

Childs, Heather G. (ODAG)

From: Childs, Heather G. (ODAG)
Sent: Monday, January 12, 2015 11:27 AM
To: Weaver, Carla J. (ODAG)
Subject: AG QFRs HJC Oversight Hearing 8April14_toODAG Edits and Comments 01-11.docx
Attachments: AG QFRs HJC Oversight Hearing 8April14_toODAG Edits and Comments 01-11.docx

Here are Qs 5-7 that Danny passed to me. Some of my comments point out that there appear to be typos in the questions themselves, but I don't know if that is due to our retyping them or the senators' making mistakes. Leave to your discretion whether we fix that. Thanks!

<<AG QFRs HJC Oversight Hearing 8April14_toODAG Edits and Comments 01-11.docx>>

**Questions for the Record
Attorney General Eric H. Holder Jr.
Hearing on the Oversight of the Department of Justice
Committee on the Judiciary
U.S. House of Representatives
April 8, 2014**

Questions Posed by Representative Conyers

1. **On January 17, 2014, President Obama delivered a speech on signals intelligence reform at the U.S. Department of Justice. In his remarks, the President acknowledged that “the same technological advances that allow U.S. signals intelligence agencies to pinpoint an al Qaeda cell in Yemen or an email between town terrorists in the Sahel, also mean that many routine communications around the world are within our reach.” These expanding capabilities place “fewer and fewer technical constraints on what we *can* do. That places a special obligation on us to ask tough questions about what we *should* do.”**

President Obama then listed a series of executive action and proposed legislative reforms to the government’s signals intelligence capabilities. At our April 8 hearing, Attorney General Holder testified to two statutory authorities that may be subject to those reforms: Section 215 of the USA PATRIOT Act, and Section 702 of the Foreign Intelligence Surveillance Act.

In his January 17 remarks, the President also committed to more transparency in the government’s use of national security letters. He directed the Attorney General to amend the rules for the gag orders that accompany NSLs, “so that this secrecy will not be indefinite.” I view this change as the bare minimum reform necessary to the NSL statute. What reforms will you institute? When will they be in place?

Response:

(b) (5)

2. In those remarks, the President observed that there is “an inevitable bias not only within the intelligence community, but among all of us who are responsible for national security, to collect more information about the world, not less.” The observation is astute. Too often since the attacks of September 11, 2001, the civilian leadership of this government has deferred to an intelligence community that is rightly preoccupied with national security but not always equipped for a robust debate about our civil liberties.

Will you commit to working with the house Judiciary Committee to correct this bias? Will you help us chart a course for surveillance reform that better accommodates our right to privacy?

Response:

(b) (5)

3. On March 26, 2014, a federal jury convicted Sulaiman Abu Ghaith on conspiring to kill Americans and providing material support to terrorists. Abu Ghaith is Osama bin Laden’s son-in-law and the most senior al Qaeda operative to have been tried in civilian court yet. He was convicted just 13 months after his arrest.

By comparison, so-called “9/11 mastermind” Khalid Shiekh Mohammed and his four co-defendants have been in U.S. custody for a decade, and their military commission in Guantanamo has struggled for years to proceed just through the pretrial phase.

Does the Department’s victory in the Southern District of New York put to rest the argument that our civilian law enforcement system is somehow not equipped to convict terrorists and keep us safe?

Response:

(b) (5)

(b) (5)

Questions Posed by Representative King

4. On February 27, 2014, the White House, Office of the Press Secretary, released a Presidential Memorandum entitled "Creating and Expanding Ladders of Opportunity for Boys and Young Men of Color." The Presidential Memorandum states, "I am establishing the My Brother's Keeper initiative, an interagency effort to improve measurable the expected educational and life outcomes for and address the persistent opportunity gaps faced by boys and young men of color. The initiative will help us determine the public and private efforts that are working and how to expand upon them, how the Federal Government's own policies and programs can better support these efforts, and how to better involve State and local officials, the private sector, and the philanthropic community." The Attorney General is listed as one of the members of the My Brother's Keeper Task Force.

First, why does this initiative not include boys and young men of all racial and ethnic groups? Second, and focusing on a specific example, could one result of the initiative on two brother in the same house (with the same white or Asian mother, but one with a black or Latino father and the other with a white or Asian father) be that one brother would be treated differently under the initiative than the other brother? Or would both such brothers be allowed to participate in programs created under this initiative?

Response:

(b) (5)

(b) (5)

Questions Posed by Representative Scott

5. The Holder memo sets out the Department's new policies regarding when to charge mandatory minimums in drug cases. There are reports that some line AUSAs and districts are choosing to disregard the memo. What will the Department do to enforce that its new policies are being implemented uniformly?

Response:

(b) (5)

6. There are reports that certain line AUSAs and districts charging multiple 18 U.S.C. 924(c), which result in 5-, 7-, 10-, and 3-year mandatory minimum sentences that must consecutively to any other sentence and, often, with each other. This leads to lengthy mandatory minimums that judges do not have the discretion to circumvent in appropriate cases and exacerbates existing problems associated with mandatory minimums and prison overcrowding. Does the Department intend to issue a memo instructing that only one such charge should be brought against a defendant?

Commented [h1]: I assume this is the wrong verb tense?

Commented [h2]: I assume there is a word missing here?

Response:

(b) (5)

7. There are reports that certain line AUSAs and districts **threatening** to file 21 U.S.C. 851 enhancement notices in order to coerce defendants to plead guilty. This punishes defendants for exercising their constitutional right to go to trial. It also exponentially increases the mandatory minimums associated with the crimes. Some AUSAs do not use them at all, while others appear to use them vindictively to punish defendants who do not accept their plea offers. Does the Department intend to issue a memo instructing that this severe enhancement is meant only for use in exceptional circumstances?

Commented [h3]: I assume this is the incorrect very tense?

Response:

(b) (5)

8. What is the present policy of the Department of Justice in prosecuting adults who have sex with children? Is there a difference in prosecution between those who pay for the sex and those who do not and is it the policy of DOJ that paying for the sex reduces the seriousness of the crime? For example, the FBI's Innocence Lost

Initiative focused on rescuing victims of sex trafficking and prosecuting the traffickers, but not on prosecuting the purchasers.

Response:

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(b) (5)

9. **Attorney General Holder has stated that the Department of Justice was investigating whether high frequency trading violates insider trading laws. In addition to the criminal investigation, are you coordinating with the Securities Exchange Commission and the Consumer Financial Protection Bureau to prospectively prohibit such acts in the future?**

Response:

(b) (5)

Questions Posed by Representative Lofgren

Bulk Collection under Section 215

10. There have been reports that the President's legislation will limit only the bulk collection of telephone metadata. To your knowledge, is the President's legislation confined to just changing the bulk collection of telephone metadata?

Response:

(b) (5)

11. It has also been reported that the President's proposal might require telephone companies to collect or store more information than they currently do. For instance, it is unclear whether telephone companies have to keep call records made on unlimited, flat-rate calling plans for 18 months. Are there additional burdens on telecom companies, storage requirements or otherwise, that this proposal may impose?

Response:

(b) (5)

Section 702

12. In a March 28 letter to Senator Ron Wyden, Director Clapper stated that, using section 702 authority, intelligence agencies had queried U.S. citizen data it collected incidentally.

A. Doesn't the Constitution require probable cause before allowing these kinds of searches on U.S. citizens? And if not

Response:

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B. What legal standard must be met before querying incidentally collected information on U.S. citizens? Is there a judicial review before such queries?

Response:

(b) (5)

13. Section 702 allows intelligence agencies to collect the communications of “non-U.S. persons” reasonably believed to be *outside* the United States, even if they are in communication with a U.S. citizen located within the United States.

It has been reported that an intelligence agency merely needs to be 51% certain that any given side of a communication was by a non-U.S. person located outside the U.S. to allow it to collect the communication. For all intents and purposes, this is statistically a coin-flip.

In light of the probable cause requirements under the Electronic Communications Privacy Act before seizing a communication is allowed and protections offered by the Fourth Amendment, is it the opinion of the DOJ that this metaphorical coin-flip is adequate protection of a U.S. citizen’s privacy who may be in contact with a foreign entity?

Response:

(b) (5)

14. Given that U.S service providers have servers located all over the world, doesn't this potentially make every communication between a user and a service provided collectable under 702 without a warrant?

Response:

(b) (5)

15. If it were so inclined, are there any legal limitations that would prevent the collection of all web communications between a U.S. citizen and a foreign service provider by an intelligence agency using 702 authority?

Response:

(b) (5)

Receiving Data from Foreign Intelligence Agencies

16. In the DOJ's opinion, are there any legal or Constitutional limitations on when or who U.S. intelligence agencies can receive data on U.S. citizens from foreign agencies?

- A. What legal standard must our intelligence agencies meet before being allowed to either request, or receive unsolicited information on U.S. citizens from foreign intelligence agencies?

Response:

(b) (5)

Defining a "Search"

17. In the opinion of the DOJ, does passively or incidentally collecting a storing communications in a government database constitute a "search" of those communications, or would the DOJ not consider it a search until the database is queried for those message?

Response:

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Collection of Public Data

- 18. What is the DOJ's opinion on the legality of the collection, long-term storage, or analysis of publicly available information?**
- A. If so inclined, could the U.S. Government legally collect and store indefinitely every bit of information that an individual shares with the public for later data analysis?**

Response:

(b) (5)

(b) (5)

B. Are there any limitations on the government's collection or use of information that individuals share with the public?

Response:

(b) (5)

19. What is the DOJ's opinion on the legality of using drones for the surveillance of people or property without a warrant or court order?

Response:

(b) (5)

Questions Posed by Representative Cohen

20. According to the Boston Herald the Administrator of the Drug Enforcement Administration, Michele Leonhart, speaking to the winter meeting of the Major Counties Sheriffs' Association, "slammed" President Obama's statement to David Remnick in the January 27th issue of the New Yorker that marijuana is not more dangerous than alcohol, a fact that's been well documented. And she recently testified before a House subcommittee that she and DEA are "fighting back against" the acceptance of regulation of marijuana. She also said that the idea "just makes [the DEA] fight harder."
- A. Given the public statements that both you and President Obama have made about reducing the criminalization of marijuana and your Department's decision to respect state laws concerning marijuana, isn't this rank insubordination?

Response:

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- B. Have you given any consideration to replacing her with someone more aligned with the Administration's policies and priorities?

Response:

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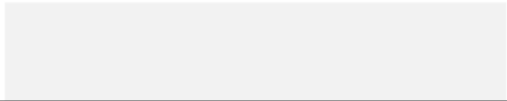
Questions Posed by Representative Deutch

21. During the April 8, 2014 oversight hearing of the U.S. Department of Justice in the House Judiciary Committee, you responded to my question and informed the Committee that since 2013 the Department of Justice has secured guilty pleas from employees at JP Morgan, Goldman Sachs, Morgan Stanly, Credit Suisse, UBS, Robobank, ICAP, Galleon Group, SAC Capital, and Stanford Financial. Please provide for each of the guilty pleas obtained from these employees:
- The caption of those cases;
 - The crimes for which the conviction were sought and obtained;
 - The outcome of the case, including the criminal penalties and/or civil penalties obtained; and
 - Which of these guilty pleas involved a Wall Street firm or bank CEO, CFO, senior manager, board member, president, or other executive position.

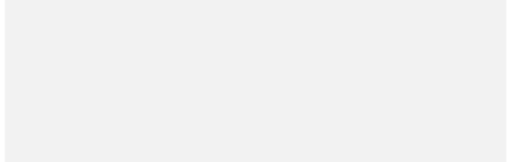
Response:

(b) (5)

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Kadzik, Peter J (OLA)

From: Kadzik, Peter J (OLA)
Sent: Thursday, February 5, 2015 5:42 PM
To: Richardson, Margaret (OAG); Fallon, Brian (OPA); Miller, Marshall; O'Brien, Alicia C (OLA); Gaston, Molly (OAG)
Subject: FW: 1-28/29-15 Attorney General Nomination - Questions for the Record
Attachments: Cornyn QFRs for Lynch.docx; Cruz QFRs for Lynch.docx; Flake QFRs for Lynch.docx; Franken QFRs for Lynch.doc; Grassley QFRs for Lynch.docx; Hatch QFRs for Lynch.docx; Lee QFRs for Lynch.docx; Schumer QFRs for Lynch.docx; Sessions QFRs for Lynch.docx; Vitter QFRs for Lynch.docx; Perdue QFRs for Lynch.pdf; Tillis QFRs for Lynch - Tillis.docx

29 pages from Cruz, with footnotes.

Peter J. Kadzik

Assistant Attorney General
Office of Legislative Affairs

(b) (6)

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From: Covey, Jason (Judiciary Rep) (b) (6)
Sent: Thursday, February 05, 2015 5:40 PM
To: Kellner, Kenneth E. (OLA); Kadzik, Peter J (OLA); Riggs, Kate M. (OLP); Yeh, Jennifer V. (OLP); Zubrensky, Michael (OLP)
Cc: Lehman, Ted (Judiciary Rep); Whitney, Maggie (Judiciary Dem); Prieb, Lauren (Judiciary Rep); O'Connor, Kasey (Judiciary Rep); Cooper, Rebecca (Judiciary); Owen, Matthew (Judiciary Rep); Johnson, Travis (Vitter); Barnett, Gary (Judiciary Rep); Zadrozny, John (Judiciary Rep); Newman, Ryan (Judiciary Rep); Martinez, Martin (Judiciary Rep); Rybicki, David (Judiciary Rep); Slaughter, Rebecca Kelly (Judiciary Dem); Chaifetz, Samantha (Judiciary Dem)
Subject: 1-28/29 15 Attorney General Nomination Questions for the Record

Attached please find questions for the record from Senators Cornyn, Cruz, Flake, Franken, Grassley, Hatch, Lee, Perdue, Schumer, Sessions, Tillis, and Vitter for:

Loretta E. Lynch, to be Attorney General of the United States

Thank you,
Jason

Jason A. Covey
Hearing Clerk | Senate Judiciary Committee
<http://judiciary.senate.gov>

**Senator David Perdue
Questions for the Record**

**On the Nomination of Loretta E. Lynch
To be Attorney General of the United States**

February 5, 2015

1. As a career federal prosecutor, I know you are familiar with the concept of prosecutorial discretion. What, if any, are the limits of the President's discretion to enforce federal law?
2. With respect to the President's executive action on immigration, please explain the legal basis for your belief that the Office of Legal Counsel memorandum setting forth the argument for the President's action is constitutional and "reasonable."
3. Please explain your view on how, or whether, the President's executive action on immigration comports with the Constitution's Take Care Clause and Congress's Article I authority over immigration and naturalization.
4. At your confirmation hearing, Senator Sessions asked whether you agreed that "someone who enters the country unlawfully" has a "civil right" to work. You responded:

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

- a. Please explain the legal basis for your assertion that all persons, including persons having entered the United States illegally, have "the right...to work."
 - b. Please explain whether you believe your assertion that all persons present in the United States have a right to work conflicts with provisions of Title 8, specifically, 8 U.S.C. § 1324a *et seq.*
5. It's now indisputable that the Internal Revenue Service ("IRS") targeted conservative organizations that were seeking to obtain tax-exempt status. Senate investigators with the Permanent Subcommittee on Investigations found that over 80% of the targeted groups had a conservative political ideology. The Department of Justice ("DOJ" or "Department") responded by initiating a criminal probe led by a Civil Rights Division attorney who had contributed to President Obama's campaign in 2012. Little, if any, progress has been made in that investigation thus far.

- a. With respect to IRS targeting of individuals and organizations who ostensibly identify with a conservative or Tea Party viewpoint, will you commit to reassignment of the DOJ's investigation to a special prosecutor if you are confirmed?
 - b. Do you believe it was appropriate to assign management of the DOJ's investigation of IRS targeting to a DOJ lawyer who contributed to President Obama's campaign?
 - c. Do you believe that assigning management of the DOJ's investigation of IRS targeting to a DOJ lawyer who contributed to President Obama's campaign could reasonably be expected to create the appearance of partiality or lack of objectivity on the part of the DOJ?
 - d. If you are confirmed, will you commit to keeping Congress informed in a more timely way than the current DOJ leadership has about the status of the investigation?
6. National security is always of paramount importance for the Attorney General. The recent Paris attack and the rise of ISIS are episodes that show two emerging national security threats that you will confront, if confirmed: foreign fighters and so-called "lone wolf" attacks.
- a. In your view, does the recent emergence of these threats have any impact on the debate over the impending renewal of the Foreign Intelligence Surveillance Act of 1978 ("FISA")?
 - b. Do you believe that the current "bulk collection" regime under FISA Section 215 is lawful?
 - c. Do you believe that the incidental collection provision, Section 702, is lawful?
 - d. President Obama has indicated that he supports a legislative reform of Section 215's bulk collection regime. What are your thoughts on amending Section 215?
 - e. Do you think law enforcement currently has sufficient investigative and legal authority to address the increasing threat from foreign fighters and "lone wolves"?
7. If you are confirmed, would the FBI, ATF, or any other DOJ agencies be permitted to allow criminals to obtain firearms as part of investigations undertaken by your Justice Department?

If so, please describe the circumstances under which you believe such operations would be appropriate.

8. Are you committed to transparency between the DOJ and Congress, and will you commit to prompt, complete, and truthful responses to requests for information from Congress about outstanding issues related to Operation Fast and Furious?
9. The DOJ announced two weeks ago that two Yemeni nationals charged with conspiring to murder American citizens abroad and providing material support to al-Qaeda will be prosecuted by your office in the Eastern District of New York. What specific circumstances that you can address here lead you to believe that civilian courts are a more appropriate or effective venue than military tribunals for the prosecution of the Yemeni nationals that have been charged by your office?
10. Do you believe that detainees currently being held at the United States Naval Base at Guantanamo Bay, Cuba, are entitled to criminal trials in the civilian court system within the United States?
11. In 2013, the DOJ intervened in litigation over the Louisiana Scholarship Program, a state initiative that provides school vouchers to low-income families. An analysis by the State of Louisiana found that the program promoted diversity in Louisiana schools and actually assisted in speeding up federal desegregation efforts. Most of the schoolchildren who benefit from this program are members of minority groups. This year, more than 13,000 students applied and nearly 7,500 schoolchildren were awarded a scholarship voucher. These children now get the chance to excel and attend high-quality schools that their parents can choose for them because of the program. Ultimately, after public pressure, the Justice Department backed off trying to kill the program entirely, but still insisted that the state provide demographic data about the students to a federal judge overseeing the lawsuit. Accordingly, now Louisiana has to provide data for the upcoming school year and for every school year as long as the program is in place.
 - a. Do you agree with the DOJ's decision to intervene in this case?
 - b. If confirmed, will you use Justice Department resources, like your predecessor has, in an effort to obstruct, monitor, or regulate school-choice programs?
 - c. Will you commit to asking the federal district court with jurisdiction over this case to discontinue the reporting requirement if you are confirmed?

12. A 2013 report by the DOJ's Inspector General revealed disturbing systemic problems related to the operation and management of the DOJ's Civil Rights Division. If confirmed, will you commit to implementing the recommendations made by the Inspector General in that report?

13. At your confirmation hearing, I asked you about the Francois Holloway case and why you consented to an order by Eastern District of New York Judge John Gleeson vacating two of Mr. Holloway's convictions for armed carjacking. In your response, you mentioned "a judicial proceeding before the court at that time" that "the court wanted us to take a second look at."
 - a. Please describe what you meant by the term "judicial proceeding before the court."
 - b. Which party initiated the "judicial proceeding before the court" that you referred to in your answer?
 - c. You stated that "our view was that we had to look at the case consistent with many of the initiatives that we were being put in place now by the DOJ certainly with respect to clemency and with respect to how we look at offenders who have served significant time." Please state the DOJ initiatives you consulted in your reexamination of the Holloway sentence and identify any initiatives on which you based your decision to consent to Judge Gleeson's order vacating Mr. Holloway's armed carjacking sentences.
 - d. Please identify any DOJ initiatives that provide for early release for violent offenders or recidivist violent offenders like Mr. Holloway.
 - e. You testified that you reconsidered whether to consent to an order to vacate Mr. Holloway's sentence "numerous times." Please explain why you ultimately consented to the vacatur after initially refusing to and suggesting to the court that Mr. Holloway contact the Office of the Pardon Attorney or seek executive commutation of his sentence.
 - f. Mr. Holloway's case had achieved a remarkable degree of finality – his appeal was rejected by the Supreme Court and he had been sentenced decades before Judge Gleeson released him, effectively, for time served. Please state the legal and policy basis for your decision to reexamine the case given the degree of finality that it had achieved.

- g. You stated that your office had “the ability to let the judge review [Mr. Holloway’s] sentence again by keeping it in the court system.” Please explain your understanding of the circumstances under which federal prosecutors should consent to review by a federal judge of sentences which have achieved finality and explain when federal prosecutors should act, as you testified, to “keep[]” those sentences “in the court system.”
 - h. Do you agree with Judge Gleeson, who wrote in his May 14, 2014, memorandum in the Holloway case, that your prosecutors from the Eastern District of New York employ “ultraharsh mandatory minimum provisions to annihilate a defendant who dares to go to trial,” like Mr. Holloway?
 - i. Do you believe that the prosecutors who tried Mr. Holloway employed “ultraharsh mandatory minimum sentences to annihilate” him because he exercised his constitutional right to a jury trial?
 - j. Do you agree with the recommendation of the U.S. Sentencing Commission in its 2011 report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*, that Congress should amend 18 U.S.C. § 924(c) to confer on federal district judges the discretion to impose concurrent sentences under that provision?
 - k. Please describe with particularity – citing case numbers, captions, etc. – any other cases in which your office, during your tenure as U.S. Attorney, consented to an order vacating convictions under 18 U.S.C. § 924 or any other criminal conviction.
14. As a U.S. Attorney and the Chair of the Attorney General’s Advisory Committee, you are no doubt familiar with the DOJ’s recent “Smart on Crime” Initiative, which addresses a number of criminal justice issues like prioritizing prosecutions, sentencing disparities, recidivism, and incarceration of non-violent offenders. Attorney General Holder has advocated reduction of the federal sentencing guideline levels that apply to most drug-trafficking offenses, including trafficking of hard drugs like heroin. The Holder Justice Department also announced a new clemency initiative last year that invites clemency petitions from offenders who meet a number of criteria. Thousands of offenders, including drug traffickers, fall within those criteria.
- a. What are your views on those DOJ initiatives and proposals?
 - b. Do they make the work of federal prosecutors harder?

- c. Do they make the American People safer?
- d. Are you going to continue them if you are confirmed as Attorney General?
- e. Do you believe that these or other DOJ initiatives should be expanded to encompass early release for violent offenders who have served a substantial portion of their sentences?
- f. Do you believe that these or other DOJ initiatives should be expanded to encompass early release for offenders who have received so-called “stacked” or consecutive mandatory minimum sentences under 18 U.S.C. § 924 or other provisions of federal law?

15. The 2013 Cole Memorandum explains the DOJ’s priorities on enforcement of federal law regarding marijuana offenses. Several jurisdictions have recently legalized cultivation and distribution of marijuana for personal use, in effect, initiating a series of state regulatory regimes that contravene federal drug laws.

- a. Do you agree with the current DOJ enforcement policies and priorities outlined in the Cole Memorandum?
- b. Do you consider the DOJ’s policy, as it is being implemented now, to reflect legitimate enforcement discretion consistent with the Take Care Clause?
- c. If you are confirmed, how do you plan to measure the effect of the DOJ’s policy on the federal interest in enforcement of drug laws?

16. The recent hacking of Sony’s computers has demonstrated that a major area of vulnerability to our national security and infrastructure is cyberattacks, often by foreign hackers or governments.

- a. In your view, what are the greatest threats we face from cyberterrorism?
- b. What tools does law enforcement need, based on your experience as a U.S. Attorney, to protect networks and critical infrastructure?

17. In recent years, the DOJ has aggressively pursued states that have enacted a wide array of voter ID provisions. You have made a number of public comments about the DOJ’s litigation in this area of the law and have pledged to continue litigation that Attorney General

Holder has initiated. Please describe, with particularity, examples of voter ID provisions that a state could enact which you believe would pass statutory and constitutional muster.

18. A number of commentators have expressed the opinion that voter fraud simply doesn't exist or the alternative opinion that, if it does, it is a minor problem with no real effect on the integrity of elections.

a. Do you agree that voter fraud does not exist or is so insignificant that it does not threaten the integrity of elections?

b. Do you think that voter fraud is a *bona fide* issue that states should be entitled to address with voter ID laws?

19. You previously stated in the context of North Carolina's voter ID law that:

Fifty years after the march on Washington, 50 years after the Civil Rights Movement, we stand in this country at a time when we see people trying to take back so much of what Dr. King fought for....People try and take over the State House and reverse the goals that have been made in voting in this country....But I'm proud to tell you that the Department of Justice has looked at these laws, and looked at what's happening in the Deep South, and in my home state of North Carolina [that] has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens. And those lawsuits will continue.

Do you believe that North Carolina's voter ID law is a pretext for, or was motivated by, racial discrimination?

20. First Amendment freedoms that protect the press became a lot more tenuous during Mr. Holder's administration of the DOJ. In May 2013, the Department obtained phone records for the Associated Press ("AP") without the knowledge of that organization, reportedly as part of an investigation of an AP story on CIA operations in Yemen. It then came to light that in 2010 the Holder Justice Department obtained a warrant to search the emails of Fox News reporter James Rosen – the Department claimed that Rosen was a potential co-conspirator with a State Department contractor in violation of the Espionage Act. Since then, the DOJ has issued new guidelines governing how it obtains evidence from journalists. The guidelines maintain that notice of a subpoena may be withheld only if notifying the journalist would present a "clear and substantial threat" to an investigation or to national security.

- a. Do you agree that the Department's treatment of journalists has been heavyhanded and that reform of DOJ practices was necessary?
 - b. Do you believe that the DOJ investigations described above pose a serious risk of chilling free speech?
 - c. Do you support the new guidelines?
 - d. As a federal prosecutor, you are no doubt aware of the balance between individual liberties and the need to conduct thorough and effective investigations. Do the guidelines strike the right balance?
 - e. How would the Lynch Justice Department distinguish itself from the Holder Justice Department when it comes to investigation of journalists?
21. There have been significant developments recently at the DOJ regarding policies on civil asset forfeiture in response to abuses by U.S. Attorney's Offices and federal and state agencies. Attorney General Holder just announced that the DOJ will end the Equitable Sharing Program, which essentially apportions billions of dollars in seized assets between federal, state, and local authorities – a huge pool of money that clearly created a risk of encouraging aggressive, if not unlawful, seizures from individuals who are not charged with a crime, have not been indicted, and have not enjoyed any due process whatsoever. Your office in the Eastern District of New York alone has seized over \$100 million in recent years.
- a. Do you believe that there have been inappropriate or excessive seizures by your office or by the DOJ with respect to civil asset forfeitures, adoptive seizures, and equitable sharing practices? If so, please describe with particularity any such cases.
 - b. After inquiries by members of Chairman Grassley's staff, a company in your district, Hirsch Brothers, was recently returned \$500,000 that your office seized from it as part of a civil asset forfeiture. Please explain the basis for the seizure and the reason why the funds were returned only after a congressional inquiry was initiated.
 - c. Has your office implemented the reforms announced by Attorney General Holder?
 - d. What steps are you taking in your office to ensure that no additional individuals or companies like Hirsch Brothers will have their assets wrongfully seized?

- e. What steps do you plan to take, if confirmed, to ensure that the DOJ returns wrongfully seized assets promptly and does not continue to seize assets wrongfully?

Gaston, Molly (OAG)

From: Gaston, Molly (OAG)
Sent: Saturday, February 7, 2015 9:54 PM
To: Richardson, Margaret (OAG); Werner, Sharon (OAG); Mizer, Benjamin (OAG); Phillips, Channing D. (OAG); Franklin, Shirlethia (OAG); Cheung, Denise (OAG)
Subject: RE: QFR status
Attachments: DEMS - QFRs Master 2-7-2015 630pm.docx; GRAHAM-CORNYN-FLAKE-TILLIS (2-7-2015 725pm).docx; 00 - QFRs for AG Nominee Lynch - Grassley Hatch Lee Vitter Perdue 930pm (to LEL).docx

So, we are several hours behind schedule, but we've recently almost gotten all the QFRs to Loretta. Here's what we've sent her so far, with Sessions/Cruz coming soon. Thanks!

From: Gaston, Molly (OAG)
Sent: Saturday, February 07, 2015 11:39 AM
To: Richardson, Margaret (OAG); Werner, Sharon (OAG); Mizer, Benjamin (OAG); Phillips, Channing D. (OAG); Franklin, Shirlethia (OAG); Cheung, Denise (OAG)
Subject: RE: QFR status

Just wanted to give everyone an update on where we are on QFRs, which is that with a few tiny exceptions, has essentially cleared everything that's made its way to us. I'm pretty sure that Ben edited 5 million QFRs last night, and Channing was commenting during commercial breaks of the awards ceremony. You are all amazing--THANK YOU!

The plan is to continue refining responses and to aim to get Loretta as complete a copy as possible around 2 p.m. today. When we send that version to her, I will also send it to all of you, but please do not feel obliged to re-review. I just want you to be in the loop.

Molly G.

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Written Question for the Record for Loretta E. Lynch
[Submitted February 9, 2015]**

QUESTIONS FROM CHAIRMAN GRASSLEY

1. As you know, the Senate is constitutionally obligated to fulfill its duty to provide advice and consent on the President’s nominees. That process is always lengthy and involved, for good reason. It is of course especially important for the Senate to fulfill its responsibilities with care for Cabinet level positions, such as the Attorney General of the United States. Nonetheless, throughout this process, my primary concern is not only that your nomination was thoroughly vetted by the Senate, but also that throughout the process you were treated fairly and with respect. I have publicly outlined the process going forward in the Committee. Do you believe the United States Senate, and in particular the Senate Judiciary Committee, has treated you and your nomination in a fair and appropriate way?

RESPONSE (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

2. Starting in 2010, the Department of Justice filed complaints against Arizona, Alabama, South Carolina, and Utah because of their pro-enforcement immigration laws. If confirmed, would you continue this policy of filing complaints against states that have passed such laws?

RESPONSE (b) (5)

[REDACTED]

(b) (5) [Redacted]

3. While the Department of Justice filed lawsuits against states that enacted pro-enforcement immigration laws, other cities enacted policies that expressly prohibited law enforcement from cooperating with the federal government on undocumented immigrant issues.
 - a. In your view, are sanctuary communities that ignore federal immigration detainers a threat to national security or public safety?
 - b. What steps would you take to encourage sanctuary communities to reverse their ordinances?

RESPONSE (b) (5) [Redacted]

4. While sanctuary communities refuse to cooperate with the federal government, they continue to collect money from DOJ grant programs. Would you instruct the Department of Justice to withhold grant money for sanctuary communities that refuse to comply with our immigration laws?

RESPONSE (b) (5) [Redacted]

5. The administration has acknowledged that over 36,000 convicted criminals were released from ICE custody in fiscal year 2013. Many of these criminals were guilty of heinous crimes, including homicide, sexual assault, abduction, and aggravated assault. Yet, Immigration and Customs Enforcement used its discretion and released these criminals back into the community. Do you believe the government, unless ordered by a court, should release convicted criminal aliens guilty of dangerous crimes, homicide, sexual assault, abduction, and aggravated assault?

RESPONSE (b) (5) [Redacted]

(b) (5)

6. DHS cited the 2001 Supreme Court decision *Zadvydas v. Davis*, 533 U.S. 678 (2001), as another reason so many illegal aliens with criminal records were released. In *Zadvydas*, the court held that immigrants admitted to the United States who are subsequently ordered removed could not be detained for more than six months. Four years later, the Court extended this decision to people here illegally in *Clark v. Martinez*, 543 U.S. 371 (2005). Since *Zadvydas*, Congress has tried to pass legislation to require DHS to detain criminal aliens beyond six months. Would you support such legislation?

RESPONSE (b) (5)

7. The Fourth Circuit Court of Appeals issued a decision in 2014 that provides a loophole for violent gang members who are here illegally to remain in the United States. In *Martinez v. Holder*, 740 F.3d 902 (4th Cir. 2014), Martinez appealed a Board of Immigration Appeals decision that denied him “withholding of removal” relief because he was a former member of the violent MS-13 gang in El Salvador. The Fourth Circuit reversed the decision holding that Martinez’s former gang membership was “immutable” and met the “particular social group” element of the statute.
 - a. Do you agree that the Fourth Circuit decision creates a dangerous threat to national security?
 - b. After the Fourth Circuit handed down its decision, concern was expressed over the effect this decision could have on national security and public safety. Chairman Goodlatte of the House Judiciary Committee along with Representative J. Randy Forbes wrote a letter to Attorney General Holder to express their concern with the holding and ask whether he would appeal or seek review of the decision. However, Attorney General Holder did not appeal or seek review of this dangerous decision.
 - i. Would you agree that the DOJ, under Attorney General Holder, should have appealed the 4th circuit decision?
 - ii. Because the decision was not appealed, what, in your view, is the remedy for this problem?

RESPONSE (b) (5) [Redacted]

8. The 287(g) program allows ICE to delegate some of its immigration enforcement authority to participating states. In 2012, ICE announced that it would no longer renew its 287(g) agreements stating, “other enforcement programs, including Secure Communities, are a more efficient use of resources.” However, Secure Communities serves a completely different function. The 287(g) program trains local officers to determine whether a person is lawfully in the country, whereas Secure Communities only allows local law enforcement to identify undocumented aliens after their incarceration. Secretary Johnson has announced that the Secure Communities program is being discontinued, and replaced by another program. Consequently, statutory authority exists for the administration to elicit state and local cooperation with the federal government; nevertheless, this administration refuses to use it.

a. Do you support the 287(g) program, and similar programs, that authorize the federal government to allow states to participate in enforcing federal law?

RESPONSE (b) (5) [Redacted]

b. In your opinion, should the 287(g) program be made available to local law enforcement agencies that want to protect their communities and participate in immigration enforcement?

RESPONSE: (b) (5) [Redacted]

c. As states and local law enforcement approach you for help in enforcing federal law, will you find a way to work with them, or will you ignore them, as your predecessor has?

RESPONSE (b) (5) [Redacted]

9. In June 2014, DOJ announced its program Justice Americorp will issue \$2 million in grants to lawyers to represent unaccompanied minors who crossed the borders illegally. Under current law, there is no right to a lawyer in a removal proceeding. The law provides only that an immigrant may obtain a lawyer, “at no expense to the government.” Do you agree that the statutory language is clear: the government may not provide a lawyer to immigrants in a removal proceeding at the expense of the taxpayers?

RESPONSE (b) (5)

[REDACTED]

10. By its very nature, Justice Americorps has due process and equal protection issues. The Department is treating similar people in similar situations differently. How can the administration avoid due process and equal protection issues if it provides lawyers to some immigrants in removal proceedings, but not to others? Couldn't such a policy lead to the requirement of providing a lawyer to all immigrants in removal proceedings?

RESPONSE (b) (5)

[REDACTED]

11. Immigration is a civil proceeding, and as a constitutional matter, the government is not required to provide counsel in civil proceedings. Are you concerned that if the government starts providing counsel to individuals in removal proceedings, the government could be required to provide counsel in other civil proceedings?

RESPONSE (b) (5)

[REDACTED]

12. ICE has brought removal charges against only 143,000 of the 585,000 removable aliens encountered in fiscal year 2014. That's a mere 24 percent of removable aliens that ICE encountered in 2014. What's even more troubling is that nearly 900,000 aliens who have final removal orders still remain in the country. Now, however, all people with final removal orders are encouraged to seek deferred action and other relief made available through the President's recent executive action.

- a. Do you support the administration's catch-and-release actions?
- b. Do you agree that individuals whom a judge has ordered removed, should, in fact, be removed?

RESPONSE (b) (5) [Redacted]

13. Does the U.S. Constitution confer a right to abortion? If so, what clauses confer that right?

RESPONSE (b) (5) [Redacted]

a. Does the U.S. Constitution compel taxpayer funding of abortion? Why or why not?

RESPONSE (b) (5) [Redacted]

b. Do you believe that the U.S. Constitution permits taxpayer funding of abortion? If so, based on what clause?

RESPONSE (b) (5) [Redacted]

c. Does the U.S. Constitution prohibit informed-consent and parental involvement provisions for abortion? Why or why not?

RESPONSE (b) (5) [Redacted]

14. In your view, is diversity a valid institutional interest for a government entity, consistent with the Equal Protection Clause? What other compelling justifications exist for government to make racial distinctions?

RESPONSE (b) (5) [Redacted]

15. In *McCutcheon v. FEC*, Justice Breyer’s dissenting opinion stated that “the First Amendment advances not only the individual’s right to engage in political speech, but also the public’s interest in preserving a democratic order in which collective speech matters” (emphasis in original).
- a. Do you agree that the First Amendment protects “collective” rights as well as individual rights?
 - b. If so, what other collective rights does the Bill of Rights protect?

RESPONSE: (b) (5)

[REDACTED]

16. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that a right to assisted suicide was not protected by the Due Process Clause. The Court reasoned: “[W]e have always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this uncharted area are scarce and open-ended. By extending constitutional protection to an asserted right or liberty interest, we, to a greater extent, place the matter outside the arena of public debate and legislative action. We must therefore ‘exercise the utmost care whenever we are asked to break new ground in this field,’ lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the members of this Court.” Do you agree with the Court’s assessment of the importance of public debate and legislative action?

RESPONSE (b) (5)

[REDACTED]

17. Do you believe that the Supreme Court’s decision in *Morrison v. Olson*, which ruled that the independent-counsel statute did not violate the constitutional separation of powers, was correctly decided? Please explain.

RESPONSE (b) (5)

[REDACTED]

18. Do you believe that the Supreme Court’s decision in *Boumediene v. Bush*, which conferred constitutional habeas rights to aliens detained as enemy combatants at

Guantanamo, was correctly decided? If so, how does that square with *Johnson v. Eisentrager*, which Justice Scalia, in his *Boumediene* dissent, said “held held beyond any doubt that the Constitution does not ensure habeas for aliens held by the United States in areas over which our Government is not sovereign”?

RESPONSE (b) (5)

[REDACTED]

19. What is your understanding of the constitutional duty of the Executive to “take Care that the Laws be faithfully executed” as contained in Article II, sec. 3 of the U.S. Constitution?

RESPONSE (b) (5)

[REDACTED]

20. Do you believe that the Supreme Court’s decision in *Zelman v. Simmons-Harris*, which held that school-choice programs that include religious schools do not violate the Establishment Clause, was correctly decided? Please explain.

RESPONSE (b) (5)

[REDACTED]

21. The Supreme Court has held that the Federal Sentencing Guidelines are advisory and persuasive, but not binding. Do you believe *Booker* and *Fanfan* were correctly decided?

RESPONSE (b) (5)

[REDACTED]

22. The U.S. Supreme Court has repeatedly upheld obscenity laws against First Amendment challenges. To my knowledge, not one new adult obscenity case has been initiated against commercial distributors of hard core adult pornography during the Holder years. Research has linked the consumption of obscenity to sexual exploitation and violence against women, and to demand for sex trafficking and child pornography. If confirmed, what is your commitment to vigorously enforcing the federal adult obscenity laws?

RESPONSE (b) (5)

[REDACTED]

23. Do you think that it is constitutional for a university to have racially exclusive internships or scholarships or summer programs, as some have in the past? My question goes not go to racially preferential programs, but ones in which a person cannot even apply based on their color. The Supreme Court held in the *Grutter* and *Gratz* cases that schools cannot use race mechanically, but must give “individualized consideration” to students. How can a racially exclusive program provide students with individualized considerations?

RESPONSE: (b) (5)

[REDACTED]

24. Do you believe racial profiling in the context of the War on Terrorism is unconstitutional?

RESPONSE (b) (5)

[REDACTED]

25. In his opening statement at the confirmation hearing of Alberto Gonzalez to be Attorney General, Senator Leahy remarked, “The Attorney General is about being a forceful, independent voice in our continuing quest for justice and in defense of the constitutional rights of every single American.”

a. Do you believe the Attorney General should be a forceful, independent voice for justice and in defense of the constitutional rights of all Americans? If so, how do you intend to accomplish this?

RESPONSE (b) (5)

[REDACTED]

(b) (5) [Redacted]

- b. Can you provide examples of how you have been an independent voice during your government service? Are there any examples from your private practice?

RESPONSE: (b) (5) [Redacted]

26. The Affordable Care Act states that the employer mandate applied “after December 31, 2013.” Notwithstanding this clear statutory command, the President postponed the employer mandate. Furthermore, according to the Wall Street Journal, the President has delayed aspects of the law some 38 times.

Under our Constitution, the President must take care that the laws are faithfully executed. He can decide how to enforce the laws, but not whether to enforce them. What are the outer limits of the President’s authority to suspend, alter or otherwise change statutory language? What’s the limiting principle?

RESPONSE: (b) (5) [Redacted]

27. The President offered no legal support when he delayed the employer mandate despite the law. It is not clear if the Office of Legal Counsel did not review his action or could not offer legal support for it. In the Justice Department under Attorney General Holder, the Office of Legal Counsel has lost its former role as a guarantor that presidential acts are legal. Either it is not consulted, or the President takes action without seeking its approval, or the Office will not say “no” to illegal actions, or it issues cursory approvals

like it did with an email when the President unilaterally released 5 terrorists from Guantanamo. Any of these possibilities is a threat to the rule of law.

What will you do to ensure that office objectively and thoroughly evaluates proposed presidential actions before they occur so the President conforms to the laws and the Constitution?

RESPONSE (b) (5)

[REDACTED]

28. In 2008, the Justice Department brought suit against the New Black Panther Party and two of its members for voter intimidation. The defendants did not contest the claims. But when the Obama Administration took over, they would not allow career litigators to move for a default judgment. The career litigators have stated that political appointees would not allow a case to be brought against Black citizens for intimidation of White voters. Internal investigations of misconduct have led nowhere after all these years. The Civil Rights Commission has criticized the Department for not cooperating with its investigation into the matter.

a. If confirmed, will you conduct a thorough and fair investigation of this matter and apply any appropriate disciplinary action?

RESPONSE: (b) (5)

[REDACTED]

b. Is it your position that the Voting Rights Act applies in a race neutral way to voter intimidation?

RESPONSE (b) (5)

[REDACTED]

29. The President remarked in his State of the Union address that voting should be as easy as possible. But fraud exists and it will get worse if the only response is denial. Not long ago, the Pew Center on the States issued a report that found there are 24 million voter registrations in this country that are no longer valid or are inaccurate. It concluded that there are almost 3 million individuals who are registered to vote in multiple states. Tens of thousands are registered to vote in three or more states.

The study also identified close to 2 million dead people on the voter rolls. NBC News found 25,000 names of likely deceased voters on the California rolls. Some voted years after they died. One woman who died in 2004 voted in 2008 and 2012. A man who died in 2001 has voted eight times since 2005. The New York Times has written that in Florida, “absentee ballot scandals seem to arrive like clockwork....”

Do you agree that voter fraud is a significant problem? Do you agree that the states should be allowed to take actions, such as requiring voters to show photo identification, especially when there is no charge for obtaining that identification, to ensure the integrity of the voting process without running afoul of the Justice Department’s Civil Rights Division?

RESPONSE: (b) (5) [Redacted]

(b) (5) [Redacted]

30. Voter fraud also includes the registration to vote and illegal voting by people who are ineligible to vote. That means that the right to vote is being diluted by illegal votes canceling legal ones. In Iowa, a state investigation from 2012 to 2014 identified 117 illegal votes that were cast. The Secretary of State’s investigation of these cases resulted in 27 criminal charges against suspected fraudulent voters and six criminal convictions. The three categories of illegal votes cast were from non-citizens, felons whose right to vote had not been restored, and miscellaneous offenses. Investigators were careful and determined that about half of the suspected non-citizen voters were actually citizens. But 88 cases were turned over to county attorneys and at least 10 of these cases have resulted in charges. The evidence of care in the investigation was demonstrated in the 16 cases brought against felons whose right to vote had not been restored, while 20 felons were identified whose rights should have been restored but had been denied when trying to vote. And there were 100 instances in which voters in Iowa also cast ballots in the same election in another state.

There is much voter fraud if only election and law enforcement officials will actually seek it. That many prosecutors do not search for it does not mean it does not exist. The public needs confidence in the integrity of its elections, and that only eligible voters actually vote.

If you are confirmed, what would you plan to do to stop voter fraud?

RESPONSE: (b) (5)

[REDACTED]

31. The Obama Administration has sought to ban the importation of shotguns and ammunition. The Administration has even argued that shotguns lack any sporting purpose.

- a. Do you agree that shotguns do not have any sporting purpose and that their importation should be banned?

RESPONSE (b) (5)

[REDACTED]

- b. Federal law requires the attorney general to determine whether or not certain types of firearms have a “sporting purpose” before they can be lawfully imported or sold. How is this consistent with the core purpose of the Second Amendment, which, according to the U.S. Supreme Court, is self-defense?

RESPONSE (b) (5)

[REDACTED]

32. The Justice Department is tasked with maintaining two important criminal databases. One is used when a Brady Act criminal background check is conducted on a prospective gun purchaser. The other is used by employers to check the criminal history of job applicants they intend to hire. These databases depend on records provided by the states that reflect criminal cases. Both databases have inaccuracies that cause serious problems. For instance, people convicted of domestic violence aren’t allowed to purchase firearms.

But many states have submitted none or very few records of such convictions. A background check for someone from these states won't keep a convicted domestic abuser from buying a gun.

Similarly, states have done a poor job with the records that are used for employment checks. Today, 32% of adult Americans have a criminal record, either a conviction or an arrest. The database contains many arrests that never led to any conviction. But when a search is done, those arrests come up, and the person may be denied a job as a result. If confirmed, what will you do to improve the accuracy of the records in these databases?

RESPONSE (b) (5)

[REDACTED]

33. One of the bills proposed in Congress and in a number of states would expand existing background check requirements that currently pertain to licensed retail sales of firearms to all firearm transfers. If such a bill were enacted, how would DOJ enforce it in the majority of states where firearms are not licensed or registered to specific individuals?

RESPONSE (b) (5)

[REDACTED]

34. Do you believe the Supreme Court correctly decided *District of Columbia v. Heller*? Do you believe the individual right to keep and bear arms is a fundamental right?

RESPONSE (b) (5)

[REDACTED]

35. The Supreme Court held in *Heller* that the Second Amendment protects an individual's right to possess a firearm, regardless of their participation in a "well regulated militia." In 2009, the U.S. Supreme Court expanded that right in *McDonald v. Chicago* by finding that the Due Process Clause of the Fourteenth Amendment incorporated the Second Amendment. What is your personal opinion of the rights afforded by the Second Amendment?

RESPONSE (b) (5)

[REDACTED]

36. A bipartisan consensus is growing in Congress that civil asset forfeiture has increased incentives for abuse. In that process, law enforcement can seize property without any finding that the person has committed a crime. And financial incentives exist for law enforcement to pursue asset forfeiture aggressively maybe too aggressively.

Recently, Attorney General Holder accepted the proposal that I and several members of Congress asked of him: to eliminate adoptive seizures and equitable sharing. Under those procedures, state and local law enforcement had incentives to pursue seizures to keep the money for their own use. However, Attorney General Holder’s order still permits equitable sharing when state and local authorities work with federal law enforcement in a joint task force, and in joint federal-state operations.

I do not read these exceptions as narrowly as you characterized them at the hearing. For instance, I am not aware that an actual case must be filed for them to apply.

- a. Haven’t a large number of investigations in your office been conducted through a joint task force or joint federal-state operation? And doesn’t the exception for equitable sharing for these operations swallow this rule? What would happen if a state law enforcement officer saw a car that it suspected had cash obtained from drug trafficking and called a DEA agent, asking whether the local agency and DOJ jointly combated drugs?
- b. Are further reforms necessary for asset forfeiture, and will you commit to working to supporting legislation to prevent injustice and enhance procedural rights in this area?

RESPONSE: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

37. The Justice Department did not, in the words of the New York Times, “prosecute a single prominent banker or firm in connection with the subprime mortgage crisis that nearly destroyed the economy.” I am concerned that this will happen again if DOJ does not hold the perpetrators responsible. Many people were prosecuted in connection with the failed savings and loan scandals of the 1990s.

- a. Why did the Department of Justice fail in bringing these criminals to Justice? Do you believe this impedes its ability to credibly deter others from committing similar crimes in the future?
- b. If confirmed, what will you do to pursue prosecution for any of these crimes that are still within the statute of limitations?

RESPONSE

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

38. As U.S. Attorney for the Eastern District of New York, you helped secure nearly \$2 billion from HSBC over its failure to establish proper procedures to prevent money

laundering by drug cartels and terrorists. You were quoted in a DOJ press release saying, “HSBC’s blatant failure to implement proper anti-money laundering controls facilitated the laundering of at least \$881 million in drug proceeds through the U.S. financial system.”

You stated that the bank’s “willful flouting of U.S. sanctions laws and regulations resulted in the processing of hundreds of millions of dollars in [Office of Foreign Assets Control]-prohibited transactions.” Still, no criminal penalties have been assessed for any executive who may have been involved.

- a. Did you make any decision or recommendation on charging any individual with a crime?
 - i. If so, please describe any and all decisions or recommendations you made.
 - ii. Please explain why such decisions or recommendations were made.
- b. If you did not make any decision or recommendation on charging any individual with a crime, who made the decision not to prosecute?

RESPONSE (b) (5)

[REDACTED]

39. Recent press reports have tracked the disturbingly large numbers of witnesses in federal criminal cases who have been murdered to prevent their testimony. It is often difficult to get witnesses to testify against dangerous criminals. They rightly fear for their safety and the Justice Department has to ensure they are protected.

I know that sometimes witnesses decline protection. And sometimes protected witnesses ignore sound advice to stay away from their former residences to avoid the defendant and others. But it is clear that the Department is not offering protection to quite a few witnesses who need it.

And I am particularly incensed that on several occasions, when the Department has confidentially informed defense counsel in advance of trial who a witness will be,

defense counsel have tipped off their client, who then appear to arrange for the witness to be murdered.

If confirmed, what will you do as Attorney General to make sure that witnesses who need protection receive it? Will you ensure that federal prosecutors seek protective orders to relieve them of the obligation of disclosing the names of vulnerable witnesses to defense counsel?

RESPONSE: (b) (5)

[REDACTED]

40. Increasingly, law enforcement is using drones for domestic law enforcement purposes. Drones enable more surveillance of citizens to occur. They are more mobile. They are cheaper to pay than police officers. And they can hover over homes and peer through windows, observing what humans cannot.

I am concerned that as law enforcement employs more drones, the security of the people in their persons, papers, and effects could be compromised. Meanwhile, despite a hearing the Judiciary Committee held, the Justice Department has not issued any guidelines on how the Fourth Amendment’s prohibition on unreasonable searches and seizures, and its warrant requirement, apply to drones.

If confirmed, will you commit that the Department of Justice will issue specific guidelines on how the Fourth Amendment restricts law enforcement’s domestic use of drones?

RESPONSE: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (5) [Redacted]

41. The House Oversight and Government Reform Committee issued a report last year finding that a banking enforcement program involving DOJ is in fact aimed at depriving legal but politically-disfavored business sectors of access to the financial services businesses need to survive in the modern economy. The name of the program is Operation Choke Point. You were asked about Operation Choke Point at your hearing, but you seemed unfamiliar with the fact that the program’s targets include legal sellers of firearms and ammunition, among other industries. Internal investigators at both DOJ and FDIC are conducting formal inquiries into the program and the officials and employees involved.

- a. Would you agree that DOJ should not use its authority to discourage legal enterprises from operating, even if some administration officials consider them “morally unacceptable”?

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

- b. Would you support appointment of a special counsel to hold accountable any DOJ official who is found to have abused his or her authority under this program to close down lawful businesses?

RESPONSE (b) (5) [Redacted]

42. On Election Day last year 3 years after the House subpoena was issued and 2 years after the contempt vote Attorney General Holder finally delivered 64,000 pages of documents to the House. Those documents were only provided to the House. The Justice Department failed to deliver them to this Committee, despite the agreement I made with Attorney General Holder to release my hold on Deputy Attorney General Cole's nomination. The Senate Judiciary Committee was supposed to receive all the same Fast and Furious documents delivered to the House throughout the investigation. The subpoena is still being litigated, so the court may order more documents to be provided in the future.

Will you commit that, if confirmed, you will ensure that this committee receives any future Fast and Furious documents provided in the litigation with the House?

RESPONSE (b) (5)

43. The Department has argued in the Fast and Furious litigation that executive privilege is more than just a Presidential privilege, but that it also establishes a constitutional shield for the “deliberative process” of lower level agency officials. However, the deliberative process privilege is traditionally a common law doctrine and one of the exemptions in the Freedom of Information Act not a constitutional privilege of equal standing with the inherent Constitutional power of Congress to conduct oversight inquiries. Deliberative process also traditionally applies only to content that is deliberative and pre-decisional.¹ It does not shield material created after a decision is made, or that is purely factual.

Moreover, the Attorney General has sought to use this exceedingly broad notion of privilege to justify withholding documents that he has stated *are not privileged*. On November 15, 2013, the Attorney General acknowledged in the Fast and Furious litigation that he was withholding documents responsive to the House subpoena that “do not . . . contain material that would be considered deliberative under common law or statutory standards.”² Furthermore, the OLC opinion on the President’s assertion of executive privilege suggests that the privilege applies “*regardless* of whether a given document contains deliberative material.”³

Yet, the Department *did* produce deliberative, pre-decisional material prior to the Feb. 4, 2011 gunwalking denial letter to me, despite its claim now that such material is privileged. The Department conceded that Congress had a clear interest in finding out whether officials knew before it was sent that the Feb. 4th letter was false. It provided

¹ *In re Sealed Case*, 121 F.3d 729, 745 (D.C. Cir. 1997).

² Def.’s Mot. For Certification of Sept. 30, 2013 Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) at 8-9, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12 cv 1332 (D.D.C. Nov. 15, 2013).

³ 36 Op. O.L.C. 1, 3 (June 19, 2012) (emphasis added).

pre-Feb. 4th material even though it was pre-decisional and deliberative. However, the Department still refuses to concede that Congress has an interest in discovering how officials learned that the letter was false *after it was sent*. It refused to provide post-Feb. 4th material even though it is post-decisional and factual in nature. The Department categorically withheld *all* records from after the Feb. 4th letter until Election Day 2014. Only then, after a court order, did it finally produce to the House Committee post-Feb. 4th documents that contained purely factual, post-decisional material.

- a. What is the scope of executive privilege, particularly over agency documents unrelated to the President?

RESPONSE: (b) (5)

[REDACTED]

- b. Does the President have an executive privilege to withhold documents subpoenaed by Congress that have nothing to do with advice or communications involving the White House? If so, what is the legal basis for that claim?

RESPONSE: (b) (5)

[REDACTED]

- c. Congress created a statutory deliberative process exemption for documents subject to Freedom of Information Act requests. Do you believe a similar exception applies to congressional subpoenas, or are requests from Congress entitled to more weight?

RESPONSE: (b) (5)

[REDACTED]

- d. Are deliberative documents just as immune from Congressional scrutiny as they are from FOIA requestors?

RESPONSE (b) (5)

[REDACTED]

- e. Can the President assert executive privilege over deliberative material, as the Office of Legal Counsel opinion suggested, “regardless of whether a given document contains deliberative content,” and even where the material is post-decisional?

RESPONSE (b) (5)

[REDACTED]

- f. The OLC opinion also claims that providing Congress with non-deliberative or purely factual agency documents would raise “significant separation of powers concerns.” Do you agree, and if so, why?

RESPONSE: (b) (5)

[REDACTED]

- g. Given that non-deliberative, purely factual agency documents are clearly not considered part of any protected “deliberative process” under common law or statute, what is the legal justification for withholding such documents under Congressional subpoena?

RESPONSE (b) (5)

[REDACTED]

44. In the Fast and Furious litigation, the Department has relied on an extremely broad notion of executive privilege in its refusal to produce non-deliberative, post-decisional documents that would help Congress understand when and how the Department came to know that its Feb. 4, 2011 letter to me denying gunwalking was false. Specifically, the Department categorically refused, until Election Day last year, to produce *64,000 documents* even though the Attorney General recognized that at least some of those documents “[did] not . . . contain material that would be considered deliberative under

common law or statutory standards.”⁴ The OLC opinion on the matter suggests that assertion of privilege is proper “regardless of whether a given document contains deliberative material.”⁵

The Department relied on this overbroad view of executive privilege when it declined to bring the congressional contempt citation of Attorney General Holder before a grand jury.⁶ The Department sent this denial letter to the Speaker of the House before the contempt citation even reached the U.S. Attorney.⁷ The U.S. Attorney failed to answer my questions seeking an explanation of the facts and circumstances sufficient for Congress to determine whether he made an independent judgment regarding the refusal to present the citation.⁸

The law states that it is the “duty” of the U.S. Attorney “to bring the matter before the grand jury for its action.”⁹

- a. What does it mean for the U.S. Attorney to have a “duty” to present a congressional contempt citation to a grand jury?
- b. If the U.S. Attorney has any discretion in cases where there is a claim of Executive Privilege, does he also have an obligation to make an independent evaluation of such a claim? If not, please explain why not.
- c. Under the Department’s interpretation of the statute, what is left of the Congressional contempt power against any agency able to convince the President to assert executive privilege?
- d. Under the Department’s interpretation of the statute, what safeguards against a President’s improper claims of executive privilege if not the independent legal judgment of the U.S. Attorney charged by statute with presenting the contempt citation to a grand jury?
- e. The Department relies on its own OLC opinions, which claim, among other things, that the Department should not prosecute officials for contempt at least in part because Congress can resort to civil litigation to enforce its subpoenas. However, it is clear from the delays in the Fast and Furious litigation that this enforcement tool is insufficient to ensure that Congress has adequate access to information to carry out its oversight responsibilities. The House Committee has had to re-issue the subpoena twice to avoid the case being mooted at the beginning of each new Congress. This

⁴ Def.’s Mot. For Certification of Sept. 30, 2013 Order for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) at 8-9, *Committee on Oversight and Government Reform, U.S. House of Representatives v. Holder*, 1:12 cv 1332 (D.D.C. Nov. 15, 2013).

⁵ 36 Op. O.L.C. 1, 3 (Jun 19, 2012).

⁶ Letter from Senator Charles E. Grassley to U.S. Attorney Ronald Machen (June 29, 2012), at 2.

⁷ *Id.* at 1.

⁸ *Id.* at 1-2.

⁹ 2 U.S.C. § 194 (emphasis added).

gives the impression that the Department is delaying the process in hopes that political events may allow it to avoid a judicial resolution. What steps would you take to counter that appearance and resolve the dispute in a more timely way?

RESPONSE (b) (5)

[REDACTED]

45. If confirmed, will you pledge to personally re-evaluate the Department’s litigation strategy in the fast and furious matter, the merits of its positions, and refusal to settle the case up to this point and provide your conclusions to this Committee?

RESPONSE (b) (5)

[REDACTED]

46. Josephine Terry sent a letter to you dated January 26, 2015, informing you that Department of Justice officials had lied to her regarding the source of the weapons found at her son’s murder scene and withheld key information from the lead FBI investigator on the case. In spite of the findings and recommendations by the DOJ OIG and the ATF Professional Review Board, many of the officials involved remain employed by the Department or ATF. Ms. Terry asks that you review the conduct and performance of those officials and examine whether the ATF obstructed the FBI’s investigation of her son’s murder.

As Ms. Terry asks:

- a. Will you “review the conduct and performance of the Justice Department and ATF . . . to determine whether the discipline or other administrative action with regard to each employee was appropriate”?
- b. “[I]f ATF’s Professional Review Board did in fact recommend certain discipline such as termination for certain employees, [will you] determine why this has not occurred”?
- c. Ms. Terry also asks about evidence that officials may have initially concealed from the FBI agent investigating her son’s murder the fact that the weapons found at the scene traced back to Fast and Furious. Do you agree with Ms. Terry that, if this is true, these officials may have hindered and obstructed a federal criminal

investigation? If so, and if confirmed, will you look into it? If not, please explain why not.

RESPONSE (b) (5)

47. In November 2014, the Department delivered to the House 64,000 pages of documents related to Fast and Furious that it had withheld for three years, even though the Attorney General admitted that they were not all privileged. One of the documents is an email that shows that the Justice Department and the White House press offices attempted to stop CBS News from reporting on Fast and Furious.

In an email dated October 4, 2011, the Attorney General’s top press aide, Tracy Schmalzer, claimed that CBS News reporter Sharyl Attkisson was “out of control.”¹⁰ The Attorney General’s press aide also told White House Deputy Press Secretary Eric Schultz that she planned on calling CBS News anchor Bob Schieffer to pressure the network to block Ms. Attkisson’s Fast and Furious reporting. The White House Deputy Press Secretary replied, “Good. Her piece was really bad for the AG.”

The White House Deputy Press Secretary also told Attorney General Holder’s press aide that he was working with reporter Susan Davis to target Rep. Darrell Issa. In the same email chain, the White House Deputy Press Secretary tells Attorney General Holder’s press aide that he would provide Susan Davis with “leaks.” Ms. Davis wrote a critical piece on Representative Issa a few weeks later.

Ms. Attkisson also testified before the Committee that the Department physically barred her from attending a Fast and Furious briefing in a public building, while handpicking other reporters who were allowed to get past building security for the briefing.

- a. Do you believe the job of the taxpayer-funded press office at the Department of Justice should include pressuring networks not to run news stories that the Attorney General does not like?

RESPONSE (b) (5)

¹⁰ E. Schulz and T. Schmalzer e mail chain (Oct. 4, 2011), available at [http://www.judicialwatch.org/document archive/control/](http://www.judicialwatch.org/document/archive/control/); see also K. Pavlich, Document Dump Shows DOJ Worked With White House To Target ‘Out of Control’ Sharyl Attkisson For Fast and Furious Coverage, Townhall.com (Nov. 21, 2014).

- b. Is it appropriate for that press office to coordinate with the White House on “leaks” of negative information about a Committee Chairman conducting aggressive oversight of the Justice Department?

RESPONSE (b) (5)

[REDACTED]

- c. If confirmed, what would you do to curb this kind of activity in your press office?

RESPONSE (b) (5)

[REDACTED]

48. If confirmed, what steps would you take to ensure that reporters are not barred from briefings simply because they report on stories unfavorable to the Attorney General?

RESPONSE (b) (5)

[REDACTED]

49. On December 30, 2014, former CBS News reporter Sharyl Attkisson who reported on Operation Fast and Furious and Benghazi filed a complaint in court alleging that the government had conducted “unauthorized and illegal surveillance” of her computers and telephones.¹¹ It is unclear so far whether the surveillance was conducted by the government, but it does seem clear that there was a hack of her CBS computers. CBS News issued a press release confirming that there was a hack.¹²

Ms. Attkisson’s complaint alleges that her forensics experts found that propriety federal government software had been used to accomplish an intrusion on her work computer, though that is unconfirmed.¹³ In addition, both her work and personal computers

¹¹ Complaint at ¶ 1, *Attkisson v. Holder*, 2014 CA 8321 (D.C. Super. Ct. Dec. 30, 2014).

¹² See E. Wemple, CBS News confirms multiple breaches of Sharyl Attkisson’s computer, Washington Post Blog (June 14 2013).

¹³ Compl. ¶ 44.

allegedly showed evidence of attacks that were coordinated and highly-skilled.¹⁴ Ms. Attkisson filed a complaint with DOJ-OIG *and* the FBI regarding this matter, but the FBI never even interviewed her about her claim.¹⁵ In a letter to Sen. Coburn, DOJ sought to blame Ms. Attkisson for failing to “follow up” with the FBI regarding her complaint.¹⁶ Ms. Attkisson also has filed a FOIA request with the FBI, and received only a few pages in response so far. The documents indicate knowledge of the hack, but it is unclear what, if any, investigative steps the FBI took to pursue a case.

- a. Given the growing importance of cybersecurity as a priority for the Department and the chilling effects that politically motivated hacking could have on the First Amendment activities of news organizations, do you believe the FBI should find out who hacked into CBS News, regardless of who is responsible?

RESPONSE: (b) (5)

[REDACTED]

- b. In light of the allegation that a government agency or a contractor for a government agency may be responsible, if confirmed, what steps would you take to ensure that there is a thorough and independent investigation of the CBS hack?

RESPONSE (b) (5)

[REDACTED]

- c. If confirmed, how would you deal with the inherent conflict in the Department’s interest in both defending itself against litigation alleging some government liability and its interest in ensuring that there is a thorough and independent inquiry to find out who was responsible for the CBS hack?

RESPONSE (b) (5)

[REDACTED]

- d. The Department also has allegedly failed to respond to related FOIA requests in a timely and appropriate way. If confirmed, will you pledge to re-evaluate the

¹⁴ *Id.* ¶ 45.

¹⁵ *Id.* ¶¶ 47, 54; L. Grove, Ex CBS Reporter Sharyl Attkisson’s Battle Royale With the Feds, *The Daily Beast* (Jan. 9, 2015).

¹⁶ Letter from P. Kadzik to T. Coburn (Dec. 12, 2013), at 2.

Department's FOIA responses on this matter to date and seek to avoid costly FOIA litigation by being as transparent as possible? If not, please explain why not.

RESPONSE (b) (5)

[REDACTED]

- e. If confirmed, will you cooperate fully with this committee's inquiry into the Department's response to the CBS hack including providing internal documents about efforts to find out who was responsible? If not, please explain why not.

RESPONSE (b) (5)

[REDACTED]

50. The FBI is exempt from the normal protections that apply to other law enforcement agencies under the Whistleblower Protection Act.¹⁷ Operating outside of the traditional whistleblower protection framework, the Department's record of actually guarding whistleblowers from retaliation is historically weak.

For example, regulations designate specific individuals to whom FBI employees may make protected disclosures.¹⁸ Those individuals include

the Department of Justice's (Department's) Office of Professional Responsibility (OPR), the Department's Office of Inspector General (OIG), the FBI Office of Professional Responsibility (FBI OPR), the FBI Inspection Division (FBI-INSID) Internal Investigations Section (collectively, Receiving Offices), the Attorney General, the Deputy Attorney General, the Director of the FBI, the Deputy Director of the FBI, or to the highest ranking official in any FBI field office¹⁹

The regulations do *not* protect whistleblowers from retaliation when they make initial disclosures of wrongdoing to their direct or immediate supervisors.

