

December 10, 2018

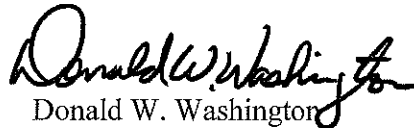
The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

Enclosed please find responses to Questions for the Record that I received from Chairman Grassley, Ranking Member Feinstein, as well as Senators Klobuchar, Coons, Hirono, Booker, and Harris following my appearance before the Senate Judiciary Committee on November 28, 2018.

Sincerely,


Donald W. Washington

**Nomination of Donald Wayne Washington
to be Director of the United States Marshals Service
Questions for the Record
December 5, 2018**

QUESTIONS FROM SENATOR GRASSLEY

1. Over the past three years, this Committee has been approached by more than 100 whistleblowers from the U.S. Marshals Service with serious allegations of waste, fraud, and abuse. Many of these whistleblowers have suffered retaliation from senior officials within the Marshals Service. If confirmed, will you commit to protecting whistleblowers and addressing some of the serious allegations that they have raised?

RESPONSE: I appreciate the important role that whistleblowers play in identifying and addressing waste, fraud, and abuse in the government. I am committed to ensuring that employees do not face retaliation for making such protected disclosures. Further, if confirmed, I am committed to evaluating allegations of waste, fraud, and abuse that are brought to my attention and addressing them appropriately, based on the underlying facts and circumstances.

2. Former U.S. Marshals Service Director Stacia Hylton was cited by the Office of the Inspector General for violating C.F.R. § 2635.702(a) when she recommended a friend for a position within the Agency. Do you believe that the Director of the U.S. Marshals Service should conduct themselves in a manner that places them above reproach and that former Director Hylton failed that standard?

RESPONSE: I do not have in-depth knowledge about the conduct of the former director. I commit to you that, if confirmed, I will strive to meet the highest ethical standards consistent with the laws, regulations, and policies of the Department of Justice.

3. Last year, approximately 2,000 U.S. Marshals Service operational personnel were using expired or soon to be expired body armor.
 - a. How important is it that all operational personnel have up-to-date body armor?

RESPONSE: As the country learned again last week with the tragic death of Deputy Chase White, the U.S. Marshals Service (USMS) fugitive hunting mission is one of the most dangerous in law enforcement. Ensuring that the USMS has the best equipment and training available to its deputies, including body armor, will be a top priority for me if I am confirmed.

- b. Should the safety and well-being of all its employees be the top priority of the U.S. Marshals Service?

RESPONSE: The safety and well-being of all USMS employees is extremely important to me, and it will be one of the top priorities of the agency if I am

confirmed. I look forward to learning in detail about this critical area from the experts in the USMS.

- c. If confirmed, what steps, if any, are you planning to take to prevent a similar issue from occurring in the future?

RESPONSE: If confirmed, I will make it a point to learn more about the USMS body armor program and the measures in place to ensure that this critical safety equipment is replaced when necessary.

- 4. The U.S. Marshals Service has a history of reaching settlement agreements with individuals accused of wrongdoing, allowing them to avoid disciplinary action through early retirements, paid leave, and other methods. While such actions may help the Agency to avoid appeals and complex litigation, they can also have a demoralizing effect on junior level employees when they see that senior level officials can violate the rules and receive little or no punishment as a result.

- a. If confirmed, do you plan to continue this trend? If not, what actions will you take to reverse it?

RESPONSE: I know from my experience as an attorney that it is not uncommon for parties to enter into mutually beneficial settlements for a variety of reasons. If confirmed, I look forward to learning about the agency's use and scope of settlement agreements, particularly with respect to federal employee personnel matters.

- b. How important is morale to the effectiveness of the Agency?

RESPONSE: If morale is defined as the confidence, discipline, and enthusiasm of a group, I believe that it is critical at the USMS. High morale is an important indicator of an organization's missions and its leadership. I hope to contribute to the latter if confirmed.

- 5. The U.S. Marshals Service has a history of adjudicating whistleblower retaliation complaints by requiring the whistleblower to retire or leave the agency as a condition of the settlement.

- a. If a whistleblower was retaliated against by his or her supervisor, why should they be the one who is forced to leave the agency as a condition of a settlement?

RESPONSE: Unfortunately, it is not possible for me to comment about hypothetical cases without understanding the unique circumstances surrounding each one.

- b. What effect do you believe this practice likely has on morale?

