

**CONFIRMATION HEARING  
ON THE NOMINATION OF  
HON. MERRICK BRIAN GARLAND  
TO BE ATTORNEY GENERAL  
OF THE UNITED STATES**

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

FIRST SESSION

FEBRUARY 22 and 23, 2021

**Serial No. J-117-1**

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**CONFIRMATION HEARING  
ON THE NOMINATION OF  
HON. MERRICK BRIAN GARLAND  
TO BE ATTORNEY GENERAL  
OF THE UNITED STATES**

**MONDAY, FEBRUARY 22, 2021**

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

The Committee met, pursuant to notice, at 9:30 a.m., in Room 216, Hart Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

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

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

Chair DURBIN. This hearing will come to order.

Today the Senate Judiciary Committee will hold a hearing on the nomination of Judge Merrick Garland to be the 86th Attorney General of the United States. Judge Garland, I want to welcome you and your family. I want to welcome you back to the Senate Judiciary Committee. I know this return trip has been a long time in planning, and you are here finally.

This will be the Judiciary Committee's first hearing of the 117th Congress. Before I turn to my opening remarks, I would like to just take a few minutes to make some acknowledgements.

I want to welcome my friend, Senator Chuck Grassley, as the Committee's Ranking Member. When I first came on the Senate Judiciary Committee 24 years ago, I was the Ranking Member on a Subcommittee with you, and we dealt with the issue of bankruptcy. Now, Illinois and Iowa sit next to each other, and so did Durbin and Grassley. We have our differences, but Senator Grassley and I have worked together on important legislation over the years, most recently on criminal justice and sentencing reform. I look forward to continuing that work in this Congress.

I want to recognize the outgoing Chair and Ranking Member: Senator Lindsey Graham, who will join us remotely this morning, and Senator Dianne Feinstein.

Senator Graham, as is true of Senator Grassley, while we do not always agree, has always been a welcome partner on many issues, including one of the most challenging issues, immigration.

Senator Feinstein I want to commend for leading the Committee Democrats with grace and resolve over the past 4 years. I know she will continue to be an important voice on this Committee on a host of issues, including in her new capacity as the Chair of the Human Rights and Law Subcommittee, which I was proud to chair in past Congresses.

I also want to welcome our new Committee Members who will either be here in person—I see one in person and one probably remote: Senators Padilla and Ossoff on the Democratic side, Senator Cotton on the Republican side. I look forward to working with each of you.

There are some historic firsts in the Judiciary Committee this year.

Senator Padilla, our new Senator from California, will be chairing the Subcommittee on Immigration, Citizenship, and Border Safety. I am honored that he is the first Latino Senator to chair that Subcommittee, and we look forward to his leadership.

Senator Cory Booker of New Jersey will chair the Subcommittee on Criminal Justice and Counterterrorism. He is the first Black Senator to chair a Judiciary Subcommittee, and we could not imagine a better choice at the helm of this particular Subcommittee.

To all of our other Members who are returning to serve on the Committee, welcome back.

I want to thank all the Committee Members for agreeing to hold this Committee hearing and vote on Judge Garland's nomination. It is a great honor to serve on this Committee. The Senate established the Judiciary Committee by resolution on December 10th, 1816, making it among the very first standing Committees of the Senate. This Committee has seen many consequential debates and approved many important nominations and landmark legislation.

In the Committee's history, there has only been one prior Illinois Senator to serve as Chair, Judge Garland: Lyman Trumbull, who led the Committee from 1861 to 1872, and during his term of service was a Democrat, a Republican, a Radical Republican, and a Democrat again. He was the most bipartisan Senator you can imagine. His tenure was also distinguished by passage of historic legislation: the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, the Freedman's Bureau Acts of 1865 and 1866, the Civil Rights Act of 1866. The last of these was introduced by Trumbull and ultimately became the Nation's first civil rights law.

As Chair, Trumbull saw a Nation torn apart by original sin—slavery—and widespread violence and injustice that continued even after the Thirteenth Amendment's passage, as African Americans throughout the Nation faced racism. Our Nation is still dealing with the consequences of these injustices. People of color face systemic racism, and we are still working to rid this Nation of the horrific legacy of slavery and Jim Crow. This Committee can make a difference. We have the jurisdiction and the opportunity to do it through legislation, oversight, and nominations, including this nomination of Merrick Garland to serve as our Nation's next Attorney General.



There have been few moments in history where the role of Attorney General and the occupant of that post have mattered more. Judge Garland, should you be confirmed, and I have every confidence you will be, you will oversee a Justice Department at an existential moment. After 4 tumultuous years of intrigue, controversy, and brute political force, the future of the Department is clearly in the hands of the next Attorney General. Under Attorney General Sessions and his successor, Bill Barr, the Justice Department literally became an arm of the White House, committed to advancing the interests of President Trump, his family, and his political allies. It came as little surprise then that the U.S. Department of Justice became the Trump Department of Justice.

General Barr stated clearly that he believed the Attorney General was the President's lawyer, not the Nation's, and what were the results? Too many in the Department's senior roles cast aside the rule of law. Trump appointees in the Department sidelined career public servants, from line attorneys to FBI agents, limited their roles, disregarded their nonpartisan input, overriding their professional judgment, and falsely accusing them of being members of the deep state. And the Department pursued policies of almost unimaginable proportions, from separating thousands—thousands—of innocent migrant children from their parents to banning innocent Muslims from traveling to our shores; from defending and even ordering violent crackdowns on peaceful protestors, to parroting baseless lies about voter fraud in the lead-up to the 2020 election.

The misdeeds of the Trump Justice Department brought this Nation to the brink. In fact, as we learned after President Biden's inauguration, the senior official in the Trump Justice Department, Jeffrey Clark, plotted with President Trump for one final stab at the results of the 2020 election. They were thwarted at the last minute by Justice Department attorneys who threatened to resign en masse rather than join their effort.

So, Judge Garland, it is no overstatement to say that your nomination is one of the most critical in Department history. When I reflect on it, I am reminded of two previous Attorneys General, one a Democrat, the other a Republican: Robert Kennedy, Edward Levi. Kennedy entered office at a time of political turmoil. Although the Nation had started down the path toward civil rights, Attorney General Kennedy recognized that equal rights and equal justice under law were still an aspiration for too many people of color in the United States.

In June 1963, several years into his tenure as AG, Kennedy testified before the House Judiciary Committee. He said, "The demonstrations of the past few months have only served to point out what thinking Americans have known for years: that this country can no longer abide the moral outrage of racial discrimination." He continued: "If we fail to act promptly and wisely at this crucial point in our history, the ugly forces of disorder and violence will surely rise and multiply throughout the land—and grave doubts will be thrown on the very premise of American democracy." The moral outrage of racial discrimination remains with us today as do the forces of disorder and violence, and, tragically, the Justice Department in the previous administration fanned the flames of dis-

crimination, but a restored Justice Department, a Department under new leadership, can, and, I believe, will, meet the moment.

There are great challenges ahead. The right to vote is under constant assault by those who wish to suppress the voices of communities of color. We have a criminal justice system still in urgent need of reform, and too many Americans, whether because of race, national origin, disability, sexual orientation, or gender identity, face inequality in their daily lives. It is time for the Department of Justice to confront these realities that unfortunately continue to threaten, as Robert Kennedy said, the very premise of American democracy.

Judge Garland, when I think of what you face in restoring integrity and independence to the Justice Department, I also think another—of another one of your predecessors and fellow Chicagoan, Edward Levi, who likewise assumed the office at a time of turmoil. Levi had, of course, been president of the University of Chicago before his nomination to serve as Attorney General for President Ford. And when he came before this Committee for his confirmation in 1975, he was asked about removing the Justice Department from the ambit of partisan politics. This is what he said: “I do not believe that the administration of justice should be a partisan matter in any sense, but I do not think that cases should be brought to reward people or to punish them for partisan reasons.” He continued: “I think it would be a bad thing for the country to believe that the administration of justice was not evenhanded because it was in some ways tilted by partisan politics.” Why was this question asked? Why was Levi’s response so important? Just 2 years earlier, President Nixon had attempted to use the Justice Department as his personal law firm, ordering Elliot Richardson to fire Archibald Cox, the special prosecutor overseeing Watergate. Richardson rightly refused to fire Cox, as did his deputy, William Ruckelshaus, and so each of them were fired in what became known as the Saturday Night Massacre. Richardson and Ruckelshaus refused to act in a way contrary to the rule of law. They refused to put partisan politics and the personal interests of President Nixon above fidelity to the Constitution and the principle of equal justice for all, even those who occupy the White House.

In the wake of Nixon’s action when the Justice Department faced a reckoning with the Department’s legacy still tarnished and public confidence shaken, President Gerald Ford turned to Levi to restore honor, integrity, and independence. Well, Judge Garland, the Nation now looks to you to do the same. The public’s faith in the Department of Justice has been shaken, the result of Department leadership consumed with advancing personal and political interests. In fact, had it not been for several Justice Department attorneys I mentioned earlier threatening to resign this January, President Trump might have gone even further than he did to overturn the election results, and that raises critical questions this Committee and you must reckon with. Judge Garland, we are confident we can rebuild the Department’s once-hallowed halls, that you can restore the faith of the American people in the rule of law and deliver equal justice.

I want to close by returning to the attempt to overturn the 2020 Presidential election. You probably noticed when you came to Cap-

itol Hill how it has changed. You have lived most of your life and I have lived a large part of mine coming to this Capitol Hill to visit, to work, really to honor the traditions of these buildings. We now have established a perimeter around this building. It stretches for blocks in every direction, and a 10-foot-high fence that walls off this Capitol Building from the rest of America. At the top of the fence, barbed wire. Inside the fence, we have not only our loyal police force, but men and women of the National Guard from all over the United States, thousands of them still standing guard over this building.

What a commentary on the current state of America that we face today, but it is needed. We were here on January 6th. We lived through it. We were lucky. For most of us, we were not in direct contact with the mob. Others were and sadly paid a heavy price for it. For months, President Trump spread falsehoods about the election and fraudulent voting, and before a single vote had been cast, he claimed that he can only lose as a result of fraud. Far too many Americans gave credence to these unproven, dangerous claims. We know the result. We saw the attempt to subvert democracy culminating in the events January 6th when this armed mob stormed the Capitol, sought to disrupt the counting of Electoral College votes, violently targeted Congress, our colleagues in the House, our families, even the Vice President's staff, ultimately causing the senseless deaths of Capitol Police Officers Brian Sicknick and Howard Liebengood, and D.C. Police Officer Jeffrey Smith.

When you're confirmed, Judge Garland, you, along with the rest of the Nation, will continue to grapple with the January 6th attacks, but you will be in a unique position with a unique responsibility. As the Nation's chief law enforcement officer, you will be tasked with a solemn duty to responsibly investigate the events of that day, to prosecute all of the individuals responsible, and to prevent future attacks driven by hate, inflammatory words, and bizarre conspiracy theories.

You know what it is like. You have been there before. You have seen domestic terrorism. You led the investigation and prosecution of the Oklahoma City bombing, and in doing so, made the Nation safer and bought some measure of peace and healing to the victims and their families. I am confident that, given this prior experience, you are up to the task the Department now faces in the wake of January 6th. In fact, I can think of few people better suited to do it.

I look forward to hearing your testimony, but at this point, I will turn to my colleague, Senator Grassley.

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

Senator GRASSLEY. Thank you, Senator Durbin.

Welcome to Judge Garland. I am glad that you have been honored with this appointment to be Attorney General of the United States. Welcome, the public at large, most of them very remote, not the large crowds we normally have when we have an Attorney General nominee come before this Committee.

I have a longer statement that I will put in the record, and I have still got plenty to say even this morning. I, of course, con-

gratulate Senator Durbin on his new role as Chairman. He has already referred to he and I getting acquainted on the Administrative Oversight Subcommittee and working on what now is badly needed law when agriculture is in bad shape, bypassing Chapter 12 agricultural bankruptcy legislation, and I look forward to working with you in the future here. And I also want to express my admiration for Senator Feinstein, the previous Democrat Leader of this Committee. She and I have worked closely together during the years that I chaired and she was Ranking Member, and I thank you for your leadership.

I would also like to say a word about Judge Garland. This is, of course, Judge Garland's first time appearing before this Committee since ascending to the Federal bench. I had something to do with that. After the death of Justice Scalia, my Republican colleagues and I decided not to hold a hearing on his nomination; in other words, meaning Judge Garland's nomination to the Supreme Court, having been nominated by President Obama. As you recall, it was an election year with a divided Congress. The position I took was consistent with previously published—publicly expressed positions by other Senators and Democratic Senators previous to that. So, yes, it is true that I did not give Judge Garland a hearing. I also did not mischaracterize his record. I did not attack his character. I did not go through his high school yearbook. I did not make his wife leave the hearing in tears. I took a position on hearings, and I stuck to it, and that is it. I admire Judge Garland's public service. Just because I disagreed with anyone being nominated did not mean that I had to be disagreeable to that nominee. Unfortunately, that is not always the way it works in this town that has great political division.

Judge Garland is here, and we are here to talk about his nomination to be Attorney General, and I extend a warm welcome to you, Judge Garland, and your family and friends that are probably very honored because of your nomination. This, of course, is a worthy capstone on a storied career that you have had. Judge Garland is a good pick to lead the Department of Justice. He has decades of experience as one of the most respected appellate judges in the country, and, before that, being a great prosecutor. When the domestic terrorist, Timothy McVeigh, was executed for his crimes, we had Merrick Garland to thank for that successful prosecution.

No one doubts that Judge Garland is qualified for his job, but, of course, an Attorney General is more than just qualifications. The top law enforcement officer of the United States must be committed to enforcing the rule of law. As our former colleague and former Attorney General, John Ashcroft, likes to say, "The Department of Justice is the only Cabinet agency whose name is an ideal." It is not the Department of Law Enforcement, but the Department of Justice. Justice is equality under the law. There is one law for all Americans regardless of race, color, creed, or connection. Is Judge Garland up to that task? I think he is, but today our goal is to ask him questions to find out.

The Department of Justice has taken important steps to live up to these ideals expressed by Attorney General Ashcroft, and I think they have done well in that direction, particularly over the last 4 years. The Department has undertaken many successful initiatives

to reduce violent crime in all communities. It has sought to maintain the rule of law by reforming consent decrees, guidance documents, and “sue and settle” abuse. It has protected our civil liberties, in particular, defending our religious liberties, and pursuing Elder Justice. I hope that the Department of Justice continues these initiatives under you, Judge Garland.

What I do not want is a return to the Obama years. I do not want an Attorney General who bragged about being a wingman, and those are his words, to the President. That was Eric Holder notoriously describing himself. I do not want a Justice Department that abuses the FISA process to spy on American citizens. I do not want consent decrees that federalize law enforcement and cause murder rates to soar. I do not want a return to catch-and-release on the border. I could come up with many other examples.

Unfortunately, a lot of what we have seen so far from the Justice Department is discouraging. They have whiplashed inducing changes to litigation positions. They are going through rescinding excellent rule of law memorandums right out of the gate. President Biden is even reportedly firing nearly every Senate-confirmed U.S. Attorney regardless of what investigations they are supervising. That is troubling. That is why I am especially concerned about the Durham investigation.

Starting January 2017, I began an investigation on how the Justice Department and the FBI handled Crossfire Hurricane, its investigation into the Trump campaign and administration. Simply said, Crossfire Hurricane is a textbook example of what should not happen during investigations. What the Obama administration did to the Trump campaign transition and administration cannot ever happen again. If confirmed, you will have oversight of Special Counsel Durham’s review of Crossfire Hurricane. When Bill Barr appeared before the Committee for his nomination hearing, he said, “It is vitally important that a Special Counsel be allowed to complete his investigation.” Of course, he was referring to then-Special Counsel Mueller’s investigation. Today, you will need to be clear about what your position will be with regard to Special Counsel Durham. We should expect the same level of commitment from you to protect Durham as we expected from Barr to protect Mueller.

So, Judge Garland, I just want to say that I like you, I respect you, and I think you are a good pick for this job, but I have a lot of questions about how—about how you are going to run the Department of Justice.

Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Grassley.

At this time, we will have a formal introduction of Judge Garland. Two of our colleagues will be doing that. Because of your State of residence, Senator Chris Van Hollen of Maryland will be first, and because of your roots, Senator Tammy Duckworth, my colleague of Illinois, will be second. Both are joining us by Webex. There will be a statement made by Senator Cardin placed in the record.

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

Chair DURBIN. Senator Van Hollen.

**INTRODUCTION OF HON. MERRICK BRIAN GARLAND, NOMINEE TO BE ATTORNEY GENERAL OF THE UNITED STATES, BY HON. CHRISTOPHER VAN HOLLEN, A U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator VAN HOLLEN. Thank you, Mr. Chairman. Let me thank you, and Ranking Member Grassley, and all of our colleagues on the Senate Judiciary Committee for being here today. And I am really grateful for the opportunity to introduce the President's nominee for Attorney General, Judge Merrick Garland, who is not only a fellow Marylander, but somebody who I have known personally for many years. And I know that President Biden has picked a nominee with impeccable credentials and an unimpeachable character.

His experience stretches from the halls of the Justice Department to the Chambers of the U.S. Court of Appeals for the District of Columbia Circuit, and he embodies the decency, the impartiality, and the commitment to justice that our Nation deserves as the Attorney General of the United States. I am confident that if confirmed, Judge Garland will serve admirably and faithfully as the next Attorney General, and I am proud to present him to you and the Committee on behalf of myself, but also Senator Cardin, who, as you mentioned, Mr. Chairman, is fully in support of this nomination, but could not join us because of a scheduling conflict.

The Nation already knows Merrick Garland because of his Supreme Court nomination and as the former judge at the U.S. Court of Appeals for the District of Columbia Circuit, where he earned a reputation as one of our Nation's finest and fairest jurists. But his tenure on the D.C. Circuit was just the most recent achievement in a life dedicated to serving the rule of law. After excelling at law school, Judge Garland clerked for the Second Circuit Court of Appeals and then for the Supreme Court. He then rose through the ranks of a prominent law firm before jumping back into public service, feet first, as a Federal prosecutor in the U.S. Attorney's Office during the administration of President George Herbert Walker Bush, and then later served as the Principal Associate Deputy Attorney General at the Department of Justice.

As a senior DOJ official, Judge Garland was tasked with overseeing the case of the Oklahoma City bombing, one of the deadliest domestic terrorist attacks in American history. It left 168 Americans dead and hundreds more injured. Merrick Garland brought a steady hand to an operation that involved massive amounts of evidence, pressure from the public, and a large team with diverse skills and backgrounds. With fidelity to the law, meticulous attention to detail, and unrelenting focus, Merrick Garland helped bring the bomber, Timothy McVeigh, to justice. He has called this case the most important thing he has done in his life.

Mr. Chairman, Ranking Member, and Committee Members, we are going to need his experience as we once again confront the rise of domestic terrorism, particularly in the wake of the horrific events of January 6th. And the next Attorney General must not only take on the rise of white supremacist and radical militia groups, but also ensure that justice is rendered equally and fairly by promoting and ensuring racial equity, rooting out discrimination in our criminal justice system, addressing police reform, and ensur-

ing that we do not see a concerted effort to limit people's, citizens' right to vote in the United States of America.

As Judge Garland has himself stated, ensuring the rule of law and making real the promise of equal justice under the law are "the great principles upon which the Department of Justice was founded and for which it must always stand." Judge Garland has spent his career doing both, and I have no doubt he will honor that tradition as Attorney General. While his professional experiences have prepared him for this job, it is his character that makes him right for this moment. Should he be confirmed, Judge Garland will be charged with restoring credibility and independence to the Department of Justice, making it clear that the Department is not the political instrument of the White House. I know Merrick Garland is up to the task.

The lengthy list of testimonials speaking to his fairness and sound judgment span the political spectrum. He is respected by lawmakers, scholars, and lawyers of every legal persuasion and political philosophy. And on a personal note, I can attest to the fact that his brilliance is matched by his kindness. His many achievements have never gone to his head. He has always stayed humble and treated everyone with respect. Mr. Chairman, Ranking Member, Members of the Committee, it is for these reasons and many more that I am honored to present to you the President's nominee to serve as the next Attorney General of the United States, Judge Merrick Garland. Thank you.

Chair DURBIN. Thank you, Senator Van Hollen.

And now I am calling on my colleague and friend from Illinois, Senator Tammy Duckworth.

**INTRODUCTION OF HON. MERRICK BRIAN GARLAND, NOMINEE TO BE ATTORNEY GENERAL OF THE UNITED STATES, BY HON. TAMMY DUCKWORTH, A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Senator DUCKWORTH. I thank the Chairman. Thank you so much for this opportunity to introduce President Biden's nominee to serve as the next Attorney General of the United States. We in Illinois also claim Merrick Garland as a son of our State. He possesses the brilliance and the resilience, the experience and intellect, the expertise and integrity necessary to serve effectively as our next Attorney General. I am especially honored to be here today because I have full confidence in his capability to lead the Department of Justice in an independent and impartial manner. And he will defend the civil and constitutional rights of all Americans, no matter what they look like, who they love, how they pray, or their disability status.

Judge Garland hails from our home State of Illinois, Mr. Chairman. His father ran a small business out of his home, and his mother directed volunteer services at the Council for Jewish Elderly in Chicago. After graduating valedictorian at Niles West High School in Skokie, he won scholarships for both college and law school. He then graduated from Harvard University in 1974 and Harvard Law School in 1977. His breadth of experience stems in part from his time in private practice and judicial clerkships. He clerked for Judge Henry Friendly on the Second Circuit and Justice

William Brennan on the United States Supreme Court. However, his commitment to public service is perhaps even more clearly demonstrated by his successful tenure at the Department of Justice and his current seat on the United States Court of Appeals for the District of Columbia Circuit.

In 1979, Judge Garland joined the DOJ as a special assistant, and then, after a brief stint in private legal practice, led the Department as the Principal Associate Deputy Attorney General in 1997. During his tenure, which spanned both Republican and Democratic administrations, he led multiple high-profile investigations, working on a number of issues, including criminal, civil, anti-trust, appellate, espionage, and national security measures. He gained valuable experience as a prosecutor by trying and supervising numerous prosecutions and appeals. Notably, he played a key role in the prosecution of the Oklahoma City bombers, as has been previously noted.

Following his career at DOJ, the United States Senate confirmed his nomination for a lifetime appointment to serve on the D.C. Circuit. Judge Garland authored hundreds of opinions that addressed disability rights, criminal justice, and voting rights, among other issues, issues that affect Americans at every mile and every corner of this country. As a judge, he joined a unanimous panel decision that upheld a Department of Labor regulation requiring contractors to comply with the Rehabilitation Act of 1973. This decision upheld regulations that sought to protect employment opportunities for individuals living with a—with a disability like myself. It is this legacy of public service that gives me confidence that, if confirmed to be our Nation's chief law enforcement officer, Judge Garland will not only modernize and strengthen enforcement of the Americans with Disabilities Act, but will restore integrity and lift morale throughout the DOJ.

Judge Garland is ready to defend the constitutional and civil rights that our Nation so deeply values, and I know he will make all of us Illinoisans proud as our country's next Attorney General. Thank you.

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

Chair DURBIN. Thank you, Senator Duckworth.

Judge Garland, will you please stand to be sworn?

[Nominee is sworn in.]

Chair DURBIN. Thank you.

Before I turn to my questions, I think there is another element in the program here, your testimony. Let me turn to Judge Garland.

**STATEMENT OF HON. MERRICK BRIAN GARLAND, NOMINEE  
TO SERVE AS ATTORNEY GENERAL OF THE UNITED STATES**

Judge GARLAND. Thank you, Mr. Chairman, Mr. Ranking Member, and Members of the Judiciary Committee. I am honored to appear before you today as the President's nominee to be the Attorney General.

I would like first to take this opportunity to introduce you to my wife, Lynn; my daughters, Jessie and Becky; and my son-in-law,



Xan. I am grateful to them and to my entire extended family that is watching today on C-SPAN every day of my life.

The President nominates the Attorney General to be the lawyer not for any individual, but for the people of the United States. July 2020 marked the 150th anniversary of the founding of the Department of Justice, making this a fitting time to remember the mission of the Attorney General and of the Department. It is a fitting time to reaffirm that the role of the Attorney General is to serve the rule of law and to ensure equal justice under law. And it is a fitting time to recognize the more than 115,000 career employees of the Department and its law enforcement agencies, and their commitment to serve the cause of justice and protect the safety of our communities. If I am confirmed as Attorney General, it will be the culmination of a career I have dedicated to ensuring that the laws of our country are fairly and faithfully enforced and the rights of all Americans are protected.

Before I became a judge almost 24 years ago, a significant portion of my professional life was spent at the Justice Department as a special assistant to Ben Civiletti, the last of the trio of post-Watergate Attorneys General, as a line assistant U.S. Attorney, as a supervisor in the Criminal Division, and, finally, as a senior official in the Department. Many of the policies that the Justice Department developed during those years are the foundation for reaffirming the norms that will ensure that the Department adheres to the rule of law. These are policies that protect the independence of the Department from partisan influence in law enforcement, that strictly regulate communications with the White House, that establish guidelines for FBI domestic operations and foreign intelligence collection, that ensure respectful treatment of the Press, that read the Freedom of Information Act generously, that respect the professionalism of DOJ's employees, and that set out principles of Federal prosecution to guide the exercise of prosecutorial discretion.

In conversations that I have had with many of you before this hearing, you have asked why I would agree to leave a lifetime appointment as a judge. I have told you that I love being a judge, but I have also told you that this is an important moment for me to step forward because of my deep respect for the Department of Justice and for its critical role of ensuring the rule of law.

Celebrating DOJ's 150th year reminds us of the origins of the Department, which was founded during Reconstruction in the aftermath of the Civil War, to secure the civil rights that were promised in the Thirteenth, Fourteenth, and Fifteenth Amendments. The first Attorney General appointed by President Grant to head the new Department led it in a concerted battle to protect Black voting rights from the violence of white extremists, successfully prosecuting hundreds of cases against white supremacist members of the Ku Klux Klan. Almost a century later, the Civil Rights Act of 1957 created the Department's Civil Rights Division, with the mission to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society.

That mission on the website of the Department's Civil Rights Division remains urgent because we do not yet have equal justice. Communities of color and other minorities still face discrimination

in housing, in education, in employment, and in the criminal justice system, and they bear the brunt of the harm caused by the pandemic, pollution, and climate change. One hundred fifty years after the Department's founding, battling extremist attacks on our democratic institutions also remains central to the Department's mission.

From 1995 to 1997, I supervised the prosecution of the perpetrators of the bombing of the Oklahoma City Federal Building, who sought to spark a revolution that would topple the Federal Government. If confirmed, I will supervise the prosecution of white supremacists and others who stormed the Capitol on January 6th, a heinous attack that sought to disrupt a cornerstone of our democracy: the peaceful transfer of power to a newly elected Government.

And that critical work is but a part of the broad scope of the Department's responsibilities. The Justice Department protects Americans from environmental degradation and the abuse of market power, from fraud and corruption, from violent crime and cybercrime, and from drug trafficking and child exploitation, and it must do all of this without ever taking its eye off of the risk of another devastating attack by foreign terrorists. The Attorney General takes an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic.

I am mindful of the tremendous responsibility that comes with this role. As Attorney General, later Supreme Court Justice Robert Jackson, famously said: "The prosecutor has more control over life, liberty, and reputation than any other person in America. While prosecutors at their best are one of the beneficent forces in our society, when they act from malice or other base motives, they are one of the worst." Jackson then went on to say: "The citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches the task with humility." That was the prosecutor I tried to be during my prior service in the Department of Justice. That is the spirit I tried to bring to my tenure as a Federal judge. And if confirmed, I promise to do my best to live up to that ideal as Attorney General. Thank you.

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

Chair DURBIN. Thank you, Judge Garland.

Before I turn to my questions, I want to lay out a few mechanics for the hearing. Senators will have 8 minutes in the first round of questions, followed by a 5-minute second round, and I ask Members to do their best to stay within their allotted of time. We will take a break every once in a while for 10 minutes. I am hoping the first will be sometime near 11. At about 12:15 or 12:30, we will break for lunch for 30 minutes. I beg you to stick with that schedule if you can and be back in time so that we can keep the hearing moving along.

So let me at this point turn to questions.

You were sent to Oklahoma City in 1995. What happened there was the deadliest act of homegrown domestic terrorism in modern American history. A hundred and sixty-eight people had been killed, including 19 children. Hundreds were injured. You were supervising the prosecution of Timothy McVeigh and Terry Nichols,

who were accused of being complicit in leading that destruction. Now, if you are confirmed as Attorney General, which I believe you will be, you will face what is known as the biggest, most complex investigation in Justice Department history, and that is the investigation around the events of January 6th. Two hundred and thirty have been arrested so far. Some 500 are under investigation. We know that the death of at least one police officer is one of the major elements in this investigation.

I would like to ask you to reflect on two things. What is going on in America? Was Oklahoma City just a one-off unrelated to what happened here? Can you measure, based on what you have learned so far, what kind of forces are at work to divide and destroy the American Dream? Second, when it comes to this prosecution, are there elements that we should consider in terms of law enforcement to deal with this rising threat to the American democracy?

Judge GARLAND. Thank you, Senator. Thank you very much for the opportunity to address the Committee today. I am grateful for this opportunity.

I do not think that this is necessarily a one-off. FBI Director Wray has indicated that the threat of domestic terrorism, and particularly of white supremacist extremists, is his number one concern in this area. This is coupled with an enormous rise in hate crimes over the past few years. There is a line from Oklahoma City, and there is another line from Oklahoma City all the way back to the experiences that I mentioned in my opening with respect to the battles of the original Justice Department against the Ku Klux Klan. We must do everything in the power of the Justice Department to prevent this kind of interference with the policies of American democratic institutions, and I plan, if you now confirm me for Attorney General, to do everything in my power to ensure that we are protected.

Chair DURBIN. Judge Garland, it goes without saying, but we ought to make it a record, we abhor violence whether it comes from the right or left, whatever its source. It has no place in responsible constitutional dialogue in America. Currently, though, we are faced with elements that were not there 25 years ago in Oklahoma City: a proliferation of weapons; second, social media and the internet which serves as a gathering place for many of these domestic terrorists. What are your thoughts about how we should deal with those elements from the law enforcement viewpoint?

Judge GARLAND. Well, Mr. Chairman, I certainly agree that we are facing a more dangerous period than we faced in Oklahoma City, than at that time. From what I have seen, and I have no inside information about how the Department is developing its work, it looks like an extremely aggressive and perfectly appropriate beginning to an investigation all across the country in the same way our original Oklahoma City investigation was, but many times more. I do not yet know what additional resources would be required by the Department, but I can assure you that this will be my first priority and my first briefing when I return to the Department, if I am confirmed.

Chair DURBIN. Judge Garland, several years ago, I went to an immigration court hearing in downtown Chicago. It was in a high-

rise Loop building. I met the immigration court judge. She had been on the job almost 20 years and seemed like a very conscientious and fair person. She asked me to stay for the docket call, particularly for the first clients on the docket. The first clients on the docket were a 4-year-old girl named Marta. When the judge asked that all of the people in the courtroom be seated, she had to be helped into the chair. It was too tall for her to get into. She was handed a stuffed animal to hold during the hearing. At the same table was a young boy with the unlikely name Hamilton, who was given a little Matchbox car, which he played with on top of the table. He was 6 years old. They were the victims of the Zero Tolerance Policy. We remember it well. Thousands of children were forcibly removed from their parents, separated and many times lost in the bureaucracy.

Some have incorrectly stated that that administration policy by the Trump administration was just a continuation of Obama-era policy. That is not true. The Obama administration did not have policies that resulted in the mass separation of parents and children, and on rare occasion separations occurred, this was due to suspicion of trafficking or fraud, not because of an intentional, cruel policy to separate children.

The Justice Department's Inspector General conducted an investigation of the Zero Tolerance Policy and noted that the Justice Department was "the driving force" in that policy. There are still a lot that we do not know about that policy and the accountability for the officials who were responsible for it, so let me ask you this. This Committee is going to hold oversight hearings to get to the bottom of it. Will you commit to cooperate with those investigations?

Judge GARLAND. Senator, I think the oversight responsibility of this Committee is one of its very most important things. It is a duty imposed by the Constitution, and I greatly respect it. I think that the policy was shameful. I cannot imagine anything worse than tearing parents from their children, and we will provide all of the cooperation that we possibly can.

Chair DURBIN. I thank you for that. When it comes to congressional oversight, this Committee has a role in restoring independence and integrity to the Justice Department through oversight hearings. It has a longstanding tradition of holding annual Justice Department oversight hearings, but sadly, it has been 3 years since the Attorney General has been called before this Committee. I pledge that as Chair, I will hold annual DOJ oversight hearings where Members from both sides of the aisle can ask important questions of you in that capacity. I do not want to go into detail, but I would ask you obviously, would you agree to cooperate in that commitment to oversight hearing?

Judge GARLAND. Of course, if I am confirmed, I will certainly cooperate.

Chair DURBIN. And when requests are made for information by Members of the Committee, I hope that I can also have your commitment to cooperation in providing timely answers.

Judge GARLAND. Yes, Mr. Chairman, we will be as responsive as we possibly can. As I said, I have great respect for and belief in the oversight role of this Committee.

Chair DURBIN. Thank you.

Senator GRASSLEY.

Yes. Since you are a currently sitting judge, you are bound by the Code of Conduct of U.S. Judges. Nevertheless, I hope that we can get frank answers from you on your views. And when we talked last on the phone, you told me you would get guidance from the Administrative Office on what you can or cannot say. I assume that you sought that guidance. If so, what did they advise you?

Judge GARLAND. Yes, Senator Grassley, I did. And they advised me just as you and I thought that they would. Canon 3 bars me from commenting on any pending or impending case that is in any court, but I am free to talk about policy with you.

Senator GRASSLEY. Okay. I am going to go to the Durham investigation. At Barr's hearing, he stated the following in regard to Mueller's investigation, "It is vitally important that the Special Counsel be allowed to complete his investigation." Also at that same hearing, Senator Feinstein asked, "Will you commit to providing Mr. Mueller with the resources, funds, and time needed to complete his investigation?" Attorney General Barr answered Senator Feinstein with a one word "yes."

With respect to Special Counsel Durham's investigation, I expect that he will be allowed to complete his investigation. If confirmed, will you commit to providing Special Counsel Durham with the staff, resources, funds, and time needed to thoroughly complete the investigation?

Judge GARLAND. Well, Senator, I do not have any information about the investigation as I sit here today, and another one of the very first things I am going to have to do is speak with Mr. Durham, figure out how his investigation is going. I understand that he has been permitted to remain in his position. And sitting here today, I have no reason to think that that was not the correct decision.

Senator GRASSLEY. Okay. And I suppose that would be an answer that he would only be removed for cause then? Would that be your position?

Judge GARLAND. Well, Senator, I really do have to have an opportunity to talk with him. I have not had that opportunity. As I said, I do not have any reason from what I know now, which is really very little, to make any determination on that ground. But I do not have any reason to think that he should not remain in place.

Senator GRASSLEY. If confirmed, would you commit to publicly releasing Special Counsel Durham's report, just like Mueller's report was made public?

Judge GARLAND. So, Senator, I am a great believer in transparency. I would, though, have to talk with Mr. Durham and understand the nature of what he has been doing and the nature of the report. But I am a big—very much committed to transparency and to explaining Justice Department decisionmaking.

Senator GRASSLEY. At this point, I am not going to take exception to the answers you gave me about Durham because I think you are an honorable person. They are not quite as explicit as I hoped they would be, like we got from Barr for the Mueller inves-

tigation, but I think you have come close to satisfying me, but maybe not entirely.

We are in the midst of a polydrug crisis. In addition to opioids, methamphetamine, and cocaine, fentanyl and fentanyl analogs are plaguing our country. Increasingly, sophisticated drug trafficking organizations, both domestic and internationally, try to skirt the law by changing their molecular structure. So the Centers for Disease Control has found that drug overdose deaths rose to their highest level ever measured during the pandemic, with the overall jump in deaths being driven most substantially by drugs like fentanyl.

We must stop this fentanyl substance from entering our neighborhoods and killing thousands of Americans. So my question is, as you lead the Justice Department, having oversight over the Drug Enforcement Administration within that Department, and they will be addressing the spread of fentanyl analogs and related substances by pushing for continued class-wide prohibition of fentanyl.

So I did not quite make my question clear. Would you lead the Justice Department in pushing for continued class-wide prohibition of fentanyl analogs?

Judge GARLAND. Senator, I am familiar with this problem. One of my roles as the Chief Judge of the D.C. Circuit was to serve on the Pretrial Services Committee—the committee for the Pretrial Services Agency for the District. And we were constantly advised of the fact that the formula was being slightly changed constantly, and this was a problem both for detection as well as for the problem of enforcement.

To be honest, I am no chemist. This is one of the reasons I ended up being a lawyer instead of a doctor. But I would need to look at what would be proposed. But I do understand the scope of this problem, and I am in favor of doing something either by scheduling or legislation, if I am confirmed, that would address the problem that you are talking about, which is an enormous problem for enforcement.

Senator GRASSLEY. I want to go to the death penalty because we have some people already prosecuted where the death penalty has been advocated or sought, and one of those is the people that were involved in the Boston Marathon. So the question, the Justice Department, again under the Obama administration, sought and received an appropriate sentence of death. That sentence is currently being appealed. Will you commit to defending these sentences on appeal?

Judge GARLAND. Well, Senator, this—now we are rubbing up against exactly the problem that you asked me about in the beginning. These are pending cases, and as a sitting judge, the Canons bar me from making comment on pending cases.

Senator GRASSLEY. My last question will have to deal with the investigation that is underway by some of us in Congress about Hunter Biden. Have you discussed the case with the President or anyone else?

And I do not expect you to discuss your private conversation with the President, but Members of this Committee always ask judges or other people what your—did you discuss with the President, for

instance, your position on abortion. So have you discussed this Hunter Biden case with the President or anyone else?

Judge GARLAND. I have not. The President made abundantly clear in every public statement before and after my nomination that decisions about investigations and prosecutions will be left to the Justice Department. That was the reason that I was willing to take on this job, and so the answer to your question is no.

Senator GRASSLEY. Okay, thank you.

Chair DURBIN. Thanks, Senator Grassley.

Senator Leahy would be next, but he is outside of the jurisdiction of Zoom at the moment. I guess that is appropriate. And so Senator Feinstein will be recognized.

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

And welcome, Judge. Throughout your career, you have been praised by people on both sides of the aisle. When you were nominated to the Supreme Court, President Obama said you were “someone who would bring a spirit of decency, modesty, integrity, evenhandedness, and excellence.”

Similarly, Senator Orrin Hatch called you “a fine man” who would be a “moderate choice for the Court.” Even Carrie Severino of the conservative Judicial Crisis Network once called you “the best scenario we could hope for to bring the tension and the politics in the city down a notch.”

At a time when America feels more polarized than ever before, this sort of bipartisanship is truly rare. So I ask this question. Can all Americans, regardless of their political affiliation, count on you to faithfully and fairly enforce our laws?

Judge GARLAND. Yes, Senator. That is my personality. That is everything I have done in my career. And that is my vision for the Justice Department, to dispense the law fairly and impartially without respect to persons and without respect to political parties.

Senator FEINSTEIN. Thank you for that statement.

On January 6th, a group of white supremacists launched a terrorist attack on our Capitol in an attempt to overturn the results of a democratic election. Their attempt failed and resulted in at least five fatalities, including a Capitol Police officer. It also led Federal prosecutors to file over 180 charges and initiate 25 domestic terrorism cases.

So this is not the first time the Justice Department has been forced to investigate and prosecute white supremacists for an act of terrorism. You received high praise for investigating and supervising the prosecution of the Oklahoma City bombing perpetrators in 1995. So here is the question. What steps will you take to ensure that the perpetrators of the attack on our Capitol are brought to justice?

Judge GARLAND. Senator, I think this was the most heinous attack on the democratic processes that I have ever seen and one that I never expected to see in my lifetime. One of the very first things I will do is get a briefing on the progress of this investigation. I intend to give the career prosecutors who are working on this matter 24/7 all of the resources they could possibly require to do this, and at the same time, I intend to make sure that we look more broadly to look at where this is coming from, what other

groups there might be that could raise the same problem in the future and that we protect the American people.

And I know that the FBI Director has made the same commitment.

Senator FEINSTEIN. Thank you for that answer.

Over the last 4 years, the independence of the Attorney General has been repeatedly attacked. For example, President Trump once told The New York Times, "I have the absolute right to do what I want to do with the Justice Department."

Do you believe that, in fact, the President does have the absolute right to do what he wants with the Justice Department?

Judge GARLAND. The President is constrained by the Constitution, as are all Government officials. The issue here for us are the set of norms and standards to which this President, President Biden, has agreed, that he will not interfere with the Justice Department with respect to its prosecutions and investigations. Those decisions will be made by the Department itself and by—led by the Attorney General, and that they will be without respect to partisanship, without respect to the power of the perpetrator or the lack of power, without respect to the influence of the perpetrator or the lack of influence.

In all of those respects, the Department will be independent. The Department is a part of the executive branch, and for that reason, on policy matters, we follow the lead of the President, of the administration, as long as it is consistent with the law.

And the role of the Department is to advise the President and the administration and the other agencies about what is consistent with the law. That is our obligation, and we will do so objectively, based only on our reading of the law.

Senator FEINSTEIN. Well, thank you for that. I think you have laid it out clearly and directly, and it is very much appreciated.

If the President's interest and the public's interest are in conflict, which interest does the Attorney General represent?

Judge GARLAND. The Attorney General represents the public interest, particularly and specifically as defined by the Constitution and the statutes of the United States.

Senator FEINSTEIN. Do you believe that the President has the authority to order the Attorney General to open or close an investigation or prosecution?

Judge GARLAND. This is a hard question of constitutional law, but I do not expect it to be a question for me. As I just said to you, the President has promised that those decisions will only be made by the Attorney General, and that is what I plan to do. I do not plan to be interfered with by anyone. I expect the Justice Department will make its own decisions in this regard.

Senator FEINSTEIN. Well, thank you.

I am going to cease at this time, but I just want to say that I think you have had a remarkable career. You have done very special things and always in a very reasonable, sober, penetrating way. So I just want to say thank you for that.

Judge GARLAND. I am grateful, Senator. Thank you for that.

Senator FEINSTEIN. Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Feinstein.

We hope that Senator Graham, who is next up, is ready.



Senator Graham.

Senator GRAHAM. Can you hear me?

Chair DURBIN. We can hear you. You have 8 minutes.

Senator GRAHAM. Great. Yes, sir. Congratulations to you.

And Judge Garland, congratulations on your appointment. I think you are a very good pick for this job. So I am going to try to go through as much information as I can.

Do you promise to defend the Portland courthouse against anarchists? The Federal court building in Portland.

Judge GARLAND. Any attack on a Federal building or damage to a Federal building violates Federal statutes, and those who do it will be prosecuted.

Senator GRAHAM. Okay. When it comes to the people who attacked the Capitol on January 6th, will you let the Committee know if you need more resources?

Judge GARLAND. Yes, absolutely, Senator. I really do think one of my first jobs is to consult with the prosecutors and the agents who are investigating that matter and see what resources they need, and I am eager to have an invitation——

Senator GRAHAM. I think I speak for most——

Judge GARLAND. I am eager to have an invitation from the Senate to ask for more resources.

Senator GRAHAM. Sure, please. Thank you.

I think all of us want to prosecute every single person that deserves to be prosecuted. So whatever you need, I am sure you will get from this Committee.

Judge GARLAND. Thank you, Senator.

Senator GRAHAM. Have you read the Horowitz report?

Judge GARLAND. Senator, in our conversations, you asked me to read it. It is some 400 pages long, and I asked your permission to read only the also very long executive summary. And I have done that.

Senator GRAHAM. So what is your general take?

Judge GARLAND. Well, my general take is that there were certainly serious problems with respect to FISA applications, particularly for Mr. Page, and in the subsequent report to the way in which FISA applications are documented. The Inspector General had a substantial number of recommendations for how this could be fixed and how it must be fixed. I understand that he submitted those to the FBI Director, and I understand the FBI Director agreed totally and either has made those changes or is in the course of making them.

I intend, if I am confirmed, to speak more deeply and directly with Mr. Horowitz, the Inspector General, about this and with Director Wray and make sure that these and any other things that are necessary be done. I am always concerned and I have always been concerned that we be very careful about FISA. It is a tool that is very useful and important for investigations involving foreign agents.

Senator GRAHAM. That is good to hear. So, *Clinesmith*: Are you familiar with the fact that a lawyer for the FBI has been prosecuted, pled guilty to altering information to the FISA court?

Judge GARLAND. I did—I did read about that, yes, Senator.

Senator GRAHAM. What would happen to somebody under your charge that did that? How would you feel about the behavior?

Judge GARLAND. Well, somebody who makes a false statement to the FBI or the Inspector General during an investigation has violated 18 U.S.C. 1001, and I prosecute those myself.

Senator GRAHAM. Do you believe the Durham investigation is a legitimate investigation?

Judge GARLAND. Senator, I—I do not know anything really about the investigation.

Senator GRAHAM. Besides the Horowitz report, do you think somebody should look at what happened?

Judge GARLAND. Well, I do think somebody should look at what happened with respect to those FISAs, absolutely. And I believe the Inspector General has done that.

Senator GRAHAM. Based on what—your review of the Horowitz report, do you think Jim Comey was a good FBI Director?

Judge GARLAND. Senator, I really do not want to get into analyzing any of the previous Directors and—

Senator GRAHAM. Well, you know, you have been very political, and appropriately so at times. I just find it pretty stunning that you can't say, in my opinion, that he was a terrible FBI Director.

But have you ever been to the border? Have you ever been to the U.S.-Mexican border?

Judge GARLAND. No, sir. I have not.

Senator GRAHAM. So I would like you to go—because I just got back—because I learned that drug cartels are using our asylum laws against us. They will collect people to sort of rush the border, and once they are apprehended, they will claim asylum. And most of these claims, 90 percent are rejected, and that will take resources away from securing the border and detecting drugs and protecting the Nation against terrorism.

This is a behavior by the cartels. Will you look into that practice of using asylum claims by drug cartels to weaken border security?

Judge GARLAND. I had not known about this, and I will certainly look into this problem. I think the drug cartels are a major menace to our society, and the poison that they put into our streets is damaging communities of every kind. If they have a particular—

Senator GRAHAM. Well, I would ask—

Judge GARLAND. If they have a particular—

Senator GRAHAM. I would ask you to visit the border. I think you will find patriots there, and when they make mistakes, they need to be held accountable. But that is one of the toughest jobs in the country.

Judge GARLAND. Senator? Senator, I apologize for speaking over you just now, but there is a little bit of a lag.

Senator GRAHAM. I am sorry.

Judge GARLAND. It is not your fault. It is a lag in the technology, I think.

Senator GRAHAM. Okay. Well, I do—I have a southern accent. So that is—

Judge GARLAND. It is not the accent. I am familiar with southern accents.

Senator GRAHAM. It must be the internet. This is the 20th anniversary of 9/11. Are you concerned that al-Qaeda and ISIS types are going to try to hit us again?

Judge GARLAND. I am very concerned that foreign terrorist organizations will try to hit us again, yes. I do not know enough at this point about the capabilities of those two, but it really does not matter which foreign terrorist. The terrible thing is the attack.

And as I said in my opening statement, with all of the other things that the Justice Department has to do, it must always keep its eye on the ball with respect to foreign terrorist attack. I was sitting in my office, arriving at my office as the first planes—first plane hit the Trade Center, and I was sitting in my office and could see smoke rising over the Pentagon. I can assure you that this is top of mind for me.

Senator GRAHAM. Well, one of the reasons I am very inclined to support you is I believe what you just said is true. I think you have a very deep understanding of the threats America faces. And to my colleagues on the Committee, al-Qaeda has been diminished. ISIS, quite frankly, has been greatly diminished. But they are out there, and they are trying to—they will this year sometime—I hope I am wrong—let us know they are still there. So it is great to hear the potential future Attorney General understanding that our Nation is very much still under threat.

So when it comes to interacting with the Committee, we are going to be talking about Section 230 reform. What is your impression of Section 230 liability protection for Big Tech, and is it time to revisit that topic?

Judge GARLAND. Senator, I have to be the first to confess when I have relatively limited information about a subject. I have had one case on Section 230. It was a very straightforward application of the law. So, of course, I know what it is. I also know that many Members of this Committee have ideas for how it should be amended, and I would have to have an opportunity, if I am confirmed, to talk with you about that and to understand all the conflicting concerns and the complexities of how to alter it, if it is to be altered.

The devil in these sort of things is always in the details, and you on the Committee know more about this than I do, and I look forward, if I am confirmed, to having the chance to talk about it with you.

Senator GRAHAM. Thank you. Congratulations on your nomination.

Thank you, Mr. Chairman.

Judge GARLAND. Thank you, Senator.

Chair DURBIN. Thank you, Senator Graham.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman.

And welcome, Judge Garland.

Judge GARLAND. Thank you, Senator.

Senator WHITEHOUSE. People who have been prosecutors understand that it is not the legislature's business to meddle around in a prosecution. At the same time, we have oversight responsibilities. In your view, is it appropriate for Congress to ask that DOJ give an honest look at investigative matters?

Judge GARLAND. Senator, I know of your own long experience as a prosecutor, including some of it which overlapped with mine, and I am deeply respectful of it and appreciative of it. When you ask it that way, it is, of course, always possible for anyone to ask about matters like this.

The Department has to be very careful with respect to the Congress in the same way it has to be respectful—careful with respect to the White House, that no investigations get started just for partisan—and I am not in any way suggesting that that is what you are asking.

Senator WHITEHOUSE. Correct. No, I agree with you.

Judge GARLAND. But we have to be careful about this.

Senator WHITEHOUSE. And after the fact, once the investigation is closed or concluded, is it appropriate in the exercise of our oversight to assure that, in fact, an honest look was taken?

Judge GARLAND. Yes, of course, it is. There are, obviously, limitations on the Department's ability to speak. They include everything from grand jury material—

Senator WHITEHOUSE. Rule 6(e) and so forth.

Judge GARLAND [continuing]. And methods.

Senator WHITEHOUSE. Understood. Understood.

With respect to January 6th, I would like to make sure that you are willing to look upstream from the actual occupants who assaulted the building in the same way that in a drug case you would look upstream from the street dealers to try to find the kingpins and that you will not rule out investigation of funders, organizers, ring leaders, or aiders and abettors who were not present in the Capitol on January 6th.

Judge GARLAND. Senator—

Senator WHITEHOUSE. Fair question?

Judge GARLAND. Fair question, and again, your law enforcement experience is the same as mine. Investigations, you know, I began as a line assistant U.S. Attorney and was a supervisor. We begin with the people on the ground, and we work our way up to those who were involved and further involved. And we will pursue these leads wherever they take us.

Senator WHITEHOUSE. Thank you.

Judge GARLAND. That is the job of the prosecution.

Senator WHITEHOUSE. As Chairman Durbin mentioned, there have been widely reported problems within the Department in the last 4 years. The Judge Gleeson's brief for Judge Sullivan is one pretty stunning reproach of the Department. Judicial decisions out of the D.C. District Court and the Southern District district court have been pretty damning. And press reports, too many to mention, have raised concerns about problems within the Department during that period.

How do you plan to assess the damage that the Department sustained so that you can go forward with a clear understanding of what needs repair?

Judge GARLAND. Well, Senator, I am a strong believer in following the processes of the Department. That was my experience in all of my experiences at the Department, regardless of whatever level I served.

The traditional process is for issues to be raised before either the Inspector General or the Office of Professional Responsibility in the areas that you are talking about, that they conduct investigations—and they certainly seemed extremely capable of conducting thorough investigations—they then make recommendations. And that would be the normal procedures in the Department, and I would expect, if I am confirmed, that those would be the kind of procedures I would want to follow.

Senator WHITEHOUSE. Well, I would submit to you that you may want to take it on more systematically than that, but we can leave that for a later day.

On this Committee, and particularly on this side of this Committee, we have experienced more or less a 4-year stonewall of information from the Department of Justice and from the FBI. From 2017 to 2020, we had 25 DOJ and FBI witnesses who failed to answer some or all of the questions for the record that Senators asked them. Twenty-one answered none of the questions for the record from either side.

I have sent during the course of those years 28 different letters on various subjects that went completely unanswered. It got so bad that Chairman Graham brought the Deputy Attorney General up to meet with him and me to go through the list and try to figure out why the hell we were not getting answers and where the policy came from, the de facto policy of refusing to answer questions of Senators.

I think we need to understand what happened during that period, why these questions were not being answered. The base question, the point of entry is why were these questions not being answered? Upon whose instructions were these questions not being answered? Why? What was behind, what was the motive for refusing to answer these questions?

Once we have cleared that up, then I think we have got to go through the backlog of questions that the Department refused to answer. As you know, sometimes Congress asks questions that are touchy for a department. Somebody may have misbehaved. There may be wrongful conduct that has taken place.

And I hope you will agree that covering up misconduct is never an acceptable reason for refusing to answer questions of Congress.

Judge GARLAND. Well, I certainly agree that covering up anything is never an appropriate reason for not answering a question of Congress. There will be no policy, de facto or otherwise, if I am confirmed, that would direct the Department to not be responsive to this Committee and to its Members. I want the Department I lead to be as responsive as possible and, at the very least, to explain why, if it cannot answer a question or cannot answer a letter, why it cannot do so.

Senator WHITEHOUSE. Correct.

Judge GARLAND. That is the minimum you are entitled to.

Senator WHITEHOUSE. Correct. And I do not want this just going forward, I want to be able to go back and get answers to those backlogged questions that were wrongfully refused. Would you help us make sure that that happens?

Judge GARLAND. Yes, Senator. As we talked in our conversation before, I would definitely direct the previous questions be an-

swered. I only ask you and the other Members of the Committee, as a matter of resource and priority allocation, to give us—the Department some sense of the priorities of which ones still need to be answered and perhaps——

Senator WHITEHOUSE. Correct.

Judge GARLAND [continuing]. Even in what order.

Senator WHITEHOUSE. We will do that. And last, I have just a few seconds left, so I will just flag two things.

I think that the Office of Legal Counsel has taken a lot of hits, from the torture memos to the wiretap memos, to the Southern District decision to the D.C. Court decision, to its extremely self-serving and self-propagating view of Presidential investigations. This is a part of the Department that I think is in real trouble.

Another role of the Department is the policing and the intermediation of Executive privilege for an administration, and I think that is an area that has been in complete collapse. And I look forward, with my time now expired, to working with you to figure out what to do about OLC and what to do about the intermediative role of the Department of Justice when Executive privilege is asserted.

Judge GARLAND. Thank you, Senator. I look forward to speaking with you.

Chair DURBIN. Senator Cornyn.

Senator CORNYN. Welcome, Judge. I enjoyed our conversation the other day. Thank you——

Judge GARLAND. As did I, thank you.

Senator CORNYN. Thank you for that.

As I told you, my sole criterion for voting for your confirmation is your pledge to make sure that politics does not affect your job as Attorney General. And I believe you told me that you could make that commitment. Is that a commitment you can make here publicly today?

Judge GARLAND. Yes, absolutely. I would not have taken this job if I thought that politics would have any influence over prosecutions and investigations.

I do want to, just to be clear about—to clarify so as to not disappoint you. With respect to policies of the administration, which I assume are driven by politics—although as a judge, I would not know for sure—it is our obligation to advance the policies of the Department, as long as they are consistent with the law. And our evaluation of the law has to be based only on the law and not politics.

Senator CORNYN. Thank you for that clarification.

I think being Attorney General has got to be the toughest job in the United States Government because you serve at the pleasure of the President, but you also have, as you appropriately point out, obligation to equal justice and impartial enforcement of the law. If you were asked to do something that you considered to be in violation of the law or unethical, would you resign?

Judge GARLAND. Well the first thing I would do is to tell the President or whoever else was asking me to do that that it was unlawful. I do not expect this to happen with this President, who has made it completely clear, publicly and in private, that he will not do that. But of course, if I am asked to do something and an alternative is not accepted, I would resign. Yes.

Senator CORNYN. Judge Garland, I think one of the biggest problems that the administration of justice has had here in the United States for the last—particularly the last couple of Presidencies—has been the perception that there is a double standard, one that applies to maybe one political party or people of wealth, and another one that applies to the opposing political party or people who do not have the resources in order to defend themselves against the awesome investigative and prosecutorial powers of the Department of Justice.

Of course, you are acquainted with the phrase above the Supreme Court, “Equal Justice Under Law.” Do you agree with me that a double standard, a perception of a double standard of justice can be a cancer that will eat away at public confidence in the administration of justice and that commitment to equal justice?

Judge GARLAND. Absolutely, Senator. As I have said to many people, I think probably including yourself, Ed Levi is my model for the Attorney General. His role was to be sure that justice was meted out fairly and impartially, without any special favors for anyone. This is the definition, in my view, of the rule of law that the powerful and the powerless, one party and another party, one community in the United States and another community in the United States, all are treated equally in the administration of justice.

Senator CORNYN. The Chairman’s recitation of things that he perceives as being inappropriate at the Department of Justice ended with the Trump—started and ended with the Trump administration. But let me take you back a little further into the Biden-Obama administration.

You are familiar with the press conference that James Comey, the FBI Director, had in July 2016—

Judge GARLAND. I remember—

Senator CORNYN [continuing]. Where he discussed the investigation of Hillary Clinton for inappropriate use of her email server?

Judge GARLAND. I remember it, Senator, yes.

Senator CORNYN. According to the Justice Department norms and procedures and rules that you are well acquainted with as a result of your experience, is that an appropriate step for an FBI Director to take, to talk about derogatory information in a case that they say no reasonable prosecutor would pursue?

Judge GARLAND. Senator, I do not think it is useful for me to comment on specific matters involving specific former officials. But I have no problem at all telling you that the Justice Department’s policies make clear that derogatory comments about subjects, targets, even people who have been indicted, except for what is in the indictment, are not appropriate. And if I am confirmed, I will zealously attempt to re-inculcate that spirit.

When I was speaking to the Press after each court hearing in Oklahoma City, I was assiduous in making sure that I did not say anything about the defendants who had just been before the court and who had done—now we know after conviction—horrible things, that I would not say anything other than what the charges had been brought against them and what the judge reported. And I believe that is an important part of Federal prosecution.

Senator CORNYN. I know you do not want to comment on Mr. Comey's actions, but what you have just described strikes me as diametrically opposed to what he actually did.

Senator Graham asked you if you had read the Horowitz report on the investigation of Crossfire Hurricane. I understand that your time has been limited up to this point, but do you—would you pledge to read all 404 pages of that report, if you are confirmed?

Judge GARLAND. I will, Senator. It may take me some time, but I have a head-start by reading the executive summary. So I think I should be able to get through it.

Senator CORNYN. Well, I think it is really important that you do so.

Judge GARLAND. Okay. I will.

Senator CORNYN. Because of the abuse not only of the FISA process, where an FBI lawyer lied to the FISA court in order to get a warrant to spy on an American citizen, but the use of a counter-intelligence investigation against a Presidential candidate and in the run-up to the election.

Are you familiar with the Steele dossier?

Judge GARLAND. Only what I read in the newspapers, and I have to admit that I read only conflicting reports about it in the papers.

Senator CORNYN. Well, it has been revealed that the sources for the Steele dossier, which was used in part in order to get FISA warrants, that the sub-sources could well be—could well be Russian intelligence officers using that in order to get—as part of a Russian active measures campaign. Are you familiar with the practice of the Soviet Union and now the Russian Federation to use active measures as part of their intelligence service attacks against the United States?

Judge GARLAND. So not from my experience either as a judge or as a prosecutor, but again, from reading media reports. I know what the words mean, and I have a general idea of what you are speaking about, yes.

Senator CORNYN. Judge Garland, my time is about up. But I think we talked about the role of the Judiciary Committee and authorizing the tools, like Section 702 of the Foreign Intelligence Surveillance Act, and the importance of preserving public confidence that those tools will be appropriately used. And there will be appropriate oversight both at the Department of Justice and the FBI, as well as the Judiciary Committee and the Intelligence Committees.

Do you agree with me that abuse of those authorities jeopardizes the availability of those tools in a way that is detrimental potentially to the security of the United States?

Judge GARLAND. Absolutely, Senator. My entire career as a Justice Department official was aimed at ensuring that we used FISA only as appropriate under the law as it existed at the time. It is not only that I am worried about losing a tool that is essential. It is also that I am worried about transgressing the constitutional rights of Americans.

Both of those are important, and I have to say probably the latter is way more important, in my view. We have to be careful about respecting American citizens' constitutional rights.

Senator CORNYN. Thank you, Judge.

Chair DURBIN. Thanks, Senator Cornyn.



Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Congratulations on your new job.

And congratulations to you, Judge Garland, on your nomination.

Judge GARLAND. Thank you.

Senator KLOBUCHAR. I listened with much happiness in your opening remarks when you talked about being a lawyer for the people, that you want to serve the law and not factional purposes, and that you used the important adjective “humble.” I think we need a little bit more of that in this town. So I appreciate that.

And I was also glad that you mentioned—when President Biden nominated you—Attorney General Edward Levi, who taught an iconic first-year law class at the University of Chicago that I took. And like Edward Levi, who took office after Watergate, you will take on the Department of Justice at a critical time and will have the great task of restoring its ideals of independence and fidelity to the Constitution and to the law.

What is the number one thing you want to do to boost morale in the Department of Justice on Day 1?

Judge GARLAND. Well, on Day 1, hopefully, if I am confirmed, I will take an oath in which I say all of the things that you just said. I want to make clear to the career prosecutors, the career lawyers, the career employees, the career agents of the Department that my job is to protect them from partisan or other improper motives.

I then hope to have an opportunity over the next few months to visit with as many members of the Justice Department as possible. In a pandemic, unfortunately, this will have to be over Zoom. I would much prefer to be able to go down to the great hall or the cafeteria and mingle with folks and let them hear what is in my heart about this, but I am afraid that technology is the only way I am going to be able to do it now.

Senator KLOBUCHAR. Okay, very good. One of the things that troubled me along these lines was the pardon process that President Trump undertook, and one study found that 88 percent of the pardons that he granted had some sort of personal or political connection to the former President.

What do you think we need to do to restore integrity to the pardon process? Obviously, it is an important power of the President. What do you think you can do from the Attorney General’s position?

Judge GARLAND. Well, Senator, you are right. This is a power granted by the Constitution to the President. I think the role of the Justice Department through its pardon attorney is to provide a careful, individualized examination of the people who are asking to be pardoned.

The office has a set of very detailed regulations, which describe when people are appropriate for pardons and when they are not. It provides an important screen that not only yields who maybe should be pardoned, but also protects the President from improper influence.

Senator KLOBUCHAR. Okay. Just a few things I want to ask quickly because I want to also get to antitrust. You talked to Senator Graham about resources for domestic terrorism and that you

want to take a look. Do you think you will need additional authorities, or you want to look at that when you get in there?

I am going to be chairing a hearing tomorrow with the Rules Committee on what happened at the Capitol and what we need to do to improve security. Obviously, part of it is prosecuting the perpetrators.

Judge GARLAND. Yes. Well, I thank you for that question. The Department is probably always looking for new tools. But the first thing we have to do before we look for new tools is figure out whether the tools we have are sufficient, and that will be part of this briefing that I want to have to determine whether the laws, which are quite capable and which were capable of the charges against McVeigh and Nichols and many other terrorists over the years, whether they are sufficient.

And then I would be interested in speaking with you and other Members of the Committee about what other additions might be made, but I first have to know whether anything more is necessary.

Senator KLOBUCHAR. Very good. Will you commit to reinstating Attorney General Holder's 2015 guidelines requiring the AG to sign off on subpoenas to journalists? Something I care a lot about as the daughter of a journalist.

Judge GARLAND. Yes. So these guidelines came out originally when I was working for Ben Civiletti, and I had the great pleasure of working on them. This is something that I am deeply committed to. They have improved, I would say, over the years as more concerns have arisen. But I would expect to re-up those guidelines.

I do not believe that they have been rescinded in any way, though. I believe they are still there.

Senator KLOBUCHAR. No, but I could not really get a straight answer from Attorney General Sessions or Barr. So we can talk about this more.

Judge GARLAND. Well, I hope this is a good answer for you.

Senator KLOBUCHAR. I know you support reforms to police practices. That is correct?

Judge GARLAND. Yes.

Senator KLOBUCHAR. Okay, very good. We obviously have a major bill on that. Conviction integrity units, something that I think is very important. You support Federal grants for that?

Judge GARLAND. Oh, yes. Look, I think that convicting someone who did not commit the crime is one of the most—it is a risk, of course, of all kinds of law enforcement. But if we can determine that we have made a mistake, we need very much to correct it.

And I think that grants for the purpose of supporting conviction integrity units in district attorney, State's attorneys offices across the country is a very good idea.

Senator KLOBUCHAR. We share an interest in antitrust law. I know that you used to teach that to law students, and you have handled some cases as judge. As Chair of the Competition Policy and Antitrust Subcommittee, we are going to be doing a lot in this area, along with my colleague Senator Lee.

Two-thirds of U.S. industries have become more concentrated between 1997 and 2012. The pandemic has actually made things even harder on small businesses. I think that we need more resources.

The FTC and the Antitrust Division of DOJ are literally shadows of what they were when the breakup of AT&T occurred, and we cannot expect the agencies to do what we need to do to take on the biggest companies the world has ever known on the tech side, in addition to other ones, with band-aids and duct tape.

Senator Grassley and I have a bill to greatly increase the funding to those divisions and agencies. Would you support that?

Judge GARLAND. Well, I appreciate your recognizing that my first love in law school, as it turns out, was, in fact, antitrust, and I studied under one of the most famous scholars and was his research assistant, Phil Areeda. And when I was in practice, I worked with Bob Pitofsky, another one of the greatest scholars and the former head or chair of the Federal Trade Commission. And I did practice antitrust law, including trying antitrust cases.

I always want to be in a position of saying thank you, yes, when you ask whether we want more resources. My expectation is, that is what I would say. But until I am—if and until I am confirmed, I really cannot evaluate what resources we might need, but I am happy to work with you on that.

Senator KLOBUCHAR. Will you commit to vigorously enforcing the antitrust laws?

Judge GARLAND. Absolutely.

Senator KLOBUCHAR. I believe that we need some changes to those laws to aid you in doing that, and I hope you will be open to those. I have a bill called the Competition Antitrust Law Enforcement Reform Act that I hope you'll look at, changing some of the standards for mergers and for exclusionary conduct. I also think that if anything has illustrated the need to look back at the consolidation in some of these industries, it would be the lawsuits filed by DOJ and the FTC. Example, Facebook's acquisitions of Instagram and WhatsApp.

I would suggest you look at Mark Zuckerberg's email where he talked about purchasing nascent competitors, and I think the answer to that has got to come from the Justice Department. The answer, the reply to that email, that this kind of exclusionary conduct is not the way capitalism works in America, and we have always had a balance. We have had a balance through Republican Presidents and Democratic Presidents to say that we believe in the capitalist system, and we have to make sure we keep rejuvenating it by allowing smaller competitors to emerge.

That is not happening right now in many areas, and I just need your commitment that you will take this area of the law very seriously.

Judge GARLAND. I take it very seriously and have throughout my entire career. The Supreme Court has repeatedly referred to the antitrust law as the charter of American economic liberty, and I deeply believe that.

Senator KLOBUCHAR. Thank you very much, Judge Garland.

Judge GARLAND. Thank you.

Chair DURBIN. Thanks, Senator Klobuchar.

This was the first test of the new regime. We are going to take a break now for 10 minutes and resume at 11:20 a.m. for the much anticipated questioning of Senator Lee.

Judge GARLAND. Thank you, Mr. Chairman.

[Whereupon the hearing was recessed and reconvened.]

Chair DURBIN. Senator Lee.

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

And thank you, Judge Garland, for being here today. I appreciated also your kind words about former Attorney General Ed Levi. I have been a lifelong admirer of his. He truly is an Attorney General in the grand tradition of that office, and he is someone my family has known in one way or another for a long time.

My late father worked for him while he was running the Civil Division during Ed Levi's time as Attorney General, and I have had close personal and professional interactions with both his son, David Levi, a former judge and later law school dean, and with Ed Levi's grandson, David's son, Will, who served with me as my Chief Counsel, worked on this Committee for several years, and later served as Chief of Staff to Attorney General Barr. So I am a big fan of that family, and I am glad that he is someone that you look up to.

I want to talk about a few issues today. Let us talk first for a moment about the Second Amendment and the right to bear arms. This is going back 15 years or so, but in a case called *Parker v. District of Columbia*, a case that later became known as *District of Columbia v. Heller*, as I recall, you voted for rehearing en banc with respect to an opinion striking down that same ban on handguns within the District of Columbia. And, of course, later in the same proceedings of the same case, the Supreme Court struck down the ban.

Can you tell us why you voted the way that you did, why you voted to give D.C. another chance to defend its ban on handguns in that case?

Judge GARLAND. Yes, Senator. As I know you know, because you were a law clerk yourself, you know that rehearing en banc is a vote to hear a case. It is not a vote on the merits of the case. And in my case, for myself, it is never a vote on the merits. It is a vote to rehear the case.

The panel decision was the first time I think ever a court of appeals had held the individual right to keep and bear arms, which you are exactly right, the Supreme Court did uphold in the end. Every court of appeals had decided to the contrary, and the issue was plainly one that would require looking at a deep historical record as to the meaning of the Second Amendment and the way that it had been applied. I thought this was an extremely important issue, important enough since it was the very first time that we should hear it en banc. I was not the only judge, and other judges, including a judge appointed by a President of a different party, also voted and for the same reason, so that we would have an opportunity to hear the case.

Senator LEE. Thank you. I appreciate that.

Let us talk a little bit about the meaning of the Second Amendment. How do you view it? And do you agree with Justice Thomas' analysis in his dissent in the *Rogers* case that the Second Amendment right to bear arms certainly includes the right to carry operable firearms in public for self-defense?

Judge GARLAND. So my view is totally controlled by the *Heller* opinion, and in that case, Justice Scalia held that there was an in-

dividual right to keep and bear arms for self-defense. In the subsequent *McDonald* case, the Court said that was a fundamental right which applied to the States as well. It is a right, as Justice Scalia said in the opinion, like all rights, that is subject to some limitations.

The Court has not given us much more to work with at this point, and I do think, as I said with respect to my vote en banc, this is a matter that requires careful historical examination, which I have never done, and I certainly cannot do sitting here for you. So I do not have an opinion on that question.

Senator LEE. You have been in a judicial role for the last 20, going on 25 years.

Judge GARLAND. Yes, sir.

Senator LEE. You will be in a different role if confirmed to this position, one in which you will have a significant impact on policy. So let us talk about policy as it relates to the Second Amendment briefly.

Do you support universal background checks?

Judge GARLAND. Well, I do think that it is very important that we be careful that people who are entitled to have guns get the background check that allows them to have them, and that those who are not entitled and who we are concerned about because they are threats, because they are felons, or whatever reason barred by the law, that we have—that there is an opportunity to determine that they not be given a gun.

Senator LEE. Do you support banning specific types of guns?

Judge GARLAND. I am sorry?

Senator LEE. Do you support banning of certain types of firearms?

Judge GARLAND. Well, as I am sure you know, the President is a strong supporter of gun control and has been an advocate all of his life, his professional life on this question. The role of the Justice Department is to advance the policy program of the administration as long as it is consistent with the law. And as I said, so far we have a little indication from the Supreme Court as to what this means, but we do not have a complete indication. And where there is room under the law for the President's policies to be pursued, then I think the President is entitled to pursue them.

Senator LEE. What about policies that would support holding firearms manufacturers liable for damage caused by people using firearms they produced to commit a crime?

Judge GARLAND. I do not have a—I believe that the President may have a position on this question. I have not thought myself deeply about this. I do not think it raises a Second Amendment issue itself, the question of the liability protection, but I have not addressed this in any way, and I would need to think about this considerably more.

Senator LEE. The other questions I raise potentially implicate the Second Amendment. That one raises other policy concerns.

Judge GARLAND. I understand.

Senator LEE. Let us talk about FISA briefly. Senator Leahy and I have offered an amendment to reform the FISA process by strengthening the amicus curiae provisions that are already in there in existing law, that have been put in there by, among other

provisions, the USA FREEDOM Act, which Senator Leahy and I got passed through Congress and signed into law by President Obama in 2015. And our amendments would also require the Government to disclose relevant exculpatory evidence, both to the FISA Court and to the amici. This is an amendment that ended up passing the Senate last year by a bipartisan supermajority of 77–19.

Do you support reforms to FISA like those I just described in the Lee-Leahy Amendment?

Judge GARLAND. So, I think FISA is an extremely important tool for the Justice Department and the intelligence community in general to protect the country from foreign agents and foreign terrorists.

On the other hand, it is extremely important that everything we do with respect to FISA—and I have felt this way my entire professional life also—that we do so in accordance with the law and with respect for the constitutional rights of citizens.

I do not know very much specifically about your two proposals. I do know the current rules with respect to amicus, and I have had the opportunity to discuss those with judges on the Foreign Intelligence Surveillance Court, and everyone seems quite happy with the way that process is going. I do not know what more might be needed. I would have to study that.

Senator LEE. Mr. Chairman, I see my time has expired. I have got one very brief follow-up. Can I just finish that question? Thank you.

On this topic of questions related to FISA, I also wanted to ask you, do you think that the Federal Government ought to be able to collect American citizens' web-browsing or internet search history without a search warrant supported by probable cause?

Judge GARLAND. I know this is a big issue. I do not—you know, my experience with FISA comes from a slightly different era. I had a lot of experience, but it was a very different era, and I followed this a little bit. I obviously have not had any cases on it myself. I would have to look at it.

You know, I believe in judicial review, and I am a strong supporter and respectful of judicial review of orders. But I do not know what the practicalities of going for a probable cause warrant in those circumstances would be, if it would be an emergency, et cetera. And I would be eager to engage with you and other Members of the Committee who are concerned about this so that I can understand this problem more fully.

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

Chair DURBIN. Senator Coons.

Senator COONS. Thank you, Chairman Durbin, Ranking Member Grassley. Judge Garland, welcome.

Judge GARLAND. Thank you.

Senator COONS. Congratulations on your nomination, and please convey my thanks to Lynn, to Jessie, to Becky, to your family for supporting what has been a decades-long career at the bench and bar as someone dedicated to public service, to law enforcement, and to upholding the balance between justice and liberty.

I cannot think of a more urgent task before us than restoring the people's faith in our institutions and in the rule of law, and your opening statement, which in part was dedicated to clarifying your

view that the Attorney General represents the public interest and your enthusiasm for ensuring that the 115,000 career employees of the Department of Justice are appropriately sheltered from partisan or political influence, is very encouraging to me after what I think were some harrowing moments in the last few years.

As I am sure you know, there are quite a few admirers of yours who work here on this Committee, some former clerks of yours who work closely with me, and many who have reassured me not just of your professional skill and great insights, but also of your personal decency, kindness and thoughtfulness.

I was struck in reading through your background that you have spent 20 years quietly as a tutor at an elementary school here in the District of Columbia, something I think not enough elected or appointed officials on either the bench or in Congress do. So thank you for your willingness to continue your service.

I am from a small town in Delaware which, like many other cities in America, was torn apart by concerns about racial justice and inequality, a city that has also struggled with longstanding challenges with gun violence and with insecurity and instability in our community. Our Mayor Mike Purzycki, our Governor John Carney, are doing a great job and working hard to try and address this and striking the right balance between protecting our citizens from gun violence, but also developing an environment where law enforcement is more transparent and accountable, is going to be one of the core challenges which you and the Department of Justice will be involved in, in partnership with State and local law enforcement and with other elected officials.

In Wilmington and Dover, Delaware, we are rolling out body-worn cameras for law enforcement officers. Our governor has committed to having that available for all of our law enforcement officers by 2025. But it is very expensive. It is something law enforcement has embraced. It is something that advocates have embraced.

I am an appropriator for the Department of Justice as well as a Member of this Committee. Is that something you could agree to, to be an advocate for the funding and deployment of body-worn cameras to ensure both accountability and improved trust between law enforcement and local communities?

Judge GARLAND. Well, Senator, I am, again, always happy to accept more resources for the Department of Justice. I do not know what that might take away from in other areas for the Department, but I personally think that body cams are a very important tool both to protect officers and to protect the citizens. And, you know, just as everyone—well, you are all on the inside. I was on the outside watching what happened on January 6th, and the fact that we were able to see exactly what was happening to the officers and the way in which they were carrying about their duties in the best way they could is only possible to be captured because of the body cameras. I think it is an important tool for accountability, yes, I do.

Senator COONS. Thank you, Your Honor. If you might, I do think it is important that we increase investment in a variety of programs. I have long worked for the Victims of Child Abuse Act. COVID-19 has demonstrated a tragic rise in child abuse, and this is a critical tool that allows State and local law enforcement to ef-

fectively address child abuse. The Bulletproof Vest Partnership Program, which has helped save 3,000 officers' lives, these and other grant programs are things I look forward to working with you on.

There is also much-needed legislation that will move us forward in terms of criminal justice reform and protecting communities from violence. Senator Cornyn and I hope to soon reintroduce the NICS Denial Notification Act, which just ensures that State and local law enforcement gets notified when a person prohibited "lies and tries." They attempt to purchase a gun. That is something that has been discussed in previous Congresses on this Committee. We have not made progress on it. I think we should.

Senator Wicker and I are soon going to reintroduce the bipartisan Driving for Opportunity Act, which incentivizes States to stop suspending driver's licenses simply for unpaid fines and fees. It is a cruel, counterproductive way to take away people's ability to get to work and ensures people are trapped in modern-day debt prisons. It is something that has strong support from law enforcement and civil rights groups, and I would just be interested in whether you will work with us here in Congress to move bipartisan bills like these two.

Judge GARLAND. I am extremely interested, if I am confirmed, in working with the Members of Congress, and particularly on bipartisan legislation. I do not know specifically about those, but each of them has the ring of something that is very important and quite reasonable.

Senator COONS. Enactable, reasonable, moving the ball forward are the sorts of things I hope we get to work on.

I will be serving as the Chair of the Subcommittee on Privacy, Technology, and the Law in this Congress, and I look forward to working with Senator Sasse, who will serve as Ranking Member. One of the core things we will be looking at is how online misinformation is contributing to domestic terrorism, to division here. You have discussed your own experience with domestic terrorism cases and your plan to prioritize this issue. It is something the FBI Director has said is one of our most pressing threats.

Do you think that DOJ has a role to play in examining the role of misinformation and incitement online to contributing to violence and that the DOJ has a role in working to help us develop reasonable solutions to this challenge?

Judge GARLAND. Well, again, Senator, I think that every opportunity the Justice Department has to work with Members of the Senate, think about how to solve problems and how to craft legislation, is one that we should take. I do not have in mind particular legislation in this area. I do think that an important part of the investigation of violent extremist groups is following their activities online and getting an idea of what kind of information and misinformation is being put out. I look forward to talking more about this with you.

Senator COONS. Well, there are increasing regulatory schemes both in Europe and in California and other States being considered, and I look forward to working with you on striking that appropriate balance between protecting data privacy, protecting individual liberty, but also protecting the competitiveness of the United



States and globally making sure that we are pushing back on digital authoritarianism.

Last, I am glad to see the Department is prosecuting—I think there are 235 charges brought so far—against rioters who invaded the Capitol and attacked our democracy on January 6th. I have supported calls for a 9/11-style independent commission to investigate the bigger picture of what caused this and what we might learn from it.

Do you think an independent commission of that style would help complement the Department's work and help the American people better understand the root causes of that riot, that incident, and then better help us both protect the Capitol and those of us who serve here but, more importantly, protect the underpinnings of our democracy?

Judge GARLAND. Well, Senator, I do think the 9/11 Commission was very useful and very helpful in understanding what happened then, and, of course, the Congress has full authority to conduct this kind of oversight investigation or to set up an independent commission.

The only thing that I would ask, if I were confirmed, is that care be taken that it not—that the commission's investigation not interfere with our ability to prosecute individuals and entities that caused the Capitol—the storming of the Capitol. And as you well know, this is a very sensitive issue about disclosing operations which are still in progress, disclosing our sources and methods, and allowing people to testify in a way that then makes it impossible to prosecute them.

So, with those caveats, I certainly could not object to anything that the Congress would want to do in this regard.

Senator COONS. Understood. Thank you, Judge. I am encouraged by the broad bipartisan support you have already garnered from this Committee and publicly, and I look forward to supporting your confirmation.

Judge GARLAND. Thank you very much, Senator. I appreciate it.

Senator COONS. Thank you.

Chair DURBIN. Thank you, Senator Coons.

Senator CRUZ.

Senator CRUZ. Thank you, Mr. Chairman.

Judge Garland, welcome.

Judge GARLAND. Thank you, Senator.

Senator CRUZ. Congratulations on your nomination.

Judge GARLAND. Thank you.

Senator CRUZ. In two-plus decades on the court, you have built a reputation for integrity and for setting aside partisan interests in following the law. The job to which you have been appointed is a very different job, and as I look back over the 8 years of the Obama-Biden Justice Department, in my view the most problematic aspect of that tenure was that the Department of Justice was politicized and weaponized in a way that was directly contrary to over a century of tradition of the Department of Justice of being apolitical and not a partisan tool to target your opponents.

So it is very much my hope, if you are confirmed as Attorney General, that you will bring that reputation for integrity to the Department of Justice and demonstrate a willingness to stand up for

what will be inevitable political pressure to once again politicize the Department of Justice and use it as a tool to attack the political opponents of the current administration.

Eric Holder, before he was nominated as Attorney General, had likewise built a reputation as being relatively nonpartisan and a prosecutor with integrity, and, unfortunately, his tenure as Attorney General did enormous damage to that reputation. As was previously discussed, Eric Holder described his role as Attorney General as being the wingman for President Obama. Am I right in assuming you do not view your role as Attorney General as being Joe Biden's wingman?

Judge GARLAND. Senator, as I said, I do not want to comment on any individual's conduct, any of my predecessors' or FBI Directors' conduct in any way. But I can assure you I do not regard myself as anything other than the lawyer for the people of the United States. I am not the President's lawyer. I am the United States' lawyer, and I will do everything in my power, which I believe is considerable, to fend off any effort by anyone to make prosecutions or investigations partisan or political in any way. My job is to protect the Department of Justice and its employees in going about their job and doing the right thing according to the facts and the law.

Senator CRUZ. Under the Obama administration, the IRS targeted the political opponents of the President. It targeted conservatives for their speech. It targeted pro-Israel groups. It targeted Tea Party groups. It targeted individuals perceived to be on the opposite political side as the administration.

Will you commit as Attorney General that you will not allow the Department of Justice to be used to target those who are perceived as political opponents because they are political opponents?

Judge GARLAND. Absolutely, I will not.

Senator CRUZ. Also under the Obama administration, Operation Chokepoint was used to pressure lawful organizations, lawful institutions, for example, that sell firearms, to constrain their lawful activity and to use regulatory authority to abuse and force them to comply with the administration's stated policies.

Do you believe it is appropriate for the administration to use regulatory pressure to force lawful behavior to stop?

Judge GARLAND. Senator, I am not aware of the specific that you are giving, and I expect you do not expect that I would have been aware of it. But, of course, I do not believe as a general matter that regulations should be used to stop people from doing what they are lawfully entitled to do, unless the regulation is pursuant to a statute, obviously, in which Congress is given authority to change the rules.

Senator CRUZ. As you also know, Attorney General Eric Holder was held in contempt of Congress, criminal contempt of Congress. That was a bipartisan vote. Eighteen Democrats voted to hold Attorney General Holder in contempt. They did so because he refused to produce documents to Congress for Congress' investigation of the Fast and Furious scandal, a major scandal that resulted in the death of two Federal law enforcement officers.

You have previously committed to Senators on this panel that, under your leadership, the Department of Justice will comply to

the extent possible with requests from this Committee, and I want to, in the course of this question, associate myself with Senator Whitehouse's comments and questions. He and I disagree on a great many issues, but on this particular issue, we are emphatically in agreement that Senators from this Committee should get answers, should get candid answers, should get substantive answers, should get real answers from the Department of Justice, regardless of the party of the Senator asking that question, that that is a level of oversight that the American people have a right to expect. Do you agree with that?

Judge GARLAND. I do think that this is a level of oversight the American people have a right to expect. I want the Department, if I am confirmed, to be responsive to the extent it is possible with respect to the Justice Department's appropriate equities, to be responsive to the requests for information.

Senator CRUZ. So you have had—previously you said you have read the executive summary of the Horowitz report. What was your reaction to the Horowitz report?

Judge GARLAND. Well, I thought, as Mr. Horowitz explained—and I believe Director Wray agreed—there were problems with respect to the applications for a couple of FISAs, that those were not—they were not consistent with the internal regulations of the Department, and that those problems had to be corrected. And I think deeply that we have to be careful about how we use FISA, and that is the reason we have pretty strict regulations internally, and policies, and we need to find out why they are not followed and to be sure that they are followed. I understand that was the purpose of his report and his recommendations to Director Wray.

Senator CRUZ. So you described the report as saying there were problems. Necessarily, that is a fairly anodyne way of characterizing it, given the multiple material misstatements the Horowitz report details, including Mr. Clinesmith's fabrication of evidence and lying to a court, which he has now pleaded guilty to. I think that was yet another example of the deep politicization of the Department of Justice culminating in a meeting with the Acting Attorney General, President Obama, Vice President Biden in the Oval Office concerning the targeting of their political opponent.

Will you commit to this Committee that, under your leadership, the Department of Justice will not target the political opponents of this administration and that there will be real scrutiny? What that report outlines, among other things, is weaponizing oppo research from the Hillary Clinton campaign and launching a criminal investigation based on that. Will you commit that that conduct will not be acceptable under any Department of Justice you are leading?

Judge GARLAND. So, absolutely, Senator, but without trying to comment specifically on that matter, it is totally inappropriate for the Department to target any individual because of their politics or their position in a campaign. The only basis for targeting has to be evidence of the risk of a foreign intelligence problem or of a criminal problem. And that is a nonpartisan issue. That is a question of objective facts and law, and it can never be an effort to help one party or another party.

However, in investigations and prosecutions, there is no party. The Department is an independent, nonpartisan actor, and that is my job to ensure that that is the case.

Senator CRUZ. Thank you.

Chair DURBIN. Thanks, Senator Cruz.

We now understand that Senator Leahy is in Zoom range. Senator Leahy, do you read me?

Senator LEAHY. Can you hear me?

Chair DURBIN. I hear the voice.

Senator LEAHY. I assume there is a picture coming in here somewhere.

Chair DURBIN. Is there a way to turn up the volume so we can hear Senator Leahy? There he is.

Senator LEAHY. I am going to move this camera around just a little bit.

Chair DURBIN. All right. If you will—

Senator LEAHY. Okay.

Chair DURBIN. Take it away, Senator.

Senator LEAHY. Thank you very much. First off, Mr. Chairman, I am glad you are having these hearings.

Judge, it is great to see you seated there. I wish 5 years ago we would have seen you seated there for your Supreme Court nomination, but I am glad you are here today.

Judge GARLAND. Thank you, Senator.

Senator LEAHY. The nomination comes at probably the most vulnerable moment in the 151-year history of the Department, and you have got to restore the integrity and the respect of the Department. No small job, but I cannot think of anybody more qualified to do that.

I know that a number of people have stated their support of you. One person I know and respect greatly, former FBI Director Judge Freeh, and I know he sent a letter. And, Mr. Chairman, if you do not mind, could we have that letter go in the record, if you have not already put it there.

Chair DURBIN. Without objection.

Senator LEAHY. Thank you.

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

Senator LEAHY. A lot of the things have already been covered, and, of course, you and I have talked before. Your experience in the Oklahoma City bombing, anybody who has been a prosecutor knows what a job you did there, and I do appreciate that.

We have other things you will have to deal with: the Voting Rights Act, the John Lewis Voting Rights Act enforcement. We have seen that there has been a scourge of voter suppression, which would be wrong—I do not care who is being suppressed. Unless the Justice Department gets its tools back under the Voting Rights Act, I am afraid the right to vote is always going to be at risk, especially for minority and underserved communities.

Do you agree that legislation like the John Lewis Voting Rights Advancement Act is urgently needed?

Judge GARLAND. So, Senator, I do not know the specifics of the Act, although I certainly knew John Lewis well, and I was a great admirer. I think that with respect to voting, even in this last election, where a larger percentage of Americans voted than ever be-

fore, there was still a huge percentage that did not—at least a third did not vote. I think it is important that every American have the opportunity to vote. Voting is the central facet, the fulcrum of our democracy. So anything that can—any legislation that will encourage more voting, I strongly support.

Specifically, you were referring to the Supreme Court's decision in the *Shelby County* case, which said that the coverage formula for preclearance could not be used as unconstitutional because of the then-state of the congressional record. But then the Court indicated that a different and stronger record might support preclearance, and I would be in favor, if I am confirmed, of working with the Committee and the Senate and the House to try and develop that record that would allow that important tool to be used.

The Department still does have other tools. It has Section II, which remains in force, as the Supreme Court clearly said in *Shelby County*, and it prevents interference with voting practices and procedures, you know, that interfere with minorities' ability to vote. And it is something that the Department has always looked to as an important tool. There are plenty of other tools to increase the ability of Americans to vote, which I would support.

Senator LEAHY. Thank you. And I know Senator Lee has already raised this, but please know that Senator Lee and I will both be talking to you about privacy matters. This is not a partisan issue. It is an issue of concern, and we will do that.

Let me ask you about another area that is of additional concern to me. In the Bush administration, the last Bush administration, they put a moratorium on the death penalty in Federal cases. They gave solid reasons for that, and that moratorium has lasted—or it did last from 2003 during the Bush administration, and then suddenly in the last 6 months, the Justice Department under the last President rushed to execute more people—this is what is stunning—in 6 months than had been executed in the past 60 years. That is a matter—many of us feel that was nothing short of being a killing spree. And what worries me, we all know the death penalty is used disproportionately against minorities and the poor. I was a prosecutor. I prosecuted many murder cases. But I always opposed the death penalty, and Vermont has gotten rid of theirs. I would much rather have somebody serve their time for years in a prison cell thinking of what they did wrong.

Now, I am joining Senator Durbin and Senator Booker in reintroducing the Federal Death Penalty Act, which would end the Federal death penalty. So I would ask you this: Would you go back to what President Bush did and reinstate the Federal moratorium, which was lifted just in the last few months by the last administration, and reinstate it while Senator Durbin, Senator Booker, myself, and others work on the legislation eliminating the death penalty?

Judge GARLAND. Well, as you know, Senator, President Biden is an opponent of the death penalty. I have to say that over those almost 20 years in which the Federal death penalty had been paused, I have had great pause about the death penalty. I am very concerned about the large number of exonerations that have occurred through DNA evidence and otherwise, not only in death penalty convictions but also in other convictions. I think a terrible thing oc-

curs when somebody is convicted of a crime that they did not commit, and the most terrible thing happens if someone is executed for a crime they did not commit.

It is also the case that during this pause we have seen fewer and fewer death penalty applications anywhere in the country, not only in the Federal Government but among the States. And as a consequence, I am concerned about the increasing almost randomness or arbitrariness of its application when you have so few number of cases.

And, finally, and very importantly, is the other matter that you raise, which is its disparate impact. The data is clear that it has an enormously disparate impact on Black Americans and members of communities of color, and exonerations also, that something like half of the exonerations have to do with Black men.

So all of this has given me pause, and I expect that the President will be giving direction in this area, and if so, I expect it not all unlikely that we will return to the previous policy.

Senator LEAHY. Thank you. I think my time is probably just about up, but I would also add, as Chairman of the Appropriations Committee, I am going to be talking to you about the Department of Justice and the grants they have on the Violence Against Women Act, VOCA grants, other such things. The moneys have had bipartisan support. Again, we have got to make sure they are done. Frankly, Judge, I am very happy you are here, but I have a feeling we are going to have a lot of conversations in the next few years.

Judge GARLAND. Well, I hope that is the case, Senator. I would be happy to have conversations even if I am not confirmed, but I certainly prefer them if I am confirmed.

Senator LEAHY. You are going to be confirmed. I will bet my farm in Vermont on that.

Judge GARLAND. I would never ask anybody to bet that, Senator. [Laughter.]

Chair DURBIN. Thank you, Senator Leahy.

Senator SASSE.

Senator SASSE. Thank you, Chairman.

Congratulations, Judge, on your nomination, and thank you for the time you have spent in this process with those of us who wanted to grill you in private before you were here today in public.

You are in the process of moving from Article III to Article II. Were you confirmed to the bench in 1996 or 1997?

Judge GARLAND. 1997.

Senator SASSE. Okay. In the 23 years, 24 years since you left an executive role, obviously the Article II branch has grown in power, and Article I seems to be shriveling in lots of ways. Do you have a theory of why Articles II and III are gaining more power in American life and Article I seemingly is weaker?

Judge GARLAND. Well, that is, I would say, a cosmic question of our civic life. I do not really have an answer to that. Obviously, each branch has enormous powers authorized by the Constitution, and it may be, if this is the case, that the Congress has just not asserted itself as it should with respect to protecting its authorities.

I do not have—to be honest, I am not enough of a political scientist to know exactly how this balance has changed. I am sure from the point of view of the Congress, its role has diminished. But, you know, sometimes I am sure the other branches feel the same way.

Senator SASSE. Right. Well, I think it is a mix of overreach by Article II and underreach by Article I, so I am not asking the question in a way to put you on the defensive as if everything that is wrong is chiefly outside the Congress, because I think we are probably chiefly to blame.

But you are going to become the most powerful law enforcement officer in the Nation, and obviously, you will have lots of prosecutorial discretion. But could you help us understand what the line is between prosecutorial discretion, which is understandable in any complex organization, and executive unilateralism, which I hope we can agree, at least at the definitional level, is a massive constitutional problem? What is the line?

Judge GARLAND. So it is not the most easy line to outline. The Supreme Court's *Cheney* case is the best overall description. For the entire history of the country, prosecutors and Government agencies have had discretion to make decisions about how they allocate their resources in terms of enforcement priorities, both criminal and civil. And this has either generally been nonreviewable or deferentially reviewable in the courts.

The opposite side of the line is that the executive branch cannot simply decide we are not going to enforce this law at all.

Now, where a particular piece of conduct falls between those two is a difficult thing to say except in an individual case.

Senator SASSE. Well, I mean, obviously in our tribal politics, it is easy for each part, when they are out of power, to say that the Article II branch is overreaching. But when you are in power, it turns out those mostly look like discretion. How do you think not just the Supreme Court line of cases but at the level of you being the boss of the AAG for OLC, for instance, how will you determine what actions are beyond the pale?

Judge GARLAND. Well, I do think that when the Department makes determinations based on resources, on its views about which are the most important matters that it should go forward with, when it thinks that State and local governments are in a better position to handle those matters, any of those kind of factors are all perfectly appropriate for deciding to exercise prosecutorial discretion. But mere disagreement with the law passed by Congress or a decision that the Department will simply not enforce regardless of resources or other things would be impermissible.

But, again, I think no matter how hard I try, I cannot put this in the perfect words, and I am sure maybe we will disagree in the future if I do get this position, but it will be out of a good-faith effort on my part to be sure that the Executive is only doing what it is supposed to do.

Senator SASSE. I want to move on to another topic, but one more finer point on it. Is congressional inaction a legitimate basis for Article II to decide it just must act because it wishes policy were different and legislation does not move, therefore, you have a pen and a phone, can you just act because Congress did not?

Judge GARLAND. Also, you are asking really tough questions of our basic constitutional structure. Doing so simply out of upset that Congress has not done what you want, obviously not okay. But in the formulation that Justice Jackson, whom I quoted in my opening, famously gave in the *Youngstown Steel* case, a President does have authorities. When he acts consonant with Congress, he is at his highest power. When Congress has not acted at all, he is left with only his own power which is clearly available under the Constitution, depending on the circumstance that we are talking about. And when he acts in contravention of Congress, he has only the authorities the Constitution gives him minus the authorities that the Congress has, and this is what Jackson famously referred to as “the lowest ebb” of the Executive’s authority.

So inaction is in the middle. You cannot do this just because Congress does not act, but the President can act if it is within his authority and he believes it is something in the public interest.

Senator SASSE. Thanks. I want to switch gears a little bit. I was encouraged earlier when you said that the Department’s purposes are to make sure—include among them to be sure that both the powerful and the powerless are treated equally. I want to talk about one case where that obviously has not happened, and that is the case of Jeffrey Epstein and his many, many victims of domestic and international sex trafficking. Obviously, he evaded justice for years, and when the Department did ultimately partner with local authorities, it allowed charges to be brought that did not befit the seriousness of his crimes. Infuriatingly, he was allowed to die by apparent suicide in Federal custody, despite the fact that everybody knew he was a suicide risk and many people would benefit from that outcome. And then, most recently, his estate has failed to pony up to make right on all of their obligations to compensate his victims.

What do you think went wrong with the Department’s handling of the *Epstein* case?

Judge GARLAND. Senator, so my position as a judge, and also my previous position as a prosecutor, I have always been extremely careful not to comment about something without knowing the facts. The facts I know about the Epstein matter are the ones that I have read in the media and that I have seen on television, so I do not think—I am just not in a position—

Senator SASSE. We can agree that those are disgustingly embarrassing—

Judge GARLAND. Absolutely.

Senator SASSE [continuing]. About how weak the Department’s pursuit of this evil man was.

Judge GARLAND. Absolutely. But you asked me the why question, and I cannot answer the why question. But the values question I can answer. This is just horrendous, and he obviously should have been vigorously prosecuted substantially earlier. But I do not know the why.

Senator SASSE. And he has co-conspirators who are still being held and pursued, and as you and I discussed in private, I hope that we will make sure that the Department prioritizes resources for this. Scores and scores of the women he victimized are just in their thirties now, but they have had so much of their lives stolen



from them. And, obviously sex trafficking is a scourge of our time, and I really would hope that the Department continues to do an after-action review on why we have underinvested there.

I have a couple more questions on the Department's China Initiative, but my time has expired, so I will follow up with that separately.

Judge GARLAND. I look forward to it. Thank you.

Chair DURBIN. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman.

I want to welcome you to the Committee, Your Honor.

Judge GARLAND. Thank you.

Senator BLUMENTHAL. And I welcome your family as well, a very supportive and accomplished family, and say that among the qualities that you bring to this job, obviously your brilliance, your service as a judge are tremendously important, but I think the lesson today is that character counts in restoring the integrity and credibility of the leadership of the Department of Justice. I think that the character traits that you have demonstrated throughout your career are going to be most important: your resilience as well as your brilliance. You have been tested by adversity and the kind of values that you exemplified beginning when I think both of us served as prosecutors in the Department of Justice and first met. So I look forward to your inspiring more young attorneys to join the ranks of law enforcement and celebrate the accomplishments of those 115,000 professionals who every day help keep us safe.

I welcome your commitment to combating violent extremism. I have supported and I am introducing a 9/11 Commission bill. But I want to turn to an area of violence that you raised, which is hate crimes, the growing incidence of hate crimes, especially against now certain groups, Asian Americans, I think is extraordinarily alarming. I have introduced a measure called the NO HATE Act. The Jabara-Heyer NO HATE Act would reform the penalties but also increase reporting. As you know, many of these crimes are underreported.

I would like your commitment that you will support such a measure and enforcement of the existing penalties against hate crimes.

Judge GARLAND. Well, you could not have any opposition from me in that matter, Senator. Hate crimes tear at the fabric of our society, make our citizens worried about walking on the street and exercising even their most normal rights. And the role of the Civil Rights Division is to prosecute those cases vigorously, and I can assure you that it will, if I am confirmed.

Senator BLUMENTHAL. Thank you. On gun violence, you have been asked a few questions by Senator Lee. Three years ago this month, Parkland occurred. Parkland, Sandy Hook, other places like Las Vegas have become shorthand for massacres that are true tragedies and also preventable by common-sense steps such as President Biden has supported and I have helped to lead in the Congress: universal background checks, safe storage measures, Ethan's law, closing the Charleston loophole, and, of course, emergency risk protection orders. Senator Graham and I have worked together on a measure that I am hoping we will reintroduce.

One of your predecessors, William Barr, said about emergency risk protection orders, "This is the single most important thing I

think we can do in the gun control area to stop these massacres from happening in the first place.”

William Barr and I did not agree on a lot, but I think I am of the opinion that it is an important step to take.

Would you support these kinds of common-sense steps?

Judge GARLAND. Yes, I do not know the specifics of all them. Certainly with respect to emergency risk orders, when somebody is acting out in a way that suggests that they are going to use violence against another human being, we have to be very careful that they do not get a weapon in their hands. I do not know the specifics of how the legislation would do that, but I do think that, yes.

Senator BLUMENTHAL. Well, I welcome your support to that extent for——

Judge GARLAND. I do not mean to be non-supportive, but unless I know the specifics, it is very hard for me to make a——

Senator BLUMENTHAL. I understand, and you are doing an excellent job of navigating your way through the requests for specific commitments. And, by the way, I understand sometimes a non-answer is the right way for you to go in this position.

Judge GARLAND. Thank you, Senator.

Senator BLUMENTHAL. Let me say also I hope you will consider Executive orders. I understand that President Biden may have some under consideration, for example, closing the Charleston loophole, redefining the nature of a firearm to prevent ghost guns from populating the world, and other steps, and I hope you will consider using the existing authority through ATF and other agencies to take such action.

I want to ask you about two areas that are of importance, I think, although they may not have reached a lot of public visibility. As you may be aware, the survivors of the 9/11 tragedy have filed a lawsuit pursuant to the Justice Against Sponsors of Terrorism Act, JASTA. Senator Cornyn and I were strong advocates of JASTA. They have asked for information from the FBI in connection with that lawsuit. They have been denied that information under the state secrets privilege. In my view, there is no justification for failing to provide that information. I hope that you will consider taking prompt action to release it. I know that you cannot necessarily address it now, but I wrote to the Department of Justice last week, not to yourself but to your predecessor, and I hope that you will take that letter as a matter of priority.

Judge GARLAND. If I am lucky enough to be confirmed, I will certainly get the letter, and I will give it my attention. Yes, I will.

Senator BLUMENTHAL. And, similarly, the Department of Justice Inspector General reportedly opened an investigation in September 2018 of the FBI's potential mishandling of the investigation into Larry Nassar's sexual abuse. I am sure you recall his prosecution.

Judge GARLAND. I do.

Senator BLUMENTHAL. There was an Inspector General report that goes into the FBI's possible delay and malfeasance. That report is finished, we are told. I hope that it will be published promptly in the interests of the transparency value that you outlined so well.

Judge GARLAND. I will definitely consult with the Inspector General, and I do believe in making those reports public to the extent permissible within the law.

Senator BLUMENTHAL. Thank you. And, finally, you may be aware that a number of my former colleagues, Attorneys General, have taken action against Exxon and other oil companies to hold them accountable for misleading and defrauding the public about climate change for decades. Nothing could be so important as the United States Department of Justice similarly taking action against gas and oil companies for lying to the American public about the devastating effects of these products on climate change. I hope you will consider taking action in that regard.

Judge GARLAND. I guess from the way you began it feels like there is probably pending litigation on this matter already, so it is something I really should not be commenting on.

Senator BLUMENTHAL. Thank you very much, Judge.

Judge GARLAND. Thank you, Senator.

Chair DURBIN. Thank you, Senator Blumenthal.

Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman.

Judge Garland, thank you for being here. Congratulations on your nomination.

Judge GARLAND. Thank you, Senator.

Senator HAWLEY. Since June of last year, the city of St. Louis and my home State of Missouri homicide rate is at its highest level since 1970. Eleven police officers have been shot, including former police officer David Dorn who was murdered in cold blood during rioting in the city this past summer. In Chicago, homicides are up 50 percent; in New York, 40 percent; in L.A., 30 percent. Clearly, our criminal justice system is under renewed and fairly extreme strain.

Can you tell me, if you are confirmed as Attorney General, what is the first thing you will do to confront this growing crisis?

Judge GARLAND. I am sorry. Did you ask me what I would do or will I?

Senator HAWLEY. What will you do? I assume you will do something. What will you do?

Judge GARLAND. Yes, so, look, I am obviously—I have read the statistics myself, and I know that there is an upswing in violent crime. I am very concerned about it. When I was an Assistant U.S. Attorney, the number of murders—I joined at a time when the number of murders in the District of Columbia were more than twice the number of murders that they are now. I spent much of my early career on this problem of violent crime searching for the best possible ways to suppress it, going after violent repeaters being one of the best ways; going after violent gangs that supported violent action being another important way; putting resources in the places where they are necessary.

Again, sitting here, and, therefore, only having been an observer of this from the outside, I do not know what information the Department has now, but I was a strong supporter and one of the developers of the Violent Crime Initiative during the time when I was in the Justice Department, and it may well be time for another

one. I know that the administration of Attorney General Barr looked at this very closely as well.

So I would have to look at, you know, what is going on in the Department right now and what more needs to be done. But I share your concern.

Senator HAWLEY. Very good. Thank you for that.

In the midst of this mounting crime wave, there has been increasing calls by some activists, including Members of the United States Congress, to defund the police. I have to tell you I think this sends exactly the wrong message to law enforcement who feel very much overburdened, underpaid, under siege, and also sends the wrong message to folks who are suffering from this violent crime wave, especially working-class communities.

Tell me what your position is on defunding the police. Do you support this movement? Will you support it as Attorney General?

Judge GARLAND. Well, as you no doubt know, President Biden has said he does not support defunding the police, and neither do I. We saw how difficult the lives of police officers were in the body cam videos we saw when they were defending the Capitol. I do believe and President Biden believes in giving resources to police departments to help them reform and gain the trust of their communities.

I do believe, and I believe he does as well, that we do need to put resources into alternative ways of confronting some actors, particularly those who are mentally ill and those who are suicidal so that police officers do not have to do a job that they are not trained for and that from what I understand it, they do not want to do. And so those resources need to go to mental health professionals and other professionals in the community so that the police can do the job that they have trained for and so that confrontations, if possible, do not lead to deaths and violence.

Senator HAWLEY. Let me ask you about assaults on Federal property in places other than Washington, DC. Portland, for instance, Seattle. Do you regard assaults on Federal courthouses or other Federal property as acts of domestic extremism, domestic terrorism?

Judge GARLAND. Well, Senator, my own definition, which is about the same as the statutory definition, is the use of violence or threats of violence and attempt to disrupt democratic processes. So an attack on a courthouse while in operation, trying to prevent judges from actually deciding cases, that plainly is domestic extremism, domestic terrorism. An attack simply on Government property at night or any other kind of circumstances is a clear crime and a serious one and should be punished. I do not mean—I do not know enough about the facts of the example you are talking about, but that is where I draw the line. One is—both are criminal, but one is a core attack on our democratic institutions.

Senator HAWLEY. Let me ask you about something that some progressive groups have recently been saying with regard to you. The Progressive Change Campaign Committee, which is a left-wing activist group that does fundraising for Democrat Party causes, is circulating a petition addressed to you that states, and I quote now, “Trump and his criminal network of associates must be investigated and prosecuted for law breaking.” This, of course, against

the backdrop, Judge, of groups who are keeping lists of people who worked at the White House, including lists of interns who worked at the White House, trying to prevent them from getting jobs, trying to prevent them from working, whether it is in politics or government or anywhere else again.

We have seen—Senator Cruz I know asked you about political targeting. I have to say I am very concerned about the specter of political targeting because it has happened before. It happened in the Obama-Biden administration. It happened—it culminated in lies told to the FISA Court during the last administration with the FBI and, sadly, the Department of Justice signed off on submissions to the FISA Court which, as you know, were falsified, actively falsified, leading to an unprecedented and historic rebuke from that court.

My question is: Given this pressure campaign already being mounted toward you—this petition I just quoted is addressed to you personally—if you are confirmed, will you resist the calls and efforts by political groups to politicize the Department of Justice, to use political targeting? Will you adhere to the statute right down the middle and enforce the law fairly and equally?

Judge GARLAND. Senator, I have been a judge now for almost 24 years. People on one side or the other of every single case think I have done the wrong thing in that case, because both sides cannot win. I have grown pretty immune to any kind of pressure other than the pressure to do what I think is the right thing given the facts and the law. That is what I intend to do as the Attorney General. I do not care who pressures me in whatever direction.

The Department, if I am confirmed, will be under my protection for the purpose of preventing any kind of partisan or other improper motive in making any kind of investigation or prosecution. That is my vow. That is the only reason I am willing to do this job.

Senator HAWLEY. Do you agree that what the Department of Justice and the FBI did in misleading, deliberately misleading a FISA Court, submitting false information to a FISA Court, submitting falsified information and evidence to a FISA Court, drawing the rebuke of that court, do you agree that that was an egregious violation of public trust?

Judge GARLAND. I think a false statement to a court is a terrible thing. It is—I was going to say “obstruction of justice,” and it may well be, but that is a very specific concern. But I can tell you how angry judges get when they learn that somebody who has made an application to them has not told them the complete truth or has spun the truth in any way. You will hear those statements by judges all the time, and appropriately so.

Senator HAWLEY. Very good. Well, thank you, Judge, and I hope if you are confirmed that you will indeed be that guardian to make sure that the rule of law is fairly enforced equally and that it is not used for political purposes.

Mr. Chairman, my time counter does not work. Has my time expired?

Chair DURBIN. Yes.

Senator HAWLEY. All right. Thank you very much, Judge.

Thank you, Mr. Chairman.

Chair DURBIN. Senator Hirono, are you within Zoom range?

Senator HIRONO. Yes.

Chair DURBIN. Take it away.

Senator HIRONO. Thank you, Mr. Chairman.

Welcome, Judge Garland. It is nice to see you again.

Judge GARLAND. Thank you.

Senator HIRONO. I want to start with two preliminary questions that I ask every nominee who comes before any of the Committees on which I sit, and these two questions are: Since you became a legal adult, have you ever made unwanted requests for sexual favors or committed any verbal or physical harassment or assault of a sexual nature?

Judge GARLAND. No.

Senator HIRONO. Have you ever faced discipline or entered into a settlement related to this kind of conduct?

Judge GARLAND. No.

Senator HIRONO. Judge Garland, considering that we just had a President that did not think the rule of law applied to him, I am gratified to hear that so many of my Republican colleagues are asking you whether you as Attorney General will follow the rule of law, and, of course, you will.

I want to get to consent decrees because I do not think that you have been asked about consent decrees yet. The Justice Department's Civil Rights Division has described consent decrees as, I quote, "most effective in ensuring accountability, transparency, and flexibility for accomplishing complex institutional reforms."

So despite their effectiveness, however, the Trump administration was openly hostile to consent decrees. In November 2018, Attorney General Jeff Sessions issued a memo that drastically curtailed their use in bringing police departments into compliance with the Constitution. The result was that the Trump administration did not enter into a single new consent decree with any law enforcement agency suspected of systemic abuse of constitutional rights, and they also actively undermined existing consent decrees, all this while excessive force by police in Minneapolis, Louisville, Kenosha, and other cities led to one of the biggest social justice movements this country has ever seen.

What is your view, Judge Garland, of the role of pattern-or-practice investigations and consent decrees in addressing civil rights abuses by police?

Judge GARLAND. Thank you for this question, Senator. I think police accountability is an essential element of the ability of a police department to have credibility with the community, and without credibility and trust, a police department cannot do its job of ensuring the safety of the community.

Police officers who violate the Constitution must be held accountable, and police officers who follow the Constitution want police officers who don't to be held accountable for just that reason, because it leads to a taint on all police officers, which would be unfair.

Congress has given the Justice Department the authority and the responsibility to investigate patterns or practices of law enforcement entities' conduct that violate the Constitution and laws of the United States. That is the statutory responsibility of the Justice Department. And so it is an important tool the Department has for ensuring accountability.

The statute further provides that if the Department finds this pattern or practice of unconstitutional conduct, it can seek equitable remedies from the court. And one of the kinds of equitable remedies which has proven effective in the past are consent decrees. So where they are necessary to assure accountability, it is very important that we use that tool.

That is not the only tool available to the Justice Department. We can use grantmaking to provide funds for police departments to reform themselves, to make themselves more accountable. We can provide technical assistance; we can provide incentives. All of these are a set of tools, and the Justice Department has been given these tools by the Congress, and it should use all of them.

Senator HIRONO. So you emphasize accountability of police departments and the Justice Department's consent decrees, which, by the way, are not just one-sided. They are entered into, as I understand it, after much dialogue and discussion with the affected police departments, so they are definitely a tool.

By your answer, I hope that you plan to reengage the Justice Department in enforcing and abiding by the existing consent decrees, because I noted that the previous administration had undermined the existing consent decrees.

Judge GARLAND. Well, I think if there is an existing consent decree, then we are certainly going to require adherence to it, yes.

Senator HIRONO. You have been asked a number of questions about, in my view, the active voter suppression laws that are being enacted, particularly, of course, after the *Shelby County* decision that gutted one of the major provisions of the Voting Rights Act, leaving Section 2 that still gives the Attorney General's office some tools to go after those States that are contemplating legislation that, in effect, will result in voter suppression.

Are you aware of any instance of widespread voter fraud in the 2020 Presidential election or, for that matter, any other election?

Judge GARLAND. No, Senator. All I know, of course, is what I have been able to glean from the public reports of Government agencies. The Department of Homeland Security in the previous administration publicly described the last election as the "most secure in American history." Some 60 or more courts rejected claims of fraud in the election, some on legal grounds, but many after providing an opportunity for the submission of evidence and rejected the evidence that was submitted as insufficient. And Attorney General Barr authorized the U.S. Attorneys to investigate voter fraud after the election and before certification, and at the conclusion, he announced that the Department had not found evidence sufficiently material of widespread voter fraud to have had an effect on the election.

Senator HIRONO. Thank you, Judge Garland. I am running out of time. I just wanted to reiterate that I heard in an earlier response that you would work with Congress to determine whether a preclearance provision should be reenacted.

There is one other thing that I wanted to note, and that is your acknowledgment that hate crimes against the AAPI community is definitely rising, and that you will do everything you can to make sure that there is enforcement of the laws against these kinds of crimes. And I just noted that just a few weeks ago, an 85-year-old

man died after he was abruptly attacked while out on a morning walk in San Francisco. And in Oakland's Chinatown neighborhood, a man violently shoved and injured a 91-year-old man, a 60-year-old man, and a 55-year-old woman, and in each of these cases, the victims were AAPI community members.

Thank you. I do have additional questions. I will wait for round two. Thank you.

Judge GARLAND. Thank you, Senator.

Chair DURBIN. Thanks, Senator Hirono.

Senator Cotton.

Senator COTTON. Judge, welcome.

Judge GARLAND. Thank you, sir.

Senator COTTON. I want to return to Senator Grassley's questions about the Durham investigation. Senator Grassley asked you if you would commit specifically to ensure that John Durham had the staff, the resources, and the time that he needed to complete that investigation. You said you did not have the info yet, that you needed to speak to him, but you had no reason to think that him staying on was not the correct decision.

Judge GARLAND. That is correct, Senator, yes.

Senator COTTON. Why can't you commit specifically to saying that he will have the time, staff, and resources he needs to complete his investigation?

Judge GARLAND. Well, again, it is because I am sitting here and I do not have any information about what he needs and his resources and the allocation of resources. But everything I know sitting here suggests that he should, of course, have those resources.

Senator COTTON. Judge, 2 years ago, Bill Barr made that exact commitment about the Mueller Special Counsel. He did not have that information. He had not consulted with the Department. He was in the same posture you are. He simply said, "yes." Why can't you say "yes" today, the way Bill Barr did 2 years ago?

Judge GARLAND. Again, my view about every investigation and every decision I make is, I have to know the facts before I can make those kind of decisions. I do not know what went into his consideration, but for myself, I have to be there and learn what is going on before I can make a decision. But as I said, I have no reason to doubt that the decision to keep him in place and to continue in his investigation was in any way wrong.

Senator COTTON. Was it wrong for Bill Barr to make that commitment 2 years ago?

Judge GARLAND. As I said, Senator, I am not going to be making judgments about my predecessors. I do not think there is any purpose in that. For myself, I want you to judge me on my own record and what I do going forward.

Senator COTTON. Was it wrong for Democratic Senators on this Committee to repeatedly demand that Bill Barr make that commitment 2 years ago?

Judge GARLAND. I think my answer would be the same.

Senator COTTON. Okay. Let us turn to the death penalty. You said that you developed great pause over it, and you said that Joe Biden expresses opposition to the death penalty. Did Joe Biden or anyone from his administration, transition, or campaign ask you



not to pursue capital punishment in cases against murderers or terrorists?

Judge GARLAND. No.

Senator COTTON. Thank you. Judge, you spoke at the outset, as did perhaps several other Senators, about your outstanding work in the 1995 Oklahoma City bombing case in which you were part of a team that helped to bring to justice a white supremacist mass murderer, Timothy McVeigh. He was sentenced to death. That death penalty has been carried out. Do you regret the fact that Timothy McVeigh received the death penalty and has been executed?

Judge GARLAND. Look, I supported, as I said in my original Senate hearing when I became a judge originally, I supported the death penalty at that time for Mr. McVeigh in that individual case. I do not have any regret. But I have developed concerns about the death penalty in the 20-some years since then, and the sources of my concern are issues of exonerations of people who have been convicted, of sort of arbitrariness and randomness of its application because of how seldom it is applied and because of its disparate impact on Black Americans and members of other communities of color. Those are the things that give me pause, and those are things that have given me pause over the last—you know, as I have thought about it over the last 20 years.

Senator COTTON. Judge, if you were confirmed as Attorney General and there was another case like Timothy McVeigh's where a white supremacist bombed a Federal courthouse, killing 168 Americans, including 19 children, and your U.S. Attorney sought your approval for the death penalty, would you give him that approval?

Judge GARLAND. So I think it depends on what the development of the policy is. If the President asks or if we develop a policy of a moratorium, then it would apply across the board. There is no point in having a policy if you make individual discretionary decisions. So if that is the policy, then that would be the policy.

Senator COTTON. Judge, you said in your opening statement and, in addition, to several questions from Senators that you would strictly regulate communications between the White House, that there would be no partisan influence. So is this a case in which there would be influence from the White House in individual cases if the U.S. Attorney was seeking the death penalty against a white supremacist domestic terrorist?

Judge GARLAND. Oh, I understand the question. I am sorry. Maybe I did not understand it before. What I am trying to say here is if there was a policy decision made by the President and announced by the President, he certainly has the authority to direct—and nothing inappropriate about it; it is within his authority to require an across-the-board moratorium. This is not—what I was talking about was not a decision by the President in any particular case or the direction of how any particular case should go forward, but of a moratorium which would apply as a policy across the board.

The Supreme Court has held that the death penalty is constitutional, but it is not required, and that is within the discretion of the President.

Senator COTTON. Before I move on from the Oklahoma City case, let me just commend you again for your work on it and say that I believe Timothy McVeigh deserved the death penalty.

Judge GARLAND. Thank you, Senator.

Senator COTTON. Another case involves Dylann Roof, a white supremacist from South Carolina, who went into an African-American church and killed nine African Americans in a racially motivated terrorist attack. The Obama Department of Justice sought the death penalty against him and received it. Do you believe that was a mistake?

Judge GARLAND. I am sorry?

Senator COTTON. Do you believe it was a mistake to seek the death penalty against Dylann Roof for murdering nine African Americans as they worshipped in church?

Judge GARLAND. I know I am not supposed to be asking you the questions, but I have a feeling that this is still a pending matter, and if it is, I cannot talk about a particular case.

Senator COTTON. In that case, let me ask you the hypothetical—

Judge GARLAND. I apologize for asking you because I know that is not my—

Senator COTTON. Let us suppose that another white supremacist walks into another African-American church and murders African Americans worshipping Christ in cold blood. The U.S. Attorney seeks the death penalty against that white supremacist. Would you approve it?

Judge GARLAND. Again, Senator, I think it does depend on what policy is adopted going forward. I would not oppose a policy of the President because it is within his authority to put a moratorium on the death penalty in all cases, and instead to seek mandatory life without possibility of parole, without any consideration of the facts of any particular case.

Senator COTTON. Some on the left are calling for President Biden to grant an across-the-board commutation to all Federal death row inmates to reduce their sentence to life in prison. Would you recommend to President Biden that he make such an across-the-board commutation?

Judge GARLAND. This is one of the ones that I would have to think about and which I have not thought about, and I would have to, you know, consult with the administration on such an across-the-board policy. I have not thought about that.

Senator COTTON. Thank you.

I want to turn to racial equity. Do you agree that a core concept, Judge, of American law is that the Government cannot discriminate against a citizen on the basis of their race?

Judge GARLAND. Absolutely. Equal justice under the law, written right there on the pediment above the Supreme Court.

Senator COTTON. And not only is it unlawful, it is morally wrong as well?

Judge GARLAND. Yes, I think discrimination is morally wrong, absolutely.

Senator COTTON. Are you aware that President Biden has signed an Executive order stating that his administration will affirmatively advance racial equity—not racial equality but racial equity?

Judge GARLAND. Yes, and I read the opening of that Executive order, which defines equity as the fair and impartial treatment of every person without regard to their status, and including individuals who are in underserved communities where they were not accorded that before. But I do not see any distinction between—in that regard. That is the definition that was included in that Executive order that you are talking about.

Senator COTTON. So to you racial equity and racial equality are the same thing?

Judge GARLAND. This is a word that is defined in the Executive order as I just said it, so I do not know what else—I cannot give you any more than the way in which the Executive order defined the term it was using.

Senator COTTON. Thank you, Judge.

Chair DURBIN. Senator Booker.

Senator BOOKER. Thank you, Mr. Chairman.

Judge Garland, it is really good to see you sitting before the Judiciary Committee of the United States Senate.

Judge GARLAND. Thank you, Senator.

Senator BOOKER. I am really grateful.

If you do not mind me starting a little bit with philosophy, there is the Micah Mandate, which I am not sure by your expression you know, but you have heard it before. It is do justice, love mercy.

Judge GARLAND. That mandate I do know, yes.

Senator BOOKER. And walk humbly. It seems like a pretty good mandate for life.

Judge GARLAND. Yes.

Senator BOOKER. And this idea of justice to me is fundamental to the ideals of the Nation, founded with a lot of injustice at the time, but the brilliance of the imperfect geniuses of our Founders who aspired to create a society that, you know, John Lewis and others would have called “the more beloved community.” And one of my—an activist I have read a lot, a theologian, said, “What does love look like in public? It looks like justice.” And you have, to me, perhaps one of the more important positions on the planet Earth for trying to create a more just society. And the issues of race—and I was really grateful that you in your opening remarks talked about your agency actually coming about to deal with issues of justice in our Nation.

I want to talk to you about white supremacist violence, which has been mentioned a lot, but before I get there, I am actually concerned with something that I consider pernicious and very difficult to root out, which is the realities of implicit racial bias that lead to larger systemic racism.

Now, I have been kind of stunned that the issue of systemic racism has become something argued over, but if I can just walk you through for a second, does our justice system treat people equally in this country at this point?

Judge GARLAND. Sadly, and it is plain to me that it does not.

Senator BOOKER. And I am going to stop you there. Bryan Stevenson says we have a criminal justice system that treats you better if you are rich and guilty than if you are poor and innocent because one’s finances make a difference often with what kind of justice one gets. Is that correct?

Judge GARLAND. Senator, there is no question that there is disparate treatment in our justice system. Mass incarceration is a very good example of this problem. You know, we are incarcerating almost 25 percent of the world's prison population, and we have something like 5 percent of the world's population. I do not think that is because Americans are worse. But what underlies that is the disparate treatment of Blacks and communities of color.

Senator BOOKER. Well, let us drill down on that for a second.

Judge GARLAND. Yes.

Senator BOOKER. So one of the big things driving arrests in our country, stunningly to me even that it is still the case, is marijuana arrests. We had in 2019 more marijuana arrests for possession than all violent crime arrests combined.