In 2012, the President tasked the Attorney General to report on the effectiveness of the FBI whistleblower regulations.²⁰ The Department submitted its report a year late.²¹

¹⁷ 28 C.F.R. Part 27.

¹⁸ 28 C.F.R. § 27.1(a).

¹⁹ *Id.*

²⁰ The White House, Presidential Policy Directive/PPD 19 (Oct. 10, 2012), at 5 ["PPD 19"].

²¹ Department of Justice Report on Regulations Protecting FBI Whistleblowers (Apr. 2014) ["DOJ FBI Whistleblower Report"].

In that report, the Department noted that of 89 reviewed cases of whistleblower complaints, 69 were found to be “non-cognizable.” Further, a “significant portion” of those deemed “non-cognizable” involved disclosures that were “not made to the proper individual or office under 28 C.F.R. § 27.1(a).”²²

The Department recommended expanding the number of designated officials to whom whistleblowers may make a protected disclosure, but only to include the second-in-command of a field office, such as the Assistant Special Agent in Charge of a smaller field office or the Special Agent in Charge of a larger field office.²³ The Department declined to expand the category of designated officials to include an employee’s direct or immediate supervisor, even though, as the Department noted, “OSC believes that to deny protection unless the disclosure is made to the high-ranked supervisors in the office would undermine a central purpose of whistleblower protection laws.”²⁴

Notably, PPD-19 specifically defined a “protected disclosure” within the intelligence community, of which the FBI forms a part, as “a disclosure of information by the employee to a supervisor in the employee’s direct chain of command *up to and including* the head of the employing agency”²⁵ The FBI thus remains the *only agency* in the Executive Branch that does not protect disclosures made by employees to their direct or immediate supervisor.

Unfortunately, this inadequate regulatory framework is not the sole culprit for the weak protections afforded to FBI whistleblowers. I have personally spoken to current and former FBI employees whose cases languished anywhere between *nine and eleven years* before those employees won relief for retaliatory acts and practices committed against them for reporting waste, fraud, and abuse in the FBI.

- a. Why shouldn’t whistleblowers in the FBI who report waste, fraud, and abuse to their direct supervisors be protected?

RESPONSE (b) (5) [REDACTED]

- b. Do you believe that there is anything unique about the FBI that suggests its policy on this issue should be different from the rest of the law enforcement and intelligence communities? If so, please explain why.

²² DOJ FBI Whistleblower Report at 7.
²³ *Id.* at 13.
²⁴ *Id.* at 14.
²⁵ PPD 19 at 7 (emphasis added).

RESPONSE (b) (5)

- c. If confirmed, will you commit to personally reviewing any changes the Department makes to its policies and procedures in handling FBI whistleblower complaints?

RESPONSE (b) (5)

- d. If confirmed, will you provide this committee with regular updates on the Department's progress in improving the effectiveness and timeliness of its policies and procedures for addressing these claims?

RESPONSE (b) (5)

51. On September 5, 2014, I wrote to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the Office of Justice Programs (OJP) regarding allegations that OJJDP knowingly granted millions of taxpayer dollars to states that incarcerated runaway youth, foster youth, and other vulnerable minors in violation of the Juvenile Justice and Delinquency Prevention Act (JJDPA). OJJDP's responses to my inquiry confirmed whistleblowers' accounts of compliance monitoring failures at OJJDP.²⁶ The Inspector General has also detailed some of these failures in a January 2014 report.²⁷

The core problem appears to be OJJDP's failure to understand or implement its separate and distinct compliance monitoring obligations under the law:

- OJJDP is required to reduce a state's funding for a given year by 20 percent for each core requirement violated in the previous fiscal year.²⁸
- OJJDP is *also* required to ensure that such a state does not receive *any* JJDPA funds for the year, unless that state meets one of two criteria, including a showing of subsequent, substantial compliance with the requirement(s) it was violating.²⁹

²⁶ Letter from Sen. Charles E. Grassley, Chairman, S. Comm. on the Judiciary, to Hon. Karol Mason, Assistant Attorney General, U.S. Department of Justice (January 14, 2015), <http://www.grassley.senate.gov/sites/default/files/news/upload/CEG%20to%20OJP%20%28JJDP%20Act%20Grant%20Fraud%29%2C%2014%2015.pdf>.

²⁷ *Id.*

²⁸ 42 U.S.C. § 5633 (c)(1).

²⁹ 42 U.S.C. § 5633 (c)(2). Significantly, subsections (c)(1) and (c)(2) are conjoined by the operative "and."

Yet, OJJDP has admitted and defended a policy that appears to conflate these two obligations, by allowing non-compliant states to avoid the 20 percent reductions so long as they are able to demonstrate subsequent, substantial compliance with the non-compliant requirement(s).³⁰

Moreover, OJJDP admitted that “this [policy] does not appear to have been reduced to writing” even though “it has been the common practice since at least 1986.”³¹ In addition, OJJDP explained that “[it] has not historically maintained a comprehensive record of all communications with the 55 participating states and territories.”³²

This gives rise to a concern that this policy, questionable on its face, may be arbitrary as applied. Moreover, there is a growing concern as to just how many taxpayer dollars OJJDP has awarded to states that imprisoned vulnerable youth in violation of the JJDP Act since then.

- a. Do you agree that it is an inappropriate use of taxpayer dollars to reward states that lock up foster youth and runaways in violation of the Juvenile Justice Delinquency Prevention Act?

RESPONSE: (b) (5)

[REDACTED]

- b. If confirmed as Attorney General, will you personally look into this issue and cooperate fully with our inquiry including ensuring that the replies to our letters are timely?

RESPONSE: (b) (5)

[REDACTED]

52. In 2013, the Government Accountability Office (GAO) reported that Attorney General Holder took 366 flights for non-mission purposes aboard Department aircraft at a cost of \$5.8 million.³³ This report also states that in 2009 the FBI stopped reporting to the

³⁰ Letter from Hon. Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice, Office of Legislative Affairs, to Sen. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary (October 28, 2014).

³¹ Email from U.S. Department of Justice, Office of Legislative Affairs, to Staff of Sen. Charles E. Grassley, Ranking Member, and Sen. Patrick J. Leahy, Chairman, S. Comm. on the Judiciary (November 21, 2014).

³² *Id.*

³³ GAO, Executives’ Use of Aircraft for Nonmission Purposes, GAO 13 235 (Washington, D.C : February 2013).

General Services Administration (GSA) flights taken by senior federal officials aboard its aircraft, although reporting is required by Office of Management and Budget (OMB) Circular A-126.³⁴ Circular A-126 states that agencies must report semiannually to GSA each use of such aircraft for non-mission travel by senior executives.³⁵

- a. As it stands now, the Department does not report the Attorney General’s travel as other agencies do under OMB Circular A-126. If you were confirmed as Attorney General, would you commit to publicly reporting the amount of your travel on FBI jets? If not, why not?

RESPONSE (b) (5)

[REDACTED]

- b. If confirmed, would you limit your travel in order to save taxpayer money and ensure that the FBI aircraft are always available for counter-terrorism operational flights? If not, why not?

RESPONSE (b) (5)

[REDACTED]

- c. If confirmed, would you be willing to develop internal guidance or policies that would help guide and regulate the extent to which “required use” travelers do not inappropriately or overly use government aircraft for personal reasons? If not, please explain why.

RESPONSE (b) (5)

[REDACTED]

53. Although administrative leave is not authorized by statute, precedent allows it as an exercise of agency discretion, but only for occasional, short periods of time and only when it is in the best interests of the taxpayer.³⁶ In a 2002 Department of Justice (DOJ)

³⁴ *Id.*

³⁵ *Id.*

³⁶ To the Chairman, U.S. Civil Service Commission, 38 Comp. Gen. 203 (1958) (where removal of an employee is necessitated by safety concerns, only 24 hours administrative leave is appropriately authorized, and extensive paid leave pending an investigation does not qualify as a proper use of “administrative leave,” but rather “immediate” steps should be taken to reduce time during which an employee is on paid leave); Navy Department Reduction In Force Administrative Leave During 30 Day Notice Period, 66 Comp. Gen. 639, 640 (1987) (holding that decisions

memorandum on administrative leave, DOJ acknowledged that “components too frequently are placing employees on administrative leave rather than utilizing other more appropriate options.”³⁷ As a result, DOJ changed its policy to limit the use of administrative leave to 10 work days unless approved by the assistant attorney general for administration or his designee for a longer period.³⁸

However, an October 2014 Government Accountability Office (GAO) report found that from fiscal years 2011 to 2013, DOJ placed 1,849 employees on paid administrative leave for one month to one year.³⁹ The average number of days on administrative leave for these 1,849 employees was 38 days, which is significantly higher than the 10 work day limit stated in DOJ policy.⁴⁰ Moreover, 23 employees were on paid administrative leave for six months or more.⁴¹ It appears that DOJ is approving much more administrative leave than its policy suggests is appropriate.

In November 2014, I wrote Attorney General Holder about this issue. Given significant costs to the taxpayer for salaries and benefits and the fact that DOJ has an administrative

of the Comptroller General and the guidelines of the Office of Personnel Management limit an agency's discretion to grant administrative leave to situations involving brief absences); Ricardo S. Morado Excused Absence, 1980 WL 17293, 1 (1980) (when it became clear that an employee would not be returning to work, an agency was not authorized to grant administrative leave pending the separation); Miller v. Department of Defense, 45 M.S.P.R. 263, 266 (MSPB, 1990) (a settlement agreement was declared invalid as the Merit Systems Protection Board determined that the Department of Defense did not have the authority to grant an employee nine months of paid administrative leave, where said employee was to be removed at the end of the period of administrative leave, because there was no statutory provision that authorized the agency to grant paid administrative leave for such an “extended period of time”); *pet. for rehearing denied by Miller v. Dept of Defense*, 1992 U.S. App. LEXIS 2457 (Fed. Cir. Feb. 18, 1992); In the Matter of the Grant of Administrative Leave Under Arbitration Leave, 53 Comp. Gen. 1054, 1056 57 (the Comptroller General refused to grant an employee thirty days of administrative leave, where that employee was injured on the job and unable to work in his full capacity, as the grant of administrative leave constituted an “extended period of excused absence” that was not permitted under any statute); Nina R. Mathews Age Discrimination/Title VII Resolution Agreement Compensatory Damages, 1990 WL 278216, 1 2 (where an employee was granted twenty two weeks of administrative leave pay in settlement of a personnel claim, the agreement was deemed invalid by the GAO, as the Comptroller determined that there was no relevant legal basis by which the employee could be placed on extended administrative leave with pay); Excused Absence for Bar Examination Preparation, 1975 WL 8763, 1 (1975) (periods of 14, 28 and 31 days did not constitute “periods of brief duration” under which an agency had authority to grant administrative leave for employees to take their Bar examinations); Department of Housing and Urban Development Employee Administrative Leave, 67 Comp. Gen. 126, 128 (1987) (The Comptroller General held that the agency’s “decision to allow the employee to participate in a NIH therapeutic trial for 3 days a month in a cancer research effort being run by the National Cancer Institute is consistent with the broad framework of decisions of this Office and the FPM Supplement addressing the discretionary agency review of administrative leave requests”); Frederick W. Merkle, Jr. Administrative Leave, 1980 WL 14633, 1 (1980) (an eight week period could not constitute administrative leave for an employee awaiting a decision on his eligibility for early retirement, as it constituted an “extended period of time”); Gladys W. Sutton Administrative Leave in Lieu of Leave Without Pay, 1983 WL 27142, 1 (a five week period constituted an “extended period” where administrative leave could not be properly granted by an agency so that an employee could preserve her eligibility for a discontinued service retirement program).

³⁷ Diegelman, R. *Proper Use of Administrative Leave* [Memorandum]. (Washington, DC: September 27, 2002) Department of Justice

³⁸ *Id.*

³⁹ GAO, *Use of Paid Administrative Leave*, GAO 15 79 (Washington, D.C : October 2014).

⁴⁰ *Id.*

⁴¹ *Id.*

leave policy that purports to limit its use to 10 days or less absent unusual circumstances it is unclear why so many DOJ employees are taking so much administrative leave.

- a. If confirmed, how would you ensure that the Department actually limits its use of administrative leave?

RESPONSE (b) (5)

- b. How would you strengthen the Department's 10-day administrative leave policy to ensure that DOJ employees are not sitting at home for a six months or more collecting a check for not working?

RESPONSE (b) (5)

- c. If confirmed, will you to respond to my letter promptly and thoroughly so that this Committee can examine the detailed facts and circumstances that led to each of these employees being on leave for such extended periods of time?

RESPONSE (b) (5)

54. On November 19, 2013, and again on September 9, 2014, Inspector General Michael Horowitz testified that the Department is improperly impeding his access to grand jury records, Title III electronic surveillance documents, and Fair Credit Reporting Act consumer credit information.⁴²

⁴² U.S. Senate Committee on Homeland Security and Government Affairs, Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce; *Strengthening Government Oversight: Examining the Roles and Effectiveness of Oversight Positions Within the Federal Workforce*, (November 19, 2013) [hereinafter Senate Homeland Security Hearing]; <http://www.hsgac.senate.gov/subcommittees/fpfw/hearings/strengthening-government-oversight-examining-the-roles-and-effectiveness-of-oversight-positions-within-the-federal-workforce>; accessed March 5, 2014; see also U.S. House of Representatives Committee on the Judiciary: *Access to Justice?: Does DOJ's Office of Inspector General Have Access to Information Needed to Conduct Proper Oversight?* (September 9, 2014); <http://judiciary.house.gov/index.cfm/2014/9/hearing-access-to-justice-does-doj-s-office-of-inspector-general-have-access-to-information-needed-to-conduct-proper-oversight>; accessed September 23, 2014.

Recognizing that Inspectors General cannot fulfill their statutorily-mandated duty to conduct oversight without access to Department records, Section 6(a)(1) of the Inspector General Act authorizes Inspectors General to access:

all records, reports, audits, reviews, documents, papers, recommendations or other material available to the applicable establishment which relates to programs and operations with respect to which that Inspector General has responsibilities under this Act.⁴³

In certain limited circumstances, the law does allow the Attorney General to “prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena.”⁴⁴ However, the Attorney General is required to provide written notice to the Inspector General of the reasons for doing so and to forward a copy of that written notice to Congress.⁴⁵

Yet, the statutory procedure for written notice by the Attorney General and a report to Congress were not followed when the Department withheld grand jury records, wiretap documents, and consumer credit information from the Inspector General.⁴⁶ Eventually, the Inspector General obtained these records after the Attorney General and the Deputy Attorney General granted written permission.⁴⁷

Under the Act, however, the Attorney General is required to write to the Inspector General not when *permitting* access to records, but when *preventing an OIG review, altogether*.⁴⁸ In other words, the burden is placed on the Attorney General to explain in writing why the Inspector General’s work should be impeded, not *vice versa*. Under the statute, the Attorney General’s blessing on the IG’s work is not required. That is the essence of independence.

Last May, the Department’s leadership asked the Office of Legal Counsel to issue an opinion on this topic. In October, I asked that this opinion specifically address the legality of the Attorney General’s current practice. House Judiciary Committee Ranking Member, John Conyers, joined me in this request. We are still waiting for the OLC Opinion.

On February 3, 2015, the Inspector General issued a report pursuant to Section 218 of the Department of Justice Appropriations Act, 2015,⁴⁹ stating that the Federal Bureau of Investigation (FBI) has failed for reasons unrelated to any express limitation in Section

⁴³ 5 U.S.C. App. § 6(a)(1).

⁴⁴ 5 U.S.C. App. § 8E(a)(1), (2).

⁴⁵ 5 U.S.C. App. § 8E(a)(3).

⁴⁶ See Senate Homeland Security Hearing.

⁴⁷ *Id.*

⁴⁸ 5 U.S.C. App. § 8E(a)(3).

⁴⁹ Pub. L. No. 113 235, § 218, 128 Stat. 2130, 2200 (2014).

6(a) of the Inspector General Act (IG Act) to provide the Office of the Inspector General with timely access to certain records.⁵⁰

Section 218 provides that no appropriated funds shall be used to deny the Inspector General timely access to all Department records, or to impede his access to such records, unless in accordance with an express limitation of Section 6(a) of the IG Act.⁵¹ Section 218 also requires the Inspector General to report to Congress within five calendar days of any failures to comply with this requirement.⁵²

According to the February 3, 2015 report, the unfulfilled document requests were made on September 26, 2014 and October 29, 2014 as part of two investigations being conducted by the OIG under the Department's Whistleblower Protection Regulations for FBI employees, 28 C.F.R. pt. 27.⁵³

The main reason for the FBI's unwillingness to produce the requested records by the deadline requested by the Inspector General is the FBI's desire to continue its review of e-mails requested by the OIG to determine whether they contain any information which the FBI maintains the OIG is not legally entitled to access, such as grand jury, wiretap, and consumer credit information.⁵⁴ Further, the FBI further informed the OIG that the FBI would need the approval of the Attorney General or Deputy Attorney General in order to produce the requested records.⁵⁵

However, as noted above, the Attorney General's blessing on the IG's work is not required.

- a. If confirmed as Attorney General, will you commit to providing the OLC opinion to the Committee by a date certain?⁵⁶

RESPONSE (b) (5)

[REDACTED]

⁵⁰ Letter from Michael Horowitz, Inspector General, U.S. Department of Justice, to Sen. Thad Cochran and Sen. Barbara Mikulski, Sen. Comm. on Appropriations, and Rep. Harold Rogers and Rep. Nita Lowey, House Comm. on Appropriations (February 3, 2015) [hereinafter February 3 Report].

⁵¹ Pub. L. No. 113 235, § 218, 128 Stat. 2130, 2200 (2014).

⁵² *Id.*

⁵³ February 3 Report.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ In January 2012, OLC issued an opinion one month after it was requested, defending the power of the President to make recess appointments even when the Senate convenes for pro forma sessions. Of course, the Supreme Court unanimously struck down OLC's erroneous interpretation. But this shows that OLC can issue opinions rather quickly when it wants to.

- b. Given the clear language of the Inspector General Act, will you give me your commitment that, if confirmed, you will not stonewall the Inspector General or delay his work?

RESPONSE (b) (5)

[REDACTED]

- c. And if you do find it necessary to delay an inquiry for legitimate reasons, will you commit to immediately provide the written notice required by Section 8E(a)(3) of the Inspector General Act?

RESPONSE (b) (5)

[REDACTED]

- d. If you believe a clarification to the law is necessary to ensure unlimited access to records for the Inspector General, would you support adding “notwithstanding any other provision of law” to the access statute as a solution adequate to prevent further access denials and delays? If not, please explain why not?

RESPONSE (b) (5)

[REDACTED]

- e. Given the FBI’s ongoing impediment of the Inspector General’s independence and timely access to records, as detailed in the February 3, 2015 report, will you commit to resolving this dispute as soon as possible according to the explicit provisions of the Inspector General Act, should you be confirmed?

RESPONSE (b) (5)

[REDACTED]

55. Department of Justice attorneys have a great deal of power and discretion but I am concerned that without proper oversight, this power and authority can be abused without

consequences. For example, the Department of Justice’s Inspector General (IG) does not have the ability to investigate attorney misconduct. Rather, attorney misconduct is currently investigated by the Office of Professional Responsibility but this office does not have the same strong statutory independence as the IG. Currently, there are at least three examples of attorneys who remain employed by the Department despite evidence that these attorneys committed serious misconduct.

- a. A Federal judge found that Karla Dobinski, a trial attorney in the Civil Rights Division, engaged in a “wanton reckless course of action” when she posted comments to Nola.com news stories under a pseudonym about a trial where she provided evidence as a disinterested expert witness.⁵⁷ If confirmed, what steps will you take to ensure that appropriate disciplinary action is taken in this case, and will you pledge to provide updates to this committee about the status?

RESPONSE (b) (5)

[REDACTED]

- b. Stephanie Celandine Gyamfi, an attorney with the Department’s Voting Rights section, was found to have engaged in perjury during a 2013 DOJ IG investigation. In addition, Ms. Gyamfi posted comments regarding an ongoing matter at the Voting Rights section suggesting that the State of Mississippi should change its motto to “disgusting and shameful.”⁵⁸ If confirmed, what steps will you take to ensure that appropriate disciplinary action is taken in this case, and will you pledge to provide updates to this committee about the status?

RESPONSE (b) (5)

[REDACTED]

- c. A Federal judge wrote that DOJ attorneys attempted to perpetrate a “fraud upon the court” in a case involving Bureau of Alcohol, Tobacco, and Firearms Agent Jay Dobyms. U.S. District Court Judge Francis Allegra also took the unusual step of submitting these findings to Attorney General Holder.⁵⁹ If confirmed will you personally review Judge Allegra’s submission to ensure that appropriate disciplinary

⁵⁷ http://www.nola.com/crime/index.ssf/2013/09/doj_prosecutor_karla_dobinski.html

⁵⁸ http://www.wtok.com/home/headlines/Comment_Flap_Continues_150703975.html

⁵⁹ http://www.foxnews.com/politics/2015/01/29/federal_judge_blasts_doj_lawyers_in_case_fast_furious_whistleblower/

action is taken in this case, and will you pledge to provide updates to this committee about the status?

RESPONSE (b) (5)

[REDACTED]

- d. On January 22, 2015, the District Court of the Southern District of Georgia received a letter from the U.S. Attorney’s Office informing it that Assistant U.S. Attorney Cameron Ippolito and ATF Special Agent Lou Valoze engaged in an improper relationship and provided potentially false or misleading information to a government agency in order to secure a visa for an informant. This has compromised cases in which Ms. Ippolito and Mr. Valoze collaborated and has already required Giglio disclosures in four separate cases. Ms. Ippolito and Mr. Valoze’s actions have harmed the Federal government and the Department of Justice. If confirmed, what steps will you take to ensure that appropriate disciplinary action is taken in this case, and will you pledge to provide updates to this committee about the status?

RESPONSE (b) (5)

[REDACTED]

- e. What steps would you take to create a more independent and credible system of attorney discipline at the Department?

RESPONSE (b) (5)

[REDACTED]

- f. Would you support transferring the DOJ/OPR function to the Inspector General so that there can be an independent reviews of attorney misconduct allegations at the Department?

RESPONSE (b) (5)

[REDACTED]

- g. If not, please explain what is special or unique about attorney misconduct that should shield it from oversight by the Department’s Inspector General like all other types of misconduct?

RESPONSE (b) (5)

56. According to media reports, in Fairfax County, Virginia, an unarmed man, John Geer, was shot by a police officer while standing in his home, and while, according to other police officers who were present at the scene, his arms were raised above his shoulders, and he was then left unattended for an hour where he bled to death.⁶⁰

In December 2014, the Department’s Civil Rights Division found the Cleveland Division of Police engaged in a pattern or practice of unreasonable and unnecessary use of force.⁶¹ The investigation was launched in March 2013 following a number of high-profile use of force incidents and requests from the community and local government to investigate.⁶²

On January 21, 2015, the Department of Justice confirmed that the following investigations are still ongoing at the Civil Rights Division,⁶³

- Shooting death of Mike Brown (Ferguson, Missouri) initiated August 11, 2014
 - Shooting death of Eric Garner (Staten Island) initiated July 18, 2014
 - Shooting death of John Geer (Fairfax County, Virginia) initiated February 11, 2014
- a. It is imperative that cases of alleged police misconduct are handled on a fair, impartial, and timely manner so that officers who have used force in an inappropriate way are held accountable and those who have acted lawfully are swiftly exonerated so that they may reclaim their reputations and resume their duties. If confirmed as Attorney General, will you ensure the thorough and timely resolution of these cases?

RESPONSE (b) (5)

- b. If confirmed as Attorney General, what would you do to ensure more transparency and better statistics on law enforcement’s use of deadly force *nationwide*?

⁶⁰ Tom Jackman, “John B. Geer had hands up when shot by police, four officers say in documents,” The Washington Post, January 31, 2015, http://www.washingtonpost.com/local/crime/officer_who_shot_john_geer_says_he_moved_hands_toward_waist_3_other_officers_say_no/2015/01/31/7cc2c0da_a7f6_11e4_a06b_9df2002b86a0_story.html.

⁶¹ U.S. Department of Justice, *Justice Department and City of Cleveland Agree to Reform Division of Police After Finding A Pattern or Practice of Excessive Force*, December 4, 2014, <http://www.justice.gov/usao/ohn/news/2014/04deccpd.html>.

⁶² *Id.*

⁶³ Email from U.S. Department of Justice, Office of Legislative Affairs, to Staff of Sen. Charles E. Grassley, Chairman, S. Comm. on the Judiciary (January 21, 2015).

RESPONSE (b) (5)

[REDACTED]

57. On December 23, 2014 Senator Leahy and I sent Attorney General Holder a letter concerning the use of cell-site simulators by law enforcement agencies.⁶⁴ According to information provided to Judiciary Committee staff by the Federal Bureau of Investigation, these devices can capture the serial numbers of thousands of cell-phones in its vicinity by mimicking cell-phone towers.

The FBI is in a unique position to shape how the device is used by law enforcement, because state and local police departments are required to coordinate their use of the device with the FBI.⁶⁵ The FBI only recently began requiring its agents to obtain a search warrant whenever the device is used as part of an FBI operation, but there are several broad exceptions that may swallow this rule.⁶⁶

For example, the FBI's new policy does not require a search warrant in cases in which the technology is used in public places or other locations at which the FBI deems there is no reasonable expectation of privacy.⁶⁷

I am concerned about whether the FBI and other law enforcement agencies at the Justice Department have adequately considered the privacy interests of other individuals who are not the targets of the interception, but whose information is nevertheless being collected when these devices are being used. I understand that the FBI believes it can address these interests by maintaining that information for a short period of time and purging the information after it has been collected.⁶⁸ But there is a question as to whether this sufficiently safeguards privacy interests if there is insufficient oversight and transparency regarding the use of this type of technology.

⁶⁴ Letter from Sen. Charles E. Grassley, and Sen. Patrick Leahy, S. Comm. on the Judiciary, to Hon. Eric Holder, Attorney General, and Hon. Jeh Johnson, Secretary of Homeland Security, (December 23, 2014), http://www.leahy.senate.gov/download/12_23_14_pjl_and_ceg_to_doj_and_dhs1.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

- a. If confirmed as Attorney General, will you commit to reviewing the legal authority used to collect information from the cell phones of innocent third parties who are not the targets of an interception order to ensure that it meets constitutional requirements and protects their privacy interests?

RESPONSE (b) (5)

[REDACTED]

- b. What steps would you take to strengthen oversight to ensure that there is no unauthorized retention of data collected by these devices?

RESPONSE (b) (5)

[REDACTED]

- c. Given the FBI’s role in making the devices available to state and local authorities, do you believe the Department has any responsibility to ensure that state and local authorities have sufficient oversight and safeguards in place to prevent abuses? If so, what steps would you take to do so if confirmed?

RESPONSE (b) (5)

[REDACTED]

58. According to the State Department, “[t]hose who patronize the commercial sex industry form a demand which traffickers seek to satisfy.”⁶⁹ Attorney General Holder has identified human trafficking and sexual exploitation of children as priority goals for investigation and litigation at the Justice Department.⁷⁰ In December 2012, Inspector General Michael Horowitz reported that three Drug Enforcement Administration agents

⁶⁹ U.S. Department of State, Trafficking in Persons Report (June 2008), 24.

⁷⁰ U.S. Department of Justice, Strategic Plan, Fiscal Years 2014 2018 (February 2014), 2.

admitted to having used their DEA Blackberry devices to arrange for paid sexual services while stationed in Cartagena, Colombia.⁷¹

These actions were an embarrassment to our nation, but the true victims are the children, women, and other vulnerable individuals who are trafficked into prostitution to satisfy this demand. In the Inspector General's words:

Even where prostitution is legal, it is often an abusive activity that involves coercive relations and it can contribute to human trafficking, a crime that DOJ seeks to eradicate. [E]mployees who engage in the solicitation of prostitution while on official travel or when stationed in foreign countries undermine their own credibility and DOJ's effectiveness in addressing this priority.⁷²

For this reason, I am deeply troubled to learn that the Department of Justice does not have a zero-tolerance policy requiring the dismissal of employees who engage in the solicitation of prostitution.⁷³ The Department currently employs more than 1,200 permanent positions abroad, and employees go on more than 6,100 trips a year to more than 140 countries.⁷⁴

According to a 2012 State Department cable on human trafficking:

It is the position of the U.S. government that the procurement of commercial sex can fuel the demand for sex trafficking. Women, children, and men are trafficked into the commercial sex trade *regardless of whether prostitution is legal or criminalized in a country*, and thus, the procurement of commercial sex runs the risk of facilitating or supporting human trafficking.

There are concerns that prostituted youth, including LGBT youth, are especially vulnerable to human trafficking and other forms of exploitation. Department employees should understand that a victim of sex trafficking may not appear to be under duress, given that coercion and threats of violence are often used to hold people in servitude. Indeed, there is a good chance that a sex trafficking victim will appear to be engaging in a commercial sex transaction willingly

Further, assumptions based on appearances as to whether or not an individual is 18 years old are frequently erroneous, as many brothel managers and pimps dress minors to look older. Purchasing sex from a minor is a serious crime under U.S. law.⁷⁵

⁷¹ Letter from Michael Horowitz, Inspector General, U.S. Department of Justice, to Sen. Joe Lieberman, Chairman, and Sen. Susan Collins, Ranking Member, Sen. Comm. on Homeland Sec. and Gov. Affairs (Dec. 20, 2012), 3.

⁷² U.S. Department of Justice, Office of Inspector General, *Review of Policies and Training Governing Off Duty Conduct by Department Employees Working in Foreign Countries* (January 2015), 7.

⁷³ *Id.* at 48 50.

⁷⁴ *Id.* at ii.

⁷⁵ *Id.* at 40 41.

Given the gravity of these concerns, it is unclear why the Department has *not* instituted a policy that incentivizes employees to *steer well clear* of facilitating or committing these heinous crimes.

If confirmed as Attorney General, will you implement a zero-tolerance policy that requires the dismissal of any employee who engages in the solicitation of prostitution, without exception? If not, please explain why.

RESPONSE: (b) (5)

[REDACTED]

59. The incumbent Attorney General criticized state so-called “stand your ground” laws under which a person who otherwise has a legitimate claim of self-defense is not required to flee before exercising the option of defensive force. This rule is also part of federal common law, as articulated by the U.S. Supreme Court in cases such as *Beard v. U.S.*, 158 U.S. 550, 564 (1895) and *Brown v. U.S.*, 256 U.S. 335, 343 (1921).

- a. What is your position on state stand your ground laws? If you oppose such laws, do you believe DOJ has a role in opposing such laws? If you believe that DOJ has such a role, what is it?
- b. Under what circumstances do private citizens have the right to use force, including deadly force, to defend themselves and others from imminent threats of unlawful, deadly harm?

RESPONSE (b) (5)

[REDACTED]

60. I believe we should do everything in our power to stop the poaching of elephants, as well as the illicit trade of ivory and other wildlife products. It is my understanding that the administration is moving forward with a regulation that would make it illegal to sell items containing ivory in the United States unless the owner can prove with documentation the item is more than 100 years old. The administration claims this regulation would reduce poaching and international illicit trade in ivory.

Ivory is commonly found in chess sets, tea pots, firearms, musical instruments and myriad other objects. Can you please explain how banning the domestic sale of these legally possessed items – most of which were acquired long ago when documentation was not required – would help achieve the administration’s goals? Don’t you believe the

Department of Justice should be directing resources to combat actual wildlife traffickers, much like you have done in New York?

RESPONSE: (b) (5) [REDACTED]

61. The Executive Office for U.S. Attorneys (EOUSA) is responsible for the administration of FOIA requests for records held by the 94 U.S. Attorneys Offices (USAOs). Annual FOIA statistics are presented in aggregate by EOUSA and do not provide FOIA performance data on individual USAOs. EOUSA reported that it had 1,525 pending FOIA requests at the start of fiscal year 2014. How many of those pending requests were pending with the Eastern District of New York?

RESPONSE (b) (5) [REDACTED]

62. EOUSA reported in aggregate that only 191 (7%) of the 2,729 FOIA requests processed in fiscal year 2014 were “fully granted.” How many FOIA requests were processed by the Eastern District of New York and how many of them were “fully granted”?

RESPONSE (b) (5) [REDACTED]

63. EOUSA reports the aggregate response time for all processed perfected FOIA requests. In fiscal year 2014, the median number of days for response was 90 and the average number of days was 132. What was the Eastern District of New York’s median and average number of days for response?

RESPONSE (b) (5) [REDACTED]

64. EOUSA reported that 1,783 FOIA requests were “backlogged” at the end of fiscal year 2014. How many FOIA requests were “backlogged” with the Eastern District of New York?

RESPONSE (b) (5)

65. As you know, the Judiciary Committee has oversight responsibility over the Department of Justice. And to help fulfill those responsibilities, last fall, one of the attorneys on my committee staff, a former Department prosecutor, traveled to Iowa to meet with federal law enforcement.

While there, he spent time in both judicial districts in Iowa. He met with the FBI, the DEA, with local law enforcement, and with the U.S. Marshals. But he was told by the Department of Justice here in Washington that the Department would not make anyone from either of the United States Attorney's Offices in Iowa available for a meeting with him, even as a courtesy.

Are you committed to making sure Congressional staff can meet, as appropriate, with local Department of Justice personnel in the states, while of course observing all ethical rules about discussing specific cases or investigations? I think most Americans would be surprised that local U.S. Attorney's offices are not allowed to speak with their Senator's staff under this administration.

RESPONSE (b) (5)

66. In September 2014, it was reported that the President was expected to sign an executive order that would require the Pentagon, the Justice Department, the Department of Homeland Security and other agencies to reveal more details about the size and surveillance capabilities of their drone programs. The order would also reportedly require these agencies to reveal the policies they have in place to protect privacy and civil liberties in connection with their use of drones.

The President, however, has not yet issued this executive order. Do you support the issuance of such an order, and if you are confirmed, will you commit to both explaining this delay to me and for advocating for one?

RESPONSE (b) (5)

67. I wrote to the Department of Justice back in October 2013 concerning its handling of a small number of cases referred to it in which National Security Agency employees intentionally and willfully abused surveillance authorities, in many cases to spy on their significant others. The press calls these cases “LOVEINT.” I also spoke to Attorney General Holder about the request when he was before the committee last January. He told me he would respond soon.

It has been over a year, and I have not received a response. I understand that the overwhelming majority of those who work in our national security and intelligence communities are dedicated, law-abiding people who deserve our profound thanks for helping to keep us safe. Nonetheless, there must be appropriate accountability for those few who violate the trust placed in them.

Can you commit to me that if you are confirmed, you will respond to my letter within 30 days?

RESPONSE (b) (5)

68. FBI Director Comey has been talking a lot recently about the increasing inability of law enforcement officers to be able to access evidence on computers, cell phones and other devices because of encryption, even when they have obtained a valid search warrant. He is clearly worried about what he calls “Going Dark,” and I hear the same from state and local law enforcement in Iowa.

On the other hand, the civil liberties community and technology companies argue that building in a door for law enforcement to bypass this encryption on their products, even when law enforcement has obtained proper legal authority, will weaken the encryption and make their customers more vulnerable to being hacked. That would obviously be a serious problem as well.

Do you have a perspective on this problem and any potential solutions? Have you felt the effects of the “Going Dark” issue in cases your office has handled?

RESPONSE (b) (5)

69. In December 2014, President Obama announced that the administration would begin to normalize diplomatic relations with Cuba. However, it is estimated that as many as 70 fugitives from our criminal justice system are being provided political asylum there. Among them are a number of accused killers of law enforcement officers, including

Joanne Chesimard, who was convicted of executing a New Jersey police officer in 1977. She subsequently escaped from prison, and is currently on the FBI's list of Ten Most Wanted Terrorists. But almost immediately after President Obama announced the change in U.S. policy toward Cuba, the Cuban government made clear that there would be no change in their refusal to hand over fugitives like Chesimard.

- a. Do you think it was appropriate for the President to change U.S. policy toward Cuba, and to provide that government the benefit of increased trade and contact with the United States, without that government agreeing to return these fugitives to our criminal justice system to face justice?

RESPONSE (b) (5) [REDACTED]

- b. If confirmed, what will you do to bring these fugitives to justice in the United States?

RESPONSE: (b) (5) [REDACTED]

70. I was glad to hear you say during your hearing that you do not support the legalization of marijuana. As you know, in 2013, the Department of Justice decided that it would not seek to strike down state laws in Colorado, Washington, and elsewhere that have legalized the recreational use of that drug, so long as these states implement effective regulatory regimes that protect key federal interests. This policy is outlined in the August 29, 2013 Cole Memorandum.

- a. In some of these states, like Colorado, businesses are currently advertising the availability of recreational marijuana on websites and on television news programs such as 60 Minutes. To be clear, do you agree that individuals that manufacture and distribute marijuana in that state are breaking federal law, no matter what state law permits?

RESPONSE (b) (5) [REDACTED]

- b. I understand the Department of Justice is not gathering data on the federal priorities identified in the Cole Memorandum to evaluate whether that policy needs re-visiting. Yet these priorities are already being negatively affected, including through the increasing diversion of recreational marijuana to nearby states like Iowa. This sounds to me like the Department does not want to know how its policy is functioning. Even the New York Times has editorialized that it's important to evaluate whether the states are "holding up their end of the bargain." Do you believe the Department should be systemically collecting data related to these federal priorities in a centralized place, establishing metrics, and analyzing the data for the purpose of evaluating whether the policy outlined in the Cole Memorandum is working, and if you are confirmed will you commit to taking these steps?

RESPONSE: (b) (5) [Redacted]

- c. As you also mentioned in your testimony, in some of these states there is a specific problem presented by edible marijuana products falling into the hands of children. Some of these marijuana products, as well as other products containing different illegal drugs like methamphetamine, are marketed and packaged like candy. Would you support legislation to address this problem by increasing the penalties for those manufacturers or distributors of controlled substances that know, or have reasonable cause to believe, that their controlled substances will be distributed to minors? If confirmed, would you commit to working with me on such legislation?

RESPONSE: (b) (5) [Redacted]

- d. Attorney General Holder has indicated that he believes that marijuana businesses in states like Colorado should have access to the U.S. banking system. Do you agree? If so, doesn't depositing the proceeds of marijuana businesses into banks violate the federal laws prohibiting money laundering, and do you believe it is appropriate for the nation's top law enforcement officer to advocate for conduct that violates those laws?

RESPONSE: (b) (5)

[REDACTED]

- 71. I have concerns with this Administration's preference to treat al-Qaeda terrorists as criminal defendants with the same rights as U.S. citizens, as opposed to unlawful combatants subject to military detention and prosecution under the law of war. Below is a hypothetical situation that could well present itself to you if you are confirmed.

If on your first day as Attorney General, the U.S. military captured Ayman Al-Zawahiri, the current leader of Al-Qaeda, and transported him to a ship in the Mediterranean Sea or the Persian Gulf, what advice would you give the President about his detention, interrogation, and possible trial, and what factors would you weigh in formulating that advice?

- a. Specifically, would you recommend that he be sent to Guantanamo Bay for detention and interrogation with those who planned the 9/11 attacks? If not, where would you advise that this detention and interrogation take place? And by whom? Why?
- b. When, if at all, would you recommend that he be read Miranda rights? Why?
- c. Would you advise that he be tried in civilian court or through the military commissions system, and why?

RESPONSE (b) (5)

[REDACTED]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

72. Law enforcement and national security officials have discussed how critical the surveillance authorities under Section 702 of the Foreign Intelligence Surveillance Act were to stopping a plot by Najibullah Zazi, an American who was born in Afghanistan, to bomb the New York City subway in 2009. Your office, the Eastern District of New York, handled that case.

How important were these authorities to that case, and how were they used to identify and stop Mr. Zazi from killing an untold number of Americans?

RESPONSE: (b) (5) [Redacted]

73. As you probably know, I've been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors, and the inability of family farmers and producers to obtain fair prices for their products. I've also been concerned about the possibility of collusive and anti-competitive business practices in the agriculture sector. Do I have your commitment that the Antitrust Division will pay close attention to agribusiness competition matters? Can you assure me that agriculture antitrust issues will be a priority for the Justice Department if you are confirmed to be U.S. Attorney General?

RESPONSE: (b) (5)

[REDACTED]

74. Historically, the Justice Department has not paid much attention to monopsony (buyer power) issues, focusing more on monopoly (seller power) and consumer effects. Do you intend to use your antitrust authorities to look into monopsony issues in the agriculture sector? Please explain.

RESPONSE (b) (5)

[REDACTED]

75. In 1986, Congress amended the Lincoln-era False Claims Act to strengthen the right and incentives of private citizens to help the federal government hold contractors accountable for submitting false and fraudulent claims. Those whistleblowers, called relators, uncover the vast majority of incidents of waste, fraud, and abuse in federal contracting. In Fiscal Year 2013, relators accounted for 89 percent of new FCA actions.⁷⁶ And the FCA overall has been hugely successful in recovering funds for the federal government. In Fiscal Year

⁷⁶ Department of Justice, Civil Division, Fraud Statistics Overview (Oct. 1, 1987 – Sept. 30, 2013).

2014 alone, the FCA was responsible for nearly \$6 billion in recovered funds.⁷⁷ Because the FCA is so effective, well-funded interests in various industries are always attempting to undermine it.

- a. How many FCA complaints have you received during your tenure as U.S. Attorney for the Eastern District of New York? In how many of those cases did your office intervene? What policies and procedures did you look to in reaching these intervention determinations?

RESPONSE

(b) (5)

[REDACTED]

- b. If confirmed, will you vigorously enforce the provisions of the False Claims Act, and will you devote adequate resources to investigating and prosecuting FCA cases?

RESPONSE

(b) (5)

[REDACTED]

(b) (5)

[REDACTED]

- c. What should DOJ's policy be with respect to the settlement of False Claims Act cases which the Justice Department does not join, where the law provides that the qui tam plaintiff may prosecute the action? For example, is it the policy of the DOJ to undertake direct negotiations with the defendant without qui tam counsel in such cases? Are there any circumstances in which it would be appropriate for

⁷⁷ Press Release, Department of Justice, Justice Department Recovers Nearly \$6 Billion from False Claims Act Cases in Fiscal Year 2014 (Nov. 20, 2014).

the Justice Department to negotiate settlement of a non-intervened FCA case without qui tam counsel's involvement?

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted]

76. What should DOJ's policy be with respect to the settlement of False Claims Act cases which the Justice Department does not join, where the law provides that the qui tam plaintiff may prosecute the action? For example, is it the policy of the DOJ to undertake direct negotiations with the defendant without qui tam counsel in such cases? Are there any circumstances where it would be appropriate for the Justice Department to negotiate settlement of a non-intervened FCA case without qui tam counsel's involvement?

RESPONSE: (b) (5) [Redacted]

(b) (5) [Redacted]

77. What should DOJ's policy be with respect to multipliers on single damages in False Claims Act cases? Are there ever instances where the Justice Department should seek to collect less than single damages?

RESPONSE (b) (5) [Redacted]

78. On August 1, 2013, you wrote to me in your capacity as the U.S. Attorney for the Eastern District of New York seeking information in connection with an investigation conducted by your office. The request was signed on your behalf by Assistant U.S. Attorney James

D. Gatta. Your letter sought copies of two letters and their attachments from my office one letter addressed to Representative Elijah Cummings and the other addressed to me and Representative Darrell Issa.

The letters your office sought copies of were written by Joshua Levy, the attorney for David Voth. Mr. Voth was the ATF Group Supervisor responsible for Fast and Furious. The letters from Mr. Levy contained numerous attachments of internal ATF and DOJ documents in an attempt to defend Mr. Voth's role in Fast and Furious and attack the whistleblowers who eventually exposed the operation. It is unclear how Mr. Levy or Mr. Voth came into possession of some of the documents. In addition to Mr. Levy providing his letter and attachments to my office, it appears someone provided them to the press as well.⁷⁸

Following receipt of your letter, Mr. Gatta also contacted the Office of Senate Legal Counsel seeking permission to conduct an interview with members of my staff. Following a cordial and cooperative discussion, there was no further follow-up from your office.

- a. Were you personally aware of this document request or interview request at the time, and did you approve either of them?
- b. What potential crime was your office investigating?
- c. What were the facts and circumstances that served as the predicate for the investigation?
- d. What nexus to the Eastern District of New York justified the involvement of your office?
- e. What is the current status of the investigation?
- f. In your testimony before the Committee, you indicated that your involvement with Fast and Furious-related matters was limited to your service on the Attorney General's Advisory Committee, which focused on disseminating lessons learned from the flawed investigative techniques to your U.S. Attorney colleagues. Yet your August 2013 letter request to me suggests that your office investigated something involving the ATF Group Supervisor in Phoenix most directly responsible for the operation. Please explain the apparent discrepancy.

RESPONSE (b) (5)

[REDACTED]

⁷⁸ Associated Press, "Key ATF agents in Fast and Furious case blame prosecutors," April 16, 2012, http://azcapitoltimes.com/news/2012/04/16/key_atf_agents_in_fast_and_furious_case_blame_prosecutors/.

(b) (5) [REDACTED]

(b) (5) [REDACTED]

79. The Firearms Owners Protection Act of 1986 amended the Gun Control Act of 1968 by adding the following language, now located in 18 U.S.C. 926(a):

No...rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established.⁷⁹

During the course of my investigation into ATF's Operation Fast and Furious, my office received allegations from multiple gun dealers in Arizona that ATF personnel routinely photocopy all ATF form 4473s (Firearms Transaction Record) and book bound entries in connection with routine annual inspections of licensed gun dealers. Dealers from other parts of the country have made similar allegations more recently.

Although federal firearms licensees felt uncomfortable turning over the records of lawful gun purchases *en masse*, they also felt obligated to comply for fear of regulatory reprisals from ATF. These administrative requirements could be used to create a national gun registry of law-abiding gun owners, which is specifically prohibited by law.

Also in the course of the Fast and Furious investigation, Congress learned about the ATF's use of the Suspect Gun Database, a feature of ATF's Firearms Tracing System. ATF agents added extensive numbers of firearms into the Suspect Gun Database. It is unclear what, if any, administrative guidelines detail when it would be appropriate to do so. The Suspect Gun Database could be used to track information about gun owners even when ATF does not have enough evidence to meet the legal standard for seizing a firearm or any other articulable criteria for entering the information about the gun and the purchaser into a database. With no clear criteria for adding a firearm connected to an

⁷⁹ Firearms Owners Protection Act, 1986; Pub. L. No. 99 308, May 19, 1986; 100 Stat. 449, 459.

investigation to the Suspect Gun Database, the decision appears to be largely up to the discretion of an individual ATF agent.

- a. Does the Suspect Gun Database, which contains purchaser, dealer and transaction information, comply with the Firearms Owners' Protection Act of 1986? If so, what is the legal basis for that claim? And if confirmed, what steps would you take to ensure that ATF only adds information about gun owners into its databases in compliance with the law?
- b. If confirmed, what steps would you take to determine the extent to which ATF is photocopying or photographing all ATF form 4473s and book bound entries in connection with routine annual inspections of licensed gun dealers?
- c. Do you agree that such a practice would be tantamount to a national gun registry of all gun owners who purchased firearms from a licensed dealer? If so, please explain what steps you would take, if confirmed, to ensure that no such practice was sanctioned or permitted by the Justice Department? If not, please explain why not.
- d. Does 18 U.S.C. Section 923(g)(7) govern the addition of data to the Suspect Gun Database and does it impose any limiting criteria or legal standards on the addition of data to the Suspect Gun Database?
- e. What administrative steps would you propose to ATF to ensure that only firearms truly related to a criminal investigation are added to the Suspect Gun Database?
- f. Will you require ATF to purge any purchaser information that is illegally in its databases, including in the Multiple Sales System, which, under ATF's own rules, must be taken out of the system after two years if there is no connection to any firearms trace?

RESPONSE (b) (5)

[REDACTED]

80. In 2012, the Department of Justice and Securities Exchange Commission (SEC) issued joint guidance detailing Foreign Corrupt Practices Act (FCPA) enforcement information and the agencies' enforcement priorities. While the guidance clarified portions of the law and some of the agencies' enforcement theories, many companies and individuals seeking to comply with the FCPA have asked for further, and continued, clarification. This request was expressed to Attorney General Eric Holder and Assistant Attorney General Leslie Caldwell during previous Committee hearings.

- a. If confirmed, will you commit to working with companies and individuals to further improve the Guidance?

RESPONSE (b) (5)

[REDACTED]

- b. Will you commit to updating the Guidance, when necessary, to reflect changes in DOJ enforcement practices?

RESPONSE (b) (5)

[REDACTED]

- 81. In the area of FCPA enforcement, there is little guiding case law available for compliance practitioners to rely on. However, the FCPA Guidance that was issued in 2012 took an important first step in helping practitioners understand how the enforcement agencies' interpret the statute. The Guidance includes six anonymized examples of declinations instances where the DOJ and SEC declined to bring FCPA-related enforcement actions in recognition of the companies' timely voluntary disclosures, meaningful cooperation, and sophisticated compliance policies and controls. The continued publication of FCPA declinations would foster greater FCPA compliance by providing practitioners with a better understanding of how the FCPA is interpreted. If confirmed, would you support increasing DOJ transparency regarding declination decisions?

RESPONSE (b) (5)

[REDACTED]

QUESTIONS FROM SENATOR HATCH

1. On April 25, 2013, Professor Paul Cassell of the University of Utah College of Law testified before the House Judiciary Subcommittee on the Constitution regarding implementation of crime victims’ rights statutes. These include the Mandatory Victim Restitution Act, 18 U.S.C. §3663A, and the Crime Victims Rights Act, 18 U.S.C. §3771, both of which I helped to enact. He suggested that your office had failed to follow these statutes in a sealed case involving a racketeering defendant who had cooperated with the government. Specifically, he cited documents appearing to show that your office failed to notify victims of the sentencing in that case and had arranged for the racketeer to keep the money he had stolen from victims, even though the law makes restitution mandatory. Please explain in detail how your office protected the rights of crime victims in this case and, in particular, how it complied with the mandatory restitution provisions of these two statutes.

RESPONSE (b) (5)

[Redacted response text]

(b) (5)

[Redacted response text]

(b) (5)

[Redacted response text]

(b) (5)

[Redacted response text]

(b) (5) [Redacted]

(b) (5) [Redacted]

2. For several years, then-Senator Joe Biden and I worked to insure that the Justice Department supported youth mentoring organizations. We helped groups like the Boys and Girls Clubs of America greatly expand the number of those they serve by partnering with the Office of Justice Programs, which you will oversee if appointed to be Attorney General. In recent years, the President’s budgets have proposed to reduce funding for youth mentoring grants and Congress has restored and even increased that funding. Can you assure me that, as Attorney General, you will work with OJP and others to make sure that funds are directed where they can do the most good and maximize the delivery of needed services?

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted]

3. In your hearing on January 28, I urged you to enforce laws prohibiting child pornography and to help victims receive restitution. Adult obscenity also lacks First Amendment protection and harms individuals, families, and communities. It is connected to sexual exploitation and violence against women as well as to human trafficking and is a destructive force in marriages. Even though the Obscenity Prosecution Task Force has been disbanded and prosecution of adult obscenity brought back under the Child Exploitation and Obscenity Section, will you commit to aggressively enforcing the adult obscenity laws and provide current data about the cases initiated and prosecuted by the Department that involve only adult obscenity?

RESPONSE (b) (5)

[REDACTED]

4. I understand that the Justice Department is in the process of reviewing the ASCAP and BMI consent decrees. I want you to know how interested I am in this process and how important it is to the future of songwriters. Will you commit to making meaningful revisions to the decrees as soon as possible?

RESPONSE: (b) (5)

[REDACTED]

5. It has been reported that the Justice Department systematically targets lawful businesses by pressuring financial and banking services providers to stop doing business with firearm and ammunition companies and others dubbed “high risk.” Do you believe that this type of targeting is appropriate and will you continue his practice if appointed to be Attorney General?

RESPONSE (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

6. Several years ago, the ATF was removed from the Treasury Department and became a stand-alone agency and the Department of Homeland Security was created. The ATF and DHS often work together and share many of the same tasks. Do you believe the ATF should remain a separate agency or should it be merged with DHS?

RESPONSE (b) (5)

[REDACTED]

7. I disagree with the Justice Department’s decision not to enforce federal marijuana laws in states that have legalized marijuana. It sends the wrong message to our youth and demonstrates disregard for the rule of law. We should all agree, however, about the need to continue fighting drug trafficking organizations and the dangers they cause. In my state of Utah and other western states, drug trafficking organizations divert rivers and streams, clear cut timber, pollute the environment, and even place booby traps in the course of illegally growing marijuana on public lands. I recently introduced legislation with Sen. Feinstein to address these problems, S.348, the Protecting Lands Against Narcotics Trafficking Act. It enhances penalties for growers who degrade the environment and create public safety hazards and creates a fund to remediate environmental harms cause by illegal marijuana cultivation. Will you commit to making the prevention of marijuana growth on federal land a priority and to ensuring that prosecutors use the tools that my bill provides?

RESPONSE (b) (5)

[REDACTED]

QUESTIONS FROM SENATOR LEE

1. As the Nation’s chief legal officer, the Attorney General is responsible for giving the President and other government agencies candid advice about the legality of proposed Executive action. With that in mind, please answer the following:
 - a. If confirmed, you (or the Office of the Legal Counsel under your supervision) would be asked to definitively opine on the legality of a variety of proposed Executive actions. As an experienced lawyer, you know that often both sides of a legal dispute can muster reasonable arguments in their defense. And yet one side’s arguments, however reasonable, are nevertheless wrong or at least weaker than those opposed to them. In your view, is it the duty of the Department of Justice to give a favorable opinion of the legality of proposed action so long as reasonable arguments can be made in its defense? Or must the Department decide, *de novo*, whether those arguments are in fact correct?
 - b. At your hearing, you testified repeatedly that you had reviewed the OLC memo concerning the legality of the President’s executive action on immigration, and found its arguments “reasonable.” Do you agree that, if confirmed, you must independently determine whether those arguments are not just “reasonable” but in fact correct?

RESPONSE

(b) (5) [Redacted]

2. How would you describe your approach to statutory interpretation?
 - a. To what sources would you look in deciding a legal question that turned on interpretation of a federal statute?

RESPONSE (b) (5)

[REDACTED]

- b. Does a statute have a purpose beyond the purpose expressed in the enacted text of the legislation and if so, how would a lawyer be capable of adducing a statute's purpose?

RESPONSE (b) (5)

[REDACTED]

- 3. In the case of the Commerce Clause, apart from circumstances present in *Lopez* and *Morrison*, what are the limits on Congress's Commerce Clause power?

RESPONSE: (b) (5)

[REDACTED]

- 4. Do you believe that Congress has at any time overstepped its authority under the Commerce Clause since *Wickard*, other than in *Lopez* and *Morrison*?

RESPONSE (b) (5)

[REDACTED]

- 5. Under the Supreme Court's decision in *Bolling v. Sharpe*, the Federal Government may not constitutionally discriminate on the basis of race. With that in mind, do you believe it is consistent with the constitutional equal-protection principle for Congress to require local governments or private employers to take explicit account of the racial impact of employment policies?

RESPONSE: (b) (5)

[REDACTED]

(b) (5)

6. Do you believe that *Citizens United v. FEC* was correctly decided?

RESPONSE (b) (5)

7. During a State of the Union address, President Obama said the *Citizens United* decision would allow “foreign corporations to spend without limits in our elections.” Do you believe that is an accurate description of the holding of that case?

RESPONSE (b) (5)

8. I would like to give you another opportunity to answer a question you were asked several times at your hearing about the limits of Executive power. Imagine the President decided that, because Congress had failed to act to reform the tax laws, the federal government would simply no longer collect any taxes above a 25% marginal rate. Could such an act be a constitutionally permissible exercise of prosecutorial discretion? Please include, in your answer, a yes or no.

RESPONSE: (b) (5)

9. INA § 212(d)(5)(A) limits the government’s authority to parole aliens into the United States to certain limited circumstances. It provides in relevant part that parole may be granted “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” Nevertheless, USCIS’s Form I-131 permits recipients of deferred action to obtain advance parole *i.e.*, permission to leave the country and then be paroled back into the United States upon their return for “educational purposes, employment

purposes, or humanitarian purposes.”⁸⁰ According to USCIS, “[e]ducational purposes include, but are not limited to, semester abroad programs or academic research” and “[e]mployment purposes include, but are not limited to, overseas assignments, interviews, conferences, training, or meetings with clients.”⁸¹ Do you believe that an undocumented alien’s need to attend meetings with clients abroad presents an “urgent humanitarian reason[]” or a significant benefit to the American public within the meaning of INA § 212(d)(5)(A)?

RESPONSE (b) (5)

[REDACTED]

10. If an inadmissible alien approached our border, without a visa, and asked to be paroled into the United States in order to take a business meeting in New York, or attend a conference in Washington, D.C., do you agree it would be unlawful to parole the alien into the country for that purpose?

RESPONSE (b) (5)

[REDACTED]

11. Will you commit to independently determining whether USCIS’s advance parole program complies with INA § 212(d)(5)(A) and release your conclusions to the Congress?

RESPONSE (b) (5)

[REDACTED]

12. In April 2014, DHS Secretary Jeh Johnson told the U.S. Council of Mayors that immigrants who entered this country illegally have “earned the right to be citizens.” Do you agree with that assertion?

RESPONSE (b) (5)

[REDACTED]

⁸⁰ See Instructions to USCIS Form I 131, OMB Doc. No. 1615 0013, at p. 4.

⁸¹ *Id.* at p. 5.

13. You recently announced that your office was prosecuting, for conspiracy to commit murder, foreign terrorist fighters accused of engaging in combat with U.S. troops on battlefields abroad. What criteria were used to decide whether these combatants should be criminally prosecuted rather than detained under the law of war and prosecuted by military commissions under the Military Commissions Act?

RESPONSE: (b) (5) [Redacted]

(b) (5) [Redacted]

14. Do you believe foreign terrorist fighters’ engaging in combat with American military forces is best described as a conspiracy to murder American nationals?

RESPONSE (b) (5) [Redacted]

15. Are you concerned that Article III criminal trials afford enemy combatants the opportunity to summon our troops from their duties elsewhere in order to appear as witnesses in criminal court?

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted]

16. At your hearing, you testified that civil asset forfeiture was a “wonderful tool” for law enforcement. No doubt that can sometimes be true, when the person who owns the seized asset is in fact guilty of using the asset to commit crimes. But our current laws permit the government to seize assets without first proving that guilt. Please answer whether you believe it is fundamentally just for the government to seize a citizen’s bank account on the belief that it contains the proceeds of crime, but without having to carry a burden to prove the owner’s guilt.

RESPONSE (b) (5) [Redacted]

17. I understand from news reports that in 2012 your office froze bank accounts belonging to the Hirsch brothers, but did not file a criminal or civil complaint, and ultimately agreed to return the funds only if the brothers agreed not to attempt to recover their expenses in trying to persuade you to return their money. Please explain whether you believe this case is a good example of why civil asset forfeiture is an important law enforcement tool.

RESPONSE: (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

18. You testified that you understood that the Attorney General had discontinued the federal government’s previous program of adopting state and local seizures as its own. But the Attorney General’s order to which you referred contains several exceptions, one of which is for “seizures pursuant to federal seizure warrants, obtained from federal courts to take custody of assets originally seized under state law.” In your experience as a prosecutor, are you aware of any legal impediments to obtaining a federal seizure warrant, whether under Federal Rule of Criminal Procedure 41 or otherwise, for the types of property seized by state officials that were previously subject to asset-forfeiture adoption?

RESPONSE: (b) (5) [Redacted]

19. Dating back to the 1960’s and 1970’s, the Department of Justice has been concerned about organized crime and other criminal enterprises profiting from the proceeds of illegal gambling. By way of example, the American Gaming Association estimated that the Super Bowl would attract some \$3.8 billion in illegal wagers, which is 38 times the amount wagered lawfully. Please describe any actions you have taken as U.S. Attorney to combat illegal gambling; and please describe what can be done to better address the growing problem of illegal gambling.

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted text block]

QUESTIONS FROM SENATOR VITTER

1. On what statutory authority does the President, the Attorney General, or the Secretary of Homeland Security have the power to grant work authorization to illegal aliens?

RESPONSE (b) (5) [REDACTED]

2. What is the purpose of the Immigration and Nationality Act?

RESPONSE (b) (5) [REDACTED]

3. Why do you think Congress set numerical limitations on the number of visas for foreign nationals and guest workers?

RESPONSE (b) (5) [REDACTED]

4. Does hiring unauthorized workers lower wages for U.S. workers?

RESPONSE (b) (5) [REDACTED]

5. All other things being equal, doesn't increasing the labor supply depress wages for workers?

RESPONSE (b) (5)

[REDACTED]

6. Where does the executive branch derive its authority to create a “deferred action” program for an entire class of illegal aliens?

RESPONSE (b) (5)

[REDACTED]

7. Where in the law does it grant the President, Attorney General, or Secretary of Homeland Security the authority to parole into the United States an entire class of illegal aliens?

RESPONSE (b) (5)

[REDACTED]

8. How do you justify the administration’s use of parole authority in the November 2014 executive action for a class of millions of illegal aliens with a clear statutory grant of authority to only grant parole on a “case-by-case basis”?

RESPONSE (b) (5)

[REDACTED]

9. In 2013, a Ninth Circuit Court of Appeals Judge wrote in a published opinion that “There is an epidemic of Brady violations abroad in the land.” Judge Kozinski was of course referring to the principal identified in Brady v. Maryland, 373 U.S. 83, a 1963 case in which the Supreme Court held that government prosecutors are required to turn over all exculpatory evidence to the Defendants.

- a. Do you agree with the holding of Brady v. Maryland?

RESPONSE (b) (5)

[REDACTED]

- b. Does the Circuit Court of Appeals' finding that there is an epidemic of Brady violations trouble you?

RESPONSE: (b) (5) [REDACTED]

- c. Do you agree there is an epidemic of Brady violations?

RESPONSE (b) (5) [REDACTED]

- d. What steps will you take to address this epidemic of Brady violations by Department of Justice prosecutors?

RESPONSE (b) (5) [REDACTED]

- 10. Brady is founded on the constitutional right to due process, and courts have long held that defendants sued by the government in civil proceedings are entitled to due process.
 - a. Do you agree that the Department of Justice's obligations to safeguard the constitutional rights of defendants under Brady should apply equally in civil matters prosecuted by the Department of Justice? If not, why not?

RESPONSE (b) (5) [REDACTED]

- b. As Attorney General, would you be willing to issue directives to Department of Justice prosecutors of civil matters to produce materials to the defense in accordance with Brady v. Maryland?

RESPONSE (b) (5) [REDACTED]

11. In a January 9, 2015 article written by George F. Will, a Pulitzer Prize winning Commentator for the Washington Post, entitled “Questions for Attorney General Nominee Loretta Lynch,” Mr. Will provided a number of questions you should answer during the confirmation process. Please answer these specific questions from Mr. Will:

- a. Many progressives say that the 34 states that have passed laws requiring voters to have a government-issued photo ID are practicing “vote suppression.” Does requiring a photo ID at airports constitute “travel suppression”?

RESPONSE: (b) (5) [Redacted]

- b. Visitors to the Justice Department are required to present photo IDs. Do you plan to end this “visit suppression”?

RESPONSE (b) (5) [Redacted]

12. Hans von Spakovsky, senior legal fellow at the Heritage Foundation’s Edwin Meese III Center for Legal and Judicial Studies, former member of the Federal Election Commission, and former Counsel to the Assistant Attorney General for Civil Rights at the U.S. Department of Justice, and J. Christian Adams, former counsel for the Voting Rights Section at the U.S. Department of Justice and blogger for PJ Media, wrote a January 27, 2015 article in the National Review entitled “The Questions Loretta Lynch Needs to Answer”. Please answer the following questions from their article:

- a. Do you “believe, as Eric Holder does, that voter-ID laws are racist?”

RESPONSE (b) (5) [Redacted]

- b. Do you “disagree with the Supreme Court’s decision upholding such laws in 2008 in *Crawford v. Marion County*?”

RESPONSE (b) (5) [REDACTED]

- c. Do you share Attorney General Holder’s apparent view that federal anti-discrimination laws such as the Voting Rights Act do not need to be executed in a race-neutral manner?

RESPONSE (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- 13. In your legal opinion, is there an allowable method for states to require photographic identification in order to vote?

RESPONSE: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- 14. Do you oppose state laws requiring a potential voter to present valid, government-issued photographic identification in a vacuum?

RESPONSE (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- 15. Does in-person voter fraud exist?

RESPONSE (b) (5) [REDACTED]
[REDACTED]

16. Is voting essential to a democracy?

RESPONSE (b) (5)

[REDACTED]

17. Should legal permanent residents have the right to vote in federal elections?

RESPONSE: (b) (5)

[REDACTED]

18. Should felons who have served their sentences have the right to vote in federal elections?

RESPONSE (b) (5)

[REDACTED]

19. Should undocumented persons in the country without felony convictions have the right to vote in federal elections?

RESPONSE (b) (5)

[REDACTED]

20. As Attorney General, will you commit to equal investigation and enforcement of Section 7 and Section 8 of the National Voter Registration Act (NVRA)?

RESPONSE (b) (5)

[REDACTED]

21. In 2013, the Department of Justice filed a lawsuit against Louisiana's school voucher program, known as the Louisiana Scholarship Program, alleging that the program violated federal desegregation orders resulting from the 1975 case *Brumfield v. Dodd*.

The Department argued that allowing voucher students to transfer out of their public schools would disrupt the racial balance in public school systems that the desegregation orders are meant to protect. However, subsequent research commissioned by Louisiana found that in the majority of districts the movement of students improved or did not affect racial balance. In districts where the program had a negative impact, the effect was “miniscule”. Nevertheless, the Eastern District of Louisiana ruled that Louisiana must provide detailed information to the Department of Justice on each student applicant at least 10 days before the vouchers are awarded. Please answer the following questions detailing how this information will be used if you are confirmed:

- a. Will the Department of Justice use this information to prevent students from participating in the voucher program, even in cases where the program would have little to no effect on racial imbalance in the public school, simply to promote the anti-school choice views of President Obama and the Department of Education?