RESPONSE: I would have to understand the unique circumstances surrounding each settlement in order to make a judgment about any effect on agency morale.

- c. Several whistleblowers who have been offered this type of settlement agreement view it as an additional form of retaliation. Do you agree? If not, why not?

RESPONSE: My understanding and experience with settlements is that they are generally entered into voluntarily by both parties. Regardless of my previous experiences, I have an open mind on this issue, and, if confirmed, I look forward to learning more about USMS settlement agreements.

6. As a former U.S. Attorney, you are likely familiar with the maxim, “justice delayed is justice denied.” Several whistleblowers who are in contact with this Committee have had pending complaints before the Office of Special Counsel for months and in some cases years. If confirmed, will you commit to resolving these longstanding complaints within your first 90 days in office?

RESPONSE: I believe it is very important to seek justice as expeditiously as possible. Because I am not a current employee of the Department, I am not privy to the complaints you reference and am not in a position to make a commitment about the timing.

7. On March 26, 2015, Acting Attorney General Sally Yates sent a response letter to the Committee that contained misleading and inaccurate information. The DOJ OIG later found that this was because “the USMS relied on an inadequate and flawed process to gather the information used to draft the response.” If confirmed, will you commit to providing the Committee with timely and accurate responses to its oversight requests?

RESPONSE: I appreciate the important role of congressional oversight. If confirmed, I look forward to working with the USMS Office of Congressional Affairs and the Department’s Office of Legislative Affairs to accommodate the Committee’s information needs, consistent with the Department’s law enforcement, national security, and litigation responsibilities.

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QUESTIONS FROM SENATOR FEINSTEIN

1. The United States Marshals Service is responsible for investigating and apprehending fugitives. The Justice Department issued a memo that forced the FBI to drop more than 500,000 names of fugitives with outstanding arrest warrants from its background check database, called NICS. The NICS database is meant to determine who is eligible to buy firearms. According to the Department, this decision was made because it was uncertain whether those fugitives crossed state lines and fled a state.

- a. **Do you agree with the Justice Department's decision about which fugitives are prohibited from possessing firearms?**

RESPONSE: This decision was made by the Department of Justice (Department) while I have been in the private sector. Presently, I am unfamiliar with the details of this decision. If I am fortunate to be confirmed as the next Director of the United States Marshals Service (USMS), I will familiarize myself with this decision.

- b. **Do you think the Justice Department's decision makes apprehending fugitives more dangerous?**

RESPONSE: As you note, apprehending fugitives is a very dangerous profession requiring highly trained and skilled personnel working with federal, state, and local law enforcement agencies across the country and around the world. From public reporting I understand that the USMS arrested over 80,000 fugitives in 2017 alone. As Director of the Marshals Service, I will work to ensure that Deputy U.S. Marshals and support personnel have all the resources and capabilities they need to locate and apprehend fugitives in a timely, safe, and efficient manner.

2. While you were U.S. Attorney, you put out statements immediately before elections promising that your office would aggressively prosecute voter fraud. For example, in the run-up to the 2003 elections in Louisiana, you said that your office would "aggressively investigate and prosecute election fraud cases." (*U.S. Attorney Warns Public against Election Fraud*, LEESVILLE DAILY LEADER (Sept. 20, 2003)) In 2008, shortly before the presidential election, you said that your office would aggressively prosecute voter fraud, because such fraud "dilute[s] the worth of votes honestly cast." (*Attorneys And FBI Agents To Be On Duty Tuesday*, ALEXANDRIA DAILY TOWN TALK (Nov. 2, 2008)) You put out a similar statement immediately before the 2006 midterm elections. (*Federal Officials to Enforce Ballot Integrity Initiative*, AMERICAN PRESS (Nov. 5, 2006))

- a. **What specific information, evidence, or data did you rely on in deciding to put**

out these statements about voter fraud?

RESPONSE: I do not recall what specific information, evidence, or data may have been provided to me relative to my efforts in protecting voting rights in my role as the U.S. Attorney for the Western District of Louisiana. To the best of my recollection, prior to every election, the Department initiated public announcements to inform citizens of the Department's obligation to protect voting rights of all Americans. To the best of my recollection, the Department also provided guidance to employees charged with district election responsibilities, and encouraged U.S. Attorneys to make public announcements about resources available to citizens who may have concerns regarding voting rights and election frauds. *See Protecting the Right to Vote and Prosecuting Ballot Fraud*, available at <https://www.justice.gov/opa/pr/protecting-right-vote-and-prosecuting-ballot-fraud-0>.

