is the same month that Senator Johnson and I received an unsolicited and unnecessary briefing from the FBI that purportedly related to our Biden investigation and a briefing for which the contents were later leaked in order to paint the investigation in a false light.

Second, it has been alleged that in September 2020, investigators from the same FBI HQ team were in communication with FBI agents responsible for the Hunter Biden information targeted by Mr. Auten's assessment. The FBI HQ team's investigators placed their findings with respect to whether reporting was disinformation in a restricted access sub-file reviewable only by the particular agents responsible for uncovering the specific information. This is problematic because it does not allow for proper oversight and opens the door to improper influence.

Third, in October 2020, an avenue of additional derogatory Hunter Biden reporting was ordered closed at the direction of ASAC Thibault. My office has been made aware that FBI agents responsible for this information were interviewed by the FBI HQ team in furtherance of Mr. Auten's assessment. It's been alleged that the FBI HQ team suggested to the FBI agents that the information was at risk of disinformation; however, according to allegations, all of the reporting was either verified or verifiable via criminal search warrants. In addition, ASAC Thibault allegedly ordered the matter closed without providing a valid reason as required by FBI guidelines. Despite the matter being closed in such a way that the investigative avenue might be opened later, it's alleged that FBI officials, including ASAC Thibault, subsequently attempted to improperly mark the matter in FBI systems so that it could not be opened in the future. As Attorney General, you oversee the FBI and have an obligation to the country to take these allegations seriously, immediately investigate, and take steps to institute fixes to these and other matters before you. Please provide and answer the following:

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

- a. All leads sent to the Washington Field Office (WFO) that were under the purview of ASAC Thibault that were ordered closed by ASAC Thibault and/or denied for opening by the Justice Department's Public Integrity Section.
- b. All opened and closed cases initiated by the WFO that were under the purview of ASAC Thibault that were ordered closed by ASAC Thibault and/or denied for opening by the Justice Department's Public Integrity Section.
- c. Does the Justice Department have a criteria that it uses to evaluate whether information is or isn't disinformation? If so, what is that criteria?
- d. With respect to the August 2020 FBI briefing given to Senator Johnson and me:
 - i. A copy of the FBI 302 for the briefing;
 - ii. All intelligence reporting, products, and analysis that formed the basis of the briefing;
 - iii. The name(s) of the person(s) who recommended that Senator Johnson and I be briefed;
 - iv. A description of the process for deciding to brief us; and
 - v. All records, including emails, relating to the briefing.

Response to a–d: The FBI responded to your requests regarding allegations of political bias within the FBI's Washington Field Office on November 25, 2022. The Department and FBI responded to your questions about the August 2020 briefing on other occasions, including August 17, 2020; April 30, 2021; June 11, 2021; and November 29, 2022.

- 5. On March 28, 2022, March 29, 2022, and April 5, 2022, Senator Johnson and I gave speeches on the Senate floor introducing bank records relating to Hunter Biden's and James Biden's financial connections to the communist Chinese regime.⁶ Based on reports of the scope of Mr. Weiss's investigation, these bank records are relevant to his work. It's unclear what records DOJ and FBI maintain with respect to Hunter and James Biden's financial associations with the communist Chinese government. Moreover, it's unclear whether the records that DOJ and FBI have in their possession with respect to Hunter and James Biden have been shared with Mr. Weiss.
 - a. With respect to the records that the Justice Department and FBI maintain on Hunter Biden and James Biden and their potential criminal conduct and affiliations with foreign governments and persons, has that information,

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

including derogatory information, been shared with Mr. Weiss? If not, why not?

- b. Does the Justice Department or FBI maintain records from Wells Fargo, USAA, Bank of America, TD Bank, JPMorgan Chase, PNC, Morgan Stanley, Citibank, Bank of New York Mellon, Bank of China and First National Bank of Omaha relating to Hunter Biden, James Biden, Sara Biden, John R. Walker, Eric Schwerin, Devon Archer and corporate entities linked to them, including but not limited to, Hudson West III and the Lion Hall Group? If not, why not?**

Response to a–b: These matters are under Special Counsel David Weiss, who was appointed on August 11, 2023. He provided a transcribed interview to the House Judiciary Committee on November 7, 2023.

Consistent with the Special Counsel regulations, at the conclusion of Mr. Weiss’ work, he will provide the Attorney General with a report explaining the prosecution or declination decisions reached by him. As with each Special Counsel who has served since the Attorney General has taken office, the Attorney General is committed to making as much of the Special Counsel’s report public as possible, consistent with legal requirements and Department policy.⁵¹

- 6. On January 19, 2021, then-President Trump issued a memorandum to the Attorney General, the Director of National Intelligence and the Director of the Central Intelligence Agency directing them to declassify certain Crossfire Hurricane records for public dissemination. On February 25, 2021, Senator Johnson and I requested an update from the Justice Department with respect to when a full and complete set of declassified records would be provided to Congress.**

Since then, our respective staffs have had countless emails and phone calls requesting updates, to which the Department has consistently failed to provide any substantive response. Indeed, to-date, the Justice Department has not produced a single declassified record to Congress and the American people. What role does the Justice Department have in producing the declassified Crossfire Hurricane records to Congress? What steps have you taken to ensure the records are produced to Congress?

Response: According to the Office of Legislative Affairs, the Department provided related materials to your office on January 20, 2022. The Office of Legislative Affairs is available to discuss this issue further with your office.

⁵¹See Speech, U.S. Dep’t of Just., Attorney General Merrick B. Garland Delivers a Statement (Aug. 11, 2023) <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-statement>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

7. Has Special Counsel Durham submitted a report of his investigation to the Justice Department? If so, when will the report be made public without redactions?

Response: On Friday, May 12, 2023, Mr. Durham submitted a 306-page unclassified report "in a form that will permit public dissemination," consistent with Attorney General Barr's October 19, 2019, order appointing Mr. Durham Special Counsel, and a 29-page classified annex. On Monday, May 15, 2023, the Attorney General released Mr. Durham's report in full, without any additions, redactions, or other modifications.

8. Does the Justice Department have a specific policy regarding the use of materials and information related to U.S. citizens who reside in the United States provided by foreign governments, including the fruits of surveillance carried out by a foreign state's intelligence services?

Response: The Attorney General's Guidelines for Domestic FBI Operations and the FBI's Domestic Investigations and Operations Guide (updated September 17, 2021) contain policies that apply to the use of information provided by foreign governments and how information concerning U.S. persons is used, retained, and disseminated.

9. In August 2022, I wrote a letter with Sens. Cornyn, Cotton and Cruz asking about the Brookings Institution's potential obligation to register as a foreign agent under the Foreign Agent's Registration Act.⁵² To date, the Justice Department has not provided a substantive response to our inquiry. Did the Justice Department ever formally investigate the conduct of the Brookings Institution related to its relationship with the State of Qatar? If so, what is the status of the investigation? If not, why not?

Response: As explained in the Department's response, dated May 1, 2023, to your August 2022 letter, longstanding policy and practice of the Department prevents us from confirming the existence of, or describing the nature of, any investigation or potential other actions the Department might take, such as through the issuance of a letter of inquiry or a letter of determination in the context of the Foreign Agents Registration Act. Relatedly, the Department cannot confirm whether a private entity has sought an advisory opinion on whether it has an obligation to register under FARA because the Department protects the identity and confidential business information contained in such requests to encourage voluntary compliance with FARA.

⁵² <https://www.grassley.senate.gov/news/news-releases/senators-push-doi-on-fara-compliance-of-brookings-institution>

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

- 10. According to the Justice Department, it determined that Al Jazeera Media Network is “an agent of the Government of Qatar” and ordered its social media subsidiary unit, AJ+, to register under the Foreign Agents Registration Act.⁵³ Why has the Justice Department not required Al Jazeera Media Network or AJ+ to register under FARA?**

Response: The National Security Division advises as follows: On September 14, 2020, the Department sent AJ+ a letter outlining its registration obligation under FARA. On May 9, 2022, the Department withdrew the September 14, 2020, letter. The Department’s withdrawal was based on its assessment of the information about AJ+ available to it at that time.

- 11. The False Claims Act has been the government’s best tool to fight fraud against the government and recover taxpayer dollars. Earlier this year, the Department announced that in Fiscal Year 2022, the False Claims Act was responsible for recovering \$2.2 billion lost to fraud. Since my amendments to modernize and strengthen the law were enacted in 1986, more than \$72 billion has been recovered through False Claims Act cases, and it likely has saved billions more in taxpayer dollars by deterring would be fraudsters.**

Whistleblowers also play a key role in the False Claims Act’s success. The law’s *qui tam* provision allows whistleblowers to root out and expose fraudulent and abusive uses of taxpayer dollars by bringing lawsuits against alleged fraudsters on behalf of the government and share in any recoveries. However, the False Claims Act is constantly under attack by those who seek to weaken its provisions and make it harder for the government to recover taxpayer dollars subject to fraud. What effect would a weakened False Claims Act have on the Department’s ability to not only hold fraudsters accountable, but to deter would be fraudsters from defrauding the government?

Response: The False Claims Act is central to the Department’s ability to protect federal programs from fraud and abuse. The Department vigorously investigates and pursues cases under the False Claims Act and, according to the Civil Division, in the fiscal year ending September 30, 2022, obtained more than \$2.2 billion in settlements and judgments from civil cases involving fraud and false claims against the government. A weakening of this law would be expected to reduce the amounts the Department is able to reclaim on behalf of the government and the taxpayers and weaken general deterrence of those who seek to defraud the federal government.

⁵³ <https://www.grassley.senate.gov/news/news-releases/qatari-backed-media-still-not-registered-under-foreign-agents-law-despite-justice-department-determination-senators-want-to-know-why>

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

12. On February 23, 2023, the Department of Justice Office of the Inspector General (DOJ- OIG) released a report evaluating the Federal Bureau of Prisons' (BOP) efforts to address sexual harassment and sexual assaults committed by inmates toward staff.⁵⁴ The DOJ- OIG report found that BOP had inadequate data on inmate-on-staff sexual harassment, was not consistently identifying the gender of the victims, and did not identify the specific nature of inmates' prohibited conducted against staff. The DOJ-OIG reported that "BOP's inability to fully identify and effectively mitigate inmate-on-staff sexual harassment has negative effects on both the BOP and its staff and can lead to unsafe work environments."⁵⁵

As part of this evaluation, the DOJ-OIG initiated a survey and conducted interviews of BOP personnel across the country to assess the prevalence and effects of inmate-on-staff sexual harassment and BOP's efforts to address this inmate misconduct.⁵⁶ According to the survey, 40% of respondents said that they had been sexually harassed by an inmate since being employed by BOP, and of those 69% were women.⁵⁷ The DOJ-OIG reported that through their interviews with BOP staff, they found that "inmate-on-staff sexual harassment occurs across BOP institutions and BOP staff believe that it particularly affects employees who are women" which is further evidenced by the results of the survey.⁵⁸

The DOJ-OIG made nine recommendations for BOP to fully ascertain the prevalence and scope of inmate-on-staff sexual harassment, to mitigate and address inmate-on-staff sexual harassment, and to improve staff training on inmate-on-staff sexual harassment.

- a. What actions has the Department taken to ensure that BOP is implementing the recommendations made in the February 23, 2023, DOJ-OIG report?

Response: BOP advises as follows:

BOP is managing these incidents through early correctional intervention and the consistent application of the discipline process. Incidences of sexual misconduct toward employees are dealt with as violations of the code of conduct and an incident report is generated by the local employees and the inmate discipline process will follow. Additionally, these incidents are

⁵⁴ U.S. Dep't of Just., Office of the Inspector General, Evaluation of the Federal Bureau of Prisons' Efforts to Address Sexual Harassment and Sexual Assault Committed by Inmates Toward Staff, (February 23, 2023), <https://oig.justice.gov/reports/evaluation-federal-bureau-prisons-efforts-address-sexual-harassment-and-sexual-assault>.

⁵⁵ *Id.* at i.

⁵⁶ *Id.* at 34.

⁵⁷ *Id.* at 18.

⁵⁸ *Id.* at i.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

referred to the local United States Attorney's Office for prosecution where appropriate. BOP provides training for all employees on reporting incidents, writing clear incident reports, and mitigating inmate-on-staff sexual harassment. Institutional controls can also be utilized, on a facility-by-facility basis, to prevent inmate-on-staff sexual harassment.

BOP is currently working to add specific gender codes to incident reports relating to sexual offenses for inmate-on-staff incidents. BOP has issued a notice of proposed rulemaking wherein all sexual acts will be combined into a single 100 series level offense, which reflect prohibited acts at the greatest severity level. The Disciplinary Hearing Officer will be authorized to key this Additional Tracking Identifier (ATI) for any guilty findings for all sexual acts.

Additionally, training on incident report codes and elements of offenses was added to inmate discipline training for Lieutenants, Captains, Investigative Intelligence staff, Case Managers, and Unit Managers. Once those individuals are trained, they will then provide the training at their respective institutions to their assigned staff.

As recommended by the Office of Inspector General in recommendation 5, BOP is organizing a multi-disciplinary team to assess BOP institutions to determine which corrective actions from the class action settlements concerning FCC Coleman and FCC Victorville should be implemented Bureau-wide or in additional institutions.

BOP intends to include a training needs assessment as part of the comprehensive mitigation strategy and will ensure its training addresses resources available to staff who witness or experience inmate-on-staff sexual harassment once updated.

b. What actions has the Department taken to ensure that BOP institutions across the nation are addressing inmate-on-staff sexual harassment allegations and punishing inmates who engage in this misconduct?

Response: BOP states as follows: BOP is managing these incidents through early correctional intervention and the consistent application of the discipline process. Incidences of sexual misconduct toward employees are dealt with as violations of the code of conduct and an incident report is generated by the local employees and the inmate discipline process will follow. Additionally, these incidents are referred to the local United States Attorney's Office for prosecution where appropriate. BOP provides training for all employees on reporting incidents, writing clear incident reports, and mitigating inmate-on-staff sexual harassment. Institutional controls can also be utilized, on a facility-by-facility basis, to prevent inmate-on-staff sexual harassment.

c. In Recommendation 1 of the report, the DOJ-OIG recommended that BOP add a field to their Discipline and Administration Reintegration Tracking System (DARTS) to specifically identify the prohibited conduct engaged in

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

by an inmate to better track inmate-on-staff sexual harassment; however, BOP responded that only their two most serious categories of offenses (100 and 200 level) require additional identifiers and "lesser" offenses (300-400) do not, even though "lesser" offenses include sexual harassment offenses. Does the Department agree with BOP's assertion that "lesser" inmate-on-staff sexual harassment specific incidents should not be tracked through DARTS? Please explain. What guidance has the Department provided or plans to provide to BOP on tracking 300 and 400 level incidents of inmate-on-staff sexual harassment?

Response: BOP advises as follows: BOP is currently working to add specific gender codes to incident reports relating to sexual offenses for inmate-on-staff incidents. BOP has issued a notice of proposed rulemaking wherein all sexual acts will be combined into a single 100 series level offense, which reflect prohibited acts at the greatest severity level. The Disciplinary Hearing Officers will be authorized to key this Additional Tracking Identifier (ATI) for any guilty findings for all sexual acts.

d. The working group established by Deputy Attorney General Lisa Monaco to review the Department's approach to instances of sexual misconduct by BOP employees released a report on November 2, 2022.⁵⁹ The report stated that "BOP should address sexual harassment perpetrated by inmates against staff" and "impose meaningful consequences for such conduct."⁶⁰ What guidance has the Department provided to BOP staff to address this part of the working group's recommendation?

Response: BOP states as follows:

BOP's Director sent out a Bureau-wide message reiterating the gravity of sexual misconduct and the zero-tolerance policy for sexual abuse of any kind. The Department continually discusses ways to prioritize investigations and prosecutions to ensure the safety of staff and the individuals in custody. BOP has also prioritized this work and appointed a point of contact to coordinate BOP's ongoing work with that of the Advisory Group.

BOP is managing these incidents through early correctional intervention and the consistent application of the discipline process. Incidences of sexual misconduct toward employees are dealt with as violations of the code of conduct and an incident report is generated by the local employees and the inmate discipline process will follow. Additionally, these incidents are

⁵⁹ Principal Associate Deputy Attorney General Working Group of DOJ Components, *Report and Recommendations Concerning the Department of Justice's Response to Sexual Misconduct by Employees of the Federal Bureau of Prisons*, U.S. Dep't of Just., (November 2, 2022), <https://www.fbi.gov/newsroom/publications/2022/11/02/sexual-misconduct-report>.

⁶⁰ *Id.* at 8.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

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Additionally, training on incident report codes and elements of offenses was added to inmate discipline training for Lieutenants, Captains, Investigative Intelligence staff, Case Managers, and Unit Managers. Once those individuals are trained, they will then provide the training at their respective institutions to their assigned staff.

As recommended by the Office of Inspector General in recommendation five of the report, BOP is organizing a multi-disciplinary team to assess BOP institutions to determine which corrective actions from the class action settlements concerning FCC Coleman and FCC Victorville should be implemented Bureau-wide or in additional institutions.

BOP intends to include a training needs assessment as part of the comprehensive mitigation strategy and will ensure its training addresses resources available to staff who witness or experience inmate-on-staff sexual harassment once updated.

13. During COVID, we saw farmers and ranchers receive low payments from the Big 4 packers while families across America faced record high rising meat prices. It's critical for the Justice Department to coordinate with the Department of Agriculture in its activities on agriculture antitrust matters.

a. How is the Justice Department working with the Department of Agriculture to enforce the Packers and Stockyards Act?

Response: The Antitrust Division advises as follows: At the beginning of 2022, the Departments of Justice and Agriculture issued a joint statement reaffirming their commitment to enforcing federal competition laws, including the Packers and Stockyards Act. Since issuing that statement, the Department has filed a lawsuit and proposed consent decrees against several poultry processors—including Cargill, Sanderson Farms, Wayne Farms, and George's—to address deceptive practices that harm chicken growers and to end a long-running conspiracy to suppress worker pay at processing plants. Under the terms of the consent decrees, a court-appointed monitor has broad authority to ensure that the processors comply with the antitrust laws. The

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

processors have also agreed not to share competitively sensitive information about plant workers' pay and committed to pay \$90 million to poultry workers. The Department will continue to collaborate with the Department of Agriculture to protect competition for the benefit of farmers, ranchers, growers, workers, and American families. The Antitrust Division and Department of Agriculture also launched farmerfairness.gov, a new online tool that allows farmers and ranchers to anonymously report potentially unfair and anticompetitive practices in the livestock and poultry sectors.

b. Are there any recommendations you'd make to strengthen your work with the Department of Agriculture?

Response: The Antitrust Division advises as follows: Fairness for farmers, ranchers, and growers is a key priority for the Department. For example, the Department has taken initial steps towards dismantling the tournament system. Our relationship with the Department of Agriculture remains strong and the Department has made active efforts to further strengthen it. For example, the Department signed an interagency memorandum of understanding with the USDA in 2022, building on our 1999 memorandum of understanding. The Department is committed to continue working with the USDA to increase one another's ability to investigate and enforce the Packers and Stockyards Act and other authorities that promote fair and competitive agricultural markets.

14. It's important that foreign antitrust agencies be transparent in their operations, ensure there is due process and procedural fairness, and refrain from industrial policy and extraterritorial application of their laws.

a. Does the Justice Department support advance U.S. core interests of due process and procedural fairness in competition investigations abroad?

Response: The Department believes due process and procedural fairness in the application of laws, domestically and internationally, is vitally important.

15. The Justice Department Antitrust Division has indicated that they will be bringing criminal cases under Section 2. However, there is concern that the Antitrust Division has not provided any guidance about such criminal enforcement.

b. When will the Justice Department Antitrust Division provide guidance about criminal enforcement under Section 2?

Response: Assistant Attorney General Jonathan Kanter of the Antitrust Division has explained that "if the facts and the law, and a careful analysis of Department policies guiding our use of prosecutorial discretion, warrant a criminal Section 2 charge, the Division will not hesitate to

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

enforce the law.”⁶¹ He has explained further that Section 2 “prohibits monopolization,” and that the Department will, in enforcing the law, “assess conduct on its merits, and based on the entire course of conduct involved,” and will not limit its inquiry into conduct that gives rise to monopolies, but will also challenge “[m]onopoly maintenance” through conduct that “helps to prevent the erosion of monopoly positions and thereby harms competition.”⁶² He has reiterated that the Division has an affirmative statutory duty to challenge conduct that suppresses or destroys competition, and that Section 2 was designed to prohibit this conduct.

16. At the March 1, 2023 oversight hearing, I asked whether the Department of Justice still considered Nicolás Maduro a fugitive of U.S. justice and, if so, if you would commit to diligently pursuing his arrest. You responded that you did not know what his current status was and would answer in writing.

a. Please provide that response.

b. If the Department of Justice is no longer pursuing Nicolás Maduro’s arrest, please explain why.

Response to a–b: The Department publicly announced the indictment of Maduro in 2020.⁶³ The Department has not dismissed or resolved those charges.

17. In your October 27, 2021 responses to questions for the record, you stated that “in March 2021, the Department formed a dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judges, and Members of Congress[.]” On August 3, 2022, I told Assistant Attorney General Polite that neither my staff nor the Congressional Research Services had been able to confirm the existence of this task force and asked the Department of Justice for more information. AAG Polite testified that he would “get more details to [us.]” On August 15, 2022, I followed-up with a letter to you informing you that it doesn’t look like this task force exists. Since then, my staff has followed up with yours, multiple times, and, incredibly, we still have not received any information on this task force.

⁶¹ See Speech, U.S. Dep’t of Just., Assistant Attorney General Jonathan Kanter Delivers Opening Remarks at 2022 Spring Enforcers Summit (April 4, 2022) <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-opening-remarks-2022-spring-enforcers>.

⁶² See Speech, U.S. Dep’t of Just., Assistant Attorney General Jonathan Kanter Delivers Keynote at the University of Chicago Stigler Center (April 21, 2022) <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-keynote-university-chicago-stigler>.

⁶³ See Press Release, U.S. Dep’t of Just., Nicolás Maduro Moros and 14 Current and Former Venezuelan Officials Charged with Narco-Terrorism, Corruption, Drug Trafficking and Other Criminal Charges (Mar. 26, 2022), <https://www.justice.gov/opa/pr/nicol-s-maduro-moros-and-14-current-and-former-venezuelan-officials-charged-narco-terrorism>.

Questions for the Record
Senate Committee on Judiciary
"Oversight of the United States
Department of Justice"
March 1, 2023

- a. Does this task force exist?
- b. If not, will you create it and when can we expect its creation?
- c. If the task force does exist, please provide the number of matters it is investigating and explain the resources the task force has.

Response a–b: In March 2021, the Department formed a dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judges, and Members of Congress to assess the most prevalent threats and implement measures to further strengthen the Department's capacity to deter and combat those threats. Composed of components across the Department, the Task Force promulgated helpful recommendations. For example, one of the Task Force's recommendation was the creation of a permanent Judicial Security working group to discuss matters of judicial security. That group has been established and includes leadership from the U.S. Marshals Service (USMS), the Administrative Office of the U.S. Courts, the Judicial Conference, as well as the Deputy Attorney General's Office. It meets on a regular basis to address these issues.

18. In your October 27, 2021 responses to questions for the record, you mentioned that the Department of Justice recently created "Joint Task Force Alpha, a law enforcement task force that is marshaling the investigative and prosecutorial resources of the Department of Justice...to enhance U.S. enforcement efforts against the most prolific and dangerous human smuggling and trafficking groups operating in Mexico and the Northern Triangle countries of Guatemala, El Salvador, and Honduras."

- a. After two years of work, what results, if any, has this task force yielded?

Response: The Joint Task Force Alpha advises as follows:

On June 7, 2021, Attorney General Garland announced the establishment of Joint Task Force Alpha (JTFA), a law enforcement task force intended to marshal the investigative and prosecutorial resources of the Justice Department, in partnership with the Department of Homeland Security (DHS), to enhance U.S. enforcement efforts against the most prolific and dangerous human smuggling and trafficking groups operating in Mexico and the Northern Triangle countries of Guatemala, El Salvador, and Honduras. JTFA's goal is to disrupt and dismantle human smuggling and trafficking networks operating in those countries, with a focus on networks that endanger, abuse, or exploit migrants, present national security risks, or engage in other types of transnational organized crime.

JTFA consists of federal prosecutors from U.S. Attorneys' Offices along the Southwest Border (District of Arizona, Southern District of California, Southern District of Texas, and Western

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

District of Texas), the Criminal and Civil Rights Divisions, the FBI, the Drug Enforcement Agency, and the Organized Crime Drug Enforcement Task Forces (OCDETF), which maximizes coordination of multi-agency, prosecutor-led investigations along with law enforcement agents and analysts from DHS's Immigration and Customs Enforcement and U.S. Customs and Border Protection. JTFA also works closely with Operation Sentinel, a DHS operation focused on countering transnational criminal organizations affiliated with migrant smuggling.

Since it was formed, JTFA has made significant progress in combating smuggling networks. JTFA has targeted organizations that have the most impact on the United States and coordinated significant smuggling indictments and extradition efforts in U.S. Attorneys' Offices across the country. According to the Task Force, to date, JTFA's work with its partners has resulted in criminal charges and over 260 domestic and international arrests of leaders, organizers, and significant facilitators of human smuggling activities; 150 convictions, many with significant prison sentences; the seizure of drugs, firearms, ammunition and vehicles; and substantial asset forfeiture. For example:

- On September 13, 2022, the Justice Department announced that eight alleged human smugglers were arrested and indicted through a JTFA operation. According to the indictment, the alleged smugglers transported migrants into and within the United States in "deplorable conditions for profit." The migrants were allegedly citizens of Mexico, Guatemala, and Colombia.⁶⁴
- On March 16, 2023, at a JTFA meeting in El Paso, Texas, the Justice Department and DHS announced the first ever extraditions from Guatemala to the United States on charges of human smuggling resulting in death, and the first Guatemalan human smuggling extraditions to the United States of any kind in nearly five years. This announcement followed extensive coordination and cooperation between U.S. and Guatemalan law enforcement authorities that led to the indictment and arrest of four leaders of a smuggling operation, as well as the apprehension of 15 additional targets in Guatemala, in August 2022. Pursuant to an extradition request, Guatemalan authorities ordered the extradition of the leaders to the United States to face charges for their alleged roles in the offense. The indictments and extraditions, as well as the assistance provided by U.S. authorities to Guatemalan law enforcement, were coordinated under JTFA.⁶⁵ On November 1, 2023, the Justice Department announced

⁶⁴ See Press Release, U.S. Dep't of Just., Eight Indicted in Joint Task Force Alpha Investigation and Arrested as Part of Takedown of Prolific Human Smuggling Network (Sept. 13, 2022), <https://www.justice.gov/opa/pr/eight-indicted-joint-task-force-alpha-investigation-and-arrested-part-takedown-prolific-human>.

⁶⁵ See Press Release, U.S. Dep't Just., Justice Department Announces Historic Guatemalan Human Smuggling Extraditions at Joint Task Force Alpha Summit (Mar. 16, 2023), <https://www.justice.gov/opa/pr/justice-department-announces-historic-guatemalan-human-smuggling-extraditions-joint-task>.

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

that JFTA had secured significant sentences—ranging from 10 years and one month in prison to 30 years in prison—for these four leaders of a smuggling operation.⁶⁶

- On June 27, 2023, the Justice Department announced the indictment and arrest of four additional individuals involved in allegedly smuggling migrants in a tractor-trailer near San Antonio in June 2022, leading to the deaths of 53 migrants.⁶⁷ (The driver and another individual were charged in June 2022 right after the discovery of the migrants.) As of February 2024, all four defendants have pleaded guilty.

19. In the same response, you also noted a new Anticorruption Task Force fighting corruption in El Salvador, Guatemala, and Honduras. On September 15, 2022, President Biden identified these three countries, among others, as major drug transit or major illicit drug producing countries.

a. What results has the Anticorruption Task Force produced?

Response: The Anticorruption Task Force advises as follows:

In June 2021, Attorney General Garland announced the establishment of the Northern Triangle Anticorruption Task Force to further the Department’s commitment to combat official corruption in Central America, and in particular in El Salvador, Guatemala and Honduras. The Task Force is part of the Department’s engagement in the region to address a cause of migration. In establishing the Task Force, the Department officials noted that corruption undermines government services and the rule of law, including critical institutions that provide health, education, and other services to those most in need. Corruption also undermines investment incentives necessary to generate employment. The Anticorruption Task Force is composed of representatives from each of the following Criminal Division components:

- The Foreign Corrupt Practices Act (FCPA) Unit of the Criminal Division’s Fraud Section, which enforces the U.S. criminal statute that generally prohibits certain persons — including U.S. companies and individuals, foreign companies whose shares trade on a U.S. stock exchange, and non-U.S. persons who engage in corrupt acts in the United States — from paying bribes overseas to obtain or retain business;

⁶⁶ See Press Release, U.S. Dep’t of Just., Four Defendants Extradited from Guatemala Sentenced for Roles in Deadly International Human Smuggling Conspiracy (Nov. 1, 2023), <https://www.justice.gov/opa/pr/four-defendants-extradited-guatemala-sentenced-roles-deadly-international-human-smuggling>.

⁶⁷ See Press Release, U.S. Dep’t of Just., Four Arrested for Tractor-Trailer Smuggling Incident that Resulted in 53 Deaths (June 27, 2023), <https://www.justice.gov/opa/pr/four-arrested-tractor-trailer-smuggling-incident-resulted-53-deaths>.

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

- The Kleptocracy Asset Recovery Initiative in the International Unit of the Money Laundering and Asset Recovery Section (MLARS), which is focused on recovering assets linked to foreign corruption and prosecuting related money laundering, especially when corruption proceeds are found in the United States or were obtained or transferred through abuse of the U.S. financial system.
- The Narcotic and Dangerous Drug Section (NDDS), which enforces federal narcotics laws against the manufacturing, importation, and distribution of illegal drugs into the United States and laundering of profits or of funds to promote or facilitate narcotics trafficking, including corruption resulting from narcotics trafficking (“narco-corruption”). NDDS has developed a focused practice in the Northern Triangle Region, and particularly in Guatemala to disrupt the command and control of the most prolific drug trafficking organizations where U.S. law provides extraterritorial jurisdiction over their unlawful conduct.
- The work of the Task Force is also supported by special agents of the FBI International Corruption Unit, the U.S. Drug Enforcement Administration (DEA), and the U.S. Department of Homeland Security (DHS). Allegations are investigated by these law enforcement agencies, working in cooperation with the legal attachés and country representatives at our U.S. embassies, as well as with the Department’s Office of International Affairs (OIA).

To further the work of the Task Force, the Department has taken the following steps, among others:

- The FBI created and administers a tip line for receiving tips in Spanish and English related to potential violations of U.S. laws involving corruption:

In October 2021, the Department announced the establishment of a tip line administered by the FBI in El Salvador so that anyone with information about corrupt actors in El Salvador, Guatemala, and Honduras who are violating U.S. laws or moving proceeds of their crimes in or through the United States may report the conduct in Spanish or English at combatiendocorrupcion@fbi.gov. The FBI is reviewing actionable tips regarding possible corruption or movements of ill-gotten funds submitted through the tip line and is referring actionable tips to the Department’s Anticorruption Task Force. Then, the Task Force determines, among other things, whether the tip indicates a possible jurisdictional link to the United States – including use of the U.S. financial system – that would allow prosecutors in the component groups of the Task Force to investigate, to prosecute, and, where appropriate, to forfeit and return stolen assets to the people of El Salvador, Guatemala, and Honduras.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

- The Task Force advertised the Kleptocracy Asset Rewards Program for information leading to the restraint, forfeiture, or return of stolen assets linked to violations of U.S. law:

Individuals can provide information to the U.S.-based reward program by email or mail. FBI, DHS, U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), and the Internal Revenue Service (IRS) review tips to determine if they are appropriate for further investigation and should be assigned to specific agencies. Recommendations for rewards are made by U.S. law enforcement agencies in consultation with their Department of Justice colleagues.

- The Task Force has coordinated with the Department of Justice's Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) program to provide training and mentoring on corruption investigations and prosecutions:

As part of the operations, Task Force members have coordinated with Resident Legal Advisors based in the three Northern Triangle countries as part of OPDAT programs to provide training and mentoring to prosecutors and investigators working on corruption matters in the region and to refer matters for further consultation with U.S. and local prosecutors and investigators as appropriate. In total there have been more than 7 such engagements.

In addition, OPDAT's Resident Legal Advisors (RLAs) have also assisted the Task Force by advising component prosecutors on regional developments and possible investigative leads.

- The Resource Guide to the Foreign Corrupt Practices Act, Second Edition, was translated to Spanish and made available to the public:

The FCPA unit of the Criminal Division's Fraud Section has published a detailed compilation of information and analysis regarding the FCPA and related enforcement in the *Resource Guide to the Foreign Corrupt Practices Act* (FCPA). In March 2023, with support from OPDAT and in connection with the work of the Task Force, the FCPA Unit released a Spanish Edition of the guide. The Spanish Edition represents the first time the guide has been published in a foreign language.

- Task Force prosecutors and investigators brought the following public law enforcement actions:

Under U.S. federal law, information about the existence of ongoing criminal investigations and their progress is not available to the public to protect the integrity of

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

the investigation and the protected privacy interests at certain phases of the investigation. The Task Force reports the following public actions that its members have taken:

MLARS' trial attorneys supported the forfeiture action of the government of Honduras in prosecuting corruption and fraud in Honduran courts in connection with the misappropriation of government resources for mobile hospitals and other equipment to fight the COVID epidemic in Honduras. The United States has obtained U.S. court orders restraining over \$4 million in U.S. bank accounts pending the outcome of the forfeiture proceedings in Honduras. OIA and the OPDAT RLA program provided important support for the work.

MLARS, and HSI prosecuted the brother of the former executive director of the Honduran Institute of Social Security (IHSS) for conspiring to launder bribe payments and public funds embezzled from IHSS and use them to purchase real estate in the New Orleans area. MLARS worked with OPDAT and the U.S. Embassy in Honduras to reach an agreement to return over \$1 million in real estate proceeds forfeited through the criminal case to Honduras for the benefit of the people that the corruption scheme harmed. Honduran officials have conducted their own investigation and prosecutions of senior agency officials and their co-conspirators, including the former IHSS executive director himself.

20. After the tragic death of George Floyd, rioters across the country caused up to \$2 billion in damage to private and public property. You said that the Department of Justice "is committed to investigating, disrupting, and bringing to justice those who engage in violence in violation of federal law."

a. To date, how many investigations has the Department of Justice opened?

Response: While the violence of the summer and fall of 2020 took place during the prior administration, the Department brought serious federal charges where it was appropriate to do so against individuals who perpetrated violence. Some of the cases included felony charges for attempted arson, assault of a federal officer, and civil disorder charges. The Department will continue to pursue those who violate federal law, including those who commit violent assaults on law enforcement.

b. How many people have been charged and with which offenses?

Response: Many of the alleged offenses in the aftermath of the death of George Floyd arose under state and local law rather than federal law, and thus were prosecuted by state and local authorities rather than by the Department. Press reports indicate that state and local law

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

enforcement arrested more than 17,000 people in the 50 largest cities that had organized protests.⁶⁸

EOUSA and the Criminal Division advise as follows: The Department has brought serious federal charges where it was appropriate to do so against individuals who perpetrated violence. Some of the cases have included felony charges for attempted arson, assault of a federal officer, and civil disorder charges. The Department will continue to pursue those who violate federal law, including those who commit violent assaults on law enforcement.

21. In cases where crimes fall exclusively within state or local jurisdictions, what assistance, if any, has the Department of Justice provided to state and local law enforcement?

Response: The Department's law enforcement components advise as follows:

In cases where crimes like mass shootings fall exclusively within state or local jurisdictions, the Department and its components, including FBI, DEA, USMS, ATF, and other law enforcement components, provide operational and victim assistance.

For example, FBI advises that FBI's agents serve as the United States government's full-time hostage and crisis negotiators in both criminal and terrorist matters. The FBI's Crisis Management Unit enhances the FBI's ability to prepare for, respond to, and successfully resolve any sort of critical incident or major investigation. If it is a crisis that happens without warning, the FBI deploys to begin operations, organize themselves, and begin working with partner agencies as soon as possible. In the horrific tragedy in Lewiston, Maine, the FBI Boston Division supported law enforcement partners, deploying more than 350 special agents, analysts, task force officers, and support personnel to assist in this investigation. In addition to this extra manpower, all our specialty teams were activated, including Evidence Response, SWAT, the Hostage Rescue Team, and the Victim Services Response Team, just to name a few.

Additionally, FBI states that in response to the notification of a critical incident, the Criminal Justice Information Services (CJIS) Division's operational programs are activated in a variety of ways. Generally, the National Threat Operations Section (NTOS) processes the intake of tips from the public and collaborates with FBI field office partners on tailored intake processes; the CJIS Division Operations Center may generate a CJIS Watch Report for the FBI field office operations center which is comprised of searches in all CJIS systems on identifiers provided;

⁶⁸ Meryl Kornfield, Austin Ramsey, Jacob Wallace, Christopher Casey and Veronica Del Valle, *Swept Up by Police* WASH. POST (Oct. 20, 2020); see Anita Snow, *AP tally: Arrests at widespread US protests hit 10,000*, APNEWS (June 4, 2020).

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

and/or the National Instant Criminal Background Check System (NICS) Section may issue a Notoriety report comprised of information located in NTOS or NICS holdings.

Additionally, USMS advises that it has a long history of providing state and local law enforcement with investigative expertise and assistance through a national network of criminal investigators who locate and apprehend dangerous fugitives. The USMS also has the ability to adopt state and local warrants, which allows for the pursuit of fugitives on a local, regional, national, and international level. In October 2023, USMS deployed assets to the District of Maine to assist with locating the suspect in the mass shooting in Lewiston, Maine.

ATF advises while each incident is different, ATF responds to all mass shootings and supports our local, state, federal, Tribal, and territorial law enforcement partner in various ways as needed based on the circumstance. For instance, ATF agents often help secure parameters, interview victims and witnesses, and search for the shooter, when appropriate. ATF also brings to the table its full investigatory capabilities, particularly its crime gun intelligence expertise. ATF's National Tracing Center, the Nation's only crime gun tracing facility, conducts crime gun traces to provide investigative leads to our law enforcement partners. ATF's National Integrated Ballistics Information Network (NIBIN) helps our law enforcement partners potentially generate critical investigative leads by matching the unique "fingerprint" of shell casings found at a crime scene with other shooting incidents. ATF's Touch DNA technology enables our law enforcement partners to extract DNA evidence from spent cartridge casings and firearms. In short, ATF is the partner that our state, federal, Tribal, and territorial law enforcement partners need when a mass shooting occurs.

Additionally, the ATF's National Integrated Ballistic Information Network (NBINS) is the only interstate automated ballistic imaging network in operation in the United States and is available to most major population centers in the United States. NIBIN relies on the close coordination of its partner law enforcement agencies at the local, state, federal, tribal and territorial levels to compile their data and share intelligence about violent crimes.

In addition to information-sharing and other partnerships with state and local law enforcement, he DEA notes that when it is asked to assist in critical incidents, DEA engages its Special Response Teams.

OJP advises as follows:

In the aftermath of a crime, the Department also works to respond with grant funding. The Office for Victims of Crime (OVC) advises that it also provides support to states using VOCA formula grants for Victim Compensation and Assistance programs, which are state-run programs. Another way OVC supports in the aftermath of crime, but exclusive to mass violence is through the Antiterrorism and Emergency Assistance Program (AEAP). Through AEAP, OVC provided resources to places like: Lewiston, ME, Uvalde, TX, and Buffalo, NY.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

OJP also provides federal leadership, grants, training, technical assistance, and other resources to improve the nation's capacity to prevent and reduce crime, assist victims, and enhance the rule of law by strengthening the criminal and juvenile justice systems. Its six program offices support state and local crime-fighting efforts, fund thousands of victim service programs, help communities manage sex offenders, address the needs of youth in the system and children in danger, and provide vital research and data. OJP provides states, local, and Tribal law enforcement with the tools and best practices they need to reduce crime and combat victimization.

OJP's largest grant-making program office, the Bureau of Justice Assistance (BJA), focuses its programmatic and policy efforts on providing a wide range of resources, including training and technical assistance, to law enforcement, courts, corrections, treatment, reentry, justice information sharing, and community-based partners to address chronic and emerging criminal justice challenges nationwide. This includes the Edward Byrne Memorial Justice Assistance Grant program, which is the leading source of federal justice funding to state and local jurisdictions.

In addition to grants provided through OJP, the Office of Community Oriented Policing Services (COPS Office), puts money directly in the hands of the nation's chiefs and sheriffs to reduce violent crime. According to the COPS Office, all training and technical assistance provided by the COPS Office is designed to reduce violent crime. The COPS Office is the component of the Department responsible for advancing the practice of community policing by the nation's state, local, territorial, and Tribal law enforcement agencies through information and grant resources. Since 1994, the COPS Office has invested more than \$14 billion to add community policing officers to the nation's streets, enhance crime fighting technology, support crime prevention initiatives, and provide training and technical assistance to help advance community policing.

22. Recently, Honoring Our PACT Act was enacted into law, which grants service members, their families, and others who were injured by contaminated water at Camp Lejeune the ability to sue the United States for health-related damages. Notably, and unlike other federal laws that permit claims against the U.S. Government, the PACT Act did not include any caps on attorneys' fees.