Now, when you break out that data and disaggregate along racial lines, it is shocking that an African American has no difference in usage or selling than someone who is white in America, but their likelihood of being arrested for doing things that two of the last four Presidents admit to doing is 3 to 4 times higher than somebody white.

Is that evidence that within the system there is implicit racial bias? "Yes" or "no," sir.

Judge GARLAND. Well, it is definitely evidence of disparate treatment in the system, which I think does arise out of implicit bias. Unconscious bias, maybe; sometimes conscious bias.

Senator BOOKER. And I think that is a fair point. Unconscious or conscious, nonetheless it results in a system. And I have had great conversations with people on both sides of the aisle, heads of think tanks that all speak to this as abhorrent to American ideals, that we still have a system that so disparately treats people at every point. The station house adjustment, which I know you know what that is, which I have seen happen as a mayor, that people get called in or are arrested for possession of marijuana, and the police make a decision like just, you know, leave, and your parents come and whatever, and it is dismissed with.

We see from station house adjustments to charging, to bail, to sentencing, every objective analysis has shown that race right now in our country is still playing a specific influence in the justice system that someone gets. You are aware of all of this, yes?

Judge GARLAND. I am, and this is a particular part of the reason at this moment I think I wanted to be the Attorney General. I want to do the best I can to stop that.

Senator BOOKER. Right, and I want to get to that. The point that a lot of my folks are making and you just made, it does not mean that the people who are engaged in this are racist overtly. It means that they have an implicit racial bias that often leads them to make different decisions about different people. That is correct?

Judge GARLAND. Yes. It also—the marijuana example is a perfect example that you have given here. Here is a nonviolent crime with respect to usage that does not require us to incarcerate people. Then we are incarcerating at different rates, significantly different rates of the different communities. And that is wrong, and it is the kind of problem that will then follow a person for the rest of their lives. It will make it impossible to get a job. It will lead to a downward economic spiral for their family.

Senator BOOKER. Right. And so to that point, and now to your point I cut you off from before, now I would like to give you a chance to answer that. Here you are in an agency that was formed to deal with the kind of systemic racism that was going on at that time. When you have disparate use of the law, where you see African Americans being churned into the criminal justice system, where it is concentrated in certain communities and not in others, where it has, as the American Bar Association says, 40,000 collateral consequences on the lives of those African Americans, where they cannot get loans from banks, they cannot get jobs, they cannot get certain business licenses, where it is so dramatic that there are estimates that it costs literally to African Americans in the persistence of a wealth gap in our country, where Black families have one-tenth the wealth of white families. If you just look at the impact of the law and the disparate impact on just marijuana, it is estimated to cost African-American communities in this country billions of dollars more.

My question to you now is: Assuming this position where you are called upon for that Micah Mandate, what are you going to do about this outrageous injustice that persists and infects our society with such a toll on Black and Brown communities?

Judge GARLAND. So there are many things that the Justice Department has to do in this regard, and I completely agree that disparate results with respect to wealth accumulation, discrimination in employment, discrimination in housing, discrimination in health care availability, all of which we all see now in the consequences of a pandemic which affects communities of color enormously more with respect to infection rates, with respect to hospitalization, and ultimately to death.

So one set of things we can do is the mass incarceration example that I began with. We can focus our attention on violent crimes and other crimes that put great danger in our society and not allocate our resources to something like marijuana possession. We can look at our charging policies and stop charging the highest possible offense with the highest possible sentence—

Senator BOOKER. I was taught in law school never to interrupt a judge of your import, so forgive me.

Judge GARLAND. I do not think that applies here.

Senator BOOKER. I would like to end with this question, and then my time is up.

Judge GARLAND. Yes.

Senator BOOKER. You have talked to me a lot about your thoughts about this, and I have been really inspired. But it gets back, to me, to your conviction in this issue and your determination to go down—at a time when our Nation needs this, to go down as one of the great leaders when it comes to dealing with the daily unconscionable injustices faced by some Americans and not others at the hands of law enforcement. And I think that one thing you said to me privately particularly motivated me to believe you when you talk about your aspirations. I am wondering if you could just conclude by answering the question about your motivation and maybe some of your own family history in confronting hate and discrimination in American history.

Judge GARLAND. Yes, Senator. So, you know, I come from a family where my grandparents fled anti-Semitism and persecution. The country took us in and protected us. And I feel an obligation to the country to pay back, and this is the highest, best use of my own set of skills to pay back. And so I want very much to be the kind of Attorney General that you are saying I could become, and I will do my best to try and be that kind of Attorney General.

Senator BOOKER. I believe your heart, and I am grateful that you are living that Micah Mandate.

Chair DURBIN. Thank you, Senator Booker.

I am going to make a motion to introduce into the record letters of support for Judge Garland's nomination. There are 25 different categories of letters of support. I am struck immediately by the diversity of support that you have: 150 former Attorneys General and top Department of Justice officials; Alberto Gonzales, Michael Mukasey, Eric Holder, Loretta Lynch. The list goes on and on. Dozens of former Federal judges, former State Attorneys General. For you to have both the National Sheriffs' Association, the Fraternal Order of Police, and the Leadership Conference on Civil and Human Rights is an amazing political achievement.

And the list goes on: advocates for crime victims and survivors, former FBI Director Louis Freeh. Senator Lee mentioned the Levi children and grandchildren. They both have written letters of support for you.

I wanted to take a moment, in light of your closing statement from this round, to tell you that your work and your life has been recognized across the board. This array of letters of support speaks to fairness and honesty in the way that you have dealt with your legal profession and your public service.

So, without objection, I will introduce these letters of support for your nomination into the record.

[The information appears as submissions for the record.]

Chair DURBIN. And now we are going to take a lunch break, and I am going to declare—I guess I have the power to do that now—that we will return at 1:40, and the first person up will be from the sovereign State of Louisiana, John Kennedy, and we will all anxiously await his contribution. So let us stand in recess.

Judge GARLAND. Thank you.

[Whereupon the hearing was recessed and reconvened.]

Chair DURBIN. The hearing will resume.

Senator Kennedy of Louisiana.

Senator KENNEDY. Thank you, Mr. Chairman.

Good afternoon, Judge.

Judge GARLAND. Nice to see you, Senator.

Senator KENNEDY. Good to see you, sir. I want to follow up a little bit on something that Senator Booker talked about. What, to you, is justice?

Judge GARLAND. Everybody treated equally, regardless of their position in society—powerful, powerless, rich, poor, Republican, Democrat, Black, white: Equal justice under the law.

Senator KENNEDY. I want to go a little further, press you a little bit on that. Is it justice if you have an unjust law that is applied equally?

Judge GARLAND. Well, no. The unjust law is itself the lack of justice.

Senator KENNEDY. Let's narrow it down to punishment injustice. If I suggested to you that justice in the concept of punishment is when someone gets what he deserves, would you agree or disagree with that?

Judge GARLAND. I supposed that depends on what "gets what he deserves" means. But yes, I think justice requires individualized determination of the kind of crime you did, you know, and the mitigating circumstances, yes.

Senator KENNEDY. Well, let me put it another way. Is a person who commits a crime a sinner, in the moral sense, or a sick person?

Judge GARLAND. This is, again, probably beyond my competence. I think with justice comes mercy, and so I think we have to take into consideration all different kinds of things. I also think that the kind of crime that we're talking about is relevant to the question of what kind of person it is. So I am not sure exactly what you are asking me. I am not trying to be evasive. I just don't know exactly what you are asking me.

Senator KENNEDY. Okay. Let me shift gears here. Were you Chief Judge when the coronavirus hit us?

Judge GARLAND. Unfortunately for my successor, my term ran out just before coronavirus hit us.

Senator KENNEDY. Well, if you had been Chief Judge——

Judge GARLAND. Yes.

Senator KENNEDY [continuing]. Would you have adopted a rule that said if one of our employees in the court gets coronavirus and goes to the hospital, and is treated, and is released, and wants to come back to work at the court, it would be discriminatory to ask them to take a coronavirus test?

Judge GARLAND. No.

Senator KENNEDY. Okay. Isn't that what happened with a lot of our nursing homes throughout the country?

Judge GARLAND. You know, I honestly don't know what happened with the nursing homes. I don't know what they were doing with respect to—I am sorry. Again, I am not trying to be evasive. I really don't know the facts here. I mean, I think in the example you gave me, there is nothing discriminatory about asking people who might be infected, from a public health point of view, to be sure they don't infect other people, and if a determination is made they are not infected then, of course, that is the end of it. Equal treatment does not mean we don't take into consideration the possibilities of different degrees of health in a particular circumstance, and I honestly don't know what happened with the nursing homes. I know that it was terrible that many people got COVID in the nursing homes, and it was a major vector in the spread of the infection. But I don't know why that was, except that they are people cooped up in one place, and then it is easy to spread that way.

Senator KENNEDY. All right. I think science tells us that keeping our schools closed has a disproportionate impact on poor people and children from poor families and on families included, but not limited to, children of color. At what point do you think our refusal of some of our leadership in our schools to reopen becomes a civil rights violation?

Judge GARLAND. So, Senator, I completely agree with your description of the consequences of the school closing.

I tutor two children in a neighborhood in Washington, DC, where most of the students in the school are people of color, and I have been able to tutor them by Zoom every week, and they are taking classes by Zoom. And it is much more difficult, obviously, for them, although they have done terrifically, not because of me but they have, than it would be with people with other resources.

So I think that public officials have to weigh very serious competing concerns with respect to how to deal with COVID. There is just no doubt about it. On the one hand, we have to be very worried about setting kids back in their schooling, and, on the other hand, we have to be very worried about not spreading the disease in a way that kills them or, more importantly, or more likely, their parents or their grandparents.

Senator KENNEDY. Judge—

Judge GARLAND. And I don't want to be the person who makes that judgment.

Senator KENNEDY. I understand, and I get it. Sorry to interrupt. I hate—

Judge GARLAND. No, no. I am sorry. I interrupted you.

Senator KENNEDY. I just have limited time.

You had written, in one of your opinions, and I am going to read—I know you haven't memorized all of your opinions. You said the Constitution, quote, “does not contemplate that the District”—the District of Columbia—“may serve as a State for purposes of the apportionment of congressional representatives. That textual evidence is supported by historical evidence concerning the general understanding at the time of the District's creation.” Is that still your considered opinion?

Judge GARLAND. Yes, and I would say that that is the case, one of my earliest cases, which taught me what it means to be a judge, which is to do something the opposite of what you would do if you had a public policy concern. I think that citizens of the District of Columbia should be able to vote, but I didn't think that the Constitution gave me authority, on my own, to give it to them. And it made me sad but it reaffirmed my role as a judge.

Senator KENNEDY. Okay. In my last 20 seconds I am going to ask you if you agree with this statement. Allowing—and I am not suggesting the answer one way or the other. I just want to know what you believe. Allowing biological males to compete in an all-female sport deprives women of the opportunity to participate fully and fairly in sports and is fundamentally unfair to female athletes.

Judge GARLAND. This is a very difficult societal question that you are asking me. I know what underlies it.

Senator KENNEDY. I know, but you are going to be Attorney General.

Judge GARLAND. Well, but I may not be the one who has to make policy decisions like that, but it is not that I am adverse to it. Look, I think every human being should be treated with dignity and respect. That is an overriding sense of my own character but an overriding sense of what the law requires.

The particular question of how Title 9 applies in schools, is one, in light of the *Bostic* case, which I know you are very familiar with,



is something that I would have to look at when I have a chance to do that. I have not had a chance to consider these kinds of issues in my career so far. But I agree that this is a difficult question.

Senator KENNEDY. Thank you, Judge.

Chair DURBIN. For his first question as a Member of the Senate Judiciary Committee, Senator Alex Padilla.

Senator PADILLA. Thank you, Mr. Chairman.

Judge Garland, and to your family, thank you for your many, many years of public service, and should you be fortunate enough to be confirmed in this next chapter.

I have spent a little bit more than 20 years in public service myself, in different capacities, including the prior 6 years, prior to my appointment to the Senate, as California's Secretary of State and Chief Elections Officer. My mission, in that role, was to increase voter participation and ensure free and fair elections.

As the country has become more diverse, not just States like California and New York but throughout the Nation, it is no coincidence that we have seen a resurgence of white supremacy and violent extremism. And history is clear—voter suppression is rooted in white supremacy. This is true now and it has been true ever since Reconstruction and the establishment of the Department of Justice, just as this Committee has acknowledged at its outset.

It should not be lost on any of us that after the 2013 *Shelby v. Holder* decision by the Supreme Court we have seen a wave of legislation in States across the Nation which have the effect of making it harder for eligible citizens to register to vote, to stay registered to vote, or to simply cast their ballot. I know Senator Leahy touched on the subject of voting rights in his questioning earlier today, but I want to acknowledge that despite the success of the 2020 election, which has been deemed secure, new voter suppression laws are being introduced right now across the country under the false pretext of preventing voter fraud.

Now we all saw how former President Trump's years of lies about voter fraud, the big lie, radicalized many of his supporters and led not just to physical threats against elections officials, elections offices, polling places, and even voters, but they ultimately led to the violent insurrection here in the Nation's capital. I know you touched on this in your opening remarks, but can you expand on how you will combat the white supremacy that threatens the safety and fairness of our elections, specifically?

Judge GARLAND. Well, you have asked a lot of questions all in one, which is—

Senator PADILLA. It is complicated.

Judge GARLAND. It is a complicated problem. Right. So I strongly believe in voting and in increasing every possible opportunity for voting, which, of course, Congress can do even on its own. The Elections Clause of the Constitution permits the Congress to set time, place, and manner, and to alter State regulations in that respect. In default, the State decides what Congress can act that way. So that is one thing that Congress could do as a matter of legislation.

As I said, I think I would like to work with the Congress on improving the record with respect to Section 4, so that we can use a tool of Section 5. We do have the authority of Section 2. It does re-

quire—it changes the burden of proof and it requires to attack, one by one, changes in election laws. But it does give us the opportunity to bring cases both where there was intention to discriminate but also where there is an overall disparate impact with respect to discrimination.

So we have a number of tools available to us, and the Voting Rights Section of the Civil Rights Division was established for the purpose of pursuing those cases, and we would do so.

Senator PADILLA. Thank you. I want to dig a little bit deeper on this, because you are absolutely right. We need, in my opinion, to restore the full strength of the Federal Voting Rights Act. There is a lot that can and should be done, not just in terms of elections administration with respect to voting rights, but protection of voters themselves. You know, people should be able to vote free of any harassment, intimidation, obstacles, et cetera. And part of what works against that is, again, rooted in white supremacy—this big lie.

We all sat through the impeachment trial, and the results notwithstanding, I can't help but be moved by the evidence presented by the House Managers, again, how President Trump's big lie about voter fraud radicalized so many of his supporters. And I was struck by a February 19th opinion piece in The Washington Post by Jim Sciutto, about the parallels between the Capitol insurrectionists and foreign terrorist organizations, that I would respectfully ask be inserted into the record, Mr. Chairman.

Chair DURBIN. Without objection.

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

Senator PADILLA. In it, Jim Sciutto writes, and I will quote, “domestic radicalism has deep parallels to jihadist terrorism: Both movements are driven by alienation from the political system and a resulting breakdown in social norms. For some groups and individuals, this breakdown leads to violence they see as justified to achieve political ends,” end quote.

Now, as we all know, the definition of terrorism is the unlawful use of violence and intimidation in pursuit of political ends. President Trump's political end was clear—stopping the certification of the 2020 election at the Capitol on January 6th. One could argue that right-wing groups, like the Proud Boys and the Oathkeepers, have acted like terrorists themselves, communicating with one another, training together, and preparing for the moment they are activated for their mission. Indeed, President Trump instructed the Proud Boys, on national television, to “stand back and stand by,” and then he summoned them to the Capitol on January 6th, as Congress was meeting to certify the election.

What happened on January 6th was not a property crime. It was not vandalism, in reference to a question you were asked earlier. Judge Garland, as we sit here in the United States Capitol, surrounded by National Guard troops and barbed wire, how will you bring the full resources of the Justice Department to bear on white supremacist organizations that pose an ongoing threat to not just our safety and not just the safety of this Capitol building but to our fundamental democracy for which it stands?

Judge GARLAND. I couldn't agree more that extremist groups, and particularly white supremacist groups, do pose a fundamental

threat to our democracy, and they have posed that threat throughout our history. And as I recounted, that was the reason the Justice Department was originally established, to fight the first incarnation of the Ku Klux Klan.

The best that I can do is, as I said, my first priority will be to have a briefing on where we are, if I am confirmed, with the investigations, which, from the outside, appear quite vigorous and nationwide, and to find out what additional resources we need. But that is just to focus on what happened in the Capitol. We also have to have a focus on what is happening all over the country and on where this could spread and where this came from, and that requires—it does require a lot of resources. I am very pleased to have read that the Director of the FBI believes that this kind of extremism is the most dangerous threat to the country, and that is where he is putting FBI resources. That is where I would put Justice Department resources. And we need very much to make sure that that is the case.

And I do want to be careful that we also always worry about the foreign threat, because it is always with us, and the fact that nothing has happened recently doesn't mean it could not happen tomorrow. So from whichever direction—inside, outside, right, left, it doesn't matter—an attack on our institutions of democracy and of our ability to go forward with our daily lives and safety has to be stopped, and that we need all—it is governmentwide but also a Justice Department-wide obligation.

Senator PADILLA. Thank you, Judge.

Thank you, Mr. Chair.

Chair DURBIN. Thanks, Senator.

Senator Tillis would be next but he is not in Zoom range. Is that a possibility? And so Senator Blackburn, if she can connect with us, is next up.

Senator BLACKBURN. Yes, sir, I am connected, Mr. Chairman. Thank you so much.

And, Judge Garland, I want to say thank you to you for your willingness to serve and for your career in public service. And I will tell you, as I have talked to Tennesseans about this, they care a lot about law, order, timeliness at the Justice Department. After the Christmas Day bombing, you and I discussed this, in the bombing that took place in Nashville. They really are interested in the principles and the convictions of our Nation's top law enforcement officials. And my hope is, and I think the expectation is that you will assure the American people that you are going to apply the law fairly and equitably, because in this country, as we know, no one is above the law.

Now I know you have been asked about the Durham investigation, and I will tell you that this is important to Tennesseans, in making certain that that investigation is going to be completed and that you are going to work to be certain that it is not impeded and is completed, and that you are committed to seeing this through to completion.

Judge GARLAND. Well, thank you, Senator. I appreciate it, and I appreciated the opportunity we had to discuss these matters earlier, as well.

As I said, with respect to the Durham investigation, I don't know anything about it other than what has appeared in the media. The investigation has been discreet, as appropriate, with respect to expressions of its status. I understand that Mr. Durham has been permitted to remain in his position, and I know of nothing that would give me any doubt that that was the correct decision.

Senator BLACKBURN. And I appreciate that, and likewise, we had discussed the investigation into Hunter Biden's business dealings. And we want to make certain that you commit to allowing Delaware U.S. Attorney David Weiss to complete that investigation and bring that evidence forward.

Judge GARLAND. And similarly with Mr. Durham, I don't know anything about that investigation, other than what I have read in the media. And again, that investigation has been proceeding discreetly and not publicly, as all investigations should. I understand that the Delaware U.S. Attorney was permitted to stay on as U.S. Attorney, and I, again, have absolutely no reason to doubt that that was the correct decision.

Senator BLACKBURN. And let's talk a little bit about China, because we discussed some of that for the record. And our last DNI had stated that China is our greatest threat. So I would like to hear from you. Do you agree that the Chinese Communist Party is an enemy of the American people?

Judge GARLAND. Well, I don't have the same familiarity with the intelligence information that the Director of National Intelligence has, so in terms of comparing, say, the threat from China and the threat from Russia, I am just not competent to make that comparison, and I have learned, in my professional career, not to make judgments on which I am not competent. But certainly, from what the Director said, there is no doubt that China is a threat with respect to hacking of our computers, hacking of our infrastructure, theft of our intellectual property. All of these are very difficult problems that we have to defend against.

Senator BLACKBURN. Well, we do, and I know that Lindsey Graham asked you about Section 230 and some of the issues that are there. We all are very concerned about the issues that surround China, whether it is the Chinese Communist Party and the way they threaten our democracy and our economic leadership around the globe. And we are also concerned about the Chinese military links into our American universities through things like the Confucius Institutes. For instance, recently there was a situation at Harvard with a cancer researcher, and he was caught trying to smuggle 21 vials of biological material out of the U.S. and get it to China.

And I would hope what you agree is that this threat puts American intellectual property and technology at risk, and I would hope that you would assure the American people that you are going to put the full force of the Department of Justice forward to investigate and to prosecute every one of these spies that are working on U.S. soil.

Judge GARLAND. Well, Senator, I am not familiar with that circumstance so I can't comment on it specifically, but I can assure that the Justice Department's National Security Division was created, in part, for the purpose of ferreting out espionage by foreign

agents and that that is also the role of the FBI and the two working together. And if foreign agents are caught stealing American intellectual property, American trade secrets, American materials, that they will be prosecuted. Yes, of course.

Senator BLACKBURN. Thank you. We are about a year into this pandemic, and technology has allowed for us to do work like we, in the Senate, are doing with WebEx. I think we have all found that it gives a lot of flexibility. But as we are spending more time online we hear from people about holding Big Tech accountable. As I said, you discussed Section 230 earlier. And we are hearing more about antitrust lawsuits. Of course, you all have heard the current suit against Google, and I will hope that you are going to allow that lawsuit to continue.

Judge GARLAND. Yes. Again, I don't want to talk about a particular lawsuit, but I don't see—every matter I have to ask for a briefing on. But much of that lawsuit is public, and again, given what I have read I don't see any reason why that investigation, the decision to institute that investigation would be changed. But I only know what I have read with respect to the descriptions of the public filings.

Senator BLACKBURN. Let me ask you one more question, and then I am going to have a series of questions to come to you as QFRs. President Biden has talked about reinstating the Obama administration practice of paying settlement money from winning lawsuits to third-party interest groups like La Raza, the National Community Reinvestment Coalition, and the Urban League. And it is just—you know, I find it really interesting that they would choose to have that money go to these outside groups instead of to victims, or to the U.S. Treasury.

So do you plan on reinstating that policy, and how would you justify reinstating that policy?

Judge GARLAND. I don't have any plan one way or the other. I know you raised that policy when we were talking before, and I understand your concern about it. Obviously, damages, recoveries should first go to help victims. I don't know very much at all about the policy, and it would be something I would have to consider, if I am confirmed. I would have to hear the arguments on both sides of why the policy obviously started and also why it was rescinded.

Senator BLACKBURN. Thank you so much. I appreciate your time.

Mr. Chairman, thank you.

Chair DURBIN. Thanks, Senator Blackburn.

Senator Ossoff, welcome to the Committee. Your turn to question.

Senator OSSOFF. Thank you, Mr. Chairman.

And Judge Garland, congratulations on your nomination. Thanks for the time that we spent by videoconference discussing some of these issues. Thank you also for sharing your family's immigrant story with the Committee.

It mirrors my own. My great-grandparents came here fleeing anti-Semitism in 1911 and 1913, from Eastern Europe, and I am sure your ancestors could hardly have imagined that you would now be sitting before this Committee and in confirmation for this position.

Judge, I want to ask you about equal justice. Black Americans continue to endure profiling, harassment, brutality, discrimination in policing and prosecution and sentencing and in incarceration. How can you use the immense power of the Office of the Attorney General to make real America's promise of equal justice for all, and can you please be specific about the tools that you will have at your disposal?

Judge GARLAND. So this is a substantial part of why I wanted to be the Attorney General. I am deeply aware of the moment that the country is in. When Senator Durbin was reading the statement of Robert Kennedy, it hit me that we are in a similar moment to the moment he was in.

So there are a lot of things that the Department can do. One of those things has to do with the problem of mass incarceration, the over-incarceration of American citizens and of its disproportionate effect on Black Americans and communities of color and other minorities. There are different ways in which we can—and that is disproportioned in the sense of both the population but also given the data we have on the fact that crimes are not committed—these crimes are not committed in any greater number than in others, and that similar crimes are not charged in the same way.

So we have to figure out ways to deal with this. One important way, I think, is to focus on the crimes that really matter, to bring our charging and our arresting on violent crimes and others that deeply affect our society, and not have such an overemphasis on marijuana possession, for example, which has disproportionately affected communities of color, and then damaged them after the original arrests, because of the inability to get jobs.

We have to look at our charging policies again, and go back to the policy that I helped Janet Reno draft during her period, and that Eric Holder drafted while he was the Attorney General, of not feeling that we must charge every offense to the maximum, that we don't have to seek the highest possible offense with the highest possible sentence, that we should give discretion to our prosecutors to make the offense and the charge fit the crime and be proportional to the damages that it does to our society.

That we should also look closely and be more sympathetic toward retrospective—of reductions in sentences, which the First Step Act has given us some opportunity, although not enough, to reduce sentences to a fair amount. And legislatively, we should look at equalizing, for example, what is known as the crack-powder ratio, which has had an enormously disproportionate impact on communities of color, but which evidence shows is not related to the dangerousness of the two drugs. And we should do, as President Biden has suggested, seek the elimination of mandatory minimum, so that we, once again, give authority to district judges, trial judges, to make determinations based on all of the sentencing factors judges normally apply, and don't take away from them the ability to do justice in individual cases. All of that will make a big difference in the things that you are talking about.

Senator OSSOFF. Thank you, Judge Garland. Let's discuss accountability for local agencies. The Civil Rights Division has the authority to launch pattern-or-practice investigations, targeting systemic violations of constitutional rights or violations of Federal

statutes governing law enforcement. Tomorrow will be the first anniversary of the murder of Ahmaud Arbery in Glynn County, Georgia, who was shot to death in broad daylight, in the street, on camera. But local authorities chose to look the other way and were it not for the activism of Georgia's NAACP there likely would not have been any prosecution in that case.

How can Congress equip DOJ's Civil Rights Division to launch more and more effective pattern-or-practice investigations, without asking you to comment on the details of the Arbery case? And how else can the Department of Justice use its authority to ensure that where local agencies violate constitutional rights or fail to uphold the guarantee of equal protection there is accountability?

Judge GARLAND. Well, I appreciate you not asking me to talk about a pending case. What I will say is that like many, many Americans, I was shocked by what I saw in videos of Black Americans being killed over this last summer. That, I do think, created a moment in the national life that brought attention from people who had not seen what Black Americans and other members of communities of color had known for decades. But it did bring everything to the fore and created a moment in which we have an opportunity to make dramatic changes and really bring forth equal justice under the law, which is our commitment of the Justice Department.

The Civil Rights Division is the place where we focus these operations. You are exactly right that pattern-or-practice investigations are the core of our ability to bring actions here, that these lead to all different kinds of remedies, sometimes consent decrees as a potential remedy. We also can criminally prosecute violations of constitutional rights, and we can also provide funding for police departments to reform themselves. I do believe that officers who follow the law in the Constitution want that accountability. They want officers who do not to become accountable, because if that doesn't happen, their law enforcement agency is tainted, they lose the credibility in the community, and without the community's trust they can't bring safety.

So we have this number of tools. Whether we need additional tools in this particular area, I don't know. Obviously, the resources are necessary—and I am probably going to be like a broken record—in every one of these areas for us to do our job.

Senator OSSOFF. And, Judge Garland, with my time—

Judge GARLAND. Oh, I am sorry.

Senator OSSOFF [continuing]. Will you commit to working with my office and with this Committee to determine what additional authorities the Department may need and what resources you may require in order to be able to bring more and more effective pattern-or-practice investigations, where appropriate?

Judge GARLAND. Absolutely, Senator. I am sorry to have gone on.

Senator OSSOFF. No problem. Thank you, Judge Garland.

Mr. Chairman, I yield back.

Chair DURBIN. Thank you, Judge, and thank you, Senator Ossoff.

And so only in the Senate would we characterize a 5-minute round of questioning as a lightning round. That is what we are going to shift to at this moment. And those Senators who wish to

ask a second question will have 5 minutes to do so, and I am going to kick it off, if I can.

I want to address an issue which doesn't come up very often in this type of hearing but should, and that is the state of America's Federal prisons. We talk a lot about justice under the law sentencing enforcement. We know the outcome in many, many cases is that a person is incarcerated for sometimes a very lengthy period of time. How long that period of time is and how that person is treated in prison should be our concern as well. It is a reflection on our values as a nation, just as many other things are.

So the first thing I would say is that I made a serious mistake, along with many others, including the current President, in supporting a bill more than 25 years ago, which established a standard for sentencing crack cocaine 100-to-1 compared to powder cocaine. The net results of it was a failure of policy. It did not reduce addiction. It did not raise the price of crack cocaine. Just the opposite occurred. We ended up arresting thousands of Americans and sentencing them to lengthy sentences, primarily African Americans.

And so, I introduced a bill several years ago, the Fair Sentencing Act, which was signed into law by President Obama, and then I worked with Senator Grassley, Senator Lee, who is here today, as well as Senator Booker and others to pass the First Step Act. The idea was to reconcile some of the injustice in our sentencing under that earlier law. President Trump, much to our surprise, signed it into law, and even spoke positively about it at the State of the Union.

Unfortunately, it has not been implemented, and the provisions in there to prepare people for release from prison, as well as to reduce sentences, have not been effectively enforced. So point number one, I hope you will put that on your agenda, because I will be back in touch with you to ask.

Second point. The United States has 5 percent of the population of the world and 20 percent of the COVID infections and deaths. It is a terrible commentary on our failure to deal with this public health crisis. But to make matters even worse, the infection rate in Federal prison populations is four times what it is in the surrounding community, and more than 230 Federal prisoners have died. We need to have a sensible and humane response to compassionate release in this time of pandemic. Senator Grassley and I have introduced legislation along those lines, and I am going to ask you to look at that carefully, as well.

And the third is the last item that I will bring up for your response. There was an article written several years ago in the New Yorker magazine, and I think I may have mentioned this to you, by Dr. Atul Gawande, who is a surgeon in the Boston metropolitan area, a prolific writer and a very insightful man. And he wrote an article about the impact of solitary confinement on the human mind, and he went further to talk about how people, in a perilous situation, can be reduced to an inhuman level just by isolation 23 hours a day, sitting in a cell by yourself. It just has that impact.

And I looked into it, to see what was happening at the Federal level. I am happy to report to you that things are marginally better, but only marginally. I think that isolation is cruel and unusual, and has to be used in some circumstances for an extremely



dangerous inmate, but, unfortunately, it is used in too many circumstances now. Many States are way ahead of the Federal prison system in looking at this issue.

I only have a minute left and it is all yours to react.

Judge GARLAND. Well, these are all easy because I had already thought about all of them, and in each case I think I will be looking at each one of these problems. The First Step Act, both with respect to our—obviously if I am confirmed—the First Step Act with respect to the re-entry education that is required so that people don't become recidivists, they are able to go into society, the First Step Act with respect to the coverage of the Act for retroactive reduction in sentences.

I also, over the years, maybe like you I have learned more and more about the crack-powder distinction and how, by reading the Sentencing Commission reports, about how there seems to be little, if any, support for making that. So I now am of the view that there is no reason, so I am very interested in reform in that area.

I have read, but I don't know a lot about the solitary confinement issue, but I can't imagine that—obviously it is required in some circumstances to protect people from other people, but it is not any kind of regular measure for incarceration.

So all three of these areas are ones that I was already planning to look at, and I can assure you that I will.

Chair DURBIN. Thanks, Judge.

I see Senator Lee is here, and I am going to recognize him next in the lightning round.

Senator LEE. Thank you, Mr. Chairman.

Judge Garland, consistent with the idea of this being our lightning round I am going to start with some questions that can be "yes" or "no." If they require more than that you can "yes" with this or that minor caveat, but I would prefer a "yes" or "no" if you can provide one of these.

Do you believe that individuals who advocate for the rights of unborn human beings are rendered unfit for public office, by virtue of having engaged in such advocacy?

Judge GARLAND. No.

Senator LEE. Do you believe that efforts to purge voter rolls of individuals who have either died or have left the State in question, or to require voter identification, are racially discriminatory and an assault on voting rights?

Judge GARLAND. This is one I can't answer "yes" or "no" because you are asking about motivations of individuals, some of whom may have discriminatory purpose and some of whom have no discriminatory purpose.

Senator LEE. Okay. Okay. I think that answers my question there, because I guess what I am asking is does an individual, without knowing more than that, is there anything about those comments or support for those positions, that in and of themselves would make that person a racist or an assault on voting rights?

Judge GARLAND. Again, there is nothing about the comment itself, but, you know, there is such a thing as circumstantial evidence, obviously, and if there is enormously disparate impact of things that somebody continues to propose, you know, it is not un-

reasonable to draw conclusions from that. But the mere fact of the statement, no.

Senator LEE. Do you believe that Republicans in the United States—and by Republicans I mean as a whole—are determined to, quote, “leave our communities to the mercy of people and institutions driven by hate, bigotry, and fear of any threat to the status quo,” close quote?

Judge GARLAND. I don’t make generalizations about members of political parties. I would never do that.

Senator LEE. I appreciate that, and would not expect otherwise. The reason I raise these, these are questions that have been drawn from comments by Vanita Gupta, who has been nominated to be the Associate Attorney General, has advocated for each of these positions.

Judge GARLAND. Well, Senator, I know Vanita Gupta now quite well. I didn’t know her before, but since the nomination I have gotten the chance to talk with her and speak with her. I have to tell you, I regard her as a person of great integrity and a person who is dedicated to the mission of the Department, and particularly equal justice under law.

Senator LEE. I understand. I am not asking you to weigh in on her, on her as a person. I am just talking about the comments.

Let’s move on. Would an individual’s past statements, statements in the past, as an adult, declaring that one racial group is superior to another, would statements like that be relevant to an evaluation of whether such a person should be put in charge of running the Department of Justice’s Civil Rights Division?

Judge GARLAND. So, Senator, I read, in the last few days, these allegations about Kristen Clarke, who I also have gotten to know, who I also trust, who I believe is a person of integrity, whose views about the Civil Rights Division I have discussed with her, and they are in line with my own. I have every reason to want her. She is an experienced former line prosecutor of hate crimes, and we need somebody like that to be running the——

Senator LEE. I am asking you about the statement. I not asking about her as a person. I am asking you about the statement. In the abstract, would someone who has made that comment, would that comment itself be relevant to the question of whether that person, having made that statement, should be put in charge of running the Civil Rights Division?

Judge GARLAND. All I can tell you is I have had many conversations with her about her views about the Civil Rights Division, about what kind of matter she would investigate——

Senator LEE. What about anti-Semitic comments? Would those be relevant to someone wanting to——

Judge GARLAND. You know my views about anti-Semitism.

Senator LEE. Right.

Judge GARLAND. No one needs to question those.

Senator LEE. I am not questioning your views.

Judge GARLAND. I know you are not. But I also want you to know I am a pretty good judge of what an anti-Semite is, and I do not believe that she is an anti-Semite, and I do not believe she is discriminatory in any sense.

Senator LEE. Okay. Tell me this. Judge, you are a man of integrity, and one who honors and respects the laws. What assurances can you give us, as one who has been nominated to serve as the Attorney General of the United States, that you, if confirmed as Attorney General of the United States, what assurances can you give Americans who are Republican, who are pro-life, who are religious people, who are members of certain minority groups—you know, in short, half or more than half of the country—telling them that the U.S. Department of Justice, if you are confirmed, will protect them, if Department of Justice leaders have condoned radical positions, like those that I have described?

Judge GARLAND. Look, I will say again. I don't believe that either Vanita or Kristen condone those positions, and I have complete faith in them. But we are a leadership team, along with Lisa Monaco, that will run the Department. And in the end, the final decision is mine. The buck stops with me, as Harry Truman said, and I will assure the people that you are talking about I am a strong believer in religious liberty and there will not be any discrimination under my watch.

Senator LEE. Thank you.

Chair DURBIN. I might remind the Committee that the statements that are being alleged can all be asked of the actual witness. The Committee is going to have a hearing on these individuals, and it would only be fair to take the question to them, as opposed to asking for a reaction from someone who did not make that statement.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman, and I appreciated, Judge, your full-throated defense, not only of religious liberty, which I know is important to Senator Lee, but also of your team and the people that you want to work with going forward. And while the Chairman is correct, we can ask questions of those nominees, I think it is important to hear from you, with their hearings coming up, of your beliefs about how they can do the job. So I appreciate that. I know both of them and have a lot of respect for them.

Judge GARLAND. Thank you, Senator. They have skills that I do not have. They have experiences that I do not have. Likewise, Lisa Monaco has experiences in the intelligence world that I do not have. No human being can have all the skills necessary to run the Justice Department, and I need this leadership team if I am going to be successful, if you confirm me.

Senator KLOBUCHAR. Very good. Well, thank you very much. One thing that we didn't touch on when I asked my first round of questions was the Violence Against Women Act, and I am going to be working with Senator Feinstein and others on this Committee to finally get that done. I don't know if you have followed this but we have had a delay in getting that reauthorized. It has tended to be a bipartisan bill in the past, and I have several provisions in the bill, including one to fix a loophole that exists involving—it is called the Boyfriend Loophole, but it is not as positive as that sounds, about getting guns after people have committed serious crimes.

But the second piece is a bill called the Abby Honold Act, which is about a rape victim in Minnesota who worked with us, and Senator Cornyn is my co-sponsor of the bill, to be able to do a better job with law enforcement to investigate sexual assault crimes.

But just in general do you want to talk about your views on the Violence Against Women Act and the Justice Department's role in training and the like across the country?

Judge GARLAND. Yes. So as I know you know, the Violence Against Women Act was pressed by Senator Joe Biden many years ago, and he has a deep commitment to its continued reauthorization, as do I. I was in the Justice Department when we set up the first Office on Violence Against Women for the purpose of coordinating departmental programs in this area. I know this requires resources. Both of the examples that you give, again, I don't know the specifics but from the description I can hardly imagine a serious disagreement. We have to provide the resources necessary to help rape victims, obviously, and I don't see any reason why, you know, somebody who commits a violent crime against a person but isn't married or have an intimate relationship should be treated any differently than one who does. So I think I'm all in on the Violence Against Women, reupping the statute, authorization, I guess.

Senator KLOBUCHAR. Thank you. Another thing that I have been very focused on, partly because my dad struggled with alcoholism most of his life, and got through that thanks to treatment and recovery, is to give that same kind of opportunity to people in the criminal justice system. And drug courts are a big presence in Minnesota, as is treatment. We are the home of Hazelden Betty Ford, as well as many other fine treatment centers. And we worked really hard here. I have led some of the efforts on diversion with Federal courts, with drug court, and, of course, there is much use of them on State courts. Could you talk about your views on that?

Judge GARLAND. Yes. No, I think courts and diversion are an excellent idea for people who have addiction and need to be treated. I think now that the opioid crisis has struck large parts of America, many Americans now understand that sometimes it is just not a question of willpower to turn this stuff down, that these kinds of drugs take control of your lives and you just can't do anything about it. And treating people in those circumstances in the criminal justice system is an abuse of them, but also it is a terrible misallocation of resources.

So the drug courts that are able to get people into addiction programs are a godsend, and I am in favor of them.

Senator KLOBUCHAR. And thank you for also mentioning opioids, which has been such a scourge. We lost Prince, in Minnesota, because of opioids, but we lost a lot of other people, that people may not know their names, and a lot of kids to opioids. And, actually, Senator Whitehouse and I, along with Senator Portman, Senator Graham has been involved in this, and many others, including Senator Grassley, have been leading the way for a while before people were even identifying this as an issue. And a commitment to the treatment side of it, which you have already made just now, but also to the prosecution of synthetic production and distribution, synthetic opioids, continues to this day. Could you comment brief-

ly? I think maybe Senator Graham asked you about this, but if you could comment.

Judge GARLAND. Yes, he did, and, of course, I think that is right. The people who are putting the poison into the communities are the ones we should be focusing on. And, you know, I think that is what the DEA is well known for doing, and I would like to put as much effort into this as we possibly can.

Senator KLOBUCHAR. Okay. I see the Chairman is looking at me in his very polite, Midwestern way, to tell me that my time has expired. So thank you.

Judge GARLAND. I am familiar with the polite, Midwestern way.

Chair DURBIN. Senator Kennedy, your diligence has been rewarded. You have 5 minutes.

Senator KENNEDY. Thank you, Mr. Chairman.

Judge, I am really curious about your thinking on this, and I don't want my questions to be interpreted as suggestive or inconsistent with your thinking. But you and I are about the same age, I think.

Judge GARLAND. I think so. That is right, Senator.

Senator KENNEDY. What is—when you refer to systemic racism, what is that?

Judge GARLAND. I think it is, to me, that there is discrimination and widespread disparate treatment of communities of color and other ethnic minorities in this country. They have a disproportionately lower employment, a disproportionately lower homeownership rates, disproportionately lower ability to accumulate wealth, a disproportionately—

Senator KENNEDY. Can I stop you, because this 5 minutes goes so fast.

Judge GARLAND. I am sorry.

Senator KENNEDY. So you are basically saying there is a disparate impact.

Judge GARLAND. There is disparate impact, which, in some cases, is a consequence of historical patterns, sometimes is the consequence of—

Senator KENNEDY. Okay. Let me ask you this—

Judge GARLAND [continuing]. Unconscious bias, and sometimes conscious, as well.

Senator KENNEDY [continuing]. When you were at the Department of Justice—

Judge GARLAND. Yes.

Senator KENNEDY [continuing]. Was the Department of Justice then systemically racist?

Judge GARLAND. I think we look for a pattern or practice in each institution. When you talk about a specific institution, you look for its pattern and practices.

Senator KENNEDY. But how do you know what you know? In other words, you say an institution is systemically racist.

Judge GARLAND. I didn't say any particular institutions.

Senator KENNEDY. I know. I am not saying you did. I am saying if you say an institution is systemically racist, how do you know what you know? Do you measure it by disparate impact, controlling for other factors?

Judge GARLAND. Well, the various—

Senator KENNEDY. Or do you just look at the numbers and say the system must be racist?

Judge GARLAND. Now you have asked me a slightly different question, which I think I have a slightly different answer for.

Senator KENNEDY. Okay.

Judge GARLAND. So the authority the Justice Department has to investigate institutions is to look for patterns or practices of unconstitutional conduct. And if we find a pattern or a practice of unconstitutional conduct, I would describe that as institutional racism within that institution. It may not be the perfect definition, but that is what I would think.

Senator KENNEDY. So it is just a product of the numbers.

Judge GARLAND. Well, if there is a pattern and a practice, it is not just a question of individual numbers. What we are looking for here, under those investigations, are patterns. Why is it that a series of similar events are occurring like that? Looking into any individual's heart is not something we can do.

Senator KENNEDY. Who bears the burden of proving that—the institution or the—

Judge GARLAND. No. No, no. Like as in all matters of law, the burden is on the investigator to prove, first by investigation, then before a court.

Senator KENNEDY. Is there any other way to measure institutional racism other than the numbers, the disparate impact?

Judge GARLAND. Well, yes. You can look at large numbers of individual cases in which discriminatory conduct is actually found, intentional discriminatory conduct. Then it is not just a question of numbers. But, you know, if an institution has a very large number of incidents of unconstitutional conduct, the entity is responsible in the same way a corporation is responsible for the behavior of its individuals, the same way—

Senator KENNEDY. What is the difference, though, between people who are racist and an institution that is racist?

Judge GARLAND. Now we do have a cosmic question, but I think institutions are made up of—

Senator KENNEDY. Yes, but this is important.

Judge GARLAND. I know. I am fully with you. I totally agree with that. Corporations are nothing other than the collection of their individuals, and the same is true for a public entity, which is, in a certain way, a corporation.

Senator KENNEDY. I have got to get one more in. I am sorry. I have got 24 seconds.

Judge GARLAND. I am sorry. You asked a very hard question, and I am—

Senator KENNEDY. We can talk about this later, but I want to you ask you about this concept of implicit bias.

Judge GARLAND. Yes.

Senator KENNEDY. Does that mean I am racist? No matter what I do or what I think, I am a racist but I don't know I am a racist?

Judge GARLAND. Okay. The label "racist" is not one that I would apply like that. Implicit bias just means that every human being has biases. That is part of what it means to be a human being. And the point of examining our implicit biases is to bring our conscious mind up to our unconscious mind, and to know when we are behav-

ing in a stereotyped way. Everybody has stereotypes. It is not possible to go through life without working through stereotypes. And implicit biases are the ones that we don't recognize in our behavior. That doesn't make you a racist, no.

Senator KENNEDY. Who judges that? Doesn't the person judging me have his own implicit bias? How do I know his implicit bias isn't worse than my implicit bias?

Judge GARLAND. I agree, but I am not judging you, Senator, and I don't know who would be judging.

Senator KENNEDY. I am not asking you—but somebody, if you say you have implicit bias, that is a pejorative statement. I am not saying you are being mean. You are not a mean guy. That is obvious. You are a nice guy. If you say somebody has implicit bias, somebody has got to make that subjective judgment, and the person making that subjective judgment has implicit bias, if it is part of being a human, then how do you know who wins?

Judge GARLAND. Fair enough. But if we say that all people have implicit bias it is not—you shouldn't take it as pejorative. This is just an element of human condition. So you shouldn't take that as pejorative. Implicit bias is just a descriptor of the way people's minds—everyone's mind works.

Senator KENNEDY. How about if you say that America has racists in it, just like everybody else, just like everywhere else. Does that make America systemically racist?

Judge GARLAND. I don't want to waste your time because I think this is what I said before. What I mean by systemic racism is the patterns of discrimination and disparate treatment across the country. It doesn't mean that any particular individual is a racist.

Senator KENNEDY. Judge, I am in big trouble. I have gone way over.

Chair DURBIN. I am developing a bias. Thank you for the exchange.

Judge GARLAND. It is a pleasure talking with you, Senator.

Senator KENNEDY. Same here, Judge. You will be a good Attorney General.

Chair DURBIN. All right. So I would like to let the Committee know that Senator Hirono will be the next up, and then we are going to take a break and return to 5-minute rounds. Senator Hirono, are you tuned in?

Senator HIRONO. Yes, I am. Thank you, Mr. Chairman.

I would like to ask what I think is a very straightforward question. Over the past couple of years the Justice Department has initiated a number of efforts related to missing and murdered indigenous people and women, including a U.S. Attorney that had pilot projects in Alaska and Oklahoma to implement tailored Tribal community response plans.

To what extent do you plan to continue to focus on these and other regional engagement efforts that could help address the missing and murdered indigenous people crisis?

Judge GARLAND. Well, I certainly do intend to continue those. Again, the last time I was in the Justice Department the Office of Tribal Justice was established. I believe, from looking at the org chart, that it is still there. This is an important aspect. We have

a responsibility to indigenous peoples, both statutory and otherwise, to protect.

And, you know, many of our problems in this country are regional, and we must focus our resources on problems that are regional. Not every problem is a national one, and our regional problems have to be addressed directly with respect to the problems caused in those regions. And this is—

Senator HIRONO. Thank you, Judge. Because I think this is possibly under-reported and definitely we don't pay enough attention to what is happening to murdered and missing indigenous women. So I think we need to put a lot more emphasis on this.

The past 4 years have seen a reawakening of right-wing extremism. Last year, FBI Director Wray testified that the greatest domestic threat, terrorist threat in the United States is white extremist groups. And, of course, last month we had the insurrection at the U.S. Capitol, led by white supremacists and right-wing extremists.

Late last month, The New York Times reported that President Trump, with the help of his Attorney General Barr, diverted law enforcement resources from combatting the serious threat posed by right-wing extremist groups. Will you re-prioritize Justice Department resources to address white supremacists and other right-wing extremists?

Judge GARLAND. Yes, Senator. If anything was necessary to refocus our attention on white supremacists, that was the attack on the Capitol, and I expect to put all departmental resources necessary to combat this problem into this area, to make sure both our agents and our prosecutors have the numbers and the resources to accomplish that mission.

Senator HIRONO. Thank you. My next question has to do with immigration courts. We discussed immigration in the courts when we were able to meet a few weeks ago, and it is worth highlighting that under the Trump administration the backlog of cases pending in the immigration courts has exploded to almost 1.3 million cases. That is an amazing number. In some jurisdictions, the wait to hear a case is 4 years, and there are cases that have been pending for more than 5 years. This not only affects families trying to reunite but students trying to study or train in the U.S., victims of crime who are working with law enforcement, and members of our military trying to adjust status.

A 1.3 million backlog. How will you address this backlog and increase the efficiency of the immigration courts?

Judge GARLAND. This is an extraordinarily serious problem. Looking from my pampered perch as an appellate judge who has a limited number of cases and weeks and weeks to study those and then weeks and weeks to write those, I can't imagine how judges can operate under the conditions that you describe and that I have heard, even from other judges, exist.

When I get into the Department, if I am confirmed, I will certainly look into what can be done about this. I suppose this must mean an increase in the number of resources and judges. It must mean some ability to give to the judges, to prioritize their cases. Even in our own appellate courts we have developed ways in which we handle some cases more swiftly and some cases take longer.



Some cases are summarily resolved. Some require full opinions. Some way of evaluating this is required, but I can't give you any specific idea with respect to court administration, which I know something about but not an enormous amount, until I have a chance to get into the Department, if confirmed, and understand what the cause of this huge backlog in number of cases is.

Senator HIRONO. There is an executive officer immigration review that oversees this, but I think the really important thing is an acknowledgement that this kind of serious backlog has got to be addressed, because lives are at stake here.

Thank you, Mr. Chairman.

Chair DURBIN. Thank you, Senator Hirono. We are going to break now and come back at 5 minutes after 3.

[Whereupon the hearing was recessed and reconvened.]

Chair DURBIN. The Committee resumes and I am going to turn to the Ranking Member, Senator Grassley: 5 minutes.

Senator GRASSLEY. Thank you.

Judge Garland, when I talked to you on the phone, I said I was going to give you a binder—I am not going to ask you to come up and get it and I am not going to take it down to you, but I will have my staff give it to you—of letters going back to the last 2 years of the Trump administration that have not been answered by the Department, and also maybe just a very few letters of the recent administration.

So I hope that you will do what you can to get those answers. So 6 months from now, I do not blame you. It is the fact that the Trump people did not answer it.

Judge GARLAND. I would like to keep the blame on the—my predecessor, yes.

Senator GRASSLEY. Thank you.

And then I am going to say something about your answering questions for us, and this goes back. Now that I am Ranking Member, I want to give you a quote that I said to Senator Sessions when he was sitting where you are.

And if Senator Feinstein contacts you, do not use this excuse, as so many people use, that if you are not a Chairman of a Committee you do not have to answer the questions. I want her questions answered just like you would answer mine.

So I hope that whether I am Ranking Member or Chairman of the Committee you will help me get answers to the questions, and I hope Senator Durbin will do the same thing.

Judge GARLAND. I will not use any excuse to not answer your questions, Senator.

Senator GRASSLEY. Thank you.

And then the other thing is just—I do not want to dwell on Durham, but several people have asked you and you have given the same answer, and I understand why you give that answer.

But would it be impossible for you to have some sort of a briefing on Durham between now and the time you get our written answers back so you could give us a more definitive answer?

Judge GARLAND. So I do not think it is appropriate. I mean, I assume, among other things, that the Durham investigation—

Senator GRASSLEY. I will accept your answer.

Judge GARLAND. Okay.

Senator GRASSLEY. You do not need to go any further.

Judge GARLAND. Yes.

Senator GRASSLEY. Okay. Then let us go to a subject of domestic terrorism, and that—and, obviously, in a democracy we need to be able to disagree with each other without violence.

Political extremism, the willingness to use violence to advocate one's political views on either side, is a threat to our democracy. The Capitol attack shows us that very directly.

I think you have answered this question and so just a very short answer. I think you have assured all of us that the Justice Department has all the necessary resources to investigate and prosecute all cases connected to the attack on the United States Capitol.

Judge GARLAND. I cannot yet say we have all the resources. What I said was I would—I would look into the question of whether we—I just do not know.

Senator GRASSLEY. Okay.

Judge GARLAND. But we, certainly, have—we, certainly, have authorities to look into it. Whether we have the money and the person power, I just do not know yet.

Senator GRASSLEY. Okay. Then, likewise, in the previous year, there have been numerous attacks not only on other institutions of the Government, like the White House and the Federal courthouse in Portland, but on hundreds, if not thousands of police officers who were injured as well as on fellow citizens and their businesses, particularly small businesses.

The Justice Department opened over 300 domestic terrorism cases due to that violence and started an anti-Government extremism task force.

So I hope you could commit absolutely, as you did for the Capitol rioters that you will see those investigations of the 2020 riots and continuing Antifa riots in the Pacific Northwest through to the very end.

Judge GARLAND. The Justice Department—I think Director Wray said it exactly right, which is we investigate violence. We do not care about ideology.

Senator GRASSLEY. Okay.

Judge GARLAND. If there are investigations going on like those then, of course, they are going to continue.

Senator GRASSLEY. Okay. And then taking off a little bit what you referred to what the FBI said, former Attorney General Barr noted that the FBI, while it had robust programs for white supremacism and militia extremism, lacked a similar infrastructure for anarchist extremism cases.

Former Acting Department of Homeland Security Secretary Wolf stated that this may have contributed to law enforcement being blindsided by the civil unrest that began in 2020.

So I hope that I can get you to say that you would be willing to review your anarchist extremism program for weaknesses and fixing those weaknesses, based upon what Barr said that the FBI said that they had better programs to go after white supremacy than they did other anarchist extremism.

Judge GARLAND. You know, I think we need to go after violence from whatever direction—left, right, up, down. It does not make any difference. We need to go after—go after that.

I think what Director Wray had said was the—what he was most concerned about was the rise of white supremacist extremism as an element of domestic terrorism. But it does not matter what direction it comes from. It does not matter what the ideology is. We have to investigate it.

Senator GRASSLEY. I guess my time is up, huh? I am going to have a lot of questions. I am going to have a lot of questions for answer in writing.

Judge GARLAND. Fair enough.

Chair DURBIN. So I want to try to give an indication of the sequence: Dick Blumenthal is going to be next, and then on the Republican side I think it is going to be John Cornyn. Then it will either be Senator Ossoff or Senator Booker. They can arm wrestle till I have to make that decision.

And then Senator Cotton, I believe, you were the next arrival. This has become kind of a little difficult to predict a sequence. I want to make sure you see it coming.

Senator BOOKER. I would never want a rookie Senator to go between Cotton and Cornyn so I will leave it there.

[Laughter.]

Chair DURBIN. Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman.

I want to pursue a couple of the questions that I was asking when we ran out of time, just to say that on the issue of climate change, President Biden, as a candidate, committed to hold accountable the oil and gas industry for any lies or fraud they committed in denying the effects of climate change, and I hope you will take that into consideration in determining what the Department of Justice will do in those kinds of cases pursuing any kind of pollution or climate change or lies in connection with the oil and gas industry.

And just to kind of ask a threshold question, do you have any doubt that human beings are a cause of climate change?

Judge GARLAND. No. No doubt at all.

Senator BLUMENTHAL. Thank you. You may—

Judge GARLAND. That was not a trick question, I guess.

Senator BLUMENTHAL. It was not a trick question. I ask it because the last major nominee before this Committee, back in September—it was a Supreme Court nomination—seemed to have some trouble with that question. But I am glad you do not.

Let me move to this—the issue of racial discrimination which has been pursued, and I really welcome your very sincere and passionate commitment to ending racism and racial injustice.

We are in the midst of a racial justice movement right now. One of the areas that most concerns me is holding accountable public officials when they violate individual rights and liberties.

As you know, Section 242 makes it a Federal crime to willfully deprive a person of their constitutional rights while acting under color of law. But prosecutors have to show that that public official had a specific intent to deprive constitutional rights, which as you also know, is a pretty high bar.

I believe and I have advocated that we, in effect, lower the state of mind requirement in Section 242 from willfully to knowingly or

with reckless disregard because this stringent mens rea requirement makes Section 242 prosecutions rare or impossible.

And so I hope you agree that we need to adopt measures that will enable criminal accountability where all the elements of the crime are committed and the mens rea intent requirement can, in effect, fit the crime.

Judge GARLAND. Well, what I can agree is that I will consult with the career lawyers in the Civil Rights Division, who are the ones who are—would be bringing these cases and who have brought them in the past.

I, honestly, just do not know. I know everyone says that they are very difficult to make. On the other hand, in the Clinton administration, we did successfully make quite a number of those cases.

So I would like to know, from talking to them, what kinds of changes might be necessary in the statute and what the consequences of changing the mens rea requirement would be.

Senator BLUMENTHAL. Thank you.

I would also like to ask you about Section 230. I proposed various measures, one of them actually adopted in law and signed by the President, that imposes accountability on the Big Tech platforms for certain kinds of really horrific material, human trafficking under SESTA, and Senator Graham and I have led an effort—it is called the EARN IT Act—to hold accountable the tech companies for spreading child sexual abuse material.

I think reform of Section 230 is long overdue. I led these kinds of targeted and, indeed, bipartisan efforts to revise Section 230 to hold Big Tech accountable and I hope that you will consider joining with the Congress in those kinds of targeted deliberate efforts to reform Section 230, which no longer fits the world that currently it applies to.

Judge GARLAND. So I do not know that much about 230 except for the case I mentioned that I had worked on myself, which was a pretty direct application of the provision. I know that a number of Members, including you, spoke to me about this in our meetings, and I know people have different views about how it should be altered.

I really would have to study that. But I am very eager to study that. There is no doubt the internet has changed from when 230 was originally adopted.

So I would be eager and interested in studying it and speaking with the Members about it.

Senator BLUMENTHAL. Great. Thank you very much.

Chair DURBIN. Thanks, Senator Blumenthal.

Senator CORNYN.

Senator CORNYN. Judge, are you familiar with Title 42, which is a public health measure which restricts traffic across the international border as a public health measure to mitigate the spread of COVID-19? Are you familiar with that?

Judge GARLAND. I do not know the statute specifically. You know, I know that there must be provisions that do that. But I do not know the statute, no.

Senator CORNYN. Well, one of the things I hear from the Border Patrol and Customs and Border Protection is they are fearful that when the current Title 42 restrictions on cross-border traffic are

lifted, there will be no plan in its place and, certainly, no transition back to normal cross-border trade, traffic, and visit.

And this is a huge issue that I have raised with Director Mayorkas and others as well and I just want to make sure that is on your radar screen.

But I also want to take up what Senator Hirono was talking about, the 1.2, 1.3 million asylum cases that are backlogged. There is no way that the United States Government is ever going to clear that backlog.

But I would want to suggest to you that that is part of a conscious strategy by the cartels, who make a lot of money moving people across the border into the United States along with drugs, whether it is human trafficking, whether it is, as I say, drugs, whether it is just migrants who are trying to flee poor economic circumstances and dangerous conditions in their home country.

But if the Biden administration is not going to enforce current laws with regard to immigration, and there are many people suggesting, including the nominee for Health and Human Services, that we ought to give free health care to people who are not legally in the country, all of this is going to be a huge incentive for more and more people to immigrate illegally into the United States. And, obviously, the Department of Justice has a very important role to play there.

But I want to suggest this is not an accident. This is not a coincidence. This is part of a conscious strategy by the cartels who are enriched by each and every person, each and every load of drugs, that comes across the border.

And I hope that you will commit to working with me and all the other Members of Congress to try to address this humanitarian and public health crisis in addition to the other aspects of immigration.

Will you agree to do that?

Judge GARLAND. Certainly, I will commit to working with Members of Congress to address the public health crisis. I have to say I was not aware that the cartels were doing this, but this seems like something that the Justice Department needs to focus on.

Senator CORNYN. Well, at different times it is referred to as transnational criminal organizations, cartels. Basically, it is people who are engaged in criminal enterprises for money. That is why they do it. They care nothing about the people that they leave, some to die en route to the United States. All they care about is money. So I appreciate your willingness to work with me and others about that.

China, and Russia, to a lesser extent, have perfected cyber espionage on the United States, for many reasons but in part to steal our intellectual property. The billions of dollars that Congress appropriates for development of the next generation Stealth Fighter to nuclear modernization, you name it, if the Russians and the Chinese can get it without making those investments and the years-long delay necessary to roll them out, they have a tremendous advantage in terms of competing with us economically and also militarily.

Eighty percent of all economic espionage cases brought by the Department of Justice involved Communist China and there are at

least some nexus to China in about 60 percent of all trade theft cases.

I have told people that Director Wray, who is a pretty stoic individual, gets positively animated when he begins to talk about the role that China is playing in its rivalry with the United States, both from an economic standpoint, and if you look at the South China Sea and some of its aggressive and boisterous actions there with a potential for military conflict at some future, this is our number one challenge, I believe, today, as we speak here.

Do you share my concerns about China's role as a rival in the world, what they are doing in terms of stealing intellectual property, what that means to us economically and from a national security perspective?

Judge GARLAND. Senator, I do not have any inside information with respect to what the intelligence agencies know. But I have read quite a lot about this and I am—it seems quite clear to me that the Chinese are involved in hacking, of stealing our intellectual property.

We are in an age where individual espionage prosecutions do not quite cut it, given the internet and how so much can be stolen in just a single hack.

So this has to be an all of Government response to this problem. There has to be a forward look as to what is happening to us. There has to be a defensive look.

I know that that is the purpose of Cyber Command. That is, certainly, something that the DNI is very concerned about, and then, of course, the FBI with respect to enforcement.

But this is a dangerous problem for all the reasons you said and it requires a whole of Government response.

Senator CORNYN. Thank you.

Chair DURBIN. Thanks, Senator Cornyn.

Based on who is present and apparently interested, it will be Senator Booker, Senator Cotton, Senator Ossoff, Senator Hawley. Those are the ones I see.

So, Senator Booker.

Senator BOOKER. Thank you very much, Mr. Chairman, and thanks for the grace of Senator Ossoff for allowing me to go before him.

I would love to just jump in real quick, if I may, and a lot has been talked about your incredible work with the Oklahoma City bombing, but I am also aware that you have a long record of working on domestic terrorism in pretty significant ways.

In the mid 1990s, in response to a wave of bombings and arson attacks against Black churches in the South and other houses of worship, the Clinton administration formed a national task force where you and your leadership, along with others, helped to make this Justice Department priority, resulting in several hundred investigations and arrests, and I just really appreciate the totality of your record on fighting domestic terrorism.

I do just, really quickly, just wonder, just in terms of proportionality, since that time till now, we have seen just this rise of right-wing terrorist attacks in our country.

In fact, since 9/11, the majority of domestic terrorist attacks have been right-wing extremist groups. The majority of those have been white supremacist groups.

And I am just hoping, and again, you are not in the position, God willing you will be, but just the proportionality of the resources we are directing toward trying to stop the scourge of domestic terrorism, is this something that you will look at in terms of the degree of the resources of the agency?

Judge GARLAND. Yes. As I say, I think the first thing I should do as part of my briefings on Capitol bombing or briefings with Director Wray as to where he sees the biggest threat and whether the resources of the Bureau and of the Department are allocated toward the biggest threat and the most dangerous and direct threat.

We do have to be careful across the board. We can never, you know, let somebody sneak around the end because we are not focusing but we also have to allocate our resources toward the biggest threat.

Senator BOOKER. Great. And I would like to shift back to marijuana. In an earlier conversation we were talking about the systemic racism there that has—I have watched tons of friends in elite colleges not worrying at all about being arrested for marijuana while the inner city Black and Brown community I live in, too—it is a much different reality, much different set of laws applying to them.

But I actually want to get to the good news, I think, in the United States of America is that red States, blue States, America in general, if you want to call those States that way—American States are moving toward more and more legalization, medical marijuana, loosening up of laws, decriminalization. It is an amazing thing.

But the Federal Government is out of step with that right—as of now, and I hope to work in a bipartisan way to see if we can advance the Federal Government maybe to de-list the legislation, think of some restorative justice elements. Just today, New Jersey signed its first major effort at legalization and restorative justice.

But one thing that was done by the Obama administration was putting forward a—the Cole Memorandum, as I am sure you are aware.

But Attorney General Jeff Sessions rescinded the Cole Memorandum, which gave guidance to U.S. Attorneys that the Federal marijuana prohibition should not be enforced in States that have legalized marijuana in some form.

And so do you think that the guidance in the Cole Memorandum to deprioritize marijuana enforcement should be reinstated? That is, should the Justice Department respect States' decisions on marijuana policy?

Judge GARLAND. So I do not have every element of the Cole Memorandum in mind, but I do remember it and I have read it. This is a question of the prioritization of our resources and prosecutorial discretion.

It does not seem to me a useful use of limited resources that we have to be pursuing prosecutions in States that have legalized and that are regulating the use of marijuana, either medically or otherwise. I do not think that is a useful use.

I do think we need to be sure that there are no end runs around the State laws that criminal enterprises are doing. So that kind of enforcement should be continued. But I do not think it is a good use of our resources where States have already authorized it and it only confuses people, obviously, within the State.

Senator BOOKER. So real quickly, the violence against Black trans Americans is unconscionable with many murders every single year, the bullying and violence against a lot of trans children. About a third of LGBTQ American children report missing school because of fear, fear of violence, and intimidation.

Is this something that you will make a priority, to protect all children from violence and discrimination, particularly in this case, transgender children and—transgender children and would you also commit to taking seriously the targeting of transgender adults, specifically with the trend we are seeing with the alarming numbers of murders of Black transgender men?

Judge GARLAND. These are hate crimes, and it is the job of the Justice Department to stop this, to fine them, to enforce and to penalize, and that is what the section of the special litigation unit in the Civil Rights Division is intended to do.

There is the Shepard-Byrd Act, which was particularly aimed at this, and I think it is—I am not sure whether it needs broadening. But it is clear to me that this kind of hateful activity has to stop and, yes, we need to put resources into it.

Senator BOOKER. Thank you for your time. I look forward to voting for your confirmation and I am going to stop here because I do not want to make Tom Cotton mad at me.

[Laughter.]

Chair DURBIN. So the remaining Senators for 5 minutes each—Senators Cotton, Ossoff, Hawley, and now Senator Whitehouse is going to make a return.

Senator Cotton.

Senator COTTON. Judge, I want to return where you stopped this morning, the question of racial equality, specifically, race discrimination in higher education.

Last year, the Department of Justice sued Yale University for discriminating against students on the basis of race based on Yale's own data.

If you look at one of its top academic categories, when you control for academic achievement, the admission rates by racial category were as follows: Asian Americans 6 percent, white applicants 8 percent, Hispanics 21 percent, African Americans 49 percent.

Do you think that evidence suggests discrimination based on race in Yale's admissions process?

Judge GARLAND. So again, my best recollection is that between my nomination and now the Department has made a decision about that—

Senator COTTON. The case was voluntarily dismissed on February 3rd. It is no longer a pending case.

Judge GARLAND. So my recollection is correct. So these kind of cases, obviously, depend on application of the Supreme Court's opinion in the *Grutter* case and the *Fisher* case, and they require a lot of factual development and examination of the facts.



These cases do not only depend on the disparate statistics, but on all the factors the Supreme Court instructed the lower courts and the Government as to what kinds of affirmative action in higher education are permissible and which ones are not.

So I cannot—I, honestly, cannot draw any conclusions without knowing the facts of the case.

Senator COTTON. Some of that Supreme Court case law about racial discrimination in higher education says that race can only be used as a plus factor. It cannot be decisive in practice. It cannot be a defining feature. It cannot be the predominant factor.

When Asian-American kids are eight times less likely to be admitted in the same band of academic achievement, you do not think that at least suggests a facial case of racial discrimination of Asian Americans?

Judge GARLAND. Well, I think that is the question that you look at for the underlying facts to know. You are, I think—I do not remember exactly the words of the Supreme Court opinions, but they seem pretty much exactly, you know, what you just said.

You cannot have a rigid quota. You cannot have a fixed—this was the consequence of the *Gratz* case, which was a companion case to *Grutter*. *Grutter* was the University of Michigan law school. *Gratz* was University of Michigan as a university.

With respect to *Grutter*, the Court said it was a holistic approach and was permissible. With respect to *Gratz*, it said it was a fixed ratio or a fixed number and not permissible.

But those are things you find out by discovery in the case and examination of what the actual practices of the university were, and I have no idea what they were.

Senator COTTON. Judge, did anyone in the Biden administration consult with you about the decision to drop the lawsuit against Yale University?

Judge GARLAND. No. No, I have assiduously kept out of those. It is not my—it is not appropriate for me to be examining anything like that, unless you confirm me.

Senator COTTON. Will the Department of Justice, under your leadership, pursue cases of obvious racial discrimination in higher education?

Judge GARLAND. Well, if you put it that way, the answer is, of course, yes. Obvious cases—

Senator COTTON. I think this presents an obvious case of discrimination against Asian Americans. I suspect some Asian-American parents and their kids are a little disappointed in those answers, Judge.

I want to turn to the—

Judge GARLAND. I just want to say I am only giving the answer to what the Supreme Court said the law was. I cannot do any better than that.

Senator COTTON. Eight times less likely to be admitted?

Judge GARLAND. All I—my answer was you have to look at the facts in—

Senator COTTON. Okay. I want to turn to another very important topic, which is the rising rates of violent crime in the country. According to FBI's crime statistics, only 45 percent of violent crimes in this country result in an arrest.

Would it be better or worse if 100 percent of violent crimes in this country resulted in arrest and prosecution instead of just 45 percent?

Judge GARLAND. It would be better if you gave—if Congress gave the Department enough money to arrest every single person. I assume you are talking both about State crimes and Federal crime?

Senator COTTON. That is according, yes, to Department of Justice, FBI crime statistics. So those 45 percent.

Judge GARLAND. So those are—almost all or a large percentage you are talking about local crime. So yes, it is better to—

Senator COTTON. Do you think the Department today solves too many crimes or prosecutes too many criminals?

Judge GARLAND. The Justice Department?

Senator COTTON. Yes.

Judge GARLAND. I think it may bring charges in areas which are not a good allocation of its resources, but I do not think it has sufficient resources, and probably never will, to pursue every crime. That seems impossible.

Senator COTTON. One final point, Judge. I just want to get it on the record. We spoke about this last week in our telephone call about the importance of State and local law enforcement to work together in a collaborative and cooperative fashion with the Department of Justice, both its local U.S. Attorneys and the law enforcement agencies that you oversee.

I was glad to know that you agree with me those partnerships are vital to reduce crime and keep our communities safe. I just wanted to give you the chance to put that on the record today.

Judge GARLAND. Yes, absolutely. You know, my experience in Oklahoma City was with close cooperation with the DA's office, the local police there, and with the governor and with the State police.

I think these joint task forces are an exceedingly good idea. They are a force multiplier. So I am completely on board with this. Yes, sir.

Senator COTTON. Thank you, Judge.

Chair DURBIN. Senator Ossoff.

Senator OSSOFF. Thank you, Mr. Chairman.

Hi again, Judge Garland.

I want to return to the question of the Department's authorities and mission to defend voting rights, and note that Sunday would have been Congressman John Lewis' 81st birthday. And as you know, he committed his life and, indeed, nearly lost his life in the struggle for voting rights.

But as we speak, Georgia's State legislature is considering legislation that would make it harder for Georgians to vote, for example, to end Sunday early voting, which is used heavily by Black and working class voters, to cut the window during which voters can participate via absentee ballot, which would make it harder for seniors to vote.

And I am not asking you to comment on these specific bills. But what I am hoping you can provide is an assurance that the Department of Justice will diligently and fully enforce constitutional and statutory guarantees of the rights to vote.

Judge GARLAND. I give you my complete assurance. Yes, Senator.

Senator OSSOFF. Thank you so much. I would also like to discuss with you resources available for public defenders' offices around the country, and a visit to a municipal court in any major American city will reveal that a steady stream of low-income defendants lacking the resources to hire their own attorneys are often represented by overworked and under-resourced public defenders, which contributes to class and race bias in the justice system, and, in my view, is an affront to the constitutional guarantee of due process as well as of equal protection.

So will you work with my office and this Committee to determine whether grant programs, which may already exist at the Department to support local public defenders' offices or which may need to be created, can be considered in legislation that this Committee and the Senate may consider?

Judge GARLAND. I will, Senator. There is no equal justice in the United States unless everybody has equal access to justice. My own experience, our Federal Public Defender's office is terrific. It needs resources, the Federal Public Defenders across the country.

I have tried my best when I was in an administrative position to provide as many resources as possible. The same for our lawyers who volunteer under the Criminal Justice Act. The difference between having an excellent lawyer and not can make all the difference in the world, and I think we should give all the resources that we can.

And with respect to the local courts and local public defenders, it would have to be through grant programs, but of course, to the extent Congress is willing, I am strongly in favor.

Senator OSSOFF. Well, I appreciate that answer and I look forward to working with you, I hope, and the Chairman and Ranking Member on those grant programs.

And, finally, I want to return to the discussion that we had earlier about pattern-or-practice investigations, and I just want to urge you that if you were confirmed and as you take this office, and there will be so many demands on your time and your attention and important missions for the Department to fight violent crime and to defend our national security, that you personally exercise leadership within the Department to ensure that the Civil Rights Division's mission is elevated and emphasized and that you come to this Committee to seek and secure any resources that you need to make that real.

And just to illustrate why I believe that is so important, the South Fulton jail in my home State of Georgia has been known to the public for years to have appalling conditions for incarcerated people.

And actually, in the last month, a Federal court ordered changes to practices within the jail. But it was after years of litigation. The U.S. Attorney's Office did file a brief in the case but the litigation was brought by independent nonprofit plaintiffs. Years it took for changes to be ordered by a Federal court.

I am going to read you a quote from the plaintiffs' brief to illustrate the conditions in this jail, and I want to warn the public viewing this on television that the material is graphic.

Quote, "The cells were covered in bodily fluids, rust, and mold. In these conditions, the inmates deteriorated, leaving them inco-

herent, screaming unintelligibly, laying catatonic, banging their heads against walls and repeatedly attempting suicide.”

This refers to the solitary confinement of women with severe psychiatric disorders in the South Fulton Jail in Georgia, and these conditions are not unique to this facility.

So I want to urge you and ask you one more time, please, respectfully, Judge Garland, your commitment to elevate this mission within the Department and to work to secure the human rights of incarcerated people and the American public with all of the power you will have in this position.

Judge GARLAND. You have my commitment. The Civil Rights Division has responsibilities and some authorities in this area, and so is quite capable of pursuing these kinds of cases.

I took to heart what the Chairman said with respect to the role that Robert Kennedy played when he was the Attorney General and I regard my responsibilities with respect to the Civil Rights Division as at the top of my major priorities list. So you have my commitment to do everything I can in this area.

Senator OSSOFF. Thank you. And just with the Chairman’s indulgence, Judge, will you commit to reviewing any materials that are sent to you by Congress or by entities such as the NAACP or the Southern Center for Human Rights where it pertains to conditions of incarceration?

Judge GARLAND. So that I have some time to be able to read everything that I need to read, if it is all right with you, I will commit to being sure that the head of the Civil Rights Division and the Associate Attorney General, Ms. Clarke and Ms. Gupta, who are directly responsible, do that and then brief me about it. I will to the extent possible read them myself. But I have already committed to reading a 400-page document and there are only so many hours in my day.

Senator OSSOFF. Understand. The Department’s condition is what I am looking for. So thank you so much.

Thank you, Mr. Chairman.

Chair DURBIN. Senator Hawley.

Senator HAWLEY. Thank you, Mr. Chairman.

Judge Garland, I would like to talk a little bit more about the law enforcement challenges at the border, which I know a number of other Members have brought up with you.

Just a fundamental question. Do you believe that illegal entry at America’s borders should remain a crime?

Judge GARLAND. Well, I have not thought about that question. I just have not thought about that question. I think, you know, the President has made clear that we are a country of—with borders and with a concern about national security.

I do not know of a proposal to decriminalize but still make it unlawful to enter. I just do not know the answer to that question. I have not thought about it.

Senator HAWLEY. Will you continue to prosecute unlawful border crossings?

Judge GARLAND. Well, this is, again, a question of allocation of resources. The Department will prevent unlawful crossing. I do not know—you know, I have to admit I just do not know exactly what the conditions are and how this is done.

I think if—I do not know what the current program even is with respect to this. So I assume that the answer would be yes. But I do not know what the issues surrounding it are.

Senator HAWLEY. Let me ask you about the guidelines on asylum eligibility issued as part of the Executive Office of Immigration Review. Your predecessors have issued quite a number of guidelines about asylum eligibility. Several Senators, Senator Hirono, I think Senator Cornyn, talked about the very significant backlog that we have currently in asylum cases.

Will you continue to use—keep in force the current guidelines on asylum eligibility or do you anticipate changing them?

Judge GARLAND. Again, given my current professional occupation, I have had no experience whatsoever with the guidelines. So I cannot give you a direct answer to that question.

Asylum is part of American law, and the Justice Department and the State Department have an obligation to apply that law. I do not know what the guidelines are that you are talking about and I do not know even about the rescissions of guidelines that you are talking about.

Senator HAWLEY. Will you—if confirmed, I am sure that you will be reviewing this and considering these questions—will you pledge to keep us fully posted as you do so?

Judge GARLAND. Yes, if there was a change in the Government policy, if I am confirmed, of course, there will be a public change because you cannot apply those kind of guidelines without making them public.

Senator HAWLEY. Let me turn to the subject of antitrust. I heard your answer to Senator Blackburn about the ongoing *Google* antitrust prosecution. I believe your answer was you did not anticipate any changes in that ongoing prosecution, that the case would go forward.

Did I hear you correctly? Is that right?

Judge GARLAND. I do not want to talk about a pending case because it is, after all, a pending case and that is just what a judge cannot talk about.

But as with most of our investigations, I will—you know, when I get in, if I am confirmed, I will examine them. But I do not have any reason to think that I would stop that kind of investigation.

Senator HAWLEY. Recent news—recently, news outlets, various news outlets, have reported that Susan Davies is being considered to lead the DOJ antitrust division.

Susan Davies, of course, has defended Facebook from Federal antitrust laws. Facebook has been another target of antitrust scrutiny. Do you think it is appropriate to have someone who is a defender of these massive corporations leading the Antitrust Division?

Judge GARLAND. Let me say a number of things in response to this.

First of all, the Department has recusal rules, which prevents somebody who had a role from taking a role in a case like that.

Susan Davies is a fantastic lawyer, a woman of enormous integrity, and I have every confidence that were she in that division that she would proceed as completely appropriate.

But it turns out that the Press reports are completely incorrect. So——

Senator HAWLEY. She is not under consideration?

Judge GARLAND. No, not that I know—not that I know of, no.

Senator HAWLEY. Oh, and is not going to be, to the best of your knowledge? I assume it would be your decision.

Judge GARLAND. I do not—look, I do not think either she or I have aspirations for her to be in the Antitrust Division.

So I am not exactly sure where this came from. But she is a woman of remarkable ability who has helped me in my previous role and I would be very eager to rely on her good judgment and her—and a woman of strong ethical judgment.

So if she were in a position, any position anywhere in the Department, she would know when to recuse or not. But this particular issue, she is not—as far as I know, she is not going to be in the Antitrust Division, not because she wanted to be or I wanted her to be in there and because somebody said she could not.

Senator HAWLEY. Good. Well, I think that is news, I think, and welcome news and I just want to register my own point of view here, which is I think that the—recusal or not, the message it would send, the *Google* case is perhaps the most significant antitrust case the Department has undertaken since *Microsoft*, easily may be more significant than that, because Google, frankly, is significantly more powerful than Microsoft was.

The message it would send, to have a lawyer defending these massive companies in the Antitrust Division would be terrible.

Judge GARLAND. Well, I do not know who would send this message or why this message was being sent. But there is no—I do not have any intention of this. But I am confident that had this been the case, this would not be a problem.

You know, unfortunately or fortunately, a lot of the best antitrust lawyers in the country have some involvement one way or another in some part of high tech, and we cannot exclude every single good lawyer from being able to be in the division.

But that is not an issue. Nothing you need to be concerned about.

Senator HAWLEY. Thank you. Thank you, Judge.

Thank you, Mr. Chairman

Chair DURBIN. Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman.

Judge Garland, I want to go back to the topic of protecting the Department of Justice from political influence and being weaponized politically.

A number of Senate Democrats at this hearing have used the opportunity to cast aspersions to the job Bill Barr did as Attorney General. I think those aspersions are false. I think he showed enormous courage in fighting to defend the rule of law.

But Bill Barr, when explicitly asked about whether he would terminate Robert Mueller, at his confirmation hearing, the same situation you find yourself, he said he would not terminate him absent, quote, “good cause.”

Are you willing to meet the same standard of integrity that Bill Barr demonstrated and will you make that same commitment to this Committee that you will not terminate Mr. Durham absent good cause?

Judge GARLAND. What I have said to the Committee and what is, is that I need to get information about this investigation, which I do not have here. I understand that a decision has been made to keep him in place, and I have absolutely no reason to doubt that that was the right decision and that he should be kept in place.

But I cannot go any further without learning the facts of the investigation and what the status is.

Senator CRUZ. So, Judge Garland, with all due respect, and I recognize you have been a judge for 23, 24 years, judicial nominees sit in that chair and decline to answer just about every question Senators pose to them, saying, "Well, as a judge, I cannot commit to how I would rule on any given case."

And that is appropriate. You are not nominated to be a judge in this position. You are nominated to an executive position, and you are a constitutional scholar. You understand fully well the difference between Attorney General versus an Article III judge.

Bill Barr did not know the details of the Mueller investigation at the time, but he knew that Bob Mueller was investigating President Trump, that it was highly politically sensitive.

And so to show his integrity and commitment to being non-partisan, he said he would not terminate Mueller absent good cause. You have the opportunity to do the same thing. The investigation into Durham is highly political. It, potentially, implicates Joe Biden and Barack Obama.

And I just want to be clear. You are refusing to give that same commitment. You want to keep the options open to terminate the investigation.

Judge GARLAND. Look, I am not refusing to give that commitment because I am a judge. I am telling you what I think an Attorney General ought to do, which is to look at the facts before making a decision.

I am also telling you that I will never make a decision in the Department based on politics or on partisanship. So whatever decision I were to make, it would not be based on that.

And all I can ask you to do is trust me based on a record of my 24 years as a judge, my entire career before that as a prosecutor, and my life before that. That is my record of integrity and that is what you have before you.

Senator CRUZ. So a similar line of questions that you were asked concerned the *Google* antitrust investigation, and Google—Big Tech as a whole contributed over \$15 million to the Joe Biden campaign.

They are enormously important Democratic donors. There will be enormous political pressure to abandon that case against *Google*.

Can you give this Committee assurances that you can stand up to that political pressure just because Democratic fundraisers want to be lenient on Google? That the Department of Justice will not give in to that pressure?

Judge GARLAND. So, Senator Cruz, I am old enough to remember when there was a political effort to end the case in the antitrust case in the Justice Department against ITT, which gives you an idea of how old this is, that there is no ITT anymore, the International Telephone and Telegraph Company.

This—if I am not wrong, this was one of the paragraphs in the indictment, the proposed indictment of impeachment of President

Nixon, I think, but it was around the same time, and it had to do with the partisan effort to influence the Justice Department in that Antitrust Division.

I grew up knowing that this is not something that is permissible for the Justice Department to do, and my whole life has been in looking at Ed Levi and the post-Watergate Attorneys General who stood up to that kind of stuff.

And I can assure you that there will—I do not care what kind of donor talks to me about what—of anything. I do not expect to talk to any donors. I have no conflicts. I do not own any Google stock and I will do whatever is the right thing, and I do not own any stock, or I won't, once—if I am——

Senator CRUZ. Let me ask two very quick questions, because my time is expiring.

Judge GARLAND. Yes.

Senator CRUZ. Number one, you voted to rehear the *Heller* case—or actually, the *Parker* case en banc.

Judge GARLAND. I did.

Senator CRUZ. I argued the *Parker* case on the D.C. Circuit. As Attorney General, will the Department of Justice argue for the Supreme Court to overturn *Heller v. District of Columbia*?

Judge GARLAND. Look, the Department, you know, makes all kinds of judgments like that. I cannot promise but I find it hard to believe that the Department could think that there was any possibility of overturning the *Heller* case.

Senator CRUZ. Okay. And then the final one, with the Chairman's indulgence because I am at the end of my time.

Judge GARLAND. Yes.

Senator CRUZ. Nine Senators wrote a letter to Chairman Durbin asking this Committee to investigate Governor Andrew Cuomo's policies concerning COVID and sending COVID-positive individuals into nursing homes. A senior aide of his admitted to a cover-up to hide information from the Department of Justice.

You have committed to a number of investigations here at this hearing today. Will you commit to investigating the extent to which the government of New York broke laws or covered up their policies concerning COVID-positive patients in nursing homes?

Judge GARLAND. With all of these investigations, the Justice Department is open to evidence of fraud, false statements, violations of the law. They normally begin in the appropriate way in the U.S.—relevant U.S. Attorney's Office, and that is a way that something like this—without commenting on this in particular, because I do not know the facts, that is the way it should go.

Senator CRUZ. But in this instance the acting U.S. Attorney is the mother-in-law of a senior official in the Cuomo administration that admitted to the cover-up.

Will you at least commit to not having the investigation done by a person with a conflict of interest?

Judge GARLAND. Of course. I do not know any of the facts. But I can guarantee you that somebody with a conflict of interest will not be the person running an investigation of any kind.

Senator CRUZ. Thank you.

Chair DURBIN. Since it has appeared, reappeared, and then appeared again, this question about the Durham Special Counsel, for



the record, the President of the United States and the White House, when they reported their policy on the future of U.S. Attorneys, made two exceptions, if I remember correctly. One was for the Delaware U.S. Attorney and the second one was in this situation with Durham.

The administration has, clearly, committed publicly to allowing Durham to complete his investigation. I do not know that any additional comments are needed beyond that, though you have been asked many, many times that question.

In terms of Attorney General Barr, we do remember that he wrote an unsolicited memo questioning the legitimacy of the Mueller investigation before he was under active consideration for the Office of the Attorney General.

I do not know why the other side keeps returning to this. But I think your position is consistent with the White House position and is what we would expect of any Attorney General when it comes to making an assessment after they learn the facts.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman, and, am I the final questioner? Could be.

So I may be all that stands between you and relief from these proceedings, your Honor.

[Laughter.]

Senator WHITEHOUSE. I would summarize our earlier conversation as you telling us that when we ask you questions or the Department or the FBI questions, we are entitled to an answer, and if the answer is "no, we cannot tell you that," we are entitled to an explanation as to why you think that. Is that correct?

Judge GARLAND. Yes, that is right, Senator.

Senator WHITEHOUSE. Good. I touched on the problem of Executive privilege because the Department of Justice has a role as kind of an arbiter for the whole administration of Executive privilege determinations.

We had documents sent in here blank, that had the phrase "constitutional privilege" stamped on them. No articulation of what constitutional privilege it was.

We have had witnesses claim to assert Executive privilege, but the administration never backed them up by actually asserting the privilege. So there was never actually a test of the proposition.

But our Chairman would not force an answer. So we were stuck. And I urge you to—maybe we should even have a hearing on it—think through what Executive privilege ought to look like, what the process for declaring it ought to look like, and try to get that cleared up so that in this Committee we are no longer being treated the way we were in the last administration.

You mentioned that false statements were a way that cases kind of traditionally came in, went to the U.S. Attorney first, worked their way up. There is one sort of strange anomaly, which is false statements to the IRS.

The administration before this one took the view that a false statement to the IRS was something that they would not look at unless it had been referred by the IRS. So I get the policy of not getting into criminal investigations of tax law without the IRS saying, hey, we would like you to prosecute this. We are the tax law

experts and we really—we have some equities here and why they want you or do not want you to proceed criminally in this matter.

I get that. When it is a plain vanilla false statement—I did that as U.S. Attorney, you did those cases, anybody who served in—as a U.S. Attorney has done those cases, I would urge you to reconsider a policy of deferring to the IRS before proceeding on a simple false statement case. Obviously, it will be fact specific, but I flagged that for you.

And the last point I would like to make is that it seems to me, and I will ask you to agree or disagree with the statement, it seems to me that failing to proceed—failing to proceed where an investigation or a prosecution is warranted and doing so on political grounds is just as bad as proceeding with an investigation or prosecution on political grounds.

Would you agree that that is a correct proposition?

Judge GARLAND. Yes, of course. Absolutely.

Senator WHITEHOUSE. Last of all, we all need something to believe in, I think. People who worked in the Department very much believe in the Department of Justice. They believe in the merits and the norms and the values and the traditions of their service and of the Department. People across this country need to believe, and there was a lot that happened in the last administration to cause doubt about whether the Department of Justice met that standard, if they were worthy of the public's trust and belief.

Let me ask you with your closing comments to respond to how you view the importance of the public's trust and belief in the Department of Justice, and your commitment to salvaging, if necessary, restoring as needed, and upholding those ideals.

Judge GARLAND. Yes. Look, I could not agree with you more. It is not just that the Department has to do justice, that it has to appear to do justice and that the people of the United States have to believe that it does justice.

Otherwise, people lose their faith in the rule of law. They take the law into their own hands if they become cynical about law enforcement, about public servants.

I would like for the time that I am in the Justice Department to turn down the volume on the way in which people view the Department, that the Justice Department not be the center of partisan disagreement, that, you know, we return to the days when the Department does its law enforcement and criminal justice policy, and that this is viewed in a bipartisan way, which for a long time in the history of the Department that is the way it was.

I know that these are divisive times. I am not naive. But I would like to do everything I can to have people believe that that is what we are doing.

People will disagree. People on the left side, the right side, the Democratic side, the Republican side, will disagree with things that I do, and that has happened as a judge.

The only thing I can hope is that people will understand that I am doing—I am doing what I do because I believe it is the right thing and not out of some improper motive. That is the best I can ask.

And if you confirm me and if at the end of my time people still believe that, I will consider that a singular accomplishment.

Senator WHITEHOUSE. Godspeed to you, sir.

Chair DURBIN. Judge Garland, I am going to say a few words about what the Committee is going to do tomorrow in pursuit of your nomination, and then a few closing comments.

Tomorrow, the second day of the hearing begins at 10 a.m. We will hear from a panel of outside witnesses. Reminder that questions for the record from the Senators on the Committee must be submitted by 5 p.m. on Wednesday, February 24th.

I hope people will show good faith and common sense in the number of questions that they submit because you have been open now for two full rounds to ask whatever people have had on their minds.

Let me say a few words in closing. My appreciation of your background is a little different than some. I know one of your earliest inspirations was a man named Abner Mikva, who proceeded to serve with distinction all three levels of Government in the Federal branch as well as his initial service in the Illinois House of Representatives.

One of his closest friends and allies and colleagues over the years was a man named Paul Simon, who picked me up and dusted me off a few times when I lost elections and said, "You will get them next time."

He was right. I eventually did but took a while. I knew Abner Mikva personally, and through his relationship with my mentor, Paul Simon, they represented the very best in public service—integrity, honesty, hard work, all of the above, time and again.

We are lucky to be heirs of that legacy, and I think that that has inspired both of us in our different pursuits of public service.

When President-elect Biden told me that you were under consideration for this job, I thought instantly, this is the right person. At this moment in history, this is the right person to put in as Attorney General.

The Department of Justice needs to have its morale restored. It needs to have its reputation restored. It needs leadership that is honest and we can respect from every corner of this country.

You are that person. Your testimony today is evidence of that. I want to thank your family in particular. I do not know that they have—you mentioned but it is well worth repeating. Lynn, thank you for being here. Rebecca and her husband, Alexander. That would be Becky and Xan. And Jessica—Jessie, thank you for being here today in support of an extraordinary person who is ready to serve again in his being called by the President to be there at a moment in history when he is needed the most.

This President has put faith in you, Judge Garland. We will do the same. Thank you again. I look forward to your swift confirmation.

And with that, the hearing stands adjourned until 10 a.m. tomorrow.

[Whereupon, at 4:06 p.m., the hearing was recessed.]

[Additional material submitted for the record for Day 1 follows Day 2.]



**CONTINUATION OF THE  
CONFIRMATION HEARING  
ON THE NOMINATION OF  
HON. MERRICK BRIAN GARLAND  
TO BE ATTORNEY GENERAL  
OF THE UNITED STATES**

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**TUESDAY, FEBRUARY 23, 2021**

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

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

Present: Senators Durbin [presiding], Whitehouse, Coons, Blumenthal, Booker, Grassley, Cornyn, Lee, and Tillis.

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

Chair DURBIN. This hearing will come to order.

Yesterday, Senators from both sides of the aisle asked Judge Merrick Garland about his ability to rebuild the independence of the Justice Department and restore its integrity so the American people know that the Nation's top law enforcement officer is working for them. I believe the Judge made it clear that he is the right person to lead the Justice Department at this moment in history. He will ensure that the Department meets the critical challenges facing America. Throughout his career at the Justice Department and as judge on the D.C. Circuit, Judge Garland has demonstrated that he has the experience, judgment, independence, and dedication to public service necessary to excel as Attorney General. I am sure today's testimony will further illustrate the Judge's qualifications.

Today, we welcome five witnesses who are supporting Judge Garland's nomination to be the 86th Attorney General. Each will offer a different perspective on Judge Garland and the experience and talent he would bring to that role. I will introduce the majority witnesses, then I will turn to Ranking Member Grassley to introduce the minority witnesses.

Our first witness in the majority is Wade Henderson. He was the CEO of—is the CEO of the Leadership Conference on Civil and Human Rights, served in that position from 1996 to 2017, currently back serving as their interim president. The Conference consists of

more than 220 national organizations working to ensure equality under the law. Mr. Henderson can speak to many issues facing the Justice Department, such as the right to vote and reform of the criminal justice system.

Andrea Tucker is a special witness, and I thank her for joining us today. She is a native of Washington, DC, and the mother of three children who are in the DC Public Schools system. Judge Garland tutors her twins, who are now in the sixth grade. Ms. Tucker can speak to and give us valuable insight into the Judge's character and his dedication to the community.

Donna Bucella has held many public service roles across the Federal Government from the U.S. Army Judge Advocate General Corps to several positions in the Department of Justice. She worked closely with Judge Garland when he led the investigation of the Oklahoma City bombing, and she is going to share that experience with us.

Ranking Member Grassley, would you like to introduce your other two witnesses?

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

Senator GRASSLEY. Yes, I would.

Ken Starr is an attorney, academic, and public servant, and also appears on a lot of television for interviews and explanations on legal matters. He earned his undergraduate degree from George Washington University, master's degree from Brown University, and law degree from Duke. After law school, Judge Starr clerked on the Fifth Circuit for Judge David Dyer and then with Chief Justice Warren Burger on the Supreme Court. Judge Starr spent some years in private practice before serving as Counselor to Attorney General William French Smith during the first term of the Reagan administration. In 1983, Judge Starr was appointed by Reagan to serve as a judge on the U.S. Court of Appeals, D.C. Circuit. Judge Starr left the bench to serve as Solicitor General under President George H. W. Bush, and then served as Independent Counsel investigating President Clinton during Whitewater.

After his services as Independent Counsel, Judge Starr returned to private practice as an appellate lawyer and law professor. Judge Starr also served as dean of Pepperdine School of Law and president and chancellor of Baylor University. He has argued 36 cases before the Supreme Court, authored more than two dozen publications, and received numerous awards for his public service. We welcome Judge Starr.

The next person is Josh Blackman, professor of law, South Texas College of Law in Houston. Professor Blackman received his undergraduate degree in Penn State University before receiving his J.D., George Mason University School of Law. Both degrees were magna cum laude. Professor Blackman clerked for Judge Kim Gibson, Western District, Pennsylvania, and then Judge Danny Boggs of the Sixth Circuit. During his career in academia, Professor Blackman has proven to be a prolific author and an expert in constitutional law, healthcare, the Supreme Court and many other subjects. He has also testified 3 times before the House Judiciary

Committee. I believe that this is his first time testifying before the Senate.

We welcome both Judge Starr and Professor Blackman.

Chair DURBIN. Thank you, Senator Grassley. Because our witnesses are appearing via video, I will lay out the procedure we will follow. The mechanics are that witnesses will be sworn in, then they each have 5 minutes to provide an opening statement, and then it will be opened for questions. The first round of questions, each Senator will have 5 minutes to ask. So I would like to start by asking the members who are witnesses today to raise their right hand and please—

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect that the Chair heard “I do,” which is an indication of good results from the oath being given.

We are going to start with Mr. Henderson to proceed with your 5-minute opening statement. Please proceed.

**STATEMENT OF WADE HENDERSON, INTERIM PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, WASHINGTON, DC**

Mr. HENDERSON. Good morning. Good morning, Chairman Durbin, Ranking Member Grassley, and Members of the Committee.

I am Wade Henderson, interim president and CEO of the Leadership Conference on Civil and Human Rights, a national coalition of over 220 civil rights, human rights, and social justice organizations dedicated to building an America as good as its ideals. Thank you for inviting me to join today’s hearing to support Judge Merrick Garland’s nomination as Attorney General of the United States.

Now, when President Biden nominated Judge Garland, he rightly instructed him, and I quote, “You are not the President’s or the Vice President’s lawyer. Your loyalty is not to me. It is to the law, to the Constitution, to the people of this Nation.” Indeed, the Attorney General must be seen by every member of the public from every community as a fair arbiter of our legal system, whose sole duty is to serve the national interest. Unfortunately, our two most recent Attorneys General failed to live up to this high standard.

From their unconscionable validation of President Trump’s subversions of voting rights and our democracy, to their inhumane separation of families at the border, to their abuses of our justice system, Attorneys General Sessions and Barr all too often served as loyalists rather than independent law enforcement officials, and, in the process, deeply tarnished the reputation of the Department of Justice. Nowhere has the damage been more apparent than in efforts to undermine civil and human rights, and my written statement lists many of the harmful anti-civil rights actions taken by President Trump’s Justice Department.

America is in dire need of a course correction at DOJ. The Nation needs an Attorney General with a demonstrated commitment to integrity, independence, and the enforcement of civil rights. And DOJ must embrace our Nation’s tremendous diversity while protecting the rights of individuals and communities that have borne the burdens of systemic discrimination in all its forms. Judge Garland, who is widely regarded as one of the top legal minds in the Nation, embodies these principles.

I first became familiar with him as a nominee to the U.S. Supreme Court in 2016. As then-president of the Leadership Conference, I had the responsibility of reviewing Judge Garland's record, and I became deeply familiar with his views. I presented those findings in various public forums, including on C-SPAN's "Washington Journal." I believe now what I believed then: Judge Garland is a jurist with a first-rate legal mind and great personal integrity, and he has consistently written and joined opinions that have upheld civil and human rights. Several of our member groups and allies reached similar conclusions. Frankly, he should right now be on the U.S. Supreme Court.

That said, however, President Biden's selection of him for this position is an inspired choice. He, along with the Leadership Conference's own Vanita Gupta, our board member, Kristen Clarke, and attorney Lisa Monaco are the right team for this trying moment. If the issue is restoring the integrity and independence of DOJ, and it is, then Judge Garland is particularly well chosen. If the issue is restoring the mission of the institution, including its commitment to addressing civil rights enforcement and attacking racial inequality, and it is, then Judge Garland's own words speak best when he recounted so movingly yesterday how the DOJ first forged its identity fighting against the Ku Klux Klan and working to bring meaning to the Thirteenth, Fourteenth, and Fifteenth Amendments of the Constitution. For these reasons, we support Merrick Garland to be the Nation's next Attorney General fully and without reservation.

I should be clear, however, that this report does not come without expectations for prompt and meaningful action on civil and human rights. My written statement outlines several priorities that DOJ should quickly address, among them, suspending the use of the Federal death penalty, rooting out and addressing white supremacy and hate violence, and helping to secure the right to vote for all Americans. The need for robust Federal civil rights enforcement is as important as it has ever been. The Nation needs a Justice Department that will do everything in its power to provide equal justice to all. We need an Attorney General who knows the Justice Department well and who will reinstate DOJ's historic commitment to integrity, independence, and vigorous civil rights enforcement.

Merrick Garland would be such an Attorney General, and is, therefore, a fitting choice to lead the Justice Department at this crucial moment. We urge the Senate to confirm him, and thank you. And I would be happy to answer any questions. Thank you.

[The prepared statement of Mr. Henderson appears as a submission for the record.]

Chair DURBIN. Thank you, Mr. Henderson.  
Professor Blackman?

**STATEMENT OF JOSH BLACKMAN, PROFESSOR OF LAW,  
SOUTH TEXAS COLLEGE OF LAW, HOUSTON, TEXAS**

Professor BLACKMAN. Thank you, Chairman Durbin, Ranking Member Grassley, thank you for inviting me to testify. My name is Josh Blackman, and I am a constitutional law professor at the South Texas College of Law, Houston. I support the confirmation



of Judge Garland. He should be swiftly confirmed. In my brief time today, I will discuss three current DOJ policies that I hope Attorney General Garland will maintain.

First, DOJ lawyers should not give legal effect to so-called rule-making by guidance. Second, Attorney General Garland should carefully scrutinize consent decrees, especially those reached through so-called “sue and settle.” Third, DOJ should not resume the settlement practice of giving third party payments to non-parties. That money should be returned to the Treasury. These three issues may seem fairly low profile, but each practice will have a huge impact on the separation of powers, and these issues should be important to people on both sides of the aisle. I hope that Attorney General Garland will retain current DOJ policy with respect to these three issues.

First, the Department of Justice should not enforce rulemaking by guidance. In the past, Federal agencies avoided the formal rule-making process and instead issued various guidance documents. For example, substantive changes to the law were made through dear colleague letters, frequently asked questions, and even online bulletins, what I called Government by Blog Post. These guidance documents are not supposed to have the force of law. However, courts grant *Auer* deference to this sub-regulatory dark matter. In 2018, Associate Attorney General Rachel Brand instructed DOJ lawyers to not treat violations of guidance documents as violations of the law, and President Trump signed Executive Orders 13891 and 13892, which ordered other agencies to adopt the principles from the Brand Memo. Unfortunately, President Biden rescinded those Executive orders on his first day in office. At present, the Brand Memo is still codified in DOD regulations. I hope that Attorney General Garland will maintain the Brand Memo.

Second, Attorney General Garland should carefully scrutinize consent decrees. These agreements include intricate requirements that DOJ could never impose through regulation or litigation, and these consent decrees can exist in perpetuity. During this time, Federal judges and court monitors can oversee State and local governments. Such agreements raise distinct federalism concerns. Indeed, many of these agreements arise from a practice known as “sue and settle.” Organizations and local governments would sue a like-minded agency, knowing there is no adversity, and reach favorable settlements. Fortunately, Attorney General Sessions took action to restrict those consent decrees. The Justice Department imposed restrictions on consent decrees, including limits on duration, sunset provisions, and means for termination. Critically, under Attorney General Sessions’ guidelines, a consent decree cannot be used to achieve a policy goal that cannot be obtained through litigation. I hope Attorney General Garland will maintain this policy.

Third, the Department of Justice should return any excess settlement funds to the United States’ Treasury rather than make third party payments to progressive groups. These payments have been criticized as settlement slush funds. The Federal Government has allowed billions—billions, not millions—billions of dollars to be given to third party nonprofit organizations. These special interest groups were not parties in the litigation and were not victims of

misconduct. Indeed, Senator Grassley has observed that the Justice Department directed funds at organizations that Congress had defunded. In this way, the executive branch bypassed the Constitution's appropriations process. In 2017, Attorney General Sessions prohibited the inclusion of third party payments and settlements. Any excess funds from settlements would be restored to the United States Treasury. Attorney General Garland should maintain this policy.

Thank you for your time, and I will be happy to answer any questions.

[The prepared statement of Professor Blackman appears as a submission for the record.]

Chair DURBIN. Thanks, Professor.

Ms. Tucker, the floor is yours.

**STATEMENT OF ANDREA TUCKER, PARENT OF STUDENTS  
AT J.O. WILSON ELEMENTARY SCHOOL, WASHINGTON, DC**

Ms. TUCKER. Good morning. First, I would like to say good morning to Chair Durbin, Ranking Member Grassley, all of the Members of the Judiciary Committee, and my fellow witnesses. Thank you so much for having me here today. My name is Andrea Tucker. I am a native Washingtonian and the proud mother of three scholars in D.C. Public Schools. I am honored to be here today, and I am thankful for the opportunity to come and speak on behalf of Judge Garland.

I met Judge Garland roughly 5 years ago when he came to my children's school to meet with one of the fifth graders he was tutoring at the time. Unbeknownst to me, a few months later, my then-second grader would have the honor of becoming Judge Garland's next pupil. This was something that my child's teacher thought he could benefit from, specifically to help bring him out of his shell and to help with his reading comprehension. Judge Garland normally tutors a student until they graduate elementary school and the fifth grade, and then he starts with another child in second grade. So over the last 4 years, Judge Garland has had weekly tutoring sessions with my son.

At the end of every school year, Judge Garland has had—always invites all of the children of the tutoring program, which he started, to the D.C. Circuit Court of Appeals for a tour to see the courtroom, meet the U.S. marshals and the marshals' dogs, and get a feel for what it was that Judge Garland does for a living. Judge Garland also has a pizza party for them where they exchange gifts and other educational materials so students can continue their learning over the summer. One year when my son was struggling with multiplication, Judge Garland gave him some flashcards to practice with over the summer so Judge Garland could quiz him when they returned the following school year.

Of course the past year was a bit different due to the pandemic. Judge Garland did not miss a beat. He quickly pivoted from tutoring in person at the school, once in-person tutoring was no longer an option, and contacted the school's tutoring coordinator to get my contact information, and he offered to virtually tutor my son. On top of that, he knew that my son had a twin sister in the same class, so he also offered to tutor my daughter. The judge felt like

all students can benefit from tutoring and extra support, not just the ones that are struggling and behind. What parent would turn that down, especially during a time like this?

So in the end, Judge Garland coordinated with my kids' school to get all the appropriate work packages to tutor both of my children once a week on Zoom, carefully guiding them through virtual learning and their schoolwork. All the extra help was much appreciated. The fact that he still wanted to tutor during a pandemic and give so much of his time to both my children was amazing. This shows his dedication to our community and love for children.

One thing that made Judge Garland such a special tutor was he always began each session with asking how my children were doing and what funny, interesting things they did since they last met, getting to know them and engaging them on a personal level. He made tutoring fun, interactive, and effective, or, in the words of my daughter, "He made tutoring and math more fun and understandable for me."

I mentioned earlier that when a student graduates fifth grade, Judge Garland usually begins with another student. But as my children approached their fifth grade graduation, they asked Judge Garland if he didn't mind staying with them for the upcoming school year if they were online. He quickly agreed. My children are now in sixth grade, and I could see their work with Judge Garland paying off in their grades.

When you confirm Judge Garland, and I believe you should confirm him quickly, he is eagerly looking forward to getting back to his students to continue tutoring them, even as he settles into a new challenging role. This speaks to the character of the man who would serve as Attorney General. He is a man who actually does what he says he will, not one who just pays lip service to helping our communities. Character, commitment, and dedication, someone who will say—do what they say they will do, that is what you are getting in Judge Garland. Thank you.

[The prepared statement of Ms. Tucker appears as a submission for the record.]

Chair DURBIN. Thanks, Ms. Tucker. I appreciate that.  
Judge Starr?

**STATEMENT OF HON. KEN STARR, JUDGE, U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, RETIRED, WACO, TEXAS**

Judge STARR. Well, thank you, Mr. Chairman, and Ranking Member Grassley, and Members of the Committee. I am so honored to testify before the Committee today.

Since 1789 and General Washington's nomination of Virginia Governor Edmund Randolph to serve as our Nation's very first Attorney General, few nominees to the office have come before the Committee, before the Senate with Judge Garland's extraordinary array of credentials. We just heard one, by the way, from Ms. Tucker, and that is his generosity of spirit. I would like to focus very briefly on leadership and the universal respect that the Judge garnered during his years as Chief Judge of the D.C. Circuit. He is not only viewed, as he is, as a superb jurist, but he was a superb leader of the court, a leader who listened carefully to his colleagues

and who treated all persons in the court family with dignity and respect.

What history teaches is that the role he will soon be occupying, if confirmed, is extraordinarily difficult. My late boss, Attorney General William French Smith, during the Reagan administration, compared the job to that of the captain of a hypothetical javelin team that elected to receive. "It is a hard job, and controversy, at times quite bitter, goes with that territory." Consider the example of Attorney General Janet Reno during the Clinton administration. She was vehemently criticized, I think unfairly, for her decisions to appoint several Independent Counsels during President Clinton's first term. And yet, as she made crystal clear, the law that was in effect required nothing less, and her determination to do the right thing was mirrored by the outstanding FBI Director at the time, Judge Louis Freeh.

This bedrock requirement of doing the right thing, of integrity, has been spoken about frequently during the course of these hearings, and, frequently, the reference is made to the independence of the Justice Department. But as Judge Garland full well understands in our constitutional architecture, Executive power is vested in the President of the United States. So how can, as a theoretical matter, any Attorney General be truly independent while serving at the pleasure of the President? Indeed, there were attempts made in the immediate wake of Watergate to reconstitute the Department as an independent agency, a very bad idea and constitutionally suspicious.

The answer to this conundrum is independence with accountability lying in the very qualities that Judge Garland has shown through his long and distinguished tenure, and that is independence of judgment. And that is, the Attorney General must be allowed to make pivotally important decisions unimpeded, especially with respect to the most sensitive work of the Department, that of the criminal laws. And at times, the resulting decision may draw the ire of White House personnel, perhaps even of the President himself, as history teaches. But his commitment to integrity and professionalism as a total way of looking at the job, I think, was reflected in the work of Judge Griffin Bell and his contribution during his tenure as Attorney General. And Judge Bell's vast judicial experience, like that now of Judge Garland, made itself manifest in the way in which he conducted the office so honorably in his aptly entitled memoir, "Taking Care of the Law." That is the job.

Very briefly, the second broad area likely to be rife with controversy in the coming months is that of protecting religious freedom. Over the past decade, a number of voices have been raised, drawing into question long-settled principles of America's very first freedom, guaranteed by the majestic opening words of the First Amendment: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." Here again, I think Judge Garland's distinguished traditional service points to optimism about the Justice Department's protecting religious liberty.

His body of jurisprudence reflects stability and predictability as huge values in the law, and those of us who have long supported the Religious Freedom Restoration Act are optimistic. After all, the

Religious Freedom Restoration Act, called RFRA, is the leading Federal civil rights law that protects all Americans in the exercise of religious liberty. It also embodies the constitutional perspective and jurisprudence of Justice William Brennan, for whom Judge Garland served as a law clerk. This is, in short, settled law, and it is crucially important that the Department of Justice not support any legislative or executive action that would dilute the vital protections that RFRA provides to Americans of all faiths.

I thank the Chairman, and I look forward to your questions.

[The prepared statement of Judge Starr appears as a submission for the record.]

Chair DURBIN. Thank you very much, Judge Starr.

Ms. Bucella?

**STATEMENT OF DONNA A. BUCELLA, FORMER DIRECTOR,  
EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS, AND  
FORMER U.S. ATTORNEY FOR THE MIDDLE DISTRICT OF  
FLORIDA, IRVING, TEXAS**

Ms. BUCELLA. Chairman Durbin, Ranking Member Grassley, distinguished Members of the Committee, thank you for allowing me this opportunity to testify at today's hearing.

I have had the privilege of knowing Judge Garland since 1993. We worked together at Justice from 1993 to 1997. At that time, I was the principal deputy director of the Executive Office for United States Attorneys, the organization that oversaw the 94 U.S. Attorney's Offices. Judge Garland and I had constant contact over those years, and I witnessed Judge Garland make sound and factually based decisions every day.

I have been honored to serve our country in various roles, some of which include assistant United States attorney for the Southern District of Florida, the director and the principal deputy director for the Executive Office for United States Attorneys, the United States attorney for the Middle District of Florida, and the director of the Terrorist Screening Center. One of my most life-changing experiences happened while working with Judge Garland in Oklahoma City after one of the most horrific domestic terrorist acts was committed on U.S. soil.

On April 19th, 1995, 168 people were senselessly murdered in Oklahoma City. That day, Attorney General Reno asked me to go to Oklahoma City. I went to offer assistance to the U.S. Attorney's Office and found that the entire downtown was a crime scene. Within 24 hours, Merrick arrived and immediately began leading the investigation. I had the opportunity to see Merrick deal calmly and purposefully with this horrific event. Initially, we worked out of the command center at the Southwest Bell Telephone building. Downtown Oklahoma City was still in chaos. The streets were closed, except law enforcement and first responders. The structures around the Alfred P. Murrah Federal Building and the Daily Register were still smoldering. Cars in the parking lot were crushed from the force of the explosion. Rescue workers and their dogs walked through the rubble searching for survivors. Later rescue dogs were substituted for cadaver dogs, and many first responders were desperate to find the remains of co-workers, family, friends, loved ones, law enforcement. Many Federal agencies had offices in

the Murrah Building, and behind the building was the Daily Register where many victims were catastrophically impacted. On the other side of the Murrah Building was a Federal courthouse where Federal judges worked. Large shards of glass were embedded into office chairs, furniture, and the walls. How could this have happened in America's heartland?

Merrick and I walked downtown around and through the Murrah Building. As we walked by the daycare center attached to the Murrah Building, an empty silence overcame us. Neither of us said anything to each other about our shock and grief, not until about 20 years later. We then went upstairs to one of the floors in the building. We saw a desk, a chair. There was a jacket on the chair, a can of Coke, papers still on the desk, but less than 5 feet away where we were standing, there was nothing but open space. Without exchanging words, we knew we had to find the perpetrators of this unimaginable terrorist attack. I knew Merrick, who would be leading the investigation, would ensure that justice would be done, would be carried out objectively and fairly. Emotions were not part of his decision-making process.

Merrick is unwavering in doing what is right and has always demonstrated outstanding judgment. I worked with him weeks and months after the bombing and in Denver where the trial was conducted. I saw the countless hours he devoted to make sure that there were no corners cut and that justice was done. Under his leadership, he required the investigation be coordinated through the Western District of Oklahoma with involvement from at least eight different jurisdictions around the United States. It required a tremendous coordination effort, which he led. And as his nature, Judge Garland was committed to making sure the investigation was conducted in the right way. Why? Because we owed the victims, the people of Oklahoma, and the people of the United States a thorough and fair investigation that comported with the rule of law. Merrick would accept nothing less.

He relentlessly followed the law throughout this complex investigation. He was meticulous in requiring that subpoenas were issued. There were complete records of how evidence was obtained. He made sure the applications for wiretaps, search warrants, and other investigative tools were reviewed and approved by each Federal district where the evidence was sought, as well as by the FBI and the Department of Justice. Merrick worked closely with Federal, State, local officials, agents, first responders. He made sure all voices were heard, and there were many voices.

Merrick is a collaborator and consensus builder. He was always willing to tackle the difficult issues head on. While many in law enforcement had their own opinions of how the investigation should have been conducted, Merrick welcomed and listened to diverse opinions. His sense of collegiality and fairness and objectivity earned the respect of even those who may not have agreed with his decisions. His commitment to victims' rights was strong and enduring.

Judge Garland dedicated most of his professional life to public service, which includes his 2 decades on the bench. He is brilliant, thoughtful, kind, empathetic, compassionate, and down-to-earth. He is a serious person and does not shy away from making the

hard decisions. He is a man of integrity, honesty, and fairness. I can attest to all of this because I know him. I was there with him in Oklahoma City, and I have worked with him in good times and in bad. He has committed his life to our country. He is extraordinarily well qualified to be our Attorney General.

Thank you for allowing me this privilege to share my thoughts regarding qualifications of Judge Garland, and I welcome any questions.

[The prepared statement of Ms. Bucella appears as a submission for the record.]

Chair DURBIN. Thanks, Ms. Bucella.

Now we will ask a few questions, and I will start.

Let me start with Ms. Tucker, if she would be kind enough to answer a basic question that I am asking, not just as a Senator, but as a father and grandfather. I am trying to visualize the relationship between Judge Garland and your children, particularly since I have found, in my experience, that many of my kids and grandkids are very skeptical of my wisdom until they reach a certain stage in life. How have your children taken to Judge Garland in a personal way?

Ms. TUCKER. Well, my son has had the last 4 years before the pandemic to get to know Judge Garland since he came to the school every week to tutor him, so he had a familiar—familiarity with Judge Garland. And my daughter always saw him getting tutored by Judge Garland, and she was kind of a little jealous, so she also wanted to get tutored with him. But they just seem to love Judge Garland, and, like I said, he always asks how they are doing to get to know them on a personal level, so it is just easy for them.

Chair DURBIN. Do they ever talk about the fact that he has another life beyond being a good tutor as a judge—maybe considered for the Supreme Court—now being considered for Attorney General? Are your kids aware of that?

Ms. TUCKER. Yes, they are, and we have had several conversations in regards to that. And we also watched when Judge Garland was nominated by President Biden on TV, and they were just so excited. They were jumping up and down. It was like, “That is my tutor. That is Judge Garland.” So they know he is famous. I don’t think they know the severity of it because they are still 11, but they know he is somebody.

Chair DURBIN. Thank you, Ms. Tucker, for joining us today.

Ms. TUCKER. Thank you.

Chair DURBIN. Wade Henderson, I have a basic question for you. When we look at the Reconstruction period, Jim Crow, there have been some great books written. I always recommend Carol Anderson’s “White Rage” and “One Man, No Vote.” But it seems to me that the first thing—the first vulnerability of the recently freed African Americans was the right to vote, and that was the first—one of the first things that was attacked during Jim Crow. It still continues to this day. Voter suppression really focuses primarily on people of color after all is said and done. Any comments on your life experience with this issue?

Mr. HENDERSON. Senator Durbin, thank you for your question. It could not be more pertinent to the issues of the day. When the Justice Department was—the Division was formed in 1870, as I men-

tioned before, one of its first tasks was to challenge the Ku Klux Klan for the violence that they perpetrated against newly freed, formerly enslaved people. That was almost—that was 150 years ago. Congress enacted the Ku Klux Klan Act of 1871 to address that violence.

Ironically, today, the same issues that affected newly freed African Americans at that time affect us and other communities of color today, literally 150 years after the enactment of the Ku Klux Klan statute. Recently, Congressman Bennie Thompson, Chair of the Homeland Security Committee, and the NAACP filed a Federal lawsuit charging a conspiracy between Former President Trump, Attorney Rudolph Giuliani, the Proud Boys, and the Oath Keepers to prevent Congress from certifying the election of this past year. And it was the Ku Klux Klan Act of 1871 that was the basis for this challenge.

So as the great author, William Faulkner, once said, “The past is never dead. It is not even past.” The issues that motivated the challenge to African Americans 150 years ago remain a challenge to American democracy today. We are a Nation at war with itself, and we need a Department of Justice that is committed to lowering the temperature and enforcing the laws as they exist today, with the understanding that every American citizen deserves the right to cast a vote when appropriate, and that that right will be protected by the Department of Justice.

Judge Garland is the perfect individual to carry out that responsibility, and, in times like these, it is so important that an individual of his integrity and stature be chosen to represent the Department of Justice. Thank you.

Chair DURBIN. Thanks, Mr. Henderson.

Senator Grassley has told me that he has to go to a Finance meeting.

Senator GRASSLEY. No, if you have got more questions, I can wait.

Chair DURBIN. No, I am going to defer my questioning so that you can take the time for yours.

Senator GRASSLEY. Then I will go to the Finance Committee meeting.

Judge Starr, you left the bench to go to the Department of Justice as Solicitor General. So what sort of advice would you have to Judge Garland that leaves the same court to go to be Attorney General?

Judge STARR. He will be blessed with a very fine group of professionals throughout the Department overwhelmingly, but I must say his independence of judgment and taking a careful look, presuming, as we say in administrative law, regularity, the presumption of regularity. But sometimes the Department gets it profoundly wrong, and the Attorney General is where, in effect, the buck stops. So I have one very quick example.

As I say in my written statement, during the Obama administration, the Justice Department took, what I believed, was an extraordinarily ill-conceived position with respect to religious liberty, trenching on values of the autonomy of religious institutions, specifically church schools. And the position taken by the Solicitor General—very able lawyers—was unanimously rejected by the Su-



preme Court, not 5–4, not 6–3, but 9–nothing, Justice Ruth Ginsburg joining, Justice Sotomayor joining, in a huge rebuke to the Justice Department.

Where has the Justice Department gone wrong? They had gone wrong, first, at the EEOC. It took the position that religious liberty did not really count on the scales beyond simply association of liberty, more generally, of the Rotary Club or the NAACP, important organizations and they enjoy associational freedoms. But the Hosanna-Tabor Angelical School was a religious institution, and that, of course, triggered First Amendment values, very specifically, those first 16 words.

So there are times when even with respect to the office that I was privileged to hold, the Solicitor General, that on issues of fundamental importance to our constitutional order, the Attorney General should be willing to focus on it and to step in and say, with all due respect, Solicitor General, and your very able team, I think you have got this one wrong.

Senator GRASSLEY. Okay. I have another question for you, but because time might run out, I have an important question for Professor Blackman. Historically, the solicitor—historically, the Solicitor General’s Office has been seen as representing the permanent interests of the Government, not the political interests of any single Presidential administration. Paul Clement in that position said, “It has been the long-term position of the Justice Department to defend the constitutionality of statutes whenever reasonable arguments can be made.” So far, we have seen the Biden administration change its litigation position on a number of high-profile cases, and I would expect that might continue.

So two questions to you. I am going to ask them both at the same time, Professor. If a case is being litigated, what is the standard for whether to change a position, and is a simple political disagreement enough, and how does the Supreme Court view an administration changing its litigation position?

Professor BLACKMAN. Well, thank you, Senator Grassley. It is a pleasure to be here.

In the past, the Supreme Court has been very critical of changes of position. During the Obama administration, Chief Justice Roberts, in particular, went after some of the lawyers in the Government, “Why did you change your position?” And the answer is always the same: “Upon further reflection, we have a new position,” and “upon further reflection” is really code for “upon further election,” rather than a simple change in position. I would hope if General Garland is in the office and decides to switch position for the Court, he gives a reason why. It cannot just be we have a new President. If that is the reason, then state it, but maybe there is some judgment about the law. But I suspect that at some point, the Court will get annoyed that all these positions keep flipping on a fairly regular basis.

Senator GRASSLEY. Okay. I am going to go back to Judge Starr. I believe you are familiar with the Justice Department’s recent practice of dismissing False Claims Act cases brought by whistleblowers. The Justice Department argues that it has unfettered discretion to dismiss any claim brought by a whistleblower. If legislation is needed in this area, I am in the process of trying to clarify

Congress' intent, which oftentimes DOJ or the Supreme Court gets wrong, and we have to correct it, and I have had a lot of help from Senator Leahy in regard to that. Based on your reading of the False Claims Act, would you—what would be your advice as the appropriate interpretation of the Government's dismissal authority?

Judge STARR. Yes, thank you, Senator Grassley, and I think that the Government has taken, frankly, an unconstitutional position. It is seeking to arrogate complete authority, what it calls an unfettered discretion, to dismiss a qui tam relator's suit seeking redress against possible fraud against the Government. And I think fundamental constitutional principle suggests that the interpretation of the law that has been given, including by my former court and Judge Garland's current court, the D.C. Circuit, is just profoundly wrong in our system of checks and balances.

There is a key interest on the part of qui tam lawsuits, and that is of the qui tam relator, the whistleblower, and those merit much more protection than is involved in the opportunity, as one judge put it. The hearing before the dismissal of the lawsuit is ordered by district judges to give the qui tam relator and her counsel an opportunity to persuade the Government not to do that. This, I think, diminishes the judicial role, calls the Article III power into fundamental question, and arrogates authority that I do not believe, and I hope that you and Senator Leahy likewise believe that Congress never intended in those magnificent amendments in the 1980s that you helped so instrumentally as really the architect of those amendments, Congress never intended to give the authority of that sort to the Justice Department's Civil Division and, ultimately, the Attorney General.