- b. In your statement quoted above, you noted that fraudulent votes “dilute the worth of votes honestly cast.” How many dishonestly cast votes did your office uncover?**

RESPONSE: To the best of my recollection, the protocol required that citizens contact the FBI or the Department's Civil Rights Division with concerns related to voting rights and election fraud. I recall that some concerns from citizens were reported to the FBI; however, I do not recall whether or not any of those complaints resulted in federal prosecution.

- c. How many voter/election fraud cases did your office prosecute while you were U.S. Attorney? How many successful convictions did your office obtain in voter/election fraud cases? Please provide a citation to any relevant cases.**

RESPONSE: I do not recall any specific election crime cases that were prosecuted in the Western District of Louisiana while I was U.S. Attorney.

- 3. At any point during the process that led to your nomination, did you have any discussions with anyone — including but not limited to individuals at the White House, at the Justice Department, or at outside groups — about loyalty to President Trump? If so, please elaborate.**

RESPONSE: During the nomination process, I have had no discussions with anyone, including White House personnel, about my loyalty to President Trump or to his Administration.

- 4. Please describe with particularity the process by which you answered these questions.**

RESPONSE: I substantially answered the questions above from memory. However, I briefly searched the Internet in an effort to refresh my recollection regarding the Department's voting rights protocol prior to an election.

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QUESTIONS FROM SENATOR DURBIN

For questions with subparts, please answer each subpart separately.

Questions for Donald Washington

1. You have been nominated to head the U.S. Marshals Service, which has responsibility for federal judicial and courthouse security. If you are confirmed to this position, I ask that you commit to make it a top priority of the Marshals Service to enhance the security of the Dirksen Federal Courthouse in Chicago.

The Dirksen Courthouse is one of the nation's largest, and it is located on a busy city block. There are four vacant buildings on the block that are just a few dozen feet away from the courthouse. The General Services Administration owns these buildings and is trying to convey them to private developers, even though the developers would bring residential apartments and vehicle traffic just a few yards away from judges' chambers and jury rooms. It is well-documented that this proposed development would create significant security risks.

We need the U.S. Marshals Service to be firm advocates for enhancing the security of the Dirksen Courthouse—and we need the Marshals to help ensure that security risks and vulnerabilities are not made worse. **Will you make that commitment?**

RESPONSE: I believe that judicial security is an important priority for the U.S. Marshals Service (USMS). I am not familiar with the facts of the situation you describe, but I can assure you that as with any situation, I will examine the relevant law and the facts when making a decision.

2. The Marshals Service has responsibility for federal judicial and courthouse security; apprehending federal fugitives both domestically and internationally; witness security; housing pre-sentenced federal prisoners; transporting federal prisoners; serving federal court criminal process; and managing and disposing of seized and forfeited properties. **If you are confirmed, what would your priorities be as director of the Marshals Service?**

RESPONSE: If confirmed, my highest priority will be to ensure that the statutory obligations of the USMS such as judicial security, fugitive apprehension, and prisoner transport are adequately resourced. I have a strong interest in officer safety, given what appears to me is an increasingly dangerous environment in which deputies are operating. Finally, I believe that a busy, mission-oriented organization like the USMS needs to invest in its people with superior recruiting, the best training at every career stage,

meaningful opportunities for professional development, and promoting the best employees to positions of leadership.

3. **What do you see as the main areas in which the Marshals Service needs improvement?**

RESPONSE: As I do not currently work for the USMS, it would be inappropriate for me to comment on specific areas that may need improvement. However, if confirmed, I look forward working with USMS leadership in determining what areas may need improvement, and based on specific facts and circumstances, determine what, if any, action is appropriate.

Additionally, as I mentioned in my response to Question 2, I believe that a busy, mission-oriented organization like the USMS needs to invest in its people. If confirmed, I intend to be a leader and steward of the United States Marshals Service, and create an environment in which every employee can reach their highest potential.

**Nomination of Donald Wayne Washington
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December 5, 2018**

QUESTIONS FROM SENATOR KLOBUCHAR

1. I understand that as U.S. Attorney in the Western District of Louisiana, you established a team of law enforcement officers to monitor elections, and prior to Election Day in 2006 and 2008, you issued statements promising to prosecute voter fraud. Studies by the Brennan Center and other non-partisan organizations have found no evidence of widespread voter fraud. In your experience, did you find evidence of widespread voter fraud?