Given the historic number of potential claimants, the plaintiffs' bar has seized upon this opportunity and by some estimates spent over \$145 million on television and social media advertising so far. Some firms are charging over 40% or even 50% of any recovery despite the PACT Act's anticipated lower burden of proof for these claims.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

- a. **What is the Department of Justice doing to rein in these misleading advertisements and to assist the impacted claimants?**
- b. **How will the Department of Justice ensure just settlements—where the lawyers do not end up pocketing as much or even more money than their clients?**

Response to a–b: The Department shares your interest in achieving speedy, just, and equitable resolution to claims brought under the Camp Lejeune Justice Act (CLJA). That is why, in September 2023, the Department, along with the Department of the Navy, announced an Elective Option (EO) to help veterans and others more quickly resolve qualifying claims under the CLJA; offers under that framework have already been made to some claimants, and the latest guidance on it can be found at www.navy.mil/clja.

The Civil Division advises as follows:

To date, tens of thousands of claimants have filed CLJA administrative claims with the Department of the Navy, which they are required to do before bringing a CLJA lawsuit. In addition, there are currently over 1,000 CLJA lawsuits pending in the Eastern District of North Carolina. Because these matters are currently in pending litigation, Department policy limits our ability to comment further.

Additionally, on October 27, 2023, the Department filed a Statement of Interest Regarding Attorneys’ Fees in the CLJA cases pending in the Eastern District of North Carolina. The Statement of Interest sets forth the Department’s position that CLJA actions are subject to the fee limitations in 28 U.S.C. § 2678 of the FTCA, and that those limitations apply both to “administrative claims presented to the agency” and to “[l]itigation settlements and judgments.” The filing is publicly available. The Department has also clarified on the Department’s webpage that “the FTCA’s fee cap provision and the associated fines and penalties apply to all claims made under the CLJA,” and that, accordingly, “contingency fee arrangements with Camp Lejeune claimants cannot exceed 20% for administrative claims or 25% for suits filed in court.” The website also explains that “[s]uch attorney’s fee caps apply to any judgment or settlement amount after any applicable offsets for health and disability benefits.”⁶⁹

23. **I’ve been trying to get the Biden Administration to issue a views letter on the bipartisan No Oil Producing and Exporting Cartels Act (NOPEC). In the past, AAG Makan Delrahim expressed his support for this legislation.**

⁶⁹ U.S. Dep’t of Justice, Environmental Torts Litigation Section, <https://www.justice.gov/civil/environmental-tort-litigation-section> (last visited Oct. 27, 2023).

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

a. Do you support NOPEC? Can you commit to me that we will get a views letter from the Justice Department on the bill?

Response: Longstanding Department policy and practice prevents the Department from expressing support for legislation or committing to send a views letter on a specific piece of legislation before completing a consultation with other federal agencies, coordinated by the Office of Management and Budget.

24. The Promoting Security and Justice for Victims of Terrorism Act (PSJVTA), which strengthened the jurisdictional provisions of the Anti-Terrorism Act of 1992, helps ensure American victims of international terrorism have their day in court against the PLO and Palestinian Authority. The Justice Department’s voice is critical, as some judges continue to minimize or outright ignore Congress’ clear intent and role in protecting Americans abroad. Will you commit to keeping my office informed of the progress of this important litigation?

Response: The Department shares your concern about the need for American victims of international terrorism to pursue justice against terrorist organizations and state sponsors of terror, and the Department supports opportunities for Americans who fall victim to acts of international terrorism to seek accountability in U.S. courts. However, the Department may not be able to provide updates on litigation since the victims are usually represented by private counsel, and the Department may not be informed of their legal strategies or attorney-client communications. The Department intervened in two cases: *Fuld v. PLP* and *Waldman v. PLO*. The Office of Legislative Affairs will do its best to keep your office informed of public filings in this litigation.

Questions for the Record
Senate Committee on Judiciary
"Oversight of the United States
Department of Justice"
March 1, 2023

SENATOR MIKE LEE
Questions for the Record
Hearing: Oversight of the Department of Justice
March 8, 2023

- 1. Please share anything in writing that shows the U.S. Marshals were given charging authority from you for protesters in front of the United States Supreme Court Justices' homes.**

Response: In May 2022, the Attorney General took the unprecedented step of directing the U.S. Marshals Service (USMS) to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows:

During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. Their first priority is to protect the life and safety of the Justices and their families.

Pursuant to 28 U.S.C. § 566, U.S. Marshals, Deputy U.S. Marshals, and any other USMS officials designated by the Director may "make arrests without warrant for any offense against the United States committed in his or her presence, or for any felony cognizable under the laws of the United States if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing such felony." As the USMS Director has said, "The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals' number one priority is to protect the Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn't compromise the lives and safety of the [J]ustices." In February 2024, the Director further testified that "The Attorney General's order was very clear, actually, crystal clear. Protect the lives of the Justices. He made sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety."⁷⁰

- 2. Were the U.S. Marshals made the decision-makers on charges regarding the protestors at the Justices' homes following the leak of the *Dobbs* decision?**

⁷⁰ *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: Decisions about whether and what federal offenses to prosecute in any specific case are made by Department prosecutors, consistent with the Principles of Federal Prosecution.

3. Explain what specifically has been done to protect family members of the Justices since that was added to the responsibility of U.S. Marshals Service.

Response: In May 2022, the Attorney General took the unprecedented step of directing the USMS to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows: During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. The Marshals' first priority is to protect the lives and safety of the Justices and their families.

4. 18 U.S.C. §1507 prohibits picketing or parading near a court or the residence of a judge "with the intent of interfering with, obstructing, or impeding administration of justice, or with the intent of influencing any judge, ... in the discharge of his duty." Has DOJ charged any protestors outside the Supreme Court Justices' homes with a violation of 18 U.S.C. §1507 since the leak of the draft opinion in *Dobbs*?

Response: In May 2022, the Attorney General took the unprecedented step of directing the USMS to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows: During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. The Marshals' first priority is to protect the lives and safety of the Justices and their families. As the USMS Director has said, "The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals' number one priority is to protect the justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn't compromise the lives and safety of the [J]ustices." In February 2024, the Director further testified that "The Attorney General's order was very clear, actually, crystal clear. Protect the lives of the Justices. He made

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety.⁷¹ In 2022, a federal grand jury returned an indictment charging a man who allegedly traveled from California to Maryland with the intent to kill a Justice of the United States Supreme Court. EOUSA has not identified any prosecutions brought under § 1507 during this timeframe.

- 5. Is it true that despite the weekly protests outside of the Justices’ homes for almost a year (since the *Dobbs* leak), that the only person who has been arrested in connection with these protests—whether under 18 U.S.C. §1507 or any other statute—was someone who *turned himself* over to law enforcement revealing his plan to kill Justice Kavanaugh? If this is true, what should that tell us about the ability of either the Marshals or the FBI to effectuate arrests under §1507?**

Response: In May 2022, the Attorney General took the unprecedented step of directing the USMS to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows: During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. The Marshals’ first priority is to protect the lives and safety of the Justices and their families. That priority was validated when a California man who allegedly traveled to Washington to murder Justice Kavanaugh, was deterred by the sight of Deputy U.S. Marshals protecting Justice Kavanaugh’s residence. In that instance, Deputy U.S. Marshals fulfilled their protective responsibility by standing their post and protected the Supreme Court Justice from potential harm. As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the [J]ustices.” In February 2024, the Director further testified that “The Attorney General’s order was very clear, actually, crystal clear. Protect the lives of the Justices. He made sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety.”⁷²

⁷¹ *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

⁷² *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

- 6. Similar to January 6th, has the FBI interviewed protestors based on their appearance in video footage from the Justices’ homes? If no, why?**

Response: Standard Department policy is not to confirm or deny the initiation or existence of any investigation.

- 7. Does DOJ brief the Justices and family members on threats that they are tracking against each Justice? Will you brief the Judiciary Committee on the number and intensity of threats on all nine Justices quarterly? If certain Justices are not being threatened, are they so advised and is the level of protection provided altered?**

Response: The USMS advises as follows: The USMS and the Supreme Court Marshal have committed to ensure that each Justice has an appropriate protection. The USMS does not comment on the process of threat notifications and the methods by which protectees are provided briefings. For any additional information on this topic, the Department defers to the Marshal of the Supreme Court.

- 8. Are threat mitigation steps provided to each Justice and their family members? If tangible expenses are prescribed, does DOJ cover the cost of enhanced security, if necessary?**

Response: The USMS has stated that it does not comment on the process of threat notifications and the methods by which protectees are provided briefings.

- 9. What recommendations does the U.S. Marshals Service have to enhance security for Justices and their families?**

Response: The Department recommends addressing enhanced security questions directly to the Marshal of the Supreme Court.

- 10. Explain the roles of security for Justices including Supreme Court police, all federal, state, local police involved in protests and threats to a Justice or their family members. What are each of the roles? Do you believe the roles are clear to stakeholders right now?**

Response: The USMS advises as follows:

The Supreme Court Police have historically taken responsibility for the Justices within the National Capital Region and the security of the Supreme Court building. USMS has, upon request, provided security to the Justices outside the National Capital Region.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

In May 2022, the Attorney General took the unprecedented step of directing the USMS to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. As the USMS Director has said, "The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals' number one priority is to protect the justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn't compromise the lives and safety of the justices." In February 2024, the Director further testified that "The Attorney General's order was very clear, actually, crystal clear. Protect the lives of the Justices. He made sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety."⁷³

USMS works in partnership with state and local law enforcement every day in cases that involve both federal and state/local crimes.

11. You mentioned a certain number of U.S. Marshals who are tasked with protecting Supreme Court Justices. Is it the same group of professionals or do they rotate? Do they do field operations to find those threatening the Justices or are they only stationed to wait for something bad to happen?

Response: The USMS advises as follows: The USMS continues to staff this detail with resources from Districts and Divisions throughout the country. Since May of 2022, USMS has deployed over 1,200 U.S. Deputy Marshals to SCOTUS protection details on varying rotations. USMS has also increased the number of intelligence analysts supporting protective intelligence/investigations. Open-Source Intelligence screening and other analyses are applied to all Justices, and each is assigned to a specific analyst for this enhanced screening. Additionally, USMS maintains a 24/7 Command Center for communications directly related to SCOTUS protective operations and also coordinates information sharing and communication through this Command Center and USMS's Office of Protective Intelligence to the Supreme Court Police. USMS has provided protective risk and residential vulnerability assessments to SCOTUS. USMS

⁷³ *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

has also provided Supreme Court Police with strategic knowledge regarding planning and executing protective operations both domestic and international.

12. Are the U.S. Marshals authorized to protect the immediate family of the U.S. Supreme Justice to which they are assigned when the Justice is not home?

Response: The USMS has stated that it provides a 24/7 protective detail for each of the Justices' residences, and that protection extends to the family members living inside the residence.

13. A few weeks ago, the Senate Judiciary Committee invited the Department of Justice to brief staff on protests at the Justices' homes and any arrests or prosecutions under 18 U.S.C. §1507. Senator Cruz's staff made clear that they wanted to discuss Section 1507. The briefers came to the briefing claiming not to have read Section 1507. Why would the Department of Justice schedule a briefing on a statute but fail to read the statute?

Response: Consistent with parameters negotiated with staff, the Department agreed to provide a bipartisan briefing on February 16, 2023, regarding the security of Supreme Court Justices, along with the attendant threat landscape. According to OLA, the Department's briefers addressed those agreed-upon topics during the briefing, as well as 18 U.S.C. §1507, then answered a number of questions raised by staff from both sides of the aisle.

14. At the hearing, I asked you about the overly aggressive arrest and prosecution of Mark Houck, a pro-life protestor in Philadelphia, for FACE Act violations because he pushed a Planned Parenthood escort who was verbally harassing his 12-year old son. According to Mr. Houck's wife, around 7 am on a Friday morning "a SWAT team of about twenty-five came to my house with about fifteen vehicles and started pounding on our door.... And then they had about five guns pointed at my husband, myself, and basically at my kids." How can you justify using this much force when Mr. Houck's attorney both called and emailed an assistant U.S. Attorney saying Mr. Houck would accept a summons and surrender himself?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

15. It has been reported that the FBI disputes Mrs. Houck's claims that the FBI used a SWAT team consisting of twenty-five agents to arrest Mr. Houck. If yes, please provide details on the number of agents and the tactics used to arrest Mark Houck on September 23, 2022.

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

16. Regarding the FACE Act charges against Mr. Houck, Judge Gerald Pappert said "doesn't the statute seem to be a little stretched here." Not surprisingly, the jury acquitted Mr. Houck of all charges. Why did the Department of Justice Pursue the prosecution?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

17. The current standard for warrantless, backdoor searches of U.S. persons' communications by the FBI is "reasonably like to return evidence of a crime." Do you believe the standard should be heightened to protect the civil liberties of Americans?

Response: The National Security Division advises as follows:

To clarify, in the context of national security investigations conducted pursuant to Foreign Intelligence Surveillance Act (FISA) authority, a query involves using a term to retrieve specific information from a database of information that has already been lawfully collected by the government. Queries of such databases do not result in new collection of data, but merely retrieve data already in an agency's computer system. Queries of Section 702 data are critical to identify links between foreign threats and the United States, ranging from terrorism, malicious cyber activities, to hostile nation state behavior. To conduct a query of lawfully collected Section 702 data in an agency's system, the query must be reasonably likely to retrieve foreign intelligence information. In the case of FBI, they may also query Section 702 information if the query is reasonably likely to return evidence of a crime from 702 collection. Outside the context of FISA and national security investigations, querying lawfully collected information is a common practice for investigators, and courts have not required that the government obtain a warrant before querying lawfully collected information.

In addition, FISA already has strong rules to protect privacy with respect to U.S. person queries of Section 702 data. Intelligence Community (IC) elements may collect, retain, and disseminate information concerning U.S. persons only pursuant to procedures approved by the Justice Department after consultation with the Director of National Intelligence. In addition to the querying procedures that require that any queries of Section 702 data be reasonably likely to retrieve foreign intelligence information or, in the case of FBI, evidence of a crime, the Section 702 minimization procedures restrict the retention and dissemination of any information of or concerning a U.S. person incidentally collected under Section 702. The FISC has repeatedly approved the government's procedures under Section 702, finding the querying and minimization procedures to be consistent with the Fourth Amendment.

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

There have been significant querying errors by FBI in recent years, which the Department and the FBI find unacceptable and have worked to correct. To that end, the FBI has implemented multiple remedial measures to address these query compliance issues. In April 2021, the Attorney General directed the FBI to submit to the Deputy Attorney General a detailed work plan to institute internal proactive compliance measures to bring further rigor and accountability to the Constitutional, statutory, and compliance FISA framework. A description of the remedial measures can be found on the Department website.⁷⁴ As a result of these remedial measures, there has been a dramatic reduction in the number of U.S. person queries and improved query compliance by the FBI. On page 85 of its April 2023 opinion, publicly released in July 2023, the FISC found a 1.7% noncompliance rate with the query standard for 702 information.

18. How is a warrantless search of Americans’ communications consistent with the Fourth Amendment?

Response: The National Security Division states as follows:

Section 702 targeting is only permitted for non-U.S. persons outside of the United States to acquire foreign intelligence information. All courts to have considered the issue of 702 targeting, including the FISC, FISC-R, and three courts of appeals, have found Section 702 targeting to be reasonable under the Fourth Amendment because of the targeting, minimization, and querying procedures.

With respect to U.S. person queries, the FISC has said no warrant requirement is needed, and no other federal court has affirmatively held a warrant is required. A query involves using a term to retrieve specific information from a database of information that has been lawfully collected by the government pursuant to FISA. A query of Section 702 acquired information is not a “search” within the meaning of the Fourth Amendment, and the law does not require the government to obtain a warrant to query communications collected under section 702.

In particular, the FISC has explained that, while it considers the reasonableness of the government’s procedures (including query procedures) “as a whole” in considering the compliance of Section 702 collection with the Fourth Amendment, the “querying of information lawfully acquired under section 702” is *not* “a distinct Fourth Amendment event requiring a reasonableness determination independent of the other circumstances of acquisition.”⁷⁵ Outside the context of FISA and national security investigations, querying lawfully collected information is a common practice for investigators, and courts have not required that the government obtain a warrant to conduct database checks of such information. In multiple criminal cases in which Section 702 information has been affirmatively used against a defendant, federal courts other

⁷⁴ See U.S. Dep’t of Just., , Recent Efforts to Strengthening FISA Compliance (2023), https://www.justice.gov/d9/pages/attachments/2023/03/03/recent_efforts_to_strengthen_fisa_compliance_02.28.23.pdf.

⁷⁵ 402 F. Supp. 3d 45, 86 (FISA Ct. 2018).

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

than the FISC have upheld the program's constitutionality and declined to state that the Fourth Amendment requires a warrant to conduct U.S. person queries of section 702 data.

19. The ODNI's recently declassified (December 21, 2022) semiannual report on compliance with Section 702, lists multiple concerning incidents of noncompliance with the "evidence of a crime" standard by the FBI. The report lists multiple issues of noncompliant 702 searches involving U.S. persons including searches of prospective FBI employees, members of a local political party, individuals recommended to participate in the FBI Citizens Academy, journalists, and a Congressman. And, this isn't the first year this has happened. What disciplinary action has been taken with regard to employees who conducted noncompliant backdoor searches of the Section 702 database?

Response: The National Security Division states as follows:

The declassified SAR—the 24th "Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, submitted by the Attorney General and the Director of National Intelligence" (24th Joint Assessment) —covered the reporting period timeframe of December 1, 2019 through May 31, 2020.⁷⁶ Accordingly, it reflects compliance data that predates the reforms that the Department and FBI have since put into place to improve compliance—including new accountability and field office health measures—described below.

When the FBI has detected intentional misuse of the authority for improper purposes, it has taken appropriate action to address that misuse. For example, in 2017, when the Department oversight identified that an FBI contractor was conducting improper queries for personal reasons, the contractor had their security clearance revoked and was terminated from their position with the FBI. When compliance incidents are unknowing or unintentional, the FBI has retrained employees and issued supplemental guidance to address noncompliant queries.

20. What action has the Department of Justice taken to eliminate these noncompliance issues plaguing the Section 702 program and protect the civil liberties of U.S. persons?

Response: The National Security Division advises as follows:

The Department and the FBI have implemented significant remedial measures that would address Section 702 noncompliance incidents identified in the 24th Joint Assessment, had they

⁷⁶ OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, *ODNI Releases 24th Joint Assessment of Section 702 Compliance* (Dec. 21, 2022), intelligence.gov/assets/documents/702%20Documents/declassified/24th-Joint-Assessment-of-FISA-702-Compliance.pdf.

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

been in place at the time, and promote protection of civil liberties consistent with Department’s core mission.⁷⁷ For example:

1. **Opt-in settings:** In June 2021, the FBI changed the default settings in the systems where it stores unminimized Section 702 information so that FBI personnel with access to unminimized FISA Section 702 information need to affirmatively “opt-in” to querying such information, reducing the risk of inadvertent queries.
2. **Batch query approval requirements:** Also in June 2021, FBI instituted a policy requiring prior FBI attorney approval before FBI personnel can conduct a “batch job” that would result in 100 or more queries. In June 2023, FBI leadership expanded this remedial measures to require attorney pre-approval for all batch job queries.
3. **Sensitive query approval:** FBI personnel must now obtain attorney pre-approval to conduct queries that present certain investigative sensitivities. In addition, the FBI’s Deputy Director must also personally approve certain types of sensitive queries—such as those involving domestic public officials—before they may be conducted.
4. **Case-specific justification requirements:** FBI systems now require agents and analysts to enter a case-specific justification for every Section 702 query using a U.S. person query term before accessing any content retrieved by such a query. In June 2023, Director Wray directed his leadership team to go beyond that recommendation and to record the justification for all U.S. person Section 702 queries at the time the queries are performed, rather than at the time that an FBI user seeks to view the content of any Section 702 information retrieved using a U.S. person query term.
5. **New training requirements:** In November 2021, the Department, ODNI, and the FBI issued new comprehensive guidance to all FBI FISA users on the proper application of the query rules, and in December 2021, the FBI instituted new mandatory training on that guidance, which personnel were required to complete by the end of January 2022. The FBI expanded and updated this training at the end of 2022. On an annual basis, all FBI personnel with access to unminimized FISA information are required to complete the expanded and updated query training or lose access to FISA systems. The guidance and mandatory training

⁷⁷ See U.S. JUSTICE DEP’T, *Recent Efforts to Strengthen FISA Compliance* (Feb. 28, 2023), [recent_efforts_to_strengthen_fisa_compliance_02.28.23.pdf \(justice.gov\)](https://www.justice.gov/press-releases/fbi-releases-fisa-query-guidance-02.28.23.pdf); see Press Releases, FEDERAL BUREAU OF INVESTIGATION, *FBI Releases FISA Query Guidance* (Apr. 24, 2023), <https://www.fbi.gov/news/press-releases/fbi-releases-fisa-query-guidance#Background-Information:%20November%202021%20FBI%20FISA%20Query%20Guidance%20Documents>.

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

directly address misunderstandings about the rules applicable to queries of unminimized FISA information and instruct personnel on how to properly apply the query rules. In addition, the text of FBI’s Section 702 querying procedures was revised to more clearly spell out the query standard to FBI personnel. The results of those interagency efforts were two documents: the “FBI FISA Query Guidance” and a two-page desk reference companion document entitled “FBI FISA Query Guidance Nutshell.” Both documents were issued to all FBI national security personnel in November 2021 and made available to the public on April 24, 2023.⁷⁸

In addition to these new remedial measures, the FBI announced in June 2023 that they would establish a new policy with escalating consequences for performance incidents involving negligence, including centralized tracking of individual employee performance incidents over time. They also announced new Field Office Health Measures (FOHM). The Department’s National Security Division (NSD) continues to conduct audits of FBI’s queries of unminimized Section 702 information. Based on the results of these ongoing reviews, NSD has provided supplemental guidance on compliance trends to FBI, and FBI has updated its mandatory query-related training.

Compliance and oversight are an ongoing process, and FBI and NSD continue to assess the efficacy of existing remedial measures to address the query compliance issues and determine additional remedial measures that are needed to improve compliance. In May 2023, the FBI released the results of initial query audits conducted by its Office of Internal Auditing (OIA).⁷⁹ Based on FBI OIA’s second, post-reform audit, the FBI had a 96% compliance rate for FISA queries, a 14% improvement from OIA’s first baseline audit, which was conducted before the reforms. FBI OIA provided 11 compliance recommendations, all of which Director Wray accepted and directed the FBI to implement. Those recommendations require a case-specific justification for each U.S. person query term before a user runs the query, rather than before viewing any content returned.

In July 2023, the FISC publicly released its April 2023 opinion, which noted the FISC found a 1.7% noncompliance rate with the query standard for 702 information.

21. In January of this year, the Bureau of Prisons released the “Transgender Offender Manual.” Section 2 of this manual is a list of definitions, including this definition of gender: “a construct used to classify a person as male, female, both, and neither. Gender encompasses aspects of social identity, psychological identity, and human

⁷⁸ FEDERAL BUREAU OF INVESTIGATION, *FBI Releases FISA Query Guidance* (Apr. 24, 2023), <https://www.fbi.gov/news/press-releases/fbi-releases-fisa-query-guidance#Background-Information:%20November%202021%20FBI%20FISA%20Query%20Guidance%20Documents>.

⁷⁹ FEDERAL BUREAU OF INVESTIGATION, *FBI Releases Results of OIA FISA Query Audit*, (May 11, 2023), [fbi.gov/news/press-releases/fbi-releases-results-of-oia-fisa-query-audit](https://www.fbi.gov/news/press-releases/fbi-releases-results-of-oia-fisa-query-audit).

Questions for the Record
Senate Committee on Judiciary
"Oversight of the United States
Department of Justice"
March 1, 2023

behavior." The manual also defines "gender identity as "a person's sense of their own gender." Are the Bureau housing inmates based on these definitions of gender and gender identity, instead of their biological sex?

Response: BOP has stated the following: All requests for gender-affirming placement are evaluated by the BOP. The BOP assesses each request on a case by case basis to protect the safety of the individual being considered for transfer as well as the safety of others at the potential location of transfer. The BOP will consider factors including, but not limited to, an inmate's security level, criminal and behavioral/disciplinary history, current gender expression, programming, medical, and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. This review therefore takes into account their prior convictions, including for sex offenses, when making a placement assessment. For as long as the BOP has been making these assessments, BOP is unaware of any instances of sexual assault in a female facility by transgender individuals approved to transfer to a female facility consistent with their gender identity.

22. Section 6 of the Transgender Offender Manual, "Housing and Programming Assignments", states "a transgender or intersex inmate's own views with respect to his/her own safety must be given serious consideration." Are the views of non-transgender inmates regarding their safety given equally serious consideration when potentially being housed with transgender inmates?

Response: BOP has stated the following: All requests for gender-affirming placement are evaluated by the relevant BOP officials. The BOP assesses each request on a case by case basis to protect the safety of the individual being considered for transfer as well as the safety of others at the potential location of transfer. The BOP will consider factors including, but not limited to, an inmate's security level, criminal and behavioral/disciplinary history, current gender expression, programming, medical, and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. This review therefore takes into account their prior convictions, including for sex offenses, when making a placement assessment. For as long as the BOP has been making these assessments, BOP is unaware of any instances of sexual assault in a female facility by transgender individuals approved to transfer to a female facility consistent with their gender identity.

23. During the sentencing of Philip Enformes the Department of Justice represented on the record that they would not retry him for any of the counts the jury hung on. His sentence was later commuted by President Trump after he had served 4.5 years in prison. However, once you were confirmed, the DOJ announced that they are going to break from hundreds of years of precedence and retry Philip Esformes despite his sentence having been commuted. Does the Department of Justice plan to retry other people who were granted pardons and commutations by President Trump?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: Mr. Esformes' case, *U.S. v. Esformes*, 1:16cr20549 (S.D. Fla. 2016), is currently pending before the U.S. District Court for the Southern District of Florida. The government's explanation for charging Esformes is cited in its court filings.

24. Is prosecuting Mr. Esformes again once his sentence has been commuted in violation of the Fifth Amendment's double jeopardy clause? Why or why not?

Response: Mr. Esformes' case, *U.S. v. Esformes*, 1:16cr20549 (S.D. Fla. 2016), is currently pending before the U.S. District Court for the Southern District of Florida. The government's explanation for charging Esformes is cited in its court filings.

25. My office has heard from conservative organizations that their Freedom of Information Act requests are being universally declined by the Department of Justice. Is this the case? For example, Advancing American Freedom has submitted the following FOIA requests to investigate what they believe is a pattern of selective investigation and prosecution by the Department of Justice and received no response. Please provide an explanation for the Department of Justice's failure to respond to each individual request.

- a. On September 21, 2022, Advancing American Freedom filed a FOIA request seeking production of records and external communications related to the DOJ's subpoena of Eagle Forum of Alabama.
- b. On September 30, 2022, Advancing American Freedom and fifteen other organizations filed a FOIA request for DOJ information related to its failure to investigate or prosecute attacks on pro-life organizations.
- c. On February 23, 2023, Advancing American Freedom filed a FOIA request regarding the FBI Richmond Field Office's leaked Intelligence Note pertaining to "radical-traditionalist Catholics" and any external communications related to Christian beliefs, the FBI's investigation of those beliefs, an unredacted and unedited version of the leaked memorandum, and other relevant records.

Response a-c: The Office of Information Policy, which administers FOIA policy, advises as follows:

The request in question (a) is addressed to EOUSA and OIP, however, OIP has no record of receiving this request. EOUSA received this request on June 6, 2023, and issued its final response on September 13, 2023, accounting for 511 pages. As of April 22, 2024, OIP has no record of receiving this request, and, relatedly, has no record of receiving a FOIA administrative appeal concerning EOUSA's final response dated September 13, 2023.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

On October 11, 2022, OIP received AAF's request, dated September 30, 2022, referenced in question (b). In March 2023, AAF filed suit. The parties subsequently worked together to clarify the scope of the request and to agree upon search terms, which they did at the end of May 2023. OIP proposed a processing schedule whereby OIP would endeavor to issue a final response in early December 2023, with rolling interim responses in between. Plaintiff agreed to this schedule. OIP issued its first interim response on October 6, 2023, accounting for 181 pages. OIP issued its second interim response on November 9, 2023, accounting for 66 additional pages, and issued its final response on January 10, 2024, accounting for 14 additional pages. The parties to this litigation are currently conferring about next steps and whether further proceedings will be required.

The request in question (c) was addressed to the FBI and OIP. OIP received this request on March 8, 2023. A search for responsive electronic records is currently in process. The FBI received this request on August 28, 2023. On September 1, 2023, the FBI issued a response to parts 1-6 of the request indicating these parts were overbroad. For part 7, a search for records has been completed and responsive records have been assigned for processing.

26. Please provide the status of the FBI investigation of the shooting of two individuals in a Utility Task Vehicle by a Ute Tribe Fish and Wildlife Officer that occurred in Duchesne County, Utah on July 17, 2022. If the FBI investigation is complete, please provide information on any further action anticipated by the Department of Justice.

Response: Standard Department policy is not to comment on or confirm or deny the existence of any pending investigations.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

SENATOR ALEX PADILLA
Questions for the Record
Senate Judiciary Committee
“Oversight of the Department of Justice”
March 1, 2023

Questions for Attorney General Merrick Garland:

1. **On January 21, 2023, a gunman opened fire inside Star Ballroom Dance Studio in Monterey Park, California. Tragically, he killed eleven people and injured nine others. This tragedy shocked the nation and reminded us that the scourge of gun violence is ever-present throughout our communities. In 2022, there were over 600 mass shootings in the United States, and less than three months into 2023, there have been over 84.**
 - a. **The U.S. Supreme Court’s decision in *Bruen* has undermined public safety, leaving people to fear the worst when they enter into public spaces. In light of that decision, how is the Department of Justice coordinating with local and state officials to better protect our communities from gun violence?**

Response: The Department—through ATF in particular—works side-by-side with our federal, state, Tribal, and local partners to carry out our shared mission to make the public safer and reduce violent gun crime.

ATF states as follows: ATF provides unique, specialized expertise and important resources to our partners, including the National Integrated Ballistic Information Network (NIBIN) and its associated NIBIN National Correlation and Training Center (NNCTC); Crime Gun Intelligence Centers (CGICs) and Strike Forces; and the National Tracing Center (NTC). Use of these systems allows investigators to obtain valuable, timely intelligence that can help them identify, apprehend, and charge dangerous and prolific shooters. ATF’s Crime Gun Intelligence Mobile Command Center (MCC) provides investigators with a state-of-the-art facility that can be used as a temporary CGIC offering accessibility to areas where NIBIN access and resources are currently limited or unavailable. ATF’s MCC is deployable (upon availability) anywhere in the United States to assist with responding to violence or initiatives.

2. **Last year, the “Empowering and Enforcing Environmental Justice Act” was introduced in the House and the Senate in hopes of strengthening efforts at the Justice Department to hold polluters accountable for environmental crimes. The bill would codify an Environmental Justice Office and an Environmental Justice Section at the Department to address longstanding environmental injustices against vulnerable communities and ensure the Department effectively enforces our environmental laws.**

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

- a. **There was a recent launch for a new Office of Environmental Justice at the Department, however, there's currently no statute that codifies such an office into law. Codification would provide continuous resources and support to the Department as it assists communities that sorely need help. How confident are you that a future administration would maintain this new office if it were not required by law?**

Response: The Department appreciates Congressional interest in environmental justice and efforts to ensure that environmental justice remains an enduring priority for the federal government. The Office of Environmental Justice states as follows:

Environmental justice can be advanced by enforcement of multiple statutes, regulations, and programs, which is why the Department's Comprehensive Environmental Justice Enforcement Strategy (CEJES) provides a set of principles and actions to be pursued across the Department to work vigorously and transparently to secure environmental justice with the full set of legal tools at its disposal.

The new Office of Environmental Justice enhances the Department's efforts by serving as a resource for the Department as it implements the CEJES, supporting environmental justice investigations and litigation, facilitating outreach by the Department to communities with environmental justice concerns, and engaging all Justice Department bureaus, components, and offices in the collective pursuit of environmental justice. Though it is possible that future administrations might shift priorities away from overburdened communities, the Department believes that this two-pronged approach—integrating environmental justice considerations throughout the Department's day-to-day work and establishing a central office with the resources to support those efforts—will help ensure the Department's continued focus on this critical mission. The Department would welcome the opportunity to provide technical assistance on legislation in this area if that would be of assistance, including any proposals involving the Department's new Office of Environmental Justice and its institutional role.

3. **The U.S. Supreme Court decision in *Dobbs* overturned settled precedent that women had a constitutional right to an abortion. In doing so, the Court effectively removed abortion protections for millions of women across the country. The Justice Department subsequently established the Reproductive Rights Task Force, seeking to coordinate its ongoing efforts to protect access to reproductive health care.**

- a. **Could you detail some of the work the Reproductive Rights Task Force, and the Department of Justice as a whole, has undertaken to ensure that access to reproductive health care is protected in the aftermath of the *Dobbs* decision?**

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

Response: On July 12, 2022, the Justice Department announced the establishment of the Reproductive Rights Task Force. The Task Force formalized an existing working group and efforts by the Department to identify ways to protect access to lawful reproductive health care following the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization et al.*

Acting Associate Attorney General Benjamin Mizer chairs the Task Force, and it consists of representatives from the Department’s Civil Division, Civil Rights Division, U.S. Attorney community, Office of the Solicitor General, Office for Access to Justice, Office of Legal Counsel, Office of Legal Policy, Office of Legislative Affairs, Office of the Associate Attorney General, Office of the Deputy Attorney General, and Office of the Attorney General.

The Department established the Reproductive Rights Task Force as a whole-of-Department effort to closely scrutinize these new, complex, and widespread threats to reproductive health for any infringements on federal protections.

The Task Force advises as follows:

By design, the Task Force model allows the Department to be coordinated and deliberative in our response. Task Force staff are working daily on the impacts of the *Dobbs* decision, and we have not hesitated to act—be it through our affirmative litigation, the enforcement actions of the Civil Rights Division, and our other work advising agencies and conducting outreach to stakeholders on our collective efforts to protect reproductive healthcare.

The Task Force has taken a number of important actions to defend reproductive freedoms that are protected by federal law. *First*, the task force is vigilantly monitoring state and local laws that may conflict with federal law.

In August 2022, the United States filed suit against the State of Idaho, asserting that the State’s abortion ban is preempted to the extent of its conflict with the Emergency Medical Treatment and Labor Act (EMTALA). EMTALA provides that every hospital that receives Medicare funds must offer necessary stabilizing treatment (or an appropriate transfer to a hospital that can provide such treatment) to an individual who arrives at the emergency department suffering from an emergency medical condition that, if left untreated, could be reasonably expected to place the individual’s health in serious jeopardy or result in serious impairment to the individual’s bodily functions or serious dysfunction of any bodily organ or part. The Department won a preliminary injunction from the district court blocking the enforcement of the State’s abortion ban as applied to medical care required by EMTALA. After proceedings in the Ninth Circuit, the Supreme Court in January 2024 stayed the district court’s preliminary injunction and granted a writ of certiorari to hear the case. The Supreme Court heard argument on April 24, 2024.

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

The Department has made it clear that we will defend the bedrock constitutional protections for women who reside in States that have restricted access to comprehensive reproductive care and must remain free to travel to States in which that care is lawful. Last November, the Department filed a statement of interest in two lawsuits challenging the Alabama Attorney General’s threat to prosecute people who provide assistance to women seeking lawful out-of-state abortions. The statement of interest explains that the threatened Alabama prosecutions infringe the constitutional right to travel. It also makes clear that states may not punish third parties for assisting women in exercising that right.

The Department has also made clear that under the First Amendment, individuals must also remain free to inform and counsel each other about the reproductive care that is legally available across State lines.

Second, the Department is advising federal agencies on legal issues related to reproductive health in the aftermath of *Dobbs*, and defending agencies as litigation arises. The Department is vigorously defending the FDA against multiple legal challenges concerning mifepristone, a safe and effective medication that FDA approved more than two decades ago. Most notably, in December 2023, the Supreme Court granted the government’s petition for a writ of certiorari challenging the Fifth Circuit’s unprecedented ruling in *Alliance for Hippocratic Medicine v. FDA* that would override FDA’s scientific judgment by reimposing conditions of use on mifepristone that FDA has determined are no longer necessary to ensure the drug is safe and effective and that its benefits outweigh its risks. Because of the Supreme Court’s April 2023 stay of the lower courts’ rulings in *Alliance*, mifepristone will remain available nationwide, under its currently approved conditions of use, as that case is reviewed by the Supreme Court. On March 26, 2024, the Supreme Court heard argument in the case. Beyond the FDA, the Department also worked closely with the Defense Department on its policy allowing servicemembers and their dependents to receive funding to travel out of state for abortion care. Additionally, the Department advised the Department of Veterans Affairs on its interim final rule and final rule allowing access to reproductive health services at VA clinics.

Third, the Civil Rights Division of the Department is continuing its critical, ongoing enforcement of the Freedom of Access to Clinic Entrances (FACE) Act that prohibits anyone from injuring, intimidating, or interfering, or attempting to do so, with access to or the provision of reproductive health services—including abortion services, pharmacies that provide reproductive health services, and pregnancy counseling services—through violence, threats of violence, physical obstruction, or property damage. The Department’s enforcement of the FACE Act reflects the overriding principle that violence, and threats of violence have no place in the public discourse on reproductive healthcare.

Since January 2021, the Department has charged more than a dozen cases involving dozens of defendants with FACE Act-related violations. The Department is working to ensure that federal prosecutors across the country are equipped to bring FACE Act cases, and the Department’s

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

National Task Force on Violence Against Reproductive Health Care has prepared training for State Attorney Generals offices, which can similarly bring civil actions under the FACE Act.

In addition, the Department has advised reproductive healthcare providers—including both facilities that perform abortions and pregnancy centers—on how to protect against attacks and vandalism. The Department has encouraged all reproductive healthcare providers to report any violent incidents or threats.

4. **Amongst the tools that the Biden Administration has said it is utilizing to address the root causes of migration is to combat migrant smuggling and trafficking. For years, smuggling organizations and cartels have been preying on vulnerable migrants fleeing persecution. These migrants are financially exploited, threatened, and placed in grave danger- sometimes leading to their death. Just last year, we witnessed the deaths of 53 migrants in Texas who were found on a sweltering summer day in a truck with no ventilation.**

In June 2021, the establishment of Joint Task Force Alpha was announced. This task force is a partnership between the Department of Justice and the Department of Homeland Security to enhance U.S. enforcement against human smuggling and trafficking groups in Mexico, Guatemala, El Salvador, and Honduras.

- a. **Could you discuss what success Joint Task Force Alpha has had in prosecuting smuggling and trafficking networks?**

Response: The Joint Task Force Alpha advises as follows:

On June 7, 2021, Attorney General Garland announced the establishment of Joint Task Force Alpha (JTFA), a law enforcement task force intended to marshal the investigative and prosecutorial resources of the Justice Department, in partnership with the Department of Homeland Security (DHS), to enhance U.S. enforcement efforts against the most prolific and dangerous human smuggling and trafficking groups operating in Mexico and the Northern Triangle countries of Guatemala, El Salvador, and Honduras. JTFA's goal is to disrupt and dismantle human smuggling and trafficking networks operating in those countries, with a focus on networks that endanger, abuse, or exploit migrants, present national security risks, or engage in other types of transnational organized crime.

JTFA consists of federal prosecutors from U.S. Attorney's Offices along the Southwest Border (District of Arizona, Southern District of California, Southern District of Texas, and Western District of Texas), from the Criminal Division and the Civil Rights Division, along with law enforcement agents and analysts from DHS's Immigration and Customs Enforcement and U.S. Customs and Border Protection. The FBI and the DEA are also part of the Task Force, which also works closely with Operation Sentinel, a DHS operation focused on countering transnational

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

criminal organizations affiliated with migrant smuggling. Since it was formed, JTFA has made significant progress in combating smuggling and trafficking networks.

JTFA has successfully increased coordination and collaboration among the Justice Department, DHS, and other interagency law enforcement participants, and with foreign law enforcement partners, including El Salvador, Guatemala, Honduras, and Mexico. JTFA has targeted organizations that have the most impact on the United States and coordinated significant smuggling indictments and extradition efforts in U.S. Attorneys’ Offices across the country. According to the Task Force, to date, JTFA’s work with its partners has resulted in criminal charges and over 260 domestic and international arrests of leaders, organizers and significant facilitators of human smuggling activities, 150 convictions, significant prison sentences, seizure of drugs, firearms, ammunition and vehicles, and substantial asset forfeiture. For example:

- On September 13, 2022, the Justice Department announced that eight alleged human smugglers were arrested and indicted through a JTFA operation. According to the indictment, the alleged smugglers transported migrants into and within the United States in “deplorable conditions for profit.” The migrants were allegedly citizens of Mexico, Guatemala, and Colombia.⁸⁰
- On March 16, 2023, at a JTFA meeting in El Paso, Texas, the Justice Department and DHS announced the first ever extraditions from Guatemala to the United States on charges of human smuggling resulting in death, and the first Guatemalan human smuggling extraditions to the United States of any kind in nearly five years. This announcement followed extensive coordination and cooperation between U.S. and Guatemalan law enforcement authorities that led to the indictment and arrest of four leaders of a smuggling operation, as well as the apprehension of 15 additional targets in Guatemala, in August 2022. Pursuant to an extradition request, Guatemalan authorities ordered the extradition of the leaders to the United States to face charges for their alleged roles in the offense. The indictments and extraditions, as well as the assistance provided by U.S. authorities to Guatemalan law enforcement, were coordinated under JTFA.⁸¹ On November 1, 2023, the Justice Department announced that JTFA had secured significant sentences—ranging from 10 years and one month in prison to 30 years in prison—for these four leaders of a smuggling operation.⁸²

⁸⁰ See Press Release, U.S. Dep’t of Just., Eight Indicted in Joint Task Force Alpha Investigation and Arrested as Part of Takedown of Prolific Human Smuggling Network (Sept. 13, 2022), <https://www.justice.gov/opa/pr/eight-indicted-joint-task-force-alpha-investigation-and-arrested-part-takedown-prolific-human>.