RESPONSE (b) (5)

[REDACTED]

- b. Will you promise that the Department will not block students from participating in the Louisiana Scholarship Program, which is meant to give underprivileged students, many of whom are African-American, access to quality schools in accordance with federal law and judicial precedents?

RESPONSE: (b) (5)

[REDACTED]

- 22. The Treasury Department and the federal banking regulators reported that many banks are engaging in a process called “de-risking,” which can be defined as banks ending services to existing businesses that might prevent a risk of scrutiny and regulations. Usually these businesses are completely legal and engaged in legitimate business such as short-term lending, check cashing, tobacco sales or legal sales of firearms.

- a. What is your view on this practice?

RESPONSE (b) (5)

[REDACTED]

(b) (5) [Redacted]

b. Should banks be terminating relationships with these types of legal businesses?

RESPONSE (b) (5) [Redacted]

23. What is the appropriate role of the Department of Justice in deciding which legal businesses should have access to financial institutions and which should not and how will you make that judgment if you are confirmed?

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted]

24. In a Senate Judiciary Committee hearing Attorney General Holder was quoted as saying, “I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if we do prosecute if we do bring a criminal charge it will have a negative impact on the national economy, perhaps even the world economy.” Do you agree with Attorney General Holder that some companies be exempted from criminal prosecution due to their impact on the nation’s financial system or economy?

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

25. In advance of your hearing you failed to include on your questionnaire an interview in which you defended a settlement you reached with a megabank. This bank was accused of allowing dangerous Mexican drug cartels to launder money through their bank. In a deal you orchestrated the bank paid a fine instead of being prosecuted. Why did you omit this interview from your questionnaire? How will you handle oversight of this settlement given the role you played creating it?

RESPONSE (b) (5)

[REDACTED]

26. The Health Insurance Portability and Accountability Act (HIPAA) exists primarily to protect patients’ right to privacy and requires abortion clinics to acquire a signed disclosure before releasing any information about the patient to anyone else, especially the public. There are several cases in which abortion clinics have clearly broken this law. In light of these serious violations of HIPAA, aggressive action must be taken against the clinics, and they must be held accountable for their illegal practices. It is all too common that clinics are not penalized for these types of violations. I understand that the number of HIPAA violation complaints received by the Department of Health and Human Services has increased since 2013, according to an article from InformationWeek published last July 8, 2014 titled “HIPAA Complaints Vex Health Care Organizations.” The article states: “Jerome Meites, an HHS chief regional civil rights counsel, warned late last year that the government would pursue organizations more aggressively for HIPAA violations. Audits, which began in 2013, will continue through 2015, he said. In addition, states enacted their own data security and enforcement policies. Of the approximately 90,000 complaints received through 2013, only 32,000 fell under the jurisdiction of the HHS Office of Civil Rights. Of these, 22,026 required corrective action, while investigation of 9,899 found no violation. Of the 521 complaints the OCR referred to the Department of Justice for potential criminal justice, the DOJ has agreed to pursue only 54 of them.”
- a. If you become the Attorney General, what role will the DOJ play in prosecuting these violations?
 - b. Will you prosecute more of these cases than the DOJ has in previous years?
 - c. Will you make protecting patients privacy through pursuing HIPAA violators a priority of yours, should you be confirmed as Attorney General?

RESPONSE: (b) (5)

[REDACTED]

27. As you know, U.S. Magistrate Judge Gary Brown, who oversees the FEMA Sandy claims case of Deborah Raimey and Larry Raisfeld v. Wright National Flood Insurance Co. (14-mc-41 and Case 2:14-cv-00461-JFB-SIL), recently issued a Memorandum and Order dated November 7, 2014 (14-CV-461, Docket Entry No. 82 & 14-MC-41, Docket Entry No. 637) exposing insurance fraud by a fraudulent engineering company hired to deny a Sandy victim's claim. Judge Brown found evidence that the fraud may be "widespread" and the conduct "outrageous," and also found indications that the fraud may be "widespread" practices. He found the fraud so bad that he sanctioned the defense attorneys for not disclosing the evidence. (*See attached Order Doc #35*) The Judge ordered the WYOs in the litigation to turn over engineering reports in approximately 1,000 cases. The U.S. Senators from New York and New Jersey have demanded the same fraud investigation ordered by this Federal Judge. One would think that with a NY Federal Judge's ruling exposing widespread insurance fraud and both NY Senators calling for a document disclosure, the New York U.S. Attorney would weigh in. In a shocking move, as the New York U.S. Attorney, you filed a brief to try to block the document disclosure. In this brief, you argue that the documents which may reveal the fraud are "unnecessary" and "unduly burdensome," and asked the court to amend the ruling to end the inquiry with the one case of discovered fraud. (*See attached FEMA Motion to Set Aside Doc #36*). The move is nothing short of a cover-up. This is even more striking given the fact that we learned FEMA received incontrovertible evidence of this fraud in another case over a year ago and intentionally ignored it. (*See attached letter from Mostyn to Judge Brown dated 12/1/14*). I find it very odd that the U.S. Attorney in New York would file a motion to limit discovery of widespread insurance fraud perpetrated against Long Island residents in Sandy.

- a. Upon learning of the fraud discovered by a Federal Judge, why would your office seek to limit the investigation into this potential Federal criminal activity?

RESPONSES: (b) (5)

[REDACTED]

(b) (5)

[Redacted]

b. Do members of your staff know about this fraudulent activity?

RESPONSE (b) (5)

[Redacted]

c. Do you have plans to pursue these cases of fraud now that you know about them? If no, then what is preventing you from going after possible corruption and fraud from the insurance companies that are taking advantage of the victims of this horrible natural disaster?

RESPONSE (b) (5)

[Redacted]

d. Do any of your colleagues, employees, or attorneys at the U.S. Attorney’s office for the Eastern District of New York have pre-existing relationships with officials and attorneys for the WYO insurance companies that have been accused of committing fraud? Please submit their names, positions, and who it is they know representing the WYO companies.

RESPONSE (b) (5)

[Redacted]

28. According to the Treasury Inspector General for Tax Administration (TIGTA), the Internal Revenue Service (IRS) used “inappropriate criteria to identify tax-exempt

applications for review,” as early as March of 2010.^[1] Subsequently, the Department of Justice, numerous Congressional Committees, and TIGTA have all initiated additional investigations into IRS improprieties, which the IRS has used to justify not disclosing information related to public FOIA requests^[2] and which have brought to light attempts by the IRS to avoid public scrutiny of their actions.^[3]

- a. Considering that the IRS was targeting organizations on a content-specific basis with regards to their potential political speech, do you think it’s important for any subsequent investigation to be conducted in a neutral and objective manner?

RESPONSE: (b) (5) [REDACTED]

- b. In response to a question from Senator Cruz on appointing a special prosecutor to investigate the IRS targeting allegations, you responded “(m)y understanding is that the matter has been considered and the matter has been resolved.”^[4] Considerations of the moment aside, do you believe the potential political motivations of civil service officials and employees in carrying out their duties are sufficient justification to appoint a special prosecutor? If not, why?

RESPONSE (b) (5) [REDACTED]

^[1] “Inappropriate Criteria Were Used to Identify Tax Exempt Applications for Review”, 5/14/13, <http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf>, pg. 30
^[2] Defendant’s Opposition to Plaintiff’s Motion Seeking Discovery, *Judicial Watch, Inc. v Internal Revenue Service*, Case No. 1:13 cv 1559 EGS JMF, 10/17/14, http://www.judicialwatch.org/wp_content/uploads/2014/11/JW_v_IRS_01559_def_oppo.pdf, pg. 4
^[3] *Lois Lerner cautioned against email chatter amid lawmaker probes*, 7/9/14, http://www.politico.com/story/2014/07/lois_lerner_irs_lawyer_email_108722.html
^[4] *Ted Cruz Leads the New Conservative Crusade Against the IRS*, 1/28/15, http://www.bloomberg.com/politics/articles/2015-01-29/ted_cruz_leads_the_new_conservative_crusade_against_the_irs

(b) (5) [Redacted]

- c. Do you believe the investigation of the IRS targeting of nonprofits would be better conducted by a single party, organization, or office, like a special prosecutor?

RESPONSE (b) (5) [Redacted]

29. November 5, 2014, during a White House press briefing, President Obama, indicated his intention to enter into discussions with congressional leaders to develop a new Authorization of Use of Military Force (AUMF) to specifically target the Islamic State, in order to "right-size and update whatever authorization Congress provides to suit the current fight, rather than previous fights" authorized by the 2001 and 2002 AUMFs. During his 2015 State of the Union, Obama also called on Congress to pass a resolution to authorize using military force against the extremist group Islamic State of Iraq and Syria (ISIS).

- a. Do you support further engagement by the U.S. Congress to address an updated Authorization of Use of Military Force (AUMF)?

RESPONSE (b) (5)

30. The United States Congress is reviewing consideration of providing President Barack Obama with an updated Authorization for Use of Military Force (AUMF) against the Islamic State and related terrorists. In 2010, court rulings such as *Al-Aulaqi v. Obama* concluded that the questions raised fell under the political question doctrine, and found in particular that [j]udicial resolution of the ‘particular questions’ posed would require the court take into account complex, military, strategic, and diplomatic considerations e.g. to “assess the merits of the President’s (alleged) decision to launch an attack on a foreign target” that it was simply not competent to handle. Handling these questions is something that Congress is equipped, under Article I, Section 8, Clause 1-15, Section 9, and Section 10 of the Constitution to do.

- a. Given the surrounding legal questions, do you agree that in an effort to better "right-size" and update whatever authorization (AUMF) Congress provides to the President, that the Senate Judiciary Committee should have a direct role to examine its tie-ins, in coordination with other relevant Committees, in crafting any new proposal to update the AUMF against the Islamic State, and its potential impacts on U.S. citizens as it is considered?

RESPONSE (b) (5)

31. My office has received information that a division within the DOJ working with the Institute of Electrical and Electronics Engineers Standards Association (IEEE-SA), is in the process of drafting a Business Review Letter (BRL), in support of a policy which will change how wireless (Wi-Fi) technology operates, and how Wi-Fi research is conducted and could potentially impact the competitiveness of American innovators. In 2006 a PAE suit almost caused the shutdown of BlackBerry wireless service. Since then, according to the White House Patent Assertion and U.S. Innovation Executive document, published in 2013, technology companies have spent billions in large part to prevent patent suits from competitors. I have also seen various reports that efforts by intellectual property legal experts to discuss the negative impacts of this policy change with the DOJ have been refused. While I support the DOJ’s review of whether current policy is consistent with U.S. antitrust laws, it is imperative that any action taken by the DOJ does not unintentionally undermine the rights and competitiveness of U.S. inventors.

- a. Can you provide an update to my office regarding the DOJ’s position and plan to move forward with a BLR that appears to be contrary to U.S. law, and on what appears to be a *de facto* change of U.S. policy without prior backing from the Executive or Congress, and based purely on the DOJ Antitrust Division staff opinion?
- b. Has the DOJ in its BLR reviewed the fact that the Board of Directors of IEEE-USA, the US-based branch of the organization, voted on November 21 expressing its concerns about the proposed policy changes?

RESPONSE

(b) (5)

[REDACTED]

32. The Computer Crime and Intellectual Property Section, or CCIPS, implements DOJ’s strategies for enforcing the theft of intellectual property (IP). Established in 1991 with only five prosecutors, CCIPS plays a crucial role in protecting our nation’s IP. More than 20 years later, it is safe to say computer and intellectual property theft has become more sophisticated, consisting of international networks targeting U.S. innovations and content. The Computer Hacking/Intellectual Property (CHIP) Unit is another tool in the Department’s chest to prosecute cybercrimes and assist in investigations.

- a. If confirmed, will you commit to this Committee that you will ensure CCIPS and the CHIP Units are operating at full strength with the necessary resources to carry out its missions?

RESPONSE:

(b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (5) [Redacted]

(b) (5) [Redacted]

33. During your confirmation hearing, you stated that you do not support the legalization of marijuana. As you may know, DC is continuing to proceed with implementation of the initiative even though language preventing DC from moving forward with legalization efforts was included in the bill.
- a. What is your position on DC’s Initiative 71 given the passage of HR 83, the Consolidated and Further Continuing Appropriations Act, which was signed into law by the President on December 16, 2014?

RESPONSE (b) (5)

[REDACTED]

- b. As the chief law enforcement official of the Executive Branch, will you enforce federal law including the Controlled Substance Act and the Anti-Deficiency Act in DC given marijuana is a Schedule 1 controlled substance and not subject to the Cole Memo since DC is not a state? If not, why not?

RESPONSE (b) (5)

[REDACTED]

34. A *U.S. News & World Report* article dated August 27, 2014 titled “School Prayer Fight Begins Anew: Tennessee and North Carolina implement religious expression laws in public schools,” highlights the increasing number of attacks on the presence of prayer in public schools by special interest advocacy groups like Americans United for Separation of Church and State. Several states, including Louisiana and North Carolina, have passed laws to clarify students’ rights to engage in prayer and religious activity in school. Furthermore, many states have laws that allow the school day to start with a moment of silence for students to quietly pray to themselves, and even these laws are facing aggressive action from anti-prayer groups.

- a. In your opinion, should American public schools begin every day with a prayer?

RESPONSE: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (5) [Redacted]

- b. Should public schools permit the allowance of a moment of silence at the beginning of the day so that students can pray quietly to themselves?

RESPONSE (b) (5) [Redacted]

- c. If you are confirmed as U.S. Attorney General, would you assist secular advocacy groups in attacking states' laws that clarify students' rights to engage in prayer and religious activity in school?

RESPONSE: (b) (5) [Redacted]

- d. What will you do to protect states' laws from secular attacks on students' rights to prayer in school?

RESPONSE (b) (5) [Redacted]

QUESTIONS FROM SENATOR PERDUE

1. As a career federal prosecutor, I know you are familiar with the concept of prosecutorial discretion. What, if any, are the limits of the President’s discretion to enforce federal law?

RESPONSE (b) (5) [Redacted]

2. With respect to the President’s executive action on immigration, please explain the legal basis for your belief that the Office of Legal Counsel memorandum setting forth the argument for the President’s action is constitutional and “reasonable.”

RESPONSE (b) (5) [Redacted]

3. Please explain your view on how, or whether, the President’s executive action on immigration comports with the Constitution’s Take Care Clause and Congress’s Article I authority over immigration and naturalization.

RESPONSE (b) (5) [Redacted]

4. At your confirmation hearing, Senator Sessions asked whether you agreed that “someone who enters the country unlawfully” has a “civil right” to work. You responded:

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

- a. Please explain the legal basis for your assertion that all persons, including persons having entered the United States illegally, have “the right...to work.”

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted]

- b. Please explain whether you believe your assertion that all persons present in the United States have a right to work conflicts with provisions of Title 9, specifically 8 U.S.C. § 1324a *et seq.*

RESPONSE: (b) (5) [Redacted]

- 5. It is now indisputable that the Internal Revenue Service (“IRS”) targeted conservative organizations that were seeking to obtain tax-exempt status. Senate investigators with the Permanent Subcommittee on Investigations found that over 80% of the targeted groups had a conservative political ideology. The Department of Justice (“DOJ” or “Department”) responded by initiating a criminal probe led by a Civil Rights Division attorney who had contributed to President Obama’s campaign in 2012. Little, if any, progress has been made in this investigation thus far.
 - a. With respect to IRS targeting of individuals and organizations who ostensibly identify with a conservative or Tea Party viewpoint, will you commit to reassignment of the DOJ’s investigation to a special prosecutor if you are confirmed?

RESPONSE: (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5)

[Redacted text block]

- b. Do you believe it was appropriate to assign management of the DOJ's investigation of IRS targeting to a DOJ lawyer who contributed to President Obama's campaign?

RESPONSE (b) (5)

[Redacted text block]

(b) (5)

[Redacted text block]

- c. Do you believe that assigning management of the DOJ’s investigation of IRS targeting to a DOJ lawyer who contributed to President Obama’s campaign could reasonably be expected to create the appearance of partiality or lack of objectivity on the part of the DOJ?

RESPONSE: (b) (5) [Redacted]

(b) (5) [Redacted]

- d. If you are confirmed, will you commit to keeping Congress informed in a more timely way than the current DOJ leadership has about the status of the investigation?

RESPONSE (b) (5) [Redacted]

6. National security is always of paramount importance for the Attorney General. The recent Paris attack and the rise of ISIS are episodes that show two emerging national security threats that you will confront, if confirmed: foreign fighters and so-called “lone wolf” attacks.
- a. In your view, does the recent emergence of these threats have any impact on the debate over the impending renewal of the Foreign Intelligence Surveillance Act of 1978 (“FISA”)?

RESPONSE: (b) (5) [Redacted]

- b. Do you believe that the current “bulk collection” regime under FISA Section 215 is lawful?

RESPONSE (b) (5) [Redacted]

- c. Do you believe that the incidental collection provision, Section 702, is lawful?

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted]

- d. President Obama has indicated that he supports a legislative reform of Section 215 bulk collection regime. What are your thoughts on amending Section 215?

RESPONSE (b) (5) [Redacted]

- e. Do you think law enforcement currently has sufficient investigative and legal authority to address the increasing threat from foreign fighters and “lone wolves”?

RESPONSE: (b) (5) [Redacted]

- 7. If you are confirmed, would the FBI, ATF, or any other DOJ agencies be permitted to allow criminals to obtain firearms as part of investigations undertaken by your Justice Department? If so, please describe the circumstances under which you believe such operations would be appropriate.

RESPONSE: (b) (5) [Redacted]

- 8. Are you committed to transparency between the DOJ and Congress, and will you commit to prompt, complete, and truthful responses to requests to information from Congress about outstanding issues related to Operation Fast and Furious?

RESPONSE (b) (5) [Redacted]

9. The DOJ announced two weeks ago that two Yemeni nationals charged with conspiring to murder American citizens abroad and providing material support to al-Qaeda will be prosecuted by your office in the Eastern District of New York. What specific circumstances that you can address here lead you to believe that civilian courts are a more appropriate or effective venue than military tribunals for the prosecution of the Yemeni nationals that have been charged by your office?

RESPONSE (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

10. Do you believe that detainees currently being held at the United States Naval Base at Guantanamo Bay, Cuba, are entitled to criminal trials in the civilian court system within the United States?

RESPONSE (b) (5)

[REDACTED]

11. In 2013, the DOJ intervened in litigation over the Louisiana Scholarship Program, a state initiative that provides school vouchers to low-income families. An analysis by the State of Louisiana found that the program promoted diversity in Louisiana schools and actually assisted in speeding up federal desegregation efforts. Most of the schoolchildren who benefit from this program are members of minority groups. This year, more than 13,000 students applied and nearly 7,500 schoolchildren were awarded a scholarship voucher. These children now get the chance to excel and attend high-quality schools that their parents can choose for them because of the program. Ultimately, after public pressure, the Justice Department backed off trying to kill the program entirely, but still insisted that the state provide demographic data about the students to a federal judge overseeing the lawsuit. Accordingly now Louisiana has to provide data for the upcoming school year and for every school year as long as the program is in place.

- a. Do you agree with the DOJ's decision to intervene in this case?

- b. If confirmed, will you use Justice Department resources, like your predecessor has, in an effort to obstruct, monitor, or regulate school-choice programs?
- c. Will you commit to asking the federal district court with jurisdiction over this case to discontinue the reporting requirement if you are confirmed?

RESPONSE (b) (5)

[REDACTED]

12. A 2013 report by the DOJ’s Inspector General revealed disturbing systemic problems related to the operation and management of the DOJ’s Civil Rights Division. If confirmed, will you commit to implementing the recommendations made by the Inspector General in that report?

RESPONSE (b) (5)

[REDACTED]

13. At your confirmation hearing, I asked you about the Francois Holloway case and why you consented to an order by Eastern District of New York Judge John Gleeson vacating two of Mr. Holloway’s convictions for armed carjacking. In your response, you mention “a judicial proceeding before the court at that time” that “the court wanted us to take a second look at.”
- a. Please describe what you meant by the term “judicial proceeding before the court.”

RESPONSE (b) (5)

[REDACTED]

- b. Which party initiated the “judicial proceeding before the court” that you referred to in your answer?

RESPONSE (b) (5)

[REDACTED]

- c. You stated that “our view was that we had to look at the case consistent with many of the initiatives that we were being put in place now by the DOJ certainly with respect to clemency and with respect to how we look at offenders who have served significant time.” Please state the DOJ initiatives you consulted in your re-examination of the Holloway sentence and identify any initiatives on which you based your decision to consent to Judge Gleeson’s order vacating Mr. Holloway’s armed carjacking sentences.

RESPONSE (b) (5) [Redacted]

- d. Please identify any DOJ initiatives that provide for early release for violent offenders or recidivist violent offenders like Mr. Holloway.

RESPONSE (b) (5) [Redacted]

- e. You testified that you reconsidered whether to consent to an order to vacate Mr. Holloway’s sentence “numerous times.” Please explain why you ultimately consented to the vacatur after initially refusing to and suggesting to the court that Mr. Holloway contact the Office of the Pardon Attorney or seek executive commutation of his sentence.

RESPONSE (b) (5) [Redacted]

- f. Mr. Holloway’s case had achieved a remarkable degree of finality his appeal was rejected by the Supreme Court and he had been sentenced decades before Judge Gleeson released him, effectively, for time served. Please state the legal and policy basis for your decision to re-examine the case given the degree of finality it had achieved.

RESPONSE (b) (5) [Redacted]

- g. You stated that your office had “the ability to let the judge review [Mr. Holloway’s] sentence again by keeping it in the court system.” Please explain your understanding of the circumstances under which federal prosecutors should consent to review by a federal judge of sentences which have achieved finality and explain when federal prosecutors should act, as you testified, to “keep[]” those sentences “in the court system.”

RESPONSE

(b) (5)

- h. Do you agree with Judge Gleeson, who wrote in his May 14, 2014, memorandum in the Holloway case, that your prosecutors from the Eastern District of New York employ “ultraharsh mandatory minimum provisions to annihilate a defendant who dares to go to trial,” like Mr. Holloway?

RESPONSE

(b) (5)

- i. Do you believe that the prosecutors who tried Mr. Holloway employed “ultraharsh minimum sentences to annihilate” him because he exercised his constitutional right to a jury trial?

RESPONSE

(b) (5)

- j. Do you agree with the recommendation of the U.S. Sentencing Commission in its 2011 report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*, that Congress should amend 18 U.S.C. § 924(c) to confer on federal district judges the discretion to impose concurrent sentences under that provision?

RESPONSE

(b) (5)

- k. Please describe with particularity citing case numbers, captions, etc. any other cases in which your office, during your tenure as U.S. Attorney consented to an order vacating convictions under 18 U.S.C. § 924 or any other criminal conviction.

RESPONSE

(b) (5)

14. As a U.S. Attorney and the Chair of the Attorney General’s Advisory Committee, you are no doubt familiar with DOJ’s recent “Smart on Crime” Initiative, which addresses a number of criminal justice issues like prioritizing prosecutions, sentencing disparities, recidivism, and incarceration of non-violent offenders. Attorney General Holder has advocated reduction of the federal sentencing guideline levels that apply to most drug-trafficking offenses, including trafficking of hard drugs like heroin. The Holder Justice Department also announced a new clemency initiative last year that invites clemency petitions from offenders who meet a number of criteria. Thousands of offenders, including drug traffickers, fall within those criteria.

a. What are your views on those DOJ initiatives and proposals?

RESPONSE (b) (5) [Redacted]

b. Do they make the work of federal prosecutors harder?

RESPONSE (b) (5) [Redacted]

c. Do they make the American people safer?

RESPONSE (b) (5) [Redacted]

d. Are you going to continue them if you are confirmed as Attorney General?

RESPONSE (b) (5) [Redacted]

- e. Do you believe that these or other DOJ initiatives should be expanded to encompass early release for violent offenders who have served a substantial portion of the sentences?

RESPONSE (b) (5) [REDACTED]

- f. Do you believe that these or other DOJ initiatives should be expanded to encompass early release for offenders who have received so-called “stacked” or consecutive mandatory minimum sentences under 18 USC 924 or other provisions of federal law?

RESPONSE (b) (5) [REDACTED]

15. The 2013 Cole Memorandum explains the DOJ’s priorities on enforcement of federal law regarding marijuana offenses. Several jurisdictions have recently legalized cultivation and distribution of marijuana for personal use, in effect, initiating a series of state regulatory regimes that contravene federal drug laws.

- a. Do you agree with the current DOJ enforcement policies and priorities outlines in the Cole Memorandum?

RESPONSE: (b) (5) [REDACTED]

- b. Do you consider the DOJ's policy, as it is being implemented now, to reflect legitimate enforcement discretion consistent with the Take Care Clause?

RESPONSE (b) (5) [Redacted]

- c. If you are confirmed, how do you plan to measure the effect of the DOJ's policy on the federal interest in enforcement of drug laws?

RESPONSE: (b) (5) [Redacted]

16. The recent hacking of Sony's computers has demonstrated that a major area of vulnerability to our national security and infrastructure is cyber attacks, often by foreign hackers or governments.

- a. In your view, what are the greatest threats we face from cyber terrorism?

RESPONSE: (b) (5) [Redacted]

- b. What tools does law enforcement need, based on your experience as a U.S. Attorney, to protect networks and critical infrastructure?

RESPONSE: (b) (5) [REDACTED]

- 17. In recent years, the DOJ has aggressively pursued states that have enacted a wide array of voter ID provision. You have made a number of public comments about the DOJ’s litigation in this area of the law and have pledged to continue litigation that Attorney General Holder has initiated. Please describe, with particularity, examples of voter ID provisions that a state could enact which you believe would pass statutory and constitutional muster.

RESPONSE (b) (5) [REDACTED]

- 18. A number of commentators have expressed the opinion that voter fraud simply doesn’t exist or the alternative opinion, that, if it does, it is minor problem with no real effect on the integrity of elections.
 - a. Do you agree that voter fraud does not exist or is so insignificant that it does not threaten the integrity of elections?

RESPONSE (b) (5) [REDACTED]

- b. Do you think that voter fraud is a bona fide issue that states should be entitled to address with voter ID laws?

RESPONSE: (b) (5)

[REDACTED]

- 19. You previously stated in the context of North Carolina’s voter ID law that:

Fifty years after the March on Washington, 50 years after the Civil Rights Movement, we stand in this country at a time when we see people trying to take back so much of what Dr. King fought for....People try and take over the State House and reverse the goals that have been made in voting in this country....But I’m proud to tell you that the Department of Justice has looked at these laws, and looked at what’s happening in the Deep South, and in my home state of North Carolina [that] has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens. And those lawsuits continue.

Do you believe that North Carolina’s voter ID law is a pretext for, or was motivated by, racial discrimination?

RESPONSE (b) (5)

[REDACTED]

- 20. First Amendment freedoms that protect the press became a lot more tenuous during Mr. Holder’s administration of the DOJ. In May 2013, the Department obtained phone records for the Associated Press (“AP”) without the knowledge of that organization, reportedly as part of an investigation of an AP story on CIA operations in Yemen. It then came to light that in 2010 the Holder Justice Department obtained a warrant to search the emails of a Fox News reporter James Rosen the Department claimed Rosen was a potential co-conspirator with a State Department contractor in violation of the Espionage Act. Since then the DOJ has issued new guidelines governing how it obtains evidence from journalists. The guidelines maintain in that notice of a subpoena may be withheld only if notifying the journalist would present a “clear and substantial threat” to an investigation or to national security.
 - a. Do you agree that the Department’s treatment of journalists has been heavy-handed and that reform of DOJ practices was necessary?

RESPONSE (b) (5)

[REDACTED]

(b) (5) [Redacted]

- b. Do you believe that the DOJ investigations described above pose a serious risk of chilling free speech?

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted]

- c. Do you support the new guidelines?

RESPONSE (b) (5) [Redacted]

- d. As a federal prosecutor, you are no doubt aware of the balance between individual liberties and the need to conduct thorough and effective investigations. Do the guidelines strike the right balance?

RESPONSE (b) (5) [Redacted]

- e. How would the Lynch Justice Department distinguish itself from the Holder Justice Department when it comes to the investigation of journalists?

RESPONSE (b) (5) [Redacted]

21. There have been significant developments recently at the DOJ regarding policies on civil asset forfeiture in response to abuses by U.S. Attorney's Offices and federal and state agencies. Attorney General Holder just announced that the DOJ will end the Equitable Sharing Program, which essentially apportions billions of dollars in seized assets between federal, state, and local authorities a huge pool of money that clearly created a risk of encouraging aggressive, if not unlawful, seizures from individuals who are not charged with a crime, have not been indicted and have not enjoyed any due process whatsoever. Your office in the Eastern District of New York alone has seized over \$100 million in recent years.

- a. Do you believe that there have been inappropriate or excessive seizures by your office or by the DOJ with respect to civil asset forfeitures, adoptive seizures, and equitable sharing practices? If so, please describe with particularity any such cases.

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

- b. After inquiries by members of Chairman Grassley's staff, a company in your district, Hirsch Brothers, was recently returned \$500,000 that your office seized from it as part of a civil asset forfeiture. Please explain the basis for the seizure and the reason why the funds were returned only after a congressional inquiry was initiated.

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

c. Has your office implemented the reforms announced by Attorney General Holder?

RESPONSE (b) (5) [Redacted]

d. What steps are you taking in your office to ensure that no additional individuals or companies like Hirsch Brothers will have their assets wrongfully seized?

RESPONSE (b) (5) [Redacted]

(b) (5) [Redacted]

- e. What steps do you plan to take, if confirmed, to ensure that the DOJ returns wrongfully seized assets promptly and does not continue to seize assets wrongfully?

RESPONSE (b) (5) [Redacted]

Gaston, Molly (OAG)

From: Gaston, Molly (OAG)
Sent: Saturday, February 7, 2015 10:40 PM
To: Richardson, Margaret (OAG); Werner, Sharon (OAG); Mizer, Benjamin (OAG); Phillips, Channing D. (OAG); Franklin, Shirlethia (OAG); Cheung, Denise (OAG)
Subject: RE: QFR status
Attachments: 00 - QFRs for AG Nominee Lynch - Cruz Sessions 1035p (to LEL).docx

Last one! Thanks.

From: Gaston, Molly (OAG)
Sent: Saturday, February 07, 2015 9:54 PM
To: Richardson, Margaret (OAG); Werner, Sharon (OAG); Mizer, Benjamin (OAG); Phillips, Channing D. (OAG); Franklin, Shirlethia (OAG); Cheung, Denise (OAG)
Subject: RE: QFR status

Duplicative Material (Document ID: 0.7.10663.25451)

QUESTIONS FROM SENATOR SESSIONS

1. Do you believe that President Obama has exceeded his executive authority in any way? If so, how?

RESPONSE: (b) (5) [REDACTED]

2. On August 6, 2014, just a few months before President Obama announced his executive amnesty, he said: "I think that I never have a green light [to push the limits of executive power]. I'm bound by the Constitution; I'm bound by separation of powers. There are some things we can't do. Congress has the power of the purse, for example... Congress has to pass a budget and authorize spending. So I don't have a green light."

Do you agree with that statement?

RESPONSE: (b) (5) [REDACTED]

3. Do you agree that Congress has a duty not to fund programs that are unconstitutional?

RESPONSE: (b) (5) [REDACTED]

4. Do you agree that Congress has the power to fund programs it agrees with, and not to fund programs it disagrees with or considers to be unlawful?

RESPONSE: (b) (5) [REDACTED]

5. On January 20, 2014, it was reported that two Yemeni nationals, Saddiq al Abbadi and Ali Alvi, members of al Qaeda, had been charged with conspiracy to murder U.S. nationals abroad and providing material support to al Qaeda, and will be tried in United States federal court in your district, the Eastern District of New York. Both men fought against U.S. military forces on multiple occasions, and Al Abbadi allegedly led an attack against U.S. forces in Afghanistan during which a U.S. Army Ranger was killed and several others were seriously wounded. On January 23, 2014, it was reported that Faruq Khalil Muhammad 'Isa, accused of orchestrating an attack that killed five U.S. soldiers in Iraq, will also be tried in the Eastern District of New York. It is undisputed that these individuals are foreign terrorists, captured abroad while engaged in armed conflict against U.S. forces. Do you agree that these individuals are unlawful enemy combatants and, as

such, could be tried before a military commission and detained for the duration of hostilities under the law of war?

RESPONSE: (b) (5) [REDACTED]

[REDACTED]

6. If an individual is charged with violations of the laws of war and appears to be an active and committed member of al Qaeda or another terrorist organization that has threatened the United States or its allies, would you support the detention of that individual as a prisoner of war so long as al Qaeda or that terrorist organization continues to threaten acts of war or terrorism against the United States or its allies?

RESPONSE: (b) (5) [REDACTED]

7. Does the president have the power to detain terrorism suspects without trial in the United States? If so, for how long?

RESPONSE: (b) (5) [REDACTED]

8. Do you agree that, under the laws of war and controlling case law, the United States military has the ability to detain enemy combatants until the end of hostilities without bringing charges?

RESPONSE: (b) (5) [REDACTED]

(b) (5) [Redacted]

9. Do you agree that in the civilian justice system, defendants are required to be told they have the right to remain silent and that interrogation must stop if they invoke that right, and that there is no such requirement in the military system for enemy combatants?

RESPONSE: (b) (5) [Redacted]

10. Do you agree that in the civilian justice system, when a suspect is interrogated, he has a right to counsel, the interrogator must tell him of that right, and the interview must cease until a lawyer arrives if the request is made, and that there is no corresponding right in the military system for enemy combatants?

RESPONSE: (b) (5) [Redacted]

11. Do you agree that in the civilian justice system, an individual must be brought promptly before a judge and be charged with a crime or released (formerly known as the “48 hour rule”), and that there is no such requirement in the military system for enemy combatants?

RESPONSE: (b) (5) [REDACTED]

12. Do you agree that, in the civilian justice system, the Speedy Trial Act sets strict guidelines on how long after arrest a prosecutor has to present a case to a grand jury, and that there is no similar timeline by which the military must charge an enemy combatant who is detained during wartime?

RESPONSE: (b) (5) [REDACTED]

13. In May 2011, in a speech before the American Association of Professional Law Enforcement, you stated:

“Military commissions have been strengthened, and whether you agree or disagree with [the] Congressional action that restricted Guantanamo Bay detainees to military commissions, the fact is there is no longer the presumption that terrorism cases will automatically be tried in federal court.”

In 2009, President Obama signed legislation passed by a Democratic controlled Congress strengthening the Military Commissions Act of 2006. While you have acknowledged that military commissions have been strengthened, you appear to be continuing to operate under the presumption that foreign terrorists captured abroad should be brought into the United States and put in a civilian judicial system. If confirmed, will you continue Attorney General Holder’s policy that there is a presumption that foreign terrorists should be tried in Article III courts?

RESPONSE: (b) (5) [REDACTED]

(b) (5) [Redacted]

14. Do you believe that it should be the policy of the United States to negotiate with terrorists?

RESPONSE: (b) (5) [Redacted]

15. If confirmed, will you advise the president to keep in place the United States' longstanding policy of not negotiating with terrorists?

RESPONSE: (b) (5) [Redacted]

16. Do you support a permanent extension of the intelligence gathering authorities under the Foreign Intelligence Surveillance Act (50 U.S.C. § 1805(c)(2)(B), 50 U.S.C. §§ 1861 2, and 50 U.S.C. § 1801(b)(1)(c)), which are set to expire on June 1, 2015?

RESPONSE: (b) (5) [Redacted]

17. During your hearing, you were asked a number of legal questions to which you demurred on the grounds that you needed more information, had not studied the issue, or were not sufficiently familiar with the "legal framework" governing a particular question. But

when asked by the Ranking Member, you testified without hesitation that “waterboarding is torture . . . and thus illegal.” Please take this opportunity to explain the basis for your conclusion, including what steps you took prior to your testimony to form a reasoned opinion, and why you were more familiar with this area of the law than the subjects on which you declined to answer.

RESPONSE: (b) (5) [REDACTED]

18. Section 8 of the Military Commissions Act of 2006, Pub. L. No. 109 366, 120 Stat. 2600 (Oct. 17, 2006), provides protection from prosecution for U.S. personnel involved in certain detentions and interrogations of enemy combatants occurring between September 11, 2001, and December 30, 2005. Please explain your understanding of the scope of this immunity.

RESPONSE: (b) (5) [REDACTED]

19. Did you participate in the drafting of or provide input for the October 28, 2014 Executive Office for United States Attorneys’ policy memo directing that U.S. Attorneys should pursue only the most egregious marijuana offenses on Indian reservations that are growing and selling marijuana, even if those reservations are located within states where marijuana is illegal under state (and federal) law? If so, what was the scope and substance of your participation and/or input?

RESPONSE: (b) (5) [REDACTED]

20. If confirmed, what actions would you direct a U.S. Attorney to take if an Indian reservation, located in a state where marijuana use is illegal under state law, legalized marijuana?

RESPONSE: (b) (5) [REDACTED]

(b) (5)

21. If confirmed, what actions would you direct a U.S. Attorney to take if an Indian reservation, located in a state where marijuana use is legal under state law, criminalized marijuana?

RESPONSE: (b) (5)

22. In his August 2013 memo to U.S. Attorneys, Deputy Attorney General Cole announced the Justice Department would essentially cease prosecutions in states that had legalized marijuana, as long as those states have “strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.” As Chairwoman of the Attorney General’s Advisory Committee, were you involved in drafting that memo? If so, please explain your involvement, including what you advised the Attorney General with regard to the policies set forth in the memo.

RESPONSE: (b) (5)

23. Attorney General Holder has advocated for reducing mandatory minimum sentences for drug trafficking, and has endorsed legislation that would reduce by at least half the mandatory minimum sentences for trafficking in heroin, methamphetamine, cocaine, LSD, PCP, marijuana, and other opiates. A number of law enforcement groups, including the National Association of Assistant U.S. Attorneys (NAAUSA), the Federal Law Enforcement Officers Association, and the National Narcotic Officers’ Associations’ Coalition opposed that legislation. It was also reported that several other groups, including the Fraternal Order of Police, the National Sheriffs’ Association, the International Association of Chiefs of Police, the National Association of Police Organizations, the Major County Sheriffs’ Association and the National District Attorneys Association were very concerned that cutting mandatory minimums in half will severely impact their ability to secure a defendant’s cooperation in indicting the “bigger fish” in a drug conspiracy. In a January 31, 2014 letter to this Committee, NAAUSA which represents the interests of the 5,400 Assistant U.S. Attorneys nationwide wrote:

“Mandatory minimums serve as an indispensable tool in enabling law enforcement and prosecutors to secure offender cooperation and dismantle criminal organizations. The current system of mandatory minimum penalties is the cornerstone in the ability of Assistant United States Attorneys and federal law enforcement agents to infiltrate and

dismantle large scale drug trafficking organizations and to take violent armed career criminals off the streets. Mandatory minimums deter crime and help gain the cooperation of defendants in lower level roles in criminal organizations to pursue higher level targets. They have been demonstrably helpful in reducing crime. Time and again, Assistant United States Attorneys have solved crimes and secured justice through the deterrent power of mandatory minimum sentences.”

a. Do you agree with NAAUSA’s statement?

RESPONSE: (b) (5) [REDACTED]

b. Do you agree that drug trafficking is a serious offense that is deserving of equally serious mandatory minimums in order to deter such behavior?

RESPONSE: (b) (5) [REDACTED]

24. As a United States Attorney, what types of drug offenders have been your priority targets?

RESPONSE: (b) (5) [REDACTED]

25. If a member of a drug trafficking ring is apprehended while in possession of such a substantial amount of drugs so as to trigger a mandatory minimum sentence, and the individual cooperates, it is very common for the prosecutor to file a motion for “substantial assistance,” which means that person will not receive a mandatory minimum even though they were carrying enough drugs to trigger the mandatory minimum. How often would you estimate this occurs in your office?

RESPONSE: (b) (5) [Redacted]

26. Congress’s purpose in creating sentencing guidelines was to ensure that the sentence a defendant received for a particular crime did not depend on the judge he or she happens to draw a reality that has been characterized as “luck of the draw.” Under the Supreme Court’s decision in *United States v. Booker*, however, the federal sentencing guidelines are now advisory, rather than mandatory. Now that judges are no longer required to follow the guidelines, we are seeing the very disparities, including racial disparities, in sentences that Congress sought to correct. According to a 2012 report from the United States Sentencing Commission, “unwarranted disparities in federal sentencing appear to be increasing.” If confirmed, will you commit to work with Congress to ensure that federal courts take sentencing guidelines into account in every case to avoid unwarranted sentencing disparities?

RESPONSE: (b) (5) [Redacted]

27. The Supreme Court in *United States v. Rita* held that appellate courts may regard properly calculated within guidelines sentences as presumptively reasonable. In view of this holding, do you believe it would improve compliance with the guidelines and thereby reduce disparities to adopt an appellate standard in line with the *Rita* decision? If you disagree, please cite the basis for your view.

RESPONSE: (b) (5) [Redacted]

28. As United States Attorney, you must have been contacted about the possibility of clemency in cases handled by your office. Did you ever endorse any of these suggestions (*i.e.*, did you ever agree that clemency was warranted in any case your office prosecuted)? If yes, please provide examples. If no, please explain why not.

RESPONSE: (b) (5) [REDACTED]

29. Do you agree that robust enforcement of existing criminal laws deters the use of a gun during a criminal act?

RESPONSE: (b) (5) [REDACTED]

30. Do you agree that before enacting new laws that restrict the constitutional rights of law abiding citizens, we should enforce the laws already in place that apply to criminals?

RESPONSE: (b) (5) [REDACTED]

31. If confirmed, will you commit to enforce existing criminal laws and not to seek new authorities that limit the rights of law abiding Americans?

RESPONSE: (b) (5) [REDACTED]

32. In April 2013, the Senate rejected measures that would have instituted a ban on so called “assault weapons” and large capacity magazines, required universal background checks, and created new unnecessarily high criminal penalties for firearm offenses. In October 2014, Attorney General Holder referred to these as “really reasonable gun safety measures.”

Do you agree with Attorney General Holder’s statement?

RESPONSE: (b) (5) [REDACTED]

33. Do you personally favor allowing concealed carry permits for law abiding citizens?

RESPONSE: (b) (5) [REDACTED]

34. Do you acknowledge that as head of the Justice Department the Attorney General has the responsibility to ensure that federal immigration laws are enforced?

RESPONSE: (b) (5) [REDACTED]

35. According to U.S. Immigration and Customs Enforcement’s FY2014 Enforcement and Removal Operations Report, ICE’s efforts in removing convicted criminal aliens have been adversely impacted by “an increasing number of state and local jurisdictions that are declining to honor ICE detainees,” resulting in the release of criminal aliens into the community. The report states that since January 2014, state and local law enforcement agencies have refused to honor 10,182 detainees. It is my understanding that through September 2014, the recidivism rate for this group was a stunning 25 percent, including 5,425 subsequent arrests and 9,316 criminal charges. It is also my understanding that litigation by individuals and advocacy groups are a major factor in this non cooperation. If confirmed, will you commit to devote Justice Department resources to put a stop to this dangerous practice?

RESPONSE: (b) (5) [REDACTED]

36. Pursuant to the Prison Rape Elimination Act (PREA), the Justice Department routinely withholds grants to state and local jurisdictions for noncompliance. If confirmed, would you support withholding State Criminal Alien Assistance Program (SCAAP) grants to jurisdictions that refuse to honor ICE detainees?

RESPONSE: (b) (5) [REDACTED]

37. Do you agree that the decision to release criminal aliens in general poses an unnecessary and unreasonable risk to the public safety?

RESPONSE: (b) (5) [REDACTED]

38. Do you support a role for state and local law enforcement, consistent with federal law, in enforcing federal immigration laws? Please explain your answer.

RESPONSE: (b) (5) [REDACTED]

39. The 287(g) program, which trains local law enforcement to determine whether an individual is lawfully present, has been extremely successful. The website for U.S. Immigration and Customs Enforcement (ICE) once touted the program’s success: “Since January 2006, the 287(g) program is credited with identifying more than 304,678 potentially removable aliens – mostly at local jails. ICE has trained and certified more than 1,300 state and local officers to enforce immigration law.” In a statement last October, an ICE spokesperson said the 287(g) program “acts as a force multiplier for the agency and enhances public safety in participating jurisdictions by identifying potentially dangerous criminal aliens and ensuring they are removed from the United States and not released back into our communities.” Nevertheless, the Obama administration has systematically dismantled the program, cancelling agreements with local law enforcement and slashing funding for the program, largely because amnesty advocates oppose the program. If confirmed, will you commit to working with Congress to rebuild the 287(g) program, and devote the necessary Justice Department resources to the program?

RESPONSE: (b) (5) [Redacted]

40. If confirmed, will you commit to reinstating Operation Streamline prosecutions and ensure that the Justice Department has or requests the resources necessary to expand the program across the entire southwest border?

RESPONSE: (b) (5) [Redacted]

41. Is accurately reporting one’s income and properly filing one’s income tax return an obligation shared by everyone in this country? If so, do you agree that someone who fails to do so lacks “good moral character” as required under the various provisions in the Immigration and Nationality Act? If not, please explain why not.

RESPONSE: (b) (5) [Redacted]

42. To my knowledge, the Office of Legal Counsel opinion regarding the president’s executive action on immigration does not identify any statutory authority for the provision of Employment Authorization Documents to the majority of the individuals eligible for either the Deferred Action for Childhood Arrivals or the Deferred Action for Parents of Americans and Lawful Permanent Residents programs. Please identify the legal authority for the provision of Employment Authorization Documents to these individuals. If you find that such authority does not exist, will you ask the Office of Legal Counsel to revise its opinion?

RESPONSE: (b) (5) [Redacted]

43. If confirmed, will you commit to conducting a thorough review of pending cases within the Executive Office for Immigration Review (EOIR) the Immigration Courts and the Board of Immigration Appeals to identify the source of the backlog in the system, and to providing the results of that review to this Committee within 60 days?

RESPONSE: (b) (5) [Redacted]

44. It is my understanding that EOIR has provided members of the Board of Immigration Appeals with an extremely generous, and perhaps questionable, teleworking program. If confirmed, will you provide a description of this policy to the Committee within 60 days?

RESPONSE: (b) (5) [Redacted]

45. Last year, the Board of Immigration Appeals issued a published decision in the *Matter of Chairez*, 26 I&N Dec. 349 (2014), which held that the United States Supreme Court’s decision in *Descamps v. United States*, 133 S. Ct. 2276 (2013), applies to the analysis of criminal convictions in immigration proceedings. *Descamps*, and its predecessor cases (*Taylor v. United States*, 495 U.S. 575 (1990); *Shepard v. United States*, 544 U.S. 13 (2005)), arose out of concerns regarding the Sixth Amendment in the criminal sentencing context. Do you agree with the Board’s decision? If so, why should a strict, technical analysis, which can only benefit aliens with serious criminal convictions, be applied to civil immigration proceedings, where the Sixth Amendment does not apply? Is the safety of our communities more important, or the ability of a criminal alien to remain in this country?

RESPONSE: (b) (5) [Redacted]

46. 8 U.S.C. §1229a clearly states that an alien has the right of being represented at no expense to the government in removal proceedings. The Board of Immigration Appeals has a “Pro Bono Project,” in which it secures counsel for previously unrepresented aliens in cases on appeal with the Board.

a. Do you believe that this program complies with federal law?

b. If confirmed, will you direct the Board to stop using taxpayer resources to find counsel for aliens and eliminate this program?

RESPONSE: (b) (5) [REDACTED]

47. The Department of Justice has provided federal funds for an AmeriCorps program to provide attorneys to aliens in immigration proceedings.
- a. Do you believe that this program complies with federal law?
 - b. If confirmed, will you cease using taxpayer resources to provide attorneys for aliens in immigration proceedings and eliminate the program?

RESPONSE: (b) (5) [REDACTED]

48. In the 2001 case *Zadvydas v. Davis*, the Supreme Court held that the government can detain an alien ordered removed for the initial 90 days allowed by 8 U.S.C. §1231(a)(2), and thereafter only for a period reasonably necessary to secure the alien’s removal. It is presumptively reasonable for the government to detain the alien for six months or less, but after that time the government must show a significant likelihood of removal in the reasonably foreseeable future. Unfortunately, due to either the alien’s actions or the alien home country’s lack of “cooperation,” the government, even if acting diligently, often cannot repatriate the alien. This has resulted in the release of thousands of criminal aliens back into the general public, where they often re offend, in many cases committing even more heinous crimes. Would you support legislation to fix the problems caused by this case?

RESPONSE: (b) (5) [REDACTED]

49. Similarly, in the 2013 case of *Rodriguez v. Robbins*, the U.S. Court of Appeals for the Ninth Circuit held that criminal and arriving aliens held in mandatory detention under 8 U.S.C. §§1226(c) and 1225(b), respectively, must be provided with a bond hearing after six months detention. In other words, the detention of criminal and arriving aliens is only mandatory for six months, after which the government is required to show that the aliens in custody are either a flight risk or a danger to public safety in order to continue detention. This is true regardless of the detainee’s adjudication status. Like *Zadvydas*, this case could contribute to the release of dangerous criminal aliens back into communities. Would you support legislation to fix the problems caused by this case?

RESPONSE: (b) (5) [Redacted]

50. 8 U.S.C. §1228(a) states that the Attorney General “shall provide for the availability of special removal proceedings at certain Federal, State, and local correctional facilities” for certain criminal aliens. Conducting hearings in such a manner reduces the cost of future detention at taxpayer expense. Do you support the expansion of this program, and if so, how will you sure its implementation by EOIR? Will you coordinate with the Department of Homeland Security to ensure that, where applicable, as many removal hearings as possible will be conducted in this manner?

RESPONSE: (b) (5) [Redacted]

51. The 1940s regulation that created the “Fairness Doctrine” was held unconstitutional in a 1986 Federal Communications Commission decision. The following year, the Department of Justice advised the president to veto legislation that would have codified the doctrine in statute. Do you believe that the Fairness Doctrine is constitutional?

RESPONSE: (b) (5) [Redacted]

52. Please list which programs within the Justice Department, if any, you believe can be eliminated because they are ineffective, duplicative, unnecessary, or have outlived their purpose.

RESPONSE: (b) (5) [Redacted]

53. I am told that litigating attorneys within Main Justice are paid significantly more than similarly situated federal prosecutors within the 93 U.S. Attorney Offices across the country. This pay variance is especially large at the entry level, and can differ as much as \$30,000 between similarly situated Assistant U.S. Attorneys and Justice Department trial attorneys. I am also told that the Department has the authority to correct the problem because it arises out of the uneven treatment in pay of Assistant U.S. Attorneys, covered under the specialized Administratively Determined pay schedule for Assistant U.S. Attorneys, and the pay of all other Department attorneys, covered under the government wide General Schedule. In your capacity as chair of the Attorney General's Advisory Committee, what have you done to address this problem, and what will you do to correct it, if you are confirmed as Attorney General?

RESPONSE: (b) (5) [Redacted]

54. On January 16, 2014, Attorney General Holder announced a new policy that prohibits federal agency forfeiture of assets seized by state and local law enforcement agencies. Would you agree that these forfeitures are important tools that enable law enforcement to effectively investigate, disrupt, and dismantle criminal organizations? If confirmed, will you continue Attorney General Holder's policy?

RESPONSE: (b) (5) [Redacted]

55. Have you ever expressed an opinion on whether the death penalty is unconstitutional? If so, what was that opinion? If not, do you have such an opinion and what is it?

RESPONSE: (b) (5) [Redacted]

56. When Attorney General Holder announced that the administration would no longer defend the Defense of Marriage Act (DOMA), he claimed that by doing so, it was acting consistent with the Justice Department’s “longstanding practice of defending the constitutionality of duly enacted statutes if reasonable arguments can be made in their defense.” Do you agree that there are several reasonable arguments in defense of DOMA, including that the law is rationally related to legitimate government interests in procreation and childrearing, or do you agree with the administration that it is not rationally related to those ends?

RESPONSE: (b) (5) [Redacted]

57. Do you acknowledge that the George W. Bush administration successfully defended DOMA on the basis that the law is rationally related to legitimate government interests in procreation and childrearing?

RESPONSE: (b) (5) [Redacted]

58. Do you acknowledge that those same arguments had been relied on by federal and state courts in upholding states’ traditional marriage laws?

RESPONSE: (b) (5) [Redacted]

59. Do you agree that the Executive Branch has a clear and unwavering duty to vigorously defend the constitutionality of any law for which a reasonable defense may be made?

RESPONSE: (b) (5) [Redacted]

60. Do you agree that there is a difference between refusing to defend a law that the administration regards as unconstitutional and refusing to defend a law that the administration opposes on policy grounds?

RESPONSE: (b) (5)

61. Do you agree that if an administration refuses to defend clearly constitutional laws based on its own policy views, it is violation of the oath to protect and defend the Constitution and the laws of the United States?

RESPONSE: (b) (5) [Redacted]

62. According to the questionnaire that you submitted to the Committee, in February 2006, you spoke at the Federal Bar Council Winter Bench and Bar Conference on whether international law should be considered by United States courts. You indicated that you did not have lecture notes and that no transcript of the event is available. Please describe the substance of your remarks at that conference.

RESPONSE: (b) (5) [REDACTED]

63. Have you ever expressed a view regarding whether it is appropriate for a United States judge to rely on foreign law? If so, what was that opinion? If not, do you have such an opinion?

RESPONSE: (b) (5) [REDACTED]

64. Have you ever expressed a view regarding whether it is appropriate for a United States judge to rely on foreign law in deciding the meaning of the U.S. Constitution? If so, what was that opinion? If not, do you have such an opinion?

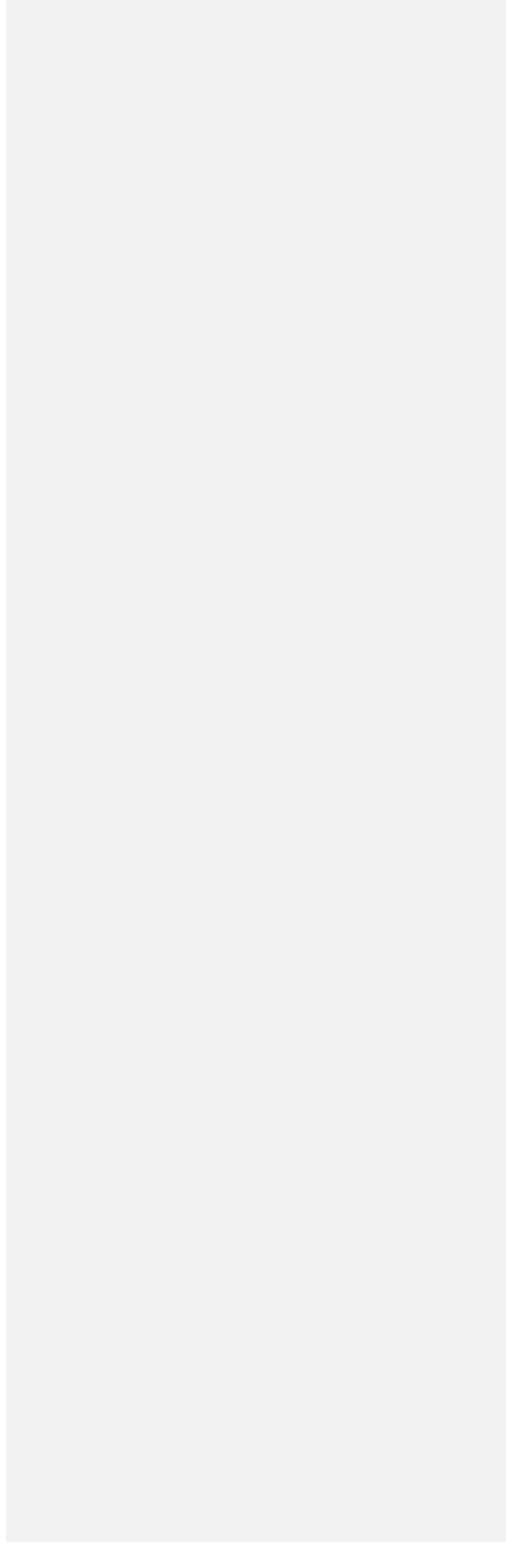
RESPONSE: (b) (5) [REDACTED]

65. Do you think that the jurisdiction of the International Criminal Court is based in customary international law, or solely on ratification of the Rome Statute?

RESPONSE: (b) (5) [REDACTED]

66. In April 2009, a Spanish judge began an investigation into alleged torture at the detention facility at Guantanamo Bay. Speaking to reporters in Berlin a few days later, Attorney General Holder was asked whether the Justice Department would cooperate with such an investigation. He said: "Obviously, we would look at any request that would come from a court in any country and see how and whether we should comply with it . . . This is an administration that is determined to conduct itself by the rule of law and to the extent that we receive lawful requests from an appropriately created court, we would obviously respond to it." He later clarified his statement by saying that he was talking only about "evidentiary requests." If confirmed, how would you respond to such investigations and evidentiary requests?

RESPONSE: (b) (5) [Redacted]
[Redacted]
[Redacted]



QUESTIONS FROM SENATOR CRUZ

Questions on Executive Amnesty

I. Deferred Action

- On two occasions, the Obama Administration has granted amnesty (otherwise known as “deferred action” because it suspends removal proceedings otherwise required by law) to entire classes of illegal immigrants:
 - Deferred Action for Childhood Arrivals (“DACA”): In a June 2012 memorandum, then Secretary of Homeland Security Janet Napolitano announced that certain illegal immigrants under the age of 31 who came to the United States as children could apply for deferred action.¹
 - Deferred Action for Parental Accountability (“DAPA”): In a November 2014 memorandum, the current Secretary of Homeland Security Jeh Johnson expanded the DACA program to include childhood arrivals who are now over the age of 30 and announced a new program that would allow certain parents of children who are either citizens or lawful residents of the United States to apply for deferred action. This most recent program would grant amnesty to an estimated 5 million illegal immigrants.²

In a subsequent legal memorandum issued by the Department of Justice’s Office of Legal Counsel (OLC), the Administration justified the legality of its decision to grant deferred action to a class of 5 million illegal immigrants as a legitimate exercise of its prosecutorial discretion.³

1. Based on the material and information contained in the OLC opinion, please answer each of the following questions separately:

a. Do you agree or disagree with the legal conclusions in the OLC opinion?

RESPONSE: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹ Janet Napolitano, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (Jun. 15, 2012).

² Jeh Johnson, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* (Nov. 20, 2014).

³ U.S. Department of Justice, Office of Legal Counsel, *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others* (Nov. 19, 2014).

b. Cite the specific provisions of the United States Code that authorize the President to grant deferred action to illegal alien childhood arrivals and the illegal alien parents of U.S. citizens.

RESPONSE: (b) (5) [Redacted]

c. Define prosecutorial discretion.

RESPONSE: (b) (5) [Redacted]

d. Are the President’s actions a proper exercise of prosecutorial discretion as you have defined it and why?

RESPONSE: (b) (5) [Redacted]

e. Does the fact that Congress has expressly authorized deferred action for certain classes of removable aliens⁴ but not for the classes covered by DACA and DAPA establish that there is no authority for the President to grant deferred action under DACA and DAPA?

RESPONSE: (b) (5) [Redacted]

⁴ e.g., 8 U.S.C. 1154(a)(1)(D)(i)(II), (IV) (providing that certain individuals are “eligible for deferred action”); 8 U.S.C. 1227(d)(1) (authorizing an “administrative stay of a final order of removal” for T and U visa applicants who can demonstrate a prima facie case for approval); 115 Stat. 272, 361 (authorizing “deferred action” for certain family members of lawful residents killed on 9/11); 117 Stat. 272, 361 (authorizing “deferred action” for certain family members of certain U.S. citizens killed in combat).

- Article II, Section 3 of the United States Constitution states that the President “shall take Care that the Laws be faithfully executed.” Although it may not be feasible for the President to enforce every law in every case, there is a difference between declining to enforce a law for an entire class of people (which is nothing more than rewriting the law) and declining to enforce a law based on the facts and equities of a particular case (which is a legitimate exercise of prosecutorial discretion).

2. Is it a violation of the Take Care Clause for the President to refuse to enforce the immigration laws for a distinct class of individuals who are not otherwise exempted by Congress?

RESPONSE: (b) (5) [REDACTED]

- 3. Do you believe the President has the authority to exercise executive discretion to:**
- a. categorically exempt a class of people from enforcement of the Affordable Care Act?
 - b. categorically exempt a class of people from enforcement of federal environmental laws?
 - c. categorically exempt a class of people from enforcement of the Internal Revenue Code?

RESPONSE: (b) (5) [REDACTED]

- In the lawsuit that Texas and more than 20 other states have brought against the United States challenging the President’s actions,⁵ the United States Government has taken the position that its deferred action decisions are judicially unreviewable non enforcement decisions.⁶

3. Do you agree that the President’s decision to defer removal actions for certain categories of illegal aliens is unreviewable by Article III courts? If your answer is yes, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

⁵ See, e.g., <https://www.texasattorneygeneral.gov/files/eypress/files/20141203ImmigrationExecutiveOrderLawsuit.pdf> (last viewed Feb. 5, 2015).

⁶ Pl.’s Reply in Support of Mot. for Preliminary Inj., *United States v. Texas*, No. 1:14-cv-254 (S.D. Tex.) (“Plaintiffs’ redress . . . is through the political process, not the courts.” (quoting Def. Opp. at 29)).

Questions on Executive Amnesty

II. Work Authorization

- Under both DACA and DAPA, illegal immigrants granted deferred action would be eligible to apply for work authorization in the United States.

1. Do you agree or disagree that the President lacks the authority to grant work authority to illegal aliens who are eligible for deferred action under DACA or DAPA? If you disagree with this statement, please provide a detailed explanation as to why, including citations to the relevant statutory authority.

RESPONSE: (b) (5)

2. Do you agree or disagree that affirmatively granting illegal aliens the right to work is not an exercise of prosecutorial discretion? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5)

- In his November 20, 2014 memorandum on DAPA, Secretary Johnson cites Section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) as the basis for his authority to grant work authorizations to illegal aliens.⁷ For purposes of determining work authorization, that provision defines the term “unauthorized alien” as an alien who is not “(A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or *by the Attorney General*” (emphasis added). (Note: The language referencing the Attorney General represents unchanged “legacy” language that has not been changed since the Department of Homeland Security was first authorized in 2002.)

3. Do you agree or disagree that the statutory language cited above means that the Secretary of Homeland Security has complete discretion to grant work authorizations to any alien? If you agree with this statement, please provide a detailed explanation as to why.

⁷ Jeh Johnson, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* (Nov. 20, 2014).

RESPONSE: (b) (5) [Redacted]

4. Do you agree or disagree that the statutory language cited above gives the Secretary of Homeland Security complete discretion to grant work authorizations to all aliens? If you agree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

Questions on Executive Amnesty

III. Advance Parole as Pathway to Citizenship/Benefits

- INA Section 212(d)(5) (8 U.S.C. 1182(d)(5)) authorizes the Secretary of Homeland Security to parole otherwise inadmissible immigrants “on a case by case basis for urgent humanitarian reasons or significant public benefit.” INA Section 245(a) (8 U.S.C. 1255(a)), in turn, allows an alien to have his status adjusted to legal permanent resident if that alien was “admitted or paroled” into the United States.

1. Do you agree or disagree that the Secretary of Homeland Security lacks the legal authority to grant “advance parole” to illegal aliens covered by DAPA (i.e., the parents of U.S.-born children who, but for their unlawful presence, would be eligible for green cards)? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

2. If you think that the Secretary of Homeland Security does have the legal authority to grant “advance parole” to illegal aliens covered by DAPA, do you agree or disagree that granting advance parole could allow the Secretary of Homeland Security to then grant lawful permanent resident status to those aliens, thereby placing them on a “path to citizenship”? If you agree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

(b) (5)

Questions on Executive Amnesty

IV. Driver's Licenses to DACA and DAPA Recipients

1. Do you think that federal law compels states to issue driver's licenses to DACA and DAPA recipients who are in the United States illegally? Whether you answer yes or no, please provide a detailed explanation as to why.

RESPONSE: (b) (5)

Questions on DOJ Legal Positions and Practices

I. Attorney General's Advisory Committee

- It is our understanding that you have served on the Attorney General's Advisory Committee of U.S. Attorneys (Advisory Committee) almost since the start of your second tenure as United States Attorney for the Eastern District of New York. Specifically, since assuming your duties as United States Attorney on May 3, 2010, you were appointed by Attorney General Eric Holder, also in May 2010, to serve on the Advisory Committee.⁸ In September 2011, you were appointed by Attorney General Holder to serve as vice chair of the Advisory Committee.⁹ In January 2013, you were appointed by Attorney General Holder to serve as chair of the Advisory Committee,¹⁰ and you continue to hold that chair.

The Advisory Committee, according to regulation, appears to provide very broad latitude in terms of the type and scope of input the Advisory Committee and its members may provide to the Attorney General, the Deputy Attorney General, and the Associate Attorney General.¹¹ The regulation provides (with emphasis added):

(b) The Committee shall make recommendations to the Attorney General, to the Deputy Attorney General and to the Associate Attorney General

⁸ U.S. Department of Justice Press Release, *U.S. Attorneys Paul J. Fishman and Loretta E. Lynch to Lead Attorney General's Advisory Committee* (Sept. 1, 2011) (noting your initial appointment to the Advisory Committee in May 2010).

⁹ *Id.*

¹⁰ CNN Library, *Loretta Lynch Fast Facts*, CNN (Dec. 5, 2014) (noting your appointment as chair of the Advisory Committee in January 2013).