Chair DURBIN. Thanks, Senator Grassley, and I realize you have to go to another Committee hearing. With the permission of the Senator from Connecticut, the Senator from Texas has a time issue. Would you be all right if I recognized him first?

Senator BLUMENTHAL. Absolutely.

Chair DURBIN. All right.

Senator Cornyn.

Senator CORNYN. I will be happy to return the favor at some future date. Thank you, Mr. Chairman.

Judge Starr, you have—during your distinguished career, you have had a lot of different hats that you have worn. One, of course, is as Independent Counsel, which was the predecessor to the—now the Special Counsel provisions that—under which Robert Mueller and now Mr. Durham have been appointed. I understand why Judge Garland was reluctant to talk about the Durham investigation and what he would or would not commit to, but I would like to get the benefit of your insight and experience on what kind of advice would you give Judge Garland, what kind of advice would you give us in terms of allowing the Special Counsel to complete their job as assigned without the Congress interfering.

Judge STARR. Well, the questions yesterday, Senator Cornyn, pointed to the key issue: will Attorney General Garland, once confirmed, support fully, completely, at a practical and moral level, as well as a legal level, the ongoing Special Counsel investigation. Under the regulations promulgated by Attorney General Janet

Reno in 1999, those are very strong and solid regulations, and, in my judgment, there is a guarantee of practical independence subject to the overall supervision of the Attorney General.

So just as the Attorney General is well advised not to be interfering with the orderly conduct of an investigation by a United States attorney's office and the like, so, too, and all the more so in light of the sensitivity of a Special Counsel investigation, that is where, it seems to me, it is very wise and prudent for Judge Garland, as Attorney General, to show the kind of respect and restraint that he has demonstrated throughout his judicial career. He should preserve, protect, and defend that investigation and to provide the assurances to Mr. Durham that that protection will proceed so long as there is not good cause for his removal, which, of course, would be a very daunting standard to meet.

Senator CORNYN. And that is the same advice you would give any Attorney General, I suspect.

Judge STARR. Yes, indeed, because it is the law. I think sometimes people on the outside do not realize that a regulation has the force of law, and I think those regulations, which have been in effect for, lo, these many years, have stood the test of time over these decades during both Republican and Democratic administrations. So I would say, as Judge Garland is accustomed to doing as a judge, stay the course. I would give that advice to any Attorney General.

Senator CORNYN. Thank you very much. Professor Blackman, recently, President Biden announced that he wanted the Department of Justice to review its policy on allowing it to divert some of the money from settlement agreements to third parties who are not even parties to the lawsuit. The goals of the settlement agreement between the Department and a private party, say, a bank or a business, are to compensate victims, as you know, redress harm, and deter unlawful conduct. So it strikes me as a little odd and highly problematic that we would let the Department of Justice pick and choose their favorite charities or political causes, even perhaps at the expense of making the victim whole, which, of course, is the whole goal of compensating the victim. Would you give us the benefits of your thoughts on changing this policy, so allowing the sharing of the proceeds of a settlement or a jury verdict with non-parties to the litigation?

Professor BLACKMAN. Thank you, Senator. Attorney General Sessions adopted a policy that I thought was quite salutary. It prohibited these so-called third party settlements where the Government would pick and choose which charities would receive millions and hundreds of millions of dollars—Senator Grassley, who stepped out, was a key hawk on this issue. In the *Bank of America* settlement, I think hundreds of millions of dollars were directed to various charities that had no connection to the actual offense. I think there is even a constitutional problem with these settlements. If there is any excess money, it should go to the U.S. Treasury. Congress then could choose to fund or not these settlements.

Some of the charities that were selected for the settlement funds were actually defunded by Congress, so these are end run—end runs around the appropriations process. It is disappointing that the Biden administration is revisiting this policy, and I suspect it will

be abandoned. I can only hope that Judge Garland will perhaps be more judicious in giving these vast amounts of money to groups that were in no way affected by the litigation.

Senator CORNYN. Thank you very much.

Chair DURBIN. Thank you, Senator Cornyn.

Senator Blumenthal.

Senator BLUMENTHAL. Thanks, Mr. Chairman.

Thank you all for being here today, and I would say, judging by your testimony, but, more important, by Judge Garland's testimony yesterday and his reception in this Committee, that he should be approved by an overwhelming bipartisan Majority. He demonstrated a fierce independence and strong sense of the integrity and credibility that needs to be restored at the Department of Justice, illustrated, I think, most tellingly by his saying again and again that he will involve the professionals, the career prosecutors, investigators, in decisions, and that those decisions will be based on fact, not politics; that he will insulate the Department of Justice from political interference and defend its independence, but, equally important, his commitment to correcting racial injustice and overcoming inequities and systemic racism that have plagued policing in this country and our justice system in almost every area of our society.

I would like to ask you, Mr. Henderson, if you were advising Judge Garland, what would you recommend to him that he adopt in the way of policies to address these kinds of inequities and issues?

Mr. HENDERSON. That is a very good question, Senator Blumenthal. I would begin first by suggesting, at least with regard to the issue of policing in our country, that the Leadership Conference supports meaningful police reform. Quite frankly, we cannot understand how anyone who witnessed the torture and death of George Floyd, or the results of a wrongly delivered no-knock warrant in the case of Breonna Taylor, resulting in her death, or the death of a victim like Eric Garner, who suffered from an illegally applied chokehold that ended up killing him, how any of those incidents could be ignored by someone arguing the need for police reform.

As a matter of fact, 2 days ago, the Office of the Chicago Inspector General issued a scathing report about the practices of the Chicago Police Department in the aftermath of the George Floyd-related demonstrations in Chicago. And the report found that many police officers made an effort to avoid accountability by obscuring their badge numbers or their names and so the issues related to their conduct could not be adjudicated. Now, this comes on the heels of an effort by the previous administration to end consent decrees that had sought reform of the Chicago Police Department.

So clearly there is evidence and a record of the need for accountability. As a matter of fact, in today's Washington Post, there is an article about police units from Japan and Canada and Finland reviewing an instance where a Seattle resident was killed by police, even though the resident was clearly mentally incapacitated. And the three police departments that reviewed it from these other countries say—said, look, we deal with these issues very differently, and it really underscored the importance of reform.

So, we hope that Judge Garland will look at these issues and understand their importance. We are supporting the George Floyd Justice in Policing Act, which may be coming up soon for a vote in the House of Representatives and hopefully will be presented to the Senate for action. We think that is one step where the Department could make a contribution to the kind of meaningful reform we support. And that is just one example, Senator, of what we would recommend on the front end.

Senator BLUMENTHAL. I am a strong supporter and co-sponsor of the Justice in Policing Act, and I think that one of the key elements of the policing reform ought to be changing the mens rea requirement under Section 242. I had an exchange with Judge Garland yesterday, and I was very pleased that he is receptive to lowering the threshold standard so that more accountability can be imposed for violations of constitutional rights by public officials generally, not just by police.

And, of course, like you, I am committed to eliminating racial injustice, not just in policing, but in housing where redlining continues to exist, in education where the quality of a child's education often depends on their ZIP Code, in workplace discrimination where jobs still are denied and promotions denied based on racial injustice, and, of course, in healthcare where there are dramatic disparities illustrated by what has been happening in the pandemic and its impact disproportionately on Black and Brown communities. So I thank you for your commitment, and I am very pleased that Judge Garland has emphasized the priority of eliminating racism and racial injustice, along with his fight against violent extremism and white supremacy and our society. Thank you very much, Mr. Henderson.

Thanks, Mr. Chairman.

Chair DURBIN. Thank you, Senator.

Senator LEE.

Senator LEE. Thank you, Mr. Chairman.

Thanks to our witnesses participating with us today.

Judge STARR, I would like to start with you, if that is okay. Would you agree that removing Special Counsel Durham for anything other than cause would flatly and inexcusably contradict the administration's claims that the Biden Justice Department will be free from political pressure?

Judge STARR. Yes, it would take the form, as it were, of a Saturday Night Massacre. We all recall that or know it from history. I recall it ever so vividly, as most Members will, which is the President of the United States acting imprudently and resulting in an act of conscience by the then-Attorney General of the United States, Elliot Richardson, who said, "I cannot in conscience fire the Special Prosecutor," as Archibald Cox was known. It would, in fact, create a firestorm absent the most compelling circumstances. And I have great confidence in Judge Garland, given his record of integrity and his independence of judgment, that were there to come such a suggestion from anyone—I am not suggesting that the President of the United States would do this, but anyone as a senior leader in the administration suggesting this kind of action without compelling circumstances would be a grievous mistake.

Senator LEE. Thank you, Judge Starr.

Professor Blackman, let us go to you for a second. Is there a point at which what is known as “prosecutorial discretion” simply becomes Executive fiat? And if so, at what point does that run afoul of the Constitution?

Professor BLACKMAN. Absolutely, the President has a duty to take care that the laws are faithfully executed, and that means something. Congress gives the Executive some latitude, some discretion, but the President cannot simply decline to enforce a law he dislikes. And I think we have seen this pattern all too often. I think some of the Executive actions on immigration amount to an abdication of the law. I think even in the first 100 days the Biden administration tried to say no more deportations for 100 days; I do not think he has that much discretion. We have seen perhaps a complete moratorium on the death penalty. That can go beyond the bound of discretion. I think Congress could perhaps do more to legislate to make clear what those rules are, but I am troubled by the failure to faithfully execute the law. It is something that I think we are seeing increasingly.

Senator LEE. So you mentioned prosecutorial discretion being invoked as a doctrine in the context of immigration. I assume you may be referring there, among other things, to DACA. It reminds me of a piece that you wrote with my friend Ilya Shapiro about a year and a half ago in which you said that if Federal law, in fact, supported DACA, then certain key important provisions of the INA would themselves run afoul of the non-delegation doctrine. Can you explain what you mean there?

Professor BLACKMAN. Of course, and I am thankful my colleague at Cato, Ilya Shapiro, gets a shout-out.

Congress has created a very elaborate scheme of granting discretion to the Department of Homeland Security. For example, you can let the Secretary set priorities. That is a fairly nebulous provision. You can set priorities.

The Obama administration and perhaps now the Trump—Biden administration said these nebulous provisions about granting discretion to set priorities let them basically create this elaborate program by granting lawful presence to over a million people and grant them work authorization.

If you can read the INA that broadly, then the entire INA is perhaps unconstitutional, right? You should not be able to read it—the Supreme Court punted on this issue. Chief Justice Roberts does what he often does and declines to decide important questions, and they just did not decide it. But eventually the courts will have to decide the DACA litigation, and this is something that Attorney General Garland will be litigating now, defending the policy for the new administration.

Senator LEE. So in other words, you have got concerns with the notion that the President of the United States could just tell the Department of Justice in advance to not comply with this specific provision of the INA. That would concern you.

Professor BLACKMAN. Oh, very much so, yes.

Senator LEE. Section 241 of the INA, of course, provides that, “When an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.”

On what planet, in what universe would it then be appropriate to convert the word “shall” into “may not” or “may decide not to”?

Professor BLACKMAN. That is exactly right, Senator. Generally, the word “shall” means “must.” That is how we read the word “shall” in the law. And Congress has created a very elaborate scheme by which the Attorney General can cancel removal through very specific rules. But the moratorium enacted on day number one was across the board: every deportation shall stop.

A Federal judge down in Texas, in Corpus Christi, declared that policy unlawful. As far as I am aware, that has not been appealed up. That is still in the district court. I think we will see more of these sorts of efforts to try to just not enforce parts of the law that are unpopular.

Yesterday Senator Sasse made a point that, over time, Article II, the Executive, has grown; Article I, the Congress, has sort of shrunk. I would hope it reverses and Congress asserts itself more over immigration and puts some teeth into the limits on the President’s powers.

Senator LEE. Thank you, Mr. Chairman. I see my time has expired, and I would note here that this is part of a consistent pattern that has been under the leadership of Republican and Democratic Congresses and White Houses combined over the last 80 years in which we have taken power away from the American people in two steps. First, we have taken non-Federal power and brought it to Washington. Within Washington, we have taken that power or any power that we might have previously had and handed it over to the executive branch. We cannot do this anymore. We have got to reclaim our role under Article I as the lawmaking branch.

Thank you.

Chair DURBIN. I thank the Senator from Utah. We can reserve for another hearing the question of prosecutorial discretion because there are not enough resources to prosecute every suspected criminal, and there are decisions being made every single day by agencies as to which are the more important prosecutions to pursue.

Senator Coons.

Senator COONS. Thank you. Thank you, Chairman Durbin.

And thank you to the witnesses. I appreciate this opportunity to consider Judge Garland’s nomination for Attorney General from the perspective of those who have worked with him, supported him, come to know him both as an individual and as a professional.

Ms. Bucella, if I might, you worked with him around the prosecution following the Oklahoma City bombing. You have praised Judge Garland’s leadership as someone who made everyone feel heard. I would be interested if you would briefly explain what stuck out to you about his leadership during that demanding prosecution of what was at that point the most pressing and challenging recent example of domestic violent extremism.

Ms. BUCELLA. Thank you very much, Senator Coons. Judge Garland is a very thoughtful person, and you need to remember that at that time there were all these competing agencies. We had Federal, State, and local law enforcement. We had a DA’s office. Everyone wanted to run the case. Merrick was incredibly patient and very—a great listener, and he took into account everybody’s ideas.

And this was something that was unimaginable, and you can only believe that the people of Oklahoma wanted to take care of business in Oklahoma. But because it was domestic terrorism, because—while the act occurred in Oklahoma City, it impacted so many other jurisdictions. McVeigh was in a number of different locations. His family was in different locations. Terry Nichols had family and co-conspirators in different locations. And it really, really took a combined effort, and so it was not, you know, Merrick's way or the highway. It was really—I remember sitting down in the command center and listening to people strenuously and vigorously argue their opinion about how they wanted the case to be prosecuted. And, ultimately, while everything is not perfect, everybody does not get exactly the way they wanted it, at the end of the day it was a solid prosecution, and he actually had everyone have their say in it.

Senator COONS. Thank you. I think a critical role for the Attorney General is to help coordinate Federal, State, and local law enforcement, to coordinate across different agencies, different interests, different regions. It is encouraging to hear about what I have heard about his experience as a judge, that he is able to craft consensus opinions from judges of widely varying views. But to hear about his experience as a prosecutor is encouraging as well.

Ms. Tucker, I am a father of twins. If you could, tell me something about your experience with Judge Garland tutoring your twins. I thought he really showed his humanity in his answers yesterday, but if you could speak briefly to how he has influenced your children and your family and what that tells you about his values, I would appreciate that.

Ms. TUCKER. Thank you so much. Thank you for your question. I would say, as Ms. Bucella previously stated, Judge Garland is so patient and he is so kind, and he is just so down-to-earth, and he gravitates toward kids, and he just sucks them in, and they just want to do that. They want to be interested in what it is that he is teaching them. He just makes it interesting to where they are able to gravitate to it. And I have seen my—he started tutoring my son in the second grade. His reading and his comprehension has tremendously grown, and he is an Honor Roll student now.

So, I appreciate the time that he invested in him because, you know, he always encourages him, be like, "You can do it. Come on, let us try to figure this out." I mean, it takes a special person and a patient person in order to be able to want to teach kids. I thank all these teachers out here because it takes a lot to be a teacher and a tutor, because he seems to know everything that they are learning in the school and he can explain it a lot better than I could. So I just appreciate what he has learned from that, and they are just so excited about learning.

Senator COONS. Thank you, Ms. Tucker, and thank you for joining our hearing today.

Ms. TUCKER. You are welcome.

Senator COONS. Mr. Henderson, it is great to see you again, Wade. You have noted that addressing America's longstanding racial inequalities, that dealing with racial justice will be central to many of the issues on the Justice Department's docket for the com-



ing years, whether it is voting rights, criminal justice, environmental justice, many others.

Can you just speak to the importance, the urgency of confirming the other senior nominees who will help guide the Department of Justice alongside Judge Garland, should he be confirmed, Vanita Gupta to be Associate Attorney General and Kristen Clarke to lead the Civil Rights Division? How will they be critical to his leadership? And how will the Attorney General play a key role in shaping the Department's work on these issues with their vital support and partnership?

Mr. HENDERSON. Senator Coons, thank you for your question. When President Biden announced the selection of Judge Garland to be his next Attorney General, he introduced three other attorneys to fill out a quartet of Department leadership that would be responsible for the enforcement of a number of issues, but of greatest concern to us is the civil rights enforcement of the Department, returning to its original mission from 1870. We were so pleased that the President announced the selection of Vanita Gupta to be the Associate Attorney General, the Number 3 position in the Department; and as you know, she comes from the Leadership Conference on Civil and Human Rights as our president, but before that had established herself as one of the great civil rights lawyers in this country and of her generation. And her history of involvement as deputy general counsel with the ACLU and ground-breaking attorney with the NAACP Legal Defense and Educational Fund lets us know that the President is deeply committed to exercising oversight of the Civil Rights Division in the most important way, and Vanita's selection confirms that.

The choice of Kristen Clarke could not be better. Kristen currently serves as the president of the Lawyers' Committee for Civil Rights Under Law, that esteemed organization established in 1963 by President Kennedy to address the great injustices that were occurring primarily in the South, directed at African Americans, making an effort to prevent them from exercising their constitutional rights. Kristen has been an outstanding civil rights lawyer. Her tenure with the State government in New York handling civil rights issues and her current work with the Lawyers' Committee has distinguished her among her peers as really one of the great attorneys of her generation.

The two of them taken together will bring an incredible strength to the Department that should not be ignored, and at this time of great controversy for the country, having both Kristen Clarke and Vanita Gupta as part of the quartet of leadership under the guidance of Merrick Garland, along with Lisa Monaco as the Deputy Attorney General, makes for, in our view, one of the strongest teams that the Department has ever fielded.

Judge Garland's commitment to including his supporters, his staffers, as part of the decisionmaking of his Department, gives us great confidence that this Department will use all of the resources available to it to ensure that the constitutional rights of all are greatly protected.

So thank you so much, and we hope that the Senate will move expeditiously to confirm Vanita and Kristen Clarke as soon as possible.

Senator COONS. Well, thank you, Wade. Thank you for that input, Mr. Henderson. I agree with you this is a very strong leadership team, and I look forward to working with you and this Committee for their swift confirmation.

Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Coons.

We understand Senator Booker is available from a remote location.

Senator BOOKER. I am. You make it sound more glamorous than it actually is, but thank you very much, Chairman.

I would like to go back to Wade Henderson, who I notice has a great haircut these days.

[Laughter.]

Senator BOOKER. I really appreciate you finally joining me in the world of bald-dom, sir. But, you know, just focusing on the Civil Rights Act of 1957 that created the Justice Department Civil Rights Division and gave the Attorney General new authorities to protect civil rights and ensure equal protection for all Americans—and I know you have dedicated so much of your life to that work of protecting civil rights, advancing equality. But in the decades since then, we have seen, unfortunately, that the Attorney General and the Department can decide not to really stand and try to create a Nation that is really liberty and justice for all.

You take the Trump administration. We saw a real abandonment of the focus on voting rights. For instance, the Trump administration's Justice Department all but ignored the Voting Rights Act of 1965. With the exception of one school district settlement just last year, it did not file a single Voting Rights Act case over the last 4 years.

And so, Mr. Henderson, what do you think the Department of Justice's priorities should be in terms of restoring civil rights? And what gives you confidence that Merrick Garland is the right person for the challenges that we see today in terms of equality of access to the polls and voting rights in general?

Mr. HENDERSON. Thank you for that question because I think it is central to the challenge facing our Nation today. I mentioned earlier in response to another question that America at this point remains a country at odds with itself. I cited the fact that the issues which were central to the controversies of the 2020 election cycle could well have come directly from the challenges facing our Nation in the aftermath of the Civil War. The fact that the Fifteenth Amendment to the Constitution, which guaranteed the right to vote to African-American men—regrettably, not to women at that time—became the central issue that this country faced regarding the 2020 election cycle and whether Americans who indeed are citizens of this country, eligible to vote, could have their votes respected and protected and heard.

The Department of Justice has a traditional responsibility, as Merrick Garland noted yesterday, formed for the purpose of defending the Reconstruction Era statutes that are making sure that the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution have real meaning. And yet the past administration did much—in fact, everything in its power to subvert the enforcement of those laws and did so in a way that greatly damaged—greatly

damaged—the interests of the American people and the reputation of the Department of Justice.

We are quite confident that the team that President Biden has put together with Merrick Garland at the helm, bringing his vast knowledge of the law, his superb gift as an attorney and someone who knows the Department well, will invest all of his authority in helping, as he said, to address this central issue in the most direct and important way. He has put together a team of individuals, as he noted, particularly with Vanita Gupta and Kristen Clarke, that gives us tremendous assurance that these skillful attorneys, knowing and understanding the Department's role in helping to achieve equal justice under law for all, will be able to carry out that responsibility in the best way practical. And I am very confident in the Attorney General's willingness to open his door to hear concerns of organizations, a vast array of who will have access to him, the entirety of the country, truthfully. He will evaluate those requests and carry them out in a way that fully, fully implements the commitment of President Biden to ensuring that there is justice for all in our country. And this is the time to do it.

So I hope that the Attorney General will focus, as he has pointed out, addressing issues of hate violence and white supremacy in our country. I hope, like Secretary Austin at the Pentagon, he will make an effort to investigate hate violence and law enforcement in this country. We saw in the unfortunate events of January 6th, and we saw, I have to say, many police officers sacrificing themselves for the interest of American democracy, and they need to be lifted up for that, particularly the three individuals who lost their lives on that day, Officer Sicknick and his two colleagues who committed suicide. We know the hardship that police officers face, and we are sympathetic to that. But at the same time, we also know that deeply embedded in that crowd were members of law enforcement who were, in fact, sympathetic to and supporting the insurrectionists' efforts that were underway at that time. And I hope that the Attorney General will pursue those issues in a meaningful way and help to ensure that that kind of activity does not go forth in the future.

Thank you.

Senator BOOKER. Sir, thank you. My time has expired. I am grateful for that. I am also grateful for the work that you have done in finding bipartisan accord on issues so urgent in criminal justice reform. It is just great to see you. Thank you for taking the time, and you and Michael Jordan have done more for bald Black men in America.

[Laughter.]

Mr. HENDERSON. Thank you, Senator.

Senator BOOKER. You are out there making us look good. Thank you.

Chair DURBIN. Thank you, Senator.

Senator Tillis.

Senator TILLIS. Thank you, Chairman Durbin.

I am going to be brief. I came here—I was in North Carolina yesterday and participated in the hearing via Webex. Unfortunately, with the time I had to go to the airport, I was going to ask some riveting questions about intellectual property, trademarks, and the things that bring everybody to this Committee every day, but I

have submitted those as questions for the record. I wanted to be here in person to say that I thought he did an extraordinary job in the hearing yesterday. I have no questions for the witnesses. I listened to their opening statements, and I fully intend to support his confirmation.

Thank you, Mr. Chair.

Chair DURBIN. Thank you, Senator.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman. I just wanted to stop in. We have a hearing in Finance on the Deputy Treasury Secretary, so I am sorry I have not been here through the day.

But I wanted to welcome Donna Bucella, who is one of our witnesses. Donna was the head of the Executive Office for United States Attorneys when I was the U.S. Attorney in Rhode Island, so she had to keep an eye on not only me but another 92 U.S. Attorneys around the country, and I want to wish her well.

I would like to ask her thoughts on the question that I raised with Judge Garland yesterday, which was how the Department should respond to what I consider to be pretty grave damage done to its norms and its practices and its values and its reputation during the Trump years. And the Attorney General suggested that working through the Inspector General and working through the Office of Professional Responsibility, which oversees attorney conduct as essentially members of the bar, might be enough to take on the problem. I think that the problem is worse than that. It is more systemic than that, and some means of trying to understand what went wrong so that you can right it. If you had a ship that you were sailing and the ship had a fire on board, the first thing you would do after you put out the fire is commission a damage assessment so you would know what the capabilities were of the vessel and what needed to be repaired and what was the most urgent thing to repair and all of that.

So if I might ask Ms. Bucella for her thoughts, having been one of the administrative leaders of the Department in the past, on this question of what might be options for the Attorney General, if he is confirmed, to consider if he finds out that the problems over there are actually worse than just what the Inspector General and OPR can handle. Ms. Bucella.

Ms. BUCELLA. Thank you, Senator Whitehouse. It is good to see you again.

Senator WHITEHOUSE. I was one of your least difficult and problematic U.S. Attorneys, correct?

Ms. BUCELLA. Of course you were.

[Laughter.]

Ms. BUCELLA. As you know, Senator Whitehouse, trying to find out all of the information—it resides in many places. I believe that Judge Garland would be best at trying to commission some sort of a working group using his U.S. Attorneys, because as you know, as the chief law enforcement officer in the 94 different districts, each of the U.S. Attorneys have accessibility to Federal, State, and local law enforcement. They also have an opportunity to hear on the ground what is going on in their communities. So perhaps having an Attorney General Advisory Committee Subcommittee to also address this to be able to provide input and information and rec-

ommendations for resolution or recommendations for where do we go next. I think there are so many dedicated men and women out there in the DOJ law enforcement community as well as the State and locals, and I do think that they have some incredible insights to really help Judge Garland when he becomes the Attorney General to figure out how to right the ship.

Senator WHITEHOUSE. Yes, I will agree with you, Ms. Bucella, that there is something that I think binds most graduates of the Department together, a sense of shared values, a sense of shared commitment, a sense of appreciation at the experience of having been allowed to work in such a remarkable place. And I think that does provide a pool of resources and of good will and of experience that any Attorney General can draw on. And one of the things that we have noticed, particularly when things were blowing up in the Bush administration over at the Department of Justice, was that that population of the alumni of the Department came together in a very bipartisan fashion to try to provide helpful remedies to the problems, particularly of Attorney General Gonzales. So thank you for saying that. I think that is an important community, and potentially a bipartisan community as well, to provide good advice that will not trigger partisan reactions.

Thank you so much, Mr. Chairman.

Chair DURBIN. Thank you very much, Senator Whitehouse.

I want to personally thank the witnesses who have appeared today. They have certainly added to the record and our insight into not only the nominee but the issues that he will face if he is successful in his confirmation quest, and I hope that he will be. I am heartened by Senator Tillis' volunteered comments, and I hope they are an indication of strong bipartisan support for a nominee who certainly deserves it.

I want to say for those who are watching this hearing, a lot of work goes into it. The Senators, of course, do their job, but there are a lot of hardworking and dedicated staff who back them up and make them look glorious every single day.

I want to thank, first of all, the Majority nomination staff who spent countless hours preparing materials for me and the other Democratic Members: Chief Nominations Counsel Phil Brest; Counsels Sarah Bauer, Gabe Kader, and Joe Charlet; Nominations Clerk Maggie Hopkins; and Research Assistant Anna Shepherd.

I would also like to thank the following staff for their work behind the scenes in the logistics department to help this hearing go smoothly: Chief Clerk Heather Vachon, Deputy Chief Clerk Michelle Heller, Assistant Clerk Bentley Olson, Michael Perkins, Katya Kazmin, Audrey Huynh, Bryan Palmer, and Chesney Mal-lory.

Let me also give a nod—and I am sure that Senator Grassley joins in this as well—to thank the Minority staff for their work and cooperation: Chief Minority Nominations Counsel Mike Frago, Senior Counsel Lauren Mehler, and the rest of the Minority nominations team.

So let me say at this point that we are concluding this hearing, and as a reminder, written questions for Judge Garland are due at 5 p.m. tomorrow, February 24th. As agreed upon by both sides, we

will proceed to a Committee markup vote on Judge Garland's nomination on Monday, March 1st.

I thank all of my colleagues, but especially Senator Grassley. We, as I said at the outset, have had a long-term friendship which I am careful to protect as much as possible. He is a good man and an honorable person, and I have enjoyed working with him over the years.

And with that good news, the hearing stands adjourned.

[Whereupon, at 11:28 a.m., the hearing was adjourned.]

[Additional material submitted for the record for Day 1 and for Day 2 follows.]

# **A P P E N D I X**

## **ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD**

Witness List  
Hearing before the  
Senate Committee on the Judiciary

“The Nomination of the Honorable Merrick Brian Garland  
to be Attorney General of the United States”

Monday, February 22, 2021  
Hart Senate Office Building Room 216  
9:30 a.m.

### Introducers

The Honorable Christopher Van Hollen  
United States Senator  
State of Maryland

The Honorable Tammy Duckworth  
United States Senator  
State of Illinois

### Panel I

The Honorable Merrick B. Garland  
to be Attorney General of the United States

### Panel II

Mr. Wade Henderson  
Interim President and CEO  
The Leadership Conference on Civil and Human Rights  
Washington, D.C.

Mr. Josh Blackman  
Professor of Law  
South Texas College of Law  
Houston, Texas

Ms. Andrea Tucker  
Parent of Students at J.O. Wilson Elementary School  
Washington, D.C.

The Honorable Ken Starr  
Judge (Retired)  
Waco, Texas

Ms. Donna Bucella  
Former Director, Executive Office for United States Attorneys (EOUSA)  
and Former U.S. Attorney for the Middle District of Florida  
Irving, Texas

**Statement of Senator Tammy Duckworth  
Before the Senate Judiciary Committee  
February 22, 2021**

Thank you for the opportunity to introduce President Biden's nominee to serve as the next Attorney General of the United States. Judge Merrick Garland possesses the brilliance and the resilience... the experience and intellect... the expertise and integrity necessary to serve effectively as Attorney General.

I am honored to be here today because I have full confidence in his capability to lead the Department of Justice in an independent and impartial manner and defend the civil and constitutional rights of all Americans—no matter what they look like, who they love, how they pray or their disability status.

Judge Garland hails from my home state of Illinois. His father ran a small business out of his home and his mother worked as a volunteer at the Council for Jewish Elderly in Chicago.

After graduating as valedictorian at Niles West High School in Skokie, Illinois, he won scholarships to attend both college and law school. He graduated from Harvard University in 1974 and Harvard Law School in 1977.



Judge Garland's breadth of experience stems in part from his time in private practice and judicial clerkships. He clerked for Judge Henry Friendly on the Second Circuit and Justice William Brennan on the U.S. Supreme Court.

However, his commitment to public service is perhaps even more clearly demonstrated by his successful tenure at the Department of Justice and his current seat on the U.S. Court of Appeals for the District of Columbia Circuit.

In 1979, Judge Garland joined the DOJ as a Special Assistant and left the Department as Principle Associate Deputy Attorney General in 1997.

During his tenure, which spanned Republican and Democratic administrations alike, he led multiple high-profile investigations, working on a number of issues including criminal, civil, antitrust, appellate, espionage and national security matters.

He gained valuable experience as a prosecutor by trying and supervising numerous prosecutions and appeals. Notably, he played a key role in the prosecution of the Oklahoma City Bombers.

Following his career at the DOJ, the U.S. Senate confirmed his nomination for a lifetime appointment to serve on the D.C. Circuit. Judge Garland authored hundreds of opinions that addressed disability rights, criminal justice and voting rights, among other issues—issues that affect Americans in every mile and in every corner of this country.

As a judge, he joined a unanimous panel decision that upheld a Department of Labor regulation requiring contractors to comply with the Rehabilitation Act of 1973. This decision upheld regulations that sought to protect employment opportunities for individuals living with a disability, like myself.

It is this legacy of public service that gives me confidence that if confirmed to be our Nation's chief law enforcement officer, Judge Garland will not only modernize and strengthen enforcement of the Americans with Disabilities Act, but restore integrity and lift morale throughout DOJ.

Judge Garland is ready to defend the constitutional and civil rights that our Nation so deeply values, and I know he will make us Illinoisans proud as our country's next Attorney General.

Hearing before the U.S. Senate Committee on the Judiciary

Merrick Brian Garland  
Nominee for Attorney General  
February 22, 2021

Mr. Chairman, Mr. Ranking Member, and members of the Judiciary Committee.

I am honored to appear before you today as the President's nominee for Attorney General.

I would like first to take this opportunity to introduce you to my wife, Lynn; my daughters, Jessie and Becky; and my son-in-law, Xan. I am grateful to them -- and to my entire extended family watching these proceedings on C-SPAN -- every day of my life.

The President nominates the Attorney General to be the lawyer -- not for any individual, but for the people of the United States. July 2020 marked the 150th anniversary of the founding of the Department of Justice, making this a fitting time to remember the mission of the Attorney General and the Department.

It is a fitting time to reaffirm that the role of the Attorney General is to serve the Rule of Law and to ensure equal justice under the law. And it is a fitting time to recognize the more than 115,000 career employees of the Department and its law enforcement agencies, and their commitment to serve the cause of justice and protect the safety of our communities.

If I am confirmed, serving as Attorney General will be the culmination of a career I have dedicated to ensuring that the laws of our country are fairly and faithfully enforced, and that the rights of all Americans are protected.

Before I became a judge almost 24 years ago, a significant portion of my professional life was spent at the Justice Department -- as a special assistant to Ben Civiletti, the last of the trio of post-Watergate Attorneys General; as a line Assistant U.S. Attorney; as a supervisor in the Criminal Division; and, finally, as a senior official in the Deputy Attorney General's Office.

Many of the policies the Justice Department developed during those years are the foundation for reaffirming the norms that will ensure the Department's adherence to the Rule of Law: Policies that protect the independence of the Department from partisan influence in law enforcement investigations; that strictly regulate communications with the White House; that establish guidelines for FBI domestic operations and foreign intelligence collection; that ensure respectful treatment of the press; that read the Freedom of Information Act generously; that respect the professionalism of DOJ's career employees; and that set out principles of federal prosecution to guide the exercise of prosecutorial discretion.

In conversations we have had before this hearing, many of you asked why I would agree to leave a lifetime appointment as a judge. I have told you that I love being a judge. I have also told you that this is an important time for me to step forward because of my deep respect for the Department of Justice and its critical role in ensuring the Rule of Law.

Celebrating DOJ's 150th year reminds us of the origins of the Department, which was founded during Reconstruction, in the aftermath of the Civil War, to secure the civil rights promised by the 13th, 14th and 15th Amendments. The first Attorney General appointed by President Grant to head the new Department led it in a concerted battle to protect black voting rights from the violence of white supremacists, successfully prosecuting hundreds of cases against members of the Ku Klux Klan.

Almost a century later, the Civil Rights Act of 1957 created the Department's Civil Rights Division, with the mission "to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society."

That mission remains urgent because we do not yet have equal justice. Communities of color and other minorities still face discrimination in housing, education, employment, and the criminal justice system; and bear the brunt of the harm caused by pandemic, pollution, and climate change.

150 years after the Department's founding, battling extremist attacks on our democratic institutions also remains central to its mission.

From 1995 to 1997, I supervised the prosecution of the perpetrators of the bombing of the Oklahoma City federal building, who sought to spark a revolution that would topple the federal government. If confirmed, I will supervise the prosecution of white supremacists and others who stormed the Capitol on January 6 -- a heinous attack that sought to disrupt a cornerstone of our democracy: the peaceful transfer of power to a newly elected government.

That critical work is but a part of the broad scope of the Department's responsibilities. DOJ protects Americans from environmental degradation and the abuse of market power, from fraud and corruption, from violent crime and cybercrime, and from drug trafficking and child exploitation.

And it must do all of that without ever taking its eye off the risk of another devastating attack by foreign terrorists. The Attorney General takes an oath to support and defend the Constitution of the United States against all enemies -- foreign and domestic.

I am mindful of the tremendous responsibility that comes with this role. As Attorney General, later Supreme Court Justice, Robert Jackson famously said:

The prosecutor has more control over life, liberty, and reputation than any other person in America. [The prosecutor's] discretion is tremendous.... While [prosecutors] at [their] best are one of the most beneficent forces in our society, when [they] act from malice or other base motives, [they are] one of the worst.

Jackson then went on to say:

The citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches [the] task with humility.

That was the kind of prosecutor I tried to be during my prior service in the Department of Justice. That is the spirit I tried to bring to my tenure as a federal judge. If confirmed, I promise to do my best to live up to that ideal as Attorney General.

Thank you.

January 26, 2021

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Merrick Brian Garland

2. **Position:** State the position for which you have been nominated.

Attorney General, Department of Justice

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: E. Barrett Prettyman United States Courthouse  
333 Constitution Avenue, NW  
Washington, DC 20001

Residence: Bethesda, MD

4. **Birthplace:** State date and place of birth.

1952, Chicago, IL

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Harvard Law School, 1974-77, J.D., June 1977  
Harvard College, 1970-74, A.B., June 1974

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for

your services. Include the name and address of the employer and job title or description.

- 1997-present United States Court of Appeals for the District of Columbia Circuit  
Circuit Judge, 2020-present  
Chief Judge, 2013-2020  
Circuit Judge, 1997-2013
- 1993-97 United States Department of Justice  
Principal Associate Deputy Attorney General, 1994-97  
Deputy Assistant Attorney General, Criminal Division, 1993-94  
950 Pennsylvania Avenue, NW  
Washington, DC 20530
- 1992-93 Arnold & Porter  
(Now Arnold & Porter Kaye Scholer LLP)  
Partner  
(Now at) 601 Massachusetts Avenue, NW  
Washington, DC 20001
- 1989-92 United States Attorney's Office for the District of Columbia  
Assistant United States Attorney  
555 4<sup>th</sup> Street, NW  
Washington, DC 20530
- 1981-89 Arnold & Porter  
(Now Arnold & Porter Kaye Scholer LLP)  
Partner, 1985-89  
Associate, 1981-85  
(Now at) 601 Massachusetts Avenue, NW  
Washington, DC 20001
- 1987-88 In re Nofziger (Wedtech)  
Associate Independent Counsel (part time)  
(Now closed) 1201 Pennsylvania Avenue, NW  
Washington, DC 20530
- 1986 Harvard Law School  
Lecturer, Advanced Antitrust (Winter Term)  
1585 Massachusetts Avenue  
Cambridge, MA 02138
- 1979-81 United States Department of Justice  
Special Assistant to the Attorney General  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

- 1978-79 Supreme Court of the United States  
Law Clerk, Justice William J. Brennan, Jr.  
One First Street, NE  
Washington, DC 20543
- 1978 Arnold & Porter  
(Now Arnold & Porter Kaye Scholer LLP)  
Summer Associate  
(Now at) 601 Massachusetts Avenue, NW  
Washington, DC 20001
- 1977-78 United States Court of Appeals for the Second Circuit  
Law Clerk, Judge Henry J. Friendly  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007
- 1977 Arnold & Porter  
(Now Arnold & Porter Kaye Scholer LLP)  
Summer Associate  
(Now at) 601 Massachusetts Avenue, NW  
Washington, DC 20001
- 1976 Pillsbury, Madison & Sutro  
(Now Pillsbury Winthrop Shaw Pittman LLP)  
Summer Associate  
(Now at) Four Embarcadero Center  
22<sup>nd</sup> Floor  
San Francisco, CA 94111
- 1975-77 Harvard Law School  
Research Assistant, Professors Philip Areeda and Charles Nesson  
1585 Massachusetts Avenue  
Cambridge, MA 02138
- 1974-77 Harvard University  
Proctor and Assistant Senior Tutor  
Massachusetts Hall  
Cambridge, MA 02138
- 1974 Committee to Reelect Congressman Mikva  
Summer Worker  
(Now closed) 4016b Church Street  
Skokie, IL 60076



Other affiliations (uncompensated):

2003-10 Harvard University Board of Overseers  
 President, 2009-10  
 Member, 2003-10  
 Massachusetts Hall  
 Cambridge, MA 02138

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I timely registered for Selective Service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

American Academy of Arts & Sciences, 2019

Harvard Club of Washington Public Service Award, 2018

Honorary Doctor of Laws, Georgetown University, 2018

U.S. Presidential Scholars Honors Award, 2017

Reflections of Hope Award, Oklahoma City National Memorial Foundation, 2015

Judge of the Year Award, Bar Association of the District of Columbia, 2011

Honorary Senior Fellow Award, Administrative Law and Regulatory Practice Section,  
 American Bar Association, 2004

Edmund J. Randolph Award, United States Department of Justice, 1997

Prune Award, Council for Excellence in Government, 1993

Director's Award, Executive Office for United States Attorneys, 1992

J.D., magna cum laude, Harvard Law School, 1977

Harvard Law Review, 1975-77; Articles Editor, 1976-77

Harvard Graduate National Scholarship, 1974-77

A.B., summa cum laude, Harvard College, 1974

Paul Revere Frothingham Award, Harvard College, 1974

Detur Prize, Harvard College, 1973

Richard Perkins Parker Award, Harvard College, 1973

West European Studies Center Award, Harvard University, 1973

Phi Beta Kappa, 1972

Edwards Whitaker Award, Harvard College, 1971

G.D. Searle Co. Scholarship, 1970-74

National Merit Scholarship, 1970

Harvard National Scholar, 1970

United States Presidential Scholar, 1970

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

United States Judicial Conference, 2001-2020

Chair, Executive Committee, 2017-2020

Member, Executive Committee, 2013-2020

Conference Member, 2013-2020

Committee on Judicial Security, 2008-13

Committee on the Judicial Branch, 2001-05

Executive Committee (Statutory Position), District of Columbia Pretrial Services Agency, 2013-2020

Board of Directors, Historical Society of the District of Columbia Circuit, 2012-15

Search Committee for Director of the Administrative Office of the United States Courts, 2005-06

Federal Judges Association, 2003-2016 (intermittent)

United States Court of Appeals for the District of Columbia Circuit  
Library Committee, 1997-present  
Judicial Council, 1999-2009, 2011-2020

American Law Institute, 1998-present

Edward Bennett Williams Inn of Court, 1996-present

District of Columbia Assistant United States Attorneys Association 1989-96

Judge William J. Bryant Inn of Court, 1988-92

Council for Court Excellence, 1987-89

American Bar Association, 1981-present (intermittent)  
Judicial Branch Liaison, Administrative Law Section Council, 2000-03  
Department of Justice Representative, Criminal Justice Section Council,  
1994-97

District of Columbia Bar, 1979-present  
Nominating Committee for Officers and Board of Governors, 1994  
Co-chair, Administrative Law and Agency Practice Section, 1991-94

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

I took and passed the District of Columbia bar examination in 1979 and was admitted on December 17, 1979. I did not apply to any jurisdiction for reciprocal admission. My membership in the District of Columbia Bar has not lapsed.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Tenth Circuit, November 25, 1996

United States Court of Appeals for the Fourth Circuit, February 17, 1983

Supreme Court of the United States, January 17, 1983

United States Court of Appeals for the District of Columbia Circuit, July 19, 1980

United States Court of Appeals for the Ninth Circuit, March 19, 1980

United States District Court, District of Columbia, January 7, 1980

District of Columbia Court of Appeals, December 17, 1979

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

American Academy of Arts & Sciences, 2019-present

Board of Overseers, Harvard University, 2003-10  
President, 2009-10

Harvard College Visiting Committee, 2003-10

Edgemoor Club, 2001-present (tennis & swimming)

Temple Sinai, 1994-present

Council for Excellence in Government, 1992-95 (closed in 2009)

Sidwell Friends School Tennis Center, 1990-91 (summers)

Chevy Chase Recreation Association, 1989-95 (summers) (tennis & swimming)

Sutton Place (D.C.) Condominium Association and tennis courts, 1981-89

Harvard Club of Washington, 1978-present (intermittent)

Harvard Law School Alumni Association, 1977-present

Harvard University Alumni Association, 1974-present

Phi Beta Kappa, elected 1972

- b. Indicate whether any of these organizations listed in response to 11a. above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None have from before the time I joined.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have provided copies of all of the following:

Entry in Harvard Law School Class of 1977, 25<sup>th</sup> Anniversary Report (2001).

Entry in Harvard Class of 1974, 25<sup>th</sup> Anniversary Report (1999).

Entry in Harvard Class of 1974, 20<sup>th</sup> Anniversary Report (1994).

Merrick B. Garland, Antitrust and State Action: Economic Efficiency and the Political Process, 96 Yale L.J. 486 (1987).

Merrick B. Garland, Antitrust and Federalism: A Response to Professor Wiley, 96 Yale L.J. 1291 (1987).

Merrick B. Garland, Deregulation and Judicial Review, 98 Harv. L. Rev. 505 (1985).

Merrick B. Garland, Courts Give Deregulatory Policies New Hard Look, Legal Times, April 22, 1985.

Entry in Harvard Class of 1974, 10<sup>th</sup> Anniversary Report (1984).

Merrick B. Garland & Robert Pitofsky, Federal Trade Commission Investigations, 4 Antitrust Counseling and Litigation Techniques, Ch. 48 (J.O. Kalinowski ed. 1984).

James F. Fitzpatrick & Merrick Garland, The Court, 'Veto' and Airbags, New York Times, August 20, 1983, at 21.

Commercial Speech, Supreme Court, 1975 Term, 90 Harv. L. Rev. 142 (1976) (collaborative student note).

State Action Exemption and Antitrust Enforcement Under the Federal Trade Commission Act, 89 Harv. L. Rev. 715 (1976) (collaborative student note).

Innocence in the Union: The Fantasticks, Co-Directed by Lindsay Davis and David Luke in the Freshman Union Tonight and Sunday at 7:30, The Harvard Crimson, January 22, 1976 (theater review).

McDonald's Offers Hamburger Reward for Pints of Blood, The Harvard Crimson, December 3, 1973.

Pinter in Progression: Three Plays by Harold Pinter: Night School, Landscape, and Silence at the Loeb, March 7-10, The Harvard Crimson, March 8, 1973 (theater review).

Harvard Housing: Playing the 'Numbers Game,' The Harvard Crimson, January 8, 1973.

UHS Committee Recommends \$25 Student Health Fee Boost, The Harvard Crimson, October 26, 1972.

Housing: Or the Harvard-to-Radcliffe Crowded-Room Bad-Ratio Blues, The Harvard Crimson, March 1, 1972.

The Homecoming: Whores Pimps and Kindly Old Men, The Harvard Crimson, February 15, 1972 (theater review).

I was an editor of the Harvard Law Review from 1975-77. Although I do not remember all the pieces that I edited in that capacity, those that I recall are:

William J. Brennan, Jr., State Constitutions and the Protection of Individual Rights, 90 Harv. L. Rev. 489 (1977).

James R. Farrand, Ancillary Remedies in SEC Civil Enforcement Actions, 89 Harv. L. Rev. 1779 (1976).

Phillip Areeda, Antitrust Violations Without Damage Recoveries, 89 Harv. L. Rev. 1127 (1976).

In addition to the above, as a research assistant to Professor Phillip Areeda, I edited portions of Phillip Areeda & Donald Turner, *Antitrust Law: An Analysis of Antitrust Principles and Their Application*, Vols. I, II & III (Little, Brown 1978). I do not have access to these now-superseded volumes.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have provided copies of all of the following:

D.C. Circuit Court Announcements

Chief Judges Announce Adoption of New Employment Dispute Resolution Plans, February 10, 2020.

Bankruptcy Judge Merit Selection Panel Appointed, January 28, 2020.

Chief Judges Announce Pro Bono Leaders Among D.C. Firms and Encourage Members of the Bar to Provide Pro Bono Legal Services, March 27, 2019.

Chief Judges Announce Adoption of Workplace Conduct Policies, November 28, 2018.

Chief Judges Announce Formation of Workplace Conduct Committee, June 4, 2018.

Court to Provide Live Audio Streaming of All Arguments at Start of 2018-2019 Term, May 23, 2018.

Chief Judges Announce Pro Bono Leaders Among D.C. Firms, April 18, 2018.

Further Expansion of D.C. Circuit Policy Regarding Live Audio Streaming of Arguments, December 19, 2017.

Chief Judges Announce Pro Bono Leaders Among D.C. Firms, April 21, 2017.

Statement by Chief Judge Garland Regarding Posting of D.C. Circuit Judgments, June 22, 2016.

Federal Courts Announce Pro Bono Leaders Among D.C. Firms, April 13, 2016.

Judicial Conference of the United States

Report of the Proceedings of the Judicial Conference of the United States,  
September 17, 2019.

Report of the Proceedings of the Judicial Conference of the United States, March  
12, 2019.

Report of the Proceedings of the Judicial Conference of the United States,  
September 13, 2018.

Report of the Proceedings of the Judicial Conference of the United States, March  
13, 2018.

Report of the Proceedings of the Judicial Conference of the United States,  
September 12, 2017.

Report of the Proceedings of the Judicial Conference of the United States, March  
14, 2017.

Report of the Proceedings of the Judicial Conference of the United States,  
September 13, 2016.

Report of the Proceedings of the Judicial Conference of the United States, March  
15, 2016.

Report of the Proceedings of the Judicial Conference of the United States,  
September 17, 2015.

Report of the Proceedings of the Judicial Conference of the United States, Special  
Session, September 9, 2015.

Report of the Proceedings of the Judicial Conference of the United States, March  
10, 2015.

Report of the Proceedings of the Judicial Conference of the United States,  
September 16, 2014.

Report of the Proceedings of the Judicial Conference of the United States, March  
11, 2014.

Report of the Proceedings of the Judicial Conference of the United States,  
September 17, 2013.



Report of the Proceedings of the Judicial Conference of the United States, March 12, 2013.

In addition to these public reports, the Judicial Conference produces other reports that are not in my possession but may be available upon request to:

Administrative Office of the United States Courts  
One Columbus Circle, NE  
Washington, DC 20544

District of Columbia Pretrial Services Agency

District of Columbia Pretrial Services Agency Strategic Plan 2018-2022.

District of Columbia Pretrial Services Agency Congressional Budget Justification and Performance Budget Request Fiscal Year 2021.

District of Columbia Pretrial Services Agency Congressional Budget Justification and Performance Budget Request Fiscal Year 2020.

District of Columbia Pretrial Services Agency Congressional Budget Justification and Performance Budget Request Fiscal Year 2019.

District of Columbia Pretrial Services Agency Congressional Budget Justification and Performance Budget Request Fiscal Year 2018.

A Case for the Future Pretrial Services Agency for the District of Columbia Fiscal Year 2014-2018 Strategic Plan (Revised March 2016).

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have provided copies of all of the following:

I sent a letter to the Honorable Charles E. Grassley responding to his request regarding statistics about the United States Court of Appeals for the District of Columbia Circuit on July 1, 2013.

I testified before the Senate Judiciary Committee at my confirmation hearing to be a Judge on the District of Columbia Circuit. *Confirmation Hearings on Federal*

*Appointments, Part 2: Hearings Before the Senate Comm. On the Judiciary*, 104<sup>th</sup> Cong. (November 30, 1995). I also received Questions for the Record from the Honorable Charles E. Grassley on December 1, 1995, and provided a response on December 6, 1995. These documents do not appear to have been made part of the formal printed hearing record.

I appeared before a subcommittee of the Senate Judiciary Committee as part of a panel of Justice Department officials, but did not provide any testimony. *False Claims Act of 1979, S. 1981: Hearing Before the Subcomm. On Improvements in Judicial Machinery of the S. Comm. On the Judiciary*, 96<sup>th</sup> Cong. (November 19, 1979).

In addition, I met with Members of Congress and staff to discuss security preparations for the Salt Lake City Olympics in the fall of 1996, and to discuss the explosion of TWA Flight 800 in the summer of 1996. I do not have statements or notes.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Press coverage is included where I was able to find it.

Date	Location	Organization/Event	Description
01/07/21	Wilmington, DE	Biden-Harris Transition	<p>Remarks on selection as Attorney General.</p> <p>Text provided.</p> <p>Link: <a href="https://www.c-span.org/video/?c4935258/merrick-garland-remarks-selection-attorney-general">https://www.c-span.org/video/?c4935258/merrick-garland-remarks-selection-attorney-general</a></p> <p>The event received broad press coverage. <i>See, e.g.,</i> Darlene Superville, Steve</p>

Date	Location	Organization/Event	Description
			<p>Peoples and Eric Tucker, <i>Biden Introduces Merrick Garland As Attorney General Pick</i>, Associated Press, 1/7/2021.</p> <p>Link:</p> <p><a href="https://apnews.com/article/merrick-garland-attorney-general-da64618113cbcc82c61e855f9162cf2e">https://apnews.com/article/merrick-garland-attorney-general-da64618113cbcc82c61e855f9162cf2e</a></p>
10/09/20	Arlington, VA via Zoom	<p>Antonin Scalia Law School, George Mason University via Zoom</p> <p>A Remembrance of Judge Stephen Williams</p>	<p>Remembrance of Circuit Court Judge Stephen Williams.</p> <p>Text provided.</p> <p>Blog post about the event, including embedded video, available at Michael S. Greve, <i>A Remembrance Of Stephen F. Williams</i>, Law &amp; Liberty, Nov. 16, 2020,</p> <p><a href="https://lawliberty.org/a-remembrance-of-stephen-f-williams/">https://lawliberty.org/a-remembrance-of-stephen-f-williams/</a></p>
09/22/20	Cambridge, MA via Zoom	<p>Harvard Law School via Zoom</p> <p>Career Q&amp;A with Ad Law Students re: legal career</p>	<p>I do not have remarks or notes.</p> <p>I have not been able to locate press coverage.</p>
09/09/20	Concord, NH via Zoom	UNH Franklin Pierce School of Law	Q&A re: legal career.
			Registration announcement provided. I do not have remarks or notes.

Date	Location	Organization/Event	Description
			Link to video of event: <a href="https://www.youtube.com/watch?v=SvZ9bphlNcw">https://www.youtube.com/watch?v=SvZ9bphlNcw</a>
09/01/20	Washington, DC via Zoom	District of Columbia Circuit, Retirement of Judge Thomas Griffith	Gave remarks at retirement ceremony for Judge Thomas Griffith.  Text provided.  I have not been able to locate press coverage.
08/08/20	Washington, DC	Statements from the Court about the Passing of Judge Stephen F. Williams	Court posting re death of Judge Stephen Williams.  Text provided.  Available at: <a href="https://www.cadc.uscourts.gov/internet/home.nsf/Content/Announcement+-+Statement+from+the+Court+about+the+Passing+of+Judge+Stephen+F.+Williams">https://www.cadc.uscourts.gov/internet/home.nsf/Content/Announcement+-+Statement+from+the+Court+about+the+Passing+of+Judge+Stephen+F.+Williams</a>
06/22/20	Washington, DC via Zoom	Shakespeare Theatre Company (Virtual)	Mock Trial – A Midsummer Night’s Dream  Link to announcement of event:  <a href="https://www.shakespearetheatre.org/events/virtual-mock-trial/?utm_source=wordfly&amp;utm_medium=email&amp;utm_campaign=PressRelease%3AMockTrial&amp;utm_content=version_A&amp;sourceNumber=">https://www.shakespearetheatre.org/events/virtual-mock-trial/?utm_source=wordfly&amp;utm_medium=email&amp;utm_campaign=PressRelease%3AMockTrial&amp;utm_content=version_A&amp;sourceNumber=</a>  I have not been able to locate other press coverage.
02/28/20	Provo, UT	BYU Law School Moot Court	I do not have remarks or notes.  Event announcement at: <a href="https://jrcb-">https://jrcb-</a>

Date	Location	Organization/Event	Description
			<a href="https://ems.byu.edu/MasterCalendar/EventDetails.aspx?EventDetailId=78999">ems.byu.edu/MasterCalendar/EventDetails.aspx?EventDetailId=78999</a>  I have not been able to locate press coverage.
02/13/20	Washington, DC	District of Columbia Circuit, Passing of the Gavel Ceremony	Gave remarks on my time as Chief Judge in passing gavel to new Chief Judge, Sri Srinivasan.  Text provided. Press coverage at Ann E. Marimow, <i>Merrick Garland Passes Gavel To Sri Srinivasan To Lead Influential Appeals Court</i> , Washington Post, Feb. 13, 2020.  Link: <a href="https://www.washingtonpost.com/local/legal-issues/merrick-garland-passes-gavel-to-sri-srinivasan-to-lead-influential-appeals-court/2020/02/13/2bb5e316-4e77-11ea-b721-9f4cdc90bc1c_story.html">https://www.washingtonpost.com/local/legal-issues/merrick-garland-passes-gavel-to-sri-srinivasan-to-lead-influential-appeals-court/2020/02/13/2bb5e316-4e77-11ea-b721-9f4cdc90bc1c_story.html</a>
11/12/19	Cambridge, MA	Harvard Law School, Ames Moot Court Competition	I do not have remarks or notes.  Press coverage at <i>'Questions are not to be feared': The Ames Moot Court Competition, 2019 edition</i> , Harvard Law Today Student Spotlights, Nov. 20, 2019.  Link: <a href="https://today.law.harvard.edu/questions-are-not-to-be-feared-the-ames-moot-court-competition-2019-edition/">https://today.law.harvard.edu/questions-are-not-to-be-feared-the-ames-moot-court-competition-2019-edition/</a>

Date	Location	Organization/Event	Description
10/30/19	Washington, DC	D.C. Bar Association Federal Government <i>Pro Bono</i> Recognition Reception 2019	<p>Gave remarks recognizing government attorneys with substantial pro bono service.</p> <p>Text provided.</p> <p>Press coverage at Rebecca Troth, <i>FDIC Wins Federal Agency Pro Bono Leadership Award</i>, D.C. Bar Association, Nov. 6, 2019.</p> <p>Link:  <a href="https://www.dcbbar.org/news-events/news/fdic-wins-federal-agency-pro-bono-leadership-award">https://www.dcbbar.org/news-events/news/fdic-wins-federal-agency-pro-bono-leadership-award</a> </p>
10/16/19	Washington, DC	Historical Society of the District of Columbia Circuit, Law Clerk Reception	<p>Introduced the new president of the Historical Society.</p> <p>Text provided.</p> <p>Press coverage at <i>Read about the Historical Society's Sixth Law Clerk Reception</i>, D.C. Circuit Historical Society, (Undated).</p> <p>Link:  <a href="https://dcchs.org/law-clerk-initiative/?keyword=merrick%20garland">https://dcchs.org/law-clerk-initiative/?keyword=merrick%20garland</a> </p>
10/11/19	Cambridge, MA	Harvard Law School Student Antitrust Law Association	<p>Antitrust careers talk.</p> <p>I do not have remarks or notes.</p> <p>I have not been able to locate press coverage.</p>
10/08/19	Washington, DC	District of Columbia Circuit Attorney Admissions Ceremony	Presiding Judge and Welcoming Remarks.

Date	Location	Organization/Event	Description
			Text provided.  I have not been able to locate press coverage.
09/20/19	Cambridge, MA	Harvard University	Q&A with Social Studies Undergraduates and at Reunion Panel.  I do not have remarks or notes.  I have not been able to locate press coverage.
09/13/19	Washington, DC	District of Columbia Circuit, Investiture Ceremony of Judge Neomi Rao	Presided over investiture ceremony.  Text provided.  Press coverage of event at Ann E. Marimow, <i>Former White House official Neomi Rao formally sworn in as newest federal appeals court judge in D.C.</i> , Washington Post, Sept. 13, 2013.  Link: <a href="https://www.washingtonpost.com/local/legal-issues/ex-white-house-official-neomi-rao-formally-sworn-in-as-newest-federal-appeals-court-judge-in-dc/2019/09/13/daf25b28-d598-11e9-86ac-0f250cc91758_story.html">https://www.washingtonpost.com/local/legal-issues/ex-white-house-official-neomi-rao-formally-sworn-in-as-newest-federal-appeals-court-judge-in-dc/2019/09/13/daf25b28-d598-11e9-86ac-0f250cc91758_story.html</a>
09/10/19	Arlington, VA	Armed Services Joint Advocacy Training at Joint Base Myer	Gave remarks on appellate brief writing.  Text provided.  I have not been able to locate press coverage.

Date	Location	Organization/Event	Description
08/01/19	Washington, DC	Harvard College Summer Program at courthouse	Q&A with students.  I do not have remarks or notes.  I have not been able to locate press coverage.
07/08/19-07/09/19	Kyoto, Japan	Doshisha University Talks on Federal Courts and American Administrative Law	Gave an overview of the American federal judicial system.  Texts provided.  No English language press coverage available.
06/25/19-06/28/19	Cambridge, MD	Bi-Annual Judicial Conference of the D.C. Circuit	Gave remarks and presided over the conference.  Text provided.  I have not been able to locate press coverage.
05/07/19	Washington, DC	District of Columbia Circuit, Attorney Admissions Ceremony	Presided over attorney admissions ceremony.  Text provided.  I have not been able to locate press coverage.
04/04/19	Washington, DC	District of Columbia Circuit Judicial Conference, Standing Committee on Pro Bono Legal Services, Annual 40 at 50 Judicial Pro Bono Recognition Breakfast	Gave remarks recognizing law firms with substantial pro bono service.  Text provided.  Link: <a href="https://www.dcd.uscourts.gov/sites/dcd/files/40%4050NewsRelease2018.pdf">https://www.dcd.uscourts.gov/sites/dcd/files/40%4050NewsRelease2018.pdf</a>  Press coverage at John Murph, <i>33 Firms Honored at 40 at 50 Judicial Pro Bono Breakfast</i> , DC Bar Blog, April



Date	Location	Organization/Event	Description
			5, 2019. Link: <a href="https://old.dcb.org/about-the-bar/news/33-Firms-Honored-at-40-at-50-Judicial-Pro-Bono-Breakfast.cfm">https://old.dcb.org/about-the-bar/news/33-Firms-Honored-at-40-at-50-Judicial-Pro-Bono-Breakfast.cfm</a>
03/20/19	Washington, DC	District of Columbia Circuit Oral Arguments at Georgetown University Law Center	Introductory remarks on the historical tradition of circuit riding.  Text provided.  Press coverage at <a href="https://www.law.georgetown.edu/news/georgetown-law-hosts-oral-arguments-of-the-u-s-court-of-appeals-for-the-d-c-circuit/">https://www.law.georgetown.edu/news/georgetown-law-hosts-oral-arguments-of-the-u-s-court-of-appeals-for-the-d-c-circuit/</a>
03/14/19	Washington, DC	District of Columbia Circuit, Student Mock Court	Mock court for high school students, on <i>Tinker v. Des Moines</i> case.  Link: <a href="https://www.uscourts.gov/news/2019/04/18/landmark-free-speech-case-opens-students-eyes-role-appellate-courts">https://www.uscourts.gov/news/2019/04/18/landmark-free-speech-case-opens-students-eyes-role-appellate-courts</a>
03/05/19	New Haven, CT	Yale Law School Supreme Court Clinic & Panel on Workplace Conduct Issues	Q&A from students.  I do not have remarks or notes.  I have not been able to locate press coverage.  Event announcement at <a href="https://law.yale.edu/vls-today/yale-law-school-events/panel-judicial-workplace-conduct-reform">https://law.yale.edu/vls-today/yale-law-school-events/panel-judicial-workplace-conduct-reform</a>

Date	Location	Organization/Event	Description
03/01/19	Washington, DC	Historical Society of the District of Columbia Circuit, 14 <sup>th</sup> Annual Mock Court Argument Program	Gave introductory remarks.  Text provided.  Press coverage at <a href="https://dcchs.org/14th-annual-mock-court-program/">https://dcchs.org/14th-annual-mock-court-program/</a>
01/16/19	Washington, DC	Shakespeare Theatre Company	Mock Trial – Richard III  I do not have remarks or notes.  Press coverage at <a href="https://www.scotusblog.com/2019/01/comedy-tonight-jurists-play-for-laughs-at-shakespeare-theatre-mock-trial/">https://www.scotusblog.com/2019/01/comedy-tonight-jurists-play-for-laughs-at-shakespeare-theatre-mock-trial/</a>
11/27/18	Washington, DC	The Harvard Club of Washington's 2018 Public Service Award	Gave remarks accepting the award.  Text provided.  Event announcement at <a href="http://hcwc.clubs.harvard.edu/article.html?aid=1676">http://hcwc.clubs.harvard.edu/article.html?aid=1676</a> Brief press coverage of event at <a href="https://www.politico.com/newsletters/morning-education/2018/10/05/education-dept-overstated-endorsements-of-for-profit-college-accreditor-363214">https://www.politico.com/newsletters/morning-education/2018/10/05/education-dept-overstated-endorsements-of-for-profit-college-accreditor-363214</a>
11/15/18	Cambridge, MA	Harvard Law School “Meet Dean Manning”	Gave introductory remarks.  Text provided.  I have not been able to locate press coverage. Event announcement and photos available at <i>Meet Dean Manning</i> , Harvard Law

Date	Location	Organization/Event	Description
			School (undated). Link: <a href="https://hls.harvard.edu/alumni/meet-dean-manning/#tab1-1">https://hls.harvard.edu/alumni/meet-dean-manning/#tab1-1</a>
10/25/18	Washington, DC	D.C. Circuit Historical Society Annual Law Clerks Reception	<p>Gave remarks and introduced speakers participating in the program.</p> <p>Text provided.</p> <p>Event announcement at <i>A Glimpse Ahead In The D.C. Circuit Courts</i>, Historical Society of the District of Columbia Circuit Newsletter, October 2018. Link: <a href="https://dcchs.org/wp-content/uploads/2018/11/New-sletter37.pdf">https://dcchs.org/wp-content/uploads/2018/11/New-sletter37.pdf</a></p> <p>Press coverage of the event at <i>Celebrating The D.C. Circuits' Current And Former Law Clerks</i>, Historical Society of the District of Columbia Circuit Newsletter, January 2019.</p> <p>Link: <a href="https://dcchs.org/wp-content/uploads/2019/01/New-sletter38.pdf">https://dcchs.org/wp-content/uploads/2019/01/New-sletter38.pdf</a></p>
10/25/18	Washington, DC	D.C. Bar Pro Bono Partnership Luncheon	<p>Gave remarks about the importance of providing legal services to those who cannot afford a lawyer.</p> <p>Text provided.</p> <p>Press coverage at John Murph, <i>Pro Bono Partnership Luncheon Recap: Reaffirming Our Commitment to Public Service</i>, D.C. Bar Association, Nov. 5, 2018.</p>

Date	Location	Organization/Event	Description
			<p>Link:  <a href="https://old.dcb.org/about-the-bar/news/2018-Pro-Bono-Partnership-Luncheon-Recap.cfm">https://old.dcb.org/about-the-bar/news/2018-Pro-Bono-Partnership-Luncheon-Recap.cfm</a></p>
10/16/18	Washington, DC/Miami, FL	Memorial service for former Department of Justice official John Hogan	<p>I do not have remarks or notes.</p> <p>Link:  <a href="https://www.youtube.com/watch?v=e5ex0M2GP_k&amp;feature=youtu.be">https://www.youtube.com/watch?v=e5ex0M2GP_k&amp;feature=youtu.be</a></p> <p>I have not been able to locate press coverage.</p>
08/31/18	Lincolnwood, IL	75 <sup>th</sup> Anniversary of Lincolnwood School District #74	<p>Gave remarks on occasion of my elementary school's anniversary.</p> <p>Text provided.</p> <p>Press coverage of event at <i>Merrick Garland to speak at kick-off of Lincolnwood School District 74 anniversary event</i>, Chicago Tribune / Pioneer Press, Aug. 20, 2018.</p> <p>Link:  <a href="https://www.chicagotribune.com/suburbs/lincolnwood/ct-lwr-merrick-garland-at-lincolnwood-school-district-74-tl-0823-story.html">https://www.chicagotribune.com/suburbs/lincolnwood/ct-lwr-merrick-garland-at-lincolnwood-school-district-74-tl-0823-story.html</a></p>
05/18/18	Washington, DC	Georgetown 2018 Honorary Degree Recipients' Dinner	<p>Gave remarks.</p> <p>Text provided.</p> <p>I have not been able to locate press coverage.</p>

Date	Location	Organization/Event	Description
05/09/18	Washington, DC	Harvard Law School, D.C. Circuit Panel	Interview of Judges Rogers, Pillard, and Millett.  Text provided.  I have not been able to locate press coverage.
04/27/18	Washington, DC	District of Columbia Circuit, Investiture Ceremony for Judge Gregory G. Katsas	Presided over investiture ceremony.  Text provided.  Press coverage of the event at Stavros Papagermanos, <i>Archbishop Offers Invocation at Investiture of Judge Gregory Katsas</i> , Hellenic News, May 14, 2018.  Link: <a href="https://hellenicnews.com/archbishop-offers-invocation-at-investiture-of-judge-gregory-katsas/">https://hellenicnews.com/archbishop-offers-invocation-at-investiture-of-judge-gregory-katsas/</a>
04/24/18	Washington, DC	District of Columbia Circuit Judicial Conference, Standing Committee on Pro Bono Legal Services, Annual 40 at 50 Judicial Pro Bono Recognition Breakfast	Gave remarks recognizing law firms with substantial pro bono service.  Text provided.  Link: <a href="https://www.dcd.uscourts.gov/sites/dcd/files/40%4050NewsRelease2018.pdf">https://www.dcd.uscourts.gov/sites/dcd/files/40%4050NewsRelease2018.pdf</a>  <a href="#">Press coverage at Jodi Feldman, 40 at 50 Event Recognizes Pro Bono Leaders Among D.C. Law Firms, Making Justice Real (The Official Blog of the Legal Aid Society of the District of Columbia), Apr. 24, 2018.</a>

Date	Location	Organization/Event	Description
			<p>Link:  <a href="https://www.makingjusticereall.org/40-at-50-event-recognizes-pro-bono-leaders-among-d-c-law-firms">https://www.makingjusticereall.org/40-at-50-event-recognizes-pro-bono-leaders-among-d-c-law-firms</a></p>
04/09/18	Cambridge, MA	Harvard University, Office of Career Services	<p>Discussion with students on public service and law.</p> <p>I do not have remarks or notes.</p> <p>Press coverage at Simone C. Chu, <i>Former SCOTUS Nominee Merrick B. Garland '74 Talks Career Advice at Harvard</i>, The Harvard Crimson, Apr. 10, 2018.</p> <p>Link:  <a href="https://www.thecrimson.com/article/2018/4/10/garland-speaks-career-undergraduates/">https://www.thecrimson.com/article/2018/4/10/garland-speaks-career-undergraduates/</a></p>
03/09/18	Washington, DC	Historical Society of the District of Columbia Circuit, 13 <sup>th</sup> Annual Mock Court Argument Program	<p>Welcomed District of Columbia high school students participating in mock trial to courthouse.</p> <p>Text provided.</p> <p>Press coverage at <i>13th Annual Mock Court Program</i>, Historical Society of the District of Columbia Circuit, Undated.</p> <p>Link:  <a href="https://dcchs.org/13th-annual-mock-court-program/">https://dcchs.org/13th-annual-mock-court-program/</a></p>

Date	Location	Organization/Event	Description
03/01/18	New Haven, CT	<p>“A Conversation with Chief Judge Merrick Garland”</p> <p>In conversation with Kate Stith Lafayette S. Foster Professor of Law, Yale Law School</p>	<p>A copy of the Yale website page announcing the event is included.</p> <p>I do not have remarks or notes.</p> <p>I have not been able to locate press coverage.</p> <p>Link:  <a href="https://law.yale.edu/yls-today/yale-law-school-events/conversation-chief-judge-merrick-garland">https://law.yale.edu/yls-today/yale-law-school-events/conversation-chief-judge-merrick-garland</a> </p>
01/25/18	Washington, DC	District of Columbia Circuit Oral Arguments at American University	<p>Introductory remarks prior to commencement of oral arguments.</p> <p>Text provided.</p> <p>Press coverage at <i>Court is in Session: U.S. Court of Appeals for the District of Columbia Circuit Holds Oral Arguments at AUWCL</i>, American University Washington College of Law News &amp; Events, Jan. 26, 2018.</p> <p>Link:  <a href="https://www.wcl.american.edu/news-events/news/u-s-court-of-appeals-for-the-district-of-columbia-holds-oral-arguments-at-auwcl/">https://www.wcl.american.edu/news-events/news/u-s-court-of-appeals-for-the-district-of-columbia-holds-oral-arguments-at-auwcl/</a> </p>
12/11/17	Washington, DC	Shakespeare Theatre Company	<p>Twelfth Night Mock Trial</p> <p>I do not have remarks or notes.</p>

Date	Location	Organization/Event	Description
			<p>Press coverage at Tim Treanor, <i>Olivia Versus Sebastian: Outcome Of Twelfth Night Mock Trial</i>, DC Theatre Scene, Dec. 13, 2017.</p> <p>Link: <a href="https://dctheatrescene.com/2017/12/13/twelfth-night-mock-olivia-versus-sebastian/">https://dctheatrescene.com/2017/12/13/twelfth-night-mock-olivia-versus-sebastian/</a></p> <p>Link: <a href="https://www.c-span.org/video/?438341-1/shakespeare-theatre-company-presents-twelfth-night-mock-trial">https://www.c-span.org/video/?438341-1/shakespeare-theatre-company-presents-twelfth-night-mock-trial</a></p>
11/03/17	Chicago, IL	The University of Chicago Law School: Stories from the Judge	<p>Q&amp;A event.</p> <p>I do not have remarks or notes.</p> <p>Press report at Becky Beaupre Gillespie, <i>Merrick Garland Visits the Law School, Discusses High-Profile Cases and Why Future Lawyers Should Prepare for Multiple Paths</i>, U. Chicago Law Blog, Nov. 8, 2017.</p> <p>Link: <a href="https://www.law.uchicago.edu/news/stories-judge">https://www.law.uchicago.edu/news/stories-judge</a></p>
10/27/17	Cambridge, MA	Harvard Law School, <i>Marbury v. Madison</i> Historical Moot Court	<p>I do not have remarks or notes.</p> <p>Video of event and press coverage at <i>Marbury v. Madison</i>, HLS 200 (Harvard Bicentennial Website), Oct. 27, 2017.</p>



Date	Location	Organization/Event	Description
			Link: <a href="https://200.hls.harvard.edu/events/hls-in-the-world/marbury-vs-madison/">https://200.hls.harvard.edu/events/hls-in-the-world/marbury-vs-madison/</a>
10/24/17	Washington, DC	D.C. Circuit, Federal Government <i>Pro Bono</i> Reception 2017	Gave remarks recognizing government attorneys with substantial pro bono service.  Text provided.  Press coverage at Jeffery Leon, <i>Department of Labor Honored for Commitment to Pro Bono Work</i> , DC Bar Blog, Nov. 3, 2017.  Link: <a href="https://old.dcbar.org/about-the-bar/news/federal-government-pro-bono-reception.cfm">https://old.dcbar.org/about-the-bar/news/federal-government-pro-bono-reception.cfm</a>
10/13/17	Washington, DC	District of Columbia Circuit, Attorney Admissions Ceremony	Presided over attorney admissions ceremony.  Text provided.  I have not been able to locate press coverage.
08/24/17	Beijing, China	Yale Law School China Center event at Peking University Law School	Gave remarks on the role of the courts in the American system.  Text provided.  Press coverage at “ <i>The Role of Courts in the U.S. Legal System</i> ”— <i>Lecture of Chief Judge Merrick B. Garland was Held</i> , Peking University Law School News, Oct. 17, 2017.

Date	Location	Organization/Event	Description
			Link: <a href="https://en.law.pku.edu.cn/newsevents/global/49389.htm">https://en.law.pku.edu.cn/newsevents/global/49389.htm</a>
08/21/17	Beijing, China	Yale Law School China Center event at Supreme and Beijing Courts	Q&A session. No text or notes of Q&A. I have not been able to locate press coverage.
08/15/17	Shanghai, China	Yale Law School China Center event at KoGuan Law School	Q&A session. No text or notes of Q&A. I have not been able to locate press coverage.
07/20/17	Washington, DC	U.S. District Court Bar, Attorney Admission Ceremony for Law Clerks	Gave remarks at the Admission Ceremony. Text provided. I have not been able to locate press coverage.
06/27/17-06/30/17	Lancaster, PA	Bi-Annual Judicial Conference of the D.C. Circuit	Gave remarks and presided over the conference. Text provided. I have not been able to locate press coverage.
06/19/17	Washington, DC	Presidential Scholars Honors Award, Kennedy Center	Gave remarks of appreciation for award. Text provided. Press coverage at Press Release, Presidential Scholars Foundation, Presidential Scholars Foundation to Honor Alumni: Chief Judge Merrick Garland, Poet Rita Dove, and Purdue University President Mitchell E. Daniels, Jr. (June 15, 2017).

Date	Location	Organization/Event	Description
			<p>Link:  <a href="https://www.presidentialscholars.org/pshonorspressrelease2017">https://www.presidentialscholars.org/pshonorspressrelease2017</a></p>
04/27/17	Washington, DC	District of Columbia Circuit Judicial Conference, Standing Committee on Pro Bono Legal Services, Annual 40 at 50 Judicial Pro Bono Recognition Breakfast	<p>Gave remarks recognizing law firms with substantial pro bono service.</p> <p>Text provided.</p> <p>Link:  <a href="https://www.cadc.uscourts.gov/internet/home.nsf/Content/Announcement+-+ProBonoLeadersAmongDCFirms2017/\$FILE/40%20at%2050%20Press%20Release%20Final%202017a.pdf">https://www.cadc.uscourts.gov/internet/home.nsf/Content/Announcement+-+ProBonoLeadersAmongDCFirms2017/\$FILE/40%20at%2050%20Press%20Release%20Final%202017a.pdf</a></p> <p>Additional coverage at Tracy Shorn, <i>33 Firms Honored at 40 at 50 Breakfast for Pro Bono Service</i>, D.C. Bar Blog, May 2, 2017.</p> <p>Link:  <a href="https://old.dcbars.org/about-the-bar/news/40-at-50-breakfast-2017.cfm">https://old.dcbars.org/about-the-bar/news/40-at-50-breakfast-2017.cfm</a></p>
04/19/17	Boston, MA	Boston College Moot Court	<p>I do not have remarks or notes.</p> <p>Press coverage at <i>Federal Judges Test Advocacy Skills of Grimes Finalists</i>, Boston College Law School Magazine Online, Apr. 21, 2017.</p> <p>Link:  <a href="http://lawmagazine.bc.edu/2017/04/federal-justices-test-">http://lawmagazine.bc.edu/2017/04/federal-justices-test-</a></p>

Date	Location	Organization/Event	Description
			<a href="#">advocacy-skills-of-grimes-finalists/</a>
04/11/17	Washington, DC	Naturalization Ceremony, U.S. District Court Extemporaneous Remarks	I do not have remarks or notes.  I have not been able to locate press coverage.
04/04/17	New Haven, CT	Yale Law School Supreme Court Clinic	Q&A with students.  I do not have remarks or notes.  I have not been able to locate press coverage.
03/10/17	New York, NY	CSPAN, Justice John Roberts and Judge Merrick Garland Discuss the Legacy of Judge Henry Friendly  Second Circuit Court of Appeals	I do not have remarks or notes.  Link: <a href="https://www.c-span.org/video/?424016-1/justice-john-roberts-judge-merrick-garland-discuss-legacy-judge-henry-friendly">https://www.c-span.org/video/?424016-1/justice-john-roberts-judge-merrick-garland-discuss-legacy-judge-henry-friendly</a>  I have not been able to locate further press coverage.
03/10/17	Washington, DC	Historical Society of the District of Columbia Circuit, 12 <sup>th</sup> Annual Mock Court Argument Program	Welcomed District of Columbia high school students participating in mock trial to courthouse.  Text provided.  Press coverage at <i>Jim Rocap Discusses Historical Society of DC Circuit's Mock Court on WPFW</i> , Steptoe News, Mar. 20, 2017.  Link: <a href="https://www.step toe.com/en/news-publications/jim-rocap-discusses-historical-society-">https://www.step toe.com/en/news-publications/jim-rocap-discusses-historical-society-</a>

Date	Location	Organization/Event	Description
			<a href="#">of-dc-circuit-s-mock-court-on-wpfw.html</a>
11/03/16	Washington, DC	Historical Society of the District of Columbia Circuit, Law Clerk Reception	Introduced program speakers, including former Solicitor General Paul Clement.  Text provided.  I have not been able to locate press coverage.
10/20/16	Washington, DC	District of Columbia Circuit Oral Arguments at University of the District of Columbia School of Law	Gave remarks prior to commencement of oral arguments.  Text provided.  Event notice available at <a href="https://www.law.udc.edu/events/EventDetails.aspx?id=867636&amp;hhSearchTerms=%22dc+and+circuit%22">https://www.law.udc.edu/events/EventDetails.aspx?id=867636&amp;hhSearchTerms=%22dc+and+circuit%22</a>  I have not been able to locate further press coverage.
10/06/16	Washington, DC	Department of Justice, Twentieth Anniversary Celebration, Federal Government Pro Bono Program	Gave speech on occasion of 20 <sup>th</sup> anniversary of Pro Bono Program.  Text provided.  Link: <a href="https://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%202016%20Pro%20Bono%20Committee%20Report/\$FILE/2016ProBonoCommitteeReport.pdf">https://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%202016%20Pro%20Bono%20Committee%20Report/\$FILE/2016ProBonoCommitteeReport.pdf</a>
09/20/16	Washington, DC	Howard Law School, Conversation with the Dean	Answered questions from the Dean regarding my legal career in front of audience of law students.

Date	Location	Organization/Event	Description
			<p>I do not have remarks or notes.</p> <p>Press coverage at Paul Holston, <i>The President's Nominee: A Conversation with Chief Judge Merrick Garland</i>, The Hilltop, Oct. 2, 2016.</p> <p>Link:  <a href="https://thehilltoponline.com/2016/10/02/the-presidents-nominee-a-conversation-with-chief-judge-merrick-garland/">https://thehilltoponline.com/2016/10/02/the-presidents-nominee-a-conversation-with-chief-judge-merrick-garland/</a> </p>
08/26/16	Cambridge, MA	Harvard Law School, Conversation with the Dean	<p>Answered questions from the Dean regarding my legal career in front of audience of first year students.</p> <p>I do not have remarks or notes.</p> <p>Link:  <a href="https://www.youtube.com/watch?v=yN46ER6PPz8">https://www.youtube.com/watch?v=yN46ER6PPz8</a> </p> <p><u>Press coverage at Peter DeMarco, <i>The Makings of Merrick Garland</i>, The Harvard Gazette, Aug. 27, 2016.</u></p> <p>Link:  <a href="https://news.harvard.edu/gazette/story/2016/08/the-makings-of-merrick-garland/">https://news.harvard.edu/gazette/story/2016/08/the-makings-of-merrick-garland/</a> </p>
08/08/16	Chicago, IL	Memorial Service for Judge Abner Mikva	Gave remarks at memorial service.

Date	Location	Organization/Event	Description
			<p>Text provided.</p> <p>Memorial service announcement at <a href="https://www.eventbrite.com/e/abner-mikva-memorial-service-registration-26709209966?fbclid=IwAR1ylUIZU5XcauKZxuSL4F6FtddR4JkACk0YJCIZUirq-jnEUeH9emn9VY">https://www.eventbrite.com/e/abner-mikva-memorial-service-registration-26709209966?fbclid=IwAR1ylUIZU5XcauKZxuSL4F6FtddR4JkACk0YJCIZUirq-jnEUeH9emn9VY</a></p> <p>Press coverage at Kim Janssen, <i>Merrick Garland chokes up at service for pal</i>, Chicago Tribune, Aug. 9, 2016.</p> <p>Link: <a href="https://www.chicagotribune.com/news/ct-abner-mikva-obama-garland-20160808-story.html">https://www.chicagotribune.com/news/ct-abner-mikva-obama-garland-20160808-story.html</a></p>
06/15/16	Washington, DC	J.O. Wilson Elementary School, Graduation Ceremony	<p>Gave graduation speech to graduating students at school at which I tutor.</p> <p>Text provided.</p> <p>Press coverage at Nina Totenberg, <i>Supreme Court Nominee's Advice To 5th-Graders: 'Be The Brave One'</i>, NPR, June 15, 2016.</p> <p>Link: <a href="https://www.npr.org/2016/06/15/482206242/merrick-garland-delivers-5th-grade-commencement-address">https://www.npr.org/2016/06/15/482206242/merrick-garland-delivers-5th-grade-commencement-address</a></p>

Date	Location	Organization/Event	Description
06/01/16	Washington, DC	Visit by J.O. Wilson Elementary School Students to United States Courthouse	Welcomed students to courthouse.  I do not have remarks or notes.  I have not been able to locate press coverage.
05/29/16	Skokie, IL	Niles West High School Graduation Ceremony	Gave graduation speech to graduating students at my high school.  Text provided.  Link:  <a href="https://www.youtube.com/watch?v=YAqLx2IaGxw">https://www.youtube.com/watch?v=YAqLx2IaGxw</a>  <a href="#">Press coverage at Dana Kozlov and Mariam Sobh, Supreme Court Nominee Merrick Garland Speaks At Niles West Graduation, CBS 2 Chicago, May 29, 2016.</a>  Link: <a href="https://chicago.cbslocal.com/2016/05/29/supreme-court-nominee-merrick-garland-speaks-at-niles-west-graduation/">https://chicago.cbslocal.com/2016/05/29/supreme-court-nominee-merrick-garland-speaks-at-niles-west-graduation/</a>
05/24/16	Washington, DC	Visit by International Association of Women Judges to United States Courthouse	Welcomed jurists to courthouse.  Notes provided.  I have not been able to locate press coverage.
04/21/16	Washington, DC	District of Columbia Circuit Judicial Conference, Standing Committee on Pro Bono Legal Services, Annual 40 at 50	Gave remarks recognizing law firms with substantial pro bono service.



Date	Location	Organization/Event	Description
		Judicial Pro Bono Recognition Breakfast	<p>Text provided.</p> <p>Press coverage at Ann E. Marimow, <i>Merrick Garland speaks — but not about the Supreme Court</i>, Washington Post, Apr. 21, 2016.</p> <p>Link:  <a href="https://www.washingtonpost.com/news/powerpost/wp/2016/04/21/merrick-garland-speaks-but-not-about-the-supreme-court/">https://www.washingtonpost.com/news/powerpost/wp/2016/04/21/merrick-garland-speaks-but-not-about-the-supreme-court/</a> </p>
03/16/16	Washington, DC	Remarks at Rose Garden Ceremony	<p>Gave remarks upon nomination to Supreme Court of the United States.</p> <p>Video of Remarks:  <a href="https://www.youtube.com/watch?v=HOjeMIEjbvg">https://www.youtube.com/watch?v=HOjeMIEjbvg</a> </p> <p>The announcement received widespread press coverage. <i>See, e.g.</i>, Juliet Eilperin and Mike DeBonis, <i>President Obama nominates Merrick Garland to the Supreme Court</i>, Washington Post, Mar. 16, 2016.</p> <p>Link:  <a href="https://www.washingtonpost.com/world/national-security/president-obama-to-nominate-merrick-garland-to-the-supreme-court-sources-say/2016/03/16/3bc90bc8-eb7c-11e5-a6f3-21ccdbc5f74e_story.html?hpid=hp_rhp-banner-high_garland-">https://www.washingtonpost.com/world/national-security/president-obama-to-nominate-merrick-garland-to-the-supreme-court-sources-say/2016/03/16/3bc90bc8-eb7c-11e5-a6f3-21ccdbc5f74e_story.html?hpid=hp_rhp-banner-high_garland-</a> </p>

Date	Location	Organization/Event	Description
			<a href="#">mobile1015am%3Ahomepage%2Fstory&amp;tid=a_inl_manual</a>
03/11/16	Washington, DC	Historical Society of the District of Columbia Circuit, 11th Annual Mock Court Argument Program	Welcomed District of Columbia high school students participating in mock trial to courthouse.  Text and press report provided.
03/03/16	Washington, DC	Visit by Yale Chapter of the American Constitution Society to the District of Columbia Circuit Court of Appeals	Answered questions from law students seeking career advice and information regarding my experiences as a judge and practicing lawyer.  I do not have remarks or notes.  Press report provided.
02/17/16	Washington, DC	George Washington University Law School, Meeting with George Washington Law Students	Provided an introduction to the District of Columbia Circuit.  I do not have remarks or notes.  I have not located any press coverage.
11/16/15	Washington, DC	Historical Society of the District of Columbia Circuit, Law Clerk Reception	Introduced Solicitor General Donald Verrilli.  Text and press report provided.
10/27/15	Washington, DC	District of Columbia Circuit Judicial Conference, Standing Committee on Pro Bono Legal Services, Federal Government Pro Bono Recognition Reception	Gave remarks recognizing government lawyers for pro bono service.  Text provided.  I have not located any press coverage.

Date	Location	Organization/Event	Description
10/22/15	Washington, DC	Washington Bar Association Event at Howard Law School	Greeted the Washington Bar Association and reported on the state of the District of Columbia Circuit.  Text provided.  I have not located any press coverage.
10/07/15	Washington, DC	District of Columbia Circuit Oral Arguments at George Washington University Law School	Answered questions from law students seeking career advice and information regarding my experiences as a judge and practicing lawyer.  I do not have remarks or notes.  I have not located any press coverage.
06/23/15-06/26/15	Philadelphia, PA	District of Columbia Circuit Judicial Conference	Presided over the District of Columbia Circuit's Judicial Conference.  Text and press reports provided.
06/04/15	Washington, DC	Visit by J.O. Wilson Elementary School Students to United States Courthouse	Welcomed students to courthouse.  I do not have remarks or notes, and have not located any press coverage.
05/14/15	Washington, DC	District of Columbia Circuit Court of Appeals, Attorney Admissions Ceremony	Presided over attorney admissions ceremony.  Text provided. I have not located any press coverage.
05/11/15	Washington, DC	Shakespeare Theatre Company, Mock Trial: <i>Don Quixote</i>	Served as panelist at mock trial event.  Transcript and press reports provided.

Date	Location	Organization/Event	Description
04/20/15	Oklahoma City, OK	Oklahoma City National Memorial and Museum, 20th Anniversary Commemoration	Participated in panel titled "The Oklahoma City Bombing – 20 Years Later: The Investigation."  I do not have remarks or notes. Agenda and press reports provided.
04/13/15	Washington, DC	Legal Services Corporation, Supreme Court Reception	Gave remarks at Supreme Court of the United States regarding legal services for the poor.  Text provided. I have not located any press coverage.
04/09/15	Washington, DC	Visit by Harvard Chapter of the American Constitution Society to the District of Columbia Circuit Court of Appeals	Answered questions from law students regarding careers in the law.  I do not have remarks or notes, and have not located any press coverage.
04/01/15	Washington, DC	District of Columbia Circuit Judicial Conference, Standing Committee on Pro Bono Legal Services, Annual 40 at 50 Judicial Pro Bono Recognition Breakfast	Gave remarks recognizing law firms with substantial pro bono service.  Text and press report provided.
03/20/15	Washington, DC	Historical Society of the District of Columbia Circuit, 10th Annual Mock Court Argument Program	Welcomed District of Columbia high school students participating in mock trial to courthouse.  Text and press report provided.
03/19/15	Washington, DC	District of Columbia Circuit Oral Arguments at the Catholic University of America Columbus School of Law	Answered questions from law students seeking career advice and information regarding my experiences as a judge and practicing lawyer.  I do not have remarks or notes. Press report provided.

Date	Location	Organization/Event	Description
02/25/15	New Haven, CT	Yale Supreme Court Advocacy Clinic, Meeting with Clinic Students	<p>Answered questions from law students regarding appellate advocacy.</p> <p>I do not have remarks or notes, and have not located any press coverage.</p>
12/04/14	Washington, DC	Council for Court Excellence, Meeting at United States Courthouse	<p>Participated in a conversation about court administration and serving as a judge.</p> <p>I do not have remarks or notes. Press report provided.</p>
11/05/14	Washington, DC	District of Columbia Circuit Oral Arguments at Howard Law School	<p>Answered questions from law students seeking career advice and information regarding my experiences as a judge and practicing lawyer.</p> <p>I do not have remarks or notes, and have not located any press coverage.</p>
10/21/14	Washington, DC	Historical Society of the District of Columbia Circuit, Law Clerk Reception	<p>Introduced Justice Elena Kagan and Judge Ellen Segal Huvelle.</p> <p>Text and press report provided.</p>
09/19/14	Cambridge, MA	Joint Forum, Harvard Chapters of the Federalist Society and the American Constitution Society	<p>Answered questions from law students regarding careers in the law.</p> <p>I do not have remarks or notes, and have not located any press coverage.</p>
09/12/14	Washington, DC	District of Columbia Circuit Court of Appeals, Investiture Ceremony for Judge Robert Wilkins	<p>Presided over investiture ceremony.</p> <p>Text and press report provided.</p>
07/11/14	Washington, DC	District of Columbia District Court, Investiture Ceremony for Judge Christopher Cooper	<p>Gave brief remarks.</p> <p>Text and press report provided.</p>

Date	Location	Organization/Event	Description
06/05/14	Washington, DC	Visit by J.O. Wilson Elementary School Students to United States Courthouse	Welcomed students to courthouse.  I do not have remarks or notes, and have not located any press coverage.
05/21/14	Washington, DC	Visit by Officials of the Administrative Office of the United States Courts to United States Courthouse	Welcomed court executives and chief deputies of three circuits to courthouse.  Text provided. I have not located any press coverage.
05/19/14	Washington, DC	Shakespeare Theatre Company, Mock Trial: <i>Measure for Measure</i>	Served as panelist at mock trial event.  I do not have remarks or notes. Press report provided.
05/13/14	Washington, DC	District of Columbia Circuit Court of Appeals, Attorney Admissions Ceremony	Presided over attorney admissions ceremony.  Text provided. I have not located any press coverage.
04/25/14	Washington, DC	Historical Society of the District of Columbia Circuit, 9th Annual Mock Court Argument Program	Welcomed District of Columbia high school students participating in mock trial to courthouse.  Text and press report provided.
04/23/14	Washington, DC	District of Columbia Circuit Judicial Conference, Standing Committee on Pro Bono Legal Services, Annual 40 at 50 Judicial Pro Bono Recognition Breakfast	Gave remarks recognizing law firms with substantial pro bono service.  Text and press report provided.
04/10/14	Washington, DC	Visit by African Judges to District of Columbia Circuit Court of Appeals	Welcomed visiting judges.  I do not have remarks or notes, and have not located any press coverage.
03/13/14	Washington, DC	District of Columbia Circuit Court of Appeals, Investiture	Presided over investiture ceremony.

Date	Location	Organization/Event	Description
		Ceremony for Judge Cornelia Pillard	Text, video, and press report provided.
02/28/14	Washington, DC	District of Columbia Circuit Court of Appeals, Investiture Ceremony for Judge Patricia Millett	Presided over investiture ceremony.  Text, video, and press report provided.
02/27/14	Washington, DC	Visit by Yale Chapter of the American Constitution Society to the District of Columbia Circuit Court of Appeals	Answered questions from law students regarding careers in the law.  I do not have remarks or notes, and have not located any press coverage.
02/19/14	Washington, DC	Cosmos Club, Meeting	Gave remarks regarding court administration.  Notes provided. I have not located any press coverage.
01/29/14	Washington, DC	Federal Public Defenders Conference	Gave welcoming remarks.  Text provided. I have not located any press coverage.
12/16/13	Washington, DC	District of Columbia Circuit Judicial Conference, Standing Committee on Pro Bono Legal Services, Federal Government Pro Bono Recognition Reception	Gave remarks recognizing government lawyers for pro bono service.  Text and press report provided.
11/12/13	Washington, DC	District of Columbia Circuit Oral Arguments at Georgetown University Law Center	Answered questions from law students seeking career advice and information regarding my experiences as a judge and practicing lawyer.  I do not have remarks or notes. Press provided.
10/23/13	Cambridge, MA	Harvard Law School, Moot Court Competition	Served as panelist at moot court event.  Video and press report provided.

Date	Location	Organization/Event	Description
10/17/13	Washington, DC	Washington Bar Association Event at Howard Law School	Greeted the Washington Bar Association.  I do not have remarks or notes, and have not located any press coverage.
10/08/13	Washington, DC	District of Columbia Circuit Court of Appeals, Attorney Admissions Ceremony	Presided over attorney admissions ceremony.  Text provided. I have not located any press coverage.
09/26/13	Washington, DC	District of Columbia Circuit Court of Appeals, Investiture Ceremony for Judge Sri Srinivasan	Presided over investiture ceremony.  Notes and press reports provided.
08/05/13	Oklahoma City, OK	Oklahoma City National Memorial Foundation. Recorded oral history.	Video available from the Foundation.
05/22/13	Washington, DC	American Law Institute, 90th Annual Meeting	Presented the Henry J. Friendly Medal to William H. Webster.  Text, video, and press report provided.
05/13/13	Washington, DC	Shakespeare Theatre Company, Mock Trial: <i>Latin Herald v. Gaius Marcius Coriolanus (Coriolanus)</i>	Served as panelist at mock trial event.  I do not have remarks or notes. Press report provided.
05/06/13	Washington, DC	District of Columbia Circuit Court of Appeals, Attorney Admissions Ceremony	Presided over attorney admissions ceremony.  Notes provided. I have not located any press coverage.
04/15/13	Washington, DC	Visit by African Judges to District of Columbia Circuit Court of Appeals	Welcomed visiting judges.  I do not have remarks or notes, and have not located any press coverage.
04/12/13	Washington, DC	Historical Society of the District of Columbia Circuit, 8th Annual Mock Court Argument Program	Congratulated District of Columbia high school



Date	Location	Organization/Event	Description
			students participating in mock trial.  Text and press report provided.
04/09/13	Washington, DC	District of Columbia Circuit Judicial Conference, Standing Committee on Pro Bono Legal Services, Annual 40 at 50 Judicial Pro Bono Recognition Breakfast	Gave remarks recognizing law firms with substantial pro bono service.  Text and press reports provided.
04/08/13	Washington, DC	Visit by Harvard Chapter of the American Constitution Society to the District of Columbia Circuit Court of Appeals	Answered questions from law students regarding careers in the law and information regarding my experiences as a judge and practicing lawyer.  I do not have remarks or notes. Press report provided.
04/05/13	Washington, DC	District of Columbia Circuit Court of Appeals, Portrait Presentation Ceremony for Judge David B. Sentelle	Presided over portrait presentation ceremony.  Text and transcript provided. I have not located any press coverage.
02/20/13	New Haven, CT	Yale Supreme Court Advocacy Clinic, Meeting with Clinic Students	Answered questions from law students regarding appellate advocacy.  I do not have remarks or notes, and have not located any press coverage.
02/16/13	Washington, DC	J. Reuben Clark Law Society, Annual Conference, Georgetown University Law Center	Discussed life lessons learned throughout career.  Video provided. I have not located any press coverage.
02/12/13	Washington, DC	District of Columbia Circuit Court of Appeals, Ceremony Honoring Judge David B. Sentelle	Gave remarks thanking Judge Sentelle for his service as Chief Judge.  Text provided. I have not located any press coverage.

Date	Location	Organization/Event	Description
01/22/13	Washington, DC	Edward Coke Appellate Inn of Court, January Meeting on the Life and Career of Judge Henry Friendly	Participated in panel discussion regarding Judge Friendly.  I do not have remarks or notes. Press report provided.
12/03/12	New Haven, CT	Yale Law School, Moot Court Competition	Served as panelist at moot court event.  Video and press report provided.
11/15/12	Washington, DC	The Federalist Society, 2012 National Lawyers Convention	Moderated panel titled "Prosecutorial Misconduct."  Notes and video provided. I have not located any press coverage.
10/18/12	Washington, DC	George Washington University Law School, Conversation with Author of "Henry Friendly: Greatest Judge of His Era"	Participated in panel discussion.  Video provided. I have not located any press coverage.
06/07/12	Washington, DC	Visit by J.O. Wilson Elementary School Students to United States Courthouse	Welcomed students to courthouse.  I do not have remarks or notes, and have not located any press coverage.
04/30/12	Washington, DC	Shakespeare Theatre Company, Mock Trial: <i>Claudio v. Hero</i>	Served as panelist at mock trial event.  I do not have remarks or notes. Press reports provided.
04/21/12	Washington, DC	15th Reunion of Garland Law Clerks at the District of Columbia Circuit Court of Appeals	Gave remarks to former law clerks.  Text provided. I have not located any press coverage.
02/28/12	Washington, DC	Visit by Harvard Law School Class to the District of Columbia Circuit Court of Appeals	Answered questions from law students seeking career advice and information regarding my experiences as a judge and practicing lawyer.

Date	Location	Organization/Event	Description
			I do not have remarks or notes, and have not located any press coverage.
02/24/12	New Haven, CT	Yale Law Journal, Meeting with Editors	Answered questions from law students regarding careers in the law.  I do not have remarks or notes, and have not located any press coverage.
01/24/12	Washington, DC	United States Department of Justice, Jack Keeney Memorial Event	Gave remarks regarding former Department official Jack Keeney.  Text and video provided. I have not located any press coverage.
01/18/12	Washington, DC	Visit by Harvard Law School Supreme Court Litigation Clinic to the District of Columbia Circuit Court of Appeals	Answered questions from law students seeking career advice and information regarding my experiences as a judge and practicing lawyer.  I do not have remarks or notes, and have not located any press coverage.
12/03/11	Washington, DC	Bar Association of the District of Columbia, Judge of the Year Ceremony	Gave remarks accepting award at ceremony.  Text provided. I have not located any press coverage.
10/05/11	New Haven, CT	Yale Supreme Court Advocacy Clinic, Meeting with Clinic Students	Discussed False Claims Act cases and legislation.  Notes provided. I have not located any press coverage.
06/20/11	Washington, DC	United States Presidential Scholars Program, Reception at Cannon House Building	Gave remarks to students.  Text provided. I have not located any press coverage.
06/16/11	Washington, DC	American Constitution Society, Moot Court Competition	Served as panelist at moot court event.

Date	Location	Organization/Event	Description
			Agenda provided.
04/11/11	Washington, DC	Shakespeare Theatre Company, Mock Trial: <i>An Ideal Husband</i>	Served as panelist at mock trial event.  I do not have remarks or notes. Press reports provided.
04/07/11	Washington, DC	District of Columbia Circuit Judicial Conference, Standing Committee on Pro Bono Legal Services, Annual 40 at 50 Judicial Pro Bono Recognition Breakfast	Gave remarks recognizing law firms with substantial pro bono service.  Text and press reports provided.
03/29/11	Washington, DC	Visit by High School Students to District of Columbia Circuit Court of Appeals	Answered questions regarding my experiences as a judge.  I do not have remarks or notes, and have not located any press coverage.
02/15/11	Washington, DC	Visit by Elementary School Students to District of Columbia Circuit Court of Appeals	Answered questions regarding my experiences as a judge.  I do not have remarks or notes, and have not located any press coverage.
01/10/11	Washington, DC	National War College, Guest Lecture	Lectured students on federal courts and administrative law.  Text provided. I have not located any press coverage.
12/09/10	Washington, DC	The Federalist Society, Panel	Moderated panel titled "Changing the Federal Rules of Civil Procedure: Has the Time Come?"  Video provided. I have not located any press coverage.
12/06/10	New Haven, CT	Yale Law School, Moot Court Competition	Served as panelist at moot court event.  Video provided. I have not located any press coverage.

Date	Location	Organization/Event	Description
12/01/10	Cambridge, MA	Harvard Law School, Meeting with Law School Class	Spoke to students about the roles of advocates in the legal system.  I do not have remarks or notes. Press reports provided.
10/22/10	New Haven, CT	Yale Law Journal, Meeting with Editors	Answered questions from law students regarding careers in the law.  I do not have remarks or notes, and have not located any press coverage.
04/11/10	Cambridge, MA	Harvard College, Meeting with Freshmen	Answered questions regarding college and law school.  I do not have remarks or notes, and have not located any press coverage.
03/25/10	Washington, DC	Spoke with Students at District of Columbia Elementary School	Answered questions regarding my experiences as a judge.  I do not have remarks or notes, and have not located any press coverage.
03/16/10	Washington, DC	Shakespeare Theatre Company, Mock Trial: <i>Judgment at Agincourt</i>	Served as panelist at mock trial event.  Video provided. I have not located any press coverage.
01/22/10	Cambridge, MA	Harvard Law School Supreme Court Litigation Clinic, Meeting with Clinic Students	Answered questions from law students regarding appellate advocacy.  I do not have remarks or notes, and have not located any press coverage.
01/19/10	Washington, DC	National War College, Guest Lecture	Lectured students on federal courts and administrative law.  Text provided. I have not located any press coverage.

Date	Location	Organization/Event	Description
12/17/09	Washington, DC	Harvard Club of Washington	Introduced Justice Ruth Bader Ginsburg at Harvard Club event.  Text provided. I have not located any press coverage.
11/03/09	New Haven, CT	Yale Supreme Court Advocacy Clinic, Meeting with Clinic Students	Lectured students regarding appellate advocacy.  Notes provided. I have not located any press coverage.
09/15/09	Washington, DC	Harvard Alumni Association Event	Introduced Harvard President Drew Gilpin Faust at event.  Text provided. I have not located any press coverage.
06/19/09	Washington, DC	American Constitution Society, 2009 Annual Convention	Moderated panel titled "The Internet Revolution and its Effect on the First Amendment."  Notes, video, and press report provided.
04/06/09	Washington, DC	Shakespeare Theatre Company, Mock Trial: <i>Malvolio's Revenge</i>	Served as panelist at mock trial event.  I do not have remarks or notes. Press reports provided.
03/25/09	Salt Lake City, UT	University of Utah Law School, Moot Court Competition	Served as panelist at moot court event.  I do not have remarks or notes, and have not located any press coverage.
02/19/09	Washington, DC	Edward Bennett Williams Inn of Court	Moderated panel on legal blogs.  Notes provided. I have not located any press coverage.
01/22/09	Washington, DC	Harvard Law School Supreme Court Litigation Clinic, Meeting with Clinic Students	Spoke with law students regarding appellate advocacy.

Date	Location	Organization/Event	Description
			I do not have remarks or notes, and have not located any press coverage.
01/15/09	Washington, DC	National War College, Guest Lecture	Lectured students on federal courts and administrative law.  Text provided. I have not located any press coverage.
11/20/08	Washington, DC	The Federalist Society, 2008 National Lawyers Convention	Moderated panel titled "The Prosecution of Public Corruption."  Notes and video provided. I have not located any press coverage.
06/13/08	Washington, DC	American Constitution Society, 2008 National Convention	Participated in panel titled "(In)effective Assistance of Counsel for Criminal Defendants."  Video provided. I have not located any press coverage.
06/06/08	Farmington, PA	District of Columbia Circuit Judicial Conference	Moderated panel titled "How Are the Courts of the Circuit Doing?"  Notes provided. I have not located any press coverage.
05/29/08	Washington, DC	The Federalist Society, Panel	Moderated panel titled "The Obstruction of Justice."  Notes and video provided. I have not located any press coverage.
03/05/08	Washington, DC	National Association of Attorneys General, Appellate Advocacy Conference	Participated in panel regarding appellate advocacy.  Notes provided. I have not located any press coverage.
01/17/08	Washington, DC	National War College, Guest Lecture	Lectured students on federal courts and administrative law.  Text provided. I have not located any press coverage.

Date	Location	Organization/Event	Description
11/30/07	Cambridge, MA	Harvard Law School, Meeting with Law School Class	Spoke to students about the legal profession.  I do not have remarks or notes, and have not located any press coverage.
11/15/07	Washington, DC	The Federalist Society, 2007 National Lawyers Convention	Moderated panel titled "The Independence of Federal Prosecutors."  Notes, transcript, agenda, and video provided. I have not located any press coverage.
10/26/07	Washington, DC	American Bar Association Administrative Law and Regulatory Practice Section, Meeting	Introduced Judge A. Raymond Randolph upon his induction as a senior fellow. Participated on panel titled "D.C. Circuit Judges Talk About Deference."  Text, notes, and press report provided.
07/27/07	Washington, DC	American Constitution Society, 2007 National Convention	Moderated panel titled "The Role of the Department of Justice."  Notes and video provided. I have not located any press coverage.
02/23/07	Washington, DC	Visit by Justices of the European Court of Justice to the District of Columbia Circuit Court of Appeals	Welcomed Justices to courthouse and discussed U.S. administrative law.  I do not have remarks or notes. Press report provided.



Date	Location	Organization/Event	Description
11/14/06	Cambridge, MA	Harvard Law School, Ames Moot Court Competition	Served as panelist at moot court event.  I do not have remarks or notes. Press report provided.  Link: <a href="https://www.youtube.com/watch?v=fOYztADJNJo&amp;feature=youtu.be">https://www.youtube.com/watch?v=fOYztADJNJo&amp;feature=youtu.be</a>
10/24/06	Annapolis, MD	United States Naval Academy, Guest Lecture	Lectured students on American government.  I do not have remarks or notes, and have not located any press coverage.
06/21/06	Washington, DC	Georgetown University Law Center, Meeting with Chinese Legal Officials at U.S. District Court	Gave remarks to Chinese legal officials regarding United States law relating to suits against the government.  Notes provided. I have not located any press coverage.
06/17/06	Washington, DC	American Constitution Society, 2006 National Convention	Moderated panel titled "Can the Department of Justice Police the Executive and Legislative Branches?"  Notes and agenda provided. I have not located any press coverage.
05/15/06	Washington, DC	Reunion of Judge Friendly Clerks	Gave a toast to Chief Justice John G. Roberts, Jr.  Text provided. I have not located any press coverage.
04/11/06	Washington, DC	Visit by New Hampshire High School Students to District of Columbia Circuit Court of Appeals	Answered questions regarding my experiences as a judge.  I do not have remarks or notes, and have not located any press coverage.

Date	Location	Organization/Event	Description
03/22/06	Washington, DC	Visit by Middle School Students to District of Columbia Circuit Court of Appeals	Answered questions regarding my experiences as a judge.  I do not have remarks or notes, and have not located any press coverage.
01/26/06	Philadelphia, PA	University of Pennsylvania Law School, Moot Court Competition	Served as panelist at moot court event.  I do not have remarks or notes. Press report provided.
12/12/05	New Haven, CT	Yale Law School, Moot Court Competition	Served as panelist at moot court event.  I do not have remarks or notes, and have not located any press coverage.
12/12/05	New Haven, CT	Yale Law School, Panel on Judicial Clerkships	Participated on panel regarding judicial clerkships.  I do not have remarks or notes, and have not located any press coverage.
11/12/05	Washington, DC	The Federalist Society, 2005 National Lawyers Convention	Moderated panel titled "Originalism and the Administrative Procedure Act."  Notes and agenda provided. I have not located any press coverage.
10/01/05	Cambridge, MA	Harvard Law School, Meeting with Law School Class	Answered questions regarding criminal law and professional responsibility.  I do not have remarks or notes, and have not located any press coverage.
08/03/05	Washington, DC	Historical Society of the District of Columbia Circuit, Panel	Participated in panel on arguing cases before the District of Columbia Circuit.  I do not have remarks or notes. Press reports provided.

Date	Location	Organization/Event	Description
06/01/05	New Haven, CT	Yale Law School, China-Yale Senior Government Leadership Program	Gave remarks regarding judicial review of administrative actions.  Notes provided. I have not located any press coverage.
05/19/05	Washington, DC	Woodrow Wilson International Center for Scholars, Discussion of <i>Becoming Justice Blackmun</i>	Participated in panel regarding a biography of Justice Harry Blackmun.  I do not have remarks or notes. Press report provided.
05/04/05	Chicago, IL	University of Chicago Law School, Moot Court Competition	Served as panelist at moot court event.  I do not have remarks or notes, and have not located any press coverage.
04/18/05	Washington, DC	Metropolitan Police Department Retirement Dinner	Gave remarks at retirement of MPD Detective Lorren Leadmon.  Notes provided. I have not located any press coverage.
04/07/05	Washington, DC	American Bar Association Administrative Law and Regulatory Practice Section, Panel	Participated in panel titled "Agency Law Making In Action: The Process from Beginning to End Using the Landmark <i>State Farm</i> Case."  I do not have remarks or notes, and have not located any press coverage.
03/30/05	Washington, DC	Harvard Law School, Admitted Students Reception	Answered questions regarding law school experience.  I do not have remarks or notes, and have not located any press coverage.
03/15/05	Washington, DC	Joint Meeting of the Edward Coke Appellate Inn of Court and the Giles Sutherland Rich American Inn of Court	Participated in panel regarding differences between the circuit courts.

Date	Location	Organization/Event	Description
			I do not have remarks or notes. Press report provided.
02/24/05	Washington, DC	Federal Public Defenders Conference, Panel	Participated in panel regarding effective appellate writing.  Notes provided. I have not located any press coverage.
11/08/04	Washington, DC	Edward Bennett Williams Inn of Court, Meeting	Participated in moot court event.  I do not have remarks or notes, and have not located any press coverage.
10/21/04	Washington, DC	American Bar Association Administrative Law and Regulatory Practice Section, Administrative Law Conference, Awards Luncheon	Gave address titled "Scholars and Public Servants at the Founding (of the APA)."  Text and press reports provided.
10/14/04	Washington, DC	Visit by Chinese Justices to the District of Columbia Circuit Court of Appeals	Welcomed visiting Justices and discussed Chinese and American legal systems.  I do not have remarks or notes, and have not located any press coverage.
10/12/04	Washington, DC	Discussion with Visiting Chinese Justices at the Supreme Court of the United States	Discussed Chinese and American legal systems.  I do not have remarks or notes, and have not located any press coverage.
05/17/04	Washington, DC	American Bar Association Section of Litigation, Panel	Participated in panel titled "Courts, Cases, and the Media: Can We Talk? A Workshop To Improve News Coverage And Public Perception Of The Justice System."

Date	Location	Organization/Event	Description
			I do not have remarks or notes, and have not located any press coverage.
04/12/04	Washington, DC	Shakespeare Theatre Company, Mock Trial: <i>Falstaff v. King Henry V</i>	Served as panelist at mock trial event.  I do not have remarks or notes, and have not located any press coverage.
02/29/04	Washington, DC	George Washington University Law School, Moot Court Competition	Served as panelist at moot court event.  I do not have remarks or notes, and have not located any press coverage.
4/21/03	Champaign, IL	University of Illinois College of Law, Moot Court Competition	Served as panelist at moot court event.  I do not have remarks or notes, and have not located any press coverage.
06/14/02	Kingsmill, VA	District of Columbia Circuit Judicial Conference	Moderated panel titled "Privacy and Security in an Age of Emerging Technologies."  Notes provided. I have not located any press coverage.
02/24/02	Washington, DC	American University Washington College of Law, Moot Court Competition	Served as panelist at moot court event.  I do not have remarks or notes, and have not located any press coverage.
12/17/01	New Haven, CT	Yale Law School, Moot Court Competition	Served as panelist at moot court event.  I do not have remarks or notes, and have not located any press coverage.

Date	Location	Organization/Event	Description
12/12/01	Washington, DC	American Bar Association Administrative Law and Regulatory Practice Section, Panel	Participated in panel titled “ <i>State Farm</i> and the Arbitrary and Capricious Standard.”  Notes and press report provided.
10/30/01	Washington, DC	District of Columbia Bar, Panel	Participated in panel on appellate advocacy.  Notes provided. I have not located any press coverage.
05/04/01	Palo Alto, CA	Stanford Law School, Moot Court Competition	Served as panelist at moot court event.  I do not have remarks or notes, and have not located any press coverage.
04/21/01	Boston, MA	Harvard Law Review, Annual Banquet	Gave address at annual banquet.  Text provided. I have not located any press coverage.
01/07/00	Washington, DC	Association of American Law Schools, Panel	Participated in panel titled “Do Antitrust Teachers and Scholars Matter?”  Notes provided. I have not located any press coverage.
11/15/99	Crystal City, VA	United States Department of Justice, National Institute of Justice Panel	Moderated panel titled “The Role of U.S. Attorney’s Offices in Case Selection, Investigation, and Enforcement.”  Notes provided. I have not located any press coverage.
11/04/99	Washington, DC	American University Washington College of Law, American Bar Association Criminal Justice Section, Meeting	Participated in panel titled “Holding Prosecutors Accountable: What Rules Apply and Who Should Enforce Them?”  I do not have remarks or notes. Agenda provided. I

Date	Location	Organization/Event	Description
			have not located any press coverage.
10/26/99	Washington, DC	District of Columbia Bar, Panel	Participated in panel discussion on appellate advocacy.  Notes and press report provided.
09/02/99	Washington, DC	Federal Public Defenders Conference, Panel	Participated in panel discussion on appellate advocacy.  Notes provided. I have not located any press coverage.
04/17/99	Dallas, TX	American Bar Association Section of Litigation, Panel	Participated in moot court and discussion of appellate advocacy.  Notes provided. I have not located any press coverage.
04/15/99	Washington, DC	Visit by High School Students to District of Columbia Circuit Court of Appeals	Answered questions regarding my experiences as a judge.  I do not have remarks or notes, and have not located any press coverage.
04/02/99	Berkeley, CA	University of California Law School, Berkeley, Moot Court Competition	Served as panelist at moot court event.  I do not have remarks or notes, and have not located any press coverage.
11/04/98	Washington, DC	Council for Court Excellence, Panel	Participated in panel titled "Lawyers, the Courts, and the Press."  I do not have remarks or notes, and have not located any press coverage.
05/02/98	Chevy Chase, MD	Ohr Kodesh Congregation	Gave Law Day speech.

Date	Location	Organization/Event	Description
			Text provided. I have not located any press coverage.
02/21/98	Washington, DC	Toast to Seth Waxman on Occasion of His Becoming Solicitor General	Gave toast to Seth Waxman.  Text and notes provided. I have not located any press coverage.
11/18/97	Cambridge, MA	Harvard Law School, Moot Court Competition	Served as panelist at moot court event.  I do not have remarks or notes. Press report provided.
11/14/97	Washington, DC	Federal Judicial Center Program for Chinese Judges	Gave remarks titled "The Role of the Appellate Court in Criminal Cases."  Notes provided. I have not located any press coverage.
08/12/97	Washington, DC	Attorney General's Advocacy Institute, Panel	Participated in panel discussion on appellate advocacy.  Notes provided. I have not located any press coverage.
08/02/97	San Francisco, CA	American Bar Association Annual Meeting	Participated in panel titled "The Press and Terrorism Trials."  Notes and press report provided.
06/03/97	Washington, DC	District of Columbia Circuit Court of Appeals Investiture Ceremony	Gave remarks at my investiture ceremony.  Text and press report provided.
04/17/97	Washington, DC	Edward Bennett Williams Inn of Court, Meeting	Moderated panel titled "Corporate Cooperation in Criminal Investigations."  Notes provided. I have not located any press coverage.
04/08/97	Washington, DC	United States Department of Justice, Farewell Ceremony	Gave remarks at my farewell ceremony.



Date	Location	Organization/Event	Description
			Text provided. I have not located any press coverage.
03/25/97	Washington, DC	United States Department of Justice, Farewell Ceremony for Deputy Attorney General Jamie Gorelick	Gave remarks at farewell ceremony.  Text provided. I have not located any press coverage.
03/07/97	New Orleans, LA	American Bar Association Criminal Justice Section, Meeting	Participated in panel titled "Trial Strategies in White Collar Criminal Cases."  I do not have remarks or notes, and have not located any press coverage.
01/16/97	Washington, DC	Washington Metropolitan Area Chapter of the American Corporate Counsel Association	Gave remarks regarding corporate and white collar crime.  Text and press report provided.
10/23/96	Airlie, VA	American Bar Association Section of Litigation, Symposium on Corporate Criminal Liability	Participated in panel on corporate criminal liability.  I do not have remarks or notes, and have not located any press coverage.
05/29/96	Baltimore, MD	United States Attorneys National Conference	Gave remarks regarding the Department of Justice's Critical Incident Response Plan.  Notes provided. I have not located any press coverage.
07/16/95	Las Vegas, NV	National District Attorneys Association Convention	Spoke to Board of Directors regarding relations with the Department of Justice.  I do not have remarks or notes, and have not located any press coverage.
10/15/94	Washington, DC	American Bar Association Criminal Justice Section, White Collar Crime Committee	Gave remarks regarding the Department of Justice's

Date	Location	Organization/Event	Description
			Professional Responsibility Initiatives.  Notes and press report provided.
09/01/94	Washington, DC	District of Columbia Bar, George Washington University Annual Institute on Program Fraud	Gave remarks regarding the Department of Justice's Professional Responsibility Initiatives.  Notes and press report provided.
08/06/94	New Orleans, LA	American Bar Association Convention	Participated in panel on high publicity cases.  I do not have remarks or notes. Press reports provided.
06/15/94	Washington, DC	District of Columbia Bar, Administrative Law and Agency Practice Section Meeting	Moderated discussion of talk by Walter Dellinger.  I do not have remarks or notes, and have not located any press coverage.
05/23/94	Washington, DC	District of Columbia Bar, Panel	Participated in panel discussion regarding plea negotiations.  I do not have remarks or notes, and have not located any press coverage.
10/22/93	Washington, DC	American Bar Association Section of Litigation, Meeting	Participated in question and answer session regarding Department of Justice initiatives.  I do not have remarks or notes, and have not located any press coverage.
06/24/93	Philadelphia, PA	American Corporate Counsel Association, Panel	Participated in panel titled "Will There Be a New Antitrust Agenda?"  Notes provided. I have not located any press coverage.

Date	Location	Organization/Event	Description
05/21/93	San Antonio, TX	St. Mary's University School of Law Symposium, Panel	Participated in panel titled "Will There Be a New Antitrust Agenda?"  I likely used the same notes as for the previous entry. I have not located any press coverage.
02/22/93	Washington, DC	District of Columbia Bar, Winter Convention	Moderated panel titled "Property Rights and Regulatory Takings."  Notes and press report provided.
02/28/86	New Haven, CT	Yale Law School, Meeting with Law School Class	Spoke to law school class regarding administrative law.  I do not have remarks or notes, and have not located any press coverage.
02/21/86	Kings Point, NY	Office of Personnel Management, Executive Seminar Center, U.S. Merchant Marine Academy, Guest Lecture	Explained basic administrative law concepts.  I do not have remarks or notes, and have not located any press coverage.
02/15/85	Kings Point, NY	Office of Personnel Management, Executive Seminar Center, U.S. Merchant Marine Academy, Guest Lecture	Explained basic administrative law concepts.  I do not have remarks or notes, and have not located any press coverage.
05/22/84	Williamsburg, VA	District of Columbia Circuit Judicial Conference	As an audience member, I asked the panel a question about administrative law.  Transcript provided. I do not have remarks or notes, and have not located any press coverage.
05/11/83	Skokie, IL	Niles West High School	Discussed high school and college experiences.

Date	Location	Organization/Event	Description
			I do not have remarks or notes, and have not located any press coverage.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Using my own records and publicly available electronic databases, the following includes all entries that I could find in which I was interviewed, gave remarks to the press, or was quoted. Most are not original interviews, but rather include quotations from other interviews or court proceedings. I have supplied clips or transcripts where available.

"Deborah Rhode, Stanford law professor and authority on legal ethics, dies at 68," The Washington Post, January 12, 2021.

"Law Clerk Hiring Plan Extended," U.S. Court News, November 12, 2020.

D.C. Circuit Judges' "Statement On Passing of Judge Stephen F. Williams," August 8, 2020.

News Release: "Chief Judges Announce Adoption of New Employment Dispute Resolution Plans," February 10, 2020.

Press Briefing at Supreme Court Regarding Actions of Judicial Conference, September 17, 2019.

"Detroit News editor and publisher Jonathan Wolman dead at 68," The Detroit News, April 15, 2019.

Press Briefing at Supreme Court Regarding Actions of Judicial Conference, March 12, 2019.

"Judges make rules changes to address #MeToo complaints," Politico, March 12, 2019.

"Sexual Harassment Policies Adopted for Federal Judiciary," Bloomberg, March 12, 2019.

"Federal Judiciary leaders approve new rules to protect court employees from workplace harassment," Washington Post, March 12, 2019.

“Sexual misconduct the aim of crackdown by the federal courts,” USA Today, March 12, 2019.

Press Briefing at Supreme Court Regarding Actions of Judicial Conference, September 13, 2018.

News Release: “Chief Judges Announce Formation of Workplace Conduct Committee,” June 4, 2018.

News Release: “Policy Regarding Live Audio Streaming of Arguments, D.C. Circuit,” May 23, 2018.

Press Briefing at Supreme Court Regarding Actions of Judicial Conference, March 13, 2018.