⁸¹ See Press Release, U.S. Dep’t of Just., Justice Department Announces Historic Guatemalan Human Smuggling Extraditions at Joint Task Force Alpha Summit (Mar. 16, 2023), <https://www.justice.gov/opa/pr/justice-department-announces-historic-guatemalan-human-smuggling-extraditions-joint-task>.

⁸² See Press Release, U.S. Dep’t of Just., Eight Indicted in Joint Task Force Alpha Investigation and Arrested as Part of Takedown of Prolific Human Smuggling Network (Sept. 13, 2022), <https://www.justice.gov/opa/pr/four-defendants-extradited-guatemala-sentenced-roles-deadly-international-human-smuggling>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

- On June 27, 2023, the Justice Department announced the indictment and arrest of four additional individuals involved in smuggling migrants in a tractor-trailer near San Antonio in June 2022, leading to the deaths of 53 migrants.⁸³ (The driver and another individual were charged in June 2022 right after the discovery of the migrants.) As of February 2024, all four defendants have pleaded guilty.
- 5. **Studies have shown that individuals who are represented during their immigration hearings have a higher success rate of being granted asylum. Unfortunately, the demand for attorneys to represent immigrants far exceeds the number available. As a result, the Department of Justice has a Recognition and Accreditation Program that allows certain non-attorneys to represent individuals in immigration court and before the Board of Immigration Appeals.**

Recently, allegations have surfaced that the accreditation process and renewals were taking months to complete. There have also been allegations that there is not enough permanent staff at the Department's Office of Legal Access Programs to administer the Recognition and Accreditation Program.

- a. **Does the Department have a plan to reduce wait times for the accreditation and renewal process?**

Response: The Department's Executive Office for Immigration Review (EOIR) oversees the Recognition and Accreditation Program (R&A).

EOIR advises as follows: Although there have been backlogs in the processing of R&A applications in recent years, EOIR is now current in its processing, and the R&A Program is operating with a working inventory of applications both for recognition of organizations and accreditation of individuals to serve as representatives before the Department of Homeland Security and EOIR. Applicants generally can expect a determination on their application in less than two months of a complete submission. Additionally, those awaiting renewal are not impacted by processing times because they are allowed to continue their representation for so long as their renewal application is pending.

- b. **Will the Department be asking for specific appropriations for FY24 in the President's Budget to ensure this program can function without glitches and long wait times?**

⁸³ See Press Release, U.S. Dep't of Just., Four Arrested for Tractor-Trailer Smuggling Incident that Resulted in 53 Deaths (June 27, 2023), <https://www.justice.gov/opa/pr/four-arrested-tractor-trailer-smuggling-incident-resulted-53-deaths>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: While not specific to the R&A, the Department's FY 2024 budget request sought \$1.45 billion for EOIR, which included a request for 965 new positions and reflects a 69.2 percent increase over the FY 2023 enacted budget. The FY24 budget request also included \$150 million in discretionary grant funding to support legal representation. These increases in staffing and discretionary funding will support any changes necessary to promote the continuing success of the R&A Program.

- 6. One of the biggest challenges of our immigration system is the backlog of cases that often take years to process. The Department of Justice seems to be making some strides in completing cases more quickly. At the end of FY22, the Executive Office of Immigration Review had almost 2 million pending cases. By November 2022, immigration judges had closed 375,000 cases – nearly three times the rate of FY2021.**

- a. What processes has the Justice Department adopted that have led to an increased rate in completions of these immigration cases?**

Response: The Department has implemented a multi-pronged approach to reducing backlogs at EOIR.

EOIR advises as follows: First, the Department has focused on building the immigration judge corps, increasing the number of immigration judges by nearly 300 judges since January 2021. Second, we are approaching hiring holistically—as we hire immigration judges, we are adding legal staff and headquarters staff in appropriate numbers to support the judge corps. Third, we have instituted various docket initiatives to resolve cases in a more efficient manner, while preserving docket space for cases that require a hearing. These initiatives include off-docketing cases that are not ripe for adjudication, establishing specialized dockets to resolve less complex matters more quickly, and encouraging pre-hearing conferences to resolve cases or narrow issues prior to trial. We have also leveraged internet-based technology to maximize the number of hearings that can be scheduled. Finally, the Department's regulatory agenda further supports the efforts to increase case resolutions. For example, a limited representation rule that took effect in 2022 increased efficiency by expanding the circumstance in which practitioners may assist pro se individuals in proceedings. Specifically, the rule allows practitioners to enter a limited appearance when they provide document assistance by helping individuals prepare forms, motions, briefs, applications, or other documents. Additionally, last fall we issued a notice of proposed rulemaking that would restore longstanding procedures such as administrative closure which allow immigration judges to efficiently manage their limited docket time.

- b. Is the Department actively pursuing other ways to more rapidly decrease the backlog?**

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

Response: EOIR advises as follows: The Department’s work throughout the past two years has resulted in an increase in the resolution of cases, and the efforts outlined above are working to bring more cases to resolution more quickly. In FY 2022, EOIR saw more cases to resolution than ever before, and in FY 2023, EOIR nearly doubled that record. But the backlog of cases is also at an all-time high because the Department of Homeland Security filed a record number of new cases in FYs 2022 and 2023, filing new cases at approximately twice the rate of case completions. The number of cases pending before EOIR is primarily dependent on the number of cases the Department of Homeland Security files with the agency. The FY 2024 budget request included \$367.1 million and 948 positions, which the Department expects to assist with continuing the positive trajectory of more case resolutions through greater staffing to both adjudicate cases and support initiatives to increase efficiencies further.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

SENATOR THOM TILLIS
DOJ Oversight - Questions for the Record

Law Enforcement

- 1. Do you believe that the current penalties for assaulting or killing a federal law enforcement officer are sufficient? Why or why not?**

Response: The Justice Department has no more important responsibility than keeping the American people safe, including the men and women who serve our nation as sworn law enforcement officers. In recent years, the Department has increased its efforts to deter and combat threats to the law enforcement community. For example, in March 2021, the Department formed a dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judges, and Members of Congress to assess the most prevalent threats and implement measures to further strengthen the Department's capacity to deter and combat those threats. The Justice Department has and will continue to aggressively pursue those who commit violent assaults on law enforcement to the full extent of the law.

- 2. Do you agree that Congress should consider proposals which would allow DOJ to prosecute those who assault and kill state or local law enforcement?**

Response: The Department stands ready to work with Congress relating to assaults against law enforcement.

- 3. What objections would you have to increasing penalties for those who assault and kill law enforcement officers at the federal, state, or local level?**

Response: The Department would need the opportunity to review any such proposal before providing an assessment.

- 4. Will you commit to working with me to enact legislation, like the *Protect and Serve Act*, which will increase penalties for those who assault and kill our brave men and women in blue at the federal, state, and local levels?**

Response: The Department committed to reviewing the Protect and Serve Act. Subsequent to the hearing, the Department has shared technical assistance about the bill with your office and stands ready to provide any further assistance as needed.

Immigration – Sanctuary Cities

- 5. Do you agree with me that sanctuary city policies create pull factors for illegal immigrants, particularly those with criminal backgrounds or intentions?**

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: The policies you are referring to were adopted by state and local governments, not the federal government. The Department of Homeland Security is the federal agency primarily responsible for immigration enforcement and border security, and the Department refers you to them for any assessment of the effect of such policies on immigration.

6. What is the Department of Justice's position on why cities and states can choose to ignore federal immigration law?

Response: The U.S. Supreme Court has identified the principles governing when federal immigration law preempts state or local law. The Department cannot answer in the abstract how those principles would apply to a given circumstance. But the Department will continue to assess whether state or local laws comply with federal law and take appropriate action in response.

7. Do you support allowing state and local governments to ignore federal immigration law? Why or why not?

Response: The Department maintains a collaborative approach with states and cities, recognizing their vital role as partners in law enforcement. This includes the enforcement of immigration laws, where cooperation between federal and local authorities is crucial.

8. In the case of Ned Byrd, a Sheriff's Deputy murdered in Wake County, one of the murderers pled guilty to a federal crime of possession of a firearm by an illegal immigrant. Is the Department continuing to investigate this case to determine any additional federal charges to bring against the murderers in this case? Please explain.

Response: Standard Department policy is not to confirm or deny the initiation or existence of any investigation.

Immigration – Asylum

9. What specifically is the Department of Justice doing to ensure that asylum claims are legitimate, and that our asylum system is not being abused?

Response: EOIR states as follows: EOIR maintains a Fraud and Abuse Prevention Program (Program) that continues to educate EOIR staff about fraud and the Fraud Program referral process. Ongoing education, coupled with training on these issues, helps to ensure that EOIR judges and staff take immigration fraud and abuse very seriously and know when it might be appropriate to refer incidents of fraud to law enforcement or prosecutors. In addition to training, the Program affirmatively notifies judges about fraud schemes through a variety of methods, including disseminating a periodic email newsletter to all EOIR staff, visiting court locations,

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

and maintaining a fraud tip telephone and email system that allows EOIR staff and the public to rapidly report fraud.

10. During your tenure, in how many cases have you or the Department made the determination that an asylum application is frivolous?

Response: EOIR states as follows: The determination of whether an asylum application is frivolous is a determination of law made by immigration judges pursuant to 8 C.F.R. § 1208.20 in individual adjudications. The consequences of such a finding are very serious because if an immigration judge finds that a noncitizen has filed a frivolous asylum application, the individual is subject to a lifetime bar of eligibility for most forms of immigration relief. EOIR's case tracking databases do not track asylum denials by reason, such as whether an asylum application is denied due to a finding that it is frivolous. Immigration judges apply the relevant law to the facts of each case to determine whether the criteria for making a determination of frivolousness has been met.

11. What efforts have you taken to ensure that frivolous asylum claims are addressed, and that illegal immigrants who make frivolous claims are punished accordingly under the law?

Response: EOIR advises as follows: The determination of whether an asylum application is frivolous is a determination of law made by EOIR's adjudicators pursuant to 8 C.F.R. § 1208.20. Judges adjudicate each asylum application on a case-by-case basis. Consequences for filing a frivolous asylum application include a lifetime bar from seeking immigration benefits. All immigration judges provide detailed, on-the-record advisals to noncitizens who express their desire to file an asylum application with the court. *See* INA §§ 208(d)(4), (6); 8 C.F.R. § 1208.20.

In addition to the warning before a noncitizen files an asylum application, the immigration judge also states on the record that it is their duty, as a judge, to advise them of the consequences if they present a frivolous application for asylum. The immigration judge proceeds to explain, in straightforward terms, that if a person lies to an immigration court, or if they present information or documents that they know are false, they could be barred for the rest of their life from any immigration benefits in the United States. Lastly, the immigration judge asks the noncitizen if, hearing the advisals, they still wish to file their application or, if already filed, wish to continue with it.

12. What are you doing to prevent illegal immigrants from not showing up for their immigration court hearings? What are you doing to apprehend and penalize those who abscond from their hearings and break our laws?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: According to EOIR, barring extenuating circumstances, immigration judges will order a noncitizen removed if they fail to appear for an immigration hearing, when the judge finds the noncitizen received proper notice of the hearing and the Department of Homeland Security (DHS) proves that the noncitizen is removable under U.S. immigration law. DHS is responsible for executing orders of removal issued by immigration judges.

13. What is the number of illegal immigrants who failed to appear for their asylum proceedings at EOIR? Of these, how many subsequently received a negative ruling as a result? Of these, how many have in fact been apprehended and removed from the country?

Response: EOIR states as follows:

EOIR tracks removal orders *in absentia*, which occur when a noncitizen does not appear for their hearing and the judge finds that proper notice of the hearing was provided to the noncitizen and DHS has proven the noncitizen is removable. EOIR reports that in FY 2023, EOIR issued 161,760 in absentia orders.

DHS is responsible for executing orders of removal issued by immigration judges, and EOIR does not track how many noncitizens DHS removes following an immigration judge's order of removal.

14. Is the 10-year penalty for absconding from an asylum hearing a large enough penalty in light of the abuse of our asylum system? Would you support increasing this penalty?

Response: The Department stands ready to work with Congress, through the Administration, on proposals to improve the asylum process and to build a fair, orderly, and humane immigration system.

15. Do you believe we need to reform our asylum laws to ensure they are not being abused? What specific reforms within the Department do you support to reduce frivolous asylum claims?

Response: The Department stands ready to work with Congress, through the Administration, on proposals to improve the asylum process and to build a fair, orderly, and humane immigration system.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Bipartisan Safer Communities Act

I am proud of the work we did to enact the *Bipartisan Safer Communities Act*. This landmark legislation provided an opportunity for us to come together and find solutions that will improve public safety while preserving our Second Amendment rights.

The bipartisan negotiations resulted in a carefully crafted compromise that permitted federal funding for state extreme risk protect orders (ERPO) if they met strict constitutional requirements. The Department recently released community safety funding which included grants to states for their ERPO programs.

16. How many states received funding for ERPO programs through the Byrne SCIP?

Response: The Department appreciates your commitment to working to combat the epidemic of gun violence. As you know, the BSCA was a monumental achievement, and the Department is taking significant steps to fully implement the law, including the grant programs established or supplemented by the legislation.

OJP reports the following: The Byrne State Crisis Intervention Program (Byrne SCIP), established by the BSCA, made available \$150 million per year for five fiscal years to support state crisis intervention programs, including ERPO programs. OJP's Bureau of Justice Assistance (BJA) has made combined Fiscal Year 2022 and Fiscal Year 2023 awards to 51 states, territories, and the District of Columbia (grantee jurisdictions).

17. How did the Department evaluate the constitutionality of these ERPO programs before deciding to award these grants?

Response: OJP advises as follows: BJA works diligently to ensure that Byrne SCIP closely tracks the statutory language, purposes, and requirements of the BSCA, including ensuring pre- and post-deprivation due process rights in grantee jurisdictions that choose to implement ERPO laws. All ERPO programs funded by Byrne SCIP are required to meet the constitutional due process requirements and protections listed in the statute. This obligation is made clear in the program solicitation⁸⁴ and further detailed in the FAQs⁸⁵ for applicants.

18. Please provide any guidance the agency has developed for the states on how to implement or amend a ERPO law so that the law will meet constitutional due process protections.

⁸⁴ See U.S. Dep't of Just., FY 2022 - 2023 Byrne State Crisis Intervention Program Formula Solicitation, <https://bja.ojp.gov/funding/awards/list>

⁸⁵ See U.S. Dep't of Just., *Byrne State Crisis Intervention Program Frequently Asked Questions* (Sept. 2023) <https://bja.ojp.gov/doc/byrne-scip-faq.pdf>.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

Response: OJP states as follows:

On June 7, 2021, the Department posted ERPO model legislation to its website.⁸⁶ Drawing on similar laws adopted across the country, this model legislation provides a framework for states to consider as they determine whether and how to craft laws to allow law enforcement, concerned family members, and others to seek these orders and to intervene before warning signs turn into tragedy.

In addition, Byrne SCIP also requires grantee jurisdictions to form Crisis Intervention Advisory Boards to inform and guide their grant activities. Such a Board must include representatives from law enforcement, the community, courts, prosecution, behavioral health providers, victim services, and legal counsel. Program and budget plans must be developed in coordination with (and receive approval from) the Board. At this stage, most of the grantee jurisdictions are still in the process of forming their Crisis Intervention Advisory Boards and developing their program plans and budgets to submit to BJA. Accordingly, the Department does not yet know how many grantee jurisdictions plan to use Byrne SCIP funding for ERPO programs.

BJA will monitor grantees’ use of funds to ensure compliance with the grant requirements listed in the solicitation. When a state, Tribe, territory, or the District of Columbia accepts the award, they are agreeing to follow the grant requirements detailed in the solicitation—which, as noted above, include constitutional and statutory protections applicable to any ERPO-related activities the grantee jurisdiction opts to undertake. BJA compliance monitoring includes desk reviews, site visits, and training and technical assistance support. In addition, BJA’s performance measures for Byrne SCIP pose specific questions to grantees using funds for ERPO to determine how they are ensuring the provision of due process. These performance measures must be completed by the grantee in the BJA Performance Management Tool four times per year to report on the grantee’s activities during the prior three months.⁸⁷

Drug Networks

Our nation is facing an unprecedented crisis due to the flooding of fentanyl into the United States. During fiscal year 2022, the U.S. Customs and Border Protection (CBP) seized 14,100 pounds of fentanyl at the border. For fiscal year 2023, CBP has already seized 8,600 pounds. Combined, that is enough to kill over 5.1 billion people. As of this year, the Drug Enforcement Agency (DEA) has already seized over 4.5 million fentanyl pills and over 800

⁸⁶ See U.S. Dep’t of Just., *Commentary for Extreme Risk Protection Order Model Legislation* (June 7, 2021) <https://www.justice.gov/doj/reducing-gun-violence/commentary-extreme-risk-protection-order-model-legislation/#model>.

⁸⁷ See U.S. Dep’t of Just., *Byrne State Crisis Intervention Program Performance Measures Questionnaire* (Oct. 2023) <https://bja.ojp.gov/funding/performance-measures/byrne-scip-measures.pdf>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

pounds of fentanyl in our U.S. interior. The three main players fueling this poison into our communities are the Sinaloa Cartel, the Jalisco New Generation Cartel (CJNG), and the Chinese Communist Party who are providing the precursors to the Mexican cartels.

19. What measures is the Department of Justice taking to address the influx of narcotics, like fentanyl into our communities?

Response: The Department is using all available resources to combat drug trafficking, increase access to evidence-based treatment, and prevent drug overdose and poisoning deaths in the United States. The Department is working closely with federal, state, local, Tribal, and territorial law enforcement partners here and abroad to stop deadly synthetic drugs from entering our neighborhoods and to aggressively investigate and prosecute those responsible for manufacturing and trafficking these drugs.

The Department's litigating, law enforcement, and grantmaking components have reported the following:

Investigative and Prosecution Efforts

The Department has investigated hundreds of fentanyl cases that have led to significant arrests, seizures, and prosecutions, including many with direct links to the Mexican cartels responsible for the majority of the fentanyl in the United States, most notably the Sinaloa and Jalisco New Generation cartels. DEA, for example, has built an entirely new strategic layer with two counter threat teams for the Sinaloa Cartel and the Jalisco Cartel. These counter threat teams map the cartels, analyze their networks, and develop targeting information on the cartel members wherever they operate around the world.

These efforts are producing significant results. On April 14, 2023, the Department announced charges against a subset of members and associates of the Sinaloa Cartel, known as the Chapitos, for their alleged role in the transportation of lethal amounts of fentanyl, cocaine, heroin, and methamphetamine into the United States. The charges were the product of proactive enforcement efforts and the dedication of significant prosecutorial resources. More recently, on October 3, the Department announced the unsealing of eight indictments in the Middle and Southern Districts of Florida charging China-based companies and their employees with crimes relating to alleged fentanyl and methamphetamine production, distribution of synthetic opioids, and sales resulting from precursor chemicals. The indictments build on prosecutions announced in June and mark the second set of prosecutions to charge China-based chemical manufacturing companies and nationals of the People's Republic of China (PRC) for trafficking fentanyl precursor chemicals into the United States.

In May, the DEA announced the results of "Operation Last Mile," a year-long national operation, targeting operatives, associates, and distributors affiliated with the Sinaloa and Jalisco Cartels

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

responsible for the last mile of fentanyl and methamphetamine distribution on streets and social media. Operation Last Mile resulted in the arrests of 3,337 associates of the Sinaloa and Jalisco Cartels in the United States. On September 15, 2023, Ovidio Guzman Lopez, one of El Chapo’s four sons and a leader of the Chapitos’ global fentanyl supply chain, was extradited from Mexico to face charges filed in the Northern District of Illinois.

Additionally, the Department has taken action against all parties involved in the prescription opioid supply chain, from manufacturers and distributors to national pharmacies, doctors, and pharmacists. Accountability has been a top priority in these efforts. For instance, in December 2022, the Department sued one of the largest prescription drug distributors in the country, alleging that over the course of nearly a decade, the company violated the Controlled Substances Act by failing to report at least hundreds of thousands of suspicious orders of controlled substances to the DEA as required by law. The alleged unlawful conduct includes filling and failing to report numerous orders from pharmacies that the company knew were likely facilitating diversion of prescription opioids. The Department has similarly filed lawsuits against two major chain pharmacies, alleging those companies defied federal law, and has brought civil and criminal actions against a bevy of doctors and local pharmacies⁸⁸.

Likewise, due to the alarming increase in overdose fatalities resulting from the consumption of counterfeit pills containing fentanyl, the Department has intensified its efforts to investigate corporate entities that are involved in the production, supply, or vending of fake pills. These include investigations into e-commerce sites and social media platforms that may be allowing traffickers to sell counterfeit pills to teens and young adults, as well as investigations into companies that may be allowing precursor chemicals and equipment used to make illegal synthetic drugs to get into the hands of drug trafficking organizations.

U.S. Attorneys’ Offices also work to hold those who sell deadly doses of fentanyl responsible for the deaths that result from their unlawful conduct. These significant cases require substantial resources and have been made more challenging by the Supreme Court’s decision in *Burrage v. United States*, 571 U.S. 204 (2014), which can make such cases difficult to prove.

Multi-Agency Efforts

The Department’s Organized Crime Drug Enforcement Task Forces (OCDETF) coordinated a multi-agency effort led by seven U.S. Attorneys’ Offices to combat the fentanyl/opioid epidemic in West Virginia and neighboring states. This operation is an alliance of more than 20 federal, state, and local OCDETF partners, including substantial intelligence and operational contributions by several High Intensity Drug Trafficking Area (HIDTA) partners. OCDETF

⁸⁸ *USA v. Walmart*, 1:20-cv-01744 (D. Del.); *United States ex rel. White et al. v. Rite Aid Corp., et al.*, No. 1:21-cv-1239 (N.D. Ohio)

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

created and launched a three-phase, national strategic initiative to focus investigative efforts on illuminating command and control elements of transnational criminal organizations smuggling fentanyl, methamphetamine, and other dangerous synthetic drugs through the mail and along highway transshipment corridors through Michigan, Ohio, West Virginia, Kentucky, and Pennsylvania. More recently, and as a result of these synchronized efforts, federal prosecutors developed eight new OCDETF cases against criminal networks targeting dozens of high-level criminals allegedly responsible for the trafficking of fentanyl, opioids, and comingled drugs in the Midwest region, including West Virginia.

Fentanyl OCDETF National Strategic Initiative (FONSI) incentivizes investigative teams to think outside-the-box, target criminal organizations early in their lifecycle, and identify command and control elements of larger criminal networks responsible for importation and trafficking of opioids. FONSI brings together 14 United States Attorney's Offices where lead OCDETF prosecutors coordinate efforts of more than 30 federal, state, and local law enforcement agency partners; and 13 regional and national HIDTA teams across the Southwest and the Pacific OCDETF regions to investigate and prosecute fentanyl traffickers.

Additionally, the FBI uses a proactive approach to combat fentanyl via the FBI-led Joint Criminal Opioid and Darknet Enforcement Team (JCODE). JCODE began in 2018 as an FBI-led, multi-agency initiative to target criminal activity on the Darknet, particularly the trafficking of fentanyl and other opioids. The JCODE team encompasses the Department and 12 federal law enforcement agencies working together to advance a strategic approach targeting drug trafficking organizations utilizing the Darknet to facilitate their illicit activities. JCODE recently announced Operation SpecTor, which the Department deemed to be the "Largest International Operation Against Darknet Trafficking of Fentanyl and Opioids."

At the local level, the FBI's Safe Streets and Gang Program uses its Safe Streets Task Forces to target violent street gangs that are increasingly distributing opioids, such as fentanyl. The FBI continues to support multi-agency task forces such as OCDETF to combat the ongoing opioid epidemic.

The Department has also demonstrated a commitment to educating the communities we serve about the dangers these opioids pose. JCODE publicized Operation ProtecTor, a proactive public outreach campaign to share information highlighting the seriousness of the opioid epidemic and the significant role of the Darknet. Other proactive FBI intelligence efforts include conducting network mapping and producing finished intelligence regarding key facilitators engaged in the production, trafficking, and financing of illicit fentanyl operations affecting the United States.

Finally, the Department's commitment to combatting the opioid crisis is clear from the creation and targeted efforts of the Appalachian Regional Prescription Opioid (ARPO) Strike Force, led by the Criminal Division's Fraud Section. Since its inception in late 2018, ARPO has partnered

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

with federal and state law enforcement agencies and U.S. Attorneys' Offices throughout Alabama, Kentucky, Ohio, Virginia, Tennessee, and West Virginia to prosecute medical professionals and others involved in the illegal prescription and distribution of opioids. Over the past four and a half years, ARPO has charged over 115 defendants collectively responsible for issuing prescriptions for over 115 million controlled substance doses. In addition, in 2022, the Fraud Section launched the New England Prescription Opioid Strike Force to identify and prosecute unlawful prescriptions and diversion of opioids and other controlled substances in Maine, New Hampshire, and Vermont. These enforcement efforts make clear that the Department will hold accountable medical professionals who have forsaken their medical duty accountable for profit during their role in the opioid crisis.

Legislative Efforts

The Department is working with Congress on legislative proposals to address the fentanyl crisis. In September 2021, the Administration submitted its Recommendations to Congress on Fentanyl-Related Substances, which is a "long-term, consensus approach that advances efforts to reduce the supply and availability of illicitly manufactured fentanyl-related substances."⁸⁹ Under the Administration's proposal, the entire fentanyl-related substance class would be added to Schedule I of the Controlled Substances Act because of the similarity to fentanyl in pharmacology, structure, and potential for abuse. The Administration's proposal also includes a more expeditious off-ramp to deschedule or reschedule specific fentanyl-related substances if the Secretary of Health and Human Services finds that the specific substance does not have a high potential for abuse after a scientific and medical evaluation. The Department welcomes the opportunity to work with Congress to discuss these and other legislative proposals to address the fentanyl crisis in this country.

Community Outreach

In addition to investigating and prosecuting those responsible for this crisis, the Department is committed to supporting programs aimed at addressing the substance use crisis that is devastating communities across the nation. Individual U.S. Attorneys' Offices have initiated innovative efforts to conduct outreach to their communities to educate youth about the dangers of opioids and to highlight the importance of other lifesaving tools, such as naloxone. For example, the U.S. Attorney in the Southern District of West Virginia has participated in multiple events to encourage individuals to learn how to use naloxone to save the lives of their friends and neighbors.

In September 2021, DEA launched the One Pill Can Kill initiative as a public awareness campaign to highlight the dangers of fentanyl to every household in every community. This campaign is consistent with the Department's obligation to make Americans aware of the deadly

⁸⁹ Press Release, Biden-Harris Administration Provides Recommendations to Congress on Reducing Illicit Fentanyl-Related Substances (Sept. 2, 2021) <https://www.whitehouse.gov/ondcp/briefing-room/2021/09/02/biden-harris-administration-provides-recommendations-to-congress-on-reducing-illicit-fentanyl-related-substances/>

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

threat from counterfeit pills containing lethal doses of illicit fentanyl. DEA has also conducted a series of operational surges as part of the One Pill Can Kill campaign. The most recent enforcement operation ran from May to September 2022 and resulted in the seizure of more than 10.2 million fentanyl pills and approximately 980 pounds of fentanyl powder—the equivalent of 36 million potentially lethal doses. The effort also resulted in the seizure of 338 weapons, including rifles, shotguns, pistols, and hand grenades.

The Department's OJP supports state, local and Tribal public safety, public health, and behavioral health entities by serving as a critical source of funding, training and technical assistance, and research for prevention and intervention efforts to improve responses to and outcomes for individuals with substance use needs at every point along the justice continuum. This support includes, but is not limited to, training law enforcement personnel on de-escalation and crisis intervention training; diverting individuals with substance use conditions away from the justice system, as appropriate; providing substance use treatment and recovery support services for adults and youth during incarceration and effective continuity of care upon their reentry into the community. In Fiscal Year 2022, OJP awarded over \$340 million to address substance use disorders and fight the overdose epidemic.⁹⁰

20. What is the Department of Justice doing to dismantle drug cartels, such as the CJNG and Sinaloa Cartel from operating in our country?

Response: DEA advises as follows:

The Sinaloa and Jalisco Cartels are the two drug cartels responsible for the influx of fentanyl in the United States, posing the greatest drug threat the United States has ever faced. These ruthless, violent, criminal organizations have associates, facilitators, and brokers in all 50 states in the United States, as well as in more than 40 countries around the world.

DEA has built an entirely new strategic layer with two counterthreat teams for the Sinaloa Cartel and the Jalisco Cartel. These counterthreat teams map the cartels, analyze their networks, and develop targeting information on the cartel members wherever they operate around the world.

These efforts are producing significant results. On April 14, 2023, the Department announced charges against a subset of members and associates of the Sinaloa Cartel, known as the Chapitos, for their alleged role in the transportation of lethal amounts of fentanyl, cocaine, heroin, and methamphetamine into the United States. The charges were the product of proactive enforcement efforts and the dedication of significant prosecutorial resources. Moreover, last year DEA announced the results of a year-long national operation, "Operation Last Mile," targeting

⁹⁰ See Press Release, U.S. Dep't of Just., Justice Department Awards More Than \$340 Million to Address Substance Use Disorders and Fight the Overdose Epidemic (Oct. 14, 2022), <https://www.justice.gov/opa/pr/justice-department-awards-more-340-million-address-substance-use-disorders-and-fight-overdose>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

operatives, associates, and distributors affiliated with the Sinaloa and Jalisco Cartels responsible for the last mile of fentanyl and methamphetamine distribution on streets and social media. Operation Last Mile resulted in the arrests of 3,337 associates of the Sinaloa and Jalisco Cartels in the United States. On September 15, 2023, Ovidio Guzman Lopez, one of El Chapo's four sons and a leader of the Chapitos' global fentanyl supply chain, was extradited from Mexico to face charges filed in the Northern District of Illinois.

ATF also has made strides in dismantling the firearms trafficking networks that provide the guns that arm the cartels, including high-caliber weapons.

In addition to these efforts, the Department continues to make gains in our relationship with our law enforcement partners around the world, including in Mexico. The Attorney General has met with Mexican counterparts to discuss, among other things, fentanyl trafficking and the cartels, including during a trip to Mexico City on October 5, 2023. Mexican law enforcement must be an ally in this fight, and the Department continues to drive cooperation forward.

21. Has the Department of Justice made any progress in finding Ismael Zambada Garcia, leader of the Sinaloa Cartel? In addition, what progress has the department made in finding Nemesio Oseguera-Cervantes, leader of the CJNG?

Response: Standard Department policy is not to comment on or confirm the existence of any pending investigations.

22. Can you provide an update of the Department of Justice Money Laundering and Forfeiture Unit's work to go after Mexican drug cartels and Chinese shell companies laundering narcotic earnings for the cartels?

Response: The Criminal Division and the Drug Enforcement Administration advises as follows:

The Criminal Division's Money Laundering and Asset Recovery Section (MLARS), Money Laundering and Forfeiture Unit (MLFU) investigates and prosecutes professional money launderers and gatekeepers who provide their services to criminal organizations. That includes Mexican drug cartels, as well as individuals and entities using the latest and most sophisticated money laundering tools and techniques. MLFU also litigates civil forfeiture cases for the Criminal Division and, in appropriate cases, in partnership with United States Attorneys' Offices. It provides support to the Criminal Division in cases involving significant or complex criminal forfeiture allegations. MLFU serves as the Criminal Division's experts on domestic forfeiture and, in this role, provides advice to other Criminal Division attorneys and United States Attorneys' Offices.

An example of MLFU's work is the prosecution of a Chinese money laundering organization, led by Xizhi Li, that obtained contracts from Mexican drug trafficking organizations to launder

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

drug proceeds through foreign and domestic front companies.⁹¹ MLFU continues to investigate numerous additional Chinese trade-based money laundering schemes, some of which MLFU believes are engaged in handling Latin American drug proceeds. In addition, MLARS has a full-time prosecutor stationed at the DEA Special Operations Division who supports money laundering investigations, including by Chinese organizations laundering narcotics proceeds.

OCDETF's investigative efforts focus on identifying, targeting, and disrupting and dismantling illicit finance infrastructures of Mexican transnational organized crime actors. One objective is to uncover Chinese money launderers and illicit finance components of Mexican criminal organizations responsible for the distribution of illicit fentanyl and other dangerous drugs into the United States.

23. What additional resources does the unit need from Congress to tackle the money laundering matter?

Response: On March 9, 2023, the Administration released its budget for FY 2024. The Department is included in the President's budget request,

24. Has the Department of Justice taken any legal action against any Chinese based companies or shell companies that are providing the fentanyl precursors to the Mexican cartels?

Response: The Criminal Division and the Drug Enforcement Administration advise as follows:

On October 3, the Justice Department announced the unsealing of eight indictments in the Middle and Southern Districts of Florida charging China-based companies and their employees with crimes relating to alleged fentanyl and methamphetamine production, distribution of synthetic opioids, and sales resulting from precursor chemicals. OFAC took complementary actions by designating 28 individuals and entities involved with the international proliferation of illicit drugs. This announcement built on prosecutions announced in June to charge China-based chemical manufacturing companies and nationals of the People's Republic of China (PRC) for trafficking fentanyl precursor chemicals into the United States and in April, when the Department charged four individuals in China for allegedly working with the Sinaloa Cartel to ship fentanyl precursors from China to Mexico.

On June 23, 2023, the Department announced Operation Killer Chemicals which includes three indictments charging four PRC companies and eight Peoples Republic of China nationals who worked for the companies with fentanyl trafficking conspiracy. Two of the PRC nationals have

⁹¹ See Press Release, [U.S. Dep't of Just., Leader of Money Laundering Network Responsible for Laundering Millions of Dollars in Drug Proceeds Sentenced to 15 Years in Prison \(Oct. 26, 2021\)](https://www.justice.gov/opa/pr/leader-money-laundering-network-responsible-laundering-millions-dollars-drug-proceeds), <https://www.justice.gov/opa/pr/leader-money-laundering-network-responsible-laundering-millions-dollars-drug-proceeds>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

been taken into custody. The indictments allege that the defendants provided their customers with raw materials and the scientific knowledge to make fentanyl. Moreover, the defendants spoke openly of having customers in America and Mexico, and, specifically in Sinaloa, Mexico, the location where the Sinaloa Cartel is based. Other indictments include in 2018 of Jian Zhang (District of North Dakota) and Xiaobing Yan (Southern District of Mississippi), and in 2018 of Fujing Zheng and his father Guanghua Zheng (Northern District of Ohio).⁹²

25. On January 30, 2023, the Texas Department of Public Safety busted a fentanyl laboratory that was disguised as a car rental company. The bust led to 17 pounds of precursor from China, counterfeit Xanax pills, cocaine, and methamphetamine.

a. What steps is the Department of Justice taking to eradicate illicit narcotic laboratories in the United States and to hold individuals accountable?

Response: DEA advises as follows:

DEA is committed to defeating the Sinaloa and Jalisco Cartels, the two organizations most responsible for the fentanyl and methamphetamine in our communities. As part of our effort to target the Sinaloa and Jalisco Cartels and their networks, DEA has mapped out the associates of these cartels based in China and Mexico, as well as identified more than 200 members and associates in the United States. The Department continues to work with our state, local, and federal partners to take enforcement action against these networks. In the last two years, DEA coordinated the dismantlement and removal of hazardous materials from over 1,000 domestic illicit drug laboratories and illicit hazardous environments. To do this dangerous work, DEA conducted training attended by nearly 1,100 DEA special agents and our state and local partners.

The Department advises a myriad of investigative components in the conduct of investigations of suspected or alleged offenses against the United States, among them violations of the Controlled Substances Act and other drug-related statutes. The Department can request an investigation and may in some cases coordinate a team of agents representing different state and/or federal level agencies having investigative jurisdiction of the suspected violations. The Department brings and prosecutes criminal cases against priority criminal actors. Persons and entities that operate and assist in the operation of illicit narcotic laboratories are among the Department's priority targets,

⁹² See Press Release, U.S. Dep't of Just., Department of State Offers Reward for Information to Bring Chinese Fentanyl Trafficker to Justice (Aug. 31, 2021), <https://www.justice.gov/usao-nd/pr/departments-state-offers-reward-information-bring-chinese-fentanyl-trafficker-justice>; See Press Release, U.S. Dep't of Just., Chinese National Indicted in Southern District of Mississippi Designated by U.S. Treasury Department as Significant Foreign Narcotics Trafficker (Aug. 22, 2019), <https://www.justice.gov/usao-sdms/pr/chinese-national-indicted-southern-district-mississippi-designated-us-treasury>; See Press Release, U.S. Dep't of Just., Two Chinese Nationals Charged with Operating Global Opioid and Drug Manufacturing Conspiracy Resulting in Deaths in Akron (Aug. 22, 2018), <https://www.justice.gov/usao-ndoh/pr/two-chinese-nationals-charged-operating-global-opioid-and-drug-manufacturing-conspiracy>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

especially if the manufacturing operation involves fentanyl or its analogues or other synthetic opioids.

b. Can you provide the number of individuals who have been convicted in 2022 and 2023 for running illicit narcotic laboratories in the United States?

Response: EOUSA advises as follows: The Department does not separately track prosecutions related to running illicit drug labs in the United States. Individuals who are involved in clandestine drug laboratories can be prosecuted under a number of different federal statutes. Most commonly, prosecutors would charge defendants with unlawfully manufacturing controlled substances, in violation of 21 U.S.C. § 841(a)(1). This is the general federal drug trafficking statute that also prohibits unlawful distribution of controlled substances, dispensing of controlled substances, and possessing controlled substances with intent to manufacture, distribute or dispense a controlled substance. Crimes related to illicit drug labs also could be prosecuted under 21 U.S.C. § 846 (attempt/conspiracy), 21 U.S.C. § 841(c) (unlawful possession of chemicals used to manufacture controlled substances), 21 U.S.C. § 841(f) (unlawful possession/distribution of certain chemicals), 21 U.S.C. § 843 (unlawful activities related to certain machines and lab equipment), 21 U.S.C. 856 (maintaining a premises for manufacturing controlled substances), or other federal statutes depending on the facts of the case.

26. What resources does the Department of Justice have available for North Carolina's state and local law enforcement to help tackle the illicit drug problem? Are there any resources that are readily available for North Carolina's rural law enforcement officers?

The Department works regularly with local, state, and federal partners in North Carolina to conduct joint investigations and enforcement operations. DEA states as follows: DEA utilizes a robust Task Force Officer (TFO) Program, which offers North Carolina counterparts the opportunity to assign officers/detectives to local DEA offices to facilitate and coordinate investigative efforts. In addition to the TFO Program, which uniquely positions DEA to coordinate intelligence and investigations, DEA works closely with numerous local drug task forces and the North Carolina State Bureau of Investigation to identify additional opportunities to leverage partnerships and combat cartel activity throughout the state of North Carolina and beyond. In these collaborative efforts, DEA offers investigative expertise and experience as well as the funding required for controlled drug purchases and the court-authorized interception (wiretaps) of communications over electronic devices being used to facilitate drug trafficking in North Carolina.

The Department will continue to leverage partnerships and deploy any increased personnel or funding in a manner consistent with our mission of fighting the cartels to create a safer place for North Carolinians. In addition to addressing the supply side of the illicit drug problem, the Department also addresses the demand side.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

OJP advises as follows:

OJP provides grant funding and training and technical assistance (TTA) that supports both state and local law enforcement to address substance use and misuse in their communities, including, but not limited to, through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program and the Comprehensive Opioid, Stimulant, and Substance Use Program (COSSUP). These programs and related TTA support prevention, harm reduction, treatment, and recovery support services. For example, OJP has provided several grants to North Carolina to support a variety of activities led by and including law enforcement, including law enforcement assisted diversion, the provision of evidence-based substance use treatment and recovery services, overdose prevention programs to reduce fatal and non-fatal opioid overdose, and providing officers with technology support tools to identify substances in the field and refer individuals in need of treatment. OJP understands the unique challenges that rural communities and rural law enforcement face in addressing their communities' substance use needs and have made specific efforts to support those needs.

For example, the COSSUP solicitation includes a specific category for applications from rural or Tribal areas. The Department also supports demonstration projects focused on rural jurisdictions, such as the COSSUP Reaching Rural: Advancing Collaboration Solutions initiative. This initiative was designed for rural justice and public safety practitioners; public health and behavioral health practitioners; city, county, and Tribal leaders; and community groups to build deeper networks, particularly across sectors; adopt bold solutions to the persistent challenge of substance use and misuse in rural communities; and reimagine how diverse systems with different missions can engage with one another to more effectively serve justice-involved individuals with substance use or co-occurring disorders. A team of fellows from Harnett County, including a representative from the Harnett County Sheriff's Office, is participating in this effort.

Crime Victims

The Children's Advocacy Centers (CACs) of North Carolina have over 45 CACs established throughout the State of North Carolina. The CACs are composed of forensic interviewers, therapists, advocates, and medical experts that serve children that are impacted by abuse.

In 2021, I was proud to be an original cosponsor of the VOCA Fix to Sustain the Crime Victims Fund Act, which was signed into law. This meaningful legislation helps to collect funds directly from deferred prosecution agreements and directs it to crime victims funding for CACs.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

27. What is the current status of the VOCA Fix Act? Has the legislation been fully implemented? If not, what roadblocks is the Department of Justice facing to implement it the law?