¹¹ 28 CFR 0.10(b).

concerning *any matters which the Committee believes to be in the best interests of justice*, including, but not limited to, the following:

- (1) *Establishing and modifying policies and procedures* of the Department;
- (2) Improving management, particularly with respect to the relationships between the Department and the U.S. Attorneys;
- (3) Cooperating with State Attorneys General and other State and local officials for the purpose of *improving the quality of justice in the United States*;
- (4) Promoting *greater consistency in the application of legal standards throughout the Nation* and at the various levels of government; and
- (5) Aiding the Attorney General, the Deputy Attorney General and the Associate Attorney General in *formulating new programs for improvement of the criminal justice system at all levels, including proposals relating to legislation* and court rules.¹²

1. Do you agree or disagree that the subject matter scope of the Advisory Committee, as provided for in the above regulatory language, is essentially limitless? **If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: (b) (5)
[Redacted]

2. Have you, in any of your capacities on the Advisory Committee (i.e., as an entering member, vice chair, or chair) provided any written or verbal advice, feedback, or information, or communicated in any direct or indirect way, via official or non-official channels, with either the Attorney General, the Deputy Attorney General, or the Associate Attorney General, on any of the following subjects:
 - a. Any aspect of the Administration’s immigration policy, including executive amnesty for illegal aliens or work authorization for illegal aliens?

¹² 28 C.F.R. 0.10(b).

- b. Any aspect of the Administration’s approach to the Defense of Marriage Act (DOMA), including the Administration’s decision to no longer defend DOMA in federal court?
- c. Any aspect of the Administration’s enforcement of the Voting Rights Act or other federal laws pertaining to voting rights, including its resistance to states’ efforts to enhance or enact voter identification laws or its selective enforcement of voting rights protections?
- d. Any aspect of the Administration’s enforcement of federal drug laws, including its executive decisions to not pursue enforcement in states that have legalized marijuana for recreational use?
- e. Any aspect of the Internal Revenue Service’s (IRS) political targeting of private organizations seeking tax-exempt status, including the decision to not appoint a special prosecutor to investigate that targeting?
- f. Any aspect of Operation Fast and Furious, including Attorney General Holder’s contempt finding or the litigation related to that contempt finding?
- g. Any aspect of the Department of Justice’s surveillance of reporters?
- h. Any aspect of the Department of Justice’s application of the Foreign Corrupt Practices Act (FCPA), including discussion of potential FCPA targets?
- i. Any aspect of the Administration’s response to the terrorist murder of U.S. citizens in Benghazi, Libya, on September 11, 2012, including decisions regarding the post-incident investigation by the Federal Bureau of Investigation?
- j. Any aspect of the Administration’s decision to close the Guantanamo Bay Detention Facility (GTMO), including the decision to transfer detainees out of GTMO?
- k. Any aspect of the Administration’s decision to close its Office of Political Affairs (OPA) in January 2011, including discussion with the U.S. Office of Special Counsel regarding the investigation into OPA?

RESPONSE: (b) (5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Questions on DOJ Legal Positions and Practices

II. DOJ Refusal to Defend DOMA

- According to Attorney General Eric Holder, it is the longstanding practice of the Department of Justice to defend “the constitutionality of duly enacted statutes if reasonable arguments can be made in their defense.” Yet, in February 2011, the Attorney General announced that the Department would no longer defend the constitutionality of Section 3 of the Defense of Marriage Act, which defined marriage under federal law as the union of one man and one woman. The Attorney General offered two reasons for this

decision: (1) the Department does not consider the arguments in defense of DOMA to be “reasonable,” and (2) the President concluded that DOMA was unconstitutional.¹³

1. Do you agree or disagree with Attorney General Holder that no “reasonable” arguments could be made in defense of a law that defines marriage as limited to the union of one man and one woman? If you agree with his position, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

2. Do you agree or disagree with the Attorney General’s decision to not defend DOMA?¹⁴ If you agree with his decision, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

3. Do you agree or disagree with Attorney General Holder that the President can refuse to defend a law in court that the President believes is unconstitutional? If you agree with his position, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

¹³ Press Release, *Statement of the Attorney General on Litigation Involving the Defense of Marriage Act*, Dept. of Justice (Feb. 23, 2011).

¹⁴ *United States v. Windsor*, 133 S. Ct. 2675 (2013) (Slip op. at 12, 6 n.2.).

(b) (5)
[Redacted]

Questions on DOJ Legal Positions and Practices

III. DOJ Refusal to Enforce Federal Marijuana Laws

- The Obama Administration arguably refuses to fully enforce federal drug laws with respect to marijuana, which is still listed as a Schedule I controlled substance in accordance with the Controlled Substance Act. Marijuana continues to be listed under Schedule I because it has long been considered by federal law enforcement and medical authorities to be both dangerous and without medicinal value.

1. Do you agree or disagree with the federal position that marijuana is a dangerous controlled substance? If you disagree with the federal position, please provide a detailed explanation as to why.

RESPONSE: (b) (5)
[Redacted]

2. Do you agree or disagree with the federal position that marijuana has no medicinal value? If you disagree with the federal position, please provide a detailed explanation as to why.

RESPONSE: (b) (5)
[Redacted]

3. Do you agree or disagree with the statement that states that have legalized marijuana for recreational use have done so in violation of federal law? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5)
[Redacted]

4. Do you agree or disagree with the statement that states that have legalized marijuana for medicinal use have done so in violation of existing federal law? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

5. Do you agree or disagree with the statement that federal prosecutors possess the prosecutorial discretion to refuse to prosecute all federal marijuana cases as a class or group? If you agree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

6. Do you agree or disagree with the statement that federal prosecutors possess the prosecutorial discretion to refuse to prosecute federal marijuana cases where the amount of marijuana at issue falls below a certain threshold? If you agree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

- In April 2013, the Drug Enforcement Administration (DEA) released a report¹⁵ that reaffirmed the following: (1) that marijuana remains a dangerous controlled substance,

¹⁵ U.S. Drug Enforcement Administration, *The DEA Position on Marijuana* (Apr. 2013).

and that its continued listing in Schedule I was entirely appropriate,¹⁶ and (2) that many (if not all) major American medical association, including the American Medical Association, the American Society of Addiction Medicine, the American Cancer Society, and the American Academy of Pediatrics, reaffirm the view that marijuana does not have medicinal value.¹⁷ The DEA’s position on marijuana continues to be echoed by Dr. Nora Volkow, Director of the National Institutes of Health’s National Institute on Drug Abuse, who is on record stating that marijuana is a harmful, non medicinal substance.¹⁸

- 7. Please read the cited DEA report and, based on the material and information contained in that report, answer each of the following questions separately:**
- a. Do you agree or disagree with any statement within, or portion of, the DEA April 2013 report? If you disagree with any statement within, or portion of, the DEA report, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

- b. Do you agree or disagree with any of the American medical associations that marijuana has no medicinal value? If you disagree with any of these American medical associations, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

- c. Are you aware of any domestic medical associations that maintain that marijuana is either medicinal, not harmful, or otherwise beneficial to users?**

RESPONSE: (b) (5) [REDACTED]

¹⁶ *Id.* at 1 (noting that “[m]arijuana is properly categorized under Schedule I of the Controlled Substances Act,” that “[t]he clear weight of the currently available evidence supports this classification,” and that “there is a general lack of accepted safety for its use even under medical supervision”).

¹⁷ *Id.* at 2-4 (citing these and other medical associations and organizations that reject the notion that smoked marijuana has any medicinal value).

¹⁸ *e.g.*, New England Journal of Medicine, *Adverse Health Effects of Marijuana Use* (Jun. 5, 2014) (co-authored by Dr. Volkow, and discussing the short- and long-term harmful effects of smoking marijuana, which can include neurological impairment); American Psychological Association, *Marijuana addiction a growing risk as society grows more tolerant* (May 2011) (noting Volkow’s comments about how smoking marijuana has the potential to interfere with cognitive development and function, particularly in developing brains).

8. Please read Dr. Volkow's cited *New England Journal of Medicine* article and, based on the material and information contained in that article, answer each of the following questions separately:
- a. Do you agree or disagree with the premise that smoked marijuana is harmful to a person's health? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5)

- b. Do you agree or disagree with Dr. Volkow's professional assessment about the potential short- and long-term effects of marijuana usage? If you disagree with Dr. Volkow's professional assessment, please provide a detailed explanation as to why.

RESPONSE: (b) (5)

- Four states—Colorado, Washington, Oregon, and Alaska—have now legalized the cultivation, distribution, and sale of marijuana for purely recreational use, thereby creating a legalized and regulated market for the illegal controlled substance within their respective states. These states have taken these internal actions to promote marijuana, despite the fact that the cultivation, distribution, and sale of marijuana remain illegal under federal law.¹⁹ Some of these states' efforts may have at least been encouraged by the Obama Administration's recent executive declarations about new federal marijuana related enforcement priorities.²⁰ Colorado's legalization of the cultivation, distribution, and sale of marijuana has triggered at least one lawsuit by adjacent states, which now trace current marijuana enforcement difficulties to Colorado's legalization of marijuana.²¹

¹⁹ Governing, *State Marijuana Laws Map* (Jan. 20, 2015) (identifying Colorado, Washington, Oregon, and Alaska as recreational use states).

²⁰ James M. Cole, *Guidance Regarding Marijuana Enforcement* (Aug. 29, 2013), identifying the eight following federal priorities regarding the enforcement of federal law against marijuana: (1) preventing the distribution of marijuana to minors; (2) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (3) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (4) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (5) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (6) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (7) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (8) preventing marijuana possession or use on federal property.

²¹ Denver Post, *Nebraska and Oklahoma sue Colorado over marijuana legalization* (Dec. 18, 2014) (citing the multi-state lawsuit and the interstate ramifications of intrastate legalization).

9. Before you are confirmed to serve as the next Attorney General, what steps will you take to require these states to cease and desist their support of the cultivation, distribution, and sale of marijuana, or to otherwise bring these states into compliance with existing federal controlled substance law?

RESPONSE: (b) (5) [Redacted]

10. Do you agree or disagree with the statement that state laws that affirmatively authorize the cultivation, distribution, or sale of marijuana and that attempt to regulate it are preempted by the Controlled Substances Act or other federal statutory law? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

11. Do you agree or disagree with the statement that federal statutory law, by virtue of the fact that it unequivocally declares marijuana to be a Schedule I controlled substance, preempts state law on the subject of marijuana, and therefore necessarily precludes states from creating a marketplace for the cultivation, distribution, and sale of marijuana under state law? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

12. Do you agree or disagree with the Obama Administration's decision to effectively suspend enforcement of the federal ban on marijuana (except with respect to certain enforcement priorities) in states that have legalized the cultivation, distribution, and sale of marijuana? If you agree with this decision, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

(b) (5)

13. Do you agree or disagree with the statement that it violates the Take Care Clause for the Administration to enforce marijuana laws only in states that have not legalized the use of marijuana in some way? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5)

- Reports indicate that there are arguably significant banking irregularities among Colorado’s legalized marijuana related businesses, which raise the significant possibility that these businesses may be improperly avoiding the reporting of marijuana related revenue in order to avoid paying federal income taxes.²²

14. Before you are confirmed to serve as the next Attorney General, can you commit or not commit to dedicating the resources of the Department of Justice to investigating the degree to which these Colorado-based marijuana-related businesses may be avoiding the payment of federal income taxes? If you will not commit to investigating the tax compliance of these businesses, please provide a detailed explanation as to why.

RESPONSE: (b) (5)

[Redacted response text]

Questions on DOJ Legal Positions and Practices

IV. DOJ Refusal to Appoint Special Prosecutors for IRS Matters

- In May 2013, the Treasury Inspector General for Tax Administration (“TIGTA”) confirmed that the IRS had used inappropriate criteria to identify potential political

²² Denver Post, *IRS fines unbanked pot shops for paying federal payroll tax in cash* (Jul. 2, 2014) (noting how marijuana-based businesses are frequently unable to use legitimate banks because of the illicit nature of their business).

(b) (5)

[REDACTED]

- There have also been allegations that the IRS has shared thousands of pages' worth of confidential taxpayer information with the White House.²⁷ Such sharing may have violated federal laws designed to protect the confidentiality of taxpayer information.

3. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to appoint a special prosecutor for the purpose of conducting an investigation into any alleged sharing of confidential taxpayer information with the White House? If you will not commit to appointing a special prosecutor, please provide a detailed explanation as to why.

RESPONSE: (b) (5)

Questions on DOJ Legal Positions and Practices

V. Operation Fast and Furious

- On August 19, 2009, the Obama Administration created a new strategy (dubbed "Operation Fast and Furious") to ostensibly stem the flow of illegal weapons from the United States to Mexican drug cartels by putting an emphasis on identifying the trafficking networks rather than arresting straw purchasers of illegal weapons.²⁸ This, of course, required federal law enforcement to allow weapons to be illegally purchased and then trafficked. Unfortunately, the weapons were not tracked (or were not tracked successfully), which allowed many of these weapons to enter the stream of commerce and trafficking and be used in the commission of crimes, including violent crimes. The full extent of the damage done by Operation Fast and Furious may never be known.

1. Do you agree or disagree that Operation Fast and Furious was effective in tracking and monitoring how Mexican drug cartels obtain firearms? If you agree with this statement, please provide a detailed explanation as to why.

²⁷ Robert W. Wood, In 'Lost' Trove Of IRS Emails, 2,500 May Link White House To Confidential Taxpayer Data, Forbes (Nov. 27, 2014).

²⁸ Office of National Drug Control Policy, National Southwest Border Counternarcotics Strategy Implementation Update, White House (Jan. 7, 2010).

RESPONSE: (b) (5) [Redacted]

2. Do you agree or disagree that operations of this kind pose inherent risks to the safety and security of not only the American public, but also to American federal, state, and local law enforcement?

RESPONSE: (b) (5) [Redacted]

- The House of Representatives has tried for years to acquire information from the Department of Justice about Operation Fast and Furious. The Department’s refusal to provide that information²⁹ on grounds of executive privilege led to the U.S. House of Representatives holding Attorney General Holder in contempt of Congress in 2012. This represented the first time in U.S. history that an Attorney General was held in contempt of Congress.³⁰ Because the Department refused to enforce the contempt citation, the Committee on Oversight and Government Reform (OGR) filed suit in federal district court. The court ordered the Department to begin producing documents by November 3, 2014.³¹ Approximately 64,000 pages of documents were finally produced, although the Department continues to assert privilege over others.³²

3. Please provide your legal understanding of the origins, nature, and purpose of the doctrine of executive privilege.

RESPONSE: (b) (5) [Redacted]

4. Do you agree or disagree that the doctrine was designed only to protect the confidentiality of a president’s inner circle of advisors, rather than to provide a general right of the President’s cabinet officers to withhold information from the

²⁹ Deputy Attorney General James Cole, *Letter to Chairman Issa*, Department of Justice (Jun. 20, 2012).
³⁰ Alan Silverleib, *House Holds Holder in Contempt*, CNN (Jun. 29, 2012).
³¹ Josh Gerstein, *Judge won’t allow Holder appeal now in contempt case*, Politico, Nov. 18, 2013; Jennifer Koons, *In Loss for Department of Justice, Judge Rules Fast and Furious Lawsuit Can Proceed*, MainJustice.com (Sept. 30, 2013).
³² Susan Ferrechio, *Department of Justice Dumps 64,000 Pages Related to Fast and Furious*, Washington Times (Nov. 4, 2014).

public? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

5. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to turning over to both chambers of Congress any and all remaining documents that Attorney General Holder has refused to provide during the prior congressional investigations into Operation Fast and Furious? If you will not commit to turning over any and all remaining Operation Fast and Furious documents, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

6. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to preserving the entire amount of Operation Fast and Furious documents in the possession of the Department of Justice, in order to permit a subsequent Administration or federal court the opportunity to review those documents? If you will not commit to preserving unreleased Operation Fast and Furious documents for future review, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

Questions on DOJ Legal Positions and Practices

VI. DOJ Interference with Freedom of the Press

- Under Attorney General Holder, the Department of Justice obtained warrants to search the phone records of the Associated Press³³ and the personal e-mail account of Fox News Chief Washington Correspondent James Rosen³⁴ in connection with stories that they published containing classified information, all without informing the target of the search. In testimony before the House Judiciary Committee, Federal Bureau of Investigation Director Robert Mueller testified that investigations of “criminal co

³³ Mark Sherman, *Gov’t Obtains Wide AP Phone Records In Probe*, Associated Press (May 13, 2013).
³⁴ Ann E. Marimow, *A rare peek into a Department of Justice leak probe*, Washington Post (May 19, 2013).

conspirators,” as Rosen was labeled in the search warrant under which the surveillance was conducted, were used “quite often” without anticipating prosecution.³⁵

- 1. Do you agree or disagree that it is inappropriate for the Department of Justice to label a journalist as a “criminal co-conspirator” and then routinely conduct surveillance of that person without seeking to prosecute him or her, when there is no evidence that the journalist is doing anything other than engaging in well-accepted journalistic practices? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

Questions on DOJ Legal Positions and Practices

VII. DOJ Foreign Corrupt Practices Act Abuses

- In much the same way as civil forfeiture, critics of the FCPA note that the Department of Justice collects and retains for use (without further congressional approval or disbursal from the Treasury) fines paid in settlement of federal FCPA investigations. This ability to retain FCPA fines incentivizes not only a vigorous application of the FCPA, but also “creative” legal theories (which can lead to investigations of companies for potentially innocuous behavior). Critics of the FCPA, and the Department’s pursuit of FCPA investigations, point out that the combination of investigation and potential litigation expenses frequently drive what may be innocent companies to settle, which both cements the revenue source for the Department and prevents federal judges from having opportunities to interpret provisions of the FCPA.

- 1. Do you agree or disagree with the claim that the ability of the Department of Justice to keep and use FCPA settlement fines incentivizes application of the FCPA? If you disagree with this claim, please provide a detailed explanation as to why.**

³⁵ FBI Oversight Hearing Before the H. Comm. on the Judiciary, 113 Cong. (2013) (Statement of Dir. Mueller, Chairman).

RESPONSE: (b) (5) [Redacted]

[Redacted]

[Redacted]

2. Has your office actually tried any FCPA cases to a verdict in federal court? If the answer is yes, please provide details about these cases.

RESPONSE: (b) (5) [Redacted]

- As you know, the Criminal Division’s Fraud Section is charged with investigating and enforcing the criminal provisions of the FCPA. Recently, Andrew Weissmann was

selected to be the Chief of the Fraud Section. Mr. Weissmann is a former prosecutor and FBI general counsel. In private practice, however, Mr. Weissmann has been an outspoken critic of DOJ's FCPA program. Specifically, in a report³⁶ Mr. Weissmann drafted for the U.S. Chamber of Commerce's Institute for Legal Reform, he has recommended that: (1) a compliance defense to the FCPA should be added; (2) a company's liability should be limited for the prior actions of a company it has acquired; (3) a "willfulness" element should be added for corporate criminal liability; (4) a company's liability should be limited for the actions of a subsidiary; and (5) the definition of "foreign official" under the FCPA should be changed.

3. Do you agree with any, some, or all of Weissmann's proposals for reforming the FCPA?

RESPONSE: (b) (5) [Redacted]

[Redacted]

³⁶ U.S. Chamber Institute for Legal Reform, *Restoring Balance: Proposed Amendments to the Foreign Corrupt Practices Act* (Oct. 26, 2010).

4. Which of these changes (if any) do you think could be done administratively, as opposed to legislatively?

RESPONSE: (b) (5) [Redacted]

- In 2004, then Deputy Attorney General (and current director of the Federal Bureau of Investigation) James Comey stated that “[the Department of Justice wants] real time enforcement, so that the public and potential white collar criminals see that misdeeds are swiftly punished.” Despite this statement, the 2014 OECD Foreign Bribery Report noted that “the average time taken (in years) to conclude foreign bribery cases has steadily increased over time, [from an average of 1.3 years in 2004] peaking at an average of 7.3 years taken to conclude the 42 cases in 2013.”³⁷ Lengthy federal investigations not only place a tremendous financial burden on the targeted corporations and their shareholders, but also on taxpayers who shoulder the agency’s expenses for conducting the investigation.

5. Do you agree or disagree with Director Comey’s statement regarding the value of real-time law enforcement? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

[Redacted]

[Redacted]

³⁷ Organization for Economic Cooperation and Development, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials* (Dec. 2, 2014).

(b) (5) [Redacted]

6. Given that the FCPA Unit within the Department’s Fraud Section has expanded its personnel from 2004 to today, and given that the Department receives even more international cooperation today than it did in 2004, do you agree or disagree that the Department should be witnessing reduced investigative timelines for FCPA investigations rather than increased timelines? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

7. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to dramatically reducing the timeline of FCPA-related Fraud Unit investigations, in order to reduce the financial burden on potentially innocent corporations and reduce investigation-related taxpayer expenses? If you will not commit to reducing these investigative timelines, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

(b) (5)

- Often, many of the countries with corrupt officials are the same countries that harbor terrorists, that seek to undermine U.S. foreign policy, and that have rampant bid rigging and illegal cartel conduct. On the opposite side of the equation, there are an increasing number of countries that have passed new anti bribery statutes in the hope of curbing their own internal corruption problems and spurring legitimate economic growth.

8. **How will you marshal the criminal justice resources of the Department of Justice to enforce the FCPA in a way that helps in the fight against terrorism, cartel conduct, and international money laundering? Please provide a detailed explanation, based on your current experience as United States Attorney for the Eastern District of New York, of how you intend to tackle the problem.**

RESPONSE: (b) (5)

[Redacted response text]

[Redacted response text]

9. **Given that more and more countries are enacting and enforcing anti-bribery statutes, would you agree or disagree that the FCPA ought to be amended to**

restrict FCPA jurisdiction to countries that do not have a prima facie anti-corruption infrastructure? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

[Redacted]

- The Department of Justice generally emphasizes the benefit of voluntary self disclosure to, and voluntary cooperation with, FCPA investigations. Corporations are increasingly questioning the benefit, however, of rushing toward self disclosure without demonstration of some sort of legal or cost benefit for doing so. To address this, some practitioners have suggested that the FCPA should contain a “safe harbor” from criminal prosecution for corporations that (1) have robust compliance programs, (2) self disclose potential FCPA violations, and (3) cooperate fully with the Department’s investigation, akin to what the Antitrust Division has for cartel enforcement.³⁸ (The Department would, of course, be able to continue to obtain non criminal penalties for violations.)

10. Do you agree or disagree with the statement that there should be an FCPA “safe harbor provision” to help corporations that are trying to do the right thing? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

³⁸ Christopher M. Matthews, *Terwilliger to Propose New Rules for FCPA Disclosure*, Just Anti-Corruption (Jun. 22, 2010).

(b) (5) [Redacted]

11. If you agree with the concept of an FCPA safe harbor provision, please describe what the structure or contours of such a safe harbor provision should be, and how you would implement that provision. Please provide a detailed explanation, based on your current experience as United States Attorney for the Eastern District of New York, of how you would write and implement such a provision.

RESPONSE: (b) (5) [Redacted]

- Members of the business community, practitioners, commentators, and even members of Congress have expressed frustration with the Department of Justice’s failure to publicize declined FCPA prosecutions, even where there is public knowledge that a particular corporation is under investigation. This practice may have several negative effects, including preventing corporations from having clarity about what type of conduct is considered acceptable. Given the Department’s financial incentive to ensure robust application of the FCPA, there is concern that this refusal to publish decline to prosecute information is intended to protect the FCPA fine based revenue source for the Department.

12. Would you agree or disagree with the statement that FCPA decline-to-prosecute decisions should be made available to the public? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

(b) (5) [Redacted]

[Redacted]

[Redacted]

13. Before you are confirmed to serve as the next Attorney General, will you or will you not commit to publishing information about the FCPA cases that the Department has decided not to pursue or prosecute? If you will not commit to publishing this information, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

Questions on DOJ Legal Positions and Practices

VIII. DOJ Civil Asset Forfeiture Abuses

- There has been recent congressional concern about the Department of Justice’s use of civil asset forfeiture, which has historically allowed federal prosecutors to seize cash and property from an individual before that individual is charged with a crime (and, in many circumstances, in the absence of any criminal charges or due process hearings).³⁹ It is also our understanding that you have been an aggressive user of civil asset forfeiture as United States Attorney for the Eastern District of New York, with your office receiving more than \$113 million in civil forfeiture proceeds from 123 cases between 2011 and 2013.⁴⁰

- 1. Please confirm the above number of civil asset forfeiture actions and the sum of civil asset forfeiture revenue taken in by your office during your recent tenure as United States Attorney (and, if these figures are incorrect, please provide the correct or updated figures).**

RESPONSE: (b) (5) [REDACTED]

- 2. Of the total number of civil asset forfeiture actions that have occurred in the Eastern District of New York during your recent tenure as United States Attorney, how many of those actions resulted in formal criminal charges:**
 - a. against the person from whom the assets were originally seized?**
 - b. against another person (such as an accomplice in criminal activity)?**

RESPONSE: (b) (5) [REDACTED]

[REDACTED]

³⁹ *Loretta Lynch’s Money Pot*, Wall Street Journal (Nov. 21, 2014).
⁴⁰ *Id.*

(b) (5) [Redacted text block]

[Redacted text block]

[Redacted text block]

- On Friday, January 16, 2015, Attorney General Holder issued an order restricting the practice whereby the federal government “adopts” state and local law enforcement seizures of property that might otherwise violate state civil asset forfeiture laws. Under the stated policy, this practice would be limited to state and local seizures of only “firearms, ammunition, explosives, and property associated with child pornography.”⁴¹

⁴¹ Eric Holder, *Prohibition on Certain Federal Adoptions of Seizures by State and Local Law Enforcement Agencies*, Department of Justice (Jan. 16, 2015).

While the order appears to be a step in the right direction, it also appears to be very limited in scope. For one, the order does not restrict in any way the federal government's ability to engage in unlimited civil asset forfeiture. Nor does it restrict any joint federal state civil asset forfeiture.

3. **Do you agree or disagree that the federal government's ability to engage in civil asset forfeiture presents due process concerns? If you disagree, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

4. **Before you are confirmed to serve as the next Attorney General, will you or will you not commit to reducing the Department of Justice's use of civil asset forfeiture in the absence of formal criminal charges? If you will not commit to reducing civil asset forfeiture in the absence of formal criminal charges, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

- Critics of civil asset forfeiture have highlighted the Department of Justice's ability under current law to collect in an offsetting account and use (without further congressional approval or disbursal from the Treasury) revenue derived from civil asset forfeiture proceeds for Department activities. Because the Department has the freedom to keep and use this revenue without additional steps, critics maintain that the Department has every incentive to continue, and even expand, its use of civil asset forfeiture (and, for all intents and purposes, can self fund certain agency functions, outside of the normal appropriations framework). One proposed solution for eliminating the incentive to engage in civil asset forfeiture is to change federal law to require that any proceeds collected as a result of civil asset forfeiture be deposited directly into the general fund of the Treasury.

5. **Do you agree or disagree that the Department's ability to keep and use proceeds from civil asset forfeitures incentivizes the Department's use of civil asset forfeiture? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

(b) (5)
[Redacted]

6. Do you agree or disagree that it would be more appropriate for the Department's proceeds from civil asset forfeiture to be deposited directly into the general fund of the Treasury? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

- Frequent deposits beneath the \$10,000 threshold can trigger federal scrutiny on suspicion the depositors are seeking to evade federal oversight for crimes like money laundering or drug trafficking. On occasion, such deposits are seized using the Department of Justice's civil asset forfeiture capacity. Frequent, small deposits, however, are a common habit of legitimate small businesses, which rely on small injections of revenue and adequate account levels to ensure smooth bill payment and operations.

7. Do you agree or disagree that the Department should exercise greater care when it attempts to seize bank accounts of individuals and entities that could be sole proprietors or legitimate small businesses? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

8. Do you agree or disagree that there should be a "loser pays" policy in which the federal government would pay for the legal expenses of individuals whose property is ultimately determined by a federal court to have been seized inappropriately (or if there is some other demonstrable failure of due process)? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [Redacted]

Questions on National Security Issues

I. Obama Administration’s Criminal Justice Approach to Terrorism

- The Department of Justice recently announced the prosecution of two separate cases in the Eastern District of New York involving attacks by terrorists on U.S. troops in overseas theaters of operation.

The first case, announced on January 20, 2015, charged two Yemeni nationals who are members of al Qaeda, Sadiq Al Abbadi and Ali Alvi, with conspiring to murder U.S. nationals abroad and providing material support to al Qaeda. The complaint alleges that the two men engaged in attacks against U.S. forces in Afghanistan, in which an Army Ranger was killed and several others were seriously wounded. One of the defendants also engaged in attacks against U.S. forces in Iraq. The complaint states that the alleged conduct occurred between 2003 and 2008. The defendants were arrested in Saudi Arabia and then extradited to the United States.⁴²

The second case, announced on January 23, 2015, charged the defendant Faruq Khalil Muhammed ‘Isa, who is identified as a member of a multinational terrorist network, with conspiring to kill U.S. nationals abroad and providing material support to a terrorist conspiracy to kill U.S. nationals abroad. The complaint alleges that the defendant assisted in orchestrating a suicide attack that killed five U.S. soldiers. The defendant was extradited from Canada.⁴³

- 1. Do you agree or disagree with the Obama Administration’s decision to bring to the United States terrorist fighters who engaged in combat against our troops overseas and to try them as civilian criminals entitled to all the procedural protections of our criminal justice system? If you agree with this decision, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [Redacted]

⁴² Press Release, *Two Yemeni Nationals Charged with Conspiring to Murder United States Nationals Abroad and Providing Material Support to al Qaeda*, U.S. Department of Justice (Jan. 20, 2015).

⁴³ Press Release, *Alleged Terrorist, Charged With Murder of Five American Soldiers, Extradited to United States*, U.S. Department of Justice (Jan. 23, 2015).

(b) (5)

[REDACTED]

2. Do you agree or disagree that these fighters should be treated as unlawful enemy combatants subject to indefinite detention and trial by military commission for violations of the laws of war? If you disagree with this decision, please provide a detailed explanation as to why.

RESPONSE: (b) (5)

3. Are you concerned that by bringing terrorists to the United States for trial, Administration policy might draw terrorists here and expose the public to danger?

RESPONSE: (b) (5)

Questions on National Security Issues

II. Obama Administration's Guantanamo Bay Detention Facility Policy

- It has been reported that, of the 620 detainees released from U.S. military's Guantanamo Bay Detention Facility (GTMO), at least 180 of these detainees have returned (or are suspected of having returned) to the battlefield to fight against U.S. forces and allies. According to U.S. officials, of those 180 confirmed or suspected recidivists, 20 to 30 have either joined ISIS or other militant groups in Syria.⁴⁴ There are now only 122 detainees at GTMO.⁴⁵

1. Do you agree or disagree with the President's decision to close GTMO? If you agree, please provide a detailed explanation as to why.

RESPONSE: (b) (5)

⁴⁴ Justin Fishel & Jenner Griffin, *Sources: Former Guantanamo detainees suspected of joining ISIS, other groups in Syria*, Fox News (Oct. 30, 2014).

⁴⁵ Fact Sheet, *Guantanamo by the Numbers*, Human Rights First (Jan. 15, 2015). Of the 242 detainees at the start of the Obama presidency, 116 have been transferred, repatriated, or resettled. *Id.*

(b) (5)

2. If you agree, please provide your view on what to do with the remaining 122 detainees.

RESPONSE: (b) (5)
[Redacted]

3. Is it illegal for the United States government to detain terrorists indefinitely at GTMO?

RESPONSE: (b) (5)
[Redacted]

4. Is it illegal for the United States government to detain terrorists indefinitely at any other facility?

RESPONSE: (b) (5)
[Redacted]

5. Do you or do you not have concerns about what seems to be the Obama Administration's policy of transferring GTMO detainees to other governments' custody, regardless of whether these governments are willing or able to demonstrate their intent or capacity to continue to detain the transferred individuals?

RESPONSE: (b) (5)
[Redacted]

6. If it is illegal for the United States government to detain terrorists indefinitely at GTMO or any other facility, why is it legal or permissible for the United States government to transfer detainees to another government for indefinite detention?

RESPONSE: (b) (5) [REDACTED]

7. Will you or will you not commit to reviewing the Administration's policy of transferring detainees to foreign governments in light of the evidence of recidivism of transferees? If you will not commit to reviewing this policy, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

Questions on National Security Issues

III. Obama Administration's U.S. Citizen Domestic Drone Strike Policy

- In February 2013, a "White Paper" from the Department of Justice was released explaining that the government has the authority to kill U.S. citizens in a foreign country, outside the area of hostilities, if they are senior operational leaders of al Qaeda, provided that certain conditions are met, including that they present an "imminent" threat.⁴⁶

1. Do you agree or disagree that it would violate the Due Process Clause of the United States Constitution if the President ordered the killing of a U.S. citizen on U.S. soil without judicial process if that U.S. citizen does not present an imminent (meaning immediate) threat of death or serious bodily injury to others? If you disagree with this statement, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

⁴⁶ Office of Legal Counsel, *Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who is a Senior Organizational Leader of Al Qaeda or an Associated Force*, Department of Justice.

- The Administration’s 2013 White Paper, which applied only to targeted killings of Americans overseas, explained that an “imminent” threat “does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future.”⁴⁷

2. **Do you agree or disagree with this White Paper’s definition of “imminent”? If you agree, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

Questions on Voting Rights

I. The Voting Rights Act’s Preclearance Requirement

- In *Shelby County v. Holder*, 133 S. Ct. 2612 (June 25, 2013), the Supreme Court invalidated Section 4 of the Voting Rights Act, which had established the formula for determining which states and localities must obtain preclearance from the Department of Justice before implementing any changes to their respective election laws.

1. **Do you agree or disagree with the Supreme Court’s holding in *Shelby County* that the Voting Rights Act formula based on social conditions in 1965 no longer accurately reflected today’s social conditions? If you disagree with the Court’s holding, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

2. **Do you agree or disagree with the view that the imposition of a federal preclearance requirement for changes to a state’s election laws violates the Tenth Amendment of the United States Constitution? If you disagree with this view, please provide a detailed explanation as to why.**

⁴⁷ *Id.*

RESPONSE: (b) (5)

3. **Do you agree or disagree with the view that the preclearance requirement of the Voting Rights Act is obsolete in modern America? If you disagree with this view, please provide a detailed explanation as to why.**

RESPONSE: (b) (5)

Questions on Voting Rights

II. Voter Identification Laws and Legislation

- In November 2014 after President Obama nominated you to serve as Attorney General you were recorded in a video⁴⁸ speaking to an audience in Long Beach, California. You were highly critical of states' voter identification laws. In the course of giving this speech, you made the following comments:
 - "Fifty years after the march on Washington, 50 years after the Civil Rights Movement, we stand in this country at a time when we see people trying to take back so much of what Dr. King fought for. ... People try and take over the State House and reverse the goals that have been made in voting in this country."
 - "But I'm proud to tell you that the Department of Justice has looked at these laws, and looked at what's happening in the Deep South, and in my home state of North Carolina [that] has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens. And those lawsuits will continue."
 - "There's still more work to do. People tell us the 'dream' is not realized because dreams never are. [Nelson] Mandela and [Martin Luther] King knew we had to continue working, and I'd be remiss if I didn't tell you, that under this president and under this attorney general, that the Department of Justice is committed to following through with those dreams."
 - Your comments during this video mirror the comments of Attorney General Holder, who has used the Department of Justice's resources to block state voter identification laws or state efforts to pass new voter identification laws. Attorney General Holder has openly used his authority to pursue an "aggressive" assault of states' laws or

⁴⁸ Drew MacKenzie, *Loretta Lynch Attacks Voter ID Laws in Video*, Newsmax (Nov. 10, 2014).

efforts to pass laws, claiming that these laws or efforts are attempts “disenfranchise American citizens of their most precious rights.”⁴⁹

1. **Do you agree or disagree that states voter identification laws have legitimate, franchise-protecting purposes and are not aimed at disenfranchising U.S. citizens? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

2. **Do you agree or disagree that states have a legitimate right to prevent non-citizens from voting in their respective elections? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

3. **Do you agree or disagree that states have a legitimate, constitutionally sound interest in preventing fraudulent votes from being cast in their respective elections? If you disagree with this statement, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

4. **Do you agree or disagree that the millions of people who support voter identification laws have no racial animus whatsoever? If you disagree with this statement, please provide a detailed explanation as to why.**

⁴⁹ Sari Horwitz, *Eric Holder vows to aggressively challenge voter ID laws*, Washington Post (Jul. 10, 2012).

RESPONSE: (b) (5) [REDACTED]

5. **Do you agree or disagree that state efforts to pass voter identification laws are an assault on the goals and achievements of the Civil Rights Movement? If you agree with this statement, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

Questions on Voting Rights

III. Selective Voting Rights Enforcement

- There is concern that the Department of Justice under Attorney General Holder has embraced the view that federal voting rights laws should not be enforced in a race neutral manner but should only be enforced to protect the rights of minority voters. Reports produced by the U.S. Commission on Civil Rights, in addition to feedback from the Commission’s membership, indicate that the Department has incorporated this view into its policy and strategy.⁵⁰

1. **Do you agree or disagree that federal voting rights laws are intended to protect and that the Department of Justice should protect the rights of all voters regardless of race? If you disagree with this view, please provide a detailed explanation as to why.**

RESPONSE: (b) (5) [REDACTED]

⁵⁰ See U.S. Commission on Civil Rights, Letter from Commissioner Peter Kirsanow to Chairman Charles Grassley, 1-4 (Feb. 3, 2015) (detailing Department conduct, including that of former Deputy Attorney General Julie Fernandes, with respect to the Civil Rights Division’s removal of cases involving white voters from Civil Rights Division consideration and citing specific Commission reports that explore this subject in depth).

2. Will you commit or not commit to reaffirming that it is the policy of the Department of Justice to pursue voting rights cases on behalf of all voters, regardless of their color, ethnicity, religion, or any other factor? If you will not commit to this specific step, please provide a detailed explanation as to why.

RESPONSE: (b) (5) [REDACTED]

Gaston, Molly (OAG)

From: Gaston, Molly (OAG)
Sent: Monday, February 9, 2015 4:05 PM
To: Richardson, Margaret (OAG); Cheung, Denise (OAG); Mizer, Benjamin (OAG);
Phillips, Channing D. (OAG); Franklin, Shirlethia (OAG); Werner, Sharon (OAG)
Subject: QFR Submission
Attachments: Lynch - QFR SUBMISSION (2-9-2015).zip

FYI: final form. Thanks again for all of your work on these!

Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015

QUESTIONS FROM SENATOR PERDUE

1. As a career federal prosecutor, I know you are familiar with the concept of prosecutorial discretion. What, if any, are the limits of the President's discretion to enforce federal law?

RESPONSE: That is a question best suited for the Office of Legal Counsel, based upon the facts of a particular case. I would not want to prejudge any issue that the Department may be presented with in the future, should I be confirmed as Attorney General. There are, of course, recognized constitutional limitations on the President's authority.

2. With respect to the President's executive action on immigration, please explain the legal basis for your belief that the Office of Legal Counsel memorandum setting forth the argument for the President's action is constitutional and "reasonable."

RESPONSE: As I noted during my testimony before Committee, the opinion by the Office of Legal Counsel is based upon a thorough review of precedent, prior actions by Congress, as well as the discretionary authority of the Department of Homeland Security to prioritize the removal of the most dangerous aliens within the United States and recent border crossers. Accordingly, the legal analysis by the Office of Legal Counsel appears reasonable.

3. Please explain your view on how, or whether, the President's executive action on immigration comports with the Constitution's Take Care Clause and Congress's Article I authority over immigration and naturalization.

RESPONSE: It is my understanding that this issue is currently the subject of pending litigation and that this issue has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

4. At your confirmation hearing, Senator Sessions asked whether you agreed that "someone who enters the country unlawfully" has a "civil right" to work. You responded: "I believe that the right and the obligation to work is one that is shared by everyone in this country, regardless of how they came here. And certainly if someone is here, regardless of status, I would prefer that they be participating in the workplace than not participating in the workplace."

- a. Please explain the legal basis for your assertion that all persons, including persons having entered the United States illegally, have “the right...to work.”

RESPONSE: I was stating my personal belief that it would be better for individuals in this country to be working to support themselves and their families and contributing to our economy than remaining unemployed. But it is my understanding that only citizens and those duly authorized to seek employment by the Department of Homeland Security are legally able to work.

- b. Please explain whether you believe your assertion that all persons present in the United States have a right to work conflicts with provisions of Title 9, specifically 8 U.S.C. § 1324a *et seq.*

RESPONSE: As I previously indicated, only United States citizens and non-citizens who have been duly authorized to seek employment by the Department of Homeland Security have a legal ability to work in the United States.

5. It is now indisputable that the Internal Revenue Service (“IRS”) targeted conservative organizations that were seeking to obtain tax-exempt status. Senate investigators with the Permanent Subcommittee on Investigations found that over 80% of the targeted groups had a conservative political ideology. The Department of Justice (“DOJ” or “Department”) responded by initiating a criminal probe led by a Civil Rights Division attorney who had contributed to President Obama’s campaign in 2012. Little, if any, progress has been made in this investigation thus far.
 - a. With respect to IRS targeting of individuals and organizations who ostensibly identify with a conservative or Tea Party viewpoint, will you commit to reassignment of the DOJ’s investigation to a special prosecutor if you are confirmed?

RESPONSE: I believe that it is very important that all investigations by the Department of Justice are conducted in a fair, objective, professional, and impartial manner, without regard to politics or outside influence. We must follow the facts wherever they lead, and must always make our decisions regarding any potential charges based upon the facts and the law, and nothing more. That is what I have always done as a United States Attorney, and it is what I will do if I am confirmed as Attorney General.

In the many years that I have worked at the Department of Justice, I have developed tremendous faith in the ability of career prosecutors and professional law enforcement agents to conduct investigations in a fair, objective, professional, and impartial manner, without regard to politics or other outside influence. As the Attorney General and his predecessor have stated in memoranda directed to all Department employees during election years, “[s]imply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges.” *See Memorandum of The Attorney General to All*

Department Employees Regarding Election Year Sensitivities (March 9, 2012, and March 5, 2008). I am committed to those principles.

It is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. Under those regulations, which I understand have been used very rarely, the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment. I have no reason to question the ability of our dedicated career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally. At the same time, I assure the Committee that, if I am confirmed as Attorney General, I will apply the Special Counsel regulations faithfully and will exercise my discretion as Attorney General in an appropriate manner.

- b. Do you believe it was appropriate to assign management of the DOJ's investigation of IRS targeting to a DOJ lawyer who contributed to President Obama's campaign?

RESPONSE: As stated above, in the many years that I have worked at the Department of Justice, I have developed tremendous faith in the ability of career prosecutors and professional law enforcement agents to conduct investigations in a fair, objective, professional, and impartial manner, without regard to politics or other outside influence. As the Attorney General and his predecessor have stated in memoranda directed to all Department employees during election years, "[s]imply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges." *See* Memorandum of The Attorney General to All Department Employees Regarding Election Year Sensitivities (March 9, 2012, and March 5, 2008). I am committed to those principles.

It is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I understand that this is a team of many investigators and prosecutors who have worked together to investigate the matter thoroughly and professionally for more than a year and a half. I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. Under those regulations, which I understand have been used very rarely, the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the

public interest would be served by such an appointment. I have no reason to question the ability of our dedicated career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally. At the same time, I assure the Committee that, if I am confirmed as Attorney General, I will apply the Special Counsel regulations faithfully and will exercise my discretion as Attorney General in an appropriate manner.

- c. Do you believe that assigning management of the DOJ's investigation of IRS targeting to a DOJ lawyer who contributed to President Obama's campaign could reasonably be expected to create the appearance of partiality or lack of objectivity on the part of the DOJ?

RESPONSE: As stated above, in the many years that I have worked at the Department of Justice, I have developed tremendous faith in the ability of career prosecutors and professional law enforcement agents to conduct investigations in a fair, objective, professional, and impartial manner, without regard to politics or other outside influence. As the Attorney General and his predecessor have stated in memoranda directed to all Department employees during election years, "[s]imply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges." *See* Memorandum of The Attorney General to All Department Employees Regarding Election Year Sensitivities (March 9, 2012, and March 5, 2008). I am committed to those principles.

It is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I understand that this is a team of many investigators and prosecutors who have worked together to investigate the matter thoroughly and professionally for more than a year and a half. I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. Under those regulations, which I understand have been used very rarely, the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment. I have no reason to question the ability of our dedicated career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally. At the same time, I assure the Committee that, if I am confirmed as Attorney General, I will apply the Special Counsel regulations faithfully and will exercise my discretion as Attorney General in an appropriate manner.

- d. If you are confirmed, will you commit to keeping Congress informed in a more timely way than the current DOJ leadership has about the status of the investigation?

RESPONSE: If I am confirmed as Attorney General, I am committed to working effectively

and productively with Congress and this Committee. Although I am not familiar with the details of this particular investigation, I assure you that I will provide information to the Committee within the parameters permitted by law and consistent with the Department's law enforcement and confidentiality interests.

6. National security is always of paramount importance for the Attorney General. The recent Paris attack and the rise of ISIS are episodes that show two emerging national security threats that you will confront, if confirmed: foreign fighters and so-called "lone wolf" attacks.
 - a. In your view, does the recent emergence of these threats have any impact on the debate over the impending renewal of the Foreign Intelligence Surveillance Act of 1978 ("FISA")?

RESPONSE: I share your concern regarding the emerging national security threats posed by foreign fighters and lone-wolf attacks and believe that these threats should inform the congressional debate regarding the reauthorization of certain provisions of FISA. It is important that our intelligence and law enforcement professionals have the full panoply of investigative tools and techniques to deal with the ever-evolving threat presented by terrorism and other national security threats, while also ensuring that we use those tools in a way that effectively protects privacy and civil liberties. The Administration has supported the USA FREEDOM Act, which would ensure that the government retained the authority to conduct electronic surveillance of foreign lone wolf terrorists. If I am confirmed as Attorney General, I will work with Congress to pass legislation consistent with the USA FREEDOM Act.

- b. Do you believe that the current "bulk collection" regime under FISA Section 215 is lawful?

RESPONSE: Yes. The "bulk collection" program operates pursuant to court order, has been reviewed and approved by multiple federal judges, and is subject to rigorous oversight by all three branches of government. Our collection of foreign intelligence, however, needs not only to be lawful, but to be conducted in a manner that best protects both our national security and our privacy and civil liberties. I understand that, based on recommendations from the Department of Justice and the Intelligence Community, the President proposed that the government end the bulk collection of telephony metadata records under Section 215, while ensuring that the government has access to the information it needs to meet its national security requirements. The Administration supported the USA FREEDOM Act as a means of enacting this proposal, and, if confirmed, I would work with Congress to reform Section 215 in a manner consistent with the President's proposal.

- c. Do you believe that the incidental collection provision, Section 702, is lawful?

RESPONSE: Yes. My understanding is that Section 702 may only be used to target non-United States persons located outside the United States and may not be used to target foreigners for the purpose of acquiring Americans' communications. Some communications of Americans, however, may be incidentally collected when an American communicates with a 702 target located outside the United States. I understand that such communications are governed by "minimization procedures" that have been found lawful by both the courts and the Privacy and Civil Liberties Oversight Board. If I am confirmed as Attorney General, I will ensure that 702 collection continues in a lawful manner that meets our national security needs and appropriately protects privacy and civil liberties.

- d. President Obama has indicated that he supports a legislative reform of Section 215 bulk collection regime. What are your thoughts on amending Section 215?

RESPONSE: If I am confirmed as Attorney General, I will work with Congress to amend Section 215 in a manner consistent with the President's proposal in order to strengthen the privacy and civil liberties protections, while preserving essential authorities that our intelligence and law enforcement professionals need.

- e. Do you think law enforcement currently has sufficient investigative and legal authority to address the increasing threat from foreign fighters and "lone wolves"?

RESPONSE: It is important that our intelligence and law enforcement professionals have the full panoply of investigative tools and techniques to deal with the ever-evolving threat presented by terrorism and other national security threats, while also ensuring that we use those tools in a way that effectively protects privacy and civil liberties. If I am confirmed as Attorney General, I will work with law enforcement and Congress to evaluate any gaps in existing authorities and to ensure all appropriate tools are brought to bear to respond to these threats.

7. If you are confirmed, would the FBI, ATF, or any other DOJ agencies be permitted to allow criminals to obtain firearms as part of investigations undertaken by your Justice Department? If so, please describe the circumstances under which you believe such operations would be appropriate.

RESPONSE: The Department's law enforcement components and the United States Attorneys' Offices take seriously the need to ensure that investigations and prosecutions are conducted in a way that preserves public safety as well as officer safety. Accordingly, the Department has provided guidance to all United States Attorneys' Offices and Department law enforcement components regarding risk assessment and mitigation for law enforcement operations in criminal matters.

8. Are you committed to transparency between the DOJ and Congress, and will you commit to prompt, complete, and truthful responses to requests to information from Congress about outstanding issues related to Operation Fast and Furious?

RESPONSE: I am committed to transparency between the Department and Congress and, if I am confirmed as Attorney General, I will work to promote such transparency while also preserving the Executive Branch's proper functioning and the separation of powers.

9. The DOJ announced two weeks ago that two Yemeni nationals charged with conspiring to murder American citizens abroad and providing material support to al-Qaeda will be prosecuted by your office in the Eastern District of New York. What specific circumstances that you can address here lead you to believe that civilian courts are a more appropriate or effective venue than military tribunals for the prosecution of the Yemeni nationals that have been charged by your office?

RESPONSE: I believe strongly that the United States government must use every available tool, including detention of unlawful enemy combatants and military commission trials, as well as Article III prosecutions, to protect the American people. In any particular case, representatives of the agencies who are tasked with protecting the American people, including the Department of Defense, the Department of Homeland Security, the Department of Justice and agencies in the Intelligence Community, work together to determine the most effective tools to apply in that case, based on the particular facts and applicable law. As the United States Attorney for the Eastern District of New York, my role to date has been limited to determining whether or not there was a prosecutable federal case, not which was the appropriate tool to employ.

Because the cases to which you refer are ongoing prosecutions, I cannot comment on the specific facts or decision-making processes in those matters, other than to indicate that the process described above was observed.

10. Do you believe that detainees currently being held at the United States Naval Base at Guantanamo Bay, Cuba, are entitled to criminal trials in the civilian court system within the United States?

RESPONSE: It is lawful for the United States to detain enemy combatants at the military facility at Guantanamo Bay without criminal charge or trial for the duration of the conflict, consistent with the 2001 AUMF, as informed by the law of war, and subject to review of their detention by the courts.

11. In 2013, the DOJ intervened in litigation over the Louisiana Scholarship Program, a state initiative that provides school vouchers to low-income families. An analysis by the State of Louisiana found that the program promoted diversity in Louisiana schools and actually assisted in speeding up federal desegregation efforts. Most of the schoolchildren who

benefit from this program are members of minority groups. This year, more than 13,000 students applied and nearly 7,500 schoolchildren were awarded a scholarship voucher. These children now get the chance to excel and attend high-quality schools that their parents can choose for them because of the program. Ultimately, after public pressure, the Justice Department backed off trying to kill the program entirely, but still insisted that the state provide demographic data about the students to a federal judge overseeing the lawsuit. Accordingly now Louisiana has to provide data for the upcoming school year and for every school year as long as the program is in place.

- a. Do you agree with the DOJ's decision to intervene in this case?
- b. If confirmed, will you use Justice Department resources, like your predecessor has, in an effort to obstruct, monitor, or regulate school-choice programs?
- c. Will you commit to asking the federal district court with jurisdiction over this case to discontinue the reporting requirement if you are confirmed?

RESPONSE: I cannot comment on this issue because it is my understanding that it is in active litigation. It is my understanding that the Department has not taken a position against school voucher programs. That would continue to be my position if I am confirmed as Attorney General.

12. A 2013 report by the DOJ's Inspector General revealed disturbing systemic problems related to the operation and management of the DOJ's Civil Rights Division. If confirmed, will you commit to implementing the recommendations made by the Inspector General in that report?

RESPONSE: If I am confirmed as Attorney General, I will commit to ensuring that all Department components are responsive to recommendations made by the Office of Inspector General.

13. At your confirmation hearing, I asked you about the Francois Holloway case and why you consented to an order by Eastern District of New York Judge John Gleeson vacating two of Mr. Holloway's convictions for armed carjacking. In your response, you mention "a judicial proceeding before the court at that time" that "the court wanted us to take a second look at."

- a. Please describe what you meant by the term "judicial proceeding before the court."

RESPONSE: A motion had been filed pursuant to the Federal Rules of Civil Procedure to reopen the defendant's habeas corpus proceedings.

- b. Which party initiated the "judicial proceeding before the court" that you referred to in your answer?

RESPONSE: The defendant initiated the proceeding by filing the motion referenced above.

- c. You stated that “our view was that we had to look at the case consistent with many of the initiatives that we were being put in place now by the DOJ certainly with respect to clemency and with respect to how we look at offenders who have served significant time.” Please state the DOJ initiatives you consulted in your re-examination of the Holloway sentence and identify any initiatives on which you based your decision to consent to Judge Gleeson’s order vacating Mr. Holloway’s armed carjacking sentences.

RESPONSE: The Department of Justice’s Smart on Crime initiative calls upon federal prosecutors to ensure that finite Department resources including finite corrections resources are devoted to the most important law enforcement priorities, to promote fairer enforcement of the law and eliminate unwarranted sentencing disparities, and to ensure that the punishment for all offenders fits the crime.

- d. Please identify any DOJ initiatives that provide for early release for violent offenders or recidivist violent offenders like Mr. Holloway.

RESPONSE: Federal prosecutors must evaluate the circumstances of each offense and each offender in order to determine what sentence to seek. Ultimately, of course, it is up to the sentencing judge to impose sentence, and to decide any application to reduce a sentence after it has been imposed.

- e. You testified that you reconsidered whether to consent to an order to vacate Mr. Holloway’s sentence “numerous times.” Please explain why you ultimately consented to the vacatur after initially refusing to and suggesting to the court that Mr. Holloway contact the Office of the Pardon Attorney or seek executive commutation of his sentence.

RESPONSE: After studying the facts of the case, the conduct of Mr. Holloway during his twenty years of incarceration, and soliciting the view of the victims of the crime, I decided not to oppose Mr. Holloway’s request that Judge Gleeson reconsider his sentence.

- f. Mr. Holloway’s case had achieved a remarkable degree of finality his appeal was rejected by the Supreme Court and he had been sentenced decades before Judge Gleeson released him, effectively, for time served. Please state the legal and policy basis for your decision to re-examine the case given the degree of finality it had achieved.

RESPONSE: After examining the facts of the case, the defendant’s motion, and after

receiving input from the victims, I decided that it was appropriate not to oppose the Court reconsidering the sentence imposed. This decision was in keeping with the obligation of all prosecutors to seek just outcomes, and to carefully weigh the facts and circumstances of each offense and offender.

- g. You stated that your office had “the ability to let the judge review [Mr. Holloway’s] sentence again by keeping it in the court system.” Please explain your understanding of the circumstances under which federal prosecutors should consent to review by a federal judge of sentences which have achieved finality and explain when federal prosecutors should act, as you testified, to “keep[]” those sentences “in the court system.”

RESPONSE: Federal prosecutors must evaluate any request for resentencing based on a thorough review of the facts and circumstances of the case, the conduct of the defendant both before and after conviction, and the applicable laws governing the defendant’s application.

- h. Do you agree with Judge Gleeson, who wrote in his May 14, 2014, memorandum in the Holloway case, that your prosecutors from the Eastern District of New York employ “ultraharsh mandatory minimum provisions to annihilate a defendant who dares to go to trial,” like Mr. Holloway?

RESPONSE: Federal prosecutors in the Eastern District of New York, like those throughout the country, strive to seek just penalties that are commensurate with the severity of the crime and the characteristics of the offender.

- i. Do you believe that the prosecutors who tried Mr. Holloway employed “ultraharsh minimum sentences to annihilate” him because he exercised his constitutional right to a jury trial?

RESPONSE: The prosecutors who tried Mr. Holloway sought to hold him accountable for the serious crimes he had committed. As United States Attorney, it is my obligation to consider defendants’ applications based on a careful review of all of the circumstances that exist at the time such application is made.

- j. Do you agree with the recommendation of the U.S. Sentencing Commission in its 2011 report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*, that Congress should amend 18 U.S.C. § 924(c) to confer on federal district judges the discretion to impose concurrent sentences under that provision?

RESPONSE: If I am confirmed as Attorney General, I look forward to continuing the dialogue between the Department, the Sentencing Commission, and Congress regarding

the important issue of mandatory minimums. It would be premature for me to opine on that specific recommendation before soliciting input from all relevant stakeholders.

- k. Please describe with particularity citing case numbers, captions, etc. any other cases in which your office, during your tenure as U.S. Attorney consented to an order vacating convictions under 18 U.S.C. § 924 or any other criminal conviction.

RESPONSE: I am not aware of any such cases.

14. As a U.S. Attorney and the Chair of the Attorney General’s Advisory Committee, you are no doubt familiar with DOJ’s recent “Smart on Crime” Initiative, which addresses a number of criminal justice issues like prioritizing prosecutions, sentencing disparities, recidivism, and incarceration of non-violent offenders. Attorney General Holder has advocated reduction of the federal sentencing guideline levels that apply to most drug-trafficking offenses, including trafficking of hard drugs like heroin. The Holder Justice Department also announced a new clemency initiative last year that invites clemency petitions from offenders who meet a number of criteria. Thousands of offenders, including drug traffickers, fall within those criteria.

- a. What are your views on those DOJ initiatives and proposals?

RESPONSE: The Smart on Crime initiative is designed to ensure finite public safety resources are devoted to the most important law enforcement priorities; to promote fairer enforcement of the laws and alleviate disparate impacts of the criminal justice system; to ensure just punishments for all offenders; to improve prevention and reentry efforts to reduce reoffending; and to strengthen protections for vulnerable populations. I support these goals. I also fully support the ongoing effort to identify for the President worthy candidates for clemency to assist him in properly executing the President’s constitutional responsibility in this area.

- b. Do they make the work of federal prosecutors harder?

RESPONSE: The role of the federal prosecutor is to see that justice is done. Every day, federal prosecutors across the country seek to improve public safety, reduce crime and do justice. I believe the Smart on Crime initiative is designed to be consistent with these goals. I think the initiative supports the work of federal prosecutors.

c. Do they make the American people safer?

RESPONSE: Yes. By ensuring finite public safety resources are devoted to the most important law enforcement priorities, by reducing reoffending and by preventing crime, the Smart on Crime initiative will make the American people safer.

d. Are you going to continue them if you are confirmed as Attorney General?

RESPONSE: If I am confirmed as Attorney General, I will review the Smart on Crime initiative and evaluate its impact. I will continue the parts of it that are effective and consider new initiatives to further the goals of public safety and justice.

e. Do you believe that these or other DOJ initiatives should be expanded to encompass early release for violent offenders who have served a substantial portion of the sentences?

RESPONSE: As I indicated above, if I am confirmed as Attorney General, I will review these initiatives and evaluate their impact. I will continue those that are effective and consider new initiatives to further the goals of public safety and justice. I do not support release of violent offenders for no corrections or public safety purpose. However, I believe sentencing and corrections policies should be reviewed periodically to ensure that just punishment is meted out for all offenders, that reoffending is minimized through programming and other corrections policies, that those considering criminal activity are deterred to the greatest extent possible, and that the purposes of punishment, as set out in the Sentencing Reform Act, are otherwise served.

f. Do you believe that these or other DOJ initiatives should be expanded to encompass early release for offenders who have received so-called “stacked” or consecutive mandatory minimum sentences under 18 USC 924 or other provisions of federal law?

RESPONSE: In an era of advisory guidelines, I believe mandatory minimum sentencing statutes remain important to promote the goals of sentencing and public safety. At the same time, I recognize that some reforms of existing mandatory minimum sentencing statutes are needed. I understand that Members of Congress have introduced various bills in the 113th Congress to reform mandatory minimum sentencing statutes. If I am confirmed as Attorney General, I look forward to working with these Members of Congress to identify those mandatory minimum statutes that need reform and to enact legislation to do so.

15. The 2013 Cole Memorandum explains the DOJ’s priorities on enforcement of federal law regarding marijuana offenses. Several jurisdictions have recently legalized cultivation

and distribution of marijuana for personal use, in effect, initiating a series of state regulatory regimes that contravene federal drug laws.

- a. Do you agree with the current DOJ enforcement policies and priorities outlines in the Cole Memorandum?

RESPONSE: As United States Attorney, and if I am confirmed as Attorney General, I am committed to enforcing the Controlled Substances Act (CSA). The Cole Memorandum sets out eight priority areas for federal marijuana enforcement. The Cole Memo also acknowledges the importance of examining the particular circumstances of each case and the authority of the Department to pursue investigations and prosecutions that otherwise serve an important federal interest. Accordingly, the Department's focus is on applying its limited investigative and prosecutorial resources to enforcing the CSA in a manner that addresses the most significant threats to public health and safety.

- b. Do you consider the DOJ's policy, as it is being implemented now, to reflect legitimate enforcement discretion consistent with the Take Care Clause?

RESPONSE: In all areas of civil and criminal enforcement, the Department uses its discretionary enforcement authority in a manner that seeks to focus limited investigative and prosecutorial resources to address the most significant public health and public safety threats. In every instance, prosecutors must make decisions about how limited resources are brought to bear to best confront those threats. The Department's policies, including in the area of marijuana enforcement, are crafted to provide guidance on doing so in an effective, consistent and rational way, while giving prosecutors discretion within the constraints of that guidance to take into account the circumstances of each case.

- c. If you are confirmed, how do you plan to measure the effect of the DOJ's policy on the federal interest in enforcement of drug laws?

RESPONSE: If I am confirmed as Attorney General, the Department will continue to consider data of all forms including existing federal surveys on drug usage, state and local research, and, of course, feedback from the community and from federal, state, and local law enforcement on the degree to which existing Department policies and the state systems regulating marijuana-related activity protect federal enforcement priorities and the public. The Department will continue to collect data and make these assessments through its various components and will continue to work with the Office of National Drug Control Policy and other partner agencies throughout the government to identify other mechanisms by which to collect and assess data on the effects of these state systems.

16. The recent hacking of Sony's computers has demonstrated that a major area of vulnerability to our national security and infrastructure is cyber attacks, often by foreign hackers or governments.

- a. In your view, what are the greatest threats we face from cyber terrorism?

RESPONSE: As I mentioned during my testimony before the Committee, a cyber attack carried out on behalf a terrorist entity is one of the greatest fears of any prosecutor, and we must be nimble in our efforts to prevent, to detect and to disrupt such a threat. My impression, based on my experience as United States Attorney, is that while terrorist groups have generally not reached the skill level of nation-state actors, we cannot ignore their expressed desires to attack us through any means, including through cyber attacks. Regardless of the specific adversary at issue, they could cause significant damage and destruction through cyber attacks in particular, through attacks on systems that support our critical infrastructure, including industrial control systems, hospitals, government networks and similarly essential systems. If I am confirmed as Attorney General, I plan to use the full extent of our authorities to identify and disrupt whether through prosecution or other means at our disposal those who would threaten our country by seeking to attack these systems or to position themselves to do so in future.

- b. What tools does law enforcement need, based on your experience as a U.S. Attorney, to protect networks and critical infrastructure?

RESPONSE: In my experience as the United States Attorney for the Eastern District of New York, I believe a comprehensive approach, including a collaborative relationship between government and private sector, is necessary to protect networks and critical infrastructure. Emphasis on the prevention and detection of this threat is critical and, if I am confirmed as Attorney General, I would work to ensure that our law enforcement community has the technological resources and legal authorities needed to stay ahead of this threat, and strengthen the relationship between government and private industry.

17. In recent years, the DOJ has aggressively pursued states that have enacted a wide array of voter ID provision. You have made a number of public comments about the DOJ's litigation in this area of the law and have pledged to continue litigation that Attorney General Holder has initiated. Please describe, which particularity, examples of voter ID provisions that a state could enact which you believe would pass statutory and constitutional muster.

RESPONSE: I do not have any categorical views on these issues in the abstract. My general understanding is that the Department considers questions of the validity of voting practices, such as state voter identification laws, based on the particular requirements of the federal law being enforced, based on the particular facts of the practice being investigated and based on the particular laws and facts in the jurisdiction.

As the Supreme Court held in *Crawford v. Marion County Election Board*, voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. I understand that before the *Shelby County* decision, the Department did preclear some voter identification laws, such as in Virginia and New Hampshire.

However, the analysis of a voter ID law is very specific to the particular law, the particular jurisdiction, and a wide range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act. As such, it is difficult for me to comment on the merits of any law (or in the abstract) without a full understanding of how the law actually operates in a particular jurisdiction.

18. A number of commentators have expressed the opinion that voter fraud simply doesn't exist or the alternative opinion, that, if it does, it is minor problem with no real effect on the integrity of elections.

a. Do you agree that voter fraud does not exist or is so insignificant that it does not threaten the integrity of elections?

RESPONSE: I am not personally familiar with the specifics of studies regarding these issues, nor do I have any categorical views on these issues in the abstract. One of the important responsibilities of the Department of Justice is to investigate and prosecute violations of the federal criminal laws, including those federal laws that criminalize various types of election fraud. If I am confirmed as Attorney General, I am committed to enforcing all of the federal laws within the Department's jurisdiction, including the federal criminal laws regarding election fraud, according to their terms, in a fair and even-handed manner.

b. Do you think that voter fraud is a bona fide issue that states should be entitled to address with voter ID laws?

RESPONSE: As stated above, I do not have any categorical views on these issues in the abstract. My general understanding is that the Department considers questions of the validity of voting practices, such as state voter identification laws, based on the particular requirements of the federal law being enforced, based on the particular facts of the practice being investigated and based on the particular law and facts in the jurisdiction.

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19. You previously stated in the context of North Carolina's voter ID law that:

Fifty years after the March on Washington, 50 years after the Civil Rights Movement, we stand in this country at a time when we see people trying to take back so much of what Dr. King fought for....People try and take over the State House and reverse the goals that have been made in voting in this country....But I'm proud to tell you that the Department of Justice has looked at these laws, and looked at what's happening in the Deep South, and in my home state of North Carolina [that] has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens. And those lawsuits continue.

Do you believe that North Carolina's voter ID law is a pretext for, or was motivated by, racial discrimination?

RESPONSE: My general understanding is that the Department has brought suit challenging certain aspects of North Carolina's 2013 omnibus election law as racially discriminatory in purpose and result. Because this matter is the subject of pending litigation by the Department, I cannot comment further.