RESPONSE: Although I recall receiving allegations of voter fraud and addressing them pursuant to Department of Justice policies, I have no recollection of finding evidence of widespread voter fraud during my tenure as U.S. Attorney for the Western District of Louisiana.

2. Combating human trafficking has been one of my top priorities in the Senate, and in 2015, the Justice for Victims of Trafficking Act, which I led with Senator Cornyn, was signed into law. That legislation provided the Marshals Service with new authority to assist state and local law enforcement in recovering missing children. If you are confirmed, what steps will you take to improve coordination among law enforcement agencies to recover missing children, including victims of trafficking?

RESPONSE: I share your concern and agree that we must use all available tools to bring these children, including victims of trafficking, home to their loved ones. If confirmed, I will work together with international, federal, state, and local authorities to ensure that necessary resources are provided to coordinate clear and effective cooperation in order to recover missing children.

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QUESTIONS FROM SENATOR COONS

1. The U.S. Marshals Service has a broad range of responsibilities, from protection of the federal judiciary, apprehension of fugitives, execution of federal arrest warrants, transport of federal prisoners, and operation of the Federal Witness Protection Program.

- a. What would be your general approach to deciding how to focus the resources of the U.S. Marshals Service?

RESPONSE: If confirmed, my highest priority will be to ensure that the statutory obligations of the U.S. Marshals Service (USMS) such as judicial security, fugitive apprehension, and prisoner transport are adequately resourced. I have a strong interest in officer safety, given what appears to me is an increasingly dangerous environment in which deputies are operating. Finally, I believe that a busy, mission-oriented organization like the USMS needs to invest in its people with superior recruiting, the best training at every career stage, meaningful opportunities for professional development, and promoting the best employees to positions of leadership.

- b. Given the multifaceted mission of the U.S. Marshals Service, how would you ensure that the criminal investigator workforce within the agency includes a diversity of backgrounds and skills required?

RESPONSE: In July of this year, the USMS received excepted service hiring authority for the hiring of Deputy U.S. Marshals. I look forward to learning more about this authority and the flexibility that it gives the USMS to recruit and hire from more diverse applicant pools. I know that diversity of backgrounds has been a challenge generally in federal law enforcement hiring, and I assure you that I take the diversity of the USMS workforce seriously. I believe that employee diversity is an operational necessity for all of the missions of the USMS.

- c. Would you seek to increase the diversity of the U.S. Marshals Service workforce as director of the agency?

RESPONSE: Please see my response to Question 1(b).

2. While you were U.S. Attorney, a series of disturbing incidents of race-related violence occurred in Jena, Louisiana, provoking massive protests.

- a. Does it remain your view that hate crimes charges were not appropriate in this

case? If so, please explain why that is your view.

RESPONSE: What has come to be known as the “Jena 6” matter was a complicated series of events. After an investigation by the FBI and the Department of Justice’s (Department) Civil Rights Division, neither my office nor the Civil Rights Division elected to bring federal criminal hate crime charges for some of those events; in one incident we did in fact bring federal hate crime charges. We elected not to bring federal criminal charges against several white students who hung a noose at school in an area where African American students frequently gathered for lunch. Those white students – young teenagers - were disciplined by the school for their actions. Some months after that, six older African American high school students badly beat a white fellow high school student. We elected not to bring federal hate crime charges largely because the students who committed the assault were prosecuted by the state for their conduct. Indeed, some in the community felt that the state charges against the African American students were excessive, further stoking unrest. We exercised our prosecutorial discretion and elected not to bring federal hate crime charges against any of the persons involved in the high school assault or the preceding noose hanging that some alleged was the underlying cause of the school assault.

These two distinct incidents, viewed together, sparked significant unrest in the community, and many people from outside the community came to Jena to march and protest. On the night of a September 2007 Jena rally, Jeremiah Munsen, 18, intentionally threatened African- American protesters by driving menacingly past a group of marchers while displaying two life-sized hangman’s nooses from the back of his pickup truck. The Civil Rights Division and the United States Attorney’s Office prosecuted Mr. Munsen, who pled guilty in April 2008 to a federal hate crime violation, admitting that he displayed the nooses with the intent to intimidate the marchers in the exercise of their civil rights.

Under my leadership, we took a comprehensive and holistic approach to these events. We engaged the Community Relations Service to calm community tensions, brought federal criminal charges when we deemed it appropriate to do so, and utilized the expertise of the Civil Rights Division’s Educational Opportunities Section to work with the local school system to address racial issues.