News Release: “Further Expansion of D.C. Circuit Policy Regarding Live Audio Streaming of Arguments,” D.C. Circuit, December 19, 2017.

News Release: “Statement by Chief Judge Garland Regarding Posting of D.C. Circuit Judgments,” D.C. Circuit, June 22, 2016.

Bridget Bowman, “Senators Speak About Their Meetings with Merrick Garland,” Atlanta Journal-Constitution, April 27, 2016.

“Senator Cory Booker Meeting with Merrick Garland,” C-SPAN, April 12, 2016. Video provided.

Mary Clare Jalonick, “GOP Senator Meets with Garland, Says Hearings Should Be Held,” Associated Press, April 6, 2016.

Mary Clare Jalonick, “Nominee Garland Smiles, Stays Quiet While in Public View,” Associated Press, April 6, 2016.

“Senator Susan Collins Meeting with Merrick Garland,” C-SPAN, April 5, 2016. Video provided.

“Senator Joe Manchin Meeting with Merrick Garland,” C-SPAN, April 5, 2016. Video provided.

“Senator Jeanne Shaheen Meeting with Merrick Garland,” C-SPAN, April 5, 2016. Video provided.

“Senator Mark Kirk Meeting with Merrick Garland,” C-SPAN, March 29, 2016. Video provided.

Lynn Sweet, “Senate GOP Must Be ‘Rational’ About Court Pick, Kirk Says,”

Chicago Sun-Times, March 29, 2016.

Denise Lavoie, "Supreme Court Nominee Formed Lasting Bonds at Harvard," The Associated Press, March 28, 2016.

Sheryl Gay Stolberg, Matt Apuzzo & Katharine Q. Seelye, "Merrick Garland Is a Deft Navigator of Washington's Legal Circles," New York Times, March 26, 2016.

"Merrick Garland, The Tutor," The White House, March 19, 2016. Video provided.

"Senator Harry Reid Meeting with Merrick Garland," C-SPAN, March 17, 2016. Video provided.

Yousur Al-Hlou, "Oklahoma City's Effect on a Supreme Court Nominee," The New York Times, March 17, 2016. Video provided.

"Garland: His Time in Oklahoma City," NewsOK, March 17, 2016. Video provided.

"Meet Merrick Garland, President Obama's Supreme Court Nominee," The White House, March 16, 2016. Video provided.

Michael Doyle, "Who Is Merrick Garland, Obama's Pick for the Supreme Court?," McClatchy Washington Bureau (DC), March 16, 2016.

Remarks at Ceremony for Nomination to the United States Supreme Court, March 16, 2016. Transcript and video provided.

Zoe Tillman, "Obama Nominates Merrick Garland for Supreme Court," National Law Journal, March 16, 2016.

Presidential Scholars Foundation, Merrick Garland – 1970 Scholar, September 1, 2015.

News Release: "The D.C. Circuit Fights Internet Link Rot," United States Court of Appeals for the District of Columbia Circuit, July 30, 2015.

Zoe Tillman, "D.C. Circuit to Combat 'Link Rot' in Court Rulings," National Law Journal, July 29, 2015.

Zoe Tillman, "Howard Law to Host D.C. Circuit," Legal Times, October 2, 2014.

"United States Court of Appeals Holds Oral Arguments at Georgetown Law," Georgetown Law, November 12, 2013.

Zoe Tillman, "D.C. Circuit to Hold Arguments at Georgetown Law," BLT: Blog of the Legal Times, November 7, 2013.

News Release: Audio Recordings of Oral Arguments, United States Court of Appeals for the District of Columbia Circuit, 2013.

"Board of Overseers Elects Senior Officers," Harvard Gazette, April 23, 2009.

Interview with David M. Dorsen for "Henry Friendly, Greatest Judge of His Era" (Harvard University Press 2012), November 16, 2006. I have no clips or transcripts.

Paul Queary, "Prosecutor's MS Stirs Concern," Associated Press, April 25, 1997.

Daniel R. Marcus, "Snaring the Price-Fixers," American Lawyer, December 1996.

Robert Schmidt, "Low Key, High Pressure: Top Prosecutor in Oklahoma City Bombing Case Plays a Surprisingly Quiet Role", Legal Times, September 2, 1996.

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- Shamrock Foods Co. v. NLRB*, 346 F.3d 1130 (D.C. Cir. 2003)
- United States v. Hanson*, 339 F.3d 983 (D.C. Cir. 2003)
- United States v. Taylor*, 339 F.3d 973 (D.C. Cir. 2003)
- Information Handling Servs., Inc. v. Def. Automated Printing Servs.*, 338 F.3d 1024 (D.C. Cir. 2003)
- Missouri Pub. Serv. Comm'n v. FERC*, 337 F.3d 1066 (D.C. Cir. 2003)
- Kappus v. Commissioner*, 337 F.3d 1053 (D.C. Cir. 2003)
- United States v. Lafayette*, 337 F.3d 1043 (D.C. Cir. 2003)
- Lathram v. Snow*, 336 F.3d 1085 (D.C. Cir. 2003)

*Transp. Intelligence, Inc. v. FCC*, 336 F.3d 1058 (D.C. Cir. 2003)

*United States v. Pindell*, 336 F.3d 1049 (D.C. Cir. 2003)

*United States v. Brown*, 334 F.3d 1161 (D.C. Cir. 2003)

*Ark Las Vegas Restaurant Corp. v. NLRB*, 334 F.3d 99 (D.C. Cir. 2003)

*Fontana v. White*, 334 F.3d 80 (D.C. Cir. 2003)

*United States v. Powell*, 334 F.3d 42 (D.C. Cir. 2003)

*Sec'y of Labor v. Excel Mining, LLC*, 334 F.3d 1 (D.C. Cir. 2003)

*Public Citizen, Inc. v. HHS*, 332 F.3d 654 (D.C. Cir. 2003)

*United States v. Johnson*, 331 F.3d 962 (D.C. Cir. 2003)

*United States v. Hinds*, 329 F.3d 184 (D.C. Cir. 2003)

*Morgan v. Fed. Home Loan Mortg. Corp.*, 328 F.3d 647 (D.C. Cir. 2003)

*United States v. Hall*, 326 F.3d 1295 (D.C. Cir. 2003)

*Rancho Viejo v. Norton*, 323 F.3d 1062 (D.C. Cir. 2003)

*Fund for Animals, Inc. v. Norton*, 322 F.3d 728 (D.C. Cir. 2003)

*Waters v. Rumsfeld*, 320 F.3d 265 (D.C. Cir. 2003)

*Lee Lumber & Bldg. Material Corp. v. NLRB*, 310 F.3d 209 (D.C. Cir. 2002)

*United States v. Arrington*, 309 F.3d 40 (D.C. Cir. 2002)

*United States v. Brooke*, 308 F.3d 17 (D.C. Cir. 2002)

*Sturm, Ruger & Co. v. Chao*, 300 F.3d 867 (D.C. Cir. 2002)

*Republican Nat. Comm. v. Taylor*, 299 F.3d 887 (D.C. Cir. 2002)

*U.S. Air Tour Ass'n v. FAA*, 298 F.3d 997 (D.C. Cir. 2002)

*Waterhouse v. District of Columbia*, 298 F.3d 989 (D.C. Cir. 2002)

*United States v. Samuel*, 296 F.3d 1169 (D.C. Cir. 2002)

*World Wide Minerals, Ltd. v. Repub. of Kazakhstan*, 296 F.3d 1154 (D.C. Cir. 2002)

*Darrell Andrews Trucking, Inc. v. Fed. Motor Carrier Safety Admin.*, 296 F.3d 1120 (D.C. Cir. 2002)

*A.E. Staley Mfg. Co. v. Sec'y of Labor*, 295 F.3d 1341 (D.C. Cir. 2002)

*U.S. Telecom Ass'n v. FCC*, 295 F.3d 1326 (D.C. Cir. 2002)

*Watters v. Wash. Metro. Area Transit Auth.*, 295 F.3d 36 (D.C. Cir. 2002)

*Gerber v. Norton*, 294 F.3d 173 (D.C. Cir. 2002)

*Ned Chartering & Trading, Inc. v. Repub. of Pakistan*, 294 F.3d 148 (D.C. Cir. 2002)

*United States v. Wesley*, 293 F.3d 541 (D.C. Cir. 2002)

*Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506 (D.C. Cir. 2002)

*Power v. Barnhart*, 292 F.3d 781 (D.C. Cir. 2002)

*Musengo v. White*, 286 F.3d 535 (D.C. Cir. 2002)

*Breen v. Dep't of Transp.*, 282 F.3d 839 (D.C. Cir. 2002)

*Arizona v. Thompson*, 281 F.3d 248 (D.C. Cir. 2002)

*United States v. Bookhardt*, 277 F.3d 558 (D.C. Cir. 2002)

*Antelope Valley Bus Co. v. NLRB*, 275 F.3d 1089 (D.C. Cir. 2002)

*Curtin v. United Airlines, Inc.*, 275 F.3d 88 (D.C. Cir. 2001)

*RAG Cumberland Res. LP v. Fed. Mine Safety & Health Review Comm'n*, 272 F.3d 590 (D.C. Cir. 2001)

*United States v. Venable*, 269 F.3d 1086 (D.C. Cir. 2001)

*Gilvin v. Fire*, 259 F.3d 749 (D.C. Cir. 2001)

*Glob. Crossing Telecomms., Inc. v. FCC*, 259 F.3d 740 (D.C. Cir. 2001)

*Tourus Records, Inc. v. DEA*, 259 F.3d 731 (D.C. Cir. 2001)

*Pac. Bell v. NLRB*, 259 F.3d 719 (D.C. Cir. 2001)

*Students Against Genocide v. Dep't of State*, 257 F.3d 828 (D.C. Cir. 2001)

*Kirby Produce Co. v. U.S. Dep't of Agriculture*, 256 F.3d 830 (D.C. Cir. 2001)

*United States v. Webb*, 255 F.3d 890 (D.C. Cir. 2001)

*CF Indus., Inc. v. Surface Transp. Bd.*, 255 F.3d 816 (D.C. Cir. 2001)

*Al-Fayed v. CIA*, 254 F.3d 300 (D.C. Cir. 2001)

*United States v. Johnson*, 254 F.3d 279 (D.C. Cir. 2001)

*Tenet HealthSystems HealthCorp. v. Thompson*, 254 F.3d 238 (D.C. Cir. 2001)

*United States v. Green*, 254 F.3d 167 (D.C. Cir. 2001)

*Tasty Baking Co. v. NLRB*, 254 F.3d 114 (D.C. Cir. 2001)

*United States v. Saro*, 252 F.3d 449 (D.C. Cir. 2001)

*United States v. Young*, 247 F.3d 1247 (D.C. Cir. 2001)

*Halle Enters., Inc. v. NLRB*, 247 F.3d 268 (D.C. Cir. 2001)

*United States v. Greenfield*, 244 F.3d 158 (D.C. Cir. 2001)

*Gray v. Poole*, 243 F.3d 572 (D.C. Cir. 2001)

*Dynaquest Corp. v. U.S. Postal Serv.*, 242 F.3d 1070 (D.C. Cir. 2001)

*United States v. McCoy*, 242 F.3d 399 (D.C. Cir. 2001)

*Sloan v. U.S. Dep't of Housing & Urban Dev.*, 236 F.3d 756 (D.C. Cir. 2001)

*Daskalea v. District of Columbia*, 227 F.3d 433 (D.C. Cir. 2000)

*United States v. Gbemisola*, 225 F.3d 753 (D.C. Cir. 2000)

*Hi-Tech Furnace Sys., Inc. v. FCC*, 224 F.3d 781 (D.C. Cir. 2000)

*Cone v. Caldera*, 223 F.3d 789 (D.C. Cir. 2000)

*United Food & Commercial Workers Intern. Union Local 400, AFL-CIO v. NLRB*, 222 F.3d 1030 (D.C. Cir. 2000)

*Transitional Hosps. Corp. v. Shalala*, 222 F.3d 1019 (D.C. Cir. 2000)

*First Am. Discount Corp. v. CFTC*, 222 F.3d 1008 (D.C. Cir. 2000)

*Graham v. SEC*, 222 F.3d 994 (D.C. Cir. 2000)

*Natural Resources Defense Council v. NRC*, 216 F.3d 1180 (D.C. Cir. 2000)

*United States v. Johnson*, 216 F.3d 1162 (D.C. Cir. 2000)

*Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111 (D.C. Cir. 2000)

*United States v. Evans*, 216 F.3d 80 (D.C. Cir. 2000)

*El-Hadad v. United Arab Emirates*, 216 F.3d 29 (D.C. Cir. 2000)

*Allied Local & Reg'l Mfrs. Caucus v. EPA*, 215 F.3d 61 (D.C. Cir. 2000)

*Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000)

*Lomak Petroleum, Inc. v. FERC*, 206 F.3d 1193 (D.C. Cir. 2000)

*Mohave Elec. Co-op., Inc. v. NLRB*, 206 F.3d 1183 (D.C. Cir. 2000)

*Borgo v. Goldin*, 204 F.3d 251 (D.C. Cir. 2000)

*Schoenbohm v. FCC*, 204 F.3d 243 (D.C. Cir. 2000)

*McGill v. Munoz*, 203 F.3d 843 (D.C. Cir. 2000)

*Fort Sumter Tours, Inc. v. Babbitt*, 202 F.3d 349 (D.C. Cir. 2000)

*Panhandle E. Pipe Line Co. v. FERC*, 196 F.3d 1273 (D.C. Cir. 1999)

*Trunkline LNG Co. v. FERC*, 194 F.3d 68 (D.C. Cir. 1999)

*Telecom\*USA, Inc. v. United States*, 192 F.3d 1068 (D.C. Cir. 1999)

*Garvey v. Nat'l Transp. Safety Bd.*, 190 F.3d 571 (D.C. Cir. 1999)

*Novecon Ltd. v. Bulgarian-Am. Enter. Fund*, 190 F.3d 556 (D.C. Cir. 1999)

*In re United Mine Workers of Am. Int'l Union*, 190 F.3d 545 (D.C. Cir. 1999)

*United States v. Christian*, 187 F.3d 663 (D.C. Cir. 1999)



*United States v. Weathers*, 186 F.3d 948 (D.C. Cir. 1999)

*United States v. Gloster*, 185 F.3d 910 (D.C. Cir. 1999)

*In re Sealed Case No. 99-3096 (Brady Obligations)*, 185 F.3d 887 (D.C. Cir. 1999)

*United States v. Clark*, 184 F.3d 858 (D.C. Cir. 1999)

*United Seniors Ass'n, Inc. v. Shalala*, 182 F.3d 965 (D.C. Cir. 1999)

*Pioneer Hotel, Inc. v. NLRB*, 182 F.3d 939 (D.C. Cir. 1999)

*In re Sealed Case No. 97-3112*, 181 F.3d 128 (D.C. Cir. 1999) (en banc)

*Anderson v. Zubieta*, 180 F.3d 329 (D.C. Cir. 1999)

*United States v. Bridges*, 175 F.3d 1062 (D.C. Cir. 1999)

*Davenport v. Int'l Bhd. of Teamsters, AFL-CIO*, 166 F.3d 356 (D.C. Cir. 1999)

*United States v. Dozier*, 162 F.3d 120 (D.C. Cir. 1998)

*United States v. Perkins*, 161 F.3d 66 (D.C. Cir. 1998)

*Evans Fin. Corp. v. Dir., Office of Workers' Comp. Programs*, 161 F.3d 30 (D.C. Cir. 1998)

*Nat'l Ass'n of Mfrs. v. Dep't of Labor*, 159 F.3d 597 (D.C. Cir. 1998)

*Serono Labs., Inc. v. Shalala*, 158 F.3d 1313 (D.C. Cir. 1998)

*Cassell v. FCC*, 154 F.3d 478 (D.C. Cir. 1998)

*Grand Canyon Air Tour Coal. v. FAA*, 154 F.3d 455 (D.C. Cir. 1998)

*In re Sealed Case No. 96-3167*, 153 F.3d 759 (D.C. Cir. 1998)

*United States v. Glover*, 153 F.3d 749 (D.C. Cir. 1998)

*United States ex rel. Yesudian v. Howard Univ.*, 153 F.3d 731 (D.C. Cir. 1998)

*LaRouche v. Fowler*, 152 F.3d 974 (D.C. Cir. 1998)

*United States v. Gartmon*, 146 F.3d 1015 (D.C. Cir. 1998)

*United States v. Andrews*, 146 F.3d 933 (D.C. Cir. 1998)

*La. Energy & Power Auth. v. FERC*, 141 F.3d 364 (D.C. Cir. 1998)

*Appalachian Power Co. v. EPA*, 135 F.3d 791 (D.C. Cir. 1998) (per curiam, authored in part)

*Hunter-Boykin v. George Wash. Univ.*, 132 F.3d 77 (D.C. Cir. 1998)

*United States v. Davis*, 127 F.3d 68 (D.C. Cir. 1997)

*United States v. Turner*, 119 F.3d 18 (D.C. Cir. 1997)

**Opinions Concurring in Part**

*United States v. Linares*, 367 F.3d 941 (D.C. Cir. 2004)

**Opinions Concurring in Part and Concurring in the Result**

*Hutchins v. District of Columbia*, 188 F.3d 531 (D.C. Cir. 1999) (en banc) (Garland, J. et al.)

**Opinions Concurring in the Judgment/Result**

*AKM LLC v. Sec'y of Labor*, 675 F.3d 752 (D.C. Cir. 2012)

*Sottera, Inc. v. FDA*, 627 F.3d 891 (D.C. Cir. 2010)

*Bennett v. Islamic Repub. of Iran*, 618 F.3d 19 (D.C. Cir. 2010)

*Citizens for Responsibility & Ethics in Wash. v. FEC*, 475 F.3d 337 (D.C. Cir. 2007)

*Wertheimer v. FEC*, 268 F.3d 1070 (D.C. Cir. 2001)

*Pub. Citizen Health Research Group v. Food & Drug Admin.*, 185 F.3d 898 (D.C. Cir. 1999)

**Opinions Concurring in Part and Dissenting in Part**

*McDonnell Douglas Corp. v. Air Force*, 375 F.3d 1182 (D.C. Cir. 2004)

*Am. Corn Growers Ass'n v. EPA*, 291 F.3d 1 (D.C. Cir. 2002)

*United States v. Wilson*, 240 F.3d 39 (D.C. Cir. 2001)

*Ross Stores, Inc. v. NLRB*, 235 F.3d 669 (D.C. Cir. 2001)

*Berger v. Iron Workers Reinforced Rodmen, Local 201*, 170 F.3d 1111 (D.C. Cir. 1999)

**Opinions Dissenting in Part**

*FedEx Home Delivery v. NLRB*, 563 F.3d 492 (D.C. Cir. 2009)

*Ne. Beverage Corp. v. NLRB*, 554 F.3d 133 (D.C. Cir. 2009)

*United States v. Spinner*, 152 F.3d 950 (D.C. Cir. 1998)

**Dissenting Opinions**

*In re Aiken County*, 725 F.3d 255 (D.C. Cir. 2013)

*Saleh v. Titan Corp.*, 580 F.3d 1 (D.C. Cir. 2009)

*Fin. Planning Ass'n v. SEC*, 482 F.3d 481 (D.C. Cir. 2007)

*Valdes v. United States*, 475 F.3d 1319 (D.C. Cir. 2007) (en banc)

*United States ex rel. Totten v. Bombardier Corp.*, 380 F.3d 488 (D.C. Cir. 2004)

*Akinseye v. District of Columbia*, 339 F.3d 970 (D.C. Cir. 2003)

*United States v. Watson*, 171 F.3d 695 (D.C. Cir. 1999)

**Opinions Concurring in the Denial of Rehearing En Banc**

*Al-Bihani v. Obama*, 619 F.3d 1 (D.C. Cir. 2010) (Garland, J., et al.)

*Bismullah v. Gates*, 514 F.3d 1291 (D.C. Cir. 2008)

**Opinions Dissenting From the Denial of Rehearing En Banc**

*Lee v. Dep't of Justice*, 428 F.3d 299 (D.C. Cir. 2005)

**13. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held or sought elected office. Other than judicial offices, I have held the following public offices:

Special Assistant to the Attorney General, United States Department of Justice, 1979-81, appointed by Attorney General Benjamin Civiletti.

Associate Independent Counsel, In re Nofziger (Wedtech), 1987-88, appointed by the United States Court of Appeals for the District of Columbia Circuit, Special Division for the Purpose of Appointing Independent Counsels.

Assistant United States Attorney, United States Attorney's Office for the District of Columbia, 1989-92, appointed by Attorney General Richard Thornburgh.

Deputy Assistant Attorney General, Criminal Division, United States Department of Justice, 1993-94, appointed by Attorney General Janet Reno.

Principal Associate Deputy Attorney General, United States Department of Justice, 1994-97, appointed by Attorney General Janet Reno.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was a volunteer for presidential candidates William J. Clinton in October 1992, Michael Dukakis in October 1988, and Walter Mondale in 1983-84. As a student, I worked parts of two summers in 1972 and 1974 for the campaign of Representative Abner Mikva in my congressional district.

14. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;
    - 1978-79 Supreme Court of the United States  
Law Clerk, Justice William J. Brennan, Jr.
    - 1977-78 United States Court of Appeals for the Second Circuit  
Law Clerk, Judge Henry J. Friendly

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1993-97	United States Department of Justice Principal Associate Deputy Attorney General 1994-97 Deputy Assistant Attorney General Criminal Division, 1993-94 950 Pennsylvania Avenue, NW Washington, DC 20530
1992-93	Arnold & Porter (Now Arnold & Porter Kaye Scholer LLP) Partner (Now at) 601 Massachusetts Avenue, NW Washington, DC 20001
1989-92	United States Attorney's Office for the District of Columbia Assistant United States Attorney 555 4 <sup>th</sup> Street, NW Washington, DC 20530
1981-89	Arnold & Porter (Now Arnold & Porter Kaye Scholer LLP) Partner, 1985-89 Associate, 1981-85 (Now at) 601 Massachusetts Avenue, NW Washington, DC 20001
1987-88	In re Nofziger (Wedtech) Associate Independent Counsel (part time) (Then at) 1201 Pennsylvania Avenue, NW Washington, DC 20530
1979-81	United States Department of Justice Special Assistant to the Attorney General 950 Pennsylvania Avenue, NW Washington, DC 20530

1978            Arnold & Porter  
(Now Arnold & Porter Kaye Scholer LLP)  
Summer Associate  
(Now at) 601 Massachusetts Avenue, NW  
Washington, DC 20001

1977            Arnold & Porter  
(Now Arnold & Porter Kaye Scholer LLP)  
Summer Associate  
(Now at) 601 Massachusetts Avenue, NW  
Washington, DC 20001

- iv. Whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

- v. Whether you have held any judicial office, including positions as an administrative law judge, on any U.S. federal, state, tribal, or local court and if so, please provide the name of the court, the jurisdiction of that court, whether the position was appointed or elected, and the dates of your service.

1997-present    United States Court of Appeals for the  
                         District of Columbia Circuit  
Circuit Judge, 2020-present  
Chief Judge, 2013-2020  
Circuit Judge, 1997-2013  
E. Barrett Prettyman United States Courthouse  
333 Constitution Avenue, NW  
Washington, DC 20001

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

After completing my clerkships, I served from 1979-81 as Special Assistant to the Attorney General. In that position, I was the point of contact for the Civil and Antitrust Divisions, and had some miscellaneous responsibilities in other areas, including some criminal matters.

From 1981-85, I was an associate and from 1985-89 a partner at Arnold & Porter (now Arnold & Porter Kaye Scholer LLP). I had a general litigation practice that included administrative, antitrust, civil, criminal, and appellate

matters. During that period, I participated as a defense counsel (primarily arguing legal motions) in a 2-month criminal bid-rigging trial and as a trial counsel for the Maryland Deposit Insurance Fund in a 4.5-month civil trial against the officers and directors of a failed savings & loan. While at Arnold & Porter (now Arnold & Porter Kaye Scholer LLP), I also served, from 1987-88, as a part-time associate independent counsel in the Nofziger investigation and trial. During my career in private practice, I participated in every phase of complex civil and criminal litigation, including initial complaints, discovery, depositions, motions, trial, and appeal.

In 1989, I left Arnold & Porter (now Arnold & Porter Kaye Scholer LLP) to become an Assistant United States Attorney in the District of Columbia, serving until the late summer of 1992. As an AUSA, I investigated and prosecuted narcotics trafficking, public corruption, and government fraud cases. During that period, I tried 12 jury cases. I also participated in the full range of other judicial proceedings, including preliminary examinations, detention hearings, arraignments, motions hearings, pleas, and sentencing. I also planned and approved investigations, search warrants, and undercover operations. Among the investigative matters in which I was involved were the investigation of the Bank of Credit and Commerce International (BCCI), which led to a guilty plea by the bank, and of Mayor Marion Barry, which led to the indictment of the Mayor. (The case was tried by two of my colleagues.)

I briefly returned to Arnold & Porter (now Arnold & Porter Kaye Scholer LLP) as a partner in 1992-93. My practice involved general litigation and counseling in the civil, criminal, and antitrust fields.

From 1993-94, I served as a Deputy Assistant Attorney General in the Criminal Division of the Department of Justice, where my responsibilities included supervision of the Division's Appellate and Fraud Sections. I also shared responsibility for the approval of Title III (wiretap) applications nationwide. In addition, I helped develop the Department's National Anti-Violent-Crime Initiative, as well as a structure for coordinating the work of Justice Department investigative agencies.

From 1994-97, I served as Principal Associate Deputy Attorney General. In that position, my responsibilities spanned the work of the Department of Justice, including criminal, civil, antitrust, appellate, espionage, and national security matters. The majority of my work focused on criminal and law enforcement issues. This included supervision of some of the Department's most significant criminal investigations and prosecutions, including the Oklahoma City bombing and UNABOM cases. In the spring of 1995, I was the lead Justice Department prosecutor on site in Oklahoma City, responsible for nationwide prosecution efforts and the initial proceedings against Timothy McVeigh and Terry Nichols. After putting together the trial team, I returned to Washington, where I continued to supervise the case. Upon my return, I

drafted the Department's critical incident response plan, worked on intra- and inter-agency plans for responding to terrorist attacks, and oversaw the United States Marshals Service's vulnerability assessment of federal facilities.

- ii. Your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As an attorney for the Department of Justice, my client was the United States. As Principal Associate Deputy Attorney General, my areas of responsibility cut across the work of the Department. As noted above, the majority of my work focused on criminal and law enforcement matters, but it also included civil, antitrust, appellate, espionage, and national security matters. As Deputy Assistant Attorney General in the Criminal Division, my work was limited to criminal matters, including supervision of the Division's Appellate and Fraud sections. As an Assistant United States Attorney, I prosecuted narcotics trafficking, public corruption, and government fraud cases. As Special Assistant to the Attorney General, my focus was on civil and antitrust matters.

As an attorney in private practice, my clients were corporations, individuals, and the State of Maryland. My areas of concentration included administrative, antitrust, civil, criminal, and appellate law. My practice primarily involved litigation, but also included counseling.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

(The percentages below are an estimate based on my recollection of the time.)

As a Department of Justice employee, the percentage of my practice that involved litigation and the frequency of my court appearances varied. From 1993-97, about 15% of my time involved supervision of matters in litigation. In April and May of 1995, I regularly appeared in federal district court in Oklahoma in proceedings relating to the Oklahoma City bombing case. From the fall of 1993 through 1994, I appeared in court twice (once in the United States Court of Appeals for the District of Columbia Circuit and once in the United States District Court for the District of Columbia). As an Assistant United States Attorney for the District of Columbia from 1989-92, almost 100% of my work involved litigation and I appeared in court very frequently, at times almost daily. As an Associate Independent Counsel from 1987-88, I appeared in court frequently. As Special Assistant to the Attorney General in 1979-81, I appeared once in the United States Court of Appeals for the Ninth Circuit.

As an associate and then partner at Arnold & Porter (now Arnold & Porter Kaye Scholer LLP) during 1981-89, about 75% of my practice involved litigation, and the frequency of my court appearances varied. I appeared frequently in 1983-84 and in



1987-88, and occasionally in other years.

- i. Indicate the percentage of your practice in:
  - 1. federal courts:
  - 2. state courts of record:
  - 3. other courts:
  - 4. administrative agencies:

Overall, approximately 90% of my practice was in federal court, except during 1989-92 when the appearances were 100% in federal court, and during 1987-88 when the appearances were approximately 80% in state court and 20% in federal court. A small percentage of my practice in the early years involved administrative proceedings.

- ii. Indicate the percentage of your practice in:
  - 1. civil proceedings:
  - 2. criminal proceedings:

As a prosecutor from 1989-92, 100% of my practice was criminal. The same was true during my service in the Criminal Division from 1993-94. During my time in the Office of the Deputy Attorney General, about 70% of my work involved criminal and law enforcement matters. At Arnold & Porter (now Arnold & Porter Kaye Scholer LLP), less than 20% of my practice was criminal, and the balance was civil.

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried fifteen cases total, including one case as chief counsel for the United States; nine cases as sole counsel for the United States (including one case in which the defendant pleaded to the indictment mid-trial); three cases as associate counsel for the United States; one case as associate counsel for the State of Maryland Deposit Insurance Fund; and one case as associate counsel for Commonwealth Electric Co., where I was responsible for legal arguments.

- i. What percentage of these trials were:
 

1. jury:	100%
2. non-jury:	0%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable,

any oral argument transcripts before the Supreme Court in connection with your practice.

While I was at Arnold & Porter (now Arnold & Porter Kaye Scholer LLP), my practice did not focus on Supreme Court litigation, but I did participate in four matters before the Supreme Court. I have provided copies of all of the following:

1. Brief in Opposition to Petitions for Writs of Certiorari; and Brief of Respondents State Farm Mutual Automobile Insurance Company in *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983).

The National Highway Traffic Safety Administration rescinded its regulation requiring automakers to install passive restraints (automatic seatbelts or airbags) in all automobiles by 1984. The question before the Court was whether the agency's rescission of its regulation was arbitrary and capricious. We argued, on behalf of respondent State Farm, that the agency's decision was arbitrary and capricious because it ignored existing effective restraints and inappropriately relied instead on automakers' assertions that they would install seatbelts that could be easily detached and hence would not increase safety. The Supreme Court held that the agency's action was arbitrary and capricious.

2. Reply to Motion to Dismiss on behalf of Wisconsin Elections Board in *Wisconsin Elections Board v. Republican Party of Wisconsin*, 469 U.S. 1081 (1984).

As of counsel for the appellant Elections Board, I was on a Reply to a motion to dismiss this case. The appellees had advised the Court that there was no longer a matter in controversy before the Court and suggested that the judgment below be vacated. The Reply advised the Court that the appellants did not oppose entry of an order vacating the judgment and remanding with instructions to dismiss appellees' complaint. The Supreme Court issued that order.

3. Brief for the Speaker of the House of Representatives and Chairman of the Committee on the Judiciary as Amici Curiae in *Nat'l Org. for Women v. Idaho*, 459 U.S. 809 (1982).

A district court had declared that Congress' extension of time for the ratification of the Equal Rights Amendment was null and void, and that any state could rescind its prior ratification of the amendment without regard to a possible decision by Congress. On behalf of the Speaker and Chairman, we argued that the Court should reverse the decision of the district court because the two issues upon which it had ruled presented non-justiciable political questions. Thereafter, the Court invited responses to the suggestion that the judgment of the district court be vacated on grounds of lack of ripeness, and we filed a motion on behalf

of the Speaker and Chairman for leave to file as amici curiae in support of that suggestion. The Supreme Court ultimately vacated the decision of the district court and remanded for dismissal of the case as moot.

4. Petition for Writ of Certiorari on behalf of Betty G. Browning in *Browning v. Clerk, United States House of Representatives*, No. 86-547, *cert. denied*, 479 U.S. 996 (1986).

Betty Browning was the first African-American Official Reporter employed by the United States House of Representatives. When she was dismissed from her position, she filed suit under the Fifth Amendment, alleging that she had been dismissed because of racial animus. The District of Columbia Circuit held that the dismissal was shielded from judicial review by the Speech or Debate Clause because Browning's duties were directly related to the due functioning of the legislative process. We argued in the petition for certiorari that the D.C. Circuit's decision was inconsistent with that of other circuits, one of which had held that congressional personnel decisions were not immunized by the Clause and another of which had held that only personnel decisions involving employees with meaningful input into the legislative process were immunized. We also argued that the Circuit's decision failed to strike a balance between the Speech or Debate Clause and the Fifth Amendment. The Supreme Court denied the petition. Twenty years later, in *Fields v. Office of Eddie Bernice Johnson*, 459 F.3d 1 (D.C. Cir. 2006) (en banc), a case in which I did not participate, the D.C. Circuit rejected the test it had employed in *Browning*.

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States v. Kaczynski*, No. MCR 96-6-H-CCL (D. Mont. 1996); No. CR S-96-259 (E.D. Cal. 1997). I was the supervising attorney for the prosecution of Theodore Kaczynski, the "Unabomber," until I became a Circuit Judge. Kaczynski carried out sixteen bombings (two of which were defused before explosion) over a seventeen-year period, killing three people and injuring twenty-nine. On June 28, 1995, he also threatened to attack a flight out of Los Angeles

International Airport. He was apprehended in Montana on April 3, 1996, and charged with federal weapons violations in Montana the following day. On June 18, 1996, he was indicted in California for four bombings that had occurred in Sacramento, and on November 30, 1996, he was indicted in New Jersey for a 1994 bombing that killed an advertising executive. My participation in the case ended when I became a judge of the District of Columbia Circuit in April 1997. On January 22, 1998, after the district court (E.D. Cal.) rejected his request to represent himself, Kaczynski pled guilty to all charges and was sentenced to life imprisonment without the possibility of parole.

- a. I worked on the case from 1995 through March 1997.
- b. The District Judges were Garland Burrell (E.D. Cal.), Charles Lovell (D. Mont.), and Dickinson Debevoise (D.N.J.).

c. Co-counsel: Robert Cleary  
 Then – United States Attorney’s Office for the District of New Jersey  
 Now – Proskauer Rose  
 Eleven Times Square  
 New York, NY 10036  
 (212) 969-3340

Stephen Freccero  
 Then – United States Attorney’s Office for the Northern District of California  
 Now – Marin County Superior Court  
 3501 Civic Center Drive  
 San Rafael, CA 94903  
 (415) 444-7020

Steven Lapham  
 Then – United States Attorney’s Office for the Eastern District of California  
 Now – Sacramento County Superior Court  
 9605 Kiefer Blvd  
 Sacramento, CA 95827  
 (916) 875-5108

Opposing counsel: Quin Denvir  
 Then – Federal Public Defender of Sacramento  
 Now – Lightfoot Steingard & Sadowsky LLP  
 800 Wilshire Boulevard – Suite 1050  
 Los Angeles, CA 90017  
 (213) 260-9449

Judy Clarke

Then – Federal Public Defender of Eastern Washington and Idaho

Now – Clarke & Rice  
1010 Second Avenue – Suite 1800  
San Diego, CA 92101  
(619) 308-8484

Gary Sowards  
McBreen & Senior  
1900 Avenue of the Stars – 11<sup>th</sup> Floor  
Los Angeles, CA 90067  
(312) 552-5300

2. *United States v. McVeigh*, 896 F. Supp. 1549, No. M-95-98 (W.D. Okla. 1995), and *United States v. Nichols*, 897 F. Supp. 542, No. M-95-105 (W.D. Okla. 1995). These cases involved the investigation and prosecution of the perpetrators of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City. Beginning two days after the bombing in April 1995, through the end of May, I was the lead Department of Justice prosecutor on site in Oklahoma City, responsible for emergency coordination of nationwide prosecution efforts and for handling court proceedings in Oklahoma City, including the preliminary hearings of Timothy McVeigh and Terry Nichols. The magistrate judge found probable cause with respect to both defendants and held both without bond. Thereafter, I helped put in place a long-term prosecution team for the indictment and trial of the case and returned to Washington where I continued to supervise the prosecution. My participation in the case ended when I became a judge of the District of Columbia Circuit in April 1997. McVeigh was subsequently convicted, sentenced to death, and executed. Nichols was convicted and sentenced to life imprisonment.

- a. The bombing occurred on April 19, 1995; the preliminary hearings were held in April and May 1995; the grand jury returned indictments on August 10, 1995. I worked on the case through March 1997.
- b. The preliminary hearings were conducted before United States Magistrate Judge Ronald Howland (W.D. Okla.); the district court proceedings in Oklahoma City were before Judge David L. Russell.

- c. Co-counsel: Arlene Johnson (then Joplin)  
Then – United States Attorney's Office for the Western District of Oklahoma  
Now – Oklahoma Court of Criminal Appeals  
2100 North Lincoln Boulevard  
Suite 2  
Oklahoma City, OK 73105  
(405) 556-9600

Donna Bucella

Then – United States Department of Justice  
 Now – Guidepost Solutions  
 1130 Connecticut Avenue, NW – Suite 520  
 Washington, DC 20036  
 (202) 499-4237

Joseph Hartzler  
 Then – United States Attorney's Office for the Western  
 District of Oklahoma  
 Now – Office of the Governor  
 State of Illinois  
 Springfield, IL 62706  
 (217) 782-0244

Beth Wilkinson  
 Then – United States Department of Justice  
 Now – Wilkinson Stekloff  
 1900 M Street, NW – Suite 800  
 Washington, DC 20036  
 (202) 847-4000

Opposing counsel: Stephen Jones  
 Then – Jones, Wyatt & Roberts  
 Now – Jones, Otjen & Davis  
 214-A North Independence  
 Enid, OK 73701  
 (580) 242-5500

Michael Tigar  
 Then – University of Texas School of Law  
 Now – Duke Law School  
 210 Science Drive – Box 90360  
 Durham, NC 27708  
 (202) 549-4229

3. *United States v. Kelley*, Crim. No. 92-152 (D.D.C. 1992), *aff'd*, 36 F.3d 1118 (D.C. Cir. 1994). This case involved the investigation, prosecution, and appeal of a senior official of the United States Agency for International Development (AID) for a transnational conspiracy to bribe, to defraud the United States, and to obstruct justice in connection with two AID computer contracts in Guatemala and Washington. The bribes were laundered from Guatemalan subcontractors to black-market currency traders to Panamanian shell corporations and, through further financial transactions in the United States, to Kelley. I was the sole prosecutor at trial and argued the appeal in the District of Columbia Circuit. Kelley was convicted after trial and his conviction was affirmed on appeal. Three other participants in the crimes pled guilty.

- a. I investigated the case during 1990-92 and tried it during July and August of

1992. I argued the appeal in 1993.

- b. The case was tried before United States District Judge Stanley S. Harris (D.D.C.). The appeal was argued before Circuit Judges Douglas H. Ginsburg and A. Raymond Randolph (D.C. Cir.), and District Judge Hubert Will (N.D. Ill.).

- c. Opposing counsel: Charles F.C. Ruff (deceased)

Carol Elder Bruce  
Then – Covington & Burling  
Now – K&L Gates  
1601 K Street, NW  
Washington, DC 20006  
(202) 778-9426

4. *United States v. Richardson et al.*, Crim. Nos. 92-117 through 92-126 (D.D.C. 1992). This case involved a long-term undercover investigation (FBI Operation Inside Track) and prosecution of ten District of Columbia corrections officers and one civilian for smuggling narcotics to inmates in the District of Columbia Jail. The case involved the use of undercover agents and inmate informants, as well as audio-taped and photographed stings. I was the lead prosecutor. Ten of the eleven defendants pled guilty. One went to trial and was convicted after I left the United States Attorney's Office.

- a. The case was investigated during 1991-92; the defendants were indicted, pled guilty, and were sentenced in 1992.

- b. The case was litigated before United States District Judge Royce Lamberth (D.D.C.).

- c. Co-counsel: Wendy Wysong  
Then – United States Attorney's Office for the District of Columbia  
Now – Clifford Chance  
2001 K Street, NW  
Washington, DC 20006  
(202) 290-7634

Opposing counsel: Nathan Silver  
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Russell Canan  
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Washington, DC 20009  
(202) 276-0046

Patrick Donahue  
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(410) 280-2023

Robert Morin  
Then – Fisher, Morin & Hansen  
Now – Superior Court of the District of Columbia  
500 Indiana Avenue, NW – Room 4450  
Washington, DC 20001  
(202) 879-1550

Frederick Sullivan  
Then – McCarthy & Sullivan  
Now – Superior Court of the District of Columbia  
500 Indiana Avenue, NW – Room 4450  
Washington, DC 20001  
(202) 879-8323

James Lyons  
1350 Connecticut Avenue, NW – Suite 600  
Washington, DC 20036  
(202) 496-0722

5. *United States v. Whitehead, et al.*, Crim. No. 89-231 (D.D.C. 1991), *aff'd*, No. 91-3176, 1992 WL 20639 (D.C. Cir. Feb. 5, 1992). This case involved the investigation and trial of a New York gang trafficking in cocaine and heroin in the District of Columbia. I was sole counsel for the United States at trial. The gang's enforcer went to trial and was convicted of conspiracy to distribute cocaine; the conviction was upheld on appeal. Seven other gang members, including the leader and his principal lieutenant, pled guilty or were convicted in related cases.

- a. The case was investigated during 1989-91 and tried during April 1991.
- b. The case was tried before United States District Judge John H. Pratt (D.D.C.).
- c. Co-counsel: Eileen Mayer  
Then – United States Attorney's Office for the District of Columbia  
Last Known Address – Internal Revenue Service, Criminal



Investigation Division  
1111 Constitution Avenue, NW  
Washington, DC 20224  
(202) 514-7063

Daniel Bernstein (Retired)  
Then – United States Attorney’s Office for the District of  
Columbia  
555 4th Street, NW  
Washington, DC 20001  
(202) 514-7059

Opposing counsel: Samuel Edgar Wilhite (Deceased)

Michael Olshonsky  
1757 U Street, NW  
Washington, DC 20009  
(202) 276-0046

6. *United States v. Yansane*, Crim. No. 89-240 (1990), *aff’d in substantial part*, No. 90-3235, 1991 WL 216865 (D.C. Cir. Oct. 25, 1991). This case involved the investigation and trial of bank fraud by a Nigerian national. Victims included Riggs Bank and the Embassy of Nigeria. I was sole counsel for the United States at trial. The defendant was tried and convicted, and the conviction was affirmed in substantial part on appeal.

- a. The case was tried in July 1990.
- b. The case was tried before United States District Judge June L. Green (D.D.C.).
- c. Opposing Counsel: Patrick Donahue  
18 West Street  
Annapolis, MD 21401  
(410) 280-2023

7. *United States v. Palmer, et al.*, Crim. No. 89-036 (D.D.C. 1989), *aff’d in substantial part sub nom. United States v. Harris*, 959 F.2d 246 (D.C. Cir. 1992). This case involved the prosecution and trial of a large-scale, violent narcotics organization that imported crack cocaine from New York City and distributed it in District of Columbia public housing. This was the first mandatory life Continuing Criminal Enterprise case tried in the District. I represented the United States at trial with lead counsel Judith Retchin. The kingpin (Michael Palmer) and four lieutenants were all convicted at trial. Four other members of the organization pled guilty. The case was affirmed in substantial part on appeal. Some of the defendants later had some counts of their convictions vacated and sentences reduced based on intervening judicial decisions concerning firearms offenses and changes to relevant provisions of the U.S. Sentencing Guidelines.

- a. The case was tried during June and July of 1989.
- b. The case was tried before United States District Judge Harold Greene.
- c. Lead counsel: Judith Retchin  
Then – United States Attorney’s Office for the District of Columbia  
Now – Superior Court of the District of Columbia  
500 Indiana Avenue, NW – Room 6750  
Washington, DC 20001  
(202) 879-1866

Opposing counsel: Kenneth Mundy (deceased)

Robert E. Sanders  
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Washington, DC 20006  
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Michael J. McCarthy  
Then – McCarthy & Sullivan  
Now – Superior Court of the District of Columbia  
500 Indiana Avenue, NW  
Washington, DC 20001  
(202) 879-1169

Christopher Davis  
Davis & Davis  
1350 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 234-7300

8. *State of Md. Deposit Ins. Fund (MDIF) v. Billman, et al.*, No. 11073 (Cir. Ct., Montgomery County MD 1988), *aff’d in substantial part*, 593 A.2d 684 (Md. Ct. Spec. App. 1991). This case involved the investigation and trial of six former officers and directors of a Maryland savings and loan for breach of fiduciary duty in connection with the operation of a complex tax shelter syndication scheme known as EPIC. Funds were siphoned from the bank to the two principal defendants through a series of payments to parent companies and loans to subsidiaries and limited partnerships. I represented the plaintiff Maryland Deposit Insurance Fund during the investigation and at trial; Neil Dilloff of Piper & Marbury was lead counsel. After a more than four-month jury trial, the six defendants were held liable for \$112 million in damages to the savings and loan. The jury verdict was affirmed in substantial part on appeal. The United States Attorney’s Office for the District of Maryland later convicted the principal defendant of fraud.

- a. The case was investigated during 1986-88, and was tried from May until October of 1988.

b. The case was tried before Montgomery County (MD) Circuit Judge James McKenna.

c. Co-counsel: Neil Dilloff  
Then – Piper & Marbury  
Now – DLA Piper LLP  
100 Light Street – Suite 1350  
Baltimore, MD 21202  
(410) 580-4138

Alexander Bennett  
Arnold & Porter  
(Now Arnold & Porter Kaye Scholer LLP)  
(Now at) 601 Massachusetts Avenue, NW  
Washington, DC 20001  
(202) 942-5000

Opposing counsel: Mark Tuohey III  
Then – Reed Smith  
Now – D.C. Mayor's Office of Legal Counsel  
1350 Pennsylvania Avenue NW – Suite 419  
Washington, DC 20004  
(202) 727-6975

Eugene Propper  
Last Known Address – 1250 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 637-9000

Richard Gordin  
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1828 L Street, NW – Suite 1000  
Washington, DC 20036  
(202) 407-7272

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1050 Connecticut Avenue NW – Suite 1100  
Washington, DC 20036  
(202) 861-1612

Robert Trout  
Trout Cacheris, PLLC  
1350 Connecticut Avenue, NW – Suite 300

Washington, DC 20036  
(202) 464-3311

9. *United States v. Fischbach & Moore, Inc., et al.*, No. CR 83-169C (W.D. Wash.). This case involved the criminal prosecution of the country's five largest electrical contracting companies and their chief executives for an alleged conspiracy to fix prices on nuclear power plants. As an attorney at Arnold & Porter, I argued the legal motions for defendant Commonwealth Electric Company; lead counsel was Richard Wertheimer. All defendants were acquitted on all counts.

- a. The case was tried from November 1983 until January 1984.
- b. The case was tried before United States District Judge John C. Coughenour (W.D. Wash.)

c. Co-counsel: Richard Wertheimer (Retired)  
Then – Arnold & Porter  
Now – P.O. Box 1121  
Davidson, NC 28036  
(704) 895-1792

Allen Overcash  
Woods & Aitken, LLP  
301 South 13th Street – Suite 500  
Lincoln, NE 68508  
(402) 437-8507

Lawrence Bader  
Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, PC  
565 5th Avenue  
New York, NY 10017  
(212) 856-9440

Ronald Meister  
Cowan, Liebowitz & Latman  
114 West 47th Street  
New York, NY 10036  
(212) 790-9255

Gordon B. Spivack (deceased)  
Then – Locke Day & Lord

Jeffrey Slade  
Last Known Address – 777 Third Avenue  
New York, NY 10007  
(212) 935-0800

Opposing counsel: Anthony Nanni  
 Then – United States Department of Justice, Antitrust  
 Division  
 Now – Cadwalader, Wickersham & Taft LLP  
 700 Sixth Street, NW  
 Washington, DC 20001  
 (202) 862-2413

10. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29 (1983), *vacating and remanding State Farm Mut. Auto Ins. Co. v. Dep't of Transp.*, 680 F.2d 206 (D.C. Cir. 1982). This case involved a challenge by automobile insurers to the Department of Transportation's decision to rescind a rule requiring the installation of passive restraints (airbags or automatic seatbelts) in automobiles. I represented State Farm Mutual Insurance Company and was on the brief in both the Supreme Court and the District of Columbia Circuit, and on the papers in the agency. James Fitzpatrick of Arnold & Porter was lead counsel and argued the cases. The Supreme Court upheld State Farm's challenge to the rescission, holding that the agency's action was arbitrary and capricious and remanding the case to the agency for further consideration. A modified airbag rule was ultimately issued.

- a. The case was decided by the Department of Transportation in 1981, decided by the D.C. Circuit in 1982, and decided by the Supreme Court in 1983.
- b. The case was litigated before the Supreme Court, the United States Court of Appeals for the D.C. Circuit, and the Department of Transportation.
- c. Co-counsel: James F. Fitzpatrick  
 Arnold & Porter  
 (Now Arnold & Porter Kaye Scholer LLP)  
 (Now at) 601 Massachusetts Avenue, NW  
 Washington, DC 20001  
 (202) 942-5000

Opposing counsel: Rex Lee, in Supreme Court (deceased)  
 Lloyd Cutler, in Supreme Court (deceased)  
 David W. Allen  
 Last Known Address – National Highway Traffic Safety  
 Administration  
 (Now at) 1200 New Jersey Avenue, SE  
 Washington, DC 20590

16. **Legal Activities:** Describe the most significant legal activities you have pursued including significant litigation which did not progress to trial or legal matters that

did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

My most significant legal activities are described in the answers above. I have no recollection of ever having performed lobbying activities.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I taught Advanced Antitrust at Harvard Law School in the 1986 Winter Term. The course covered such topics as antitrust objectives, state action, political speech and petitioning, regulated industries, extraterritorial jurisdiction, antitrust standing, and remedial issues. I have provided the syllabus.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

No.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.
- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

a.& b. In connection with the nomination process, I have consulted with and will continue in the future to consult with, the Department of Justice's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I will enter into with the Department's Designated Agency Ethics Official.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

For 21 years I have tutored second through fifth grade students at J.O. Wilson Elementary School, 660 K Street, NE, Washington, DC 20002. I have driven to the school approximately twice each month to tutor students in reading and math. Throughout the 2020 pandemic, I tutored 6<sup>th</sup> grade students at Stuart-Hobson Middle School remotely, approximately once each week.

While I was in private practice, I was involved in pro bono matters providing professional assistance to disadvantaged individuals. These included: representation of an African-American stenographer in a claim of racial discrimination against her former employer, the House of Representatives; representation of a mother in a custody dispute; representation of an individual in connection with a minor criminal matter; representation of a prisoner at the request of the United States Court of Appeals for the Fourth Circuit; and representation of anti-apartheid demonstrators arrested outside the Embassy of South Africa. As part of Arnold & Porter's pro bono program, I also advised junior lawyers in their representations on such matters.

In addition, while I was at Arnold & Porter (now Arnold & Porter Kaye Scholer LLP) in the

1980s, a young man who worked as a photocopier operator at the firm asked me to help him with his writing. I worked with and mentored him over many years, both while I was in private practice and in the government, from the time we met through his successful graduation from law school and entry into the legal profession.

Finally, when I served as Principal Associate Deputy Attorney General in 1995-96, I helped develop a new pro bono policy for the Justice Department that encouraged and facilitated pro bono and other volunteer service by Department employees, including attorneys, on their own time. The policy subsequently served as the model for policies issued by other federal agencies.



**U.S. Senate  
Committee on the Judiciary  
February 23, 2021**

**“The Nomination of the Honorable Merrick Brian Garland to be  
Attorney General of the United States: Day 2”**

**Statement of Professor Josh Blackman  
South Texas College of Law Houston**

**Written Statement of Professor Josh Blackman**

Chairman Durbin, Ranking Member Grassely, thank you for inviting me to testify. My name is Josh Blackman and I am a constitutional law professor at the South Texas College of Law Houston.

I support the confirmation of Judge Garland. He should be swiftly confirmed. In my brief time today, I will discuss three current DOJ policies that I hope Attorney General Garland will maintain. First, DOJ lawyers should not give legal effect to so-called “rulemaking by guidance.” Second, Attorney General Garland should carefully scrutinize consent decrees, especially those reached through so-called “sue and settle.” Third, DOJ should not resume the settlement practice of giving “third party payments” to nonparties; that money should be restored to the Treasury. These three issues may seem fairly low-profile, but each practice will have a huge impact on the separation of powers. And these should be important to people on both sides of the aisle. I hope that Attorney General Garland will retain current DOJ policy with respect to these three issues.

First, the Department of Justice should not enforce “rulemaking by guidance.” In the past, federal agencies avoided the formal rulemaking process, and instead issued various guidance documents. For example, substantive changes to the law were made through “dear colleague letters,” “frequently asked questions,” and even online bulletins--what I called *government by blog post*.<sup>1</sup> These guidance documents are not supposed to have the force of law. However, courts grant *Auer* deference to this “subregulatory dark matter.” In 2018, Associate Attorney General Rachel Brand instructed DOJ lawyers to not treat violations of guidance documents as violations of the law. And President Trump signed Executive Orders 13891 and 13892, which ordered other agencies to adopt the principles from the *Brand Memo*. Unfortunately, President Biden rescinded those two executive orders on his first day in office. At present, the Brand Memo is still codified in DOJ regulations. I hope that Attorney General Garland will maintain the Brand Memo.

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<sup>1</sup> Josh Blackman, [Government by Blog Post](#), 11 FIU L. Rev. 389 (2016).

Second, Attorney General Garland should carefully scrutinize consent decrees. These agreements include intricate requirements that DOJ could never impose through regulation or litigation. And these consent decrees can exist in perpetuity. During this time, federal judges and court monitors can oversee state and local governments. Such agreements raise distinct federalism concerns. Indeed, many of these agreements arise from a practice known as “sue and settle.” Organizations and local governments would sue a like-minded agency, knowing there was no adversity, and reach favorable settlements. Fortunately, Attorney General Sessions took actions to restrict these consent decrees. The Justice Department imposed restrictions on consent decrees, including limits on duration, sunset provisions, and means for termination. Critically, under Attorney General Sessions’s guidelines, a consent decree could not be used to achieve a policy goal that could not be obtained through litigation. I hope Attorney General Garland will maintain this policy.

Third, the Department of Justice should return any excess settlement funds to the United States Treasury, rather than make “third party payments” to progressive groups. These payments have been criticized as “settlement slush funds.” The federal government has allowed billions of dollars to be given to third-party non-profit organizations. These special interest groups were not parties in the litigation, and were not victims of the misconduct. Indeed, Senator Grassley has observed that the Justice Department directed funds at organizations that Congress had defunded.<sup>2</sup> In this way, the executive branch bypassed the Constitution’s appropriations process. In 2017, Attorney General Sessions prohibited the inclusion of “third party payments” in settlements. Any excess funds from settlements would be restored to the United States Treasury. Attorney General Garland should maintain this policy.

Thank you for your time, and I will be happy to answer any questions.

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<sup>2</sup>

<https://www.judiciary.senate.gov/press/rep/releases/grassley-seeks-details-on-obama-admin-settlement-agreements-tied-to-third-party-donations>

**Statement of Donna A. Bucella**  
**United States Senate Committee on the Judiciary**  
**Nomination of the Honorable Merrick Brian Garland to be Attorney General of**  
**the United States**  
**February 23, 2021**

Chair Durbin, Ranking Member Grassley, and distinguished members of the Committee, thank you for this opportunity to testify at today's confirmation hearing for Judge Merrick Garland to be the Attorney General. I have had the privilege of knowing Judge Garland since 1993. We worked together at the Department of Justice from 1993 to 1997. At that time, I was the Principal Deputy Director of the Executive Office for United States Attorneys--the organization that oversees the day-to-day operations of the 94 United States Attorneys' Offices. Judge Garland and I had constant contact during these years, and I witnessed Judge Garland make sound and factually based decisions every day.

I have been honored to serve our Country in various roles, some of which include: Assistant United States Attorney for the Southern District of Florida; Director and Principal Deputy Director of the Executive Office for United States Attorneys; United States Attorney for the Middle District of Florida; Director of the Terrorist Screening Center; Assistant Commissioner, Office of Intelligence, U.S. Customs and Border Protection; and Colonel (retired) in the U.S. Army Judge Advocate Generals Corps. One of my life-changing experiences happened while working with Judge Garland in Oklahoma City after one of the most horrific domestic terrorist acts was committed on U.S. soil.

On April 19, 1995, one hundred and sixty-eight people were senselessly murdered in Oklahoma City. That day, Attorney General Janet Reno asked me to go to Oklahoma City. I went to the United States Attorney's Office to offer assistance and soon realized that all of downtown was a crime scene. Within 24 hours, Merrick arrived and immediately began leading the investigation. I had the opportunity to see Merrick deal calmly and purposefully with this horrific event. Initially, we worked out of the Command Center in the Southwest Bell Telephone Building. Downtown Oklahoma City was still in chaos; the streets were closed except to first responders and law enforcement. The structures around the Alfred P. Murrah Federal Building and the Daily Register Building were smoldering. Cars

in the parking lot were crushed from the force of the explosion. Rescue workers with their dogs walked through the rubble searching for survivors. Later, the rescue dogs were substituted for cadaver dogs and many first responders were desperate to find the remains of their co-workers, family members, loved ones, law enforcement, and government colleagues. Many federal agencies had offices in the Murrah Building. Behind that Murrah Building was the Daily Register where many victims were catastrophically impacted. On the other side of the Murrah building was the Federal Courthouse where Federal Judges worked; large shards of glass were embedded in office chairs and in the walls and other furniture. How could this have happened in America's heartland?

Merrick and I walked downtown around and through the Murrah building. As we walked by the Daycare Center, which was attached to the Murrah building, an empty silence overcame us; neither of us said anything to each other about our shock and grief--not until about twenty years later. We then went upstairs to one of the floors in the building and there we saw a desk with a chair, someone's jacket on a chair, a can of Coke, and papers still lying on the desk. Less than five feet away from where we were standing, there was nothing but open air. Without exchanging words, we knew that we had to find the perpetrators of this unimaginable terrorist act. I knew Merrick, who would be leading the investigation, would ensure that justice would be done, and it would be carried out objectively and fairly. Emotions were not part of his decision-making process.

Merrick is unwavering in doing what is right and he has always demonstrated outstanding judgment. I worked with him weeks and months after the bombing in Oklahoma City and in Denver where the trials were conducted. I saw the countless hours he devoted to make sure there were no corners cut and justice was done. Under his leadership, Merrick required the investigation be coordinated through the Western District of Oklahoma, with involvement from at least eight different jurisdictions around the United States. It required a tremendous coordination effort which Merrick led. As is his nature, Judge Garland was committed to making sure the investigation was conducted the right way. Why? Because we owed the victims and the people of Oklahoma and the United States a thorough and fair investigation that comported with the rule of law; Merrick would accept nothing less.

Merrick relentlessly followed the law throughout this complex investigation. There were times when people wanted to help and wanted to provide evidence without a subpoena. Merrick was meticulous in requiring that subpoenas were issued and there were complete records of how evidence was obtained. He made sure applications for wiretaps, search warrants and other investigative tools were reviewed and approved by each Federal District where the evidence was sought, as well as by the FBI, and the Department of Justice.

Judge Garland was committed to making sure the public knew what was occurring and that all hearings were open to the press, including during the arrest of Timothy McVeigh. McVeigh was transported to Tinker Air Force Base for his initial appearance. Tinker officials did not allow visitors for security reasons, but Merrick directed that the press be present for McVeigh's initial appearance. Following the law, Merrick argued that McVeigh was a risk of flight and a danger to the community. Merrick met with and worked with McVeigh's and Nichols' attorneys to make sure their clients' rights were protected.

Merrick worked closely with federal, state, local officials, agents, and first responders. He made sure all voices were heard and there were many voices. Merrick is a collaborator and a consensus builder. He is always willing to tackle the difficult issues head on. While many in law enforcement had their own opinions as to how the investigation should be conducted, Merrick welcomed and listened to diverse opinions. His sense of collegiality, fairness, and objectivity earned the respect of even those who may not have agreed with his decisions.

Merrick helped select the trial team and led them throughout the trials of both McVeigh and Nichols. He met with the prosecutors, defendants' lawyers, and agents throughout the entire process.

Merrick's commitment to victims' rights was strong and enduring. He listened to and ensured that victims and survivors were heard during the investigation and trial. He went so far as to assign a federal prosecutor to work with the victims so they would understand the legal proceedings.

Judge Garland has dedicated most of his professional life to public service which includes his two decades on the bench. He is brilliant, thoughtful, kind, empathetic, compassionate, and down to earth. He is a serious person and does

not shy away from making the hard decisions. He is a man of integrity, honesty, and fairness. I can attest to all of this because I know him, was there with him in Oklahoma City, and have worked with him in good times and in bad. He has committed his life to our Country. He is extraordinarily well qualified to be our Attorney General. Thank you for allowing me the privilege to share my thoughts regarding the qualifications of Judge Garland. I welcome any questions you may have.

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**STATEMENT OF  
WADE HENDERSON, INTERIM PRESIDENT & CEO,  
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**HEARING ON  
THE NOMINATION OF JUDGE MERRICK GARLAND TO BE ATTORNEY  
GENERAL**

**COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
FEBRUARY 23, 2021**

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**Vice Chairs**  
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American Civil Liberties Union  
Fawn Sharp  
National Congress of American Indians  
Maria Town  
American Association of  
People with Disabilities  
Richard L. Trumka  
AFL-CIO  
Randi Weingarten  
American Federation of Teachers  
John C. Yang  
Asian Americans Advancing Justice |  
AAJC

**Interim President & CEO**  
Wade Henderson

Chairman Durbin, Ranking Member Grassley, and members of the committee: I am Wade Henderson, interim president and CEO of The Leadership Conference on Civil and Human Rights. Thank you for the opportunity to speak on behalf of The Leadership Conference in support of the confirmation of Judge Merrick Garland to be the next United States Attorney General.

The Leadership Conference on Civil and Human Rights is the nation's oldest, largest, and most diverse coalition of civil and human rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. The Leadership Conference consists of more than 220 national organizations and provides a powerful unified voice for the many constituencies of the coalition: people of color, women, children, people with disabilities, LGBTQ people, older Americans, labor unions, major religious groups, civil libertarians, and human rights organizations. I am privileged to bring the voices of this community to today's hearing.

**The Recent Erosion of the Department of Justice's Sacred Duty**

The Leadership Conference has been profoundly troubled by the leadership, the overall change in mission, and many of the policy decisions that emanated from the Department of Justice (DOJ) under Attorneys General Sessions and Barr. In our democracy, the attorney general is supposed to be the people's lawyer, not the president's lawyer, and has a sacred duty to enforce our nation's laws without prejudice and with an eye toward justice. Indeed, as he introduced Judge Garland to the public, President Biden rightly instructed him: "You won't work for me. You are not the president's or the vice president's lawyer. Your loyalty is not to me. It is to the law. To the Constitution. The people of this nation." The attorney general must be seen by the public – every member of the public, from every community – as a fair arbiter of our legal system, whose sole duty is to serve them.





Unfortunately, the attorneys general who served under President Trump failed to live up to this high standard. They deeply tarnished the reputation of the Department of Justice, which has been aptly called the “crown jewel” of the federal government because of its historic commitment to integrity, independence, and civil rights enforcement. From their unconscionable validation of President Trump’s subversion of voting rights and our democracy, to their inhumane separation of immigrant families at the border, to their abuses of our criminal justice system, Attorneys General Sessions and Barr all too often served as Trump loyalists rather than independent law enforcement officials.

Nowhere has this damage been more apparent than in the Trump Justice Department’s efforts to undermine civil and human rights in America. The number of its harmful, anti-civil rights actions are far too numerous to list in their entirety, but some of the most egregious examples include:<sup>1</sup>

- Defending the spread of misinformation about the safety of mail-in voting, and defending the use of discriminatory absentee ballot witness requirements that would have been particularly harmful to people of color and voters with disabilities in the middle of a global pandemic.
- Supporting discriminatory photo ID laws, voter purges, and other right-wing efforts to restrict the fundamental right to vote.
- Defending the discriminatory efforts to add a citizenship question to the 2020 Census and to rush the count in order to subvert the rights and power of immigrants.
- Working to undermine the rights of LGBTQ employees, customers, students, athletes, and soldiers, among others, by repeatedly advancing anti-equality policies and litigation positions.
- Investigating and suing universities to try and prevent them from using race-conscious equal opportunity admissions policies.
- Implementing a “zero tolerance” program at the border, which resulted in the inhumane separation of thousands of immigrant children from their families.
- Defending the president’s discriminatory anti-Muslim travel ban.
- Defending the rescission of the Deferred Action for Childhood Arrivals (DACA) program, which provides a safe haven for 800,000 immigrants brought to the United States as children.
- Arguing in federal courts that the Affordable Care Act and its protections for more than 100 million people with pre-existing conditions are unconstitutional.
- Barring settlements that gave corporate defendants credit for supporting nonprofit organizations, chosen by defendants, to more efficiently help entire communities harmed by widespread misconduct.
- Urging the U.S. Supreme Court to allow a restrictive Louisiana abortion law to go into effect – part of an ongoing, coordinated effort across the country to eliminate access to abortion, particularly for those living on low incomes, people of color, and those in rural communities.
- Suspending all diversity and inclusion training for DOJ employees and managers.

The Trump Justice Department also turned back the clock in the critical areas of criminal justice and police reform. During the past four years, for example, the Trump DOJ:<sup>2</sup>

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<sup>1</sup> <https://civilrights.org/trump-rollbacks/>.

<sup>2</sup> *Id.*



- Failed to enforce the law and refused to engage in any systemic efforts to hold police departments accountable, rejected the use of consent decrees, and sabotaged previous DOJ efforts to reform police departments in Baltimore, Chicago, and other cities with discriminatory police practices. This failure of leadership coincided with a national reckoning with racial injustice in the wake of some of the most shocking instances of police brutality this nation has seen in decades.
- Abandoned the Obama administration's Smart on Crime initiative that had sought to ensure fair punishments for low-level, nonviolent offenders.
- Reversed the nearly two-decade moratorium on the federal death penalty.
- Rescinded policies that reduced the inherently inhumane use of private prisons.
- Closed the Office for Access to Justice, an office designed to improve civil and criminal justice in America by, for example, eliminating excessive court fees and fines.
- Sought draconian prison sentences for criminal offenders, except those who were friends and cronies of President Trump.

#### **Confirm Judge Garland to Restore the Integrity of the Department of Justice**

America is in dire need of a course correction at the Justice Department. The nation needs an attorney general with a demonstrated commitment to integrity, independence, and the aggressive enforcement of our civil rights laws. The Justice Department must embrace our nation's tremendous diversity while protecting the rights of individuals and communities that have borne the burdens of systemic discrimination and inequity.

Judge Garland, who is widely regarded as one of the top legal minds in the nation, embodies these principles and values. I first became familiar with Judge Garland when President Obama nominated him to the U.S. Supreme Court in 2016. As then president of The Leadership Conference, I had the responsibility of reviewing Judge Garland's record, and I became deeply familiar with his views as a jurist on the D.C. Circuit Court of Appeals. It was my job to present the findings of The Leadership Conference in all public forums, which included an appearance on C-SPAN's Washington Journal. I believe now what I believed then: Judge Garland is a jurist with a first-rate legal mind and great personal integrity.

We found that as a judge on the U.S. Court of Appeals for the D.C. Circuit since 1997, Judge Garland has consistently written and joined opinions that have upheld civil and human rights. Similarly, the Lawyers' Committee for Civil Rights Under Law examined Judge Garland's record on the bench and concluded: "While Judge Garland does not have an extensive body of opinions in civil rights cases, his decisions have been consistent with core civil rights principles."<sup>3</sup> And the Alliance for Justice also conducted an analysis of Judge Garland's judicial record and reached a similar conclusion.<sup>4</sup> Judge Garland's jurisprudence demonstrates a commitment to equality, fairness, and access to justice.<sup>5</sup> Frankly, he should

<sup>3</sup> <https://www.lawyerscommittee.org/lawyers-committee-releases-report-evaluating-supreme-court-nominee-judge-merrick-garlands-full-record-civil-rights-cases-issues-statement-u-s-senate-urging-immediate-hear/>.

<sup>4</sup> <https://www.afj.org/wp-content/uploads/2019/12/The-Garland-Record.pdf>.

<sup>5</sup> *Id.*

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right now be a justice on the U.S. Supreme Court, and the Senate's abject hypocrisy in refusing to consider his nomination will be an indelible stain on the integrity of this institution.

Five years later, it remains clear to us that Judge Garland understands the vital need for robust enforcement of our nation's civil rights laws. As he stated in his remarks at the January 7, 2021 event in which President Biden announced his DOJ leadership team: "ensuring the rule of law and making the promise of equal justice under law real are the great principles upon which the Department of Justice was founded and for which it must always stand. They echo today in the priorities that lie before us. From ensuring racial equity in our justice system to meeting the evolving threat of violent extremism. If confirmed, those are the principles to which I will be devoted as attorney general."<sup>6</sup>

President Biden's selection of Merrick Garland as the nation's next attorney general is an inspired choice. He, along with the rest of the leadership he selected, including The Leadership Conference's most recent president and CEO Vanita Gupta and our board member Kristen Clarke, are the right team for this trying moment. If the issue is restoring the integrity and independence of the DOJ – and it is – then Merrick Garland is particularly well-chosen. If the issue is restoring the mission of the institution, including its commitment to addressing civil rights enforcement and attacking racial inequality – and it is – then Merrick Garland's own words speak best, when he recounted how the DOJ first forged its identity fighting against the Ku Klux Klan and working to bring meaning to the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments. For these reasons, we support Merrick Garland's selection fully and without reservation and urge the Senate to swiftly confirm him.

I should be clear, however, that this support does not come without expectations for meaningful action on the restoration and enhancement of civil and human rights enforcement. Prior to the transition, The Leadership Conference circulated our coalition-wide priorities for the new administration.<sup>7</sup> These cover all agencies, as well as Congress, but the work of the Department of Justice naturally lies at the center of these priorities. And rest assured, we will continue to press the DOJ, the rest of the Biden administration, and Congress to fulfill them. But I would like to draw Judge Garland's and the committee's attention to several priorities, in particular, that the DOJ could promptly move forward in addressing.

First, regardless of what one thinks of capital punishment in theory, every year it becomes more and more clear that, in practice, its use simply cannot be defended. Its application has long been tainted by our nation's history of racial discrimination, and it can never be undone in the event of mistakes or outright prosecutorial misconduct. Every exoneration secured with the assistance of groups such as the Equal Justice Initiative and the Innocence Project raises new questions about just how many more people have died or will die for crimes they did not commit. We call upon the attorney general to work with President Biden to suspend the use of the federal death penalty, and commute those currently on death row to life imprisonment.

<sup>6</sup> <https://www.rev.com/blog/transcripts/joe-biden-introduces-doj-nominees-merrick-garland-transcript>.

<sup>7</sup> <https://civilrights.org/2020/12/02/the-leadership-conference-outlines-priorities-for-the-incoming-administration-and-congress/#>.



Second, the DOJ has the authority and obligation to address the human rights catastrophe playing out in our federal prisons as the COVID-19 crisis continues. Already abysmal prison conditions have been exacerbated during this pandemic, with people of color suffering and dying from COVID-19 inside prisons at even higher rates than outside of prisons.<sup>8</sup> We call upon the attorney general to use all authority available to reduce prison populations wherever possible, and to improve support for institutional responses to COVID-19 where release is not possible.

Third, since the 2020 Presidential election, legislators in 28 states have either introduced, pre-filed, or carried over 106 bills<sup>9</sup> to restrict voting access. These proposals primarily seek to: (1) limit voting by mail; (2) impose stricter voter ID requirements; (3) limit proven pro-voter registration policies; and (4) enable more aggressive voter roll purges. Many of these actions are aimed squarely at communities of color, which only heightens the imperative for the DOJ to aggressively enforce the Voting Rights Act (VRA), including the general anti-discrimination provisions of Section 2, the bail-in provisions of Section 3(c), and the federal observer and election monitoring provisions of Sections 3(a) and 8, in state and local jurisdictions, and vigorously defend the provisions of the VRA against constitutional challenge.

Fourth, during the last administration, we saw with collective horror the ways in which the attorney general abused his power to target people of color who were protesting for racial justice. We urge Judge Garland to ensure that investigations and prosecutions are reviewed and do not perpetuate the unjust and racist decision-making embodied by the last administration.

Fifth, just as Defense Secretary Lloyd J. Austin III convened the military chiefs and civilian secretaries of the armed forces to order a stand-down to discuss the threat posed by white supremacy, and has committed to take additional steps to address it, it is essential that the next attorney general take steps to address white supremacy in federal law enforcement.

Sixth, the Justice Department must also reverse course to vigorously enforce our laws after four years that saw a 90 percent reduction in corporate penalties and enforcement actions. The burden of that neglect has fallen disproportionately (as it always does) on the most vulnerable among us. DOJ must recognize that our pollution control systems have long sacrificed the health of marginalized communities, that our public lands policies have deprived indigenous communities of sacred lands, and that federal policies place the greatest burdens of the growing climate crisis on those least able to bear them. We urge the attorney general to make a strong commitment to – and follow through on – advancing environmental justice.

Seventh, the Justice Department must use all of the tools at its disposal, including over 50 federal criminal statutes that apply to domestic terrorism and over a dozen other criminal statutes and authorities to prioritize and address white nationalist violence now. Rather than supporting a new domestic terrorism charge that is unnecessary and would not only delay justice, but also harm the very same communities targeted by white nationalists, the Justice Department must ensure accountability now.

<sup>8</sup> <https://www.themarshallproject.org/2020/12/18/1-in-5-prisoners-in-the-u-s-has-had-covid-19>.

<sup>9</sup> <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-january-2021>.

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And finally, we applaud President Biden's commitment to close Guantanamo,<sup>10</sup> and we encourage Judge Garland to work with the White House and his counterparts at the Departments of Defense and State to make this very long-overdue goal a reality.

### Conclusion

The need for robust federal civil rights enforcement has never been more important for this country. A well-functioning Justice Department can transform America and improve the lives of our communities. This nation needs a Justice Department that will do everything in its power to provide equal justice and fight for voting rights, police reform, criminal justice, LGBTQ equality, disability rights, environmental justice, reproductive freedom, the rights of working people, and other pressing civil and human rights issues. We need an attorney general at its helm who knows the Justice Department well, and who can pick up from where the Obama administration left off and go bolder. We need an attorney general who will reinstate DOJ's historic commitment to integrity, independence, and vigorous civil rights enforcement. Judge Garland would be such an attorney general, and is a fitting choice to lead the Justice Department at this crucial moment. We urge the Senate to confirm him as soon as possible.

Thank you for giving me the opportunity to present the views of The Leadership Conference. I would be pleased to answer any questions you may have.

Sincerely,

Wade Henderson  
Interim President and CEO

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<sup>10</sup> <https://www.reuters.com/article/us-usa-biden-guantanamo-exclusive/biden-launches-review-of-guantanamo-prison-aims-to-close-it-before-leaving-office-idUSKBN2AC1Q4>

**Statement of Judge Ken Starr (D.C. Cir.-Ret.)**  
**in support of the nomination of Judge Merrick Garland**  
**February 23, 2021**

It is an honor and privilege to have been invited to testify today. I do so in full support of Judge Merrick Garland's nomination as the 86th Attorney General of the United States.

Since General Washington's nomination in 1789 of Governor Edmund Randolph of Virginia to serve as our nation's first Attorney General, few nominees to this vitally important office have come before the Senate with the extraordinary array of credentials as Judge Garland. His unparalleled record of distinguished service both to the Department of Justice and to the federal judiciary has sparked enthusiastic support and admiration from both bench and bar, and from Republicans and Democrats alike. Justly so.

In light of all that has been said and written, let me point to two sterling qualities of Judge Garland that warrant special mention: First, the universal respect that the Judge garnered on the D.C. Circuit during his years of service as Chief Judge, not only as a superb jurist but as a leader of the court – a leader who listened carefully to his colleagues and treated all persons in the court family with dignity and respect; second, Judge Garland's generosity of spirit reflected in his many years of selfless dedication in tutoring elementary school students in our nation's capital.

Coupled with his unquestioned integrity and powerful intellect, these leadership qualities will stand him in good stead as the nation's top lawyer and chief law enforcement officer.

History teaches us that the role he will soon be occupying, if this body sees fit to confirm his nomination, is extraordinarily difficult. My former boss, Attorney General William French Smith, likened the job to that of the captain of the javelin team who elected to receive. When asked why he was stepping down early in President Reagan's second term, the nation's 74th Attorney General replied: "Because I want to get my First Amendment rights back." And that was long before the Age of Twitter.

It's a hard job. Brickbats are inevitable. Controversy – at times bitter – goes with the territory. Two dimensions of the challenge ahead merit special mention. The

first – the integrity and wisdom of decision-making throughout the Department will continually be drawn into question. In no arena of Attorney General decision-making is this more salient than in criminal investigations and prosecutions, especially those touching on sensitive relationships at the seat of power.

### **Politically-sensitive investigations**

Consider the example of Attorney General Janet Reno during the Clinton Administration. She was vehemently criticized for her decisions to appoint several independent counsels during President Clinton's first term. Yet, as she made clear, the law then in effect – the independent counsel provisions of the Ethics in Government Act – required no less. To her credit, Attorney General Reno was determined to follow the law. That was, as she rightly saw it, her fundamental duty as the Attorney General of the United States. Her steely determination to do the right thing was mirrored by the FBI Director at the time, Judge Louis Freeh, himself a paragon of rock-ribbed integrity.

Integrity. This bedrock requirement of life at the Justice Department is frequently described as “independence.” But as Judge Garland fully understands, in our constitutional architecture, Executive power is vested in the President. How can any Attorney General be truly “independent” if he or she serves at the pleasure of the President?

Indeed, in the immediate wake of Watergate, when the integrity of the Justice Department's leadership had been severely compromised, Senator Sam Erwin of North Carolina introduced a bill that would have removed the Department from the President's control and re-constituted it as an independent agency in the nature of the Federal Reserve Board. The concept was quickly scuttled, however, as sober reflection led ineluctably to the conclusion that the Attorney General, who is of course a member of the Cabinet and thus an advisor to the President, needed to be accountable to the nation's chief executive.

The answer to the riddle – the conundrum – of independence with accountability lies in the very quality that Judge Garland displayed throughout his long tenure as a judge, and in particular his years as Chief Judge – integrity and independence of judgment, guided by the rule of law. That is, the Attorney General must be permitted to make pivotally important decisions, especially in the enforcement of the nation's criminal laws, that embody integrity and professionalism. And, at

times, the resulting decision may well be one destined to draw the ire of White House personnel, perhaps even that of the President himself.

One episode during my tenure as Chief of Staff to Attorney General Bill Smith illustrates the point. President Reagan's political advisor, Lyn Nofziger, was concerned that the Justice Department was investigating three supporters of President Reagan out in California. Lyn should never have inquired, but he did. Why are these loyal supporters being investigated? To what was at best a questionable inquiry from a senior White House official, Attorney General Smith responded this way: "Lyn, we're investigating them because we think they're a bunch of crooks." Lyn Nofziger's reply: "But, Bill, they are our crooks!"

There is no such thing. Honest government -- government without fear or favor -- is what the constitutional oath demands, and what the American people deserve. Equal justice under law, without turning a blind eye because of political or relational considerations. To be fully prepared for that daunting task, few experiences are as salient as that of having served as a judge.

This commitment to integrity and professionalism was a vital source of the enduring strength of Judge Griffin Bell's contribution to the Justice Department during his justly renowned tenure as Attorney General during the Carter Administration. Although his nomination by President Carter was opposed editorially by the *Washington Post*, Judge Bell's vast judicial experience made itself manifest in the upright way in which he consistently conducted the office and made its way into the legend and lore of the Department. His aptly entitled memoir of his years at Main Justice was this: *Taking Care of the Law*.

That's the job.

The moral of the Judge Bell story: Judges tend to have the professional experience and frame of mind to be excellent, independently-minded yet accountable Attorneys General.

### **Religious Freedom**

The second broad area likely to be rife with controversy in the coming months and years is that of religious freedom. Over the past decade, a number of voices have been raised drawing into question long-settled precepts and principles of America's first freedom, guaranteed by the majestic opening words of the First



Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”

Here, again, Judge Garland’s distinguished service as a judge points to bright optimism about the future of religious liberty in America. His jurisprudence is one reflecting stability and predictability in the law. And thus it is with cheerful optimism that those of us who have long supported the Religious Freedom Restoration Act look ahead to Judge Garland’s tenure as the nation’s top lawyer.

After all, the Religious Freedom Restoration Act (RFRA) is the leading federal civil rights law that protects all Americans’ religious liberty. It was championed by Senator Ted Kennedy and Senator Orrin Hatch when it passed the Senate by a 97-3 vote and unanimously passed by the House before President Clinton enthusiastically signed this historic measure into law. For nearly three decades it has protected the religious freedom of all faiths. It is crucially important that the Department of Justice not support any legislative or executive action that would dilute the protection that RFRA generously provides to Americans of all faiths.

In addition, to its great credit, the Obama Administration refused to rescind an opinion of the Office of Legal Counsel issued in 2007 affirming that a religious organization which administers a federal grant retains its right, under the 1964 Civil Rights Act and RFRA, to hire staff who agree with its religious mission. This is fundamental to the core principle of the autonomy of religious institutions guaranteed by the Free Exercise Clause. Despite considerable pressure from outside groups, the Obama Administration was steadfast in support of that well-reasoned opinion. (The opinion is entitled “Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act,” 31 Op. O.L.C. 162 (2007)). That support should continue unabated.

In similar vein, during the Trump administration, the Justice Department issued guidance to all executive departments and agencies through a Memorandum entitled “Federal Law Protections for Religious Liberty” (82 Fed.Reg. 49668). The Memorandum examined the myriad ways in which the First Amendment and federal law protect all Americans’ rights to live according to their religious beliefs. The Memorandum is an accurate, meticulous and comprehensive overview of governing law. Consistent with the values of stability and predictability that Judge Garland has championed throughout his illustrious judicial career, that Memorandum should not be rescinded.

Finally, we likewise look with optimism to the Department of Justice, under Judge Garland's stewardship, vigorously defending rules adopted by the Department of Education that protect religious student groups. 34 CFR 75.500(d) and 76.500(d). These well-reasoned rules ensure that students of all faiths feel welcome and respected at any public college or university that receives federal grants. On January 19, 2021, the rules were challenged in federal district court in Washington, D.C. They deserve an aggressive defense.

At times, the Attorney General himself may need to step in to defend America's culture of freedom. A salient example illustrates the point: The remarkable anti-liberty position embraced by the Obama Administration, including the Justice Department, in the watershed religious freedom case of *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012), tells a cautionary tale, one signaling the profound need for constant vigilance and caution. A unanimous Supreme Court in that case roundly rejected the effort by Justice Department lawyers to erode America's first freedom. May that case be dismissed as the classic "one off," the exception to the rule that our culture of liberty merits energetic defenses mounted by the Justice Department.

### **Conclusion**

Friends of freedom are filled with optimism that, in light of his exemplary record of distinguished service to American law and our constitutional order, Judge Merrick Garland will continue to defend America's Constitution and our cherished tradition of equal justice under law. No one is above the law, and the law must be faithfully obeyed.

If confirmed, Attorney General Garland, we are confident, will preside with high professionalism and integrity, showing neither fear nor favor.

I look forward to your questions.

**Statement of Andrea Tucker**  
**United States Senate Committee on the Judiciary**  
**Nomination of the Honorable Merrick Brian Garland to be Attorney General of**  
**the United States**  
**February 23, 2021**

First, I would like to say good morning to Chair Durbin, Ranking Member Grassley, all the members of the Judiciary Committee, and my fellow witnesses. Thank you so much for having me here today.

My name is Andrea Tucker. I am a native Washingtonian and the proud mother of three scholars in DC Public Schools. I am honored to be here today and am thankful for the opportunity to come and speak on behalf of Judge Garland.

I met Judge Garland roughly five years ago when he came to my children's school to meet with one of the fifth grade students he was tutoring. Unbeknownst to me, a few months later my then-second grader would have the honor of becoming Judge Garland's next pupil. This was something that my child's teacher thought he could benefit from, specifically to help bring him out of his shell and help him with his reading comprehension.

Judge Garland normally tutors a student until they graduate Elementary school in the fifth grade and then he starts with another child in second grade. So over the last four years, Judge Garland has had weekly tutoring sessions with my son. At the end of every school year, Judge Garland always invites all of the children in the tutoring program, which he started, to the DC Circuit Court of Appeals for a tour--to see the courtroom, meet the U.S. Marshals and the Marshals' dogs, and get a feel for what the Judge does for a living. Judge Garland also has a pizza party for the students, where they exchange gifts like books and other educational materials so students can continue with their studies over the summer. One year, when my son was struggling with multiplication, Judge Garland gave him some flash cards to practice with over the summer so Judge Garland could quiz him when they returned the following school year.

Of course, this past year was a bit different due to the pandemic. Judge Garland didn't miss a beat. He quickly pivoted from tutoring in person at the school, once in person tutoring was no longer an option, and contacted the school's tutoring

coordinator to get my contact information and offered to virtually tutor my son. On top of that, he knew my son has a twin sister in the same class, so he also offered to tutor my daughter. The Judge felt like all students could benefit from tutoring and extra support, not just the ones that are behind or struggling. What parent would turn that down, especially during a time like this?

So, in the end, Judge Garland coordinated with my kids' school to get all the appropriate work packets and tutored both my children once a week over Zoom, carefully guiding them through virtual learning and their school work.

All the extra help was much appreciated. The fact that he still wanted to tutor during a pandemic and give so much of his time to both my children was amazing. This shows his dedication to our actual community and love for children.

One thing that made Judge Garland special as a tutor was that he always began each session by asking how my children were and what they had done that was fun or interesting in the last week since they met, getting to know them and engaging them personally. He made tutoring fun, interactive, and effective. Or, in the words of my daughter, "he made the math more understandable for me." I mentioned earlier that when a student graduates fifth grade, Judge Garland usually begins with another student. But as my children approached their fifth grade graduation, they asked Judge Garland if he didn't mind staying with them for the upcoming year if they were online. He quickly agreed. My children are now in sixth grade, and I can see their work with Judge Garland paying off in their grades.

When you confirm Judge Garland—and I believe you should confirm him quickly—he is eagerly looking forward to getting back to his students, and continue tutoring them, even as he settles into a new, challenging role. This speaks to the character of the man who will serve as Attorney General: he is a man who actually does what he says he will, not one who just pays lip service to helping our communities. Character, commitment, and dedication—someone who will do what they say they will do—that is what you are getting in Judge Garland.

Thank you.

**Senator Dick Durbin**  
**Chair, Senate Judiciary Committee**  
**Written Questions for Judge Merrick Garland**  
**Nominee to be United States Attorney General**  
**February 24, 2021**

1. At your hearing, you made clear you will work tirelessly to restore integrity and independence to the Justice Department. In your opening remarks and in responding to several questions, you addressed the importance and role of career Justice Department employees. I have a few additional questions on that topic.

Early in his tenure as Attorney General, Eric Holder told career DOJ professionals that the Justice Department “has aptly been described as the ‘crown jewel’ of the federal government...not because of any laws or regulations, cases or controversies, buildings or equipment, but rather because of the quality, integrity, and dedication of the people who work tirelessly to carry out the Department’s vital mission.” He went on to say that these career employees are “the backbone, the heart, and the soul” of the Department.

Unfortunately, over the last four years, many of these career employees have been publicly undermined and denigrated by Department leadership. President Trump amplified baseless lies that he was the “victim of a seditious conspiracy” at DOJ and said that Attorney General Barr should “clean house.” Barr overruled prosecutors to seek a lower sentence for Trump ally Roger Stone and to dismiss a case against Trump ally Michael Flynn, leading to a wave of resignations and a statement of protest from over 2,000 former DOJ officials.

Barr even dismissed the idea that senior officials could trust line prosecutors’ judgment. He stated: “Letting the most junior members set the agenda might be a good philosophy for a Montessori preschool, but it’s no way to run a federal agency.”

- a. **If confirmed, to what degree would you rely on the expertise of career Justice Department employees?**
  - b. **How does your previous experience as a Special Assistant to the Attorney General, as an Assistant U.S. Attorney, as a Deputy Assistant Attorney General, and as Principal Associate Deputy Attorney General inform that view?**
  - c. **Do you believe that respecting the input and experience of career professionals is an important component of ensuring the Justice Department’s independence?**
2. In the 2013 case *Shelby County v. Holder*, the Supreme Court gutted Section 5 of the Voting Rights Act (VRA) by striking down its “preclearance” formula, which required states or localities with a history of voter discrimination to receive signoff from the Justice Department before making changes to their voting laws.

Nearly eight years later, Democrats in Congress are still working to restore the VRA to ensure ballot access for all. In the meantime, Republican state legislatures have enacted a

slew of measures to undermine the franchise. We're seeing discriminatory voter ID laws, purges of voter rolls, curbs on early voting, attempts to undermine absentee voting, and polling location closures in minority precincts.

And yet, throughout the entirety of the Trump Administration, the Justice Department's enforcement of the VRA was nearly nonexistent. Until May 2020, the Administration had not filed a single new case under Section 2 of the VRA, which remains in force and prohibits any "standard, practice or procedures...which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color."

After the 2020 election, where we saw record-breaking turnout in the midst of an unprecedented pandemic, these voter suppression efforts have been dialed up. According to the Brennan Center, in 2021 alone, at least 165 bills that would restrict ballot access have already been introduced or considered in 33 states.

**a. What are your views on the state of ballot access today?**

**b. What do you view as the Justice Department's role in ensuring the right to vote?**

3. At your hearing, I shared with you a story about a visit I made to an immigration court hearing in downtown Chicago. I mentioned four-year-old Marta and six-year-old Hamilton, two victims of the Trump Administration's shameful Zero Tolerance Policy. Marta and Hamilton were represented by top-notch pro bono lawyers from a Chicago nonprofit and were thankfully reunited with their parents.

But so many immigrants moving through the immigration court system are not represented by an attorney. Moreover, as noted at your hearing, the immigration court backlog has grown considerably — from 460,000 cases in 2015 to more than 1.2 million pending cases today.

In addition to this increased backlog, the immigration courts fell victim to harmful policies propagated by the Trump Justice Department that politicized the courts and stripped them of both their independence and effectiveness. Under Trump, the Justice Department:

- Restricted immigration judges' ability to manage their own dockets and to administratively close low-priority cases;
- Established a controversial annual quota system requiring judges to decide a minimum number of cases at the expense of due process;
- Politicized the hiring process for judges, according to multiple whistleblower accounts;
- Decertified the judges' longstanding union; and
- Tried to end the highly effective Legal Orientation Program, which provides basic legal information for detained migrants.

In short, under Trump, Attorneys General Sessions and Barr treated immigration courts as yet another arm of the Trump Administration's anti-immigration machinery.

- a. Do you agree that the nation's immigration courts should operate free of undue political influence?
- b. Will you commit to work with this Committee to improve the administration of justice in immigration courts?

**Senator Grassley, Ranking Member**  
**Questions for the Record**  
**Judge Merrick Garland**  
**Nominee to be United States Attorney General**

1. Among the civil rights of Americans is the right to keep and bear arms. This has been repeatedly affirmed by the U.S. Supreme Court.

What role does the U.S. Department of Justice have in protecting this civil right, and what steps will you take to ensure it is protected?

2. As a candidate, President Biden pledged to direct his Attorney General to “deliver to him within his first 100 days a set of recommendations for restructuring the ATF and related Justice Department agencies to most effectively enforce our gun laws.”<sup>1</sup> What recommendations would you provide President Biden?
3. In the context of national security, there is often a tension between keeping Americans safe and protecting individual liberties.
  - a. As a judge, how do you weigh those competing interests against each other?
  - b. Will you change how you weigh those interests if you are confirmed as Attorney General?
4. In 2017, the Trump administration formally discontinued and repudiated Operation Choke Point. This program, which involved the Justice Department among other federal agencies, pressured banks against transacting with certain industries which, while legal and financially viable, were considered to pose a “reputation risk” to banks. The Obama/Biden administration has been accused of using Operation Choke Point to target disfavored business sectors, including makers and sellers of firearms and ammunition. More recently, the Office of the Comptroller of the Currency issued a rule that would prohibit banks from discriminating against lawful, financially sound customers for ideological or political reasons.

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

5. There are many gun control proposals being floated or introduced in Congress, including licensing and registration schemes, bans on popular types of firearms, and repeal of the Protection of Lawful Commerce in Arms Act.
  - a. Do you support the enactment of additional federal gun control laws? If so, which proposals do you support?

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<sup>1</sup> “The Biden plan to end our gun violence epidemic,” available at <https://joebiden.com/gunsafety/>.



- b. Do you believe any proposal goes too far in infringing Second Amendment rights?
6. Federal firearm laws delegate a number of technical decisions highly relevant to the legality of firearms and their accessories to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The agency has historically made case-by-case determinations that offer manufacturers and consumers very little guidance on how slight variations to existing designs might affect a product's legality. Law-abiding gun owners are rightly concerned that products they obtain lawfully and in good faith could, at the stroke of ATF's pen, later become contraband that would subject the items to forfeiture and their owners to criminal penalties.

What safeguards can ATF and DOJ provide so that these technical decisions are transparent, consistent, and fairly applied, without the political whipsawing gun owners have come to fear and expect with each change in administration?

7. During your hearing you were asked if you will support the issuance of executive orders that restrict firearm ownership.
- a. Can executive orders restrict the constitutional right to bear arms?
  - b. What executive orders would you refuse to support on the basis they would violate the right to bear arms?
  - c. What executive orders restricting firearm ownership are constitutional in your view?
8. According to press reports, the Biden administration recently reactivated a "migrant child facility" that was open "for only a month in summer 2019" during the Trump administration.<sup>2</sup> The practice of keeping children in these facilities was routinely criticized as "kids in cages" by Democrats and members of the media.
- a. What's the difference between a "migrant child facility" and a "cage"?
  - b. According to this article, as of February 21, the Biden administration had "about 7,000 children in HHS custody." How do you plan on dealing with the rise in unaccompanied minors arriving at the Southern Border?
9. The Senate Judiciary Committee received a letter supporting your nomination from the U.S. Chamber of Commerce. On March 13, 2019, Senators Schumer, Whitehouse, and 22 of their Democrat colleagues wrote a letter to the U.S. Chamber admonishing the organization as one that "has long used its considerable resources to fight legislative and administrative action on climate change."<sup>3</sup>

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<sup>2</sup> Silva Foster-Frau, "First migrant facility for children opens under Biden," Washington Post, Feb. 22, 2021, available at [https://www.washingtonpost.com/national/immigrant-children-camp-texas-biden/2021/02/22/05d6d158c-7533-11eb-8115-9ad5e9c02117\\_story.html](https://www.washingtonpost.com/national/immigrant-children-camp-texas-biden/2021/02/22/05d6d158c-7533-11eb-8115-9ad5e9c02117_story.html).

<sup>3</sup> Available at <https://www.whitehouse.senate.gov/news/release/schumer-whitehouse-lead-letter-challenging-us-chamber-of-commerce>.

- a. Why do you think an organization that “has long used its considerable resources to fight legislative and administrative action on climate change” supported your nomination?
  - b. Should you be confirmed, what effect will the Chamber of Commerce’s endorsement have on your tenure as Attorney General?
- 10. The Department of Justice has changed its litigation position in a number of cases so far since President Biden’s inauguration.
  - a. Were you consulted on any of these changes in position?
  - b. Do you agree with all of the changed positions? If you don’t agree with a change in a particular case, please explain why.
  - c. Do you anticipate weighing in on the litigation positions of any other Justice Department cases currently before the courts? If so, please list them and your rationale.
  - d. As I asked you in our phone call, will you commit to having the Department of Justice inform the Judiciary Committee on all changes in litigation position?
- 11. As many members of the Committee mentioned, you will find yourself with a lot of issues to tackle right away if you are confirmed. As you and some of my Democrat colleagues mentioned, the Department of Justice has limited resources, and thus some issues will be prioritized over others, and “prosecutorial discretion” may be employed in the immigration context due to these resource strains.
  - a. Do you plan on re-implementing the Department-wide implicit bias training instituted under former Attorney General Lynch?
  - b. If so, do you feel that such training is a higher priority than enforcing immigration laws passed by Congress?
- 12. During the second day of your hearing, Wade Henderson, Interim President and CEO of the Leadership Conference on Civil and Human Rights, said that he is “very confident in the Attorney General’s willingness to open his door to hear concerns of organizations, a vast array of whom will have access to him—the entirety of the country, truthfully—he’ll evaluate those requests and carry them out...”
  - a. Which “organizations” will “have access” to you?
    - i. If so, how will they be able to make “requests” to you and how will you evaluate them?
    - ii. If not, why was Mr. Henderson under the impression that they would?
  - b. In particular:
    - i. Will the NAACP “have access” to you?
    - ii. Will the ACLU “have access” to you?
    - iii. Will NARAL “have access” to you?
    - iv. Will Planned Parenthood “have access” to you?
    - v. Will the NRDC “have access” to you?
    - vi. Will the NRA “have access” to you?

- vii. Will the National Shooting Sports Foundation “have access” to you?
- viii. Will Everytown for Gun Safety “have access” to you?
- ix. Will the Alliance Defending Freedom “have access” to you?
- x. Will the U.S. Chamber “have access” to you?
- xi. Will the Becket Fund for Religious Liberty “have access” to you?
- xii. Will the United States Conference of Catholic Bishops “have access” to you?

13. You were asked if “the Chinese Communist Party is an enemy of the American people.” You responded that you were not well positioned to “compar[e], say, the threat from China and the threat from Russia” but that “that China is a threat with respect to hacking of our computers, hacking of our infrastructure, theft of our intellectual property.” During his confirmation hearing, Bill Barr was asked by Senator Sasse, “is Putin a friend or a foe?” Barr responded that Russia is “a potent rival of our country.”

In your personal view:

- a. Is Vladimir Putin an enemy of the United States?
  - b. Are foreign terrorist organizations like ISIS and al Qaida enemies of the United States?
  - c. Is the Chinese Communist Party an enemy of the United States?
  - d. Is the Iranian Revolutionary Guard an enemy of the United States?
  - e. Is the Communist Party of Cuba an enemy of the United States?
14. When asked about Vanita Gupta, President Biden’s nominee to be Associate Attorney General, you said, “Well, Senator, I know Vanita Gupta now quite well. I didn’t know her before, but since the nomination I have gotten the chance to talk with her and speak with her.”
- a. If you have only gotten to know Ms. Gupta since her nomination, does this mean you did not know her before her nomination?
  - b. If you didn’t know her before her nomination, how was she selected?
  - c. Did you have any input in her selection?
  - d. If your input was limited, how are you confident in senior deputies you did not choose?
15. During your hearing you were asked by Senator Cotton and me about the ongoing litigation defending the death sentences of Dzhokhar Tsarnaev and Dylann Roof. I understand that you are not willing to comment on pending litigation. But in the case of litigation defending death sentences on direct appeal *generally*—that is not with regard to Tsarnaev or Roof in particular—what factors *should* the Justice Department consider in deciding whether or not to continue to defend those sentences on direct appeal?
16. Do you think that the regulations (28 CFR §§ 26.22, 26.23) guiding opt-in assessment by the Attorney General of capital counsel certifications under Chapter 154 of Title 28 allow

for the Attorney General to reconsider a final certification decision? If so, what provision in the regulations allows for this?

17. In December 2020, the Justice Department finalized a rule prohibiting the inclusion of provisions in settlement agreements directing or providing for a payment or loan to a non-governmental person or entity that is not a party to the dispute, except in defined circumstances. The rule follows a 2017 memo from then-Attorney General Jeff Sessions, which was codified in the Department's "Justice Manual." As AG Sessions stated, "[w]hen the federal government settles a case against a corporate wrongdoer, any settlement funds should go first to the victim and then to the American people—not to bankroll third-party special interest groups or the political friends of whoever is in power." Will the Department commit to abiding by and upholding this rule? Do you think it's appropriate for the Justice Department to direct settlement funds toward third-party organizations that Congress has affirmatively defunded?
18. In 2018, the Justice Department announced that it had begun investigating potential waste, fraud, and abuse in the asbestos bankruptcy trust system. These trusts are designed to ensure that all victims of asbestos exposure—both current and future—have access to compensation for their injuries. If funds in these trusts are depleted unfairly through abuse or mismanagement, it's the future victims who will feel the impact through reduced compensation. To protect future asbestos victims and the integrity of the asbestos trust system, it's important that the Department continue its investigative and oversight work. If confirmed, will you ensure that the Department does so, and will you commit to keeping this Committee informed of its efforts?
19. Since 2018, plaintiffs' counsel have filed thousands of lawsuits and sent an untold number of settlement demand letters to business owners alleging their websites are not accessible to the blind or visually impaired, in violation of Title III of the Americans with Disabilities Act (ADA). The bulk of these claims allege that private websites qualify as places of public accommodation and that websites with access barriers—such as those without compatible screen-reading software—deny individuals the right of equal access. Will the Department provide clarity on the law by resolving the question of whether private websites fall under the ADA? And will the Department provide clear parameters and guidance on how to comply with the law?
20. Do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?
21. Will you commit, if confirmed, to both seek and follow the advice of the Department's career ethics officials on recusal decisions?
22. Are state laws protecting the unborn under the purview of the Civil Rights Division? If so, how?

23. Would the Department of Justice under your leadership defend *Roe v. Wade* in court if it were challenged?
24. Would the Department of Justice under your leadership defend *D.C. v. Heller* in court if it were challenged?
25. During your hearing you commented on the “disparate results with respect to wealth accumulation, discrimination in employment, discrimination in housing, discrimination in health care availability” relating to racial minorities. This is why now-Justice Kavanaugh has for many years sought to hire minority law clerks first at the Court of Appeals and now at the Supreme Court.
  - a. In your years on the bench, how many law clerks have you hired?
  - b. Of them, how many were Black, Hispanic, or Native American?
  - c. What affirmative steps have you taken to identify and recruit outstanding Black, Hispanic, or Native American law clerks?
26. Elite universities have had complex and often troubled relationships with racial and ethnic minorities over the years. You were asked at your hearing, for example, about the Justice Department litigation against Yale University for its alleged discrimination against Asian applicants. But these complex relationships go beyond Yale. Princeton’s President, for example, has said that “Racist assumptions from the past also remain embedded in structures of [Princeton] University itself.” According to the *New York Times*, one study showed that Harvard recruits African-American applicants who have little chance of attending “rais[ing] questions about whether such recruitment strategies amount to a cynical enterprise by college admissions offices, in which students are being sold false promises to serve the schools’ interests.”<sup>4</sup> It is perhaps, then, unsurprising that studies have shown that diverse and low-income students at elite colleges can “find the experience isolating and foreign.”<sup>5</sup>

While the causes of and proper responses to the difficulties faced by many racial and ethnic minorities at elite universities are beyond our purview here, there seems to be general agreement that they are real. With that in mind,

- a. How have you taken the challenges faced by racial and ethnic minorities in higher education into account in your clerk hiring?
- b. Recognizing that high-achieving students from diverse backgrounds come from a variety of educational settings, have you ever hired any law clerks from outside the Ivy League? If so, from which universities and how many? If not, why not?

<sup>4</sup> Anemona Hartocollis, “That Recruitment Letter From Harvard Probably Doesn’t Mean Much,” *New York Times*, Nov. 29, 2019, available at <https://www.nytimes.com/2019/11/29/us/harvard-admissions-recruit-letter.html>.

<sup>5</sup> Elissa Nadworny, “As Elite Campuses Diversify, A ‘Bias Towards Privilege’ Persists,” *NPR*, March 5, 2019, available at <https://www.npr.org/2019/03/05/699977122/as-elite-campuses-diversify-a-bias-towards-privilege-persists>.

27. Under the Religious Freedom Restoration Act the federal government cannot “substantially burden a person’s exercise of religion.”
  - a. Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?
  - b. How is a burden deemed to be “substantial[]” under current caselaw? Do you agree with this?
  
28. Last Congress, I co-authored the bipartisan Promoting Security and Justice for Victims of Terrorism Act. This bill passed Congress with support from the State Department and was signed into law by the President. It strengthens the jurisdictional provisions of my Anti-Terrorism Act of 1992 and ensures that American victims of terrorism have their day in court against the PLO and Palestinian Authority. The PLO—which has done everything possible to avoid responsibility in our justice system—challenged the constitutionality of this law in federal court. As you know, the Attorney General has the duty to defend the constitutionality of duly enacted laws when they’re challenged. If confirmed, will you commit to defending the constitutionality of the Anti-Terrorism Act and its most recent jurisdictional amendments in cases currently pending in federal court?
  
29. Under applicable law you would have the ability to appoint U.S. Attorneys, should you be confirmed. Will you commit to consulting with home-state Senators prior to any Attorney General appointments of U.S. Attorneys?
  
30. I’ve long supported the Freedom of Information Act (FOIA) and the public disclosure of government records. Transparency yields accountability, no matter who is in the White House. As Chairman of this Committee, I helped steer the FOIA Improvement Act—led by Senators Cornyn and Leahy—into law, which creates a “presumption of openness” standard. The Justice Department oversees the federal government’s compliance with FOIA.
  - a. Do you agree that FOIA is a critically important tool for holding government accountable? If confirmed, will you commit to make FOIA—and the faithful and timely implementation of the 2016 amendments—a top priority at the Department?
  - b. If confirmed, will you commit to helping advocate for more proactive disclosure of government records—not just by the Justice Department, but by the federal government overall?
  
31. As you know, enforcement of the antitrust laws is extremely important to ensure that markets are fair and participants don’t engage in abusive activity that harms consumers. I’ve been particularly active in making sure that the Justice Department and Federal Trade Commission carefully scrutinize mergers and acquisitions, as well as look out for anti-competitive behavior and predatory practices. Over the years, I’ve focused on competition issues in a couple sectors of our economy – the agriculture industry which is important to my state of Iowa, and the health care industry. Do you agree that the Justice

Department has a critical role to play in these areas? Will you commit to making antitrust enforcement a top priority for the Department under your leadership? Especially in the drug, health care and agriculture sectors?

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

33. When bringing any complicated case, resources are undoubtedly an issue. There will be future cases—both criminal and civil—where the in-house technology expertise of the Department of Justice will be vital. Do you think the Justice Department currently has enough technologists and other experts to deal with the current workload? And how can the Department ensure that a lack of expertise in these areas doesn't impact the administration of justice?

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

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

35. In environmental rulemakings and records of decision (ROD) that have already been developed by non-political career civil servants and have completed the entire permitting process—from scoping, through public comment periods, draft environmental impact statements, all the way through records of decision—should those rulemakings and RODs be defended in court by the Department of Justice? If not, why not?

36. As Attorney General, you would have broad authority to administer and enforce the Immigration and Nationality Act and issue decisions that would be binding on immigration courts, the Board of Immigration Appeals, and the Department of Homeland Security. I've long been concerned about the abuse of our asylum system.

According to Executive Office of Immigration Review statistics, from Fiscal Year 2008 through Fiscal Year 2019, for every 100 immigrants who claimed credible fear, only 14 were ultimately granted asylum.

Under the law, asylum can be granted if an individual has a well-founded fear of persecution in their home country based on race, religion, nationality, membership in a particular social group, or political opinion.

The notoriously vague “membership in a particular social group” category has created quite a few issues over the years.

- a. Do you agree with former Attorney General Sessions’ statement in *Matter of A-B-* that, as a general matter, claims related to gang violence or domestic violence committed by non-governmental actors will not qualify for asylum?
- b. Do you agree with the statement made in *Matter of A-B-* that the mere fact that a country might have problems effectively policing certain crimes – such as gang violence – or the fact that certain populations are more likely to be victims of a crime, cannot in and of itself establish an asylum claim?
- c. Do you agree that, particularly in cases involving private criminal activity, asylum adjudicators and immigration judges must consider factors such as whether or not internal relocation within an individual’s home country presents a reasonable alternative to asylum in the United States?
- d. If confirmed, do you anticipate asking for BIA cases to be referred to you in order to revisit *Matter of A-B-* or address any of its findings regarding whether being a victim of private criminal activity amounts to persecution on account of membership in a particular social group?

37. Do you think the Supreme Court should be expanded?

38. Another Justice Department nominee has said, “Yes, freedom of religion is a fundamental right, but it is not an absolute right. It cannot be used as shield to permit discrimination.”

- a. Is this a correct understanding of the First Amendment and the Religious Freedom Restoration Act?
- b. Will this be the understanding of the Justice Department, should you be confirmed?

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

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

41. Do you agree that the Religious Freedom Restoration Act requires assessing compelling government interests “to the person” substantially burdened by a government action?



- a. If not, why not?
  - b. If so, can *general* interests restrict religious liberty, or must the interests be defined more precisely?
  - c. How would you implement this principle in Justice Department guidance?
42. Judge Ken Starr, in supporting your nomination, said he was confident that your record shows you will defend religious liberty. Will you commit that the Department of Justice under your leadership will not seek to restrict the scope of or otherwise undermine the Religious Freedom Restoration Act through litigation, guidance, or legislative priorities?
43. The First Step Act became law 2 years ago, and since its passage, I've focused on the implementation of this comprehensive criminal justice law. The COVID-19 pandemic has affected implementation efforts. During the pandemic, many First Step Act authorities were used more frequently yet judiciously, such as increased review of compassionate release and elderly home detention cases.

However, the virus impeded programming available to federal prisoners. Programming to reduce recidivism is an essential part of the law, and can help non-violent inmates earn time off their sentences.

As we continue to navigate COVID-19 in prisons, how would you use your role as Attorney General to ensure that programming is available for inmates and effective in reducing recidivism?

44. It is critical that the Justice Department and Bureau of Prisons fully and expeditiously implement the First Step Act. Chairman Durbin and I sent a letter to the Justice Department Inspector General last year on this issue, but particularly in light of COVID-19. Specifically, we asked that he review the implementation of legislative authorities and directives on home confinement, preventative measures to protect prison staff and inmates, COVID-19 testing, screening and isolation measures, and availability of access by inmates to electronic communication.

If confirmed, would you provide any directives and guidance on these issues? If so, what would that look like?

45. The First Step Act requires that nonviolent inmates be given more opportunities to earn time credits as a result of participating in recidivism reduction programming. This will undoubtedly lead to more inmates being put in prerelease custody, such as halfway houses. The First Step Act authorizes \$75 million each year through FY 2023. It'll be absolutely vital that some of this funding be used for the expansion and creation of new residential reentry centers.

As Attorney General, will you use the funding available to you to adequately fund these residential reentry centers to handle the increase of inmates being put in prerelease custody?

46. The Justice Department, as part of the federal government, must enforce federal laws. An area where this has led to confusion is the enforcement of federal law in states where marijuana has been legalized. As you are aware, marijuana is a Schedule I drug under the Controlled Substances Act.
  - a. Under your leadership, how will you navigate the Justice Department's enforcement of federal law in states where marijuana has been legalized?
  - b. What do you see the role of the Justice Department to be in the changing landscape of marijuana legalization, decriminalization, and recreational use?
  - c. Do you support efforts to decriminalize or legalize marijuana?
  - d. Legalized marijuana use may contribute to increased driving deaths. How will you support efforts by local and state law enforcement to combat driving under the influence of marijuana?
  - e. While Biden is opposed to legalization of marijuana, he supports decriminalization of possession and expungements of marijuana offenses. Do you see any contradictions in President Biden's vision of maintaining the drug's federally illegal status while decriminalizing minor possession and expunging prior conviction records?
  - f. Are you aware whether drug trafficking organizations continue to operate illicit marijuana markets in states with legalized marijuana? If so, what steps will you take to combat drug trafficking organizations that may use the cover of the legal marijuana market?
47. The last two Attorneys General showed an unwavering commitment to seeking justice for vulnerable populations such as the elderly, and they both encouraged the prosecution of financial fraud and scams that target seniors during the COVID-19 pandemic. They championed training, research, victim services, and public awareness initiatives to combat elder abuse, through the Justice Department's "Elder Justice Initiative."
  - a. Will you also commit to continue the previous administration's Elder Justice Initiative and devote adequate resources to its implementation?
  - b. And will you ensure that there continues to be a prosecutor dedicated to elder abuse cases in each federal judicial district (as required under the bipartisan Elder Abuse Prevention and Prosecution Act, which I championed in 2017 with Senator Blumenthal)?
48. In August of last year, Sen. Wyden and I released a report on syndicated conservation-easement transactions. That report concluded that those transaction are abusive tax shelters and that the government should do more to stop them. The Department of Justice's Tax Division is already litigating one case against a company called EcoVest, which was featured prominently in our report. I believe it is imperative that Americans

believe the nation's tax laws are enforced fairly. If you are confirmed, can you commit that the Tax Division will do everything it can to help stop these abusive tax shelters, including seeking criminal charges where appropriate?

49. Do you believe we should be defunding, or otherwise withdrawing resources in any way, from police services, in order to redirect those resources to other government services? As Attorney General, will you take any steps to shift resources away from direct law enforcement services?
50. One area where bipartisan support could be found in combatting crime is increased Federal support to state and local law enforcement for technology. These include items like body armor, camera systems, automated fingerprint identification systems, weapons of less than lethal force. I am sure you are familiar with technology that detects gunshots, including technology that identifies gunshots and their location and transmits that information quickly to local law enforcement. Do you believe that local communities deserve increased Federal support to deploy this technology, along with other technologies?
51. As noted in media reports, the FBI waited months before pursuing sexual abuse allegations made by Olympic gymnasts against Larry Nassar. On July 9, 2018, I sent a letter requesting that the FBI provide my committee staff with a briefing on its handling of the USA Gymnastics abuse allegations. My letter also requested responses to 11 questions. Nearly three years have elapsed, and the FBI has yet to provide me with a briefing or responses to the questions I raised in this letter. To date, the FBI has indicated only that the matter had been turned over to the Office of Inspector General.
  - a. Can you commit to a date certain when I will receive a response from the Department to my letter and briefing request?
  - b. Can you commit to a date certain by which the Department will make available to my committee staff its internal report on the FBI's handling of the investigation into the Nassar allegations?
52. Prosecutors within the Human Trafficking Prosecution Unit in DOJ's Civil Rights Division work closely with federal prosecutors and law enforcement personnel to streamline human trafficking investigations, ensure consistent enforcement of trafficking statutes, and identify multijurisdictional trafficking networks. The FBI's Crimes Against Children and Human Trafficking program also focuses on detection and investigation of human trafficking crimes.
  - a. If confirmed, will you ensure that the investigation and prosecution of human trafficking offenses remains a top priority for the Department?
  - b. How will you do so?
53. In 2018, the Department of Justice launched the China Initiative, focusing on the wide number of national security threats posed by the government of the People's Republic of

China (PRC). As FBI Director Wray noted, the FBI opens a new China-related counterintelligence case about every 10 hours.

- a. Will you continue this important initiative?
  - b. In what ways do you think our response to the threat of the government of the PRC can be made more comprehensive or robust?
54. In 2020, the Department of Justice launched Operation Legend, a sustained and systematic law enforcement initiative to fight the sudden surge in violent crime that began in America's cities last summer. By the end of 2020, over 6,000 arrests had been made through Operation Legend, including 450 for homicide.
- a. Do you intend to retain or disband Operation Legend?
  - b. If you intend to disband it, how do you intend to support state and local partners to fight the recent surge in violent crime?
55. The FBI and DOJ have repeatedly indicated to this committee that a solution for lawful access to encrypted technology is needed. Do you support such a solution? What is your plan?
56. Section 3204 of the SUPPORT for Patients and Communities Act provided that specialty pharmacies may distribute Medication Assisted Treatments (MAT) directly to providers.
- a. Section 3204 of the Act requires the practitioner to administer treatment to the patient named on the prescription or dispose of the medication within 14 days of receipt of the controlled substance, a period of time which can be modified by DOJ. Comments to the DEA Interim Final Rule for the SUPPORT Act have suggested that the 14 day limit needs to be increased in order to eliminate barriers to patient access. Can you commit to considering these comments and issuing a Final Rule expeditiously?
  - b. Can you commit that the DEA will expeditiously completed rule-making under your leadership? Please describe how you will ensure this.
57. In your hearing, you indicated a willingness to work with me on classwide scheduling of fentanyl analogues. Please be as explicit as possible: do you support a permanent extension of the current Schedule I designation of fentanyl related substances that is currently set to expire in May 2021? If not, please explain why not. If so, how do you plan to support this extension?
58. During your hearing you were asked repeatedly about the death penalty. I understand your answers to mean that you do not personally support the death penalty any longer, despite righteously seeking the death penalty against terrorist Timothy McVeigh. I also understand that you have committed to following the law as enacted by the Congress, and not selectively enforcing the provisions with which you personally disagree.

Will you enforce the death penalty so long as it is the law of the land? If not, why not?

59. Do you intend to continue Operation Lady Justice? What plans to you have to alter, restrict, rebrand, or otherwise change this important initiative?
60. One thing on which there is bipartisan agreement is our mutual disdain in both parties for white supremacy and white supremacy extremism. Yet, as I stated in a recent letter to Senator Durbin, the term appears to be used out of context at times to slam conservatives, including supporters of former President Trump, who are not in fact white supremacists.

In your written statement and in your hearing, I noticed that you characterized the attack on the Capitol as having been committed by white supremacists. However you also stated that you had not been briefed yet on law enforcement's information on the Capitol attack.

What is your understanding of the involvement of white supremacists in the 1/6 attack? What is the source of your information? If someone suggested you characterize the attack as conducted by white supremacists, who suggested that to you?

61. The year 2020 was marked by a great deal of left-wing violence. Riots broke out in numerous cities. Over 900 officers were injured in the line of duty. At least 25 people died. Estimates of the damage run over 2 billion dollars. The FBI opened over 300 domestic terrorism cases in response to this violence. Nationally over 14,000 people were arrested. Notwithstanding this violence, Democratic politicians have been dismissive and the media has lumped in the riots with the peaceful protests, using the dubious terminology that there were no riots, only "mostly peaceful protests." This is contrasted with the bipartisan condemnation of the attack on the Capitol by right-leaning supporters of former President Trump.

In response to my direct question, you committed to continuing to work the over 300 domestic terrorism cases opened by the FBI in response to riots last year. I thank you for making that commitment. Senator Hirono then asked you if you would prioritize rightwing cases. Senator Hirono cited a *New York Times* article in which a small number of DOJ and FBI employees claimed that working the leftwing summer riots somehow "distracted" them from rightwing extremism. However the article notes that the FBI carries about 1,000 domestic terrorism cases in an ordinary year, and 400 were opened last summer because of the riots. It is difficult to see how a 40% increase in case load is a "distraction." If anything, leftwing terrorism and anarchist extremism seem like growth areas especially deserving of your attention.

It is my expectation that you will receive constant pressure from left-leaning media such as the New York Times and Congressional Democrats to "prioritize" rightwing terrorism over leftwing terrorism, or to ensure that "scarce resources" are devoted to right-leaning terrorism and not left-leaning terrorism. This is totally unacceptable, and I suspect it has more to do with attempting to deemphasize the very real threat of leftwing terrorism than it does with anything else.

- a. Can you reaffirm your commitment to me that you will continue to pursue the 2020 riots cases and future cases of leftwing terrorism?
  - b. Can you commit to me that if you are ever contemplating prioritizing or de-prioritizing or under-resourcing any terrorism investigations, you will first come to Congress and ask for more resources?
  - c. Do you agree that protecting Americans from all forms of domestic terrorism is a critical priority?
62. During your hearing I noted that former Attorney General Barr has observed that the FBI, while it had robust programs for white supremacism and militia extremism, lacked a similar infrastructure for anarchist extremism cases. Former Acting DHS Secretary Wolf stated this may have contributed to law enforcement being blindsided by the civil unrest that began in 2020. I asked if you will commit to reviewing your anarchist extremism program for weaknesses and fixing those weaknesses, and I understand that you will. Please explain exactly how you will conduct this review?
63. Will you keep the antigovernment extremism task force which was founded at the Justice Department last summer, and which appears sorely needed at this point in time? If not, why not?
64. I want to better understand a point you were making in your hearing. I believe you stated that you would not consider an attack on a courthouse to be domestic terrorism if it occurred at night when judges were not there. You mentioned that this would comport with a statutory definition. Title 18 of the U.S. Code, section 2331 defines terrorism:
- (5) the term “domestic terrorism” means activities that—
    - (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
    - (B) appear to be intended—
      - (i) to intimidate or coerce a civilian population;
      - (ii) to influence the policy of a government by intimidation or coercion; or
      - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
    - (C) occur primarily within the territorial jurisdiction of the United States[.]

How does burning or attacking a courthouse at night not comply with that definition? To be more specific, don't months of attacks on the federal courthouse in Portland, Oregon meet that definition? If not, why not?

65. Former Attorney General Barr launched investigations, under the Civil Rights of Institutionalized Persons Act, into how state actors may have fueled the spread of COVID-19 in public nursing homes. These investigations are even more important as we have learned that state actors may have concealed information and underreported nursing home deaths in the state of New York.

- a. If confirmed, will you set aside any partisan pressure and continue the Justice Department's investigations, under the Civil Rights of Institutionalized Persons Act, into four Democratic governors' poor handling of the COVID-19 pandemic in public nursing homes?
  - b. Will you look into the question of whether New York State officials may have deliberately misled federal investigators and the public as to the number of COVID-19 deaths which occurred in nursing homes?
  - c. Acting U.S. Attorney for the Northern District of New York, Toni Bacon, is a career prosecutor and the former Elder Justice Coordinator of the Department of Justice. Will you consider keeping her in her acting role to work on the investigation of this potential cover up in New York state until a replacement is confirmed by the Senate?
66. Former Attorney General Barr circulated an April 27, 2020 memorandum directing the Civil Rights Division and U.S. Attorney's Offices to participate, where appropriate, in civil litigation over excessive or unequal COVID-19 restrictions, including in defense of religious liberty. Will you continue the Justice Department policy, articulated in an April 27, 2020 memorandum, of participating, where appropriate, in civil litigation to defend Americans' religious freedom against unnecessary interference during the COVID-19 pandemic? If not, why not?
67. The Department of Justice's Office of Legal Counsel, in a January 2020 opinion, declared that the Equal Rights Amendment (ERA) resolution expired in 1979. Its legal opinion also indicated that Congress has no power to revive this resolution, except by re-starting the Article V process with the support of two-thirds of Congress. For the current Congress to attempt to retroactively change the deadline on this long-expired proposal would be like this Congress trying to override a veto by President Carter. Yet the Virginia General Assembly has passed a resolution purporting to ratify the ERA and claimed to be the last state needed to enact the Amendment.

The late Justice Ruth Bader Ginsburg implied that she agreed with this OLC legal opinion when she stated, last February, of the ERA proposal, "I'd like it to start over." She added that Virginia's legislative action came "long after the deadline passed....Plus, a number of states have withdrawn their ratification."

Yet some now are pressing the new Biden Administration to declare the original 1972 ERA back from the dead, without first obtaining two-thirds of votes in Congress and the consent of three fourths of the states.

The Archivist for the United States issued a press release, dated January 8, 2020, indicating that he "defers to DOJ on this issue and will abide by the OLC opinion, unless otherwise directed by a final court order." No such court order has been issued. In light of the Archivist's statement, can you give this committee your assurance that you will not direct or permit the Archivist to certify that the ERA is part of the Constitution, without a final federal court order directing such an action?