Response: The Department is grateful for Congress's efforts to pass the VOCA Fix. The Office of Victims of Crime (OVC) states as follows:

Since FY 2018, the Crime Victims Fund (CVF or Fund) balance had declined by 74 percent and the obligation cap had been lowered. As a result, the allocations for all states and territories had decreased. Since enactment in 2021 through April 2023, nearly \$1 billion was deposited into the CVF from NPAs and DPAs – a direct result of the VOCA Fix and the Department's efforts to increase deposits into the CVF. When the VOCA Fix passed in 2021, courts were still experiencing delays and recovering from the impacts of the pandemic, resulting in a corresponding delay in prosecutions. As courts resume normal processes, and cases are tried, the Department anticipates seeing the full effects of the law.

The OVC is the office within the Department responsible for administering the Fund. OVC has met with other offices within the Department, including the offices responsible for the largest contributions to the CVF (Antitrust Division, Criminal Division, Executive Office for U.S. Attorneys) to discuss the Victims of Crime Act, and the resources and support provided to victims stemming from case fines and penalties. OVC has also met with front line U.S. Attorneys on the importance of the Fund, and how it affects victim assistance programs in their districts. This engagement with U.S. Attorneys will continue regularly to facilitate further understanding and awareness of the Fund.

Additionally, the Department recognizes that keeping the CVF solvent is essential to providing crime victims with compensation and assistance critical for emotional, physical, and financial support in the aftermath of crime. The Department has a robust training curriculum that emphasizes the availability of the Fund as a repository for fines, DPAs and NPAs, and other criminal monetary penalties. In addition to trainings and guidance set forth in the Justice Manual, the Department has published a number of resource materials to assist prosecutors in ensuring that asset recovery is taken into consideration at every stage of a criminal prosecution. Moreover, the Department actively informs prosecutors of any legislative changes which impacts the Fund. For example, the Department immediately implemented and educated prosecutors on the changes made by the VOCA Fix Act.

28. Can you provide the year by year impact that VOCA Fix Act has had on crime victim funding since its enactment?

Response: OVC reports the following: Since enactment of the VOCA Fix Act in 2021 through April 2023, nearly \$1 billion was deposited into the CVF fund from NPAs and DPAs, which is a direct result of the VOCA Fix and the Department's efforts to increase deposits into the Fund.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

During that same period, \$1.15 billion from criminal fines, penalties, gifts, donations, and bequests were deposited into the Fund. Since FY 2018, the CVF balance had declined by 74 percent and the annual obligation cap had been lowered by Congress by 57 percent to ensure solvency. As a result, the allocations for all states and territories had decreased. The VOCA Fix has enabled a new funding stream to flow into the Fund rather than into the general Treasury; however, the VOCA Fix alone cannot bring about immediate stability to the CVF.

In March of 2022, the Violence Against Women Act (VAWA) Reauthorization Act of 2022 was signed into law, which I was proud to cosponsor. The VAWA Reauthorization Act provides critical resources for victims of violence such as increasing the authorized amount of grant funding to support domestic violence prevention and response organizations that provide victim services.

29. What is the current status of the VAWA Reauthorization Act of 2022? Has the legislation been fully implemented? If not, what roadblocks is the Department of Justice facing to implement it?

Response: OVW advises as follows:

VAWA 2022 reauthorization implementation is well underway. Department components, including OVW, are working together and with other federal agencies to successfully implement VAWA 2022, including numerous reporting recommendations. The Department looks forward to continuing to share announcements, reports, and updates with Congress in the months ahead.

OVW has undertaken a range of activities to implement provisions of VAWA 2022. Most new grant provisions in the 2022 reauthorization of VAWA did not take effect until this past October, so the roll-out of those changes began with the Office's FY 2023 grantmaking. OVW's FY 2023 solicitations reflect the many statutory improvements that Congress made to existing OVW grant programs in VAWA 2022. Of the newly authorized VAWA 2022 grant programs, only the Restorative Justice program received an appropriation in FY 2022. Therefore, OVW has already completed significant planning activities for the Restorative Justice program, including researching promising practices, seeking insights from a range of stakeholders, and soliciting technical assistance proposals in advance of issuing awards. For other new VAWA 2022 grant programs that first received appropriations in FY 2023, OVW has initiated planning activities, including assigning managers and staff to new programs. As with the Restorative Justice program, OVW is formulating program plans to ensure it makes the best use of these new opportunities.

In addition, OVW has identified and deployed resources to support Tribal implementation of VAWA 2022 provisions that recognize expanded special Tribal criminal jurisdiction (STCJ) over non-Indian offenders. To this end, OVW issued a competitive award to the Tribal Law and Policy Institute (TLPI) to provide technical assistance to Tribes seeking to exercise and

Questions for the Record
Senate Committee on Judiciary
"Oversight of the United States
Department of Justice"
March 1, 2023

implement STCJ and co-hosted an August 2022 meeting of Tribes focused on STCJ. To support implementation of STCJ in Alaska, OVW issued a special solicitation for Tribes in Alaska interested in designation through the Alaska Pilot Program. The Department announced its implementation plan for the Alaska STCJ Pilot Program on October 20, 2023.

On April 11, 2023, following extensive consultation with Tribal leaders and experts, OVW issued an interim final rule governing VAWA 2022's newly authorized program to reimburse Tribes for expenses incurred in exercising STCJ. This new rule will enable OVW to administer the Tribal Reimbursement Program in Calendar Year 2024.

30. Has the Department of Justice started distributing the grant funding to support domestic violence prevention and response organizations?

Response: OVW states as follows:

As described above, OVW has taken significant steps to prepare to distribute grant funding that Congress newly authorized by VAWA 2022 and appropriated in FY 2023. The Office appreciates the need to get new programs out the door as quickly as possible. At the same time, whenever OVW has the opportunity to administer new grant programs, it takes great care to ensure our approach tracks with Congress's intent, matches the needs in the field, and makes the best use of taxpayer funds.

OVW's process for launching a newly appropriated program includes a number of steps: reviewing existing evaluations or other research relevant to the new programming, conducting focus groups and other inquiries to ascertain current efforts (see, e.g., ongoing efforts regarding Restorative Justice program described above), and determining how to measure grantee success, identifying the most appropriate funding model (i.e., grant program or pilot/demonstration initiative, competitive or non-competitive awards), to name a few.

31. Has the grant funding under the Sexual Assault Nurse Examiner (SANE) provision of VAWA been appropriately allocated to grantees?

Response: OVC advises as follows: OVC announced grants under the "Sexual Assault Nurse Examiner Training Program Grants" section of the VAWA Reauthorization Act of 2022 (Section 1318) in September 2023. More than \$3 million in funding was awarded to a technical assistance provider to establish regional SANE training programs. An additional \$2 million was awarded to supporting new sites. One goal of this work will be to establish a Center of Excellence in Forensic Nursing to prepare current and future SANES/SAFEs to be professional-ready and meet the applicable State certifications and licensure requirements.

32. How much has the State of North Carolina received in SANE funding from the VAWA reauthorization?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: OVC advises as follows: OVC funds organizations, not states, under the SANE funding related to the VAWA reauthorization. While OVC will make awards under the OVC FY 2023 Expanding Access to Sexual Assault Forensic Examinations program, no applications from organizations in North Carolina were received.

33. Has the Department of Justice addressed the 2018 Office of Inspector General (OIG) report about VAWA grants not being closed in an appropriate time?

Response: A March 2018 report published by the Department's Office of the Inspector General (OIG) examined the grant closeout process across the Department's three grant-making offices—the OJP, the COPS Office, and OVW. The report included 61 findings, 29 of which pertained to OVW.

According to OVW, it worked closely with its grantees and the OIG to resolve the findings. A September 2021 memorandum from the OIG informed OVW that the status of the report is fully closed.

a. Will the Department of Justice conduct audits to ensure victims and grant recipients get the resources in a timely manner?

Response: OVW states as follows: OVW prioritizes equipping grantees with the resources, training, and technical assistance they need to serve survivors and hold offenders accountable. Recently, OVW's Grants Financial Management Unit has hired additional staff to provide financial management at all junctures of the grant cycle, including processing grant awards and completing financial review of grant budgets. OVW's FY 2024 Budget request included additional financial staff to not only increase efficiency in OVW's financial management but also bolster the technical assistance and training OVW provides to grantees and applicants.

Social Media Impact on Children

I understand that the internet and social media platforms can be beneficial to our daily lives. Like keeping us connected with friends and family across the country. We must also recognize that internet and social media have become the virtual interstate system for the sale of narcotics to the distribution of child sexual abuse material (CSAM). In 2021, National Center for Missing & Exploited Children (NCMEC) cyberline received 29 million reports of suspected online child sexual abuse material (CSAM).

34. What action is the Department of Justice taking to hold individuals accountable for possessing and distributing child sexual abuse material? Is DOJ able to investigate all reports of suspected online CSAM? If not, what actions is the Department taking to

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

improve its response and investigate the extraordinary number of suspected CSAM reports?

Response: Child sexual abuse material is abhorrent, and the Department is committed to stopping its production and transmission online through vigorous enforcement of the law. The Criminal Division advises as follows:

The advent of so many different online platforms with global reach, and the proliferation of encryption and anonymizing technology, has complicated the identification, interdiction, and investigation of online child sexual exploitation. Smartphones, for example, are fully encrypted devices that fit in a pocket that offenders can use to produce, livestream, store remotely, access, send, and receive child sexual abuse material, and engage with other offenders or children on any manner of social media and encrypted messaging apps. The Tor network hosts hidden services where hundreds of thousands of offenders congregate in communities dedicated to the sexual abuse of children. Artificial intelligence (AI) provides offenders with new and easy-to-use methods to create instantaneous photo-realistic child sexual abuse material with or without the use of an actual minor.

The child exploitation threats have grown exponentially in scale, complexity, and dangerousness. The Department is doing everything it can to prevent and stop child sexual exploitation, hold offenders accountable, and protect victims, but the solutions to address child exploitation require action not just from the Justice Department and law enforcement partners, but also from Congress, the technology industry, our NGO and interagency partners, and others. Even with unlimited resources, law enforcement will not be able to investigate and prosecute every instance of online child exploitation crime. The Justice Department's goals and objectives must continue to be focused on utilizing technology and law enforcement collaboration to prioritize the worst offenders and rescue children actively being harmed. Additionally, it is critical that the Department continue its engagement with other stakeholders to improve online safety, mandated where possible, and the pursuit of other prevention and outreach efforts.

One noteworthy part of the law enforcement response is the work done by the ICAC Task Forces, a national network of 61 coordinated task forces across federal, state, and local law enforcement and prosecutorial agencies. The ICAC Task Forces are the primary entities that receive investigative CyberTips in the United States, receiving approximately 500,000 of the 32 million reports referred globally in 2022. This number has more than quadrupled in six years, yet at the same time, their resources have only increased a modest 34%. This mismatch between crime reports and law enforcement resources puts ICAC Task Forces in an untenable position. They feel an obligation to investigate every CyberTip they receive without regard to its quality, but they are not given the resources to keep up with the growth of CyberTips and are forced to make triage decisions based on woefully inadequate information.

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

The ICAC Task Forces are funded in large part by grants from Congress that the Department administers. One practical step that Congress can take immediately is to appropriate funds for these critical efforts as requested in the President’s budget. Notwithstanding the ICAC resource shortfalls, work is being done to try to address some of the concerns. In the last two years, for example, the National Center for Missing and Exploited Children (NCMEC) has instituted measures within the CyberTipline system to assist with deconfliction, deduplication, triaging, and automation, all of which seek to improve the efficiency of the law enforcement response. But it is also important to understand that CyberTips only account for a portion of online child exploitation material. Some technology companies search for and report child exploitation occurring on their platforms; others do not. And the CyberTipline does not account for the vast amount of child sexual exploitation shielded behind encryption and anonymization on the Tor network.

35. What tools and resources does the Department of Justice have available for State and local law enforcement, specifically to go after individuals who possess and distribute child sexual abuse material? Are there additional tools and resources Congress can provide to assist state and local law enforcement to fight CSAM?

Response: As part of Project Safe Childhood, U.S. Attorneys’ Offices and the Criminal Division’s Child Exploitation and Obscenity Section, federal, state, and local resources are utilized to locate, apprehend, and prosecute individuals who use the Internet to exploit children, as well as to identify and rescue victims. EOUSA and the Criminal Division advise as follows:

The Justice Department manages the ICAC Task Force Program, which receives over \$30 million in annual funding and represents more than 5,200 federal, state, local, and Tribal law enforcement and prosecutorial agencies. In FY 2022 alone, ICAC task force programs conducted more than 167,000 investigations and over 76,770 forensic exams. These efforts resulted in the arrests of more than 10,200 individuals. Additionally, the ICAC program trained nearly 34,000 law enforcement personnel, more than 2,500 prosecutors, and more than 6,600 other professionals working in the ICAC field. One practical step that Congress can take immediately is to increase the appropriation of funds for these critical efforts to the higher level requested in the President’s budget.⁹³

The Justice Department also works closely with and provides funding to the National Center for Missing and Exploited Children (NCMEC), which runs the Child Victim Identification Program, the nationwide clearinghouse on CSAM, among other relevant programs. Of note, in addition to federal law, CSAM offenses are criminalized by every state in the country, which account for a significant number of prosecutions annually. While additional funding, particularly funding targeting technical, centralized support for the ICAC program, is always needed to yield

⁹³ Report, White House Task Force Addresses Online Harassment and Abuse https://www.whitehouse.gov/wp-content/uploads/2024/05/White-House-Task-Force-to-Address-Online-Harassment-and-Abuse_FINAL.pdf

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

increased results, it is equally important to apply the resources available strategically and ensure that other stakeholders play their part to fight CSAM.

In early 2022, the Department shared with Congress extensive legislative proposals that offer some potential solutions to several significant challenges inherent in the fight against online child exploitation. The Justice Department stands ready to work with Congress to address legislation to combat child sexual abuse material.

36. Does the Department of Justice have sufficient resources to assist victims of child sexual abuse material? What additional funding or authorities does DOJ need from Congress in order to best serve victims?

Response: The Criminal Division states as follows:

The Department continues to engage in work that assists victims of child sexual abuse material and enhances victims’ voices. On June 5, 2023, the Department published its Notice of Proposed Rulemaking proposing regulations that implement the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, an Act that established the Child Pornography Victims Reserve to provide defined monetary assistance to eligible individuals who are depicted in child sexual abuse material that is the basis for certain convictions.⁹⁴ In October 2022, the revised Attorney General Guidelines for Victim and Witness Assistance were issued. Additionally, as part of the legislative proposals submitted to Congress last year, the Justice Department proposed legislative reforms to enact provisions designed to afford child victims better protections in the federal criminal justice system, including enhancing courtroom protections and facilitating the appointment of a trustee or fiduciary for restitution. The Justice Department also supports additional legislative reform to support victim rights, such as enhancing a victim’s ability to report and remove CSAM and permitting victims of CSAM to pursue civil remedies against online providers.

Additional measures are needed to respond to the increase in victims of CSAM offenses. Steadily increasing each year, the annual number of defendants federally prosecuted by the Justice Department for producing CSAM nearly tripled from FY 2008 to FY 2019. Data from the Sentencing Commission shows a 422% increase in the prosecution of production offenders from FY 2005 to FY 2019. Each production defendant signifies not only new CSAM, but new victims of abuse and exploitation. The Department has also seen increases in the number of victims per offender. Single cases can involve thousands of victims, overburdening the Victim Witness Specialists in investigative and prosecutorial agencies. Changes in technology have caused this dramatic increase in the number of offenders and victims of these offenses, taxing existing

⁹⁴ Implementing the Child Pornography Victims Reserve, 88 Fed. Reg. 36516 (proposed June 5, 2023) (codified at 28 C.F.R. pt. 81).

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

resources.⁹⁵ Artificial intelligence (AI) provides offenders with new and easy-to-use methods to create instantaneous photo-realistic child sexual abuse material with or without the use of an actual minor.

37. What specific actions has DOJ taken to investigate, prosecute, and prevent crimes related to the advertising and sale of illicit narcotics to children on social media?

Response: The Justice Department uses all available resources in a whole-of-government approach to combat drug trafficking in the United States, including online sales of illegal narcotics. Cartels are using social media to advertise and sell their deadly drugs to Americans, especially young Americans.

Dismantling illicit social media drug marketplaces is critical to stemming the flow of dangerous drugs into our communities. This is not just happening on the dark web. Pills are also being sold on mainstream social media networks. Often, pills are sold as legitimate pharmaceuticals but are actually just fentanyl and filler.

Recognizing the threat these marketplaces pose to our communities, the Department is pursuing cases linked to the sale of fake pills containing fentanyl on social media.

38. How has the Department of Justice had engaged with social media platforms to improve child safety, and to prevent illicit narcotics from being sold online? How receptive have social media platforms been to working with DOJ? In what ways could they be better partners in the fight to keep our children safe online?

Response: Engagement between the Department, other Executive Branch agencies, and social media platforms is the subject of pending litigation. The Department is unable to comment further on the topic at this time, other than to confirm the Department will comply with any and all court orders in the case.

FACE Act Prosecutions

As you are aware, in September 2022, Mark Houck was arrested at gunpoint by 15-20 FBI agents in front of his family in connection to an incident where he allegedly shoved a Planned Parenthood abortion facility escort who was harassing his 12-year-old son. Mr. Houck was facing up to 11 years imprisonment, but he was acquitted of all charges on January 30, 2023 by a Pennsylvania jury. Additionally, in October 2022, the Justice

⁹⁵ Implementing the Child Pornography Victims Reserve, 88 Fed. Reg. 36516 (proposed June 5, 2023) (codified at 28 C.F.R. pt. 81).

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

Department indicted 11 eleven pro-life activists under the FACE Act for allegedly disrupting and blocking an abortion clinic in Tennessee. To understand the Department’s position and use of the FACE Act, can you provide a thorough response the following questions:

39. What factors led to the Justice Department and FBI for executing an arrest warrant against Mr. Houck instead of using less aggressive tactics?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

40. Were you made aware of the search warrant and the excessive tactics used by the SWAT team to arrest Mr. Houck?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

41. Can you provide the number of FACE Act investigations that the Department and FBI have opened from 2020-2023?

Response: According to the Civil Rights Division, between January 2021 and July 2023, the Department has charged 21 cases involving 52 defendants across all cases with FACE Act-related violations.⁹⁶

42. Of those FACE Act investigations from 2020-2023, can you outline how many were regarding abortion facilities, pregnancy centers, and places of worship?

Response: The FBI states as follows:

The FBI is committed to investigating violations of the FACE Act—like all other violations—in a fair and objective manner. The FBI takes these cases very seriously. Although we cannot comment on ongoing investigations, the FBI will use every tool within its authorities to identify and bring perpetrators to justice.

Following the May 2022 leak of the U.S. Supreme Court’s draft opinion in *Dobbs v. Jackson Women’s Health Organization (Dobbs)*, and the subsequent decision, the FBI observed an increase in abortion-related threats of violence and activity targeting both pro-life and pro-choice entities. These investigations were conducted in approximately 27 FBI field offices and included

⁹⁶ Recent Cases on Violence Against Reproductive Health Care Providers, U.S. Dep’t of Justice (Updated May 30, 2023) <https://www.justice.gov/crt/recent-cases-violence-against-reproductive-health-care-providers>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

involvement by our local and state law enforcement partners. A significant portion of this activity involved some type of offense against a medical facility or religious institution.

Federal authorities, including the FBI, are committed to vigorously pursuing investigations into crimes against reproductive care health clinics and pregnancy counseling services across the country. In January of this year, for example, the FBI announced that it is offering rewards up to \$25,000 for information leading to the identification, arrest, and conviction of suspects in a series of attacks on reproductive health service facilities.⁹⁷

43. How does the Department and FBI determine whether to open a FACE Act investigation? Does the Department and FBI investigate FACE Act cases that are handled and closed by State Courts?

Response: The FBI advises as follows: The FBI is the primary federal agency responsible for investigating allegations regarding violations of federal civil rights statutes. These laws are designed to protect the civil rights of all people within U.S. territory. The FBI opens hundreds of civil rights cases each year, and it is a responsibility the Bureau takes very seriously. Specifically, the civil rights program investigates hate crimes, color of law violations, and Freedom of Access to Clinic Entrances (FACE) Act violations. The FBI also supports the investigations of state and local authorities. The FBI investigates violations of the FACE Act statute through both our Criminal Investigative Division and Counterterrorism Division.

44. What guidance have you provided to the Department to prevent the FACE Act from being weaponized to prevent pro-life Americans from being targeted?

Response: The Reproductive Rights Task Force advises as follows: As the Department states on its website, "The FACE Act is not about abortions. The statute protects all patients, providers, and facilities that provide reproductive health services, including pro-life pregnancy counseling services and any other pregnancy support facility providing reproductive health care." The Department has reached out to groups representing pregnancy resource centers and religious groups to ensure their awareness of FACE Act protections and to facilitate open lines of communication. Since the *Dobbs* decision, the Department has met with pro-choice groups and pro-life groups to discuss the protections under the FACE Act. The Department urged them to encourage reproductive health care providers, whatever the nature of their services, to report to the FBI any violence or threats of violence they encounter.

Felony Streaming & Commercial Piracy

⁹⁷ See Press Release, FBI Offering \$25,000 Rewards for Information in Series of Attacks Against Reproductive Health Service Facilities (Jan. 19, 2023), <https://www.fbi.gov/news/press-releases/fbi-offering-25000-rewards-for-information-in-series-of-attacks-against-reproductive-health-service-facilities>.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

45. Pirate streaming is an illegal industry that creates significant harms and poses major risks. Pirate streaming costs the U.S. economy at least \$29 billion and 230,000 jobs a year. These sites are used by criminals to spread ransomware and other malware. And piracy sites undermine national security by enabling banned terrorist channels to broadcast in the U.S.

This Committee works hard to address this problem, and in 2020 Congress passed legislation to make commercial streaming piracy punishable as a felony. I know that the Justice Department in both Republican and Democratic administrations alike called for passage of such legislation for many years to give it the tools it needs to pursue today’s criminal infringers.

a. Can you please update the Committee on the DOJ’s enforcement efforts using these new tools since the enactment of that act?

Response: The Criminal Division and EOUSA state as follows:

Streaming piracy remains a priority for the Department, and the Department continues to pursue criminal prosecutions of large-scale commercial streaming piracy operations using applicable statutory tools, including criminal copyright statutes and the new criminal offense (18 U.S.C. § 2319C) created in the Protecting Lawful Streaming Act (PLSA). The first defendant to be charged under 18 U.S.C. § 2319C, Joshua Streit, ultimately pleaded guilty to related computer intrusion offenses. Streit was sentenced in March of this year to 3 years’ imprisonment and ordered to pay nearly \$3 million in restitution to victims of his illicit-streaming conduct, and \$500,000 in forfeiture for his role in operating a pirate streaming site that offered unauthorized streams of various professional sports events. Based on his conduct, in addition to the PLSA, Streit was also charged with wire fraud, extortionate threats, and computer intrusion.

The Department continues to pursue major illicit streaming services using criminal statutes that predate the PLSA, including criminal copyright infringement, wire fraud, and money laundering. For example, earlier this year the founder of the pirate TV service Gears TV, Omar Carrasquillo, was sentenced to 66 months’ imprisonment and ordered to pay more than \$30 million in forfeiture and \$15 million in restitution. Several of the eight individuals charged in 2019 for their roles in operating pirate streaming services Jetflixs/iStreamitAll, among the largest pirate streaming sites at the time, have since pleaded guilty, and have received sentences as high as 57 months.

46. My understanding is that there are at least seven felony streaming cases that have been referred to the DOJ. These involve illegal streaming subscription services that are operated from the U.S. To date I am not aware that indictments have been sought in any of these cases. Can we expect to see action soon from the DOJ on these or other cases under the new felony streaming law?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: The Criminal Division and EOUSA state as follows:

It is not appropriate for the Department to comment on specific pending cases. As a general matter, however, the Department is in frequent contact with representatives of affected industries and has actively sought their assistance in identifying large-scale illicit streaming sites. As noted above, prosecution of large-scale commercial pirate streaming sites remains a priority, and the Department will pursue such cases with all appropriate statutory tools available.

Although the new offense created by the PLSA provides felony penalties in a wider range of streaming cases, the Department continues to rely for enforcement on existing criminal copyright statutes and other criminal laws (such as wire fraud and computer intrusion), in lieu of or in addition to charges under 18 U.S.C. § 2319C, for several reasons.

First, although § 2319C provides enhanced felony penalties for individuals operating illicit streaming sites, it does not include forfeiture authority for criminal proceeds or for property used to facilitate streaming piracy offenses. Because forfeiture is an important tool in shutting down and deterring commercial piracy operations, where possible, the Department continues to rely on pre-PLSA criminal statutes with accompanying forfeiture authority, such as traditional criminal copyright statutes.

Second, although as part of the PLSA new criminal penalties were enacted at the end of 2020, amendments to the United States Sentencing Guidelines that incorporate the new criminal offense at 18 U.S.C. § 2319C did not take effect until November 1, 2023. While the Guidelines applicable to copyright offenses have long posed a challenge to sentencing in streaming cases (because sentences are determined largely by "infringement amount," and the Guidelines Commentary only provides guidance on valuing individual copies of works, rather than performances or streams of copyright works), the lack of a specifically designated Guidelines provision applicable to § 2319C or method of calculation of infringement amount has left additional uncertainty as to how courts should sentence cases charged under the new statute. The 2023 amendments to the Sentencing Guidelines tie § 2319C offenses to the same Guidelines provision applicable to copyright offenses. Unfortunately, despite the Department's recommendation to the Commission to address the issue, the Commission declined to amend the Guidelines to provide additional clarity or guidance to courts regarding how the "infringement amount" should be determined in cases involving illicit internet streaming, or to address the PLSA's enhancements for offenses involving "works being prepared for commercial public performance."

47. Former Senator Leahy and I partnered together to enact the Protecting Lawful Streaming Act. This bill finally closed the so-called "streaming loophole" by giving DOJ the authority to pursue felony charges against large scale, commercial piracy organizations. Importantly, this law doesn't allow the DOJ to target individual

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

streamers, companies pursuing licensing deals in good faith, or internet service providers. This law is what we call a win-win for everyone.

- a. Thus far, how many prosecutions been pursued under the Protecting Lawful Streaming Act? Of these prosecutions, how many have been successful, and what have been the sentences issued to criminals?**

Response: The Criminal Division and EOUSA state as follows: To date, one defendant charged under § 2319C has been sentenced. Joshua Streit, who operated an illicit streaming site that provided unauthorized streams of a variety of professional sporting events and related content, was charged in the Southern District of New York with violations of 18 U.S.C. § 2319C, as well as wire fraud, computer intrusion, and extortionate threats. In March 2023, after pleading guilty to computer intrusion, Streit was sentenced to 3 years' imprisonment, as well as nearly \$3 million in restitution for victims of illicit streaming and \$500,000 in forfeiture.

- b. What specific steps has the DOJ undertaken to educate rights holders about the Protecting Lawful Streaming Act and to work with them to enforce their rights? And what has the response been from rights holders to these steps?**

Response: The Criminal Division and EOUSA state as follows:

The Department circulated guidance to federal prosecutors regarding the PLSA in early 2021. Further, the Department also regularly communicates with representatives of rights-holders and other groups affected by copyright piracy to exchange information regarding emerging piracy trends that law enforcement and the private sector are observing; to highlight the availability and importance of criminal enforcement; and to invite and encourage referrals to law enforcement agencies. Many of these same stakeholders were involved in the working group your staff convened in 2020 to draft the bill that became the PLSA, and so are already familiar with the text and substance of the PLSA.

The Department continues to engage in outreach to make rights holders aware of criminal enforcement against piracy as well as civil and other remedies that may be available to them. The Department has long looked to rights holders to seek out their expertise in identifying large-scale piracy sites that have evaded civil enforcement efforts. The Department hosts an annual meeting for law enforcement and IP industry representatives to discuss the Department's efforts in combating intellectual property rights violations, including through criminal enforcement of digital piracy, and this annual meeting includes rights holders associated with the copyright industries. Similarly, the Department supports and participates in the IP Summit hosted by the National Intellectual Property Rights Coordination Center (IPR Center), which includes multiple representatives from the copyright industry. Both events include substantial discussion of copyright enforcement in the digital era.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

48. Some countries have taken a different and more holistic approach to combatting piracy. For example, what are your thoughts on site blocking via *no-fault injunctions*, which is a remedy relied upon by other countries, but not the U.S.?

Response: The Criminal Division and EOUSA state as follows:

Beyond criminal prosecution, the Department employs a range of legal authorities to disrupt illegal piracy operations, including the authority to forfeit facilitating property and proceeds traceable to copyright offenses. For example, during last year's FIFA World Cup Finals (in December 2022), the Department (through the U.S. Attorney's Office for the District of Maryland, in conjunction with the Criminal Division's Computer Crime and Intellectual Property Section and in collaboration with the Department's International Computer Hacking and Intellectual Property (ICHIP) Network and rights holders), worked with HSI Baltimore to seize a total of 78 domain names being used by illicit streaming sites that offered pirated versions of World Cup soccer matches. The first round of 55 domain name seizures was conducted on December 10, shortly before the tournament's quarterfinal matches. Investigators then developed additional leads (based on, among other things, information from rights holders and public social media discussions regarding still-active pirate streaming sites) and effectuated seizures of a second round of 23 domain names on the eve of the widely watched World Cup final and third place match. These domain seizures, which relied on existing forfeiture authorities for property connected to copyright crimes, significantly disrupted the ability of multiple commercial pirate streaming sites to operate and collect revenue during the World Cup tournament. In addition, in the wake of these seizures, some streaming sites, including those that were not directly targeted for seizure during the operation, announced that they would no longer provide unauthorized streams of soccer matches, indicating that Operation Offsides had a deterrent effect beyond the specific domains that were seized.

The Department has employed other legal tools, including restraining orders and injunctions, to disrupt internet sites engaged in or facilitating criminal conduct (such as servers involved in the command and control of botnets), and will continue to explore the use of such authorities in appropriate cases.

The Department remains keenly aware that government actions to block, disable, or disrupt internet sites and servers can have significant implications for the protection of freedom of expression. Therefore, in considering the use of any existing legal authorities to disrupt internet sites, or contemplating new legal authorities to facilitate such actions, extra care is warranted.

49. The House Committee on Appropriations report in explanation of the accompanying bill making appropriations for Commerce, Justice, Science, and Related Agencies for FY22, p. 61, states: "*Illegal Pirate Sites.—Significant commercial scale infringing activities continue unabated, posing a significant threat to the livelihoods of authors, creators, and copyright owners, while perpetrating a fraud on unsuspecting, law-abiding consumers. A*

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Study by Frontier Economics on 'The Economic Impacts of Counterfeiting and Piracy' estimates that by 2022, the global value of piracy would be \$384–856 billion, with estimated tax losses to governments at \$199–\$270 billion. Because of the harm to consumers and the creative sector, the Committee directs the Department of Justice to prioritize criminal copyright infringement cases, to work closely with prosecutors in local district U.S. Attorney's Offices, and to detail within existing reports on copyright enforcement activities the investigations and prosecutions brought under existing legal authorities."

Can you please provide an update on how the DOJ is prioritizing criminal copyright cases and how the DOJ is working closely with prosecutors in local district U.S. Attorney's Offices to combat significant commercial scale infringing activities?

Response: The Criminal Division and EOUSA state as follows:

The Department, through the Criminal Division and U.S. Attorneys' Offices, continues to place a high priority on combating large-scale copyright piracy across a range of media and in multiple jurisdictions, using a variety of legal tools. Within the past two years the Department has obtained convictions, significant prison sentences, and sizable forfeiture and restitution orders against multiple high-profile sites and their operators, including the illicit operation of the Gears TV/Reloaded and JetFlicks/iStreamItAll services. Last year the Department obtained indictments against two Russian nationals responsible for operating Z-Library, one of the world's largest e-book piracy sites, and earlier in the year obtained a nearly 21-month sentence against a British member of the SPARKS release group, which had been one of the largest sources of pirated movie and television content on the internet before much of the group's infrastructure was taken down in 2020. The Department worked with HSI, the National Intellectual Property Rights Coordinator Center, and rights holders to disrupt dozens of illicit sports streaming services during the 2022 World Cup tournament in Qatar.

The Department's Criminal Division engages in regular outreach efforts with representatives of copyright-intensive industries and other stakeholders to encourage and facilitate referrals of potential criminal IP cases and provides regular training to agents and prosecutors on criminal investigations and prosecution of criminal copyright cases. The Department provided specific guidance on the PLSA to the United States Attorneys' Offices both shortly after enactment and in subsequent Department trainings, highlighting its potential application in criminal piracy cases, and offers technical assistance to those Assistant United States Attorneys who may be interested in bringing criminal charges under the new PLSA.

Cybersecurity

50. What impact do you see emerging technologies, such as artificial intelligence, having on helping stop cybersecurity-related crimes and on perpetrating such crimes? What is the

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

DOJ doing to prepare for the advent of more sophisticated AI – again, both in terms of using artificial intelligence as a tool to help combat crime and as a tool used to perpetrate crime?

Response: Like most emerging technologies, artificial intelligence (AI) has the potential to enhance the capabilities of both law enforcement and criminals. AI may be used to quickly identify patterns in large amounts of data, which can help law enforcement more efficiently identify criminal conduct. At the same time, the Department has been considering how to prevent criminals from using AI to more easily identify victims and flaws in cybersecurity. Large language models can also be used by cybercriminals to quickly develop convincing phishing and spear-phishing emails and texts. Some models could be used to refine malicious code, including ransomware, to make it more effective. The Department is involved in Administration initiatives to identify how AI can support our mission, including in combating cybercrime. In addition, to prepare to combat crime perpetrated with AI, the Department is building expertise in AI and has engaged with AI providers.

51. Could you please discuss the practical implications regarding DOJ's ability to protect the public from child predators, foreign-based IP criminal networks, domestic terror threats, and traffickers with the proliferation of the use of encryption, such as end-to-end encryption, on various popular digital platforms?

Response: The proliferation of end-to-end and user-only-access encryption is a serious issue that increasingly limits law enforcement's ability, even after obtaining a lawful warrant or court order, to access critical evidence and information needed to disrupt threats, protect the public, and bring perpetrators to justice. It is important to address law enforcement's legitimate need to protect public safety, while at the same time recognizing civil liberties, economic, and cybersecurity concerns.

52. What are the top priorities that Congress should address to help your agency and the Administration better fight cybersecurity attacks? Are there additional authorities which Congress should provide to assist you in preventing, investigating, and prosecuting cybercrimes?

Response: In addition to the actions the Department is already taking with existing authorities, collaborations, and resources, as reflected in the Comprehensive Cyber Review, the Department's number one need in this area is the ability to recruit and retain a best-in-class cyber workforce. None of the vital work the Department does to keep Americans safe and provide them justice is possible without our people. Keeping up with increasingly sophisticated threats requires significant specialized skills that are in high demand elsewhere in the federal government and in the private sector. Appropriations from Congress will determine the extent to which the Department is able to achieve that critical goal.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

The Department has presented to Congress a number of legislative proposals that would make investigations more effective and efficient as well as possible criminal prohibitions and penalties to better disrupt and deter malicious actors. These include:

- Proposal to amend Section 18 U.S.C. § 1030(c) to add language specifying penalties for the crime of conspiracy to violate the Computer Fraud and Abuse Act, which is currently not specified in the Act.
- Proposal to amend 18 U.S.C. § 3238 by eliminating the requirement that an extradited defendant be tried in the venue where "first brought" into the United States and permitting an extradited defendant to be tried in any applicable venue in the United States, potentially saving millions of dollars of U.S. taxpayer funds.
- Proposal to amend 18 U.S.C. § 1510(b)(3), which prohibits covered financial institutions from notifying others of certain subpoenas they receive, to cover certain virtual asset service providers (VASPs) that operate as money services businesses, and to expand the anti-tip-off prohibition in 18 USC § 1510(b) to cover additional notable serious offenses.

The Department looks forward to working with Congress to make sure the Department can detect, disrupt and deter those who would harm our country, its people, and its interests.

53. We continue to see an increase of cyberattacks, threatening our national, economic, and personal security. This was highlighted in the DOJ's July 2022 "Comprehensive Cyber Review" report. To combat future cyberattacks we need a coordinated, whole-of-government approach to this issue.

a. What must be done to improve coordination among the many actors that play a role in combatting cyberattacks, stopping future attacks, and bringing the bad actors to justice?

Response: The Department works closely with other federal agencies and foreign, state, local, Tribal, and territorial law enforcement partners as part of a whole-of-government approach to combat cyber threats. The Department (via the FBI) does so as co-chair, along with CISA, of the Joint Ransomware Task Force, which was created by the Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA). Within the Joint Ransomware Task Force structure, the Department and FBI coordinate numerous lines of effort against ransomware, including threat ecosystem mapping and actor prioritization; disruption operations; and the sequenced use of investigative and prosecutorial tools in conjunction with sanctions and rewards for information leading to arrest.

One aspect of this coordination is through federal cybersecurity centers like the National Cyber Investigative Joint Task Force (NCIJTF). NCIJTF is composed of over 30 partners from law enforcement agencies, the U.S. Intelligence Community, and the Department of Defense.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Through its leadership of the NCIJTF, the FBI manages efforts to coordinate, integrate, and share information on cyber threat investigations. Specifically, when a significant cyber incident occurs, the Department engages with DHS's Cybersecurity and Infrastructure Security Agency (CISA) on our respective response efforts under Presidential Policy Directive 41. The FBI and the broader Department focus on threat response, and CISA focuses on asset response.

The Department continues to evolve and adopt lessons-learned aimed at increasing coordination and information sharing throughout the government. For instance, consistent with a whole-of-government approach, the Department has established coordination processes with the Department of Defense and agencies in the intelligence community for handling ransomware threats. FBI liaisons detailed to partner agencies also help manage information sharing and operational issues that arise daily.

b. How is DOJ coordinating amongst its components to effectively coordinating within its various areas of expertise to address cyber incidents and cybercrimes?

Response: The Department ensures close coordination on cyber investigations, which are primarily conducted through the Criminal Division, National Security Division (NSD), and the FBI. These components, and other Department components as appropriate, confer in weekly intra-departmental meetings focused on cyber operational and policy issues. Additionally, the Criminal Division, NSD, and FBI regularly exchange personnel on detail assignments to encourage a more comprehensive understanding of the Department's cyber threat activities. The recently instituted Cyber Fellows Program is another way the Department is working to develop new prosecutors and ensure cross-component coordination. Each fellow will rotate through the Criminal Division's Computer Crime and Intellectual Property Section, NSD's Counterintelligence and Export Control Section, and the U.S. Attorney's Offices to gain exposure to a broad range of the Department cyber cases. Additionally, the Department implements specialized coordination, as needed, to address evolving cyber threats. For example, to address increasing, significant ransomware attacks, the Department adopted enhanced reporting mechanisms and focused additional personnel and effort on disrupting, investigating, and prosecuting ransomware and digital extortion crimes. The Department's broader reporting requirements for cyber and cyber-enabled crime investigations, including for ransomware activity, requires affirmative deconfliction checks and updated recordkeeping in case management systems, and Urgent Reports to inform Department leadership of major developments in significant investigations and litigation.

c. How are you ensuring that the DOJ is effectively coordinating with other government agencies, including CISA and the Secret Service, on these issues?

Response: The Department works closely with other federal agencies and foreign, state, local, Tribal, and territorial law enforcement partners as part of a whole-of-government approach to

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

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The Department continues to evolve and adopt lessons-learned aimed at increasing coordination and information sharing throughout the government. For instance, consistent with a whole-of-government approach, the Department has established coordination processes with the Department of Defense and agencies in the intelligence community for handling the ransomware threats. FBI liaisons detailed to partner agencies also help manage information sharing and operational issues that arise daily.

Lastly, the Department has a long, productive history of working with the U.S. Secret Service on cyber investigations. The U.S. Secret Service has been the investigative agency responsible for some of the largest data breach cases the Department has prosecuted and remains a valued law enforcement partner. The Criminal Division has regularly provided training to the U.S. Secret Service and coordinated with them on law enforcement policy matters.

d. How have you and how will you continue to increase cooperation between private actors and companies – particularly companies engaged in cutting edge research and development of emerging technologies – and the federal government on these issues?

Response: The Department's strong partnerships with the private sector have been essential to combating cyber threats. For example, private sector collaboration has been key in the Department's disruption efforts against transnational criminal cyber organizations for many years and has provided critical support in operations that have dismantled infrastructure used for botnets and ransomware attacks. Also, the Department serves as a member of CISA's Joint Cyber Defense Collaborative (JCDC) alongside the private sector and other federal agencies.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

JCDC promotes sharing of cyber risk information across these groups and develops proactive cyber plans. Additionally, CCIPS conducts outreach to the private sector through participation in industry conferences, contacts with trade organizations, and ad-hoc conversations. CCIPS' Cybersecurity Unit develops white papers on topical cybersecurity issues, such as intelligence gathering on the Dark Web, creating a vulnerability disclosure program, and working with law enforcement before, during, and after a cyber incident. The Department continues to look for ways to enhance these relationships and partnerships with the private sector. Forthcoming victim reporting requirements will be another opportunity for future beneficial engagement.

54. In the DOJ's July 2022 "Comprehensive Cyber Review" report it was stated the DOJ would establish the following to combat fast-changing cyber threats: (1) National Cryptocurrency Enforcement Team (NCET); (2) Civil Cyber-Fraud Initiative (CCFI); (3) Cyber Fellowship; and (4) Ransomware and Digital Extortion Task Force.

a. What actions have been taken by each of these four efforts and what progress has been made in each to improve cyber threat responses?