20. First Amendment freedoms that protect the press became a lot more tenuous during Mr. Holder's administration of the DOJ. In May 2013, the Department obtained phone records for the Associated Press ("AP") without the knowledge of that organization, reportedly as part of an investigation of an AP story on CIA operations in Yemen. It then came to light that in 2010 the Holder Justice Department obtained a warrant to search the emails of a Fox News reporter James Rosen the Department claimed Rosen was a potential co-conspirator with a State Department contractor in violation of the Espionage Act. Since then the DOJ has issued new guidelines governing how it obtains evidence from journalists. The guidelines maintain in that notice of a subpoena may be withheld only if notifying the journalist would present a "clear and substantial threat" to an investigation or to national security.

a. Do you agree that the Department's treatment of journalists has been heavy-handed and that reform of DOJ practices was necessary?

RESPONSE: Because my Office was not involved in the investigations described above, I cannot address those specific matters.

I agree that the revisions to the Department's policies and practices regarding the use of certain law enforcement tools to obtain information from, or records of, members of the news media were appropriate. In my view, the revised policies and practices strike the proper balance between law enforcement and free press interests. Significantly, the revised policies and practices cover law enforcement tools and records, and ensure robust, high-level consideration of the use of those tools to obtain information from, or records of, members of the news media.

- b. Do you believe that the DOJ investigations described above pose a serious risk of chilling free speech?

RESPONSE: Because my Office was not involved in the investigations described above, I cannot address those specific matters.

As a general matter, I believe that persons entrusted with safeguarding information related to our national security should be held accountable when they breach that trust. I also believe that a free press plays a critical role in ensuring government accountability. In my view, the Department's revised media policies and practices strike the proper balance between law enforcement and free press interests.

- c. Do you support the new guidelines?

RESPONSE: Yes, I believe the revised policies and practices strike the proper balance between law enforcement and free press interests.

- d. As a federal prosecutor, you are no doubt aware of the balance between individual liberties and the need to conduct thorough and effective investigations. Do the guidelines strike the right balance?

RESPONSE: Yes, in my view, the Department's revised policies and practices strike the proper balance between law enforcement and free press interests.

- e. How would the Lynch Justice Department distinguish itself from the Holder Justice Department when it comes to the investigation of journalists?

RESPONSE: Given the essential role that members of the news media play in our society, I believe that federal investigators and prosecutors should view the use of certain law enforcement tools to obtain information from, or records of, non-consenting members of the news media as an extraordinary measure, not a standard investigatory practice. If I am confirmed as Attorney General, I would give careful consideration to, and closely scrutinize, any request for authorization to obtain information from, or records of, a member of the news media; or to investigate or prosecute a member of the news media. In my view, the revised media policies and practices both provide an appropriate framework with which to conduct this critical analysis, and strike the appropriate balance between law enforcement and free press interests.

- 21. There have been significant developments recently at the DOJ regarding policies on civil asset forfeiture in response to abuses by U.S. Attorney's Offices and federal and state agencies. Attorney General Holder just announced that the DOJ will end the Equitable Sharing Program, which essentially apportions billions of dollars in seized assets between

federal, state, and local authorities a huge pool of money that clearly created a risk of encouraging aggressive, if not unlawful, seizures from individuals who are not charged with a crime, have not been indicted and have not enjoyed any due process whatsoever. Your office in the Eastern District of New York alone has seized over \$100 million in recent years.

- a. Do you believe that there have been inappropriate or excessive seizures by your office or by the DOJ with respect to civil asset forfeitures, adoptive seizures, and equitable sharing practices? If so, please describe with particularity any such cases.

RESPONSE: First of all, to clarify, I understand that Attorney General Holder's January 16, 2015, Order generally prohibited the practice of federal adoptions of assets seized by state and local law enforcement. It did not end the Equitable Sharing Program. That said, the adoption Order came as part of the Department's comprehensive, ongoing review of the Asset Forfeiture Program, including the Equitable Sharing Program.

I can speak with regard to the seizures made in connection with civil forfeiture actions prosecuted in the Eastern District of New York, and I believe they have been appropriate. Every seizure in my district, and indeed across the country, must be based on probable cause that the property is connected to crime, and is often pursued only after a federal judge issues a warrant based on such a finding. That probable cause is the same burden of proof required to arrest someone. In any contested forfeiture, the government must prove by a preponderance of the evidence, in federal court, that the property is connected to a crime.

As indicated by my Office's forfeiture records, adoptive seizures represent a tiny fraction of the Eastern District of New York's forfeiture litigation. An internal review revealed that approximately thirty-four adoptive seizures, representing a total asset value of roughly \$2.95 million in seized assets, were referred by federal agencies to the Office since 2010. Further, of these thirty-four adoptive seizure referrals, my Office declined to accept half based upon its own assessment of the merits of the seizure.

- b. After inquiries by members of Chairman Grassley's staff, a company in your district, Hirsch Brothers, was recently returned \$500,000 that your office seized from it as part of a civil asset forfeiture. Please explain the basis for the seizure and the reason why the funds were returned only after a congressional inquiry was initiated.

RESPONSE: 31 U.S.C. § 5324 provides that "[n]o person shall, for the purpose of evading" certain statutory reporting requirements primarily set forth in 31 U.S.C. §§ 5313(a), 5325 and 5326 "cause or attempt to cause a domestic financial institution to fail to file a report" for the deposit of amounts in excess of \$10,000.00. In May 2012, my Office presented evidence to a federal magistrate judge that the Hirsch brothers' business, Bi-County Distributors, Inc. ("Bi-County"), had deposited over \$1.4 million in cash in what the evidence indicated was likely a "structured" manner, intended to evade federal currency reporting requirements. Based upon this

showing, the federal magistrate judge found that there was probable cause for the seizure of the structured deposits and issued a warrant to seize Bi-County's account.

Immediately after the seizure, my Office notified Bi-County and its then-attorney of the seizure. From May 2012 to May 2014, the parties engaged in settlement discussions, during which Bi-County organized its records relating to its cash receivables, provided them to the government and produced a forensic accounting of its cash business. As discussions with Bi-County's prior attorney did not result in a resolution of the matter, Bi-County retained new attorneys who, in October 2014, filed an action seeking return of the seized funds. In response, and to avoid further litigation, my Office renewed its efforts to resolve this matter with Bi-County's new attorneys.

After Bi-County filed its action and upon completion of the investigation and exchange of information, my Office determined that the settlement represented an appropriate resolution of this matter. These efforts culminated in a mutually agreeable settlement in principle of the action. The parties ultimately memorialized their settlement in a publicly-filed stipulation. As with all settlements, both parties, represented by their counsel, negotiated aspects of a settlement upon which they could agree. The stipulation also sets forth a mutually agreed upon description of the procedural history of the negotiations between the parties and includes, among other things, an acknowledgment by Bi-County and its principals that they have been advised of the laws against structuring.

The Bi-County settlement was negotiated and resolved in the ordinary course of litigation. The parties had drafted and agreed upon a final settlement stipulation, which the Hirsch brothers and their counsel already had signed before my Office received Senator Grassley's January 20, 2015 correspondence containing an inquiry about the Bi-County case.

- c. Has your office implemented the reforms announced by Attorney General Holder?

RESPONSE: My Office has implemented and is in compliance with the reforms that Attorney General Holder recently announced with respect to adoptive forfeitures.

- d. What steps are you taking in your office to ensure that no additional individuals or companies like Hirsch Brothers will have their assets wrongfully seized?

RESPONSE: As noted above, the action against Bi-County's assets was commenced pursuant to a seizure warrant issued by a United States Magistrate Judge based upon an independent, judicial determination of probable cause to believe that Bi-County had deposited over \$1.4 million of United States currency in a "structured" manner, in violation of 31 U.S.C. § 5324.

In all cases like the Bi-County case, where bank accounts are seized, such seizures can be effectuated only after the review, approval and authorization of a United States Magistrate Judge. Before seizure warrants even are submitted for judicial authorization, my Office carefully

reviews all available information which has resulted in the declination of many civil asset forfeiture cases presented for prosecution. These judicial safeguards, in conjunction with my Office's internal vetting process, have prevented wrongful seizures in the past and will prevent them in the future. If, following a seizure, my Office is presented with, or obtains information that leads to a determination that the forfeiture of the seized asset should not be pursued on the merits, then my Office has, and will continue to, consider settlement or a return of the asset, as appropriate.

- e. What steps do you plan to take, if confirmed, to ensure that the DOJ returns wrongfully seized assets promptly and does not continue to seize assets wrongfully?

RESPONSE: I am keenly aware of concerns about civil asset forfeiture, and I take those concerns very seriously. As mentioned above, the Department has embarked on an ongoing review of its Asset Forfeiture Program (which has so far resulted in the policy change on adoptions) and if I am confirmed as Attorney General, I look forward to continuing that review, to ensure that Asset Forfeiture tools are used effectively and appropriately to take the profit out of crime and return assets to victims, while safeguarding civil liberties and the rule of law.

Lynch, Loretta (USANYE)

From: Lynch, Loretta (USANYE)
Sent: Thursday, February 19, 2015 4:50 PM
To: Gaston, Molly (OAG); O'Brien, Alicia C (OLA); Kadzik, Peter J (OLA); Miller, Marshall; Werner, Sharon (OAG)
Subject: Lynch - Sessions QFR (2-20-2015)
Attachments: Lynch - Sessions QFR (2-20-2015).docx

Sessions comments only one on th (b) (5)

Thanks all.

Loretta

**Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 20, 2015**

QUESTIONS FROM SENATOR SESSIONS

1. In Question 1, you were asked whether you believe that President Obama has exceeded his executive authority in any way and, if so, how. You responded: "As the United States Attorney for the Eastern District of New York, I have not been charged with determining when and whether the President has exceeded his executive authority." While I understand that you may not have been charged with making such determinations in your capacity as United States Attorney, the question did not ask whether you were charged with such determinations. Should you be confirmed as Attorney General, you will be responsible for such determinations. In order to properly evaluate your nomination, it is important for members to know your views in that regard. Please take this opportunity to consider and respond to the original question.

RESPONSE: (b) (5) [REDACTED]

2. In Question 5, you were asked whether Sadiq al Abbadi, Ali Alvi, and Faruq Khalil Muhammad 'Isa are unlawful enemy combatants and, as such, could be tried before a military commission and detained for the duration of hostilities under the law of war. You responded:

"I believe strongly that the United States government must use every available tool, including detention of unlawful enemy combatants and military commission trials, as well as Article III prosecutions, to protect the American people. In any particular case, representatives of the agencies who are tasked with protecting the American people, including the Department of Defense, the Department of Homeland Security, the Department of Justice and agencies in the Intelligence Community, work together to determine the most effective tools to apply in that case, based on the particular facts and applicable law. As the United States

Attorney for the Eastern District of New York, my role to date has been limited to determining whether or not there was a prosecutable federal case, not which was the appropriate tool to employ.”

You also said that because the cases referred to in Question 5 are ongoing prosecutions, you “cannot comment on the specific facts or decision making processes in those matters, other than to indicate that the process described above was observed.” The question did not ask you to disclose details about the decision making process in the above cases nor did it address your role in the decision to prosecute the individuals in Article III courts. Instead, it asked whether the individuals qualify as unlawful enemy combatants and, as such, could be tried before a military commission and detained for the duration of hostilities. Please take this opportunity to answer that question.

RESPONSE: (b) (5) [REDACTED]

3. In your responses to Question 9, which asked about the distinctions between the civilian and military justice systems with regard to interrogation and the right to remain silent; Question 11, which asked about the distinctions between the civilian and military justice systems with regard to bringing an arrestee before a judge; and Question 12, which asked about the distinctions between the civilian and military justice systems with regard to charging timelines, you included in your answer the following: “I have not had the occasion as a United States Attorney to examine the requirements under the military commission system, but, if confirmed as Attorney General, I would support using all lawful tools of national power, including the military commission system, to protect the nation from terrorism.” However, in response to Question 5, you stated that you “believe strongly that the United States government must use every available tool,” including military commission trials, to protect the American people. If you believe that military commissions are one of the “tools” available to the government to protect the American people, you must have some familiarity with the military commission system. Accordingly, please take this opportunity to answer the original questions posed by Questions 9, 11, and 12. Please also explain what you mean by the phrase “national power.”

RESPONSE: (b) (5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

4. In Questions 14 and 15, you were asked whether you believe it should be the policy of the United States to negotiate with terrorists and, if confirmed, whether you will advise the president to keep in place the United States' longstanding policy of not negotiating with terrorists. In your response to each question, you stated: "It is my understanding that it is the policy of the United States not to grant concessions to terrorists. If confirmed, I would support that policy." Please explain what you mean by "grant

concessions.” Please also explain the difference between “negotiating” with terrorists and “granting concessions” to terrorists.

RESPONSE: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

5. In Question 16, you were asked whether you support a permanent extension of a number of intelligence gathering authorities under the Foreign Intelligence Surveillance Act (FISA), which are set to expire on June 1, 2015. You responded:

“Although I have not had the occasion to consider these particular provisions of the Foreign Intelligence Surveillance Act (FISA) as a United States Attorney, I believe that it is important that our intelligence and law enforcement professionals have the full panoply of tools to deal with evolving national security threats like international terrorism, while ensuring that we use those tools in a way that effectively protects privacy and civil liberties. As I mentioned during the hearing, as a prosecutor, I am quite familiar with the invaluable benefits provided by roving wiretaps in narcotics prosecutions; those wiretaps are critical to conducting electronic surveillance against those attempting to evade it and are only issued after judicial review.

I understand that the Administration supported the USA FREEDOM Act, which would have extended these three provisions of FISA while also providing additional privacy protections, including prohibiting bulk collection under Section 215. If confirmed as Attorney General, I look forward to working with this Committee, as well as the Intelligence committees, on legislation to counter serious national security threats in a manner that also protects the privacy and civil liberties of our citizens.”

While I appreciate your view that it is important for intelligence and law enforcement professionals have the full panoply of tools to deal with evolving national security threats, your response did not address whether you would support a permanent extension of intelligence gathering authorities under 50 U.S.C. § 1805(c)(2)(B), 50 U.S.C. §§ 1861 2, and 50 U.S.C. § 1801(b)(1)(c). Please take this opportunity to respond to the original question.

RESPONSE: (b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6. In Question 18, you were asked to explain your understanding of the scope of the immunity provided to U.S. personnel involved in certain detentions and interrogations of enemy combatants between September 11, 2001 and December 30, 2005. You responded: "I have not had occasion to address that statute in my role as a United States Attorney, but I have reviewed the statute and believe that it describes in plain terms the scope of immunity." Please take this opportunity to familiarize yourself with the statute and provide an answer to the original question.

RESPONSE: (b) (5)

[REDACTED]

7. In Question 23(b), you were asked if you agree that drug trafficking is a serious offense that is deserving of equally serious mandatory minimums in order to deter such behavior. In response, you stated:

"As I noted in my testimony before the Committee, with respect to the enforcement of the narcotics laws that contain mandatory minimums laws which I have had occasion to use on numerous occasions as a career prosecutor and United States Attorney those laws are being followed not just by my Office but throughout the United States Attorney community. Every United States Attorney's Office retains and exercises the discretion to seek a mandatory minimum sentence. We also look at the nature of the crime and narcotics problems in our particular districts to determine whether a mandatory minimum sentence would be appropriate under the particular facts of each case."

This statement did not answer the question. Please take this opportunity to do so.

(b) (5)

(b) (5) [Redacted]

8. In Question 32, you were asked if you agree with Attorney General Holder’s statement that a ban on so called “assault weapons” and large capacity magazines, universal background checks, and new unnecessarily high criminal penalties for firearm offenses are “really reasonable gun safety measures.” You responded:

“As a United States Attorney, one of my highest priorities has been to protect Americans from violent crime, including violent gun crime. I understand that the Administration supports passage of legislation that would strengthen and enhance the now sunsetted 1994 Public Safety and Recreational Firearms Use Protection Act. If confirmed, I look forward to working with Congress on any appropriate legislation toward that end.

This statement did not answer the question. Please take this opportunity to do so.

RESPONSE: (b) (5) [Redacted]

9. In Question 35, you were asked whether, if confirmed, you would commit to devote Justice Department resources to put a stop to the practice of state and local jurisdictions’ refusal to honor ICE detainees. You responded:

“I support efforts to engage with state and local law enforcement partners to achieve consistent policies for the apprehension, detention, and removal of undocumented aliens. If confirmed as Attorney General, I will continue the Department’s efforts to work closely with the Department of Homeland Security and state and local law enforcement partners to ensure that national security and public safety are our top priorities in the enforcement of our immigration laws.”

This statement did not answer the question. Please take this opportunity to do so.

RESPONSE: (b) (5) [Redacted]

10. In Question 36, you were asked whether, if confirmed, you would support withholding State Criminal Alien Assistance Program (SCAAP) grants to jurisdictions that refuse to honor ICE detainees. You responded:

“I understand that while the Prison Rape Elimination Act provides that certain grant funds will be withheld from states that are noncompliant, a similar statutory penalty is not present in the State Criminal Alien Assistance Program (SCAAP). If confirmed as Attorney General, I will work closely with leadership of the Bureau of Justice Assistance, which administers SCAAP, and my colleagues at the Department of Homeland Security to examine ways to improve SCAAP.”

While I appreciate your commitment to examining ways to improve SCAAP if confirmed, your response does not answer whether you would support withholding SCAAP grants to jurisdictions that refuse to honor ICE detainees. Please take this opportunity to respond to the original question.

RESPONSE: (b) (5) [REDACTED]

11. In Question 39, you were asked if you will commit to working with Congress to rebuild the 287(g) program, and devote the necessary Justice Department resources to the program. You responded:

“In my position as the United States Attorney for the Eastern District of New York, I have had no role in addressing ICE’s implementation of the 287(g) program. I look forward to learning more about the 287(g) program and other ICE programs directed at public safety, if I am confirmed as Attorney General.”

While I understand that as United States Attorney you have had no role in addressing ICE’s implementation of this program, the question asked simply whether you would commit to work with Congress to rebuild the program and devote the necessary Justice Department resources to the program. Please take this opportunity to respond to the original question.

RESPONSE: (b) (5) [REDACTED]

12. In Question 40, you were asked if you will commit to reinstating Operation Streamline and ensure that the Justice Department has or requests the necessary resources to expand the program across the southwest border. You responded:

“As the United States Attorney for the Eastern District of New York, I have not stood in the shoes of the Southwestern Border United States Attorneys as they have set their priorities. While I have great confidence in those United States Attorneys, if confirmed as Attorney General, I will personally take a close look at the policies governing prosecution of illegal border crossers to ensure that those policies are best protecting the security of the United States and its citizens.”

While I understand that you have not had a role in setting the priorities of the Southwestern Border United States Attorneys, in order to properly evaluate your nomination, it is important for members to know how you would prioritize Department resources if confirmed. Accordingly, please take this opportunity to respond to the original question.

RESPONSE: (b) (5) [REDACTED]

13. Question 42 states that the Office of Legal Counsel (OLC) opinion regarding the president’s executive action does not identify any statutory authority for the provision of Employment Authorization Documents to the majority of the individuals eligible for either the Deferred Action for Childhood Arrivals or the Deferred Action for Parents of Americans and Lawful Permanent Residents programs. The question asked you to identify the legal authority for the provision of Employment Authorization Documents to these individuals. You responded: “It is my understanding that this issue is currently the subject of pending litigation and that it has been addressed in a brief filed by the Department. I would respectfully refer you to the Department’s brief for a full discussion of this issue.” The question did not ask you to comment on matters subject to pending litigation, but rather asked you to cite a legal authority for the basis for OLC’s analysis an analysis which you repeatedly characterized as “reasonable” during your testimony before this Committee. Please take this opportunity to respond to the original question.

RESPONSE: (b) (5) [REDACTED]

(b) (5) [Redacted]

14. In Question 45, you were asked specific questions about the Board of Immigration Appeals' (BIA) decision in the *Matter of Chairez*, 26 I&N Dec. 349 (2014). You responded:

“As the United States Attorney for the Eastern District of New York, I have not been involved in any matters pending before the Board of Immigration Appeals, and I have not had the opportunity to review the Board’s decision in *Matter of Chairez* [sic]. If confirmed as Attorney General, I look forward to learning more about these important issues.”

While I appreciate your willingness to learn more about these issues if confirmed, this statement does not answer the question. The decision(s) to which I refer are available on the Justice Department’s website: <http://www.justice.gov/eoir/vll/intdec/vol26/3807.pdf>; <http://www.justice.gov/eoir/vll/intdec/vol26/3825.pdf>. Please familiarize yourself with this case and take this opportunity to respond to the original questions.

RESPONSE: (b) (5) [Redacted]

15. In Questions 46(a) and 46(b), you were asked whether the BIA’s “*Pro Bono Project*” which is housed within the Justice Department complies with 8 U.S.C. §1229a and whether, if confirmed, you will direct the BIA to stop using taxpayer resources to find counsel for aliens and eliminate the program. You responded:

“The government does not have a constitutional obligation to provide counsel in this context. I am not personally familiar with programs or policies through which the government provides counsel in removal proceedings. If confirmed as Attorney General, I look forward to learning more about this important issue.”

Please take this opportunity to familiarize yourself with this program and provide an answer to the original question.

RESPONSE: (b) (5) [Redacted]

- 16. In Questions 47(a) and 47(b), you were asked whether a federally funded AmeriCorps program “justice AmeriCorps” that provides attorneys to aliens in immigration proceedings complies with federal law. You were also asked whether, if confirmed, you will cease using taxpayer resources to provide attorneys for aliens in immigration proceedings and eliminate the program. In response, you stated:

“The government does not have a constitutional obligation to provide counsel in this context. I am not personally familiar with programs or policies through which the government provides counsel in removal proceedings. If confirmed as Attorney General, I look forward to learning more about this important issue.”

Please take this opportunity to familiarize yourself with this program and provide an answer to the original question.

RESPONSE: (b) (5) [Redacted]

17. In Question 51, you were asked whether you believe that the Fairness Doctrine is constitutional. You responded:

“I have not had occasion to encounter this issue in my role as a United States Attorney. If Congress is considering legislation that would codify the fairness doctrine, I would welcome, if confirmed as Attorney General, the opportunity for the Department of Justice to evaluate the constitutionality of such legislation.”

While it is not surprising that you have not had occasion to encounter this issue in your role as United States Attorney, this statement does not answer the question. Please take this opportunity to do so.

RESPONSE: (b) (5)

[REDACTED]

18. In Question 55, you were asked if you have ever expressed an opinion on whether the death penalty is unconstitutional, and whether you have such an opinion. In response, you stated: “As I testified before the Committee, I believe the death penalty is an effective penalty. In bringing such cases, I will be guided, as I was during my time as a federal prosecutor, by the evidence and the law.” While I appreciate your view that the death penalty is an effective penalty, the statement did not answer the question. Please take this opportunity to do so.

(b) (5)

19. In Question 57, you were asked whether you acknowledge that the George W. Bush administration successfully defended the Defense of Marriage Act (DOMA) on the basis that the law is rationally related to legitimate government interests in procreation and childrearing. You responded:

“The Supreme Court has addressed the constitutionality of Section 3 of the Defense of Marriage Act (DOMA), and held that it is unconstitutional under the Equal Protection component of the Due Process Clause. Accordingly, arguments

in defense of the statute were rejected. I have not reviewed the filings the Department made before the Attorney General's letter to Speaker Boehner in February 2011. In any event, the Supreme Court has now resolved the constitutionality of Section 3 of DOMA."

This statement does not answer the question. Please take this opportunity to do so.

RESPONSE: (b) (5) [REDACTED]

20. In Question 64, you were asked if you have ever expressed a view regarding whether it is appropriate for a United States judge to rely on foreign law in deciding the meaning of the United States Constitution and whether you have such an opinion. You responded: "Although I have not had occasion to address this question in my role as United States Attorney, if confirmed as Attorney General, I will be guided by applicable Supreme Court precedent." While I appreciate your commitment to follow precedent, this statement does not respond to the question. Please take this opportunity to do so.

RESPONSE: (b) (5) [REDACTED]

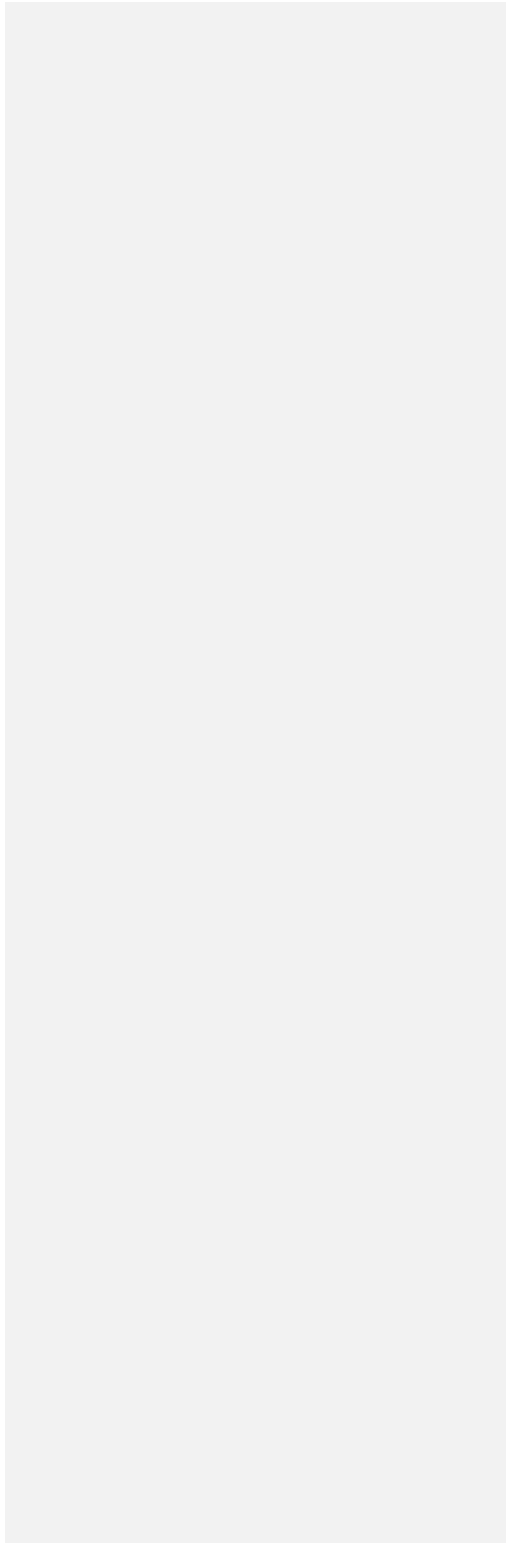
21. In Question 65, you were asked whether you think that the jurisdiction of the International Criminal Court is based in customary international law, or solely on ratification of the Rome Statute. You responded: "I have not had occasion to encounter questions concerning the jurisdiction of the International Criminal Court in my role as a United States Attorney, and as a result, I do not have developed views on this issue at this time." While I understand you have not had occasion to encounter such questions in your role as United States Attorney, this statement does not answer the question. Please take this opportunity to do so.

RESPONSE: (b) (5) [REDACTED]

(b) (5)

[Redacted text]

[Redacted text]



Werner, Sharon (OAG)

From: Werner, Sharon (OAG)
Sent: Monday, March 16, 2015 9:58 PM
To: (b)(6) Sharon Werner
Subject: Fwd: LEL Transcript
Attachments: 2015-1-28 SJC Confirmation Hearing - Full Final Transcript.docx; ATT00001.htm;
2015-1-28 SJC Confirmation Hearing - Full Final Transcript.pdf; ATT00002.htm

Begin forwarded message:

From: "Gaston, Molly (OAG)" (b) (6) >
To: "Werner, Sharon (OAG)" (b) (6) >
Subject: LEL Transcript

Molly Gaston
Office of the Attorney General
Office (b) (6) | Cell (b) (6)

Senate Judiciary Committee Holds Confirmation Hearing on the Nomination of Loretta Lynch for U.S. Attorney General, Day 1, Panel 1, Morning Session

LIST OF PANEL MEMBERS AND WITNESSES

GRASSLEY:

Good morning.

I welcome everyone to this very, very important hearing.

Before we start, I'd like to state a few things. These are some ground rules, pretty much the same as what former chairman and my friend Senator Leahy and others have done -- stated in the past.

I want everyone to be able to watch the hearing without obstruction. If people stand up and block the view of those behind them, or speak out of turn, it's not fair or considerate to others. So officers would then remove those individuals.

I know that there's a lot to protest regarding this administration's policies, but this isn't the time or place to do it.

Before I turn to our opening statements, I wanted to go over a couple of housekeeping items, and explain how we're going to proceed. Senator Leahy and I will give our opening statements. Then I will call on Senators Schumer and Gillibrand to introduce the nominee.

GRASSLEY:

Following Ms. Lynch's opening remarks, we'll begin with the first round of questions, in which each senator will have 10 minutes. After the first round, we're going to do eight minute rounds of questions.

I want everyone to know that I'm prepared to stay here as long as members have questions that they'd like to ask. I think this is a most fair way to proceed, both to the responsibilities of the Senate and senators, and, most importantly, to the nominee who has to sit here through all of this and answer our questions.

And I think we all know that this is a very important position in the Cabinet, and we should do what we can to move it along within our rules. We have a lot of ground that we want to cover in live questioning.

One final note on scheduling. I would like to take a short break of maybe 45 minutes sometime around 12:30 or 1:00. And I know that we have a series of stacked votes this afternoon, and in regard to, I think, 18 amendments we have to vote on, the plan right now is to keep this hearing going, even though it may be a very chaotic way to do things, and maybe not as respectful to the position of attorney general as it ought to be, but I don't know how else to get through the process, to get every question asked that wants to be asked.

So I would ask that all of my colleagues remain very flexible and keep it going. And that means some accommodation by members on my side of the aisle to chair when I can't be here, over there voting.

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

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

I congratulate you on your nomination. You've already been confirmed by the Senate, as U.S. attorney. But the process involved to serve as the 83rd attorney general is a bit more rigorous. For one thing, U.S. attorneys don't even have hearings, let alone one like this.

So I'm -- my hope is that we discuss some of the most important matters facing our nation, and in the process of doing that, then we'll get to know you a bit better.

The fact of the matter is, this nomination comes at a pivotal time for the Department of Justice and for our country. And as I discuss some of those things, those are probably things you have had nothing to do with. But you have an opportunity to make some changes.

The next attorney general will face some very difficult challenges, from combating cyber crime to protecting our children from exploitation, to helping fight the war on terror.

But I'm not just concerned about the tough decisions that come with the office, there are challenges facing the Department of Justice that go to the heart of our system of government. How about restoring faith in the bedrock principles like respect for the rule of law and the fair and even-handed application of those laws? How about restoring respect for the the coequal branches of government? How about taking care that the law is faithfully executed and not rewritten?

How about the Department of Justice honoring, once again, its long-standing duty to vigorously defend our nation's laws, even when political appointees disagree with the policy?

Then there is the Office of Legal Counsel. I'm interested in returning that office to its rightful place as the impartial crown jewel of the Justice Department. Its opinion should be firmly rooted in the Constitution's text, neutral interpretation of statutes, and sound judicial precedent.

They shouldn't be transparently self-serving attempts to justify whatever the president or an attorney general wants to do for political reasons.

And let me say it right here: The Office of Legal Counsel should be sharing with the American public the opinions it's providing to the president, especially when they supposedly sanction the unprecedented authority that the president claims to possess.

And I'm going to work to see that it does. The public's business ought to be public. Transparency, I believe, and in fact does bring accountability. These ideals and principles are foundational to the republic.

GRASSLEY:

But ideals and principles aren't simply academic. And they don't exist in a vacuum.

Over the last few years, public confidence in the department's ability to do its job without regard to politics has been shaken with good reason. It's not just Republicans who see the problem or who recognize it as a real-world affects on our own fellow Americans. The department's own inspector general listed as one of its top management challenges, quote, "restoring confidence in the integrity, fairness and accountability of the department," end of quote.

The I.G. cited several examples, including the department's falsely denying basic facts in the "Fast and Furious" controversy. The inspector general concluded this, quote, "resulted in an erosion of trust in the department," end of quote.

In that fiasco, our government knowingly allowed firearms to fall into the hands of international gun traffickers, and it led to the death of patrol agent -- patrol agent Brian Terry.

And then, after Congress called on the leadership of the department to account for this foolish operation, what did they do? Did they apologize to the family and rush to uncover the truth? Quite the opposite. They denied, spun and hid the facts from Congress and the American people. They bullied and intimidated whistle-blowers, members of the press, and anyone who had audacity to investigate and to uncover the truth.

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

What was the Justice Department's reaction to the targeting of citizens based on political beliefs? Well, they appointed a campaign donor to lead an investigation that hasn't gone anywheres and call it then a day. That simply isn't good enough.

Meanwhile, the department's top litigator, the nation's solicitor general is arguing in case after case for breathtaking expansion of federal power.

I'd like to have you consider this. Had the department prevailed in just some of the arguments that it pressed before the Supreme Court in the last several years, there would be essentially no limit on what the federal government could order states to do as a condition for receiving federal money.

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

The federal government could review decisions by religious organizations regarding who can serve as a minister. The federal government could ban books that expressly advocate for the election or defeat of political candidates.

And the Fourth Amendment wouldn't have anything to say about a police attaching a GPS device to a citizen's car without a warrant and constantly tracking their every movement for years -- or for months and years.

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

I don't expect Ms. Lynch and I will agree on every issue, but I, for one, need to be persuaded that she will be an independent attorney general, and I have no reason to believe at this point she won't be. The attorney general's job is to represent the American people. Not just the president and not just the executive branch.

So today we will hear from Ms. Lynch. As far as I know, Ms. Lynch has nothing to do with the Department of Justice problems that I just outlined. But as new attorney general, she can fix them.

Tomorrow we'll hear from a second panel of witnesses, many of whom will speak directly to the many challenges facing the Justice Department. As I listen to both panels I'll be considering whether Ms. Lynch has what it takes to fix the Obama Justice Department. We need to get back then to first principles, and that starts with the depoliticizing the Department of Justice. Because the American people deserve better.

So I hope, Ms. Lynch can fix these flaws.

Senator Leahy?

LEAHY:

Thank you. I won't speak as long, because I just want to focus on Loretta Lynch, and not on all the problems that some may see in this country.

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

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

Ms. Lynch has worked hard to improve the relationships between law enforcement and the communities they serve. And probably that's one of the reasons why her -- her nomination enjoys strong support from both.

She has prosecuted those who have committed crimes against police officers, as well as police officers who committed crime.

Her record shows that as attorney general Ms. Lynch will effectively, fairly and independently enforce the law. I hope we all remember that she is the nomination for attorney general, and that's why I'm focusing on her.

She was born in North Carolina, the daughter of a Baptist preacher and a school librarian. And we're honored to have members of her family here with us today.

And I know you'll be introducing them later.

She grew up hearing her family speak about living in the Jim Crow South, but she never lost faith that the way to obtain justice is through our legal system.

And her nomination is historic. When she's confirmed as the 83rd attorney general of the United States, she'll be the first African- American woman to lead the Department of Justice. Really, I can't think of anyone more deserving of that honor.

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

And a significant factor leading to this budget imbalance is the unnecessary creation of more and more mandatory minimum sentences. Passing new mandatory minimum laws has become a convenient way for lawmakers to claim they're tough on crime, even when there's no evidence that these sentences keep us safer.

That's one of the reasons why we have the largest prison population in the world. That's why I oppose mandatory minimums. I hope we can find a way to face this mass incarceration problem.

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

The growing threat of cyber crime is very real, but also the specter of unchecked government intrusion in our private lives, particularly dragnet surveillance programs directed at American citizens.

The intelligence community faces a critical deadline this June. Three sections of the Foreign Intelligence Surveillance Act are set to expire. I believe we have to protect our national security, but we also have to protect our civil liberties which make us unique as a country. So we have to reform our nation's surveillance laws so we can realize both goals.

And the next attorney general is going to play a central role in protecting all Americans. All Americans.

The president's selection for attorney general, no matter who the president is, deserves to be considered swiftly, fairly and on the nominee's own record.

I believe Americans realize that a role this important cannot be used just as just one more sound bite Washington political football. I'm confident that if we stay focused on Ms. Lynch's impeccable qualifications and fierce independence, she's going to be confirmed quickly by the Senate.

LEAHY:

She deserves a fair, thoughtful and respectful confirmation process. And the American people deserve an attorney general like Ms. Lynch. So I thank you for your years of public service. I look forward to your testimony.

GRASSLEY:

For those of you who are new to our hearing, it's tradition that senators from home state introduce nominees from their state. So I'm now going to call on Senator Schumer and then Senator Gillibrand, senators from New York, to do that.

And since we're under such a tight schedule, if I could ask you to keep it to five minutes, it would be very nice. Thank you.

SCHUMER:

Thank you, Mr. Chairman. I want to thank you and Ranking Member Leahy and the members of the committee. It's my great privilege to introduce Loretta Lynch, a proud New Yorker and the nominee to be the next attorney general of the United States.

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

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

And adding to the American dream story, Ms. Lynch's late brother, Lorenzo, was a Navy SEAL.

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

(LAUGHTER)

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

When you look at the breadth and depth of the cases she's handled, it's clear Loretta Lynch is law enforcement's Renaissance woman. One I would mention, the Abner Louima case, where she convicted police

officers who horribly abused the Haitian immigrant. As we have seen, these types of cases can create great tension between the police and the community.

But despite the high-running emotions that accompanied this notorious case, Ms. Lynch was praised by lawyers on both sides, as well as community leaders and police officials, for her judicious, balanced and careful approach.

Mr. Chairman, members of this committee, in this age of global terrorism, the A.G.'s role in national security has never been more important. It makes apparent that the confirmation of a new attorney general cannot and should not be delayed any longer.

Today we've already heard and will hear a lot more, about issues completely unrelated to Ms. Lynch's experience and her qualifications. If anything, that just goes to show how qualified she is. No one can assail Loretta Lynch and no one has, who she is, what she has done and how good an attorney general she would be.

So instead, some are trying to drag extraneous issues -- executive orders on immigration, the IRS -- into the fray to challenge her nomination because they can't find anything in her record to point to.

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

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

But when I had the opportunity to recommend a candidate to President Obama I was certain I wanted Ms. Lynch to serve again. So I called her on a Friday afternoon.

She was happy with her life in the law firm. But I was confident that with the weekend to think it over she'd be drawn to answer the call to public service. And sure enough, her commitment to public service was so strong that she called me back on Monday to say yes.

She passed unanimously out of the Senate twice already.

Wouldn't it be nice if we could pass her unanimously out of the Senate a third time?

Based on her record, we should.

Mr. President, if we can't confirm Loretta Lynch, then I don't believe we can confirm anyone.

And I would like to remind my colleagues that the president's immigration policies are not seeking confirmation today; Loretta Lynch is. When we move to vote, hopefully sooner rather than later, you won't be voting for or against the president's policies, you'll be voting on this eminently qualified law enforcement professional, first-rate legal mind and someone who is committed in her bones to the equal application of justice for all people.

Thank you, Mr. Chairman.

GRASSLEY:
Senator Gillibrand.

GILLIBRAND:

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

To serve as United States attorney general requires deep experience in the field of law. It also requires a brilliant intellect and it requires a steady moral compass. I have met with Ms. Lynch two months ago and I can tell you, she meets all of those -- all of those criteria. She is strong, tough, independent and fearless.

And as one of our country's most accomplished and distinguished women serving in law enforcement, I urge my colleagues to support her nomination. She is an outstanding candidate for this job.

Ms. Lynch began her service as the U.S. Attorney for the Eastern District of New York in 1990, where she rose quickly to serve as chief of the Long Island office and then deputy chief of General Crimes and chief of Intake and Arraignments. For 15 years she has been a prosecutor in the U.S. Attorney's office for the Eastern District of New York and since 2010 she has served admirably as United States attorney for the Eastern District of New York.

In that position she has demonstrated a superior sense of judgment and remarkable legal expertise.

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

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

Thank you, Mr. Chairman.

GRASSLEY:

Thank you, Senator Gillibrand.

It's now, just as soon as the table is cleared, it's going to give Ms. Lynch an opportunity to come.

And before...

(OFF-MIKE)

Before you seat yourself, would you take an oath, please?

Would you raise your hand? And I'll give the oath.

Do you affirm that the testimony you're about to give before the committee will be the truth, the whole truth and nothing but the truth, so help you God?

LYNCH:

I do.

GRASSLEY:

Thank you.

The committee welcomes you and I know that it's an honor for all of us to have you before us. But it's also an honor for you to be selected by the president and it's quite an honor for your family.

So I would ask if, before you make your statement, if you would like to introduce anybody to the committee and speak about them any way you want to.

And then if there's people that aren't introduced by you that you would like to have their name in the record and you'd submit their names, I'd be glad to include that in the record.

So would you proceed as you choose?

LYNCH:
(inaudible)...

(CROSSTALK)

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

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

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

(UNKNOWN)
Thank you.

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

(LAUGHTER)

Immediately to his left is my younger brother, the Reverend Leonzo Lynch, who is the fifth generation of ministers in a direct line in my family, and my sister-in-law Nicole Lynch (ph).

I'm also here with several other family members and friends whom I would love to introduce, but I am informed that you have a schedule for the afternoon. So I will keep to that.

But let me say to all of them how tremendously gratified I am for their support, not just today, but over the years.

Chairman Grassley, Senator Leahy, distinguished members of this committee, I'm honored to appear before you in this historic chamber among so many dedicated public servants. I want to thank you for your time this morning, and I also want to thank President Obama for the trust he has placed in me by nominating me to serve as attorney general of the United States.

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

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

And as they stand before me, prepared to pledge their honor and their integrity, I remind them that they are making their oath not to me, not to the office, not even to the attorney general, but to our Constitution, the fundamental foundation for all that we do.

It is to that document and the ideals embodied therein that I have devoted my professional life. And, Senators, if confirmed as attorney general, I pledge to you today, and to the American people, that the Constitution, the bedrock of our system of justice, will be my lodestar as I exercise the power and the responsibility of that position.

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

My mother, Loreen (ph), who was unable to travel here today, is a retired English teacher and librarian for whom education was the key to a better life. She still recalls people in her rural North Carolina community pressing a dime or a quarter into her hands to help support her college education. As a young woman, she refused to use segregated rest rooms, because they did not represent the America in which she believed. She instilled in me an abiding love of literature and learning, and taught me the value of hard work and sacrifice.

My father, Lorenzo, who is here with me today, is a fourth generation Baptist preacher who in the early 1960s opened his Greensboro church to those planning sit-ins and marches, standing with them while carrying me on his shoulders.

He has always matched his principles with his actions, encouraging me to think for myself, but reminding me that we all gain the most when we act in service to others.

It was the values my parents instilled in me that led me to the Eastern District of New York. And from my parents, I gained the tenacity and the resolve to take on violent criminals, to confront political corruption and to disrupt organized crime. They also gave me the insight and the compassion to sit with the victims of crime and share their loss.

Their values have sustained me, as I have twice had the privilege, indeed the honor, of serving as United States attorney, leading an exceptional office, staffed by outstanding public servants. And their values guide and motivate me even today.

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

In a world of complex and evolving threats, protecting the American people from terrorism must remain the primary mission of today's Department of Justice. If confirmed, I will work with colleagues across the executive branch to use every available tool to continue disrupting the catastrophic attacks planned against our homeland, and to bring terrorists to justice.

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

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

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

In my current position, I'm proud to lead an office that has significant experience prosecuting complex international cyber crime, including high-tech intrusions at key financial and public sector institutions.

If I am confirmed, I will continue to use the combined skills and experience of our law enforcement partners, the department's Criminal and National Security Divisions, and the United States attorney community to defeat and to hold accountable those who would imperil the safety and security of our citizens through cyber crime.

I will also do everything I can to ensure that we are safeguarding the most vulnerable among us. During my tenure as U.S. attorney, the Eastern District of New York has led the prosecution against financial fraudsters who have callously targeted hard-working Americans, including the deaf, the elderly, and stolen not just their trust but their hard-earned savings.

We have taken action against abusers in over 100 child exploitation and child pornography cases. And we have prosecuted brutal international human trafficking rings that have sold -- sold -- victims as young as 14 and 15 into sexual slavery.

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

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

Few things have pained me more than the recent reports of tension and division between law enforcement and the communities we serve. If confirmed as attorney general, one of my key priorities would be to work to strengthen the vital relationships between our courageous law enforcement personnel and all of the communities we serve.

In my career, I have seen this relationship flourish. I have seen law enforcement forge unbreakable bonds with community residents. And I have seen violence-ravaged communities come together to honor officers who have risked all to protect them. And as attorney general I will draw all voices into this important discussion.

In that same spirit, I look forward to fostering a new and improved relationship with this committee, the United States Senate and the entire United States Congress, a relationship based on mutual respect and constitutional balance.

Ultimately, I know we all share the same goal and commitment to protect and to serve the American people.

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

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

LYNCH:

Senators, as I come before you today in this historic chamber, I still stand on my father's shoulders as well as on the shoulders of all of those who have gone before me and who dreamed of making the promise of America a reality for all, and worked to achieve that goal.

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

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

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

GRASSLEY:

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

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

I hope my colleagues will be cognizant of what we normally do between Senator Leahy and I; we're fairly liberal on letting people go over and whether we have five-, seven- or 10-minute rounds, in any hearing, my practice is generally if you got one second left, you can ask a question and -- but this time I would prefer that you kind of stick to the 10 minutes.

And I'm not very good at gaveling people down, so take care of my timidity, will you please?

Now again, before the first 10 minutes starts, I'd like to make something clear just for myself. I can't speak for my colleagues. And it takes off on two things: one, what you said about you wanted to improve relationships with the committee and with Congress.

I -- we welcome that very much and that will be very, very helpful, particularly in regard to our responsibilities of oversight.

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

So now I would start with my questions.

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

If you're confirmed as the next attorney general, before you take office, you will take a oath. You will raise your right hand and swear, quote, "support and defend the Constitution of the United States and to bear true and false faith -- true faith and allegiance to the same," end of quote.

Your duty as attorney general is not to defend the president and his policies. Your duty is your oath to defend the Constitution.

So my first question, with that oath in mind, I ask you, do you believe that the president has the legal authority to unilaterally deford (ph) deportations in a blanket manner for millions of individuals in the country illegally and grant them permits and other benefits, regardless of what the U.S. Constitution or imitation law -- immigration laws say?

LYNCH:

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

Certainly I was not involved in the decisions that led to the executive actions that you reference. And I am not aware of, at this point, how the Department of Homeland Security has set forth regulations to actually implement that. So I can't comment on the particulars of what will happen.

I have had occasion to look at the Office of Legal Counsel Opinion through which the Department of Homeland Security sought legal guidance there, as well as some of the letters from constitutional scholars, who've looked at the similar issue.

And certainly it seems to be a reasonable discussion of legal precedent, the relevant statute, congressional actions, along with the enforcement discretion of the -- of the agency.

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

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

So I do think it is very important that, as the Department of Justice, through any of its agencies, be it the Office of Legal Counsel or in a direct conversation with the president or any other member of Cabinet, always ensure that they are operating from a position of whether or not there's a legal framework that supports the requested action.

And the advice provided must be thorough, it must be objective and it must be completely independent.

GRASSLEY:

Let me take off on one word you used: discretion. And I presume that may have applied to prosecutorial discretion that was part of the president's rationale.

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

What it doesn't allow anybody to do is tell whole categories of people that the law won't apply to them going forward. No one seriously disputes these broad principles. Even the Office of Legal Counsel Opinion on the president's executive action accepts them.

So let me ask you this.

What are the outer limits of the doctrine of prosecutorial discretion?

And why don't the president's actions exceed those boundaries when we're talking about millions of people?

How does this action realistically allow for a case-by-case exercise of discretion?

LYNCH:

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

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

As a prosecutor, however, I've had experience obviously in doing similar things, in finding the best way to attack a serious problem with limited resources.

But as a prosecutor, I always want the ability to still take some sort of action against those who may not be in my initial category as the most serious threat. And I didn't see anything in the opinion that prevented action being taken from individuals who might otherwise qualify for the deferral.

Again, I'm not aware of how the department will actually go forward and implement by regulation this matter. I haven't had the occasion to study that. And I don't know if, in fact, if those are out.

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

GRASSLEY:

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

GRASSLEY:

Let's move on. I'd like to move away from the president's refusal to enforce the law and talk a little bit about this administration's failure to apply the law in an even-handed way.

According to the -- this goes to the IRS -- according to the Treasury Department inspector general -- now, that's not me, the inspector general -- the IRS used inappropriate criteria to deny tax- exempt status to predominantly conservative organizations, ask unnecessary questions and lastly, slowed approval of their application.

Initially, President Obama remarked that any IRS actions to -- to target conservatives would be, quote unquote, "outrageous." Then last February, the president said there wasn't, quote, "even a smidgen of corruption in what occurred at the IRS -- a smidgen of corruption," unquote.

Yet a few months later, in June, the director of the FBI, Director Comey, testified before the House Judiciary Committee that there was a, quote, "very active," unquote, ongoing criminal investigation into the matter.

So this brings me to these questions. I'd like to know how to reconcile these two statements.

If what the president said was accurate, then why in the world would the FBI be conducting an ongoing criminal investigation? A rhetorical question: Would the investigation be just for show?

I'd like -- I'm going to take the director at his word. So if there is an ongoing criminal investigation at the FBI, then how could it be possible -- be appropriate for the president to reach the conclusion about the facts before Director Comey?

LYNCH:
Thank you, sir.

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

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

GRASSLEY:
Based on what you just said then, I can shorten this up by asking you this question.

You spent a career in law enforcement. When would it ever be appropriate for any president to know the results of a criminal investigation and then comment on it publicly while the investigation is still ongoing?

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

Certainly, as part of the Department of Justice exercise of its powers, whether at the U.S. attorney level or here in Washington, investigations are handled independently and without provision of materials or information about them before their conclusions to others in the executive branch or other agencies.

GRASSLEY:
Senator Leahy, thank you very much.

LEAHY:
Thank you, Mr. Chairman.

I've been fortunate that my native state of Vermont has allowed me to serve here for four decades.

I've listened in several different committees I've been on to a lot of statements by nominees. I cannot think of one that is so moving as your statement, and I -- and I intend to make sure I have -- send copies to all members...

(AUDIO GAP)

LYNCH:
Yes. Thank you, Senator.

I think you've raised one of the most important issues facing our country today, which is the need to resolve the tensions that appear to be discussed and appear to be rising between law enforcement and the communities that we serve.

In my experience as a prosecutor and United States attorney, these tensions are best dealt with by having discussions between all parties so that everyone feels that their voice has been heard.

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

Many of our community residents, because of a host of factors, feel disconnected from government in general today, and when they interact with law enforcement, transfer that feeling to them as well, even if someone is there to help.

What I have found most effective is getting people together and simply listening to their concerns, being open, helping them see that, in fact, we are all in this together and that the concerns of law enforcement, a safe society, a free society are the exact same concerns of every resident of every community there.

LEAHY:

And would you agree that that's something that has to be considered by not only federal law enforcement but by state and local law enforcement and that the federal government can help the state and local law enforcement in that respect?

LYNCH:

Absolutely, Senator.

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

LEAHY:

We all know that no prosecutor's office has the resources to prosecute every single crime before it, and you have to decide which ones have priority.

Let me take -- let me talk about one.

In state court, there was a case where a child rapist received two years. You obviously disagreed with that, you brought federal charges, and I think Bill O'Riley on -- on Fox called you a hero and said, quote, "You should be respected by all Americans for standing up to gross injustice," and I agree -- I agree with Bill O'Riley on that.

How do you make -- well, let me back up. More and more, the Justice Department's budget, as I said earlier, is going now into our federal prison system, so you have limited resources.

How do you make these kind of judgments? How do you determine which cases are the important ones you have to go and -- also the very difficult thing, realizing if you go after certain cases, it means you don't have the resources to go after others.

LYNCH:

Certainly, Senator.

One of the privileges of being the U.S. attorney for the Eastern District of New York has been the ability to work with so many of my United States attorney colleagues across the country.

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

We then look at our resources and set priorities and goals to achieve the safest communities that we can.

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

LEAHY:

Well, let me -- let me go into one that takes resources, but we've had some people say that, actually, again, terrorists, lock them up in Guantanamo, even though we know what that has cost American people, both in respect abroad and in dollars.

You successfully prosecuted a number of terrorism cases in the Eastern District of New York, cases against individuals that you said plotting against John F. Kennedy Airport, Federal Reserve Bank and so on. Just this month, you charged two Al Qaida members for attacking American troops in Afghanistan and Iraq.

LEAHY:

I've been impressed not only in your district but other parts of the country who have actually brought these terrorists to trial in our federal courts. We've shown the rest of the world we can do it. There's been convictions of some, Bin Laden's son-in-law being one. And then they've been locked up.

Now, do you find the criminal justice system -- I think I know your answer -- an important counter (inaudible).

LYNCH:

Senator, it is certainly an important counterterrorism tool in the arsenal of tools that we have to deal with this ever-growing and ever-evolving threat.

Let me say at the outset, my view is that if terrorists threaten American citizens here or abroad, they will face American justice. We work with our counterparts throughout the executive branch to determine based on every case the most appropriate venue for bringing terrorists to justice, as our primary goal is to incapacitate them and prevent further destruction.

Certainly, within my own career as U.S. attorney, when cases -- when the decision has been made that the case should be handled by a U.S. attorney's office, we proceed in that fashion. We also work closely, however, with the Office of Military Commissions and consult with them and share information to make those decisions as to how -- what is, in fact, the best way to manage every case.

LEAHY:

The -- and then, as these cases come to you, I want to ask you a question I asked each of the recent attorney general nominees. And I say this because of I think of the tremendous effort of the senator from California, Senator Feinstein, who's sitting here, her tremendous efforts to confront acts of torture carried out in our country's name.

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

LYNCH:

Waterboarding is torture, Senator.

LEAHY:
And thus illegal?

LYNCH:
And thus illegal.

LEAHY:
Thank you. And I know you're gonna be asked a lot about immigration. Well, it's -- it makes me think we should be focusing on your qualifications for this job. It might even -- asking those questions might speak also to some of the qualifications of Congress.

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

In my opinion, there were votes enough to pass it in the House of Representatives, but their leadership decided not to bring it up. I think that was a mistake.

So now we deal with the question of executive action. You didn't write the executive action. You weren't consulted about it, were you?

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

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

LYNCH:
I believe that statement is fair, sir.

LEAHY:
Thank you.

Thank you, Mr. Chairman.

GRASSLEY:
Senator Hatch is the next one. But I wanted to inform all the committee members that since everybody on the committee was here at the fall of the gavel, it will be done on a seniority basis as opposed to first come, first serve basis.

Senator Hatch is next.

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

Ms. Lynch, welcome to the Judiciary Committee.

LYNCH:
Thank you.

HATCH:

Appreciate the service you've given in this country. I'm impressed with your qualifications, and I hope I can support your nomination. It's important to hear what you understand your role and duty will be.

Do you agree that when the constitutionality of a law is challenged the attorney general has a duty to defend that law if reasonable arguments can be made?

LYNCH:

Senator, I believe that one of the first and foremost duties of the Department of Justice is to defend the law as it's passed by this body.

HATCH:

OK. Now, I'd like you to answer these questions. I'm trying to get through a number of them. I think you can answer most of them yes or no, if you can.

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

LYNCH:

Absolutely, sir.

HATCH:

Thank you. I'm glad you said that. Attorney General Holder answered that same question in the same way.

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

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

LYNCH:

Senator, it's my view that when it comes to the position of the attorney general and the role of the Department of Justice in defending the statutes as passed by this Congress, the issue is not my personal view or any issue of bias or policy even, but it is the duty and responsibility of the Department of Justice to defend those statutes.

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

HATCH:

But that would be rare.

LYNCH:

... but I anticipate those would be few and far between. I also think should we reach that point, if there is a matter, it's a matter that I would prefer to have discussion about.

HATCH:

OK. I appreciate that answer.

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

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

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

LYNCH:

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

HATCH:

Right.

LYNCH:

But consistent with that, every good lawyer knows you must also provide the information that indicates that the legal framework may not exist for certain actions that someone may want to take. Every lawyer has to be independent. The attorney general even more so. And I pledge to you that I -- that I -- I take that independence very seriously.

HATCH:

Well, you did that in my office, and I appreciate that because I think you'll be a great attorney general if you'll - if you'll do that.

Last August you gave a speech in Switzerland in which you praised Attorney General Holder's initiative to limit mandatory minimum sentences only to some of the criminals who Congress said should receive them. But prosecutors, including even the attorney general, do not have authority to decide that entire categories of defendants will not receive a sentence that the Congress has mandated.

Isn't that another example of using prosecutorial discretion to really, in effect, change the law without Congress?

LYNCH:

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

HATCH:

I want to help you with that.

LYNCH:

Sir?

HATCH:

I want to help you with that.

LYNCH:

Yes. And prosecute them effectively.

In fact, in my own experience, both as an assistant United States attorney and United States attorney, we've had to deal with similar issues in the Eastern District of New York. We've had tremendous issues with narcotics importations over the years. And we have had to work out ways of resolving those cases.

Many of them go to trial, but we also have had to prioritize the cases that we will seek mandatory minimums for and those which will we seek guidelines sentences for.

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

HATCH:
OK. I understand.

As currently written, the Electronic Communications Privacy Act, or ECPA, requires only a subpoena for law enforcement to access e-mail that has been opened, even though a search warrant would be required for a printout of the same communication sitting on a desk. To make matters more complicated, ECPA is silent on the privacy standard for accessing data stored abroad. Without an actual legal framework in place, this puts the privacy of American citizens at risk for intrusion by foreign governments.

In the coming days, I intend to reintroduce the LEADS Act, which will promote international comity and law enforcement cooperation.

Will you commit to working with me on this important subject, because it's important we solve these problems?

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

HATCH:
Well, thank you so much.

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

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

LYNCH:
Senator, I think that the issue of trade secrets, again, particularly as American technology becomes ever more complex and becomes ever more a target from those both in the U.S. and without who would seek to steal it, is an increasingly important issue and I look forward to working with you to consider that statute.

I'm not familiar with the provision that you raised, but it certainly touches on an important issue of making sure that our companies and their technology are protected.

HATCH:

Well, thank you so much. I am today introducing legislation to help victims of child pornography receive the restitution that Congress has already said they deserve. The Supreme Court said last year that the current restriction statute enacted more than 20 years ago does not work for child pornography victims and this legislation will change that.

I am joined by more than 30 senators on both sides of the aisle, including 14 on this committee.

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

LYNCH:

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

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

(CROSSTALK)

HATCH:

Thank you so much. Now I recently led a powerful -- read a powerful book, read it in one day. It's titled "License to Lie: Uncovering Corruption in the Department of Justice."

The author writes about many things, including the debacle that occurred in the misguided prosecution of Senator Ted Stevens, which I thought was out-of-this-world bad. I was one of the people who testified as to his character and he was a person of great character. And as you know, he lost the Senate race because of this type of prosecution.

I know that case. Ted Stevens was a dear friend of mine and I testified on his behalf, as I said. Only after he was convicted did we learn that the Justice Department prosecutors intentionally hid exculpatory evidence that could have helped his case.

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

Now I recommend that you read this book because if you're -- if you -- if even half of it is true and I believe it is true, you have a lot of work to do to clean up the -- that department.

Will you consider doing that for me?

LYNCH:

Thank you, sir, I will.

HATCH:

I appreciate it.

Thanks, Mr. Chairman.

GRASSLEY:

Yes.

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

Senator Feinstein?

FEINSTEIN:

Thank you very much, Mr. Chairman.

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

LYNCH:

Thank you.

FEINSTEIN:

I see the combination of steel and velvet. I see your effectiveness before a jury. I see your love for the Constitution and I see the determination which is in your heart and I think your being. And it's very, very impressive.

So I want to thank you for really 30 years of service...

(CROSSTALK)

LYNCH:

Thank you, Senator.

FEINSTEIN:

... and I hope it will be a lot longer.

Mr. Chairman, I'd like to place in the record Los Angeles Police Department's Chief's Charlie Beckett's written testimony on the subject of the president's executive action on immigration.

GRASSLEY:

Without objection, so ordered.

FEINSTEIN:

Thank you very much.

Ms. Lynch, I'm going to ask you three questions. The first is on expiring provisions of the Foreign Intelligence Surveillance Act, which will come to this committee before June of this year and also before the Intelligence Committee, on which I serve.

A question about Office of Legal Counsel Opinions and a question on the State Secrets Act.

Let me begin with FISA. The three provisions that are going to expire on June 1 are first the roving wiretap authority. This provision enables the government to maintain surveillance on a target when he or she switches phone numbers or e-mail addresses without seeking a new court order.

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

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

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

LYNCH:

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

With respect to the provisions that you refer to, I think it's -- I have always found it most interesting that the roving wiretap provision is actually a provision that was incorporated into the FISA statute after being utilized extensively for several years in narcotics prosecutions. It was one with which I was familiar as a young prosecutor as many of my colleagues across the country were as well.

And the ability to describe to a court the nature of the offense, the nature of the activity and the use of attempts to shield one's self from electronic surveillance, which is part of what must be set forth in the application, have been invaluable tools.

Of particular importance is the fact that all of this must go to a court -- obviously in the narcotics area it was an Article 3 court; in the FISA area, it goes to the FISA court -- but there is judicial review for this and it has been an important part of the techniques we have used in the war on terror, as have the other two provisions that you mentioned.

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

With respect to the lone wolf provision, again, I think we have to obviously examine it carefully. Recent events, however, have underscored the importance of this as an issue in the war on terror. And so I would hope that we could move forward with any proposed changes to FISA with a full and complete understanding of the risks that are -- that we are still facing.

And if any changes need to be made, again, after full and fair consideration with this committee, with the Intelligence Committee and the discussions that we need to have, making sure that we can still provide law enforcement with the tools that they need.

Similarly with Section 215, I believe that the court order provision in there is an effective check and certainly a necessary check as we gather data from all types of sources.

As I've always said, I'm certainly open to discussions about how they can be best modified if we need to modify them consistent with the goals of protecting the American people.

And I commit to you, Senator, and indeed to all of this committee that I will always listen to all those concerns, be it about the FISA statute or any of the techniques we are using in the war on terror.

FEINSTEIN:

Thank you very much.

As a member of both Judiciary and Intelligence, we have on both committees sought access to Office of Legal Counsel opinions, called OLC opinions. And these opinions often represent the best and most comprehensive expression of the legal basis for intelligence activities Congress is actually charged with overseeing.

So without these opinions, you don't really know the legal basis upon which an administration has made -- has based certain activities. And it's been very frustrating to us.

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

My question is, could we have your commitment that you will make a copy of this OLC opinion available to members of both the Intelligence and the Judiciary Committee? Probably your first tough question.

LYNCH:

Senator, I think that with respect to the OLC opinions, you are correct. They do represent a discussion, an analysis of legal issues on a wide variety of subjects when a variety of agencies come to the department for that -- that independent advice that we must provide them.

Certainly, I'm not aware of the discussions that have been had about this previous opinion in terms of providing it. Certainly, I will commit to you to work with this committee, as well as the Intelligence Committee, to find a way to provide the information that you need, consistent with the department's own law enforcement and investigative priorities.

FEINSTEIN:

Thank you very much. This particular opinion is important. And it would be useful if we can review it. So thank you.

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

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

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

LYNCH:

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

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

FEINSTEIN:

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

LYNCH:

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

FEINSTEIN:

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

GRASSLEY:

Thank you, Senator Feinstein. Now it's Senator Sessions' turn.

SESSIONS:

Thank you, Mr. Chairman. It is great to have you here. I appreciate the opportunity to have a good discussion, I think, in our office, and having had -- I think I just passed my time in the Senate longer than I spent in the Department of Justice. It was a great honor to serve that. I have high ideals for this department.

And we understand that the attorney general is a premier law enforcement officer, the senior law enforcement officer in America. He or she sets the tone for law in America, the commitment to law, and must resist politicizing law, and do the right thing on a daily basis.

On occasion, you're called upon to issue opinions. OLC works for you, the Office of Legal Counsel, who issues these opinions. And you'll have to tell the president yes or no on something that he may want to do.

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

LYNCH:

Senator, I believe you've touched upon one of the most important responsibilities of the attorney general. And let me say also that I appreciate it very much the opportunity to meet with you and discuss these important issues.

The attorney general's position, as a cabinet member, is perhaps unique from all of the cabinet members; yes, a member of the president's cabinet. But the attorney general has a unique responsibility to provide independent and objective advice to the president, or any agency, when it is sought; and sometimes perhaps even when it is not sought.

With respect to the Office of Legal Counsel...

SESSIONS:

And just -- so you understand that your role is such that on occasion you have to say no to the person who actually appointed you to the job, and who you support?

LYNCH:

Senator, I do understand that that is in fact the role and the responsibility of the attorney general, and in fact, a necessary obligation on their part.

SESSIONS:

Well, you know, people have agendas, and attorneys general sometimes do. And they have to guard against that and be objective, as you basically said to me now in committee.

On April 24th of 2013, Attorney General Holder said this -- and I'm raising this fundamentally because I think there's a lot of confusion about the -- how we should think about immigration in America, what are duties and what our responsibilities are.

He said this, quote, "Creating a pathway to earn citizenship for the 11 million unauthorized immigrants in our country is essential. The way we treat our friends and neighbors who are undocumented by creating a

mechanism for them to earn citizenship and move out of the shadows transcends the issue of immigration status. This is a matter of civil and human rights."

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

LYNCH:

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

SESSIONS:

I don't want to interrupt you, but just the question is, do you agree with that statement about it's a matter of civil rights, and citizenship, and work authority, right to work in America, for someone who enters the country unlawfully? That's a civil right?

LYNCH:

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

SESSIONS:

I'd just like to hear you answer that. Is it a civil right for a person who enters the country unlawfully, who would like to work and like to be a citizen, to demand that, contrary to the laws of the United States? And when Congress doesn't pass it, is that a right that they're entitled to demand?

LYNCH:

So I don't think -- I think that citizenship is a privilege. Certainly, it's a right for those of us born here. I think it's a privilege that has to be earned. And within the panoply of civil rights that are recognized by our jurisprudence now, I don't see one that you -- as such that you are describing.