68. If any members of the Biden administration met and negotiated with Iranian leaders with the purpose of undermining the previous administration's policy, would that constitute a violation of the Logan Act? If so, do you intend to prosecute them?
69. When the Department of Homeland Security described the Supreme Court's DACA opinion as having "no basis in law," Judge Garufis, in the Eastern District of New York, took exception to the executive branch criticizing a Supreme Court opinion. He asked a career Justice Department lawyer, "I'm just wondering how a decision by the Supreme Court could be deemed by a federal agency to have no basis in law. Can you explain that to me[?]" The judge went on, "The attorney general should advise his client Mr. Wolf that it is not [a] benefit to anyone to have a federal agency take issue with a decision of the Supreme Court. I'm very troubled by anyone who would write such a thing on a document issued by a federal agency regarding a decision by the U.S. Supreme Court or any court, until it is overruled or reversed, any federal court."
- a. Under your leadership will the Justice Department agree not to "take issue with a decision of the Supreme Court"?
  - b. Under your leadership will the Justice Department and its client agencies maintain publicly that all Supreme Court holdings have a sound basis in the law?
70. Will the Justice Department under your leadership enforce the Partial Birth Abortion Ban Act of 2003?
71. Hunter Biden publicly confirmed that he is under criminal investigation regarding his taxes and financial matters. Has anyone provided you non-public information about Hunter Biden's criminal case? If so, who, when, and what was it?
72. Do you understand that if you're confirmed you'll have an obligation to ensure the Department and its components, including the FBI, respond to congressional inquiries in a timely manner?
73. Do you understand that this obligation applies regardless of whether a member of Congress is a committee chairman or ranking member?
74. I've conducted oversight of the Foreign Agents Registration Act (FARA) since April 2015. My oversight activities have been bipartisan and without regard to party or power. As a result of my oversight, I introduced the bipartisan Foreign Agents Disclosure and Registration Enhancement Act to shore up the law (S. 1762). I encourage you to review the bill.
75. My most recent FARA oversight letter focused on the extensive contacts Hunter Biden and James Biden have with the communist Chinese government. In that letter I asked the Justice Department to review whether they should've registered as foreign agents under FARA. If confirmed, will you commit to fully and completely answering that letter?



76. The Justice Department Inspector General found 17 errors and omissions in the Carter Page FISA applications. There were also 50 errors in the Woods Process for the FISA applications. Crossfire Hurricane should've collapsed under the weight of its faulty foundation and political infection. Comey, Yates, McCabe, and Rosenstein now say they wouldn't have signed the FISAs if they had known about those flaws. As I've told many nominees, you either run the Department or the Department runs you. If confirmed, what steps will you take to ensure that the government doesn't abuse its power and authorities with respect to surveilling American citizens and related FISA activity like it did under the Obama/Biden administration during Crossfire Hurricane?
77. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform.
- Have you ever hired a clerk who was in the Federalist Society?
  - Would you allow a member of the Federalist Society to serve on your staff as Attorney General?
  - Would you allow a member of the Federalist Society to serve on front-office staff within the Justice Department?
  - Would you allow a career employee who is a member of the Federalist Society to be promoted to chief, assistant chief, section head, or any other career supervisory position in the Justice Department?
78. What is your view on removing federal employees who joined the government during the last presidential administration—whether as appointees and career employees—and now hold career positions?
79. Do Blaine Amendments violate the Constitution?
80. Do you believe potential voter fraud or other elections abnormalities are concerns that the Justice Department should take seriously?
81. If the Justice Department determines that a prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department's motivations and appoint an amicus to continue the prosecution? Please explain why or why not.
82. On the night of May 29 two well-educated young attorneys in Brooklyn drove around, found a police cruiser, and threw a fire bomb at it. The incident was caught on video. When they were apprehended, the two attorneys were found to have precursor items for several more "Molotov cocktails" in their van. This was a serious crime and the lawyers have since been charged with seven felonies, including civil disorder, conspiracy to commit arson, and federal explosives charges. Many liberal media outlets have since taken up the case of the two attorneys, trying to paint them as sympathetic actors whose

hearts were in the right place and merely got caught up in events. Just this week reports emerged that the Justice Department is offering them a plea deal. Will you commit that any disposition of that case following your confirmation will neither take into account the politics of the defendants nor the influence of liberal activists and journalists on their behalf?

83. Another Justice Department nominee has said, "As a civil rights lawyer with matters that regularly go before the Supreme Court, I can't underscore how dangerous it will be to have [Judge Brett] Kavanaugh on the Court, a man who harbors such bias, rage, fury and is so easily unhinged. We should expect a spike in recusal motions for sure."
  - a. Do you agree that Justice Kavanaugh is "dangerous" and "easily unhinged"?
  - b. Are you confident that Justice Kavanaugh will be fair in hearing cases from the Justice Department under your leadership?
  - c. Do you intend to direct the Solicitor General to seek his recusal from civil rights cases?
84. Please describe the selection process that led to your nomination to be Attorney General, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).
85. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?
86. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?
87. Please explain, with particularity, the process whereby you answered these questions.

**Senator Jon Ossoff**  
**Question for the Record**  
**Senate Judiciary Committee Hearing**  
**“The Nomination of the Honorable Merrick Brian Garland**  
**to be Attorney General of the United States”**  
**Date of Hearing: Monday, February 22, 2021**

**The Honorable Merrick Brian Garland**, Nominee to be Attorney General of the United States

Will you commit to working with my office and this committee to determine how the Department of Justice can support efforts to ensure there is accountability for war crimes, atrocities committed against civilians, and attacks on journalists?

**QUESTIONS FOR THE RECORD****TO JUDGE MERRICK GARLAND, NOMINEE FOR ATTORNEY GENERAL****Submitted by Senator Lindsey Graham**

1. If confirmed, will you commit that the Drug Enforcement Administration (DEA) will collaboratively engage with industry stake holders to evaluate new technologies intended to render controlled substances “non-retrievable” and, further, work with interested parties to understand DEA’s role as it relates to the Environmental Protection Agency (EPA) Resource Conservation and Recovery Act (RCRA) exemption identified in 40 CFR 266.506?
2. Vladimir Kara-Murza, a prominent opposition activist in Russia, was poisoned in Russia in 2015 and again in 2017, and nearly died on both occasions. Following both poisonings, samples of his blood were accepted for testing by the FBI, and tests were performed, but the results of those tests and the FBI’s assessment of the cause of Mr. Kara-Murza’s poisonings have not been released to either interested Members of Congress or Mr. Kara-Murza. On July 5, 2018, Mr. Kara-Murza submitted a request pursuant to the Freedom of Information Act and Privacy Act (FOIPA) to the FBI (FBI FOIPA Request No. 1410820-000) for documents relating to his poisonings, including the results of tests performed by U.S. government agencies. Mr. Kara-Murza has been informed that 277 pages of documents responsive to that request have been referred by the FBI for review to other, undisclosed agencies of the federal government. Of those 277 pages, 251 have yet to be released to Mr. Kara-Murza pending consultation with other government agencies. Additionally, 15 pages of responsive documents have been withheld from disclosure by the FBI on varying grounds, including that they contain classified information. A further 562 pages that were released by the FBI have been redacted.
  - a. Do you commit that the United States Government, the Department of Justice, and the FBI will work with Mr. Kara-Murza and interested Members of Congress to share information in their possession about the circumstances surrounding the poisonings of Mr. Kara-Murza, including the nature of the agent with which he was poisoned?
  - b. Will you commit to reviewing the information that the FBI has withheld from disclosure? Do you commit to expediting the release of as many responsive documents as possible to Mr. Kara-Murza, as soon as possible? After your review, will you consider directing that the 562 pages of documents that were redacted by the FBI be re-reviewed with an eye to releasing as much information as practicable to Mr. Kara-Murza about the circumstances surrounding his poisonings and the nature of the agent with which he was poisoned?
  - c. Beyond documents encompassed by Mr. Kara-Murza’s FOIPA request, will you look into whether the Department of Justice, including any element of the Department, has additional documents, records, evidence, or other materials relating to the poisonings of Mr. Kara-Murza? If the Department of Justice has

such materials, do you commit to briefing the committee on their contents and releasing them to the greatest extent possible?

**Senator John Cornyn**  
**Questions for the Record**  
**Merrick Garland, Nominee for Attorney General of United States**

1. Vanita Gupta, President Biden's nominee for Associate Attorney General, has advocated to "decrease police budgets . . ."
  - a. Do you agree with the statement of Ms. Gupta to "decrease police budgets"? Please be specific as to your agreement or disagreement with the aforementioned statement.
  - b. What effect, if any, do you see this type of rhetoric having on state and local police if she were to become the Associate Attorney General?
  - c. Do you support measures to shift resources away from state and local police?
  - d. If you do not, then what guardrails do you intend to put into place to prevent efforts to "defund the police" or shift resources away from state and local police?
2. The Obama Administration had instituted a policy where legal settlements between the DOJ and companies were used to fund third-party, special interest groups that were not parties to the litigation. This practice, often referred to as "slush fund settlements," presents a myriad legal, ethical, and constitutional concerns. In 2017, the Trump Administration forbade this practice; and last year, the DOJ incorporated this ban into the Justice Manual (85 FR 81409). President Biden recently announced that it is reviewing the bar on this practice.
  - a. What problems, if any, do you foresee if this practice is reinstituted?
  - b. Do you see any constitutional issues at play if the DOJ is diverting money from a general fund to a specific party or charitable cause that is not a party to the litigation?
  - c. If so, what are those constitutional issues at play?
  - d. Do you think the "slush fund settlement" practice usurps any congressional authority? If so, how so?
  - e. If not, why not?
3. Over the past four years, the DOJ has updated and reformed the enforcement of the Foreign Corrupt Practices Act ("FCPA"), a process that began under the Obama Administration. Specifically, in 2016, under Attorney General Loretta Lynch, the DOJ announced an FCPA "pilot project," which was designed to promote voluntary self-disclosure, cooperation with the government, and remediation of violations in exchange for mitigated penalties. In 2017, the DOJ enhanced this pilot project and incorporated it into the U.S. Attorneys' Manual as the FCPA Corporate Enforcement Policy ("CEP"); the Department has since stated that it will apply the principles of the CEP to contexts other than the FCPA. It appears that these reforms are having a positive effect on compliance. For example, the Organisation for

Economic Cooperation and Development (“OECD”) recently released its Phase IV report on the effort by the United States to combat foreign corruption. Its lead examiners “commend[ed] the United States for its unparalleled efforts to encourage voluntary disclosure of FCPA violations... and recognize[d] the United States’ continuous dedication to refine enforcement policies in order to achieve the right mix of incentives to voluntary self-disclose.” In addition, the OECD found that, according to the career staff at the DOJ, these reforms were resulting in a higher quality of self-disclosure. The OECD report also noted a significant improvement in the quality of compliance programs as a result of the CEP. If you are confirmed, will you continue to support and improve the CEP in a way that appropriately incentivizes the private sector to invest voluntarily in compliance programs and cooperate with the DOJ?

- a. What ways do you intend to support the CEP?
4. On October 19, 2020, Attorney General Barr appointed United States Attorney John Durham as a special counsel to investigate matters related to intelligence activities and investigations arising out of the 2016 Presidential Campaign. Mr. Durham has all the powers of a special counsel under federal law.
    - a. Today, do you see any reason why you would end Mr. Durham’s investigation into the intelligence activities and investigations arising out of the 2016 Presidential Campaign (“Durham Probe”)?
    - b. Will you commit to me that you will not end the Durham Probe unless you find that there is “good cause” to do so?
  5. I’ve been a big proponent of improving the National Instant Criminal Background Check System (“NICS”). In 2018, we were able to pass the FIX NICS Act, which incentivizes state and federal agencies to submit all disqualifying records into NICS to ensure that firearms are lawfully purchased. Under the FIX NICS Act, each department or agency is required to submit to the Attorney General a written certification to the Attorney General as to whether the department or agency is in compliance with the record submitting requirements under the law. Additionally, the FIX NICS Act requires the Attorney General to ensure each agency is in compliance with the FIX NICS Act requirements, and to take certain remedial measures if an agency or department is not in compliance. Finally, the Attorney General must publish and submit to Congress a semiannual report on federal agency compliance with the law.
    - a. If confirmed, will you ensure that departments and agencies are complying with the FIX NICS Act certification requirement?
    - b. If confirmed, will you ensure that each department or agency is complying with its own implementation plan and making good faith efforts to continue to improve with the uploading of disqualification records into NICS?
    - c. If confirmed, will you take remedial measures, where appropriate, to ensure that each department or agency is complying with the FIX NICS Act?

- d. If confirmed, will you commit to submitting to Congress a semiannual report on federal agency compliance with the FIX NICS Act?
  - e. Sometimes, NICS is unable to make an immediate determination about whether a person can lawfully purchase a firearm. If that is the case, NICS provides a Missing Disposition Information Date, also known as the Brady Transfer Date, at which point the licensed dealer is allowed, but not required, to transfer a firearm after three business days if the licensed dealer has no reasonable cause to believe that an individual is prohibited from possessing a firearm. Do you believe that ATF has the regulatory authority to require licensed dealers to wait beyond the three-business day waiting period before legally transferring a firearm to an individual in “delayed” status or that it would have to take an Act of Congress?
6. Modern Sporting Rifles (“MSRs”) are among the most popular firearms sold. In your opinion, should these semi-automatic firearms be classified and regulated under the National Firearms Act?
- a. Does the DOJ have the administrative authority to establish and enforce a mandatory buyback program for MSRs?
  - b. If so, what is that authority?
7. In your opinion, does the administration have the power to create a national gun registry or would it take an Act of Congress? Please provide legal authority in support of your position.
8. In your opinion, does the administration have the power to require background checks for all firearm transfers absent a licensed dealer or would it take an Act of Congress? Please provide legal authority in support of your position.
9. Guidance documents, also known as sub-regulatory guidance, are a way for agencies to announce policy changes, establish new procedures, and sometimes set forth new obligations on the private sector. This guidance often takes a variety of forms, including Frequently Asked Questions and compliance memos. This process is fundamentally different than legislation and rule-making. One can envision a number of problems when the DOJ uses and relies on these guidance documents to bring enforcement actions.
- a. Do you see any problems with using guidance documents to bring enforcement actions?
  - b. If so, what are some of the problems presented to a potential defendant or litigant when the DOJ uses guidance documents to bring enforcement actions?
  - c. Will you commit to me that you will avoid using guidance documents as a way to bring enforcement actions?
10. Increasingly, third-party litigation funding (“TLPF”) is being used to fund lawsuits, including False Claims Act (“FCA”) cases brought by relators. As you know, the government—through the DOJ—may choose to intervene in these actions not knowing that the TLPF



funders are backing the relator's action and stand to obtain a cut of the proceeds of any settlement. Recently, DOJ has encouraged its attorneys to ask questions of relators as to whether there is an agreement with a third-party funder and/or whether the third-party funder exercises decision-making authority over the litigation.

- a. Do you think the DOJ would be better able to assess a case if it understood the extent to which third party litigation founder is backing, and may have some influence or even control over, the relator's cause of action? If so, why?
  - b. Do you support transparency measures in Congress to highlight TLPF in FCA cases?
  - c. As Attorney General, will you support DOJ attorneys asking relators questions regarding TLPF funding and involvement?
11. Human traffickers target the most vulnerable members of our society, especially children. They violently exploit them through force, fraud, threats, debt bondage, drug addiction, or intimidation. Do you believe that mandatory minimum sentences are an appropriate tool in crimes involving the sexual exploitation and slavery of children?
12. A primary purpose of the Justice for Victims of Trafficking Act (P.L. 114-22), which I sponsored, was to provide resources for survivors of human trafficking. JVTa mandated that DOJ create the Domestic Trafficking Victims' Fund, which uses fines levied on offenders to provide funding for vital services and protections for domestic trafficking victims. Do you agree that victim compensation and financial contribution from criminals should be a core element of human trafficking prosecutions?
13. The rape kit backlog has unbearable consequences for victims. Laws like the Debbie Smith Act, which we most recently reauthorized in 2019, provide important resources so rape kits can be tested and criminals can be brought to justice. For several years now, I have worked to make sure the laws that address this backlog are properly complied with, so that sexual assault survivors can have the justice they deserve. Will you commit to working with me to make sure legislation that works to end the backlog, like the Debbie Smith Act, the SAFER Act, and the Justice Served Act, are fully implemented?

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

**Judge Merrick B. Garland  
Nominee, U.S. Attorney General**

1. In *Priests for Life v. HHS*, you voted in support of an opinion requiring a religious nonprofit to comply with the Obama Administration's contraceptive mandate. Could you explain why you voted against rehearing that case?
2. Do you intend to prosecute religious organizations who seek exemptions from federal laws governing healthcare, employment, and education?
3. Do you believe religious organizations and institutions should be exempted from government mandates requiring them to violate their sincerely held religious beliefs?
4. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans' religious freedom. It was championed by Senator Ted Kennedy and Senator Orrin Hatch to pass the Senate by a vote of 97-3 and to pass the House by a unanimous voice vote. President Bill Clinton proudly signed it into law in 1993. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit that the Department of Justice will not support any legislative or executive action that would alter in any way the Religious Freedom Restoration Act's protection for Americans of all faiths?
5. In a 2007 opinion, the Office of Legal Counsel affirmed that a religious organization which administers a federal grant retains its right, under the Civil Rights Act of 1964 and the Religious Freedom Restoration Act, to hire staff who agree with its religious mission. Despite pressure from outside groups, the Obama Administration refused to rescind that opinion. If confirmed, will you continue the Obama Administration's policy of leaving that opinion in place? (The opinion is "Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act," 31 Op. O.L.C. 162 (2007)).
6. On October 6, 2017, the Department of Justice issued guidance for all executive departments and agencies through a Memorandum entitled Federal Law Protections for Religious Liberty (82 Fed. Reg. 49668). This memorandum explained the many ways in which the First Amendment and federal law protect all Americans' right to live according to their religious beliefs. If confirmed, will you ensure that the memorandum will not be rescinded or otherwise ignored?
7. In an executive order, President Biden has committed to extend *Bostock's* narrow holding to other areas of federal nondiscrimination law, including those touching on school sports and locker rooms. If confirmed as Attorney

General, will the Justice Department force schools and other organizations to allow biological males who identify as female to:

- a. Compete in girls' and women's sports?
  - b. Use girls' and women's locker rooms?
  - c. Enter women's shelters?
  - d. Enjoy financial benefits, such as scholarship grants, reserved for women and girls?
8. As Attorney General, in seeking to "fully enforce" federal antidiscrimination laws, will you also commit to protect the freedoms of all Americans to exercise their rights of conscience and religious liberty?
  9. Will you commit to not target religious organizations and individuals who seek exemptions from Title VII based on their sincere religious beliefs?
  10. Do you believe the President can disregard the majority's express clarification that *Bostock's* reasoning only applies to the employment discrimination context and not to other federal antidiscrimination laws?
  11. Earlier this year, the Department of Justice's Inspector General released a report reviewing the U.S. Marshall Services' response to the COVID-19 pandemic, which found that contractor-operated facilities were safer, more accountable, and more responsive in mitigating risk from COVID-19 than government-run facilities. While these plans have all been reviewed and approved, the Inspector General was not able to confirm whether any of the 873 government-run facilities it worked with had implemented a COVID-19 response plan. What implications does this have for the Biden Administration's executive order canceling private prison contracts?
  12. Do you believe Civil Asset Forfeiture is a legitimate use of government authority?
  13. Do you think there have been abuses of Civil Asset Forfeiture programs? Will you commit to helping correct those abuses?
  14. Recently, President Biden signed an executive order prohibiting the Justice Department from renewing contracts with Private Prisons. As far as I'm aware, about 14,000 federal inmates— around 9% of the total prison population—are in private prisons.
    - a. Do you have any concerns about prison capacity? A 2017 study (the most recent study I've seen) showed that many BOP facilities were operating above capacity. What steps will the Justice Department take to ensure that it's not creating an overcrowding problem in existing federal facilities?

- b. What precautions do you plan to take to avoid unnecessary risks while transferring inmates from private prisons to federal facilities given the ongoing pandemic?
- 15. Unlike the Federal Bureau of Prisons, the U.S. Marshalls Service does not have its own facilities—how will you ensure that canceling private prison contracts will not negatively impact the U.S. Marshalls Service?
- 16. When bringing any complicated case, resources are undoubtedly an issue. For example, the pending case on Google could conceivably turn on issues around computer coding and algorithmic decision making. There will also undoubtedly be future cases- both criminal and civil- where the in-house technology expertise of the Department of Justice will be vital. Do you think the DOJ currently has enough technologists and other experts to deal with the current workload? And how can the Department ensure that a lack of expertise in these areas doesn't impact the administration of justice?
- 17. How will your Department of Justice work with our allies and trading partners on issues of international antitrust? The Europeans, Australians, South Koreans, and Japanese are all pursuing cases against some large US based technology firms, and without some coordination there could be unintended consequences that could hurt consumers.
- 18. We've seen disturbing reports recently of websites posting obscene content involving minors. Will you commit to prioritize enforcement of our anti-trafficking and child pornography laws against these heinous online actors?
- 19. When General Flynn's case came before you on the D.C. Circuit, you voted with the majority of the court to deny his request for a writ of mandamus, effectively ruling that Judge Sullivan's actions did not show bias towards General Flynn. Could you explain your reasoning in that case?
- 20. Relatedly, can you name an example (other than Judge Flynn's case) where, when the U.S. Attorney has asked the court to dismiss the government's case against a defendant, the court has appointed an outside lawyer to continue arguing for conviction?
- 21. Did you see any problems with Judge Sullivan's decision to appoint an outside lawyer who had written an article criticizing General Flynn mere days before his appointment?
- 22. Did you see any problems at all with Judge Sullivan's actions including his threat to investigate the Department of Justice's decision to dismiss and whether career prosecutors agreed with that decision?
- 23. In her dissent in *In re: Michael T. Flynn*, Judge Rao stated "by allowing the district court to scrutinize 'the reasoning and motives' of the Department of Justice, the majority ducks our obligation to correct judicial usurpations of

executive power and leaves Flynn to twist in the wind while the district court pursues a prosecution without a prosecutor.” Would you agree that Judge Sullivan’s attempts to keep the prosecution of General Flynn alive even though the Justice Department had dismissed charges constitutes an unconstitutional abuse of authority?

24. Do you believe agencies should try to “aggressively” interpret statutes in order to accomplish White House priorities?
25. Do you think it’s proper for agencies to try to “fix” a problem through regulations where Congress is deadlocked on an issue?
26. Would you be in favor of agencies addressing problems like immigration, transgendered students in sports, and other controversial issues through regulation?
27. On the whole, do you believe that we need more government control and regulation of American’s lives, jobs, and healthcare, or less?
28. As Attorney General, who would your client be? The President or the American people?
29. What happens when the President takes a position that is contrary to the law or not in the interests of the United States?
30. As a nominee for a position in the Executive branch, do you think there are any limits on the President’s use of prosecutorial discretion?
31. Is there a point where “prosecutorial discretion” simply becomes “executive fiat?”
32. Do you agree that prosecutorial discretion should be the exception rather than the rule—i.e., that in the typical case covered by a law, it is the Executive’s duty to enforce that law?
33. Do you commit to support and continue the Department’s antitrust lawsuit against Google?
34. Do you commit to not hiring for a leadership, supervisory, or policy-making role any person who previously worked for or represented Google, Amazon, Facebook, Apple, or any other Big Tech firm?
35. Will you support the Antitrust Division continuing to investigate other potential antitrust violations by Google or other tech companies?
36. Do you believe the antitrust laws require amendment or reform? If so, in what way(s)?

37. Do you believe that U.S. antitrust enforcement would benefit from consolidation at one agency?
38. Operation Fast and Furious was an ATF enforcement action that allowed operable firearms to be transferred to agents of drug trafficking organizations, ostensibly to help track how those organizations obtained and distributed weapons. Yet these same firearms were used by their eventual recipients to commit lethal crimes in Mexico and the U.S., including the murder of U.S. Border Patrol Agent Brian Terry. Is gun-walking of the sort used in Operation Fast and Furious a legitimate law enforcement tactic? If not, what steps would you take to ensure it doesn't happen by any DOJ component under your watch?
39. A number of states have enacted so-called "red flag laws" that authorize judges to issue orders for the seizure of otherwise lawfully owned firearms when the owner is found to be a danger to self or others. Do you support the use of red flag orders to seize lawfully-owned firearms? If so, what due process protections should apply to the issuance of these orders? Should a judge be able to order firearm seizures in *ex parte* proceedings, before the respondent has had a chance to answer the allegations in the petition?
40. Kristen Clarke has been selected by President Biden to lead DOJ's Civil Rights Division. Yet in publicly accessible tweets issued on July 16, 2019, Ms. Clarke lauded the late Associate Justice John Paul Stevens for calling for the repeal of the Second Amendment. Does it concern you at all that the presumptive leader of DOJ's Civil Rights Divisions supports repealing a constitutional provision that protects an individual civil right? How can gun owners feel confident that DOJ will protect their rights with Ms. Clarke in charge of its Civil Rights Division?
41. Late last year, ATF took steps to crack down on pistol braces, an accessory that was originally created to help disabled veterans safely and effectively handle large-framed handguns. Over a span of several years, BATFE deemed these items to be unregulated accessories, then appeared to backtrack on that decision, then reiterated its original position, then suddenly declared certain braced pistols to be regulated short-barreled rifles. The agency also issued highly-controversial draft guidance on pistol braces which it quickly withdrew after condemnation from the firearm industry and gun-owning public. Do you intend to reprise BATFE's efforts to regulate brace-equipped handguns? If so, how do you intend to accommodate the millions of law-abiding Americans who originally obtained these devices lawfully and in good faith and who have never used them for illegal purposes?
42. Do you support the following gun control measures?
  - a. Banning specific types of firearms?

- b. Banning large magazines?
  - c. Holding firearms manufacturers liable for damage caused by people using their firearms to commit a crime?
43. In your hearing testimony, you stated that you agreed with the Biden Administration's definition of "equity," which the administration has defined as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality."
- a. What is the difference between "equity" and "equality?"
  - b. In order to achieve "equity," is it ever necessary to discriminate *against* members of some groups in favor of others?
  - c. If treating people equally before the law results in disparate outcomes, is it acceptable to discriminate against those with favorable outcomes before the law in order to correct that disparity?
44. In 2016 Vanita Gupta co-authored the "Dear Colleague" letter which threatened schools with defunding if they did not permit biological males from using girl's facilities, including showers and locker rooms. Although the letter towards the beginning states that it does not "add requirements to applicable law," it nonetheless uses language which implies that a school will be defunded if it does not comply with the contents of the letter. What would you do if a subordinate tried to send a similar letter that implied it had to be followed even though it admitted that it was not "add[ing] requirements to applicable law"?
45. Under the Electronic Communications Privacy Act, providers of electronic communications services or remote computing services, such as phone companies or Internet service providers, are generally prohibited from voluntarily disclosing certain customer information to government agencies. But this law was written before the advent of digital data brokers. Today, ECPA's prohibition is easily sidestepped; the company that collects the data can sell it to a data broker without any restrictions, and then the data broker can turn around and sell it to the government.

- a. Will you commit to disclosing to this committee any purchases from data brokers made by the Department of Justice or its components that involve the acquisition of Americans' data?
  - b. Would you support legislation to close this legal loophole by subjecting data brokers to the same restrictions as the companies they get the data from?
- 46. Over the next four years, a number of foreign intelligence surveillance authorities will come before Congress for reauthorization. FISA authorities can be valuable tools for collecting intelligence on foreign threats. But a series of scandals over the past eight years have raised questions about whether the rights of Americans are sufficiently protected.
  - a. Do you agree that the government should have to obtain a warrant or a FISA Title I order before seeking access to the private phone calls, emails, and text messages of Americans?
- 47. In 2018, the Supreme Court ruled in *Carpenter v. United States* that historical cell site location information was protected by the Fourth Amendment despite the fact that this information is shared with cell phone service providers. The holding was limited to historical cell site information. Still, *Carpenter* made clear that the government can no longer argue, as it has in the past, that there is no Fourth Amendment protection for any information voluntarily disclosed to a third party. And the principles articulated in *Carpenter*, if not the holding, could certainly be applied in other contexts.
  - a. Does the Department of Justice have an obligation to revisit its legal interpretations and practices with respect to collection of personal information from third parties in light of *Carpenter*?
  - b. Will you commit to sharing with this committee any legal analysis that the Department has conducted or will conduct regarding the application of *Carpenter*?
- 48. If confirmed, how would you direct your department to handle a mandatory gun confiscation-type program that would result from banning so-called "assault weapons" like some of my colleagues are calling for and that has the support of the President?
- 49. In 2007, you voted to re-hear *Parker v. District of Columbia*, a case that challenged the Washington, D.C. ban on handgun possession – even a handgun in the home for personal defense. The court ultimately denied the en banc request in a 6-4 vote and the case was heard a year later before the Supreme Court when it was combined with *District of Columbia v. Heller*. You



also voted to deny en banc hearing in a similar case, *Seegars v Gonzales*, which involved five Washington, D.C., residents who sued the mayor and U.S. Attorney General over the District's prohibition against the registration of pistols, its requirement to keep firearms disassembled or bound by a trigger lock and its prohibition against carrying a pistol without a license in one's dwelling.

- a. Since there were no accompanying opinions from any of the judges as to their beliefs on why an en banc panel of the D.C. Circuit should or should not reconsider the *Parker* decision, can you share your rationale for voting to re-hear *Parker*?
  - b. And state for the record your thoughts on the Second Amendment?
50. Under the Obama Administration, Operation Chokepoint formalized financial discrimination in the form of an effort by the Federal Deposit Insurance Corporation (FDIC) and Department of Justice (DOJ) to stop financial institutions from offering services to some regulated industries in an attempt to choke off banking services. This included federally licensed firearm retailers and other companies in the firearm and ammunition industry – some of the most heavily regulated businesses in the country. The Justice Department under President Trump committed to ending this controversial program.
  - a. Will you commit that, if confirmed, this would also be the case under your leadership?
51. 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. 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?
52. Are there any specific Office of the Legal Counsel ("OLC") opinions that you would like to withdraw?
  - a. What will be your approach to deciding which opinions to withdraw?

53. Lawsuits have been filed over the ratification of the Equal Rights Amendment (“ERA”). The Biden-Harris Administration has stated that with Virginia ratifying the ERA, the required ¾th of states have ratified the amendment. However, the OLC released a slip opinion stating that Congress must start over. Do you agree with the Administration’s position, or the conclusion reached by OLC that this is a matter that should be left to Congress to decide?
54. What are your thoughts on the Department of Justice’s (“DOJ”) policy concerning civil asset forfeiture?
  - a. As we have seen in published reports, the Department of Justice collects large amounts of money for its Assets Forfeiture Fund, particularly from large deposits. Does this provide an incentive for the agencies you oversee to use civil asset forfeiture in a way that continues purely for budgetary gain?
    - i. Do you think this incentive by law enforcement agencies is a problem? If so, is it something you will work to address?
  - b. Your predecessor, Attorney General Barr, stated that incentives behind asset forfeiture require “constant vigilance,” do you share that view? How do you plan about ensuring that agencies have the right incentives in place?
  - c. Are you willing to work with the members of the U.S. Senate to reform civil asset forfeiture?
55. In terms of antitrust, attention has been given to “big tech” companies such as Google, Amazon, and Apple, but what are your thoughts on the monopolistic practices of the National Collegiate Athletic Association (“NCAA”)?
  - a. For years, the NCAA has profited off of the name, likeness, and image of college athletes, but also used its influence to undermine decisions made by schools in communities across the country. What are your thoughts on how it wields its influence?
  - b. In particular, what are your thoughts on the NCAA’s recent track record of undermining women by pushing schools to allow individuals born biologically of one gender to participate in another gender’s sports?
56. The Supreme Court ruled in *Regents of the University of California v. Bakke* that racial quotas cannot be used in university admissions. In subsequent decisions, the Supreme Court has stated that universities may use a process that considers various qualities, such as race, to evaluate candidates. Numerous universities, including your alma mater, have been sued or are under investigation for their admissions processes and possible

discrimination against various groups of people. With that in mind, please answer the following:

- a. Under your leadership, how would the DOJ handle these investigations and lawsuits?
  - b. More broadly, how would DOJ approach future investigations into similar institutions?
57. Given that when you were an AUSA, you assisted in the successful prosecution of D.C. Mayor Marion Barry for cocaine possession, you are aware of the prevalence of drugs in our society. With that in mind, please answer the following:
- a. Recently, there has been growing discussion in the United States concerning the establishment of “supervised consumption services” or “safe consumption sites” for individuals to come to a designated area for the purpose of using drugs. What are your views on these sites? How with DOJ handle any attempts to establish more of these sites throughout the country?
  - b. In *United States v. Safehouse*, the DOJ sued a Philadelphia planned “safe consumption sites” on the grounds that it would violate the federal Controlled Substances Act’s (“CSA”) so-called “crack house provision.” The 3rd Circuit found that this statute prohibits operation of safe injection facilities and as a result the site could not open. Do you agree with this decision? If so, would you commit to enforcing the CSA in its entirety, a law that President Biden was a proponent of while serving in the U.S. Senate? What if the policy of the Biden-Harris Administration, advocates or encourages the creation of these sites?
58. At the hearing, when I asked you whether you “believe[d] that efforts to purge voter rolls of people who have either died or have left the state in question are racially discriminatory,” you said “If there is enormously disparate impact of something that someone continues to propose it is not unreasonable for people to draw conclusions from that.”
- a. If someone “continued to propose” voter ID laws and it had a disparate impact, do you think someone would be justified in calling them a racist?
59. How do you define systemic racism?
60. How do you define critical race theory?

61. Do you think America's criminal justice system, including the federal courts, U.S. Attorney's offices, and the Department of Justice are "systemically racist?"
62. Congresswoman Ayanna Presley has said, in relation to criminal justice policy: "[w]e must now be every bit as intentional in legislating justice and equity, and that starts with embracing anti-racism as a central tenet of the policymaking process."
  - a. Do you plan to institute "anti-racist" policies at the Justice Department? If so, which policies do you plan to institute?
  - b. What current policies of the Justice Department are "racist?"
63. Do you believe that members of historically oppressed minority groups should be treated more favorably than those of other races in prosecutions and sentencing decisions to correct for the effects of systemic racism?
64. Do you distinguish critical race theory from systemic racism, and if so how?
65. Do you believe that as the AG you have a duty to act in line with your moral code? If so, would you agree that it is part of your duty to ensure that the department under your care does not violate that code?
  - a. Along the same line, let's assume that someone acting as an agent of the Department of Justice takes actions which contradict your moral code. What responsibility do you feel you would owe for those actions?
66. For purposes of federal law, when does life begin?
  - a. Does the definition of when human life begins for purposes of federal law differ from the scientific definition of when human life begins?
67. At what point in human development does the United States have a compelling interest in protecting a human life?
68. Do you support laws penalizing fetal homicide?
69. Do you support the Unborn Victims of Violence Act of 2004, which provides that a person guilty of killing a child in utero may be punished to the same extent as if they had killed the child's mother, and that a person who intentionally kills a child in utero may be charged as a homicide (i.e., murder or manslaughter)?
  - a. Given that "homicide" requires the killing of an innocent human being, do you agree that in order to punish someone for violating this statute, the child in utero would have to be a human being?

- b. Are there any circumstances which justify the killing of an innocent human being?
- 70. Do you support the Born Alive Infants Protection Act?
  - a. Relatedly, would you support any policy that would prohibit the killing of children who survive failed abortions outside the womb?
- 71. Will you commit that the Department of Justice will not rely upon data or information compiled by the Southern Poverty Law Center considering the serious allegations of systemic sexual harassment, racial discrimination and their ties to domestic terrorism cases?
- 72. Based on evidence that Planned Parenthood profited from the purchase and sale of fetal tissue, the FBI opened its current investigation into the sale of fetal tissue. Will you ensure that this investigation will be allowed to proceed without interference under your leadership of the Department of Justice?
- 73. What is the Federalist Society?
  - a. What does it do?
  - b. What do you think about it?
- 74. On March 22, 1972, the 92nd Congress gave final approval, by the required two-thirds votes, to H.J. Res. 208, the Equal Rights Amendment. The final text of the resolution reflected a political compromise reached in the previous Congress (the 91st), in which proponents had accepted a 7-year ratification deadline. Congresswoman Griffiths explained, "I think it is perfectly proper to have the 7-year statute so that it should not be hanging over our head forever." (117 Cong. Rec. 35814-15, 1971) As has been the case for every constitutional amendment proposed by Congress since 1960, this 7-year deadline appeared in the Proposing Clause. In your February 22, 2021 oral testimony before the Judiciary Committee, you indicated that under your leadership, the Justice Department will follow the President on "policy" matters, "as long as it is consistent with the law." In advising the President on what the law is, on any given matter, you said, "we will do so objectively, based only on the reading of law." I will proceed here on the assumption that this assurance would apply in full force to such a weighty matter as the requirements that Article V of the Constitution imposes for adopting amendments to the text of the Constitution. During the 2020 presidential campaign, the Biden-Harris campaign posted a short position statement on its website on the ERA, which remains there today. It states in part, "Now that Virginia has become the 38th state to ratify the ERA, Biden will proudly advocate for Congress to recognize that 3/4 of the states have ratified the amendment..." However, this campaign statement by the now-President

cannot be effectuated unless the Department of Justice alters its positions on fundamental aspects of the constitutional amendment process.

- a. In analyzing the constitutional issues that surround that current status of the 1972 ERA, will you be influenced in any manner by this political position taken during the campaign? In other words, will you feel obligated, at least to some degree, to come up with legal rationales, however strained or novel, to justify the conclusion that the President stated when he was still a candidate?
- b. In 1977, with the 7-year deadline fast approaching, the ERA had not received the required 38 state ratifications, and several states had rescinded their initial ratifications. The Justice Department's Office of Legal Counsel issued an opinion dated Oct. 31, 1977, written by Assistant Attorney General John M. Harmon, which argued, with qualifications, that Congress could, by simple majority votes, extend the deadline prior to expiration. Subsequently, in 1978, did pass such a resolution purporting to extend the deadline to June 1982. (The only federal court to consider the matter ruled in *Idaho v. Freeman* that this was unconstitutional, but after the ostensibly extended deadline passed with no new ratifications, the Acting Solicitor General asserted that the ERA had failed ratification with or without the deadline extension, and the Supreme Court implicitly agreed by declaring the litigation moot.) In his 1977 OLC opinion, Mr. Harmon wrote, "Certainly if a time limit had expired before an intervening Congress had taken action to extend that limit, a strong argument could be made that the only constitutional means of reviving a proposed amendment would be to propose the amendment anew by a two-thirds vote of each House and thereby begin the ratification process anew." Do you agree that since the ERA deadline was reached with only 35 states having ratified (or only 30, if the 5 pre-deadline rescissions are permissible), "a strong argument could be made that the only constitutional means of reviving a proposed amendment would be to propose the amendment anew by a two-thirds vote of each House..."?
- c. In 1992, many people came to believe that the "Congressional Pay Amendment" had been ratified 203 years after Congress proposed it -- although it appears that to this day, no federal court has reviewed that claim or held that the amendment is actually part of the Constitution. In any event, the Congressional Pay Amendment contained no deadline, nor did any state rescind a ratification prior to the 38-state threshold being reached. Nevertheless, some ERA proponents then began to advance claims that ratification deadlines either were unconstitutional, or could be retroactively adjusted or removed by Congress, and this by simple majority votes. After decades of unsuccessful attempts, three state legislatures ultimately adopted purported ratifications based on such theories --

Nevada (2017), Illinois (2018), and Virginia (2020). However, the Virginia legislature's action came weeks after the Office of Legal Counsel on January 6, 2020, issued a 38-page legal opinion, arguing that Congress has the power to include a ratification deadline in a resolution submitted to the states proposing a constitutional amendment; that the 92nd Congress effectively exercised that power when it included a 7-year deadline in H.J. Res. 208; and that Congress lacks power to change an amendment proposal in any respect, once it is submitted to the states. OLC therefore concluded that the only constitutional route to adoption of an ERA was to restart the process. Based on that guidance, the Archivist of the United States issued a statement on January 8, 2020, that he would not certify the ERA as part of the Constitution, "unless otherwise directed by a final court order."

- i. Do you intend to withdraw the OLC opinion on which the Archivist currently relies?
  - ii. If so, will you simultaneously replace it with a new opinion, and if so, how soon might that occur?
- d. If after thorough review, you were to conclude that the President was mistaken in asserting that "3/4 of states have ratified the amendment," or that "Congress can recognize" that to be so, would your conclusions about "what the law is" be conveyed privately to the President, and perhaps, subject to modification at his instruction?
  - i. Or, would your legal conclusions be presented in a public document, such as a new OLC opinion?
- e. Candidate Biden's 2020 statement that "3/4 of states have ratified the amendment" the ERA disregarded not only the ratification deadline, but the fact that five state legislatures formally rescinded their ratifications, prior to the deadline of March 22, 1979. In 1977, the opinion by Assistant Attorney General Harmon argued that rescissions are not allowed under Article V, and no subsequent OLC opinion has found it necessary to re-examine that question. But when the late Justice Ruth Bader Ginsburg was asked about the ERA on Feb. 10, 2020, she said, "I would like to see a new beginning. I'd like it to start over. There's too much controversy about latecomers -- Virginia, long after the deadline passed. Plus, a number of states have withdrawn their ratification. So, if you count a latecomer on the plus side, how can you disregard states that said, 'We've changed our minds'?"
  - i. Do you intend to analyze the question of whether Article V permits states to rescind their ratifications, prior to the three-fourths threshold being reached, in order to determine whether the

Administration can in fact, consistent with the Constitution, urge Congress to assert that "3/4 of states have ratified" the ERA?

- f. Do you foresee any eventually in which the Department of Justice would authorize or permit the Archivist of the United States to certify the ERA as part of the Constitution, if Congress has NOT passed a joint resolution purporting to remove the ERA's ratification deadline?
- g. There are currently two active federal lawsuits against the Archivist in the federal courts, which involve claims regarding the validity of the ratification deadline, the validity of rescissions, the authority (if any) of Congress to act retroactively on such matters, etc. In these lawsuits the Department of Justice has been defending the position that the 1979 deadline was permissible and effective. As long as such litigation is ongoing, are there any circumstances under which the Department of Justice would allow or order the Archivist of the United States to certify the ERA as part of the Constitution, under 1 U.S.C. Sec. 106b, in the absence of a final judgment or order by a federal court that such an action by the Archivist is authorized or required by law?



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

**Questions for the Record for Merrick Garland, Nominee to be Attorney General**

**I. Directions**

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions.

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

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

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

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

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

Because you stated at your hearing that you are able to answer questions about policy, many of the questions below focus on policy and facts underlying policy decisions. To the extent you are unable to answer a question about your policy views, please state why you are unable to provide an answer at this time, what information

you will need to provide an informed answer, and when you will be able to provide that answer.

## **II. Questions**

1. Do you agree that it is appropriate to investigate whether and to what extent individuals engaged in criminal conduct related to the 2016 election?
2. When Bill Barr was asked at his confirmation whether he would terminate Robert Mueller, he answered that he would not terminate him without “good cause.” At your hearing, you refused to commit to any standard by which to determine whether to fire John Durham or stop his investigation and instead avoided answering the question by stating that you have yet to examine the facts.
  - a. What is the appropriate standard for an Attorney General to apply to determine whether to fire a U.S. Attorney who is overseeing a politically sensitive investigation?
  - b. What is the appropriate standard for an Attorney General to apply to determine whether to indefinitely halt a politically sensitive investigation?
  - c. Do you agree with Bill Barr that the appropriate standard is “good cause”?
  - d. If the appropriate standard for terminating John Durham or his investigation is anything other than “for cause” or “good cause” please explain why the standard for reviewing the Durham investigation should be different than the standard that Bill Barr applied when reviewing the Mueller investigation.
  - e. If the appropriate standard for terminating John Durham or his investigation is anything other than “for cause” or “good cause” please explain how that standard differs from the “for cause” or “good cause” standard.
3. What does “for cause” removal mean in the context of reviewing whether to terminate a politically sensitive investigation?
  - a. What kind of conduct would qualify as removable “for cause”?

- b. Who will make the determination that the “for cause” standard has been met?
  - c. Who will conduct the investigation into whether “for cause” behavior has occurred?
  - d. If you have decided to break with precedent and apply a different standard from the “good cause” standard applied by Bill Barr, please answer subparts (a)–(c) for the standard you intend to apply.
- 4. What does “for cause” removal mean in the context of reviewing whether to terminate a U.S. Attorney overseeing a politically sensitive investigation?
  - a. What kind of conduct would qualify as removable “for cause”?
  - b. Who will make the determination that the “for cause” standard has been met?
  - c. Who will conduct the investigation into whether “for cause” behavior has occurred?
  - d. If you have decided to break with precedent and apply a different standard from the “good cause” standard applied by Bill Barr, please answer subparts (a)–(c) for the standard you intend to apply.
- 5. Assume for the sake of this question and this question only that after reviewing the facts of the Durham investigation, you were to determine that the Durham investigation was not properly predicated.
  - a. Would that hypothetical lack of proper predication be sufficient grounds to terminate the investigation? Please explain your answer.
  - b. Would that hypothetical lack of proper predication be sufficient grounds to terminate John Durham? Please explain your answer.
  - c. Does your answer to subpart (a) change if you assume that a reasonable, objective observer could disagree with your assessment that the investigation lacked a proper predicate? Please explain your answer.

- d. Does your answer to subpart (b) change if you assume that a reasonable, objective observer could disagree with your assessment that the investigation lacked a proper predicate? Please explain your answer.
6. You stated at the hearing that you knew nothing of the Steele “dossier” beyond what you had read in the papers. Have you taken the time to acquaint yourself with the issue since?
  - a. You had earlier claimed to have read the executive summary of the IG report, which referenced the “dossier” multiple times. Have you since read any of the remainder of the IG report?
  - b. Do you have any additional comments on the “dossier,” having learned more about it?
  - c. Do you believe the FBI’s handling of the “dossier” was appropriate?
7. What standard of obstruction of justice did the Mueller investigation adopt?
  - a. What is the statutory definition of obstruction of justice?
  - b. Could the firing of an independent counsel, special counsel, or U.S. Attorney who is investigating the President, his political allies, or his family members constitute obstruction of justice?
  - c. Is it possible for a President to commit obstruction of justice?
  - d. Do you agree that terminating John Durham would create the appearance of impropriety?
8. Will you allow special counsel Durham to publish a public report, with only minimal redactions?
  - a. What categories of redactions would the Department consider?
  - b. Will you commit to personally review and approve of any and all redactions?

9. Top officials, including Sally Yates, Rod Rosenstein, and Jim Comey, have testified that they were not responsible for the FISA abuses outlined in the Horowitz Report.
  - a. Do you agree that, as Attorney General, the buck stops with you—that you are responsible for the product and conduct of career attorneys speaking and working on behalf of the Department of Justice?
  - b. What, if anything, would you have done differently from previous leadership to have prevented these abuses?
10. Will you commit to ensuring that no one who was found to have engaged in improper conduct related to Crossfire Hurricane is employed by Department of Justice or the FBI?
  - a. Will you commit to reporting to this Committee on the reasons for retaining any culpable individuals, in the event they remain at DOJ or the FBI?
11. Kevin Clinesmith, the FBI lawyer who admitted to falsifying an email, was sentenced to one year of probation, and no prison time. Prosecutors had asked for several months prison time. Do you agree with the prosecutors that Mr. Clinesmith deserved at least some term of imprisonment?
12. On January 5, 2017, the day after the FBI drafted a closing memo in the General Flynn investigation determining Flynn was “no longer a viable candidate,” there was an Oval Office meeting with President Obama and, among others, Vice President Biden, Susan Rice, James Comey, and Sally Yates. At that meeting, President Obama asked if they should withhold information from Flynn. Do you believe this was appropriate?
  - a. How would you respond in such a situation with President Biden?
  - b. If you had been the Attorney General during this January 5 meeting, would you have pushed back and made clear that sidelining the incoming National Security Advisor was dangerous and unprecedented?
13. Investigations have revealed that then-Deputy Director of the FBI, Andrew McCabe, who initially told inspector general investigators that he did not authorize a controversial leak, was lying. He later confessed.

- a. We do not know, however, whether and to what extent then-FBI Director Comey was aware of and authorized this leak after the fact; will you commit to finding an answer to this question?
  - b. Do you agree this is the kind of conduct of senior government officials that requires oversight?
  - c. Mr. Comey and Mr. McCabe have now offered multiple statements, under oath, that are directly and irreconcilably contradictory. One of them must be lying. Would you agree that lying under oath is a serious matter?
  - d. Will you commit to fulfilling my request sent to Director Wray and Attorney General Barr on December 10, 2020, to provide “to the fullest extent possible any and all emails, records, communications, and any other documents relevant to determining whether Mr. Comey knew of and approved of the FBI’s leak of information pertaining to the Clinton investigation to the Wall Street Journal”?
  - e. If, and when, one of them is determined definitively to be lying, will you instruct DOJ staff to consider charges under federal law?
  - f. Will you commit that lying under oath and to federal authorities will be treated the same for each and every individual, regardless of position or previous rank?
14. While COVID has no doubt posed a challenge for state and local governments around the country, we have seen a disturbing trend in the way that Americans have been treated by local authorities. The Department of Justice is entrusted with the authority to prevent state and local authorities from violating federal civil rights and civil liberties.
- a. Are you willing to commit to filing suit against, or support suits against, states and localities that single out religious institutions and religious individuals for particularly onerous regulations?
  - b. Would it satisfy the First Amendment for a state to impose an arbitrary system in which commercial establishments are allowed to open, or open partially, while religious institutions are shut down indefinitely?

15. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be the Little Sisters of the Poor or small business owners, in pursuit of political goals?
16. Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?
17. How will you accommodate Americans who hold strong religious convictions when there is growing pressure from the Biden administration to loosen, and perhaps even undo, religious exemption laws?
18. The Biden administration is now on the record stating its opposition to the use of religious exemptions for those who hold traditional religious views on sexuality and gender.
  - a. What is the role of the Department of Justice in preventing the federal and state governments from discriminating against religious Americans who hold traditional religious views on sexuality and gender?
  - b. What will you do in office to ensure that religious exemption laws are not dismantled?
19. Please describe your understanding of the holding of *Our Lady of Guadalupe School v. Morrissey-Berru* (2020).
20. If confirmed, will you revive the lawsuits against the Little Sisters of the Poor seeking to require them, against their religious beliefs, to facilitate abortions?
21. Is it religious discrimination if the government forces a religious baker or florist to provide customized services and products for a ceremony or event celebrating an LGBTQ wedding, even if providing that service or product conflicts with her religious beliefs?
22. Can the government force a church that objects to same-sex marriage to hire a pastor who is in a relationship with someone of the same sex?
23. If a student Christian campus organization asks a member who begins a same-sex relationship to step down, on grounds that the organization does not support same-sex marriage, does that violate the member's civil rights?

24. Please explain the holding of *Bostock v. Clayton County* and its relevance to the Department of Justice.
25. Do you agree that free speech is an essential and irreplaceable American value?
  - a. What are the present threats to free speech in America?
  - b. What role does the Department have in addressing threats to free speech?
  - c. Does the First Amendment protect speech that some may consider offensive? If so, what are the limits to that protection?
  - d. What is “hate speech”? Is “hate speech,” as you have defined it, protected by the First Amendment? If so, what are the limits to that protection?
26. Do public educational institutions have the legal obligation to protect the speech rights of students and employees?
27. Under the prior administration, the DOJ moved to protect free speech on college and university campuses. Will you continue to defend students on campuses across America against increasingly repressive speech codes?
28. Do private educational institutions have the legal obligation to protect the speech rights of students and employees?
29. Are educational institutions that receive federal funding permitted to discriminate on the basis of speech?
30. What do you understand to be the scope of Section 230 protection?
  - a. Does Section 230 immunize content publishers only?
  - b. If an internet platform curates content, and specifically selects what a user sees and does not see, is the platform engaged in publishing?
  - c. Do you believe that corporations like Facebook, Twitter, and Google should have a special immunity from liability when publishing material



that is unavailable to traditional publishers like the *New York Times*? Please explain why.

- d. Would it be appropriate for the Department of Justice to work in any way with Facebook, Twitter, and Google to limit the availability or reach of constitutionally protected speech or information?
31. Many big technology platforms are funded or financed in part by the Chinese Community Party.
    - a. Do you see the self-censorship of American media companies at the behest of a fundamentally anti-western, anti-American regime as a problem?
    - b. If not, why not?
  32. What are your thoughts on what is called “cancel culture”? Is “cancel culture,” as you understand it, consistent with the values of free speech?
  33. Do you plan on taking action against companies for “misinformation” or “disinformation”?
    - a. How do you define those terms?
    - b. What is the basis in the law?
    - c. What is your opinion on social media and networking companies banning material or the accounts of content providers who promote what are termed “conspiracy theories”?
  34. At your hearing, you stated that you were not familiar with “Operation Choke Point.”
    - a. Having now had time to review the details of it, please describe your understanding of the Operation Choke Point initiative.
    - b. Do you believe Operation Choke Point was an appropriate use of the Department of Justice’s investigatory power?
  35. Can institutional investors and stock brokerages lawfully suspend trading on their platform to protect themselves against loss?

36. My office has received a number of complaints from Texas manufacturers regarding the benchmarks used to set the price of aluminum. Specifically, there is concern that the Midwest Premium (MWP) set by S&P Global Platts—a provider of energy and commodities information and a source of benchmark price assessments in the physical commodity markets—is causing market distortions and artificially inflated prices to consumers. Will you commit to ensuring that you or the appropriate member of your senior staff becomes familiar with this issue and assesses whether any action by the Department of Justice is appropriate?
37. In your testimony, you expressed some doubt that the Biden administration would seek to overturn *Heller v. District of Columbia* because the Supreme Court is unlikely to agree with their position.
  - a. Would you instruct the Solicitor General to advocate to overturn *Heller* if you believed there was a reasonable chance that the Supreme Court would agree to do so?
  - b. Please describe the holding of *Heller*.
38. Please state whether you would defend the constitutionality of any of the following hypothetical executive actions or pieces of legislation restricting access to firearms:
  - a. A ban on “assault weapons,” as that term was used in the Public Safety and Recreational Firearms Use Protection Act.
  - b. A ban on high-capacity magazines.
  - c. A ban on carrying firearms outside the home.
  - d. Universal background checks.
  - e. A punitive tax on the purchase or ownership of a firearm.
  - f. As a matter of policy, do you support one or more of the above in subparts (a)-(f)? If so, please state which policies.

39. Is the ability to own a firearm a personal civil right?
  - a. Does the right to own a firearm deserve less protection than the other individual rights specifically enumerated in the Constitution?
  - b. Does it deserve less protection than the right to vote?
  - c. Does the Civil Rights division have a duty to ensure that states and localities do not infringe on the right to bear arms, just as it has a duty to ensure that states and localities do not infringe on other individual rights, such as the right to vote?
  - d. Do you believe that an individual who believes *Heller* was incorrectly decided, and that there is thus no individual right to possess a firearm, can fully discharge the duties of Assistant Attorney General for the Civil Rights division?
  - e. Will you commit to ensuring that all political appointees understand that the Second Amendment protects a personal civil right and to providing training on the scope of that right to employees in the Civil Rights division?
40. Do you personally own any firearms? If so, please list them.
41. At your hearing, you refused to commit to prosecuting illegal border crossings. Do you stand by that testimony?
  - a. You also stated that whether to prosecute illegal border crossings “is again a question of allocation of resources.” Can you please elaborate?
  - b. Under what circumstances would the Justice Department be unable to prosecute unlawful border entries for lack of resources?
42. During the hearing for your nomination to be the Attorney General of the United States, Senator Hawley asked, “Do you believe that illegal entry at America’s borders should remain a crime?” You responded that you had not thought about that question.

- a. Having had time to think about the question, do you now believe that illegal entry at America's borders should remain a crime? If so, why? If not, why not?
  - b. Do you believe that only some illegal entries should be criminalized, and others should be considered lawful? If so, what is the basis for the distinction?
- 43. The Obama-Biden administration refused to withhold funding from cities that openly ignored immigration law and refused to cooperate with federal law enforcement. Was this consistent with the rule of law?
- 44. Do you believe that, if the Department's resources were not limited, the Department of Justice should enforce every immigration law in its jurisdiction?
- 45. Is it appropriate for the executive to refuse to enforce a law, absent constitutional concerns?
  - a. Does the same principle apply in a different political context, such as if a Republican president ordered the IRS not to collect taxes?
  - b. Could a President concerned with the impact of immigration on domestic employment decide to enforce the laws *more* stringently than intended by Congress?
- 46. The Secretary of DHS, Alejandro Mayorkas, was the focus of a 2015 Inspector General report that concluded he overrode normal process in order to provide political favors under the EB-5 visa program to well-connected Democrat stakeholders.
  - a. Was that consistent with the rule of law?
  - b. If not, do you condemn his actions?
  - c. If a Department of Justice employee engaged in behavior materially equivalent to Mayorkas's behavior that served as the basis for the Inspector General report, would you recommend discipline?
  - d. If not, why not? If so, what discipline would be appropriate?

47. Should an illegal alien who is convicted of murder or sexual assault in the United States expect to be deported immediately?
48. Every day, almost 30 people in the United States die in drunk-driving crashes—that's one person every 50 minutes. Should the United States prioritize the deportation of illegal aliens who are convicted of driving while intoxicated?
49. The Biden administration is committed to opening our country's borders at a time when many businesses and shops remain closed due to COVID-19-related precautions. Do you find this policy to be consistent with the stated goal of "building back better"?
50. The opening of borders has led to a surge in the number of illegal migrants at the southwestern border of the United States. Virtually none of these migrants, who are from countries like Guatemala, Nicaragua, and Mexico, are vaccinated against COVID-19. Health-related grounds is a reason of inadmissibility to the United States under the INA. How would will the Department of Justice address this?
51. Are there any differences in the rights, under federal law, between a citizen and an illegal alien? Please describe any differences.
  - a. What is the legal basis of those differences?
52. Can you commit to bringing the same vigor and completeness of enforcement to the immigration laws, duly passed by Congress, that you bring to other laws?
  - a. If not, why not?
53. In response to a request from my staff asking for an in-person meeting with you, I received a reply that you "cannot do an in-person meeting under any circumstances." This was in contrast to other senior nominees of the Biden administration who have scheduled meetings in-person.
  - a. Did the White House instruct you not to take in-person meetings?
  - b. Since April 1, 2020, have you met with any members of the Senate in-person, other than on February 23, at your confirmation hearing?

- i. If so, who and on what dates?
  - c. Since April 1, 2020, have you met with Joe Biden in person?
  - d. Since April 1, 2020, have you met with any individuals employed by the White House in person?
    - i. If so, who and on what dates?
  - e. Since April 1, 2020, have you had any conversations or meals indoors lasting more than 15 minutes with an individual who is not a member of your household?
  - f. Since April 1, 2020, have you attended any marches, rallies, or public protests?
  - g. Is it your belief that taking a meeting with me in my office pursuant to all appropriate medical guidelines, including the guidelines set forth by the Capitol's attending physician, would have posed an unacceptable risk of transmission?
    - i. If so, on what basis do you base that conclusion?
54. In *Garza v. Hargan*, you joined the en banc order overturning the panel's decision "substantially for the reasons set forth in the . . . dissenting statement of Circuit Judge Millett."
- a. Please describe the reasoning set forth in Judge Millett's dissenting opinion.
- Do you agree that the court's order stands for the proposition that the moment a person steps foot in the United States, whether lawfully or unlawfully, she has a constitutional right to abortion?
55. Please describe your understanding of the undue burden standard in light of *Russo v. June Medical Services LLC* (2020). Did it alter the undue burden standard as set forward in *Whole Women's Health v. Hellerstedt* (2016)?

56. American public opinion is increasingly coming to favor at least some restrictions on abortion, and that is reflected by new federal and state legislation.
  - a. Will you faithfully enforce restrictions on abortions that appear in federal law?
  - b. Will you exercise prosecutorial discretion, as with immigration, to not enforce certain valid laws relating protecting the lives of unborn babies?
  - c. Will the Biden administration join litigation seeking to invalidate state-level laws protecting the lives of unborn babies?
  - d. Does the Biden administration plan to make abortion access a priority of enforcement at the Department of Justice?
  - e. Should Americans be forced to pay for abortions against their conscience rights?
57. The Department of Justice safeguards rights against discrimination on the basis of sex, race, and disability, among other characteristics.
  - a. Should a mother be permitted to terminate her pregnancy on the basis of the unborn child's gender?
  - b. Should a mother be permitted to terminate her pregnancy on the basis of the unborn child's suspected disability?
  - c. Should a mother be permitted to terminate her pregnancy on the basis of the unborn child's race?
58. Do you believe that the Equal Rights Amendment, if enacted, would protect a right to abortion?
59. Some advocates claim that the Equal Rights Amendment remains alive and available for ratification, even though Congress imposed a ratification deadline of 1982. Do you agree that this option is open to states that failed to ratify?
  - a. Can it be ratified, moving forward, on the basis of the past approval of states?

- b. Does that apply to all other proposed amendments which have received some state approval, but not enough to qualify for ratification?
  - c. Justice Ginsburg famously believed that the ERA can no longer be ratified, and that the process has to start over. Is she incorrect?
  - d. When determining whether a sufficient number of states have ratified the ERA, is it appropriate to include states that withdrew their ratification?
  - e. Do you believe there would be a states' rights concern in counting the nearly four-decade-old votes of states who no longer desire to ratify the ERA?
  - f. Will you commit to not revoking the Office of Legal Counsel opinion stating that Congress may not revive a proposed amendment after a deadline for its ratification has expired?
- 60. Will you commit that acts of violence and destruction will be prosecuted, to the fullest extent of the law, regardless of the politics of the perpetrators?
  - 61. At your hearing, a Senator suggested that burning buildings as part of a riot is mere vandalism and a property crime. Do you believe that unlawfully setting a building on fire in a riot is a violent act?
  - 62. The Vice President very publicly encouraged citizens to contribute money for bail for rioters and looters last year, some of whom went on to commit further crimes. Do you support using federal tools to encourage local authorities to prohibit or limit cash bail requirements, so that those arrested for committing violence may be more expeditiously released into the community?
  - 63. What is your understanding of the policy underlying the slogan "defund the police"? Do you support that underlying policy?
  - 64. Is it appropriate for a witness to a crime to consider the race of the perpetrator when deciding whether to provide information to the police or federal authorities?
  - 65. Is it racist for a person to call police out of concern over the conduct of a person of color?



- a. Can it ever be racist, provided that person has in fact committed the alleged crime?
66. Do you believe that an individual who attended the Trump rally on January 6, 2021 did not participate in any act of violence should be prohibited in holding a political position in the Department of Justice in a future administration, even if he or she did not personally engage in any unlawful conduct?
  67. Do you believe that an individual who attended a protest during the summer of 2020 and did not participate in any act of violence should be permitted to hold a political position in the Department of Justice, even if he or she did personally engage in any unlawful conduct?
  68. Is participation in a riot grounds for termination from the Department of Justice?
  69. At your hearing, you stated that your definition of “domestic terrorism” is “about the same” as the statutory definition.
    - a. What is the statutory definition of “domestic terrorism”?
    - b. What is your definition of “domestic terrorism”?
    - c. What is the difference between your definition and the statutory definition?
    - d. What relevance will your personal definition of “domestic terrorism” have to your duties, if confirmed, as Attorney General?
  70. At your hearing, you said that an attack on a courthouse while in operation, trying to prevent judges from actually trying cases, “plainly is domestic extremism.” You mentioned also that an attack “simply on government property at night or any other kind of circumstances” is a clear and serious crime, but seemed to make a distinction between the two regarding an “attack on our democratic institutions.”
    - a. Is it your position that if rioters targeted and stormed the Capitol in the middle of the night, when Congress was not in the Capitol, it would not constitute “domestic terrorism” or an “attack on our democratic institutions”?

- b. Is it your position that if Timothy McVeigh had bombed the Alfred P. Murrah Federal Building at 5 a.m., it would not constitute “domestic terrorism” or an “attack on our democratic institutions”?
  - c. My understanding is that Timothy McVeigh did not bomb the Alfred P. Murrah Federal Building because he wished to disrupt the proceedings at that specific building, but did so to send a message against the federal government for its handling of incidents at Ruby Ridge and Waco. Under the definition you provided at the hearing, that would not qualify “domestic terrorism.” Please explain why that is correct or incorrect.
  - d. You stated that you were not familiar with the facts surrounding the over 50 days of rioting in which rioters assaulted a federal courthouse, federal officers, and local law enforcement personnel with hammers, lasers, baseball bats, fireworks, Molotov cocktails, chemicals, and other weapons resulting in over 270 injuries to federal law enforcement officers. Having now had an opportunity to familiarize yourself with the facts, do you believe this was “domestic terrorism?” Please explain why or why not.
71. Is the criminal justice system systemically racist?
- a. Are police unions systemically racist?
  - b. Is the Department of Justice systemically racist?
72. Do you agree that the vast majority of law enforcement personnel are good people who fairly enforce the law without regard to race?
73. Would it be appropriate for the Department of Justice to provide trainings that teach the following:
- a. One race or sex is inherently superior to another race or sex;
  - b. An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;
  - c. An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or

d. Meritocracy or related values such as work ethic are racist or sexist.

74. Could training or teaching any of the propositions stated in question 73 result in a hostile work environment in violation of Title VII of the Civil Rights Act? Please explain.
75. Will you commit to producing any and all training materials used by the Department of Justice upon request so that the public understands what is being taught to the people in charge of enforcing our laws?
76. President Biden last month issued an Executive Order blocking the Department of Justice from renewing contracts for privately-operated detention centers. Unlike the Federal Bureau of Prisons, the U.S. Marshals Service does not have its own facilities; please explain why the U.S. Marshals Service should not be allowed to renew its contracts with private facility operators.
77. Where marijuana is “legalized,” does law enforcement currently have technology to accurately determine whether a driver has unsafe levels of THC in his or her system for the purposes of driving?
  - a. If not, what is the solution for this problem?
78. By most indications, illicit and large-scale marijuana trafficking activity has increased; if you are confirmed, what actions will you undertake to counter the trend?
79. Is there currently a crime problem in America’s urban centers?
  - a. Is crime worse than it has been in years past?
  - b. Do statistics suggest there has been a jump in violent crime?
  - c. Does this problem require more police, or fewer police, on the streets?
  - d. Given the assertion that police are systematically racist, does additional funding for, or deployment of, police in America’s city constitute an act of racism?

80. Is it appropriate for the Department of Justice to use settlements as a means to provide funding to outside organizations?
81. At your hearing, you stressed the importance of transparency and congressional oversight. Will you commit to provide a yearly report to the Committee listing every suit settled by the Department of Justice whereby a settlement requires the defendant to pay any amount to a third-party (excluding customary attorneys' fees and costs)?
  - a. If you are not willing to commit to providing a yearly list, will you commit to providing the information in a timely manner upon request?
82. Does the President have the authority to abolish the death penalty?
  - a. Does the implementation of a criminal punishment prescribed by law depend entirely on the President's discretion?
  - b. Could a President lawfully declare, as a policy, that he disfavors physical imprisonment and order all federal prosecutors to refuse to seek it?
83. What is the difference between a commutation and refusal to carry out the death penalty?
  - a. Are there differences in the effect on future cases?
  - b. On the political accountability involved?
84. Will you commit to having the Bureau of Prisons continue with executions for murderers on death row who have exhausted their appeals, unless the President takes the politically accountable step of commuting their sentences?
85. Will you commit to allowing line prosecutors to seek the death penalty in appropriate cases?
86. You prosecuted Timothy McVeigh, a terrorist who bombed the Oklahoma federal building, murdering 168 people, including 19 children and infants in a day care center. McVeigh was sentenced to death and was executed in 2001.
  - a. Should Attorney General Reno have refused to have prosecutors seek the death penalty?

- b. Should Attorney General Ashcroft have stopped his execution?
87. Last year, the United States carried out the death sentence against Daniel Lewis Lee. Lee was a virulent racist who murdered a husband and wife along with their 8-year-old daughter.
- a. If you were Attorney General at the time of Daniel Lee's execution, would you have prevented the Bureau of Prisons from carrying out his sentence?
88. The Boston Marathon bomber, Dzhokhar Tsarnaev, murdered three people and injured 264 with two pressure cooker bombs. A court of appeals recently reversed his death sentence, and the Department of Justice appealed to the Supreme Court. At your hearing you refused to commit to maintaining the Justice Department's position, stating that you are unable to opine on a pending matter as a sitting judge. The question, however, was not about the merits of the case that could come before you, but rather about whether the Department of Justice would take the radical step of reversing its position.
- a. Will you commit to maintaining the Department's position in the Tsarnaev case?
  - b. If you refuse to answer subpart (a), have you sought the advice of an ethics expert to determine whether you may provide an answer to this question? If not, why not. If so, what was the advice, and its basis?
  - c. Even if the appeal is unsuccessful, prosecutors will have the opportunity to again seek the death penalty. Can you commit that the Department of Justice will seek the death penalty on remand?
89. You stated at your hearing that your concerns with the death penalty have grown because of the increasing awareness of false convictions.
- a. I assume that, like me, you have no doubt that Dylann Roof was correctly and lawfully convicted of murdering nine people in cold blood during a bible study at Emanuel African Methodist Episcopal Church. Given that there are no concerns about false conviction, will you commit to working with the Bureau of Prisons to carry-out his execution? If not, what is the basis for your refusal?

- b. How many of the individuals who had their federal death sentences carried out since 2000 do you believe were wrongly convicted? If the answer is anything other than “none,” state which individuals you believe were wrongly convicted.
  - c. How many individuals currently on federal death row do you believe were wrongly convicted? If the answer is anything other than “none,” state which individuals you believe were wrongly convicted.
- 90. Do civil rights laws apply to all Americans or only certain Americans?
- 91. Do you approve of the Biden administration’s recent decision to voluntarily dismiss a suit against Yale for discrimination against Asian Americans? If you lack sufficient knowledge about the suit, will you commit to reviewing the dismissal to determine whether it was in error?
- 92. In 2011, the U.S. Department of Education issued a dear Deal Colleague Letter to colleges and universities that broadened the definition of sexual harassment and required covered institutions to adopt a lenient “more likely than not” burden of proof when adjudicating claims. Should this standard of proof govern?
- 93. Are students accused of sexual misconduct entitled to due process?
- 94. As Chief Judge of the D.C. Circuit, you instituted reforms to prevent sexual harassment. Did any of these reforms include adopting a “more likely than not standard,” or otherwise altering traditional rights to due process?
- 95. Will you commit to hiring career attorneys for the civil rights division without regard to ideology?
  - a. If the vast majority of attorneys in the civil rights division hold liberal political views, does this suggest discriminatory hiring?
  - b. Would your answer be the same if the vast majority of attorneys identified with the same racial group? Please explain.
- 96. Is it appropriate for the Department of Justice to consider an individual’s race, sex, or sexual orientation when making a hiring decision for career positions? For political appointments, including judicial nominations? If the answer is

“yes,” in what manner and to what extent may race, sex, or sexual orientation be considered?

97. Should colleges receiving federal funds be permitted to consider the race, sex, or sexual orientation of prospective students in admissions decisions?
  - a. Are racial quotas constitutionally permissible?
  - b. What compelling justification, if any, can be offered for racial discrimination in college admissions?
98. In 2019, the attorney general of Michigan announced her new “hate crimes unit” would use the Southern Poverty Law Center’s “hate group” list in the enforcement of law, and two conservative organizations have filed lawsuits claiming this violates the First Amendment.
  - a. Do you believe that the SPLC’s “hate group” list is sufficiently credible that Department of Justice employees may rely on it?
  - b. If your answer to subpart (a) is anything other than “yes,” will you commit to ensuring that Department of Justice attorneys do not rely in whole or in objectionable part on the SPLC’s “hate group” list?
  - c. If your answer to subpart (a) is anything other than “no,” do you agree with SPLC that any of the following are “hate groups”:
    - i. The Ruth Institute;
    - ii. Alliance Defending Freedom;
    - iii. Family Research Council
99. Title IX of the Civil Rights Act prevents sex-based discrimination in any school or educational program that receives federal funds. Title IX has led to the proliferation and growth of women’s sports.
  - a. Do biological men possess a physiological advantage compared to biological women in collegiate sports?
  - b. If so, what implications, if any, does this have for Title IX?

100. Does it violate women's rights to open female competitions to biological men?
101. At your hearing, you stated about Kristen Clarke: she has "views about the civil rights division I have discussed with her and they are in line with my own." Are any of her public views materially different than your views? If so, which views?
102. Does voter fraud exist?
103. Is voter fraud an issue that should be addressed?
104. Do you agree with the Baker-Carter Commission's conclusion that "absentee ballots remain the largest source of potential voter fraud"?
105. Do you agree with the Baker-Carter Commission's conclusion that fraud is particularly possible where "third-party organizations, candidates, and political party activists" are involved in "handling absentee ballots"?
106. Can Voter ID laws help prevent voter fraud?
107. Can you commit to affirmatively investigating any credible allegations of fraud in any election?
108. Are there any violations of the Voting Rights Act that *should not* result in the Department of Justice moving to place a jurisdiction under preclearance?
109. Former Attorney General Holder described himself as the President's "wingman." Is this an accurate description of the Attorney General's role?
  - a. If you are confirmed, will you act as President Biden's "wingman"?
110. Who makes the laws—the President or Congress, or neither?
111. Is it consistent with the rule of law for the President or the Attorney General to refuse to enforce a law because he disagrees with it?
112. Is it consistent with the rule of law for federal prosecutors to refuse to prosecute individuals who violate federal drug laws because the President disagrees with those laws?



113. The Obama-Biden administration refused to enforce certain federal drug laws to avoid triggering mandatory minimum sentences enacted by Congress. Is this consistent with the rule of law?
114. Democrats criticized former Attorney General Barr for overriding line prosecutors in recommending a sentence for Roger Stone, alleging this was political, even though the trial court, exercising its independent judgment, ended up agreeing with Barr's recommendation.
  - a. Do you agree with this criticism that it politicized the Department of Justice's work to override the line prosecutors?
  - b. If so, do you commit that political appointees will never override the decisions of career employees?
115. In 2012, the House voted to hold then-Attorney General Eric Holder in contempt of Congress for his failure to turn over documents related to the Fast and Furious scandal.
  - a. If you had been in Eric Holder's position, would you also have refused to turn over documents relevant to a legitimate investigation into a serious scandal?
116. Who are the relevant parties for the Department of Justice to consult before reaching a settlement and establishing a consent decree?
  - a. Should the public have a chance to review and comment on such arrangements?
  - b. Is there a concern over the integrity of a "settlement" when two parties are not actually adverse?
117. Will you abide by all court orders?
  - a. Including declaratory judgments?
  - b. Including injunctions?
  - c. Including injunctions imposed nationwide by the issuing court?

118. When is it appropriate for political appointees in the Department of Justice to override decisions made by career FBI agents?
119. When is it appropriate for political appointees in the Department of Justice to override decisions made by career Department of Justice attorneys?
120. Do you accept the legitimacy of the Supreme Court as currently constituted?
121. President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase or decrease the number of justices on the U.S. Supreme Court?
122. Should there be a Code of Conduct for Supreme Court justices?
123. Given the information in the public domain, do you believe that Brett Kavanaugh sexually assaulted Christine Blasey Ford?
124. What is your understanding of the scope of the President's decision-making authority after *United States v Nixon* and *Seila Law v CFPB*?
  - a. Should agencies, such as the FCC, receive any insulation from presidential control and administration?
  - b. To what extent, if any, is the Department of Justice independent from the political directives of the President?
  - c. What is the Unitary Executive theory? Do you agree with this theory? If not, why not?
125. Reports indicate that Governor Cuomo, of New York, actively withheld information from the Department of Justice and intentionally misled federal officials to avoid political accountability in his handling of COVID-19.
  - a. Is withholding information requested by federal authorities a crime?
  - b. Is misleading federal investigators a crime?
  - c. Is encouraging or ordering others to withhold material information from the FBI a crime?

126. Will you commit the Department of Justice to fully investigating the allegations that Governor Cuomo and/or his staff violated the civil rights of New York senior citizens and later misled the Department of Justice regarding its actions?
  - a. Will you commit to determining whether any criminal laws were violated?
  - b. Will you commit to prosecuting attempts to obstruct justice in this case?
127. Do you agree that Toni Bacon—the acting U.S. Attorney for the Northern District of New York, a career Department of Justice employee and former Elder Justice coordinator—is well-suited to lead a politically sensitive investigation into the actions of Governor Cuomo’s administration?
128. At your hearing, you committed to ensuring that the individual who runs any investigation into the actions of Governor Cuomo’s administration will not have a conflict of interest.
  - a. Do you agree that Audrey Strauss would have a conflict of interest?
  - b. Would an individual with substantial ties to Governor Cuomo’s campaign have a conflict of interest?
  - c. Would an individual with ties to the New York State Democratic Party have a conflict of interest?

**Question for the Record for Judge Merrick Garland from Senator Ben Sasse  
February 24, 2021**

1. In your opening statement, you discussed the notion that the Attorney General's client is not the President, but rather the United States. Nevertheless, the Attorney General is obviously part of the President's team. We should surely expect that the Attorney General and the Department are going to be trying their best to support the administration as a whole and its agenda.
  - a. Can you explain exactly how that tension works in practice and how you plan to navigate these competing demands?
  - b. Given that both the Attorney General and federal judges take an oath to the Constitution and laws of the United States, do they both have a duty to abide by their best view of the law, or does the Attorney General have more flexibility to interpret the law in a way more favorable to the administration's agenda? Do the relationships between the coordinate branches affect how officers in each branch should approach legal interpretation?
2. You have spoken admirably about the importance of shoring up the integrity of the Department. Unfortunately, the nature of our tribal partisanship means that it is very easy for each party to decry the abuses they see in the administration of the other party, but it is much harder to stand up for the rule of law when it involves standing up to an administration of the same party.
  - a. Do you agree that preserving the integrity of the Department depends not just on resisting politically driven interference in investigations, but also in resisting stretching statutory authorities past their limits to accomplish the parts of a President's agenda that cannot pass through Congress?
  - b. Is it healthy for the republic for a President to say that he will resort to his pen and phone to get his agenda through against the will of Congress? How should an administration pursue its agenda when Congress seriously disagrees on first principles?
  - c. Please list some instances in which the demands of the law and the facts of a particular situation or case have forced you to reach an answer that did not serve the agenda of an administration in which you served.
  - d. Please list some instances when you as a judge have ruled against some high-profile priorities of administrations of your same party.
3. Turning to the matter of politically sensitive investigations, I hope you share the desire to figure out how we build robust and durable processes to handle these cases so that Americans and their elected representatives can have confidence that no matter who is in office the law will be enforced.
  - a. What are the biggest takeaways that you've garnered from the IG reports on the Clinton email investigation and the Trump-Russia investigation? What lessons should we have learned?
  - b. When you have a high-profile, politically sensitive investigation cross your desk, how do you plan to handle it?
  - c. Given your praise on the post-Watergate Department's groundbreaking policies to preserve the Department's integrity, do you plan use that period as a model for instituting any new policies for the Department?

4. In your hearing, I indicated that I intended to ask you questions for the record about China.
  - a. Do you agree that the Chinese Communist Party (CCP) is our greatest geostrategic and ideological adversary on the international stage?
  - b. How would you evaluate the Department's China Initiative? Was it needed, and if so, why? What has been its greatest successes? Has there been overreach? Was there underreach in light of the CCP's influence operations?
  - c. What is going to be necessary to convince the venture capital and academic community to take this threat seriously?
5. As a sitting federal judge, I am confident that you share my perspective that the judicial selection process is critically important.
  - a. Is it your understanding that you will have a significant role in the administration's judicial selection process?
  - b. As Attorney General, will you use your platform to advocate for judicial nominees that are reasonable and can command public trust across the political spectrum?
6. Public safety is obviously one of the basic responsibilities of the Department.
  - a. How do you plan to balance your obligations under the FIRST STEP Act with the need to protect public safety?
  - b. Do you agree that the federal prison population contains very few offenders that are incarcerated because of low-level, non-violent drug offenses?
  - c. Given the significant amount of violence associated with trade in narcotics, are drug traffickers properly considered non-violent?
  - d. Does increasing judicial discretion in sentencing risk increasing racial disparities in sentences?
7. The Department of Education has two rules that protect religious student groups, 34 CFR §§ 75.500(d) and 76.500(d). These rules prohibit public college administrators from discriminating against student groups because of their sincerely held religious beliefs, speech, and leadership standards. These rules ensure that students of all faiths feel welcome and respected at any public college that receives federal grants.
  - a. Will you assure me that the Department will defend these rules against any court challenges?
8. In a January 6, 2020 opinion, the Department's Office of Legal Counsel concluded "that Congress had the constitutional authority to impose a deadline on the ratification of the [Equal Rights Amendment] and, because that deadline has expired, the ERA Resolution is no longer pending before the States." Accordingly, the opinion goes on to state that "the 1972 version of the ERA has failed of adoption."
  - a. Do you see any cause for modifying or rescinding this opinion? Will you commit that the Department under your leadership will not modify or rescind the opinion?

**Senator Josh Hawley**  
**Questions for the Record**

**The Hon. Merrick B. Garland**  
**Nominee, U.S. Attorney General**

1. If you are confirmed as Attorney General, when, if ever, would you independently recommend, advise, or direct that the Department of Justice decline to defend a Federal statute?
2. If you are confirmed as Attorney General, do you intend to faithfully enforce the laws prohibiting unlawful entry into the United States, whether through unauthorized border crossings or visa overstays?
3. If you are confirmed as Attorney General, would you independently recommend, advise, or advocate that the domestic operations of U.S. Immigrations and Customs Enforcement be significantly curtailed or restructured?
4. If you are confirmed as Attorney General, do you intend to faithfully use Federal law enforcement resources to defend Federal property against violent rioters, without prejudice to whether those rioters hold radical left-wing or right-wing views?
5. If you are confirmed as Attorney General, as you conduct your investigation of the rioting that took place at the Capitol grounds on January 6, 2021, what specific steps do you intend to take to ensure that Americans' First Amendment rights to

criticize their government and pursue political change are not infringed?

6. In testimony to Sen. Cruz about Operation Choke Point, you stated that you “do not believe as a general matter that regulations should be used to stop people from doing what they are lawfully entitled to do, unless the regulation is pursuant to a statute, obviously, in which Congress is given authority to change the rules.” If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department of Justice pursue legal actions against, or develop legal theories for the Federal prosecution of, websites, firearms manufacturers, internet platforms, banks, financial services providers, book distributors, or religious organizations that are engaged in activities traditionally understood to be protected by the First and Second Amendment?
  
7. If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department of Justice pursue efforts to criminalize, prosecute, undermine, or obtain technological backdoors into end-to-end encrypted messaging technologies?
  
8. If you are confirmed as Attorney General, what specific steps do you intend to take to prevent pressure from large multinational technology firms from influencing the decisions taken by the Department of Justice?
  
9. In testimony to me, you observed that “unfortunately or fortunately, a lot of the best antitrust lawyers in the country have some involvement one way or another in some part of high tech, and we cannot exclude every single good lawyer from being able to be in the division.” If you are confirmed as Attorney General, what specific steps do you intend to take to prevent the conflicts of interest that naturally come from a

**“revolving door” between regulators and regulated technology entities?**

- 10. If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department of Justice drop its ongoing antitrust lawsuit against Google?**
- 11. If you are confirmed as Attorney General, what steps do you intend to take, and what authorities do you intend to consult, in order to develop the Department’s interpretation of 47 U.S.C. § 230 (“Section 230”) under your leadership?**
- 12. In testimony to Sen. Lee, you stated that “I am a strong believer in religious liberty and there will not be any discrimination under my watch.” If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department of Justice support legislative or executive actions that would alter in any way the Religious Freedom Restoration Act’s protection for Americans of all faiths?**
- 13. If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department of Justice continue to pursue legal action against the Little Sisters of the Poor?**
- 14. If you are confirmed as Attorney General, what do you envision as the principal strategic litigation priorities of the Department’s Civil Rights Division under your**



leadership?

15. If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department of Justice suspend Special Counsel John Durham's investigation into the Crossfire Hurricane operation?

16. If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department depart from the reasoned analysis set forth in OLC's January 6, 2020 opinion *Ratification of the Equal Rights Amendment*, which is in accord with both statements made by the late Justice Ginsburg and OLC's October 31, 1977 opinion *Constitutionality of Extending the Time Period for Ratification of the Proposed Equal Rights Amendment*?

**Nomination of Merrick Brian Garland to be Attorney General of the United States  
Questions for the Record  
Submitted February 24, 2021**

**QUESTIONS FROM SENATOR COTTON**

1. During your hearing, you refused to commit to ensuring that U.S. Attorney John Durham has the time, staff, and resources needed to complete his investigation into intelligence, counter-intelligence, and law-enforcement activities related to the 2016 presidential campaigns. You did, however, state that, “everything I know sitting here suggests that he should, of course, have those resources.” You also stated that you “have no reason to doubt that the decision to keep him in place and to continue in his investigation was in any way wrong.” Based on everything you know as you answer these questions, do you have any reason to believe that the Durham Investigation was not properly predicated?
2. Based on everything you know as you answer these questions, do you have any reason to believe that the Durham Investigation has been conducted improperly?
3. Based on everything you know as you answer these questions, do you have any reason to believe that the Durham Investigation is an inappropriate or excessive use of resources?
4. Do you believe that a political appointee of President Biden ordering the closure of the Durham Investigation prior to its natural end could cause members of the public to believe that such a decision was based on improper political considerations, rather than the impartial administration of justice?
5. Has anyone within the Biden administration, the Biden transition team, or the Department of Justice discussed the Durham Investigation with you?
  - a. If so, please list all such individuals with whom you have discussed the Durham Investigation.
  - b. If any such discussions have occurred, please identify any individuals involved in those discussions who have suggested that the Durham Investigation should not continue.
6. Do you believe, based on what you know today, that the decision of the Department of Justice to allow the Mueller Investigation to run its course increased confidence among Americans that impartial justice would be done?
7. During your hearing, you stated that you “do not have any regret” for seeking the death penalty against Timothy McVeigh, but you also said that you supported the death penalty

“at that time for Mr. McVeigh in that individual case.” If Timothy McVeigh were still on death row awaiting execution today, would you as Attorney General sign the order to carry out that sentence?

8. During your hearing, you repeatedly suggested it would be within President Biden’s authority to issue a moratorium on seeking the death penalty in criminal cases, and that you would follow such a policy if President Biden were to issue one. But you also repeatedly stated that one of your roles as Attorney General would be to advise the president on policy. If you are confirmed as Attorney General, would you advise President to issue an across-the-board moratorium on seeking the death penalty?
9. When I asked you during your hearing whether you would recommend to President Biden that he issue an across-the-board commutation to all federal death row inmates, you said that you would have to think about that before you could answer. So I ask you again, now that you have had more time to think about it: If you are confirmed as Attorney General, would you advise President Biden to categorically commute the sentences of all federal death row inmates, as some have suggested you should?
10. During your hearing, I asked you whether, if you were confirmed as Attorney General and there was another case like Timothy McVeigh’s where a white supremacist bombed a federal courthouse, killing 168 Americans, including 19 children, and your U.S. Attorney sought your approval to seek the death penalty, you would approve that request. You answered that “it depends on what the development of the policy is—if the president asks or if we develop a policy of a moratorium, then it would apply across the board.” That’s one scenario. If, however, such a policy had not been developed, and the Department of Justice’s policies were as you understand them to exist right now, would you approve that request from your U.S. Attorney?
11. During your hearing, you refused to answer whether, as Attorney General, you would continue supporting on appeal the death penalty sentence against Dylann Roof, the white supremacist who murdered nine African Americans as they worshipped in a church in South Carolina, stating that you wouldn’t comment on a pending case. I won’t ask you about the case itself or the appeal, but I will ask you purely about two executive branch matters:
  - a. Assuming that Dylann Roof’s sentence is upheld on appeal and all further avenues for appeal are exhausted, would you advise President Biden to commute Roof’s sentence?
  - b. Assuming that Dylann Roof’s sentence is upheld on appeal and all further avenues for appeal are exhausted, under the Department of Justice’s policies as you understand them to exist today, would you sign the order to carry out his sentence?

12. During your hearing, you said that one of the sources of concern with the death penalty is what you described as its “disparate impact on black Americans and members of other communities of color.” I’d like to ask you specifically about the death penalty cases that are prosecuted by the Department of Justice. According to the non-profit Death Penalty Information Center, the current makeup of the federal death row is 43% White, 41% Black, 14% Latino, and 2% Asian.
  - a. Do you believe that the federal death penalty was sought or applied improperly in the cases of any of the 49 individuals currently on federal death row?
  - b. If so, in which of the 49 cases do you believe the death penalty was improperly sought or applied, and why?
  - c. For any individuals on federal death row whose cases you identified in the previous question, what, if anything, do you plan to do as Attorney General to remedy those improprieties?
13. If, after thorough review of any federal death row inmate’s case file, you have no reason to believe that the death penalty was improperly sought or applied in that particular case, would you nonetheless advise President Biden to commute that individual’s sentence based not on the facts of the case but on the fact of application of the death penalty alone?
14. During your hearing, you said that you “do not see any distinction” between “equality” and the definition of “equity” contained within President Biden’s Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the federal Government, signed on January 20, 2021.
  - a. To confirm, then, do you believe that there is no difference between “equality” and “equity” as used in that Executive Order?
  - b. The Executive Order, as you noted during the hearing, defines “equity” to mean “the consistent and systemic fair, just, and impartial treatment of all individuals[.]” Do you believe that the Executive Order allows for or directs the treatment of any Americans differently from other Americans based on the color of their skin?
15. If you believe that “equity” and “equality” are interchangeable terms, do you believe they refer to providing people with the same opportunity, or the same outcomes?
16. If you are confirmed as Attorney General, will you commit to opposing any Department of Justice action that would treat Americans differently based on the color of their skin?
17. If you are confirmed as Attorney General, will you commit to opposing any Department of Justice action that would treat Americans differently based on their sex?

18. Is the First Amendment right to one's own religious beliefs and expression of those beliefs a fundamental right?
19. If you are confirmed as Attorney General, will you commit to defending the religious freedoms of all Americans to the fullest extent of the law?
20. Should students at our public colleges and universities be discriminated against because of their sincerely held religious beliefs, regardless of whether they are Christian, Jewish, Muslim, Hindu, or something else?
21. The Department of Education has two rules (34 C.F.R. §§ 75.500(d) and 76.500(d)) that are designed to protect religious student groups from discrimination by any public college administrators due to the student groups' sincerely-held religious beliefs, speech, and leadership standards.
  - a. Do you believe that it is important that students of all faiths feel that their religious freedoms are respected by any public college receiving federal grants?
  - b. If you are confirmed as Attorney General, will the Department of Justice vigorously defend these rules against court challenges?
22. Do you agree that government officials should be held to clear standards of conduct because they have the power to use government authority against individuals?
23. Do you believe that it is important that government officials know and understand the rules they need to follow?
24. If government officials, such as a police officers, break the rules, isn't it true that they could be suspended, disciplined, or lose their jobs?
25. If a government official breaks the law, isn't it true that she could potentially be charged with a crime?
26. Under current law, if a government official in the course of his duties violates someone's clearly established rights, is true that he can face personal lawsuits for those actions?
27. If a government official doesn't violate someone's clearly established rights, is it true that, while she might face other workplace discipline for her actions, she is protected from personal lawsuit under the doctrine of qualified immunity?
28. If qualified immunity did not exist, would it be easier or more difficult for a criminal to sue an arresting officer personally for his actions during the arrest?
29. If a police officer was sued in her personal capacity without the protection of qualified immunity, is it possible she could face some very expensive legal fees even if she won the case?

30. If police officers faced potential lawsuit from every criminal they arrested, even if they didn't violate the criminal's clearly established rights, would that make police officers more likely or less likely to arrest criminals?
31. Aluminum purchasers, including the beer industry that relies on rice from Arkansas, are concerned that price spikes in the "Midwest Premium" index are being driven by anticompetitive behavior, as opposed to market demands. The "Midwest Premium" index is set by a single entity which may increase the chance that anticompetitive actions result in price swings. These price spikes are passed on to consumers and ultimately result in job losses. If you are confirmed as Attorney General, will you commit to examining credible allegations of anticompetitive conduct in the "Midwest Premium" index, as well as anticompetitive conduct for all price indexes, that may result in job losses?
32. During the course of the 2016 Trump campaign and shortly after President Trump won the 2016 election, certain members of FBI leadership egregiously abused their investigatory powers, which led to the unjust prosecution of General Mike Flynn. Not only did the FBI engage in malfeasance in this case, Judge Emmet Sullivan (who oversaw the criminal case in the D.C. District Court) also displayed an extraordinary level of personal, political animus toward General Flynn. If you are confirmed as Attorney General, you must continue the work of your predecessor in combatting such politically-motivated bad acts.
  - a. If you are confirmed as Attorney General, what steps will you take to ensure that FBI agents do not conduct interviews without a legitimate investigatory basis?
  - b. Do you believe it's appropriate for law enforcement officers to interview someone to see if they will lie about non-criminal conduct, with the intent of then prosecuting them for making a false statement?
  - c. Do you believe that it is ever appropriate for an FBI Director to have agents interview White House officials without notifying the Attorney General or the White House?
  - d. Do you believe that it is ever appropriate to charge someone with making a false statement to an FBI agent where the agents themselves don't believe there was an intent to lie?
  - e. If the Department of Justice moves to dismiss a prosecution, and the defendant consents, is it appropriate for the judge to refuse to dismiss the case?
  - f. If you are confirmed as Attorney General, will you commit to working with me to change the Federal Rule of Criminal Procedure 48 to clarify that federal judges do not have discretion to continue a prosecution by refusing to dismiss cases where the government's motion to dismiss is unopposed? In other words, will you commit to working with me to clarify the Rule 48 to ensure that the rules accurately reflect the constitutional principle that the power to prosecute belongs to the Executive, not the Judiciary?
33. In December 2020, the European Union implemented an e-Privacy Directive that interfered with technology companies' ability to use hashing, PhotoDNA, and anti-grooming technologies to scan user e-mails and messages for child sexual abuse material (CSAM). Since that time, the National Center for Missing and Exploited Children

(NCMEC) has stated that, as of February 15, EU reports to its CyberTipline have dropped by 51% compared to the same period in 2020. The European Commission previously noted that the EU has become the largest host of digital child sexual abuse material globally. The images depicting the abuse of child victims from all over the world can now be freely exchanged, undetected, within the European Union. If you are confirmed as Attorney General, will you commit to working with me—and our Five Eyes allies—to encourage the European Union to pass legislation that would clearly permit companies to use hashing, PhotoDNA, and anti-grooming technologies?

34. U.S.-based technology companies are continually moving toward encrypted platforms, which would prevent the use of hashing, PhotoDNA, and anti-grooming technologies to scan for child sexual abuse material (CSAM). Thus, the United States could soon become like the EU, seeing CyberTipline reports decrease significantly as tech companies become willfully blind to CSAM that is exchanged on their platforms. Further, these tech companies are using warrant-proof encryption, which means that, even if law enforcement had probable cause to believe there was CSAM on an encrypted platform, and obtained a warrant stating based on this probable cause, law enforcement could not obtain access to it to the material. Your predecessors understood the dangers of warrant-proof encryption and publicly called for technology companies to ensure lawful access to encrypted platforms. If you are confirmed as Attorney General, will you commit to working with me and my colleagues on this issue and publicly support the Lawful Access to Encrypted Data Act that I introduced with Senators Graham and Blackburn last Congress?
35. Contraband cell phones are a pervasive and widespread problem inside U.S. prisons. Prison officials confiscate hundreds of thousands of cell phones from prisons and jails each year. Contraband cellphones are used to perpetuate all types of crime from within prison walls and victimize both other inmates and people in our communities. The most recent example of the dangers posed by the use of contraband cell phones is a 147-count indictment from the United States Attorney in South Carolina. It details a large RICO conspiracy involving numerous individuals who are incarcerated in the South Carolina Department of Corrections, and involved violent offenses such as murder and kidnapping. To reduce the proliferation of contraband cellphones in prisons, the Federal Bureau of Prisons has two active micro-jamming pilots underway. However, the Communications Act of 1934 precludes state correctional institutions from similarly jamming signals in their own facilities. Would you support legislation that would allow states to test and use micro-jamming technology in order to disable contraband cell phones, like the technology being tested and used by the Federal Bureau of Prisons?
36. During your hearing, we discussed how, according to FBI statistics, only 45 percent of violent crimes in the United States result in an arrest. You agreed with me that it would be better if 100 percent of violent crimes in the United States resulted in arrest and prosecution. You also noted that task forces and collaborative work with state and local law enforcement partners can be a “force multiplier.” In the summer of 2020, to stem the tide of violent crime in U.S. cities throughout the country, Attorney General Barr began Operation Legend. Operation Legend was named after four-year-old LeGend Taliferro,

who was shot and killed while he slept early in the morning of June 29, 2020 in Kansas City, Missouri. Operation Legend was a “a sustained, systematic and coordinated law enforcement initiative in which federal law enforcement agencies work in conjunction with state and local law enforcement officials to fight violent crime,” the very type of “force multiplier” we discussed at your hearing. Unsurprisingly, Operation Legend was a major success. In a matter of weeks, law enforcement made more than 2000 arrests—including 147 homicide arrests; seized more than 544 firearms; and seized more than seven kilograms of fentanyl, 14 kilograms of heroin, 12 kilograms of cocaine, and 50 kilograms of methamphetamine. 476 of the individuals arrested were charged with federal offenses. Given the massive increase in murders we continue to see in U.S. cities, if you are confirmed as Attorney General, will you commit to continuing Operation Legend and similar operations?

37. Do you believe that federal law enforcement and state and local law enforcement partners should work together in a collaborative fashion?
38. Over the last few years, we've seen a marked increase in politically-motivated riots, including some high-profile examples. Do you think that police departments should have access to protective gear like helmets and riot shields when they're facing down a mob of rioters?
39. Do you believe the government should be responsible with taxpayer funds and reduce waste when it is possible to do so?
40. Should rioters be given a free pass to work out their anger by attacking government buildings?
41. Should rioters be given a free pass to work out their anger by attacking non-governmental targets, such as by attacking innocent people or businesses?
42. Should rioters who engage in violence be prosecuted to the fullest extent of the law?
43. During your hearing, you said that, under your own definition, “an attack on a courthouse while in operation, trying to prevent judges from actually deciding cases, that plainly is domestic extremism, domestic terrorism, [but] an attack simply on government property at night or any other kind of circumstances is a clear crime . . . both are criminal, but one is a core attack on our democratic institutions.”
  - a. Under that same definition, would the riots at the U.S. Capitol on January 6 qualify as “domestic terrorism” if they had occurred on January 7, after Congress had finished counting the election results?
  - b. Under that same definition, would you say that the riots at the U.S. Capitol on January 6 were not a “core attack on our democratic institutions” if they had taken place on January 7, after Congress had already finished counting the election results?
  - c. Does intent matter in the determination of whether something is “an attack on our democratic institutions?” In other words, if rioters attacking the U.S. Capitol mistakenly believed that Congress was conducting business inside and the rioters



intended to disrupt such business but the buildings were actually empty at the time, would such a riot still be an attack on our democratic institutions?

44. Do you believe, based on what you know as you answer these questions, that the violent riots instigated and carried out by Antifa and similar groups over the last few years in an attempt to dismantle or destroy police departments, courthouses, and other symbols and institutions of our justice system qualify as domestic terrorism and core attacks on our democratic institutions?
45. During your hearing, you were asked whether you believe that illegal entry at America's borders should remain a crime. You responded that you had "not thought about that question." Now that you have had time to think about the question, do you believe that illegal entry at our borders should remain a crime?
46. Is it important to enforce our nation's immigration laws?
47. You are currently a federal judge. If a case is decided by the D.C. District Court, the parties exhaust all of their appeal rights, and the court's order is upheld, would it be appropriate for the parties to simply ignore the court's order?
48. If you are confirmed as Attorney General, the nation's immigration courts will be your employees and will report to you. If one of your immigration courts rules that an alien has violated immigration law and must be deported, and all appeals are exhausted, should that alien be deported?
49. If you are confirmed as Attorney General and one of your immigration courts rules that an illegal alien who assaulted a U.S. citizen must be deported, and all appeals are exhausted, should that alien be deported?
50. If you are confirmed as Attorney General and one of your immigration courts rules that an illegal alien who is a gang member must be deported, and all appeals are exhausted, should that alien be deported?
51. Can unmonitored communications between inmates in Bureau of Prisons custody and the outside world be a security threat to our prisons?
52. Can unmonitored communications between inmates in Bureau of Prisons custody and the outside world threaten the safety and security of federal judges, their staffs, and their families?
53. Can unmonitored communications between inmates in Bureau of Prisons custody and the outside world threaten the safety of innocent people, crime victims, and other inmates?
54. Can unmonitored communications between inmates in Bureau of Prisons custody and the outside world threaten the safety of corrections officers and staff?

55. Drug cartels and other drug trafficking organizations push deadly drugs like fentanyl on our streets. According to the DEA, “[f]entanyl and other highly-potent synthetic opioids—primarily sourced from China and Mexico—continue to be the most lethal category of illicit substances misused in the United States.” It is estimated that more than 80,000 Americans died of opioid overdoses last year. Do you agree that stopping fentanyl and other synthetic opioid trafficking must be among the Department of Justice’s highest drug enforcement priorities?
56. Should the people who are responsible for bringing illicit fentanyl into the United States be prosecuted?
57. Should gangs and drug trafficking rings that distribute illicit fentanyl on the streets be prosecuted?
58. Should individuals who knowingly sell illicit fentanyl to unsuspecting customers while misrepresenting it as some less-lethal substance be prosecuted?
59. Should cartels, gangs, and drug trafficking rings that traffic drugs like heroin and cocaine be prosecuted?
60. The Chinese drug labs that have been flooding our streets with illegal fentanyl have recently turned to a new weapon: A drug called isotonitazene, or referred to on the street as “iso.” It’s harder to pronounce than fentanyl, but equally deadly, and has already been encountered in dozens of confirmed incidents across the country, according to the DEA. Last summer, the DEA used its emergency scheduling authority to make isotonitazene illegal, but that authority is only temporary. Will you commit to continuing the work of stopping this deadly drug?
61. During your hearing, you said that we should seek to eliminate mandatory minimum sentences in the context of drug cases. The mandatory minimum is a crucial tool in dismantling drug trafficking organizations, not only because it serves as a deterrent, but also because it promotes cooperation with law enforcement. As you know, many drug trafficking defendants can have mandatory minimum sentences significantly reduced merely by providing substantial assistance to the government. In passing legislation such as the Controlled Substances Act, Congress knew that the mandatory minimum would be an important tool in combatting an intractable problem like drug trafficking. Do you think it’s appropriate for the Executive branch to disregard Congress’s intent that individuals trafficking certain amounts of drugs be subject to specific mandatory minimum sentences by having a policy of charging lesser-included offenses as opposed to the most serious, readily provable offense?
62. If you are confirmed as Attorney General and Congress chooses not to heed your call to eliminate mandatory minimum sentences, do you believe that you have the authority to unilaterally override Congress by categorically declining to bring charges that would trigger those sentences?

63. If you are confirmed as Attorney General, will you be responsible for enforcing the laws of the United States?
64. If you are confirmed as Attorney General, will your responsibility be to enforce all laws of the United States, or merely the laws with which you agree?
65. Are laws passed by Congress and signed by the president merely policy suggestions for the Executive Branch?
66. Do you believe that it is appropriate for the Department of Justice to categorically decline to bring certain types of cases or charge certain crimes, regardless of the evidence, merely because you dislike the law?
67. Do you believe that it is appropriate for the Department of Justice to categorically decline to bring certain types of cases or charge certain crimes, regardless of the evidence, merely because you disagree with Congress about whether the law is good policy?
68. During your hearing, you said that you “find it hard to believe that the Department [of Justice] could think that there was any possibility of overturning the *Heller* [*v. District of Columbia*] case.” Please describe what you view as the core holding of the *Heller* case, and any limits you believe the *Heller* case imposes on the Department’s ability to regulate firearms.
69. As noted during your hearing, you voted to re-hear *en banc* the case of *Parker v. District of Columbia*, which challenged Washington, D.C.’s former ban on handgun possession even in the home for personal defense. Why did you vote to re-hear that case?
70. Prior to the Supreme Court’s opinion in *Heller v. District of Columbia*, did you think that Washington, D.C.’s former ban on handgun possession in the home for personal defense was allowable under the Second Amendment? Why or why not?
71. Firearms sales in the United States are occurring at a record pace, with more than 21 million background checks for gun purchases reported last year. In 2019, the Department of Justice released the first implementation report regarding the *Fix NICS Act*, in which the Department detailed improved compliance by state and federal agencies, resulting in faster and more accurate background checks for gun purchasers. Nonetheless, some have suggested that the government should use delays in background check results to prevent individuals from purchasing guns for undefined periods of time even if they have not been found to be ineligible. Do you believe that the Bureau of Alcohol, Tobacco, Firearms, and Explosives has regulatory authority under current law to require that certain individuals without a NICS denial have their firearm sale delayed indefinitely?
72. Modern Sporting Rifles (MSRs) are one of the most popular types of firearms sold today. MSRs are semi-automatic firearms, which only fire a single round with each pull of the trigger. Do you believe that President Biden has the authority under existing law to ban the sale or possession of MSRs without Congress?

**Senate Judiciary Committee - Questions for the Record from Senator John Kennedy  
February 22-23, 2021**

Hearing entitled: "The Nomination of the Honorable Merrick Brian Garland to be Attorney General of the United States"

**Questions for The Honorable Merrick B. Garland, nominated to be Attorney General of the United States**

1. The core copyright industries employ 5.7 million Americans. The copyright workforce earns on average more than \$100,000 per year -- a 43 percent premium over the average American wage. These 5.7 million Americans add \$1.5 trillion to the U.S. economy and rely on the property rights created by the Constitution and the Copyright Act to make a living from their art. Because copyright is purely a body of federal law, what mechanisms will you put in place to ensure that the Department prioritizes the protection of American creators?

2. The Obama administration was selective over which federal laws it would defend in court, based on its own interpretation of the law's constitutionality.

Is it the Department of Justice's duty to defend in court all laws duly passed by Congress where there is at least a reasonable argument to be made for the law being constitutional?

3. You and I are too familiar with backed-up court dockets. One of the places this is most evident is with our nation's immigration courts, which fall under the Department of Justice's jurisdiction. Over the last forty years, the backlogged caseload has only gotten worse.

Why don't immigration judges have similar authorities as other judges to dismiss claims or to grant summary judgment so they can more efficiently manage their dockets when it comes to disposing of meritless claims? Do you think these would be useful, and if so, will you commit to giving immigration judges similar authorities?

4. A few years ago, the Federal Bureau of Investigation special agent in charge in New Orleans called political corruption in that city "robust." He said corruption in New Orleans was "profound." In fact, we have two Federal Bureau of Investigation units in New Orleans to handle the workload.

How will you prioritize the issue of political corruption during your tenure as Attorney General, if confirmed?

**Senator Tillis Questions at Confirmation Hearing for Judge  
Merrick Garland  
Nominee to be United States Attorney General**

**Intellectual Property Enforcement**

1. The Department of Justice's attention to intellectual property enforcement has been somewhat inconsistent over the years. During the times that IP enforcement has properly been regarded as a high priority, the Department generally had put into place a structure that emphasizes its importance and takes a coordinated approach involving all the stakeholder components. What type of organizational structure do you plan to put in place at DOJ, as well as other steps you will take, to ensure that protecting American intellectual property will be regarded as a high priority under your leadership?
2. How do you plan to work proactively with the IP Enforcement Coordinator alongside DOJ's sister agencies, especially DHS, to coordinate IP enforcement across the government? In addition, please provide specific information about your plan to combat counterfeit products, online piracy and copyright crime, and the theft of trade secrets.
3. Last Congress, Senator Leahy and I partnered together to enact the Protecting Lawful Streaming Act. This bill finally closed the so-called "streaming loophole" by giving the

Department the authority to pursue felony charges against large scale, commercial piracy organizations. Importantly, this law doesn't allow the Department to target individual streamers, companies pursuing licensing deals in good faith, or internet service providers. This law is what we call a win-win for everyone. As Attorney General, will you use this new authority and make the prosecution of commercial piracy sites a tier one priority?

- a. How soon can you update the US Attorneys manual to provide guidance on prosecutions under this law?
- b. Will you ensure that such guidance makes clear that—per the plain, clear, and unambiguous words of the statute—that prosecutions should only be pursued against commercial piracy services?

### Patent Eligibility Reform

1. As you likely know, reforming our nation's patent eligibility standards is one of my top priorities. The current state of patent eligibility law is in shambles. The standards are so unworkable that you have judges ruling that things like a garage door opener is an abstract idea. That's bizarre and well-beyond the scope of what any reasonable person would conclude. These unworkable standards are having an adverse impact on a number of sectors, from life-sciences and precision medicine to quantum computing, 5G, and artificial intelligence. If the United States is going to remain the world's leader in innovation, we have to fix this.

That's why I'm doing everything I can, from hearings, letters, and draft legislation, to filing an *amicus brief* **this week** in the *American Axle* case. But I can't do it alone. As Attorney General, will you direct the Solicitor General to find appropriate cases on patent eligibility and to urge the Supreme Court to take them up and finally provide clarity in this area of the law?

**Antitrust**

1. Judge, as you know, competition policy and antitrust enforcement can have important implications for intellectual property policy. Both have the shared goal of encouraging innovation and competition. And a big area right now where more antitrust scrutiny is likely needed is the technology industry—particularly big internet companies. How do you think the Department of Justice should approach antitrust enforcement against what we think of as “big tech”?
2. Google and Facebook are two of the most powerful and most influential companies in the world. Both completely dominate their corners of the online service provider market. And more Americans now get their news from Facebook or Google than news publishers. At the same time, Facebook and Google have repeatedly refused to negotiate in good faith with news publishers for their carrying their content on Facebook and Google. Just last week this took a very ugly turn in Australia when Google agreed to some licensing terms but Facebook refused and then prohibited its Australian customers from sharing URLs from those news publishers. What do you plan to do to address monopoly powers generally and particularly those big tech companies that control access to information?
3. In the copyright space, the Department of Justice has overseen the music consent decrees that have governed the public performance of music for 80 years. Songwriters and



publishers have long argued—and I fully agree— that the consent decrees are outdated – especially for the digital age. Following a lengthy review of the consent decrees, the past administration left the consent decrees untouched. What are your thoughts on the music consent decrees, and do you plan to reopen their review? Do you support transitioning to a fully functioning free market for musical licensing?

4. In the patent space, standard essential patents are those patents necessary to meet certain requirements set by standard setting organizations. One area where this comes up a lot is for cell phone makers. In 2019, Senator Coons and I sent a letter to the Department of Justice urging greater clarity on how DOJ enforces antitrust policy with regard to standard essential patents. In particular, we wanted to ensure that DOJ doesn't unduly prejudice rights holders in this area. What do you think should be DOJ's competition policy and enforcement practices related to standard essential patents?
5. What are your thoughts on the ongoing issues surrounding the Qualcomm litigation? How will you approach the types of antitrust issues raised by the *Qualcomm* case?

### **Section 230 and Telecommunications**

1. Judge, last Congress this Committee dedicated a lot of attention to the Communications Decency Act, and particularly how some internet providers hide behind section 230's bar on liability to not address illicit user activity while also actively curating content. DOJ weighed in last year after completing a lengthy review of section 230 and sent Congress 230 reform legislation. As I'm sure you know, section 230 can pose real challenges for law enforcement because it does not encourage online services to address illicit activity – including sex trafficking – on their sites. DOJ's proposal focused on increasing transparency from online services when they remove lawful speech and motivating internet platforms to better address illicit activity. What are your thoughts on how section 230 should be reformed?

**Counterfeit Goods**

1. Judge Garland, counterfeit goods are not only a threat to American innovation, they are a significant threat to public safety. This is especially true as counterfeit PPE such as N95 masks flood into the United States putting Americans at risk. Earlier this month there was another report of more counterfeit N95 masks that had been sold to hospitals and, just last week, federal agents seized one million counterfeit N95 masks. What steps will you take as Attorney General to stop the flow of counterfeit goods into the United States and protect public safety?
  - a. How will you coordinate with the Department of Homeland Security to combat the importation of counterfeit goods?
  - b. Will you commit to establishing a specific task force dedicated to this issue?

### **Cybersecurity and Privacy**

1. Judge, we are still working to understand the extent of the reported Solar Winds cyber-attack. While the extent of this particular attack is shocking, cyber-attacks are not a new threat to American infrastructure and technology. As Attorney General, what will you do to prevent another attack like the Solar Winds attack, and more broadly, cyber-attacks on American infrastructure and innovation in the future?
2. To combat future cyberattacks we need a coordinated, whole-of-government approach to this issue. From proactive security measures to the quick reporting and prosecution of cyberattacks, every relevant agency in the federal government needs to be engaged on this issue. How will you increase cooperation between private actors and companies—particularly companies engaged in cutting edge research and development of emerging technologies—and the federal government on these issues?

**Law Enforcement**

1. In 2020, 47 law enforcement officers were murdered by criminals. In 2021, there have already been 11 law enforcement officers killed by criminals. The shocking calls to “defund the police” continue to devalue and dehumanize our brave men and women in blue. This is dangerous and it is unacceptable. As our nation’s top law enforcement official, what will you do as Attorney General to stop violence against law enforcement officers?
2. Do you agree or disagree that we need to make it a federal crime to assault law enforcement officers? If not, please explain why.
3. What are your thoughts on “defunding the police?” If you don’t support defunding the police, how do you and the Administration intend to manage the vocal stakeholders calling for this policy?
4. What are your thoughts on qualified immunity for law enforcement officers? I view qualified immunity as a critical legal protection for law enforcement agencies across the country? Do you believe it is appropriate to eliminate or limit qualified immunity?

### **Criminal Justice Reform**

1. The First Step Act was a landmark law that had broad bipartisan support. I am proud of the work we in the Judiciary Committee did to enact this commonsense and historic legislation. But proper implementation of the First Step Act is just as important as passing the law. Do I have your commitment that you will work in good faith with Congress to see that the First Step Act is fully implemented?
2. Earned time credits were included in this legislation as an incentive to encourage inmates to participate in programming that is likely to reduce their likelihood of recidivism. At this time, however, inmates have not yet been assigned earned time credits.
  - a. When are inmates scheduled to begin receiving earned time credits?
  - b. Which date has the Department and the Bureau of Prisons identified as the date when earned time credits begin to accrue?
  - c. How significant are the waitlists for inmates to access programming, and how will you reduce these waitlists?
  - d. What steps will you take to ensure that inmates have access to programming which will decrease their likelihood of recidivism?
3. Which criminal justice policy do you believe is the most important issue that needs to be addressed?

4. President Biden issued an executive order directing the Attorney General not to extend any contracts for private prisons. Can you explain the Administration's thinking surrounding this issue?

**Victims Issues**

1. In 2017, the Crime Victim's Fund collected \$6.5 billion – the most ever, and three times what was collected the year before. Collections in 2018 and 2019 plummeted to approximately \$500 million. As a result, organizations that serve victims have been deeply impacted by cuts in federal funding. My colleagues and I sent a letter on this issue last year that has yet to receive a response. In the letter, we identified the use of non-prosecution agreements as a major factor in this decrease in collections. Do you agree with that assessment?
  - a. Other than the use of non-prosecution agreements, what other factors have contributed to this significant decline in collections for the Crime Victims Fund?
  - b. Do you commit to working with the President and Congress to address this growing crisis for organizations who serve victims?
  - c. What recommendation would you make as Attorney General to solve this challenge?



**Private Immigration Detention**

1. President Biden has prohibited the Department of Justice from renewing or entering into any new contracts for private prison facilities. According to media reports, President Biden may extend that prohibition to immigration detention. Do you support this policy? How will you advise President Biden on this issue if you are confirmed?
  - a. How would you expect to absorb the detainee population from private facilities into public facilities?

**Asylum**

1. As the head of the Department, you will be responsible for the Executive Office of Immigration Review. In this role, you will have extensive authorities over the removal process for illegal immigrants. How does the Biden Administration plan to define asylum?
2. What are your thoughts on the previous Administration's decision to appropriately limit the scope of asylum in *Matter of A.B.*? Do you have any intention of expanding the definition of asylum to encompass more general acts of crimes committed against individuals?
3. If you do expand the definition of what qualifies for asylum, are you concerned this could cause an increase in unlawful immigration, something which would just further overwhelm our already strained immigration system?
4. What will the Biden Administration do to prevent family separations and reunite separated children?
5. What actions will you take to reduce the backlog of immigration cases? Additionally, for those who have final orders of removal, what steps will you take, in coordination with the Department of Homeland Security, to actually effectuate their removal?

### **Sanctuary Cities**

1. I believe very strongly that sanctuary city policies are misguided and dangerous. It is incomprehensible that we should be releasing dangerous criminal aliens back into our communities. For many years we have seen sheriffs across our nation, including some in the State of North Carolina, who have ignored the notification and detainer requests made by federal ICE agents. For example in 2019, Mecklenburg County's Sherriff in North Carolina ignored over 200 detainer requests. These reckless actions have led to criminal aliens being released back into our communities and jeopardizing public safety.

Do you agree with me that sanctuary city policies are a threat to public safety, and that it is unwise for sheriffs to ignore detainer requests which release criminal aliens back in tour communities? If not, why?

2. The previous administration attempted to stop sanctuary city policies by limiting access to federal grant funding for sanctuary cities. The Justice Department previously asked the Supreme Court to hear three cases to determine whether federal funds may be conditioned on whether sanctuary cities comply with federal immigration enforcement. Will you allow for this important issue to be litigated before the Supreme Court? Or will you direct the Justice Department to change its position in this case?

3. Do you believe that the federal government has the authority to condition federal grant funds on whether jurisdictions comply with federal immigration law?

**Deportation Moratorium**

1. As you know, the Department of Homeland Security issued a memorandum on January 20 that put in place a ban on deportation for 100 days. Currently there is an injunction filed in a federal district court in Texas preventing it from going into effect. If this injunction is lifted, it may exempt dangerous criminal aliens from being deported. Do you believe this is a wise policy by the Department of Homeland Security? More importantly, do you think this policy is even legal?
2. Do you believe that sanctuary city policies will shield dangerous criminal aliens who are released back in to communities because of this moratorium? What will the impact of this be on public safety?
3. If you are confirmed as the Attorney General, what action will the DOJ take to protect American citizens if criminal aliens are released into communities because of the moratorium?

### **International Parental Child Abduction**

1. I have a specific interest in the issue of international parental child abduction, where one parent will unlawfully kidnap an American citizen child to another country. Many of these countries often refuse to return the children. This practice is devastating to left-behind parents, who must navigate international law to get their children returned. Will you make this issue a top priority if you are confirmed as Attorney General?
2. In your career as an attorney, prosecutor, and judge, how much have you engaged with the issue of parental child abduction either through individual cases or broader policy?
3. Are you committed to working with left-behind parents to return each and every child kidnapped abroad? What steps will you take, yourself, to engage directly with left behind parents and their advocacy organizations?
4. How will you direct the Department to prevent and resolve cases of international parental child abduction? Will you commit to directing US Attorneys and DOJ staff to aggressively prosecute cases of international parental child abduction?
5. Preventing parental child abduction and resolving cases requires an interagency process between the DOJ, State, and DHS. How will you work with your colleagues at other

agencies to reunite kidnapped children with their left-behind parents?

6. Are you willing to utilize extradition as a tool to bring those who kidnap children to justice in the United States?

### **First Amendment Issues**

1. Over the past few months, Americans have needed their faith and the support that comes with their faith communities, but some governors have prohibited faith communities from gathering to worship. In many cases, the restrictions on religious gatherings have been much stricter than the requirements to go to the local Walmart. Judge Garland—is there a difference between Americans’ right to assemble and participate in peaceful protest and their right to practice their religion?
2. As Attorney General what will you do to protect Americans’ right to practice their faith during this incredibly difficult time?
3. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans’ religious freedom. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit that the Department of Justice will not support any legislative or executive action that would alter in any way the Religious Freedom Restoration Act’s protection for Americans of all faiths?
4. In a 2007 opinion, the Office of Legal Counsel affirmed that a religious organization that administers a federal grant retains its right, under the Civil Rights Act of 1964 and the Religious Freedom Restoration Act, to hire staff who agree with its religious mission. Despite pressure from outside groups, the Obama Administration refused to rescind that



opinion. If confirmed, will you continue the Obama Administration's policy of leaving that opinion in place?

5. Is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected? What is that line? Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?

### **Second Amendment**

1. President Biden repeatedly promised during his campaign that on his first day in office he would send a bill to Congress repealing liability protections on gun manufacturers, closing the background check loophole and waiting period. I am pleased that he did not actually do this on his first day in office. Can you commit to this Committee today that as Attorney General you will not take any actions to limit liability protections for gun manufactures, expand the background check requirements or extend the waiting period beyond what is mandated by Congress—unless Congress passes a law touching on one of these subjects?
2. President Biden selected Kristen Clarke to lead DOJ's Civil Rights Division. Yet in publicly accessible tweets issued on July 16, 2019, Ms. Clarke lauded the late Justice John Paul Stevens for calling for the repeal of the Second Amendment. Does it concern you at all that President Biden's choice of DOJ's Civil Rights Division supports repealing a constitutional provision that protects an individual civil right?
3. What will you do as Attorney General to ensure that Americans feel confident that DOJ will protect their Second Amendment rights and ensure Ms. Clarke doesn't use her possible position leading the Civil Rights Division to attack individual gun owners?

### **Gunfire Protection**

1. It is increasingly clear that technology provides very useful tools in crime fighting and crime prevention, especially when they are in an integrated system. I would like to see Federal support for these technologies increased. Most gunshot incidents, for example, go unreported to local law enforcement. Gunfire detection and location technology where it has been deployed, including communities in my state, has helped local law enforcement respond to more gunshot incidents, and in a safer and timely way. This enables police to collect the shell casings, interview witnesses, and sometimes catch a fleeing suspect. When those shell casings are run through another technology, the National Integrated Ballistic Information Network (NIBIN), law enforcement agencies can determine if the gun has been used in other crimes and thus focus their investigation. The technology also facilitates a faster emergency medical response for gunshot victims. The use of cameras in public spaces is another valuable tool. Will you support increased Federal resources to assist state and local governments in deploying these kinds of technologies?

**Pastor Cao**

1. I'd like to ask about the case of Pastor Cao. Pastor Cao is a lawful permanent resident who lives in North Carolina. He's been arbitrarily detained by the Communist Chinese Government since March 2017 and is currently being held in Kuming Prison. My understanding is that he is on the U.N. Working Group on Arbitrary Detention's list of people who should be immediately released. Will you commit to me to do everything in your power to secure Pastor Cao's release, including raising his unlawful detention each and every time you meet with your Chinese counterparts?

### **Prohibiting the Use of “Slush Fund Settlements”**

1. As you may know, the Obama Administration had instituted a policy where legal settlements between the DOJ and companies were used to fund third-party, special interest groups that were not parties to the litigation. This practice, required by the Department as a condition for settling a case, has been called “slush fund settlements.”

In some cases, the Department required donations that restored funding that Congress had specifically cut. The Department justified “slush fund settlements” by claiming that business defendants were “voluntarily” making these third-party payments as part of settling claims. But many of these companies were boxed into accepting these types of settlements because they had a tremendous amount of liability on the line if they were to litigate the matter, in addition to the risk of losing government licenses and contracting permits. In reality, these companies never had a choice.

In 2017, the Trump Administration forbade this practice; and last year, the Department incorporated this ban into the Justice Manual (85 FR 81409). The Biden Administration recently announced that it is reviewing the bar on this potentially unlawful and unethical practice. Will you commit to oppose the reinstatement of this potentially unlawful and unethical practice if you are confirmed?