Response: The National Security Division, FBI, and Criminal Division advise as follows:

The Department's ransomware work has resulted in a wide array of efforts aimed at disrupting the ransomware ecosystem. In November 2021, the Department announced the seizure of \$6.1 million in funds traceable to ransom payments received by a Russian national charged with conducting Soninke/Reville ransomware attacks.⁹⁸ In October 2022, Sebastian Vachon-Desjardins of Canada, received a 20-year sentence for his role in NetWalker ransomware attacks, and he was ordered to forfeit.⁹⁹ Cooperation with Canada proved instrumental in the successful prosecution of Vachon-Desjardins. In January 2023, the Department announced a months-long disruption campaign against the Hive ransomware group wherein the FBI penetrated Hive's computer networks, captured.¹⁰⁰ In June 2023, in conjunction with the U.S. Attorney's Office for the District of New Jersey, the Department announced charges against and the arrest of Ruslan Magomedovich Astramirov deploying numerous LockBit ransomware and other cyberattacks against computer systems in the United States, Asia, Europe, and Africa as part of the LockBit ransomware campaign. In addition to demonstrating the Department's determination to seek opportunities to disrupt the ransomware ecosystem, instances like the prosecution of Vachon-Desjardins and the Hive disruption action demonstrate the Department's focus on international collaboration. The Department further supports international collaboration by supporting the

⁹⁸ See Press Release, U.S. Dep't of Just., Ukrainian Arrested and Charged with Ransomware Attack on Kaseya (Nov. 8, 2021), <https://www.justice.gov/opa/pr/ukrainian-arrested-and-charged-ransomware-attack-kaseya>.

⁹⁹ See Press Release, U.S. Dep't of Just., Canadian National in Connection with Ransomware Attacks Resulting in the Payment of Tens of Millions of Dollars in Ransoms (Oct. 4, 2022) <https://www.justice.gov/opa/pr/canadian-national-sentenced-connection-ransomware-attacks-resulting-payment-tens-millions>.

¹⁰⁰ See Press Release, U.S. Dep't of Just., U.S. Department of Justice Disrupts Hive Ransomware Variant (Jan. 26, 2023), <https://www.justice.gov/opa/pr/us-department-justice-disrupts-hive-ransomware-variant>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

White House's Counter Ransomware Initiative, which brings together a multitude of countries focused on preventing and combating ransomware attacks.

The Department continues to collaborate with various federal agencies. Deconfliction continues internally within Department components. The Criminal Division's Computer Crime and Intellectual Property Section and the FBI's Cyber Division collaborate on ransomware investigations and prosecutions. Both entities prioritize support for ransomware cases and use the FBI's Standardized Approach for Banning Ransomware (SABR) in its prioritization of these cases. Externally, the Department deconflicts investigations through the National Cyber Investigative Joint Task Force (NCIJTF). One way the Department works to strengthen public-private partnerships is through participation in the Joint Cyber Defense Collaborative (JCDC) established by the DHS's Cybersecurity and Infrastructure Security Agency (CISA). The JCDC unites public and private sector partners to gather, analyze, and share actionable cyber risk information. The Department and DHS further collaborate on the Cyber Safety Review Board, which was established pursuant to President Biden's Executive Order 14028 on "Improving the Nation's Security."

In August 2021, the Department announced the creation of a new Cyber Fellowship program designed to develop a new generation of prosecutors and attorneys equipped to handle emerging national security threats. Two classes of three fellows each have joined the Cyber Fellows program. Each fellow is working through their rotations in the Criminal Division's Computer Crime and Intellectual Property Section (CCIPS), NSD's Counterintelligence and Export Control Section, and the U.S. Attorneys' Offices to gain exposure to a broad range of the Department's cyber cases.

Since February 2022, with the appointment of the first Director of the NCET, the NCET has grown to over two dozen attorneys and staff dedicated to three primary lines of effort. First, the NCET has worked to identify, pursue, and support investigations involving the criminal use of digital assets, with a particular focus on virtual currency exchanges and platforms that are enabling the misuse of digital assets to commit or facilitate criminal activity. Since that time, NCET members have led and supported international enforcement efforts to dismantle online illicit platforms, including the international coordinated takedown of the Bitzlato criminal exchange, responsible for illicitly facilitating billions of dollars of transactions; worked on cutting-edge investigations involving the theft and exploits of DeFi platforms, including by North Korean actors seeking to illicitly generate revenue in contravention of sanctions; and led the coordination of seizure warrants totaling over \$112 million in cryptocurrency investment scams known as "pig butchering" schemes.

Second, the NCET has worked to set the Department's strategic priorities regarding digital asset technologies and identify areas for increased investigative and prosecutorial focus. To that end, the NCET led the Department's efforts in issuing two reports in response to President Biden's Executive Order 14067 on "Ensuring Responsible Development of Digital Assets": How to

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Strengthen International Law Enforcement Cooperation for Detecting, Investigating, and Prosecuting Criminal Activity Related to Digital Assets (June 2022) and The Role of Law Enforcement Agencies in Detecting, Investigating, and Prosecuting Criminal Activity Related to Digital Assets (September 2022), and in September 2022 established the Digital Asset Coordinator Network, a network of more than 150 designated federal prosecutors from across the Department that serves as the Department's primary forum for prosecutors to obtain and disseminate specialized training, technical expertise, and guidance about digital asset crimes.

Third, the NCET has led the Department's efforts to coordinate with domestic and international law enforcement partners, regulatory agencies, and private industry to combat the criminal use of digital assets, as well as provide support and training to federal, state, local, and international law enforcement to build capacity to investigate and prosecute crimes involving digital assets in the United States and around the world. Since February 2022, NCET members have undertaken over 150 engagements and trainings on digital assets with law enforcement and private sector partners across six continents.

The Department launched the Civil Cyber-Fraud Initiative in October 2021, and its work is active and ongoing. The Civil Cyber-Fraud Initiative combines expertise in civil fraud enforcement, government procurement, and cybersecurity to contribute to the government-wide effort to combat new and emerging cyber threats to the security of sensitive government information and critical systems. The Initiative seeks to hold accountable entities or individuals that put government information or systems at risk in connection with government contracts or grants by knowingly providing deficient cybersecurity products or services, knowingly misrepresenting their cybersecurity practices or protocols, or knowingly violating obligations to monitor and report cybersecurity incidents and breaches.

Since the Initiative was announced, the Department has received a significant number of referrals from within the government as well as from whistleblower complaints disclosing alleged cybersecurity violations by government contractors or grantees. Three matters have been resolved, two of which involve the failure to protect sensitive health and/or personal information, and the most recent of which involves cybersecurity deficiencies in information technology services. In March 2022, Comprehensive Health Services (CHS), a provider of global medical support services, agreed to pay \$930,000, in part to resolve allegations that it knowingly misrepresented its compliance with contract requirements to provide medical support services at government-run facilities in Iraq and Afghanistan by failing to use a secure electronic medical record system to store medical records, including the confidential identifying information of United States service members, diplomats, officials and contractors working and receiving medical care in Iraq.¹⁰¹

¹⁰¹ See Press Release, U.S. Dep't of Just., Medical Services Contractor Pays \$930,000 to Settle False Claims Act Allegations Relating to Medical Services Contracts at State Department and Air Force Facilities in Iraq and

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

In March 2023, Jelly Bean Communications Design LLC and its owner¹⁰² agreed to pay \$293,771 to resolve allegations that they knowingly violated contract requirements when they failed to secure personal information on a federally funded Florida children's health insurance website that they created and maintained.¹⁰³ The United States alleged that Jelly Bean knowingly failed to properly maintain, patch, and update software systems, and more than 500,000 applications for medical assistance were exposed. Through the pursuit of matters like these, as well as outreach to industry stakeholders, the Civil Cyber-Fraud Initiative aims to build resilience, increase timely reporting of incidents and breaches, promote adherence to cybersecurity obligations, reduce the competitive disadvantage for responsible vendors, and recover damages for affected federal programs and agencies.

In September 2023, Verizon Business Network Services LLC agreed to pay over \$4 million to resolve allegations that it had failed to completely satisfy certain cybersecurity controls in connection with an information technology service provided to federal agencies. In connection with the settlement, the Department acknowledged that Verizon took a number of significant steps entitling it to credit for cooperating with the government.

b. What additional efforts does DOJ intend to undertake to combat cyber threats?

Response: With respect to cyber threats, the Department continues to prioritize prevention and placing victims at the center of its mission. The Department will also continue to message the importance of incident reporting by victims of cybercrime. Victim reporting can make a significant difference in the ability of the Department to recover stolen funds or obtain and use decryption keys in a timely manner. As the Attorney General said at the announcement of the Hive ransomware disruption, "[s]ince July of last year, we provided assistance to over 300 victims around the world, helping to prevent approximately \$130 million in ransom payments." The Department will continue to work with victims to counter ransomware, mitigate harm, and prevent losses.

Afghanistan (Mar. 8, 2022), <https://www.justice.gov/opa/pr/medical-services-contractor-pays-930000-settle-false-claims-act-allegations-relating-medical>.

¹⁰² See Press Release, U.S. Dep't of Just., Jelly Bean Communications Design and its Manager Settle False Claims Act Liability for Cybersecurity Failures on Florida Medicaid Enrollment Websites (Mar. 14, 2023), <https://www.justice.gov/opa/pr/jelly-bean-communications-design-and-its-manager-settle-false-claims-act-liability>.

¹⁰³ Letter from Jonathan J. Wroblewski, Dir., Off. of Pol. and Legis., Crim. Div., U.S. Dep't of Just., to J. Carlton W. Reeves, Chair, U.S. Sent'g Comm'n (Feb. 15, 2023), <https://www.uscc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/DOJ3.pdf>.

Transcript of Pub. Hearing on Proposed Amends., U.S. Sent'g Comm'n (Feb. 24, 2023), https://www.uscc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/0224_Transcript.pdf.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

The Department also seeks to hire and retain experienced cyber prosecutors and investigators. Due to the technical nature of ransomware and other cyber threats, a knowledgeable and experienced workforce can make a significant difference in case outcomes. The Department hopes to make cybercrime-focused positions within the Department competitive and attractive.

55. In light on past DOJ budget requests directed toward protecting our nation from cyberattacks and cybercrime, how has the DOJ prioritized the spending of these resources to minimize fragmentation, overlap, or duplication of efforts between the DOJ and other agencies?

Response: The Comprehensive Cyber Review builds on past reports such as the Cyber Digital Task Force report in laying out the Department's unique role to play in contributing to the whole of government effort to address cybersecurity. The Department is mindful that many players have interests impacted by transnational organized cybercrime and we are more effective when we recognize and welcome the efforts of others toward the same goal of protecting our country from criminal threats.

56. In 2021 we heard from the DOJ in our Ransomware hearing that the reluctance to report ransomware incidents and payments made may be driven by concerns "including a fear of regulatory action or reputational harm, or of an interruption to business operations." In 2022 the Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA) was signed into law.

a. Does this law go far enough in addressing the reporting issue? What more can be done?

Response: The Department has yet to form an opinion on the impact of CIRCIA on ransomware reporting because CIRCIA has yet to be fully implemented. The Act required CISA to publish a notice of public rulemaking (NPRM) within two years of enactment of the Act, meaning the NPRM must be published by March 2024. CISA has an additional 18 months after publication of the NPRM to issue a final rule. Per CIRCIA, that must occur no later than August 2025.

The liability and other legal protections provided under CIRCIA were designed to address areas of concern that the private sector identified as disincentives to reporting. The Department hopes these protections will spur more industry reporting, but the Department will be unable to assess whether CIRCIA achieved that goal until the final rule is issued and reporting trends can be observed.

The Department has previously recommended language to amend a subsection of CIRCIA in 6 U.S.C. § 681e(c)(3), to clarify that a report could not be used against the entity submitting the

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

report but information that appeared in CIRCIA reports could be used to investigate and prosecute the criminals responsible for the cyber incident.

b. What are the primary concerns you have heard from the private sector regarding reporting requirements? How are you working to address these concerns?

Response: The most common concern the Department has heard during the Department's outreach to the private sector about cyber incident reporting requirements is duplicative mandatory reporting requirements imposed by multiple federal regulatory agencies and state authorities. The Department does not play a role in mandatory cyber incident reporting but have been working with CISA to help alleviate the reporting burden on entities that have suffered a breach or ransomware attack. Working with CISA, the Department is identifying information that both agencies require for our respective post-incident response activities so that information may be collected once by the appropriate agency and shared with other agencies as necessary rather than being produced separately for each.

c. Thus far, to what extent has the DOJ collaborated with the Cybersecurity and Infrastructure Security Agency (CISA)? How would you characterize the success of this collaboration thus far?

Response: There is regular, frequent collaboration between the Department and CISA on cyber matters. CISA's Office of the Chief Counsel and the Criminal and National Security Divisions are in frequent contact on legal and policy matters affecting each agency. For instance, the Cybersecurity Information Sharing Act of 2015 (CISA 2015) required the Department and DHS to jointly produce guidance for private entities on sharing cyber threat indicators and defensive measures consistent with the Act. Subsequently, the Department and DHS have regularly coordinated on further interpretation of CISA 2015 and published an updated CISA 2015 guidance document in 2020. Operationally, both agencies' cyber centers have regular coordination calls regarding cyber incidents. The FBI has assigned liaisons assigned to CISA to facilitate coordination between the two agencies. The collaboration between the Department and CISA is good and improving.

57. DHS has implemented hiring practices aimed at recruiting and retaining cybersecurity professionals. Has DOJ taken similar efforts to implement hiring practices directed at the recruitment and retention of cybersecurity professionals? If so, please provide details about these efforts.

Response: The Criminal Division advises as follows:

The Department has taken a number of steps, described below, to enhance the recruitment and retention of cyber professionals. It is important to note first, however, that the Department of

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

Homeland Security (DHS) has flexibilities to hire and compensate cyber-skilled professionals that are not available to the Department. Specifically, in 2014, Congress granted DHS the authority to create a talent management system for cybersecurity positions, and the Office of Personnel Management (OPM) subsequently approved amendments to Title 6 of the Code of Federal Regulations to create the DHS Cybersecurity Talent Management System (CTMS), which was launched in November 2021. DHS’s use of those authorities has permitted DHS to offer higher compensation (e.g., retention incentives tied to specific IT certifications) that are competitive with the private sector and use hiring flexibilities not offered to other federal agencies.

Although the Department had a relatively flat level of dedicated cyber prosecutors and other cyber workforce personnel since 2010, the Department has continued to achieve investigative and prosecutorial successes that are central to the nation’s cybersecurity. That cyber workforce personnel has included computer scientists, computer engineers, IT specialists, digital operations specialists, digital forensics specialists, electronics engineers, and cyber systems and security engineers.

To enhance the Department’s critical work on cybersecurity issues, in mid-2022, the Department conducted a strategic review to identify current and future challenges as well as additional steps that could be taken to address the Department’s need to recruit and retain professionals with cyber skills. The Department’s 2022 Comprehensive Cyber Review (CCR) identified the need for the Department to develop hiring and retention strategies to attract staff for hard-to-fill cyber/STEM positions (such as computer scientists, electronics engineers, electronics technicians, information technology specialists, and telecommunications managers) and to retain a best-in-class cyber workforce to fulfill the Department’s investigative, prosecutorial, policy and defensive responsibilities.

Specific actions taken since the publication of the CCR include an internal campaign to educate component leadership regarding existing incentive and other authorities, as well as the creation of a cross-component working group focused on the Department’s cyber-related workforce. This group is working directly with the Office of the National Cyber Director on current interagency initiatives related to the federal government’s cyber workforce to identify hiring and compensation solutions to address the challenges the Department faces compared to the private sector, as well as compared to DHS and the Department of Defense, in attracting and retaining cyber-skilled professionals. In addition, the FBI has also established a Cyber and Technical Talent Task Force that has multiple lines of effort underway focused on ways to better recruit and retain cyber talent.

Following the publication of the CCR, in January 2023, Congress enacted Public Law No. 117-347, which specifically includes a provision authorizing the Attorney General to provide additional incentive pay – in an amount up to 25 percent of the basic pay of an eligible employee – to individuals in the Department, including the Federal Bureau of Investigation.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

In October 2023, the Department adopted a Cybercrime Incentive Pay policy implementing the authorities granted by Public Law No. 117-347. Subject to the availability of funds, this policy allows components within the Department to allow for incentive pay for employees appointed to a position that requires significant cyber skills and that aids in the prevention, investigation, or prosecution of cybercrime. Congress has thus provided the Department a significant additional tool to help recruit and retain professionals with skills needed to investigate, disrupt, and prosecute cybercrime. However, this new authority is subject to the availability of appropriations, and Congress has yet to appropriate additional funds to support this authority.

The Department looks forward to working with Congress to ensure that the Department has sufficient resources to hire and retain cyber professionals who are paid commensurate with their best-in-class skills.

Better Cybercrime Metrics Act

On May 5, 2022, President Biden signed into law the *Better Cybercrime Metrics Act*. I was proud to co-lead this legislation with Senator Brian Schatz. This important law is intended to build the foundation of cybercrime reporting to the Department of Justice to help improve our nation's response to cybercrime.

This law requires the Attorney General to enter an agreement with the National Academy of Sciences to develop a taxonomy for categorizing cybercrime and cyber-enabled crime within 90 days. It then requires the National Academy of Sciences to submit a report summarizing its taxonomy and findings.

58. Can you please provide an update on the status of the report being prepared by the National Academy of Sciences? Do you expect the report to be completed on time?

Response: The FBI started the work with the National Academy of Sciences in September 2023 and is on track to have the preliminary report completed within one year.

59. Have you considered ways in which to apply this taxonomy in other contexts beyond the requirements of this law?

Response: The FBI CJIS Division added a section to the Statement Of Work for the consideration of including in the taxonomy the cybercrime portion of the VAWA Reauthorization Act of 2022.

60. Have you taken any actions to begin establishing a category in NIBRS for the collection of cybercrime and cyber-enabled crime?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: In 2013, to address cybercrime within the National Incident-Based Reporting System (NIBRS), the FBI added the offenses of Identity Theft and Hacking/Computer Invasion. Cybercrimes are identified with a location code of cyberspace. Within the NIBRS, law enforcement agencies can also denote whether an offender was suspected of using a computer to perpetrate a crime.

Antitrust

61. This year the DOJ sued Google for monopolizing multiple digital advertising technology products in violation of Sections 1 and 2 of the Sherman Act. What news, if any, can you share with the Committee regarding the status of this case?

Response: The Antitrust Division states as follows:

On January 24, 2023, the Department's Antitrust Division, along with several State Attorneys Generals, filed a civil antitrust suit against Google for monopolizing certain digital advertising technologies in violation of Sections 1 and 2 of the Sherman Act. Google filed a motion to dismiss the lawsuit, which was denied in full by the district court on April 28, 2023.

Since filing of the complaint, the Department has also announced that nine additional states – Arizona, Illinois, Michigan, Minnesota, Nebraska, New Hampshire, North Carolina, Washington, and West Virginia – have joined the Department and the Attorneys Generals of California, Colorado, Connecticut, New Jersey, New York, Rhode Island, Tennessee, and Virginia as co-plaintiffs. Longstanding Department policy and practice prevents the Department from commenting on pending or potential cases or investigations beyond what is in the public record.

62. On June 8, 2022, the DOJ, the U.S. Patent and Trademark Office (USPTO), and the National Institute of Standards and Technology (NIST) announced the withdrawal of the 2019 Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments. In an accompanying press release it was stated that the "...Justice Department will review conduct by standards essential patent (SEP) holders or standards implementers on a case-by-case basis to determine if either party is engaging in practices that result in the anticompetitive use of market power or other abusive processes that harm competition." Since that announcement what has been the finding of the DOJ? How many instances of case-by-case reviews have been conducted by the DOJ since that announcement?

Response: The Antitrust Division advises as follows: The Department has encouraged parties that are concerned about behavior in the standards development ecosystem to bring conduct to

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

the Department's attention. While the Department cannot disclose any specific investigations or confidential complaints concerning disputes over the licensing or assertion of SEPs, the Department will not hesitate to act if conduct by SEP holders or implementers threatens to harm competition.

63. The Supreme Court has recognized that private standards can have significant procompetitive advantages, but that there need to be procedures that prevent the standard-setting process from being biased or manipulated by members with economic interest in stifling competition in violation of section 1 of the Sherman Act. In that context, do you continue to commit to ensure that the DOJ enforces Section 1 aggressively to prevent collusive activity by manufacturers of standards-compliant products that subvert the voluntary consensus-based processes of standards development organizations to deprive patent owners of fair and reasonable compensation for their standards-essential patented technologies?

Response: The Antitrust Division states as follows: Yes, as the Department said in withdrawing the 2019 Policy Statement, "the Justice Department will review conduct by standards essential patent (SEP) holders or standards implementers on a case-by-case basis to determine if either party is engaging in practices that result in the anticompetitive use of market power or other abusive processes that harm competition."¹⁰⁴

64. As you know, competition policy and antitrust enforcement can have important implications for intellectual property policy. Both have the shared goal of encouraging innovation and competition.

a. How do you think the DOJ should approach antitrust enforcement against what we think of as "big tech?"

Response: The Antitrust Division states as follows:

The Department follows the facts and the law where they lead, and where appropriate the Department will not hesitate to enforce Section 2 of the Sherman Act across all industries, including the technology sector.

In digital markets, too often, gatekeepers use their market dominance to exploit consumers, workers, and small businesses. It is among the Department's priorities to meet this challenge by faithfully enforcing the antitrust laws as Congress intended. To date, the Department has filed

¹⁰⁴ See Press Release, U.S. Dep't of Justice, Justice Department, U.S. Patent and Trademark Office and National Institute of Standards and Technology Withdraw 2019 Standards-Essential Patents (SEP) Policy Statement (June 8, 2022), <https://www.justice.gov/opa/pr/justice-department-us-patent-and-trademark-office-and-national-institute-standards-and-technology-withdraw-2019-standards-essential-patents-sep-policy-statement>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

multiple lawsuits challenging anticompetitive conduct by digital platforms, including historic lawsuits against Google alleging that its anticompetitive conduct in markets related to search and digital advertising technology violate Sections 1 and 2 of the Sherman Act.

b. How should it coordinate its approach with other agencies – including the Commerce Department and the Federal Trade Commission – that also have competencies with respect to these issues? Can you provide some examples of such coordination?

Response: The Antitrust Division (Division) states as follows:

The Division has closely collaborated with other agencies, including the Federal Trade Commission, and it will continue to do so. For example, as part of the Division's efforts to modernize merger guidelines, the Department has worked side by side with the FTC, including jointly issuing Draft Merger Guidelines in July 2023. The process prior to release involved hosting meetings with a wide variety of stakeholders affected by merger enforcement, including consumers, workers, entrepreneurs, start-ups, farmers, investors, and independent businesses as well as state and foreign antitrust enforcers. The Division continues to host workshops with the FTC to help familiarize the public with the guidelines and learn from public feedback.

As for the Department of Commerce, the National Telecommunications and Information Administration collaborated this year with the Division on a report on improving competition in the mobile application ecosystem.¹⁰⁵ And in partnership with the U.S. Patent and Trademark Office, the United States Department of Agriculture, and the Federal Trade Commission, the Department is working to better understand patent licensing practices, particularly in the seeds industry. This collaboration allows the agencies to discuss the challenges facing farmers, small and mid-sized seed businesses, and plant breeders, while helping to promote innovation and protect competition.

c. How will the DOJ approach cross-cutting issues related to data that have antitrust implications but that may also implicate intellectual property, national security, cybersecurity, privacy, and other concerns?

Response: The Antitrust Division advises as follows: The antitrust laws apply to data in the same way they apply to other inputs. There are no inconsistencies or contradictions with enforcing the antitrust laws and promoting intellectual property, national security, cybersecurity, and privacy. Indeed, vigorous competition can spur the development of intellectual property and drive firms to better protect national security, cybersecurity, and privacy. At the same time,

¹⁰⁵ See National Telecommunications and Information Administration, Competition in the Mobile App Ecosystem (Feb. 1, 2023), <https://ntia.gov/report/2023/competition-mobile-app-ecosystem>.

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

facing competition domestically makes companies more competitive in markets abroad and enhances the competitiveness of the United States economy.

65. Google and Facebook are two of the most powerful and most influential companies in the world. Both completely dominate their corners of the online service provider market. And more Americans now get their news from Facebook or Google than news publishers. What do you plan to do to address the powers of those big tech companies that control access to information?

Response: The Antitrust Division states as follows:

The Department is working to promote competition in digital markets on multiple fronts, from bringing historic lawsuits against digital gatekeepers, to partnering with State Attorneys Generals and international enforcers and supporting legislation—including the American Innovation and Choice Online Act, and other legislation from members of the Committee—that will strengthen our ability to address the problem of monopoly power in digital markets and beyond. For example, the Department filed a lawsuit—along with several State Attorneys Generals—to end Google’s long-running monopoly in markets related to digital advertising technologies.

While longstanding Department policy and practice prevents the Department from commenting on pending or potential cases or investigations beyond what is in the public record, please rest assured that the Department remains committed to protecting competition in digital markets, and the Department will follow the facts and law wherever they lead.

Intellectual Property

66. As Ranking Member of the Intellectual Property Subcommittee, I have a keen interest in the work you are doing to protect intellectual property rights. I have asked you on multiple occasions about what work you are doing to investigate and prosecute intellectual property crimes. Can you please provide an update on your efforts as Attorney General to defend intellectual property rights, including from foreign actors like the Chinese Communist Party?

Response: The Department takes very seriously the national security threat to the United States posed by theft of intellectual property. In February 2023, the Department announced the creation of the Department’s “Disruptive Technology Strike Force” (Strike Force), a partnership between the Department of Justice and the Department of Commerce designed to enforce U.S. laws protecting U.S. advanced technologies from illegal acquisition and use by nation-state adversaries.¹⁰⁶ The Strike Force is already having an impact on defending intellectual property

¹⁰⁶ See Press Release, U.S. Dep’t of Just., Justice and Commerce Departments Announce Creation of Disruptive

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

rights, including from foreign actors like the Chinese Communist Party. For example, on May 16 2023, Department officials from multiple components and five different U.S. Attorneys' Offices announced criminal charges in five cases and four arrests in connection with the new Strike Force.¹⁰⁷ Three of the cases have a nexus to Chinese companies and citizens.

67. What can Congress do to further improve the DOJ's policies and efforts relating to the prevention and investigation of intellectual property crimes? What are your top priorities with respect to the DOJ's intellectual property mission?

Response: Disrupting efforts to illicitly acquire sensitive U.S. technologies to advance authoritarian regimes, facilitate human rights abuses, and other nefarious purposes is a top priority for the Department. Keeping sensitive technology out of the hands of foreign adversaries, including Russia, China, and Iran, is critical to protect U.S. national security and democratic values throughout the world. Task Force KleptoCapture is an interagency law enforcement task force that is dedicated to enforcing sanctions, export controls, and economic countermeasures imposed in response to Russia's unprovoked military invasion of Ukraine. Preventing and investigating intellectual property crimes requires a whole-of-government approach, and the Department works closely with federal and state partners to accomplish this mission.

68. How have you and how do you continue to work proactively with the IP Enforcement Coordinator and alongside DOJ's sister agencies, especially DHS, to coordinate IP enforcement across the government?

Response: The Antitrust Division advises as follows: The Department's work with the White House's Intellectual Property Enforcement Coordinator (IPEC) and with other departments and agencies are detailed in the IPEC's April 2023 "Annual Intellectual Property Report to Congress" (IPEC 2022 Annual Report).¹⁰⁸ The IPEC 2022 Annual Report details the Department's activities during FY2022 relating to intellectual property protection and enforcement and details certain IP-related activities of the Department's Antitrust Division.

69. The DOJ's Computer Hacking and Intellectual Property (CHIP) program in the past Administration placed a high priority on fostering international cooperation and coordination of criminal IP enforcement efforts. How have you continued this tradition? What plans does the DOJ have for its international enforcement efforts? Has

Technology Strike Force (Feb. 16, 2023), <https://www.justice.gov/opa/pr/justice-and-commerce-departments-announce-creation-disruptive-technology-strike-force>.

¹⁰⁷ See Press Release, U.S. Dep't of Just., Justice Department Announces Five Cases as Part of Recently Launched Disruptive Technology Strike Force (May 16, 2023), <https://www.justice.gov/opa/pr/justice-department-announces-five-cases-part-recently-launched-disruptive-technology-strike>.

¹⁰⁸ The White House, IPEC Annual Intellectual Property Report to Congress (Apr. 4, 2023), https://www.whitehouse.gov/wp-content/uploads/2023/04/FY22-IPEC-Annual-Report_Final.pdf.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

DOJ expanded or enhanced current programs such as the Global Law Enforcement Network of International Computer Hacking and Intellectual Property ("ICHIP") program, which contains the Intellectual Property Law Enforcement Coordinator (IPEC) program, and if so, how has it done so?

Response: The Criminal Division states as follows: The Department continues to place a high priority on international cooperation and coordination on cases and capacity building to address the fundamentally transnational nature of much IP crime. Since 2008, the Criminal Division's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) and the Computer Crime and Intellectual Property Section (CCIPS) have worked closely with the State Department to develop the Department's international outreach capability. Beginning as the IP Law Enforcement Coordinator network, the program has grown (and been renamed) as the U.S. Transnational and High-Tech Crime Global Law Enforcement Network, or GLEN, comprised of ICHIP attorney advisors, global cyber forensic advisors, and ICHIP special agents. As the demand for international training and case-based mentoring has grown, the work of the GLEN has developed to include both IP and cybercrime issues, in a manner similar to the domestic CHIP program administered by U.S. Attorneys' Offices and coordinated through the Criminal Division. The IPEC 2022 Annual Report details the many engagements, trainings, workshops, and coordinated operations with foreign partners carried out by the GLEN and hosted by ICHIP Advisors with the assistance of experienced CHIP attorneys, federal agents, and members of the Judiciary during FY 2022. These engagements occurred throughout Latin America, Africa, Europe, and Asia, and covered topics including counterfeit pharmaceuticals, online copyright piracy, transnational trade in fake goods, and investigation of the financial and technical structures that enable illicit trade by IP-infringing criminal organizations.¹⁰⁹

CCP Police Stations

Recent reports have revealed appalling evidence of the Chinese Communist Party (CCP) carrying out illegal, transnational policing operations across 53 countries, including the United States, targeting overseas critics of the CCP for harassment, threats against their families in China and "persuasion" to get them to return home.

In November 2022, FBI Director Christopher Wray testified before the Senate Homeland Security and Government Affairs Committee. During the hearing, Director Wray was asked about the CCP running unauthorized police stations in the United States. Director Wray acknowledged that he was aware of the CCP police stations and that he was very concerned.

70. Does DOJ believe that these CCP police stations present a threat to the United States?

¹⁰⁹ *Id.* at 141-43.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: These police stations are a threat, and the Department will not tolerate attempts by any foreign power to undermine the rule of law upon which our democracy is based.

71. What action has the Department of Justice taken to shutdown these illegal CCP police stations operating in the United States?

Response: On April 17, 2023, the Department announced the arrest and charging of two defendants living in New York City in connection with allegedly opening and operating an illegal overseas police station, located in lower Manhattan, New York, for a provincial branch of the Ministry of Public Security (MPS) of the People's Republic of China (PRC).¹¹⁰ On the same day, the Department announced the unsealing of two criminal complaints filed by the U.S. Attorney's Office for the Eastern District of New York in federal court in Brooklyn charging 44 defendants with various crimes related to efforts by PRC Ministry of Public Security (MPS) national police to harass Chinese nationals in New York and elsewhere in the United States; the defendants comprise 40 MPS officers and two officials in the Cyberspace Administration of China alleged to have perpetrated transnational repression.¹¹¹ Additionally, on June 20, 2023, a federal jury in Brooklyn, New York, returned guilty verdicts against three defendants of charges including acting and conspiring to act in the United States as illegal agents of the PRC, conspiracy to commit interstate stalking, and interstate stalking as part of the PRC's repatriation program, "Operation Fox Hunt."¹¹² The Department will continue to take resolute actions to counter the PRC's campaign of transnational repression.

72. How many individuals has the Department of Justice prosecuted for running these CCP police station?

Response: On April 17, 2023, the Department announced the arrest and charging of two defendants living in New York City in connection with allegedly opening and operating an illegal overseas police station, located in lower Manhattan, New York, for a provincial branch of the Ministry of Public Security (MPS) of the People's Republic of China (PRC).¹¹³ On the same

¹¹⁰ See Press Release, U.S. Dep't of Just., Two Arrested for Operating Illegal Overseas Police Station of the Chinese Government (Apr. 17, 2023), <https://www.justice.gov/opa/pr/two-arrested-operating-illegal-overseas-police-station-chinese-government>.

¹¹¹ See Press Release, U.S. Dep't of Just., Defendants Accused of Creating Fake Social Media Accounts to Harass PRC Dissidents, and Working with Employees of a U.S. Telecommunications Company to Remove Dissidents from Company's Platform (Apr. 17, 2023), <https://www.justice.gov/opa/pr/40-officers-china-s-national-police-charged-transnational-repression-schemes-targeting-us>.

¹¹² See Press Release, U.S. Dep't of Just., Federal Jury Convicts Three Defendants of Interstate Stalking of Chinese Nationals in the U.S. and Two of Those Defendants for Acting or Conspiring to Act on Behalf of the People's Republic of China (Jun. 20, 2023), <https://www.justice.gov/usao-edny/pr/federal-jury-convicts-three-defendants-interstate-stalking-chinese-nationals-us-and>.

¹¹³ See Press Release, U.S. Dep't of Just., Two Arrested for Operating Illegal Overseas Police Station of the Chinese Government (Apr. 17, 2023), <https://www.justice.gov/opa/pr/two-arrested-operating-illegal-overseas-police-station-chinese-government>.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

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73. Has the Department of Justice worked with State and local law enforcement to make them aware of the rogue CCP police stations? If so, please provide additional information about your work to educate and engage State and local law enforcement about this threat.

Response: The FBI’s relevant field offices work closely with state and local law enforcement, the relevant U.S. Attorneys’ Offices, other Department components, and other relevant Federal departments and agencies to address the threat posed by transnational repression.

Religious Freedom

Over the past few years the attacks on religious freedom and places of worship have increased. Since May 2020, there have been over 280 instances where Catholic Churches were attacked. This includes, over 120 attacks since the Supreme Court leak of the *Dobbs* ruling.

74. Since you were confirmed as Attorney General, how many individuals or groups has the Department of Justice prosecuted for attacking places of worship?

Response: The Civil Rights Division states as follows: Since Attorney General Garland was confirmed on March 11, 2021 through May 2023, approximately 15 individuals or groups have been charged under 18 U.S.C. § 247 for attacking places of worship or obstructing people in the

¹¹⁴ See Press Release, U.S. Dep’t of Just., Defendants Accused of Creating Fake Social Media Accounts to Harass PRC Dissidents, and Working with Employees of a U.S. Telecommunications Company to Remove Dissidents from Company’s Platform (Apr. 17, 2023), <https://www.justice.gov/opa/pr/40-officers-china-s-national-police-charged-transnational-repression-schemes-targeting-us>.

¹¹⁵ See Press Release, U.S. Dep’t of Just., Federal Jury Convicts Three Defendants of Interstate Stalking of Chinese Nationals in the U.S. and Two of Those Defendants for Acting or Conspiring to Act on Behalf of the People’s Republic of China (June 20, 2023), <https://www.justice.gov/usao-edny/pr/federal-jury-convicts-three-defendants-interstate-stalking-chinese-nationals-us-and>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

free exercise of religious beliefs. At least five other people were charged with religiously motivated offenses targeting houses of worship or people associated with houses of worship. In addition, the Department has prosecuted numerous cases involving individuals who were targeted because of their religion where the incident did not occur in or in close association with a house of worship, including dozens of prosecutions of antisemitic hate crimes and hate crimes targeting Muslims or those perceived to be Muslim. For example, the Department charged a resident of Troy, North Carolina with allegedly communicating threats to a Jewish organization and a Cornell University student with making online threats to Jewish students. The Department also opened a hate crimes investigation into the events leading to the tragic death of a six-year-old child and serious injuries suffered by his mother in Illinois in October 2023.

75. How many individuals or groups have been prosecuted for attacking places of worship since the Supreme Court leak of the *Dobbs* ruling?

Response: The Civil Rights Division states as follows: As of May 2023, and since the *Dobbs* leak, at least 10 individuals have been charged under 18 U.S.C. § 247 for attacking places of worship or obstructing people in the free exercise of religious beliefs. At least five other people were charged with religiously motivated offenses targeting houses of worship or people associated with houses of worship. In addition, the Department has prosecuted numerous cases involving individuals who were targeted because of their religion where the incident did not occur in or in close association with a house of worship, including dozens of prosecutions of antisemitic hate crimes and hate crimes targeting Muslims or those perceived to be Muslim. For example, the Department charged a resident of Troy, North Carolina with allegedly communicating threats to a Jewish organization and a Cornell University student with allegedly making online threats to Jewish students. The Department also opened a hate crimes investigation into the events leading to the tragic death of a six-year-old child and serious injuries suffered by his mother in Illinois in October 2023.

76. What resources does the Department of Justice have available to assist places of worship who have been viciously attacked?

Response: The Attorney General Guidelines for Victim and Witness Assistance prioritize a victim-centered, trauma-informed, and culturally sensitive approach to Department's work to accord victims of federal crime their rights and provide them services under federal law. Training regarding these guidelines, the Crime Victims' Rights Act, and the Victims' Rights and Restitution Act, is mandatory for all Department personnel whose primary job responsibilities affect crime victims and witnesses, or who in the course of their duties are expected to come into contact with victims.

The FBI has victim specialists and U.S. Attorneys' Offices and Department litigating components have victim-witness coordinators and liaisons who work with victims to ensure they receive appropriate services throughout the investigation and prosecution. The Department's

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Office for Victims of Crime maintains a website that compiles resources for victims, including victims of mass violence. The Community Relations Service provides an in-person facilitated program, Protecting Places of Worship, which educates local communities on how to prevent and respond to hate crimes that target religious institutions and fosters dialogue to strengthen relations between government, law enforcement, and faith communities.

77. Is the Department of Justice coordinating with State and local law enforcement to help prevent further attacks against places of worship?

Response: The FBI advises as follows:

The Department works every day with local, state, federal, and Tribal law enforcement to help combat acts of hate, including attacks against places of worship. These partnerships directly support the FBI's investigations and operations and enable mutually beneficial information sharing that helps us better understand emerging threats and foster crime prevention initiatives.

The Department also provides Byrne JAG funding that state and local governments are able to use to increase patrols and deployments that bolster the security of organizations like places of worship. Additionally, the Department's Community Relations Service offers an in-person facilitated training program to local communities and faith-based leaders that is called "Protecting Places of Worship." This training program includes information about religious hate crimes, state and federal hate crime laws, law enforcement threat assessments, and ways to protect places of worship from potential hate crimes and other threats of violence.

During your confirmation hearing in February 2021, you stated: "If I am confirmed, I will seek to ensure that the Department of Justice upholds the rights of all Americans under the Constitution and the laws of the United States, including the provisions of the Constitution and laws securing religious liberty."

In recent weeks, the FBI Richmond Division Office published an advisory that would target individuals based on their religious beliefs and worship practices. The advisory explicitly stated that "racially or ethnically motivated violent extremists (RMVEs) in radical-traditionalist Catholic (RTC) ideology almost certainly presents opportunities for threat mitigation."

78. Attorney General Garland, do you believe that Catholics hold radical-traditionalist ideology?

Response: No.

79. As Attorney General, were you notified of the Richmond Division advisory? If not, what is your position on the advisory by the division?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: The Attorney General has stated that the analytical product from the FBI's Richmond Field Office "is appalling" and "doesn't reflect the methods that the FBI is supposed to be using." The FBI states as follows: Immediately after FBI Headquarters learned of the product, FBI leadership ordered that it be withdrawn and removed from FBI systems. The FBI's Inspection Division conducted a review into the process preceding the product's publication. The FBI has also taken steps to ensure their standards and expectations are clear, including providing intelligence tradecraft and domestic terrorism terminology refresher training and reminders of the rules and safeguards that apply to human intelligence operations and the production of intelligence products.

80. Attorney General Garland, can you provide the number of individuals that have been prosecuted for exercising their religious beliefs?

Response: The Department and FBI do not target people of any faith because of their religious beliefs. A fundamental principle of the Attorney General's Guidelines for FBI investigations and operations is that investigative activity may not be based solely on the exercise of rights guaranteed by the First Amendment. This includes our rights of religious freedom.

81. Are you committed to protecting Americans who freely exercise their rights under the First Amendment?

Response: Yes.

82. Do you believe that an independent agency, such as the FBI should be using data from the Southern Poverty Law Center to establish advisories? What actions do you plan to take as Attorney General to ensure the independence of the FBI and prevent other religious groups from being targeted?

Response: The FBI states as follows: The FBI must draw on a variety of sources while also rigorously examining those sources. The FBI conducted a review regarding how and why that rigorous examination may not have happened with respect to the development of an analytical product from the FBI's Richmond Field Office.

Bureau of Prisons

Over the past few months, it has been brought to my attention that there are some severe structural problems at Federal Correctional Complex, Butner (FCC Butner) that are impacting working and living conditions. Furthermore, my office had an initial call with the Bureau of Prison that confirmed some of the problems at FCC Butner.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

83. Have you been made aware of these problems that FCC Butner is having? If not, are you committed to assisting on this matter?