SESSIONS:

I certainly agree. I'm a little surprised it took you that long. But the attorney general statement was breathtaking to me. Now, Peter Kirsanow, who's a member of the U.S. Commission on Civil Rights, responded to that some time ago.

And here's what he said, quote, "To equate amnesty for breaking the nation's immigration laws with civil rights betrays an incoherent and a historical understanding of the Civil Rights movement. Law-abiding black citizens of the United States were not seeking exemption from law; they were seeking application of such laws in the same manner that was applied to whites," closed quote.

Would you agree with Mr. Kirsanow's analysis?

LYNCH:

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

SESSIONS:

Well, on the 50th anniversary of the Selma March -- it's approaching -- people were denied, systematically, fundamental rights as citizens of United States of America. And that was a historic event. It changed America. I think it's important that that be remembered.

But I will just tell you it's quite different, as I think Mr. Kirsanow points out, to demand your lawful rights as an American, and to ask for -- insist that civil rights apply to those who enter the country unlawfully, to have these benefits.

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

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

LYNCH:

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

With respect to...

SESSIONS:

So you think that a person that's -- anybody that's here lawfully or unlawfully is entitled to work in America?

LYNCH:

Senator, I'm not sure if I know -- if I understand the basis for your question as -- as to whether or not there's a legal basis for them to work or not.

SESSIONS:

I asked you, who had -- we're talking about rights -- who has the most rights? Does a lawful American immigrant or citizen have the right to have the laws of the United States enforced so that they might be able to work, or does a person who came here unlawfully have a right to demand a job?

LYNCH:

Certainly, the benefits of citizenship confer greater rights on those of who are citizens than those -- than those who are not.

SESSIONS:

Well, do you think a person that's here unlawfully is entitled to work in the United States when the law says that employees can't hire somebody unlawfully in America?

LYNCH:

I believe that -- go ahead.

SESSIONS:

Go ahead.

LYNCH:

Sorry, sir.

I think that certainly the provision that you refer to regarding to the role of the employer in ensuring the legal status of those who are here is an important one and that we have to look at in conjunction with this issue in terms of preventing undocumented workers, who, as you've indicated before, are seeking employment.

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

SESSIONS:

Alright. Do you think that someone given -- I understand that you support the -- the executive order and OLC's opinion. Is that correct?

LYNCH:

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

SESSIONS:

Well, just let me wrap up by asking this: Are you -- if -- if a person comes here and is given a lawful right under the president's executive amnesty to have Social Security and a work authorization card, what if somebody prefers to hire an American citizen first? Would you take action against them?

Do you understand this to mean that those who are given executive amnesty are entitled as much as anybody else in America to compete for a job in America?

LYNCH:

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

SESSIONS:

Would you take action against an employer who says, "No, I prefer to hire someone that came to the country lawfully rather than someone given executive amnesty by the president"? Would Department of Justice take action against them?

GRASSLEY:

When you answer that, I'll move on then.

LYNCH:

Thank you, sir.

With respect to the -- the provision about temporary deferral, I did not read it as providing a legal amnesty, that is, that permanent status there, but a temporary deferral.

With respect to whether or not those individuals would be able to seek redress for employment discrimination, if -- if that is the purpose of your question, again, I haven't studied that legal issue.

I certainly think you raised an important point and would look forward to discussing it with you and using -- and relying upon your thoughts and experience as we consider that point.

GRASSLEY:

Thank you, Senator Sessions. Now Senator Schumer.

SCHUMER:

Well, thank you.

And, you know, I think that even in the short while here, it's clear to my colleagues why you are such a tremendous -- why you've been such a tremendous U.S. attorney in my home state of New York and home

borough of Brooklyn and why you'd make such a great attorney general. You've just, you know -- you're just knocking them out of the park.

And speaking of...

(LAUGHTER)

... sports analogies, there's another point I'd like my colleagues to know, another testament to your perseverance, to your loyalty in the face of incredible adversity. With all due respect to Mr. Tillis, you're not a Tar Heel or a Blue Devil; you're a Knicks fan.

That takes...

(LAUGHTER)

It's a lot tougher being a Knicks fan than going through these questions here today.

(LAUGHTER)

But anyway, I have a couple of -- I'd like to just go over a couple points some of my colleagues made.

First, on prosecutorial discretion, there's a myth out there that prosecutorial discretion policies are tantamount to an illegal failure to force the law, and we know that you have enforced the law aggressively and will continue to do so, as has the administration.

My friends -- some of my friends across the aisle seem to be suggesting that the president's announcement of the enforcement policies for the Department of Homeland Security is tantamount to an announcement that we won't enforce our immigration laws, but that's absurd.

We know we have 11 million undocumented immigrants living in the United States. Congress, this body, only allocates enough money for DHS to deport 400,000 of them. 11 million illegal immigrants, enough money to deport 400,000.

Obviously, you have to make some choices here. And I'm sure when my dear friend, Jeff Sessions -- and he is a dear friend -- was U.S. attorney in Alabama, he used prosecutorial discretion. I know he did a good job going after violent drug dealers and criminals.

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

Now, obviously, there can be an occasional exception. As you mentioned, the president's executive order allows for that occasional exception.

But this idea that going after -- having an office go after the higher-level, more dangerous crimes first is part of how law enforcement has gone on for hundreds of years, and it should. So I don't even get this idea that this is a -- an illegal act by the president.

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

Immigration is like any other issue. We have limited resources. It makes imminent sense to go after the hardened criminals before going after low-level offenders.

So just let me ask you a couple of questions here.

Don't U.S. attorney offices all over the country consistently have to make these general type of prosecutorial decisions on a day- to-day basis, and how do -- how do you?

LYNCH:

Yes, Senator.

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

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

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

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

LYNCH:

We also work closely with our state and local counterparts, not just the law enforcement counterparts but our prosecutive counterparts in the district attorneys' offices.

Many times I will have a matter in my office that is subject to both federal and state jurisdiction and it may be more appropriate for the district attorney to prosecute that type of crime because of the nature of the sentence that can be achieved, because of the impact on a particular victim or community or because of a legal issue with -- involving proof and the admissibility thereof.

All of these things go into the consideration of how we manage individual cases, but also how we set priorities and then deploy our limited resources to best protect the people of our district.

SCHUMER:

Exactly. Every prosecutor, whether it's the Justice Department, the U.S. attorney's office sets priorities and has to and that's just what the president did, in my opinion, in the executive order.

Next one, we're hearing a lot about executive action being unconstitutional. And so I'd like to just talk about that. That's another myth that's out there.

Now no federal court has struck down executive action. The most recent federal court to hand down a decision supported it. I've heard it suggested federal courts have declared executive action unconstitutional.

So happens, in fact, dating back to Chief Justice Rehnquist the Supreme Court has repeatedly bolstered executive discretion and refused to review agency decisions that are within the law.

With respect to this executive action, there have been two federal cases filed, one here in Washington by Sheriff Arpaio, a notoriously anti-immigration activist; that's been dismissed.

The second suit was filed in Texas and is still pending. Now we're hearing that -- so no courts have struck down executive action.

Now we're hearing that Speaker Boehner and House Republicans will be suing the president on this executive action. I don't think that's a responsible use of taxpayer dollars, but at least Speaker Boehner and I agree on one thing.

If Republicans disagree with the -- with President Obama over the legality of this policy, they can sue him and let the courts decide. The confirmation of America's highest law enforcement officer is not the time or place to vent frustration.

So let me just ask you a couple of questions. You've answered them, but I want to underscore them, because some people are concerned that the, quote, "rogue Obama administration is lawless."

Will you commit to following court decisions and legal process?

LYNCH:

Absolutely, Senator, that's my first point of reference.

SCHUMER:

And specifically if a court happens to strike down executive action, will you respect that court decision?

LYNCH:

I will respect that court decision.

SCHUMER:

And let's imagine Congress -- I don't think this will happen; I would try to prevent it as best I could -- but let's say Congress were to pass a bill explicitly prohibiting President Obama's immigration actions, a bill I find hard to imagine the president would sign. But let's just imagine for the sake of argument happened. If that such a bill passed, will you commit to following the new law?

LYNCH:

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

SCHUMER:

Thank you.

OK. Just one other issue, since I have a little more time. Work permits, which my good friend, again, Jeff brought -- Senator Sessions brought up.

Some have suggested it's illegal for the administration to issue work permits for recipients of deferred action. Again, they imply this is unprecedented. That's misleading.

Guess who did it in 1982?

Ronald Reagan. They published INS regulations authorizing work permits for recipients of deferred action -- 1982, the Reagan administration. That's not to say workplace enforcement isn't unnecessary -- isn't necessary; it is.

And in fact, isn't it true, Ms. Lynch, that you have a strong record of enforcing workplace immigration rules?

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

LYNCH:

Thank you, senator. The case against the 7-Eleven Stores and various franchises was a very important one to my office because it was one in which we saw a corporate entity deliberately flouting the labor laws.

Individuals, mostly of a particular ethnic group who owned franchises at 7-Eleven, were reaching out to their own community members and hiring them to work in the stores. This would have been an opportunity for individuals to earn money for their families and to essentially become part of the American dream.

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

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

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

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

SCHUMER:

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

(UNKNOWN)

Thank you. I would offer for the record a consent that the article from "The Atlantic" saying the headline from David Frum of Reagan and Bush offer no precedent for Obama's amnesty order and I think that's crystal clear.

Senator Cornyn -- Justice Cornyn is next.

CORNYN:

Good morning, Ms. Lynch.

LYNCH:

Good morning.

CORNYN:

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

LYNCH:

Yes.

CORNYN:

... to visit about this hearing and I should say congratulations to you for an outstanding career as a United States attorney. The challenge I think that people have when they come to Washington, D.C., and they assume jobs that have political implications is that they sort of forget their basic mooring in the law and they become politicians masquerading as law enforcement officers and that's a real challenge. And I won't claim that it's only a challenge for Democrats. It's a challenge -- has been a challenge for Republicans as well.

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

LYNCH:
No, I'm not, sir.

(LAUGHTER)

CORNYN:
But no one is suggesting that you are, but of course, Attorney General Holder's record is heavy on our minds now. And I agree with the chairman about his concerns when the attorney general refers to himself as the president's wingman, suggesting that he is not -- does not exercise independent legal judgment as the chief law enforcement officer for the country.

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

LYNCH:
No, Senator, that would be a totally inappropriate view of the position of attorney general.

(CROSSTALK)

CORNYN:
I'm sorry, and you're -- and you'd be willing to tell your friends no if in your judgment the law required that?

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

CORNYN:
And that would be the -- include the President of the United States?

LYNCH:
I think that the obligation of the attorney general is to when presented with matters by the president, to provide a full, thorough, independent, substantive legal analysis and give the president the best independent judgment that there is.

And that may be a judgment that says that there is a legal framework for certain actions and it may be a judgment that says that there is not a legal framework for certain actions.

CORNYN:
And while we have stipulated you're not Eric Holder, Mr. Holder's record is certainly on our minds because I can't think of an attorney general who so misevaluated the independent role of the chief law enforcement officer and taken on that aspect of the president's wingman and operated as a politician using the awesome power conferred by our laws on the attorney general.

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

We know that the attorney general has repeatedly made legal arguments that have been rejected as unconstitutional by the United States Supreme Court and he's harassed states like mine.

And I suspect you'll hear from another colleague about his state, on matters like voter ID. When the United States Supreme Court has upheld the validity of voter ID as a means to protect the integrity of the ballot for people who were qualified to vote.

CORNBYN:

And at the same time, the attorney general has failed to implement laws that Congress has passed in order to provide -- to protect the voting rights of our military deployed overseas. He's also politicized the war on terror. He's declassified top secret legal memos, exposing public officials in the intelligence community to not only ridicule but threats, legal and otherwise, for performing actions that they were told by the highest legal authorities were legal and necessary to save American lives.

And, indeed, he reopened a criminal investigation into those same members of the intelligence community after a previous investigation had not revealed any basis for criminal charges.

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

LYNCH:

Senator, if confirmed as attorney general, I will be myself. I will be Loretta Lynch. And I -- and I would refer you to my record as United States attorney on two occasions, as well as a practicing lawyer, to see the independence that I've always brought to every particular matter.

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

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

CORNBYN:

You may not agree with everything we do.

LYNCH:

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

CORNBYN:

Ms. Lynch, I've been married 35 years, and I can guarantee you that 100 percent agreement is an impossible standard...

(LAUGHTER)

... for anybody to comply with. So we don't expect -- we don't expect that, obviously.

But I want to ask you about your commitment to working with the committee and Congress and respecting our congressional oversight authority. A recent letter sent to Senator Leahy on behalf of Attorney General Holder was dated December the 5th, 2014, and responds to questions for the record that arose in an appearance before this committee on March the 6th, 2013, so obviously about, this looks roughly a year and a half, more than a year and a half later.

Can we expect a more timely response from you and the Department of Justice to the legitimate inquiries of this committee?

LYNCH:

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

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

CORNYN:

I think it would make if possible for you to be a more effective attorney general and it would make it possible for us to be more effective in our respective roles as a member of Congress exercising our responsibilities as well.

I want to just ask you a little bit about prosecutorial discretion, which you've heard something about here. My only regret from this morning's hearing, is that Senator Schumer, the senior senator from New York who introduced you wasn't available for cross-examination by members of the committee, but we'll have a chance to talk later.

But he was -- seemed somewhat dismissive of concerns about this massive what I would consider in essence refusal to enforce existing law that is involved in these executive actions.

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

LYNCH:

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

CORNYN:

Well, let me ask you about that. Isn't it incumbent upon the Department of Justice to ask Congress for the resources to do the job that Congress has said that the department must perform before you can come back and say, well, we're just not gonna pursue those crimes and those offenses because we don't have enough money.

I mean, isn't it your responsibility, won't it be your responsibility as the next attorney general to come to us and ask us for those resources? I can't imagine if Attorney General Holder or the president of the United States or Secretary Johnson or others had come to us and said we don't have the resources to enforce the immigration laws, so we're gonna have to -- we're gonna have to in essence decline to enforce them because we don't have those.

I mean, don't you have that responsibility to ask for those resources before you decline to enforce the law based on lack of resources.

LYNCH:

Certainly, Senator, I'm not aware of the Department of Homeland Security's budget request before this -- this body or Congress in general.

With respect to the Department of Justice, I have been involved in reviewing the budget as part of my work on the attorney general's advisory committee and certainly during sequestration spent a great deal of time looking at the budget to ensure that we did maintain the appropriate resources to carry out our core mission of protecting the American people within the constraints that were placed upon us at that time.

And it's my understanding that with respect to budget requests that the Department of Justice makes, that those requests do include information about goals and priorities across the board as a way of explaining to Congress why specific resources are needed.

CORNYN:

So you do need more money?

LYNCH:

I would probably join all of my agencies in saying that, sir, but I can't speak for them.

(LAUGHTER)

CORNYN:

That's what I thought. Thank you.

HATCH:

Thank you, Senator.

Now, Senator Durbin. Then the next Republican will be Senator Lindsey Graham.

DURBIN:

Ms. Lynch, thank you for being here. I will be objective, although I am deferential to women named Loretta. I've been married to one for 47 years. And I'm glad that you're here today.

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

One of the central issues that was raised during the civil rights movement was the right to vote, a right which Chief Justice Roberts said, sitting in that very same place and in quoting a court decision, is preservative of all rights.

We are now in a unique position, some 50 years later, about to celebrate the 50th anniversary of the Voting Rights Act. The Supreme Court in *Shelby County v. Holder* struck down major provisions of the Voting Rights Act. And Congress, which historically had renewed the Voting Rights Act on a bipartisan basis, is now, with few, rare exceptions, split along partisan lines as to whether or not there will be a renewal of some sections.

We are finding states across the nation, many states, that are changing the requirements for voting. I chaired the Constitution Subcommittee of Judiciary.

I took the subcommittee to public hearings in Ohio and in Florida where there were new restrictions placed on voting by state legislatures. I called the election officials of both political parties in those states and asked them if there was any evidence of voter fraud or voter abuse that led to these legislative changes. And, to a person, they said virtually none.

What has happened is that the Department of Justice has stepped in in some cases that they consider to be extreme and unfair, and worked to stop the implementation of these state laws that restricted the right to vote.

As you embark on the possibility of making that decision as attorney general, how do you view the state of voting rights in America today? And what do you view as your responsibility, should you be our next attorney general?

LYNCH:

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

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

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

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

LYNCH:

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

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

Absent that, I believe that when the laws are passed, the Department of Justice has to look very carefully at their impact in making a decision as to how to proceed.

Certainly, there have been instances when voter ID laws have received approval from the department under what was previously known as pre-clearance, because they sought to simply regulate and protect the ballot as opposed to act in a different way.

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

DURBIN:

I couldn't agree with you more, and I find it ironic and painful that at this moment in our history, as we celebrate with the movie "Selma" and talk about 50-year anniversary of the Voting Rights Act, that states -- many states on a systematic basis are making it more difficult for Americans to vote, without any evidence of voter fraud to back up those changes.

In one Southern state, it's estimated that some 600,000 voters were basically precluded from voting in election, because of new voter ID requirements. In that same state, a 93-year-old veteran was turned away, a 73-year-old doctor turned away, people who were proud to vote, wanted to vote turned away by new laws. These were people who had a right to vote.

And it troubles me that amidst all the celebration of the civil rights movement, we are finding a reversal of the most fundamental principle in preserving that right to vote. I appreciate you had to say about it.

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

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

Let me add one other element. As chairman of the Constitution and Human Rights and Civil Rights Committee, which was its name before this new Congress, we also had a hearing on solitary confinement.

It turns out the United States in its prison system has more prisoners in solitary confinement than any other country, and we had testimony from those who had spent 10 years on death row in solitary confinement in Texas, an even longer period of time in solitary confinement on death row in the State of Louisiana, and ultimately exonerated. They were not found to be guilty.

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

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

LYNCH:

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

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

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

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

DURBIN:

Thank you very much.

Thank you, Mr. Chairman.

GRASSLEY:

Senator Lindsey -- Senator Graham is next.

GRAHAM:

Thank you.

Thank you very much, Ms. Lynch, and congratulations on being chosen by the president. This is truly an honor, I'm sure.

Do you support the death penalty?

LYNCH:

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

GRAHAM:

How about, "Yes"?

LYNCH:

... a death verdict there.

GRAHAM:

Yes?

LYNCH:

So we have sought it, yes.

GRAHAM:

Yeah, OK. That's good. Well, that's good from my point of view. I don't know about other people.

Sequestration, have you had a chance to look at the impact sequestration will create on your ability to defend this nation as attorney general, or those who work for you?

LYNCH:

Senator, with respect to sequestration, I have had an opportunity to review that matter very closely through my work on the attorney general's advisory committee and also as -- as United States attorney dealing with the budgetary limits that -- that came down with the implementation of sequestration.

As you are familiar with the history probably perhaps far more than I, it did constrain the federal budget greatly about -- about 18 months...

GRAHAM:

Is this a fair statement? If Congress continues to implement sequestration, it will devastate the Department of Justice's ability to effectively defend this country.

LYNCH:

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

GRAHAM:

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

LYNCH:

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

GRAHAM:

So we need to up our game in the cyber-security area fairly quickly. Do you agree with that?

LYNCH:

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

GRAHAM:

And there's just not criminals; terrorists also are in the cyber business. Is that correct?

LYNCH:

Senator, you've outlined perhaps the greatest fear of any prosecutor, is the combination of a cyber attack being carried out on behalf a terrorist entity, is one that we take great pains to prevent, to detect and to disrupt.

But it is certainly an emerging threat and calls for resources beyond just mere personnel but in terms of our own technology also.

GRAHAM:

Does it also cry out for Congress to take a comprehensive approach to our cyber problems in past legislation that would modernize our ability to deal with this threat?

LYNCH:

Certainly, a comprehensive approach is necessary.

In my experience, both in the Eastern District of New York and in talking to my colleagues, all of us are struck by the prevalence of cyber issues in every type of case that we prosecute now, much more so than even five or 10 years ago.

And so we must have not only a comprehensive approach but one that allows government to work with private industry as well to come up with ways to best protect us against this threat.

GRAHAM:

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

LYNCH:

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

GRAHAM:

OK. Do you have a role in the deportation of people here illegally in the Department of Justice? Do have any role at all there?

LYNCH:

Well, that role is initially -- in terms of deportation, the role is initially handled by the Department of Homeland Security.

There is -- there are the immigration courts through which individuals can seek either asylum or redress from deportation orders that are handled by the Department of Justice, but that would be simply -- actually further along in the process.

GRAHAM:

But that's part of the process?

LYNCH:

Yes, it is.

GRAHAM:

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

Now, do you think the national NSA terrorist surveillance program is constitutional as it is today?

LYNCH:

I'm sorry?

GRAHAM:

Do you think the NSA program, terrorist surveillance program, that we have in effect today is constitutional?

LYNCH:

Senator, I believe that it's not only -- it's -- it's constitutional and effective.

I know that there are court challenges to it, and certainly, we will abide by those court regulations.

GRAHAM:

Right.

LYNCH:

But it has been a very effective tool in managing...

GRAHAM:

But you're OK with it being constitutional from your viewpoint?

LYNCH:

Certainly constitutional and effective.

GRAHAM:

Thank you. Marijuana: There are a lot of states legalizing marijuana for personal consumption. Is it a crime at the federal level to possess marijuana?

LYNCH:

Marijuana is still a criminal substance under federal law. And it is still a crime not only to possess, but to distribute, under federal law.

GRAHAM:

Under the Doctrine of Preemption, would the federal law preempt states who are trying to legalize the substance?

LYNCH:

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

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

GRAHAM:

Do you know a Michele Leonhart, the DEA Administrator? I don't know if I said her name right.

LYNCH:

She is the administrator of the Drug Enforcement Administration.

GRAHAM:

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

LYNCH:

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

GRAHAM:

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

LYNCH:

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

GRAHAM:

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

LYNCH:

All U.S. attorneys received that memo, as did I.

GRAHAM:

Do you think that is a good policy?

LYNCH:

I believe that the deputy attorney general's policy seeks to try and work with state systems that have chosen to take, admittedly, a different approach from the federal government with respect to marijuana, and determine the most effective way to still pursue marijuana cases consistent with the states and the choices that they have made.

The deputy attorney general's policy, as both -- as I understood it, and has been implemented, still requires federal prosecutors to seek prosecution of marijuana cases, particularly where we have situations where children are at risk, where marijuana is crossing state lines, particularly where you have marijuana being trafficked from a state that has chosen a legal framework, into a state that has not chosen a legal framework, and the intended harms therein, as well as those who are driving under the influence of this.

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

GRAHAM:

If a state is intending to try to legalize personal consumption of a small level of marijuana, what would your advice be to that state?

LYNCH:

Well, certainly, I'm not sure that -- if a state were to reach out to the department for its views, I don't know if that's happened or what advice has been given, but certainly, I believe the department would have an obligation to inform them of the current federal status of narcotics laws, and the department's position that the federal narcotics laws will still be enforced by the Department of Justice.

GRAHAM:

In 2006, you signed an amicus brief supporting Planned Parenthood's opposition of partial-birth abortion ban; is that correct?

LYNCH:

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

GRAHAM:

The only reason I mentioned that is that if there's a Republican president in the future, an attorney general nominee takes an opposite view on an issue like abortion, I hope our friends on the other side will acknowledge it's OK to be an advocate for a cause, as their lawyer. That doesn't disqualify you from serving.

Same-sex marriage, the courts are wrestling with this issue. Same-sex marriage, this may go to the Supreme Court very soon. If the Supreme Court rules that same-sex marriage bans are unconstitutional, it violates the U.S. Constitution for a state to try to limit marriage between a man and a woman, that's clearly the law of the land, unless there's a constitutional amendment to change it.

What legal rationale would be in play that would prohibit polygamy? What's the legal difference between a state -- a ban on same-sex marriage being unconstitutional, but a ban on polygamy being constitutional? Could you try to articulate how one could be banned under the Constitution, and the other not?

LYNCH:

Well, Senator, I have not been involved in the argument or analysis of the cases that have gone before the Supreme Court. And I'm not comfortable undertaking legal analysis without having had the ability to undertake a review of the relevant facts and the precedent there.

So I certainly would not be able to provide you with that analysis at this point in time, but I look forward to continuing the discussions with you.

GRASSLEY:

(OFF-MIKE) from Rhode Island ask his questions, this would be my plan. And you tell me if this will give you enough time. The Rhode Island senator, Senator Lee, and then Senator Klobuchar; that'll take us until about 12:45. Then I was thinking of coming back about 1:30.

LYNCH:

Thank you, Senator.

GRASSLEY:

Is that going to give you enough time?

LYNCH:

Yes, indeed. Thank you, Senator.

GRASSLEY:

Senator from Rhode Island.

WHITEHOUSE:

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

Since there has been a significant amount of commentary about the president's immigration measures, the ranking member has asked me to put into the record letters from law enforcement leaders in Ohio, Utah, Iowa, Indiana and Wisconsin, supporting the president's policies and saying, concluding, "While the executive

reforms improve a broken immigration system that can achieve only a fraction of what can be accomplished by broad congressional action, we continue to recognize that what our broken system truly needs is a permanent legislative solution, and urge Congress to enact comprehensive immigration reform legislation."

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

(UNKNOWN)

Without objection.

WHITEHOUSE:

There's also been considerable commentary about Attorney General Holder in a hearing at which he does not have the opportunity to defend himself. And it's my view that a significant amount of that commentary would not withstand his ability to defend himself if he were here.

So let me say in response to that, there are legal arguments and policies that fall outside a particular political ideology. That does not make them outside the mainstream. And it does not politicize a department to make those arguments or pursue those policies.

I'd argue, actually, that it's the effort to constrain (ph) the department within that ideology that would be politicizing. I'd further note, as a former United States attorney, that the department that Attorney General Holder inherited was in a very grave state of disarray. And that's not just a matter of opinion.

The Office of Legal Counsel wrote opinions that were so bad, so ill-informed, so ill-cited to the case law that pertained, that when they were finally exposed to peer review, they were widely ridiculed, and ultimately withdrawn by the previous administration.

We witnessed efforts to manipulate United States attorneys. And I know that you are one, Ms. Lynch. It caused a very public rebellion among sitting U.S. attorneys at the time, and that drew in past U.S. attorneys appointed by both Republican and Democratic presidents.

WHITEHOUSE:

We were exposed to hiring practices within the department that were, on their face, overtly political, and had political litmus tests for hiring, a first in the department's history, haven't gone down that way before. And ultimately, a series of other issues, as well as those, led to the resignation of the attorney general of the United States.

So it's easy to critique Attorney General Holder and blame him for politicizing the department. But I think history's calm and dispassionate judgment will reflect that attorney general actually brought the department back from a place where it had been sadly politicized.

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

So I shouldn't waste the time of this hearing on that. But with all the things that have been said about Attorney General Holder without him having the opportunity to defend and rebut, I wanted to say that.

So some of the areas I think we need to work together, Ms. Lynch, when you're confirmed, which as I hope you will be.

Senator Graham raised the issue of cybersecurity. And he has been an extraordinarily helpful and forward-leaning member of the Senate on protecting our country from the dangers of cyber attacks, whether it's ordinary criminal activity or the theft of intellectual property wholesale on behalf of Chinese industries, or the

really dangerous threat of laying in the cyber sabotage traps that can be detonated later on in the event of a conflict.

I'm concerned about the structure within the department for handling cybersecurity. At an investigative level it's spread across primarily the FBI, secondarily Secret Service and to a degree Homeland Security. Within the department it falls under the roof of both the criminal division and at the national security division.

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

LYNCH:

Certainly, senator. I think you've outlined an important issue. And if confirmed as attorney general I look forward to working with you and all of the relevant partners on this committee and throughout Congress in making sure that the department is best situated to handle this growing threat.

WHITEHOUSE:

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

Another area where there is considerable bipartisan legislation is on sentencing reform. Senator Durbin mentioned his and Senator Lee's legislation that his at the front end of the sentencing end.

Senator Cornyn and I have an almost parallel bill that relates to the end of the sentence and how to encourage incarcerated people to get the type of job training, drug and alcohol rehabilitation, anger management, mental health care, family reconciliation, job training, whatever it is that they need so that when they're put back into society they have a less chance of going back to a life of crime, of recidivating as they say.

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

LYNCH:

Certainly, senator. You've raised I think the next challenge as we look at how to manage our prison population and the issue of crime, which is how do we help people who are going to be released return to the communities from which they came and become productive citizens, as opposed to returning to the prior behavior, criminal behavior that not only landed them in prison but creates new victims. And that will certainly be an important part of my focus.

Within the Eastern District of New York we are very strong participants in reentry programs that are sponsored by our colleagues at the Brooklyn District Attorney's Office, in one of the most difficult neighborhoods in my district, in Brownsville. We work extensively with those reentry efforts.

And those reentry efforts work exactly as you said, in focusing on job training, in focusing on building skills so that those coming out of prisons can become productive members of society, as opposed to those who will continue to harm others in society. So you certainly have raised very important issues and I look forward to continuing the discussion with you and people on this committee and throughout this body on those issues.

WHITEHOUSE:

Thank you.

Another piece of legislation that we'll be working on, thanks to the courtesy and care of our chairman, Senator Grassley, is a reauthorization of the Juvenile Justice and Delinquency Prevention Act, which has been now 12

years since its last reauthorization. And I appreciate very much that the chairman has been willing to work on this and has made it one of the priorities for this committee.

Obviously the way in which juveniles are treated in our correction system as they're detained has been an important issue for the Justice Department. And I would ask again for your cooperation and active support of our process going forward to reauthorize JJDP.

LYNCH:

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

I believe it certainly is incumbent upon all of us to look at the latest research on issues of how juveniles develop and how they manage their -- themselves in certain environments, and always be open to reviewing those. I look forward to working with you and others in discussing that statute.

WHITEHOUSE:

In my last seconds, you and I have both had the experience of being United States attorneys. And I suspect we both had the experience of finding people who were targets of our criminal enforcement efforts who if we looked back into their past might've avoided our attention had they managed their drug or alcohol addiction...

LYNCH:

Certainly.

WHITEHOUSE:

... or gotten the mental health treatment that they needed.

And it's sort of a -- it's almost -- it's a societal sorrow when somebody like that doesn't get the treatment that they need and ends up in the criminal justice system. And it's a great burden for the taxpayer.

We have other legislation, the Comprehensive Addiction Recovery Act, that I hope you will also work with us on to try to make sure that where we can intervene with appropriate addiction treatment and mental health treatment, we can move people to more appropriate setting rather than burden the criminal justice system with what is often an inappropriate response to their conduct and to their condition.

LYNCH:

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

WHITEHOUSE:

Thank you.

Thank you, Chairman.

GRASSLEY:

Yes. Thank you very much.

And now Senator Lee.

LEE:

Thank you, Mr. Chairman.

And thank you, Ms. Lynch, for joining us today. Thanks for your service to our country. I also appreciated our visit recently when you came to my office and am grateful to you for your support for sentencing reform. The bipartisan legislation that I'm working on with Senator Durbin that he referenced a few minutes ago is important. And I appreciate your views on that as well.

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

LYNCH:

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

LEE:

Right. So prosecutors inevitably have limited resources. And so it's understandable why they would choose when they've got to prioritize to perhaps put more resources into punishing, for example, bank robberies than they do into punishing pickpocketers. And perhaps they might put more resources into going after pickpocketers than they do going after people who exceed the speed limit.

But at some point there are limits to this. And that doesn't mean that it would be OK, that it would be a proper exercise of prosecutorial discretion to issue permits for people to speed, right?

LYNCH:

Certainly, sir. I think that if you -- if a prosecutor were to come to the view that they had to prioritize one crime over another you would always still want to retain the ability, even if it was an area that was not an immediate priority.

If, for example, it became one because a particular neighborhood was being victimized or, again to use your issue of speeding, there were deaths resulting from that. You would want to have the ability to still, if you could, take resources and focus on that issue. It might not be the first priority. But you would want to have the ability to go back and deal with that issue.

LEE:

For that reason prosecutorial authorities or law enforcement authorities typically don't go out and say we're only going to punish you for a civil violation involving a traffic offense if you speed and then it results in an accident with injuries. They leave open the very real possibility, indeed the likelihood, that someone can and will be brought to justice in one way or another for any civil violation they commit while speeding.

LYNCH:

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

LEE:

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

LYNCH:

Again, without knowing more about it, I'm not able to respond to the hypothetical. It certainly doesn't sound like something that a law enforcement official would be engaged in, but, again, without knowing more of the facts I'm not able to really respond to your hypothetical.

LEE:

OK. Thank you.

Let's shift gears for a minute. Do you agree that citizens and groups of citizens should not be targeted by government, should not be the recipients of adverse action by the government based on their exercise of their First Amendment rights?

LYNCH:

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

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

LEE:

And presumably you'd say the same with respect to someone's exercise of their rights under the Fourth Amendment or the Fifth Amendment or the Sixth or the Seventh or the Eighth. Under any of those protections, somebody shouldn't be punished by government for exercising their rights under those provisions of the Constitution.

LYNCH:

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

LEE:

Second Amendment rights as well, presumably then, right?

LYNCH:

I believe that certainly the Supreme Court has set forth clarity on that issue, and so, therefore that, regardless of the amendment, that -- that certainly that is a protected right.

LEE:

Are you aware that there's a program called Operation Choke Point within the Department of Justice and that through this program, the Department of Justice and some other federal law enforcement agencies have on some occasions put financial pressure on legal businesses, including hard-working Americans who happen to be involved in the business of selling firearms and ammunition, by essentially telling banks not to do business with them?

LYNCH:

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

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

LEE:

OK. I assume it's safe to assume that should you be confirmed you'll work with me to make sure that legitimate, law-abiding Americans aren't targeted for their exercise of their Second Amendment rights.

LYNCH:

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

LEE:

Thank you. Thank you.

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

LYNCH:

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

With respect to civil forfeiture, certainly as implemented by the department, it is done pursuant to supervision by a court, it is done pursuant to court order, and I believe that the protections are there. What I will also -- sorry.

LEE:

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

So you're guilty, in essence, until proven innocent. At least guilty in the sense that your property's gone. Do you think your average citizen would be comfortable with that?

LYNCH:

Well, I certainly can't speak in terms of what the average citizen would or would not be aware of there. I certainly understand that there has been a lot of discussion and concern over -- over asset forfeiture as a program, as expressed by a number of people.

LEE:

And particularly at the state level, such that some states have adopted in response to a pretty widespread citizen outcry laws significantly restricting the use of civil forfeiture proceedings for that very reason.

Which leads to why I raise this with you. It's my understanding that the Department of Justice has in many instances been used as a conduit through which law enforcement officials at the state and local level can circumvent state laws restricting the use of civil forfeiture within the state court system.

In other words, where, under the state courts -- state law established system that kind of forfeiture is prohibited, people can go through the Department of Justice. The Department of Justice will take out a fee,

maybe 20 percent of the value of the assets seized, and then those can be returned. It's a process known as adoption.

Don't you think most Americans would find that concerning, if the federal government is facilitating efforts to circumvent state laws that are designed to prohibit the very thing that they're doing?

LYNCH:

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

My understanding is that the department is undertaking a review of its asset forfeiture program.

And certainly as U.S. attorney I'm aware of the fact that the adoption program that you have just described which did raise significant concerns from a number of parties has actually been discontinued by the department, that's the guidance that we have recently received, with some exceptions for things like items of danger, explosives and the like.

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

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

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

LEE:

Thank you. I look forward to those additional discussions.

And I see my time's expired. Thank you very much.

GRASSLEY:

Thank you, Senator Lee.

Now, Senator Klobuchar.

KLOBUCHAR:

Well, thank you very much.

And thank you so much to you. I understand I am the only thing that stands between you and your lunch and this entire room and their lunch. So we will have a good 10 minutes here.

Your dad seemed to enjoy that (inaudible).

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

When I read about the story of you scoring so well on a test in elementary school that they didn't believe that you'd taken that test and then you took it again and scored even higher...

(LAUGHTER)

... the obstacles are the path. Or the time that you became the valedictorian of your class and the school officials said that it would be too controversial if you were the only valedictorian and so they added some other students to be valedictorian.

I was thinking of all the senators in this building. We may have more than a few valedictorians. And I don't think that ever happened to them.

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

KLOBUCHAR:

I was going to start with a question. I know you touched with on it with Senator Schumer.

As you know, I'm a former prosecutor (inaudible) office. We had about 400 people. We worked really well with the U.S. Attorney's Office.

Some of the U.S. attorneys you know that I worked with, Todd Jones, who's now the head of our Bureau of Alcohol, Tobacco and Firearms, and then also Tom Heffelfinger, who was the U.S. attorney under Bush. Now we have a guy named Andy Luger, who you're also aware of, and it's been very important, that relationship that we've had with local prosecutors and the U.S. Attorney's Office.

I wondered if you would talk a little bit more about how you would view that as the attorney general in terms of how you would like your U.S. attorneys to work with the local prosecutors.

You know, it can be very inundated with a lot of cases, and sometimes we would view the U.S. Attorney's Office as getting the luxury to spend a lot of time on cases, while we would be handling literally tens of thousands of cases coming in the doors.

LYNCH:

Well, thank you, Senator.

You touch upon an important part of my practice. One of the benefits of being the U.S. attorney, as you noted, is getting to know the other prosecutors, not just my fellow U.S. attorneys but also the numerous state and local prosecutors with whom we work so well.

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

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

KLOBUCHAR:

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

LYNCH:

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

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

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

Should I be confirmed as attorney general, I intend to draw upon that strength of my U.S. attorney colleagues as well as all of my state and local counterparts throughout the country.

People who are at the ground zero of these problems often come up with the best solutions. They pull in the health care community, they pull in parents, they pull in community leaders, and they come up with a solution that works that can often be replicated in other places.

I've seen that happen in my -- with my U.S. attorney colleagues particularly in the area of heroin abuse and some of the initiatives that they are working on as well.

So if confirmed as attorney general, I intend to rely very heavily on my -- my prosecutorial colleagues.

KLOBUCHAR:

Well, thank you very much for that answer.

And at some point, I think we talked about this before, but Senator Cornyn and I did the drug take-back bill, and we've finally gotten the rules out from DEA on that, and we want to -- would look forward to working with you on that.

Something else I -- I think I'll talk to you later about, your work in Rwanda but the fact that you've done some very important international work as well.

But you've also done prosecution of international terrorists here at home. And what lessons have you taken from those cases?

I'll tell you why this is important from a home-state perspective. As you know, we have -- our U.S. Attorney's Office in Minnesota indicted and prosecuted a number of al-Shabaab members who had gone over in Somalia.

We also had -- the first person killed in Syria fighting with ISIS was actually a Minnesotan, and our U.S. attorney recently issued some indictments against others that have been recruited to fight over in Syria.

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

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

We're concerned, because it's coming out of general funds, and if you would support some kind of specific funding for the program.

Thank you.

LYNCH:

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

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

Some of the most difficult conversations I have had have been when I have visited the mosques in -- in my district and had, frankly, wonderful interaction with the participants there and wonderful interaction with the residents there.

But we've talked about violent extremism, and I've talked to parents who have said to me, "You know, I just don't understand why the government is targeting my youth." And we've had very frank discussions about how it's difficult for any parent to know what their children are seeing on the Internet and how they are responding to what is being put forth on the Internet and the harm it does not just to our society but also to those families, because they lose their children. They absolutely lose them when they are sucked up by this radical extremism and only to come back to be dealt with, as they will, by American justice.

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

KLOBUCHAR:

And the funding, you're aware of the pilot program that we have going in the twin cities?

LYNCH:

Yes, yes. A very important program given the nature of the -- of the problems that have emanated from that community and how -- the devastation that it has -- that it has essentially wrought within those families and within that community. I think those issues are very, very important.

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

KLOBUCHAR:

Thank you.

And the last thing I'm going to ask about is sex trafficking. And I know you've done an impressive job of prioritizing the investigation and the prosecution of trafficking cases.

This is something -- Senator Cornyn and I, again, have a bill on sex trafficking, which -- called the Safe Harbor Bill, which is supported by a lot of the groups, which creates incentives for states to enact laws which treat the victims of sex trafficking, the children, as true victims and not as perpetrators themselves. We think we can build better cases that way so people will come and testify against those that are running the sex rings.

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

LYNCH:

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

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

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

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

KLOBUCHAR:

Thank you. And I also look forward to working with you.

We have a number of domestic victims that -- I think 80 percent of the victims actually are from the U.S. as well...

LYNCH:

Absolutely.

KLOBUCHAR:

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

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

Thank you.

LYNCH:

Thank you, Senator.

GRASSLEY:

It's going OK for you?

LYNCH:

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

GRASSLEY:

We will now adjourn until 1:35.

CQ Transcriptions, Jan. 28, 2015

List of Panel Members and WitnessesPANEL MEMBERS:

SEN. CHARLES E. GRASSLEY, R-IOWA CHAIRMAN

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SEN. ORRIN G. HATCH, R-UTAH

SEN. LINDSEY GRAHAM, R-S.C.

SEN. JOHN CORNYN, R-TEXAS

SEN. MIKE LEE, R-UTAH

SEN. TED CRUZ, R-TEXAS

SEN. JEFF FLAKE, R-ARIZ.

SEN. DAVID VITTER, R-LA.

SEN. DAVID PERDUE, R-GA.

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SEN. PATRICK J. LEAHY, D-VT. RANKING MEMBER

SEN. DIANNE FEINSTEIN, D-CALIF.

SEN. CHARLES E. SCHUMER, D-N.Y.

SEN. RICHARD J. DURBIN, D-ILL.

SEN. SHELDON WHITEHOUSE, D-R.I.

SEN. AMY KLOBUCHAR, D-MINN.

SEN. AL FRANKEN, D-MINN.

SEN. CHRIS COONS, D-DEL.

SEN. RICHARD BLUMENTHAL, D-CONN.

WITNESSES:

SEN. KIRSTEN GILLIBRAND, D-N.Y.

LORETTA E. LYNCH, U.S. ATTORNEY, EASTERN DISTRICT OF NEW YORK, NOMINATED TO BE
U.S. ATTORNEY GENERAL

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Senate Judiciary Committee Holds Confirmation Hearing on the Nomination of Loretta Lynch for U.S. Attorney General, Day 1, Panel 1, Afternoon Session

LIST OF PANEL MEMBERS AND WITNESSES

GRASSLEY:

Welcome back, Ms. Lynch. Hope you're ready to continue.

LYNCH:

Thank you, Senator.

GRASSLEY:

OK.

And according to the seniority arrangements that we're doing, Senator Cruz of Texas is next.

CRUZ:

Thank you, Mr. Chairman.

Good afternoon, Ms. Lynch.

LYNCH:

Good afternoon, Senator.

CRUZ:

And congratulations on your nomination. Congratulations to your family, who I know are justifiably proud of you for being nominated to this...

LYNCH:

Thank you, sir.

CRUZ:

You know, I'll note a number of my friends and colleagues who practice law in New York have reached out to me with -- with words of praise for you, describing your tenure as U.S. attorney there as that of a no-nonsense prosecutor and as a U.S. attorney who honored and respected the law. And -- and so for that I congratulate you.

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

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

The attorney general has a long and distinguished history, a bipartisan history, of being willing to stand up to the presidents who appointed them.

Attorneys general in both parties have demonstrated fidelity to law and to the Constitution, even when it meant telling the president of their own party, "No." Now, that is never easy to do. But part of what's made the Department of Justice special is that attorneys general, both Democrat and Republican, have honored that commitment, as you noted to your young lawyers, to the Constitution, not to the president who has appointed me.

My single greatest concern with the tenure of Attorney General Eric Holder is that I do not believe he has upheld that tradition. I believe the Department of Justice has behaved more like a partisan operation for the president than an impartial law enforcement agency.

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

LYNCH:

Well, Senator, I think you have raised an important issue of the role of the attorney general.

As we discussed, it is an incredibly important cabinet member, but -- but the attorney general is a cabinet member unlike other cabinet members in that the obligation of the attorney general is first and foremost to represent the American people, to protect and defend the Constitution and to faithfully execute the laws as passed by this body.

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

Going forward, every attorney general creates their own path.

You've asked how I will be different from Eric Holder. I will be Loretta Lynch. I will be the person that I've always been as I've lead my office through two terms as United States attorney, focusing solely on the protection of the people of my district, and if confirmed as attorney general, on the protection of all of the American people.

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

LYNCH:

I look forward to more discussions with you and your colleagues, and I want to pledge to you now that I will always listen to your concerns. I will consult with this body where appropriate, because there's a great collective wisdom here and experience, both prosecutorial and legal, and I look forward to having a dialogue with you and, frankly, crafting a positive relationship not just with this committee but with Congress.

CRUZ:

Ms. Lynch, I thank you for that. That commitment is -- is welcome and -- and would mark a sharp -- sharp break from the practices of the current Department of Justice.

One of the frustrations of a number of members of this committee is that the department has not been responsive to this committee's requests, and indeed that -- were that to change, that would be highly welcome.

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

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

Do you agree with the legal analysis in the OLC opinion?

LYNCH:

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

I did not see a grant of amnesty there or a pathway to citizenship. Certainly, as I reviewed the opinion, as well as the letters from some scholars who -- who wrote in support of it, it seemed to be a way to look for the legal framework based upon case law, precedent, prior action of Congress as well as the discretionary authority of the Department of Homeland Security to prioritize this removal, and certainly, placing those most dangerous of the undocumented immigrants at the top of that list seemed to me to be a very reasonable exercise.

CRUZ:

Ms. Lynch...

LYNCH:

Certainly, I -- I would want to hope -- I would hope that the protection of those communities where undocumented immigrants involved in, for example, violent crime, gang activity, terrorism would be at the top of the list.

CRUZ:

Ms. Lynch, you said now and before in your opening statement that you found the legal analysis reasonable.

OLC operates in the place of the attorney general of the United States, and an OLC opinion operates as the legal judgment of the attorney general as the chief legal officer for the United States.

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

LYNCH:

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

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

And what I noted was that for some of the actions, the Office of Legal Counsel found that there was a legal framework for some of the actions that the Department of Homeland Security wanted to set in place.

But for some of the requested actions, the Office of Legal Counsel found there was not the appropriate legal framework for some of those actions and instead, in my understanding, has advised the Department of Homeland Security that they -- they should not proceed along certain -- certain ways, and my understanding is that that advice was taken.

So I do believe that the Office of Legal Counsel has the important obligation to look at the law, look at the facts, look at the action that is being brought before it and say where there is an appropriate legal framework as well as there is not an appropriate legal framework.

CRUZ:

Ms. Lynch, I would note that I've twice asked you if you agree with the analysis. And you are a very talented lawyer, and so I -- i suspect it is not an accident that twice, you have not answered that question.

You have described what OLC did but not given a simple answer. Do you agree with that analysis or not?

LYNCH:

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

CRUZ:

Well, in 2011, before the last election, President Obama said, quote, "With respect to the notion that I can just suspend deportations through executive order, that's just not the case, because there are laws in the books that Congress has passed."

Now, do you agree with what President Obama said in 2011?

LYNCH:

Senator, I don't know what legal opinion he was relying on at the time.

Certainly, the subsequent legal opinion talks about the temporary deferral of deportation in a way that does provide a legal framework for it, but I don't know if the president was speaking of this exact same issue or not. I simply couldn't provide a legal opinion about the president's comments at this time.

CRUZ:

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

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

LYNCH:

Senator, we would not have that type of direct dealing with offenders; they would come to our attention as part of an investigation or part of an issue where they would already be under suspicion of some sort of wrongdoing.

So we would not -- we would not have that type of discussion with someone who might be represented or might have other rights. We would not have that type of discussion with someone.

CRUZ:

So that's not anything you ever did?

LYNCH:

No.

We do have priorities within my office. We do have guidelines within my office. Those are shared with our law enforcement colleagues. We also share them with many of our state and local colleagues as we -- as we discuss where to best place certain types of cases.

GRASSLEY:
Senator...

CRUZ:
Thank you very much, and -- and we will continue...

GRASSLEY:
Thank you, Senator Cruz.

CRUZ:
... later on in the day.

GRASSLEY:
Senator Franken now.

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

GRASSLEY:
Thank you. I'm glad to be chairman. I can tell you that.

(LAUGHTER)

FRANKEN:
I -- I know you are.

(LAUGHTER)

Ms. Lynch, congratulations on your nomination.

LYNCH:
Thank you, Senator.

FRANKEN:
It was very -- it was great meeting with you. Your reputation for smart and tough precedes you, and you didn't disappointment in our meeting, and thank you for the wide-ranging conversation -- how was lunch?

(LAUGHTER)

LYNCH:
Excellent. Thank you, sir.

FRANKEN:
Yeah. You enjoyed lunch?

LYNCH:
Yes, sir.

FRANKEN:
Good.

I wanted to -- I -- I discussed a couple things -- number of things when -- when you were in my office, and I want to bring them up again, talk about them.

One is our -- just our prison system. We have...

LYNCH:

I'm sorry, sir? I'm sorry?

FRANKEN:

Our prison system, I want to talk about our prison system.

We have -- the United States has 5 percent of the world's population, 25 percent of the prison population.

I think one of the biggest problems is that we've used our criminal justice system as a substitute for a well-functioning mental health system. We have a lot of people in prison, in jails in this country who shouldn't be -- probably shouldn't be there and who -- it's not serving anybody any purpose.

We have young people with -- and others with mental illness who are in solitary confinement, and it just makes their -- their mental health worse.

So what I -- what I want to do to address that is something called the Justice and Mental Health Collaboration Act. It's a reauthorization of MIOTRA, which the Mentally Ill Offender Treatment and Rehabilitation Act, which has been very bipartisan in the past and should be -- in fact, it is bipartisan. It's been carried by a Republican in the House.

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

LYNCH:

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

I think you've highlighted one of the most important developments in criminal justice research and literature has been the ongoing research that has been done into the root causes of so many -- so much of our criminal activity.

In particular, where the mentally ill are involved, we continue to learn more and more about how that illness impacts them as they make their way through the criminal justice system. And I look forward to taking advantage of that new knowledge with you and working with you on that and other important issues.

FRANKEN:

Yeah. Some of this involves -- I don't know if you heard of crisis intervention training, but crisis intervention training is teaching both police on -- on the ground and corrections officials in prisons to recognize when they're seeing someone with -- with a mental health problem and to deal with it in the correct way.

LYNCH:

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

FRANKEN:

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

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

LYNCH:

Yes.

FRANKEN:

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

LYNCH:

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

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

FRANKEN:

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

Let me move on to something kind of specific.

I -- I was chair and now will be ranking member of the Privacy Technology and the Law Subcommittee, and there's a lot of technology out there that's new that we're -- we're learning about some unforeseen consequences of it.

There's a thing called stalking apps. I don't know if you know about -- we -- we discussed this.

And incredible -- when I first did Location Privacy Subcommittee hearing, my first hearing, I got some testimony from the Minnesota Coalition for Battered Women, and they told a story of a woman who had an abusive partner, and she went to a county building in -- it was in St. Louis County in northern Minnesota, and while she was there on her phone, she got a text from her abuser, "Why are you in the county building? Are you going to the domestic violence place"?

Well, it scared her so much, they took her to the courthouse to get to -- file an order against him. While she's there, she gets from him saying, "Why are you at the courthouse? Are you getting a restraining order against me"? It's terrified her.

And it turns out -- we've have testimony on this -- this is very common.

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

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

LYNCH:

Senator, you've outlined a very important issue as it relates to the victims of domestic violence or anyone who fears that someone that they thought was close to them might turn on them instead.

Certainly, I look forward to working with you and keeping you apprised not only of the department's efforts and the continued prosecution of these matters but to look at the statute with you and provide whatever assistance we can.

FRANKEN:

Thank you. Look forward to that as well.

One last thing -- I have about two minutes -- I am very concerned about the telecommunications industry consolidating, and I'm specifically concerned about the telecommunications industry consolidating, and I'm specifically concerned about Comcast's proposed acquisition of Time Warner Cable.

This is the largest cable provider and the -- second largest cable provider. It is the largest Internet -- broadband Internet provider -- the third largest broadband Internet provider. To me, this is just too big, and they would have unprecedented power in the telecommunications industry.

I have -- there's been a lot of comment on this, including my comment on this to the Antitrust Division.

Will you commit to reviewing the serious concerns about the proposed Comcast-Time Warner deal that I and so many others have raised and just do all that you can to ensure that the Antitrust Division is empowered to stand up to telecommunications giants like Comcast if that's deemed necessary?

LYNCH:

Certainly, Senator.

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

FRANKEN:

OK, then I'll probably vote for you.

(LAUGHTER)

Thank you. Thank you, Mr. Chairman.

GRASSLEY:

Thank you, senator from Minnesota.

Now Senator we go to Senator Flake.

FLAKE:

Thank you, Mr. Chairman.

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

I -- I brought something up there, and I'll bring it up to you again, with regard to the border situation in Arizona.

We have had, obviously, ongoing problems on the border. We share such a large border with Mexico, but there have been some considerable successes.

And one of the successes over the past several years has been in the so-called Yuma sector, where we've seen apprehensions go from about 140,000 in Fiscal Year 2005 to about 6,000 last year. So considerable success.

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

One of the things that I think just about everybody attributes the success in the Yuma sector to is something called Operation Streamline, and it allows the so-called consequences program to be implemented, where first-time crossers are met with consequences.

And it has -- it's -- it's pointed to by certainly law enforcement organizations in Yuma and along that sector, and -- and just about everyone else recognizes it's been successful.

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

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

LYNCH:

Certainly, Senator, I've had the opportunity to know somewhat about this matter from my discussions with my colleagues, the U.S. attorneys, not just along the Arizona border but also in Texas and California, and they -- they work hard everyday to keep our borders safe and essentially to protect the people in their districts but also to deal with this -- this ever-growing problem.

And I believe that -- again, I'm not familiar with the current status of Operation Streamline, but as it -- as it -- as it relates to first-time prosecutions of individuals, individuals are still being prosecuted.

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

And I believe that the issues in managing the program have had a great deal to do with resources, particularly with the budget constraints that offices have found themselves under in recent years.

But I can assure you, Senator, that the commitment to protect the border is strong, not only among U.S. attorneys who work on the border but throughout the U.S. attorney community and the department, and would be one of my priorities also as attorney general.

FLAKE:

As I mentioned, this is what distinguishes the Yuma sector from the others, is the success with this program.

If you're -- if you're saying now that it's a budget issue, why haven't we seen concern about the budget or those budget aspects? Why hasn't DOJ come to Congress and said, "We are having issues here, and so in order to continue with this program, we're going to need additional funding"?

To your knowledge, has that happened?

LYNCH:

I'm not aware of what's gone into the specifics of the department's budget. I'm generally aware of the budget as it relates to U.S. attorneys generally but not the department as a whole or as it relates to specific programs, so I'm not able to provide that information to you.

I certainly -- it is certainly something that I would be working closely on, should I be confirmed as attorney general.

FLAKE:

I guess I'll put it this way: Barring budget issues, is this a program that you're committed to, or do you have other issues with it?

LYNCH:

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

But with respect to the issue itself, I'm certainly committed to work on that issue with you and the members of the committee, be it through Operation Streamline, if it can be maintained, or in an equally effective program.

FLAKE:

Well, for the record, we've not, to my knowledge, received any concerns about budget issues with regard to Operation Streamline. It seems to have been another decision that was made, and -- and I will be following up with you.

We want to make sure that, you know -- let me just step back. I -- I believe we need to do a lot with regard to immigration policy. I'm a sponsor of the comprehensive bill that went through the Congress last -- two years ago through the House -- I'm sorry, through the Senate and didn't get through the House.

So this isn't all we need to do, but it's a significant part of what we need to do, and Arizonans have paid the price, a disproportionate price, for a long time for the federal government's failure to have a secure border.

And so when we have programs like this that work and we -- we see, you know, success in one sector and -- and everybody can point to that, then it's very disturbing when DOJ pulls back on that.

And we fear that -- that Yuma sector, as the economy kicks up again and crossings are -- are more frequent, that we're going to have the same problems that we had a few years ago, and that just -- we can't go on with that.

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

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

When announcing these charge, Attorney General Holder said, "The administration will not tolerate actions by any nation that seeks to illegally sabotage American companies and undermine the integrity of fair competition and free markets. This case will serve as a wakeup call to the seriousness of ongoing cyber threat," he said.

Would you agree with Secretary Holder -- I'm sorry, Attorney General Holder's statement as well as other statements by the executive branch that this is a growing and persistent threat?

LYNCH:

Senator, I -- I would agree with those statements, and I would add that I have seen, through cases in my own district, that this is a growing and increasing threat.

My office has also worked on matters involving foreign nations attempting to obtain technology under false pretenses.

We've worked closely with our colleagues in other agencies to bring these cases to fruition. I'm very proud of the work that we've done.

And it is an ever-growing concern, certainly -- and has been also expressed by the FBI not only under the -- the current director but under former Director Mueller.

So I look forward to working closely with our law enforcement partners and with this body to deal with the numerous ways that we have to fight this problem.

FLAKE:

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

The -- the -- you know, the concern is that, you know, since the Economic Espionage Act was enacted in 1996, I think there have only been 10 convictions under Section 1831. That's -- that's a lot of time for just a few convictions.

Since the FBI can't investigate and DOJ can't prosecute every single theft of trade secrets, does it make sense that there might be a, you know, federal civil action, cause of action that could help these companies through another remedy? Does that make any sense.

LYNCH:

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

I haven't had the opportunity to study the bill that you discussed, but I certainly look forward to doing so and having further discussions with you.

FLAKE:

Well, I appreciate that.

Victims' services, another area that has been of some concern. Last year Congress passed the victim of child abuse recognition -- I'm sorry, Victim of Child Abuse Act re-authorization. And I was pleased that the sponsor of the bill agreed to include an important provision that clarified Congress' intent that the money from the crime victims' fund should only be used to assist victims of crime.

Will you commit to follow that new law and direct the victim advocates in the U.S. attorneys' offices that this money only be used for victims? In the past we've seen it used for witness travel and other administrative duties and not actually focus on the victims.

LYNCH:

Certainly, the management of the issue of how to provide not only restitution but support to victims is an important one to the department and to me as United States attorney.

And I think that we'd have to work to implement the law that you have discussed. My understanding is that it is being implemented, certainly the guidance has gone out to ensure that the victim -- victim advocates and offices are being appropriately focused.

I know in my own office, we have victim advocates who work closely with the victims of crimes, families who've suffered incredible loss, and provide a great support to them. And I fully support empowering those professionals.

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

FLAKE:

OK. Thank you. And should you be confirmed, I look forward to working with you.

LYNCH:

Thank you, sir.

GRASSLEY:

Next person is Senator Blumenthal.

And when Senator Coons comes back, obviously we've skipped over him, I'll call on him as the next Democrat.

BLUMENTHAL:

Thank you, Mr. Chairman. And thank you for your courtesy and thoughtfulness in the way that you've conducted this hearing. And I'm proud to serve under you as chairman.

GRASSLEY:

Thank you.

BLUMENTHAL:

And, thank you, U.S. Attorney Lynch for being here today and also for having your family welcomed, your husband, Stephen and your dad, Lorenzo.

The two most common words I think that have been used to describe you are smart and tough, and I can see from your dad and I'm sure it's true of your mom that you come by those qualities honestly.

(LAUGHTER)

LYNCH:

Yes.

BLUMENTHAL:

In the best sense of the word, sir. And you should be very proud of your daughter.

Your testimony has been among the most accomplished and impressive that I've seen as a member of this committee and I'm sure you've done yourself a lot of good today, not that you necessarily needed it, but thank you for your very forthright and erudite answers.

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

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

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

If you couldn't in a sense rely on them to bring those cases based on human trafficking, whether we should perhaps strengthen them? And, in particular, the Trafficking Victims Protection Act of 2000 provided

mandatory restitution for trafficking victims, a provision that is unfortunately more unenforced than enforced. In fact, rarely enforced, I think, to provide for restitution.

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

So, my question is really two-fold. Number one, do the statutes need to be strengthened?

And, number two, can you and would you do more to make sure that restitution is provided to the victims of human trafficking?

LYNCH:

Certainly, Senator. The issue of restitution for the victims of human trafficking is an important one, particularly as we do increase the number of cases that we bring. Certainly, sometimes there are situations where a court may not impose restitution because the funds are not there or for other legal reasons, but where we can, we always do seek a restitution order for the victims.

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

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

With respect to the 7-Eleven case, we did not have the evidence that the workers had been moved across state lines to effectuate the crime. And so, therefore, we would not have been able to use the trafficking laws per se. But as with that case, with every case, we look at the -- at the relevant facts and the laws and bring the strongest case that we can.

And, certainly where we have seen numerous, numerous incidences of children and women being trafficked from within the United States, sometimes even simply just crossing one state border, as well as from overseas, we've never hesitated to act. And should I become attorney general, it will be one of my priorities.

BLUMENTHAL:

I would welcome that priority very much, as the co-chairman of the human trafficking caucus in the Senate. It's a very bipartisan one, the co-chairman is Senator Rob Portman of Ohio. So I look forward to working with you on it.

Let me ask you, and first of all, welcome your comments about the invisible wounds of war. Thank you to your uncles and cousins for their service in Vietnam and to your brother for his service as a Navy SEAL. I say that as a dad of a Marine Corps Reserve veteran who served in Afghanistan and another son who is currently in the Navy.

And I would hope that you will continue to focus on those issues relating to post-traumatic stress and traumatic brain injury as they may be a cause of certain kinds of conduct that may be unwelcome, may even be criminal.

Because what we've found is that a better understanding of those invisible wounds of war and the inner demons that many of our veterans bring back with them can lead to more thoughtful and humane treatment through our criminal justice system.

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

In remarks that you made after the Department of Justice entered into a settlement with HSBC for money laundering, I'm sure you recall it, you said that the settlement had deterred that company, but you weren't sure that it would deter other companies.

So my question is whether more can be done to more aggressively prosecute white collar crime, corporate crime, to dispel at least the widespread impression or perception that perhaps the Department of Justice has been too lenient? And, in particular, would you work with me on a bill that I've authored that would make certain corporate officers criminally liable if they are aware of significant potentially deadly risks to workers, workplace safety problems, and fail to act or make it public?

So this bill is called "Hide No Harm." It's a bill that's designed to protect workers on their jobs, and it focuses on that part of the potential wrongdoing that may be committed by corporate officers.

But also -- again, two-part question -- would you consider pursuing more aggressively criminal laws that may be applied to corporate officers who are involved in malfeasance or violations of federal criminal laws generally?

LYNCH:
Certainly, Senator.

When it comes to white-collar crime or any kind of crime, as a career prosecutor and as U.S. attorney, I've been very aggressive in pursuing those types of cases.

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

At the outset, no individual is too big to jail, and no one is above the law. There are certain situations where we may come to a different resolution or may decide that a civil resolution is appropriate, but that is only after a full and fair analysis of all of the facts and the law and the relevant burdens under the criminal justice system or the civil system.

But that being said, Senator, I believe if you look at the record of the Eastern District of New York, we have prosecuted a number of corporate officers for -- for insider trading, with respect to the Brooks case, and corporate malfeasance in other cases as well as for violations of the FCPA.

We have struck significant -- wrung significant concessions from corporations and made major changes in the way in which corporations and financial institutions are structured and operate that act as a deterrent.

And we have been clear with respect to the industries within which we are looking that should a corporation not engage in preventive behavior or should they not take seriously the type of investigation we bring, that criminal charges will be brought.

BLUMENTHAL:
Thank you, and I know of your very aggressive and distinguished record in this area. It's one of the reasons why I strongly support you and I look forward to voting for you and working with you on all these topics.

And also reform of the Foreign Intelligence Surveillance Court...

LYNCH:

Yes.

BLUMENTHAL:

... as you know, I've advocated a public advocate to defend and -- and advocate constitutional liberties in the course of this secret proceeding, the Foreign Intelligence Surveillance Court.

I'm not going to ask you to commit on that issue, but I hope that you will work with me on it as well as these other issues, and I very much appreciate your being here today and your public service and your family's service.

Thank you very much.

Thanks, Mr. Chairman.

LYNCH:

Thank you, Senator.

GRASSLEY:

Thank you, Senator. Now I go to Senator Vitter.

VITTER:

Thank you, Mr. Chairman.

And thank you, Madam U.S. attorney. And thank you for the meeting in my office.

As I told you at the time, I was very disappointed and frustrated,, because you didn't respond directly to any of my big topics, and you said you'd look into these matters and -- and consider them.

And -- and as I promised, I restated the big questions in writing, and -- and I was further disappointed when yesterday, I got a letter saying there would be no response to that.

But -- but maybe the third time is a charm for me asking them, so we'll try here.

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

So I'm going to put up what is the central statutory argument that the president's lawyers point to in terms of his allegedly having authority for this executive amnesty, and it talks about granting parole only on a case-by-case basis.

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

LYNCH:

Senator, I greatly appreciate the question as well as the opportunity that we had to discuss the matters in your office.

With respect, again, to my review of the opinions supporting the Department of Homeland Security's request for a legal basis for taking certain actions and prioritizing removal, as indicated, I did find it to be reasonable that we would prioritize removal of the most dangerous undocumented immigrants with our limited resources, particularly those who were involved in violent crime, terrorism, recent crossers, those with criminal records. That seemed to me to be acting in the interest of public safety and appropriate.

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

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

VITTER:

Ms. Lynch, as we -- as we talked about in my office, though, his action goes well beyond setting prosecutorial priorities, doesn't it?

Apart from that, he goes further in granting this broad category of folks a certain status for three years at a time, and then he takes another affirmative step in giving them a work permit. So those two steps are going beyond setting priorities for prosecution, are they not?

LYNCH:

Well, certainly, Senator, as relates to how the Department of Homeland Security manages the removal process for those in the low-priority category, however they may be determined to be, again, I'm not aware if those regulations have been set forth yet, so I can't comment on how they'll be implemented...

VITTER:

Does his plan go beyond setting priorities for prosecution or not?

Does it -- doesn't it, in fact, go beyond that by granting these folks a parole status and giving them a work permit? Isn't that something additional to simply setting internal priorities for prosecution of these cases?

LYNCH:

Well, Senator, I just -- one minor point at the outset, I believe that the Department of Homeland Security's action refers to removal and not necessarily prosecution.