### **Maintaining the Corporate Enforcement Policy**

1. Over the past four years, the Department has updated and reformed the enforcement of the Foreign Corrupt Practices Act (FCPA), a process that began under the Obama Administration. Specifically, in 2016, under Attorney General Loretta Lynch, the Department announced an FCPA “pilot project,” which was designed to promote voluntary self-disclosure, cooperation with the government, and remediation of violations in exchange for mitigated penalties. In 2017, the Department enhanced this pilot project and incorporated it into the U.S. Attorneys’ Manual as the FCPA Corporate Enforcement Policy (CEP); the Department has since stated that it will apply the principles of the CEP to contexts other than the FCPA.

It appears that these reforms are having a positive effect on compliance. If you are confirmed, will you continue to support and improve the Corporate Enforcement Policy in a way that appropriately incentivizes the private sector to invest voluntarily in compliance programs and cooperate with the Department?

### **Safeguards on the Use of Sub-regulatory Guidance**

1. Guidance documents, also known as sub-regulatory guidance, are a way for agencies to announce policy changes, establish new procedures, and sometimes set forth new obligations on the private sector. This guidance often takes a variety of forms, such as Frequently Asked Questions, compliance memos, and other tools that can help agencies accomplish their goals but can unfairly impose burdens on private parties. Sub-regulatory guidance does not have to comply with statutory law or be formally promulgated as rules in accordance with the Administrative Procedure Act (most notably the notice and comment obligations). Agencies often issue it without any restrictions.

Since agencies are not required to notify the public when issuing new guidance, it may be impossible for private parties to comply with it. This is particularly problematic when the “guidance” purports to be binding, even though it is not based in law or regulation. Worse still, agencies have increasingly sought to bring enforcement actions predicated on it.

The abuse by the government of sub-regulatory guidance prompted the Trump Administration to act. In 2017, former Attorney General Sessions issued a memo rescinding existing guidance documents that went too far and prohibiting the Department from issuing new ones that

have the effect of adopting new regulatory requirements or amending the law. On January 25, 2018, former Associate Attorney General Rachel Brand released the Brand Memo, which forbids the Department from treating sub-regulatory guidance as binding legal requirements in certain cases. The Department later broadened the Brand Memo and incorporated it into the Justice Manual, so it covered all civil and criminal enforcement actions.

In October 2019, the last Administration made the Department's important reforms in this area apply across the Executive Branch; it issued two Executive Orders (EO), EO 13891 and EO 13982, which respectively required agencies to treat guidance documents as "non-binding both in law and in practice" and limited the ability of agencies to enforce standards of conduct that were not publicly stated or issued in formal rulemaking. These EOs also required transparency to the American people—guidance documents now had to be posted on-line, and the government had to receive Americans' input on the guidance it was issuing.

It is troubling that on his first day in office, President Biden rescinded Executive Orders 13891 and 13982. However, the particular reforms and safeguards that are designed to prevent the unfair application and abuse of sub-regulatory guidance are still policy at the Department. Do you commit to preserving these important safeguards at the Department if you are confirmed?



### **Transparency of Third-Party Litigation Funding in False Claims Act Cases**

1. As you may know, third-party litigation funding (TPLF) is a growing phenomenon in the United States. TPLF involves third-party financiers investing in litigation for a cut of any final settlement or judgment. For many cases involving TPLF, the existence of a TPLF agreement is never required to be disclosed to the opposing party or even to the court, which means that funders may be exercising strategic control over the litigation instead of the actual plaintiffs.

This practice is especially problematic in the context of *qui tam* False Claims Act (FCA) litigation brought by relators. This is because *qui tam* relators stand in the shoes of the government. In these cases, the Department has little insight into the extent to which TPLF funders are backing *qui tam* cases that the Department is investigating, litigating, or otherwise monitoring. These non-party funders may be exercising substantial control over relators' litigation and settlement decisions in cases that were brought in the name of the United States.

Third party litigation funders and the government may have entirely divergent interests. Because of this possible divergence of interests, the Department has the right and the need to know if third-party funders are behind *qui tam* actions.

To achieve this desired level of transparency, the Department recently began instructing its attorneys to ask a series of questions at each relator interview designed to reveal whether third party funders are involved in the underlying litigation. Do you agree that TPLF raises particular ethical issues in *qui tam* FCA cases? If you are confirmed, will you continue to require DOJ attorneys to ask these questions at each relator interview?

### Asbestos Oversight

1. The Department of Justice has repeatedly and publicly committed to investigate conduct related to asbestos trusts that is illegal under federal law. I and others on this committee have introduced legislation, the PROTECT Asbestos Victims Act, that would make it easier for asbestos-related fraud and abuse to be identified and addressed. While I continue to believe that statutory reforms are necessary, I applaud the Department's commitment to using available tools to ensure that legitimate asbestos victims are able to receive the compensation they are due without dilution of their claims through fraud.

Most recently, the Department filed a Statement of Interest in a case pending in U.S. Bankruptcy Court for the Western District of North Carolina, *In re Bestwall LLC*. In a press release announcing the filing, the Department was clear that it is “increasingly common for claimants’ counsel to seek duplicative recoveries from multiple sources by misrepresenting the asbestos products to which claimants were exposed” and that fraudulent claiming “depletes resources that would otherwise be available to compensate deserving claimants filing claims in the future.”

The Department is also acting separately to protect the United States’ interest in the appropriate resolution of asbestos claims. As the Department’s *Bestwall* filing explained, “[i]n many cases, payment of personal injury

claims will trigger reimbursement obligations to the United States under the Medicare Secondary Payer Statute (“MSP Statute”), 42 U.S.C. § 1395y(b)(2).” Misdirection of asbestos funds through waste, fraud, or abuse may prevent proper reimbursements. Asbestos trusts’ public disclosures and court filings make clear that the Department is actively investigating potential violations of the federal False Claims Act and MSP Statute.

Will you commit, if confirmed, to continue the Department’s important efforts to detect and prosecute illegal asbestos-related conduct and provide the Civil Division, U.S. Trustee Program, and other Department components with the resources needed to do so?

**Senator Marsha Blackburn  
Questions for the Record  
Senate Judiciary Committee**

**“Nomination of Judge Merrick Garland to be Attorney General of the United States”**

1. Is the death penalty appropriate punishment for domestic terrorists such as the Oklahoma City bomber Timothy McVeigh and the Boston Marathon bomber Dzhokhar Tsarnaev?
2. Do you support any modifications to the consumer welfare standard?
3. Does the consumer welfare standard include consideration for non-price harms such as diminished privacy?
4. Are reforms necessary to reshape the limits of liability protection under Section 230 of the Communications Act? What speech should or should not be protected?
5. If confirmed, how do you plan to handle investigations within the U.S. Department of Justice (DOJ) that were initiated by prior administrations?
6. On January 26, 2021, President Biden signed an executive order on privately operated detention facilities, stating: “The Attorney General shall not renew Department of Justice contracts with privately operated criminal detention facilities, as consistent with applicable law.” The U.S. Marshals Service (USMS) oversees 60,000 detainees daily. If the USMS loses access to contractor-operated secure facilities, there is the real risk of not being unable to find needed capacity that meets federal requirements and standards for detainees, including the requisite level of medical care.
  - a. Will state and county detention facilities provide a sufficient alternative if the USMS loses access to contractor-operated secure facilities?
  - b. If state and county detention facilities fail to provide a sufficient alternative to contractor-operated secure facilities, how will the USMS effectively carry out its mission of exercising custody of federal prisoners and providing for their security and transportation to correctional facilities?
7. In 1994, President Clinton and Congress enacted a ban on assault weapons that barred the purchase of numerous common, self-defense, and hunting firearms. In 2016, Obama issued 23 Executive Actions on gun violence, including a call to ban assault weapons and high-capacity magazines. There are reports President Biden plans to enact similar gun control measures via Executive Actions. If confirmed as Attorney General, would you use your authority over the Bureau of Alcohol, Tobacco, Firearms and Explosives to promote a similar reenactment of these types of gun bans?
8. Please describe any limits under federal law that bar the use of taxpayer funds for abortion.

9. Although marijuana is still considered a federally controlled schedule one drug, some states have legalized marijuana use within their jurisdictions. Do law enforcement agencies at the federal, state or local level have universal access to technology that can accurately assess whether a driver has unsafe levels of THC in his or her system? If not, what solution do you recommend for the public safety problem of driving under the influence of marijuana?
10. The Wall Street Journal recently reported that some illegal immigrants anticipate more lenient treatment by the Biden Administration. In January 2021, U.S. Border Patrol successfully arrested 7,260 illegal aliens attempting to enter the United States compared to 4,500 in December 2019. As Attorney General, how do you plan to prioritize illegal reentry cases, and will you carry through with a zero-tolerance policy for illegal immigration enforcement?
11. What steps should DOJ take, from filing amicus briefs, statements of interests, to initiating lawsuits, to ensure that the First Amendment is upheld for all viewpoints on college campuses? Please describe some recent efforts taken on behalf of campus free speech initiatives that you believe should be continued.

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Nominee to be United States Attorney General**

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## Chairman Durbin

### Responses to Questions from Chairman Durbin to Judge Merrick Garland, Nominee to be United States Attorney General

1. At your hearing, you made clear you will work tirelessly to restore integrity and independence to the Justice Department. In your opening remarks and in responding to several questions, you addressed the importance and role of career Justice Department employees. I have a few additional questions on that topic.

Early in his tenure as Attorney General, Eric Holder told career DOJ professionals that the Justice Department “has aptly been described as the ‘crown jewel’ of the federal government...not because of any laws or regulations, cases or controversies, buildings or equipment, but rather because of the quality, integrity, and dedication of the people who work tirelessly to carry out the Department’s vital mission.” He went on to say that these career employees are “the backbone, the heart, and the soul” of the Department.

Unfortunately, over the last four years, many of these career employees have been publicly undermined and denigrated by Department leadership. President Trump amplified baseless lies that he was the “victim of a seditious conspiracy” at DOJ and said that Attorney General Barr should “clean house.” Barr overruled prosecutors to seek a lower sentence for Trump ally Roger Stone and to dismiss a case against Trump ally Michael Flynn, leading to a wave of resignations and a statement of protest from over 2,000 former DOJ officials.

Barr even dismissed the idea that senior officials could trust line prosecutors’ judgment. He stated: “Letting the most junior members set the agenda might be a good philosophy for a Montessori preschool, but it’s no way to run a federal agency.”

- a. If confirmed, to what degree would you rely on the expertise of career Justice Department employees?

**RESPONSE: The more than 115,000 career public servants at the Justice Department and its law enforcement agencies are committed to serving the cause of justice and protecting the safety of our communities. If confirmed, I would extensively rely on their expertise.**

- b. How does your previous experience as a Special Assistant to the Attorney General, as an Assistant U.S. Attorney, as a Deputy Assistant Attorney General, and as Principal Associate Deputy Attorney General inform that view?

**RESPONSE: Before I became a judge, a significant portion of my professional life was spent at the Justice Department as a Special Assistant to Ben Civiletti, the last of the trio of post-Watergate Attorneys General; as a line Assistant U.S. Attorney; as a supervisor in the Criminal Division; and finally, as a senior official in the Department. Many of the policies that the Justice Department developed during those years are the foundation for reaffirming the norms that were adopted to help ensure that the Department adheres to the rule of law. Among these are policies that protect the independence of the Department**



from partisan influence in law enforcement, that strictly regulate communications with the White House, that establish guidelines for FBI domestic operations and foreign intelligence collection, that direct the respectful treatment of the press, that read the Freedom of Information Act generously, that respect the professionalism of Justice Department employees, and that set out the principles of federal prosecution to guide the exercise of prosecutorial discretion.

- c. Do you believe that respecting the input and experience of career professionals is an important component of ensuring the Justice Department's independence?

**RESPONSE: As a former career prosecutor myself, I believe that respecting the input and experience of career professionals is an important component of ensuring the independence of the Department of Justice. If confirmed, a critical part of my job will be to protect career employees—prosecutors, lawyers, agents, and all others—from partisan motives or other improper influences.**

2. In the 2013 case *Shelby County v. Holder*, the Supreme Court gutted Section 5 of the Voting Rights Act (VRA) by striking down its “preclearance” formula, which required states or localities with a history of voter discrimination to receive signoff from the Justice Department before making changes to their voting laws.

Nearly eight years later, Democrats in Congress are still working to restore the VRA to ensure ballot access for all. In the meantime, Republican state legislatures have enacted a slew of measures to undermine the franchise. We’re seeing discriminatory voter ID laws, purges of voter rolls, curbs on early voting, attempts to undermine absentee voting, and polling location closures in minority precincts.

And yet, throughout the entirety of the Trump Administration, the Justice Department’s enforcement of the VRA was nearly nonexistent. Until May 2020, the Administration had not filed a single new case under Section 2 of the VRA, which remains in force and prohibits any “standard, practice or procedures...which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color.”

After the 2020 election, where we saw record-breaking turnout in the midst of an unprecedented pandemic, these voter suppression efforts have been dialed up. According to the Brennan Center, in 2021 alone, at least 165 bills that would restrict ballot access have already been introduced or considered in 33 states.

- a. What are your views on the state of ballot access today?

**RESPONSE: I was encouraged to learn that the country had a historically high voter turnout in the last election. But at least a third of Americans still did not vote, and I think it is important that every eligible American has the opportunity to vote.**

- b. What do you view as the Justice Department's role in ensuring the right to vote?

**RESPONSE: I believe the Department of Justice has a central role in protecting the right to vote for all eligible Americans. Voting is foundational to our democracy, and protecting the fundamental right to vote will be a top priority of the Department should I be confirmed.**

3. At your hearing, I shared with you a story about a visit I made to an immigration court hearing in downtown Chicago. I mentioned four-year-old Marta and six-year-old Hamilton, two victims of the Trump Administration's shameful Zero Tolerance Policy. Marta and Hamilton were represented by top-notch pro bono lawyers from a Chicago nonprofit and were thankfully reunited with their parents.

But so many immigrants moving through the immigration court system are not represented by an attorney. Moreover, as noted at your hearing, the immigration court backlog has grown considerably — from 460,000 cases in 2015 to more than 1.2 million pending cases today.

In addition to this increased backlog, the immigration courts fell victim to harmful policies propagated by the Trump Justice Department that politicized the courts and stripped them of both their independence and effectiveness. Under Trump, the Justice Department:

- Restricted immigration judges' ability to manage their own dockets and to administratively close low-priority cases;
- Established a controversial annual quota system requiring judges to decide a minimum number of cases at the expense of due process;
- Politicized the hiring process for judges, according to multiple whistleblower accounts;
- Decertified the judges' longstanding union; and
- Tried to end the highly effective Legal Orientation Program, which provides basic legal information for detained migrants.

In short, under Trump, Attorneys General Sessions and Barr treated immigration courts as yet another arm of the Trump Administration's anti-immigration machinery.

- a. Do you agree that the nation's immigration courts should operate free of undue political influence?

**RESPONSE. Yes. All courts must operate fairly, impartially, and free of improper influence of any kind. As a sitting judge for the last 24 years, these values are of particular importance to me.**

- b. Will you commit to work with this Committee to improve the administration of justice in immigration courts?

**RESPONSE: Yes. As I testified in my confirmation hearing, the immigration court backlog is an extraordinarily serious problem. As a federal judge for the last 24 years, I have not**

had occasion to study the particulars of this issue, but I look forward to learning more. If I am confirmed, I am committed to appropriately supervising this departmental function with the goal of effective and efficient processing of immigration cases, consistent with principles of fairness, due process, and other applicable law.

**Senator Ossoff**

**Responses to Questions from Senator Ossoff to Judge Merrick Garland, Nominee to be  
United States Attorney General**

Will you commit to working with my office and this committee to determine how the Department of Justice can support efforts to ensure there is accountability for war crimes, atrocities committed against civilians, and attacks on journalists?

**RESPONSE: If I am confirmed as Attorney General, I look forward to building upon the important efforts the Department has undertaken to seek justice for the victims of human rights violations and war crimes worldwide. I will also be committed to pursuing accountability for attacks on journalists. I look forward to working with you and the Committee to effectively address these issues.**

## Ranking Member Grassley

### Responses to Questions from Ranking Member Grassley to Judge Merrick Garland, Nominee to be United States Attorney General

1. Among the civil rights of Americans is the right to keep and bear arms. This has been repeatedly affirmed by the U.S. Supreme Court.

What role does the U.S. Department of Justice have in protecting this civil right, and what steps will you take to ensure it is protected?

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

2. As a candidate, President Biden pledged to direct his Attorney General to “deliver to him within his first 100 days a set of recommendations for restructuring the ATF and related Justice Department agencies to most effectively enforce our gun laws.”<sup>1</sup> What recommendations would you provide President Biden?

**RESPONSE: Because I am not currently at the Department, I am not familiar with the current operations of the ATF. If I am confirmed, I will respond to requests from the Administration on this issue after consultation with Department personnel.**

3. In the context of national security, there is often a tension between keeping Americans safe and protecting individual liberties.
  - a. As a judge, how do you weigh those competing interests against each other?
  - b. Will you change how you weigh those interests if you are confirmed as Attorney General?

**RESPONSE: From my first job at the Justice Department as a special assistant, to my current job as a federal judge, I have sworn an oath that I would take again if I am confirmed as Attorney General—to support and defend the Constitution of the United States. I have and will continue to dedicate myself to ensuring the security of our Nation, to ensuring the fair and faithful enforcement of our laws, and to protecting the rights of all Americans.**

4. In 2017, the Trump administration formally discontinued and repudiated Operation Choke Point. This program, which involved the Justice Department among other federal agencies, pressured banks against transacting with certain industries which, while legal and financially viable, were considered to pose a “reputation risk” to banks. The

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<sup>1</sup> “The Biden plan to end our gun violence epidemic,” available at <https://joebiden.com/gunsafety/>.

Obama/Biden administration has been accused of using Operation Choke Point to target disfavored business sectors, including makers and sellers of firearms and ammunition. More recently, the Office of the Comptroller of the Currency issued a rule that would prohibit banks from discriminating against lawful, financially sound customers for ideological or political reasons.

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

**RESPONSE: I am not familiar with Operation Choke Point. As I testified, I think the laws should be enforced without regard to politics or partisanship.**

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

**RESPONSE: I have not yet carefully studied these particular measures or developed positions on them. But as I testified at my hearing, I believe as a general matter that we should be careful that people who are entitled to have guns get the background check that allows them to have them, and that for those who are not entitled and who we are concerned about because they are threats, because they are felons or for whatever reason barred by the law, that there is an opportunity to determine that they are not permitted to have a gun.**

6. Federal firearm laws delegate a number of technical decisions highly relevant to the legality of firearms and their accessories to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The agency has historically made case-by-case determinations that offer manufacturers and consumers very little guidance on how slight variations to existing designs might affect a product's legality. Law-abiding gun owners are rightly concerned that products they obtain lawfully and in good faith could, at the stroke of ATF's pen, later become contraband that would subject the items to forfeiture and their owners to criminal penalties.

What safeguards can ATF and DOJ provide so that these technical decisions are transparent, consistent, and fairly applied, without the political whipsawing gun owners have come to fear and expect with each change in administration?

**RESPONSE: Because I am not currently at the Department, I am not familiar with ATF technical decisions regarding particular firearm features or accessories. I agree that rules should be transparent, consistent, and fairly applied.**

7. During your hearing you were asked if you will support the issuance of executive orders that restrict firearm ownership.
  - a. Can executive orders restrict the constitutional right to bear arms?
  - b. What executive orders would you refuse to support on the basis they would violate the right to bear arms?
  - c. What executive orders restricting firearm ownership are constitutional in your view?

**RESPONSE: Like laws enacted by Congress, executive orders issued by the President must comply with the Constitution, including the Second Amendment. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment confers “an individual right to keep and bear arms.” *Id.* at 595. The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626. If I am confirmed, I would not support any executive order that is inconsistent with any provision of the Constitution, including the Second Amendment.**

8. According to press reports, the Biden administration recently reactivated a “migrant child facility” that was open “for only a month in summer 2019” during the Trump administration.<sup>2</sup> The practice of keeping children in these facilities was routinely criticized as “kids in cages” by Democrats and members of the media.
  - a. What’s the difference between a “migrant child facility” and a “cage”?
  - b. According to this article, as of February 21, the Biden administration had “about 7,000 children in HHS custody.” How do you plan on dealing with the rise in unaccompanied minors arriving at the Southern Border?

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

9. The Senate Judiciary Committee received a letter supporting your nomination from the U.S. Chamber of Commerce. On March 13, 2019, Senators Schumer, Whitehouse, and 22 of their Democrat colleagues wrote a letter to the U.S. Chamber admonishing the organization as one that “has long used its considerable resources to fight legislative and

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<sup>2</sup> Siliva Foster-Frau, “First migrant facility for children opens under Biden,” Washington Post, Feb. 22, 2021, available at [https://www.washingtonpost.com/national/immigrant-children-camp-texas-biden/2021/02/22/05dfd58c-7533-11eb-8115-9ad5e9c02117\\_story.html](https://www.washingtonpost.com/national/immigrant-children-camp-texas-biden/2021/02/22/05dfd58c-7533-11eb-8115-9ad5e9c02117_story.html).

administrative action on climate change.”<sup>3</sup>

- a. Why do you think an organization that “has long used its considerable resources to fight legislative and administrative action on climate change” supported your nomination?

**RESPONSE: I must leave it to any organization to explain its reasons for supporting my nomination.**

- b. Should you be confirmed, what effect will the Chamber of Commerce’s endorsement have on your tenure as Attorney General?

**RESPONSE: None. During my almost 24 years as a judge, I have been immune to outside pressures and have made my decisions based solely on the facts and the law before me. If confirmed as Attorney General, I will continue to do the same.**

10. The Department of Justice has changed its litigation position in a number of cases so far since President Biden’s inauguration.

- a. Were you consulted on any of these changes in position?

**RESPONSE: As I testified at my hearing, I have kept out of litigation decisions made by the Department.**

- b. Do you agree with all of the changed positions? If you don’t agree with a change in a particular case, please explain why.

**RESPONSE: As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court, including cases in which the Department of Justice is participating.**

- c. Do you anticipate weighing in on the litigation positions of any other Justice Department cases currently before the courts? If so, please list them and your rationale.

**RESPONSE: I will not weigh in on any of the Department’s litigation decisions unless and until I am confirmed by the Senate. If I am confirmed, I will have ultimate responsibility for the Department’s litigation decisions and will weigh in on those decisions in accordance with the Department’s traditional policies and practices.**

- d. As I asked you in our phone call, will you commit to having the Department of Justice inform the Judiciary Committee on all changes in litigation position?

**RESPONSE: As I testified at my hearing, I have great respect for the Committee’s**

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<sup>3</sup> Available at <https://www.whitehouse.senate.gov/news/release/schumer-whitehouse-lead-letter-challenging-us-chamber-of-commerce>.



**oversight role. If I am confirmed, I will seek to ensure that the Department of Justice's Office of Legislative Affairs works with you and your staff to determine the most appropriate way to keep the Committee apprised of significant changes in litigating positions.**

11. As many members of the Committee mentioned, you will find yourself with a lot of issues to tackle right away if you are confirmed. As you and some of my Democrat colleagues mentioned, the Department of Justice has limited resources, and thus some issues will be prioritized over others, and "prosecutorial discretion" may be employed in the immigration context due to these resource strains.

- a. Do you plan on re-implementing the Department-wide implicit bias training instituted under former Attorney General Lynch?

**RESPONSE: I am not familiar with the training programs currently offered by the Department of Justice, nor am I familiar with the training instituted by former Attorney General Lynch. President Biden issued an Executive Order directing federal agencies to conduct an internal review and devise plans to address unequal barriers to opportunity in agency policies and programs. If I am confirmed as Attorney General, I will promptly undertake efforts to comply with President Biden's Executive Order.**

- b. If so, do you feel that such training is a higher priority than enforcing immigration laws passed by Congress?

**RESPONSE: If I am confirmed as Attorney General, I commit to enforcing the laws of the United States, including immigration laws.**

12. During the second day of your hearing, Wade Henderson, Interim President and CEO of the Leadership Conference on Civil and Human Rights, said that he is "very confident in the Attorney General's willingness to open his door to hear concerns of organizations, a vast array of whom will have access to him—the entirety of the country, truthfully—he'll evaluate those requests and carry them out..."

- a. Which "organizations" will "have access" to you?
  - i. If so, how will they be able to make "requests" to you and how will you evaluate them?
  - ii. If not, why was Mr. Henderson under the impression that they would?
- b. In particular:
  - i. Will the NAACP "have access" to you?
  - ii. Will the ACLU "have access" to you?
  - iii. Will NARAL "have access" to you?
  - iv. Will Planned Parenthood "have access" to you?
  - v. Will the NRDC "have access" to you?
  - vi. Will the NRA "have access" to you?
  - vii. Will the National Shooting Sports Foundation "have access" to you?
  - viii. Will Everytown for Gun Safety "have access" to you?
  - ix. Will the Alliance Defending Freedom "have access" to you?

- x. Will the U.S. Chamber “have access” to you?
- xi. Will the Becket Fund for Religious Liberty “have access” to you?
- xii. Will the United States Conference of Catholic Bishops “have access” to you?

**RESPONSE: If I am confirmed as Attorney General, I will serve the American people and the rule of law. I look forward to receiving information from a wide range of voices as we make decisions important to the Department’s mission.**

13. You were asked if “the Chinese Communist Party is an enemy of the American people.” You responded that you were not well positioned to “compar[e], say, the threat from China and the threat from Russia” but that “that China is a threat with respect to hacking of our computers, hacking of our infrastructure, theft of our intellectual property.” During his confirmation hearing, Bill Barr was asked by Senator Sasse, “is Putin a friend or a foe?” Barr responded that Russia is “a potent rival of our country.”

In your personal view:

- a. Is Vladimir Putin an enemy of the United States?
- b. Are foreign terrorist organizations like ISIS and al Qaida enemies of the United States?
- c. Is the Chinese Communist Party an enemy of the United States?
- d. Is the Iranian Revolutionary Guard an enemy of the United States?
- e. Is the Communist Party of Cuba an enemy of the United States?

**RESPONSE: If I am confirmed as Attorney General, I will take an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic. As I testified before the Committee, that requires remaining vigilant to the persistent threat of attacks by terrorist organizations. That also requires countering threats from foreign actors who conduct espionage, attack our elections, imperil our cyber security, steal our intellectual property, target our service members and diplomats overseas, and violate the sovereignty and territorial integrity of our allies. If confirmed, I will assess the Department’s current structure and capacity to counter such threats and fully support the President’s national security team in protecting the American people’s security, prosperity, health, and way of life against all enemies.**

14. When asked about Vanita Gupta, President Biden’s nominee to be Associate Attorney General, you said, “Well, Senator, I know Vanita Gupta now quite well. I didn’t know her before, but since the nomination I have gotten the chance to talk with her and speak with her.”
- a. If you have only gotten to know Ms. Gupta since her nomination, does this mean you did not know her before her nomination?
  - b. If you didn’t know her before her nomination, how was she selected?
  - c. Did you have any input in her selection?

- d. If your input was limited, how are you confident in senior deputies you did not choose?

**RESPONSE:** I have had the privilege of getting to know Vanita Gupta well since we were nominated, and I have found her to be a person of great integrity and experience who is dedicated to the mission of the Department—particularly equal justice under law and ensuring independence and integrity in decision making. I have complete faith in Ms. Gupta, and she will be integral to the success of the Department’s leadership team. As you note, President Biden nominated Ms. Gupta for this post. That is within his Constitutional authority alone, and I think he made a terrific decision in selecting her.

15. During your hearing you were asked by Senator Cotton and me about the ongoing litigation defending the death sentences of Dzhokhar Tsarnaev and Dylann Roof. I understand that you are not willing to comment on pending litigation. But in the case of litigation defending death sentences on direct appeal *generally*—that is not with regard to Tsarnaev or Roof in particular—what factors *should* the Justice Department consider in deciding whether or not to continue to defend those sentences on direct appeal?

**RESPONSE:** As I testified at my hearing, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. I cannot comment on factors that would apply to pending cases. I also testified that I have developed serious concerns about the death penalty due to the large number of exonerations in capital cases, the apparent arbitrariness or randomness in application, and the disparate impact of the death penalty on Black Americans and other people of color. As a broader policy matter, President Biden has publicly stated that he opposes the death penalty.

16. Do you think that the regulations (28 CFR §§ 26.22, 26.23) guiding opt-in assessment by the Attorney General of capital counsel certifications under Chapter 154 of Title 28 allow for the Attorney General to reconsider a final certification decision? If so, what provision in the regulations allows for this?

**RESPONSE:** I understand that this issue has been raised in a case that is currently pending before the D.C. Circuit. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court.

17. In December 2020, the Justice Department finalized a rule prohibiting the inclusion of provisions in settlement agreements directing or providing for a payment or loan to a non-governmental person or entity that is not a party to the dispute, except in defined circumstances. The rule follows a 2017 memo from then-Attorney General Jeff Sessions, which was codified in the Department’s “Justice Manual.” As AG Sessions stated, “[w]hen the federal government settles a case against a corporate wrongdoer, any settlement funds should go first to the victim and then to the American people—not to bankroll third-party special interest groups or the political friends of whoever is in

power.” Will the Department commit to abiding by and upholding this rule? Do you think it’s appropriate for the Justice Department to direct settlement funds toward third-party organizations that Congress has affirmatively defunded?

**RESPONSE: As I testified at my hearing, I have not studied this specific issue. If I am confirmed, I will carefully consider the matter and the arguments on both sides, including both the reasons why this practice developed and the reasons why it was changed.**

18. In 2018, the Justice Department announced that it had begun investigating potential waste, fraud, and abuse in the asbestos bankruptcy trust system. These trusts are designed to ensure that all victims of asbestos exposure—both current and future—have access to compensation for their injuries. If funds in these trusts are depleted unfairly through abuse or mismanagement, it’s the future victims who will feel the impact through reduced compensation. To protect future asbestos victims and the integrity of the asbestos trust system, it’s important that the Department continue its investigative and oversight work. If confirmed, will you ensure that the Department does so, and will you commit to keeping this Committee informed of its efforts?

**RESPONSE: If I am confirmed, I look forward to learning more about these efforts as part of my duty to ensure the full and faithful enforcement of our laws, including laws concerning conduct related to the asbestos bankruptcy trust system. I will exercise my best efforts in good faith to keep this Committee informed about the Department’s efforts through the Office of Legislative Affairs, consistent with the Department’s policies and practices related to ongoing investigations and cases, as well as closed matters.**

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

**RESPONSE: As a sitting judge I am not permitted to comment on pending lawsuits. As a general matter, transparency and clarity in the law are important principles that I will strive to uphold as Attorney General. If I am confirmed, I will look forward to studying this issue.**

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

**RESPONSE: I have not studied this question and therefore cannot offer an opinion on it.**

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

**RESPONSE:** If I am confirmed, I will consult about recusal issues with the Department of Justice's career ethics officials, for whom I have enormous respect. Because I would be personally responsible for my recusal decisions, I would ultimately have to make my own judgment based on the facts, the law, and the applicable rules, policies, and practices.

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

**RESPONSE:** I am not familiar with all of the laws that the Civil Rights Division enforces, but my understanding is that, in general, the Division is responsible for enforcing federal statutes prohibiting discrimination on specified statutory bases. I am not familiar with whether and to what extent the Civil Rights Division is engaged with the issue you reference.

23. Would the Department of Justice under your leadership defend *Roe v. Wade* in court if it were challenged?

**RESPONSE:** If I am confirmed as Attorney General, the Department of Justice's litigating positions will be guided by the facts and the law, including the important legal principle of *stare decisis*. *Roe v. Wade* is an established precedent of the Supreme Court that has been repeatedly reaffirmed.

24. Would the Department of Justice under your leadership defend *D.C. v. Heller* in court if it were challenged?

**RESPONSE:** If I am confirmed as Attorney General, the Department of Justice's litigating positions will be guided by the facts and the law, including the important legal principle of *stare decisis*. *Heller* is an established precedent of the Supreme Court that has been repeatedly reaffirmed.

25. During your hearing you commented on the "disparate results with respect to wealth accumulation, discrimination in employment, discrimination in housing, discrimination in health care availability" relating to racial minorities. This is why now-Justice Kavanaugh has for many years sought to hire minority law clerks first at the Court of Appeals and now at the Supreme Court.

- a. In your years on the bench, how many law clerks have you hired?
- b. Of them, how many were Black, Hispanic, or Native American?
- c. What affirmative steps have you taken to identify and recruit outstanding Black, Hispanic, or Native American law clerks?

**RESPONSE: I have had the privilege of working with approximately 100 clerks over the course of my time as a federal judge, and have intentionally sought to bring a wide variety of lived experiences and perspectives to my chambers, including by building candidate pools of people with diverse backgrounds. I have not tracked these statistics over the course of my tenure, but I am proud to have had clerks from diverse backgrounds throughout my time on the bench.**

26. Elite universities have had complex and often troubled relationships with racial and ethnic minorities over the years. You were asked at your hearing, for example, about the Justice Department litigation against Yale University for its alleged discrimination against Asian applicants. But these complex relationships go beyond Yale. Princeton's President, for example, has said that "Racist assumptions from the past also remain embedded in structures of [Princeton] University itself." According to the *New York Times*, one study showed that Harvard recruits African-American applicants who have little chance of attending "rais[ing] questions about whether such recruitment strategies amount to a cynical enterprise by college admissions offices, in which students are being sold false promises to serve the schools' interests."<sup>4</sup> It is perhaps, then, unsurprising that studies have shown that diverse and low-income students at elite colleges can "find the experience isolating and foreign."<sup>5</sup>

While the causes of and proper responses to the difficulties faced by many racial and ethnic minorities at elite universities are beyond our purview here, there seems to be general agreement that they are real. With that in mind,

- a. How have you taken the challenges faced by racial and ethnic minorities in higher education into account in your clerk hiring?
- b. Recognizing that high-achieving students from diverse backgrounds come from a variety of educational settings, have you ever hired any law clerks from outside the Ivy League? If so, from which universities and how many? If not, why not?

**RESPONSE: I have intentionally sought to bring a wide variety of lived experiences and perspectives to my chambers, including by building candidate pools with people from diverse backgrounds. I have hired clerks from non-Ivy League schools.**

27. Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."
- a. Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?

<sup>4</sup> Anemona Hartocollis, "That Recruitment Letter From Harvard Probably Doesn't Mean Much," *New York Times*, Nov. 29, 2019, available at <https://www.nytimes.com/2019/11/29/us/harvard-admissions-recruit-letter.html>.

<sup>5</sup> Elissa Nadworny, "As Elite Campuses Diversify, A 'Bias Towards Privilege' Persists," *NPR*, March 5, 2019, available at <https://www.npr.org/2019/03/05/699977122/as-elite-campuses-diversify-a-bias-towards-privilege-persists>.

**RESPONSE:** The Religious Freedom Restoration Act provides that the federal government may not “substantially burden a person’s exercise of religion” unless it “demonstrates that application of the burden to the person” is “in furtherance of a compelling government interest” and is “the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1. As the Supreme Court’s decisions illustrate, a reviewing court is ultimately responsible for determining whether a law substantially burdens a person’s exercise of religion. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 719-726 (2014). But the Court has emphasized that a court making that determination must not second-guess the plausibility or reasonableness of the religious adherent’s beliefs. *Id.* at 723-726. Instead, the court’s “narrow function” is to determine whether the adherent’s asserted beliefs reflect an “honest conviction” and whether the challenged law “imposes a substantial burden” on the adherent’s ability to act in accordance with those beliefs. *Id.* at 723-724.

- b. How is a burden deemed to be “substantial[]” under current caselaw? Do you agree with this?

**RESPONSE:** In *Hobby Lobby*, for example, the Court held that the contraceptive-coverage requirement promulgated under the Affordable Care Act imposed a substantial burden on the plaintiffs’ exercise of religion. By requiring the plaintiffs to arrange for such coverage, the Court reasoned, the requirement demanded “that they engage in conduct that seriously violates their religious beliefs,” and if they did not comply, they would have faced “substantial economic consequences” in the form of “substantial” penalty assessments. 573 U.S. at 720-721.

28. Last Congress, I co-authored the bipartisan Promoting Security and Justice for Victims of Terrorism Act. This bill passed Congress with support from the State Department and was signed into law by the President. It strengthens the jurisdictional provisions of my Anti-Terrorism Act of 1992 and ensures that American victims of terrorism have their day in court against the PLO and Palestinian Authority. The PLO—which has done everything possible to avoid responsibility in our justice system—challenged the constitutionality of this law in federal court. As you know, the Attorney General has the duty to defend the constitutionality of duly enacted laws when they’re challenged. If confirmed, will you commit to defending the constitutionality of the Anti-Terrorism Act and its most recent jurisdictional amendments in cases currently pending in federal court?

**RESPONSE:** The question refers to cases currently pending in federal court. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. As a general matter, however, the Department of Justice’s longstanding practice is to defend the constitutionality of the laws passed by Congress, subject only to limited exceptions. If I am confirmed, I will uphold that traditional practice.

29. Under applicable law you would have the ability to appoint U.S. Attorneys, should you be confirmed. Will you commit to consulting with home-state Senators prior to any Attorney General appointments of U.S. Attorneys?

**RESPONSE: If I am confirmed, I would welcome the opportunity to consult with home-state Senators in the limited circumstances under which the Attorney General has the authority to appoint U.S. Attorneys.**

30. I've long supported the Freedom of Information Act (FOIA) and the public disclosure of government records. Transparency yields accountability, no matter who is in the White House. As Chairman of this Committee, I helped steer the FOIA Improvement Act—led by Senators Cornyn and Leahy—into law, which creates a “presumption of openness” standard. The Justice Department oversees the federal government’s compliance with FOIA.
- a. Do you agree that FOIA is a critically important tool for holding government accountable? If confirmed, will you commit to make FOIA—and the faithful and timely implementation of the 2016 amendments—a top priority at the Department?
  - b. If confirmed, will you commit to helping advocate for more proactive disclosure of government records—not just by the Justice Department, but by the federal government overall?

**RESPONSE: Yes. As I said in my testimony before the Committee, I strongly believe in transparency, and I recognize that FOIA is a critically important tool for government accountability.**

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

**RESPONSE: As I testified at my hearing, antitrust was my first love in law school and I firmly believe that the antitrust laws are the charter of American economic liberty. I am committed to vigorously enforcing the antitrust laws in all sectors of the economy.**

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

**RESPONSE: I believe that effective enforcement of the U.S. antitrust laws in a global economy requires cooperation with our allies and trading partners. The Department of Justice’s Antitrust Division works closely with its counterparts around the world through**



both bilateral relationships and participation in international organizations. Indeed, I worked with Attorney General Civiletti on one of the Department's first bilateral cooperation agreements during my first tour of duty in the Department. If I am confirmed, I look forward to learning more about the current status of these important efforts and working with the Antitrust Division to reinforce and strengthen them.

33. When bringing any complicated case, resources are undoubtedly an issue. There will be future cases—both criminal and civil—where the in-house technology expertise of the Department of Justice will be vital. Do you think the Justice Department currently has enough technologists and other experts to deal with the current workload? And how can the Department ensure that a lack of expertise in these areas doesn't impact the administration of justice?

**RESPONSE:** Because I am not currently at the Department, I am not familiar with current state of technological expertise at the Department or whether any additional resources are required. As I testified at my confirmation hearing, if I am confirmed, I look forward to the opportunity to engage with Congress on resources allocated to the Department in our effort to ensure that the Department has the expertise it needs to carry out its mission.

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

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

**RESPONSE:** While I have not had the occasion to study this issue specifically, if confirmed, I would welcome the opportunity to learn more about this issue from you.

35. In environmental rulemakings and records of decision (ROD) that have already been developed by non-political career civil servants and have completed the entire permitting process—from scoping, through public comment periods, draft environmental impact statements, all the way through records of decision—should those rulemakings and RODs be defended in court by the Department of Justice? If not, why not?

**RESPONSE:** I have not studied this specific issue. In general, all Department of Justice litigation decisions—including decisions about whether to defend rulemakings and other

**agency actions—should be based on a careful review of the relevant facts and law and consultation with the relevant lawyers at the Department and any interested client agency.**

36. As Attorney General, you would have broad authority to administer and enforce the Immigration and Nationality Act and issue decisions that would be binding on immigration courts, the Board of Immigration Appeals, and the Department of Homeland Security. I've long been concerned about the abuse of our asylum system.

According to Executive Office of Immigration Review statistics, from Fiscal Year 2008 through Fiscal Year 2019, for every 100 immigrants who claimed credible fear, only 14 were ultimately granted asylum.

Under the law, asylum can be granted if an individual has a well-founded fear of persecution in their home country based on race, religion, nationality, membership in a particular social group, or political opinion.

The notoriously vague “membership in a particular social group” category has created quite a few issues over the years.

- a. Do you agree with former Attorney General Sessions' statement in *Matter of A-B-* that, as a general matter, claims related to gang violence or domestic violence committed by non-governmental actors will not qualify for asylum?
- b. Do you agree with the statement made in *Matter of A-B-* that the mere fact that a country might have problems effectively policing certain crimes—such as gang violence—or the fact that certain populations are more likely to be victims of a crime, cannot in and of itself establish an asylum claim?
- c. Do you agree that, particularly in cases involving private criminal activity, asylum adjudicators and immigration judges must consider factors such as whether or not internal relocation within an individual's home country presents a reasonable alternative to asylum in the United States?
- d. If confirmed, do you anticipate asking for BIA cases to be referred to you in order to revisit *Matter of A-B-* or address any of its findings regarding whether being a victim of private criminal activity amounts to persecution on account of membership in a particular social group?

**RESPONSE: As a judge on the D.C. Circuit, my docket has not provided the occasion to become familiar with the federal government's asylum policies. If I am confirmed as Attorney General, I will study this issue. As a general matter, asylum is part of American law and the Department of Justice and the State Department have an obligation to apply the federal asylum laws.**

37. Do you think the Supreme Court should be expanded?

**RESPONSE: President Biden has stated his intent to create a bipartisan commission to study the court system. If confirmed, I would review the issue as appropriate.**

38. Another Justice Department nominee has said, “Yes, freedom of religion is a fundamental right, but it is not an absolute right. It cannot be used as shield to permit discrimination.”

- a. Is this a correct understanding of the First Amendment and the Religious Freedom Restoration Act?
- b. Will this be the understanding of the Justice Department, should you be confirmed?

**RESPONSE: The Religious Freedom Restoration Act provides that the federal government may not “substantially burden a person’s exercise of religion” unless it “demonstrates that application of the burden to the person” is “in furtherance of a compelling government interest” and “is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1. If I am confirmed, the Department of Justice’s understanding of the Act will be determined by the text of the statute, traditional tools of statutory interpretation, and applicable precedent.**

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

**RESPONSE: As I testified at my hearing, I am a strong believer in religious liberty, a principle that is enshrined in the Free Exercise Clause, the Establishment Clause, the Religious Freedom Restoration Act, and other federal statutes. Those constitutional provisions and statutes guarantee religious individuals and organizations substantial autonomy to act consistently with their religious beliefs.**

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

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

the schools rely to do this work lie at the core of their mission.” *Id.* at 2055. In finding the facts sufficient to decide the case before it, the Court declined to adopt a “rigid formula” for determining whether an employee falls within the exception. *Id.* at 2069 (citation omitted).

41. Do you agree that the Religious Freedom Restoration Act requires assessing compelling government interests “to the person” substantially burdened by a government action?
  - a. If not, why not?
  - b. If so, can *general* interests restrict religious liberty, or must the interests be defined more precisely?
  - c. How would you implement this principle in Justice Department guidance?

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

42. Judge Ken Starr, in supporting your nomination, said he was confident that your record shows you will defend religious liberty. Will you commit that the Department of Justice under your leadership will not seek to restrict the scope of or otherwise undermine the Religious Freedom Restoration Act through litigation, guidance, or legislative priorities?

**RESPONSE:** As I testified at my hearing, I strongly believe in religious liberty. If I am confirmed as Attorney General, I will seek to ensure that the Department of Justice scrupulously complies with the Constitution and all federal statutes, including the Religious Freedom Restoration Act. I have not considered any potential legislative amendments to the Act. If I were asked to consider such an amendment, my position would be informed by my strong belief in religious liberty and guided by a careful review of the relevant facts and law.

43. The First Step Act became law 2 years ago, and since its passage, I’ve focused on the implementation of this comprehensive criminal justice law. The COVID-19 pandemic has affected implementation efforts. During the pandemic, many First Step Act authorities were used more frequently yet judiciously, such as increased review of compassionate release and elderly home detention cases.

However, the virus impeded programming available to federal prisoners. Programming to reduce recidivism is an essential part of the law, and can help non-violent inmates earn time off their sentences.

As we continue to navigate COVID-19 in prisons, how would you use your role as Attorney General to ensure that programming is available for inmates and effective in reducing recidivism?

**RESPONSE: If confirmed, I would welcome the opportunity to work with Congress and the Bureau of Prisons to advance implementation of the First Step Act. Because I am not in the Department, I am not familiar with the programming issue you raise. If confirmed, I would work diligently to ensure COVID-19 safety and programming in prisons that effectively reduces recidivism.**

44. It is critical that the Justice Department and Bureau of Prisons fully and expeditiously implement the First Step Act. Chairman Durbin and I sent a letter to the Justice Department Inspector General last year on this issue, but particularly in light of COVID-19. Specifically, we asked that he review the implementation of legislative authorities and directives on home confinement, preventative measures to protect prison staff and inmates, COVID-19 testing, screening and isolation measures, and availability of access by inmates to electronic communication.

If confirmed, would you provide any directives and guidance on these issues? If so, what would that look like?

**RESPONSE: I am not aware of the status of this review, but, if confirmed, I would press for implementation of the dictates of the First Step Act, including by issuing directives and guidance where necessary.**

45. The First Step Act requires that nonviolent inmates be given more opportunities to earn time credits as a result of participating in recidivism reduction programming. This will undoubtedly lead to more inmates being put in prerelease custody, such as halfway houses. The First Step Act authorizes \$75 million each year through FY 2023. It'll be absolutely vital that some of this funding be used for the expansion and creation of new residential reentry centers.

As Attorney General, will you use the funding available to you to adequately fund these residential reentry centers to handle the increase of inmates being put in prerelease custody?

**RESPONSE: If confirmed, I will strive to use available resources to adequately fund these residential reentry centers.**

46. The Justice Department, as part of the federal government, must enforce federal laws. An area where this has led to confusion is the enforcement of federal law in states where

marijuana has been legalized. As you are aware, marijuana is a Schedule I drug under the Controlled Substances Act.

- a. Under your leadership, how will you navigate the Justice Department's enforcement of federal law in states where marijuana has been legalized?

**RESPONSE:** As I suggested at my hearing, I do not think it the best use of the Department's limited resources to pursue prosecutions of those who are complying with the laws in states that have legalized and are effectively regulating marijuana. I do think we need to be sure, for example, that there are no end runs around the state laws by criminal enterprises, and that access is prohibited to minors.

- b. What do you see the role of the Justice Department to be in the changing landscape of marijuana legalization, decriminalization, and recreational use?

**RESPONSE:** The Department of Justice has not historically devoted resources to prosecuting individuals for simple possession of marijuana. As I suggested at my hearing, I do not think it the best use of the Department's limited resources to pursue prosecutions of those who are complying with the laws in states that have legalized and are effectively regulating marijuana. I do think we need to be sure, for example, that there are no end runs around the state laws by criminal enterprises, and that access is prohibited to minors.

- c. Do you support efforts to decriminalize or legalize marijuana?

**RESPONSE:** As I said at my hearing, criminalizing the use of marijuana has contributed to mass incarceration and racial disparities in our criminal justice system, and has made it difficult for millions of Americans to find employment due to criminal records for non-violent offenses.

- d. Legalized marijuana use may contribute to increased driving deaths. How will you support efforts by local and state law enforcement to combat driving under the influence of marijuana?

**RESPONSE:** I have not had an opportunity to examine this public safety question. If I am confirmed, I look forward to learning about it, and determining if the Department has programs or resources that could be helpful.

- e. While Biden is opposed to legalization of marijuana, he supports decriminalization of possession and expungements of marijuana offenses. Do you see any contradictions in President Biden's vision of maintaining the drug's federally illegal status while decriminalizing minor possession and expunging prior conviction records?

**RESPONSE:** As I testified at my hearing, it is important to focus our attention on violent crimes and other crimes that greatly endanger our society, and prosecutions for simple marijuana possession are not an effective use of limited resources. As I testified, we have

seen disparate treatment in these prosecutions that has had a harmful impact on people and communities of color, including stymied employment opportunities and social and economic instability.

- f. Are you aware whether drug trafficking organizations continue to operate illicit marijuana markets in states with legalized marijuana? If so, what steps will you take to combat drug trafficking organizations that may use the cover of the legal marijuana market?

**RESPONSE: As I testified at my hearing, I think we need to be sure that there are no end run around the state laws by criminal enterprises, and that kind of enforcement is important.**

- 47. The last two Attorneys General showed an unwavering commitment to seeking justice for vulnerable populations such as the elderly, and they both encouraged the prosecution of financial fraud and scams that target seniors during the COVID-19 pandemic. They championed training, research, victim services, and public awareness initiatives to combat elder abuse, through the Justice Department's "Elder Justice Initiative."
  - a. Will you also commit to continue the previous administration's Elder Justice Initiative and devote adequate resources to its implementation?

**RESPONSE: I am not familiar with the Elder Justice Initiative, but I share your commitment to seeking justice for the elderly, and, if confirmed, I look forward to working with you in seeking to ensure that the Department has the resources necessary to achieve that goal.**

- b. And will you ensure that that there continues to be a prosecutor dedicated to elder abuse cases in each federal judicial district (as required under the bipartisan Elder Abuse Prevention and Prosecution Act, which I championed in 2017 with Senator Blumenthal)?

**RESPONSE: I am not familiar with the specific requirements of the statute, but, if confirmed, I will work to ensure the Department abides by statutory requirements and vigorously enforces all laws that protect the Nation's elderly from fraud and abuse.**

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

**RESPONSE:** Because I am a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court.

49. Do you believe we should be defunding, or otherwise withdrawing resources in any way, from police services, in order to redirect those resources to other government services? As Attorney General, will you take any steps to shift resources away from direct law enforcement services?

**RESPONSE:** As I stated at my hearing, I do not support defunding the police. I support giving police departments the resources they need to reform, build community trust, and ensure the safety of their communities. I understand that many police departments are forced to use their limited resources on public health issues over which they do not want sole responsibility, including confronting mental health crises. I believe other professionals in the community, such as mental health professionals, need resources to work in the community in a way that helps reduce unnecessary confrontations, alleviate the strains placed on police officers, and enhances public safety.

50. One area where bipartisan support could be found in combatting crime is increased Federal support to state and local law enforcement for technology. These include items like body armor, camera systems, automated fingerprint identification systems, weapons of less than lethal force. I am sure you are familiar with technology that detects gunshots, including technology that identifies gunshots and their location and transmits that information quickly to local law enforcement. Do you believe that local communities deserve increased Federal support to deploy this technology, along with other technologies?

**RESPONSE:** I am very supportive of law enforcement using technology appropriately and effectively. Because I am not in the Department, I am not currently aware of Department resources made available for these purposes, but, if confirmed, I look forward to learning more about ways the Department can provide appropriate support while protecting civil liberties.

51. As noted in media reports, the FBI waited months before pursuing sexual abuse allegations made by Olympic gymnasts against Larry Nassar. On July 9, 2018, I sent a letter requesting that the FBI provide my committee staff with a briefing on its handling of the USA Gymnastics abuse allegations. My letter also requested responses to 11 questions. Nearly three years have elapsed, and the FBI has yet to provide me with a briefing or responses to the questions I raised in this letter. To date, the FBI has indicated only that the matter had been turned over to the Office of Inspector General.
- a. Can you commit to a date certain when I will receive a response from the Department to my letter and briefing request?



- b. Can you commit to a date certain by which the Department will make available to my committee staff its internal report on the FBI's handling of the investigation into the Nassar allegations?

**RESPONSE: Because I am not in the Department, I don't have information about the Department's response to your request. If confirmed, I will look into the matter.**

52. Prosecutors within the Human Trafficking Prosecution Unit in DOJ's Civil Rights Division work closely with federal prosecutors and law enforcement personnel to streamline human trafficking investigations, ensure consistent enforcement of trafficking statutes, and identify multijurisdictional trafficking networks. The FBI's Crimes Against Children and Human Trafficking program also focuses on detection and investigation of human trafficking crimes.

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

**RESPONSE: Yes.**

- b. How will you do so?

**RESPONSE: Domestic and international human trafficking, the commodification of humans for forced labor, prostitution, and other illicit purposes, is a scourge on our society. If I am confirmed, I will seek to expand and further the efforts of the Civil Rights Division to combat these terrible offenses.**

53. In 2018, the Department of Justice launched the China Initiative, focusing on the wide number of national security threats posed by the government of the People's Republic of China (PRC). As FBI Director Wray noted, the FBI opens a new China-related counterintelligence case about every 10 hours.

- a. Will you continue this important initiative?
- b. In what ways do you think our response to the threat of the government of the PRC can be made more comprehensive or robust?

**RESPONSE: Because I am not currently at the Department, I am not familiar with the details of this initiative. But if confirmed, I look forward to reviewing this and any related initiatives that are underway. As I testified at my confirmation hearing, there is no doubt that China poses threats that the United States must defend against with a whole of government response.**

54. In 2020, the Department of Justice launched Operation Legend, a sustained and systematic law enforcement initiative to fight the sudden surge in violent crime that

began in America's cities last summer. By the end of 2020, over 6,000 arrests had been made through Operation Legend, including 450 for homicide.

- a. Do you intend to retain or disband Operation Legend?
- b. If you intend to disband it, how do you intend to support state and local partners to fight the recent surge in violent crime?

**RESPONSE: Because I am not currently at the Department, I am not familiar with the details of Operation Legend. As I testified at my hearing, it is important to focus the Department's attention on violent crimes and other crimes that greatly endanger our society, and I support targeting our limited resources that way.**

- 55. The FBI and DOJ have repeatedly indicated to this committee that a solution for lawful access to encrypted technology is needed. Do you support such a solution? What is your plan?

**RESPONSE: I agree that it is important to address law enforcement's legitimate need to protect public safety, while at the same time recognizing civil liberties, economic, and cybersecurity concerns. If confirmed, I look forward to learning more about this important issue.**

- 56. Section 3204 of the SUPPORT for Patients and Communities Act provided that specialty pharmacies may distribute Medication Assisted Treatments (MAT) directly to providers.
  - a. Section 3204 of the Act requires the practitioner to administer treatment to the patient named on the prescription or dispose of the medication within 14 days of receipt of the controlled substance, a period of time which can be modified by DOJ. Comments to the DEA Interim Final Rule for the SUPPORT Act have suggested that the 14 day limit needs to be increased in order to eliminate barriers to patient access. Can you commit to considering these comments and issuing a Final Rule expeditiously?
  - b. Can you commit that the DEA will expeditiously completed rule-making under your leadership? Please describe how you will ensure this.

**RESPONSE: Because I am not currently at the Department, I am not familiar with the DEA Interim Final Rule for the SUPPORT Act. If confirmed, I look forward to learning about the DEA's rule-making process and working with Department personnel to ensure it is efficient and effective.**

- 57. In your hearing, you indicated a willingness to work with me on classwide scheduling of fentanyl analogues. Please be as explicit as possible: do you support a permanent extension of the current Schedule I designation of fentanyl related substances that is

currently set to expire in May 2021? If not, please explain why not. If so, how do you plan to support this extension?

**RESPONSE: As we discussed, fentanyl analogues are sold illicitly and have caused senseless fatalities. Criminals constantly alter their chemical composition to evade scheduling. If confirmed, I look forward to examining and addressing this problem.**

58. During your hearing you were asked repeatedly about the death penalty. I understand your answers to mean that you do not personally support the death penalty any longer, despite righteously seeking the death penalty against terrorist Timothy McVeigh. I also understand that you have committed to following the law as enacted by the Congress, and not selectively enforcing the provisions with which you personally disagree.

Will you enforce the death penalty so long as it is the law of the land? If not, why not?

**RESPONSE: As I testified at my hearing, I do not regret seeking the death penalty against Timothy McVeigh. Over the past two decades, however, I have developed serious concerns about the death penalty due to the large number of exonerations in capital cases, the apparent arbitrariness or randomness in application, and the disparate impact of the death penalty on Black Americans and other people of color. As a broader policy matter, President Biden opposes the death penalty, and could choose to order an across-the-board moratorium on federal executions.**

59. Do you intend to continue Operation Lady Justice? What plans do you have to alter, restrict, rebrand, or otherwise change this important initiative?

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

60. One thing on which there is bipartisan agreement is our mutual disdain in both parties for white supremacism and white supremacism extremism. Yet, as I stated in a recent letter to Senator Durbin, the term appears to be used out of context at times to slam conservatives, including supporters of former President Trump, who are not in fact white supremacists.

In your written statement and in your hearing, I noticed that you characterized the attack on the Capitol as having been committed by white supremacists. However you also stated that you had not been briefed yet on law enforcement's information on the Capitol attack.

What is your understanding of the involvement of white supremacists in the 1/6 attack? What is the source of your information? If someone suggested you characterize the attack as conducted by white supremacists, who suggested that to you?

**RESPONSE: Because I am not at the Department, I do not have access to internal law enforcement information relating to the attack on the Capitol. My statement was that the**

attack was by “white supremacists and others” and my understanding of the events is based on videos, audio tapes, and reports that I saw and heard in the public media.

61. The year 2020 was marked by a great deal of left-wing violence. Riots broke out in numerous cities. Over 900 officers were injured in the line of duty. At least 25 people died. Estimates of the damage run over 2 billion dollars. The FBI opened over 300 domestic terrorism cases in response to this violence. Nationally over 14,000 people were arrested. Notwithstanding this violence, Democratic politicians have been dismissive and the media has lumped in the riots with the peaceful protests, using the dubious terminology that there were no riots, only “mostly peaceful protests.” This is contrasted with the bipartisan condemnation of the attack on the Capitol by right-leaning supporters of former President Trump.

In response to my direct question, you committed to continuing to work the over 300 domestic terrorism cases opened by the FBI in response to riots last year. I thank you for making that commitment. Senator Hirono then asked you if you would prioritize rightwing cases. Senator Hirono cited a *New York Times* article in which a small number of DOJ and FBI employees claimed that working the leftwing summer riots somehow “distracted” them from rightwing extremism. However the article notes that the FBI carries about 1,000 domestic terrorism cases in an ordinary year, and 400 were opened last summer because of the riots. It is difficult to see how a 40% increase in case load is a “distraction.” If anything, leftwing terrorism and anarchist extremism seem like growth areas especially deserving of your attention.

It is my expectation that you will receive constant pressure from left-leaning media such as the New York Times and Congressional Democrats to “prioritize” rightwing terrorism over leftwing terrorism, or to ensure that “scarce resources” are devoted to right-leaning terrorism and not left-leaning terrorism. This is totally unacceptable, and I suspect it has more to do with attempting to deemphasize the very real threat of leftwing terrorism than it does with anything else.

- a. Can you reaffirm your commitment to me that you will continue to pursue the 2020 riots cases and future cases of leftwing terrorism?

**RESPONSE: If confirmed, confronting domestic terrorism will be a top priority. As I testified at my hearing, I believe the role of the Department is to investigate and prosecute acts of violence and other crimes regardless of associated ideology.**

- b. Can you commit to me that if you are ever contemplating prioritizing or de-prioritizing or under-resourcing any terrorism investigations, you will first come to Congress and ask for more resources?

**RESPONSE: If confirmed, I would seek to ensure that investigations into terrorist threats are adequately resourced, and I would welcome the opportunity to work with Congress to guarantee that the Department always has the resources it needs to combat evolving domestic and international terrorist threats.**

- c. Do you agree that protecting Americans from all forms of domestic terrorism is a critical priority?

**RESPONSE: Yes.**

62. During your hearing I noted that former Attorney General Barr has observed that the FBI, while it had robust programs for white supremacism and militia extremism, lacked a similar infrastructure for anarchist extremism cases. Former Acting DHS Secretary Wolf stated this may have contributed to law enforcement being blindsided by the civil unrest that began in 2020. I asked if you will commit to reviewing your anarchist extremism program for weaknesses and fixing those weaknesses, and I understand that you will. Please explain exactly how you will conduct this review?

**RESPONSE: Because I am not in the Department, I am not familiar with these specific programs. If confirmed, I look forward to learning more about them and any related efforts. As I testified at my hearing, confronting domestic terrorism will be a top priority.**

63. Will you keep the antigovernment extremism task force which was founded at the Justice Department last summer, and which appears sorely needed at this point in time? If not, why not?

**RESPONSE: Because I am not in the Department, I am not familiar with this specific program. If confirmed, I look forward to learning more about this and any related efforts. As I testified at my hearing, confronting domestic terrorism will be a top priority.**

64. I want to better understand a point you were making in your hearing. I believe you stated that you would not consider an attack on a courthouse to be domestic terrorism if it occurred at night when judges were not there. You mentioned that this would comport with a statutory definition. Title 18 of the U.S. Code, section 2331 defines terrorism:

- (5) the term “domestic terrorism” means activities that—
  - (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
  - (B) appear to be intended—
    - (i) to intimidate or coerce a civilian population;
    - (ii) to influence the policy of a government by intimidation or coercion; or
    - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
  - (C) occur primarily within the territorial jurisdiction of the United States[.]

How does burning or attacking a courthouse at night not comply with that definition? To be more specific, don’t months of attacks on the federal courthouse in Portland, Oregon meet that definition? If not, why not?

**RESPONSE:** My point at the hearing was as follows: “[A]n attack on a courthouse, while in operation, trying to prevent judges from actually deciding cases ... plainly is domestic extremism, domestic terrorism. An attack simply on a government property at night or any other kind of circumstances is a clear crime and a serious one and should be punished.... I don’t know enough about the facts of the example you’re talking about, but that’s where I draw the line.... [B]oth are criminal, one is a core attack on our democratic institutions.”

65. Former Attorney General Barr launched investigations, under the Civil Rights of Institutionalized Persons Act, into how state actors may have fueled the spread of COVID-19 in public nursing homes. These investigations are even more important as we have learned that state actors may have concealed information and underreported nursing home deaths in the state of New York.

- a. If confirmed, will you set aside any partisan pressure and continue the Justice Department’s investigations, under the Civil Rights of Institutionalized Persons Act, into four Democratic governors’ poor handling of the COVID-19 pandemic in public nursing homes?
- b. Will you look into the question of whether New York State officials may have deliberately misled federal investigators and the public as to the number of COVID-19 deaths which occurred in nursing homes?
- c. Acting U.S. Attorney for the Northern District of New York, Toni Bacon, is a career prosecutor and the former Elder Justice Coordinator of the Department of Justice. Will you consider keeping her in her acting role to work on the investigation of this potential cover up in New York state until a replacement is confirmed by the Senate?

**RESPONSE:** If confirmed, I will make decisions concerning investigations based on the facts and the law, without regard to partisan considerations. I understand that, generally, in all investigations like those referenced above, the Justice Department considers evidence of fraud, false statements, and other violations of the law. Because I am not in the Department and am a sitting federal judge, it would not be appropriate for me to comment on any particular investigation.

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

**RESPONSE:** If confirmed I look forward to reviewing the policy. As I testified at my hearing, I am a strong believer in religious liberty.

67. The Department of Justice's Office of Legal Counsel, in a January 2020 opinion, declared that the Equal Rights Amendment (ERA) resolution expired in 1979. Its legal opinion also indicated that Congress has no power to revive this resolution, except by re-starting the Article V process with the support of two-thirds of Congress. For the current Congress to attempt to retroactively change the deadline on this long-expired proposal would be like this Congress trying to override a veto by President Carter. Yet the Virginia General Assembly has passed a resolution purporting to ratify the ERA and claimed to be the last state needed to enact the Amendment.

The late Justice Ruth Bader Ginsburg implied that she agreed with this OLC legal opinion when she stated, last February, of the ERA proposal, "I'd like it to start over." She added that Virginia's legislative action came "long after the deadline passed.... Plus, a number of states have withdrawn their ratification."

Yet some now are pressing the new Biden Administration to declare the original 1972 ERA back from the dead, without first obtaining two-thirds of votes in Congress and the consent of three fourths of the states.

The Archivist for the United States issued a press release, dated January 8, 2020, indicating that he "defers to DOJ on this issue and will abide by the OLC opinion, unless otherwise directed by a final court order." No such court order has been issued. In light of the Archivist's statement, can you give this committee your assurance that you will not direct or permit the Archivist to certify that the ERA is part of the Constitution, without a final federal court order directing such an action?

**RESPONSE: The issue to which you refer is the subject of pending litigation involving the Archivist of the United States. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. If I am confirmed as Attorney General, any opinions or legal advice I might give on this subject would be based solely on the law, and not on any other consideration.**

68. If any members of the Biden administration met and negotiated with Iranian leaders with the purpose of undermining the previous administration's policy, would that constitute a violation of the Logan Act? If so, do you intend to prosecute them?

**RESPONSE: As I testified at my hearing, I have always been extremely careful, as a prosecutor and as a judge, not to comment about something without knowing the facts. Accordingly, I am not in a position to comment on this hypothetical scenario.**

69. When the Department of Homeland Security described the Supreme Court's DACA opinion as having "no basis in law," Judge Garufis, in the Eastern District of New York, took exception to the executive branch criticizing a Supreme Court opinion. He asked a career Justice Department lawyer, "I'm just wondering how a decision by the Supreme Court could be deemed by a federal agency to have no basis in law. Can you explain that

to me[?]" The judge went on, "The attorney general should advise his client Mr. Wolf that it is not [a] benefit to anyone to have a federal agency take issue with a decision of the Supreme Court. I'm very troubled by anyone who would write such a thing on a document issued by a federal agency regarding a decision by the U.S. Supreme Court or any court, until it is overruled or reversed, any federal court."

- a. Under your leadership will the Justice Department agree not to "take issue with a decision of the Supreme Court"?
- b. Under your leadership will the Justice Department and its client agencies maintain publicly that all Supreme Court holdings have a sound basis in the law?

**RESPONSE: As a sitting judge who has been serving for more than two decades, I have great respect for the nation's courts and the judges who sit on them. The Department of Justice and its client agencies may sometimes disagree with decisions issued by the Supreme Court or other courts, and may express that disagreement in legal briefs or public statements. But if I am confirmed, I will seek to ensure that all such statements are appropriately respectful of the courts and their role in our constitutional system.**

70. Will the Justice Department under your leadership enforce the Partial Birth Abortion Ban Act of 2003?

**RESPONSE: If I am confirmed as Attorney General, I commit to enforcing the laws of the United States.**

71. Hunter Biden publicly confirmed that he is under criminal investigation regarding his taxes and financial matters. Has anyone provided you non-public information about Hunter Biden's criminal case? If so, who, when, and what was it?

**RESPONSE: No.**

72. Do you understand that if you're confirmed you'll have an obligation to ensure the Department and its components, including the FBI, respond to congressional inquiries in a timely manner?

**RESPONSE: Yes.**

73. Do you understand that this obligation applies regardless of whether a member of Congress is a committee chairman or ranking member?

**RESPONSE: As I testified in my hearing, I take very seriously the obligation to respond to Congressional inquiries, and I believe it is important for the Department to be responsive to congressional inquiries.**

74. I've conducted oversight of the Foreign Agents Registration Act (FARA) since April 2015. My oversight activities have been bipartisan and without regard to party or power.



As a result of my oversight, I introduced the bipartisan Foreign Agents Disclosure and Registration Enhancement Act to shore up the law (S. 1762). I encourage you to review the bill.

**RESPONSE: I look forward to reviewing the bill if I am confirmed as Attorney General.**

75. My most recent FARA oversight letter focused on the extensive contacts Hunter Biden and James Biden have with the communist Chinese government. In that letter I asked the Justice Department to review whether they should've registered as foreign agents under FARA. If confirmed, will you commit to fully and completely answering that letter?

**RESPONSE: As I testified in my hearing, the oversight responsibility of this Committee is a vital duty imposed by the Constitution. This duty is one that I greatly respect and it is important for the Department to be responsive to Congress in a timely fashion as appropriate. I understand that the Department works to appropriately respond to all Members of the Committee, consistent with the Department's law enforcement, national security, and litigation responsibilities. If confirmed, I will continue this practice and will be pleased to work with Congress through the Department's Office of Legislative Affairs.**

76. The Justice Department Inspector General found 17 errors and omissions in the Carter Page FISA applications. There were also 50 errors in the Woods Process for the FISA applications. Crossfire Hurricane should've collapsed under the weight of its faulty foundation and political infection. Comey, Yates, McCabe, and Rosenstein now say they wouldn't have signed the FISAs if they had known about those flaws. As I've told many nominees, you either run the Department or the Department runs you. If confirmed, what steps will you take to ensure that the government doesn't abuse its power and authorities with respect to surveilling American citizens and related FISA activity like it did under the Obama/Biden administration during Crossfire Hurricane?

**RESPONSE: As I testified at the hearing, I understand that the Inspector General found serious problems with respect to FISA applications, and had a substantial number of recommendations for how they could be fixed. Those problems must be fixed. I understand that the Inspector General submitted his recommendations to the FBI Director, and I understand that the FBI Director is in the process of implementing them. If I am confirmed, I intend to speak directly with the Inspector General and the FBI Director about these issues and make sure that necessary steps are taken. I am concerned, and have always been concerned, that the Department be vigilant regarding appropriate application of FISA.**

77. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform.

- a. Have you ever hired a clerk who was in the Federalist Society?

**RESPONSE: I do not know.**

- b. Would you allow a member of the Federalist Society to serve on your staff as Attorney General?

**RESPONSE: Yes.**

- c. Would you allow a member of the Federalist Society to serve on front-office staff within the Justice Department?

**RESPONSE: Yes.**

- d. Would you allow a career employee who is a member of the Federalist Society to be promoted to chief, assistant chief, section head, or any other career supervisory position in the Justice Department?

**RESPONSE: Yes.**

78. What is your view on removing federal employees who joined the government during the last presidential administration—whether as appointees and career employees—and now hold career positions?

**RESPONSE: If confirmed, it will be my direction that personnel decisions at the Justice Department be made consistent with civil service laws and Departmental policies and without regard to any prohibited considerations.**

79. Do Blaine Amendments violate the Constitution?

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

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

**RESPONSE: I believe the Department of Justice plays a pivotal role in protecting the right to vote and ensuring that elections are not influenced by fraud. While I am aware that there have been documented instances of isolated voter fraud, I have no reason to question Attorney General Barr’s statement that the Department’s investigation did not discover “fraud on a scale that could have effected a different outcome in the [last] election.”**

81. If the Justice Department determines that a prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department’s

motivations and appoint an amicus to continue the prosecution? Please explain why or why not.

**RESPONSE: I believe this question refers to *In re Flynn*, 973 F.3d 74 (D.C. Cir. 2020) (en banc), in which I joined the per curiam opinion denying a petition for a writ of mandamus. Matters related to that case are addressed in that opinion.**

82. On the night of May 29 two well-educated young attorneys in Brooklyn drove around, found a police cruiser, and threw a fire bomb at it. The incident was caught on video. When they were apprehended, the two attorneys were found to have precursor items for several more “Molotov cocktails” in their van. This was a serious crime and the lawyers have since been charged with seven felonies, including civil disorder, conspiracy to commit arson, and federal explosives charges. Many liberal media outlets have since taken up the case of the two attorneys, trying to paint them as sympathetic actors whose hearts were in the right place and merely got caught up in events. Just this week reports emerged that the Justice Department is offering them a plea deal. Will you commit that any disposition of that case following your confirmation will neither take into account the politics of the defendants nor the influence of liberal activists and journalists on their behalf?

**RESPONSE: Because I am a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case that is in any court. As I testified during my confirmation hearing, however, if I am confirmed as Attorney General, the Department will make prosecutorial decisions based on the facts and the law only, without regard to politics or partisanship.**

83. Another Justice Department nominee has said, “As a civil rights lawyer with matters that regularly go before the Supreme Court, I can’t underscore how dangerous it will be to have [Judge Brett] Kavanaugh on the Court, a man who harbors such bias, rage, fury and is so easily unhinged. We should expect a spike in recusal motions for sure.”

- a. Do you agree that Justice Kavanaugh is “dangerous” and “easily unhinged”?

**RESPONSE: I am not familiar with the statement quoted. Based on my experience serving with Justice Kavanaugh on the D.C. Circuit for many years, I would not describe him that way.**

- b. Are you confident that Justice Kavanaugh will be fair in hearing cases from the Justice Department under your leadership?

**RESPONSE: Yes.**

- c. Do you intend to direct the Solicitor General to seek his recusal from civil rights cases?

**RESPONSE: No.**

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

**RESPONSE:** I was called by the President-elect's transition and asked whether I was willing to be considered for nomination as Attorney General. Between that time and the day of the President-elect's public announcement of his intent to nominate me, I had further contact with transition representatives, including for the vetting process. I was also interviewed by the President-elect and by the Vice President-elect. The President-elect publicly announced his intent to nominate me on January 7, 2021, and formally sent that nomination to Congress on January 20, 2021.

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

**RESPONSE:** No.

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

**RESPONSE:** No.

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

**RESPONSE:** The Department of Justice received these questions on February 24, 2021. I worked with Department attorneys, conducted research, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on February 28, 2021.

## Senator Graham

### Responses to Questions from Senator Graham to Judge Merrick Garland, Nominee to be United States Attorney General

1. If confirmed, will you commit that the Drug Enforcement Administration (DEA) will collaboratively engage with industry stake holders to evaluate new technologies intended to render controlled substances “non-retrievable” and, further, work with interested parties to understand DEA’s role as it relates to the Environmental Protection Agency (EPA) Resource Conservation and Recovery Act (RCRA) exemption identified in 40 CFR 266.506?

**RESPONSE: I am not familiar with this issue. I look forward to examining it should I be confirmed and I would welcome the opportunity to speak with you about these matters.**

2. Vladimir Kara-Murza, a prominent opposition activist in Russia, was poisoned in Russia in 2015 and again in 2017, and nearly died on both occasions. Following both poisonings, samples of his blood were accepted for testing by the FBI, and tests were performed, but the results of those tests and the FBI’s assessment of the cause of Mr. Kara-Murza’s poisonings have not been released to either interested Members of Congress or Mr. Kara-Murza. On July 5, 2018, Mr. Kara-Murza submitted a request pursuant to the Freedom of Information Act and Privacy Act (FOIPA) to the FBI (FBI FOIPA Request No. 1410820-000) for documents relating to his poisonings, including the results of tests performed by U.S. government agencies. Mr. Kara-Murza has been informed that 277 pages of documents responsive to that request have been referred by the FBI for review to other, undisclosed agencies of the federal government. Of those 277 pages, 251 have yet to be released to Mr. Kara-Murza pending consultation with other government agencies. Additionally, 15 pages of responsive documents have been withheld from disclosure by the FBI on varying grounds, including that they contain classified information. A further 562 pages that were released by the FBI have been redacted.
  - a. Do you commit that the United States Government, the Department of Justice, and the FBI will work with Mr. Kara-Murza and interested Members of Congress to share information in their possession about the circumstances surrounding the poisonings of Mr. Kara-Murza, including the nature of the agent with which he was poisoned?
  - b. Will you commit to reviewing the information that the FBI has withheld from disclosure? Do you commit to expediting the release of as many responsive documents as possible to Mr. Kara-Murza, as soon as possible? After your review, will you consider directing that the 562 pages of documents that were redacted by the FBI be re-reviewed with an eye to releasing as much information as practicable to Mr. Kara-Murza about the circumstances surrounding his poisonings and the nature of the agent with which he was poisoned?

- c. Beyond documents encompassed by Mr. Kara-Murza's FOIPA request, will you look into whether the Department of Justice, including any element of the Department, has additional documents, records, evidence, or other materials relating to the poisonings of Mr. Kara-Murza? If the Department of Justice has such materials, do you commit to briefing the committee on their contents and releasing them to the greatest extent possible?

**RESPONSE:** Because I am not currently at the Department, I am not familiar with the circumstances of this case. As a general matter, I will seek to ensure that the Freedom of Information Act and Privacy Act is properly followed and that the Department is as responsive as possible to inquiries from the Committee.

## Senator Cornyn

### Responses to Questions from Senator Cornyn to Judge Merrick Garland, Nominee to be United States Attorney General

1. Vanita Gupta, President Biden's nominee for Associate Attorney General, has advocated to "decrease police budgets . . . ."
  - a. Do you agree with the statement of Ms. Gupta to "decrease police budgets"? Please be specific as to your agreement or disagreement with the aforementioned statement.

**RESPONSE:** I am not familiar with the context of the statement referred to above. As I stated at my hearing, I do not support defunding the police, and Ms. Gupta has not only stated the same, but has received widespread support from police leaders and organizations. I support giving police departments the resources they need to reform, build community trust, and secure the safety of their communities.

- b. What effect, if any, do you see this type of rhetoric having on state and local police if she were to become the Associate Attorney General?

**RESPONSE:** I have had the opportunity to discuss the Department's mission with Ms. Gupta and am confident that she is a person of great ability and integrity, who shares my goals and priorities. I am also confident that, if confirmed, she would help the Department attend to and advance critical partnerships, such as those with state and local law enforcement agencies, many of which have endorsed her nomination.

- c. Do you support measures to shift resources away from state and local police?

**RESPONSE:** As stated above, I support giving police departments the resources they need to reform and build community trust. I understand that many police departments are forced to use their limited resources on public health issues over which they do not want sole responsibility, such as confronting mental health crises. I believe that also supporting other professionals in the community, such as mental health professionals, will help alleviate the unnecessary strains that are placed on police officers and will enhance public safety.

- d. If you do not, then what guardrails do you intend to put into place to prevent efforts to "defund the police" or shift resources away from state and local police?

**RESPONSE:** If confirmed, I will continue the Department's longstanding practice of supporting state and local law enforcement, including helping police departments secure the resources they need to reform, build community trust, and ensure the safety of their communities.

2. The Obama Administration had instituted a policy where legal settlements between the

DOJ and companies were used to fund third-party, special interest groups that were not parties to the litigation. This practice, often referred to as “slush fund settlements,” presents a myriad legal, ethical, and constitutional concerns. In 2017, the Trump Administration forbade this practice; and last year, the DOJ incorporated this ban into the Justice Manual (85 FR 81409). President Biden recently announced that it is reviewing the bar on this practice.

- a. What problems, if any, do you foresee if this practice is reinstituted?
- b. Do you see any constitutional issues at play if the DOJ is diverting money from a general fund to a specific party or charitable cause that is not a party to the litigation?
- c. If so, what are those constitutional issues at play?
- d. Do you think the “slush fund settlement” practice usurps any congressional authority? If so, how so?
- e. If not, why not?

**RESPONSE: As I testified at my hearing, I have not studied this specific issue. If I am confirmed, I will carefully consider the matter and the arguments on both sides, including both the reasons why this practice developed and the reasons why it was changed.**

3. Over the past four years, the DOJ has updated and reformed the enforcement of the Foreign Corrupt Practices Act (“FCPA”), a process that began under the Obama Administration. Specifically, in 2016, under Attorney General Loretta Lynch, the DOJ announced an FCPA “pilot project,” which was designed to promote voluntary self-disclosure, cooperation with the government, and remediation of violations in exchange for mitigated penalties. In 2017, the DOJ enhanced this pilot project and incorporated it into the U.S. Attorneys’ Manual as the FCPA Corporate Enforcement Policy (“CEP”); the Department has since stated that it will apply the principles of the CEP to contexts other than the FCPA. It appears that these reforms are having a positive effect on compliance. For example, the Organisation for Economic Cooperation and Development (“OECD”) recently released its Phase IV report on the effort by the United States to combat foreign corruption. Its lead examiners “commend[ed] the United States for its unparalleled efforts to encourage voluntary disclosure of FCPA violations... and recognize[d] the United States’ continuous dedication to refine enforcement policies in order to achieve the right mix of incentives to voluntary self-disclose.” In addition, the OECD found that, according to the career staff at the DOJ, these reforms were resulting in a higher quality of self-disclosure. The OECD report also noted a significant improvement in the quality of compliance programs as a result of the CEP. If you are confirmed, will you continue to support and improve the CEP in a way that appropriately incentivizes the private sector to invest voluntarily in compliance programs and cooperate with the DOJ?



- a. What ways do you intend to support the CEP?

**RESPONSE: I am committed to the vigorous enforcement of the Foreign Corrupt Practices Act and other federal anti-corruption laws, including efforts to foster voluntary compliance and cooperation with the Department of Justice. I have not studied the Corporate Enforcement Policy. If I am confirmed, however, I will look forward to consulting with the relevant Department officials to learn more about that initiative and to identifying ways in which it might be further supported or improved.**

4. On October 19, 2020, Attorney General Barr appointed United States Attorney John Durham as a special counsel to investigate matters related to intelligence activities and investigations arising out of the 2016 Presidential Campaign. Mr. Durham has all the powers of a special counsel under federal law.
- a. Today, do you see any reason why you would end Mr. Durham's investigation into the intelligence activities and investigations arising out of the 2016 Presidential Campaign ("Durham Probe")?
- b. Will you commit to me that you will not end the Durham Probe unless you find that there is "good cause" to do so?

**RESPONSE: As I said at the hearing, I do not know anything about this investigation except what I have read in the press. If confirmed, one of the first things I am going to do is speak with Mr. Durham and learn the status of his investigation. I understand that he has been permitted to remain in his position, and today, I see no reason why that was not the correct decision.**

5. I've been a big proponent of improving the National Instant Criminal Background Check System ("NICS"). In 2018, we were able to pass the FIX NICS Act, which incentivizes state and federal agencies to submit all disqualifying records into NICS to ensure that firearms are lawfully purchased. Under the FIX NICS Act, each department or agency is required to submit to the Attorney General a written certification to the Attorney General as to whether the department or agency is in compliance with the record submitting requirements under the law. Additionally, the FIX NICS Act requires the Attorney General to ensure each agency is in compliance with the FIX NICS Act requirements, and to take certain remedial measures if an agency or department is not in compliance. Finally, the Attorney General must publish and submit to Congress a semiannual report on federal agency compliance with the law.
- a. If confirmed, will you ensure that departments and agencies are complying with the FIX NICS Act certification requirement?
- b. If confirmed, will you ensure that each department or agency is complying with its own implementation plan and making good faith efforts to continue to improve with the uploading of disqualification records into NICS?

- c. If confirmed, will you take remedial measures, where appropriate, to ensure that each department or agency is complying with the FIX NICS Act?
- d. If confirmed, will you commit to submitting to Congress a semiannual report on federal agency compliance with the FIX NICS Act?

**RESPONSE (a – d): Because I am not currently at the Department, I am not familiar with the current efforts to comply with the FIX NICS Act. If I am confirmed, I will examine the state of compliance and take remedial steps where appropriate.**

- e. Sometimes, NICS is unable to make an immediate determination about whether a person can lawfully purchase a firearm. If that is the case, NICS provides a Missing Disposition Information Date, also known as the Brady Transfer Date, at which point the licensed dealer is allowed, but not required, to transfer a firearm after three business days if the licensed dealer has no reasonable cause to believe that an individual is prohibited from possessing a firearm. Do you believe that ATF has the regulatory authority to require licensed dealers to wait beyond the three-business day waiting period before legally transferring a firearm to an individual in “delayed” status or that it would have to take an Act of Congress?

**RESPONSE: I am not familiar with the impact of the Missing Disposition Information Date. I have not examined ATF’s regulatory authority with regard to the three-business day period and cannot offer an opinion on that question.**

- 6. Modern Sporting Rifles (“MSRs”) are among the most popular firearms sold. In your opinion, should these semi-automatic firearms be classified and regulated under the National Firearms Act?
  - a. Does the DOJ have the administrative authority to establish and enforce a mandatory buyback program for MSRs?
  - b. If so, what is that authority?

**RESPONSE: I am not familiar with the relevant statutory and regulatory provisions and accordingly cannot offer an opinion on this issue.**

- 7. In your opinion, does the administration have the power to create a national gun registry or would it take an Act of Congress? Please provide legal authority in support of your position.

**RESPONSE: I am aware that Brady Act Section 103(i)(2) bars the use NICS to establish a firearm registry, “except with respect to persons prohibited by ... law from receiving a firearm.” Beyond that I am not familiar with any other relevant statutory or regulatory provisions.**

8. In your opinion, does the administration have the power to require background checks for all firearm transfers absent a licensed dealer or would it take an Act of Congress? Please provide legal authority in support of your position.

**RESPONSE: I am not familiar with the relevant statutory and regulatory provisions and accordingly cannot offer an opinion on this issue.**

9. Guidance documents, also known as sub-regulatory guidance, are a way for agencies to announce policy changes, establish new procedures, and sometimes set forth new obligations on the private sector. This guidance often takes a variety of forms, including Frequently Asked Questions and compliance memos. This process is fundamentally different than legislation and rule-making. One can envision a number of problems when the DOJ uses and relies on these guidance documents to bring enforcement actions.
- Do you see any problems with using guidance documents to bring enforcement actions?
  - If so, what are some of the problems presented to a potential defendant or litigant when the DOJ uses guidance documents to bring enforcement actions?
  - Will you commit to me that you will avoid using guidance documents as a way to bring enforcement actions?

**RESPONSE: In general, enforcement actions must be based on a violation of a statute or a “legislative rule” that has “the force and effect of law.” *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 95 (2015) (citation omitted). By definition, the guidance documents referenced in the question lack that force and effect. A violation of a guidance document thus cannot, by itself, be the basis for an enforcement action. Guidance documents may, however, serve valuable functions. For example, they can “advise the public” of how the agency understands, and is likely to apply, its binding statutes and legislative rules.” *Kisor v. Wilkie*, 139 S. Ct. 2400, 2420 (2019) (plurality opinion). If I am confirmed, any action I take in this area will be consistent with these principles.**

10. Increasingly, third-party litigation funding (“TLPF”) is being used to fund lawsuits, including False Claims Act (“FCA”) cases brought by relators. As you know, the government—through the DOJ—may choose to intervene in these actions not knowing that the TLPF funders are backing the relator’s action and stand to obtain a cut of the proceeds of any settlement. Recently, DOJ has encouraged its attorneys to ask questions of relators as to whether there is an agreement with a third-party funder and/or whether the third-party funder exercises decision-making authority over the litigation.
- Do you think the DOJ would be better able to assess a case if it understood the extent to which third party litigation founder is backing, and may have some influence or even control over, the relator’s cause of action? If so, why?

**RESPONSE: The False Claims Act, and its qui tam provisions, play a critical role in**

the federal government's effort to ensure that those who do business with the government do so honestly. However, I have not had occasion to become familiar with the particulars of this issue.

- b. Do you support transparency measures in Congress to highlight TLPF in FCA cases?

**RESPONSE: I have not studied this issue. As a general matter, I firmly believe in transparency wherever possible, and I would look forward to reviewing any proposals from Congress to increase transparency.**

- c. As Attorney General, will you support DOJ attorneys asking relators questions regarding TLPF funding and involvement?

**RESPONSE: As a federal judge for the last 24 years, I have not had occasion to become familiar with this issue.**

- 11. Human traffickers target the most vulnerable members of our society, especially children. They violently exploit them through force, fraud, threats, debt bondage, drug addiction, or intimidation. Do you believe that mandatory minimum sentences are an appropriate tool in crimes involving the sexual exploitation and slavery of children?

**RESPONSE: Sexual exploitation and enslavement of children are horrific acts. Congress has recognized the seriousness of these crimes by enacting statutes that impose significant criminal penalties, including mandatory minimums in some instances. If confirmed, I commit that the Department will vigorously enforce these laws so that those that prey on the vulnerable face appropriate punishment.**

- 12. A primary purpose of the Justice for Victims of Trafficking Act (P.L. 114-22), which I sponsored, was to provide resources for survivors of human trafficking. JVT Act mandated that DOJ create the Domestic Trafficking Victims' Fund, which uses fines levied on offenders to provide funding for vital services and protections for domestic trafficking victims. Do you agree that victim compensation and financial contribution from criminals should be a core element of human trafficking prosecutions?

**RESPONSE: Yes. I am not currently in the Department, but I understand there have been challenges to securing funds from criminals who are responsible for these horrific offenses. If confirmed, I will seek to expand and further efforts to obtain funding for victims, who often lack resources to obtain needed services.**

- 13. The rape kit backlog has unbearable consequences for victims. Laws like the Debbie Smith Act, which we most recently reauthorized in 2019, provide important resources so rape kits can be tested and criminals can be brought to justice. For several years now, I have worked to make sure the laws that address this backlog are properly complied with, so that sexual assault survivors can have the justice they deserve. Will you commit to working with me to make sure legislation that works to end the backlog, like the Debbie

Smith Act, the SAFER Act, and the Justice Served Act, are fully implemented?

**RESPONSE: I share your commitment to ending the rape kit backlog, and, if confirmed, look forward to working with you to achieve that goal.**

## Senator Lee

### Responses to Questions from Senator Lee to Judge Merrick Garland, Nominee to be United States Attorney General

1. In *Priests for Life v. HHS*, you voted in support of an opinion requiring a religious nonprofit to comply with the Obama Administration’s contraceptive mandate. Could you explain why you voted against rehearing that case?

**RESPONSE:** I understand that litigation concerning the contraceptive-coverage requirement remains pending in the federal courts. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. But, as I testified at my hearing, for me a vote on a petition for rehearing en banc is simply a vote on whether or not the case warrants rehearing by the full court.

2. Do you intend to prosecute religious organizations who seek exemptions from federal laws governing healthcare, employment, and education?

**RESPONSE:** No. I am not aware of any law making it a crime to request a religious exemption.

3. Do you believe religious organizations and institutions should be exempted from government mandates requiring them to violate their sincerely held religious beliefs?

**RESPONSE:** The Religious Freedom Restoration Act provides that the federal government may not “substantially burden a person’s exercise of religion” unless it “demonstrates that application of the burden to the person” is “in furtherance of a compelling government interest” and “is the least restrictive means of furthering that compelling governmental interest.” 42 U.S.C. § 2000bb-1.

4. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans’ religious freedom. It was championed by Senator Ted Kennedy and Senator Orrin Hatch to pass the Senate by a vote of 97-3 and to pass the House by a unanimous voice vote. President Bill Clinton proudly signed it into law in 1993. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit that the Department of Justice will not support any legislative or executive action that would alter in any way the Religious Freedom Restoration Act’s protection for Americans of all faiths?

**RESPONSE:** As I testified at my hearing, I am a strong believer in religious liberty. If I am confirmed as Attorney General, I will seek to ensure that the Department of Justice scrupulously complies with the Constitution and all federal statutes, including the Religious Freedom Restoration Act. I have not considered any potential legislative amendments to the Act. If I were asked to consider such an amendment, my position would be informed by my strong belief in religious liberty and guided by a careful review

**of the relevant facts and law.**

5. In a 2007 opinion, the Office of Legal Counsel affirmed that a religious organization which administers a federal grant retains its right, under the Civil Rights Act of 1964 and the Religious Freedom Restoration Act, to hire staff who agree with its religious mission. Despite pressure from outside groups, the Obama Administration refused to rescind that opinion. If confirmed, will you continue the Obama Administration's policy of leaving that opinion in place? (The opinion is "Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act," 31 Op. O.L.C. 162 (2007)).

**RESPONSE: I have not studied this Office of Legal Counsel opinion or the legal issues it addresses. If I were confirmed and called upon to consider those issues, I would follow the same approach I would use in any other context where I was asked to provide legal advice: I would carefully review the relevant facts and law; consult with lawyers in the Department of Justice and other relevant agencies; consider any relevant Department practices and procedures; and ultimately reach a conclusion based on my best view of the law.**

6. On October 6, 2017, the Department of Justice issued guidance for all executive departments and agencies through a Memorandum entitled Federal Law Protections for Religious Liberty (82 Fed. Reg. 49668). This memorandum explained the many ways in which the First Amendment and federal law protect all Americans' right to live according to their religious beliefs. If confirmed, will you ensure that the memorandum will not be rescinded or otherwise ignored?

**RESPONSE: As I testified at my hearing, I am a strong believer in religious liberty. I have not studied the October 2017 memorandum. But if I am confirmed, I will seek to ensure that the Department of Justice faithfully follows the First Amendment and federal laws protecting religious liberty. I will also adhere to those laws in issuing, revising, or rescinding any guidance in this area.**

7. In an executive order, President Biden has committed to extend *Bostock*'s narrow holding to other areas of federal nondiscrimination law, including those touching on school sports and locker rooms. If confirmed as Attorney General, will the Justice Department force schools and other organizations to allow biological males who identify as female to:
  - a. Compete in girls' and women's sports?
  - b. Use girls' and women's locker rooms?
  - c. Enter women's shelters?
  - d. Enjoy financial benefits, such as scholarship grants, reserved for women and girls?

**RESPONSE:** As I testified at my hearing, I believe that every human being should be treated with dignity and respect. I have not had the opportunity to consider these issues or to examine the effects of the Supreme Court’s decision in *Bostock*, and because some of these issues are pending in current court cases I am barred from commenting on them.

8. As Attorney General, in seeking to “fully enforce” federal antidiscrimination laws, will you also commit to protect the freedoms of all Americans to exercise their rights of conscience and religious liberty?

**RESPONSE:** If I am confirmed, I will endeavor to fully enforce all federal laws within the authority of the Department of Justice, including both the federal antidiscrimination laws and laws protecting religious liberty.

9. Will you commit to not target religious organizations and individuals who seek exemptions from Title VII based on their sincere religious beliefs?

**RESPONSE:** As I testified at my hearing, I firmly believe that improper considerations such as an individual’s political or religious beliefs should not play any role in the Department of Justice’s investigations, prosecutions, or other enforcement actions. Instead, those actions must be guided by a careful review of the facts and an evenhanded application of the law. If I am confirmed, I will likewise follow the facts and applicable law if called upon to consider any question related to religious exemptions from Title VII.

10. Do you believe the President can disregard the majority’s express clarification that *Bostock*’s reasoning only applies to the employment discrimination context and not to other federal antidiscrimination laws?

**RESPONSE:** If I am confirmed, I will seek to ensure that the Department of Justice’s approach to all statutes, including antidiscrimination laws, is guided by the traditional tools of statutory interpretation. Those traditional tools include the text, structure, and context of the statute, as well as any relevant precedent.

11. Earlier this year, the Department of Justice’s Inspector General released a report reviewing the U.S. Marshall Services’ response to the COVID-19 pandemic, which found that contractor-operated facilities were safer, more accountable, and more responsive in mitigating risk from COVID-19 than government-run facilities. While these plans have all been reviewed and approved, the Inspector General was not able to confirm whether any of the 873 government-run facilities it worked with had implemented a COVID-19 response plan. What implications does this have for the Biden Administration’s executive order canceling private prison contracts?

**RESPONSE:** I am not familiar with this report but, if I am confirmed, addressing the impact of COVID-19 across the Department will be an important priority.

12. Do you believe Civil Asset Forfeiture is a legitimate use of government authority?



**Civil forfeiture is authorized under federal law, including 18 U.S.C. § 981 and other laws enforced by the Department of Justice. I understand that aspects of civil forfeiture have been a source of controversy. If I am confirmed, I would look forward to examining these issues.**

13. Do you think there have been abuses of Civil Asset Forfeiture programs? Will you commit to helping correct those abuses?

**RESPONSE: I have not studied these issues closely enough to have a view on whether there have been abuses of the Department's forfeiture programs. If confirmed, I would work diligently to correct any abuses in any Department processes, and I would welcome input from you and other Members of Congress.**

14. Recently, President Biden signed an executive order prohibiting the Justice Department from renewing contracts with Private Prisons. As far as I'm aware, about 14,000 federal inmates— around 9% of the total prison population—are in private prisons.
- a. Do you have any concerns about prison capacity? A 2017 study (the most recent study I've seen) showed that many BOP facilities were operating above capacity. What steps will the Justice Department take to ensure that it's not creating an overcrowding problem in existing federal facilities?

**RESPONSE: As a nominee, I am not familiar with studies regarding the capacity at BOP facilities. But I agree that we should work to alleviate any overcrowding in federal facilities.**

- b. What precautions do you plan to take to avoid unnecessary risks while transferring inmates from private prisons to federal facilities given the ongoing pandemic?

**RESPONSE: If I am confirmed, I will address the impact of COVID-19 across the Department, including the risks attendant to operations in and transfers to federal facilities.**

15. Unlike the Federal Bureau of Prisons, the U.S. Marshalls Service does not have its own facilities—how will you ensure that canceling private prison contracts will not negatively impact the U.S. Marshalls Service?

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

16. When bringing any complicated case, resources are undoubtedly an issue. For example, the pending case on Google could conceivably turn on issues around computer coding and algorithmic decision making. There will also undoubtedly be future cases- both criminal and civil- where the in-house technology expertise of the Department of Justice will be vital. Do you think the DOJ currently has enough technologists and other experts to deal with the current workload? And how can the Department ensure that a lack of expertise in these areas doesn't impact the administration of justice?

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

17. How will your Department of Justice work with our allies and trading partners on issues of international antitrust? The Europeans, Australians, South Koreans, and Japanese are all pursuing cases against some large US based technology firms, and without some coordination there could be unintended consequences that could hurt consumers.

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

18. We've seen disturbing reports recently of websites posting obscene content involving minors. Will you commit to prioritize enforcement of our anti- trafficking and child pornography laws against these heinous online actors?

**RESPONSE:** Yes. Sexual exploitation of children is a heinous crime. If I am confirmed, the Department will vigorously enforce all statutes that criminalize the trafficking and exploitation of children.

19. When General Flynn's case came before you on the D.C. Circuit, you voted with the majority of the court to deny his request for a writ of mandamus, effectively ruling that Judge Sullivan's actions did not show bias towards General Flynn. Could you explain your reasoning in that case?

**RESPONSE:** I joined the per curiam opinion in *In re Flynn*, 973 F.3d 74 (D.C. Cir. 2020) (en banc), which explains the reasons for denying the writ of mandamus in that case.

20. Relatedly, can you name an example (other than Judge Flynn's case) where, when the U.S. Attorney has asked the court to dismiss the government's case against a defendant, the court has appointed an outside lawyer to continue arguing for conviction?

**RESPONSE:** I joined the per curiam opinion in *In re Flynn*, 973 F.3d 74 (D.C. Cir. 2020) (en banc), and point to that opinion concerning any matters related to that case.

21. Did you see any problems with Judge Sullivan's decision to appoint an outside lawyer who had written an article criticizing General Flynn mere days before his appointment?

**RESPONSE:** I joined the per curiam opinion in *In re Flynn*, 973 F.3d 74 (D.C. Cir. 2020) (en banc), and point to that opinion concerning any matters related to that case.

22. Did you see any problems at all with Judge Sullivan’s actions including his threat to investigate the Department of Justice’s decision to dismiss and whether career prosecutors agreed with that decision?

**RESPONSE: I joined the per curiam opinion in *In re Flynn*, 973 F.3d 74 (D.C. Cir. 2020) (en banc), and point to that opinion concerning any matters related to that case.**

23. In her dissent in *In re: Michael T. Flynn*, Judge Rao stated “by allowing the district court to scrutinize ‘the reasoning and motives’ of the Department of Justice, the majority ducks our obligation to correct judicial usurpations of executive power and leaves Flynn to twist in the wind while the district court pursues a prosecution without a prosecutor.” Would you agree that Judge Sullivan’s attempts to keep the prosecution of General Flynn alive even though the Justice Department had dismissed charges constitutes an unconstitutional abuse of authority?

**RESPONSE: I joined the per curiam opinion in *In re Flynn*, 973 F.3d 74 (D.C. Cir. 2020) (en banc), and point to that opinion concerning any matters related to that case.**

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

**RESPONSE: If I am confirmed, my legal advice on matters of statutory interpretation, as on all other matters, will reflect my independent judgment.**

25. Do you think it’s proper for agencies to try to “fix” a problem through regulations where Congress is deadlocked on an issue?

**RESPONSE: As I testified at my hearing, the mere fact that the Executive Branch disagrees with congressional inaction cannot create regulatory authority that would not otherwise exist. But congressional action or inaction can be relevant to the scope of the Executive’s authorities, as Justice Jackson famously explained in his concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). “When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.” *Id.* at 635. “When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.” *Id.* at 637. And “[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.” *Id.***

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

**RESPONSE:** My answer would depend on the context, including the agency's relevant legal authorities and the specific nature of the regulation at issue. Congress has, for example, required or authorized the Attorney General and the Secretary of Homeland Security to issue regulations addressing many matters related to immigration. *See, e.g.*, 8 U.S.C. § 1103(g)(2).

27. On the whole, do you believe that we need more government control and regulation of American's lives, jobs, and healthcare, or less?

**RESPONSE:** It is hard to answer that question in the abstract. If I am confirmed, my decisions about whether to issue or rescind any regulation within the authority of the Department of Justice will be based on a careful review of the relevant facts and law.

28. As Attorney General, who would your client be? The President or the American people?

**RESPONSE:** The American people.

29. What happens when the President takes a position that is contrary to the law or not in the interests of the United States?

**RESPONSE:** As I testified at my hearing, I do not expect this to happen because the President has made clear his respect for the rule of law and the independence of the Department of Justice. But if I were asked to do something unlawful, the first thing I would do is say it was unlawful. If I were nonetheless asked to do something unlawful, I would resign.

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

**RESPONSE:** As I testified at my hearing, prosecutors and other government agencies have exercised discretion about how to allocate their limited enforcement resources throughout our Nation's history. But the Executive Branch cannot simply decide, based on a policy disagreement, that it will not enforce a law at all.

31. Is there a point where "prosecutorial discretion" simply becomes "executive fiat?"

**RESPONSE:** As I testified at my hearing, prosecutors and other government agencies have exercised discretion about how to allocate their limited enforcement resources throughout our Nation's history. But the Executive Branch cannot simply decide, based on a policy disagreement, that it will not enforce a law at all.

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

**RESPONSE:** The Department of Justice has a duty to vigorously enforce the law. The

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

33. Do you commit to support and continue the Department’s antitrust lawsuit against Google?

**RESPONSE:** As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. As I testified at my hearing, I do not know anything about the Google case beyond what I’ve read in press reports about public filings. But based on what I have read, I do not see any reason why the decision to institute the investigation would be changed.

34. Do you commit to not hiring for a leadership, supervisory, or policy-making role any person who previously worked for or represented Google, Amazon, Facebook, Apple, or any other Big Tech firm?

**RESPONSE:** As I said during my hearing, many of the best lawyers in the country have had some involvement, in one way or another, with Big Tech companies, and I cannot commit to excluding all those talented lawyers from the Department or its leadership. I can promise that I will insist that Department personnel adhere scrupulously to applicable ethics rules, including those that require recusals.

35. Will you support the Antitrust Division continuing to investigate other potential antitrust violations by Google or other tech companies?

**RESPONSE:** I support the vigorous enforcement of the antitrust laws in all contexts, including the technology sector.

36. Do you believe the antitrust laws require amendment or reform? If so, in what way(s)?

**RESPONSE:** I have not carefully studied potential reforms to the antitrust laws. If I am confirmed, I look forward to consulting with the Department’s antitrust lawyers and working with the Committee to identify and advance any necessary amendments.

37. Do you believe that U.S. antitrust enforcement would benefit from consolidation at one agency?

**RESPONSE:** I have not studied this issue enough to have a view.

38. Operation Fast and Furious was an ATF enforcement action that allowed operable firearms to be transferred to agents of drug trafficking organizations, ostensibly to help track how those organizations obtained and distributed weapons. Yet these same firearms were used by their eventual recipients to commit lethal crimes in Mexico and the U.S., including the murder of U.S. Border Patrol Agent Brian Terry. Is gun-walking of the sort used in Operation Fast and Furious a legitimate law enforcement tactic? If not, what steps would you take to ensure it doesn't happen by any DOJ component under your watch?

**RESPONSE: I do not know the details of Operation Fast and Furious, but based on public reports, I have a general understanding of the concerns. If I am confirmed, I will work with the Department's law enforcement components to understand and address the very serious issues that have been raised.**

39. A number of states have enacted so-called "red flag laws" that authorize judges to issue orders for the seizure of otherwise lawfully owned firearms when the owner is found to be a danger to self or others. Do you support the use of red flag orders to seize lawfully-owned firearms? If so, what due process protections should apply to the issuance of these orders? Should a judge be able to order firearm seizures in *ex parte* proceedings, before the respondent has had a chance to answer the allegations in the petition?

**RESPONSE: I do not know the specifics of this issue, but I believe that if someone is determined by a judge to be a danger to themselves or another human being, then it is important to minimize those risks, including allowing for the temporary seizure of their firearms. It is also important to consider due process and other constitutional principles.**

40. Kristen Clarke has been selected by President Biden to lead DOJ's Civil Rights Division. Yet in publicly accessible tweets issued on July 16, 2019, Ms. Clarke lauded the late Associate Justice John Paul Stevens for calling for the repeal of the Second Amendment. Does it concern you at all that the presumptive leader of DOJ's Civil Rights Divisions supports repealing a constitutional provision that protects an individual civil right? How can gun owners feel confident that DOJ will protect their rights with Ms. Clarke in charge of its Civil Rights Division?

**RESPONSE: If I am confirmed as Attorney General, I will uphold all provisions of the Constitution, including the Second Amendment. With respect to Ms. Clarke, she is an experienced former hate-crime prosecutor, who we need to run the Civil Rights Division. She is a person of integrity, whose views about running the Civil Rights Division are in line with my own. If she is confirmed, I have no doubt that she will likewise faithfully uphold all provisions of the Constitution.**

41. Late last year, ATF took steps to crack down on pistol braces, an accessory that was originally created to help disabled veterans safely and effectively handle large-framed handguns. Over a span of several years, BATFE deemed these items to be unregulated accessories, then appeared to backtrack on that decision, then reiterated its original position, then suddenly declared certain braced pistols to be regulated short-barreled

rifles. The agency also issued highly-controversial draft guidance on pistol braces which it quickly withdrew after condemnation from the firearm industry and gun-owning public. Do you intend to reprise BATFE's efforts to regulate brace-equipped handguns? If so, how do you intend to accommodate the millions of law-abiding Americans who originally obtained these devices lawfully and in good faith and who have never used them for illegal purposes?

**RESPONSE: Because I am not currently at the Department, I am not familiar with current ATF proposals or pending technical decisions on particular firearm features or accessories. I agree that rules should be transparent, consistent, and fairly applied.**

42. Do you support the following gun control measures?

- a. Banning specific types of firearms?
- b. Banning large magazines?
- c. Holding firearms manufacturers liable for damage caused by people using their firearms to commit a crime?

**RESPONSE: I would have to study these issues further to offer an informed view. As I said at the hearing, the President is a strong supporter of gun safety measures. With respect to matters of policy, the role of the Department is to advance the policy program of the President and the administration as long as it is consistent with the law.**

43. In your hearing testimony, you stated that you agreed with the Biden Administration's definition of "equity," which the administration has defined as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality."

- a. What is the difference between "equity" and "equality?"

**RESPONSE: As you note above, and as I stated in my hearing, the Biden Administration has provided a specific definition of equity, and I am not sure what else there is to be said in that regard.**

- b. In order to achieve "equity," is it ever necessary to discriminate against members of some groups in favor of others?

**RESPONSE: The Biden Administration's definition of equity aligns with bedrock legal principles and is thus consistent with federal laws, including laws that forbid**

**discriminatory conduct.**

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

**RESPONSE: Disparate impact and discriminatory intent are distinct legal principles. There are statutory remedies for each. Determining what remedies are available for correcting a legal violation is a fact-specific inquiry. If confirmed, I will apply the facts and governing law to any case before me, including those addressing acts of unlawful discrimination.**

- 44. In 2016 Vanita Gupta co-authored the “Dear Colleague” letter which threatened schools with defunding if they did not permit biological males from using girl’s facilities, including showers and locker rooms. Although the letter towards the beginning states that it does not “add requirements to applicable law,” it nonetheless uses language which implies that a school will be defunded if it does not comply with the contents of the letter. What would you do if a subordinate tried to send a similar letter that implied it had to be followed even though it admitted that it was not “add[ing] requirements to applicable law”?

**RESPONSE: I understand that matters related to these issues are the subject of ongoing litigation, and as a sitting federal judge, Canon 3 of the Code of Conduct for Federal Judges bars me from commenting on any pending or impending case that is in any court. As a general matter, if confirmed, I would seek to ensure that the Justice Department adheres to all applicable legal requirements.**

- 45. Under the Electronic Communications Privacy Act, providers of electronic communications services or remote computing services, such as phone companies or Internet service providers, are generally prohibited from voluntarily disclosing certain customer information to government agencies. But this law was written before the advent of digital data brokers. Today, ECPA’s prohibition is easily sidestepped; the company that collects the data can sell it to a data broker without any restrictions, and then the data broker can turn around and sell it to the government.
  - a. Will you commit to disclosing to this committee any purchases from data brokers made by the Department of Justice or its components that involve the acquisition of Americans’ data?
  - b. Would you support legislation to close this legal loophole by subjecting data brokers to the same restrictions as the companies they get the data from?

**RESPONSE: Because I am not currently in the Department, I am not aware of the Department’s practices with respect to purchases of data or of legislative proposals regarding this issue. If confirmed, I would welcome the opportunity to learn more about your concerns.**



46. Over the next four years, a number of foreign intelligence surveillance authorities will come before Congress for reauthorization. FISA authorities can be valuable tools for collecting intelligence on foreign threats. But a series of scandals over the past eight years have raised questions about whether the rights of Americans are sufficiently protected.

- a. Do you agree that the government should have to obtain a warrant or a FISA Title I order before seeking access to the private phone calls, emails, and text messages of Americans?

**RESPONSE: As I stated during my confirmation hearing, when I worked at the Department of Justice, I strove to ensure that we used FISA only as appropriate under the law as it existed at the time. I did so not only because I was concerned about losing a valuable intelligence tool, but more importantly because of my commitment to respecting constitutional rights. If confirmed as the Attorney General, I look forward to reviewing legislative proposals and engaging with this Committee on this important issue.**

47. In 2018, the Supreme Court ruled in *Carpenter v. United States* that historical cell site location information was protected by the Fourth Amendment despite the fact that this information is shared with cell phone service providers. The holding was limited to historical cell site information. Still, *Carpenter* made clear that the government can no longer argue, as it has in the past, that there is no Fourth Amendment protection for any information voluntarily disclosed to a third party. And the principles articulated in *Carpenter*, if not the holding, could certainly be applied in other contexts.

- a. Does the Department of Justice have an obligation to revisit its legal interpretations and practices with respect to collection of personal information from third parties in light of *Carpenter*?
- b. Will you commit to sharing with this committee any legal analysis that the Department has conducted or will conduct regarding the application of *Carpenter*?

**RESPONSE: The Department of Justice is obligated to ensure that its interpretations and practices are consistent with the Constitution, including new Supreme Court precedents. If I am confirmed, I would be happy to direct the Department's Office of Legislative Affairs to work with the Committee to determine what information about the *Carpenter* decision the Department can provide, consistent with its longstanding policies and practices.**

48. If confirmed, how would you direct your department to handle a mandatory gun confiscation-type program that would result from banning so-called "assault weapons" like some of my colleagues are calling for and that has the support of the President?

**RESPONSE: As I testified at the hearing, if confirmed, the Department will take positions that are supported by the Constitution and the law.**

49. In 2007, you voted to re-hear *Parker v. District of Columbia*, a case that challenged the Washington, D.C. ban on handgun possession—even a handgun in the home for personal defense. The court ultimately denied the en banc request in a 6-4 vote and the case was heard a year later before the Supreme Court when it was combined with *District of Columbia v. Heller*. You also voted to deny en banc hearing in a similar case, *Seegars v. Gonzales*, which involved five Washington, D.C., residents who sued the mayor and U.S. Attorney General over the District’s prohibition against the registration of pistols, its requirement to keep firearms disassembled or bound by a trigger lock and its prohibition against carrying a pistol without a license in one’s dwelling.
- a. Since there were no accompanying opinions from any of the judges as to their beliefs on why an en banc panel of the D.C. Circuit should or should not reconsider the *Parker* decision, can you share your rationale for voting to re-hear *Parker*?

**RESPONSE: As I testified, a vote to rehear a case en banc is a vote for the full court to hear a case, not a vote on the merits of the case. I thought this was an extremely important issue. Other judges, including a judge appointed by a president of a different party, also voted to rehear the case, and for the same reason, so that the full court would have an opportunity to hear the case.**

- b. And state for the record your thoughts on the Second Amendment?

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

50. Under the Obama Administration, Operation Chokepoint formalized financial discrimination in the form of an effort by the Federal Deposit Insurance Corporation (FDIC) and Department of Justice (DOJ) to stop financial institutions from offering services to some regulated industries in an attempt to choke off banking services. This included federally licensed firearm retailers and other companies in the firearm and ammunition industry—some of the most heavily regulated businesses in the country. The Justice Department under President Trump committed to ending this controversial program.
- a. Will you commit that, if confirmed, this would also be the case under your

leadership?

**RESPONSE: I am not familiar with the operation you reference. As I testified, I think the laws should be enforced without regard to partisan views.**

51. 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. 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?

**RESPONSE: My understanding is that the Office of Legal Counsel's longstanding practice with respect to providing controlling legal advice is to "provide advice based on its best understanding of what the law requires—not simply an advocate's defense of the contemplated action or position proposed by an agency or administration." David J. Barron, Acting Assistant Attorney General, Office of Legal Counsel, *Memorandum for Attorneys of the Office re: Best Practices for OLC Legal Advice and Written Opinions* at 1 (July 16, 2010). I agree with that traditional practice.**

52. Are there any specific Office of the Legal Counsel ("OLC") opinions that you would like to withdraw?

- a. What will be your approach to deciding which opinions to withdraw?

**RESPONSE: I have not undertaken a review of Office of Legal Counsel opinions or formed views about opinions that might warrant reconsideration or withdrawal. If I am confirmed, I will approach all aspects of giving legal advice—including considering whether to withdraw an Office of Legal Counsel opinion—by giving careful attention to the facts and the law, consulting as appropriate with the lawyers in the Department with expertise on the relevant issues, and reaching a conclusion based on my best judgment.**

53. Lawsuits have been filed over the ratification of the Equal Rights Amendment ("ERA"). The Biden-Harris Administration has stated that with Virginia ratifying the ERA, the required ¾th of states have ratified the amendment. However, the OLC released a slip opinion stating that Congress must start over. Do you agree with the Administration's position, or the conclusion reached by OLC that this is a matter that should be left to Congress to decide?

**RESPONSE: The issue to which you refer is the subject of pending litigation involving the Archivist of the United States. As a sitting federal judge, Canon 3 of the Code of**

**Conduct for United States Judges bars me from commenting on any pending or impending case in any court. If I am confirmed as Attorney General, opinions or legal advice I might give on this subject would be based solely on the law, and not on any other consideration.**

54. What are your thoughts on the Department of Justice's ("DOJ") policy concerning civil asset forfeiture?

- a. As we have seen in published reports, the Department of Justice collects large amounts of money for its Assets Forfeiture Fund, particularly from large deposits. Does this provide an incentive for the agencies you oversee to use civil asset forfeiture in a way that continues purely for budgetary gain?
  - i. Do you think this incentive by law enforcement agencies is a problem? If so, is it something you will work to address?
- b. Your predecessor, Attorney General Barr, stated that incentives behind asset forfeiture require "constant vigilance," do you share that view? How do you plan about ensuring that agencies have the right incentives in place?
- c. Are you willing to work with the members of the U. S. Senate to reform civil asset forfeiture?

**RESPONSE: Civil forfeiture is authorized under federal law, including 18 U.S.C. § 981 and other laws enforced by the Department of Justice. I understand that aspects of the practice have attracted criticism. If I am confirmed, I will review the Department's practices in this area and determine whether changes may be warranted. And I would welcome the opportunity to work with Congress to address any issues within the purview of the Justice Department that might need reform.**

55. In terms of antitrust, attention has been given to "big tech" companies such as Google, Amazon, and Apple, but what are your thoughts on the monopolistic practices of the National Collegiate Athletic Association ("NCAA")?

- a. For years, the NCAA has profited off of the name, likeness, and image of college athletes, but also used its influence to undermine decisions made by schools in communities across the country. What are your thoughts on how it wields its influence?

**RESPONSE: I have not studied the NCAA's actions in these areas. In addition, I understand that some of the NCAA's practices are the subject of active litigation, including a case pending before the Supreme Court. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court.**

- b. In particular, what are your thoughts on the NCAA's recent track record of undermining women by pushing schools to allow individuals born biologically of one gender to participate in another gender's sports?

**RESPONSE: I am not familiar with the NCAA activities referenced in the question.**

56. The Supreme Court ruled in *Regents of the University of California v. Bakke* that racial quotas cannot be used in university admissions. In subsequent decisions, the Supreme Court has stated that universities may use a process that considers various qualities, such as race, to evaluate candidates. Numerous universities, including your alma mater, have been sued or are under investigation for their admissions processes and possible discrimination against various groups of people. With that in mind, please answer the following:

- a. Under your leadership, how would the DOJ handle these investigations and lawsuits?
- b. More broadly, how would DOJ approach future investigations into similar institutions?

**RESPONSE: My understanding from publicly available information is that the Department recently voluntarily dismissed one such lawsuit, but that related matters remain pending. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case that is in any court. As a general matter, if I am confirmed, the Department will conduct its investigatory work guided by the facts and the law.**

57. Given that when you were an AUSA, you assisted in the successful prosecution of D.C. Mayor Marion Barry for cocaine possession, you are aware of the prevalence of drugs in our society. With that in mind, please answer the following:

- a. Recently, there has been growing discussion in the United States concerning the establishment of "supervised consumption services" or "safe consumption sites" for individuals to come to a designated area for the purpose of using drugs. What are your views on these sites? How with DOJ handle any attempts to establish more of these sites throughout the country?
- b. In *United States v. Safehouse*, the DOJ sued a Philadelphia planned "safe consumption sites" on the grounds that it would violate the federal Controlled Substances Act's ("CSA") so-called "crack house provision." The 3rd Circuit found that this statute prohibits operation of safe injection facilities and as a result the site could not open. Do you agree with this decision? If so, would you commit to enforcing the CSA in its entirety, a law that President Biden was a proponent of while serving in the U.S. Senate? What if the policy of the Biden-Harris Administration, advocates or encourages the creation of these sites?

**RESPONSE: I understand that the lawsuit referenced in the question remains pending. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court.**

58. At the hearing, when I asked you whether you “believe[d] that efforts to purge voter rolls of people who have either died or have left the state in question are racially discriminatory,” you said “If there is enormously disparate impact of something that someone continues to propose it is not unreasonable for people to draw conclusions from that.”

- a. If someone “continued to propose” voter ID laws and it had a disparate impact, do you think someone would be justified in calling them a racist?

**RESPONSE: Both in law and in life it can be difficult to ascertain a person’s subjective intent. Some instances of disparate impact are the result of purposeful discrimination. Some are not.**

59. How do you define systemic racism?

**RESPONSE: In my view, systemic racism refers to historic patterns or practices that have had a disparate impact of communities of color and other ethnic minorities, such as the fact that those communities have disproportionately lower rates of employment and wealth accumulation.**

60. How do you define critical race theory?

**RESPONSE: I am not a legal academic and do not have a definition.**

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

**RESPONSE: As I explained at the hearing, acknowledging the existence of systemic racism in society does not mean that any particular institution or individual is systemically racist.**

62. Congresswoman Ayanna Presley has said, in relation to criminal justice policy: “[w]e must now be every bit as intentional in legislating justice and equity, and that starts with embracing anti-racism as a central tenet of the policymaking process.”

- a. Do you plan to institute “anti-racist” policies at the Justice Department? If so, which policies do you plan to institute?
- b. What current policies of the Justice Department are “racist?”

**RESPONSE: “Equal justice under law” is a foundational principle of our legal system and the Department of Justice’s mission is to ensure fair and impartial administration of justice for all Americans. If confirmed, I will faithfully and impartially apply the law in an effort**

**to identify and address acts of unlawful racial discrimination. I am not familiar with all of the Department's current policies, but if confirmed I would seek to ensure that the Department's policies and practices are aligned with this vision.**

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

**RESPONSE: If confirmed, I would faithfully carry out the Department's responsibility to fairly and impartially administer justice for all Americans.**

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

**RESPONSE: As explained above, I am not a legal academic and do not have a definition of critical race theory.**

65. Do you believe that as the AG you have a duty to act in line with your moral code? If so, would you agree that it is part of your duty to ensure that the department under your care does not violate that code?
- a. Along the same line, let's assume that someone acting as an agent of the Department of Justice takes actions which contradict your moral code. What responsibility do you feel you would owe for those actions?

**RESPONSE: If confirmed, like any public servant in our government, I would take an oath to support and defend the Constitution of the United States and my decisions as Attorney General would be in keeping with this oath and in furtherance of the Department's mission. I would expect the same from every Department employee.**

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

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

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

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

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

68. Do you support laws penalizing fetal homicide?

**RESPONSE: In the course of my tenure as a federal judge I have not had occasion to become familiar with these laws.**

69. Do you support the Unborn Victims of Violence Act of 2004, which provides that a person guilty of killing a child in utero may be punished to the same extent as if they had killed the child's mother, and that a person who intentionally kills a child in utero may be charged as a homicide (i.e., murder or manslaughter)?

**RESPONSE: I have not had occasion to become familiar with this legislation.**

- a. Given that "homicide" requires the killing of an innocent human being, do you agree that in order to punish someone for violating this statute, the child in utero would have to be a human being?

**RESPONSE: I have not had occasion to become familiar with this legislation.**

- b. Are there any circumstances which justify the killing of an innocent human being?

**RESPONSE: Existing federal and state laws prohibit homicide. If I am confirmed as Attorney General, I will enforce the laws of the United States, including criminal homicide statutes.**

70. Do you support the Born Alive Infants Protection Act?

- a. Relatedly, would you support any policy that would prohibit the killing of children who survive failed abortions outside the womb?

**RESPONSE: I have not had occasion to become familiar with this legislation.**

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

**RESPONSE: Because I am not at the Department, I am not familiar with whether and to what extent the Department relies upon data or information compiled by the Southern Poverty Law Center, and I do not know the facts of these allegations.**

72. Based on evidence that Planned Parenthood profited from the purchase and sale of fetal tissue, the FBI opened its current investigation into the sale of fetal tissue. Will you ensure that this investigation will be allowed to proceed without interference under your leadership of the Department of Justice?



**RESPONSE:** As the nominee for Attorney General, I do not have information about this investigation. If I am confirmed, I commit to making prosecutorial decisions based on the facts and the law.

73. What is the Federalist Society?

- a. What does it do?
- b. What do you think about it?

**RESPONSE:** According to its website, the Federalist Society is “a group of conservatives and libertarians interested in the current state of the legal order. It is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. The Society seeks both to promote an awareness of these principles and to further their application through its activities.” As with many other legal organizations, I have participated in panels hosted by the Federalist Society and have friends and colleagues who are members.

74. On March 22, 1972, the 92nd Congress gave final approval, by the required two-thirds votes, to H.J. Res. 208, the Equal Rights Amendment. The final text of the resolution reflected a political compromise reached in the previous Congress (the 91st), in which proponents had accepted a 7-year ratification deadline. Congresswoman Griffiths explained, “I think it is perfectly proper to have the 7-year statute so that it should not be hanging over our head forever.” (117 Cong. Rec. 35814-15, 1971) As has been the case for every constitutional amendment proposed by Congress since 1960, this 7-year deadline appeared in the Proposing Clause. In your February 22, 2021 oral testimony before the Judiciary Committee, you indicated that under your leadership, the Justice Department will follow the President on “policy” matters, “as long as it is consistent with the law.” In advising the President on what the law is, on any given matter, you said, “we will do so objectively, based only on the reading of law.” I will proceed here on the assumption that this assurance would apply in full force to such a weighty matter as the requirements that Article V of the Constitution imposes for adopting amendments to the text of the Constitution. During the 2020 presidential campaign, the Biden-Harris campaign posted a short position statement on its website on the ERA, which remains there today. It states in part, “Now that Virginia has become the 38th state to ratify the ERA, Biden will proudly advocate for Congress to recognize that 3/4 of the states have ratified the amendment...” However, this campaign statement by the now-President cannot be effectuated unless the Department of Justice alters its positions on fundamental aspects of the constitutional amendment process.