Response: The Department remains committed to ensuring that BOP facilities are adequately staffed and are safe environments in which to work and live. BOP reports as follows: Federal Correctional Institution II at the Federal Correctional Complex located in Butner, North Carolina, has received funding to replace roofs on 11 buildings (all building except the housing units, which do not have roofing concerns). It is funded at \$10.2 million, and this request is currently in the contracting process. The project for Food Service and the Laundry area roofing has been awarded to a contractor.

84. As Attorney General, are you committed to improving the living and working conditions at FCC Butner?

Response: The Department and BOP are committed to enhancing living and working conditions for the individuals under the care of BOP as well as BOP's dedicated employees, including at the Federal Correctional Complex located in Butner, North Carolina.

85. What is the Department Justice and Bureau of Prisons doing to address the exodus of staff at federal facilities nationwide? Is augmentation a factor in staff leaving?

Response: Maintaining fully staffed institutions is a key priority for BOP and the Department. Adequate staffing levels give BOP flexibility and stability needed to carry out its mission, including increased capacity in First Step Act programs, and are critical to the safety and security of our institutions, wellness of our employees, and better outcomes for those in our custody. BOP facilities use a variety of recruitment and retention incentives to attract and keep employees. The Department appreciates your continued support of those efforts.

According to BOP, it uses augmentation as one tool to fill temporary gaps in posts with trained correctional staff to maintain safety and security. For example, if an officer calls in sick or is in training, or in emergency situations where additional personnel is needed urgently, the Bureau can ensure that critical law enforcement posts are filled.

86. What is the current number of vacancies at FCC Butner? What is the total number of vacancies in all federal prisons?

Response: BOP reports as follows: The Federal Correctional Complex located in Butner, North Carolina, consists of two medium-security institutions, a low-security institution, a camp, and a medical center. The total authorized staff complement for the full complex is 1,392. As of May 6, 2023, the full complex is staffed at 83.44%, with 224 vacancies. As of the same date, the Bureau's overall staffing rate is 85.74%.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

87. What can Congress do to assist in helping reduce the number of vacancies? Are there any hurdles that are impeding the hiring process for BOP? Should hiring decisions be moved to the individual prison level, or remain centralized?

Response: BOP advises as follows: Maintaining fully staffed institutions is a key priority for BOP, from the safety and security of our institutions, wellness of our employees, and better outcomes for those in our custody and their communities upon release. We are pursuing strategies to modernize hiring across the agency and give us the flexibility and stability we need to carry out our mission successfully. For example, we have used recruitment incentives, retention incentives, direct hire authority, pay flexibilities for medical professionals, and accelerated promotions for correctional officers as dictated by the needs of institutions. We welcome your support to continue funding the incentives we use to provide competitive compensation and compete for top talent.

88. What steps is the Department of Justice and Bureau of Prisons taking to screen inmate mail for contraband and illicit narcotics?

Response: BOP states as follows: Management of mail in a correctional environment is an especially demanding proposition. Staff must be familiar not only with the processing of personal and official mail, but also must be aware of situations that can lead to breaches of security and order in the institution. BOP has established administrative and engineering controls to identify suspicious mail and BOP continuously reviews the procedures for handling mail and updates the methods to keep up with emerging trends. For example, BOP has screening protocols in place, including the use of photocopying and hoods, if suspicious items are flagged for further analysis. All inmate packages are opened and inspected prior to distribution; legal/special mail is opened in the inmate's presence and staff is instructed to check for contraband at this time. BOP has developed and disseminated policies to its employees to ensure that contraband does not make it into a correctional institution.

89. Attorney General, do you know how many Bureau of Prisons staff have been hospitalized due to fentanyl laced inmate mail?

Response: BOP states as follows: BOP does not have the specifics on the number of employees hospitalized due to fentanyl-laced mail. However, BOP prioritizes the safety and well-being of its dedicated employees and the individuals under BOP's care. As outlined above, BOP has implemented measures to detect and prevent contraband, including fentanyl. BOP continues its commitment to a secure and safe correctional environment, enhancing its mail and other security protocols to address emerging trends.

90. Has the Department of Justice taken a position on extending the 2020 Bureau of Prisons pilot program to convert mail to electronic scans? If not, do you believe the pilot program is beneficial for the safety of inmates and staff?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: BOP states as follows:

BOP has successfully piloted mail scanning at two facilities, the Federal Correctional Institution located in Beckley, West Virginia, and the United States Penitentiary located in Canaan, Pennsylvania.

BOP believes that the mail scanning technology is beneficial. Both pilots established that the threat of synthetic drug introduction was significantly reduced at both sites. This conclusion was based on fewer positive urinalysis tests, increased intelligence indicating greatly increased prices for synthetic drugs, and no recorded attempted introductions of synthetic drugs through postal mail at either facility during the one-year pilot period.

First Step Act

As you are aware, the First Step Act was a crucial, bipartisan piece of legislation that seeks to reduce recidivism by encouraging inmate participation in recidivism reduction programs. One key provision is the use of earned time credits as an incentive for inmates to participate in reduction programs.

91. How is the process coming along to implement the earned time credits? Have all federal inmates been assigned all earned time credits which they are entitled to under the First Step Act? If not, what additional steps does DOJ need to take in order to fulfill that statutory requirement?

Response: BOP advises as follows:

In November 2022, BOP finalized a new policy for awarding earned time credits, which informs incarcerated individuals and staff of the process for earning, documenting, applying, forfeiting, and restoring time credits pursuant to the statute. Through the new policy, the BOP Director exercised her discretion to make several changes to how BOP calculates time credits, including to increase the availability of time credits for individuals who participate in evidenced-based programming or productive activities, consistent with the First Step Act (FSA). BOP's automated calculation of credits for individuals, promotes consistency, allows BOP to provide accurate calculations on a routine basis, and allows individuals in custody to track their time credits and prepare for prerelease from custody.

The Department is committed to ensuring that earned time credits are awarded in accordance with the FSA and BOP policy. As of January 28, 2023, more than 13,500 individuals had been released earlier from Residential Reentry Centers (RRCs), home confinement (HC), and secure facilities based on receiving credits under the FSA. An estimated 3,800 individuals have been placed in an RRC or HC and have a projected release method based on the application of earned

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

time credits. In addition, approximately 10,650 individuals currently in secured custody are expected to receive an earlier release date or transfer to prelease custody based on the application of earned time credits.

92. How are the Bureau of Prison staffing shortages impacting the recidivism reduction programs? Are there wait lists at prisons to access programming? If so, how is DOJ and BOP working to provide greater access to recidivism reduction programming?

Response: BOP states as follows:

When the individuals in BOP's custody sign up for an Evidence-Based Recidivism Reduction (EBBR) or Productive Activity (PA) program, BOP initially places those individuals on a waitlist; they may go directly into the program if there is available space. BOP's Central Office monitors the waitlists, along with each institution's programming needs, whether programming meets the needs of the individuals under BOP's care, and the overall programming trends and needs.

Each BOP facility monitors its own population's assessed needs, to help determine which programs to offer. Some large residential programs, such as the Residential Drug Abuse Program, target a subset of the population for intensive services. For programs like these, BOP monitors program completions and determines when and where more staffing is needed. For most programs, however, facilities have the ability to add cohorts and increase participant capacity, as needed. For example, if a facility is already offering Anger Management but has a disproportionately large group of individuals with needs remediated by the Anger Management program, the location could add an additional section of the program to meet the population needs.

93. Does FCC Butner have any issues with recidivism reduction programs? Is there a waitlist for inmates to enter into programming at FCC Butner?

Response: BOP advises as follows: When the individuals in BOP's custody sign up for an EBBR or PA program, BOP initially places those individuals on a waitlist; they may go directly into the program if there is available space. The involved correctional departments recommend EBBRs and PAs that correspond with an individual's needs areas. BOP's Central Office monitors the waitlists, along with each institution's programming needs, whether programming meets the needs of the individuals under BOP's care, and the overall programming trends and needs. This is the process followed by the Federal Correctional Complex in Butner, North Carolina. Waitlists vary by interest and need.

94. How many inmates have been released or placed in home confinement as a result of earned time credits being applied?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: BOP states as follows:

In November 2022, BOP finalized a new policy for awarding earned time credits, which informs incarcerated individuals and staff of the process for earning, documenting, applying, forfeiting, and restoring time credits pursuant to the statute. Through the new policy, the BOP Director exercised her discretion to make several changes to how BOP calculates time credits, including to increase the availability of time credits for individuals who participate in evidenced-based programming or productive activities, consistent with the First Step Act (FSA). BOP's automated calculation of credits for individuals, promotes consistency, allows BOP to provide accurate calculations on a routine basis, and allows individuals in custody to track their time credits and prepare for prerelease from custody.

The Department is committed to ensuring that earned time credits are awarded in accordance with the FSA and BOP policy. As of January 28, 2023, 13,501 individuals have been released from RRCs, HC, and secure facilities under an FSA release code. An estimated 3,800 individuals have been placed in an RRC or HC and have a projected release method based the application of earned time credits. In addition, approximately 10,650 individuals currently in secured custody are expected to receive an earlier release date or transfer to prelease custody based on the application of earned time credits. The Department is committed to ensuring that earned time credits are awarded in accordance with the FSA and BOP policy.

95. In how many cases have inmates been returned to prison following a period of home confinement during FY21 and FY22?

Response: BOP reports as follows: Between the enactment of the CARES Act on March 26, 2020 and May 2023, BOP has placed more than 12,000 individuals in home confinement under CARES Act authority. Of those, only a fraction of one percent have been returned to secure custody due to new criminal conduct.

96. The First Step Act also included the medication-assisted treatment (MAT) program which provides access to opioid treatment medication throughout the federal prison system. What is the latest number of FCC Butner inmates that have been screened for participation in the MAT program? What is the total number that are participating in the MAT program?

Response: BOP states as follows: As of May 22, 2023, the Federal Correctional Complex in Butner, North Carolina, has screened more than 600 patients for the Medication-Assisted Treatment (MAT) program. Of those screened, 350 individual patients have been treated with MAT since 2021. More than 200 patients have been released or transferred from FCC Butner while in the MAT program. Currently, there are more than 150 patients in the MAT program in Butner.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

97. How many inmates are currently eligible to receive treatment through the MAT program? Is there a waitlist for inmates enter the MAT program? What is the total number of inmates throughout the federal prison system that have received treatment through the MAT program?

Response: BOP advises as follows: Consistent with the First Step Act (FSA), BOP has expanded access to medication-assisted treatment for inmates with substance use disorder. Amid the opioid crisis, this program is an important treatment option for people with opioid use disorder. BOP provides all three FDA-approved medications in conjunction with individualized psychosocial interventions for offenders with opioid use disorder. MAT participation has increased over 120% since April 2022. In FY 2022, counting both those who received treatment in BOP's facilities and those receiving treatment in community custody, 3,208 individuals participated in the MAT program. These individuals were engaged in psychosocial treatment and services to address individual treatment needs, including referrals to other programs such as vocational training and trauma treatment. In the first five months of FY23, 2,824 individuals have participated in MAT, with more individuals expected to join in the coming months. BOP anticipates continued growth of the MAT program moving forward.

98. I was proud to cosponsor, along with Senator John Cornyn, the Crisis Stabilization and Community Reentry Act of 2020. Can you please provide an update on implementation of this grant program, and the positive impacts which are being achieved as a result of its enactment?

Response: The Office of Justice Programs (OJP) states as follows:

In FY 2022, the first year of the program, OJP's Bureau of Justice Assistance (BJA) awarded 11 grants totaling \$7,875,657 through the Improving Adult and Juvenile Crisis Stabilization and Community Reentry (CSCR) Program. This funding supports state, local, and Tribal governments, as well as nonprofit organizations, as they improve reentry, reduce recidivism, and address the treatment and recovery needs of people with mental health, substance use, or co-occurring disorders who are currently or formerly involved in the criminal justice system.

The program provides training and education for criminal and juvenile justice agencies, mental health and substance use agencies, and community-based health providers. This support focuses on best practices diversion models in crisis response services, engagements in recovery services and treatment, and access to medication while in an incarcerated care and during reentry into a community.

Individuals with serious mental illness are provided access to appropriate recovery supports, which may include peer support services, medication management, case management, and psycho-social therapy. Programs funded under this solicitation must ensure that individuals are screened, assessed, and identified for program participation and clinical services during pretrial

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

detention, or as early as possible upon incarceration and prior to release. Following release from incarceration or pretrial detention, participants should receive discharge planning services based on the results of their screening and assessment that support continuity of care and long-term recovery in the community.

The grant program has a specific focus on the intersection of crisis response and reentry and the emphasis on alternative approaches, innovations, and cross-system coordination across a wide range of stakeholders, so technical assistance for this grant program will reflect a more intensive model and a quicker path to implementation than most other Second Chance Act programs.

For more information about grants and funding opportunities, visit <https://www.ojp.gov/funding>

Rapid DNA Funding

I am supportive of funding for Rapid DNA instruments, which provide our local law enforcement agencies with an important tool to prevent crime and keep our communities safe. It is my understanding that the Department has resisted the use of grant funding for Rapid DNA, as well as for direct appropriations.

I am deeply concerned about the situation involving the award to the New Hanover County Sheriff's Office. Specifically, the Department awarded the Sheriff's Office a \$400,000 grant. The Sheriff's Office then received a notice of denial for their grant, before being told that funds might still be awarded. This is no way to treat our local law enforcement officials.

In addition, I was proud to support a \$405,000 appropriation for the Jacksonville Police Department to purchase a Rapid DNA instrument in the most recent omnibus. Given the issues that New Hanover County experiences, I want to ensure that grant awardees and those who receive appropriations are not being improperly stopped from purchasing Rapid DNA instruments.

99. Can you please state, clearly, the Department's policy on funding Rapid DNA instruments?

Response: Multiple Department components work together to determine the scope of funding for Rapid DNA projects. The FBI is the Department lead for Rapid DNA, primarily due to the Rapid DNA Act of 2017 which authorized the FBI Director to "issue standards and procedures for the use of Rapid DNA instruments and resulting DNA analyses." The FBI is also the Department component responsible for the National DNA Index System (NDIS) and CODIS. The National Institute of Justice (NIJ) plays an important role in advising on Rapid DNA policy and has funded significant aspects of the original research into, and continued efforts to improve,

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

the technology. Finally, the Bureau of Justice Assistance (BJA) is the component responsible for application of Department policy for funding.

BJA advises as follows: The Department policy currently allows funding for Rapid DNA projects that are in compliance with NDIS standards, to include processing of reference buccal swabs for upload to CODIS by NDIS participating laboratories and for Rapid DNA Booking Devices. The use of Rapid DNA on crime scene samples is limited as such samples can present challenges for current Rapid DNA Technology. Presently, the Department only funds projects involving Rapid DNA testing on crime scene samples that involve Congressionally Directed Spending (CDS) projects (Byrne Discretionary Community Project Funding/Byrne Discretionary Grants Program). Under this exception, projects are expected to follow FBI published guidance including the "Non-CODIS Rapid DNA Considerations and Best Practices for Law Enforcement Use" and "Rapid DNA Testing for non-CODIS Uses: Considerations for Court" documents.

100. If the Department is opposed to allowing funding for Rapid DNA instruments, please provide a justification for your opposition.

Response: BJA advises as follows:

The Department is not opposed to funding Rapid DNA instruments, as demonstrated by the numerous active grant projects involving Rapid DNA for testing of reference buccal swabs. However, in recent years, there has been significant interest in the use of Rapid DNA on samples recovered from crime scenes, and it is the Department's position that Rapid DNA technology is not yet suitable for testing crime scene samples, including sexual assault kits. This opinion is shared by leading forensic scientists in the United States and Europe, who in a July 2020 joint paper outlined the enhancements needed before the technology can be considered for crime scene samples.¹¹⁶

There are many challenges to overcome before Rapid DNA devices can be reliably used for crime scene sample analysis. The Department continues to assess how to address these challenges, including monitoring enhancements to Rapid DNA technology and interfacing with the Rapid DNA industry to help advance the technology. It is important to note that Rapid DNA instruments require significantly more DNA than conventional laboratory processing and have significantly lower success rates for producing usable DNA profiles. According to a May 2020 paper in the *Journal of Forensic Sciences*, Rapid DNA analysis of reference samples (which contain 100-1,000 times more DNA than a crime scene sample) resulted in a success rate of only

¹¹⁶ Rapid DNA for crime scene use: Enhancements and data needed to consider use on forensic evidence for State and National DNA Databasing – An agreed position statement by ENFSI, SWGDAM and the Rapid DNA Crime Scene Technology Advancement task Group. Hares, Knopper's and Honorato. *Forensic Science International: Genetics* 48 (2020) 102349.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

80 percent.¹¹⁷ This is adequate for samples where another can readily be obtained, such as buccal swabs; however, this is not an acceptable risk for use on crime scene samples which, by their nature, cannot be replenished.

Due to these and additional concerns (e.g., reference databases, considerations for court interpretation of samples with multiple DNA donors), until the technology matures and is capable of addressing the issue brought forth by Hares et al (2020), Department policy only allows funding of projects involving Rapid DNA testing on crime scene samples in instances involving CDS projects (Byrne Discretionary Community Project Funding/Byrne Discretionary Grants Program).

101. Can you please provide an update on the status of the New Hanover County Sheriff's Office grant award for a Rapid DNA instrument? When can the county expect to receive these funds?

Response: OJP advises as follows:

When OJP issued the award agreement to New Hanover County for the FY 2022 Byrne Discretionary Grant for the Rapid DNA project, it included an award condition stating that funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS. Following internal discussions on how to best allow New Hanover County to use grant funds to support rapid DNA for non-CODIS uses, BJA sent a letter to the County in March 2023 proposing changes to the award agreement to allow grant funds to purchase Rapid DNA equipment and supplies for non-CODIS uses if the county will agree to follow FBI guidelines for non-CODIS use and meet periodically with BJA's training and technical assistance partner to confirm that the county is adhering to the FBI's guidelines.

In that letter, BJA requested that the county 1) send a written agreement to the changes of the award conditions; and, if the county agrees to the changes, 2) send a written certification that the county has established policies and procedures that adhere to all practices outlined in both the FBI's "Non-CODIS Rapid DNA Considerations and Best Practices for Law Enforcement Use" document and the "Rapid DNA Testing for Non-CODIS Uses: Considerations for Court" document, to include having consulted with the chief local prosecutor and employing an "A-swab/B-swab" strategy when collecting all crime scene DNA samples intended for use on a rapid DNA instrument. On May 12, 2023, New Hanover County sent BJA a letter agreeing to the award agreement changes (#1). New Hanover County subsequently submitted the required certification (#2) to BJA, and the County is able to obligate, expend, and draw down grant funds for the project.

¹¹⁷ Results of the 2018 Rapid DNA Maturity Assessment. Romeos, et al. Journal of Forensic Sciences 2020 May; 65 (3):953-959.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

102. Are there any other outstanding grant awards that have been the subject to these conflicting communications? If so, what is the status of their grant awards, and when can they expect to receive funding?

Response: OJP states as follows: OJP issued two additional FY 2022 Byrne Discretionary Grant awards for projects funding Rapid DNA for crime scene use. Those awards were made to Spokane County, WA and East Baton Rouge Parish Sheriff's Office, LA. The status of their respective awards is currently the same as New Hanover County. That is, both Spokane County and East Baton Rouge Parish Sheriff's Office have sent letters to BJA agreeing to the proposed changes to the award agreement and submitted the required certifications; they are now able to obligate, expend, and draw down grant funds for the project.

103. Please provide a status update on the processing of the Jacksonville Police Department's Rapid DNA appropriation for a Rapid DNA instrument.

Response: OJP states as follows: The City of Jacksonville, NC, submitted its application to the FY 2023 Byrne Discretionary Grant solicitation requesting funding for the "Implementation of a Rapid DNA Regional System for Investigations." OJP issued the award agreement on August 10, 2023. BJA has subsequently held meetings with Jacksonville on the Rapid DNA requirements, and the City has submitted its certification agreeing to comply with these requirements. The budget was approved and there are currently no remaining holds on funds. The City therefore can obligate, expend, and draw down funds.

Third-Party Settlement Payments

During the Obama Administration, the Department of Justice instituted a policy of diverting of settlement proceeds with businesses to third-party groups without Congressional authorization and even for purposes that Congress may have decided not to authorize.

In 2017, Attorney General Sessions prohibited the Justice Department from entering into settlement agreements that direct or provide payments to non-governmental third parties. This prohibition was subsequently incorporated into the Code of Federal Regulations. In May 2022, you reinstated this practice.

I have been vocal that this is a fiscally and legally unsound practice, which can circumvent Congress' intent. Ultimately, this practice allows whatever Administration is in power to direct sums, without Congressional oversight or approval, to favored causes and groups.

104. Do you share my concerns about this practice of creating "slush fund settlements" with third-party groups in litigation? Why or why not?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: On May 5, 2022, the Attorney General issued a memorandum that addressed concerns regarding settlement agreements that direct or provide payments to non-governmental third parties. That memorandum sets forth guidelines and limitations that govern the Justice Department's approach to entering into such settlement agreements. The memorandum is available at:
https://www.justice.gov/d9/pages/attachments/2022/05/05/02_ag_guidelines_and_limitations_morandum_0.pdf.

105. Will you, or will you not, support reinstating the previous ban on these "slush fund settlements" and ensuring taxpayer dollars are not being used for partisan or political purposes?

Response: On May 5, 2022, the Attorney General issued a memorandum that addressed concerns regarding settlement agreements that direct or provide payments to non-governmental third parties. That memorandum sets forth guidelines and limitations that govern the Justice Department's approach to entering into such settlement agreements. The memorandum is available at:
https://www.justice.gov/d9/pages/attachments/2022/05/05/02_ag_guidelines_and_limitations_morandum_0.pdf.

Acquitted Conduct

I am proud to have been a cosponsor of the *Prohibiting Punishment of Acquitted Conduct Act*, and believe the law should be amended to protect our constitutional liberties.

106. What is the Department's position on whether acquitted conduct should be the basis of sentencing decisions?

Response: The Department is committed to ensuring that our sentencing system is fair and predictable. A sufficient, but not greater than necessary sentence requires a complete understanding of the defendant's conduct, history, and circumstances of the offense. The Department believes that courts are best positioned to determine how much weight, if any, to give all relevant conduct at sentencing and to disregard any conduct unsupported by the evidence or insufficiently related to the offense of conviction. During the 2022-2023 amendment year, the Sentencing Commission considered amendments to the Sentencing Guidelines to limit the use of acquitted conduct at sentencing, but ultimately decided to defer further consideration of acquitted conduct. The Department submitted a letter and the United States Attorney for the Eastern

Questions for the Record
Senate Committee on Judiciary
"Oversight of the United States
Department of Justice"
March 1, 2023

District of Virginia testified at a public hearing articulating the Department's views on this important issue.¹¹⁸

107. Does the Department share my concern that sentencing which incorporates acquitted conduct is a potential constitutional violation? Why or why not?

Response: The Supreme Court has long recognized broad judicial discretion to impose sentences based on facts found by a preponderance of the evidence at sentencing. Curtailing courts' discretion to consider conduct related to acquitted counts would be a significant departure from longstanding sentencing practice, Supreme Court precedent, and the principles of the Guidelines. Please see the Department's letter and testimony before the Sentencing Commission articulating the Department's views on this important issue.¹¹⁹

108. If the Department does not support removing acquitted conduct as the basis for sentencing decisions, are there any other reforms that the Department may support?

Response: The Department understands the concerns regarding acquitted conduct and remains ready to work with Congress on any alternative proposals. For the reasons stated in Department's letter and testimony before the Sentencing Commission, the Department does not believe that acquitted conduct can practicably be excluded from the definition of relevant conduct.¹²⁰ Any reforms should be administrable, and any limitation on judicial discretion should be clearly defined and not invite litigation.

¹¹⁸ Letter from Jonathan J. Wroblewski, Dir., Off. of Pol. and Legis., Crim. Div., U.S. Dep't of Just., to J. Carlton W. Reeves, Chair, U.S. Sent'g Comm'n (Feb. 15, 2023), <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/DOJ3.pdf>.
Transcript of Pub. Hearing on Proposed Amends., U.S. Sent'g Comm'n (Feb. 24, 2023), https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/0224_Transcript.pdf.

¹¹⁹ Letter from Jonathan J. Wroblewski, Dir., Off. of Pol. and Legis., Crim. Div., U.S. Dep't of Just., to J. Carlton W. Reeves, Chair, U.S. Sent'g Comm'n (Feb. 15, 2023), <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/DOJ3.pdf>.
Transcript of Pub. Hearing on Proposed Amends., U.S. Sent'g Comm'n (Feb. 24, 2023), https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/0224_Transcript.pdf.

¹²⁰ *Id.*

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Pastor Cao

As co-chair of the Senate Human Rights Caucus, I want to raise again the case of Pastor John Cao, a lawful permanent resident of North Carolina who has been arbitrarily detained by the Communist Chinese Government since March 2017 and is currently being held in Kunming Prison. I am an advocate for Pastor Cao through the Defending Freedoms Project (DFP) of the Tom Lantos Human Rights Commission. The U.S. Commission on International Religious Freedom (USCIRF) is the advocacy partner for Pastor Cao through DFP. During your confirmation hearing, you committed to reviewing the case of Pastor John Cao if confirmed.

109. Have you reviewed his case? Now that you are confirmed as Attorney General, will you commit to me to do everything in your power to secure Pastor Cao's release, including raising his unlawful detention each and every time you meet with your Chinese counterparts?

Response: Although the Department's jurisdiction does not extend to this particular situation, the Department of State, which is responsible for helping U.S. citizens who have been arrested overseas, has stated that Washington is deeply concerned about Pastor Cao's sentence and has urged China to release him as a U.S. legal permanent resident on "humanitarian grounds."

International Parental Child Abduction

110. How many individuals were charged under the IPKCA during 2021 and 2022?

Response: According to the Executive Office for United States Attorneys, seven individuals were charged with violating 18 U.S.C. § 1204 in FY 2021 and FY 2022.

111. In how many cases has an extradition request been formally presented to a foreign government in each of 2021 and 2022? In how many of those cases was the individual successfully extradited to the United States?

Response: The Criminal Division and Executive Office for United States Attorneys states as follows:

In cases where international parental kidnapping charges are pending (whether in federal or state court), the Department takes appropriate steps that may best lead to return of the taking parent, based on the facts and circumstances of each case, the country involved, and whether the United States has an extradition treaty that covers parental kidnapping with that country. Based on the unique facts of each case, the Department may request extradition or seek the return of the taking parent through other legal means.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

In calendar year 2021, the United States requested the return through the extradition process of four fugitives charged with international parental kidnapping under 18 U.S.C. § 1204; three of these fugitives were extradited to the United States. In calendar year 2022, the United States requested the extradition or other lawful return of two fugitives charged with international parental kidnapping under 18 U.S.C. § 1204. Both of these fugitives were returned to the United States. Additionally, in 2022, after requesting the provisional arrest with a view to extradition of two co-defendants in a case charged by a state prosecutor's office, both fugitives consented to their surrender prior to submission of the extradition requests. Both fugitives were returned to the United States to face state international parental kidnapping charges.

112. How many individuals were convicted or pleaded guilty under the IPKCA during 2021 and 2022? Please provide a separate number of convictions and guilty pleas.

Response: According to the Executive Office for United States Attorneys, seven individuals were convicted of violating 18 U.S.C. § 1204 in FYs 2021 and 2022, and of those seven who were convicted, six pleaded guilty.

113. What was the average sentence imposed on those convicted or who plead guilty under IPKCA in 2021 and 2022? Please provide a separate average for convictions and for guilty pleas.

Response: The Executive Office for United States Attorneys states as follows: The statutory maximum sentence for a violation of 18 U.S.C. § 1204 is three years (36 months) imprisonment. The average sentence for those who were convicted of violating 18 U.S.C. 1204 in FY 2022 was 24 months of imprisonment. Those convictions were all the result of defendants who pleaded guilty. The average sentence for those who were convicted of violating 18 U.S.C. § 1204, and any other charges, in FY 2021 was 178 months imprisonment. The high average sentence results from two defendants having been sentenced for other offenses in addition to 18 U.S.C. § 1204.¹²¹ Those two defendants pleaded guilty. One defendant was sentenced to 18 months and 19 days in prison following a trial conviction.¹²² These numbers are based solely on those defendants sentenced to prison time. It does not include defendants who received a non-custodial or time-served sentence.

¹²¹ See Press Release, U.S. Dep't of Just., Previously Convicted Sex Offender Sentenced to 35 Years in Federal Prison for Child Pornography and International Kidnapping (Jan. 22, 2021), <https://www.justice.gov/usao-nm/pr/previously-convicted-sex-offender-sentenced-35-years-federal-prison-child-pornography-and-international-kidnapping>; See Press Release, U.S. Dep't of Just., West Virginia Woman Sentenced for Willful Retention of Top Secret National Defense Information and International Parental Kidnapping (Jan. 25, 2021), <https://www.justice.gov/opa/pr/west-virginia-woman-sentenced-willful-retention-top-secret-national-defense-information-and-international-parental-kidnapping>.

¹²² See Press Release, U.S. Dep't of Just., Anchorage Man Sentenced to Federal Prison for International Parental Kidnapping (May 7, 2021), <https://www.justice.gov/usao-ak/pr/anchorage-man-sentenced-federal-prison-international-parental-kidnapping>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

114. In how many of the cases prosecuted in 2021 and 2022 was the abducted child or children successfully returned to the left-behind parents?

Response: Because the return of a child is not part of the criminal proceeding, the Department does not track the return. The Department of State, however, plays a role in assisting parents to recover abducted children pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. The State Department publishes the Annual Report on International Child Abduction, which contains additional information about abduction cases, including abduction cases that were resolved, and is available at: <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data.html>.

Prescription Drug Monitoring Program Grants

BJA administers grants through the Harold Rogers Prescription Drug Monitoring Program to assist in the fight against the opioid crisis. States have been able to use PDMP fund in previous years to engage outside vendors. However, BJA recently made changes by which certain states must treat outside PDMP vendors as subrecipients. Because subrecipients cannot make a profit, many of these vendors are no longer eligible to assist in the fight against opioids.

115. Please provide a justification for this change in policy, the purpose of this change, and your analysis of the impact of the change.

Response: The Office of Justice Programs advises as follows:

BJA's administration of grant awards is in accordance with all applicable legal authorities, including the Code of Federal Regulations (C.F.R.), specifically 2 C.F.R. § 200.331, with regard to subrecipient and contractor determinations. Within the past few years, it has come to BJA's attention that the subrecipient and contractor definitions were not always being applied correctly in grantee budgets. BJA is working with grantees to ensure the correct determinations are in place for awards.

The definition of a "subrecipient" is found in the Office of Management and Budget regulation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. It provides, in relevant part, that "[c]haracteristics which support the classification of the non-federal entity as a subrecipient include when the non-federal entity: (1) determines who is eligible to receive what federal assistance; (2) has its performance measured in relation to whether objectives of a federal program were met; (3) has responsibility for programmatic decision-making; (4) is responsible for adherence to applicable federal program requirements specified in the federal award; and (5) in accordance with its agreement, uses the federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

goods or services for the benefit of the pass-through entity." *Id.* at § 200.331(a). In contrast, the above-referenced federal regulations define "contractor," in relevant part, as an entity that "provides goods or services that are ancillary to the operation of the federal program." *Id.* at § 200.331(b).

116. This policy has already had negative impacts on States, including one where the State can no longer use one of its long-time vendors. Is BJA considering waivers or a change to this policy as a result of these challenges?

Response: The Office of Justice Programs states as follows:

The Bureau of Justice Assistance strongly supports the goals of the Harold Rogers Prescription Drug Monitoring Program (PDMP) and continues to allow states to utilize PDMP grant funds to finance the PDMP of their choice. However, all grant recipients must administer their grant programs in compliance with 2 C.F.R. § 200 and classify recipients of grant funds from a prime recipient of grant funds per the requirements of 2 C.F.R. § 200. Consistent with 2 C.F.R. § 200.331, the agreement the prime recipient makes for the disbursement of funds to another nonfederal entity under the grant award must be that of a subrecipient if the funds are being used to carry out a program for the public purpose specified in authorizing statute.

BJA is working with PDMP grantees to ensure they are in compliance with 2 C.F.R. § 200 and can move forward with their projects.

117. Is this new rule generally applicable to all PDMP grantees? Or is it specific to particular states? Please explain.

Response: According to the Office of Justice Programs, this is not a new rule. All grant recipients must comply with 2 C.F.R. § 200.

118. Please provide a list of states which have been subject to this new policy.

Response: According to the Office of Justice Programs, this is not a new policy. All grant recipients must comply with 2 C.F.R. § 200.

119. Is BJA applying this change in grant rule applications to other grants beyond the Harold Rogers Program? Please explain why or why not.

Response: According to the Office of Justice Programs, this is not a new rule. All grant recipients must comply with 2 C.F.R. § 200.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

Power Grid Attacks

In December, Moore County residents were left without power for almost a week as a result of attacks on Moore County’s power grid. While I am glad to see that the FBI is involved, I am concerned that there is still no answer as to who did this, and why. And in January, there was another attack on the power grid in nearby Randolph County, which the FBI is also helping to investigate.

120. What information, if any, can you provide about the status of the investigation into the power grid attacks in Moore County and in Randolph County? How has the FBI responded to these attacks, and what measures have been employed to find the criminals who did this?

Response: The Department remains deeply concerned about the shooting attacks on electrical substations that occurred in Moore County and Randolph County, North Carolina, in December 2022 and January 2023, respectively. Damaged or inoperable electrical substations can be devastating to surrounding communities. The FBI continues to assist Moore County and Randolph County law enforcement, the lead investigative entities for those attacks. Immediately after the first attack, the FBI made its laboratory services available for physical and forensic evidence processing and analysis, and then offered rewards in amounts up to \$25,000 for information about each of these attacks. The Department will use all tools at our disposal to assist in these investigations.

121. How many other attacks on power grids have been recorded in the past year? Of these, how many has the FBI been involved investigating?

Response: The FBI and EOUSA advise as follows: There are more than twenty open FBI investigations across the country on incidents related to the power grid and electricity infrastructure. While we are not able to disclose information about all of those FBI investigations, there are a few recent examples of investigations resulting in federal criminal charges that are worth highlighting. For example, in January 2023 the Western District of Washington U.S. Attorney’s Office charged two men in Washington State with, among other charges, conspiracy to damage energy facilities associated with attacks on four power stations in December 2022.¹²³ In February 2023, the Department announced the filing of a federal criminal complaint charging a Maryland woman and a Florida man with conspiracy to destroy an energy facility connected to a plot to attack multiple electrical substations around Baltimore.¹²⁴ The FBI disrupted this plot before the planned attacks could be carried out. In April 2023, two men were

¹²³ UNITED STATES ATTORNEY’S OFFICE, WESTERN DISTRICT OF WASHINGTON, *Two Charged with Attacks on Four Pierce County Power Substations* (Jan. 3, 2023), <https://www.justice.gov/usao-wdwa/pr/two-charged-attacks-four-pierce-county-power-substations>.

¹²⁴ UNITED STATES ATTORNEY’S OFFICE, DISTRICT OF MARYLAND, *Maryland Woman and Florida Man Face Federal Charges for Conspiring to Destroy Energy Facilities* (Feb. 6, 2023).

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

sentenced to 92 months and 60 months in prison in the Southern District of Ohio, for crimes related to a scheme to attack power grids with powerful rifles. And in July 2023, a federal grand jury returned an indictment charging a Canadian citizen with destruction of an energy facility and illegal firearm possession in relation to the May 2023 alleged damage to an electric substation near Ray, North Dakota. In addition to the Moore and Randolph County shooting incidents, the FBI maintains rewards of up to \$25,000 each for information regarding a November 2022 shooting at an electric substation in Maysville, Jones County, North Carolina, and a November 2022 vandalism at an electric substation in Tumwater, Washington.

122. How is the Department responding to these attacks on a national scale, and what additional resources or authorities do you need in order to find and prosecute the criminals in these cases?

Response: This threat requires a whole-of-government approach. Where there is a potential violation of Federal law such as destruction of an energy facility in violation of 18 U.S.C. § 1366, the FBI might take the lead investigative role, supported by federal, state, or local law enforcement. In other cases, other federal, state, or local law enforcement are in the lead, with FBI in support. The Department will include requests for additional resources or authorities through the Administration.

123. Does the Department recommend any statutory changes to increase penalties on those who commit these crimes?

Response: The Department looks forward to working with Congress on legislative proposals to address threats to critical infrastructure.

Questions for the Record
Senate Committee on Judiciary
“Oversight of the United States
Department of Justice”
March 1, 2023

SENATOR PETER WELCH
Judiciary Committee Hearing:

Oversight of the Department of Justice

March 1, 2023
Questions for the Record

Questions for the Honorable Merrick B. Garland

Bipartisan Safer Communities Act

This year alone, Americans have already experienced nearly 100 mass shootings. Last year, over 40,000 people died from gun violence. Firearms are now the number one cause of death for children in the United States. Gun violence is a scourge on our communities. It's shameful.

Last year, Congress took one step forward to address gun violence. We passed the Bipartisan Safer Communities Act—the most significant gun prevention legislation to become law in decades. The law made critical investments and reforms to DOJ programs to help reduce gun violence, which are already making an impact. Just a few weeks ago, the Department announced that Vermont would receive Bipartisan Safer Communities Act crisis intervention funding to support its Commission on Mental Health and the Courts Program. The funding will help provide behavioral health deflection training to Vermont judges, lawyers, and other court staff—improving outcomes for justice-involved individuals experiencing mental health and substance use issues.

Congress must ensure that the Bipartisan Safer Communities Act is implemented effectively and efficiently. And we must do more to prevent gun violence.

1. What are the biggest challenges facing the Department in implementing the Bipartisan Safer Communities Act—including provisions that provided for enhanced background checks for certain gun purchases?

Response: The Department has no higher priority than keeping the American people safe. Gun violence has devastating effects on families, communities, and the entire nation. The BSCA provides the Department with essential tools to help prevent and reduce gun violence in communities across the country in order to save lives. The BSCA narrowed what was known as the boyfriend loophole by revising definition of “misdemeanor crimes of domestic violence” (MCDVs) to include violent offenses committed in the context of a current or recent dating relationship. On August 8, 2022, Federal Bureau of Investigation National Instant Criminal Background Check System (NICS) began denying firearms transactions based on this expanded MCDV definition. The Department is conducting outreach to our state, local, Tribal, and

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

territorial law enforcement partners, emphasizing the importance of documenting evidence of dating relationships in incident reports and court records as one means of notifying NICS about convictions that qualify under the expanded MCDV definition.

The BSCA also expanded background checks to include juvenile criminal and mental-health records for prospective firearm purchasers under the age of 21. According to the FBI, as of January 13, 2023, the FBI has been conducting these enhanced checks for all 43 jurisdictions it is responsible for processing. The Department understands that the 13 jurisdictions that conduct their own background checks, known as point of contact states, have fully implemented the BSCA enhanced checks as well. However, even post-implementation, a significant challenge to obtaining substantive information has been that many states have privacy laws restricting the sharing of mental-health records and/or juvenile adjudication records with NICS.

The Department is also utilizing its new criminal authorities, including the new straw-purchasing and firearm trafficking provisions (18 U.S.C. §§ 932 and 933, respectively). Since BSCA's enactment on June 25, 2022, EOUSA reports that United States Attorneys' Offices have charged over 200 defendants under §§ 932 and 933, and have already begun to obtain convictions, with one defendant in the Southern District of Texas receiving a sentence of 80 months in prison for trafficking firearms to the Southwest Border.

2. What steps can Congress take to support the Department in its enforcement efforts?

Response: The Department appreciates Congress' passage of the BSCA and the commitment to combating gun violence. The BSCA has provided the Department with important new tools to address violent crime and to address the trauma of gun violence affecting so many communities. Many of the investigations and prosecutions that proceed under the BSCA's new provisions are resource intensive. While Congress provided significant funding to NICS for implementation of the under 21 enhanced checks and other provisions, the BSCA did not include any additional funding for ATF or for federal prosecutors to implement the new criminal provisions, including enhanced enforcement of straw purchasing and firearms trafficking crimes. Accordingly, the Department has requested an additional \$71.1 million be appropriated to ATF for FY 2024 to assist in fulfilling its responsibilities under the new law.

3. What else is DOJ doing to help states address some of the drivers of gun violence?

Response: EOUSA and the Department's law enforcement components advise as follows:

The Department is focused on protecting the public from the threat of violent crime. In 2021, the Department issued a Department-wide strategy to leverage the resources of our federal prosecutors, agents, investigators, criminal justice experts, and grant programs to combat the violent crime spike that began in 2020. Since then, every one of the U.S. Attorneys' Offices across the country has worked alongside their state and local partners to implement district-

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

specific violent crime reduction strategies. The Department’s law enforcement components—the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and the U.S. Marshals Service (USMS)—have worked with their state, local, Tribal, and territorial law enforcement partners to seize illegal guns and deadly drugs and to prosecute those who commit acts of violence in our communities. In fiscal year 2023 alone, the Department prosecuted more than 14,500 individuals for violent crimes.