- b. Please describe any lessons you learned from these events and, whether looking back, you wish you had done anything differently.

RESPONSE: I believe that my office and the other involved components of the Department appropriately investigated the Jena events and made appropriate decisions. I abhor and condemn violence, hatred, racism, and bigotry in all of its forms. During my involvement in the Jena 6 investigation, I learned that it is important for concerned persons to examine all of the facts and circumstances surrounding each matter. It is very important not to jump to early, superficial conclusions, and to allow investigations to proceed independently. It is also important not to allow racial tensions to fester. After the events described in my

Response to Question 2(a), the Department deployed its Community Relations Service, which led to outstanding results over the year following the protests in Jena. I strongly believe in Dr. King's pursuit of one fair justice system for everyone, and I will continue to work toward that end.

3. Please describe any lessons you learned during your work representing Sergeant Jeremy Hatley in litigation involving the abuse of pretrial detainees at the Iberia Parish Jail.

RESPONSE: The basic lesson from the investigation of the Iberia Parish Sheriff's office is that the Constitution demands strict obedience to and respect for the protection of civil rights for all citizens, whether incarcerated or not. As criminal defense counsel, I represented one of the dozen deputies investigated. The primary lesson for law enforcement officers is that they must, at all times, remain faithful to protecting and serving others. This is especially true when officers of the law witness their own colleagues perform abhorrent and abusive acts contrary to their oaths, the law, and their responsibility to serve others.

4. It is critical that federal, state, and local law enforcement officers establish strong, trusting relationships with the communities they serve. Officers who abuse their authority, either through the use of excessive force, discrimination, or patterns of constitutional violations erode these police-community relationships.

- a. Is it your view that law enforcement officers have a special responsibility to intervene and/or promptly report another officer's use of excessive force, discrimination, or constitutional violations?

RESPONSE: If confirmed, I will be faithful to fair and even-handed enforcement of the laws. It is the mission of the USMS to "protect, defend, and enforce the American justice system." Consistent with that mission, it is imperative that U.S. Marshals and Deputies report to the appropriate supervisor if they witness another officer's conduct in violation of USMS policies, Department policies, federal, state, or local laws, or the U.S. Constitution.

- b. Is it ever appropriate for a law enforcement officer to conceal evidence of wrongful conduct by an officer or provide a false report regarding that conduct?

RESPONSE: Every situation should be evaluated on the specific facts and circumstances to determine the appropriate action, and to make a blanket statement on this issue would be speculative. However, the appropriate action of an officer who witnesses or is aware of conduct in violation of the law by another officer, is to bring the matter to the attention of his or her supervisor. It would never be appropriate for an officer to provide a false report regarding such conduct.

5. Notes from a 2006 South Texas College of Law commencement speech that you provided to the Senate Judiciary Committee include the following statement: "The children of Islam are again warring with the children of Christ and Jacob. Abraham would be sorely disappointed at today's events."

- a. Please explain this statement.

RESPONSE: The statement that you reference was intended to emphasize one of the themes of my speech – the idea that the lawyers graduating from South Texas College of Law would enter a world where their leadership and careers would be impacted by events that occur far from the U.S. These events included, among many others, ongoing conflicts between religious groups.

- b. Do you believe that a religious institution should be targeted for law enforcement scrutiny because it is of a particular faith, i.e., should a religious institution be targeted because it is a Muslim institution?

RESPONSE: Absolutely not. I strongly believe in the fundamental right to freedom of religion. No religious institution or religion should ever be targeted for investigation solely because it is a religious institution or associated with a particular religion.

6. In 2002, as U.S. Attorney, you announced the creation of a team of federal prosecutors and investigators to monitor elections in Louisiana, and you suggested a continued focus on voter fraud in subsequent election years.

- a. Please explain what facts or circumstances prompted the creation of this unit and your subsequent commitments to aggressively prosecute voter fraud.

RESPONSE: To the best of my recollection, prior to elections, the Department initiated public announcements regarding its obligation to protect voting rights of all Americans. To the best of my recollection, the Department provided guidance to employees charged with district election responsibilities and encouraged U.S. Attorneys to make public announcements about resources available to citizens who may have concerns regarding voting rights and election frauds. For example, see *Protecting the Right to Vote and Prosecuting Ballot Fraud*, available at <https://www.justice.gov/opa/pr/protecting-right-vote-and-prosecuting-ballot-fraud-0>.