- a. In analyzing the constitutional issues that surround that current status of the 1972 ERA, will you be influenced in any manner by this political position taken during the campaign? In other words, will you feel obligated, at least to some degree, to come up with legal rationales, however strained or novel, to justify the conclusion that the President stated when he was still a candidate?

- b. In 1977, with the 7-year deadline fast approaching, the ERA had not received the required 38 state ratifications, and several states had rescinded their initial ratifications. The Justice Department's Office of Legal Counsel issued an opinion dated Oct. 31, 1977, written by Assistant Attorney General John M. Harmon, which argued, with qualifications, that Congress could, by simple majority votes, extend the deadline prior to expiration. Subsequently, in 1978, did pass such a resolution purporting to extend the deadline to June 1982. (The only federal court to consider the matter ruled in *Idaho v. Freeman* that this was unconstitutional, but after the ostensibly extended deadline passed with no new ratifications, the Acting Solicitor General asserted that the ERA had failed ratification with or without the deadline extension, and the Supreme Court implicitly agreed by declaring the litigation moot.) In his 1977 OLC opinion, Mr. Harmon wrote, "Certainly if a time limit had expired before an intervening Congress had taken action to extend that limit, a strong argument could be made that the only constitutional means of reviving a proposed amendment would be to propose the amendment anew by a two-thirds vote of each House and thereby begin the ratification process anew." Do you agree that since the ERA deadline was reached with only 35 states having ratified (or only 30, if the 5 pre-deadline rescissions are permissible), "a strong argument could be made that the only constitutional means of reviving a proposed amendment would be to propose the amendment anew by a two-thirds vote of each House..."?
- c. In 1992, many people came to believe that the "Congressional Pay Amendment" had been ratified 203 years after Congress proposed it -- although it appears that to this day, no federal court has reviewed that claim or held that the amendment is actually part of the Constitution. In any event, the Congressional Pay Amendment contained no deadline, nor did any state rescind a ratification prior to the 38-state threshold being reached. Nevertheless, some ERA proponents then began to advance claims that ratification deadlines either were unconstitutional, or could be retroactively adjusted or removed by Congress, and this by simple majority votes. After decades of unsuccessful attempts, three state legislatures ultimately adopted purported ratifications based on such theories -- Nevada (2017), Illinois (2018), and Virginia (2020). However, the Virginia legislature's action came weeks after the Office of Legal Counsel on January 6, 2020, issued a 38-page legal opinion, arguing that Congress has the power to include a ratification deadline in a resolution submitted to the states proposing a constitutional amendment; that the 92nd Congress effectively exercised that power when it included a 7-year deadline in H.J. Res. 208; and that Congress lacks power to change an amendment proposal in any respect, once it is submitted to the states. OLC therefore concluded that the only constitutional route to adoption of an ERA was to restart the process. Based on that guidance, the Archivist of the United States issued a statement on January 8, 2020, that he would not certify the ERA as part of the Constitution, "unless otherwise directed by a final court order."
  - i. Do you intend to withdraw the OLC opinion on which the Archivist

currently relies?

- ii. If so, will you simultaneously replace it with a new opinion, and if so, how soon might that occur?
- d. If after thorough review, you were to conclude that the President was mistaken in asserting that "3/4 of states have ratified the amendment," or that "Congress can recognize" that to be so, would your conclusions about "what the law is" be conveyed privately to the President, and perhaps, subject to modification at his instruction?
  - iii. Or, would your legal conclusions be presented in a public document, such as a new OLC opinion?
- e. Candidate Biden's 2020 statement that "3/4 of states have ratified the amendment" the ERA disregarded not only the ratification deadline, but the fact that five state legislatures formally rescinded their ratifications, prior to the deadline of March 22, 1979. In 1977, the opinion by Assistant Attorney General Harmon argued that rescissions are not allowed under Article V, and no subsequent OLC opinion has found it necessary to re-examine that question. But when the late Justice Ruth Bader Ginsburg was asked about the ERA on Feb. 10, 2020, she said, "I would like to see a new beginning. I'd like it to start over. There's too much controversy about latecomers -- Virginia, long after the deadline passed. Plus, a number of states have withdrawn their ratification. So, if you count a latecomer on the plus side, how can you disregard states that said, 'We've changed our minds'?"
  - iv. Do you intend to analyze the question of whether Article V permits states to rescind their ratifications, prior to the three-fourths threshold being reached, in order to determine whether the Administration can in fact, consistent with the Constitution, urge Congress to assert that "3/4 of states have ratified" the ERA?
- f. Do you foresee any eventually in which the Department of Justice would authorize or permit the Archivist of the United States to certify the ERA as part of the Constitution, if Congress has NOT passed a joint resolution purporting to remove the ERA's ratification deadline?
- g. There are currently two active federal lawsuits against the Archivist in the federal courts, which involve claims regarding the validity of the ratification deadline, the validity of rescissions, the authority (if any) of Congress to active retroactively on such matters, etc. In these lawsuits the Department of Justice has been defending the position that the 1979 deadline was permissible and effective. As long as such litigation is ongoing, are there any circumstances under which the Department of Justice would allow or order the Archivist of the United States to certify the ERA as part of the Constitution, under 1 U.S.C. Sec. 106b, in the absence of a final judgment or order by a federal court that such an action by the Archivist is

authorized or required by law?

**RESPONSE:** The issue to which you refer is the subject of pending litigation involving the Archivist of the United States. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. If I am confirmed as Attorney General, any opinions or legal advice I might give on this subject would be based solely on the law, and not on any other consideration.

## Senator Cruz

### Responses to Questions from Senator Cruz to Judge Merrick Garland, Nominee to be United States Attorney General

#### I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions.

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

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

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

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

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

Because you stated at your hearing that you are able to answer questions about policy, many of the questions below focus on policy and facts underlying policy decisions. To the extent you are unable to answer a question about your policy views, please state why you are unable to provide an answer at this time, what information you will need to provide an informed answer, and when you will be able to provide that answer.

#### II. Questions

1. Do you agree that it is appropriate to investigate whether and to what extent individuals engaged in criminal conduct related to the 2016 election?

**RESPONSE: If confirmed, I will make decisions concerning investigations based on the facts and the law. Because I am not in the Department and accordingly lack access to relevant facts, among other things, it would not be appropriate for me to comment on any particular investigation or potential investigation.**

2. When Bill Barr was asked at his confirmation whether he would terminate Robert Mueller, he answered that he would not terminate him without “good cause.” At your hearing, you refused to commit to any standard by which to determine whether to fire John Durham or stop his investigation and instead avoided answering the question by stating that you have yet to examine the facts.
  - a. What is the appropriate standard for an Attorney General to apply to determine whether to fire a U.S. Attorney who is overseeing a politically sensitive investigation?
  - b. What is the appropriate standard for an Attorney General to apply to determine whether to indefinitely halt a politically sensitive investigation?
  - c. Do you agree with Bill Barr that the appropriate standard is “good cause”?
  - d. If the appropriate standard for terminating John Durham or his investigation is anything other than “for cause” or “good cause” please explain why the standard for reviewing the Durham investigation should be different than the standard that Bill Barr applied when reviewing the Mueller investigation.
  - e. If the appropriate standard for terminating John Durham or his investigation is anything other than “for cause” or “good cause” please explain how that standard differs from the “for cause” or “good cause” standard.

**RESPONSE: As I testified at my hearing, I do not know anything about the Durham investigation except what I have read in the press. My view about every investigation is that I have to know the facts before I can make these kinds of decisions or commitments. As I said at the hearing, however, I understand Mr. Durham has been permitted to remain in his position, and I presently have no reason to think that that was not the correct decision.**

3. What does “for cause” removal mean in the context of reviewing whether to terminate a politically sensitive investigation?
  - a. What kind of conduct would qualify as removable “for cause”?
  - b. Who will make the determination that the “for cause” standard has been met?
  - c. Who will conduct the investigation into whether “for cause” behavior has occurred?
  - d. If you have decided to break with precedent and apply a different standard from the “good cause” standard applied by Bill Barr, please answer subparts (a)–(c) for the standard you intend to apply.

**RESPONSE: As I testified at my hearing, I do not know anything about that investigation except what I have read in the press. My view about every investigation is that I have to**

**know the facts before I can make these kinds of decisions or commitments. As I said at the hearing, however, I understand Mr. Durham has been permitted to remain in his position and to continue his investigation, and I presently have no reason to think that that was not the correct decision.**

4. What does “for cause” removal mean in the context of reviewing whether to terminate a U.S. Attorney overseeing a politically sensitive investigation?
  - a. What kind of conduct would qualify as removable “for cause”?
  - b. Who will make the determination that the “for cause” standard has been met?
  - c. Who will conduct the investigation into whether “for cause” behavior has occurred?
  - d. If you have decided to break with precedent and apply a different standard from the “good cause” standard applied by Bill Barr, please answer subparts (a)–(c) for the standard you intend to apply.

**RESPONSE: As I testified at my hearing, I do not know anything about that investigation except what I have read in the press. My view about every investigation is that I have to know the facts before I can make these kinds of decisions or commitments. As I said at the hearing, however, I understand Mr. Durham has been permitted to remain in his position and to continue his investigation, and I presently have no reason to think that that was not the correct decision.**

5. Assume for the sake of this question and this question only that after reviewing the facts of the Durham investigation, you were to determine that the Durham investigation was not properly predicated.
  - a. Would that hypothetical lack of proper predication be sufficient grounds to terminate the investigation? Please explain your answer.
  - b. Would that hypothetical lack of proper predication be sufficient grounds to terminate John Durham? Please explain your answer.
  - c. Does your answer to subpart (a) change if you assume that a reasonable, objective observer could disagree with your assessment that the investigation lacked a proper predicate? Please explain your answer.
  - d. Does your answer to subpart (b) change if you assume that a reasonable, objective observer could disagree with your assessment that the investigation lacked a proper predicate? Please explain your answer.

**RESPONSE: As I testified at my hearing, I have always been extremely careful, as a prosecutor and as a judge, not to comment about something without knowing the facts. As a Justice Department nominee, I do not have information about Mr. Durham’s**

investigation aside from what has been reported in the press. I therefore am not in a position to comment on these hypotheticals. If confirmed, I will make decisions concerning investigations based on the facts and the law. As I said at the hearing, I understand Mr. Durham has been permitted to remain in his position and I presently have no reason to think that that was not the correct decision.

6. You stated at the hearing that you knew nothing of the Steele “dossier” beyond what you had read in the papers. Have you taken the time to acquaint yourself with the issue since?
  - a. You had earlier claimed to have read the executive summary of the IG report, which referenced the “dossier” multiple times. Have you since read any of the remainder of the IG report?
  - b. Do you have any additional comments on the “dossier,” having learned more about it?
  - c. Do you believe the FBI’s handling of the “dossier” was appropriate?

**RESPONSE: Since the confirmation hearing, I have not studied these issues further and thus am not in a position to comment further.**

7. What standard of obstruction of justice did the Mueller investigation adopt?
  - a. What is the statutory definition of obstruction of justice?

**RESPONSE: I have not reexamined the Mueller Report. There are several statutes that prohibit obstruction of justice, including those in Chapter 73 of Title 18 of the U.S. Code.**

- b. Could the firing of an independent counsel, special counsel, or U.S. Attorney who is investigating the President, his political allies, or his family members constitute obstruction of justice?

**RESPONSE: As I testified at my hearing, I have always been extremely careful, as a prosecutor and as a judge, not to comment about something without knowing the facts. As a Justice Department nominee, I am not in a position to comment on these hypotheticals. If confirmed, I will make decisions concerning investigations based on the facts and the law.**

- c. Is it possible for a President to commit obstruction of justice?

**RESPONSE: As I testified at my hearing, I have always been extremely careful, as a prosecutor and as a judge, not to comment about something without knowing the facts. As a Justice Department nominee, I am not in a position to comment on this hypothetical.**

- d. Do you agree that terminating John Durham would create the appearance of impropriety?



**RESPONSE:** As I testified at my hearing, I have always been extremely careful, as a prosecutor and as a judge, not to comment about something without knowing the facts. As a Justice Department nominee, I am not in a position to comment on this hypothetical. If confirmed, I will make decisions concerning investigations based on the facts and the law.

8. Will you allow special counsel Durham to publish a public report, with only minimal redactions?
  - a. What categories of redactions would the Department consider?
  - b. Will you commit to personally review and approve of any and all redactions?

**RESPONSE:** As the nominee for Attorney General, I do not have information about Mr. Durham's investigation aside from what has been reported in the press. If I am confirmed, one of my first tasks will be to speak with Mr. Durham to learn about his investigation. Only when I know relevant facts would I be in a position to consider these questions.

9. Top officials, including Sally Yates, Rod Rosenstein, and Jim Comey, have testified that they were not responsible for the FISA abuses outlined in the Horowitz Report.
  - a. Do you agree that, as Attorney General, the buck stops with you—that you are responsible for the product and conduct of career attorneys speaking and working on behalf of the Department of Justice?

**RESPONSE:** As I stated at my confirmation hearing, if I am confirmed as Attorney General, I would be ultimately responsible for the Department's actions.

- b. What, if anything, would you have done differently from previous leadership to have prevented these abuses?

**RESPONSE:** As I stated at my confirmation hearing, as a nominee I should not comment about Justice Department officials' prior decisions, as I want you to judge me on my own record and what I do going forward. If I am confirmed, I will speak directly with Mr. Horowitz and FBI Director Wray to make sure that any necessary changes are made as a result of the recommendations by Inspector General Horowitz. I have long been concerned that the Department be careful in its use of FISA.

10. Will you commit to ensuring that no one who was found to have engaged in improper conduct related to Crossfire Hurricane is employed by Department of Justice or the FBI?
  - a. Will you commit to reporting to this Committee on the reasons for retaining any culpable individuals, in the event they remain at DOJ or the FBI?

**RESPONSE:** If confirmed, it will be my direction that personnel decisions at the Justice

**Department comply with all applicable laws, and that any investigations into allegations of misconduct by Department employees should be searching and fair.**

11. Kevin Clinesmith, the FBI lawyer who admitted to falsifying an email, was sentenced to one year of probation, and no prison time. Prosecutors had asked for several months prison time. Do you agree with the prosecutors that Mr. Clinesmith deserved at least some term of imprisonment?

**RESPONSE: As I said at the hearing, as a nominee I should not comment on Justice Department officials' prior decisions, as I want you to judge me on my own record and what I do going forward.**

12. On January 5, 2017, the day after the FBI drafted a closing memo in the General Flynn investigation determining Flynn was "no longer a viable candidate," there was an Oval Office meeting with President Obama and, among others, Vice President Biden, Susan Rice, James Comey, and Sally Yates. At that meeting, President Obama asked if they should withhold information from Flynn. Do you believe this was appropriate?
  - a. How would you respond in such a situation with President Biden?
  - b. If you had been the Attorney General during this January 5 meeting, would you have pushed back and made clear that sidelining the incoming National Security Advisor was dangerous and unprecedented?

**RESPONSE: I do not know the facts of the situation you describe. As I stated at the hearing, as a nominee I should not comment about Justice Department officials' prior decisions or hypothetical situations, as I want you to judge me on my own record and what I do going forward.**

13. Investigations have revealed that then-Deputy Director of the FBI, Andrew McCabe, who initially told inspector general investigators that he did not authorize a controversial leak, was lying. He later confessed.
  - a. We do not know, however, whether and to what extent then-FBI Director Comey was aware of and authorized this leak after the fact; will you commit to finding an answer to this question?

**RESPONSE: I have not studied these matters, and it would not be appropriate for me to commit to an investigation without knowing the facts. If confirmed, I will make decisions concerning investigations based on the facts and the law.**

- b. Do you agree this is the kind of conduct of senior government officials that requires oversight?

**RESPONSE: As I said at the hearing, as a nominee I should not comment on Justice Department officials' prior decisions, as I want you to judge me on my own record and**

**what I do going forward. As a general matter, oversight is appropriate for all government officials.**

- c. Mr. Comey and Mr. McCabe have now offered multiple statements, under oath, that are directly and irreconcilably contradictory. One of them must be lying. Would you agree that lying under oath is a serious matter?

**RESPONSE: I have always been careful as a prosecutor and a judge not to comment about something without knowing the facts. Without commenting on any specific individual or prior event, I agree that lying under oath is a serious matter.**

- d. Will you commit to fulfilling my request sent to Director Wray and Attorney General Barr on December 10, 2020, to provide “to the fullest extent possible any and all emails, records, communications, and any other documents relevant to determining whether Mr. Comey knew of and approved of the FBI’s leak of information pertaining to the Clinton investigation to the Wall Street Journal”?

**RESPONSE: If confirmed, it will be my direction that the Justice Department be responsive to congressional requests for information, consistent with applicable law and longstanding Department policies and procedures.**

- e. If, and when, one of them is determined definitively to be lying, will you instruct DOJ staff to consider charges under federal law?

**RESPONSE: As I testified at my hearing, I have always been extremely careful, as a prosecutor and as a judge, not to comment about something without knowing the facts. As a Justice Department nominee, I am not in a position to comment on these hypotheticals.**

- f. Will you commit that lying under oath and to federal authorities will be treated the same for each and every individual, regardless of position or previous rank?

**RESPONSE: If confirmed, I will make decisions concerning investigations and charging decisions based on the facts and the law, without respect to the power of the perpetrator (or lack thereof).**

- 14. While COVID has no doubt posed a challenge for state and local governments around the country, we have seen a disturbing trend in the way that Americans have been treated by local authorities. The Department of Justice is entrusted with the authority to prevent state and local authorities from violating federal civil rights and civil liberties.
  - a. Are you willing to commit to filing suit against, or support suits against, states and localities that single out religious institutions and religious individuals for particularly onerous regulations?

**RESPONSE: I am committed to vigorous and evenhanded enforcement of federal law, including federal laws protecting religious individuals and institutions.**

- b. Would it satisfy the First Amendment for a state to impose an arbitrary system in which commercial establishments are allowed to open, or open partially, while religious institutions are shut down indefinitely?

**RESPONSE: The Supreme Court has held that a law violates the Free Exercise Clause of the First Amendment if it “discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). The Court has likewise made clear that the government “cannot in a selective manner impose burdens only on conduct motivated by religious belief.” *Id.* at 543. In general, the application of those tests requires a careful assessment of the facts and circumstances of each case. But a law that draws “arbitrary” distinctions between institutions based on their religious character would violate that test.**

- 15. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be the Little Sisters of the Poor or small business owners, in pursuit of political goals?

**RESPONSE: Yes. The government must respect the rights enshrined in the Constitution, including the rights to freedom of speech, the free exercise of religion, due process, and equal protection of the laws, as well as the rights provided by statute.**

- 16. Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?

**RESPONSE: Yes. The Supreme Court has made clear that rights secured by the Free Exercise Clause and the Religious Freedom Restoration Act are not limited to the home or houses of worship.**

- 17. How will you accommodate Americans who hold strong religious convictions when there is growing pressure from the Biden administration to loosen, and perhaps even undo, religious exemption laws?

**RESPONSE: As I testified at my hearing, I am a strong believer in religious liberty. If I am confirmed, I will seek to ensure that the Department of Justice scrupulously follows the Constitution and federal law, including the Free Exercise Clause and statutes protecting religious liberty.**

- 18. The Biden administration is now on the record stating its opposition to the use of religious exemptions for those who hold traditional religious views on sexuality and gender.
  - a. What is the role of the Department of Justice in preventing the federal and state

governments from discriminating against religious Americans who hold traditional religious views on sexuality and gender?

- b. What will you do in office to ensure that religious exemption laws are not dismantled?

**RESPONSE:** The role of the Department of Justice is to vigorously and evenhandedly enforce the law, including laws protecting religious liberty. If I am confirmed, I will seek to ensure that the Department fulfils that responsibility.

19. Please describe your understanding of the holding of *Our Lady of Guadalupe School v. Morrissey-Berru* (2020).

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

20. If confirmed, will you revive the lawsuits against the Little Sisters of the Poor seeking to require them, against their religious beliefs, to facilitate abortions?

**RESPONSE:** I understand that litigation on the contraceptive-coverage requirement promulgated under the Affordable Care Act, including a suit involving the Little Sisters of the Poor, remains pending. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court.

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

**RESPONSE:** I understand that these issues are currently pending before the courts, including in a petition for a writ of certiorari before the Supreme Court. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from

commenting on any pending or impending case in any court.

22. Can the government force a church that objects to same-sex marriage to hire a pastor who is in a relationship with someone of the same sex?

**RESPONSE:** The “ministerial exception” recognized by the Supreme Court gives religious institutions “the authority to select, supervise, and if necessary, remove a minister without interference by secular authorities.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020).

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

**RESPONSE:** I understand that these issues are the subject of pending litigation. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court.

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

**RESPONSE:** In *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the Supreme Court held that Title VII prohibits an employer from firing or otherwise discriminating against employees “simply for being homosexual or transgender.” *Id.* at 1737. Like other federal agencies, the Department of Justice must comply with Title VII in its own employment actions. 42 U.S.C. § 2000e-16(a). In addition, the Department’s Civil Rights Division is responsible for enforcing Title VII in cases involving state and local government employers. 42 U.S.C. § 2000e-5(f)(1).

25. Do you agree that free speech is an essential and irreplaceable American value?
- What are the present threats to free speech in America?
  - What role does the Department have in addressing threats to free speech?
  - Does the First Amendment protect speech that some may consider offensive? If so, what are the limits to that protection?
  - What is “hate speech”? Is “hate speech,” as you have defined it, protected by the First Amendment? If so, what are the limits to that protection?

**RESPONSE:** The protection of speech against government regulation is a fundamental value enshrined in the First Amendment. The Department of Justice is responsible for upholding all constitutional rights, including the right to freedom of speech. The protection of the First Amendment extends to speech that some may find offensive; indeed, the Supreme Court has “said time and again that ‘the public expression of ideas

may not be prohibited merely because the ideas are themselves offensive to some of their hearers.” *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017). So far as I am aware, the Supreme Court has not defined “hate speech” or treated it as a distinct legal category. In general, the Court has instructed that the First Amendment excludes only a few “well defined and narrowly limited classes of speech” such as “obscenity,” “defamation,” “fraud,” “incitement,” and “speech integral to criminal conduct.” *United States v. Stevens*, 559 U.S. 460, 468-469 (2010) (citation omitted).

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

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

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

**RESPONSE:** I am not familiar with the specific initiatives referenced in the question. If I am confirmed, I will uphold all constitutional rights, including the First Amendment right to freedom of speech.

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

**RESPONSE:** The Supreme Court has held that “the Free Speech Clause prohibits only governmental abridgement of speech”; it “does not prohibit *private* abridgement of speech.” *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019). The Free Speech Clause thus does not govern the actions of private educational institutions. I have not studied other federal or state laws that might require some or all of those institutions to protect the free speech rights of their students or employees.

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

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

30. What do you understand to be the scope of Section 230 protection?

**RESPONSE:** As I testified at my hearing, I have relatively limited information about Section 230 beyond the statutory text and the D.C. Circuit case I decided. I know that

you and other Members of the Committee have ideas about how the statute should be amended. If I am confirmed, I look forward to talking with you and others about those ideas.

- a. Does Section 230 immunize content publishers only?

**RESPONSE:** As I testified at my hearing, I have relatively limited information about Section 230 beyond the statutory text and the D.C. Circuit case I decided. If confirmed, I look forward to studying the issue more closely.

- b. If an internet platform curates content, and specifically selects what a user sees and does not see, is the platform engaged in publishing?

**RESPONSE:** As I testified at my hearing, I have relatively limited information about Section 230 beyond the statutory text and the D.C. Circuit case I decided. If confirmed, I look forward to studying the issue more closely.

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

**RESPONSE:** In my role as a federal judge, I have not thought about this policy question. If confirmed, I look forward to learning more about your concerns.

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

**RESPONSE:** The Department is bound to enforce the First Amendment's protections.

- 31. Many big technology platforms are funded or financed in part by the Chinese Community Party.

- a. Do you see the self-censorship of American media companies at the behest of a fundamentally anti-western, anti-American regime as a problem?
- b. If not, why not?

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

- 32. What are your thoughts on what is called "cancel culture"? Is "cancel culture," as you understand it, consistent with the values of free speech?

**RESPONSE:** I do not have an understanding of the meaning of the term sufficient to comment.



33. Do you plan on taking action against companies for “misinformation” or “disinformation”?
  - a. How do you define those terms?
  - b. What is the basis in the law?
  - c. What is your opinion on social media and networking companies banning material or the accounts of content providers who promote what are termed “conspiracy theories”?

**RESPONSE: I have not had occasion to study these issues. I understand that Director Wray has testified that misinformation and disinformation, especially from foreign adversaries, pose one of the key challenges for the FBI, and that the Bureau has partnered with social media companies to address this issue. As I indicated during my hearing, I would welcome the opportunity, if confirmed, to work with Congress on this issue and to learn more about the challenges it poses. Of course, any action the Department of Justice takes in this area must be consistent with the First Amendment.**

34. At your hearing, you stated that you were not familiar with “Operation Choke Point.”
  - a. Having now had time to review the details of it, please describe your understanding of the Operation Choke Point initiative.
  - b. Do you believe Operation Choke Point was an appropriate use of the Department of Justice’s investigatory power?

**RESPONSE: Since the confirmation hearing, I have not studied these issues any further and have no additional comments.**

35. Can institutional investors and stock brokerages lawfully suspend trading on their platform to protect themselves against loss?

**RESPONSE: I am not sufficiently conversant in the securities laws to have a view on this question at this time.**

36. My office has received a number of complaints from Texas manufacturers regarding the benchmarks used to set the price of aluminum. Specifically, there is concern that the Midwest Premium (MWP) set by S&P Global Platts—a provider of energy and commodities information and a source of benchmark price assessments in the physical commodity markets—is causing market distortions and artificially inflated prices to consumers. Will you commit to ensuring that you or the appropriate member of your senior staff becomes familiar with this issue and assesses whether any action by the Department of Justice is appropriate?

**RESPONSE:** I understand that the Midwest Premium is the subject of ongoing antitrust litigation. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. As a general matter, however, I am committed to the vigorous enforcement of the antitrust laws.

37. In your testimony, you expressed some doubt that the Biden administration would seek to overturn *Heller v. District of Columbia* because the Supreme Court is unlikely to agree with their position.
- a. Would you instruct the Solicitor General to advocate to overturn *Heller* if you believed there was a reasonable chance that the Supreme Court would agree to do so?

**RESPONSE:** If confirmed, I will take an oath, as all Department employees do, to support and defend the U.S. Constitution. As I testified, I cannot take a position on a particular case before reviewing the facts and the applicable law.

- b. Please describe the holding of *Heller*.

**RESPONSE:** In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the U.S. Supreme Court held that the Second Amendment protects “an individual right to keep and bear arms.” *Id.* at 595. The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626.

38. Please state whether you would defend the constitutionality of any of the following hypothetical executive actions or pieces of legislation restricting access to firearms:
- a. A ban on “assault weapons,” as that term was used in the Public Safety and Recreational Firearms Use Protection Act.
- b. A ban on high-capacity magazines.
- c. A ban on carrying firearms outside the home.
- d. Universal background checks.
- e. A punitive tax on the purchase or ownership of a firearm.
- f. As a matter of policy, do you support one or more of the above in subparts (a)-(f)? If so, please state which policies.

**RESPONSE:** If I am confirmed, my decisions about the Department of Justice’s litigating positions would be guided by the Constitution and applicable Supreme Court precedent. I have not carefully studied the constitutional issues raised by these hypothetical measures. I also have not developed policy positions on those hypothetical measures. But as I testified at my hearing, I believe as a general matter that we should be careful that people who are

entitled to have guns get the background check that allows them to have them, and that for those who are not entitled and who we are concerned about because they are threats, because they are felons or for whatever reason are barred by the law, that there is an opportunity to determine that they are not permitted to have a gun.

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

**RESPONSE:** In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects “an individual right to keep and bear arms.” *Id.* at 595.

a. Does the right to own a firearm deserve less protection than the other individual rights specifically enumerated in the Constitution?

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

b. Does it deserve less protection than the right to vote?

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

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

**RESPONSE:** If confirmed, the protection of individual rights will be one of my duties as Attorney General, a duty I will share with all Department attorneys.

d. Do you believe that an individual who believes *Heller* was incorrectly decided, and that there is thus no individual right to possess a firearm, can fully discharge the duties of Assistant Attorney General for the Civil Rights division?

**RESPONSE:** Respectfully, this question appears aimed at another Presidential nominee for an important position as a leader in Department of Justice. As I stated in my hearing, I have gotten to know Kristen Clarke and believe she is a person of great integrity who will faithfully and impartially apply and defend the laws and Constitution of the United States, including Supreme Court precedent. The Department of Justice will benefit from her leadership and experience.

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

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

**individual rights and adherence to Supreme Court precedent is an integral part of that commitment.**

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

**RESPONSE: No.**

41. At your hearing, you refused to commit to prosecuting illegal border crossings. Do you stand by that testimony?
- You also stated that whether to prosecute illegal border crossings “is again a question of allocation of resources.” Can you please elaborate?
  - Under what circumstances would the Justice Department be unable to prosecute unlawful border entries for lack of resources?

**RESPONSE: As a judge on a court that hears few immigration cases, I have not had the occasion to carefully study this issue. I am committed to fostering public safety through the enforcement of federal laws and to working with other agency partners in continuing efforts to secure our borders and protect our national security.**

42. During the hearing for your nomination to be the Attorney General of the United States, Senator Hawley asked, “Do you believe that illegal entry at America’s borders should remain a crime?” You responded that you had not thought about that question.
- Having had time to think about the question, do you now believe that illegal entry at America’s borders should remain a crime? If so, why? If not, why not?
  - Do you believe that only some illegal entries should be criminalized, and others should be considered lawful? If so, what is the basis for the distinction?

**RESPONSE: As I said to Senator Hawley, “I just haven’t thought about that question.... [T]he President has made clear that we are a country of ... borders and with a concern about national security. I don’t know of a proposal to decriminalize, but still make it unlawful to enter.” Since the hearing, I have not had time to think further about the question.**

43. The Obama-Biden administration refused to withhold funding from cities that openly ignored immigration law and refused to cooperate with federal law enforcement. Was this consistent with the rule of law?

**RESPONSE: It is my understanding that the statutory requirements referenced in the question are the subject of active litigation, including cases pending in the Supreme Court. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges prohibits me from commenting on pending or impending cases.**

44. Do you believe that, if the Department's resources were not limited, the Department of Justice should enforce every immigration law in its jurisdiction?

**RESPONSE: I am committed to fostering public safety through the enforcement of federal laws and to working with other agency partners in continuing efforts to secure our borders and protect our national security.**

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

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

- a. Does the same principle apply in a different political context, such as if a Republican president ordered the IRS not to collect taxes?

**RESPONSE: The Executive Branch's actions, including its exercises of enforcement discretion, are always governed by the Constitution and laws of the United States.**

- b. Could a President concerned with the impact of immigration on domestic employment decide to enforce the laws more stringently than intended by Congress?

**RESPONSE: In enforcing statutes enacted by Congress, the Executive Branch must act consistently with those statutes.**

46. The Secretary of DHS, Alejandro Mayorkas, was the focus of a 2015 Inspector General report that concluded he overrode normal process in order to provide political favors under the EB-5 visa program to well-connected Democrat stakeholders.
- a. Was that consistent with the rule of law?
  - b. If not, do you condemn his actions?
  - c. If a Department of Justice employee engaged in behavior materially equivalent to Mayorkas's behavior that served as the basis for the Inspector General report, would you recommend discipline?
  - d. If not, why not? If so, what discipline would be appropriate?

**RESPONSE: I have not studied the 2015 Inspector General report referenced in the question and it would not be appropriate for me to comment without knowing the facts.**

47. Should an illegal alien who is convicted of murder or sexual assault in the United States expect to be deported immediately?

**RESPONSE: Murder and sexual assault are serious crimes and such crimes are, as general matter, grounds for removal. See 8 U.S.C. § 1227(a)(2). The process and timing of removal is governed by the immigration laws.**

48. Every day, almost 30 people in the United States die in drunk-driving crashes—that's one person every 50 minutes. Should the United States prioritize the deportation of illegal aliens who are convicted of driving while intoxicated?

**RESPONSE: Driving while intoxicated can lead to death and serious injury. If I am confirmed as Attorney General, I will enforce the laws of the United States.**

49. The Biden administration is committed to opening our country's borders at a time when many businesses and shops remain closed due to COVID-19-related precautions. Do you find this policy to be consistent with the stated goal of "building back better"?

**RESPONSE: My understanding is that the Administration is undertaking a comprehensive review of immigration policies in an effort to ensure that they are consistent with the law and the Nation's values.**

50. The opening of borders has led to a surge in the number of illegal migrants at the southwestern border of the United States. Virtually none of these migrants, who are from countries like Guatemala, Nicaragua, and Mexico, are vaccinated against COVID-19. Health-related grounds is a reason of inadmissibility to the United States under the INA. How would will the Department of Justice address this?

**RESPONSE: My understanding is that the Administration is undertaking a comprehensive review of immigration policies in an effort to ensure that they are consistent with the law and the Nation's values.**

51. Are there any differences in the rights, under federal law, between a citizen and an illegal alien? Please describe any differences.
  - a. What is the legal basis of those differences?

**RESPONSE: As a general matter, there are differences between the rights afforded to citizens and non-citizens, and among non-citizens depending on their immigration status. The legal bases for those differences are the relevant constitutional and statutory provisions, some of which apply to all persons in the United States and some of which differentiate on the basis of citizenship or immigration status.**

52. Can you commit to bringing the same vigor and completeness of enforcement to the immigration laws, duly passed by Congress, that you bring to other laws?
- a. If not, why not?

**RESPONSE: If I am confirmed as Attorney General, I will commit to vigorously enforcing the laws of the United States.**

53. In response to a request from my staff asking for an in-person meeting with you, I received a reply that you “cannot do an in-person meeting under any circumstances.” This was in contrast to other senior nominees of the Biden administration who have scheduled meetings in-person.
- a. Did the White House instruct you not to take in-person meetings?
- b. Since April 1, 2020, have you met with any members of the Senate in- person, other than on February 23, at your confirmation hearing?
- i. If so, who and on what dates?
- c. Since April 1, 2020, have you met with Joe Biden in person?
- d. Since April 1, 2020, have you met with any individuals employed by the White House in person?
- i. If so, who and on what dates?
- e. Since April 1, 2020, have you had any conversations or meals indoors lasting more than 15 minutes with an individual who is not a member of your household?
- f. Since April 1, 2020, have you attended any marches, rallies, or public protests?
- g. Is it your belief that taking a meeting with me in my office pursuant to all appropriate medical guidelines, including the guidelines set forth by the Capitol’s attending physician, would have posed an unacceptable risk of transmission?
- h. If so, on what basis do you base that conclusion?

**RESPONSE: Because of the COVID-19 pandemic, I have been working from home and limiting activities outside of my house as much as possible since mid-March of 2020, including work related to my nomination to be the Attorney General. To date I have met virtually, or by telephone, with over 30 Senators, including 20 Senators on the Judiciary Committee. I regret that you and I were not able to arrange a way to meet virtually before the hearing, but I look forward to being able to do so in the future, or to meet in person when the dangers related to the pandemic abate.**

54. In *Garza v. Hargan*, you joined the en banc order overturning the panel’s decision “substantially for the reasons set forth in the . . . dissenting statement of Circuit Judge Millett.”
  - a. Please describe the reasoning set forth in Judge Millett’s dissenting opinion.
  - b. Do you agree that the court’s order stands for the proposition that the moment a person steps foot in the United States, whether lawfully or unlawfully, she has a constitutional right to abortion?

**RESPONSE: The per curiam order I joined in *Garza* sets forth my views on that case as it came before me. The order and Judge Millett’s opinion speak for themselves.**

55. Please describe your understanding of the undue burden standard in light of *Russo v. June Medical Services LLC* (2020). Did it alter the undue burden standard as set forward in *Whole Women’s Health v. Hellerstedt* (2016)?

**RESPONSE: This is the subject of ongoing litigation. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges prohibits me from commenting on pending or impending cases.**

56. American public opinion is increasingly coming to favor at least some restrictions on abortion, and that is reflected by new federal and state legislation.
  - a. Will you faithfully enforce restrictions on abortions that appear in federal law?

**RESPONSE: If I am confirmed as Attorney General, I will faithfully enforce the laws of the United States.**

- b. Will you exercise prosecutorial discretion, as with immigration, to not enforce certain valid laws relating protecting the lives of unborn babies?

**RESPONSE: If I am confirmed as Attorney General, I will faithfully enforce the laws of the United States.**

- c. Will the Biden administration join litigation seeking to invalidate state- level laws protecting the lives of unborn babies?

**RESPONSE: As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges prohibits me from commenting on pending or impending cases.**

- d. Does the Biden administration plan to make abortion access a priority of enforcement at the Department of Justice?

**RESPONSE: If confirmed as Attorney General, I will engage with Department personnel to consider enforcement priorities across the country and the Department.**



- e. Should Americans be forced to pay for abortions against their conscience rights?

**RESPONSE: As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges prohibits me from commenting on pending or impending cases.**

- 57. The Department of Justice safeguards rights against discrimination on the basis of sex, race, and disability, among other characteristics.
  - a. Should a mother be permitted to terminate her pregnancy on the basis of the unborn child's gender?
  - b. Should a mother be permitted to terminate her pregnancy on the basis of the unborn child's suspected disability?
  - c. Should a mother be permitted to terminate her pregnancy on the basis of the unborn child's race?

**RESPONSE: These questions are the subject of ongoing litigation. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges prohibits me from commenting on pending or impending cases.**

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

**Please see my answer to Question 59 below.**

- 59. Some advocates claim that the Equal Rights Amendment remains alive and available for ratification, even though Congress imposed a ratification deadline of 1982. Do you agree that this option is open to states that failed to ratify?
  - a. Can it be ratified, moving forward, on the basis of the past approval of states?
  - b. Does that apply to all other proposed amendments which have received some state approval, but not enough to qualify for ratification?
  - c. Justice Ginsburg famously believed that the ERA can no longer be ratified, and that the process has to start over. Is she incorrect?
  - d. When determining whether a sufficient number of states have ratified the ERA, is it appropriate to include states that withdrew their ratification?
  - e. Do you believe there would be a states' rights concern in counting the nearly four-decade-old votes of states who no longer desire to ratify the ERA?
  - f. Will you commit to not revoking the Office of Legal Counsel opinion stating that

Congress many not revive a proposed amendment after a deadline for its ratification has expired?

**RESPONSE:** The issue to which you refer is the subject of pending litigation involving the Archivist of the United States. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. If I am confirmed as Attorney General, any opinions or legal advice I might give on this subject would be based solely on the law, and not on any other consideration.

60. Will you commit that acts of violence and destruction will be prosecuted, to the fullest extent of the law, regardless of the politics of the perpetrators?

**RESPONSE:** Yes.

61. At your hearing, a Senator suggested that burning buildings as part of a riot is mere vandalism and a property crime. Do you believe that unlawfully setting a building on fire in a riot is a violent act?

**RESPONSE:** I do not recall the context of the first sentence, but unlawfully setting a building on fire is a violent act.

62. The Vice President very publicly encouraged citizens to contribute money for bail for rioters and looters last year, some of whom went on to commit further crimes. Do you support using federal tools to encourage local authorities to prohibit or limit cash bail requirements, so that those arrested for committing violence may be more expeditiously released into the community?

**RESPONSE:** I am not familiar with any individual cases within the scope of your question, and as a sitting judge, I would be unable to comment on any such cases regardless. And although I have not studied the issue, I do understand that many jurisdictions in the country are assessing the fairness of conditioning release on cash bail rather than other alternatives for those who are unable to afford it, particularly for nonviolent pretrial detainees. If confirmed, I would welcome the opportunity to study this issue and assist state and local law enforcement officials with such assessments.

63. What is your understanding of the policy underlying the slogan “defund the police”? Do you support that underlying policy?

**RESPONSE:** As I stated at my hearing, I do not support defunding the police. I support giving police departments the resources they need to help them reform and build community trust. I also support giving communities mental health and other resources so that police can do the job they are trained to do.

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

**RESPONSE: It is important that individuals reporting to law enforcement about crimes or potential crimes make those calls on the basis of criminal conduct, not the race of the suspect.**

65. Is it racist for a person to call police out of concern over the conduct of a person of color?

a. Can it ever be racist, provided that person has in fact committed the alleged crime?

**RESPONSE: Please see response to Question 64.**

66. Do you believe that an individual who attended the Trump rally on January 6, 2021 did not participate in any act of violence should be prohibited in holding a political position in the Department of Justice in a future administration, even if he or she did not personally engage in any unlawful conduct?

**RESPONSE: Americans have a constitutional right to engage in lawful, peaceful protest. If confirmed, I would assess any candidate's fitness for a role in the Department on an individual basis and with the goal of hiring individuals who are capable of carrying out the Department's important mission with integrity.**

67. Do you believe that an individual who attended a protest during the summer of 2020 and did not participate in any act of violence should be permitted to hold a political position in the Department of Justice, even if he or she did personally engage in any unlawful conduct?

**RESPONSE: Please see response to Question 66.**

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

**RESPONSE: While I am not familiar with the administrative termination procedures in the Department, I would expect that unlawful conduct is a ground for termination.**

69. At your hearing, you stated that your definition of "domestic terrorism" is "about the same" as the statutory definition.

a. What is the statutory definition of "domestic terrorism"?

**RESPONSE: The term "domestic terrorism" is statutorily defined in 18 U.S.C. § 2331.**

b. What is your definition of "domestic terrorism"?

c. What is the difference between your definition and the statutory definition?

d. What relevance will your personal definition of "domestic terrorism" have to your

duties, if confirmed, as Attorney General?

**RESPONSE: At the hearing, I described domestic terrorism as using violence or threats of violence in an attempt to disrupt democratic processes, noting that this definition is close to the statutory definition of the term in the criminal code codified at 18 U.S.C. § 2331. If confirmed, all of my actions as Attorney General would be guided by the law as written.**

70. At your hearing, you said that an attack on a courthouse while in operation, trying to prevent judges from actually trying cases, “plainly is domestic extremism.” You mentioned also that an attack “simply on government property at night or any other kind of circumstances” is a clear and serious crime, but seemed to make a distinction between the two regarding an “attack on our democratic institutions.”
- a. Is it your position that if rioters targeted and stormed the Capitol in the middle of the night, when Congress was not in the Capitol, it would not constitute “domestic terrorism” or an “attack on our democratic institutions”?

**RESPONSE: My testimony was intended to explain why I regard the January 6 attack on the Capitol as a particularly heinous act.**

- b. Is it your position that if Timothy McVeigh had bombed the Alfred P. Murrah Federal Building at 5 a.m., it would not constitute “domestic terrorism” or an “attack on our democratic institutions”?
- c. My understanding is that Timothy McVeigh did not bomb the Alfred P. Murrah Federal Building because he wished to disrupt the proceedings at that specific building, but did so to send a message against the federal government for its handling of incidents at Ruby Ridge and Waco. Under the definition you provided at the hearing, that would not qualify “domestic terrorism.” Please explain why that is correct or incorrect.

**RESPONSE (b – c): Timothy McVeigh intentionally built and detonated a bomb that killed at least 168 people and injured more than 680 others. This act of mass destruction was intended to intimidate and coerce a civilian population and spark a revolution that would topple the federal government. It was an act of domestic terrorism.**

- d. You stated that you were not familiar with the facts surrounding the over 50 days of rioting in which rioters assaulted a federal courthouse, federal officers, and local law enforcement personnel with hammers, lasers, baseball bats, fireworks, Molotov cocktails, chemicals, and other weapons resulting in over 270 injuries to federal law enforcement officers. Having now had an opportunity to familiarize yourself with the facts, do you believe this was “domestic terrorism?” Please explain why or why not.

**RESPONSE: As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case that is in any court.**

**As I described throughout the hearing, if I am confirmed I will fairly and impartially apply the law and vigorously prosecute incidents of violence and domestic terrorism regardless of the ideology motivating such acts.**

71. Is the criminal justice system systemically racist?
  - a. Are police unions systemically racist?
  - b. Is the Department of Justice systemically racist?

**RESPONSE: As I explained in my hearing, acknowledging the existence of systemic racism in society does not mean that any particular institution or individual is systemically racist.**

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

**RESPONSE: I have spent my entire career working with our Nation's law enforcement personnel, for whom I have great respect, and I have relied on their good judgment for decades.**

73. Would it be appropriate for the Department of Justice to provide trainings that teach the following:
  - a. One race or sex is inherently superior to another race or sex;
  - b. An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;
  - c. An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or
  - d. Meritocracy or related values such as work ethic are racist or sexist.

**RESPONSE: On his first day in office, President Biden issued an Executive Order stating that it is the policy of his administration "to advance racial equity for all," meaning "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment." As part of that Executive Order, President Biden rescinded Executive Order 13950, which related to workplace trainings, and directed all agency heads to consider appropriate actions in response, as consistent with applicable law. If confirmed, I would look forward to supporting the President's efforts to advance racial equity.**

74. Could training or teaching any of the propositions stated in question 73 result in a hostile work environment in violation of Title VII of the Civil Rights Act? Please explain.

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

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

**RESPONSE: As I stated during my hearing, it would be my goal if confirmed to have the Department be responsive to congressional requests for information and, if the Department cannot answer a question, to explain why it cannot do so.**

76. President Biden last month issued an Executive Order blocking the Department of Justice from renewing contracts for privately-operated detention centers. Unlike the Federal Bureau of Prisons, the U.S. Marshals Service does not have its own facilities; please explain why the U.S. Marshals Service should not be allowed to renew its contracts with private facility operators.

**RESPONSE: I am not familiar with the nature of the contracts the U.S. Marshals Service has with privately owned facilities.**

77. Where marijuana is “legalized,” does law enforcement currently have technology to accurately determine whether a driver has unsafe levels of THC in his or her system for the purposes of driving?
  - a. If not, what is the solution for this problem?

**RESPONSE: Because I am not currently at the Department, I am not familiar with the technology that is available to accurately assess whether a driver has unsafe levels of THC in his or her system.**

78. By most indications, illicit and large-scale marijuana trafficking activity has increased; if you are confirmed, what actions will you undertake to counter the trend?

**RESPONSE: As I testified at my hearing, it is important to focus our attention on violent crimes and other crimes that greatly endanger in our society. Large-scale illicit drug trafficking should be distinguished from simple marijuana possession and should be vigorously investigated and prosecuted.**

79. Is there currently a crime problem in America’s urban centers?
  - a. Is crime worse than it has been in years past?
  - b. Do statistics suggest there has been a jump in violent crime?
  - c. Does this problem require more police, or fewer police, on the streets?

- d. Given the assertion that police are systematically racist, does additional funding for, or deployment of, police in America's city constitute an act of racism?

**RESPONSE: Combatting violent crime is an important duty of the Department of Justice. I spent much of my early career working on the issue of violent crime. During my time at the Justice Department, I was one of the developers of its Violent Crime Initiative. If confirmed as Attorney General, I look forward to using the Department's resources to find innovative and sustainable ways to decrease violence across our Nation.**

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

**RESPONSE: As I testified at my hearing, I have not studied this specific issue. If I am confirmed, I will carefully consider the matter and the arguments on both sides, including both the reasons why this practice developed and the reasons why it was changed.**

81. At your hearing, you stressed the importance of transparency and congressional oversight. Will you commit to provide a yearly report to the Committee listing every suit settled by the Department of Justice whereby a settlement requires the defendant to pay any amount to a third-party (excluding customary attorneys' fees and costs)?
- a. If you are not willing to commit to providing a yearly list, will you commit to providing the information in a timely manner upon request?

**RESPONSE: As I testified at my hearing, I have great respect for the oversight role of the Senate Judiciary Committee. And as I also testified at my hearing, I will seek to ensure that the Department responds to oversight requests in a timely manner, subject to the Department's longstanding policies and practices that may limit what can be disclosed in response to particular requests.**

82. Does the President have the authority to abolish the death penalty?
- a. Does the implementation of a criminal punishment prescribed by law depend entirely on the President's discretion?
- b. Could a President lawfully declare, as a policy, that he disfavors physical imprisonment and order all federal prosecutors to refuse to seek it?

**RESPONSE: The President could not abolish the death penalty, which is reflected in federal and state statutes. But the President has the authority to declare an across-the-board moratorium on executions. The President also has broad clemency powers, which includes the power to commute an individual's sentence of death to a lesser punishment or to commute an individual's sentence of imprisonment to a lesser punishment.**

83. What is the difference between a commutation and refusal to carry out the death penalty?

- a. Are there differences in the effect on future cases?
- b. On the political accountability involved?

**RESPONSE: The President has broad clemency powers, which include the power to commute an individual's sentence of death. I am not able to speculate on the hypothetical effect on future cases or on political accountability.**

- 84. Will you commit to having the Bureau of Prisons continue with executions for murderers on death row who have exhausted their appeals, unless the President takes the politically accountable step of commuting their sentences?

**RESPONSE: Because I am not in the Department, I cannot make such commitments without studying the issue further and learning the Administration's policy positions.**

- 85. Will you commit to allowing line prosecutors to seek the death penalty in appropriate cases?

**RESPONSE: I cannot speculate on hypothetical future cases. To the extent that your question implicates current cases, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case that is in any court.**

- 86. You prosecuted Timothy McVeigh, a terrorist who bombed the Oklahoma federal building, murdering 168 people, including 19 children and infants in a day care center. McVeigh was sentenced to death and was executed in 2001.
  - a. Should Attorney General Reno have refused to have prosecutors seek the death penalty?
  - b. Should Attorney General Ashcroft have stopped his execution?

**RESPONSE: As I testified at my hearing, I do not regret seeking the death penalty against Timothy McVeigh. I supported the death penalty at that time in that case.**

- 87. Last year, the United States carried out the death sentence against Daniel Lewis Lee. Lee was a virulent racist who murdered a husband and wife along with their 8-year-old daughter.
  - a. If you were Attorney General at the time of Daniel Lee's execution, would you have prevented the Bureau of Prisons from carrying out his sentence?

**RESPONSE: I am not familiar with the specifics of this case. As such, it would not be appropriate for me to comment further.**

- 88. The Boston Marathon bomber, Dzhokhar Tsarnaev, murdered three people and injured



264 with two pressure cooker bombs. A court of appeals recently reversed his death sentence, and the Department of Justice appealed to the Supreme Court. At your hearing you refused to commit to maintaining the Justice Department's position, stating that you are unable to opine on a pending matter as a sitting judge. The question, however, was not about the merits of the case that could come before you, but rather about whether the Department of Justice would take the radical step of reversing its position.

- a. Will you commit to maintaining the Department's position in the Tsarnaev case?
- b. If you refuse to answer subpart (a), have you sought the advice of an ethics expert to determine whether you may provide an answer to this question? If not, why not. If so, what was the advice, and its basis?
- c. Even if the appeal is unsuccessful, prosecutors will have the opportunity to again seek the death penalty. Can you commit that the Department of Justice will seek the death penalty on remand?

**RESPONSE: These questions implicate a pending case, so I am barred from commenting on this matter by Canon 3 of the Code of Conduct for United States Judges.**

- 89. You stated at your hearing that your concerns with the death penalty have grown because of the increasing awareness of false convictions.
  - d. I assume that, like me, you have no doubt that Dylann Roof was correctly and lawfully convicted of murdering nine people in cold blood during a bible study at Emanuel African Methodist Episcopal Church. Given that there are no concerns about false conviction, will you commit to working with the Bureau of Prisons to carry-out his execution? If not, what is the basis for your refusal?
  - e. How many of the individuals who had their federal death sentences carried out since 2000 do you believe were wrongly convicted? If the answer is anything other than "none," state which individuals you believe were wrongly convicted.
  - f. How many individuals currently on federal death row do you believe were wrongly convicted? If the answer is anything other than "none," state which individuals you believe were wrongly convicted.

**RESPONSE: I testified at my hearing that I have developed concerns about the death penalty due to the large number of exonerations, the apparent arbitrariness of application, and the disparate impact on Black Americans and other people of color. Exonerations of individuals sentenced to death are well documented. However, I am not familiar with the specifics of the cases involving individuals who are currently on federal death row, and I am banned from commenting on pending or impending cases by Canon 3.**

- 90. Do civil rights laws apply to all Americans or only certain Americans?

**RESPONSE: Civil rights laws apply to all Americans.**

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

**RESPONSE: My understanding from publicly available information is that the Department recently voluntarily dismissed one such lawsuit, but that related matters remain pending. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case that is in any court. As a general matter, if I am confirmed, the Department will conduct its investigatory work guided by the facts and the law.**

92. In 2011, the U.S. Department of Education issued a dear Deal Colleague Letter to colleges and universities that broadened the definition of sexual harassment and required covered institutions to adopt a lenient “more likely than not” burden of proof when adjudicating claims. Should this standard of proof govern?

**RESPONSE: My understanding is that these matters are currently the subject of pending litigation. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case that is in any court.**

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

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

94. As Chief Judge of the D.C. Circuit, you instituted reforms to prevent sexual harassment. Did any of these reforms include adopting a “more likely than not standard,” or otherwise altering traditional rights to due process?

**RESPONSE: I do not believe the D.C. Circuit reforms addressed a standard of proof.**

95. Will you commit to hiring career attorneys for the civil rights division without regard to ideology?
  - a. If the vast majority of attorneys in the civil rights division hold liberal political views, does this suggest discriminatory hiring?
  - b. Would your answer be the same if the vast majority of attorneys identified with the same racial group? Please explain.

**RESPONSE:** If confirmed, it will be my direction that personnel decisions at the Justice Department are made consistent with civil service laws and departmental policies, and without regard to any prohibited considerations, including ideology.

96. Is it appropriate for the Department of Justice to consider an individual's race, sex, or sexual orientation when making a hiring decision for career positions? For political appointments, including judicial nominations? If the answer is "yes," in what manner and to what extent may race, sex, or sexual orientation be considered?

**RESPONSE:** President Biden has been clear that he values a process that brings diverse perspectives and expertise to the table, as do I. Executive Order 11478, as amended, directs executive departments and agencies "to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, sexual orientation, gender identity, or status as a parent, and to promote the full realization of equal employment opportunity through a continuing affirmative program." If confirmed, it will be my direction that the Department shall conform fully with this Executive Order and all applicable law.

97. Should colleges receiving federal funds be permitted to consider the race, sex, or sexual orientation of prospective students in admissions decisions?
- c. Are racial quotas constitutionally permissible?
  - d. What compelling justification, if any, can be offered for racial discrimination in college admissions?

**RESPONSE:** As I stated during my hearing, the Supreme Court has repeatedly affirmed that universities have a compelling interest in obtaining "the educational benefits that flow from student body diversity," and that it is permissible to consider race as part of a holistic approach to achieving these goals. *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003). The Court has also made clear that "a race-conscious admissions program cannot use a quota system." *Id.* at 334. If confirmed, I would seek to ensure that the Department's federal funding programs comply fully with applicable law.

98. In 2019, the attorney general of Michigan announced her new "hate crimes unit" would use the Southern Poverty Law Center's "hate group" list in the enforcement of law, and two conservative organizations have filed lawsuits claiming this violates the First Amendment.
- a. Do you believe that the SPLC's "hate group" list is sufficiently credible that Department of Justice employees may rely on it?
  - b. If your answer to subpart (a) is anything other than "yes," will you commit to ensuring that Department of Justice attorneys do not rely in whole or in objectionable part on the SPLC's "hate group" list?

- c. If your answer to subpart (a) is anything other than “no,” do you agree with SPLC that any of the following are “hate groups”:
  - i. The Ruth Institute;
  - ii. Alliance Defending Freedom;
  - iii. Family Research Council

**RESPONSE: I am not familiar with how the Southern Poverty Law Center classifies groups, nor am I familiar with any deliberations regarding classifying the groups listed in (c).**

- 99. Title IX of the Civil Rights Act prevents sex-based discrimination in any school or educational program that receives federal funds. Title IX has led to the proliferation and growth of women’s sports.
  - a. Do biological men possess a physiological advantage compared to biological women in collegiate sports?
  - b. If so, what implications, if any, does this have for Title IX?
  - c. Does it violate women’s rights to open female competitions to biological men?

**RESPONSE: The issues you reference are the subject of ongoing litigation. As a sitting federal judge, Canon 3 prohibits me from commenting on such matters.**

- 100. At your hearing, you stated about Kristen Clarke: she has “views about the civil rights division I have discussed with her and they are in line with my own.” Are any of her public views materially different than your views? If so, which views?

**RESPONSE: Kristen Clarke is a person of great integrity with a proven track record of advocating for the most vulnerable among us and defending liberty. If we are both confirmed, I look forward to her valuable insights as part of our Department leadership team.**

- 101. Does voter fraud exist?

**RESPONSE: Yes, there have been documented, isolated instances of voter fraud. Fortunately, I have not seen evidence of widespread voter fraud.**

- 102. Is voter fraud an issue that should be addressed?

**RESPONSE: The Department investigates credible allegations of voter fraud.**

- 103. Do you agree with the Baker-Carter Commission’s conclusion that “absentee ballots

remain the largest source of potential voter fraud”?

**RESPONSE: I am not familiar with the conclusions of this commission. I understand that it concluded its work over 15 years ago.**

104. Do you agree with the Baker-Carter Commission’s conclusion that fraud is particularly possible where “third-party organizations, candidates, and political party activists” are involved in “handling absentee ballots”?

**RESPONSE: I am not familiar with the conclusions of this commission. I understand that it concluded its work over 15 years ago.**

105. Can Voter ID laws help prevent voter fraud?

**RESPONSE: I am unfamiliar with what specific laws or regulations could have prevented the documented, isolated incidents of voter fraud. If confirmed, I would prioritize working to ensure that all eligible Americans have the opportunity to cast their ballot in a free and fair election.**

106. Can you commit to affirmatively investigating any credible allegations of fraud in any election?

**RESPONSE: If confirmed, I will seek to ensure that the Department investigates credible allegations of voter fraud within its jurisdiction.**

107. Are there any violations of the Voting Rights Act that should not result in the Department of Justice moving to place a jurisdiction under preclearance?

**RESPONSE: The effect of the *Shelby County* decision is that the jurisdictions identified by the coverage formula in Section 4(b) of the Voting Rights Act no longer need to seek preclearance for new voting changes. Jurisdictions covered by a separate court order entered under Section 3(c) of the Act must still seek preclearance under that section, which provides the remaining standards for preclearance.**

108. Former Attorney General Holder described himself as the President’s “wingman.” Is this an accurate description of the Attorney General’s role?

- a. If you are confirmed, will you act as President Biden’s “wingman”?

**RESPONSE: If confirmed, I will be the lawyer for the people of the United States.**

109. Who makes the laws—the President or Congress, or neither?

**RESPONSE: “Explicit and unambiguous provisions of the Constitution prescribe and define the respective functions of the Congress and of the Executive in the legislative process.” *INS v. Chadha*, 462 U.S. 919, 945 (1983). To become a law, a bill must be passed**

by both the House of Representatives and the Senate, then presented to the President for his signature or veto. U.S. Const. art. I, § 7, Cl. 2. The bill becomes a law if the President signs it; if the House and Senate override his veto by a two-thirds vote; or the bill is not “returned by the President within ten days (Sundays excepted),” unless “the Congress by their adjournment prevent its return.” *Id.*

110. Is it consistent with the rule of law for the President or the Attorney General to refuse to enforce a law because he disagrees with it?

**RESPONSE:** As I testified at my hearing, prosecutors and other government agencies have exercised discretion about how to allocate their resources in terms of enforcement priorities, both criminal and civil, throughout our Nation’s history. But the Executive Branch cannot simply decide, based on a policy disagreement, that it will not enforce a law at all.

111. Is it consistent with the rule of law for federal prosecutors to refuse to prosecute individuals who violate federal drug laws because the President disagrees with those laws?

**RESPONSE:** As I testified at my hearing, it is important to prioritize the Department’s limited resources to prosecute violent crimes and other crimes that greatly endanger our society. Large-scale illicit drug trafficking should be distinguished from simple marijuana possession. But the Executive Branch cannot simply decide, based on a policy disagreement, that it will not enforce a law at all.

112. The Obama-Biden administration refused to enforce certain federal drug laws to avoid triggering mandatory minimum sentences enacted by Congress. Is this consistent with the rule of law?

**RESPONSE:** As I testified at my hearing, I support the policy I helped draft for Attorney General Reno, and that was furthered by Attorney General Holder, in which prosecutors are not required to seek in every case the most serious offense with the highest possible sentence. I believe that the Department should give discretion to its prosecutors to make the offense and the charge fit the crime and be proportional to the damage that it does to our society. In addition, as President Biden has suggested, we should consider the elimination of mandatory minimums so that we, once again, give authority to trial judges to make determinations based on all of the sentencing factors that judges normally apply granting them the ability to do justice in individual cases.

113. Democrats criticized former Attorney General Barr for overriding line prosecutors in recommending a sentence for Roger Stone, alleging this was political, even though the trial court, exercising its independent judgment, ended up agreeing with Barr’s recommendation.
- a. Do you agree with this criticism that it politicized the Department of Justice’s work to override the line prosecutors?

- b. If so, do you commit that political appointees will never override the decisions of career employees?

**RESPONSE: As I stated at the hearing, as a nominee I should not comment on Justice Department officials' prior decisions. I want you to judge me on my own record and what I do going forward.**

- 114. In 2012, the House voted to hold then-Attorney General Eric Holder in contempt of Congress for his failure to turn over documents related to the Fast and Furious scandal.
  - a. If you had been in Eric Holder's position, would you also have refused to turn over documents relevant to a legitimate investigation into a serious scandal?

**RESPONSE: As I stated at the hearing, as a nominee I should not comment on Justice Department officials' prior decisions. I want you to judge me on my own record and what I do going forward.**

- 115. Who are the relevant parties for the Department of Justice to consult before reaching a settlement and establishing a consent decree?
  - a. Should the public have a chance to review and comment on such arrangements?
  - b. Is there a concern over the integrity of a "settlement" when two parties are not actually adverse?

**RESPONSE: Consent decrees are sometimes appropriate to enact a shared goal. These agreements are not one-sided. The Justice Department has been given these tools by Congress and I believe it is important that the Department consider all tools at its disposal when tailoring resolutions.**

- 116. Will you abide by all court orders?
  - a. Including declaratory judgments?
  - b. Including injunctions?
  - c. Including injunctions imposed nationwide by the issuing court?

**RESPONSE: If I am confirmed, I will seek to ensure that the Department of Justice complies with all court orders.**

- 117. When is it appropriate for political appointees in the Department of Justice to override decisions made by career FBI agents?

**RESPONSE: As I testified at my hearing, I have always been extremely careful, as a**

**prosecutor and as a judge, not to comment about something without knowing the facts. As a Justice Department nominee, I am not in a position to comment on this hypothetical.**

118. When is it appropriate for political appointees in the Department of Justice to override decisions made by career Department of Justice attorneys?

**RESPONSE: As I testified at my hearing, I have always been extremely careful, as a prosecutor and as a judge, not to comment about something without knowing the facts. As a Justice Department nominee, I am not in a position to comment on this hypothetical.**

119. Do you accept the legitimacy of the Supreme Court as currently constituted?

**RESPONSE: Yes.**

120. President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase or decrease the number of justices on the U.S. Supreme Court?

**RESPONSE: I understand that President Biden has stated his intent to create a bipartisan commission to study the court system. If confirmed, I would review the issue as appropriate.**

121. Should there be a Code of Conduct for Supreme Court justices?

**RESPONSE: During my time as a federal judge, I have rigorously adhered to the Code of Conduct for United States Judges. I have not had occasion to consider whether that or another ethical code should govern Supreme Court justices, but I understand from public reporting that the issue has been a subject of discussion.**

122. Given the information in the public domain, do you believe that Brett Kavanaugh sexually assaulted Christine Blasey Ford?

**RESPONSE: As a Justice Department nominee, it would not be appropriate for me to answer a question like this.**

123. What is your understanding of the scope of the President's decision-making authority after *United States v. Nixon* and *Seila Law v. CFPB*?
- a. Should agencies, such as the FCC, receive any insulation from presidential control and administration?
  - b. To what extent, if any, is the Department of Justice independent from the political directives of the President?
  - c. What is the Unitary Executive theory? Do you agree with this theory? If not, why not?



**RESPONSE:** The Supreme Court’s decision in *Seila Law LLC v. CFPB*, 140 S. Ct. 2183 (2020), is the Court’s most recent statement on the President’s authority to supervise and remove officers in the Executive Branch. The Court explained that the executive power conferred on the President by Article II of the Constitution “generally includes the ability to remove executive officials.” *Id.* at 2197. The Court noted that its decisions have recognized “two exceptions to the President’s unrestricted removal power.” *Id.* at 2198. First, the Court has held that the heads of certain multimember commissions like the Federal Trade Commission can be protected from removal “except for ‘inefficiency, neglect of duty, or malfeasance in office.’” *Id.* (citation omitted). Second, the Court has upheld statutory restrictions on the removal of “*inferior officers*.” *Id.* at 2199. In *Seila Law*, the Court declined to “extend those precedents” to allow Congress to limit the President’s authority to remove the head of the Consumer Financial Protection Bureau, which the Court described as “an independent agency led by a single Director and vested with significant executive power.” *Id.* at 2201.

The Department of Justice is part of the Executive Branch. For that reason, the Department follows the President’s direction on policy matters. But since Watergate, the Department has developed powerful norms, policies, and traditions to protect the independence of its prosecutions and investigations. President Biden has committed that he will not interfere with the Department in those matters. Those decisions will be made by the Department, under my leadership, if I am confirmed. And those decisions will be made without respect to partisanship, the perpetrator’s power or lack of power, or any other improper consideration.

124. Reports indicate that Governor Cuomo, of New York, actively withheld information from the Department of Justice and intentionally misled federal officials to avoid political accountability in his handling of COVID-19.
  - a. Is withholding information requested by federal authorities a crime?
  - b. Is misleading federal investigators a crime?
  - c. Is encouraging or ordering others to withhold material information from the FBI a crime?

**RESPONSE:** As I testified at my hearing, I have always been extremely careful, as a prosecutor and as a judge, not to comment about something without knowing the facts. As a Justice Department nominee, I am not in a position to comment on these hypotheticals.

125. Will you commit the Department of Justice to fully investigating the allegations that Governor Cuomo and/or his staff violated the civil rights of New York senior citizens and later misled the Department of Justice regarding its actions?
  - a. Will you commit to determining whether any criminal laws were violated?

- b. Will you commit to prosecuting attempts to obstruct justice in this case?

**RESPONSE: If confirmed, I will make decisions concerning investigations and charging decisions based on the facts and the law.**

126. Do you agree that Toni Bacon—the acting U.S. Attorney for the Northern District of New York, a career Department of Justice employee and former Elder Justice coordinator—is well-suited to lead a politically sensitive investigation into the actions of Governor Cuomo’s administration?

**RESPONSE: As I testified at my hearing, I have always been extremely careful, as a prosecutor and as a judge, not to comment about something without knowing the facts. As a Justice Department nominee, I am not familiar with the relevant facts here, and therefore am not in a position to comment.**

127. At your hearing, you committed to ensuring that the individual who runs any investigation into the actions of Governor Cuomo’s administration will not have a conflict of interest.
- a. Do you agree that Audrey Strauss would have a conflict of interest?
  - b. Would an individual with substantial ties to Governor Cuomo’s campaign have a conflict of interest?
  - c. Would an individual with ties to the New York State Democratic Party have a conflict of interest?

**RESPONSE: Government ethics rules serve vitally important purposes, and Justice Department ethics officials provide guidance on when conflicts of interest exist. As a Justice Department nominee, I do not know facts relevant to these questions and hypotheticals, but as a general matter, if I am confirmed, I will seek to ensure that all ethics rules are scrupulously followed.**

## Senator Sasse

### Responses to Questions from Senator Sasse to Judge Merrick Garland, Nominee to be United States Attorney General

1. In your opening statement, you discussed the notion that the Attorney General's client is not the President, but rather the United States. Nevertheless, the Attorney General is obviously part of the President's team. We should surely expect that the Attorney General and the Department are going to be trying their best to support the administration as a whole and its agenda.
  - a. Can you explain exactly how that tension works in practice and how you plan to navigate these competing demands?
  - b. Given that both the Attorney General and federal judges take an oath to the Constitution and laws of the United States, do they both have a duty to abide by their best view of the law, or does the Attorney General have more flexibility to interpret the law in a way more favorable to the administration's agenda? Do the relationships between the coordinate branches affect how officers in each branch should approach legal interpretation?

**RESPONSE: Decisions concerning investigations and prosecutions at the Justice Department must be based on the facts and the law. With respect to matters of policy, because the Justice Department is part of the Executive Branch, the Department follows the lead of the President so long as the President's policy is consistent with the law. In other words, where there is room under the law for the President's policies to be pursued, the President is entitled to pursue them. But the Department must advise the President on whether his or her policies are consistent with the law.**

2. You have spoken admirably about the importance of shoring up the integrity of the Department. Unfortunately, the nature of our tribal partisanship means that it is very easy for each party to decry the abuses they see in the administration of the other party, but it is much harder to stand up for the rule of law when it involves standing up to an administration of the same party.
  - a. Do you agree that preserving the integrity of the Department depends not just on resisting politically driven interference in investigations, but also in resisting stretching statutory authorities past their limits to accomplish the parts of a President's agenda that cannot pass through Congress?
  - b. Is it healthy for the republic for a President to say that he will resort to his pen and phone to get his agenda through against the will of Congress? How should an administration pursue its agenda when Congress seriously disagrees on first principles?

- c. Please list some instances in which the demands of the law and the facts of a particular situation or case have forced you to reach an answer that did not serve the agenda of an administration in which you served.
- d. Please list some instances when you as a judge have ruled against some high-profile priorities of administrations of your same party.

**RESPONSE: Investigations and prosecutions at the Justice Department must be based on the facts and the law. With respect to matters of policy, because the Justice Department is part of the Executive Branch, the Department follows the direction of the President. In other words, where there is room under the law for the President's policies to be pursued, the President is entitled to pursue them. But the Department must advise the President on whether his or her policies are consistent with the law. I have decided many cases both for and against each of the four administrations that have spanned my 24 years on the bench.**

- 3. Turning to the matter of politically sensitive investigations, I hope you share the desire to figure out how we build robust and durable processes to handle these cases so that Americans and their elected representatives can have confidence that no matter who is in office the law will be enforced.
  - a. What are the biggest takeaways that you've garnered from the IG reports on the Clinton email investigation and the Trump-Russia investigation? What lessons should we have learned?

**RESPONSE: As I stated at the hearing, as a nominee I should not comment on Justice Department officials' prior decisions, as I want you to judge me on my own record and what I do going forward.**

- b. When you have a high-profile, politically sensitive investigation cross your desk, how do you plan to handle it?

**RESPONSE: If confirmed, I will make decisions concerning investigations based on the facts and the law.**

- c. Given your praise on the post-Watergate Department's groundbreaking policies to preserve the Department's integrity, do you plan use that period as a model for instituting any new policies for the Department?

**RESPONSE:** As I testified at my hearing, policies that the Justice Department developed in the wake of Watergate are the foundation for the norms that seek to ensure that the Department adheres to the rule of law.

4. In your hearing, I indicated that I intended to ask you questions for the record about China.
  - a. Do you agree that the Chinese Communist Party (CCP) is our greatest geostrategic and ideological adversary on the international stage?

**RESPONSE:** Secretary of State Blinken has repeatedly observed that China represents the most significant challenge to the United States of any country in the world. As I testified at my hearing, there is no doubt that China poses threats that the United States must defend against with a whole-of-government response. If confirmed, I will assess the Department's current structure and capacity to counter such threats and will fully support the President's national security team to protect the American people's security, prosperity, health, and way of life.

- b. How would you evaluate the Department's China Initiative? Was it needed, and if so, why? What has been its greatest successes? Has there been overreach? Was there underreach in light of the CCP's influence operations?

**RESPONSE:** Because I am not currently at the Department, I am not familiar with the details of this initiative. However, if confirmed, I look forward to learning more about this is reviewing this and any related initiatives that are underway and ensuring that all of the tools at the Department's disposal are being put to their best use to counter threats from China.

- c. What is going to be necessary to convince the venture capital and academic community to take this threat seriously?

**RESPONSE:** If confirmed, I look forward to learning more about this issue and the Department's efforts in this area.

5. As a sitting federal judge, I am confident that you share my perspective that the judicial selection process is critically important.

- a. Is it your understanding that you will have a significant role in the administration's judicial selection process?
- b. As Attorney General, will you use your platform to advocate for judicial nominees that are reasonable and can command public trust across the political spectrum?

**RESPONSE:** It is my understanding that the Department of Justice traditionally plays a role in advising the President on the selection of judicial nominees, including vetting of potential nominees by the Department's Office of Legal Policy. If I am confirmed, I would recommend the nomination of individuals of outstanding character and ability.

- 6. Public safety is obviously one of the basic responsibilities of the Department.
  - a. How do you plan to balance your obligations under the FIRST STEP Act with the need to protect public safety?

**RESPONSE:** Based on my understanding of the First Step Act, I do not believe that the law is in tension with ensuring public safety. Rather, I believe the two are complementary and reinforcing. For example, the First Step Act contains provisions aimed at reducing recidivism and reducing recidivism helps promote public safety and public welfare.

- b. Do you agree that the federal prison population contains very few offenders that are incarcerated because of low-level, non-violent drug offenses?

**RESPONSE:** Because I am not currently at the Department, I am not familiar with the precise classifications of incarcerated persons in Bureau of Prison facilities.

- c. Given the significant amount of violence associated with trade in narcotics, are drug traffickers properly considered non-violent?

**RESPONSE:** As I testified, I believe that it is important to devote Department resources to the most serious offenders, which can include drug traffickers. I have not studied the issue of how various offenders are classified, but whether a person has engaged in violence has been a factor in the exercise of prosecutorial discretion and in sentencing policy for decades.

- d. Does increasing judicial discretion in sentencing risk increasing racial disparities in sentences?

**RESPONSE: Judges retain judicial discretion under our current advisory federal sentencing guidelines. I have not examined the data on this issue, but it is a question worthy of study.**

- 7. The Department of Education has two rules that protect religious student groups, 34 CFR §§ 75.500(d) and 76.500(d). These rules prohibit public college administrators from discriminating against student groups because of their sincerely held religious beliefs, speech, and leadership standards. These rules ensure that students of all faiths feel welcome and respected at any public college that receives federal grants.
  - a. Will you assure me that the Department will defend these rules against any court challenges?

**RESPONSE: As I testified at my hearing, I am a strong believer in religious liberty. I have not studied these specific rules or any legal issues they may raise. In general, the Department of Justice's legal defense of regulations issued by another agency is guided by close consultation with the client agency and a careful review of the facts and the law. If I am confirmed and these rules are challenged in court, I would follow that same approach here.**

- 8. In a January 6, 2020 opinion, the Department's Office of Legal Counsel concluded "that Congress had the constitutional authority to impose a deadline on the ratification of the [Equal Rights Amendment] and, because that deadline has expired, the ERA Resolution is no longer pending before the States." Accordingly, the opinion goes on to state that "the 1972 version of the ERA has failed of adoption."
  - a. Do you see any cause for modifying or rescinding this opinion? Will you commit that the Department under your leadership will not modify or rescind the opinion?

**RESPONSE: The issue to which you refer is the subject of pending litigation involving the Archivist of the United States. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. If I am confirmed as Attorney General, any opinions or legal advice I might give on this subject would be based solely on the law, and not on any other consideration.**

## Senator Hawley

### Responses to Questions from Senator Hawley to Judge Merrick Garland, Nominee to be United States Attorney General

1. If you are confirmed as Attorney General, when, if ever, would you independently recommend, advise, or direct that the Department of Justice decline to defend a Federal statute?

**RESPONSE: I understand that, as a general matter, the Department of Justice will defend laws that Congress passed so long as there is a reasonable argument to be made that the law is constitutional, and so long as the statute does not violate the separation of powers by infringing on executive authority.**

2. If you are confirmed as Attorney General, do you intend to faithfully enforce the laws prohibiting unlawful entry into the United States, whether through unauthorized border crossings or visa overstays?

**RESPONSE: As I testified at my hearing, if I am confirmed the Department of Justice will work to prevent unlawful entry into the United States. I look forward to studying the issue and consulting with Department officials to review the Department's current efforts in this area and to determine the most effective way to accomplish that goal given the Department's available resources.**

3. If you are confirmed as Attorney General, would you independently recommend, advise, or advocate that the domestic operations of U.S. Immigrations and Customs Enforcement be significantly curtailed or restructured?

**RESPONSE: I would refer you to President Biden's Executive Orders on immigration policy and enforcement. As a federal judge for the last 24 years, I have not had occasion to become familiar with this issue.**

4. If you are confirmed as Attorney General, do you intend to faithfully use Federal law enforcement resources to defend Federal property against violent rioters, without prejudice to whether those rioters hold radical left-wing or right-wing views?

**RESPONSE: If confirmed, I will enforce federal law without regard to the ideology of those who violate it.**

5. If you are confirmed as Attorney General, as you conduct your investigation of the rioting that took place at the Capitol grounds on January 6, 2021, what specific steps do you intend to take to ensure that Americans' First Amendment rights to criticize their government and pursue political change are not infringed?



**RESPONSE: Americans have a fundamental right to engage in lawful, peaceful protest. If confirmed, I will vigorously defend this right. Acts of violence and other criminal acts are not protected under the Constitution.**

6. In testimony to Sen. Cruz about Operation Choke Point, you stated that you “do not believe as a general matter that regulations should be used to stop people from doing what they are lawfully entitled to do, unless the regulation is pursuant to a statute, obviously, in which Congress is given authority to change the rules.” If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department of Justice pursue legal actions against, or develop legal theories for the Federal prosecution of, websites, firearms manufacturers, internet platforms, banks, financial services providers, book distributors, or religious organizations that are engaged in activities traditionally understood to be protected by the First and Second Amendment?

**RESPONSE: As I testified, I am not familiar with Operation Choke Point. But it is improper to target an individual or entity for prosecution or other enforcement action because of their constitutionally protected activity.**

7. If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department of Justice pursue efforts to criminalize, prosecute, undermine, or obtain technological backdoors into end-to-end encrypted messaging technologies?

**RESPONSE: I agree that it is important to address law enforcement’s legitimate need to protect public safety, while at the same time recognizing civil liberties, economic, and cybersecurity concerns. If confirmed, I look forward to learning more about this important issue.**

8. If you are confirmed as Attorney General, what specific steps do you intend to take to prevent pressure from large multinational technology firms from influencing the decisions taken by the Department of Justice?

**RESPONSE: As I testified at my hearing, as a judge I have been immune to any kind of pressure or influence other than the pressure to do what I think is right given the facts and the law. I have spent my whole professional life looking up to Ed Levi and the other post-Watergate Attorneys General who stood up on behalf of the Department against impermissible pressure and influence. If I am confirmed as Attorney General, I intend to do the same.**

9. In testimony to me, you observed that “unfortunately or fortunately, a lot of the best antitrust lawyers in the country have some involvement one way or another in some part of high tech, and we cannot exclude every single good lawyer from being able to be in the division.” If you are confirmed as Attorney General, what specific steps do you intend to take to prevent the conflicts of interest that naturally come from a “revolving door” between regulators and regulated technology entities?

**RESPONSE:** As I testified at my hearing, the Department of Justice has recusal rules that reflect applicable federal ethics statutes, regulations, and policies. In addition, President Biden’s Executive Order No. 13989 requires political appointees to sign a pledge imposing additional recusal obligations and other requirements aimed at “revolving door” concerns. If I am confirmed, I will seek to ensure that all Department employees scrupulously follow these and other ethics rules. More broadly, I will insist that the Department’s decisions in all enforcement matters—including antitrust matters—are based solely on an evenhanded application of the law to the facts.

10. If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department of Justice drop its ongoing antitrust lawsuit against Google?

**RESPONSE:** As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. As I testified about my hearing, I do not know anything about the Google case beyond what I’ve read in press reports about public filings. But based on what I have read, I do not see any reason why the decision to institute the investigation would be changed.

11. If you are confirmed as Attorney General, what steps do you intend to take, and what authorities do you intend to consult, in order to develop the Department’s interpretation of 47 U.S.C. § 230 (“Section 230”) under your leadership?

**RESPONSE:** As I testified at my hearing, I have relatively limited information about Section 230. I know that you and other members of the Committee have ideas about how the statute should be amended, and, if confirmed, I look forward to talking with you and others about those ideas.

12. In testimony to Sen. Lee, you stated that “I am a strong believer in religious liberty and there will not be any discrimination under my watch.” If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department of Justice support legislative or executive actions that would alter in any way the Religious Freedom Restoration Act’s protection for Americans of all faiths?

**RESPONSE:** As I testified at my hearing, I am a strong believer in religious liberty. If I am confirmed as Attorney General, I will seek to ensure that the Department of Justice scrupulously complies with the Constitution and all federal statutes, including the Religious Freedom Restoration Act. I have not considered any potential legislative amendments to the Act. If I were asked to consider such an amendment, my position would be informed by my strong belief in religious liberty and guided by a careful review of the relevant facts and law.

13. If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department of Justice continue to pursue legal action against the Little Sisters of the Poor?

**RESPONSE:** I understand that litigation on the contraceptive-coverage requirement promulgated under the Affordable Care Act, including a suit involving the Little Sisters of the Poor, remains pending. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court.

14. If you are confirmed as Attorney General, what do you envision as the principal strategic litigation priorities of the Department's Civil Rights Division under your leadership?

**RESPONSE:** If confirmed, I would expect the Civil Rights Division to play a role in a number of the Department's priorities such as battling the threat of domestic violent extremism through hate crime prosecutions, protecting the right to vote, addressing police departments that engage in unconstitutional patterns or practices and helping them to reform, and combating discrimination in housing, to name a few.

15. If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department of Justice suspend Special Counsel John Durham's investigation into the Crossfire Hurricane operation?

**RESPONSE:** As I testified at my hearing, I do not know anything about the Durham investigation except what I have read in the press. My view about every investigation is that I have to know the facts before I can make these kinds of decisions or commitments. As I said at the hearing, however, I understand Mr. Durham has been permitted to remain in his position, and I presently have no reason to think that that was not the correct decision.

16. If you are confirmed as Attorney General, would you independently recommend, advise, or direct that the Department depart from the reasoned analysis set forth in OLC's January 6, 2020 opinion Ratification of the Equal Rights Amendment, which is in accord with both statements made by the late Justice Ginsburg and OLC's October 31, 1977 opinion Constitutionality of Extending the Time Period for Ratification of the Proposed Equal Rights Amendment?

**RESPONSE:** The issue to which you refer is the subject of pending litigation involving the Archivist of the United States. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. If I am confirmed as Attorney General, any opinions or legal advice I might give on this subject would be based solely on the law, and not on any other consideration.

## Senator Cotton

### Responses to Questions from Senator Cotton to Judge Merrick Garland, Nominee to be United States Attorney General

1. During your hearing, you refused to commit to ensuring that U.S. Attorney John Durham has the time, staff, and resources needed to complete his investigation into intelligence, counter-intelligence, and law-enforcement activities related to the 2016 presidential campaigns. You did, however, state that, “everything I know sitting here suggests that he should, of course, have those resources.” You also stated that you “have no reason to doubt that the decision to keep him in place and to continue in his investigation was in any way wrong.” Based on everything you know as you answer these questions, do you have any reason to believe that the Durham Investigation was not properly predicated?

**RESPONSE:** As I testified at my hearing, I do not know anything about the Durham investigation except what I have read in the press. My view about every investigation is that I have to know the facts before I can make these kinds of decisions or commitments. As I said at the hearing, however, I understand Mr. Durham has been permitted to remain in his position, and I presently have no reason to think that that was not the correct decision.

2. Based on everything you know as you answer these questions, do you have any reason to believe that the Durham Investigation has been conducted improperly?

**RESPONSE:** As I testified at my hearing, I do not know anything about the Durham investigation except what I have read in the press. My view about every investigation is that I have to know the facts before I can make these kinds of decisions or commitments. As I said at the hearing, however, I understand Mr. Durham has been permitted to remain in his position, and I presently have no reason to think that that was not the correct decision.

3. Based on everything you know as you answer these questions, do you have any reason to believe that the Durham Investigation is an inappropriate or excessive use of resources?

**RESPONSE:** As I testified at my hearing, I do not know anything about the Durham investigation except what I have read in the press. My view about every investigation is that I have to know the facts before I can make these kinds of decisions or commitments. As I said at the hearing, however, I understand Mr. Durham has been permitted to remain in his position, and I presently have no reason to think that that was not the correct decision.

4. Do you believe that a political appointee of President Biden ordering the closure of the Durham Investigation prior to its natural end could cause members of the public to believe that such a decision was based on improper political considerations, rather than the impartial administration of justice?

**RESPONSE:** As I testified at my hearing, I do not know anything about the Durham investigation except what I have read in the press. My view about every investigation is that I have to know the facts before I can make these kinds of decisions or commitments. As I said at the hearing, however, I understand Mr. Durham has been permitted to remain in his position, and I presently have no reason to think that that was not the correct decision.

5. Has anyone within the Biden administration, the Biden transition team, or the Department of Justice discussed the Durham Investigation with you?
  - a. If so, please list all such individuals with whom you have discussed the Durham Investigation.
  - b. If any such discussions have occurred, please identify any individuals involved in those discussions who have suggested that the Durham Investigation should not continue.

**RESPONSE:** No.

6. Do you believe, based on what you know today, that the decision of the Department of Justice to allow the Mueller Investigation to run its course increased confidence among Americans that impartial justice would be done?

**RESPONSE:** As I stated at the hearing, as a nominee it would not be appropriate for me to comment on Justice Department officials' prior decisions, as I want you to judge me on my own record and what I do going forward.

7. During your hearing, you stated that you "do not have any regret" for seeking the death penalty against Timothy McVeigh, but you also said that you supported the death penalty "at that time for Mr. McVeigh in that individual case." If Timothy McVeigh were still on death row awaiting execution today, would you as Attorney General sign the order to carry out that sentence?

**RESPONSE:** If confirmed, I will seek to ensure that criminal sentences are carried out consistent with the law, the Department's policies and practices, and any relevant policies set by the President.

8. During your hearing, you repeatedly suggested it would be within President Biden's authority to issue a moratorium on seeking the death penalty in criminal cases, and that you would follow such a policy if President Biden were to issue one. But you also repeatedly stated that one of your roles as Attorney General would be to advise the president on policy. If you are confirmed as Attorney General, would you advise President to issue an across-the-board moratorium on seeking the death penalty?

**RESPONSE:** As I testified at my hearing, I have developed concerns about the death penalty over the last two decades due to the large number of exonerations, the apparent

**arbitrariness of application, and the disparate impact on Black Americans and other people of color. I have not reached a conclusion on the question you ask, and if I am confirmed I would want to consult with Department of Justice attorneys before advising the President on policy matters.**

9. When I asked you during your hearing whether you would recommend to President Biden that he issue an across-the-board commutation to all federal death row inmates, you said that you would have to think about that before you could answer. So I ask you again, now that you have had more time to think about it: If you are confirmed as Attorney General, would you advise President Biden to categorically commute the sentences of all federal death row inmates, as some have suggested you should?

**RESPONSE: This is an important issue that warrants more careful study and consideration than I have been able to give it in the few days since my hearing. I have not reached a conclusion on the question you ask, and if I am confirmed I would want to consult with Department of Justice attorneys before advising the President on policy matters.**

10. During your hearing, I asked you whether, if you were confirmed as Attorney General and there was another case like Timothy McVeigh's where a white supremacist bombed a federal courthouse, killing 168 Americans, including 19 children, and your U.S. Attorney sought your approval to seek the death penalty, you would approve that request. You answered that "it depends on what the development of the policy is—if the president asks or if we develop a policy of a moratorium, then it would apply across the board." That's one scenario. If, however, such a policy had not been developed, and the Department of Justice's policies were as you understand them to exist right now, would you approve that request from your U.S. Attorney?

**RESPONSE: It would not be appropriate for me to comment on hypothetical charging decisions. If confirmed, my charging decisions would be based on careful consideration of the facts and the law.**

11. During your hearing, you refused to answer whether, as Attorney General, you would continue supporting on appeal the death penalty sentence against Dylann Roof, the white supremacist who murdered nine African Americans as they worshipped in a church in South Carolina, stating that you wouldn't comment on a pending case. I won't ask you about the case itself or the appeal, but I will ask you purely about two executive branch matters:
  - a. Assuming that Dylann Roof's sentence is upheld on appeal and all further avenues for appeal are exhausted, would you advise President Biden to commute Roof's sentence?
  - b. Assuming that Dylann Roof's sentence is upheld on appeal and all further avenues for appeal are exhausted, under the Department of Justice's policies as you understand them to exist today, would you sign the order to carry out his

sentence?

**RESPONSE: This question implicates a pending case, so I am barred from commenting on this matter by Canon 3 of the Code of Conduct for United States Judges.**

12. During your hearing, you said that one of the sources of concern with the death penalty is what you described as its “disparate impact on black Americans and members of other communities of color.” I’d like to ask you specifically about the death penalty cases that are prosecuted by the Department of Justice. According to the non-profit Death Penalty Information Center, the current makeup of the federal death row is 43% White, 41% Black, 14% Latino, and 2% Asian.
  - a. Do you believe that the federal death penalty was sought or applied improperly in the cases of any of the 49 individuals currently on federal death row?
  - b. If so, in which of the 49 cases do you believe the death penalty was improperly sought or applied, and why?
  - c. For any individuals on federal death row whose cases you identified in the previous question, what, if anything, do you plan to do as Attorney General to remedy those improprieties?

**RESPONSE: I am not familiar with the specific circumstances of the individuals currently on federal death row. If I am confirmed, I expect to learn more about their cases.**

13. If, after thorough review of any federal death row inmate’s case file, you have no reason to believe that the death penalty was improperly sought or applied in that particular case, would you nonetheless advise President Biden to commute that individual’s sentence based not on the facts of the case but on the fact of application of the death penalty alone?

**RESPONSE: As I testified at my hearing, I have not formed a view about the possibility of an across-the-board commutation of capital sentences. In addition, if I am confirmed, I would want to consult with Department of Justice attorneys before reaching any definitive view or providing advice in this area.**

14. During your hearing, you said that you “do not see any distinction” between “equality” and the definition of “equity” contained within President Biden’s Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the federal Government, signed on January 20, 2021.
  - a. To confirm, then, do you believe that there is no difference between “equality” and “equity” as used in that Executive Order?
  - b. The Executive Order, as you noted during the hearing, defines “equity” to mean “the consistent and systemic fair, just, and impartial treatment of all

individuals[.]” Do you believe that the Executive Order allows for or directs the treatment of any Americans differently from other Americans based on the color of their skin?

**RESPONSE: As I stated in my hearing, the Biden Administration has provided a specific definition of equity, and I am not sure what else there is to be said in that regard.**

15. If you believe that “equity” and “equality” are interchangeable terms, do you believe they refer to providing people with the same opportunity, or the same outcomes?

**RESPONSE: As I stated in my hearing, the Biden Administration has provided a specific definition of equity, and I am not sure what else there is to be said in that regard.**

16. If you are confirmed as Attorney General, will you commit to opposing any Department of Justice action that would treat Americans differently based on the color of their skin?

**RESPONSE: If I am confirmed, I will seek to ensure that Department actions abide by the laws and Constitution of the United States, including bans on unlawful discrimination on the basis of race.**

17. If you are confirmed as Attorney General, will you commit to opposing any Department of Justice action that would treat Americans differently based on their sex?

**RESPONSE: If I am confirmed, I will seek to ensure that Department actions abide by the laws and Constitution of the United States, including bans on unlawful discrimination on the basis of sex.**

18. Is the First Amendment right to one’s own religious beliefs and expression of those beliefs a fundamental right?

**RESPONSE: The Supreme Court has recognized that “the free exercise of religion” is “[u]nquestionably” a “fundamental constitutional right.” *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974).**

19. If you are confirmed as Attorney General, will you commit to defending the religious freedoms of all Americans to the fullest extent of the law?

**RESPONSE: If I am confirmed, I will uphold all rights guaranteed by the Constitution and other federal laws—including religious freedom—to the fullest extent of the law.**

20. Should students at our public colleges and universities be discriminated against because of their sincerely held religious beliefs, regardless of whether they are Christian, Jewish, Muslim, Hindu, or something else?

**RESPONSE: No.**



21. The Department of Education has two rules (34 C.F.R. §§ 75.500(d) and 76.500(d)) that are designed to protect religious student groups from discrimination by any public college administrators due to the student groups' sincerely-held religious beliefs, speech, and leadership standards.

- a. Do you believe that it is important that students of all faiths feel that their religious freedoms are respected by any public college receiving federal grants?
- b. If you are confirmed as Attorney General, will the Department of Justice vigorously defend these rules against court challenges?

**RESPONSE: As I testified at my hearing, I am a strong believer in religious liberty. I have not studied these specific rules or any legal issues they may raise. In general, the Department of Justice's legal defense of regulations issued by another agency is guided by close consultation with the client agency and a careful review of the facts and the law. If I am confirmed and these rules are challenged in court, I would follow that same approach here.**

22. Do you agree that government officials should be held to clear standards of conduct because they have the power to use government authority against individuals?

**RESPONSE: Yes, to the greatest extent possible.**

23. Do you believe that it is important that government officials know and understand the rules they need to follow?

**RESPONSE: Yes.**

24. If government officials, such as a police officers, break the rules, isn't it true that they could be suspended, disciplined, or lose their jobs?

**RESPONSE: Yes, although I am unfamiliar with the administrative processes for addressing police officer misconduct in every police department.**

25. If a government official breaks the law, isn't it true that she could potentially be charged with a crime?

**RESPONSE: Yes, depending on the law and the nature of the violation.**

26. Under current law, if a government official in the course of his duties violates someone's clearly established rights, is true that he can face personal lawsuits for those actions?

**RESPONSE: Yes. State and local officials who violate the rights secured by the Constitution and laws of the United States are subject to suits under 42 U.S.C. § 1983. Federal officials who violate certain constitutional rights may be subject to suit under**

the implied cause of action recognized by the Supreme Court in *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

27. If a government official doesn't violate someone's clearly established rights, is it true that, while she might face other workplace discipline for her actions, she is protected from personal lawsuit under the doctrine of qualified immunity?

**RESPONSE:** It is true that in certain federal law suits alleging official misconduct, a government official is protected by the judicially-created doctrine of qualified immunity if the official is alleged to have violated someone's rights that were not clearly established at the time of the alleged misconduct.

28. If qualified immunity did not exist, would it be easier or more difficult for a criminal to sue an arresting officer personally for his actions during the arrest?

**RESPONSE:** As a federal judge, I am aware of the ways that the doctrine of qualified immunity impacts federal causes of actions, such as lawsuits brought under 42 U.S.C. § 1983. I am not familiar with the availability of various state law causes of action regarding official misconduct. Based on what I know, I would assume that the elimination of qualified immunity would make it easier for persons whose constitutional rights were violated to advance federal civil suits alleging incidents of official misconduct.

29. If a police officer was sued in her personal capacity without the protection of qualified immunity, is it possible she could face some very expensive legal fees even if she won the case?

**RESPONSE:** I am unfamiliar with the various indemnification policies and arrangements for police officers throughout the nation and how those provisions are or would be impacted by the existence or non-existence of qualified immunity.

30. If police officers faced potential lawsuit from every criminal they arrested, even if they didn't violate the criminal's clearly established rights, would that make police officers more likely or less likely to arrest criminals?

**RESPONSE:** I have not studied the literature on the practical effects of the qualified immunity doctrine or the likely effects of eliminating it.

31. Aluminum purchasers, including the beer industry that relies on rice from Arkansas, are concerned that price spikes in the "Midwest Premium" index are being driven by anticompetitive behavior, as opposed to market demands. The "Midwest Premium" index is set by a single entity which may increase the chance that anticompetitive actions result in price swings. These price spikes are passed on to consumers and ultimately result in job losses. If you are confirmed as Attorney General, will you commit to examining credible allegations of anticompetitive conduct in the "Midwest Premium" index, as well as anticompetitive conduct for all price indexes, that may

result in job losses?

**RESPONSE: I understand that the Midwest Premium is the subject of ongoing antitrust litigation. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. As a general matter, however, I am committed to the vigorous enforcement of the antitrust laws.**

32. During the course of the 2016 Trump campaign and shortly after President Trump won the 2016 election, certain members of FBI leadership egregiously abused their investigatory powers, which led to the unjust prosecution of General Mike Flynn. Not only did the FBI engage in malfeasance in this case, Judge Emmet Sullivan (who oversaw the criminal case in the D.C. District Court) also displayed an extraordinary level of personal, political animus toward General Flynn. If you are confirmed as Attorney General, you must continue the work of your predecessor in combatting such politically-motivated bad acts.

- a. If you are confirmed as Attorney General, what steps will you take to ensure that FBI agents do not conduct interviews without a legitimate investigatory basis?
- b. Do you believe it's appropriate for law enforcement officers to interview someone to see if they will lie about non-criminal conduct, with the intent of then prosecuting them for making a false statement?
- c. Do you believe that it is ever appropriate for an FBI Director to have agents interview White House officials without notifying the Attorney General or the White House?
- d. Do you believe that it is ever appropriate to charge someone with making a false statement to an FBI agent where the agents themselves don't believe there was an intent to lie?
- e. If the Department of Justice moves to dismiss a prosecution, and the defendant consents, is it appropriate for the judge to refuse to dismiss the case?
- f. If you are confirmed as Attorney General, will you commit to working with me to change the Federal Rule of Criminal Procedure 48 to clarify that federal judges do not have discretion to continue a prosecution by refusing to dismiss cases where the government's motion to dismiss is unopposed? In other words, will you commit to working with me to clarify the Rule 48 to ensure that the rules accurately reflect the constitutional principle that the power to prosecute belongs to the Executive, not the Judiciary?

**RESPONSE: As I testified at my hearing, I have always been extremely careful, as a prosecutor and as a judge, not to comment about something without knowing the facts. As a Justice Department nominee, I do not know all of the facts and circumstances**

surrounding these events and therefore am not in a position to comment on them, or on hypotheticals drawn from them. If confirmed, I will make decisions concerning investigations based on the facts and the law. With respect to the change to Federal Rule of Criminal Procedure 48, I have not studied the specific issue you raise.

33. In December 2020, the European Union implemented an e-Privacy Directive that interfered with technology companies' ability to use hashing, PhotoDNA, and anti-grooming technologies to scan user e-mails and messages for child sexual abuse material (CSAM). Since that time, the National Center for Missing and Exploited Children (NCMEC) has stated that, as of February 15, EU reports to its CyberTipline have dropped by 51% compared to the same period in 2020. The European Commission previously noted that the EU has become the largest host of digital child sexual abuse material globally. The images depicting the abuse of child victims from all over the world can now be freely exchanged, undetected, within the European Union. If you are confirmed as Attorney General, will you commit to working with me—and our Five Eyes allies—to encourage the European Union to pass legislation that would clearly permit companies to use hashing, PhotoDNA, and anti-grooming technologies?

**RESPONSE: During my time as a federal judge, I have not had occasion to study this particular issue, but the sexual exploitation of children is a horrific crime. If confirmed, I would look forward to studying this important issue in greater depth.**

34. U.S.-based technology companies are continually moving toward encrypted platforms, which would prevent the use of hashing, PhotoDNA, and anti-grooming technologies to scan for child sexual abuse material (CSAM). Thus, the United States could soon become like the EU, seeing CyberTipline reports decrease significantly as tech companies become willfully blind to CSAM that is exchanged on their platforms. Further, these tech companies are using warrant-proof encryption, which means that, even if law enforcement had probable cause to believe there was CSAM on an encrypted platform, and obtained a warrant stating based on this probable cause, law enforcement could not obtain access to it to the material. Your predecessors understood the dangers of warrant-proof encryption and publicly called for technology companies to ensure lawful access to encrypted platforms. If you are confirmed as Attorney General, will you commit to working with me and my colleagues on this issue and publicly support the Lawful Access to Encrypted Data Act that I introduced with Senators Graham and Blackburn last Congress?

**RESPONSE: While I am not familiar with that particular bill, I agree that it is important to address law enforcement's legitimate need to protect public safety, while at the same time recognizing civil liberties, economic, and cybersecurity concerns. If confirmed, I look forward to learning more about this important issue.**

35. Contraband cell phones are a pervasive and widespread problem inside U.S. prisons. Prison officials confiscate hundreds of thousands of cell phones from prisons and jails each year. Contraband cellphones are used to perpetuate all types of crime from within prison walls and victimize both other inmates and people in our communities. The most

recent example of the dangers posed by the use of contraband cell phones is a 147-count indictment from the United States Attorney in South Carolina. It details a large RICO conspiracy involving numerous individuals who are incarcerated in the South Carolina Department of Corrections, and involved violent offenses such as murder and kidnapping. To reduce the proliferation of contraband cellphones in prisons, the Federal Bureau of Prisons has two active micro-jamming pilots underway. However, the Communications Act of 1934 precludes state correctional institutions from similarly jamming signals in their own facilities. Would you support legislation that would allow states to test and use micro-jamming technology in order to disable contraband cell phones, like the technology being tested and used by the Federal Bureau of Prisons?

**RESPONSE: I have not studied this issue, so I cannot offer an opinion at this time. If confirmed, I look forward to learning more, consulting with Department personnel, and working with Congress to address this issue.**

36. During your hearing, we discussed how, according to FBI statistics, only 45 percent of violent crimes in the United States result in an arrest. You agreed with me that it would be better if 100 percent of violent crimes in the United States resulted in arrest and prosecution. You also noted that task forces and collaborative work with state and local law enforcement partners can be a “force multiplier.” In the summer of 2020, to stem the tide of violent crime in U.S. cities throughout the country, Attorney General Barr began Operation Legend. Operation Legend was named after four-year-old LeGend Taliferro, who was shot and killed while he slept early in the morning of June 29, 2020 in Kansas City, Missouri. Operation Legend was a “a sustained, systematic and coordinated law enforcement initiative in which federal law enforcement agencies work in conjunction with state and local law enforcement officials to fight violent crime,” the very type of “force multiplier” we discussed at your hearing. Unsurprisingly, Operation Legend was a major success. In a matter of weeks, law enforcement made more than 2000 arrests—including 147 homicide arrests; seized more than 544 firearms; and seized more than seven kilograms of fentanyl, 14 kilograms of heroin, 12 kilograms of cocaine, and 50 kilograms of methamphetamine. 476 of the individuals arrested were charged with federal offenses. Given the massive increase in murders we continue to see in U.S. cities, if you are confirmed as Attorney General, will you commit to continuing Operation Legend and similar operations?

**RESPONSE: I am not familiar with the details of Operation Legend. As I testified at my hearing, it is important to focus our attention on violent crimes and other crimes that greatly endanger in our society, and I support targeting our limited resources that way. If confirmed, I will evaluate our joint task forces and operations for lessons learned and ways to build on their success.**

37. Do you believe that federal law enforcement and state and local law enforcement partners should work together in a collaborative fashion?

**RESPONSE: Yes.**

38. Over the last few years, we've seen a marked increase in politically-motivated riots, including some high-profile examples. Do you think that police departments should have access to protective gear like helmets and riot shields when they're facing down a mob of rioters?

**RESPONSE: Yes. It is important to ensure the safety and security of police officers. Police departments should also be encouraged officers to use safety resources in a way that builds community trust and prioritizes de-escalation.**

39. Do you believe the government should be responsible with taxpayer funds and reduce waste when it is possible to do so?

**RESPONSE: Yes.**

40. Should rioters be given a free pass to work out their anger by attacking government buildings?

**RESPONSE: No. There is a difference between peacefully exercising fundamental free speech rights and criminal acts of violence and vandalism. If confirmed, I will protect the former and prosecute the latter.**

41. Should rioters be given a free pass to work out their anger by attacking non-governmental targets, such as by attacking innocent people or businesses?

**RESPONSE: No. There is a difference between peacefully exercising fundamental free speech rights and criminal acts of violence and vandalism. If confirmed, I will protect the former and prosecute the latter.**

42. Should rioters who engage in violence be prosecuted to the fullest extent of the law?

**RESPONSE: All individuals who engage in violence should be held accountable for their actions.**

43. During your hearing, you said that, under your own definition, "an attack on a courthouse while in operation, trying to prevent judges from actually deciding cases, that plainly is domestic extremism, domestic terrorism, [but] an attack simply on government property at night or any other kind of circumstances is a clear crime . . . both are criminal, but one is a core attack on our democratic institutions."
- a. Under that same definition, would the riots at the U.S. Capitol on January 6 qualify as "domestic terrorism" if they had occurred on January 7, after Congress had finished counting the election results?
  - b. Under that same definition, would you say that the riots at the U.S. Capitol on January 6 were not a "core attack on our democratic institutions" if they had taken place on January 7, after Congress had already finished counting the

election results?

- c. Does intent matter in the determination of whether something is “an attack on our democratic institutions?” In other words, if rioters attacking the U.S. Capitol mistakenly believed that Congress was conducting business inside and the rioters intended to disrupt such business but the buildings were actually empty at the time, would such a riot still be an attack on our democratic institutions?

**RESPONSE:** At the hearing, I described domestic terrorism as using violence or threats of violence in an attempt to disrupt democratic processes, noting that this definition is close to the statutory definition of the term in the criminal code codified at 18 U.S.C. § 2331. If confirmed, all of my actions as Attorney General would be guided by the law as written. My testimony was intended to explain why I regard the January 6 attack on the Capitol as a particularly heinous act.

- 44. Do you believe, based on what you know as you answer these questions, that the violent riots instigated and carried out by Antifa and similar groups over the last few years in an attempt to dismantle or destroy police departments, courthouses, and other symbols and institutions of our justice system qualify as domestic terrorism and core attacks on our democratic institutions?

**RESPONSE:** I am not familiar with the specific circumstances of the events you reference. To the extent that your question implicates pending cases, I am barred from commenting on any pending or impending case in any court by Canon 3 of the Code of Conduct for United States Judges. As a general matter, I understand domestic terrorism to be the conduct specified in 18 U.S.C. § 2331.

- 45. During your hearing, you were asked whether you believe that illegal entry at America’s borders should remain a crime. You responded that you had “not thought about that question.” Now that you have had time to think about the question, do you believe that illegal entry at our borders should remain a crime?

**RESPONSE:** As I said at the hearing, I haven’t thought about that question. The President has made clear that we are a country of borders and with a concern about national security. I don’t know of a proposal to decriminalize, but still make it unlawful to enter. Since the hearing, I have not had time to think further about the question.

- 46. Is it important to enforce our nation’s immigration laws?

**RESPONSE:** Yes.

- 47. You are currently a federal judge. If a case is decided by the D.C. District Court, the parties exhaust all of their appeal rights, and the court’s order is upheld, would it be appropriate for the parties to simply ignore the court’s order?

**RESPONSE:** No.

48. If you are confirmed as Attorney General, the nation's immigration courts will be your employees and will report to you. If one of your immigration courts rules that an alien has violated immigration law and must be deported, and all appeals are exhausted, should that alien be deported?

**RESPONSE: The process of removal after proceedings in immigration court is governed by the immigration laws. I have not studied those laws, or the practical issues involved in the removal process, in detail.**

49. If you are confirmed as Attorney General and one of your immigration courts rules that an illegal alien who assaulted a U.S. citizen must be deported, and all appeals are exhausted, should that alien be deported?

**RESPONSE: The process of removal after proceedings in immigration court is governed by the immigration laws. I have not studied those laws, or the practical issues involved in the removal process, in detail.**

50. If you are confirmed as Attorney General and one of your immigration courts rules that an illegal alien who is a gang member must be deported, and all appeals are exhausted, should that alien be deported?

**RESPONSE: The process of removal after proceedings in immigration court is governed by the immigration laws. I have not studied those laws, or the practical issues involved in the removal process, in detail.**

51. Can unmonitored communications between inmates in Bureau of Prisons custody and the outside world be a security threat to our prisons?

**RESPONSE: Because I am not in the Department, I am not familiar with the current procedures governing incarcerated persons' communications with parties outside BOP facilities. It is important to evaluate security threats, while recognizing that some communications are privileged, such as communications with counsel. If confirmed, I would evaluate these issues in consultation with Department personnel.**

52. Can unmonitored communications between inmates in Bureau of Prisons custody and the outside world threaten the safety and security of federal judges, their staffs, and their families?

**RESPONSE: Because I am not in the Department, I am not familiar with the current procedures governing incarcerated persons' communications with parties outside BOP facilities. It is important to evaluate security threats, while recognizing that some communications are privileged, such as communications with counsel. If confirmed, I would evaluate these issues in consultation with Department personnel.**

53. Can unmonitored communications between inmates in Bureau of Prisons custody and



the outside world threaten the safety of innocent people, crime victims, and other inmates?

**RESPONSE:** Because I am not in the Department, I am not familiar with the current procedures governing incarcerated persons' communications with parties outside BOP facilities. It is important to evaluate security threats, while recognizing that some communications are privileged, such as communications with counsel. If confirmed, I would evaluate these issues in consultation with Department personnel.

54. Can unmonitored communications between inmates in Bureau of Prisons custody and the outside world threaten the safety of corrections officers and staff?

**RESPONSE:** Because I am not in the Department, I am not familiar with the current procedures governing incarcerated persons' communications with parties outside BOP facilities. It is important to evaluate security threats, while recognizing that some communications are privileged, such as communications with counsel. If confirmed, I would evaluate these issues in consultation with Department personnel.

55. Drug cartels and other drug trafficking organizations push deadly drugs like fentanyl on our streets. According to the DEA, "[f]entanyl and other highly-potent synthetic opioids—primarily sourced from China and Mexico—continue to be the most lethal category of illicit substances misused in the United States." It is estimated that more than 80,000 Americans died of opioid overdoses last year. Do you agree that stopping fentanyl and other synthetic opioid trafficking must be among the Department of Justice's highest drug enforcement priorities?

**RESPONSE:** Yes. As I testified at my hearing, I agree that stopping fentanyl and synthetic opioids from flooding our communities should be a high priority for the Department.

56. Should the people who are responsible for bringing illicit fentanyl into the United States be prosecuted?

**RESPONSE:** Yes.

57. Should gangs and drug trafficking rings that distribute illicit fentanyl on the streets be prosecuted?

**RESPONSE:** As I have testified, fentanyl analogues are sold illicitly and have caused senseless fatalities. I think we should devote resources to the most dangerous criminal enterprises.

58. Should individuals who knowingly sell illicit fentanyl to unsuspecting customers while misrepresenting it as some less-lethal substance be prosecuted?

**RESPONSE: As I have testified, fentanyl analogues are sold illicitly and have caused senseless fatalities. I think we should devote resources to the most dangerous criminal enterprises.**

59. Should cartels, gangs, and drug trafficking rings that traffic drugs like heroin and cocaine be prosecuted?

**RESPONSE: Yes. As I have testified, I think we should devote resources to the most dangerous criminal enterprises.**

60. The Chinese drug labs that have been flooding our streets with illegal fentanyl have recently turned to a new weapon: A drug called isotonitazene, or referred to on the street as “iso.” It’s harder to pronounce than fentanyl, but equally deadly, and has already been encountered in dozens of confirmed incidents across the country, according to the DEA. Last summer, the DEA used its emergency scheduling authority to make isotonitazene illegal, but that authority is only temporary. Will you commit to continuing the work of stopping this deadly drug?

**RESPONSE: I am not familiar with isotonitazene, but it is clear that criminal enterprises remain eager to develop and sell illicit dangerous substances. If confirmed, I look forward to working on this issue in consultation with Department personnel.**

61. During your hearing, you said that we should seek to eliminate mandatory minimum sentences in the context of drug cases. The mandatory minimum is a crucial tool in dismantling drug trafficking organizations, not only because it serves as a deterrent, but also because it promotes cooperation with law enforcement. As you know, many drug trafficking defendants can have mandatory minimum sentences significantly reduced merely by providing substantial assistance to the government. In passing legislation such as the Controlled Substances Act, Congress knew that the mandatory minimum would be an important tool in combatting an intractable problem like drug trafficking. Do you think it’s appropriate for the Executive branch to disregard Congress’s intent that individuals trafficking certain amounts of drugs be subject to specific mandatory minimum sentences by having a policy of charging lesser-included offenses as opposed to the most serious, readily provable offense?

**RESPONSE: As I testified at my hearing, I support the policy I helped draft for Attorney General Reno, and that was furthered by Attorney General Holder, in which prosecutors are not required to seek in every case the most serious offense with the highest possible sentence. I believe that we should give discretion to our prosecutors to make the charge fit the crime and be proportional to the damage that it does to our society. In addition, as President Biden has suggested, we should consider the elimination of mandatory minimums so that we, once again, give authority to trial judges to make determinations based on all of the sentencing factors that judges normally apply. This would give judges the ability to do justice in individual cases.**

62. If you are confirmed as Attorney General and Congress chooses not to heed your call to

eliminate mandatory minimum sentences, do you believe that you have the authority to unilaterally override Congress by categorically declining to bring charges that would trigger those sentences?

**RESPONSE:** As I testified at my hearing, I support the policy I helped draft for Attorney General Reno, and that was furthered by Attorney General Holder in which prosecutors are not required to seek in every case the most serious offense with the highest possible sentence. I believe that we should give discretion to our prosecutors to make the charge fit the crime and be proportional to the damage that it does to our society. In addition, as President Biden has suggested, we should consider the elimination of mandatory minimums so that we, once again, give authority to trial judges to make determinations based on all of the sentencing factors that judges normally apply. This would give judges the ability to do justice in individual cases.

63. If you are confirmed as Attorney General, will you be responsible for enforcing the laws of the United States?

**RESPONSE:** Yes.

64. If you are confirmed as Attorney General, will your responsibility be to enforce all laws of the United States, or merely the laws with which you agree?

**RESPONSE:** If I am confirmed, I will be responsible for enforcing the Constitution and all laws of the United States within the authority of the Department of Justice. I will exercise those responsibilities free from improper influences.

65. Are laws passed by Congress and signed by the president merely policy suggestions for the Executive Branch?

**RESPONSE:** No.

66. Do you believe that it is appropriate for the Department of Justice to categorically decline to bring certain types of cases or charge certain crimes, regardless of the evidence, merely because you dislike the law?

**RESPONSE:** If confirmed, I will expect charging decisions to be made based on the facts and the law, consistent with departmental policies, and free from improper influences.

67. Do you believe that it is appropriate for the Department of Justice to categorically decline to bring certain types of cases or charge certain crimes, regardless of the evidence, merely because you disagree with Congress about whether the law is good policy?

**RESPONSE:** If confirmed, I will expect charging decisions to be made based on the facts and the law, consistent with departmental policies, and free from improper influences.

68. During your hearing, you said that you “find it hard to believe that the Department [of Justice] could think that there was any possibility of overturning the Heller [v. District of Columbia] case.” Please describe what you view as the core holding of the Heller case, and any limits you believe the Heller case imposes on the Department’s ability to regulate firearms.

**RESPONSE:** In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment confers “an individual right to keep and bear arms.” *Id.* at 595. The Court also stated that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Id.* at 626.

69. As noted during your hearing, you voted to re-hear en banc the case of *Parker v. District of Columbia*, which challenged Washington, D.C.’s former ban on handgun possession even in the home for personal defense. Why did you vote to re-hear that case?

**RESPONSE:** As I testified, for judges a vote to rehear en banc is a vote to hear a case, not a vote on the merits of the case. I thought this was an extremely important issue that I had not previously studied, and I was not the only judge who thought so. Other judges, including a judge appointed by a president of a different party, also voted to rehear the case, and for the same reason, so that the full court would have an opportunity to hear the case.

70. Prior to the Supreme Court’s opinion in *Heller v. District of Columbia*, did you think that Washington, D.C.’s former ban on handgun possession in the home for personal defense was allowable under the Second Amendment? Why or why not?

**RESPONSE:** I did not form a view on that question because I did not hear the case on the merits. After a three-judge panel of my court decided the case that became *Heller*, I voted in favor of rehearing en banc so the full court would have an opportunity to hear the case. But rehearing en banc was denied, so I did not consider the matter further before the Supreme Court issued its decision.

71. Firearms sales in the United States are occurring at a record pace, with more than 21 million background checks for gun purchases reported last year. In 2019, the Department of Justice released the first implementation report regarding the Fix NICS Act, in which the Department detailed improved compliance by state and federal agencies, resulting in faster and more accurate background checks for gun purchasers. Nonetheless, some have suggested that the government should use delays in background check results to prevent individuals from purchasing guns for undefined periods of time even if they have not been found to be ineligible. Do you believe that the Bureau of Alcohol, Tobacco, Firearms, and Explosives has regulatory authority under current law to require that certain individuals without a NICS denial have their firearm sale delayed indefinitely?

**RESPONSE: I am not familiar with the current implementation of the FIX NICS Act. I have not examined ATF's statutory or regulatory authority with regard to the waiting period and cannot offer an opinion on that question.**

72. Modern Sporting Rifles (MSRs) are one of the most popular types of firearms sold today. MSRs are semi-automatic firearms, which only fire a single round with each pull of the trigger. Do you believe that President Biden has the authority under existing law to ban the sale or possession of MSRs without Congress?

**RESPONSE: I am unfamiliar with this issue and cannot offer an opinion on that question.**

## Senator Kennedy

### Responses to Questions from Senator Kennedy to Judge Merrick Garland, Nominee to be United States Attorney General

1. The core copyright industries employ [5.7 million](#) Americans. The copyright workforce earns on average more than \$100,000 per year -- a 43 percent premium over the average American wage. These 5.7 million Americans add \$1.5 trillion to the U.S. economy and rely on the property rights created by the Constitution and the Copyright Act to make a living from their art. Because copyright is purely a body of federal law, what mechanisms will you put in place to ensure that the Department prioritizes the protection of American creators?

**RESPONSE:** I share your commitment to the important, and often challenging, task of protecting intellectual property rights of American creators and businesses. Because I am not currently in the Department, I am not familiar with the mechanisms the Department currently has in place to protect copyright owners. If confirmed, I look forward to reviewing the existing measures, as well as working with your office to understand how the Department can better enforce intellectual property laws, including those laws protecting copyright holders.

2. The Obama administration was selective over which federal laws it would defend in court, based on its own interpretation of the law's constitutionality.

Is it the Department of Justice's duty to defend in court all laws duly passed by Congress where there is at least a reasonable argument to be made for the law being constitutional?

**RESPONSE:** In general, the Department of Justice should vigorously defend the constitutionality of the laws passed by Congress. That is a longstanding tradition of the Department and one I will uphold if I am confirmed as Attorney General. There are, however, limited exceptions to the Department's duty to defend the constitutionality of federal laws. As you note, one such exception applies when the Department concludes that there are no reasonable arguments to be made in defense of the law. Another applies when the law infringes on the constitutional authorities of the Executive Branch.

3. You and I are too familiar with backed-up court dockets. One of the places this is most evident is with our nation's immigration courts, which fall under the Department of Justice's jurisdiction. Over the last forty years, the backlogged caseload has only gotten worse.

Why don't immigration judges have similar authorities as other judges to dismiss claims or to grant summary judgment so they can more efficiently manage their dockets when it comes to disposing of meritless claims? Do you think these would be useful, and if so, will you commit to giving immigration judges similar authorities?

**RESPONSE:** As I testified in my confirmation hearing, the immigration court backlog is

**an extraordinarily serious problem. As a federal judge for 24 years, I have not had occasion to study the particulars of this issue and I look forward to learning more. If I am confirmed, I am committed to ensuring that immigration judges are supervised appropriately to ensure effective and efficient processing of immigration cases consistent with principles of fairness and due process and other applicable law.**

4. A few years ago, the Federal Bureau of Investigation special agent in charge in New Orleans called political corruption in that city “robust.” He said corruption in New Orleans was “profound.” In fact, we have two Federal Bureau of Investigation units in New Orleans to handle the workload.

How will you prioritize the issue of political corruption during your tenure as Attorney General, if confirmed?

**RESPONSE: One of the primary functions of the Justice Department is to protect Americans from fraud and corruption, including public corruption. The Department’s Public Integrity Section oversees the investigation and prosecution of all federal crimes affecting government integrity, including bribery of public officials. If confirmed as Attorney General, I will make the Section’s important mission a priority and work to ensure that our Nation’s anticorruption laws are vigorously enforced.**

## Senator Tillis

### Responses to Questions from Senator Tillis to Judge Merrick Garland, Nominee to be United States Attorney General

#### Intellectual Property Enforcement

1. The Department of Justice's attention to intellectual property enforcement has been somewhat inconsistent over the years. During the times that IP enforcement has properly been regarded as a high priority, the Department generally had put into place a structure that emphasizes its importance and takes a coordinated approach involving all the stakeholder components. What type of organizational structure do you plan to put in place at DOJ, as well as other steps you will take, to ensure that protecting American intellectual property will be regarded as a high priority under your leadership?

**RESPONSE: I consider intellectual property enforcement a priority area, as intellectual property crime threatens both our economic wellbeing and, in some instances, public safety. If confirmed, I would look forward to examining this issue in greater depth, including studying how the Department can better coordinate its approach among various stakeholder components.**

2. How do you plan to work proactively with the IP Enforcement Coordinator alongside DOJ's sister agencies, especially DHS, to coordinate IP enforcement across the government? In addition, please provide specific information about your plan to combat counterfeit products, online piracy and copyright crime, and the theft of trade secrets.

**RESPONSE: I share your commitment to ensuring strong and coordinated approach to intellectual property enforcement. If confirmed, I would look forward to working with the Department's stakeholder components, including its IP Task Force, in seeking to ensure that the Department closely collaborates with the Office of the Intellectual Property Enforcement Coordinator, as well as other agencies, to address these serious issues.**

3. Last Congress, Senator Leahy and I partnered together to enact the Protecting Lawful Streaming Act. This bill finally closed the so-called "streaming loophole" by giving the Department the authority to pursue felony charges against large scale, commercial piracy organizations. Importantly, this law doesn't allow the Department to target individual streamers, companies pursuing licensing deals in good faith, or internet service providers. This law is what we call a win-win for everyone. As Attorney General, will you use this new authority and make the prosecution of commercial piracy sites a tier one priority?

**RESPONSE: As noted above, I consider intellectual property enforcement a priority area, and if confirmed, I will seek to ensure the Department vigorously enforces this important law.**

- a. How soon can you update the US Attorneys manual to provide guidance on



prosecutions under this law?

**RESPONSE:** Because I am not currently in the Department, I am not familiar with the guidance that currently exists to implement this law. If confirmed, I will seek to ensure that any appropriate revisions to the relevant guidance are made in a timely fashion.

- b. Will you ensure that such guidance makes clear that—per the plain, clear, and unambiguous words of the statute—that prosecutions should only be pursued against commercial piracy services?

**RESPONSE:** Because I am not currently in the Department, I am not familiar with what guidance currently exists to implement this law. If confirmed, I would work to ensure all Department guidance is consistent with federal law.

#### Patent Eligibility Reform

4. As you likely know, reforming our nation’s patent eligibility standards is one of my top priorities. The current state of patent eligibility law is in shambles. The standards are so unworkable that you have judges ruling that things like a garage door opener is an abstract idea. That’s bizarre and well-beyond the scope of what any reasonable person would conclude. These unworkable standards are having an adverse impact on a number of sectors, from life-sciences and precision medicine to quantum computing, 5G, and artificial intelligence. If the United States is going to remain the world’s leader in innovation, we have to fix this.