The Department has accelerated our efforts to fight gun violence on every front—from cracking down on criminal gun-trafficking pipelines, to updating regulations, to deepening our partnerships with state and local law enforcement. This includes preventing firearms from falling into the wrong hands. ATF has launched several gun violence strike forces around the country to specifically facilitate local, state, Tribal, and federal law enforcement efforts to identify and prosecute gun traffickers that are fueling the violence in our communities. ATF is also working more closely than ever with state and local partners to turn the evidence they collect at crime scenes into concrete leads, generating nearly 200,000 leads on violent criminals just since summer 2022. As the Department builds on this work, we are putting important new tools to use thanks to the enactment of the Bipartisan Safer Communities Act (BSCA) last year. Those include expanded background check requirements for juvenile criminal history and relevant mental health records before a firearm is sold to anyone under 21. Thanks to those requirements, more than 450 firearms have been kept out of the hands of young people who should not have access to them. These tools also include BSCA’s new proscriptions against illegal firearms trafficking and straw purchasing. The Department has already charged more than 170 defendants under the Act’s gun trafficking provisions and seized hundreds of firearms in connection with those cases.

The Department also continues to support community-led efforts that are vital to preventing violence before it occurs. In February 2023, the Department hosted the first-ever Community Violence Intervention and Prevention Initiative Grantee Convening, which saw more than 400 participants—representing the Department’s CVI grantees, local law enforcement officials, and community partners—come together in St. Louis. And in July 2023, the Department announced the investment of over \$238 million for the Department’s Byrne State Crisis Intervention Program, which will allow communities to implement programs that work to keep guns out of the hands of those who pose a threat to themselves or others.¹²⁵

¹²⁵ See ATF Final Rule 2021R-05F, “Definition of ‘Frame or Receiver’ and Identification of Firearms,” 87 Fed. Reg. 24652, available at: <https://www.federalregister.gov/documents/2022/04/26/2022-08026/definition-of-frame-or-receiver-and-identification-of-firearms>; ATF Final Rule 2021R-08F, “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces,’” 88 Fed. Reg. 6478, available at: [govinfo.gov/content/pkg/FR-2023-01-31/pdf/2023-01001.pdf](https://www.govinfo.gov/content/pkg/FR-2023-01-31/pdf/2023-01001.pdf).

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Environmental Law and Justice

Urgent action is required to fight climate change and secure a healthy and livable future for us, for our children, and for future generations. Not only are the actions of humankind making our planet hotter, but increased pollution is also making our citizens sicker. As we know, these key environmental issues disproportionately impact both communities of color and low-income communities. In May 2022, Associate Attorney General Vanita Gupta announced the Department's Comprehensive Environmental Justice Enforcement Strategy, which describes the agency's goals to advance environmental justice in communities that are disproportionately impacted by pollution and climate change.

4. What steps has the Department taken since May 2022 to implement this strategy and uplift marginalized communities?

Response: The Department's announcement of its Comprehensive Environmental Justice Enforcement Strategy (CEJES) was an acknowledgement that overburdened communities and others facing environmental justice concerns have faced barriers to accessing the justice they deserve, particularly when it comes to health and quality of life burdens posed by environmental violations, legacy pollution, and climate change. For that reason, the Department created the Office of Environmental Justice (OEJ) to serve as the central hub and catalyst for our efforts to advance a comprehensive environmental justice enforcement strategy.

OEJ reports as follows:

In the time since OEJ was announced, the Department has taken important actions across the country to advance environmental justice for all Americans, including working to improve access to safe drinking water in Jackson, Mississippi;¹²⁶ securing convictions for mismanagement of industrial waste in West Virginia;¹²⁷ filing a comprehensive water rights settlement on behalf of Tribes in Montana to protect water resources that are becoming more vulnerable due to increasing temperatures and drought;¹²⁸ and securing a settlement agreement with the City of Houston to address illegal dumping in Black and Latino neighborhoods.¹²⁹ In partnership with the Department of Health and Human Services, the Department also reached an

¹²⁶ See Press Release, U.S. Dep't. of Justice, United States Files Complaint and Reaches Agreement on Proposal with City of Jackson and State of Mississippi on Interim Solution to the Jackson Water Crisis (Nov. 29, 2022), <https://www.justice.gov/opa/pr/united-states-files-complaint-and-reaches-agreement-proposal-city-jackson-and-state>

¹²⁷ See Press Release, U.S. Dep't. of Just., Fayette County Man and Business Plead Guilty to Clean Water Act Violations (Feb. 22, 2023), <https://www.justice.gov/usao-sdwy/pr/fayette-county-man-and-business-plead-guilty-clean-water-act-violations>.

¹²⁸ U.S. Dep't. of Just., Environment and Natural Resources Division FY 2022 Accomplishments Report at 40, available at <https://www.justice.gov/enrd/page/file/1580691/download>.

¹²⁹ See Press Release, U.S. Dep't. of Just., Justice Department Announces Agreement in Environmental Justice Investigation of Illegal Dumping in the City of Houston (June 6, 2023), <https://www.justice.gov/opa/pr/justice-department-announces-agreement-environmental-justice-investigation-illegal-dumping>.

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

interim resolution agreement with the Alabama Department of Public Health regarding the development of equitable and safe wastewater disposal and management systems in Lowndes County, Alabama.¹³⁰

Many low-income communities, communities of color, and Tribal and indigenous communities along with individuals with disabilities and other communities most in harm’s way from climate change, face disproportionate environmental risks and burdens, which in turn affect health, lifespan, and quality of life. The Department’s commitment to seeking equal justice under the law—exemplified by the cases cited above and many others—encompasses a mandate to reduce the disproportionate adverse public health and environmental burdens borne by these overburdened and other communities with environmental justice concerns. And beyond these examples, the Office of Environmental Justice is working to support environmental justice investigations and litigation, facilitate outreach by the Department to communities with environmental justice concerns, and engage all Justice Department bureaus, components, and offices in the collective pursuit of environmental justice.

Immigration

When President Biden took office, he promised to “restore humanity and American values to our nation’s immigration system.” A key challenge in helping our nation achieve that goal is the significant backlog within our immigration court system, which the Department of Justice oversees. There are currently hundreds of thousands of cases in backlog, leaving people in limbo and severely hampering the effectiveness of our system overall. We must work to improve our immigration system and ensure that it is equitable, humane, and treats those involved in it with dignity and respect.

- 5. You inherited an immigration court system from the previous Administration with a backlog of over one million cases, significant staffing shortages, and inefficient policies. What steps have you taken to address these challenges, and what additional efforts are underway?**

Response: Reducing the immigration court backlog is one of the highest priorities for EOIR. EOIR reports as follows:

At the start of the Administration, the immigration courts faced a backlog of 1.3 million cases. In FY 2022, EOIR completed more than 300,000 cases, marking an all-time high. In FY23, EOIR completed approximately 550,000 cases, a more than 80% increase over last year’s record. The Department attributes its high number of case completions to several factors, including increased

¹³⁰ See Press Release, U.S. Dep’t. of Just., Departments of Justice and Health and Human Services Announce Interim Resolution Agreement in Environmental Justice Investigation of Alabama Department of Public Health (May 4, 2023), <https://www.justice.gov/opa/pr/departments-justice-and-health-and-human-services-announce-interim-resolution-agreement>.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

hiring of judges and support staff, improved docket processes, and a focused regulatory agenda. EOIR recognizes that immigration judges are critical to the prompt and fair adjudication of immigration cases, and EOIR has increased its adjudicatory capacity by significantly expanding its immigration judge corps.

Since the start of the Administration, EOIR has increased the number of immigration judges by nearly 150%. Additionally, EOIR has leveraged internet-based technology to maximize the number of hearings that can be scheduled and introduced new backlog reduction efforts such as off-docketing cases that are not ripe for adjudication, establishing specialized dockets to resolve less complex matters quickly, and expanding the use of prehearing conferences to resolve cases or narrow issues prior to trial. EOIR continues to make data-based operational decisions to support the positive trajectory of its case resolutions.

6. What reforms should Congress consider to expedite the cases currently in backlog in an equitable, humane, and democratic manner, and to reduce backlogs moving forward?

Response: The Department appreciates the funding provided by Congress in the past and requests full consideration of the FY 2024 President's budget, which includes additional funding for immigration judges, staff, and other improvements that will aid in backlog reduction.

Vermont Institutions and Restorative Justice

Members of this body – both Republican and Democrat – have called for substantive reforms to our criminal justice system. And with good reason. The U.S. makes up close to 5% of the global population, but we have more than 20% of the world's prison population. And that population is disproportionately Black and Brown. That's a reflection of a dysfunctional criminal justice system. As Congress considers criminal justice reforms, it is critical that we have access to as much research—and as many innovative models—possible to improve our existing system.

Vermont plays a leading role in developing those innovative approaches—including through the National Center on Restorative Justice. The organization is a partnership between Vermont Law School, the University of Vermont, and the University of San Diego, with funding from the Department. NCORJ conducts research on, educates the public about, and promotes the restorative justice approach to responding to crime. Rather than focusing solely on punishment in response to legal violations, the restorative justice model focuses on repairing harm. It seeks to empower victims, survivors, and the community to engage in the justice process.

7. Do you agree that the potential benefits of the restorative justice are valuable and should be further explored by the Department?

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

Response: The Office on Violence Against Women (OVW) states as follows:

The Department is actively engaged in developing the Restorative Practices Pilot Program established in the 2022 Violence Against Women Act Reauthorization. The program development effort to date has included conducting listening sessions with practitioners, exploring existing restorative justice models, identifying metrics for success, and seeking proposals for a technical assistance provider that will be ready to assist the first round of grantees.

Of the newly authorized VAWA 2022 grant programs, only Restorative Justice (RJ) received an appropriation in FY 2022. According to OVW, it has not yet issued an RJ grant program solicitation, but it has established an internal RJ working group, issued a Call for Concept Papers for RJ technical assistance, and is conducting ongoing listening sessions on the subject.

Additionally, Victims of Crime Act [victim assistance formula funding](#) can support restorative justice activities, including but not limited to, Tribal community-led meetings and peace-keeping activities, if such meetings are requested or voluntarily agreed to by the victim. According to OVC, victims must always have the opportunity to withdraw from participation, and there must be a reasonably anticipated beneficial or therapeutic value to the crime victim. Those funds are administered through State Administering Agencies (SAA), which are entities within state and territorial governments, and the District of Columbia, that are responsible for comprehensive criminal justice planning and policy development. Ultimately, the SAA maintains the discretion to determine what restorative justice activities it wishes to fund and has the responsibility of monitoring and overseeing the program.

8. Why is it important for the Department to support programs, like the National Center on Restorative Justice, that invest in the development of and research into less traditional models in the criminal justice system?

Response: Congress recognized the importance of the Department's technical assistance and authorized OVW to spend up to 8% of its appropriation for its technical assistance program, with some exceptions that authorize OVW to spend more. According to OVW, for the last five years, the percentage spent on technical assistance has been largely consistent, ranging from just under 6% to 6.8%. OVW does anticipate some increased investments in technical assistance as it works with its grant community to implement new VAWA 2022 programming such as restorative practices and as new challenges such as online harassment and abuse arise.

Questions for the Record
 Senate Committee on Judiciary
 "Oversight of the United States
 Department of Justice"
 March 1, 2023

OJP advises as follows:

This year, through BJA, accredited universities of higher education and accredited law schools were eligible to apply for funding to manage and expand the work of the National Center on Restorative Justice, with the overall purpose to educate, train, and build knowledge on restorative justice approaches, principles, and their application to criminal justice and community safety. This includes educating and training the next generation of justice leaders on the use of restorative justice within, or in alignment with, criminal justice systems.

In addition, the National Institute of Justice reports that through its FY 2022 Research and Evaluation on the Administration of Justice: Diversion and Restorative Justice Program, it funded the Urban Institute project *National Scan, Case Studies, and Evaluability Assessments of Restorative Justice Programs for Serious and Violent Harm*.

9. What steps can the Department take to support the implementation of these types of models, including the restorative justice model?

Response: OJP advises as follows: As the Department works to implement VAWA 2022, the Department is actively engaged in developing the Restorative Justice program. Currently, the Department is conducting listening sessions with stakeholders, exploring existing restorative justice models, identifying metrics for success, and seeking proposals for a technical assistance provider that will be ready to assist the first round of grantees.

Election Security and Infrastructure

American democracy is at risk. In recent elections, state and local election officials have faced threats and harassment—including in Vermont. Meanwhile, our election infrastructure is stretched thin. State officials need help to ensure that our voting systems are robust and secure. The Department of Justice has taken important steps to protect election workers and the right to vote—including by establishing an Election Threats Task Force. But more must be done.

10. How can the Department improve coordination with other federal agencies, like the Department of Homeland Security, to help state officials strengthen our election systems?

Response: The Department coordinates regularly with other federal agencies, including the DHS, in preparing and planning for significant upcoming elections. As part of those efforts, the Department and its federal counterparts prepare for potential issues and potential threats that may arise during the relevant election, including issues and threats specific to State election systems. For example, the Department and DHS, in partnership with other federal agencies, have conducted tabletop exercises designed to address election-related contingencies, all in an effort

Questions for the Record
 Senate Committee on Judiciary
 “Oversight of the United States
 Department of Justice”
 March 1, 2023

to enhance election preparedness and to promote and ensure effective communication and coordination with State election and law enforcement officials.

11. Recent reports have documented coordinated efforts to copy state voting software and distribute it publicly—with potentially dangerous implications for election security and future elections.¹³¹ What steps, if any, is the Department taking to investigate these reports?

Response: The Department routinely intakes and assesses allegations of potentially criminal activity to determine whether the allegations are credible, may constitute possible violations of federal law, and warrant federal investigative action. As a matter of policy, the Department generally does not comment about specific allegations of misconduct, or the existence or non-existence of a particular investigation.

¹³¹ See Sue Halpern, “The Election Official Who Tried to Prove ‘Stop the Steal,’” *New Yorker*, September 7, 2022, <https://www.newyorker.com/news/american-chronicles/the-election-official-who-tried-to-prove-stop-the-steal>; Emma Brown, Aaron C. Davis, and John Swaine, “Advocates seek federal investigation of multistate effort to copy voting software,” *Washington Post*, December 13, 2022, <https://www.washingtonpost.com/investigations/2022/12/13/election-security-voting-machine-breach/>.

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

The New York Times

<https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.

Arriving in record numbers, they're ending up in dangerous jobs that violate child labor laws — including in factories that make products for well-known brands like Cheetos and Fruit of the Loom.

By Hannah Dreier Photographs by Kirsten Luce

Hannah Dreier traveled to Alabama, Florida, Georgia, Michigan, Minnesota, South Dakota and Virginia for this story and spoke to more than 100 migrant child workers in 20 states.
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Cristian works on a construction job instead of going to school. He is 14.

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times
Carolina packages Cheerios at night in a factory. She is 15.

Wander starts looking for day-labor jobs before sunrise. He is

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

13.

It was almost midnight in Grand Rapids, Mich., but inside the factory everything was bright. A conveyor belt carried bags of Cheerios past a cluster of young workers. One was 15-year-old Carolina Yoc, who came to the United States on her own last year to live with a relative she had never met.

About every 10 seconds, she stuffed a sealed plastic bag of cereal into a passing yellow carton. It could be dangerous work, with fast-moving pulleys and gears that had torn off fingers and ripped open a woman's scalp.

The factory was full of underage workers like Carolina, who had crossed the Southern border by themselves and were now spending late hours bent over hazardous machinery, in violation of child labor laws. At nearby plants, other children were tending giant ovens to make Chewy and Nature Valley granola bars and packing bags of Lucky Charms and Cheetos — all of them working for the processing giant Hearthside Food Solutions, which would ship these products around the country.

"Sometimes I get tired and feel sick," Carolina said after a shift in November. Her stomach often hurt, and she was unsure if that was because of the lack of sleep, the stress from the incessant roar of the machines, or the worries she had for herself and her family in Guatemala. "But I'm getting used to it."



<https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>

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3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

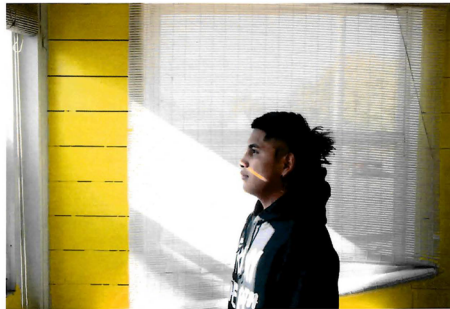
Hearstside Food Solutions, one of the United States' largest food contractors, makes and packages products for well-known snack and cereal brands. Kirsten Luce for The New York Times

These workers are part of a new economy of exploitation: Migrant children, who have been coming into the United States without their parents in record numbers, are ending up in some of the most punishing jobs in the country, a New York Times investigation found. This shadow work force extends across industries in every state, flouting child labor laws that have been in place for nearly a century. Twelve-year-old roofers in Florida and Tennessee. Underage slaughterhouse workers in Delaware, Mississippi and North Carolina. Children sawing planks of wood on overnight shifts in South Dakota.

Largely from Central America, the children are driven by economic desperation that was worsened by the pandemic. This labor force has been slowly growing for almost a decade, but it has exploded since 2021, while the systems meant to protect children have broken down.

The Times spoke with more than 100 migrant child workers in 20 states who described jobs that were grinding them into exhaustion, and fears that they had become trapped in circumstances they never could have imagined. The Times examination also drew on court and inspection records and interviews with hundreds of lawyers, social workers, educators and law enforcement officials.

In town after town, children scrub dishes late at night. They run milking machines in Vermont and deliver meals in New York City. They harvest coffee and build lava rock walls around vacation homes in Hawaii. Girls as young as 13 wash hotel sheets in Virginia.



Oscar Lopez, a ninth grader, works overnight at a sawmill in South Dakota. On this day, he skipped school to sleep after a 14-hour shift. Kirsten Luce for The New York Times

In many parts of the country, middle and high school teachers in English-language learner programs say it is now common for nearly all their students to rush off to long shifts after their classes end.

"They should not be working 12-hour days, but it's happening here," said Valeria Lindsay, a language arts teacher at Homestead Middle School near Miami. For the past three years, she said, almost every eighth grader in her English learner program of about 100 students was also carrying an adult workload.

Migrant child labor benefits both under-the-table operations and global corporations, The Times found. In Los Angeles, children stitch "Made in America" tags into J. Crew shirts. They bake dinner rolls sold at Walmart and Target, process milk used in Ben & Jerry's ice cream and help debone chicken sold at Whole Foods. As recently as the fall, middle-schoolers made Fruit of the Loom socks in Alabama. In Michigan, children make auto parts used by Ford and General Motors.

The number of unaccompanied minors entering the United States climbed to a high of 130,000 last year — three times what it was five years earlier — and this summer is expected to bring another wave.

These are not children who have stolen into the country undetected. The federal government knows they are in the United States, and the Department of Health and Human Services is responsible for ensuring sponsors will support them and protect them from trafficking or exploitation.

But as more and more children have arrived, the Biden White House has ramped up demands on staffers to move the children quickly out of shelters and release them to adults. Caseworkers say they rush through vetting sponsors.

While H.H.S. checks on all minors by calling them a month after they begin living with their sponsors, data obtained by The Times showed that over the last two years, the agency could not reach more than 85,000 children. Overall, the agency lost immediate contact with a third of migrant children.

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

An H.H.S. spokeswoman said the agency wanted to release children swiftly, for the sake of their well-being, but had not compromised safety. "There are numerous places along the process to continually ensure that a placement is in the best interest of the child," said the spokeswoman, Kamara Jones.

Far from home, many of these children are under intense pressure to earn money. They send cash back to their families while often being in debt to their sponsors for smuggling fees, rent and living expenses.

"It's getting to be a business for some of these sponsors," said Annette Passalacqua, who left her job as a caseworker in Central Florida last year. Ms. Passalacqua said she saw so many children put to work, and found law enforcement officials so unwilling to investigate these cases, that she largely stopped reporting them. Instead, she settled for explaining to the children that they were entitled to lunch breaks and overtime.

Sponsors are required to send migrant children to school, and some students juggle classes and heavy workloads. Other children arrive to find that they have been misled by their sponsors and will not be enrolled in school.

The federal government hires child welfare agencies to track some minors who are deemed to be at high risk. But caseworkers at those agencies said that H.H.S. regularly ignored obvious signs of labor exploitation, a characterization the agency disputed.

In interviews with more than 60 caseworkers, most independently estimated that about two-thirds of all unaccompanied migrant children ended up working full time.

A representative for Hearthsides said the company relied on a staffing agency to supply some workers for its plants in Grand Rapids, but conceded that it had not required the agency to verify ages through a national system that checks Social Security numbers. Unaccompanied migrant children often obtain false identification to secure work.

"We are immediately implementing additional controls to reinforce all agencies' strict compliance with our longstanding requirement that all workers must be 18 or over," the company said in a statement.

At Union High School in Grand Rapids, Carolina's ninth-grade social studies teacher, Rick Angstman, has seen the toll that long shifts take on his students. One, who was working nights at a commercial laundry, began passing out in class from fatigue and was hospitalized twice, he said. Unable to stop working, she dropped out of school.

"She disappeared into oblivion," Mr. Angstman said. "It's the new child labor. You're taking children from another country and putting them in almost indentured servitude."

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

On the Night Shift

Children being processed by the U.S. Border Patrol in Roma, Texas. In the past two years alone, 250,000 unaccompanied minors have come into the country. Kirsten Luce for The New York Times

When Carolina left Guatemala, she had no real understanding of what she was heading toward, just a sense that she could not stay in her village any longer. There was not much electricity or water, and after the pandemic began, not much food.

The only people who seemed to be getting by were the families living off remittances from relatives in the United States. Carolina lived alone with her grandmother, whose health began failing. When neighbors started talking about heading north, she decided to join. She was 14.

"I just kept walking," she said.

Carolina reached the U.S. border exhausted, weighing 84 pounds. Agents sent her to an H.H.S. shelter in Arizona, where a caseworker contacted her aunt, Marcelina Ramirez. Ms. Ramirez was at first reluctant: She had already sponsored two other relatives and had three children of her own. They were living on \$600 a week, and she didn't know Carolina.

When Carolina arrived in Grand Rapids last year, Ms. Ramirez told her she would go to school every morning and suggested that she pick up evening shifts at Hearthside. She knew Carolina needed to send money back to her grandmother. She also believed it was good for young people to work. Child labor is the norm in rural Guatemala, and she herself had started working around the second grade.

One of the nation's largest contract manufacturers, Hearthside makes and packages food for companies like Frito-Lay, General Mills and Quaker Oats. "It would be hard to find a cookie or cracker aisle in any leading grocer that does not contain multiple products from Hearthside production facilities," a Grand Rapids-area plant manager told a trade magazine in 2019.

General Mills, whose brands include Cheerios, Lucky Charms and Nature Valley, said it recognized "the seriousness of this situation" and was reviewing The Times's findings. PepsiCo, which owns Frito-Lay and Quaker Oats, declined to comment.

Three people who until last year worked at one of the biggest employment agencies in Grand Rapids, Forge Industrial Staffing, said Hearthside supervisors were sometimes made aware that they were getting young-looking workers whose identities had been flagged as false.

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

"Hearthside didn't care," said Nubia Malacara, a former Forge employee who said she had also worked at Hearthside as a minor.

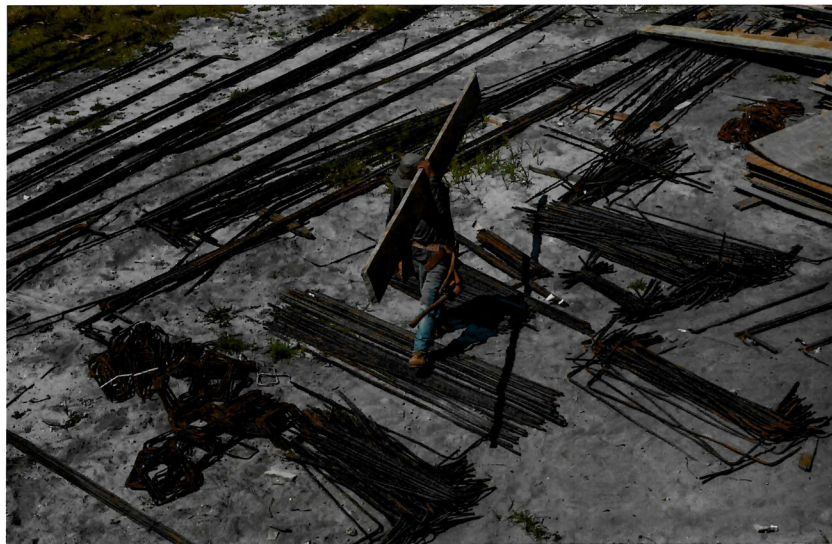
In a statement, Hearthside said, "We do care deeply about this issue and are concerned about the mischaracterization of Hearthside." A spokesman for Forge said it complied with state and federal laws and "would never knowingly employ individuals under 18."

Kevin Tomas said he sought work through Forge after he arrived in Grand Rapids at age 13 with his 7-year-old brother. At first, he was sent to a local manufacturer that made auto parts for Ford and General Motors. But his shift ended at 6:30 in the morning, so he could not stay awake in school, and he struggled to lift the heavy boxes.

"It's not that we want to be working these jobs. It's that we have to help our families," Kevin said.

By the time he was 15, Kevin had found a job at Hearthside, stacking 50-pound cases of cereal on the same shift as Carolina.

'So Many Red Flags'



Cristian, 14, has been working in construction in North Miami for two years instead of going to school. Federal law bars minors from a long list of such jobs. Kirsten Luce for The New York Times

The growth of migrant child labor in the United States over the past several years is a result of a chain of willful ignorance. Companies ignore the young faces in their back rooms and on their factory floors. Schools often decline to report apparent labor violations, believing it will hurt children more than help. And H.H.S. behaves as if the migrant children who melt unseen into the country are doing just fine.

"As the government, we've turned a blind eye to their trafficking," said Doug Gilmer, the head of the Birmingham, Ala., office of Homeland Security Investigations, a federal agency that often becomes involved with immigration cases.

Mr. Gilmer teared up as he recalled finding 13-year-olds working in meat plants; 12-year-olds working at suppliers for Hyundai and Kia, as documented last year by a Reuters investigation; and children who should have been in middle school working at commercial bakeries.

"We're encountering it here because we're looking for it here," Mr. Gilmer said. "It's happening everywhere."

Children have crossed the Southern border on their own for decades, and since 2008, the United States has allowed non-Mexican minors to live with sponsors while they go through immigration proceedings, which can take several years. The policy, codified in anti-trafficking legislation, is intended to prevent harm to children who would otherwise be turned away and left alone in a Mexican border town.

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

When Kelsey Keswani first worked as an H.H.S. contractor in Arizona to connect unaccompanied migrant children with sponsors in 2010, the adults were almost always the children's parents, who had paid smugglers to bring them up from Central America, she said.

But around 2014, the number of arriving children began to climb, and their circumstances were different. In recent years, "the kids almost all have a debt to pay off, and they're super stressed about it," Ms. Keswani said.

She began to see more failures in the vetting process. "There were so many cases where sponsors had sponsored multiple kids, and it wasn't getting caught. So many red flags with debt. So many reports of trafficking."

Now, just a third of migrant children are going to their parents. A majority are sent to other relatives, acquaintances or even strangers, a Times analysis of federal data showed. Nearly half are coming from Guatemala, where poverty is fueling a wave of migration. Parents know that they would be turned away at the border or quickly deported, so they send their children in hopes that remittances will come back.

In the last two years alone, more than 250,000 children have entered the United States by themselves.

The shifting dynamics in Central America helped create a political crisis early in Mr. Biden's presidency, when children started crossing the border faster than H.H.S. could process them. With no room left in shelters, the children stayed in jail-like facilities run by Customs and Border Protection and, later, in tent cities. The images of children sleeping on gym mats under foil blankets attracted intense media attention.

The Biden administration pledged to move children through the shelter system more quickly. "We don't want to continue to see a child languish in our care if there is a responsible sponsor," Xavier Becerra, secretary of health and human services, told Congress in 2021.



A detention site in the Rio Grande Valley in March 2021. The Biden administration has faced pressure to move unaccompanied children through the system quickly. Pool photo by Dario Lopez-Mills

His agency began paring back protections that had been in place for years, including some background checks and reviews of children's files, according to memos reviewed by The Times and interviews with more than a dozen current and former employees.

"Twenty percent of kids have to be released every week or you get dinged," said Ms. Keswani, who stopped working with H.H.S. last month.

Concerns piled up in summer 2021 at the Office of Refugee Resettlement, the H.H.S. division responsible for unaccompanied migrant children. In a memo that July, 11 managers said they were worried that labor trafficking was increasing and complained to their bosses that the office had become "one that rewards individuals for making quick releases, and not one that rewards individuals for preventing unsafe releases."

Staff members said in interviews that Mr. Becerra continued to push for faster results, often asking why they could not discharge children with machine-like efficiency.

"If Henry Ford had seen this in his plants, he would have never become famous and rich. This is not the way you do an assembly line," Mr. Becerra said at a staff meeting last summer, according to a recording obtained by The Times.

The H.H.S. spokeswoman, Ms. Jones, said that Mr. Becerra had urged his staff to "step it up." "Like any good leader, he wouldn't hesitate to do it again — especially when it comes to the well-being and safety of children," she said.

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

During a call last March, Mr. Becerra told Cindy Huang, the O.R.R. director, that if she could not increase the number of discharges, he would find someone who could, according to five people familiar with the call. She resigned a month later.

He recently made a similar threat to her successor during a meeting with senior leadership, according to several people who were present.

'It Was All Lies'



Migrant children were among the day laborers who gathered on a school day in Homestead, Fla., to find roofing, landscaping or other work. Kirsten Luce for The New York Times

While many migrant children are sent to the United States by their parents, others are persuaded to come by adults who plan to profit from their labor.

Nery Cutzal was 13 when he met his sponsor over Facebook Messenger. Once Nery arrived in Florida, he discovered that he owed more than \$4,000 and had to find his own place to live. His sponsor sent him threatening text messages and kept a running list of new debts: \$140 for filling out H.H.S. paperwork; \$240 for clothes from Walmart; \$45 for a taco dinner.

"Don't mess with me," the sponsor wrote. "You don't mean anything to me."

Nery began working until 3 a.m. most nights at a trendy Mexican restaurant near Palm Beach to make the payments. "He said I would be able to go to school and he would take care of me, but it was all lies," Nery said.

His father, Leonel Cutzal, said the family had become destitute after a series of bad harvests and had no choice but to send their oldest son north from Guatemala.

"Even when he shares \$50, it's a huge help," Mr. Cutzal said. "Otherwise, there are times we don't eat." Mr. Cutzal had not understood how much Nery would be made to work, he said. "I think he passed through some hard moments being up there so young."

Nery eventually contacted law enforcement, and his sponsor was found guilty last year of smuggling a child into the United States for financial gain. That outcome is rare: In the past decade, federal prosecutors have brought only about 30 cases involving forced labor of unaccompanied minors, according to a Times review of court databases.

<https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>

9/17

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

Deuda de Nery	
1	Primer Pago Salida Guate a USA. \$10,000
2	Segundo Pago Mexico Estados Unidos \$10,000
3	Pago de huellas al notario \$102.50
4	Pago de Huella Fier. da para Arizona \$37.50
5	Pago de aldon de NERY \$551.00
6	Pago de Pasaje del aeropuerto de NERY \$6.00
7	Jalisco una noche de Permiso de trabajo \$50.00
8	Tacos Por la llegada de NERY \$45.00
9	Pete para NERY al aeropuerto \$65.00
10	Tacos al comprar la ropa de NERY \$30.00
11	Ropa de NERY \$240.00
12	el fater Per toda a NERY \$300.00
Total \$3,000	
Pagos 403.6	
interes mensual \$520	
tarifa Remito mensual	
\$500.99	
4,000 dya en la casa	

A handwritten ledger, in Spanish, of Nery Cutzal's debts to his sponsor, including money for tacos and clothes. The child owed more than \$4,000, plus interest. Court information has been redacted for privacy.

Unlike the foster care system, in which all children get case management, H.H.S. provides this service to about a third of children who pass through its care, and usually for just four months. Tens of thousands of other children are sent to their sponsors with little but the phone number for a national hotline. From there, they are often on their own: There is no formal follow-up from any federal or local agencies to ensure that sponsors are not putting children to work illegally.

In Pennsylvania, one case worker told The Times he went to check on a child released to a man who had applied to sponsor 20 other minors. The boy had vanished. In Texas, another case worker said she had encountered a man who had been targeting poor families in Guatemala, promising to help them get rich if they sent their children across the border. He had sponsored 13 children.

"If you've been in this field for any amount of time, you know that there's what the sponsors agree to, and what they're actually doing," said Bernal Cruz Munoz, a caseworker supervisor in Oregon.

Calling the hotline is not a sure way to get support, either. Juanito Ferrer called for help after he was brought to Manassas, Va., at age 15 by an acquaintance who forced him to paint houses during the day and guard an apartment complex at night. His sponsor took his paychecks and watched him on security cameras as he slept on the basement floor.

Juanito said that when he called the hotline in 2019, the person on the other end just took a report. "I thought they'd send the police or someone to check, but they never did that," he said. "I thought they would come and inspect the house, at least." He eventually escaped.

Asked about the hotline, H.H.S. said operators passed reports onto law enforcement and other local agencies because the agency did not have the authority to remove children from homes.

The Times analyzed government data to identify places with high concentrations of children who had been released to people outside their immediate families — a sign that they might have been expected to work. In northwest Grand Rapids, for instance, 93 percent of children have been released to adults who are not their parents.

H.H.S. does not track these clusters, but the trends are so pronounced that officials sometimes notice hot spots anyway.

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

Scott Lloyd, who led the resettlement office in the Trump administration, said he realized in 2018 that the number of unaccompanied Guatemalan boys being released to sponsors in South Florida seemed to be growing.



Jose Vasquez, 13, photographed at the church he attends in Grand Rapids, Mich. He works 12-hour shifts, six days a week, at an egg farm outside the city. Kirsten Luce for The New York Times

"I always wondered what was happening there," he said.

But his attention was diverted by the chaos around the Trump administration's child separation policy, and he never looked into it. The trend he saw has only accelerated: For example, in the past three years, more than 200 children have been released to distant relatives or unrelated adults around Immokalee, Fla., an agricultural hub with a long history of labor exploitation.

In a statement, H.H.S. said it had updated its case management system to better flag instances when multiple children were being released to the same person or address.

Many sponsors see themselves as benevolent, doing a friend or neighbor a favor by agreeing to help a child get out of a government shelter, even if they do not intend to offer any support. Children often understand that they will have to work, but do not grasp the unrelenting grind that awaits them.

"I didn't get how expensive everything was," said 13-year-old Jose Vasquez, who works 12-hour shifts, six days a week, at a commercial egg farm in Michigan and lives with his teenage sister. "I'd like to go to school, but then how would I pay rent?"

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

Occupational Hazards

Carolina Yoc, back right, worked on math problems after a night shift at a Grand Rapids food plant. The 13-year-old girl sitting next to her said she also worked nights at a factory. Kirsten Luce for The New York Times

One fall morning at Union High School in Grand Rapids, Carolina listened to Mr. Angstman lecture on the journalist Jacob Riis and the Progressive Era movement that helped create federal child labor laws. He explained that the changes were meant to keep young people out of jobs that could harm their health or safety, and showed the class a photo of a small boy making cigars.

"Riis reported that members of this family worked 17 hours a day, seven days a week," he told the students. "The cramped space reeked of toxic fumes." Students seemed unmoved. Some struggled to stay awake.

Teachers at the school estimated that 200 of their immigrant students were working full time while trying to keep up with their classes. The greatest share of Mr. Angstman's students worked at one of the four Hearthsides plants in the city.

The company, which has 39 factories in the United States, has been cited by the Occupational Safety and Health Administration for 34 violations since 2019, including for unsafe conveyor belts at the plant where Carolina found her job. At least 11 workers suffered amputations in that time. In 2015, a machine caught the hairnet of an Ohio worker and ripped off part of her scalp.

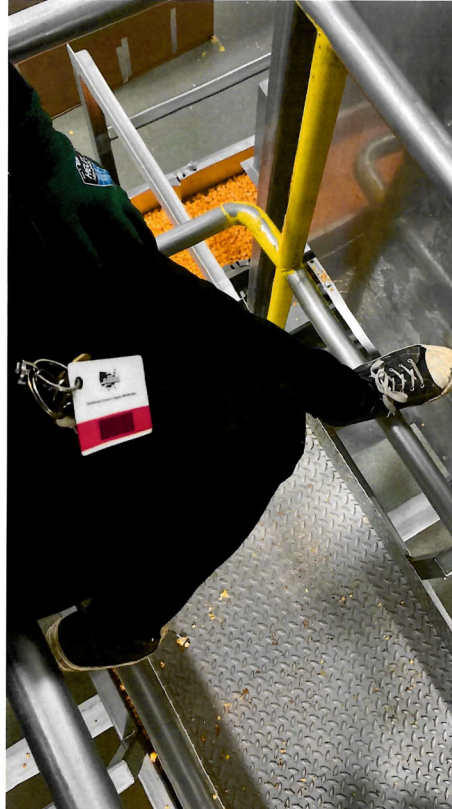
The history of accidents "shows a corporate culture that lacks urgency to keep workers safe," an OSHA official wrote after the most recent violation for an amputation.

Underage workers in Grand Rapids said that spicy dust from immense batches of Flamin' Hot Cheetos made their lungs sting, and that moving heavy pallets of cereal all night made their backs ache. They worried about their hands getting caught in conveyor belts, which federal law classifies as so hazardous that no child Carolina's age is permitted to work with them.

Hearthsides said in a statement that it was committed to complying with laws governing worker protections. "We strongly dispute the safety allegations made and are proud of our safety-first culture," the statement read.

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times



A selfie taken by a 17-year-old at a Hearthside facility in Grand Rapids. She said older men at the factory sometimes harassed her.

Federal law bars minors from a long list of dangerous jobs, including roofing, meat processing and commercial baking. Except on farms, children younger than 16 are not supposed to work for more than three hours or after 7 p.m. on school days.

But these jobs — which are grueling and poorly paid, and thus chronically short-staffed — are exactly where many migrant children are ending up. Adolescents are twice as likely as adults to be seriously injured at work, yet recently arrived preteens and teenagers are running industrial dough mixers, driving massive earthmovers and burning their hands on hot tar as they lay down roofing shingles, The Times found.

Unaccompanied minors have had their legs torn off in factories and their spines shattered on construction sites, but most of these injuries go uncounted. The Labor Department tracks the deaths of foreign-born child workers but no longer makes them public. Reviewing state and federal safety records and public reports, The Times found a dozen cases of young migrant workers killed since 2017, the last year the Labor Department reported any.

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

The deaths include a 14-year-old food delivery worker who was hit by a car while on his bike at a Brooklyn intersection; a 16-year-old who was crushed under a 35-ton tractor-scraper outside Atlanta; and a 15-year-old who fell 50 feet from a roof in Alabama where he was laying down shingles.



From left: Oscar Nambo Dominguez, 16, was crushed last year under an earthmover near Atlanta. Edwin Ajacalon, 14, was hit by a car while delivering food on a bike in Brooklyn. Juan Mauricio Ortiz, 15, died on his first day of work for an Alabama roofing company when he fell about 50 feet.

In 2021, Karla Campbell, a Nashville labor lawyer, helped a woman figure out how to transport the body of her 14-year-old grandson, who had been killed on a landscaping job, back to his village in Guatemala. It was the second child labor death she had handled that year.

"I've been working on these cases for 15 years, and the addition of children is new," Ms. Campbell said.

In dairy production, the injury rate is twice the national average across all industries. Paco Calvo arrived in Middlebury, Vt., when he was 14 and has been working 12-hour days on dairy farms in the four years since. He said he crushed his hand in an industrial milking machine in the first months of doing this work.

"Pretty much everyone gets hurt when they first start," he said.

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

Targeting the Middlemen

Young workers exited an overnight cleaning shift last October at a JBS pork plant in Worthington, Minn. Their employer, a sanitation company, was later fined for violating child labor laws. Kirsten Luce for The New York Times

Charlene Irizarry, the human resources manager at Farm Fresh Foods, an Alabama meat plant that struggles to retain staff, recently realized she was interviewing a 12-year-old for a job slicing chicken breasts into nuggets in a section of the factory kept at 40 degrees.

Ms. Irizarry regularly sees job applicants who use heavy makeup or medical masks to try to hide their youth, she said. "Sometimes their legs don't touch the floor."

Other times, an adult will apply for a job in the morning, and then a child using the same name will show up for orientation that afternoon. She and her staff have begun separating other young applicants from the adults who bring them in, so they will admit their real ages.

Ms. Irizarry said the plant had already been fined for one child labor violation, and she was trying to avoid another. But she wondered what the children might face if she turned them away.

"I worry about why they're so desperate for these jobs," she said.

In interviews with underage migrant workers, The Times found child labor in the American supply chains of many major brands and retailers. Several, including Ford, General Motors, J. Crew and Walmart, as well as their suppliers, said they took the allegations seriously and would investigate. Target and Whole Foods did not respond to requests for comment. Fruit of the Loom said it had ended its contract with the supplier.

One company, Ben & Jerry's, said it worked with labor groups to ensure a minimum set of working conditions at its dairy suppliers. Cheryl Pinto, the company's head of values-led sourcing, said that if migrant children needed to work full time, it was preferable for them to have jobs at a well-monitored workplace.

The Labor Department is supposed to find and punish child labor violations, but inspectors in a dozen states said their understaffed offices could barely respond to complaints, much less open original investigations. When the department has responded to tips on migrant children, it has focused on the outside contractors and staffing agencies that usually employ them, not the corporations where they perform the work.

<https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>

15/17

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

In Worthington, Minn., it had long been an open secret that migrant children released by H.H.S. were cleaning a slaughterhouse run by JBS, the world's largest meat processor. The town has received more unaccompanied migrant children per capita than almost anywhere in the country.