Certainly, with respect to prosecution, there is still a robust prosecution under the immigration laws, and in my own district, they are a tool I use quite frequently.

With respect also to what would happen to those individuals who would be in a lower-priority status, for lack of a better word, again, I'm not sure how the department will go about implementing that.

My understanding is that the issue was, was there a legal framework for establishing such a -- a program? And the opinion indicated that there was.

I believe individuals...

VITTER:

Do you agree with that opinion?

LYNCH:

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

VITTER:

Fundamentally, do you agree with the legal opinion we're talking about?

LYNCH:

I thought that the opinion was reasonable. I also thought that it made distinctions in terms of...

VITTER:

Again, going back to that legal opinion, this -- put that back up -- this is a key element of it.

So do you think that action that's applying to about 5 million illegal aliens is operating on a case-by-case basis?

LYNCH:

Senator, again, I'm not familiar with how the Department of Homeland Security will be actually implementing the orders that it will be -- that it'll be reviewing and the applications that it will be reviewing, so I'm not able to provide you with specifics on...

VITTER:

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

LYNCH:

With respect to my review of the Office of Legal Counsel opinion, it did provide a reasonable basis both for the removal and for the prioritization of certain people as it came to removal.

When it came to the issue of whether or not there could be a program for deferral, it seemed to refer to legal precedent, to the statute itself and to actions by this body, among others, so it certainly seemed to provide a legal framework for that.

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

VITTER:

OK. Well, I'll take it as a yes that this is operating on a case-by-case basis, and I -- and I just think that's really a clear, obvious stretch to say that this action that's going to affect 5 million people is following the law in a case-by-case basis.

The law also says -- in fact, the same specific citation, it says, "This decision on a case-by-case basis has to be made by the attorney general."

Now, is it your understanding under the president's plan that if you're the attorney general, you're going to be in the middle of that process making those decisions?

LYNCH:

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

VITTER:

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

LYNCH:

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

VITTER:

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

Let me go to another case that goes to following the law which Senator Hatch brought up earlier, which is your comments regarding the Department of Justice's initiative, Smart on Crime initiative.

Now, as I read it, and based on what I know, this is just a way to clearly ignore mandatory minimums. And there are crimes that have mandatory minimums, we can have a good debate about whether those should be lowered in some cases or not, but they are what they are. They're in the statute. So why aren't we following the statute with regard to crimes with mandatory minimums?

LYNCH:

Well, Senator, with respect to the enforcement of the narcotics laws that contain those mandatory minimums, laws which I have had occasion to use on numerous occasions as an assistant U.S. attorney, as a career prosecutor and as U.S. attorney, those laws are being followed, not just by my office but throughout the U.S. attorney community.

The issue with Smart on Crime, as well as by a number of offices who have sought to prioritize how to handle those cases in an area -- in an era of limited resources is focused on when is it best to use the mandatory minimums and when do we not necessarily have to use them.

But every office still retains and in fact exercises the discretion to impose a mandatory minimum sentence should someone who may not on the face of the policy fall into that category, but upon review of the case clearly does.

VITTER:

So, when...

LYNCH:

That has and is being done.

VITTER:

When is it best to use the mandatory minimums? So the mandatory minimums aren't mandatory?

GRASSLEY:

When you get done with that answer, then I'll cull on Senator Coons. But go ahead.

LYNCH:

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

My fellow U.S. attorneys use the mandatory minimum statutes in a similar way.

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

VITTER:

But, Mr. Chairman, just in closing, I just observe that -- I mean that is taking all meaning out of the word "mandatory" to replacing your and your colleagues' judgment for the judgment of folks who wrote the law, and that's what this whole discussion and debate is about.

Thank you.

GRASSLEY:

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

LYNCH:

Thank you.

GRASSLEY:

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

Senator Coons?

COONS:

Thank you, Chairman Grassley.

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

The attorney general of the United States, one of the most important offices for which this committee has oversight responsibility and consent responsibility. The current attorney general, Eric Holder, has served in that office with distinction under very trying circumstances.

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

I'm interested in hearing from you about how you plan to carry forward progress on some of the issues that the Department of Justice faces, with respect to privacy, collaboration with state and local law enforcement, I.T. protection, and important civil rights issues, such as sentencing reform, voting rights and racial profiling.

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

First, if I could, about state and local law enforcement. Given my previous experience, I'm thrilled that someone with your seasoned and senior experience in law enforcement has been nominated for this position.

I serve as co-chair with Senator Roy Blunt of the Senate law enforcement caucus. And the Department of Justice plays a central role in supporting state and local law enforcement.

Can you just comment for me, if confirmed, on the importance you would place on the partnership between federal, state and local law enforcement, including such programs as the bulletproof vest program, the Justice Reinvestment initiative, the Violence Reduction Network, which is particularly important to me, and the information sharing?

And then, second, Senator Flake asked about this previously, but could you just talk about the Victims of Child Abuse Act programs and comment on what experiences you've had with child advocacy centers and how they function as one of the partnership undertakings between federal, state and local law enforcement?

LYNCH:

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

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

Similarly, our federal law enforcement agency partners have outstanding background effort and ability to manage complex cases. And when we combine those two, we have been -- we have been able to achieve tremendous results for victims of violent crime, of terrorism, of cyber crime, along with the cases you mentioned involving vulnerable victims of child abuse.

So, certainly I feel that there has to be a collaborative relationship, but I want to essentially assure you that in my view it would be one where we would not just provide assistance and training and grants -- that is very, very important -- but we would also listen and learn as well from our local law enforcement partners.

COONS:

Well, thank you. That's both a good answer and a great attitude. And I look forward to working with you on this area going forward.

The U.S. PATRIOT Act, and in particular its Section 215 authority, is often thought of as a spying program, which in some ways it essentially is. But it also is and can be a tool that DOJ and the FBI routinely use in the course of domestic law enforcement and its investigative missions.

Does the DOJ use Section 215 as a bulk collection tool? And could the department continue to make effective use of Section 215 if the enhanced privacy protections, the limitations on bulk collection set forth in the USA FREEDOM Act were to be adopted?

LYNCH:

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

But certainly I understand that as we work to protect our country from terrorists who seek to attack us here and abroad, that we have to be mindful of our civil liberties and the privacy rights of anyone who may be impacted by our collection procedures.

And certainly I look forward to -- as the renewal of Section 215 comes up, I look forward to discussions with you and the other members of this committee about the best way in which to keep that useful tool and also reassure this body and the American people that it is being used in the most effective way.

COONS:

I'm also concerned about I.P., intellectual property protections, as we talked about previously, and trade secrets. My understanding is several other senators have also asked about this issue, so I'll try to be brief.

I'm concerned about the huge transfer of wealth going on through trade secrets theft and the federal crime under the Economic Espionage Act is estimated to be responsible for up to \$500 billion annually in terms of losses to the United States, and yet there's only one or two cases a month, federally, brought by prosecutors.

As the U.S. attorney for the Eastern District, what's been your experience in investigating or prosecuting trade secret theft? And would you be interested in working together to strengthen the resources and strengthen the

legal authorities for protecting America and our inventions and innovations and ensuring that we stem the tide of loss through trade secret theft?

LYNCH:

Certainly, Senator, in my experience as the U.S. attorney for the Eastern District of New York, I don't believe we have any specific indictments around the Trade Secrets Act.

We do, however, have a number of cases where we have -- we have intercepted foreign actors trying to obtain U.S. information, and we have prosecuted them under other statutes. So we deal with very, very similar issues.

I will note that these cases tend to be complex and long-term. They do require an investment in resources, the devotion of time on the part of prosecutors but also technological resources on the part of our law enforcement agencies.

So I would look forward to, should I be confirmed, working with you and this committee to ensure that we have the appropriate resources we need to handle these cases.

COONS:

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

I want to ask about criminal justice reform, an issue that I think is front and center and -- and important for our country and for our justice system.

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

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

I think we need legislation through this committee and in this body that will help rationalize overly mandatory, overly long drug sentences for nonviolent offenders.

Attorney General Holder took an important step forward two years ago when he issued revised guidance to the field directing prosecutors not automatically charge the most serious mandatory minimum triggering levels of drug possession against low-level, nonviolent offenders.

I wondered whether you would -- whether it's your intention to keep in place Attorney General Holder's 2013 memorandum or whether you would look for other or additional ways, within the law, within the Constitution, to promote the equal and just application of our criminal laws to every person, regardless of background, of sex, of gender, of sexual orientation, race, religion or nationality.

LYNCH:

Senator, you touch on the important issue of making sure that our criminal justice system protects the American people but does so in a way that's fair and effective and also protects the individual rights of everyone who has to pass through it. It is the responsibility of a prosecutor not just to win convictions but to bring justice to every case, no matter what the result.

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

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

That is a dual responsibility of the prosecutor. It's one I've taken seriously all of my professional career, and I - - and should I be confirmed as attorney general, I look forward to working with you as we explore that issue together.

COONS:

Thank you, Ms. Lynch.

As -- as he said at the outset, Senator Leahy remarked that nearly a third of the department's budget at this point is dedicated to the Bureau of Prisons.

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

Thank you.

LYNCH:

Thank you, Senator.

PERDUE:

U.S. attorney, this is David Perdue. We met the other day.

LYNCH:

Yes.

PURDUE:

I'm a senator from Georgia.

LYNCH:

Yes. Thank you for your time.

PERDUE:

I want to thank you for your perseverance and patience with us today. I hope it wasn't anything I said that cleared the room for you.

(LAUGHTER)

I hope you're doing well.

LYNCH:

I hope it wasn't anything I said.

(LAUGHTER)

PERDUE:

Well, thank you so much for, again, your perseverance.

I just want to join my colleagues in welcoming you before the Judiciary Committee and also thank you for your years of public service, as we talked the other day. I am very impressed with your career and want to thank you for upholding the law in your career.

I congratulate you on this nomination.

You spoke about, this morning, your oath and the required commitment to the Constitution. I applaud that. You've demonstrated that in your career.

You were just talking about mandatory minimums, if I'm correct. I just have a quick question.

Relative to a case that you had in your jurisdiction recently, I want to ask about a defendant who was convicted by your office in the late 1990s. His name was Frances -- Francois Holloway, I believe. I hope you remember him.

There was a lot of press coverage on this case during your current tenure as U.S. attorney.

In 1995, Mr. Holloway rejected a 10-year plea and was convicted after a trial on three counts of armed carjacking and possessing a gun during a violent crime. Those offenses subjected him to consecutive mandatory minimum sentences, and he received a total of, I think, 57 years.

In 2013, Judge Gleeson, the district judge in Brooklyn, who sentenced Mr. Holloway, began what the New York Times called a "campaign on Mr. Holloway's behalf" and wrote to you asking that you consent to an order vacating two of Mr. Holloway's convictions for armed carjacking.

No one argued that Holloway was innocent or that -- that he was wrongfully convicted or that his sentence was unlawful. No one claimed that there was a problem with the trial. All of Mr. Holloway's appeals were rejected.

The case went to the Supreme Court, which upheld the convictions. In fact, everyone agreed that the sentence he received was lawful under Title 18 of the sentencing guidelines.

Judge Gleeson didn't agree with the sentence the law required him to impose and was asking you to help him do it.

In February 2013, to your credit, you refused to vacate the carjacking convictions. You suggested to Judge Gleeson that Mr. Holloway could contact the Office of the Pardon Attorney and submit a petition for commutation of the sentence.

I personally think that that was the appropriate response. I congratulate you on that. I think every prosecutor would've responded that way.

In May of 2013, however, Judge Gleeson again urged you to vacate two of Mr. Holloway's armed carjacking convictions. He said your suggestion that Mr. Holloway seek clemency was not a realistic avenue of relief, because the fact that Holloway committed crimes of violence would disqualify him. The judge was definitely a passionate advocate for this defendant.

This time, however, you backed down, and you consented to the judge's order to vacate the carjacking convictions.

I want to note that he was a violent offender, along with an accomplice, stole three cars at gunpoint.

You know, as the top law enforcement officer, I have a couple of questions relative to that case and your perspective tenure as attorney general.

My first question is, what -- what caused you to change your -- your earlier position in that case?

LYNCH:

Senator, with respect to the Holloway case, there was a matter that had been of longstanding -- it was longstanding case from the office. It did predate my tenure my first time as U.S. attorney -- the second time but not first time as U.S. attorney, I should say -- and it was a case in which it was the defendant who had made a motion to -- to allow the judge to revisit his sentence.

So there was, in fact, a judicial proceeding before the court at that time, and the court wanted us to take a second look at it. We did consider it numerous times.

Ultimately, the matter was before the court, and while the judge indicated he would like to have the opportunity to review that, our view was that we had to look at the case consistent with many of the initiatives that were being put in place now by the Department of Justice, certainly with respect to clemency and with respect to how we look at offenders who have served a significant time and whether or not they would be eligible for that.

Of note to me as I reviewed the matter was that Mr. Holloway was the second person in that carjacking incident and, in fact, was not the individual with the gun but was, of course, legally liable for that, and while he received the sentence of 57 years, the -- shall we say, the main actor in that received a sentence shortly under two years. So there was an incredible disparity in the sentence there.

But the real issue for us was, was there a legal proceeding in place -- and there was -- and essentially, if we -- did we have the ability to let the judge review the sentence again by keeping it in the court system, and we felt that we did.

But before we did that, it was important to me to consult with every victim in that case. And certainly, we found all of the victims but one, after extensive research, all the victims who also felt that the judge should have the opportunity to reconsider Mr. Holloway's sentence without a guarantee of what that sentence would be.

Based on that information, based upon Mr. Holloway's record in prison, based upon his role in the offense, we looked at how we would have handled the case under current times. And, again, given that there was a court proceeding, we were able to go to court and tell the judge that we would not stand in the way of him reviewing the sentence again, which Judge Gleason did.

Mr. Holloway was resentenced. He then went into state custody to finish a matter. And so, I do not know his current status. But we did -- we did essentially allow the judge to take another look at that. And through the judicial process, the judge imposed a different sentence. That sentence was still significant, and it was still, I would say, twice as long as what Mr. Holloway would have gotten, had he accepted a plea deal.

PERDUE:

Thank you. You know, as -- as the attorney general, you'll have great discretion, just as you did as district attorney. The question I would have, as illustrated by the case, I think, is, you know, where do you draw the line? How do you see this balance between the law and your personal position in a case? Your personal opinion in a case?

LYNCH:

Senator, I don't believe that my personal opinion is the governing factor in a case, be it Mr. Holloway's case or be it any case in which I would review, either as U.S. attorney now, or, should I be confirmed, as attorney general. I will take -- take a look at every case. And I will commit to you that I will review every matter brought to me with a full and fair examination of the facts and an application of the law. But also, with a view towards, as with -- in Mr. Holloway's case, whether or not there is a judicial proceeding there and the current status of that. But we will -- we will take every effort, and I will make every effort, should I be confirmed, to always act consistent with the law.

PERDUE:

Thank you.

There are -- just one last question on this in this vein. There are probably hundreds, if not thousands, of violent offenders in our federal custody who are serving sentences based on consecutive mandatory minimums that you just spoke about, like those imposed on Mr. Holloway. If you're confirmed, and during your tenure as attorney general, it comes to your attention there are cases like Mr. Holloway's, would you consent to early release of those offenders?

LYNCH:

Senator, it would not be my place to consent to an early release, nor was it our place in the Eastern District of New York in the Holloway case. Our posture was to consent to allow the judge to revisit the sentence and impose a sentence that, as a judicial officer, he felt appropriate.

So, as U.S. attorney, I would not be making the decisions as to whether someone should literally be released. Should I be confirmed as attorney general, I would not be making those decisions, either, except as people go through the clemency process or the Pardon Office. And those matters come under review by the Department of Justice. We would then apply our best judgment to the situation. But ultimately, the ultimate decision on release would not be made, I believe, by me.

PERDUE:

Well, since I'm the only one up here, I guess I'm the presiding officer. And...

(LAUGHTER) ... my time is almost up. But I have just one -- one other question for you. I'd like to move on to national security, if I might. And will remind the chairman that I didn't go over on my allotted time, just in case.

The DOJ announced last week that two Yemeni nationals charged with conspiring to murder American citizens abroad, and providing material support to Al Qaida will be prosecuted by your office in the Eastern District of New York. I'd like to ask you about your views on transferring terrorists to U.S. soil who have been captured abroad. Terrorists have been tried successfully in civilian courts before, but I'd like to know your opinion about what role you think military tribunals play in handling terrorism cases.

Is there any role for military tribunals? Or should civilian courts be used exclusively for these prosecutions, in your opinion?

LYNCH:

Senator, thank you for that question. The case that you mentioned is being handled by my office. And at the outset, I would note that throughout the process of reviewing that case and deciding how to best prosecute it and where to -- where to appropriately venue it, we consulted extensively with the Office of Military Commissions, as we do with all of the cases involving national security defendants who may be brought to U.S. shores, and maybe -- maybe brought to the Eastern District of New York.

Certainly, I would say at the outset that my position is, if terrorists threaten Americans here or abroad, they will face American justice. We have done that successfully in the Eastern District of New York. And I look forward, should I be confirmed as attorney general, to continuing that strong practice, utilizing all of the tools in our arsenal. And that includes the military commission process.

Essentially, Senator, should I be confirmed as attorney general, I look forward to working with the military and the other executive branch divisions in government to make the best determination about where each case should be brought. Should that determination be in Article 3 court, I anticipate that the -- that the receiving U.S. attorney's office would handle it with the skill and dedication that my prosecutors do every day.

Similarly, should it be a military commission, they will also handle it with the skill and dedication that they have also shown. I've been honored to have hosted General Martins (ph) on more than one occasion in my

office, and have a positive relationship with him. And should I be confirmed as attorney general, look forward to continuing that relationship with him and all of our partners in the war on terror.

PERDUE:

Well, I'd like to thank you for your patience ,perseverance, professionalism, and your graciousness today.

You've run out of senators, almost.

LYNCH:

I seem to have.

PERDUE:

I'm going to -- in the absence of our chair, there's only one other senator, I think, that is potentially available for questioning. I know that they're on the floor right now voting. I ran over to -- to get a few questions in.

So, what I would suggest is that we take a 10-minute recess, if you're amenable. And we'll find from the chairman if Senator Tillis, who's the last remaining, I think, person to ask questions. And we'll see where we'll go from there.

So, I think we'll stand in recess for 10 minutes. And thank you again for your graciousness and perseverance today.

LYNCH:

Thank you, Senator.

PERDUE:

Thank you.

(RECESS)

GRASSLEY:

Just as soon as the room -- just as soon as the room quiets, I'm going to recognize Senator Tillis.

I think it's quiet enough. Senator Tillis, would you proceed?

TILLIS:

Thank you, Mr. Chair.

And, Ms. Lynch, congratulations. It's quite an honor to be in the place that you are today. I want to compliment you on your distinguished career. And I've also noted over the course of your testimony just how much pride is in the eyes of your friends and supporters here. So, congratulations.

I had a question for you, and it stems from -- oh, I also want to thank you for dealing with last week when we had to move the venue and the time around for the meeting. I appreciate your graciousness in spending some time with me last week.

And I really want to maybe start where we left off with some of the discussions. And I think that Senator Flake and Senator Lee and Senator Schumer have also echoed the concerns about the limited resources and how you would prioritize things within the -- within your future prospective new responsibilities.

And I guess something that strikes home for me has to do with certain elections laws. And in North Carolina, I'm not -- I'm not familiar -- or how familiar you are with some of the elections laws that have been passed over the past couple of years.

But in the context of at least one case that was brought against the state of North Carolina by Mr. Holder, where the law was -- more or less the foundation of that law was the Indiana law which has been held up -- or upheld by the Supreme Court 6-3, but given the limited resources within the A.G.'s office in the Department of Justice, what are your thoughts on pursuing laws that are likely end to up in the same state, particularly laws like North Carolina, that went much further than the Indiana law that was upheld?

LYNCH:

Certainly, sir. I believe that the right to vote obviously is the cornerstone of our democracy.

TILLIS:

As do I.

LYNCH:

And, certainly, I think that states obviously have an interest in protecting that right to vote also, as well as regulating it and making it safe and free and open for everyone. And I believe that many states are acting with exactly that view in mind.

Certainly with respect to the North Carolina statute and case, I know it's under litigation now. I believe there will be a trial at some point in time. I'm not familiar with the status of the case now, so I can't comment on that specific case or that specific statute.

But what I can say is that with respect to how the department will look at voting rights issues, is with a view towards protecting the right to vote and hopefully working with the states to ensure that all the interests are met.

Certainly all voter I.D. laws are not problematic. As you've noted -- as you've noted, the court has outlined situations in which they are useful and serve a fundamentally important purpose. And the department has, under the previously utilized doctrine that's called free clearance, actually approved voter I.D. laws.

So I don't think that we can at this point, without knowing how a case will be presented, say which way the department will go in viewing it.

But given the fundamental importance of the right to vote, should an issue be raised, it is something that the Department of Justice has an obligation to review and consider whether or not it should get involved.

TILLIS:

In the -- in the example of the law that was passed by North Carolina and the case that was brought against North Carolina, in fact I was named in the case because at the time I was speaker of the house, I'm just curious how, as you go forward and you're dealing with the challenges in this office of, as I believe Senator Schumer said, trying to focus your resources on the bad actors, the hardened criminals, the difficult challenges that the department faces, in a case that has 10 attorneys on it, focused on -- no less than 10, I believe, focused on that, I would hope that there would be some focus on is that the best and highest use?

If, given the merits of the case and other laws that have gone to the Supreme Court, that it's likely to end in a situation where the -- it's gonna rule in favor of the state and at the expense of those resources that could be used for other purposes.

I mean, what is your thought on going into -- into this role and taking a look at cases like that and maybe determining priorities based on the likely outcome? Have you given any thought to that?

LYNCH:

Well, certainly, Senator, as we review a case, both throughout my career as a prosecutor and as U.S. attorney, we always look to the possibility of how a court will view a particular matter.

But first and foremost, whether the case involves voting or any other -- any other important right, is the issue of what is the evidence that's presented and what is the relevant law, what is the interest being protected?

And if it relates to a core function of the Department of Justice, such as protecting the rights of citizens, keeping our citizens safe, or protecting the right to vote, it is a matter that we would be obligated to look into.

Whether or not a matter would result in litigation would of course depend upon a variety of factors which are not in front of me today about the nature of the law and how it was written and essentially whether it comported with those laws that were previously approved both by the department and by courts.

Certainly, with respect to the North Carolina case, I believe the matter is in litigation. It's not something that I'm intimately familiar with. I have not been involved in the management of that case to date. I look forward to learning more about it, should I be confirmed. And I believe the matter will proceed to court and we will await the results there.

TILLIS:

Now, Ms. Lynch, I do have a question just based on the final comment that you made there with respect to the case. Because it gives me some sense of whether or not we can look at this objectively and make sure that we're using the resources of DOG -- DOJ in the most effective way.

I think in January of 2014 you said that people try and take over the state house and reverse the goals that have been made in voting in this country. I presume, since I was the person that took over the state house, I would be included by reference. And you go on to say, and in my home state of North Carolina has brought lawsuits against those voting rights changes that seek to limit our ability to stand up and exercise our rights as citizens.

So, in my limited time, I know I'll have another opportunity to ask questions, I had some sense that maybe perhaps you were somewhat familiar with what had been done in North Carolina, and, again, with the backdrop of other laws that seem to have disposed of whether or not what North Carolina has done -- I took great care to make sure that we made heroic efforts to preserve everyone's right to vote -- I may come back around and ask you a few more questions to that -- to this effect.

But I want to move on to something that's completely out of there, and it has to do with something that's very important to me. I'm very -- one of the reasons I ran was on veterans issues and on taking care of those who have taken care of us.

And one question that I have, I hope that you will look at and perhaps consider in my follow-up questions, giving me a response if you have time to speak with others, but the Public Safety Officers Benefits program is a problem. We have people who are making claims there who are not getting their claims resolved on a timely basis. And I've heard a number of reports where -- this is in the event of a death -- that I would like to think that we would place a priority on resolving these claims and clearing the backlog.

And if you have an opportunity, and you won't have a lot because you'll be sitting right there, but if I could get some sense of what that will be as a priority if you are confirmed as attorney general, that's something personally important to me. I think it's the most -- the least we can do for the families.

The one other thing I'll tell you that I think that we're going to find a lot of common ground, should you be confirmed, is on the issue of cyber-security. I consider this to be something that the attorney general, all law enforcement, all prosecutorial districts across this nation need the tools to make sure that we get control of this quickly.

I'd like some idea, based on your knowledge of how we're currently doing, if you have any sense of where you would go as a priority, should you be confirmed.

LYNCH:

Certainly, Senator. With respect to cyber-security, there are a number of areas in which -- which would be my focus should I become confirmed as attorney general.

Within our law enforcement community, I would work to ensure that they had the technological resources needed to stay ahead of this threat, both from a human resource perspective as well as computers and the like.

With respect to the U.S. attorney community and the Department of Justice community, I would make sure that our prosecutors receive the appropriate training to manage this important issue.

As I've seen in my practice as U.S. attorney, cyber issues are now in every area of practice that we have. That will continue to be the case. And I'm sure that should I become confirmed as attorney general I will see that throughout the Department of Justice.

So, I will work to strength the resources in the Criminal Division and the National Security Division that deal with these cases.

But, Senator, another thing that I think is very important as we combat cyber attacks and deal with cyber-security is the relationship between government and private industry. I believe that there's a very, very important collaborative relationship to be built there.

It is being built. I've seen it. I've participated in conferences with both financial sector parties as well as pharmaceutical industry parties on this important issue. And we've had very, very good, positive, collaborative results involving the reporting of cyber attacks as well as law enforcement's ability to work with private industry to gain knowledge of their systems to prevent attacks as well.

So I think we also, should I become attorney general, one of my priorities would be strengthening this connection between government and private industry as well.

TILLIS:

Thank you very much. Senator Schumer mentioned earlier, I meant to mention in my opening comments, that we have a number of very capable basketball teams in North Carolina, beyond the Blue Devils and the Tar Heels, many of whom I think this year could beat the Knicks.

(LAUGHTER)

LYNCH:

Well. Well, Mr. Tillis, Senator, as an early Carolina fan, I have to say that that is -- that is likely true.

(LAUGHTER)

GRASSLEY:

(OFF-MIKE)

to have the various staff of both Republican and Democrat give us some inventory of the number of people that want a second round. And the second round will be eight minutes. I'm gonna take about five minutes of that eight minutes and then go vote. And I'll have to recess, if nobody else is back here. So you can do what you want to do during that period of time.

LYNCH:

Thank you, Senator.

GRASSLEY:

The first question was going to be a question, now it's just gonna be a statement. So I'd appreciate if you'd listen to my point of view.

You suggested earlier that prosecutorial discretion allows the administration to prioritize removal of criminal aliens from the country. Yet, in fiscal year 2013, the administration released from its custody 36,000 aliens who had been convicted of a crime instead of removing them. According to the Department of Homeland Security, 1,000 of these aliens have already been convicted of another crime since their release.

Just today I received a 38-page document from the Department of Homeland Security that lists each of the offenses underlying those 1,000 post-release convictions, including things like assault with a deadly weapon, terrorist threats, failure to register as a sex offender, lewd acts with child under 14, aggravated assaults, robbery, hit and run, criminal street gang, raped spouse by force, child cruelty, possible injury, death.

And so, I'm going to put this in the record.

But, so my statement is this for you to consider -- you don't have to respond to it now. I could go on, but for the sake of time, that copy's in the record so anybody can review it.

This suggests the administration is not prioritizing the removal of criminal aliens very well, so 1,000 out of 36,000 have committed further crimes. And who knows, maybe others.

So, if confirmed, my statement to you would be simply, you need to take a look at that policy.

I'm going -- I had two points in my second question. But Senator Tillis asked about the Public Safety Officers Benefits. So he has heard the same thing from my constituents -- the same thing that I've heard from my constituents.

In Iowa alone, there are three families who have been waiting for over three years and another that's been waiting since 2013 to receive benefits. Two weeks ago I wrote the department about the delays and requested a reply by this Friday. Obviously, you won't be in a position that you can request that or answer that by Friday.

But I hope to get an answer, because way back in 2004, the attorney general at that time made a decision that these claims should be processed within 90 days of receiving all the necessary information.

So then I would go to the second one, which is just -- well, let me go to it, and then I'll ask you the question. There's a Brandon Ellingson of Iowa, you wouldn't know about this because it's an Iowa person and a college student, who drowned while handcuffed in the custody of Missouri state troopers after they arrested him on the Lake of Ozarks May 2014.

I've discussed the case with Attorney General Holder, had a couple telephone conversations. I'm very satisfied with his personally looking at it. It has gotten his personal attention. He has assured me that the department will look into the unanswered questions in this case carefully to see if there are any federal laws involved.

So all I'm asking you to do, if and when you're approved, and will you be able to talk to Attorney General Holder, and if he doesn't make a decision by then, that you would personally examine Brandon Ellingson's case?

LYNCH:

I would certainly continue that resolve, Senator.

GRASSLEY:

Thank you.

Now, I'm going to go. And I'll recess it for a while, and then I'll come back and finish my second round.

Thank you.

LYNCH:
Thank you, Senator.

(RECESS)

GRASSLEY:
Thank you all. Thank you all.

Sorry that we're in this unfortunate circumstance of having our hearing interrupted rather repeatedly. And it's not the best way to do business, Ms. Lynch. I'm sorry that that's occurred.

We have been working hard in the Senate. Thursday, more votes were cast in one day than the entire year last year, and Senator McConnell promised that members would be able to offer votes, and so there's 18 more, I think, going to be cast today. Maybe that'll bring -- come close to bringing the end to the -- to the legislation that's out there.

But I think it's part of our heritage as Congress to have individual senators be able to offer an amendment and get a vote on it. So I think it's the right thing, but this hearing, I wish could've been conducted more respectfully, so I'm sorry about that.

I have to have a clear answer to this question, Ms. Lynch. Do you believe the executive action announced by President Obama on November 20 is legal and constitutional? Yes or no?

LYNCH:
As I've read the opinion, I do believe it is, Senator.

GRASSLEY:
Well, this is very troubling to me, because it goes way beyond prosecutorial discretion, I think. It goes clearly to allowing someone to work who's unlawfully in America, to take jobs that statutes say they're not entitled to take.

It gives people the right to participate in Social Security and gives them a number as part of their work authorization to participate in other actions like Medicare.

And I believe this is a fundamental question. It's been a part of the national debate, and the American people are very concerned about it.

The polling number is very high. They do not believe -- and in fact, the American people are shocked that we are seeing this action from the president after Congress was asked to pass legislation to this effect and Congress rejected it.

Do you believe that the president has a right to take action in violation of law just because Congress refused to pass a law he asked them to pass?

LYNCH:
I believe, Senator, that the president is as limited by law as every citizen, and it is certainly the responsibility of both the president and the Department of Justice to follow the laws as passed by this body.

With respect to other actions the president may take, depending upon the action taken, there may be a basis for certain actions, or there may not be a basis for legal actions.

And that is where I believe that the Department of Justice must apply its own independent, thorough legal analysis and, as with this particular opinion, ascertain whether or not there was a legal framework for some

action and, as -- as I saw in the opinion, indicate that there was not a legal framework for the action that was requested and declined to provide a legal basis for that.

GRASSLEY:

Well, what it did approve, I think clearly goes beyond the law.

Congress authorized -- has -- has passed certain laws that control entry into the United States. We expect you as a chief law enforcement officer, the president, who takes an oath to see the laws are faithfully executed, to execute those.

And I've read the opinion, and it suggests that -- it suggests that faithfully executing means you use your resources as best you have to carry out the intent of Congress.

Is that fundamentally...

LYNCH:

Certainly, sir.

GRASSLEY:

So it goes beyond just enforcing every single law. If you don't have the resources, you should try to use the resources you have to effectively carry out the law.

LYNCH:

Certainly, sir.

GRASSLEY:

Well, what I would contend is absolutely plain. I would contend that you've gone far beyond that. You've actually created a new system of law, a new system of qualification, a new standard for who can work in America, a new standard for who can have Social Security and Medicare.

And this is a fundamental matter of great importance, and I just got to tell you, I'm worried about it.

In the Wall Street Journal, Mr. Rifken, who served two White House counsels and -- and Professor -- Law Professor Foley concluded their piece this way.

The OLC -- that's the Office of Legal Counsel, who reports to Mr. Holder and would report to you, that you're now affirming rendered a valid opinion, which you associate yourself with -- this is what he says.

"The OLC's memo endorses a view of presidential power that has never been advanced by even the boldest presidential advocates. If this view holds, future presidents can unilaterally gut tax, environmental, labor and security laws by enforcing only those portions with which they agree. This is a dangerous precedent and cannot be allowed to stand."

And frankly, the attorney general of the United States should've told President Obama that, urged him and -- to back off -- presidents get headstrong -- and he didn't do, and now you're here defending this. And I believe it's indefensible. So I'm -- I just want to tell you, that's a big, big problem with me.

Now, do you believe and do you support legalization of marijuana?

LYNCH:

Senator, I do not.

GRASSLEY:

I know the head of the DEA is a little bit out of step with some in administration, I think. Agreed with you on that.

The president said this in January of last year, quote, "I smoked pot as a kid, and I view it as a bad habit and a vice, not very difficult from -- different from the cigarettes that I smoked as a young person up through a big chunk of my adult life. I don't think it is more dangerous than alcohol," close quote.

Do you agree with that?

LYNCH:

Well, Senator, I certainly don't hold that view, and don't agree with that view of marijuana as a substance. I certainly think that the president was speaking from his personal experience and personal opinion, neither of which I'm able to share. But I can tell you that I -- not only do I not support legalization of marijuana. It is not the position of the Department of Justice currently to support the legalization. Nor would it be the position, should I become confirmed as attorney general.

SESSIONS:

Well, I do think there's been a lot of silence there. I know the head of the DEA did push back, and testified here pretty aggressive. But I think she felt like she was out of step within the administration. And I hope that you will cease to be so (ph). Because if -- if the law enforcement officers don't do this, I don't know who will. And in the past, attorneys general and other government officials have spoken out, and I think have kept bad decisions from being made.

It's good to see Senator Leahy here. How many attorney generals have you presided over? More than a few? How about a rough number?

LEAHY:

I'm trying to think who President Ford's -- go back to the...

(LAUGHTER) ... but don't preside (ph), about (inaudible).

SESSIONS:

Well, it's been -- it's been a pleasure to work with you on this Committee over a number of years.

Ms. Lynch, this is a big issue -- this immigration -- because it represents, in my view, a presidential brute (ph) decision that he was rejected in Congress. And I do not believe, and totally reject the idea, that if Congress fails to act, then the president is entitled to act. Any more than I think if Congress fails to act, judges can just act. Because Congress, by not agreeing to pass a certain piece of legislation, has acted. It has made a decision. And that's where we are.

There's still opportunities and still legislation moving that will be considered in the years to come on all questions relating to immigration. There's going to be a lot of debate and -- and that kind of thing. But under our system, it is not justified, in my view.

Just one more thing I would say to you. I do hear a lot of talk, a lot of loss of confidence in the Justice Department. A belief from professionals, prosecutors, and citizens, that there's too much politics and not enough law. And I do think if you achieve this office, you need to know that. I shared that with you, I think, in our meeting. And you need to make it a central part of what you do, to reverse that trend and restore confidence that this attorney general's office serves the law and the people objectively, and not a political agenda.

Thank you. And I'll recognize Senator Leahy.

LEAHY:

Let me say -- and I'll be brief -- but when I was a young law student, I was invited into the attorney general's office. Was recruiting me to come to the Department of Justice. I asked the attorney general how independent they were. I said, "For example, suppose you had a prosecution that you knew was justified. But the White House you knew might take a different view." He said, "I'd have to prosecute, because that's my job." That attorney general was Robert Kennedy. He later prosecuted a man who was critical to his brother getting elected president.

I contrast that to another attorney general in the last administration, who testified here that, well, he's a member of the president's staff, so, therefore, in effect, took orders from the White House. I kind of exploded in that. I said, "It's not the secretary of Justice. It's the attorney general of the United States. Not for the Republicans, not for the Democrats, but the United States."

I think from what you have told us, you would be that kind of an independent attorney general.

I also heard somebody criticize here this morning on the prosecution of Ted Stevens. Happened to feel he should not have been prosecuted. And neglected to mention that was during the last administration. And it was Attorney General Holder who got a conviction obtained in the last administration -- a removal from Senator Stevens.

I assume, from things you said before -- and we are concerned in Vermont about the increase of opiates and heroin -- that you would continue to work with communities as the Justice Department does now -- I mean, communities not just the federal level, but the state and local level, to combat this problem that's facing so many parts of the United States. Not just my own state of Vermont.

LYNCH:

Senator, should I be confirmed as attorney general, certainly, the issue of the growing numbers and amount of heroin abuse is a grave concern to me. I've seen it happen in my own district. And in talking with my colleagues in the U.S. attorney community across the country, they have expressed similar concerns.

As you point out, however, we are most effective when we work in partnership with our state and local law enforcement partners. And often, when dealing with the issue of opioid addictions and working with our public health community, as well, to find treatment for the offenders, and possibly break the cycle of addiction, many of my colleagues have, in fact, been engaged in efforts of exactly that type, that have been very effective in lowering the addiction rates. And, in fact, lowering the crime rate associated with heroin abuse.

These are efforts that we can study and that we can share. We have to have a strong law enforcement response, also. But we must involve state and local counterparts. We must involve families. WE must involve treatment centers, as well, in dealing with this -- with this seemingly intractable problem.

LEAHY:

Thank you. I would, if there's no objection, reserve the four minutes and 46 seconds left in my round of questions. Because I didn't realize (ph) another roll call was started (ph).

GRASSLEY (?):

Fine, we'll save that four minutes and 46 seconds, whatever. And we'll stand in recess...

LYNCH:

Thank you, Senator.

GRASSLEY (?):

... till somebody returns.

(RECESS)

SCHUMER:

The hearing will come to order.

And first, I'd like to thank my Republican colleagues for the courtesy here. We're all going back and forth voting. It would be rare to have the third-ranking Democrat chair the committee, but we're all going and voting and I appreciate that. And I'll try to be as quick as I can because of my need to vote.

So first, Ms. Lynch, I read this morning on the news that you have something special from your late brother who was a Navy SEAL with you today. Tell us a little about that.

LYNCH:

Well, Senator, I have with me my late brother's Trident, the insignia of the Navy SEAL. It is something that I usually have with me in my office, but I often bring with me when I come down to the Department of Justice. And I have it with me here today. And it ensures that I have both of my brothers with me here today.

SCHUMER:

Yeah, well, having read and seen and met the SEALs, it's an amazingly difficult thing to achieve, and then like you, in a different way, he was defending our country in one of the best ways you can. So we really appreciate that and appreciate your thoughts about your brother.

OK. Now, I'd like to go to the next area. This morning, both you and Senator Sessions and I talked about a topic -- it seems like a long time ago, this morning. So I'd like to just talk a little more about that.

Absent appropriate authorization from DHS, I just want to ask, is there any federal right for an immigrant who is not a lawful -- not in lawful status to work?

LYNCH:

No, there is not, to my knowledge.

SCHUMER:

OK. Thanks.

I think earlier you said you had a preference that all individuals here in the United States work regardless of status. I think a lot of us would share that preference. I think this is confusing for people because there literally are nearly 100 categories of statuses or stati -- whatever the right word is; they didn't teach that at James Madison High School -- for people because you've got to count green cards, nonimmigrant visas, spouses of individuals on certain visas, parole, asylum, applicants for green cards, nonimmigrant visas, immigration visas.

Many people who are not U.S. citizens have a legal right to work. For example, green cardholders' work visas. We admit people to work on a work visa.

So let me ask you just what did you mean by -- when you said you think everyone should work regardless of status?

LYNCH:

Well, certainly, Senator, when I made that comment, I was really making more of a personal observation. And I must admit I have to be careful here because my father is here and my mother is watching.

But certainly in my family, as we grew up, we were all expected to try and find employment as part of becoming a responsible adult and as part of becoming a responsible member of society. So I was making a personal observation based on the work ethic that's been passed down to me by my family, not a legal observation.

SCHUMER:

Right. So again to reiterate, you don't believe that there's a federal right for an immigrant who is not lawful here to work?

LYNCH:

No, sir, not at all.

SCHUMER:

OK. I just wanted to clarify that because I think -- I wish Senator Sessions were here. I think he wasn't certain about what you said. I think now the record is 100 percent clear.

OK, one final question. This is about a myth -- another of the myths that's out there. A generally deferred action policy eliminates case-by-case consideration is therefore illegal. That's what some people are saying.

Deferred action is actually, like many federal policies, sets eligibility criteria, but then requires case-by-case consideration. So only a limited set of individuals, those with deep ties to this country and without a criminal record, can apply for deferred action under the president's proposal.

But that's not all. After they register, pay a fee, undergo criminal background and national security checks, the president requires DHS officers to scrutinize every single case individually to make absolutely sure the person is not someone we should prioritize for deportation.

So I have two questions in regard to that. Doesn't it make eminent sense for a program to set out guidelines at the front end, and then still require careful individual consideration at the back end before anyone is approved?

LYNCH:

Certainly, sir. That would make eminent sense and would provide for a careful review of every applicant.

SCHUMER:

And I believe that's what the president is intending to do. We haven't seen all the regulations yet, but that seems to me what he said. Couldn't one argue that other discretionary guidelines in programs like federal contract bids take a similar approach? We lay out broad criteria, but then they review each contract -- contract by contract?

LYNCH:

Contract by contract, and with vigorous application and screening.

SCHUMER:

Right. OK. I want to thank again my colleagues for deferring, and I will pass not only the questioning, but the gavel to Senator Graham.

GRAHAM:

A dream come true.

(LAUGHTER)

That will only last for eight minutes, so I'm going to enjoy it while I can.

Your brother was a Navy SEAL. That's got to be -- that's a major accomplishment. It's the -- probably the hardest thing to be in all the military. So I know your family's proud of him and what you've accomplished.

Do you agree with me that one of the worst possible outcomes is for the United States to release somebody from Guantanamo Bay to go back to the fight to kill an American SEAL or anyone else? That we should really make sure we don't do that unless we absolutely have to.

LYNCH:

I certainly think that anyone coming from either Guantanamo Bay or any of our facilities we should take appropriate steps to make certain they do not place Americans in harm's way.

GRAHAM:

I couldn't agree with you more. We've got a 30 percent release rate, and from a SEAL point of view, they're usually the guys capturing these folks. It's got to be bad for morale for one of the guys that you captured wind up killing your buddy down the road, so I really do believe that the policy we have at Guantanamo Bay needs to be reviewed and reviewed closely for not just all SEALs, but for all who have been fighting.

Now about being at war. Do you believe we're at war?

LYNCH:

We are at war, Senator.

GRAHAM:

OK. Now, I've been a military lawyer for 30-something years, you've been a prosecutor for a very long time. I believe in an all-of-the-above approach that military commissions have a place in this war and Article III courts have a place in this war. Do you agree with that?

LYNCH:

I do, Senator. I do agree with that principle.

GRAHAM:

Thank you. Now, under military law, the main objective when you capture an enemy combatant is to gather intelligence, it's not prosecution. Does that make sense to you?

LYNCH:

That is certainly one of the important objectives under military law. I would add, however, though, that with respect to the Article III prosecutions that I've been involved in through my office, a primary goal is also to obtain cooperation and, thereby, valuable intelligence.

GRAHAM:

Thank you. Here's what I would suggest to you, ma'am. This is the Army Field Manual. It's over 300 pages. I helped write the Detainee Treatment Act with Senator McCain to make sure that we did not torture people. I believe waterboarding is torture and is illegal, but in this Army Field Manual, which sets the parameters for detaining people and interrogating them, not one time does it suggest that you should read the enemy combatant their Miranda rights. Do you know why that would be?

LYNCH:

Well, I certainly think the Army Field Manual has proven to be a very effective way of handling high-target detainees.

GRAHAM:

All I would suggest, ma'am, that anybody in the military would reject out of hand that it's a good way to gather intelligence by providing the enemy combatant a lawyer.

In World War II, even though Miranda didn't exist, and all the wars since then, no one's ever suggested to our military that once you capture an enemy combatant that you give them a lawyer as a better way to gather intelligence versus holding them under the Law of War.

So here's my recommendation to you. That we've caught several high-value targets in the last year or two. We've read them their Miranda rights within days or hours of capture. You'll never convince me that criminalizing the war is the best way to gather intelligence. I want to talk to you about this. I want to have

more flexibility than we have with the current system. If we do not hold some of these people under the Law of War for questioning as an enemy combatant, then we're going to lose the ability to gather intelligence, and the only way you can protect this nation is to -- is to interrupt the next attack because the people we're fighting do not mind being killed.

Can an American citizen be held as an enemy combatant?

LYNCH:

Senator, with respect to an American citizen, I believe there would be a prohibition against holding them -- against us holding them as an enemy combatant.

GRAHAM:

Ma'am, that is not true. We have held several American citizens for a multiple period of years as enemy combatants. Hamdi versus Rumsfeld. Before I vote on your nomination, I want you to read Hamdi versus Rumsfeld, an Ex Parte Quirin, where American citizens collaborating with the Nazis landed at Long Island to try to attack the country. They were tried by a military commission.

Military commission trials are not available to American citizens, they have to go under Article III, but we have under our law in Hamdi versus Rumsfeld the idea there is no bar to this nation holding one of its own citizens as an enemy combatant.

What recommendation -- I want you to read those two cases and get back with me and see if that changes your mind -- what recommendation would you give an American citizen when it comes to joining ISIL or Al-Qaeda? What would you tell them to do?

LYNCH:

Senator, with respect to an American citizen or anyone who seeks my opinion on joining ISIL or Al-Qaeda, my recommendation would be do not do it or you will face American justice.

GRAHAM:

Well, not so much you'll face American justice, you're going to get killed if we can find you.

LYNCH:

You may get killed before we can find you.

GRAHAM:

That's right. But if we find you, we can kill you. Anwar al-Awlaki, you know that guy?

LYNCH:

Yes. He is -- he was --

GRAHAM:

Do you think the president acted within his Constitutional authority to use a drone against him?

LYNCH:

So with respect to Anwar al-Awlaki, I'm familiar with him, as he has figured in the radicalization of some of the defendants who've come before the Eastern District of New York as well as a very active Al-Qaeda leader. I'm not familiar with the -- with the ways in which the decision was made to use the drone against him, but I --

GRAHAM:

Let me say -- let me tell you how it was made. There's an executive process where there are executive agencies that evaluate the threat that every individual presents to the country, and in the case of an American citizen, there are very strict criteria. But if they meet those criteria, the president can order the use of lethal force. I

promise you, in every war we've been in, American citizens, for some reason, have decided to side with the enemy, and they've been viewed as an enemy combatant, not a common criminal.

The president of the United States, I think, correctly authorized a drone attack against Anwar al-Awlaki, who was the head of Al-Qaeda in Yemen. Would you want to look at that before you give me the answer? Are you comfortable with that process? Would you like to look at that process and get back with me?

LYNCH:

Well Senator, I'm comfortable with the process as you describe it. But what I think it illustrates, however, is the need to, as you put so eloquently at the beginning of our discussion, use all of the tools available to combat this war.

GRAHAM:

And I just want to make sure that as the attorney general of the United States, you understand one of the tools to combat this war is to use lethal force against an American citizen who our government has determined to be part of the enemy force. The second tool is to hold an American citizen or a non-citizen under the Law of War for the purposes of intelligence-gathering.

Those are two tools in our toolbox that have been used for decades. I want to make sure as attorney general you recognize those tools are available to us in this war as we go forward. Read these cases and get back with me if you could.

LYNCH:

Absolutely, Senator.

GRAHAM:

Thank you very much.

Online gaming. Are you familiar with the decision by the Office of Legal Counsel in 2011 to basically say that the prohibition in the Wire Act was limited to sporting events and contests?

LYNCH:

I'm generally familiar with the results of that.

GRAHAM:

Do you agree with that decision?

LYNCH:

I haven't read that decision, Senator, so I'm not able to really analyze it for you. Certainly, I think it was one interpretation of the Wire Act that was --

(CROSSTALK)

GRAHAM:

Would you agree with me that one of the best ways for a terrorist organization or criminal enterprise to be able to enrich themselves is to have online gaming that would be very hard to regulate?

LYNCH:

I think certainly that what we've seen with respect to those who provide the material support and financing to terrorist organizations, they will use any means to finance those organizations.

GRAHAM:

I'm going to send you some information from law enforcement officers and other people who have been involved in this fight and their concern about where online gaming is going under this interpretation.

Thank you very much. From my point of view, you've acquitted yourself very well, but I do appreciate if you would look and be able to answer my questions about enemy combatant status for American citizens, the use of lethal force.

LYNCH:

Thank you, Senator.

GRAHAM:

Thank you very, very much. And now, I will turn it over to Senator Lee, who is now chair.

LEE:

Thank you, Mr. Chairman. Thank you for staying with us and even through the hectic vote schedule.

I'd like to go back to civil forfeiture, if that's all right, which is the topic we were discussing earlier before I left for the last vote.

First of all, I want to get back to the question I asked at the outset. Do you think it's fair -- is it fundamentally just that someone can have their property taken from them by the government without any evidence that they've committed wrongdoing, based solely on a showing by the government, based on a probable cause standard, that their property might have been involved in the commission of a crime, perhaps without their own knowledge, their own consent, their own awareness on any level? Do you think that's fair?

LYNCH:

Senator, I think that we have a very robust asset forfeiture program, both criminal and civil. With respect to civil forfeiture, I've looked at the program in general. Again, the Department is conducting a review of the forfeiture program. And with respect to civil forfeiture, there are legal safeguards at every step of the process, certainly as instituted or implemented by my office and my understanding by my U.S. attorney colleagues. So there will be judicial review before there can be attachment or seizure, for example, as well as an opportunity to be heard. And that -- but that standard must be met before the seizure warrant can be issued.

LEE:

I understand. I understand.

A lot of Americans don't believe that that's fundamentally fair, and again, that's why, in many states, there have been laws enacted that restrict the use of civil forfeiture under those circumstances and impose additional requirements, which is why I raised the concern about the process by which the Department of Justice has on occasion in the past used known something as adoption, whereby they will take something that -- that could not be forfeited under state law in state court, and they'll -- they'll utilize the resources of the U.S. Department of Justice to assist in the forfeiture, U.S. Department of Justice retains 20 percent and then yields back 80 percent to the state or local law enforcement agency.

This is troubling, and -- and -- and you appeared to be aware when I asked you about this. You appear to be aware of an order that Attorney General Holder issued just about a week and a half or two weeks ago -- I believe it was January 16th -- restricting that.

So I -- I assume you're familiar with that order.

LYNCH:

There was an order -- or a policy directive from the attorney general to the field, and as U.S. attorney, I did receive that, and it essentially ends the adoption program.

As you point out, Senator, a number of states now do have a robust asset forfeiture program on their own. When the federal program was being instituted, at least the research shows, many states did not have this program, and so a lot of the local law enforcement agencies that have been using the adoption program initially

did not have a venue to effectuate legal seizure of property that had been used in a crime. The adoption program began several years ago primarily as a response to that.

That has changed. That legal landscape is very different. That certainly was one of the reasons set forth in our discussions when the policy change was made.

LEE:

OK. So this order that the attorney general issued on January 16th, you refer to it as essentially ending this adoption program, again, the program by which the federal government can assist state and local law enforcement agencies in circumventing their own state law restrictions on civil forfeiture.

But when you read the order, you see it that it's subject to several exceptions.

One exception applies with respect -- I think you -- you referred to this briefly before when you and I spoke a few hours ago -- one exception relates to property that directly relates to public safety concerns. Fair enough?

Then you turn the next page, you look at the -- the second to last paragraph, which contains some additional carve-outs. This order does not apply to, one, seizures by state and local authorities working under -- working together with federal authorities in a joint task, two, seizures by state and local authorities that are the result of joint federal-state investigations or that are coordinated with federal authorities as part of ongoing federal investigations, or three, seizures pursuant to federal seizure warrants obtained from federal courts to take custody of assets originally seized under state law.

So as I see it, Ms. Lynch, this -- this order, while purporting to end this adoption program, as -- as you say, is riddled with loopholes. It's riddled with loopholes that effectively swallow the rule, which seems to be a theme today, which -- which is something that concerns me greatly with this department.

Now, I understand that this order was issued, has been issued prior to your confirmation -- after your nomination, prior to any confirmation vote on your nomination. But I would just ask you to -- to take into account these concerns and to work with me moving forward on making sure that our civil forfeiture programs don't get out of control.

But would you agree with me that we really ought to find ways to stop federal law enforcement agencies from helping state governments to circumvent their own state law restrictions on civil forfeiture?

LYNCH:

Senator, I believe that the policy change that ended the adoption program certainly ends that as the problem that -- that had been raised.

As you pointed out, these were situations where local law enforcement made an initial stop or seizure -- so the seizure was not essentially begun by a federal agent or partner -- and then the matter was brought to a federal agent for adoption and processing through the asset forfeiture equitable sharing system therein.

The other situations to which you refer where there is a federal- state task force or a joint investigation really are situations where there's actually a federal case from the outset, and there would not be the issue of -- of having to review the state laws, and there would not be an option in that case, because again, the case would be under federal jurisdiction from the very beginning.

So as you pointed out, the initial adoption program did raise concerns, and I understand that those have been discussed in the public discussion venue as well as in law enforcement circles as well about the issue where the state has a robust system of asset forfeiture, but that system is not being used, and the federal system is being used instead.

The adoption program ends that practice.

LEE:

It ends it, but subject to some very large loopholes. And so I just ask you to be aware of that, and I'd like to discuss that with you more moving forward.

Before my time expires, I want to get back to another question I asked earlier. Just indulge me in -- in this hypothetical scenario. We didn't have time to fully explore it previously.

But imagine you're in a state in which there is a 55-mile-an-hour speed limit. There're a lot of people who want that speed limit raised. Imagine that the chief executive of that, the governor, really wants it raised to, say, 75 miles an hour.

There is a lot of support within the legislature and among the public at large that there needs to be some reform to the speed limit law. They can't get to any one proposal that gets enough votes, and so nothing happens.

The governor at that point decides that he will announce that anyone who wants to drive faster than 55 will not be ticketed, and they can apply for certification that they won't be ticketed if they want to drive up to 75 miles an hour. He says, "I can't guarantee it forever, but I can guarantee it for the next three years. I will not be enforcing that."

Would that, under that hypothetical scenario, not be tantamount to a usurpation of the legislative role that belongs to the legislative branch?

LYNCH:

Well, Senator, with respect to your hypothetical, before I could provide a response, I would certainly want to understand not just the factual framework that you've outlined but the relevant laws governing the -- the situation as well as any prior state action, any actions that had been sanctioned, all the types of things that would go into rendering a legal opinion.

And certainly, as I'm sure you can appreciate, I'm a careful lawyer, and I would want to have all of that information before I could really give you a legal opinion as to your hypothetical situation.

LEE:

OK. I understand, and I respect the great care that you devote to answering questions.

And -- but I -- I would respectfully submit that at some point, there is a limit to what a chief executive can do, whether we're talking about a chief executive in the form of a governor at state level or whether we're talking about a chief executive who's the president of the United States.

At some point, I would hope you could agree with me that there are limits to what a chief executive can do.

At some point when saying, "I'm not going to enforce this law" -- let's suppose it's not a speed limit; let's say it's -- it's taxes, a future president of the United States, whether a Republican or Democrat says, "I don't think we ought to have any tax rate above on 25 percent," and at some point, that president can't get Congress to agree, so that president says, "I'm not going to enforce any tax rate above a 25-percent marginal rate."

We can think of lots of examples. At some point, there is a limit. And I'd just -- I -- I hope that you'll recognize that and hope that moving forward, should you be confirmed, that you be one who's willing to point out to the president of the United States that you do have a client. Your client is the United States of America.

The chief spokesperson for that client might be the president himself, but your client is the United States, and embodied within that are the constitutional restraints that -- that fall upon every officer who's sworn to uphold, protect and defend that constitution, including the president himself.

I see that my time has expired, and I recognize Mr. Blumenthal.

BLUMENTHAL:

Thank you, Senator Lee.

And as a careful lawyer, which I know you are, I want to try to perhaps set your mind a little bit at ease about a question that you were asked earlier. The question related to a statute that purportedly, according to the questioner, made the attorney general responsible for determining who can take deferred action.

One of my colleagues suggested that the president's executive order is illegal because it's being implemented by the Department of Homeland Security and not the attorney general, as the law he quoted seemed to suggest.

Just to clarify, the statute that was quoted to you actually was amended in 2002. It no longer assigns responsibility for immigration policy to the attorney general. The provision that he quoted and another provision which more directly authorizes what President Obama has done are to be implemented by the secretary of homeland security.

So, good news. The president has done nothing wrong. And you don't have to run home and look up the statute and get ready to implement a whole new area of law. You have enough to do, or will have enough to do already.

I want to personally say that I appreciate that my colleagues are not making immigration policy the kind of turning point for their decision. Or to put it a different way, they're not making this nomination a referendum on the merits of the president's immigration policy and decisions.

And I must say, I agree with the president's action and support him. And so do sheriffs and chiefs of police across the country. And I'm going to ask, if there's no objection, that letters that I have from towns as varied as Marshalltown, Iowa; Salt Lake City, Utah; South Bend, Indiana be made a part of the record, and also a letter from the National Task Force to End Sexual and Domestic Violence Against Women.

Both letters -- all these letters make the case that the president's executive action not only helps immigration officials target their scarce resources, but it also helps state and local law enforcement to secure cooperation with immigrant communities and identify potential criminals within their jurisdiction. So the beneficiaries of the president's policies are not just the immigrants, but also law enforcement officials and people who are better protected by virtue of the activities of those law enforcement officials.

If there's no objection, I ask that these materials be entered into the record.

CRUZ (?):

Without objection.

BLUMENTHAL:

Thank you.

I want to turn briefly to another area where you have some very profoundly valuable experience, in the wake of the events in Ferguson, Missouri and New York City of last year. Many of us on the committee and many around the country who have backgrounds in law enforcement are deeply concerned with making sure the public understands the vital role that our police and our law enforcers in general play, as well as proper training and discipline that should be provided to those police and law enforcers.

And I wonder if you could talk about your experience in addressing the concerns about law enforcement in the wake of the Abner Louima case where you had a professional involvement? And I think how you feel that experience and new policies at the Department of Justice might better help the Department of Justice and state and local police?

I would mention that I led an effort to pass during the last session a statute relating to death in custody. It's the Death in Custody Reporting Act that requires local and state police to report deaths in custody, along with correction officials. It's actually a reauthorization of a law that expired in 2006, just a modest step toward gaining more facts. But I think there are obviously two sides to this kind of issue, and I would very much appreciate your perspective on it.

LYNCH:

Certainly. Thank you, Senator.

With respect to my work on the Louima case, I was certainly privileged to be a part of the trial team that handled that case. And I think what often is not commented on, and perhaps it is not even widely known, is how essential the support and contributions and the actual work of the NYPD was to both the investigation and the prosecution of that case.

Our investigative team was comprised of both FBI agents and New York City police officers who knew that unless we held each other accountable, that unless law enforcement acted to hold bad actors accountable, all of law enforcement would suffer. And certainly one of the most painful things to watch during that case was, as is often -- as is happening now, the understandable anger and tension over it, but the backlash against larger groups of police officers.

And that is in fact one of the dangers of not addressing police misconduct is that not only are the officers who work hard every day and -- and work to not only follow the rules, but to enhance the relationship between law enforcement and the community, those officers are not rewarded, but they often get painted with the same brush as officers who may cross the line. And that is one of the greatest harms that we see from these types of cases.

I've been privileged to work with dedicated police and agents my entire career. And I think that there are no greater teachers and no greater instructors for a young prosecutor than an experienced police officer.

One of the things that we found most useful after the Louima case was encouraging community policing, which the NYPD was doing on its own. And a number of officers did very, very well. I have seen situations where when I was handing out awards to officers and agents for working on a case in a mostly minority area -- cleaning out a housing project of a violent crack organization -- the residents asked if they could also come and hand out plaques to those same officers and agents. And they did so with plaques that said basically, "thank you for giving us back our safety, our security, and our houses."

Because there was a collaboration there. There was a recognition that this is a joint effort. This is a shared project that we all have between law enforcement and all the communities that we serve to keep all of us safe.

We also have to work more, and certainly if confirmed as attorney general one of my priorities will be to ensure that our police officers have the tools that they need to do their jobs and to do them safely.

Senator, I spent several weekends this past month attending the funerals of Detectives Ramos and Liu in New York City. And to use the word "heartwrenching" is frankly an understatement. The sense of loss and grief with this crime that has really touched the heart of New York City was palpable on every street corner. We cannot allow our law enforcement officers to be targets like this. We must provide them the protections they need to do their jobs as well.

So certainly, it is a priority of mine. I look forward to working with you to address the legislation that you describe as well. Because the more we can get adequate information about these deaths in custody, the more we can put effective regulations and rules and training in place to prevent them.

BLUMENTHAL:

Thank you. Thank you for that excellent answer. And I can tell you that the grief over the loss -- the assassination of those two brave and dedicated police officers was shared in Connecticut. As a former United States attorney as well as state attorney general, my own experience has been that some of the strongest condemnation of improper conduct or impropriety on the part of police officers comes from the police and other law enforcement themselves. And they have the toughest job -- one of the toughest jobs, in my view, that exists in public service.

And I hope that the public appreciates it, and that as attorney general, you will work with Congress to try to educate and make the public aware about the tremendous challenges they face day in and day out, and the courage and strength that they demonstrate.

So I thank you for that answer, and thank you again for being here today.

Thank you, Mr. Chairman -- whoever the chairman is.

(LAUGHTER)

CRUZ:

It's a flexible answer.

BLUMENTHAL:

Well, I know that the chairman is the senator from Texas.

(LAUGHTER)

CRUZ:

That's a nice answer to that question.

Ms. Lynch, thank you for your endurance in what has been a long, extended hearing. I would ask in this round of questions if you could try to keep your answers brief, because we've got to return to votes on the floor.

In the prior round, you and I had a conversation about the OLC opinion and the president's executive amnesty. And you stated your agreement with the legal reasoning in that OLC opinion. And I would like to explore the limits of that reasoning.

As you know, any legal theory that is being put forth to justify government power naturally raises the question: What are the limits of that power? And one of my greatest concerns about the Holder Justice Department is at every turn when asked what are the limits on government power, the answer has been there are none, there are none, there are none.

So let's talk about the limits of the prosecutorial discretion power. The LLC memorandum justifies the executive amnesty, in part, based on prosecutorial discretion. And initially, that was limited to some 800,000 people in the original DACA. Then in the subsequent amnesty, that expanded to 4 million or 5 million people.

CRUZ:

My first question to you is -- is, in your understanding of prosecutorial discretion, is there anything to prevent that from being expanded from 4 million or 5 million people to all 11 million or 12 million people who are currently here illegally?

LYNCH:

Well, Senator, as I read the legal opinion, it was focusing on how the Department of Homeland Security could best execute its executive discretion in prioritizing removals of the most dangerous of the undocumented immigrants among us. Then with respect to those who would be a low priority, it focused on the legal framework for setting up a deferral program. And as I also read the opinion, it went through a legal analysis

that indicated that part of the request did not have the requisite legal framework, and should not be implemented. And my understanding is that that particular part of the request was not implemented.

So, I think that with respect to any action, certainly, should I become confirmed as attorney general, I would undertake a very careful legal analysis based on all of the facts presented to me by -- whether the White House or whatever agency raises the issue, we would look at all of the precedent, congressional action, the relevant statutes, and carefully explore whether or not the requested action did have a legal framework. If there was, in fact, a reasonable basis for it, as was outlined in the opinion that I read, that information would be provided. But, as also was outlined in the opinion that I read, where the legal framework did not exist to support the request for the proposed action, that would have to be told to the requesting department.

CRUZ:

Ms. Lynch, let me try again. Because you described the memorandum. But I asked a pretty straightforward question. Would prosecutorial discretion allow the president to decline to enforce immigration laws against all 11 million to 12 million people here illegally?

LYNCH:

Senator, prosecutorial discretion, as a tool, certainly as I have used it as a career prosecutor and U.S. attorney, would focus on which cases to prosecute and which types of charges to bring. It would not apply to the situation that you have outlined. So, I'm sorry if I'm not able to answer your hypothetical in the way in which you are requesting.

As I have utilized prosecutorial discretion throughout my career, it has been with the presentation of cases before me, and determining the best way to focus limited resources.

CRUZ:

Well, and, of course, this is not simply prosecutorial discretion. Because in addition to stating that federal immigration law would not be enforced with respect to somewhere between 4 million and 5 million people, the president also announced that the administration would be printing work authorizations in direct contravention of federal law.

Now, are you familiar in your practices as U.S. attorney, when you have declined -- when you have used prosecutorial discretion to prioritize prosecuting one crime versus another, have you ever engaged in printing up authorizations for one set of individuals to violate the law -- to affirmatively violate the law, which is what these work authorizations consist of?

LYNCH:

Senator, in my practice as a career prosecutor and U.S. attorney, I have focused on bringing the strongest, most effective cases based on the facts and the law against -- that have been presented to me. Also, when referring those cases to other law enforcement agencies, should my venue not be the most appropriate one there.

CRUZ:

Ms. Lynch, I'm sorry...

LYNCH:

With respect to...

CRUZ:

... I'm sorry to interrupt, but we are on limited time. And what I asked is, if in your practice, you ever issued authorizations to violate the law. And that -- I'm certain the answer is no. And if -- but am I correct in that?

LYNCH:

Certainly, Senator, in my practice, I focus on the -- building the most strongest and most effective cases against the perpetrators who come before me, and referring them to other jurisdictions if I'm not the appropriate venue.

CRUZ:
OK, Ms. Lynch, you're...

LYNCH:
It would not be part of my responsibility...

CRUZ:
... Ms. Lynch...

LYNCH:
... to make a determination...

CRUZ:
... Ms. Lynch, you are...

LYNCH:
... in the matter you're referring to.

CRUZ:
... you are a very experienced prosecutor. You have asked questions and had witnesses decline to answer. This is -- this is a simple question. Has your office issued authorizations for individuals to violate federal law?