- b. Do you agree that voter integrity initiatives are sometimes used as a pretext for vote suppression efforts?

RESPONSE: As U.S. Attorney, I was committed to upholding and protecting the voting rights of all Americans, and I remain committed to protecting these important rights. Whether a particular law or initiative affects voters in violation of the Voting Rights Act will depend on the particular facts and the relevant law.

**Nomination of Donald Wayne Washington,
to be Director of the United States Marshals Service
Questions for the Record
Submitted December 5, 2018**

QUESTIONS FROM SENATOR HIRONO

- 1. Based on the information provided in your Senate Judiciary Questionnaire, it appears that the largest organization you have managed was the U.S. Attorney's Office for the Eastern District of Louisiana, which employs approximately 70 lawyers. And, although you worked with federal investigative agencies as U.S. Attorney, you don't have any experience managing a law enforcement agency.**

Please explain what in your record qualifies you to be director of the U.S. Marshals Service—an agency that employs over 5,000 people, runs on a budget of about \$1.3 billion, serves 94 districts, and has 218 offices?

RESPONSE: The U.S. Marshals Service is responsible for a number of nationwide law enforcement tasks, including apprehending fugitives, transporting prisoners, protecting witnesses, and protecting the judiciary. I am a graduate of West Point, which is internationally recognized for academic, military, and physical excellence, and is known for producing many of America's military, public, and private-sector leaders. I have led soldiers as a commissioned officer in the United States Army, serving in troop-level up to division-level assignments in CONUS and the Republic of Korea. I have served on leadership teams in the military and in private business, and some of those teams have been responsible for managing significant numbers of personnel, operations, and resources. I have been selected, on a number of occasions, to serve on boards of directors of non-profit entities responsible for budgeting, selecting leadership, and managing hundreds of millions of dollars in assets. I also currently serve on the Board of Directors of a Louisiana bank, whose assets are valued at approximately \$2.2 billion. I also have experience serving and managing law enforcement agencies as I was the United States Attorney for the Western District of Louisiana for more than 8 years. Coincident with my service as U.S. Attorney, I served on the Attorney General's Advisory Committee, and several other Justice Department committees responsible for advising Department leadership on the management of highly significant nation-wide matters in the subject areas of antiterrorism, controlled substances, Native American issues, and others. During my service as U.S. Attorney, I was selected to lead the multi-agency Organized Crime Drug Enforcement Task Force for the southeastern United States based on my leadership in criminal law enforcement and controlled substances operations. From East Texas, to West Point, my training, job experiences, public service, and family leadership have prepared me to be a good leader and steward of the United States Marshals Service.

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QUESTIONS FROM SENATOR BOOKER

1. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.¹ Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.² These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.³ In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.⁴

- a. Do you believe there is implicit racial bias in our criminal justice system?

RESPONSE: I am aware of the significant and important debate about the existence of implicit racial bias in our criminal justice system. I know that this is an important issue for all law enforcement agencies as it raises concerns of due process and fairness in the administration of the criminal justice system and the enforcement of federal, state, and local laws. It is important to ensure that biases and discrimination do not play a role in the criminal justice system.

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

RESPONSE: I believe that based on population, people of color are disproportionately represented in federal, state, and local incarceration processes.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

RESPONSE: See my response to Question 1(a). While serving as U.S. Attorney, I believe that I attended discussions and training on the larger topic of implicit bias as well as implicit racial bias in the criminal justice system. To the best of my recollection, I participated in education and funding efforts for training police departments in the Western District of Louisiana on implicit bias issues. Other than a recent article published in Scientific American on implicit bias, I do not

¹ Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

² *Id.*

³ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

⁴ *Id.*

recall the names and publications where I have seen other articles and reports on this topic.

2. As Director of United States Marshals Service, you would be one of our nation's top law enforcement officials. What will you do to ensure that implicit racial bias does not play a role in our criminal justice system?

RESPONSE: It is important to ensure that biases and discrimination do not play a role in the criminal justice system. I support measures consistent with federal law that eliminate these evils. Whether and when such measures are appropriate depends on the facts and circumstances of each situation. I would consider the facts and relevant law when facing a situation that implicates the issues you raise.

3. While you were the U.S. Attorney for the Western District of Louisiana, you promised to prosecute drug crimes to the maximum extent possible. You said, "The message is this—we will not tolerate criminal activity in our communities. Our policy is to charge and pursue the most serious charges and accept less only if the criminal provides substantial assistance in the prosecuting another of his brother criminals."
 - a. The job of a prosecutor is to seek justice, not merely to maximize convictions. Do you believe it is in the interest of justice to adopt a policy to always "pursue the most serious charges"?