Outside the JBS pork plant last fall, The Times spoke with baby-faced workers who chased and teased one another as they came off their shifts in the morning. Many had scratched their assumed names off company badges to hide evidence that they were working under false identities. Some said they had suffered chemical burns from the corrosive cleaners they used.

Not long afterward, labor inspectors responding to a tip found 22 Spanish-speaking children working for the company hired to clean the JBS plant in Worthington, and dozens more in the same job at meat-processing plants around the United States.

But the Labor Department can generally only issue fines. The cleaning company paid a \$1.5 million penalty, while JBS said it had been unaware that children were scouring the Worthington factory each night. JBS fired the cleaning contractor.

Many of the children who were working there have found new jobs at other plants, The Times found.

"I still have to pay back my debt, so I still have to work," said Mauricio Ramirez, 17, who has found a meat processing job in the next town over.

'Not What I Imagined'



Cristian Lopez, 16, pictured with his 12-year-old sister, Jennifer, works at a Hearthsides facility in Grand Rapids. Kirsten Luce for The New York Times

It has been a little more than a year since Carolina left Guatemala, and she has started to make some friends. She and another girl who works at Hearthsides have necklaces that fit together, each strung with half a heart. When she has time, she posts selfies online decorated with smiley faces and flowers.

Mostly, though, she keeps to herself. Her teachers do not know many details about her journey to the border. When the topic came up at school recently, Carolina began sobbing and would not say why.

3/8/23, 10:48 AM

Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S. - The New York Times

After a week of 17-hour days, she sat at home one night with her aunt and considered her life in the United States. The long nights. The stress about money. "I didn't have expectations about what life would be like here," she said, "but it's not what I imagined."

She was holding a debit card given to her by a staffing agency, which paid her Hearthside salary this way so she did not have to cash checks. Carolina turned it over and over in her palm as her aunt looked on.

"I know you get sad," Ms. Ramirez said.

Carolina looked down. She wanted to continue going to school to learn English, but she woke up most mornings with a clenched stomach and kept staying home sick. Some of her ninth grade classmates had already dropped out. The 16-year-old boy she sat next to in math class, Cristian Lopez, had left school to work overtime at Hearthside.

Cristian lived a few minutes away, in a bare two-room apartment he shared with his uncle and 12-year-old sister, Jennifer.

His sister did not go to school either, and they had spent the day bickering in their room. Now night had fallen and they were eating Froot Loops for dinner. The heat was off, so they wore winter jackets. In an interview from Guatemala, their mother, Isabel Lopez, cried as she explained that she had tried to join her children in the United States last year but was turned back at the border.

Cristian had given his uncle some of the money he earned making Chewy bars, but his uncle believed it was not enough. He had said he would like Jennifer to start working at the factory as well, and offered to take her to apply himself.

Cristian said he had recently called the H.I.S. hotline. He hoped the government would send someone to check on him and his sister, but he had not heard back. He did not think he would call again.

Research was contributed by Andrew Fischer, Seamus Hughes, Michael H. Keller and Julie Tate.

3/7/23, 9:06 AM

Wyden Delivers Floor Speech Calling on President Biden and the FDA to Keep Mifepristone on the Market, Regardless of Outcome...

**CLICK HERE FOR INFRASTRUCTURE LAW RESOURCES****(https://www.wyden.senate.gov/imo/media/doc/Wyden_Infastructure%20Guide%202021.pdf)**

February 16, 2023

Wyden Delivers Floor Speech Calling on President Biden and the FDA to Keep Mifepristone on the Market, Regardless of Outcome in Texas Case**“The awful reality is, from the moment this case landed in front of Judge Kacsmaryk, it’s been a rigged game all along.”***Wyden's call comes after decades of his advocacy for women to have access to abortion medication, holding the first ever congressional hearing on the basic healthcare issue**[Click here to watch video of remarks.](#)**As Prepared for Delivery*

On the first floor of the federal building in Amarillo, across the street from a grassy park and a few blocks away from the local minor league baseball stadium, is a United States District Courtroom for the Northern District of Texas.

Presiding over that courtroom is a lifelong right-wing activist. A partisan ideologue. An anti-abortion zealot who was hand-picked by Donald Trump and the Federalist Society to feign impartiality on the bench and deliver favorable rulings on the cases his fellow right-wing ideologues funnel his way.

3/7/23, 9:06 AM Wyden Delivers Floor Speech Calling on President Biden and the FDA to Keep Mifepristone on the Market, Regardless of Outcome...

His name is Judge Matthew Kacsmaryk. Confirmed in 2019 on a party-line vote. In a matter of days he will issue a ruling on a case so absurd and meritless that it did not deserve a single breath of argument in his courtroom.

The case is the so-called Alliance for Hippocratic Medicine v. U.S. Food and Drug Administration. If we allow it, Kacsmaryk's ruling could deal the next devastating blow to the right to privacy in America, and the right of all women to control their own bodies. Not just in Texas, but in all 50 states.

So this afternoon I want to talk about the dangerous, new political scheme playing out in that courtroom, what I'll call "courtwashing." I'll also talk about what the president and the FDA must do when the ruling comes down.

The suit aims to undo the FDA's 2000 approval of a medication called mifepristone, one of two drugs used in a medication abortion. This drug is very safe and effective. It's used in more than 50 percent of abortions nationwide. It has been on the market and used for this important treatment for three decades. Anyone who calls its safety into question is not telling the truth.

I have a long history working on policy related to mifepristone or RU486, as it was called when I first learned about it decades ago. I was one of the first elected officials to advocate for its use in the United States. In 1990, I chaired the first ever Congressional hearing on RU486 before the House Small Business Committee.

Back then, just like today, right-wing extremists were pulling all the stops to keep the drug from being approved. They campaigned on politics of fear, threatened lives and lied about the drug's safety. They even once deployed a small bomb at a conference where the chemist behind RU486 was scheduled to speak.

3/7/23, 9:06 AM Wyden Delivers Floor Speech Calling on President Biden and the FDA to Keep Mifepristone on the Market, Regardless of Outcome...

Their efforts worked at first. The FDA imposed an import alert on the drug that hindered research on its uses outside abortion. I fought that import alert and introduced the bill to remove the restriction. The FDA finally approved the drug in 2000.

My advocacy around this issue and this drug has never been based on some extreme view or some political agenda. It is based in science and in fact.

So, let's look at the facts. Not the fiction you hear from the plaintiffs in this case.

It is a fact that this medication is key to ensuring fundamental rights, including the right to privacy and the right to make your own reproductive choices. Medication abortions allow for women to end a pregnancy in the comfort and safety of their own homes.

It is a fact that mifepristone has fewer complications than Tylenol. A wealth of evidence demonstrates the drug's safety and effectiveness.

It's also a fact that the Republicans on the Supreme Court have said that the issue of abortion should be returned to the states. That the country should not have a one-size-fits-all policy on this subject.

So here's the question: How did it come to be that this one single judge in Texas is on the verge of blocking access to a drug that a duly-authorized federal agency has deemed safe for over twenty years -- and blocking it nationwide?

To answer that, let's talk a little about the history of this issue and the flaws in this case.

3/7/23, 9:06 AM Wyden Delivers Floor Speech Calling on President Biden and the FDA to Keep Mifepristone on the Market, Regardless of Outcome...

Congress long ago empowered the FDA, a body made up of scientists and clinicians, to approve or disapprove the use of new drugs — not states and certainly not activist judges. The FDA approved Mifepristone 23 years ago. For those looking to challenge that approval, well, it's too late. The statute of limitations allows challenges to FDA procedures for only six years.

If that wasn't clear enough, Congress solidified its approval again in 2007. As part of an amendment to the Food and Drug Act, any drug previously approved by the agency was deemed to be in compliance with new rules governing the FDA.

Mifepristone is covered by that amendment made by the Legislative Branch. There is no reasonable argument to the contrary.

Nonetheless, the plaintiffs in this case want Judge Kacsmaryk to reach back through time, bust through the statute of limitations and Congressional intent, and toss out the FDA's legal approval.

Furthermore, the plaintiffs in this case have no standing to bring the suit in the first place. To establish standing, a plaintiff must show actual harm or injury to demonstrate a direct impact by the actions of the defendant.

The plaintiffs are extreme anti-abortion groups and doctors. Here is the ludicrous claim they've put forward to establish standing: They argue—defying science and fact—that some unknown future patient may take mifepristone, experience a highly unlikely side effect, and then specifically come into one of their exam rooms for treatment.

If a standing claim that ridiculous and overly broad passes muster, then it's time to rip up all the legal textbooks in America and start over. That would mean that anybody can wander into federal court and seek relief against anyone else based on wild,

3/7/23, 9:06 AM Wyden Delivers Floor Speech Calling on President Biden and the FDA to Keep Mifepristone on the Market, Regardless of Outcome...

dreamt up scenarios hypothesizing that they may somehow be injured one day in the future.

Legal logic be damned, the plaintiffs know that Judge Kacsmaryk won't let pesky obstacles like standing or precedent get in the way of the agenda they share.

That's because Donald Trump and conservative activists planted him on the bench in that Amarillo courtroom. They know he has spent his entire career fighting shoulder to shoulder with them against LGBTQ equality, abortion, and contraception.

He is there for the purpose of what I'll call "courtwashing."

In the courtwashing scheme, it's his role to give the appearance of judicial legitimacy to the outcomes that right-wing activists know they're getting as soon as their cases show up on his docket.

In the few years that Judge Kacsmaryk has been on the federal district court, he has earned the title of the most lawless judge in the country. It's tough to earn that kind of infamy in such a short time, but his rulings have justified it.

He has issued constitutionally dubious and extraordinarily contentious opinions, has defied precedent on protecting LGBTQ employees and attacked the right to contraception by restricting minors' access to it.

Now he has this case on access to abortion medication that is directly intertwined with the rights to privacy and choice.

The plaintiffs who have no legitimate standing have hand picked him to hear this case that has no merit because they know what they're getting with Judge Kacsmaryk.

3/7/23, 9:06 AM Wyden Delivers Floor Speech Calling on President Biden and the FDA to Keep Mifepristone on the Market, Regardless of Outcome...

They've gone to him for courtwashing.

The plaintiffs want mifepristone outlawed in every state, and they've found a way to make that happen.

Because of how judges in this federal district in Texas are assigned, the plaintiffs were able to use a procedural loophole and hotwire the judiciary. They could ensure Kacsmaryk was the only judge who could get the case. No shot of getting it assigned to somebody else.

To make this more frightening, if and when Kacsmaryk tosses out the FDA approval, Americans cannot count on the appellate courts to step in and do what is right, what is constitutional.

The appeal would land at the activist Fifth Circuit Court of Appeals. This is the same court that allowed Texas bill SB 8, effectively an abortion ban, to go into effect before the Supreme Court ruled on Dobbs.

From there any appeal would presumably head to the very same Republican majority on the Supreme Court that just overturned Roe. The Roberts Court doesn't even wince at revoking constitutional rights and upending decades of precedent on legal grounds that are flimsy at best.

It's a fairly recent phenomenon that a single judge has the authority to issue a nationwide injunction. Until 1976, three-judge courts were required to enjoin federal and state laws. And even after that was no longer required, it was relatively uncommon until about a decade ago to see federal laws and policies blocked in their entirety by the ruling of just one district court judge.

3/7/23, 9:06 AM Wyden Delivers Floor Speech Calling on President Biden and the FDA to Keep Mifepristone on the Market, Regardless of Outcome...

It's true that these types of injunctions have been used against both Democratic and Republican administrations. The difference is that the appellate courts, and particularly the Supreme Court, are aiding these polarization efforts -- but only for one side.

Here are the numbers. On 41 occasions, the Trump administration asked the Supreme Court to put on hold an adverse lower-court ruling for the duration of the government's appeal. In 28 of those cases, the Supreme Court granted the Trump administration relief.

In comparison, the Biden administration has sought emergency relief from the Supreme Court nine separate times. The Supreme Court has granted it on only two occasions. And incredibly, the Court has granted emergency relief against the Biden administration four times, something that did not happen during the lawless days of the Trump administration.

So, what does that mean for the case in Texas? Well, if and when Judge Kacsmaryk issues the ruling that he was handpicked to deliver, then the courtwashing is on.

The Fifth Circuit, which has little respect for precedent or the authority of the other two branches of government, will almost certainly uphold his ruling. Then the Roberts Court will almost certainly leave the ruling in place through the long and arduous appellate process.

All the while, millions will suffer grave danger. The harm that will result from this decision cannot be overstated. Cut off from the care they need, women will die.

And while this wouldn't be the first time a judicial decision has caused irreparable harm to others, this case is particularly egregious.

3/7/23, 9:06 AM Wyden Delivers Floor Speech Calling on President Biden and the FDA to Keep Mifepristone on the Market, Regardless of Outcome...

It will come from a lawless judge, picked by the litigants with no standing to bring a case that should be barred by the statute of limitations and has absolutely no merit.

There are moments in history where Americans and their leaders must look at circumstances like this one and say, "Enough." Not "let's see how the appeals process plays out," or "let's hope Congress can fix this down the road." Just, "Enough."

The power of the judiciary begins and ends with its legitimacy in the eyes of the public. It does not have the military backing of the executive branch or Congress's power of the purse.

A judge's rulings stand because elected leaders and citizens have agreed that abiding by them is right and necessary to uphold the rule of law. That's part of the social contract in America.

But the judiciary must uphold its end of the social contract too. It must follow the rule of law and earn the confidence of the American people continually, every day, every month, every year.

Recently that confidence has eroded, and it's no secret why. Look at the Dobbs decision overturning Roe. Look at what is happening in Texas right now. Parts of the judiciary have morphed into a mob of MAGA extremists, conspiring with and willing to do the bidding of every right-wing group or former President that appears before it, no matter the cost to life and liberty.

The awful reality is, from the moment this case landed in front of Judge Kacsmaryk, it's been a rigged game all along. It's illegitimate. The case is an affront to the Constitution and to the rule of law in the United States of America.

3/7/23, 9:06 AM Wyden Delivers Floor Speech Calling on President Biden and the FDA to Keep Mifepristone on the Market, Regardless of Outcome...

So here's what must happen if and when Judge Kacsmaryk issues his nationwide injunction halting access to mifepristone.

President Biden and the FDA must ignore it.

Don't give in to the courtwashing. Protect the fundamental rights and wellbeing of all women in America.

The FDA should go on just as it has for the last 23 years since it first approved mifepristone.

The FDA needs to keep this medication on the market without interruption regardless of what the ruling says.

Doctors and pharmacies should go about their jobs like nothing has changed.

American leaders who care about the right to privacy and the lives of women in this country cannot let an illegitimate ruling in this case stand. We cannot hide from this fight. Let the right-wing extremists stand up and explain why they lied when they said that Dobbs was about returning abortion law to the states.

In the face of a courtwashing strategy whose outcome is almost certainly predetermined, we cannot simply say we're going to let the appeals process play out and hope for the best. Too much is at stake, and this case will not be in the hands of public servants who are staying true to their oaths of office.

Women in America must know that they're not going to be cut off from the care they need -- the care they have a legal right to obtain. Not for one year, one month, one day.

3/7/23, 9:06 AM Wyden Delivers Floor Speech Calling on President Biden and the FDA to Keep Mifepristone on the Market, Regardless of Outcome...

If that's what the ruling would do, the answer is to ignore it, at least until there's a final ruling on the underlying matter by the Supreme Court.

I don't say this lightly. In fact, I've never said it before.

I believe in the three branches of government and respect the role of the judicial branch. I have served for over 40 years in Congress, first in the House and for the last 27 years in the Senate. I have raised my hand and taken an oath to uphold the Constitution of the United States. I do not intend to dishonor that oath, which is why I stand here today.

This judge is not upholding the oath he took. He is not adhering to the Constitution. He is making a dangerous mockery of the rule of law. Something needs to be done about it.

This wouldn't be the first time a political leader or elected official has called on others to ignore a court ruling. Abraham Lincoln did it after the Supreme Court issued the historically egregious Dred Scott ruling, which held that black people could never be citizens of the United States.

Lincoln called that decision erroneous. An abomination. He pointed to the partisan bias in the opinion. That it was based on assumed historical facts which were not really true. That it was one opinion that could not be considered precedent. Sound familiar?

And Lincoln's directive in response to the case was that it is the constitutional duty of elected officials to resist unconstitutional decisions of the courts, even the Supreme Court, if those rulings would harm the nation and its people.

3/7/23, 9:06 AM Wyden Delivers Floor Speech Calling on President Biden and the FDA to Keep Mifepristone on the Market, Regardless of Outcome...

These cases obviously deal with very different circumstances, and nothing compares with the horrors of slavery. Nonetheless, they do have something in common. It's a question of the advancement of rights versus the deprivation of rights.

The advancement of individual rights is at the core of our national character and history. This case before Judge Kacsmaryk is a rejection of that.

It's clearly part of an effort to backtrack on a century of progress for American women and deprive them of fundamental rights. The right to privacy. The right to control their own bodies. And stemming from that, the right to live and work and participate in American life -- fully and equally.

That will be the outcome if the courtwashing strategy succeeds. If Judge Kacsmaryk violates his oath to deliver the outcome his fellow right-wing activists are after. If the Fifth Circuit and Supreme Court bless such a ruling as legitimate.

As Lincoln told his fellow Americans, the Supreme Court is not the Constitution. Neither is Judge Kacsmaryk.

The Constitution, and the rights it affords American women, are what we must defend.

Watch a video of Wyden's remarks here.

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Press Contact

Nicole L'Esperance

Congress of the United States
Washington, DC 20515

February 17, 2023

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Garland:

Over the last two years, the Biden Administration has targeted political opponents and undermined the lawful actions of the Trump Administration. This type of lawfare has become commonplace during the Biden Administration, and it should concern all Americans. The latest of these unprecedented actions is the Justice Department's decision to re-prosecute a case in which President Trump already granted clemency.¹

In 2016, the Obama Administration's Justice Department charged Philip Esformes with healthcare fraud, money laundering, and bribery in a multi-count indictment.² During litigation, a federal magistrate found that the Justice Department prosecutors committed misconduct and made a bad faith effort to cover it up by reviewing over 70 boxes containing information covered by attorney-client-privilege.³ Former Attorney-General John Ashcroft described the Justice Department's behavior as "amongst the most abusive" he had ever seen.⁴ The privileged information included Esformes' legal defense strategy. The privileged information could not be used to directly support the health care fraud charges. However, the trial court permitted the government attorneys who had seen the privileged information to remain on the case, thereby allowing the insider knowledge to inform their strategy in prosecuting Esformes. Ultimately, the jury convicted Esformes of a majority of the charges, with the prosecution undeniably benefitting from its insights into Esformes' defense strategy.

Esformes was sentenced to 20 years in prison, and the trial judge cited conduct about which the jury acquitted or could not reach a verdict to justify the sentence. The Justice Department also argued that Esformes' actions cost the government \$1.4 billion, yet the jury found that the actual

¹ *Executive Grant of Clemency*, <https://www.justice.gov/pardon/page/file/1349136/download>.

² *Three Charged in \$1 Billion Medicare Fraud Scheme*, FBI (July 22, 2016), <https://www.fbi.gov/news/stories/three-charged-in-1-billion-medicare-fraud-scheme>.

³ Jay Weaver, *Miami judge tosses key evidence, accuses feds of 'misconduct' in Medicare fraud case*, Miami Herald (Aug. 13, 2018), <https://www.miamiherald.com/news/local/article216589740.html>.

⁴ Charlie McCarthy, *Former AG Blasts Planned Retrial of Trump Clemency Recipient*, NEWSMAX (Jan. 20, 2023), <https://www.newsmax.com/newsfront/attorney-general-ashcroft-trump/2023/01/20/id/1105242/>.

losses totaled less than \$200,000.⁵ To rectify the role of the prosecutorial misconduct in using the privileged material against Esformes, President Trump commuted his sentence to time served, based in part on the recommendations of former U.S. Attorneys-General Edwin Meese and Michael Mukasey, and former Deputy Attorney General Larry Thompson.⁶

Now, the Biden Administration has refocused its sights on Esformes, announcing its intentions to prosecute him for the charges on which the jury did not reach final decisions. Professor Jonathon Turley, a constitutional lawyer and scholar, has objected to this strategy by the Justice Department, calling it “deeply concerning” because the “the clear intent [of President Trump’s grant of clemency] was to grant relief from the prosecution as a whole,” not just the guilty charges.⁷

Despite all this proven misconduct and minimal damages, the Justice Department has reopened the case and a three-judge panel for 11th U.S. Circuit Court of Appeals rejected Esformes’ appeal, allowing the government to seize more than \$44 million in assets as restitution and asset forfeiture.⁸

The Esformes case raises serious issues of double-jeopardy, vindictive prosecution and the fairness of using conduct for which a defendant has been acquitted by a jury in the sentencing phase of a criminal case. Equally important, by re-opening the case after President Trump commuted the sentence, the Justice Department undermines the constitutional authority of presidents who exercise their authority to grant clemencies and/or pardons.

The Esformes case is just the latest in a string of decisions that highlight the politicization and overreach of the Justice Department. Indeed, the record is littered with partisan actions, ranging from targeting concerned parents and Catholics as “potential terrorists,” to dismissing threats of violence against pro-life pregnancy centers, to abusing FISA authorities by targeting President Trump and a Member of Congress, all while steadfastly refusing to investigate credible allegations of criminal activity by the Biden family.⁹

⁵ John Ashcroft, *The troubling case of Philip Esformes and the erosion of fundamental rights*, The Washington Times (Oct. 13, 2022), <https://www.washingtontimes.com/news/2022/oct/13/prosecutorial-misconduct-and-the-erosion-of-fundam/>.

⁶ *Statement from the Press Secretary Regarding Executive Grants of Clemency* (Dec. 22, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-regarding-executive-grants-clemency-122220/>.

⁷ Jonathon Turley (@JonathonTurley), Twitter (Aug. 13, 2022, 4:14 PM) <https://twitter.com/JonathonTurley/status/1558547644208877571>.

⁸ Dan Mangan, *Philip Esformes, whose prison sentence Trump commuted, loses appeal and faces retrial on health-care fraud charges*, CNBC (Jan. 20, 2023), <https://www.cnbc.com/2023/01/20/philip-esformes-whose-prison-sentence-trump-commuted-loses-appeal.html>.

⁹ Laura Meckler, *National School Boards Association stumbles into politics and is blasted apart*, The Washington Post (Jan. 13, 2022), <https://www.washingtonpost.com/education/2022/01/13/school-board-association-domestic-terrorism/>; Brianna Herlihy, Kelly Laco, *DOJ, FBI targeting Catholics as ‘violent extremists’ under scrutiny by state AGs: ‘Bigotry’ is ‘festering’*, Fox News (Feb. 10, 2023), <https://www.foxnews.com/politics/doj-fbi-targeting-catholics-violent-extremists-under-scrutiny-state-ags-bigotry-festering>; Dell Cameron, *The FBI’s Most*

Your efforts to nullify President Trump's commutation of Philip Esformes is unprecedented and threatens the constitutional authority of the President "to grant Reprieves and Pardons for Offenses against the United States." Not only does it raise questions about the finality of clemencies granted in the past, it sets a dangerous precedent for future chief executives with respect to their ability to exercise their constitutional authorities.¹⁰

Given these concerns and what we view as a troubling pattern of weaponization of prosecutorial powers, please provide answers to the following questions by February 23, 2023.

1. When did the Justice Department decide to reopen the prosecution of Philip Esformes?
2. Who made the decision to re-open the prosecution of Philip Esformes? Did that decisionmaker do any type of constitutional analysis as to the propriety of re-opening the case?
3. How does the Justice Department justify the use of privileged information uncovered through prosecutorial misconduct to pursue charges against Philip Esformes?
4. Why is the Justice Department seeking more than \$44 million when the jury found actual damages resulting from Esformes' conduct totaled less than \$200,000?
5. Is the Justice Department currently prosecuting, or planning to prosecute, additional individuals who received grants of clemency from previous presidents, including pardons and commutations?
6. Are the prosecutors who committed misconduct in the prosecution of Philip Esformes currently employed by the Justice Department?
7. Are the prosecutors who committed misconduct in the prosecution of Philip Esformes currently involved in this new prosecution of Philip Esformes? If so, are they the same government employees who spoke to the New York Times, describing Trump's clemency decisions as a "kick in the teeth"?¹¹
8. In what account is the \$44 million that Philip Esformes has forfeited as a result of his renewed prosecution?
9. From what source is the Department of Justice funding the renewed prosecution of Philip Esformes?
10. If the Justice Department renews additional prosecutions against individuals who received presidential grants of clemency, including pardons and commutations, from what source will these prosecutions be funded?
11. Who makes the decisions regarding whether the Justice Department will renew prosecutions into individuals who previously received presidential grants of clemency, including pardons and commutations?

Controversial Surveillance Tool Is Under Threat, Wired (Feb. 10, 2023), <https://www.wired.com/story/fbi-section-702/>.

¹⁰ U.S. CONST. art. 2, § 2

¹¹ Eric Lipton, *For Prosecutors, Trump's Clemency Decisions Were a 'Kick in the Teeth,'* The New York Times (Jan. 21, 2021), <https://www.nytimes.com/2021/01/21/us/politics/trump-pardons-medicare-fraud.html>.

314

Sincerely,

A handwritten signature in blue ink, appearing to read "Andy Biggs". The signature is stylized with a large, looped "A" and a cursive "Biggs".

Andy Biggs
Member of Congress

The Washington Post

EXCLUSIVE

Showdown before the raid: FBI agents and prosecutors argued over Trump

An exclusive look at behind-the-scenes deliberations as both sides wrestled with a national security case that has potentially far-reaching political consequences

By [Carol D. Leonnig](#), [Devlin Barrett](#), [Perry Stein](#) and [Aaron C. Davis](#)

March 1, 2023 at 6:00 a.m. EST

Months of disputes between Justice Department prosecutors and FBI agents over how best to try to recover classified documents from Donald Trump's Mar-a-Lago Club and residence led to a tense showdown near the end of July last year, according to four people familiar with the discussions.

Prosecutors argued that new evidence suggested Trump was knowingly concealing secret documents at his Palm Beach, Fla., home and urged the FBI to conduct a surprise raid at the property. But two senior FBI officials who would be in charge of leading the search resisted the plan as too combative and proposed instead to seek Trump's permission to search his property, according to the four people, who spoke on the condition of anonymity to describe a sensitive investigation.

Prosecutors ultimately prevailed in that dispute, one of several previously unreported clashes in a tense tug of war between two arms of the Justice Department over how aggressively to pursue a criminal investigation of a former president. The FBI conducted an unprecedented raid on Aug. 8, recovering more than 100 classified items, among them [a document describing](#) a foreign government's military defenses, including its nuclear capabilities.

Starting in May, FBI agents in the Washington field office had sought to slow the probe, urging caution given its extraordinary sensitivity, the people said.

Some of those field agents wanted to shutter the criminal investigation altogether in early June, after Trump's legal team asserted a diligent search had been conducted and all classified records had been turned over, according to some people with knowledge of the discussions.

The idea of closing the probe was not something that was discussed or considered by FBI leadership and would not have been approved, a senior law enforcement official said.

This account reveals for the first time the degree of tension among law enforcement officials and behind-the-scenes deliberations as they wrestled with a national security case that has potentially far-reaching political consequences.

The disagreements stemmed in large part from worries among officials that whatever steps they took in investigating a former president would face intense scrutiny and second-guessing by people inside and outside the government. However, the agents, who typically perform the bulk of the investigative work in cases, and the prosecutors, who guide agents' work and decide on criminal charges, ultimately focused on very different pitfalls, according to people familiar with their discussions.

On one side, federal prosecutors in the department's national security division advocated aggressive ways to secure some of the country's most closely guarded secrets, which they feared Trump was intentionally hiding at Mar-a-Lago; on the other, FBI agents in the Washington field office urged more caution with such a high-profile matter, recommending they take a cooperative rather than confrontational approach.

Both sides were mindful of the intense scrutiny the case was drawing and felt they had to be above reproach while investigating a former president then expected to run for reelection. While trying to follow the Justice Department playbook for classified records probes, investigators on both sides braced for Trump to follow his own playbook of publicly attacking the integrity of their investigation, according to people with knowledge of their discussions.

The FBI agents' caution also was rooted in the fact that mistakes in prior probes of Hillary Clinton and Trump had proved damaging to the FBI, and the cases subjected the bureau to sustained public attacks from partisans, the people said.

Prosecutors countered that the FBI failing to treat Trump as it had other government employees who were not truthful about classified records could threaten the nation's security. As evidence surfaced suggesting that Trump or his team was holding back sensitive records, the prosecutors pushed for quick action to recover them, according to the people familiar with the discussions.

While the people who described these sensitive discussions disagreed on some particulars, they agreed on many aspects of the dispute.

Spokespeople for the Justice Department and the FBI declined to comment for this story.

It is not unusual for FBI agents and Justice Department prosecutors to disagree during an investigation about how aggressively to pursue witnesses or other evidence. Often, those disagreements are temporary flare-ups that are debated, decided and resolved in due course.

While the FBI tends to have great discretion in the day-to-day conduct of investigations, it is up to prosecutors to decide whether to file criminal charges — and, like the prosecutors, the director of the FBI ultimately reports to the attorney general. The Mar-a-Lago case was unusual not just for its focus on a former president, but in the way it was closely monitored at every step by senior Justice Department officials. Attorney General Merrick Garland said he “personally approved” the search of Trump’s property.

It’s unclear how the investigation may have been reshaped if the two sides had settled their disputes differently. Had the criminal investigation been closed in June, as some FBI field agents discussed, legal experts said it’s unlikely agents would have yet recovered the items found in the FBI’s raid of Trump’s residence.

Some inside the probe argued the infighting delayed the search by months, ultimately reducing the time prosecutors had to reach a decision on possible charges. Others contend the discussions were necessary to ensure the investigation proceeded on the surest footing, enabling officials to gather more evidence before they executed the search, people familiar with the dynamics said.

In November, before prosecutors had finished their work and decided whether to charge Trump or anyone else, he announced his campaign to retake the White House in 2024, leading Garland to appoint a special counsel, Jack Smith, to complete the investigation.

A collision course

From the moment the FBI and Justice Department received a formal referral on Feb. 7 from the National Archives and Records Administration to investigate missing classified records that could be in Trump’s possession, FBI investigators and federal prosecutors knew they were taking on a highly charged and sensitive case.

Archives officials reported that, after they had pleaded with Trump's representatives for months, the former president had in January returned 15 boxes of government records he had stored at Mar-a-Lago since his presidency ended. Sifting through the boxes' contents, archivists were shocked by what they found: 184 classified documents consisting of 700 pages. Archives officials said they had reason to believe Trump still had more sensitive or classified documents he took from the White House.

Prosecutors in the Justice Department's national security division needed to answer two immediate questions: Was national security damaged by classified records being kept at Trump's Florida club, and were any more sensitive records still in Trump's possession?

Prosecutors and FBI agents were set on a collision course in April, when Trump through his lawyers tried to block the FBI from reviewing the classified records the Archives found. That set off alarm bells for prosecutors because it signaled he might be seeking to hide something, according to people familiar with the case. In preliminary interviews with witnesses in April and May, including Trump associates and staff, investigators were told of many more boxes of presidential records at Mar-a-Lago that could contain classified materials — similar in packaging to the boxes shipped there from the White House, and to those returned to the Archives in January, the people said.

The prosecutors and FBI agents began clashing in previously unreported incidents in early May, the people said. Jay Bratt, the prosecutor leading the department's counterespionage work, advocated seeking a judge's warrant for an unannounced search at the property to quickly recover any sensitive documents still there.

The FBI often conducts raids of properties without advance notice when investigators have reason to believe evidence is being withheld or could be destroyed. Some prosecutors saw guideposts in a related case a decade earlier, when Army Gen. David H. Petraeus lied to FBI agents about whether he had given classified information to a book author with whom he was having an affair. Agents executed a search warrant at Petraeus's house and retrieved a cache of notebooks in which the prominent general improperly had stored extensive amounts of classified information.

But FBI agents viewed a Mar-a-Lago search in May as premature and combative, especially given that it involved raiding the home of a former president. That spring, top officials at FBI headquarters met with prosecutors to review the strength of evidence that could be used to justify a surprise search, according to two people familiar with their work.

Encountering resistance, Bratt agreed for the time being to subpoena Trump. On June 3, Bratt and a small number of FBI agents visited Mar-a-Lago to meet with Trump's lawyer and collect any classified records the Trump team had found to comply with the subpoena. That day, Trump's lawyer, Evan Corcoran, handed over an expandable envelope containing 38 classified records and produced a letter signed by another lawyer, Christina Bobb, asserting that a diligent search had been conducted and all classified records had been turned over.

Some FBI field agents then argued to prosecutors that they were inclined to believe Trump and his team had delivered everything the government sought to protect and said the bureau should close down its criminal investigation, according to some people familiar with the discussions.

But they said national security prosecutors pushed back and instead urged FBI agents to gather more evidence by conducting follow-up interviews with witnesses and obtaining Mar-a-Lago surveillance video from the Trump Organization.

The government sought surveillance video footage by subpoena in late June. It showed someone moving boxes from the area where records had been stored, not long after Trump was put on notice to return all such records, according to people familiar with the probe. That evidence suggested it was likely more classified records remained at Mar-a-Lago, the people said, despite the claim of Trump's lawyers. It also painted for both sides a far more worrisome picture — one that would soon build the legal justification for the August raid.

By mid-July, the prosecutors were eager for the FBI to scour the premises of Mar-a-Lago. They argued that the probable cause for a search warrant was more than solid, and the likelihood of finding classified records and evidence of obstruction was high, according to the four people.

But the prosecutors learned FBI agents were still loath to conduct a surprise search. They also heard from top FBI officials that some agents were simply afraid: They worried taking aggressive steps investigating Trump could blemish or even end their careers, according to some people with knowledge of the discussions. One official dubbed it “the hangover of Crossfire Hurricane,” a reference to the FBI investigation of Russia's interference in the 2016 presidential election and possible connections to the Trump campaign, the people said. As president, Trump repeatedly targeted some FBI officials involved in the Russia case.

A rift within the FBI

Against that backdrop, Bratt and other senior national security prosecutors, including Assistant Attorney General Matt Olsen and George Toscas, a top counterintelligence official, met about a week before the Aug. 8 raid with FBI agents on their turf, inside an FBI conference room.

The prosecutors brought with them a draft search warrant and argued that the FBI had no other choice but to search Mar-a-Lago as soon as practically possible, according to people with knowledge of the meeting. Prosecutors said the search was the only safe way to recover an untold number of sensitive government records that witnesses had said were still on the property.

Steven M. D'Antuono, then the head of the FBI Washington field office, which was running the investigation, was adamant the FBI should not do a surprise search, according to the people.

D'Antuono said he would agree to lead such a raid only if he were ordered to, according to two of the people. The two other people said D'Antuono did not refuse to do the search but argued that it should be a consensual search agreed to by Trump's legal team. He repeatedly urged that the FBI instead seek to persuade Corcoran to agree to a consensual search of the property, said all four of the people.

Tempers ran high in the meeting. Bratt raised his voice at times and stressed to the FBI agents that the time for trusting Trump and his lawyer was over, some of the people said. He reminded them of the new footage suggesting Trump or his aides could be concealing classified records at the Florida club.

D'Antuono and some fellow FBI officials complained how bad it would look for agents with "FBI" emblazoned on their jackets to invade a former president's home, according to some people with knowledge of the meeting. The FBI's top counterintelligence official, Alan E. Kohler Jr., then asked the senior FBI agents to consider how bad it would look if the FBI chose not to act and government secrets were hidden at Mar-a-Lago, the people said.

D'Antuono also questioned why the search would target presidential records as well as classified records, particularly because the May subpoena had only sought the latter.

"We are not the presidential records police," D'Antuono said, according to people familiar with the exchange.

Later, D'Antuono asked if Trump was officially the subject of the criminal investigation.

"What does that matter?" Bratt replied, according to the people. Bratt said the most important fact was that highly sensitive government records probably remained at Mar-a-Lago and could be destroyed or spirited away if the FBI did not recover them soon.

FBI agents on the case worried the prosecutors were being overly aggressive. They found it worrisome, too, that Bratt did not seem to think it mattered whether Trump was the official subject of the probe. They feared any of these features might not stand up to scrutiny if an inspector general or congressional committee chose to retrace the investigators' steps, according to the people.

Jason Jones, the FBI's general counsel who is considered a confidant of FBI Director Christopher A. Wray, agreed the team had sufficient probable cause to justify a search warrant. D'Antuono agreed, too, but said they should still try to persuade Corcoran to let them search without a warrant, the people said.

The disagreement over seeking Corcoran's consent centered partly on how each side viewed Trump's lawyer. The prosecutors — as well as some officials at FBI headquarters — were highly suspicious of him and feared that appealing to Corcoran risked that word would spread through Trump's circle, giving the former president or his associates time to hide or destroy evidence, according to people familiar with the internal debate.

Some FBI agents, on the other hand, had more trust in Corcoran — a former federal prosecutor who had recently returned to practicing law and represented Stephen K. Bannon, a former Trump adviser, against criminal contempt charges. The agents drafted a possible script they could use to pitch to Trump's lawyer on a consensual search. D'Antuono's team said they could keep surveillance on Mar-a-Lago and act quickly if they saw any scramble to move evidence. The prosecutors refused, saying it was too risky, the people said.

In the meeting, some attendees viewed Toscas, a Justice Department veteran who had worked with the FBI through the Crossfire Hurricane and Clinton email investigations, as a prosecutor whose words would carry special weight with the FBI agents. He told D'Antuono he had shared the agents' skepticism, but was now "swayed" that the evidence was too strong not to get a search warrant, according to people familiar with the discussion.

"George, that's great, but you haven't swayed me," D'Antuono replied.

Jones, the FBI's general counsel, said he planned to recommend to Deputy FBI Director Paul Abbate that the FBI seek a warrant for the search, the people said. D'Antuono replied that he would recommend that they not.

The raid

But prosecutors appeared unwilling to wait and debate further, according to people familiar with the discussions. Olsen, the assistant attorney general for national security, appealed to senior officials in FBI headquarters to push their agents to conduct the raid. Abbate handed down his instructions a day later: The Washington field office led by D'Antuono would execute the surprise search.

On Aug. 5, FBI agents quietly sought and received approval from a federal magistrate judge in Florida to search Mar-a-Lago for documents. The search was planned for the following Monday, Aug. 8.

Prosecutors remained somewhat on guard until the day of the raid, as they continued to hear rumblings of dissent from the Washington field office, according to three people familiar with the case. Some of the people said prosecutors heard some FBI agents wanted to call Corcoran once they arrived at Mar-a-Lago and wait for him to fly down to join them in the search; prosecutors said that would not work.

Just days before the scheduled search, prosecutors got a request from FBI headquarters to put off the search for another day, according to people familiar with the matter. The FBI told prosecutors the bureau planned to announce big news that week — charges against an Iranian for plotting to assassinate former national security adviser John Bolton — and did not want the impact of that case to be overshadowed or complicated by media coverage of the Mar-a-Lago raid. It is common for the Justice Department and FBI to fine-tune the timing of certain actions or announcements to avoid one law enforcement priority competing with another. But prosecutors, fatigued by months of fighting with agents in the FBI's field office, wanted no delay, no matter the reason, the people said. The search would proceed as scheduled.

FBI agents found ways to make the search less confrontational than it otherwise could have been, according to people familiar with the investigation: The search would take place when Trump was in New York and not in Palm Beach; the Secret Service would receive a heads-up a few hours before FBI agents arrived to avoid any law enforcement conflict; and agents would wear white polo shirts and khakis to cut a lower profile than if they wore their traditional blue jackets with FBI insignia.

On Aug. 8, FBI agents scoured Trump's residence, office and storage areas, and left with more than 100 classified records, 18 of them top-secret. Prosecutors claimed vindication in the trove of bright color-coded folders that agents recovered.

Some documents were classified at such a restricted level that seasoned national security investigators lacked the proper authorization to look at them, leading to consternation on the prosecution team. They involved highly restricted "special access programs" that require Cabinet-level sign-off even for officials with top-secret clearances to review. The documents described Iran's missile program and records related to highly sensitive intelligence aimed at China, The Washington Post previously has reported.

In late fall, Bratt and his team began sketching out the evidence that potentially pointed to Trump's obstruction, with an expectation that the prosecutors together would soon make a recommendation on whether to charge the former president, according to people familiar with the case. Bratt's team began to button up witness accounts and stress-test factual evidence against the law.

Meanwhile, in late October, amid news reports that Trump was looking to soon announce another bid for the presidency, Garland told aides he was seriously contemplating appointing a special counsel to take over the investigation, as well as a separate criminal probe looking at Trump and his allies' effort to overturn the results of the 2020 election — a rare procedure designed to ensure public faith in fair investigations.

On Nov. 15, Trump took the stage in the Mar-a-Lago ballroom — at the same property where FBI agents had searched three months earlier — and announced that he would run for president again in 2024. The Justice Department's national security division leaders who had pushed the FBI to be more aggressive pursuing Trump did not finish the investigation or reach a charging decision before a new chief took over.

On Nov. 18, Garland sent word to the prosecutors working on both of the probes to come to Justice Department headquarters for a meeting that morning. He wanted to privately inform them that he planned later that day to appoint a special counsel. Garland told them they could choose their next steps, but he hoped they would join the special counsel's team for the good of the two investigations, people familiar with the conversation said.

Just after 2 p.m., Garland stood before cameras to announce he had appointed Smith to take over the investigations. Flanked by three of his top deputies, Garland said the Justice Department had the integrity to continue the investigations fairly but that turning them over to an outside prosecutor was “the right thing to do.”

“The extraordinary circumstances presented here demand it,” he added.

Spencer S. Hsu contributed to this report.