LYNCH:
Senator, as -- as the U.S. attorney, our office is not involved in issuing authorizations for anyone to work or not work, or to engage in various activities. We're not a licensing authority.

So I'm just not able, unfortunately, to answer the question as put to me.

CRUZ:
So your office has not -- are you aware of a precedent for the federal government doing what the administration is doing right now, which it's hired over a thousand people, it is printing millions of authorizations for individuals to violate federal law? That is a remarkable step, and it is a step that goes much further than simply prosecutorial discretion.

Are you aware of any precedent for hiring over a thousand people to issue authorizations for individuals to violate federal law?

LYNCH:
Senator, I'm not aware of the practices that you are referring to now, nor am I aware of how the particular remaining portions of the executive action are being implemented, so I'm simply not able to comment on the hypothetical as presented to me or the particulars that you've given to me.

So I'm sorry I don't have the information to answer your question.

CRUZ:
Well, then let me understand the limits of the (inaudible) theory you're putting forth, because, in -- in prior questioning, embraced the prosecutorial discretion argument.

And so Senator Lee asked you a minute ago. Let's take the hypothetical Senator Lee asked you about.

If a subsequent president -- let's say President Cornyn is sworn in in January of 2017. And if President Cornyn decided that he was going to instruct the secretary of treasury not to collect any taxes in excess of 25 percent, to exercise prosecutorial discretion and not collect the taxes, in your legal opinion, would that be consistent with the Constitution?

LYNCH:

Senator, before I could render a legal opinion on the hypothetical as presented to me, I would want to know the entire scope of the action but also have the time to -- to gather all of the legal precedent, the cases, congressional actions, any other similar or dissimilar actions where that particular type of action might've been considered.

So I would certainly want to have all of that before I provided a legal opinion in -- in terms of the hypothetical that you've presented to me.

CRUZ:

So -- so you're unable to give any legal judgment to this committee today on whether a subsequent president could decline to enforce the tax laws as they're written?

LYNCH:

I think with respect to current or subsequent presidential action, there would have to be, as in every case, a thorough review of the relevant law, the precedent, congressional precedent, the statutes in issue in conjunction with whatever action was being proposed to see if there was, in fact, a legal basis or whether there was not a legal basis for the action being proposed.

CRUZ:

And let me ask -- and this'll be my final question -- your understanding of prosecutorial discretion. Would it allow a subsequent president, President Cornyn, to state that there're other laws that the administration will not enforce -- labor laws, environmental laws. Would it allow a President Cornyn to say, "Every existing federal labor law shall heretofore not apply to the State of Texas, because I'm using my prosecutorial discretion to refuse to enforce those laws."

In -- in your judgment, would that be constitutional?

LYNCH:

Well, I certainly can't imagine President Cornyn taking that step.

But with respect to the hypothetical that you present, again, Senator, I would have to know what legal basis was being proposed for that, and certainly, I would review that law, and if I were the person providing advice to future President Cornyn, advise him as to whether or not there was a legal framework for it or whether there was not a legal framework for it.

If there was not, that would be the advice that I would provide to him.

CRUZ:

I must say, I find it remarkable that you're unable to answer that question. I can answer it straightforward.

It would patently unconstitutional for any subsequent president to refuse to enforce the tax laws or the labor laws and the immigration laws for the very same reason that President Obama's actions refusing to force immigration laws are unconstitutional.

And it is discouraging that -- that a nominee who hopes to serve as attorney general either will not -- will not give a straightforward answer to that question.

My time at this point is expired, so I recognize Senator Franken.

FRANKEN:

Thank you, Senator -- Mr. Chairman.

I'm sorry. I'm just a little shook up about this President Cornyn thing.

(LAUGHTER)

GRASSLEY:
Your worst nightmare.

(LAUGHTER)

FRANKEN:
OK. I just -- I got here, and -- and suddenly, Cornyn was president.

(LAUGHTER)

FRANKEN:
My world had changed.

I'd like to ask you, Ms. Lynch, about something that's been a focus of mine since I first got to the Senate -- and you may -- I got there a little early. I got -- it took me a while to get seated -- and it's about the -- the financial meltdown and how it happened and how it caused the Great Recession. And it's about the credit rating agencies and their business model.

And basically, what happened in the leadup to the -- the meltdown was that banks would put out financial -- structured financial products -- subprime mortgage-backed securities, say -- and then they would pay -- I'm sorry -- yes, they would -- they would choose a rating agency, like Standard & Poors or Moody's or Fitch, to rate it, give them a rating, and they would pay them.

But they would choose them, and it -- it turned out that a lot of junk got AAA ratings. And this is all kinds of -- not just subprime mortgage-backed securities but then bets on those, derivatives, and then bets on the bets and then bets on the bets on the bets.

So when you -- the reason you had a house of cards collapse is because you had all these bets based on the original piece of junk, and there was an incentive, a total conflict of interest, which is the -- the credit rating agencies knew that if they gave a AAA rating, they'd get the next gig. So that's what they did.

And then Chairman Levin of the Permanent Subcommittee on Investigations got -- subpoenaed some emails from within S&P, and they basically were emailing each other, "We've got to give these better -- we got to give these things that aren't good, these financial products, better ratings so we can keep our share of the business.

And I've been fighting to get the -- I had actually a bipartisan piece in -- in the Senate side of -- of -- of what's now called Dodd- Frank, the Wall Street reform bill, to fix this. It hasn't totally fixed, and I'm on the SUC to do it.

But -- this is what I'm getting to -- Department of Justice is -- has a big lawsuit against S&P, and I think it's for about \$5 billion, \$6 billion, and my understanding is it may be being settled.

But I just don't want it to stop with -- with S&P, with the one agency. So what I'm -- I'm -- I'm concerned that - and actually, SEC just did a settlement also with S&P on the same practice that still exists.

So what I want to know is, will you take an aggressive approach to holding these rating agencies, including but not limited to S&P, accountable for their role in the financial crisis from before and as -- and their current role in what they're doing?

LYNCH:

Senator, certainly, with respect to the financial institutions, including the rating agencies, if I'm fortunate enough to be confirmed as attorney general, I do look forward taking a very aggressive stance in reviewing their conduct, as you indicated, not just past conduct but current and prospective so that we can prevent these types of harms from occurring again.

FRANKEN:

Because Minnesotans lost their homes, they lost their savings, they lost their jobs, and millions of Americans did this because of these guys. And I don't think they've learned their lesson, and I don't think they've been incentivized to learn their lesson.

OK. I'm told I have to leave in two minutes, so I just want to talk a little bit about transparency in NSA.

I have one minute. That -- that took a minute, what I did.

(LAUGHTER)

Well, I want to encourage us to work together if you're -- should be attorney general on transparency in government surveillance, because I -- I think Americans that have the right to know, to the extent that it's not harmful, obviously, what the -- what the -- what surveillance is like, for example, how many Americans' data was captured, say, in the metadata, but how much was actually accessed.

And I think that that -- had we done that -- and I had voted against these two programs, 715 and 702, originally because they didn't have enough transparency, and I think it is absolutely essential that Americans know, to the greatest degree possible, without jeopardizing our safety, what is going on.

So, just your commitment to work together on that.

LYNCH:

Absolutely, Senator.

FRANKEN:

OK. Thank you, Ms. Lynch.

LYNCH:

Thank you, sir.

FRANKEN:

Mr. President.

(LAUGHTER)

CORNYN:

How are you holding up?

LYNCH:

I'm fine, sir.

CORNYN:

Hanging in there? Good.

Forgive me for jumping around a little bit. But there are a number -- I know there have been a lot of different areas that you have taken questions on. And I just want to fill in some of the gaps.

First of all, do you recognize the Second Amendment right to keep and bear arms as an individual right?

LYNCH:

Yes, Senator. And I believe that has also been decided by the Supreme Court as well.

CORNBYN:

The current attorney general and Department of Justice have been involved in a program known as Operation Chokepoint that you are probably familiar with to some extent.

But this is a collaboration by the Department of Justice and the Federal Deposit Insurance Corporation who have partnered to discourage banks and other financial institutions from doing business with certain types of businesses, including lawful firearms dealers.

Documents from Operation Chokepoint obtained by the House Oversight Committee showed that the DoJ and FDIC used intimidation tactics and categorized licensed and law-abiding gun dealers as having been engaged in "high-risk activity," similar to financial scams, prostitution services, pornography, racist materials, gambling, and drug paraphernalia.

I would just like to ask you, do you agree that it was inappropriate for the Department of Justice and the FDIC to associate licensed and law-abiding businesses with these types of other obviously illicit activities?

LYNCH:

Senator, I appreciate your concern over any department initiative. My familiarity with the Chokepoint initiative is based upon my understanding that it focuses on payment processing companies that are involved in defrauding consumers.

And I'm not aware enough of the underlying types of businesses that the consumers themselves may have been patronizing to know about the facts that you raise.

Certainly with respect to any initiative that the Department of Justice engages in, should I be confirmed as attorney general, there is no room for improper bias or even personal views. We must look -- we must follow the law where it leads us.

And I certainly hope that should you have concerns about this program or any other, that you would feel free to share them with me, and that I would look forward to working to provide you with as much information as we could about them.

CORNBYN:

I appreciate that. I have heard from constituents back home in Texas from financial institutions that they have been unable to continue longstanding banking relationships with their own lenders because of some of these tactics.

And I will take you up on your offer to visit with you more about those -- the specifics of those cases as well as the topic I mentioned earlier at a later date. I appreciate that.

Senator Leahy, who just has arrived, and I have joined in an unlikely partnership on freedom of information areas. He and I both agree that it is absolutely critical to the functioning of our democratic form of government that the people have access to as much information as they can possibly get so they can make their consent to the laws that are passed by Congress, informed consent.

And so I want to ask you, in the Department of Justice's evaluation of the Eastern District of New York under your management, compliance with the Freedom of Information Act was one of the few areas to receive criticism.

In fairness to you, it is one of the few areas in which there have been critical comments. But do you believe that the government should operate under a presumption of -- that information should be open to the public unless otherwise precluded by law?

LYNCH:

Senator, I share your concern and your view that the Freedom of Information Act is an important tool for the American people to know about the functioning of all of government agencies, including the Department of Justice.

With respect to my tenure as U.S. attorney, during the evaluation system, which I found very, very helpful, I specifically asked the evaluators to look at our management systems and our support staff systems to make sure that we were in compliance and to bring any issues to our attention.

And they raised this issue, which was a great concern to me. We immediately took steps to rectify the issues that we found within our own office functioning. We have added increased personnel to handle Freedom of Information Act requests.

We work closely with the Department of Justice to ensure that they are handled as expeditiously as possible. And so I actually found it a very helpful evaluation process. And I find that I have learned the most when someone has pointed out to me an area in which I might improve as opposed to...

CORNYN:

And you took corrective action?

LYNCH:

Absolutely. Immediately.

CORNYN:

President Obama, in 2009, mandated that government agencies -- executive branch agencies should operate under this presumption that information should be open unless otherwise prevented by some rule or some other law.

The current Department of Justice has taken the position that -- that information should be withheld if release of the information will cause foreseeable harm. In other words, they articulated a different standard than the president himself called for in 2009, which is this presumption of openness, absent some legal prohibition against disclosure.

Senator Leahy and I have been working on some legislation which would actually codify the president's mandate, the presumption of openness.

Is that a standard that you could support and would you work with us in your administration, if confirmed, to make sure that this presumption of openness applies across government agencies, and that information would only be withheld from the public if some law or other rule or regulation precluded it?

LYNCH:

Senator, I share your view in the importance of the Freedom of Information Act, and in transparency. And certainly I look forward to working with both you and Senator Leahy to review that type of legislation.

And I hope that in the full and fair exchange that I believe we will have, as we have had over the past few weeks, we can discuss ways in which to make as much information available possible while protecting vital interests.

I certainly feel that with respect to the Department of Justice, should I be confirmed as attorney general, one of the areas that we always have to be concerned about are ongoing investigations and witness safety and security.

But I feel that through discussing these issues, it is something that we can work together on.

CORNYN:

And, finally, I know the chairman alluded to the gun- walking program known as Fast and Furious, which was the subject of a lot of oversight efforts by this committee and others in the House.

And then to our surprise, the attorney general, Attorney General Holder claimed executive privilege as to certain communications and documents, even though the documents in question did not involve the president or his staff. And the president himself confirmed that claim of executive privilege.

As you may know, that claim is currently in litigation. And I would ask your commitment to take a look at that with a fresh set of eyes to see whether you believe that the department's defense and continued refusal to deny Congress access to these documents is justified under a claim of executive privilege.

Would you pledge to take a fresh look at that and render your own independent judgment about that?

LYNCH:

Well, certainly, Senator, with respect to that matter, it is the subject of ongoing litigation. And I really do not know when it is likely to be resolved. So I don't know what status -- at what stage it will be in should I be so fortunate as to be confirmed.

Certainly, however, I look forward to learning more about it once I'm able to, again, should I be confirmed, and reviewing that as well as any other matters.

CORNYN:

But just so we understand each other, and this will be my last question, if you are the next attorney general, you can decide to settle that case, if you decide that the claim of executive privilege was not well taken.

In other words, if you -- if there's no legal impediment based on a claim of executive privilege to disclosing those documents, you, as the next attorney general, could resolve that, couldn't you?

LYNCH:

Certainly I believe that the ability to resolve any number of cases would rest within me, should I be confirmed as the next attorney general.

CORNYN:

Thank you.

LYNCH:

Thank you, Senator.

GRASSLEY:

I hope that when we're done here that you don't get this attitude that the way this chaotic place is run...

(LAUGHTER)

... why should you be working with the Congress of the United States. It doesn't always work this way. So I'm -- a little -- little tongue in cheek, but...

(UNKNOWN)

It doesn't always work this way?

LYNCH:

Well, Senator, it's been a privilege to watch the peaceful transfer of power going on this afternoon.

(LAUGHTER)

GRASSLEY:

Yeah.

(UNKNOWN)

-- I -- I didn't (inaudible).

(LAUGHTER)

GRASSLEY:

Not so peaceful.

OK. Here we go.

Before I read my question, I want to kind of tell you, my view is that there's very legitimate reason for -- between a counsel that's -- that's advising the president, for that to have a very tight counsel- client relationship.

Then we get into Fast and Furious and then 64,000 pages that I'll go into some detail here that I want you to comment on, that is maybe an argument that was privileged, but is it really privileged?

So let me go to where you maybe had not a direct role, but you were chaired -- you chaired the attorney general's advisory committee, so you had a chance to watch your predecessor closely in the job that you're now seeking, and I assume that you learned lessons from that experience.

What's the biggest mistake that Attorney General Holder made in the handling of the Fast and Furious controversy, which involved this privileged information that we're talking about, and what would you have done differently?

LYNCH:

With respect to the privileged litigation, which is ongoing, while -- as -- as the chair of the attorney general's advisory committee and a member before that, I was given information about the nature of the investigation itself and the problems that -- that lay therein.

Simply put, Senator, the focus in terms of providing information to the U.S. attorney community was more on the problems with the actual underlying firearms investigation, and so I was not privy and have not been privy to any of the decisions or discussion or rationale behind the litigation over documents or privilege. That is something that has not been shared with the U.S. attorney.

So I'm not able to really categorically answer one way or the other as to how that's been managed.

I certainly think that the attorney general himself has said that he's made mistakes in general, and he's -- he's been very open and frank about that.

With respect to that litigation, I simply don't have information about that.

You are correct. I did receive general information about the underlying case, because it did represent an investigation that certainly the review -- the inspector general's report indicated was not handled in the best

way and was not the way in which those of us in the U.S. attorney community would've wanted to see that case operate at all.

GRASSLEY:

OK. Well, the you have probably answered half -- half of that in this sense. Would have you done anything differently?

LYNCH:

With respect to the firearms investigation?

GRASSLEY:

No, the way that the attorney general handled it?

LYNCH:

Well, with respect -- certainly, I think that having the inspector general review the firearms investigation itself and come up with the issues that occurred within the office and the handling of the case was something that I think will be useful to the Department of Justice as it seeks to prevent similar mistakes being made and improve training and the like.

With respect to the litigation over the documents, again, I simply have not been involved in those decisions, and so I'm not able to say what the options were that the attorney general had that I would've chosen in a different manner.

So I'm sorry for not being able to provide you with a direct response to that question.

GRASSLEY:

Well, let me go back to the privilege -- and you may have answered this, but I want to read my question anyway.

In my opinion, one of the attorney general's biggest mistakes was not following through on the president's promise to be the most transparent administration in history. Instead, he was the first attorney general in the history to be held in contempt of Congress with a bipartisan vote that included 17 Democrats.

Attorney General Holder plainly (ph) delivered 64,000 pages of documents to the House three years after the House subpoenaed, two years after the contempt vote and only after the House went to court. So when push came to shove, he didn't even try to argue to the judge that those 64,000 pages were privileged.

Now, do you think it's appropriate to withhold so many documents for so long, especially even if the Justice Department admits that there was no valid privileged claim, and if so, why? And if not, please explain why you would do it differently.

LYNCH:

With respect to any issue where this body seeks information from the Department of Justice, certainly in documentary form, should I be confirmed as attorney general, I would carefully review the request and work to provide as much information as -- as -- as could be provided consistent with our law enforcement and investigative responsibilities.

That would be my pledge to you going forward, Senator, with respect to every issue of oversight that you would bring to my attention, and I certainly hope that you would bring those issues to my attention.

GRASSLEY:

Can I -- can I ask the same question in my own way, in the sense of the way it might be talked about it at a town meeting?

So people are mad about, you know, a lot of things the president might do that you call executive edicts or in this case, withholding information. In this case, the attorney general decided to withhold it.

OK. If somebody asked me about Fast and Furious at a town meeting, then I get into the fact that as far as I know, the president knew nothing about it and that this is between me and the attorney -- the attorney general and the Congress, I should say. I only say me, because I started this investigation before the House took it over.

Then -- then when they withhold 64,000 pages, as opposed to a few pages, where maybe the president really knows something about something that you can legitimately withhold it, then I say to my town meeting, you know, when 64,000 pages are supposedly privileged, then I wonder. What does a president know about it if they can be protected that way?

Well, now, the attorney general didn't argue that they were privileged. They were just given up.

So you see the problem it causes for me? And how far does executive privilege go? And it surely doesn't go to 64,000 pages, or if it does, can't you assume that the president knew a lot about Fast and Furious when he says he didn't know anything about it?

Do you see the problem that I have?

LYNCH:

I certainly can -- can understand the frustration when any party is seeking discovery or seeking information and another party's not able to provide it based upon the claim of privilege or whatever that claim may be, particularly a body that has oversight responsibility over the Department of Justice and is seeking to fulfill that obligation and that mandate.

Certainly, with respect to the volume of documents, not knowing the documents, I'm not able to comment on how appropriate or not that would be. And certainly fortunately, it was not civil litigation when it might've been a larger number of documents, as my experience as a young attorney.

GRASSLEY:

But I hope you at least understand why it's frustrating to me, the way this whole thing was handled.

Let me move on. As Senator Graham mentioned, in 2006, you cosigned a Supreme Court brief on partial-birth abortion. I believe you told him your primary concern was the impact that the law would have on law enforcement more broadly if upheld.

That brief argued the federal Partial Abortion Ban Act was unconstitutional and that partial-birth abortion, quote, "procedures are sometimes the best means to preserve a woman's health," end of quote.

The Supreme Court, along with a majority of Americans, disagreed with any position taken in opposition of that legislation, I assume as well as your position. The Supreme Court held there is, quote, "uncertainty in" -- parentheses -- "in the medical community over whether the barred procedure's ever necessary to preserve a woman's health."

Just one question: Judging by your question here, it doesn't look like you've added your name to a lot of Supreme Court briefs. Of all the cases that you could've become personally involved in, why did you pick this particular case? Was that the only case that raised the concerns you mentioned to Senator Graham?

And I'd like to get this on record, because I assume you read the brief. Otherwise you wouldn't have signed it. Would that be right?

LYNCH:

Yes, Senator. That would be correct.

GRASSLEY:

OK. So then can you -- can say why did you pick this particular case if -- if you haven't done it very often, and was this the only case that raised concerns that you mentioned to Senator Graham?

LYNCH:

Thank you, Senator.

With respect to the amicus brief, I joined a group of former Department of Justice personnel, former United States attorneys as well as former assistant attorneys general, and our focus was on our concern that the way in which the law would be implemented might put prosecutors at variance with doctors and their medical treatment and might raise an issue that prosecutorial discretion had been constrained in some way by the political debate.

We were not focused on the actual issue involving the procedure itself. In fact, it was our concern that as lawyers, we did not have medical information or the medical capability to evaluate that procedure and could be dealing with a situation where a doctor may say something different from what the law might require us to do.

And that was the concern that was being raised in that brief.

GRASSLEY:

OK.

LYNCH:

The Supreme Court did resolve the issue on the part of the statute itself, and certainly that is the law of the land now.

GRASSLEY:

OK.

Senator Leahy.

LEAHY:

Thank you very much.

GRASSLEY:

And for your -- since -- for both your benefit and for the nominee's benefit, I have been told that I have two additional members that want to come over to ask a second round.

LEAHY:

They're going to come today?

GRASSLEY:

They're going to come just as soon -- yes, I'm going to make sure they come today. Just as soon as the vote's over, I've been told.

And we'll -- you and I will have to go vote, too.

LEAHY:

Yeah, OK. Why don't we just recess, we'll go vote, and then we'll come back.

GRASSLEY:

OK. We'll recess. Thank you for being patient.

(RECESS)

(UNKNOWN)
(inaudible)

CRUZ:

In the exchange we just had earlier this afternoon, you detailed a very broad understanding of the president's potential authority and that, try as I might, I could not find a hypothetical that you consider to be beyond the power of the president.

I'd like to ask you now a question that I've asked Attorney General Holder and that he repeatedly declined to answer, and it's in a different context. It concerns the civil liberties and privacy rights of Americans and drone policy.

And my question to you is in your legal judgment, is it constitutional for the federal government to utilize a drone strike against an American citizen on U.S. soil if that individual does not pose an imminent threat?

LYNCH:

Well Senator -- Senator, certainly, I'm not aware of legal authority that would -- that would authorize that, nor am I aware of a policy seeking authorization to do that.

If you could share more information with me?

CRUZ:

My question is about the constitutional limits on the federal government's power. Attorney General Holder repeatedly declined to answer the question about whether it is constitutional for a drone to use lethal force against an American citizen on U.S. soil if that individual doesn't pose imminent threat.

Now let me be clear, I think the answer to this is very easy. My question to you is is it constitutional for the federal government to do so?

LYNCH:

Well Senator, I think with respect to the use of lethal force by any means, one would always want to look at the law enforcement issues involved there.

And certainly, if you could provide more context there, I could place it in the -- in the scope of either a case or an issue that I might have familiarity with.

CRUZ:

Ms. Lynch, it is in the nature of a hypothetical, but you are certainly aware that the federal government is currently using drone strikes overseas.

The federal government also maintains drone surveillance domestically here at home. The Senate had an -- an extended debate on the limits of federal government authority with respect to the privacy and civil rights of American citizens, and I'm asking you, in your view, does the Constitution give any protection to American citizens?

Is -- does the Constitution allow the federal government to do what it has done overseas, utilize lethal force from a drone? Could it do so against an American citizen here at home if that individual did not pose an imminent threat?

LYNCH:

Senator, with respect to the use of -- again, as I said before, with -- of lethal force by any means, be it drone or someone on the street, the -- the use of lethal force is generally regulated by either police guidance or by the

nature of the interaction. Based on what you were describing to me, I don't see interaction between the American citizen that you are referring to and anyone to generate the type of lethal force that you are referring to.

CRUZ:

I'm disappointed that like Attorney General Holder, you are declining to give a simple, straight-forward answer, an in fact what I think is the obvious answer of no, the federal government cannot use lethal force from a drone to kill an American citizen on American soil if that individual doesn't pose an imminent threat.

I don't view that as a difficult legal question. And indeed, it demonstrates what I think has been the consistent failing of this administration's approach to constitutional law, is that it always, always, always opts in favor of government power.

Let me ask you a different question. This administration's Department of Justice went before the United States Supreme Court and argued that law enforcement could place a GPS on any American citizen's automobile with no probable cause and no articulable suspicion. In your legal judgment, is placing the GPS on the automobile of the men and women gathered here, with no probable cause or articulable suspicion, is that consistent with the Fourth Amendment's protections of American citizens?

LYNCH:

I believe the Supreme Court has resolved that issue, Senator, and I believe that the -- that law enforcement agencies seeking to use that type of technique would need to obtain a warrant.

CRUZ:

You are correct, the Supreme Court resolved that issue. It resolved it unanimously, 9-0. It rejected the Holder Justice Department's position. My question is, if you were attorney general at the time, would you have agreed with that argument that law enforcement can place GPSes on any American citizen's car?

LYNCH:

Well certainly, Senator, I wasn't involved in a legal analysis or discussion then. Based upon the practice prior to the Supreme Court argument and the fact that law enforcement had used various techniques, this was a new technique that was being evaluated and had been used in a variety of ways.

So, my understanding was that after a careful consideration of precedent and practice, the department made a strong argument, the Supreme Court has reasoned and has ruled that a warrant is required.

And certainly, that is the law of the land. Should I be confirmed as attorney general, that is certainly the practice that I would follow.

CRUZ:

The Obama Justice Department, 22 times, has gone before the Supreme Court arguing for broader government authority. And 22 times, it has been unanimously rejected. 9-0, the court has rejected those claims.

Another case was a case called Hosanna-Tabor, where the Obama Justice Department argued before the Supreme Court that the First Amendment has no relevance, says nothing about whether a church may select its own ministers or pastors. Do you agree with that position that was put forth by this Justice Department?

LYNCH:

Well Senator, I have not read the briefs on that, so certainly I'm not aware of the full articulation of that position, but I believe the Supreme Court has spoken and has resolved that issue.

Certainly, should I be confirmed as attorney general, I would follow that precedent.

CRUZ:

You are correct again. The Supreme Court resolved that 9- 0, rejecting the opinion. And I would note, Justice Elena Kagan, an appointee of this president, said from the bench in that argument to the Department of Justice's lawyer, "I find your position amazing that the Justice Department would argue the First Amendment does nothing, says nothing, about a church's ability to appoint its own ministers and pastors."

Let me ask you, if you are confirmed as attorney general, will you commit to this committee to provide greater scrutiny to the positions the Justice Department takes before the Supreme Court, and in particular, to stop the practice over and over again of advocating for broad government power, which has resulted in 22 times the Supreme Court unanimously rejecting that -- that argument?

LYNCH:

Senator, should I be so fortunate so as to be confirmed as attorney general, I will take every case that comes before the Department of Justice seriously. I will consult with the career prosecutors there, also within the solicitor general's office on the facts of the case, the relevant law, and in conjunction with them, give -- provide my best judgment as to the approach to take.

CRUZ:

Is it your understanding of the role of the attorney general that the Department of Justice should always advocate greater government power?

LYNCH:

Senator, my view is that the Department of Justice advocates to defend statutes as passed by Congress and that its greatest function is to represent the American people.

With respect to specific cases, again, I will always do as I have done throughout my career as a lawyer. I will carefully examine the facts of the case, the relevant law, precedent, and make the best- reasoned argument that there is to support the position that's being advocated.

CRUZ:

Well, let's shift to another area where this Department of Justice has not been, in my view, faithfully enforcing the law. In May of 2013 the inspector general of the Treasury Department concluded that the IRS had wrongfully targeted citizen groups for their political views.

When that news broke, President Obama publicly said he was outraged. He said he was angry and he said the American people had a right to be angry.

Ms. Lynch, do you agree with what President Obama said then, that the American people have a right to be angry at the IRS targeting citizens for their political views?

LYNCH:

Senator, my view is that political views or bias have no place in the way in which not only the Department of Justice, but all agencies carry out their duties. And certainly when people hear of something that raises that issue, I can understand their concerns.

CRUZ:

In the nearly two years that have transpired, the individual who led the IRS office in question, Ms. Lois Lerner, has testified twice before Congress and has pleaded the Fifth, which, as you are well aware, means she raised her hand and said, if I answer your questions, it means I may incriminate myself in criminal conduct.

In the nearly two years since that time has transpired, not a single person has been indicted. In the nearly two years since that time has transpired, many of the victims of the illegal targeting have yet to be interviewed by the FBI or the Department of Justice.

And in the nearly two years that have transpired, we've discovered that the Department of Justice appointed to lead the investigation a partisan Democrat who has been a major donor to President Obama and the Democratic Party.

Indeed, she has given over \$6,000 to President Obama and the Democratic Party. In your view, is it consistent with fairly and impartially enforcing the law to have an investigation into the abuse of power by the IRS headed by a major Democratic donor?

LYNCH:

Senator, my understanding of that investigation is really from public records. I'm not familiar with the specifics of it. I can certainly tell you that complex investigations often do take several months if not a year or more to resolve.

And I don't know the status of the witness interviews at this point, so I'm not able to provide you information on that point that you raised.

With respect to how an investigation is staffed, again, I believe that while I'm not familiar with the details of this, certainly my view is that the department has career prosecutors who are devoted to the Constitution and to the fair and effective exercise of their judgment, and that the department has made the decision as to how to best staff the case and manage the case.

I'm just not able to comment on the length or other issues that you raise. Certainly should I be confirmed, I look forward to learning more about the matter. And as I've said before, Senator, I appreciate your raising concerns with me and I hope that you will continue to do so should I have the opportunity to work with you in the future.

CRUZ:

You know, one of the terrific things about the Department of Justice is that it has a long and bipartisan tradition of remaining above the fray from partisan politics, of demonstrating a fidelity to law, so that when serious accusations of abuse of power, and in fact of abusing the IRS, were raised against Richard Nixon, his attorney general, Elliot Richardson, a Republican, appointed an independent counsel to investigate those allegations free of any tainted propriety or partisan bias.

Likewise, when serious allegations of wrongdoing against William Clinton were raised, his attorney general, Janet Reno, a Democrat, made the same determination to appoint an independent counsel, Robert Fisk, to investigate the matter free of partisan bias or taint.

The question I would ask you if you are confirmed as attorney general, would you commit to this committee to appoint a special prosecutor to investigate the IRS abuse of power who, at a very minimum, is not a major Obama donor and who can be counted on to actually investigate the facts and follow them wherever they may lead?

LYNCH:

Senator, again, I'm not familiar with the investigation in great detail at this point. My understanding is that that matter has been considered and that the matter has been resolved to continue with the investigation as currently set forth.

Should I be confirmed as attorney general, I can commit to you that I will take seriously every allegation of abuse of power brought to my attention. And in conjunction with career prosecutors and this body where appropriate, make the best decision about how to handle that investigation.

CRUZ:

Ms. Lynch, you're correct, the matter has been considered. Indeed, I sent a letter to Attorney General Holder laying out the facts and asking him to follow the bipartisan tradition of his predecessors and uphold the rule of law.

And he responded in writing that he was declining to appoint a special prosecutor. And the basis of his declining to do so was the "discretion of the attorney general." So despite the internal DoJ rules that require recusal if there's even an appearance of bias, the attorney general refused to appoint a special prosecutor.

You've stated you're not familiar with this investigation. I think that's unfortunate because when you and I visited over a month ago in my office, we talked about this investigation.

I told you it was a very serious concern of mine and I asked before your hearing if you would take the time to familiarize yourself with what had occurred.

And yet your answer today is that you're not aware of what's happening. Let me ask a more general question. Would you trust John Mitchell to investigate Richard Nixon?

LYNCH:

You're referring to former Attorney General Mitchell?

CRUZ:

Yes.

LYNCH:

Again, Senator, again, based on that hypothetical, I'd have to know what the issue was and what you were requesting him to do.

CRUZ:

Would you trust John Mitchell to investigate the allegations of wrongdoing in the break-in at Watergate against Richard Nixon? Would you trust John Mitchell, who had run Richard Nixon's campaign, to investigate the allegations that ultimately led to Richard Nixon resigning the presidency?

LYNCH:

Well, I think that matter has been resolved.

CRUZ:

Indeed.

(LAUGHTER)

LYNCH:

But certainly with respect to how that matter should have been handled and Attorney General Mitchell's involvement in it, I believe his role in it has been resolved as well.

So, I'm sorry, I just not able -- I don't think I'm understanding the basis of your question, sir.

CRUZ:

Ms. Lynch, there are many of us who are alumni of the Department of Justice, who have most respected the department when it demonstrated independence from the president, when the department was willing to stand up to the president, when the attorney general behaved not as if he or she were the personal lawyer for the president who appointed them, but rather when the attorneys general in both parties have behaved as independent, impartial law enforcement officers who owe a fidelity to the Constitution and the laws.

Prior to becoming attorney general, Eric Holder had a reputation as a U.S. attorney of upholding the law. And I was hopeful when he was appointed that he would carry that reputation forward as attorney general.

It has saddened me greatly that he has not done so. And I will say it is disappointing in this hearing that, try as I might, there has been nothing I have been able to ask you that has yielded any answer suggesting any limitations whatsoever on the authority of the president.

That does not augur well for this committee's assessment of your willingness to stand up to the president when the Constitution and the laws so require. Do you agree with that characterization?

LYNCH:

Senator, as I've indicated before, I believe that the role of the attorney general is to provide their most objective, well-researched, independent legal advice to the president or any agency who may come before them with a request for an opinion.

And where there is a legal basis for the request being made, to indicate so. But where there is not, to also tell the president or any other executive agency that what they are asking for is not within the framework of the law.

I believe that that's the role of the attorney general. I believe the attorney general must represent the people of the United States. And should I be so fortunate as to be confirmed, they will be my client and they will be my first thought.

CRUZ:

The "they" that you refer to as your client, I just -- for clarification, to whom did the "they" refer? I'm sorry.

LYNCH:

They refer to the American people.

CRUZ:

And yet, and I'll ask again, can you articulate any limitations on the authority of the president that as attorney general you would be prepared to stand up and tell the president, no, there is some modicum of power you do not have?

LYNCH:

Senator, I believe that the role of the attorney general does encompass the role of advising the president of when actions do not have the appropriate legal framework and when they may not be undertaken.

That is something that I believe is an important part of the functions of the attorney general. And certainly should I be so fortunate as to be confirmed, it is something that I would not hesitate to do.

It is part of the function of the attorney general, even of a cabinet member, to be independent of the president, and to provide their best independent legal judgment on any issue presented to them.

CRUZ:

Well, I hope that you will very much carry through on that. It is discouraging that in the course of this hearing you have been unwilling to say that the president lacks the authority to refuse to enforce tax laws, labor laws, environmental laws, immigration laws.

That you have declined to say that the president cannot order a drone strike on an American citizen on U.S. soil. And that you have refused to commit to a fair and impartial investigation of the IRS abuse of power by a special prosecutor.

I hope if you are confirmed that your conduct in office differs from the answers you have given at this hearing.

My time has now expired. I see Senator Leahy is here. So I recognize Senator Leahy.

LEAHY:

I see Senator Tillis is here too. I'll withhold my time that I have.

TILLIS:

Thank you, Senator.

Ms. Lynch, I wanted to go back to -- and I do apologize for all this cycling, if you saw the activity over in the Senate Chamber, you know why we're going through it, certainly not for a lack of interest in this important topic.

But I want to go back to the idea of the limited resources within the DoJ and some matters that I'd like to get some sense that, if you should be confirmed, that you would take a look at it and potentially reconsider some of the priorities of the current attorney general.

And I'll give you one example. In North Carolina we did change the election law, early voting. We went from 17 days to 10 days. In that law, though, we made it by law you could never offer fewer hours of early voting than the highest number that you'd ever offered in that particular county.

And what that had the effect of in this last election cycle is historic turnout, even among minorities. And so I've got a -- we've got a lawsuit filed by this Department of Justice where I'm named in it questioning that.

But then we have 12 states that have no early voting whatsoever. And I'm wondering why -- it seems to be inconsistent, when have one state that's preserving the most that it has ever had before, other states that have never offered it, that we would -- in a time of limited prosecutorial resources, that we would actually allocate that way, given all that has been said today about the limits of resources and the need to allocate them to their best and highest use.

Can you give me some sense of your thinking on that?

LYNCH:

Well, Senator, with respect to the current litigation that has been filed, I haven't been involved in it to date. I do know that it is proceeding through the courts and I believe there will be further action this summer. There may be a trial, I'm not sure.

And so I think we will have to wait and see the judicial determination on the impact of the changes in the North Carolina state law.

As I indicated earlier, states obviously have a grave interest and a great interest in both preserving the right to vote and protecting the integrity of the vote. And many of them do so in ways that are effective throughout several states.

The Department of Justice will always have a concern if the matter is raised as to whether or not there is a negative impact, that is to say a foreclosing of their right to vote.

And certainly people can differ on the impact that will be had. And that will always be the issue in a case to be brought along those lines. And certainly nothing -- I don't believe anything would have been personally aimed at you, sir.

TILLIS:

Oh, no.

LYNCH:

But so with respect to that, when the issue is whether or not a change in statutes somehow infringes upon this, our most important right, it is something that the Department of Justice will always review.

But certainly, sir, I look forward to having discussions with you about the nature of, not this case, because it's under litigation, but other matters in which the department is taking an interest and getting views of you and others on this committee on them.

TILLIS:

I think it's very important because should you be confirmed, I think -- again I think we will always be in this state of not enough resources for all the things that we want to do.

And it just seems to me that this may be one example where if you look objectively at the Supreme Court case, states that are doing everything that they can to respect and promote a citizen's right to vote, that to spend our additional time and resources re-prosecuting laws doesn't seem to be the best use of resources in the context of the limited resources that we've discussed and several members on this panel have discussed today.

And I would look forward to -- should you be confirmed, to having a discussion with you about how we can be sure that we are putting it to the best purposes, for the good of the American people that you're trying to serve or that will you try to serve.

LYNCH:

Thank you, sir.

TILLIS:

Thank you.

GRASSLEY:

Senator Sessions.

SESSIONS:

Thank you, Mr. Chairman. I'm honored to serve with you and also to have served with our former chairman. And I appreciate the opportunity today.

I just want to pursue, to me, some legal rights here. It seems to me that if there are two people applying for a job as a truck driver, one of them is a lawful immigrant or a citizen, and another is not, under the president's order, the person unlawfully here magically at this moment becomes eligible to compete against an unemployed American truck driver.

And I think that's bizarre. And the idea that there are rights that might attach to someone here unlawfully, they take jobs from Americans under difficult working conditions, as we are today, is antithetical to common sense.

So I think that we -- somebody needs to be asking themselves, who is protecting the American worker, the people who are paying the salaries of you, the president, and all of us?

And as a matter of law, the people who elect us are the people we are most directly accountable for, and that's the citizens of the United States. So I'm worried about that.

What kind of lawsuit -- what kind of claim, have you thought about this, that might somebody who loses out to a person who claims that they're legal to work now, because of the president's order, and they didn't become a truck driver, and the person that was recently legalized did get the job?

LYNCH:

Well, Senator, at the outset I do want to state that it's my understanding that, and there is no right to work for an undocumented immigrant in the country, so they would not have the right to work, for those people who...

SESSIONS:

Well, they would under the president's order, would they not?

LYNCH:

For those people who can obtain documentation, be it a green card or a visa or other cards, they would have the ability to apply for positions. With respect to...

SESSIONS:

Well, could I ask you about that? The president is going to give work permits to 5 million. They would be, under his theory, entitled to work. He would have created 5 million persons to compete against 5 million Americans for a limited number of jobs, right?

LYNCH:

Senator, I believe that if the process were to be implemented as what I reviewed, there would be criteria set up for people to apply for work permits. They would apply. There would have to be a decision as to whether or not they would receive them. And then I do not know what level of employment they would be able to apply for, but assume that they could apply for positions.

SESSIONS:

Well, the estimates are, I think, from the White House, it would be as many as -- a total of 5 million. And they would be given work authorization, photo IDs, Social Security numbers, and the ability to participate in Social Security and Medicare.

Are you aware -- and to me I find no lawful basis for this. And as the attorney general and the person who supervises the Office of Legal Counsel, whose opinion you have basically affirmed here today, then you become in a sense the point person for this effort.

And some have suggested, well, it's Homeland Security. But Homeland Security asked your department, Attorney General Holder's department, the Office of Legal Counsel, for an opinion that would allow them to do so, so in effect had the Department of Justice said no, that this is not appropriate and cannot be justified, Homeland Security would've been bound by that rejection, would it not?

LYNCH:

Homeland Security would've been bound by that opinion, as I believe they were with respect to the portion of their proposal to which the Office of Legal Counsel did say no, there was not a legal basis for another portion that they sought to implement. And I believe they did not implement that.

With respect to the...

SESSIONS:

I'm only talking about what they did agree to, that apparently with the -- create this new number of workers. Well, are there plans to -- what if there's somebody not in the 5 million is arrested for speeding next week? Would they be deported?

LYNCH:

Well Senator, I don't know how the Department of Homeland Security would manage the removal. Certainly a criminal record, if there would be an arrest and a conviction would place someone at jeopardy of -- in jeopardy of losing their deferral status if that's what they initially had.

SESSIONS:

Well, the point is that you're not going to deport any of the 7 million either. That's the policy that's become clear in the last few years, and so the administration I would suggest, quite plainly, is nullifying American immigration law to a degree that's breathtaking in effect.

For example, you're saying that we -- not only will we not find the resources, ask for the resources, nobody's asked for more resources to enforce the law if they need them.

The president isn't asking for it because he has no intention, if it were given to him, to use that money for that effect. So that's the problem we've got. That's why the American people are wondering who's going to defend them? Who is going to defend their children who are out trying to find a job? African Americans who have the highest unemployment rate among young people? The data is clear.

This large flow of immigration at this time of low employment is hurting the poor the most. So, I would say to you that I'm not raising this just to make an argument about what kind of immigration policy we need.

I'm raising this as a constitutional and legal question of incredible importance. As I read to you, professors have said this is perhaps the greatest presidential overreach in history. The Congress refused to pass what the president wanted to do.

And I'm not saying that you made that decision. You didn't. But your department gave the legal opinion that justified it, after he, 28 times, said he didn't have authority to do it. Really an amazing event.

So Mr. Chairman, I respect the nominee. She's got a good family, I know she was raised right. And I appreciate that. Maybe you're just in a difficult position that's not necessarily your fault, but I am not satisfied that we at this point in history can just slide by and let this go.

I think we need to confront this issue as a Congress and it needs to use the powers that it has to defend its legitimate rights under the Constitution and that's why I have difficulties with your nomination. I respect you and appreciate your appearance today and your willingness to answer questions.

Thank you.

GRASSLEY:

Before I go back to Senator Tillis for three or four minutes, call on Senator (inaudible)

But let me assure everybody that Senator Tillis, Senator Leahy, I've got a couple requests of you, and then I think we're done.

LEAHY:

Thank you, and another roll call vote has started. And I'll be leaving soon. I am sorry there's been so many questions that really have nothing to do with your qualifications. You were shown a book and told this is terrible what's happening, the implication being that it's something this administration did, the prosecution of Ted Stevens, of course, was the last administration that did that. This administration exonerated him.

Be that as it may, we talk about immigration. We've had millions of people here that every administration known, you can't just remove 10, 12 million people. That's what President Reagan said, both President Bushes said. I've been here since President Ford. They've all taken that same position. As far as jobs are concerned, Chamber of Commerce strongly supported the immigration bill that this committee passed two years ago, and the Senate passed by a bipartisan majority.

Grover Norquist, a very conservative economist, said it would add billions of dollars, billions of dollars, hundreds of billions of dollars to our economy, and it would increase jobs, not decrease them, but increase jobs. I wish the speaker of the House had allowed it to come to a vote over in the other body. It would've passed.

But that's not an issue for you. That's an issue: are you qualified to be attorney general? I have -- I have seen a lot of attorneys general in the 40, now going into my 41st year. Some were very good, in both parties. I think of Ed Levi for example, in Gerry Ford's administration. Others, I remember one that I think all my Republican

colleagues voted for. When he was here before this committee and asked questions, when you get to 50 or 60 (ph) of the questions in advance, and he answered it 75 times, I don't know the answer, or I'm not sure, I can't answer that, even though it had the questions weeks in advance, they voted for him.

I must say, that I cannot think of anybody in all these years I've been here who has struck me so much as being qualified to be attorney general as yourself. I said earlier, you're a prosecutor's prosecutor. I think of the attorney general as the attorney general of the United States, there for all of us. I just referred to my days as a young law student, being recruited by an Attorney General Robert Kennedy, but I was just too homesick for Vermont, so didn't say.

I am not going to ask further questions because I am satisfied with what you've said so far. You will have my vote. You have my strong support. And I hope in the remaining part of this administration, you will be there to enforce the laws of the United States.

Thank you Mr. Chairman. I have nothing further to say. I'll put the rest of my statement in the record.

LYNCH:

Thank you, Senator.

GRASSLEY:

Senator Tillis.

TILLIS:

Thank you Senator.

And I apologize, I should've taken care of this question. My final question, Ms. Lynch, is really around the philosophy that you may bring to the Department of Justice.

In December of 2014, the Government Accountability Office issued a report that was titled "the Department of Justice could strengthen procedures for disciplining its attorneys." There were a couple of examples going back to even I think the handling of New Orleans police officers related to the Katrina, Hurricane Katrina, where either misconduct or they had perjured themselves.

Would you agree with me that the Department of Justice employees who would engage in this sort of activity, either through prosecutorial misconduct or through perjuring themselves in court, are they the kind of personnel that you would allow to continue to be employed in the DOJ.

LYNCH:

Certainly Senator, with respect to personnel issues, I take very seriously the integrity of every member of my staff. And if confirmed as attorney general, would also take very seriously the professionalism of the members of all the staff of the Department of Justice, all of whom I have found to have been a privilege and a pleasure to work with, and to be dedicated career professionals, and dedicated to not just improving their skills, but the highest standards of professional conduct. When they cross a line, they are dealt with, and that will continue to happen should I be confirmed as attorney general.

But I will say that with respect to the staff and the attorneys at the Department of Justice, they are some of the most effective and professional individuals that I've had the pleasure to be affiliated with.

TILLIS:

Well, should you be confirmed, since this report was just dated last month, I hope that it's something that you would take into account as you go into the organization and look at the resources that you've inherited responsibility for.

Thank you very much and thanks to the family in particular. This, I know it's a long day, and those seats aren't that comfortable. So thank you all, and again, congratulations on the honor that -- that you have from the president's nomination. Thank you very much.

LYNCH:

Thank you, Senator.

GRASSLEY:

I've changed my mind. I'm not going to ask you two questions. I'm going to submit them for -- along with some other questions for you to answer in writing.

I thank you very much for being patient today. It has been a long day and I suspect some members of the committee were more impressed with your answers than others.

We're going to recess for the day and have our second panel tomorrow. I think you should -- I hope you'll count yourself lucky, let's say, compared to Judge Mukasey. When he testified he was forced to come back for a second day of questions.

Finally, I'd like to note that after tomorrow's panel I'm going to give everyone one week to submit questions for the record. That's standard practice on this committee. And once again thank you for being so patient and putting up with the chaos that I formerly referred to.

Thank you and we are recessed now. Thank you.

LYNCH:

Thank you, Senator.

CQ Transcriptions, Jan. 28, 2015

List of Panel Members and WitnessesPANEL MEMBERS:

SEN. CHARLES E. GRASSLEY, R-IOWA CHAIRMAN

SEN. JEFF SESSIONS, R-ALA.

SEN. ORRIN G. HATCH, R-UTAH

SEN. LINDSEY GRAHAM, R-S.C.

SEN. JOHN CORNYN, R-TEXAS

SEN. MIKE LEE, R-UTAH

SEN. TED CRUZ, R-TEXAS

SEN. JEFF FLAKE, R-ARIZ.

SEN. DAVID VITTER, R-LA.

SEN. DAVID PERDUE, R-GA.

SEN. THOM TILLIS, R-N.C.

SEN. PATRICK J. LEAHY, D-VT. RANKING MEMBER

SEN. DIANNE FEINSTEIN, D-CALIF.

SEN. CHARLES E. SCHUMER, D-N.Y.

SEN. RICHARD J. DURBIN, D-ILL.

SEN. SHELDON WHITEHOUSE, D-R.I.

SEN. AMY KLOBUCHAR, D-MINN.

SEN. AL FRANKEN, D-MINN.

SEN. CHRIS COONS, D-DEL.

SEN. RICHARD BLUMENTHAL, D-CONN.

WITNESSES:

LORETTA E. LYNCH, U.S. ATTORNEY, EASTERN DISTRICT OF NEW YORK, NOMINATED TO BE
U.S. ATTORNEY GENERAL

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Wade Tyson, Jill C (OLA)

From: Wade Tyson, Jill C (OLA)
Sent: Wednesday, March 18, 2015 3:10 PM
To: Axelrod, Matthew (ODAG); Childs, Heather G. (ODAG); Dix, Melanie (ODAG)
Cc: Kadzik, Peter J (OLA); Williams, Elliot (OLA); Chogyal, Tashi (OLA); O'Brien, Alicia C (OLA); Wade Tyson, Jill C (OLA)
Subject: Courtesy visit papers for 3/19/15 meetings
Attachments: Blumenthal - Courtesy Visit - 3.16.15.docx; Durbin - Courtesy Visit - 3.16.15.docx; Klobuchar - Courtesy Visit 3.16.15.docx; Lee - Courtesy Visit - 3.18.15.docx; Feinstein - Courtesy Visit - 3.13.15.docx

<<Blumenthal - Courtesy Visit - 3.16.15.docx>> Ma <<Durbin - Courtesy Visit - 3.16.15.docx>> tt <<Klobuchar - Courtesy Visit 3.16.15.docx>> , <<Lee - Courtesy Visit - 3.18.15.docx>> He <<Feinstein - Courtesy Visit - 3.13.15.docx>> ather, Melanie:

Please find attached the five courtesy visit papers for DAG Yates' 3/19/15 Senate meetings. Thank you.

-JCT

Jill C. Tyson
Attorney Advisor
U.S. DEPARTMENT OF JUSTICE
Office of Legislative Affairs

(b) (6)
(b) (6) - direct

Kadzik, Peter J (OLA)

From: Kadzik, Peter J (OLA)
Sent: Tuesday, March 31, 2015 6:39 PM
To: Axelrod, Matthew (ODAG); Childs, Heather G. (ODAG)
Subject: FW: 3-24-15 Deputy Attorney General Nomination Hearing - Questions for the Record
Attachments: Perdue QFRs for Yates.docx; Tillis QFRs for Yates.docx; Durbin QFRs for Yates.docx; Feinstein QFRs for Yates.docx; Franken QFRs for Yates.docx; Grassley QFRs for Yates.docx; Sessions QFRs for Yates.docx

FYSA. Extraordinarily light by comparison with others. Please don't have Sally think about these for a nanosecond for now. We are assigning out and will have responses for broader review early next week, but I wanted you to have them for general awareness.

Peter J. Kadzik

Assistant Attorney General
Office of Legislative Affairs

(b) (6)

(b) (6)

From: Wade Tyson, Jill C (OLA)
Sent: Tuesday, March 31, 2015 5:51 PM
To: Kellner, Kenneth E. (OLA); O'Brien, Alicia C (OLA); Burton, Faith (OLA); Kadzik, Peter J (OLA); Williams, Elliot (OLA); Goldberg, Daniel L. (OLA)
Subject: RE: 3 24 15 Deputy Attorney General Nomination Hearing Questions for the Record

Adding Dan. He and I are reviewing now then will make chart for assignments etc.

From: Kellner, Kenneth E. (OLA)
Sent: Tuesday, March 31, 2015 5:46 PM
To: O'Brien, Alicia C (OLA); Burton, Faith (OLA); Kadzik, Peter J (OLA); Williams, Elliot (OLA); Wade Tyson, Jill C (OLA)
Subject: FW: 3 24 15 Deputy Attorney General Nomination Hearing Questions for the Record

From: Coney, Jason (Judiciary Rep) (b) (6)
Sent: Tuesday, March 31, 2015 5:44 PM
To: Kellner, Kenneth E. (OLA); Kadzik, Peter J (OLA); Riggs, Kate M. (OLP); Yeh, Jennifer V. (OLP); Zubrensky, Michael (OLP)
Cc: Lehman, Ted (Judiciary Rep); Mehler, Lauren (Judiciary Rep); O'Connor, Kasey (Judiciary Rep); Whitney, Maggie (Judiciary Dem); Cooper, Rebecca (Judiciary Dem)
Subject: RE: 3 24 15 Deputy Attorney General Nomination Hearing Questions for the Record

Attached please find questions submitted to Ms. Yates for the record from Senators Grassley, Feinstein, Franken, Perdue, Tillis, Sessions and Durbin.

Please do not hesitate to contact me should you have any questions or need any additional information.

Thank you.

Jason A. Covey
Hearing Clerk | Senate Judiciary Committee
<http://judiciary.senate.gov>

**Senator David Perdue
Questions for the Record**

**On the Nomination of Sally Quillian Yates
To be Deputy Attorney General of the United States**

March 31, 2015

1. As a former federal prosecutor, I know you are familiar with the concept of prosecutorial discretion. What, if any, are the limits of the President's discretion to enforce federal law?
2. In his Memorandum Opinion and Order in *Texas v. United States*, B-14-254 (S.D. Tex. Feb. 16, 2015), Judge Hanen enjoined the implementation of President Obama's Deferred Action for Parental Accountability Program ("DAPA") and of the "three expansions/additions to the [Deferred Action for Childhood Arrivals Program, hereinafter "DACA"]," finding that the government had "clearly legislated a substantive rule without complying with the procedural requirements under the Administrative Procedure Act." *Mem. Op.* at 123. Do you agree that in promulgating and implementing DAPA and the DACA expansions, the government acted unlawfully?
3. According to press reports, at a recent hearing on the injunction in the *Texas* case, Judge Hanen told the government that "I was made to look like an idiot. I believed your word that nothing would happen." The judge was referring to the more than 100,000 three-year DACA renewals the government processed in the weeks following issuance of the injunction. Is it the Justice Department's position that the government is authorized to continue processing of DACA renewals during the pendency of the *Texas* injunction? If so, please explain the legal basis for your answer.
4. With respect to the President's executive actions on immigration implemented through the DACA and DAPA programs, please explain whether you share the view of Attorney General nominee Loretta Lynch that the Office of Legal Counsel memorandum setting forth the argument for the President's actions are constitutional and "reasonable."
5. Please explain your view on how, or whether, the President's executive action on immigration implemented through the DACA and DAPA programs comports with the Constitution's Take Care Clause and Congress's Article I authority over immigration and naturalization.
6. It's now indisputable that the Internal Revenue Service ("IRS") targeted conservative organizations that were seeking to obtain tax-exempt status. Senate investigators with the Permanent Subcommittee on Investigations found that over 80% of the targeted groups had a

conservative political ideology. The Department of Justice (“DOJ” or “Department”) responded by initiating a criminal probe led by a Civil Rights Division attorney who had contributed to President Obama’s campaign in 2012. Little, if any, progress has been made in that investigation thus far.

- a. With respect to IRS targeting of individuals and organizations who ostensibly identify with a conservative or Tea Party viewpoint, do you believe that reassignment of the DOJ’s investigation to a special prosecutor is appropriate?
 - b. Do you believe it was appropriate to assign management of the DOJ’s investigation of IRS targeting to a DOJ lawyer who contributed to President Obama’s campaign?
 - c. Do you believe that assigning management of the DOJ’s investigation of IRS targeting to a DOJ lawyer who contributed to President Obama’s campaign could reasonably be expected to create the appearance of partiality or lack of objectivity on the part of the DOJ?
 - d. If you are confirmed, will you commit to keeping Congress informed in a more timely way than the current DOJ leadership has about the status of the investigation?
7. National security is always of paramount importance for the Justice Department. The January 2015 Paris attack and the rise of ISIS are episodes that show two emerging national security threats that you will confront, if confirmed: foreign fighters and so-called “lone wolf” attacks.
- a. In your view, does the recent emergence of these threats have any impact on the debate over the impending renewal of the Foreign Intelligence Surveillance Act of 1978 (“FISA”)?
 - b. Do you believe that the current “bulk collection” regime under FISA Section 215 is lawful?
 - c. Do you believe that the incidental collection provision, Section 702, is lawful?
 - d. President Obama has indicated that he supports a legislative reform of Section 215’s bulk collection regime. What are your thoughts on amending Section 215?

- e. Do you think law enforcement currently has sufficient investigative and legal authority to address the increasing threat from foreign fighters and “lone wolves”?
- 8. Are you committed to transparency between the DOJ and Congress, and will you commit to prompt, complete, and truthful responses to requests for information from Congress about outstanding issues related to Operation Fast and Furious?
- 9. Do you believe that detainees currently being held at the United States Naval Base at Guantanamo Bay, Cuba, are entitled to criminal trials in the civilian court system within the United States?
- 10. In 2013, the DOJ intervened in litigation over the Louisiana Scholarship Program, a state initiative that provides school vouchers to low-income families. An analysis by the State of Louisiana found that the program promoted diversity in Louisiana schools and actually assisted in speeding up federal desegregation efforts. Most of the schoolchildren who benefit from this program are members of minority groups. This year, more than 13,000 students applied and nearly 7,500 schoolchildren were awarded a scholarship voucher. These children now get the chance to excel and attend high-quality schools that their parents can choose for them because of the program. Ultimately, after public pressure, the Justice Department backed off trying to kill the program entirely, but still insisted that the State provide demographic data about the students to a federal judge overseeing the lawsuit. Accordingly, now Louisiana has to provide data for the upcoming school year and for every school year as long as the program is in place.
 - a. Do you agree with the DOJ’s decision to intervene in this case?
 - b. If confirmed, will you use Justice Department resources to obstruct, monitor, or regulate school-choice programs?
 - c. Will you commit to asking the federal district court with jurisdiction over this case to discontinue the reporting requirement if you are confirmed?
- 11. A 2013 report by the DOJ’s Inspector General revealed disturbing systemic problems related to the operation and management of the DOJ’s Civil Rights Division. If confirmed, will you commit to implementing the recommendations made by the Inspector General in that report?
- 12. Do you agree with the recommendation of the U.S. Sentencing Commission in its 2011 report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*, that Congress should amend 18 U.S.C. § 924(c) to confer on federal district judges the discretion to impose concurrent sentences under that provision?

13. As the former U.S. Attorney for the Northern District of Georgia and the former Vice Chair of the Attorney General's Advisory Committee, you are no doubt familiar with the DOJ's recent "Smart on Crime" Initiative, which addresses a number of criminal justice issues like prioritizing prosecutions, sentencing disparities, recidivism, and incarceration of non-violent offenders. Attorney General Holder has advocated reduction of the federal sentencing guideline levels that apply to most drug-trafficking offenses, including trafficking of hard drugs like heroin. The Holder Justice Department also announced a new clemency initiative last year that invites clemency petitions from offenders who meet a number of criteria. Thousands of offenders, including drug traffickers, fall within those criteria.

- a. What are your views on those DOJ initiatives and proposals?
- b. Do they make the work of federal prosecutors harder?
- c. Do they make the American People safer?
- d. Are you going to continue them if you are confirmed as Deputy Attorney General?
- e. Do you believe that these or other DOJ initiatives should be expanded to encompass early release for violent offenders who have served a substantial portion of their sentences?
- f. Do you believe that these or other DOJ initiatives should be expanded to encompass early release for offenders who have received so-called "stacked" or consecutive mandatory minimum sentences under 18 U.S.C. § 924 or other provisions of federal law?

14. The 2013 Cole Memorandum explains the DOJ's priorities on enforcement of federal law regarding marijuana offenses. Several jurisdictions have recently legalized cultivation and distribution of marijuana for personal use, in effect, initiating a series of state regulatory regimes that contravene federal drug laws.

- a. Do you agree with the current DOJ enforcement policies and priorities outlined in the Cole Memorandum?
- b. Do you consider the DOJ's policy, as it is being implemented now, to reflect legitimate enforcement discretion consistent with the Take Care Clause?

- c. If you are confirmed, how do you plan to measure the effect of the DOJ's policy on the federal interest in enforcement of drug laws?

- 15. A number of commentators have expressed the opinion that voter fraud simply doesn't exist or the alternative opinion that, if it does, it is a minor problem with no real effect on the integrity of elections.
 - a. Do you agree that voter fraud does not exist or is so insignificant that it does not threaten the integrity of elections?

 - b. Do you think that voter fraud is a *bona fide* issue that states should be entitled to address with voter ID laws?

- 16. First Amendment freedoms that protect the press became a lot more tenuous during Mr. Holder's administration of the DOJ. In May 2013, the Department obtained phone records for the Associated Press ("AP") without the knowledge of that organization, reportedly as part of an investigation of an AP story on CIA operations in Yemen. It then came to light that in 2010 the Holder Justice Department obtained a warrant to search the emails of Fox News reporter James Rosen the Department claimed that Rosen was a potential co-conspirator with a State Department contractor in violation of the Espionage Act. Since then, the DOJ has issued new guidelines governing how it obtains evidence from journalists. The guidelines maintain that notice of a subpoena may be withheld only if notifying the journalist would present a "clear and substantial threat" to an investigation or to national security.
 - a. Do you agree that the Department's treatment of journalists has been heavyhanded and that reform of DOJ practices was necessary?

 - b. Do you believe that the DOJ investigations described above pose a serious risk of chilling free speech?

 - c. Do you support the new guidelines?

 - d. As a former federal prosecutor, you are no doubt aware of the balance between individual liberties and the need to conduct thorough and effective investigations. Do the guidelines strike the right balance?

 - e. Going forward, how should the Justice Department distinguish itself from the Holder Justice Department when it comes to investigation of journalists?

17. There have been significant developments recently at the DOJ regarding policies on civil asset forfeiture in response to abuses by U.S. Attorney's Offices and federal and state agencies. Attorney General Holder recently announced that the DOJ will end the Equitable Sharing Program, which essentially apportions billions of dollars in seized assets between federal, state, and local authorities a huge pool of money that clearly created a risk of encouraging aggressive, if not unlawful, seizures from individuals who are not charged with a crime, have not been indicted, and have not enjoyed any due process whatsoever.

- a. Do you believe that there have been inappropriate or excessive seizures by your office or by the DOJ with respect to civil asset forfeitures, adoptive seizures, and equitable sharing practices?
- b. What steps do you plan to take, if confirmed as Deputy Attorney General, to ensure that the DOJ returns wrongfully seized assets promptly and does not continue to seize assets wrongfully?

Senator Jeff Sessions
Questions for the Record
Sally Quillian Yates, to be Deputy Attorney General of the United States

1. Do you believe that President Obama has exceeded his executive authority in any way? If so, how?
2. On April 23, 2014, Deputy Attorney General Cole announced a new clemency initiative, under which the President intends to grant clemency to “perhaps thousands” of convicted federal drug offenders, including those who have limited ties to gangs and drug cartels. This policy would give federal drug offenders the benefit of changes in law that took place after they were convicted, even though many of these legislative changes were specifically negotiated to not apply retroactively. On March 20, 2015, President Obama stated that he plans to grant clemency “more aggressively” during the remainder of his term. If confirmed, you will be in a position to advise the President on clemency and pardon petitions.
 - a. Do you agree that the pardon power exists to mitigate injustice in individual cases?
 - b. Do you agree that the pardon power should not be used to target laws that the President disagrees with on policy grounds?
 - c. How will you ensure that the individuals whose petitions are granted under this policy are not dangerous criminals convicted of serious federal offenses?
3. I am told that litigating attorneys within Main Justice are paid significantly more than similarly-situated federal prosecutors within the 93 U.S. Attorney Offices across the country. This pay variance is especially large at the entry level, and can differ as much as \$30,000 between similarly situated Assistant U.S. Attorneys and Justice Department trial attorneys. I am also told that the Department has the authority to correct the problem because it arises out of the uneven treatment in pay of Assistant U.S. Attorneys, covered under the specialized Administratively Determined pay schedule for Assistant U.S. Attorneys, and the pay of all other Department attorneys, covered under the government-wide General Schedule. Serving as vice chair of the Attorney General’s Advisory Committee, you must have been aware of this situation. Do you believe it is justified? If not, will you take action to correct it?
4. In response to a question at your nomination hearing regarding what your priorities will be if confirmed, you stated:

“It’s important that we not be generating stat[istics] but actually having an impact on the communities that we serve to make them as safe as possible. And so one of the things that I would like to do is to work with our law enforcement agencies to ensure that they are focused on making an impact on the safety of the communities rather than just, as I said, generating stat[istics].”

Starting in the 1990s, the “broken windows” crime prevention theory was used in New York with great success. Do you believe there is a danger in failing to prosecute smaller crimes as those smaller crimes lead to larger crimes and undermine public safety?

5. If confirmed, would you advocate for legislation to close the so-called “gun show loophole”?
6. In April 2013, the Senate rejected measures that would have instituted a ban on so-called “assault weapons” and large capacity magazines, required universal background checks, and created new high criminal penalties for firearms offenses. In October 2014, Attorney General Holder referred to these as “really reasonable gun safety measures.” Do you agree with Attorney General Holder’s statement?
7. Have you ever expressed an opinion on whether the death penalty is unconstitutional? If so, what was that opinion? If not, do you have such an opinion and what is it?
8. President Obama was quoted in a January 2014 article in *The New Yorker* as saying the following: “I smoked pot as a kid, and I view it as a bad habit and a vice, not very different from the cigarettes that I smoked as a young person up through a big chunk of my adult life. I don’t think it is more dangerous than alcohol.” Do you agree with the President’s statement?
9. DEA Administrator Michele Leonhart has testified before Congress that “it’s important to have the facts about marijuana out there in ways that kids, teens, young adults, parents can look at it to see that what they’ve been sold that [legalization] is no big deal is not true.” Do you agree with Administrator Leonhart?
10. The American Medical Association has stated that it believes “(1) cannabis is a dangerous drug and as such is a public health concern; (2) the sale of cannabis should not be legalized.”
 - a. Do you agree with that statement?
 - b. Do you support the legalization of marijuana at either the state or Federal level?
 - c. Do you support the legalization of medical marijuana, as proposed in S. 683 (introduced in the 114th Congress)?
 - d. Will you speak out against efforts to eliminate the enforcement of Federal drug laws?