RESPONSE: I believe it is in the interest of justice for the prosecutor to enforce federal law as written and passed by Congress. This is consistent with the longstanding practices of the Department of Justice (Department) and allows prosecutors to faithfully discharge their duties, rather than following unilateral determinations by the Attorney General about which laws will be enforced and to what extent. This does not require prosecutors to seek the harshest sentence possible, but just to pursue the most serious, readily provable offense.

- b. How has your work as a defense attorney in private practice changed or otherwise affected your perspective on drug prosecutions, and the criminal justice system generally?

RESPONSE: As a defense attorney, I have not represented defendants charged with federal drug crimes. My work as a defense attorney in state prosecutions has allowed me to see the defendants' side of the issues related to the prosecution and the collateral consequences of the prosecution. My work in this area has caused me to believe that we must be mindful of differences between non-violent offenders and violent offenders.

4. While you were the U.S. Attorney for the Western District of Louisiana, Attorney General John Ashcroft announced the creation of the Ballot Access and Voting Integrity Initiative. Following this announcement, in 2002, you created a team of federal prosecutors and FBI agents to monitor elections in Louisiana. In a public statement on the creation of that team,

you said, “Vote buying still occurs. It’s unfortunate but true . . .” And in 2003, before the gubernatorial election in Louisiana, you stated that you would “aggressively investigate and prosecute election fraud.”

- a. Do you believe there is widespread voter fraud in American elections today?

RESPONSE: Through news media accounts, I am aware of the continuing, important debate over the potential level of voter fraud and outside influence on American elections. As a private citizen, while there is always the possibility for voter fraud in almost any election, I have no evidentiary basis to believe that there is widespread voter fraud in American elections today.

- b. Approximately how many cases of voter fraud did your office prosecute while you were the U.S. Attorney?

RESPONSE: I do not recall any specific election crime cases that were prosecuted in the Western District of Louisiana while I was U.S. Attorney.

- c. Study after study has demonstrated that widespread voter fraud is a myth.⁵ In fact, an American is more likely to be struck by lightning than to impersonate a voter at the polls.⁶ One study that examined more than one billion ballots cast between 2000 and 2014 found only 31 credible instances of voter fraud.⁷ Given this information, do you stand by your decision to use resources to create a team of prosecutors and FBI agents to investigate and prosecute voter fraud?

RESPONSE: To the best of my recollection, prior to elections, the Department routinely initiated public announcements regarding its obligation to protect voting rights of all Americans. To the best of my recollection, the Department provided guidance to employees charged with district election responsibilities, and encouraged U.S. Attorneys to make public announcements about resources available to citizens who may have concerns regarding voting rights and election frauds. For example, *See Protecting the Right to Vote and Prosecuting Ballot Fraud*, available at <https://www.justice.gov/opa/pr/protecting-right-vote-and-prosecuting-ballot-fraud-0>.

5. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.⁸ In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1

⁵ *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31 2017), https://www.brennancenter.org/sites/default/files/analysis/Briefing_Memo_Debunking_Voter_Fraud_Myth.pdf.

⁶ *Id.*

⁷ Justin Levitt, *A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents out of One Billion Ballots Cast*, WASH. POST (Aug. 6, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast>.

⁸ Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

percent.⁹

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

RESPONSE: My career demonstrates that I believe that strong law enforcement is a crucial aspect of community safety. As our former Attorney General has noted, crime rates for violent crime, murder, and rape began to go back up during recent years when there was a decreased focus on law enforcement. Fortunately, the FBI's final crime numbers for 2017 showed that crime rates have started to go back down.

However, I believe strong enforcement is only one aspect of community safety. It must also be fair enforcement. I think building good relationships between the police and the community is also essential. Moreover, I am a big believer in federal partnerships with state and local police officers. If confirmed, I intend for the U.S. Marshals to continue those valuable relationships at the state and local levels.

- b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

RESPONSE: Please see my response to Question 5(a).

6. Do you believe it is an important goal for there to be demographic diversity among law enforcement personnel? If not, please explain your views.

RESPONSE: I know that diversity of backgrounds has been a challenge generally in federal law enforcement hiring, and I assure you that I take the diversity of the USMS workforce seriously. I believe that employee diversity is an operational necessity for all of the missions of the U.S. Marshals Service (USMS).

In July of this year, the USMS received excepted service hiring authority for the hiring of Deputy U.S. Marshals. I look forward to learning more about this authority and the flexibility that it gives the USMS to recruit and hire from more diverse applicant pools than they have previously.

⁹ *Id.*

**Nomination of Donald Wayne Washington,
to be Director of the United States Marshals Service
Questions for the Record
Submitted December 5, 2018**

QUESTIONS FROM SENATOR HARRIS

1. According to *The Leesville Daily Leader*, when you were U.S. Attorney in 2008, you said that the U.S. Attorney's Office should "charge and pursue the most serious charges and accept less only if the criminal provides substantial assistance in prosecuting another of his brother criminals."

- a. Does this still accurately reflect your view?

RESPONSE: Yes.

- b. Do you believe that strict charging practices improve public safety? If yes, please provide citations.

RESPONSE: I believe it is the job of the prosecutor to enforce federal law as written and passed by Congress. Congress has given prosecutors the tools to improve public safety. The policy of pursuing the most serious, readily-provable charges is consistent with the longstanding practices of the Department of Justice and allows prosecutors to faithfully discharge their duties, rather than following unilateral determinations by the Attorney General about which laws will be enforced and to what extent. This does not require prosecutors to seek the harshest sentence possible, but just to pursue the most serious, readily provable offense.

- c. More generally, do you believe that strict law enforcement practices improve public safety? If yes, please provide citations.

RESPONSE: I am not sure how you are defining strict law enforcement practices. As I mentioned in my response to Question 1(b), I believe that it is the job of law enforcement to enforce federal law as written and passed by Congress. Congress plays an important role in defining criminal acts and the penalties for such acts.

2. In *United States v. Sanchez-Gomez*, the Supreme Court considered the constitutionality of a district-wide policy that allowed U.S. Marshals to hold defendants in "five-point restraints" during pre-trial hearings. Five-point restraints are those that hold defendants in handcuffs, leg irons, and chains—a practice that the Ninth Circuit said treated defendants "like a bear on a chain."

- a. **Do you believe the U.S. Marshals Service should implement an organization-wide policy for restraining inmates? Why or why not?**

RESPONSE: My understanding is that the United States Marshals Service (USMS) currently has an agency-wide policy of fully restraining prisoners for all movements. I am generally familiar with judicial security and prisoner operations issues, but I look forward to learning more about the specifics if I am confirmed.

- b. **Do you support an organization-wide policy that requires U.S. Marshals to restrain inmates in the least restrictive manner possible? Why or why not?**

RESPONSE: My position regarding this issue will be informed by consultation with the experts in judicial security and prisoner operations at the USMS, who are in the best position to advise as to the most appropriate courtroom security procedures to protect the prisoner, the court family, and the public.

- c. **What factors should be considered when determining whether an inmate should be restrained during a pre-trial hearing?**

RESPONSE: I look forward to consulting with experts in judicial security and prisoner operations at the USMS, who are in the best position to advise as to the most appropriate courtroom security procedures to protect the prisoner, the court family, and the public. As with any situation, I will examine the relevant law and the facts when making a decision.

- d. **When, if ever, is it appropriate to restrain an inmate in “five-point restraints”?**

RESPONSE: The USMS’s current nationwide policy directs the use of full restraints for transport and non-jury courtroom proceedings. I look forward to learning more about this issue.

3. If confirmed, you will be in a position to hire staff and oversee the hiring practices of the U.S. Marshals Service.

- a. **Do you believe that diversity is important for the U.S. Marshals Service? Why or why not?**

RESPONSE: I know that diversity of backgrounds has been a challenge generally in federal law enforcement hiring, and I assure you that I take the diversity of the USMS workforce seriously. I believe that employee diversity is an operational necessity for all of the missions of the USMS.

In July of this year, the USMS received excepted service hiring authority for the hiring of Deputy U.S. Marshals. I look forward to learning more about this authority and the flexibility that it gives the USMS to recruit and hire from more

diverse applicant pools than they have previously.

- b. **Would you commit to executing a plan to ensure that qualified minorities and women are given serious consideration for positions of power and/or supervisory positions?**

RESPONSE: An organization should ideally have leaders that reflect the diversity of its workforce. I am committed to ensuring that all qualified candidates have a chance at leadership positions at the USMS, and diversity of candidates will be one of several factors that I will consider when I evaluate new candidates for leadership positions.