That’s why I’m doing everything I can, from hearings, letters, and draft legislation, to filing an amicus brief **this week** in the *American Axle* case. But I can’t do it alone. As Attorney General, will you direct the Solicitor General to find appropriate cases on patent eligibility and to urge the Supreme Court to take them up and finally provide clarity in this area of the law?

**RESPONSE:** As a sitting federal judge, Canon 3 of the Code of Conduct precludes me from commenting on pending or impending litigation, including the *American Axle* case. I share your commitment, however, to protecting the intellectual property of American creators and business, as well as ensuring that there is clarity in this important area of law.

#### Antitrust

5. Judge, as you know, competition policy and antitrust enforcement can have important implications for intellectual property policy. Both have the shared goal of encouraging innovation and competition. And a big area right now where more antitrust scrutiny is likely needed is the technology industry—particularly big internet companies. How do you think the Department of Justice should approach antitrust enforcement against what we think of as “big tech”?

**RESPONSE: As I said during my hearing, I take the enforcement of antitrust laws very seriously and have throughout my career. If confirmed, the Department will vigorously enforce antitrust laws in every sector of the economy, including the technology sector.**

6. Google and Facebook are two of the most powerful and most influential companies in the world. Both completely dominate their corners of the online service provider market. And more Americans now get their news from Facebook or Google than news publishers. At the same time, Facebook and Google have repeatedly refused to negotiate in good faith with news publishers for their carrying their content on Facebook and Google. Just last week this took a very ugly turn in Australia when Google agreed to some licensing terms but Facebook refused and then prohibited its Australian customers from sharing URLs from those news publishers. What do you plan to do to address monopoly powers generally and particularly those big tech companies that control access to information?

**RESPONSE: While I am not familiar with the specific issues you mention, I take very seriously the Department's role in enforcing antitrust laws. If confirmed, the Department will vigorously enforce antitrust laws in every sector of the economy, including the technology sector.**

7. In the copyright space, the Department of Justice has overseen the music consent decrees that have governed the public performance of music for 80 years. Songwriters and publishers have long argued—and I fully agree—that the consent decrees are outdated—especially for the digital age. Following a lengthy review of the consent decrees, the past administration left the consent decrees untouched.

What are your thoughts on the music consent decrees, and do you plan to reopen their review? Do you support transitioning to a fully functioning free market for musical licensing?

**RESPONSE: I have not studied the market for musical licensing, or the Department's music consent decrees. If confirmed, I would look forward to learning more about this issue and discussing it with the Antitrust Division and the U.S. Copyright Office.**

8. In the patent space, standard essential patents are those patents necessary to meet certain requirements set by standard setting organizations. One area where this comes up a lot is for cell phone makers. In 2019, Senator Coons and I sent a letter to the Department of Justice urging greater clarity on how DOJ enforces antitrust policy with regard to standard essential patents. In particular, we wanted to ensure that DOJ doesn't unduly prejudice rights holders in this area. What do you think should be DOJ's competition policy and enforcement practices related to standard essential patents?

**RESPONSE: Because I am not currently in the Department, I am not familiar with the Department's current competition policy and enforcement practices related to standard essential patents, and I have not had occasion to study the issue during my time as a**

**federal judge. If confirmed, I would welcome the opportunity to learn more about the issue from you and other members.**

9. What are your thoughts on the ongoing issues surrounding the Qualcomm litigation? How will you approach the types of antitrust issues raised by the Qualcomm case?

**RESPONSE: My understanding is that the *Qualcomm* case remains pending. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case in any court. I have not studied the *Qualcomm* case and therefore have not formed a view about how I would approach similar issues if they arose in the future. As a general matter, however, I am committed to vigorous enforcement of the antitrust laws.**

#### **Section 230 and Telecommunications**

10. Judge, last Congress this Committee dedicated a lot of attention to the Communications Decency Act, and particularly how some internet providers hide behind section 230's bar on liability to not address illicit user activity while also actively curating content. DOJ weighed in last year after completing a lengthy review of section 230 and sent Congress 230 reform legislation. As I'm sure you know, section 230 can pose real challenges for law enforcement because it does not encourage online services to address illicit activity—including sex trafficking—on their sites. DOJ's proposal focused on increasing transparency from online services when they remove lawful speech and motivating internet platforms to better address illicit activity. What are your thoughts on how section 230 should be reformed?

**RESPONSE: As I testified at my hearing, I have relatively limited information about Section 230. I know that you and other members of the committee have ideas about how the statute should be amended, and if confirmed, I look forward to talking with you and others about those ideas.**

#### **Counterfeit Goods**

11. Judge Garland, counterfeit goods are not only a threat to American innovation, they are a significant threat to public safety. This is especially true as counterfeit PPE such as N95 masks flood into the United States putting Americans at risk. Earlier this month there was another report of more counterfeit N95 masks that had been sold to hospitals and, just last week, federal agents seized one million counterfeit N95 masks. What steps will you take as Attorney General to stop the flow of counterfeit goods into the United States and protect public safety?
- a. How will you coordinate with the Department of Homeland Security to combat the importation of counterfeit goods?
  - b. Will you commit to establishing a specific task force dedicated to this issue?

**RESPONSE: I share your concern regarding counterfeit goods. Because I am not at the**

**Department, I am not familiar with the Department's current efforts to stop the flow of counterfeit goods into the United States. If confirmed, I will coordinate with all appropriate government partners, including the Department of Homeland Security, to address this important issue.**

#### **Cybersecurity and Privacy**

12. Judge, we are still working to understand the extent of the reported Solar Winds cyber-attack. While the extent of this particular attack is shocking, cyber-attacks are not a new threat to American infrastructure and technology. As Attorney General, what will you do to prevent another attack like the Solar Winds attack, and more broadly, cyber-attacks on American infrastructure and innovation in the future?

**RESPONSE: I share your concerns about cybersecurity and the need to be nimble in our efforts to prevent, detect, and disrupt cyberattacks. I know President Biden has repeatedly warned that there are vulnerabilities in U.S. cyber infrastructure. If confirmed, I would look forward to fully supporting the President's and his national security team's efforts on that front. That approach would include using the full extent of the Department's authorities to identify and disrupt—whether through prosecutions or other means—those who would threaten our country by seeking to attack these systems.**

13. To combat future cyberattacks we need a coordinated, whole-of-government approach to this issue. From proactive security measures to the quick reporting and prosecution of cyberattacks, every relevant agency in the federal government needs to be engaged on this issue. How will you increase cooperation between private actors and companies—particularly companies engaged in cutting edge research and development of emerging technologies—and the federal government on these issues?

**RESPONSE: As I said during my hearing, I fully agree that this threat demands a forward-looking and whole-of-government response. If confirmed, I am committed to developing a coordinated approach to combatting cyberattacks and would look forward to reviewing the Department's existing efforts at cooperation and finding ways to enhance those efforts.**

#### **Law Enforcement**

14. In 2020, 47 law enforcement officers were murdered by criminals. In 2021, there have already been 11 law enforcement officers killed by criminals. The shocking calls to “defund the police” continue to devalue and dehumanize our brave men and women in blue. This is dangerous and it is unacceptable. As our nation's top law enforcement official, what will you do as Attorney General to stop violence against law enforcement officers?

**RESPONSE: If I am confirmed, ensuring the safety and security of all public servants, including police officers, will be a top priority. As part of this focus, I will vigorously prosecute federal offenses involving attacks on law enforcement officers,**

such as the heinous January 6th attack on the Capitol and its police officers.

15. Do you agree or disagree that we need to make it a federal crime to assault law enforcement officers? If not, please explain why.

**RESPONSE:** 18 U.S.C. § 111 makes it a federal crime to assault, resist, oppose, impede, intimidate, or interfere with a federal officer while the officer is engaged in the performance of his or her official duties. I have not had an opportunity to assess all the available federal, state, and local protections for state and local law enforcement officers. If confirmed, I would welcome the opportunity to study the issue and work with Congress to ensure that federal law adequately and appropriately protects law enforcement officers from violence.

16. What are your thoughts on “defunding the police?” If you don’t support defunding the police, how do you and the Administration intend to manage the vocal stakeholders calling for this policy?

**RESPONSE:** I do not support defunding the police. I support giving police departments the resources they need to reform and build community trust. If confirmed, I would seek to ensure that the Department operates in a manner consistent with this view.

17. What are your thoughts on qualified immunity for law enforcement officers? I view qualified immunity as a critical legal protection for law enforcement agencies across the country? Do you believe it is appropriate to eliminate or limit qualified immunity?

**RESPONSE:** As a federal judge, I am familiar with the judicially-created doctrine of qualified immunity and the way it affects certain federal civil causes of action, such as suits brought under 42 U.S.C. § 1983. Because I am a sitting judge bound by precedent and a specific code of conduct, it would be inappropriate for me to express my view on the propriety of that doctrine. If confirmed as Attorney General, I would welcome the opportunity to work with various partners and stakeholders, including Congress, to pursue appropriate and effective methods of police accountability.

#### Criminal Justice Reform

18. The First Step Act was a landmark law that had broad bipartisan support. I am proud of the work we in the Judiciary Committee did to enact this commonsense and historic legislation. But proper implementation of the First Step Act is just as important as passing the law. Do I have your commitment that you will work in good faith with Congress to see that the First Step Act is fully implemented?

**RESPONSE:** Yes. As I testified at my hearing, if I am confirmed I plan to make the First Step Act a priority. I would welcome the opportunity to work with Congress to see that the Act is fully implemented.

19. Earned time credits were included in this legislation as an incentive to encourage inmates to participate in programming that is likely to reduce their likelihood of recidivism. At this time, however, inmates have not yet been assigned earned time credits.

- a. When are inmates scheduled to begin receiving earned time credits?
- b. Which date has the Department and the Bureau of Prisons identified as the date when earned time credits begin to accrue?
- c. How significant are the waitlists for inmates to access programming, and how will you reduce these waitlists?
- d. What steps will you take to ensure that inmates have access to programming which will decrease their likelihood of recidivism?

**RESPONSE:** Because I am not currently at the Department, I do not have access to information about the operations and internal plans of the Bureau of Prisons. If I am confirmed, I expect to study the Bureau's operations to determine what is necessary to fully implement the First Step Act and take other steps to advance these important goals.

20. Which criminal justice policy do you believe is the most important issue that needs to be addressed?

**RESPONSE:** As I testified, I believe that guaranteeing the promise of fair and impartial enforcement of the law, and addressing the disparate results for communities of color in our justice system, are among the most important issues we face. If I am confirmed, I look forward to the opportunity to address these issues.

21. President Biden issued an executive order directing the Attorney General not to extend any contracts for private prisons. Can you explain the Administration's thinking surrounding this issue?

**RESPONSE:** Because I am not currently at the Department, I am not familiar with the nature of the contracts the Bureau of Prisons or the U.S. Marshals Service has with privately owned facilities. As I have testified, the Department is a part of the Executive Branch, and for that reason on policy matters we follow the lead of the President and the administration as long as it is consistent with the law. The President's Executive Order is the best explanation of the Administration's thinking on this issue.

#### Victims Issues

22. In 2017, the Crime Victim's Fund collected \$6.5 billion—the most ever, and three times what was collected the year before. Collections in 2018 and 2019 plummeted to approximately \$500 million. As a result, organizations that serve victims have been deeply impacted by cuts in federal funding. My colleagues and I sent a letter on this

issue last year that has yet to receive a response. In the letter, we identified the use of non-prosecution agreements as a major factor in this decrease in collections. Do you agree with that assessment?

- a. Other than the use of non-prosecution agreements, what other factors have contributed to this significant decline in collections for the Crime Victims Fund?
- b. Do you commit to working with the President and Congress to address this growing crisis for organizations who serve victims?
- c. What recommendation would you make as Attorney General to solve this challenge?

**RESPONSE:** As a nominee for Attorney General, I am not familiar with the letter you are referencing. If confirmed as Attorney General, I will look into these matters and work with requisite parties to help ensure that Department of Justice's victim services remain robust and effective.

#### Private Immigration Detention

23. President Biden has prohibited the Department of Justice from renewing or entering into any new contracts for private prison facilities. According to media reports, President Biden may extend that prohibition to immigration detention. Do you support this policy? How will you advise President Biden on this issue if you are confirmed?
  - a. How would you expect to absorb the detainee population from private facilities into public facilities?

**RESPONSE:** Because I am not currently at the Department, I am not familiar with the nature of the contracts the Bureau of Prisons or the U.S. Marshals Service has with privately owned facilities. If I am confirmed, the Department will work to ensure that the operations of the U.S. Marshals Service are not negatively impacted.

#### Asylum

24. As the head of the Department, you will be responsible for the Executive Office of Immigration Review. In this role, you will have extensive authorities over the removal process for illegal immigrants. How does the Biden Administration plan to define asylum?

**RESPONSE:** I would refer you to President Biden's Executive Orders on immigration policy and enforcement. As a federal judge for the last 24 years, I have not had occasion to become familiar with the federal government's asylum policies. If I am confirmed as Attorney General, I will study this issue. As a general matter, asylum is part of American law and the Department of Justice has an obligation to apply the federal asylum laws.

25. What are your thoughts on the previous Administration's decision to appropriately limit the scope of asylum in Matter of A.B.? Do you have any intention of expanding the definition of asylum to encompass more general acts of crimes committed against individuals?

**RESPONSE: This is the subject of ongoing litigation. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges prohibits me from commenting on pending or impending cases.**

26. If you do expand the definition of what qualifies for asylum, are you concerned this could cause an increase in unlawful immigration, something which would just further overwhelm our already strained immigration system?

**RESPONSE: As a federal judge for the last 24 years, I have not had occasion to become familiar with the federal government's asylum policies. If I am confirmed as Attorney General, I will study this issue. As a general matter, asylum is part of American law and the Department of Justice has an obligation to apply the federal asylum laws.**

27. What will the Biden Administration do to prevent family separations and reunite separated children?

**RESPONSE: I would refer you to President Biden's Executive Orders on immigration policy and enforcement. As I testified in my confirmation hearing, the prior administration's family separation policy was shameful. I cannot imagine anything worse than tearing parents from their children. If I am confirmed as Attorney General, the Department of Justice will provide all the cooperation that we possibly can to help reunite separated children and their families.**

28. What actions will you take to reduce the backlog of immigration cases? Additionally, for those who have final orders of removal, what steps will you take, in coordination with the Department of Homeland Security, to actually effectuate their removal?

**RESPONSE: As I testified in my confirmation hearing, the immigration court backlog is an extraordinarily serious problem. As a federal judge for the last 24 years, I have not had occasion to study the particulars of this issue, but I look forward to learning more. If I am confirmed, I am committed to ensuring that immigration judges are supervised appropriately to ensure effective and efficient processing of immigration cases consistent with principles of fairness and due process and other applicable law.**

#### **Sanctuary Cities**

29. I believe very strongly that sanctuary city policies are misguided and dangerous. It is incomprehensible that we should be releasing dangerous criminal aliens back into our communities. For many years we have seen sheriffs across our nation, including some in the State of North Carolina, who have ignored the notification and detainer requests made by federal ICE agents. For example in 2019, Mecklenburg County's Sheriff in



North Carolina ignored over 200 detainer requests. These reckless actions have led to criminal aliens being released back into our communities and jeopardizing public safety.

Do you agree with me that sanctuary city policies are a threat to public safety, and that it is unwise for sheriffs to ignore detainer requests which release criminal aliens back in to our communities? If not, why?

**RESPONSE: I have not studied these specific issues. As a general matter, however, the Department of Justice's commitment to protecting public safety includes not only enforcing the law but also ensuring the safety and security of our communities, including promoting policies that enhance trust between law enforcement and those they serve. If confirmed as Attorney General, I will work to ensure that the Department works collaboratively with state and local jurisdictions and law enforcement to promote public safety and fair treatment.**

30. The previous administration attempted to stop sanctuary city policies by limiting access to federal grant funding for sanctuary cities. The Justice Department previously asked the Supreme Court to hear three cases to determine whether federal funds may be conditioned on whether sanctuary cities comply with federal immigration enforcement. Will you allow for this important issue to be litigated before the Supreme Court? Or will you direct the Justice Department to change its position in this case?

**RESPONSE: This is the subject of ongoing litigation. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges prohibits me from commenting on pending or impending cases.**

31. Do you believe that the federal government has the authority to condition federal grant funds on whether jurisdictions comply with federal immigration law?

**RESPONSE: This is the subject of ongoing litigation. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges prohibits me from commenting on pending or impending cases.**

#### **Deportation Moratorium**

32. As you know, the Department of Homeland Security issued a memorandum on January 20 that put in place a ban on deportation for 100 days. Currently there is an injunction filed in a federal district court in Texas preventing it from going into effect. If this injunction is lifted, it may exempt dangerous criminal aliens from being deported. Do you believe this is a wise policy by the Department of Homeland Security? More importantly, do you think this policy is even legal?

**RESPONSE: This is the subject of ongoing litigation. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges prohibits me from commenting on pending or impending cases.**

33. Do you believe that sanctuary city policies will shield dangerous criminal aliens who are released back in to communities because of this moratorium? What will the impact of this be on public safety?

**RESPONSE: This is the subject of ongoing litigation. As a sitting federal judge, Canon 3 of the Code of Conduct for United States Judges prohibits me from commenting on pending or impending cases.**

34. If you are confirmed as the Attorney General, what action will the DOJ take to protect American citizens if criminal aliens are released into communities because of the moratorium?

**RESPONSE: If I am confirmed as Attorney General, I will continue and strengthen the Department's work to protect our Nation's communities from crime, regardless of the source.**

#### **International Parental Child Abduction**

35. I have a specific interest in the issue of international parental child abduction, where one parent will unlawfully kidnap an American citizen child to another country. Many of these countries often refuse to return the children. This practice is devastating to left-behind parents, who must navigate international law to get their children returned. Will you make this issue a top priority if you are confirmed as Attorney General?

**RESPONSE: International parental child kidnapping is a deeply concerning issue. If I am confirmed as Attorney General, I look forward to learning more about and working to further strengthen the efforts the Department has undertaken to work with left-behind parents and advocacy organizations to return every child kidnapped abroad. I would also welcome working with you and other Members of Congress to effectively address this important issue.**

36. In your career as an attorney, prosecutor, and judge, how much have you engaged with the issue of parental child abduction either through individual cases or broader policy?
37. Are you committed to working with left-behind parents to return each and every child kidnapped abroad? What steps will you take, yourself, to engage directly with left behind parents and their advocacy organizations?

**RESPONSE: Please see my response to Question 35.**

38. How will you direct the Department to prevent and resolve cases of international parental child abduction? Will you commit to directing US Attorneys and DOJ staff to aggressively prosecute cases of international parental child abduction?

**RESPONSE: If confirmed, I look forward to engaging with you on ways to enhance the Department's current efforts to prevent and resolve cases of international parental abduction.**

39. Preventing parental child abduction and resolving cases requires an interagency process between the DOJ, State, and DHS. How will you work with your colleagues at other agencies to reunite kidnapped children with their left- behind parents?

**RESPONSE: If confirmed, I will prioritize assessing the Department's current structure and capacity to help ensure that all the tools available to the Department and our interagency partners, including at the Departments of State and Homeland Security, are being put to their best use to prevent and resolve cases of international parental kidnapping.**

40. Are you willing to utilize extradition as a tool to bring those who kidnap children to justice in the United States?

**RESPONSE: Please see my response to Question 39.**

#### **First Amendment Issues**

41. Over the past few months, Americans have needed their faith and the support that comes with their faith communities, but some governors have prohibited faith communities from gathering to worship. In many cases, the restrictions on religious gatherings have been much stricter than the requirements to go to the local Walmart. Judge Garland—is there a difference between Americans' right to assemble and participate in peaceful protest and their right to practice their religion?

**RESPONSE: The First Amendment guarantees the right to assemble in peaceful protest and the right to the free exercise of religion. Those rights protect different activities, but both are fundamental to our constitutional structure.**

42. As Attorney General what will you do to protect Americans' right to practice their faith during this incredibly difficult time?

**RESPONSE: If I am confirmed, I will seek to ensure that the Department of Justice upholds the rights of all Americans under the Constitution and the laws of the United States, including the provisions of the Constitution and laws securing religious liberty.**

43. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans' religious freedom. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit that the Department of Justice will not support any legislative or executive action that would alter in any way the Religious Freedom Restoration Act's protection for Americans of all faiths?

**RESPONSE:** As I testified at my hearing, I am a strong believer in religious liberty. If I am confirmed as Attorney General, I will seek to ensure that the Department of Justice scrupulously complies with the Constitution and all federal statutes, including the Religious Freedom Restoration Act. I have not studied the question of potential legislative amendments to the Act. If I were asked to consider such an amendment, my position would be informed by my strong belief in religious liberty and guided by a careful review of the relevant facts and law.

44. In a 2007 opinion, the Office of Legal Counsel affirmed that a religious organization that administers a federal grant retains its right, under the Civil Rights Act of 1964 and the Religious Freedom Restoration Act, to hire staff who agree with its religious mission. Despite pressure from outside groups, the Obama Administration refused to rescind that opinion. If confirmed, will you continue the Obama Administration's policy of leaving that opinion in place?

**RESPONSE:** I have not studied this Office of Legal Counsel opinion or the legal issues it addresses. If I were confirmed and called upon to consider those issues, I would follow the same approach I would use in any other context where I was asked to provide legal advice: I would carefully review the relevant facts and law; consult with lawyers in the Department of Justice and other relevant agencies; consider any relevant Department practices and procedures; and ultimately reach a conclusion based on my best view of the law.

45. Is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected? What is that line? Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?

**RESPONSE:** The First Amendment protects speech and other expressive activity. It does not protect theft, arson, property damage, or violence.

#### Second Amendment

46. President Biden repeatedly promised during his campaign that on his first day in office he would send a bill to Congress repealing liability protections on gun manufacturers, closing the background check loophole and waiting period. I am pleased that he did not actually do this on his first day in office. Can you commit to this Committee today that as Attorney General you will not take any actions to limit liability protections for gun manufacturers, expand the background check requirements or extend the waiting period beyond what is mandated by Congress—unless Congress passes a law touching on one of these subjects?

**RESPONSE:** As I testified at the hearing, the role of the Department of Justice in matters of policy is to advance the policy program of the President and the administration as long as it is consistent with the law. President Biden has been a strong supporter of and advocate for gun safety measures throughout his professional life. I would not adopt or support any policy that is inconsistent with the law, including the Second Amendment and

**the statutes enacted by Congress. But where there is room under the law for the President's policies to be pursued, I believe he is entitled to pursue them.**

47. President Biden selected Kristen Clarke to lead DOJ's Civil Rights Division. Yet in publicly accessible tweets issued on July 16, 2019, Ms. Clarke lauded the late Justice John Paul Stevens for calling for the repeal of the Second Amendment. Does it concern you at all that President Biden's choice of DOJ's Civil Rights Division supports repealing a constitutional provision that protects an individual civil right?

**RESPONSE: If I am confirmed as Attorney General, I will uphold all provisions of the Constitution, including the Second Amendment. With respect to Ms. Clarke, she is exactly the person we need to be running the Civil Rights Division. She is a person of integrity; she is an experienced former line prosecutor; and her views about the Civil Rights Division are in line with my own. If she is confirmed, I have no doubt that she will likewise faithfully uphold all provisions of the Constitution.**

48. What will you do as Attorney General to ensure that Americans feel confident that DOJ will protect their Second Amendment rights and ensure Ms. Clarke doesn't use her possible position leading the Civil Rights Division to attack individual gun owners?

**RESPONSE: For the reasons stated in my response to Question 47, I am confident that Ms. Clarke's investigative and enforcement decisions as the head of the Civil Rights Division would be guided by the facts and the law. I have no basis whatsoever to believe that she would use her position to attack individual gun owners.**

#### **Gunfire Protection**

49. It is increasingly clear that technology provides very useful tools in crime fighting and crime prevention, especially when they are in an integrated system. I would like to see Federal support for these technologies increased. Most gunshot incidents, for example, go unreported to local law enforcement. Gunfire detection and location technology where it has been deployed, including communities in my state, has helped local law enforcement respond to more gunshot incidents, and in a safer and timely way. This enables police to collect the shell casings, interview witnesses, and sometimes catch a fleeing suspect. When those shell casings are run through another technology, the National Integrated Ballistic Information Network (NIBIN), law enforcement agencies can determine if the gun has been used in other crimes and thus focus their investigation. The technology also facilitates a faster emergency medical response for gunshot victims. The use of cameras in public spaces is another valuable tool. Will you support increased Federal resources to assist state and local governments in deploying these kinds of technologies?

**RESPONSE: I am very supportive of law enforcement using technology appropriately and effectively to investigate, reduce, and combat crime. Because I am not in the Department, I am not currently aware of Department resources available for these purposes, but if**

**confirmed, I look forward to learning more about ways the Department can provide appropriate support while protecting civil liberties.**

**Pastor Cao**

50. I'd like to ask about the case of Pastor Cao. Pastor Cao is a lawful permanent resident who lives in North Carolina. He's been arbitrarily detained by the Communist Chinese Government since March 2017 and is currently being held in Kuming Prison. My understanding is that he is on the U.N. Working Group on Arbitrary Detention's list of people who should be immediately released. Will you commit to me to do everything in your power to secure Pastor Cao's release, including raising his unlawful detention each and every time you meet with your Chinese counterparts?

**RESPONSE: If I am confirmed as Attorney General, I commit to reviewing the matter. However, because I am not currently at the Department and I am not familiar with these circumstances, it would not be appropriate for me to comment further.**

**Prohibiting the Use of "Slush Fund Settlements"**

51. As you may know, the Obama Administration had instituted a policy where legal settlements between the DOJ and companies were used to fund third-party, special interest groups that were not parties to the litigation. This practice, required by the Department as a condition for settling a case, has been called "slush fund settlements."

In some cases, the Department required donations that restored funding that Congress had specifically cut. The Department justified "slush fund settlements" by claiming that business defendants were "voluntarily" making these third-party payments as part of settling claims. But many of these companies were boxed into accepting these types of settlements because they had a tremendous amount of liability on the line if they were to litigate the matter, in addition to the risk of losing government licenses and contracting permits. In reality, these companies never had a choice.

In 2017, the Trump Administration forbade this practice; and last year, the Department incorporated this ban into the Justice Manual (85 FR 81409). The Biden Administration recently announced that it is reviewing the bar on this potentially unlawful and unethical practice. Will you commit to oppose the reinstatement of this potentially unlawful and unethical practice if you are confirmed?

**RESPONSE: As I testified at my hearing, I have not studied this specific issue. If I am confirmed, I will carefully consider the matter and the arguments on both sides, including both the reasons why this practice developed and the reasons why it was changed.**

**Maintaining the Corporate Enforcement Policy**

52. Over the past four years, the Department has updated and reformed the enforcement of the Foreign Corrupt Practices Act (FCPA), a process that began under the Obama

Administration. Specifically, in 2016, under Attorney General Loretta Lynch, the Department announced an FCPA “pilot project,” which was designed to promote voluntary self-disclosure, cooperation with the government, and remediation of violations in exchange for mitigated penalties. In 2017, the Department enhanced this pilot project and incorporated it into the U.S. Attorneys’ Manual as the FCPA Corporate Enforcement Policy (CEP); the Department has since stated that it will apply the principles of the CEP to contexts other than the FCPA.

It appears that these reforms are having a positive effect on compliance. If you are confirmed, will you continue to support and improve the Corporate Enforcement Policy in a way that appropriately incentivizes the private sector to invest voluntarily in compliance programs and cooperate with the Department?

**RESPONSE: I am committed to the vigorous enforcement of the Foreign Corrupt Practices Act and other federal anti-corruption laws, including efforts to foster voluntary compliance and cooperation with the Department of Justice. I have not studied the Corporate Enforcement Policy. If I am confirmed, however, I will look forward to consulting with the relevant Department officials to learn more about that initiative and to identify ways in which it might be further supported or improved.**

#### **Safeguards on the Use of Sub-regulatory Guidance**

53. Guidance documents, also known as sub-regulatory guidance, are a way for agencies to announce policy changes, establish new procedures, and sometimes set forth new obligations on the private sector. This guidance often takes a variety of forms, such as Frequently Asked Questions, compliance memos, and other tools that can help agencies accomplish their goals but can unfairly impose burdens on private parties. Sub-regulatory guidance does not have to comply with statutory law or be formally promulgated as rules in accordance with the Administrative Procedure Act (most notably the notice and comment obligations). Agencies often issue it without any restrictions.

Since agencies are not required to notify the public when issuing new guidance, it may be impossible for private parties to comply with it. This is particularly problematic when the “guidance” purports to be binding, even though it is not based in law or regulation. Worse still, agencies have increasingly sought to bring enforcement actions predicated on it.

The abuse by the government of sub-regulatory guidance prompted the Trump Administration to act. In 2017, former Attorney General Sessions issued a memo rescinding existing guidance documents that went too far and prohibiting the Department from issuing new ones that have the effect of adopting new regulatory requirements or amending the law. On January 25, 2018, former Associate Attorney General Rachel Brand released the Brand Memo, which forbids the Department from treating sub-regulatory guidance as binding legal requirements in certain cases.

The Department later broadened the Brand Memo and incorporated it into the Justice Manual, so it covered all civil and criminal enforcement actions.

In October 2019, the last Administration made the Department's important reforms in this area apply across the Executive Branch; it issued two Executive Orders (EO), EO 13891 and EO 13982, which respectively required agencies to treat guidance documents as "non-binding both in law and in practice" and limited the ability of agencies to enforce standards of conduct that were not publicly stated or issued in formal rulemaking. These EOs also required transparency to the American people—guidance documents now had to be posted on-line, and the government had to receive Americans' input on the guidance it was issuing.

It is troubling that on his first day in office, President Biden rescinded Executive Orders 13891 and 13982. However, the particular reforms and safeguards that are designed to prevent the unfair application and abuse of sub-regulatory guidance are still policy at the Department. Do you commit to preserving these important safeguards at the Department if you are confirmed?

**RESPONSE:** I have not studied the memos issued by Attorney General Sessions and Associate Attorney General Brand or the corresponding provisions of the Justice Manual. In general, however, enforcement actions must be based on a violation of a statute or a "legislative rule" that has "the force and effect of law." *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 95 (2015) (citation omitted). By definition, the guidance documents referenced in the question lack that force and effect. A violation of a guidance document thus cannot, by itself, be the basis for an enforcement action. Guidance documents may, however, serve valuable functions. For example, they can "'advise the public' of how the agency understands, and is likely to apply, its binding statutes and legislative rules." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2420 (2019) (plurality opinion). If I am confirmed, any action I take in this area will be consistent with these principles.

#### Transparency of Third-Party Litigation Funding in False Claims Act Cases

54. As you may know, third-party litigation funding (TPLF) is a growing phenomenon in the United States. TPLF involves third-party financiers investing in litigation for a cut of any final settlement or judgment. For many cases involving TPLF, the existence of a TPLF agreement is never required to be disclosed to the opposing party or even to the court, which means that funders may be exercising strategic control over the litigation instead of the actual plaintiffs.

This practice is especially problematic in the context of qui tam False Claims Act (FCA) litigation brought by relators. This is because qui tam relators stand in the shoes of the government. In these cases, the Department has little insight into the extent to which TPLF funders are backing qui tam cases that the Department is investigating, litigating, or otherwise monitoring. These non-party funders may be exercising substantial control over relators' litigation and settlement decisions in cases that were brought in the name of the United States.



Third party litigation funders and the government may have entirely divergent interests. Because of this possible divergence of interests, the Department has the right and the need to know if third-party funders are behind qui tam actions.

To achieve this desired level of transparency, the Department recently began instructing its attorneys to ask a series of questions at each relator interview designed to reveal whether third party funders are involved in the underlying litigation. Do you agree that TPLF raises particular ethical issues in qui tam FCA cases? If you are confirmed, will you continue to require DOJ attorneys to ask these questions at each relator interview?

**RESPONSE: The False Claims Act, and its qui tam provisions, play a critical role in the federal government's effort to ensure that those who do business with the government do so honestly. However, as a federal judge for the last 24 years, I have not had occasion to become familiar with the particulars of this issue.**

#### Asbestos Oversight

55. The Department of Justice has repeatedly and publicly committed to investigate conduct related to asbestos trusts that is illegal under federal law. I and others on this committee have introduced legislation, the PROTECT Asbestos Victims Act, that would make it easier for asbestos-related fraud and abuse to be identified and addressed. While I continue to believe that statutory reforms are necessary, I applaud the Department's commitment to using available tools to ensure that legitimate asbestos victims are able to receive the compensation they are due without dilution of their claims through fraud.

Most recently, the Department filed a Statement of Interest in a case pending in U.S. Bankruptcy Court for the Western District of North Carolina, *In re Bestwall LLC*. In a press release announcing the filing, the Department was clear that it is "increasingly common for claimants' counsel to seek duplicative recoveries from multiple sources by misrepresenting the asbestos products to which claimants were exposed" and that fraudulent claiming "depletes resources that would otherwise be available to compensate deserving claimants filing claims in the future."

The Department is also acting separately to protect the United States' interest in the appropriate resolution of asbestos claims. As the Department's Bestwall filing explained, "[i]n many cases, payment of personal injury claims will trigger reimbursement obligations to the United States under the Medicare Secondary Payer Statute ('MSP Statute'), 42 U.S.C. § 1395y(b)(2)." Misdirection of asbestos funds through waste, fraud, or abuse may prevent proper reimbursements. Asbestos trusts' public disclosures and court filings make clear that the Department is actively investigating potential violations of the federal False Claims Act and MSP Statute.

Will you commit, if confirmed, to continue the Department's important efforts to detect and prosecute illegal asbestos-related conduct and provide the Civil Division, U.S. Trustee Program, and other Department components with the resources needed to do so?

**RESPONSE:** While Canon 3 of the Code of Conduct for United States Judges bars me from commenting on any pending or impending case that is in any court, if I am confirmed, I will work to ensure full and faithful enforcement of our laws, including laws pertaining to conduct related to asbestos trusts. I would also look forward to reviewing current resource allocation and needs across the relevant components of the Department.

## Senator Blackburn

### Responses to Questions from Senator Blackburn to Judge Merrick Garland, Nominee to be United States Attorney General

1. Is the death penalty appropriate punishment for domestic terrorists such as the Oklahoma City bomber Timothy McVeigh and the Boston Marathon bomber Dzhokhar Tsarnaev?

**RESPONSE:** As I testified at my hearing, I supported the death penalty for Timothy McVeigh and believed it was appropriate at that time in that specific case. Regarding Dzhokhar Tsarnaev, this question implicates a pending case, so I am barred from commenting on this matter by Canon 3 of the Code of Conduct for United States Judges.

2. Do you support any modifications to the consumer welfare standard?

**RESPONSE:** Strong antitrust enforcement must be anchored by the rule of law. If confirmed, it will be my direction that our antitrust laws be used to effectively promote market competition. As a sitting judge and Justice Department nominee, I do not have a preconceived notion of how best to achieve that goal.

3. Does the consumer welfare standard include consideration for non-price harms such as diminished privacy?

**RESPONSE:** Strong antitrust enforcement must be anchored by the rule of law. If confirmed, it will be my direction that our antitrust laws be used to effectively promote market competition. As a sitting judge and Justice Department nominee, I do not have a preconceived notion of how best to achieve that goal.

4. Are reforms necessary to reshape the limits of liability protection under Section 230 of the Communications Act? What speech should or should not be protected?

**RESPONSE:** As I testified at my hearing, I have relatively limited information about Section 230. I know that you and other members of the committee have ideas about how the statute should be amendment, and if confirmed, I look forward to talking with you and others about those ideas.

5. If confirmed, how do you plan to handle investigations within the U.S. Department of Justice (DOJ) that were initiated by prior administrations?

**RESPONSE:** As the nominee for Attorney General, I am not familiar with current investigations being undertaken by the Department. If confirmed, I will make all decisions concerning investigations based on the facts and the law, without regard to partisan or other improper considerations.

6. On January 26, 2021, President Biden signed an executive order on privately operated detention facilities, stating: "The Attorney General shall not renew Department of Justice

contracts with privately operated criminal detention facilities, as consistent with applicable law.” The U.S. Marshals Service (USMS) oversees 60,000 detainees daily. If the USMS loses access to contractor-operated secure facilities, there is the real risk of not being unable to find needed capacity that meets federal requirements and standards for detainees, including the requisite level of medical care.

- a. Will state and county detention facilities provide a sufficient alternative if the USMS loses access to contractor-operated secure facilities?

**RESPONSE: Because I am not currently at the Department, I am not familiar with the nature of the contracts the Bureau of Prisons or the U.S. Marshals Service has with privately owned facilities. If I am confirmed, the Department will work to ensure that the operations of the U.S. Marshals Service are not negatively impacted.**

- b. If state and county detention facilities fail to provide a sufficient alternative to contractor-operated secure facilities, how will the USMS effectively carry out its mission of exercising custody of federal prisoners and providing for their security and transportation to correctional facilities?

**RESPONSE: Because I am not currently at the Department, I am not familiar with the nature of the contracts the Bureau of Prisons or the U.S. Marshals Service has with privately owned facilities. If I am confirmed, the Department will work to ensure that the operations of the U.S. Marshals Service are not negatively impacted.**

7. In 1994, President Clinton and Congress enacted a ban on assault weapons that barred the purchase of numerous common, self-defense, and hunting firearms. In 2016, Obama issued 23 Executive Actions on gun violence, including a call to ban assault weapons and high-capacity magazines. There are reports President Biden plans to enact similar gun control measures via Executive Actions. If confirmed as Attorney General, would you use your authority over the Bureau of Alcohol, Tobacco, Firearms and Explosives to promote a similar reenactment of these types of gun bans?

**RESPONSE: As I testified at the hearing, President Biden has been a strong supporter of and advocate for gun safety measures throughout his professional life. The role of the Justice Department on policy matters is to advance the policy program of the administration as long as it is consistent with the law.**

8. Please describe any limits under federal law that bar the use of taxpayer funds for abortion.

**RESPONSE: As a federal judge for 24 years, I have not had occasion to become familiar with the limits under federal law related to the use of taxpayer funds for abortion.**

9. Although marijuana is still considered a federally controlled schedule one drug, some states have legalized marijuana use within their jurisdictions. Do law enforcement agencies at the federal, state or local level have universal access to technology that can

accurately assess whether a driver has unsafe levels of THC in his or her system? If not, what solution do you recommend for the public safety problem of driving under the influence of marijuana?

**RESPONSE: I have not had an opportunity to examine this public safety issue. If I am confirmed, I look forward to learning about this concern, and determining if the Department has programs or resources that could be helpful.**

10. The Wall Street Journal recently reported that some illegal immigrants anticipate more lenient treatment by the Biden Administration. In January 2021, U.S. Border Patrol successfully arrested 7,260 illegal aliens attempting to enter the United States compared to 4,500 in December 2019. As Attorney General, how do you plan to prioritize illegal reentry cases, and will you carry through with a zero-tolerance policy for illegal immigration enforcement?

**RESPONSE: As a federal judge, I have not had the occasion to become familiar with the particulars of this issue. If I am confirmed, I will study this topic.**

11. What steps should DOJ take, from filing amicus briefs, statements of interests, to initiating lawsuits, to ensure that the First Amendment is upheld for all viewpoints on college campuses? Please describe some recent efforts taken on behalf of campus free speech initiatives that you believe should be continued.

**RESPONSE: I have not studied the Department of Justice's recent efforts in this area, but in general I firmly believe that the Department should seek to uphold all constitutional rights, including the rights protected First Amendment. The appropriate steps to uphold those rights will depend on the context, including the Department's relevant legal authorities, other applicable law, and the facts and circumstances of each case.**

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January 21, 2021

The Honorable Dick Durbin  
Chairman  
Senate Committee on the Judiciary  
Washington, DC 20510

The Honorable Chuck Grassley  
Ranking Member  
Senate Committee on the Judiciary  
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

When concluding my 15 years of public service in the Department of Justice, serving as Deputy Attorney General and Acting Attorney General, I came to know firsthand the weight of the responsibilities and demands those positions carry. As a result of that experience, I am extremely gratified that President Biden has chosen to nominate Merrick Garland to be Attorney General. I have known Judge Garland since he was an Assistant United States Attorney in Washington, DC, during the time that I was privileged to serve as Deputy Attorney General in a Republican administration. He had primary responsibility for aspects of a politically charged international bank fraud investigation as to which I was providing direct supervision. I was impressed by his level-headed judgement then and all that I have experienced of Judge Garland since, including when arguing cases before him, has only enhanced my convictions regarding his quality of intellect, impartial judgment, and commitment to the rule of law.

More and more, the Justice Department is thrust into matters of great public interest and increased political controversy. As such, it is critically important that its politically appointed leadership exercise the authority to supervise the Department's activities with great care and attention to the interests of justice above all else. I am confident that Judge Garland will draw on his own prior experience in the Department to exercise good judgment and courage in that role. I also believe he will work hard to foster an atmosphere and a culture in the Department that fully lives up to its commitments to do justice without fear or favor.

The Honorable Dick Durbin  
The Honorable Chuck Grassley  
January 21, 2021  
Page 2

It is quite possible, and, indeed, necessary, for the Attorney General to be both a trusted advisor to the President on legal matters as well as an independent enforcer of the law. I believe that Judge Garland's hard-earned record of impartiality on the bench and apolitical treatment of cases before him hold every promise that he can and will fill the role of Attorney General as it is meant, by our Constitution and laws, to be performed.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "George J. Terwilliger III", with a stylized flourish at the end.

George J. Terwilliger III

cc: The Honorable Mitch McConnell  
The Honorable Patrick Leahy  
The Honorable Ted Cruz

February 1, 2021

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

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

Re: Letter in Support of the U.S. Department of Justice Nominees

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin and Ranking Member Grassley:

We write in strong support of President Biden's nominees to the U.S. Department of Justice: Judge Merrick Garland for Attorney General, Lisa Monaco as Deputy Attorney General, Vanita Gupta as Associate Attorney General, and Kristen Clarke as Assistant Attorney General for the Civil Rights Division.

We are former State Attorneys General in each of our respective states, who belonged to both Republican and Democratic parties. Many of us served for multiple terms, operating as the chief statewide law enforcement officials in our states, bringing criminal and civil enforcement actions to protect our citizens and the public fisc, and defending our states in federal and state courts.

We often worked with the U.S. Department of Justice and senior officials (including the Deputy Attorney General, Associate Attorney General, and Assistant Attorney General for the Civil Rights Division) under both Republican and Democratic Administrations, and believe that the slate of Justice Department nominees announced by President Biden represent outstanding selections of individuals who have sterling reputations and leadership qualities that will meet the mission of the Justice Department.

Judge Merrick Garland is well known to many of us, not just through his reputation as a fair-minded judge, but also through his work as a senior Justice Department official during the Oklahoma City bombing investigation/prosecution, which required close coordination among



federal, state, and local authorities. Judge Garland's skillful and wise leadership over that investigation team was exemplary of how federal, state, and local authorities can work towards a common goal on behalf of public safety for the American people.

Lisa Monaco similarly is a well-known public servant, who has devoted her life to public safety and protecting our national security. She served with distinction as the Assistant Attorney General for the National Security Division, and in senior positions within the Federal Bureau of Investigation and as a homeland security advisor. She is a professional through and through -- who has worked hand in hand with law enforcement and intelligence personnel to keep our cities and states safe.

Vanita Gupta is a gifted national leader who has developed credibility with law enforcement leaders and civil rights leaders, and she too is an outstanding selection to assume the Associate Attorney General position within the Justice Department. Because of her extensive work and ability to build strong relationships with local leaders, she has demonstrated a keen understanding of building coalitions and promoting greater trust between law enforcement and the communities they serve. We welcome her leadership at the Justice Department.

Kristen Clarke is someone with immense credibility among community leaders in each of our states -- she has handled cases of hate crimes, constitutional policing, human trafficking, and voting rights, and, most recently, has done effective work on violent extremism and the threat that it poses to our citizens. Clarke further worked in a leadership position within the New York State Attorney General's office, leading the Civil Rights Bureau there -- where she led a religious rights initiative as well as other civil rights initiatives on behalf of the State. We are further proud that she is an alumnus of a State Attorney General's office.

We urge the Committee to quickly process the Justice Department nominees and urge the Senate to quickly confirm these outstanding nominees. We have been alarmed at recent efforts to undermine the rule of law and our democratic institutions, at both the state and federal level. We firmly believe that the credibility, independence, and devotion to the rule of law that these Justice Department nominees have exhibited throughout their professional and personal lives will help garner greater faith in our institutions going forward.

Thank you for your consideration.

Yours truly,

Grant Woods  
Arizona Attorney General 1991-98

Frankie Sue Del Papa  
Nevada Attorney General 1990-2002

Robert Abrams  
NY Attorney General, 1979-93

Ron Amemiya  
HI Attorney General 1974-1978

Doug Baily  
AK Attorney General, 1989-91

Thurbert Baker  
GA Attorney General, 1997-2010

Senator Richard Blumenthal  
CT Attorney General, 1991-2011

Bruce Botelho  
AK Attorney General, 1994-2002

Roland Burris  
IL Attorney General, 1991-95

Bob Butterworth  
FL Attorney General, 1987-2002

Bonnie J. Campbell  
IA Attorney General, 1991-95

Pamela Carter  
IN Attorney General, 1992-1996

Ben Chandler  
KY Attorney General, 1996-2004

Steve Clark  
AR Attorney General, 1979-1990

Mike Cody  
TN Attorney General, 1984-1988

Walter Cohen  
PA Attorney General, 1995

Jack Conway  
KY Attorney General, 2008-16

Robert E. Cooper, Jr.  
TN Attorney General, 2006-2014

Richard Cordray  
OH Attorney General, 2009-11

Fred Cowan  
KY Attorney General, 1988-1992

J. Joseph Curran, Jr.  
MD Attorney General, 1987-2006

M. Jerome Diamond  
VT Attorney General, 1975-81

Rufus Edmisten  
NC Attorney General, 1974-84

Drew Edmondson  
OK Attorney General, 1995-2011

John J. Farmer Jr.  
NJ former Attorney General, 1999-2002

Lee Fisher  
OH Attorney General, 1991-95

Douglas Gansler  
MD Attorney General, 2007-15

Terry Goddard  
AZ Attorney General, 2003-11

Chris Gorman  
KY Attorney General, 1992-96

Governor Christine Gregoire  
WA Attorney General, 1993-2005

Neil Hartigan  
IL Attorney General, 1983-91

Peter C. Harvey  
NJ Attorney General, 2003-06

Mike Hatch  
MN Attorney General, 1999-2007

Senator Heidi Heitkamp  
ND Attorney General, 1993-2001

Jim Hood  
MS Attorney General, 2004-20

Hubert H. Humphrey III  
MN Attorney General, 1982-98

Richard Ieyoub  
LA Attorney General, 1992-2003

George Jepsen  
CT Attorney General, 2011-19

Jim Jones  
ID Attorney General, 1983-91

Peter Kilmartin  
RI Attorney General, 2011-19

Senator Joseph Lieberman  
CT Attorney General, 1983-89

Jahna Lindemuth  
AK Attorney General 2016-18

Bill Lockyer  
CA Attorney General, 1999-2007

David Louie  
HI Attorney General, 2011-14

Lisa Madigan  
IL Attorney General, 2003-19

Patricia Madrid  
NM Attorney General, 1998-2006

Dustin McDaniel  
AR Attorney General 2007-2015

Brian McKay  
NV Attorney General 1983-1990

V. Frank Mendicino  
WY Attorney General, 1975-78

Anne Milgram  
NJ Attorney General, 2007-10

Tom Miller  
IA Attorney General, 1979-91 and 1995-present

Governor Janet Mills  
ME Attorney General , 2009-2011; 2013-2019

Jeff Modisett  
IN Attorney General, 1997-2000

Mike Moore  
MS Attorney General, 1987-2003

Governor Janet Napolitano  
AZ Attorney General, 1999-2003

Irving B. Nathan  
DC Attorney General, 2011-15

Charlie Oberly III  
DE Attorney General, 1983-95

Clarine Nardi Riddle  
CT Attorney General, 1989-91

Hector Reichard  
PR Attorney General, 1981-83

Stephen Rosenthal  
VA Attorney General, 1993-94

Senator Ken Salazar  
CO Attorney General, 1999-2005

James Shannon  
MA Attorney General, 1987-91

Mark Shurtleff  
UT Attorney General, 2001-13

Governor Don Siegelman  
AL Attorney General, 1987-91

Gregory Smith  
NH Attorney General, 1980-84

Robert J. Spagnoletti  
DC Attorney General, 2003-06

Lori Swanson  
MN Attorney General, 2007-19

Mary Sue Terry  
VA Attorney General, 1986-93

James Tierney  
ME Attorney General, 1980-90

Duane Woodard  
CO Attorney General, 1983-1991

James Zazzali  
NJ Attorney General, 1981-82



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February 3, 2020

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

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

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin and Ranking Member Grassley:

On behalf of the International Association of Chiefs of Police (IACP), I am pleased to offer our endorsement for the nomination of Judge Merrick Garland to serve as the next Attorney General of the United States.

Throughout his career, Judge Garland has consistently demonstrated a firm understanding of, and a deep appreciation for, the challenges and complexities confronting our nation's law enforcement officers. During his time with the U.S. Court of Appeals for the D.C. Circuit, Judge Garland has clearly displayed his profound dedication to ensuring that our communities are safe and that the interests of justice are served.

The IACP believes that Judge Garland's years of experience, his expertise, and unwavering dedication to the rule of law are evidence of his outstanding qualifications to serve as the next Attorney General of the United States. The IACP urges the Judiciary Committee and the members of the United States Senate to swiftly confirm the nomination of Judge Garland.

Sincerely,

Chief Cynthia Renaud (Ret.)  
IACP President

**President**  
Chief Cynthia E. Renaud (Ret.)  
Santa Monica, CA, Police Department

**Immediate Past President**  
Chief Steven R. Castevens  
Buffalo Grove, IL, Police Department

**First Vice President**  
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**Third Vice President**  
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Park City, UT, Police Department

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West University Place, TX, Police Department

**Fifth Vice President**  
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**Vice President At-Large**  
Chief M. B. Johnson  
BNSF Railway Police Department

**Vice President At-Large**  
Chief Kristen Ziman  
Aurora, IL, Police Department

**International Vice President**  
Special Agent in Charge Ray Villanueva  
Homeland Security Investigations

**Vice President-Treasurer**  
Chief Ronald A. Sallan  
Mansfield, MA, Police Department

**General Chair, Division of State and Provincial Police**  
Colonel Matthew Langer  
Minnesota State Patrol

**General Chair, Division of State Associations of Chiefs of Police**  
Chief James G. Hicks  
Natick, MA, Police Department

**General Chair, Midsize Agencies Division**  
Chief Edward Walsh  
Taunton, MA, Police Department

**Parliamentarian**  
Deputy Commissioner Max Santiago (Ret.)  
California Highway Patrol

**Executive Director / Chief Executive Officer**  
Vincent Talucci, CAE  
Alexandria, VA

**Deputy Executive Director / Chief Operating Officer**  
Terrence M. Cunningham  
Alexandria, VA



THE FALSE CLAIMS ACT LEGAL CENTER

February 4, 2021

The Honorable Richard Durbin, Chairman  
Senate Judiciary Committee  
711 Hart Senate Building  
Washington, D.C. 20510

The Honorable Charles Grassley, Ranking  
Member  
Senate Judiciary Committee  
135 SH  
Washington, DC 20510

Re: **Support for Merrick Garland for United States Attorney General**

Dear Chairman Durbin and Ranking Member Grassley:

Taxpayers Against Fraud ("TAF") writes in support of the nomination of Chief Judge Merrick Garland to be United States Attorney General.

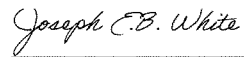
TAF is a public interest organization dedicated to combating fraud against the government and preserving public resources through public-private partnerships. Since its inception in 1986, TAF has primary focused on strengthening the False Claims Act, the government's primary fraud-fighting weapon.

TAF closely monitors all court decisions that interpret the False Claims Act. In this role, TAF has reviewed all D.C. Circuit court opinions addressing the Act in which Judge Garland wrote the majority or dissenting opinion. At all times, Judge Garland not only demonstrated an exceptional understanding of the False Claims Act, but he embraced a reading of the Act that honored the underlying Congressional intent and the realities of anti-fraud law enforcement.

Of particular note, in the seminal case *United States ex rel. Totten v. Bombardier Corp.*, 380 F.3d 488 (D.C. Cir. 2004), Judge Garland wrote a powerful dissent, arguing that the False Claims Act applies to government money defrauded from a government contractor. Judge Garland maintained that the statutory language of the False Claims Act protected *all* government money from fraud. Subsequently, the Fraud Enforcement and Recovery Act of 2009 included clarifying amendments that embraced Judge Garland's reading of the False Claims Act.

If confirmed, Judge Garland will now enforce the False Claims Act. Based on his proven track record, Judge Garland will wield this important anti-fraud weapon against those who seek to steal from the U.S. Treasury. For these reasons, TAF supports Judge Merrick Garland for the position of United States Attorney General.

Respectfully yours,

A handwritten signature in cursive script that reads "Joseph E. B. White".

---

Joseph E. B. "Jeb" White, Esq.  
President & C.E.O.  
Taxpayers Against Fraud





**PATRICK YOES**  
NATIONAL PRESIDENT

**NATIONAL  
FRATERNAL ORDER OF POLICE®**

328 MASSACHUSETTS AVE., N.E.  
WASHINGTON, DC 20002

**JIM PASCO**  
EXECUTIVE DIRECTOR

10 February 2021

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our support for the nomination of Merrick B. Garland to be the next Attorney General of the United States.

Judge Garland began his public service career in 1979 as Special Assistant to U.S. Attorney General Benjamin R. Civiletti. After several years in private practice, he returned to the U.S. Department of Justice in 1989 as an Assistant U.S. Attorney for the District of Columbia where he investigated and prosecuted drug-related and public corruption cases. Following a brief return to private practice, Judge Garland returned to the Justice Department's Criminal Division where he supervised the handling of high-profile cases like the prosecution of the Unabomber as well as the Oklahoma City and Atlanta Olympic bombings. He left the Department after he was nominated and confirmed as a judge for the U.S. Court of Appeals for the District of Columbia Circuit. He has been the court's Chief Judge since 2013.

Throughout his tenure as a Federal prosecutor and a Federal judge, Judge Garland has demonstrated a keen legal mind, a reputation for fairness and honesty, and a respect for law enforcement officers. While we anticipate that we may have some serious disagreements on certain issues, based on his character and dedication to public service and law enforcement, we are cautious, but hopeful, that we will be able to build a working relationship with Judge Garland, should he be confirmed.

On behalf of the more than 356,000 members of the Fraternal Order of Police, we thank you for considering our support for this nominee. If I can provide any more information on this nomination, please do not hesitate to contact me or Executive Director Jim Pasco in our Washington office.

Sincerely,

Patrick Yoes  
National President

—BUILDING ON A PROUD TRADITION—

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

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

February 3, 2021

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin and Ranking Member Grassley:

As a group of local prosecutors committed to criminal justice reform, police reform, and racial justice, we are writing to express our support for the nomination of Merrick Garland as Attorney General.

As President Biden's nominee, we are hopeful that Merrick Garland will take our country in a new direction when it comes to justice issues. President Biden, who nominated Merrick Garland, has pledged and committed to eliminating the racial disparities that plague our criminal justice system. He has affirmed his support for using the Department of Justice (DOJ) to investigate police misconduct, wants to eliminate mandatory minimums, expand clemency, reform outdated marijuana laws, stop incarcerating people for drug use, and more. Already, our new president, recognizing the stain of systemic racism within government and the need for racial equity, has banned federal contracts with private prisons that were financially benefiting from the government's over reliance on the incarceration of Black and Brown people. Consequently, we are confident that President Biden's selection of Merrick Garland signals an embrace of this transformative agenda.

As progressive prosecutors who recognize the need to reduce racial disparities in the criminal justice system and are committed to righting the wrongs of the past, our hope is that President Biden and Merrick Garland will work to nominate US Attorneys throughout the country that share these ideals.

Under the prior Presidential Administration, DOJ lost direction and credibility. The agency became Trump's personal law firm in many ways, moving to invalidate the election, undermine the Mueller investigation, and pursue politically-motivated investigations against the self-proclaimed enemies of Donald Trump.

It's not just that DOJ under Trump became politicized; it also became a wrecking-ball in the lives of many Americans, particularly people of color. Under the prior administration, explicit directives by former Attorneys General were given that escalated the war on drugs, there was an abandonment of President Obama's smart on crime agenda, an urging of prosecutors to pursue mandatory minimums, and threats to crackdown on legal marijuana. Moreover, the past two Attorneys General under Trump engineered an immigration policy of zero-tolerance that culminated in the caging of children, after parents were federally prosecuted for crossing the border; stopped the use of consent decrees and civil rights investigations that held police departments accountable; took an enforcement-only approach to the overdose crisis; supported private prisons; pushed for tougher penalties on fentanyl; opposed any type of sentencing reform; embarked on a crusade against gun offenses that did nothing to increase public safety and targeted people of color; and federally executed 13 black men after an 18-year hiatus in the use of the death penalty by the federal government.

In our collective opinion, the Divisions under the DOJ are ripe for reform and we believe that Merrick Garland – as a DOJ veteran with a commitment to the rule of law – is well-placed to restore integrity to the Department.

We believe Merrick Garland can and will revamp the DOJ in a way that will demonstrate a commitment to holding rogue police officers and departments accountable, reducing racial disparities in our criminal justice system and ending mass incarceration.

While the last four years have been harrowing to communities of color, it is our belief that the election of President Biden and Vice-president Harris presents an opportunity for change. We believe Merrick Garland will be that change. Hence, we support the nomination of Merrick Garland and look forward to working with him on these important issues.

Sincerely,

Marilyn J. Mosby, Baltimore City State's Attorney

Larry Krasner, Philadelphia District Attorney

Kim Foxx, Cook County State's Attorney

Rachael Rollins, Suffolk County District Attorney

Chesa Boudin, San Francisco District Attorney

George Gascon, Los Angeles District Attorney

John Creuzot, Dallas County District Attorney

Wesley Bell, St. Louis County Prosecuting Attorney

Aramis Ayala, former State Attorney for the Ninth Judicial Circuit Court of Florida

Diana Becton, District Attorney for Contra Costa County

Sherry Boston, Dekalb County District Attorney

Satana Deberry, District Attorney for Durham, North Carolina

Kim Gardner, Circuit Attorney for the City of St. Louis, Missouri

Stephanie Morales, Commonwealth's Attorney for Portsmouth, VA

Eric Gonzalez, Brooklyn District Attorney

Lynneice O. Washington, Jefferson County District Attorney - Bessemer Cutoff Division



625 N. Washington Street, Ste. 212  
Alexandria, VA 22314  
Phone: 703.575.9400  
AIRise.org

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CHIEF EXECUTIVE OFFICER  
Carson Fox

February 10, 2021

The Honorable Dick Durbin  
Chair, Committee on the Judiciary  
U.S. Senate  
711 Hart Senate Office Building  
Washington, DC 20510

The Honorable Charles Grassley  
Ranking Member, Committee on the Judiciary  
U.S. Senate  
135 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

On behalf the National Association of Drug Court Professionals and the 40,000 justice and substance use treatment professionals working in nearly 4,000 American drug courts, I write to express support for Judge Merrick B. Garland to be the next attorney general of the United States of America.

Judge Garland's distinguished legal career as a prosecutor, private attorney, and federal judge gives him a unique understanding and makes him exceptionally qualified to lead the Department of Justice at this time. Judge Garland has served both democratic and republican administrations in his extensive career in the federal government before presiding over the U.S. Court of Appeals for the District of Columbia starting in 1997. Judge Garland's experience, integrity, and dedication to the rule of law make him an ideal candidate for U.S. attorney general.

I am honored to support the nomination of Judge Merrick B. Garland to be the next attorney general of the United States of America.

Sincerely,

Carson Fox  
Chief Executive Officer





**National  
Urban League**

*Empowering Communities.  
Changing Lives.*

**Marc H. Morial  
President and CEO**

80 Pine Street, 9<sup>th</sup> Floor  
New York, NY 10005

Phone 212 558 5336  
eFax 646 568 2165

[www.nul.org](http://www.nul.org)  
[presidentoffice@nul.org](mailto:presidentoffice@nul.org)

February 11, 2021

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

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

Re: Letter in Support of the Honorable Merrick B. Garland, nominee to become  
the United States Attorney General

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and  
Ranking Member Grassley:

On behalf of the National Urban League (NUL), I write in unqualified support of the  
Honorable Merrick B. Garland to serve as Attorney General of the United States.

The NUL is an historic civil rights organization that was founded in 1910 to uplift and  
empower Americans confronting inequality and injustice in all forms. Today, NUL has 90  
affiliates serving 300 communities in 37 states and the District of Columbia, and has, within  
its mission, also sought to address the systemic injustices in our criminal justice system.

The United States Department of Justice is foundational to criminal justice in America and  
is led by the Attorney General. The mission of the Justice Department is to, among other  
things, uphold the rule of law, ensure public safety, and promote the fair and impartial  
administration of justice for all. This past summer, the outpouring of pain and grief over  
racial injustice, and the recent deadly riot in the U.S. Capitol, reveal how justice is not  
always fair and impartial in this country.

We are at a time of crisis in our nation. A time of reckoning over the racial inequality and  
injustice that has caused many Americans to lose faith in our institutions and in the rule of  
law. To address these pressing issues, it is imperative that the Justice Department be led  
by a person of the utmost integrity, a person who is clear-eyed about the injustice and  
inequality in our justice system, and someone who can provide confidence that the  
Justice Department will be led with independence and integrity.



The Honorable Charles E. Schumer  
The Honorable Mitch McConnell  
The Honorable Richard J. Durbin  
The Honorable Charles E. Grassley  
February 11, 2021  
Page 2 of 2

Judge Garland is that leader. He is held in high esteem by both his peers and observers. He led the investigation and prosecution of domestic terrorists Timothy McVeigh and Terry Nichols with clarity and fairness. He has served with distinction from the bench for over 20 years as someone who is independent and impartial. He has further expressed a deep commitment to not only uphold the rule of law, but also prioritizing issues that are exacerbating inequalities in America today -- such as the COVID-19 crisis in our prisons and implementation of fairer sentencing reforms. He has further reiterated that "equal justice under law is that all citizens are protected in the exercise of their civil rights."

I urge the Senate Judiciary Committee to quickly process Judge Garland's nomination, and for the Senate to confirm him so that he is confirmed without any unnecessary delay.

Thank you for your consideration.

Very truly yours,

Marc H. Morial  
President and CEO  
National Urban League



## NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES

*National President*  
LYNDA R. WILLIAMS  
Deputy Assistant Director (Retired), U.S. Secret Service;  
Professor Criminal Justice, Middle Tennessee State University

*National Vice President*  
FREDERICK THOMAS  
Captain Commander  
East Haven Police, York's Sheriff's Office

*National Second Vice President*  
BRENDA GOSI ANDREWS  
Deputy Chief of Police (Retired)  
Detroit Police Department

*Immediate Past President*  
CERLEYN A. DAVIS  
Chief of Police  
Duluth Police Department

*Treasurer*  
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Chief of Police  
Fayetteville City Police Department

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Assistant Chief of Police  
New York Police Department

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Public Safety Director  
Franklin Township New Jersey

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Mayor  
Broward County Sheriff's Office

*Parliamentarian*  
DR. ROSALYNNE M. FENNER  
Supervisory Special Agent (Retired)  
Drug Enforcement Administration

*Associate Members Representative*  
MICHELLE L. TEGE  
Detective  
New York Police Department

*Region One Vice President*  
GERALD NELSON  
Chief (Retired)  
New York Police Department

*Region Two Vice President*  
ESTELLA J. THOMAS  
Supervisor (Retired)  
Transportation Security Administration

*Region Three Vice President*  
ROBERT FORD  
Assistant Chief  
Lumpkin Police Department

*Region Four Vice President*  
TIFFANY TINS  
Chief of Police  
Hocking College Police Department

*Region Five Vice President*  
EDWIN DEBREW  
Assistant Special Agent in Charge  
U.S. Environmental Protection Agency

*Region Six Vice President*  
ANTHONY APRIL  
Captain  
Alaska State Troopers

*Federal Assistant to the National President*  
JEFFREY FORBIS  
Postal Inspector  
U.S. Postal Inspection Service

*Special Assistant to the National President*  
LARI E. IRVON  
Principle Assistant Inspector (Retired)  
U.S. Department of Transportation

*Special Assistant to the National President*  
JOHN L. PEARSON  
Director of Police Services  
Delaware County Police Department

*Special Assistant to the President for International Affairs*  
MELODY JACKSON  
Special Agent in Charge (Retired)  
Health and Human Services-Office of Inspector General

*National Chaplain*  
REVEREND DR. BARBARA WILLIAMS HARRIS  
Inspector Chaplain  
New York Police Department

February 16, 2021

DWAYNE CRAWFORD  
Executive Director

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Mitchell McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

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

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and Ranking Member Grassley:

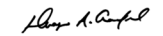
The National Organization of Black Law Enforcement Executives (NOBLE) formally acknowledges the work and commitment to service that has been exhibited by Judge Merrick Garland.

Judge Garland has displayed the qualities of leadership, empathy, excellence, and persistence in supporting and defending the U.S. Constitution while ensuring equal protection and justice for all Americans. This has been exhibited in roles such as United States Circuit Judge of the U.S. Court of Appeals and Principal Deputy Associate Attorney General of the U.S. Department of Justice.

It is NOBLE's belief that Judge Garland will help to ensure the delivery of its mission which is to ensure equity in the administration of justice in the provision of public service to all communities, and to serve as the conscience of law enforcement by being committed to Justice by Action.

In closing, this correspondence acts as a formal endorsement of Judge Merrick B. Garland as the next Attorney General of the U.S. Department of Justice.

Sincerely,

  
Dwayne A. Crawford  
Executive Director



## National Action Network

Rev. Al Sharpton, *President & Founder* | Rev. Dr. W. Franklyn Richardson, *Chairman*



February 12, 2021

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

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

Re: Letter in Support of U.S. Attorney General nominee the Honorable Merrick B. Garland

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin, and Ranking Member Grassley:

On behalf of the National Action Network (NAN) and the Rev. Al Sharpton, we fully support Honorable Merrick B. Garland, President Biden's nominee to become the United States Attorney General.

National Action Network is a civil rights organization with chapters throughout the United States, which works to advance a modern civil rights agenda to pursue a vision for America for one standard of justice, decency, and equal opportunity for all people. Issues under DOJ's purview are a top urgent priority for our community and organization. NAN has been at the forefront in the effort to reform our criminal justice system into one that is more just and equal and has called for protected voting rights, police reform, and impacted family assistance. Last August, we convened over 200,000 people on these issues for the Commitment March on Washington co-chaired by Rev. Al Sharpton, Martin Luther King, III and impacted families including George Floyd, Breonna Taylor, Eric Garner and more.

The United States Department of Justice, led by the Attorney General, is integral in promoting equal justice under the law in this country. The Justice Department not only enforces federal criminal and civil rights laws, but it also serves as legal authority for the entire executive branch. Including defending federal programs in Court, representing the executive branch in the Supreme Court, providing legal counsel to federal agencies, and providing justice-related assistance to states and local governments.

## National Action Network

Rev. Al Sharpton, *President & Founder* | Rev. Dr. W. Franklyn Richardson, *Chairman*



For the Justice Department to be effective in this country, not only must it promote the rule of law, but it must always act with integrity and independence, to promote fairness and justice in courts all over America. It must also squarely confront racial injustice and promote the civil rights of all Americans.

Judge Garland has pledged to prioritize civil rights and ensure racial equity in our justice system, keeping with a deep and abiding reverence for the rule of law to ensure that the law is applied fairly and equally. As a judge on the powerful D.C. Circuit Court of Appeals, his record speaks to his commitment to protect voting rights, the rights of the disabled, and those seeking discrimination claims based on their national origin. He has championed access to justice and was a proponent for developing pro bono work for federal government lawyers. He has been a consensus-builder throughout his esteemed career. Before he became a judge, he helped guide the country through one of the most horrific domestic terrorist attacks in our country's history in Oklahoma City. He is a leader who helped this nation heal. And he understands that this moment in our history similarly requires healing; and for the Justice Department to vigorously protect the civil rights of marginalized communities.

We urge the Senate Judiciary Committee to process Judge Garland's nomination quickly. I similarly urge the entire Senate to confirm him to become the 86th Attorney General of the United States.

Very Truly Yours,

Rev. Al Sharpton, Founder & President, National Action Network

Ebonie Riley, Washington, DC Bureau Chief, National Action Network

February 19, 2021

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

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

Re: Letter in Support of the Honorable Merrick Garland

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin and Ranking Member Grassley:

We write in strong support of the nomination of the Honorable Merrick Garland to serve as the 86th Attorney General of the United States Department of Justice.

We are former federal judges, appointed by both Republican and Democratic Presidents. Many of us have also served within the United States Department of Justice as trial attorneys and in supervisory roles. Like Judge Garland, we served as judicial officers with humility and independence. We all took the same oath to uphold the Constitution and the rule of law.

The Attorney General of the United States also swears to “support and defend” the Constitution. We believe, based upon Judge Garland’s character, his impeccable judicial service, and his distinguished service to the United States as a federal prosecutor and senior Justice Department official, that he will be an outstanding Attorney General.

Judge Garland clerked for two of President Eisenhower’s appointees: Judge Henry Friendly of the Second Circuit Court of Appeals, and Supreme Court Justice William Brennan. While serving in the Justice Department, Judge Garland oversaw some of the most significant and consequential prosecutions of our time, including the federal response to the Oklahoma City bombing. Judge Garland approaches the law with an unwavering commitment to fairness and justice. Those of us who have

worked directly with Judge Garland have seen firsthand his strong moral compass and abiding integrity.

These values were on display when he was introduced by then President-elect Biden on January 7, 2021, as his nominee for Attorney General. Judge Garland spoke movingly of his commitment to defend the norms and principles that have always guided the Justice Department's mission to conduct independent investigations without fear or favor. He pledged to lead the Department with independence and pursue equal justice for all. Moreover, these values, which are the mainstay of the Justice Department, are not mere platitudes; they are at the core of Judge Garland's life and character.

The rule of law serves as the bedrock of our democracy, and has long been the envy of countries all over the world. Our institutions, particularly the Judiciary and the United States Department of Justice, are foundational to upholding the rule of law. We believe that Judge Garland's leadership of the Department of Justice will ensure that the Department can and will effectively carry out its mission. We urge the Senate to confirm Judge Garland as swiftly as possible.

Yours truly,

**The Honorable Timothy K. Lewis (Ret.)**

U.S. Court of Appeals for the Third Circuit

1992-1999

U.S. District Court for the Western District of Pennsylvania

1991-1992

**The Honorable Paul G. Cassell (Reg.)**

U.S. District Court for the District of Utah

2002-2007

**The Honorable Shira A. Scheindlin (Ret.)**

U.S. District Court for the Southern District of New York

1994-2016

**The Honorable Jeremy D. Fogel (Ret.)**

U.S. District Court for the Northern District of California

1998-2018

**The Honorable Nancy Gertner (Ret.)**

U.S. District Court for the District of Massachusetts  
1994-2011

**The Honorable Michael Chertoff (Ret.)**

U.S. Court of Appeals for the Third Circuit  
2003-2005

**The Honorable John Gleeson (Ret.)**

U.S. District Court for the Eastern District of New York  
1994-2016

**The Honorable Faith S. Hochberg (Ret.)**

U.S. District Court for the District of New Jersey  
1999-2015

**The Honorable Ruben Castillo (Ret.)**

U.S. District Court for the Northern District of Illinois  
1994-2019

**The Honorable Mark W. Bennett (Ret.)**

U.S. District Court for the Northern District of Iowa  
1994-2019

**The Honorable Stephen G. Larson (Ret.)**

U.S. District Court for the Central District of California  
2006-2009

**The Honorable Christopher F. Droney (Ret.)**

U.S. Court of Appeals for the Second Circuit  
2011-2019  
U.S. District Court for the District of Connecticut  
1997-2011

**The Honorable John S. Martin Jr. (Ret.)**

U.S. District Court for the Southern District of New York  
1990-2003

**The Honorable Thomas Vanaskie (Ret.)**

U.S. Court of Appeals for the Third Circuit

2010-2018

U.S. District Court for the Middle District of Pennsylvania

1994-2010

**The Honorable Katherine B. Forrest (Fmr.)**

U.S. District Court for the Southern District of New York

2011-2018

**The Honorable Michael W. McConnell (Reg.)**

U.S. Court of Appeals for the Tenth Circuit

2002-2009

**The Honorable Robert J. Cindrich (Ret.)**

U.S. District Court for the Western District of Pennsylvania

1994-2004

**The Honorable John D. Tinder (Ret.)**

U.S. Court of Appeals for the Seventh Circuit

2007-2015

U.S. District Court for the Southern District of Indiana

1987-2007

**The Honorable Stephen M. Orlofsky (Ret.)**

U.S. District Court for the District of New Jersey

1996-2003

**The Honorable Layn R. Phillips (Fmr.)**

U.S. District Court for the Western District of Oklahoma

1987-1991

**The Honorable F. A. Little, Jr. (Ret.)**

U.S. District Court for the Western District of Louisiana

1984-2006

**The Honorable Stephen C. Robinson (Ret.)**

U.S. District Court for the Southern District of New York

2003-2010

**The Honorable Deanell R. Tacha (Ret.)**

U.S. Court of Appeals for the Tenth Circuit  
1986-2011

**The Honorable Thelton Henderson (Ret.)**

U.S. District Court for the Northern District of California  
1980-2017

**The Honorable James Holderman (Ret.)**

U.S. District Court for the Northern District of Illinois  
1985-2015

**The Honorable Wayne Andersen (Ret.)**

U.S. District Court for the Northern District of Illinois  
1991-2010

**The Honorable D. Lowell Jensen (Ret.)**

U.S. District Court for the Northern District of California  
1986-2014

**The Honorable Barbara S. Jones (Ret.)**

U.S. District Court for the Southern District of New York  
1995-2013

**The Honorable Ann Claire Williams (Ret.)**

U.S. Court of Appeals for the Seventh Circuit  
1999-2017  
U.S. District Court for the Northern District of Illinois  
1985-1999

**The Honorable A. Howard Matz (Ret.)**

U.S. District Court for the Central District of California  
1998-2013

**The Honorable Henry H. Kennedy, Jr. (Ret.)**

U.S. District Court for the District of Columbia  
1997-2011

**The Honorable David Folsom (Ret.)**

U.S. District Court for the Eastern District of Texas  
1995-2012

**The Honorable Stanwood R. Duval Jr. (Ret.)**

U.S. District Court for the Eastern District of Louisiana  
1994-2017

**The Honorable Bruce D. Black (Ret.)**

U.S. District Court for the District of New Mexico  
1995-2017

**The Honorable T. John Ward (Ret.)**

U.S. District Court for the Eastern District of Texas  
1999-2011

**The Honorable Robert H. Henry (Ret.)**

U.S. Court of Appeals for the Tenth Circuit  
1994-2010

**The Honorable Royal Furgeson (Ret.)**

U.S. District Court for the Western District of Texas  
1994-2013

**The Honorable Vaughn R. Walker (Ret.)**

U.S. District Court for the Northern District of California  
1989-2011

**The Honorable Robert O'Connor, Jr. (Fmr.)**

U.S. District Court for the Southern District of Texas  
1975-1985

**The Honorable Robert C. Bonner (Fmr.)**

U.S. District Court for the Central District of California  
1989-1990



**The Honorable H. Lee Sarokin (Ret.)**

U.S. Court of Appeals for the Third Circuit

1994-1996

United States District Court for the District of New Jersey

1979-1994

**The Honorable Marilyn Hall Patel (Ret.)**

United States District Court for the Northern District of California

1980-2012

**The Honorable David H. Coar (Ret.)**

U.S. District Court for the Northern District of Illinois

1994-2010

**The Honorable Gary A. Feess (Ret.)**

U.S. District Court for the Central District of California

1999-2014

**The Honorable Abraham D. Sofaer (Reg.)**

U.S. District Court for the Southern District of New York

1979-1985

**The Honorable Andre M. Davis (Ret.)**

U.S. Court of Appeals for the Fourth Circuit

2009-2017

U.S. District Court for the District of Maryland

1995-2009

**The Honorable Joel A. Pisano (Ret.)**

U.S. District Court for the District of New Jersey

2000-2015

**The Honorable Alexander Williams, Jr. (Ret.)**

U.S. District Court for the District of Maryland

1994-2014

**The Honorable Ralph G. Thompson (Ret.)**

U.S. District Court for the Western District of Oklahoma

1975-2007

**The Honorable William G. Bassler (Ret.)**

U.S. District Court for the District of New Jersey  
1991-2006

**The Honorable David F. Levi (Reg.)**

U.S. District Court for the Eastern District of California  
1990-2007

**The Honorable Dennis M. Cavanaugh (Ret.)**

U.S. District Court for the District of New Jersey  
2000-2014

**The Honorable Héctor M. Laffittee (Ret.)**

U.S. District Court for the District of Puerto Rico  
1983-2005

**The Honorable William Webster (Reg.)**

U.S. Court of Appeals for the Eighth Circuit  
1973-1978

U.S. District Court for the Eastern District of Missouri  
1970-1973

Director of the Federal Bureau of Investigation  
1978-1987

Director of the Central Intelligence Agency  
1987-1991

**The Honorable Margaret M. Morrow (Ret.)**

U.S. District Court for the Central District of California  
1998-2006

**The Honorable Arthur J. Gajarsa (Ret.)**

U.S. Court of Appeals for the Federal Circuit  
1997-2012

**The Honorable Lawrence F. Stengel (Ret.)**

U.S. District Court for the Eastern District of Pennsylvania  
2004-2018

**The Honorable William W. Wilkins (Ret.)**

U.S. Court of Appeals for the Fourth Circuit

1986-2007

U.S. District Court for the District of South Carolina

1981-1986

**The Honorable Richard J. Holwell (Reg.)**

U.S. District Court for the Southern District of New York

2003-2012

**The Honorable Kenneth W. Starr (Ret.)**

U.S. Court of Appeals for the D.C. Circuit

1983-1989

U.S. Solicitor General

1989-1993

**The Honorable Thomas B. Griffith (Ret.)**

U. S. Court of Appeals for the D. C. Circuit

2005 - 2020



**National District Attorneys Association**  
 Staff Contact: Nelson Bunn  
 703-519-1666 or [nbunn@ndaajustice.org](mailto:nbunn@ndaajustice.org)  
[www.ndaa.org](http://www.ndaa.org)

January 8, 2021

The Honorable Dick Durbin  
 Chairman, Committee on the Judiciary  
 United States Senate  
 Washington, D.C. 20510

The Honorable Chuck Grassley  
 Ranking Member, Committee on the Judiciary  
 United States Senate  
 Washington, D.C. 20510

Dear Chairman Durbin & Ranking Member Grassley,

On behalf of the National District Attorneys Association (NDA), the oldest and largest national, non-partisan organization representing state and local prosecutors in the country with more than 5,000 members nationwide, I write to express support for Judge Merrick B. Garland to be the next Attorney General of the United States of America. President-Elect Joseph R. Biden's nominee is eminently qualified to serve as the Nation's chief law enforcement officer.

Judge Garland's distinguished past service to the Department of Justice (DOJ), serving multiple roles including as a Federal prosecutor, bolsters his credentials as an ideal candidate to be confirmed as the Attorney General of the United States. First joining the Department as a Special Assistant to the Attorney General of the United States during President Jimmy Carter's administration, Judge Garland returned from private practice to serve as both an Assistant United States Attorney and a Deputy Assistant Attorney General during both President George H.W. Bush and President Bill Clinton's administrations. This extensive, bipartisan experience makes Judge Garland uniquely suited to lead our Nation's Justice Department during this fractured time in our history.

Through overseeing complex prosecutions, such as the Oklahoma City Bombing, Judge Garland has proven himself capable of protecting American citizens and ensuring justice is served in accordance with the rule of law. After President-Elect Biden announced his nomination, Judge Garland stated, "the essence of the rule of law is that like cases are treated alike: That there not be one rule for Democrats and another for Republicans, one rule for friends, another for foes, one rule for the powerful, and another for the powerless." These comments echo the sentiment of prosecutors throughout the country and confirm Judge Garland's commitment to equality under the law. Further, his past service has earned him a reputation as an effective, consensus-building leader through service as a Principal Associate Deputy Attorney General at DOJ, a United States Circuit Judge and then as the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit.

Based on these qualifications, NDA encourages the United States Senate to swiftly confirm Judge Merrick B. Garland as the next Attorney General of the United States. Judge Garland's track record of upholding the rule of law and building a more equitable justice system encourages us that he will continue the Department's effort to maintain open lines of communication with state and local prosecutors in the field. Further, we look forward to the opportunity to discuss new ways in which DOJ can partner with state and local prosecutors and law enforcement to better protect the communities they serve.

We are confident that Judge Merrick B. Garland will affirm the Department of Justice's commitment to providing justice to the American people and assist in supporting state and local law enforcement in our shared mission.

Sincerely,

A handwritten signature in blue ink that reads "Nancy G. Parr". The signature is written in a cursive, flowing style.

Nancy G. Parr  
NDAA President

**Crime Victim/Survivor Assistance Professionals' Support for  
Judge Merrick Garland's Appointment to Serve as U.S. Attorney General**

January 28, 2021

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

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

Dear Senators Schumer, Durbin, McConnell and Grassley:

We, the undersigned, are all individuals who have had 25 or more years' experience, both personally and professionally, as advocates for victims and survivors of crime. We have worked at the national, state, Tribal and local levels for system- and community-based victim service agencies and organizations, and as volunteers dedicated to helping victims and survivors recover from their traumatic experiences.

We are writing to express our strong, bipartisan support for the appointment of Judge Merrick Garland as Attorney General of the United States.

Judge Garland's previous roles at the Department of Justice, including as a Federal prosecutor, a Special Assistant to the Attorney General, an Assistant U.S. Attorney, a Principal Associate Deputy Attorney General, and as the Deputy Attorney General, make him uniquely qualified to rebuild the Department and the American public's confidence in it. He has served Attorneys General under Administrations of both political parties, demonstrating his unswerving dedication to ideals of justice. He is eminently qualified to restore independent leadership to this critical agency.

On a more personal level, many of the undersigned worked directly with Judge Garland when he led the investigation and prosecution of the Oklahoma City bombing case. On April 19, 1995, while first responders were still searching for the injured and the dead in the ruins of the Alfred J. Murrah Federal Building, Judge Garland decided that he would not simply oversee the investigation from his Washington office. Instead, he said goodbye to his own family and flew to the largest and most complex crime scene anyone in American law enforcement had ever encountered at that time. Throughout the case, Judge Garland maintained close contact with those of us working with victims and survivors and surviving family members, as well as with law enforcement. With his towering intellect, exceptionally sound judgment, and extraordinary decency and compassion, he provided the leadership and wise counsel that helped us face both novel legal issues in the courtroom and unprecedented challenges in supporting a community of victims that numbered in the thousands. Judge Garland's support was critical, not just as a supervisor, but as a mentor, a counselor, and a protector of victims' rights.

**Judge Merrick Garland Support Letter**  
**January 28, 2021**  
**Page 2**

As Attorney General, Judge Garland will carry forth his commitment to equal justice for all. As crime victim/survivor advocates, we are confident that he will lead the Department as it fulfills its mission to, among other things, provide justice and assistance to victims and survivors of crime, and uphold the tenets of crime victims' statutes. Certainly, for us, among the most pressing issues is the protection of the rights of crime victims to be treated with fairness, dignity and respect. We know that, as Attorney General, Judge Garland will ensure complete and meaningful compliance with the Federal Crime Victims' Rights Act.

Equally important are those programs administered by the Department to provide resources for programs that directly serve and assist crime victims and survivors. Foremost are the Violence Against Women Act (VAWA) and the Victims of Crime Act (VOCA). These programs, along with USDOJ efforts to respond to mass violence (including environmental justice crimes) and terrorism, such as the International Terrorism Victim Expense Reimbursement Program (ITVERP) and other mass violence/terrorism programs that arose out of the Pan Am 103 bombing, the Oklahoma City bombing, and the 9/11 attacks, are financially dependent upon deposits into the Crime Victims Fund, which is now in serious jeopardy. We know, from past experience, that Judge Garland understands the importance of these programs, and we are confident that he will lead the Department in a manner that will help secure these programs in the future.

It is with great pride that we, individually and collectively, offer our support for the nomination of Judge Merrick Garland to serve as our Attorney General. We appreciate your consideration of our recommendation, and look forward to continue to work closely with the U.S. Department of Justice on all issues related to comprehensive, quality victim/survivor assistance.

Sincerely,

Aileen Adams, Esq.  
Los Angeles, CA

Marti Anderson  
Des Moines, IA

Jennie Barr, Ph.D., LMFT  
Austin, TX

Suzanne Beaudoin, MSW  
Madison, WI

David Beatty, J.D.  
Naples, FL

Aurelia Sands Belle, M. ED  
Charleston, SC

Connie Best, Ph.D.  
Charleston, SC

Irene Blatnick  
Denver, CO

**Judge Merrick Garland Support Letter**  
**January 28, 2021**  
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Robin Brassie  
Albuquerque, NM

Jeralita Costa  
Marysville, WA

Pamela Ferguson-Brey  
Honolulu, HI

Russell P. Butler, Esq.  
Dunkirk, MD

Jackie McCann Cleland, Psy.D  
Leesburg, VA

Connie Clery  
Newtown Square, PA

Steve Derene  
Madison, WI

Michael Dougherty  
Boulder, CO

Dan Eddy  
Alexandria, VA

Norm Early, J.D.  
Atlanta, GA

Sharon English  
San Clemente, CA

Nancy Feldman, MPA  
Littleton, CO

Robin Finegan  
Denver, CO

Krista Flannigan  
Tallahassee, FL

Mario Gaboury, J.D., Ph.D.  
Old Saybrook, CT

Meg Garvin, J.D., MST  
Portland, OR

Trudy Gregorie  
Naples, FL

Sue Hardgrove  
Broomfield, CO

Jay Howell, Esq.  
Jacksonville, FL

Susan Smith Howley, J.D.  
Beltsville, MD

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Austin, TX

William Kellibrew  
Washington, DC

Dean Kilpatrick, Ph.D.  
Sullivan's Island, SC

Kelly Kissell  
Castlerock, CO

Jo Kolanda  
Mequon, WI

Dan Levey, M.Ed.  
Scottsdale, AZ

Nancy Lewis  
Broomfield, CO

Janice Harris Lord, LCSW ACSW/LPC  
Arlington, VA



**Judge Merrick Garland Support Letter**  
**January 28, 2021**  
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Sandra Matheson  
Bluffton, SC

Angie McCown  
Austin, TX

Mary McGhee  
Denver, CO

Karen McLaughlin  
Marblehead, MA

Herman Millholland  
Los Angeles, CA

Gillian Nevers  
Madison, WI

Greg Novak  
Venice, FL

Kevin O'Brien, M.A., Ed. D.  
Washington, DC

Cecelia O'Farrell  
Longmont, CO

David Osborne  
Fairfax, VA

Sandra Pavelka, Ph.D.  
Fort Myers, FL

William Petty  
Houston, TX

Stan Pryor  
Reedville, VA

Donna Purdy  
Denver, CO

Jocelyn Rhymer  
Parker, CO

Roberta Roper  
Upper Marlboro, MD

Benjamin E. Saunders, Ph.D.  
Mt. Pleasant, SC

Anne Seymour  
Washington, DC

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Denver, CO

Pat Smallwood, MS, LMFT LSW  
Fort Wayne, IN

John Stein, J.D.  
Newburg, OR

Larry Tackman  
Albuquerque, NM

Kathryn Turman  
Franklin, TN

Steve Twist  
Scottsdale, AZ

Debbie Vigue  
Lamar, CO

Marsha Willis  
Denver, CO

Marlene Young, J.D.  
Newburg, OR

Kathy Zupan  
Fitchburg, WI



**FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION**  
 1100 Connecticut Ave NW • Suite 900 • Washington D.C., 2006  
 Phone: 202-293-1550 • [www.fleoa.org](http://www.fleoa.org)

Representing Members From:

AGRICULTURE  
 OIG  
 Forest Service  
 CENTRAL INTELLIGENCE AGENCY  
 COMMERCE  
 Export Enforcement  
 OIG  
 NOAA Fisheries Law Enforcement  
 DEFENSE  
 Air Force - OIG  
 Army - CID  
 Defense Criminal Investigative Service  
 Naval Criminal Investigative Service  
 OIG  
 Police  
 EDUCATION - OIG  
 ENERGY  
 National Nuclear Security Administration  
 ENVIRONMENTAL PROTECTION AGENCY  
 CID  
 FEDERAL DEPOSIT INSURANCE CORPORATION  
 OIG  
 FEDERAL HOUSING FINANCE AGENCY - OIG  
 FEDERAL RESERVE SYSTEM  
 Federal Reserve Board  
 FEDERAL RESERVE POLICE  
 FEDERAL LAW ENFORCEMENT TRAINING CENTER  
 GENERAL SERVICES ADMINISTRATION - OIG  
 HEALTH & HUMAN SERVICES  
 Food & Drug Administration  
 OIG  
 HOMELAND SECURITY  
 Border Patrol  
 Coast Guard Investigative Service  
 Immigration & Customs Enforcement  
 Customs & Border Protection  
 Federal Air Marshal Service  
 Federal Protective Service  
 U.S. Secret Service  
 Transportation Security Administration  
 OIG  
 HOUSING & URBAN DEVELOPMENT - OIG  
 INTERIOR  
 Bureau of Indian Affairs  
 Bureau of Land Management  
 Fish & Wildlife Service  
 National Park Service  
 OIG  
 U.S. Park Police  
 JUSTICE  
 Alcohol, Tobacco, Firearms & Explosives  
 Bureau of Prisons  
 Drug Enforcement Administration  
 Federal Bureau of Investigation  
 U.S. Marshals Service  
 OIG  
 U.S. Attorney's Office-CI  
 LABOR - OIG  
 NATIONAL AERONAUTICS AND SPACE  
 ADMINISTRATION - OIG  
 NUCLEAR REGULATORY COMMISSION - OIG  
 NATIONAL SECURITY AGENCY - Police  
 OFFICE OF PERSONNEL MANAGEMENT - OIG  
 PERIODIC FORCE PROTECTION AGENCY  
 POSTAL SERVICE  
 Postal Inspection  
 Postal OIG  
 Postal Police  
 RAILROAD RETIREMENT BOARD  
 SOCIAL SECURITY ADMINISTRATION - OIG  
 SMALL BUSINESS ADMINISTRATION - OIG  
 SMITHSONIAN INSTITUTION - OIG  
 STATE DEPARTMENT  
 Bureau of Diplomatic Security  
 OIG  
 TRANSPORTATION - OIG  
 TREASURY  
 FINCEN & OIG  
 Internal Revenue Service - CI  
 Mint  
 TIGTA  
 U.S. CAPITOL POLICE  
 U.S. PROBATION & PRETRIAL SERVICES  
 U.S. SUPREME COURT POLICE  
 VETERANS AFFAIRS  
 Office of Inspector General  
 VA Police  
 RETIREES  
 National President  
 LAZARO "LARRY" COSME  
 National Executive Vice President  
 MATTHEW SILVERMAN  
 Vice President - Operations  
 ERIC FERBS  
 Vice President - Agency Affairs  
 BRUCE BUTLER  
 Vice President - Membership Benefits  
 WILLIAM HAMPTSTEAD  
 National Secretary  
 JAMES J. SANTOS  
 National Treasurer  
 MADELINE GORRA  
 Vice President - Legislative Affairs  
 DOMINICK STORES  
 Immediate Past President  
 NATHAN LATINA  
 Executive Director  
 DONALD MINALEX  
 National Chapters Director  
 MARK HERBACH  
 National Awards Director

February 17, 2021

The Honorable Richard Durbin  
 Chairman,  
 Committee on the Judiciary  
 United States Senate  
 Washington, DC 20510

The Honorable Charles Grassley  
 Ranking Member,  
 Committee on the Judiciary  
 United States Senate  
 Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

We write to you today to express our support for the nomination of Judge Merrick Garland as the next Attorney General of the United States. The Federal Law Enforcement Officers Association (FLEOA) is the largest nonpartisan, nonprofit professional organization, representing federal law enforcement officers. FLEOA represents more than 30,000 federal law enforcement officers from 65 different agencies. As Attorney General, Judge Garland will lead the Department of Justice and bear the enormous responsibility and, as our nation's top law enforcement officer, be tasked with ensuring that our Constitution, democracy, and the rule of law are protected and preserved throughout the nation.

In an effort to best serve our members, FLEOA conducts careful analysis of candidates set to fill critical roles that affect the wellbeing of our constituents. Accordingly, this support is always given to the best candidate – regardless of any political affiliation. Judge Garland will bring a wealth of knowledge and experience in his role as Attorney General. He is a graduate of Harvard University, served as an attorney for a major law firm and as a federal prosecutor for the Department of Justice playing a leading role in the investigation and prosecution of the Oklahoma City bombers. Judge Garland has served as a United States Circuit Judge in Washington DC since 1997 and has a reputation for working with both sides of the aisle.

Within the Department of Justice, federal law enforcement officers of the Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, U.S. Marshals Service, and Drug Enforcement Administration work diligently to ensure our nation and its residents are kept safe from a myriad of crimes and violations of federal law. Their successes are tied directly to the support and funding received from the Department of Justice and the leadership of the Attorney General. In our view, as someone who has worked both within the Department and served on the federal courts, Judge Garland has the background and pragmatic experience necessary to ensure that both DOJ and its law enforcement components will continue to be equipped and ready to carry out their important missions.

FLEOA looks forward to working with Judge Garland as the Attorney General so that together we can continue to keep our nation safe, ensure the rule of law is adhered to, and reinforce the support for the important work federal law enforcement officers perform every day.

If we can be of any additional assistance, feel free to contact us at [fleoa@fleoa.org](mailto:fleoa@fleoa.org).

Sincerely,  
*Larry Cosme*  
 National President  
 Federal Law Enforcement Officers Association

CC: Members, Senate Committee on the Judiciary



National Council of Negro Women, Inc. • ncnw.org • ncnwhq@ncnw.org  
633 Pennsylvania Avenue, NW Washington, DC 20004 • 202-737-0120

February 11, 2021

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

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

Re: Letter in Support of the Honorable Merrick B. Garland, nominee to  
become the United States Attorney General

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin and  
Ranking Member Grassley:

In my role as president and chair of the Board of the National Council of Negro  
Women (NCNW) I am writing on behalf of the NCNW, to strongly support the  
Honorable Merrick B. Garland to serve as Attorney General of the United States.

NCNW, an organization of organizations spread across the country connected  
through more than 2,000,000 women and men, with a mission to lead and empower  
women of African descent, their families, and their communities. It was founded in  
1935 by Dr. Mary McLeod Bethune, a civil rights activist who served this country  
with distinction and vision.

Part of Dr. Bethune's vision nearly a century ago was, through the NCNW, "make a  
lasting contribution to all that is finest and best in America, to cherish and enrich  
her heritage of freedom and progress by working for the integration of all her people  
regardless of race, creed, or national origin, into her spiritual, social, cultural, civic,

Founder: Dr. Mary McLeod Bethune  
President & Chair Emerita: Dr. Dorothy Irene Height (1957-2010)  
Chair of the Board and 7th President: Dr. Johnnetta Betsch Cole  
Executive Director: Janice L. Mathis, Esq. Chief Administrative Officer: Krystal Ramseur, MPA



National Council of Negro Women, Inc. • [ncnw.org](http://ncnw.org) • [ncnwhq@ncnw.org](mailto:ncnwhq@ncnw.org)  
633 Pennsylvania Avenue, NW Washington, DC 20004 • 202-737-0120

and economic life, and thus aid her to achieve the glorious destiny of a true and unfettered democracy.”

Integral to achieving such a beautiful vision of America is a fidelity to the rule of law and equal justice under the law. For far too long the law has not been applied equally, and America’s promise of equality has been eroded by hate, violence, discrimination, and racial inequality. Even today, we see the ugly seeds of racism and hate manifest themselves, in acts of violence that even find themselves in the hallowed halls of the U.S. Capitol.

This is why it is of vital importance that the very institution to enforce the law -- the United States Department of Justice -- be led with integrity, humility, and a deep understanding of history and the fight for equal justice under the law. We were heartened when Judge Garland laid out his vision for the Justice Department by recounting the fight for equality following the Civil War, when the Justice Department deployed considerable resources to ensure civil rights for vulnerable populations while those rights were under assault by militants. Judge Garland recounted that the promise of equal justice under law is at the core of the Justice Department’s principles, and the mission of ensuring racial equity in our justice system and combating violent extremism is foundational to upholding the rule of law in this country.

We fully agree with this assessment. And we fully support Judge Garland’s vision to pursue racial equity in our justice system. We believe he is the right person to carry out this vision at this time, along with the leadership team of Justice Department veterans who were nominated alongside him: Lisa Monaco, Vanita Gupta, and Kristen Clarke.

We urge the Senate Judiciary Committee to quickly process Judge Garland’s nomination, and for the Senate to swiftly confirm him.

Most Sincerely,

Johnnetta Cole

Founder: Dr. Mary McLeod Bethune  
President & Chair Emerita: Dr. Dorothy Irene Height (1957-2010)  
Chair of the Board and 7th President: Dr. Johnnetta Betsch Cole  
Executive Director: Janice L. Mathis, Esq. Chief Administrative Officer: Krystal Ramseur, MPA



## NATIONAL SHERIFFS' ASSOCIATION

February 19, 2021

President Joseph R. Biden  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

On behalf of the nation's 3,080 sheriffs, the National Sheriffs' Association (NSA) supports the appointment of Merrick Garland as Attorney General of the United States.

Judge Garland's experience as chief judge of the United States Court of Appeals in D.C ensures demonstrate that Judge Garland's takes a balanced approach to the issues important to law enforcement, the victims of crime, and those accused of crimes. Further, his writings show a commitment to enforcing the rule of law and protecting our nation. It is clear he can put aside philosophy and apply the law fairly and with perspective.

While his role as a sitting judge precluded a conversation with him, we feel after careful review of his rulings and public statements that his judgement and experience makes him highly qualified to be the United States Attorney General.

We call upon the Senate to swiftly confirm Judge Garland. Should we be able to assist in the process, please don't hesitate to reach out.

Sincerely,

Sheriff David Mahoney, Dane County, WI  
President, National Sheriffs' Association

Sheriff Vernon Stanforth, Fayette County, OH  
Chairman of Government Affairs Committee,  
National Sheriffs' Association

cc: Jonathan Thompson  
Executive Director and CEO  
National Sheriffs' Association

The Leadership Conference  
on Civil and Human Rights

1620 L Street, NW  
Suite 1100  
Washington, DC  
20036  
202.466.3311 voice  
202.466.3435 fax  
www.civilrights.org



February 19, 2021

**SUPPORT THE CONFIRMATION OF MERRICK GARLAND  
TO BE ATTORNEY GENERAL OF THE UNITED STATES**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights – a coalition of more than 220 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States – and the 91 undersigned organizations, we write to express our support for the confirmation of Merrick Garland to serve as Attorney General of the United States.

The Attorneys General who served under President Trump deeply tarnished the reputation of the Department of Justice (DOJ), which has been aptly called the “crown jewel” of the federal government because of its historic commitment to integrity, independence, and civil rights enforcement. From their unconscionable attempts to validate President Trump’s subversion of voting rights and our democracy, to their inhumane separation of immigrant families at the border, to their abuses of our criminal justice system, Attorneys General Barr and Sessions often served as Trump loyalists rather than independent law enforcement officials.

Nowhere is this damage more apparent than in the Trump Justice Department’s efforts to undermine civil and human rights in America. The number of its harmful, anti-civil rights actions are far too numerous to list, but some of the most egregious examples include:<sup>1</sup>

- Defending the spread of misinformation about the safety of mail-in voting and the use of discriminatory absentee ballot witness requirements in the middle of a global pandemic.
- Supporting discriminatory photo ID laws, voter purges, and other right-wing efforts to restrict the fundamental right to vote.
- Defending the discriminatory efforts to add a citizenship question to the 2020 Census and to rush the count in order to subvert the rights and power of immigrants.
- Working to undermine the rights of LGBTQ employees, customers, students, athletes, and soldiers, among others, by repeatedly advancing anti-equality policies and litigation positions.
- Investigating and suing universities to try and prevent them from using race-conscious equal opportunity admissions policies.
- Implementing a “zero tolerance” program at the border, which resulted in the inhumane separation of thousands of immigrant children from their families.

**Officers**  
**Chair**  
Judith L. Lichtman  
National Partnership for  
Women & Families  
**Vice Chairs**  
Derrick Johnson  
NAACP  
Farhana Khora  
Muslim Advocates  
Thomas A. Saenz  
Mexican American Legal  
Defense and Educational Fund  
**Secretary**  
Fatima Goss Graves  
National Women's Law Center  
**Treasurer**  
Lee A. Saunders  
American Federation of State,  
County & Municipal Employees  
**Board of Directors**  
Kimberly Churches  
AAUW  
Alphonse D. David  
Human Rights Campaign  
Rory Gamble  
International Union, UAW  
Jonathan Greenblatt  
Anti-Defamation League  
Mary Kay Henry  
Service Employees International Union  
Damon Hewitt  
Lawyers' Committee for  
Civil Rights Under Law  
Sherrilyn Ifill  
NAACP Legal Defense and  
Educational Fund, Inc.  
David H. Irupe  
Japanese American Citizens League  
Benjamin Jealous  
People for the American Way  
Derrick Johnson  
NAACP  
Virginia Kase  
League of Women Voters of the  
United States  
Samir E. Khalaf  
American-Arab  
Anti-Discrimination Committee  
Marc Morial  
National Urban League  
Janet Murgula  
UnidosUS  
Debra L. Neus  
National Partnership for  
Women & Families  
Christian F. Nunez  
National Organization for Women  
Rabbi Jonah Pesner  
Religious Action Center  
Of Reform Judaism  
Rebecca Pringle  
National Education Association  
Lisa Rice  
National Fair Housing Alliance  
Anthony Romero  
American Civil Liberties Union  
Fawn Sharp  
National Congress of American Indians  
Maria Town  
American Association of  
People with Disabilities  
Richard L. Trumka  
AFL-CIO  
Randi Weingarten  
American Federation of Teachers  
John C. Yang  
Asian Americans Advancing Justice |  
AAJC  
**Interim President & CEO**  
Wade Henderson



- Defending the president's discriminatory anti-Muslim travel ban.
- Defending the rescission of the Deferred Action for Childhood Arrivals (DACA) program, which had provided a safe haven for 800,000 immigrants brought to the United States as children.
- Arguing in federal courts that the Affordable Care Act and its protections for more than 100 million people with pre-existing conditions are unconstitutional.
- Urging the U.S. Supreme Court to allow a restrictive Louisiana abortion law to go into effect – part of an ongoing, coordinated effort across the country to eliminate access to abortion, particularly for those living on low incomes, people of color, and those in rural communities.
- Suspending all diversity and inclusion training for DOJ employees and managers.

The Trump Justice Department also turned back the clock in the critical areas of criminal justice and police reform. During the past four years, for example, the Trump DOJ:<sup>2</sup>

- Failed to enforce the law and refused to engage in any systemic efforts to hold police departments accountable, rejected the use of consent decrees, and sabotaged previous DOJ efforts to reform police departments in Baltimore, Chicago, and other cities with discriminatory police practices. This failure of leadership coincided with a national reckoning with racial injustice in the wake of the most shocking instances of police brutality this nation has seen in decades.
- Abandoned the Obama administration's Smart on Crime initiative that had sought to ensure fair punishments for low-level, nonviolent offenders.
- Reversed the nearly two-decade moratorium on the federal death penalty.
- Rescinded policies that reduced the inhumane use of private prisons.
- Ended the Community Oriented Policing Services' Collaborative Reform Initiative, a program aimed to help build trust between police officers and communities.
- Closed its Office for Access to Justice, an office designed to improve civil and criminal justice in America by, for example, eliminating excessive court fees and fines.
- Sought draconian prison sentences for criminal offenders, except those who were friends and cronies of President Trump.

America is in dire need of a course correction at the Justice Department. The nation needs an Attorney General with a demonstrated commitment to integrity, independence, and the aggressive enforcement of our civil rights laws. The Justice Department must embrace our nation's tremendous diversity while protecting the rights of individuals and communities that have borne the burdens of systemic discrimination and inequity.

Judge Garland, who is widely regarded as one of the top legal minds and most influential jurists of his generation, embodies these principles and values. As a judge on the U.S. Court of Appeals for the D.C. Circuit since 1997, Judge Garland has consistently written and joined opinions that uphold civil and human rights. When Judge Garland was nominated by President Obama to the Supreme Court in 2016, the Lawyers' Committee for Civil Rights Under Law examined Judge Garland's record on the bench and concluded: "While Judge Garland does not have an extensive body of opinions in civil rights cases, his

February 19<sup>th</sup>, 2021  
Page 3 of 5



decisions have been consistent with core civil rights principles.<sup>33</sup> The Alliance for Justice also conducted an analysis of Judge Garland's judicial record and reached a similar conclusion.<sup>4</sup> Judge Garland's jurisprudence demonstrates a commitment to equality, fairness, and access to justice.<sup>5</sup>

Judge Garland understands the vital need for robust civil rights enforcement. As he stated in his remarks at the January 7, 2021 event in which President Biden announced his DOJ leadership team: "[E]nsuring the rule of law and making the promise of equal justice under law real are the great principles upon which the Department of Justice was founded and for which it must always stand. They echo today in the priorities that lie before us. From ensuring racial equity in our justice system to meeting the evolving threat of violent extremism. If confirmed, those are the principles to which I will be devoted as Attorney General."<sup>6</sup>

While Judge Garland embodies many of the qualities our coalition seeks in an Attorney General, we believe Judge Garland should be asked questions during the Senate confirmation process about his views on a full array of civil rights and criminal justice policy matters. As the president and director-counsel of the NAACP Legal Defense and Educational Fund, Inc. (LDF), Sherrilyn Ifill, has observed: "Judge Garland...will need to quickly master the most pressing civil rights issues facing this country, including voter suppression, the eradication of white supremacy from law enforcement, and the urgent need for criminal justice reform."<sup>7</sup>

The need for robust federal civil rights enforcement has never been more important for this country. A well-functioning Justice Department can transform America and improve the lives of our communities. This nation needs a Justice Department that will do everything in its power to fight for voting rights, police reform, criminal justice, LGBTQ equality, disability rights, environmental justice, and other pressing civil and human rights issues. We need an Attorney General who knows the Justice Department well and can pick up from where the Obama-Biden administration left off and go bolder. We need an Attorney General who will reinstate the Justice Department's historic commitment to integrity, independence, and vigorous civil rights enforcement. Judge Garland would be such an Attorney General and is a fitting choice to lead the Justice Department at this moment. We urge the Senate to confirm him as soon as possible. Thank you for your consideration.

Sincerely,

The Leadership Conference on Civil and Human Rights  
A. Philip Randolph Institute  
AFL-CIO  
Alliance for Justice  
American Association of People with Disabilities  
American Federation of Teachers  
American-Arab Anti-Discrimination Committee (ADC)  
Americans United for Separation of Church & State  
Arab American Institute





Asian American Legal Defense and Education Fund (AALDEF)  
 Asian Americans Advancing Justice – AAJC  
 Asian and Pacific Islander American Vote  
 Augustus F. Hawkins Foundation  
 Autistic Self Advocacy Network  
 Bazelon Center for Mental Health Law  
 Brady  
 Center for American Progress  
 Center for Law and Social Policy (CLASP)  
 Center for Responsible Lending  
 Center for the Study of Hate & Extremism, California State University, San Bernardino  
 Clearinghouse On Women's Issues  
 Coalition on Human Needs  
 Constitutional Accountability Center  
 Council on American-Islamic Relations (CAIR)  
 Demos  
 Earthjustice  
 End Citizens United//Let America Vote Action Fund  
 Equal Justice Society  
 Equality California  
 Fair Elections Center  
 Family Equality  
 Feminist Majority Foundation  
 Freedom From Religion Foundation  
 Futures Without Violence  
 Generation Progress  
 Girls for Gender Equity  
 Hispanic Federation  
 Human Rights Campaign  
 Indivisible  
 Japanese American Citizens League  
 Joint Center for Political and Economic Studies  
 Labor Council for Latin American Advancement  
 Lambda Legal  
 LatinoJustice PRLDEF  
 Lawyers' Committee for Civil Rights Under Law  
 League of Conservation Voters  
 League of United Latin American Citizens (LULAC)  
 March For Our Lives  
 Matthew Shepard Foundation  
 Muslim Advocates  
 Muslim Public Affairs Council



NAACP  
 NAACP Legal Defense and Educational Fund, Inc. (LDF)  
 NARAL Pro-Choice America  
 National Action Network  
 National Alliance for Partnerships in Equity (NAPE)  
 National Association of Social Workers  
 National Black Justice Coalition  
 National Center for Lesbian Rights  
 National Council of Jewish Women  
 National Council on Independent Living  
 National Education Association  
 National Employment Law Project  
 National Fair Housing Alliance  
 National Health Law Program  
 National Hispanic Media Coalition  
 National Immigration Law Center  
 National Organization for Women  
 National Partnership for Women & Families  
 National Redistricting Foundation  
 National Women's Law Center  
 Not In Our Town  
 OCA - Asian Pacific American Advocates  
 People For the American Way  
 PFLAG National  
 Planned Parenthood Federation of America  
 POWER Interfaith  
 Protect Our Care  
 Public Advocacy for Kids  
 Public Justice  
 Service Employees International Union (SEIU)  
 Sierra Club  
 Silver State Equality-Nevada  
 Southeast Asia Resource Action Center (SEARAC)  
 SPLC Action Fund  
 Supermajority  
 The Center for Policing Equity  
 UnidosUS  
 URGE: Unite for Reproductive & Gender Equity  
 Voices for Progress  
 Voto Latino  
 YWCA USA

\*\* Signers updated as of February 25, 2021

DAVID F. LEVI  
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February 22, 2021

The Honorable Richard J. Durbin, Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Charles E. Grassley, Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

I write in support of the confirmation of Judge Merrick B. Garland for the position of Attorney General of the United States. I have known Judge Garland for many years, and I am pleased to offer my enthusiastic and unqualified endorsement of him for this important position.

Like Judge Garland, I have served in the United States Department of Justice and as a federal judge. After clerking on the Ninth Circuit (Judge Ben C. Duniway) and the United States Supreme Court (Justice Lewis F. Powell, Jr.), I joined the Department of Justice in 1983 as an Assistant United States Attorney in the Eastern District of California. In 1986, I was appointed the United States Attorney for the Eastern District by President Reagan. In 1990, President Bush appointed me to the United States District Court where I served for 17 years until 2007. In 2007, I left the bench to become the Dean of the Duke Law School, where I served for 11 years until July 2018. I am now the Levi Family Professor of Law and Director of the Bolch Judicial Institute at Duke Law School. I am also President of the American Law Institute, which is another one of the nation's leading rule of law organizations, responsible for the Restatements of the Law and model codes, such as the Model Penal Code. I mention these two organizations not because I am speaking on their behalf—I speak only for myself—but because my deep involvement with two rule of law organizations influences my recommendation of Judge Garland.

Judge Garland's career has prepared him perfectly for the role of Attorney General during this unsettled time in our nation's history. Having clerked for two of the finest judges of the last century, Judge Henry Friendly and Justice William J. Brennan, Judge Garland first joined the Department of Justice ("DOJ") as a special assistant to Attorney General Civiletti. After two years, he went into private practice, eventually becoming a partner at one of the preeminent law firms in Washington, D.C. In 1989 he took the unusual step of leaving his law firm partnership to become a line prosecutor in Washington, D.C. In this position he gained trial experience and an understanding of how the justice system operates on the ground and in the trial courts. He then moved back to Main Justice, becoming a highly effective principal deputy associate attorney general. In this role, he supervised many of DOJ's most complex and important criminal cases, including the Oklahoma City Bombing of the U.S. Courthouse and the Unabomber prosecution

that was filed and tried in my district. Because of these two cases, I became aware of Judge Garland's superb organizational and analytical abilities. The management and prosecution of such complex and difficult cases, involving many victims, requires multi-talented and dedicated teams. Judge Garland assembled and supervised those teams.

In 1997 Judge Garland was appointed to the D.C. Circuit. He quickly earned a reputation among federal judges as the "gold standard," a judge whose opinions were meticulous, balanced, and clear. A clerkship with Judge Garland was a much sought after prize for graduating law students. The esteem of his colleagues on the D.C. Circuit was evident to all of us in the judiciary. I had the pleasure of serving on a committee with Judge Garland in 2006 to help the Chief Justice select a new Director of the Administrative Office of U.S. Courts. I was greatly impressed by Judge Garland—his understanding of the courts, his perceptiveness as to the personal qualities required for the position, and the care with which he approached the task. It was clear to me then what a pleasure it must be to serve on an appellate court with such a kind, collegial, smart, and insightful judge.

The range and depth of Judge Garland's experiences in the law is remarkable. He has extensive experience at all levels of the Department, from top to bottom. He has seen when it works well and when it does not. He knows the stresses and strains in the field offices and the extraordinary power wielded by individual prosecutors. He has seen the DOJ from outside, from the vantage of the private sector and from that of a judge. He knows that the Department can over-step and over-reach. He also knows the central place of the DOJ in our system of justice. He has been tempered and enlightened by these experiences. And when this lifetime of dedicated public service is combined with the integrity, organizational ability, and legal acumen that Judge Garland possesses, what emerges is the portrait of an unusually talented person uniquely well suited to be an excellent Attorney General.

Of course, an Attorney General cannot do the job on his or her own. Perhaps the most important person to the Attorney General's success is the President, not because of what he does, but because of what he does not and should not do. An Attorney General must have independence to do the job properly. My own father, Edward H. Levi, was a great Attorney General in large part because President Ford assured him of independence and stood by that assurance. It was heartening to hear President Biden give this assurance to Judge Garland on national television in making the nomination. And it was equally heartening to hear Judge Garland comment upon the importance of this assurance. With independence from political forces and partisan objectives, the Department of Justice can be the great upholder of the rule of law in our country. With independence, the Department may demonstrate its commitment to equal justice under law, to the Constitution and democratic processes, and to the wise, fair, and careful exercise of its considerable powers. No one will embody these values more visibly and convincingly than Judge Garland.

It is an honor to support Judge Garland's nomination as the Attorney General of the United States, and I do so without reservation.

Sincerely,

David E. Souter

JOHN G. LEVI

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February 22, 2021

The Honorable Richard J. Durbin, Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Charles E. Grassley, Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

It is my great honor to write this letter, in my personal capacity, in strong and enthusiastic support of the confirmation of Judge Merrick Garland for the position of Attorney General of the United States. I have had the privilege of getting to know Judge Garland during the past decade in my role as the Chairman of the Board of the Legal Services Corporation.

As you know, the Legal Services Corporation is the largest funder of civil legal assistance in the country with 132 grantees and 880 offices in every U.S. Congressional district and territory. It has helped provide assistance to low-income Americans throughout the country, including domestic violence survivors, those battling against foreclosures/evictions, and those who have suffered from consumer harms. Judge Garland has spoken at, or attended, a number of Legal Services' public forums on access to justice and I have had the opportunity to hear him speak eloquently and forcefully about the need to make sure that our civil justice system is fairly accessible to all Americans, irrespective of their economic means. On these occasions, I have also been able to talk with him more generally about our justice system and the issues confronting so many of our citizenry as they try to navigate the system on their own.

Prior to that time, I knew of his significant service to our country in my professional life as a long-time partner of a major law firm, where I have practiced law since 1973. From his distinguished service as Chief Judge on

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the U.S. Court of Appeals for the District of Columbia, and his prior service in the Department of Justice and the U.S. Attorney's Office for the District of Columbia, it is abundantly clear that he appreciates the importance of the independence of the Department of Justice and very much understands that the fair accessibility of our justice system is essential to our country's respect for the rule of law. Judge Garland knows well the importance of this issue and speaks of it frequently as he did, in fact, just a few days ago, in his remarks accepting his nomination for this significant post.

We have also had the chance over the years to discuss my own father's service as the 71st U.S. Attorney General. I know that Judge Garland fully embraces the vision my father, Edward H. Levi, had for the United States Department of Justice and for the administration of justice in our country.

When my father gave his farewell address in January of 1977 in the Great Hall of the Department, he thanked the men and women of the Department and in so doing, observed that "we have shown that the administration of justice can be fair, can be effective, can be nonpartisan. These are goals which can never be won for all time, they must always be won anew. I know you will be steadfast in your adherence to them." Judge Garland clearly embraces those principles and, I have no doubt, will bring them with him to his leadership of the Department of Justice.

It is a privilege to support Judge Merrick Garland's nomination as the Attorney General of the United States, and I do so without reservation.

Sincerely,

A handwritten signature in dark ink, appearing to read "John G. Levi", written in a cursive style.

February 21, 2021

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

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

Re: Letter in Support of the Honorable Merrick B. Garland, nominee to  
become the United States Attorney General

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin and  
Ranking Member Grassley:

It is my privilege to write in support of the Honorable Merrick B. Garland's  
nomination to become Attorney General of the United States.

I first heard of Judge Garland in the early 1990s because he served in the U.S.  
Department of Justice in several senior roles, while I was serving as the United  
States Associate Attorney General (appointed by President Reagan in 1988; and  
prior to that I served as the U.S. Attorney for the Northern District of Oklahoma  
between 1981 and 1983). Even then, before Judge Garland went on to accomplish  
many things, he was a heavyweight within the Department, someone who was well-  
respected for his legal ability and leadership.

I came to know Judge Garland more personally shortly after I became the 25th  
Governor of Oklahoma in 1995, when one of the worst crimes was ever committed  
on American soil at the Alfred J. Murrah Federal Building in Oklahoma City. The  
devastation was profound from that attack, and the entire State of Oklahoma,  
together with the federal government and other local governments, marshaled  
together every resource imaginable to mobilize relief and rescue teams to handle  
the crisis. While rescue efforts were underway, on the law enforcement side, Judge  
Garland departed Justice Department headquarters in Washington D.C. and arrived  
in Oklahoma City to oversee one of the largest and most complicated crime scenes

ever encountered. He quickly and expertly put a team together out of many different local, state, and federal law enforcement agencies.

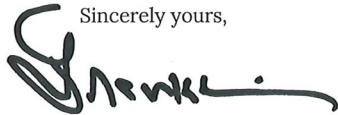
His team worked swiftly, expertly, and judiciously, identifying and arresting the two men responsible, and Judge Garland meticulously oversaw every step of the initial proceeding to build an overwhelming case to ensure justice and accountability for the heinous attack. When I observed Judge Garland firsthand during that time, he displayed wisdom and humility, not seeking the spotlight for himself, but truly seeking to serve the United States in a manner that transcended partisanship and personal interest. His tireless service is something I will always remember.

I believe that Judge Garland will bring this same character and approach to his service as the Attorney General. He will act with the utmost integrity and independence, and will ensure principled leadership at the Department. As someone who has served as a lifelong Republican (including as a former Chairman of the Republican Governors Association), I can think of no better leader than Judge Garland for the Justice Department at this time.

I urge the Senate Judiciary Committee to expeditiously process Judge Garland's nomination, and I urge the Senate to unanimously confirm him.

Thank you for your consideration.

Sincerely yours,



Frank Keating  
Oklahoma Governor, 1995-2003





PRESIDENT  
NAN ARON

CHAIR  
PAULETTE MEYER

February 21, 2021

The Honorable Richard Durbin  
Chairman  
Senate Judiciary Committee

Dear Chairman Durbin:

On behalf of the Alliance for Justice (AFJ), a national association representing over 120 public interest and civil rights organizations, I write to strongly support the confirmation of Merrick Garland to serve as Attorney General of the United States.

Merrick Garland's nomination is not occurring in a vacuum; it is colored by the Trump Administration's repeated degradation of the rule of law and politicization of the Justice Department (DOJ).

That abuse of the Justice Department includes the erosion of critical constitutional rights and legal protections. Attorneys General Sessions and Barr were not subtle in their efforts to abandon protecting Americans across the country in favor of a dangerous agenda. The Trump Justice Department refused to defend acts of Congress, including, most notably, the Affordable Care Act, risking access to quality health care for millions. Sessions and Barr dramatically scaled back civil rights enforcement, including voting rights. They derailed efforts to ensure constitutional policing, led an assault on Americans fighting for racial justice following the murder of George Floyd, and undermined fairness in the criminal justice system. They aggressively fought to curtail LGBTQ rights and laws that protect persons with disabilities. They exploited DOJ's position as the superintendent of our nation's immigration courts to advance an anti-immigrant agenda. They aided an assault on clean air and water and attacked protections for consumers.

For all those who care deeply about an independent Justice Department truly committed to equal justice under law, this is a pivotal moment in our history. And, at this key juncture, AFJ believes that Merrick Garland is exceptionally suited to lead DOJ and restore trust and dignity to the Department.

Eleven Dupont Circle NW, Suite 500 | Washington, DC 20036 | [www.afj.org](http://www.afj.org) | t: 202-822-6070

*Field Offices*

Dallas | Houston | Los Angeles | San Francisco

Alliance for Justice  
Letter in Support of Merrick Garland  
Page 2

As you know, in 2016, President Obama nominated Judge Garland to fill the seat left vacant after Justice Antonin Scalia's death. At that time, AFJ compiled [an in-depth](#) report on Garland's background. While the Republican-led Senate staged a historic and egregious obstruction of the nomination, we believe our conclusions then are just as relevant now: Throughout his career, "Judge Garland has demonstrated extraordinary intellect, fairness, humility, and an unwavering commitment to the rule of law."

AFJ has no doubt that Judge Garland will restore independence and integrity to the Department. He will ensure faithful application of some of our nation's most important rights and statutes and ensure that our nation's laws are administered fairly and fully. We are likewise confident he will be steadfast in his dedication to equal justice for all persons, including the most vulnerable in our society.

Throughout his career, Judge Garland has served our justice system with distinction. He is ready on his first day as attorney general to begin to reverse the travesties of the Trump administration. Along with Lisa Monaco, Vanita Gupta, and Kristen Clarke — and the scores of outstanding career lawyers, agents, and employees at the Justice Department — we are confident there will be a rejuvenated Department dedicated to the cause of justice and rule of law. The Senate should expeditiously confirm Garland as attorney general and these other prominent appointees.

Sincerely,



Nan Aron  
President

Alaska Wilderness League \* Christian Council of Delmarva \* Corazón Latino \*  
 Defenders of Wildlife \* Earthjustice \* Endangered Habitats League \*  
 Endangered Species Coalition \* Environmental Defense Fund \*  
 Environmental Law & Policy Center \* Environmental Working Group \* GreenLatinos \*  
 Howling For Wolves \* Natural Resources Defense Council \*  
 League of Conservation Voters \* Sierra Club \* Southern Utah Wilderness Alliance \*  
 The Climate Reality Project \* The Wilderness Society \*  
 Western Environmental Law Center \* Western Nebraska Resources Council

February 21, 2021

The Honorable Dick Durbin, Chairman	The Honorable Chuck Grassley, Ranking Member
Senate Committee on the Judiciary	Senate Committee on the Judiciary
United States Senate	United States Senate
Washington, DC 20510	Washington, DC 20510

**RE: Letter of Support for Department of Justice nominees: Judge Merrick Garland,  
 Vanita Gupta, Kristen Clarke & Lisa Monaco**

Dear Chairman Durbin and Ranking Member Grassley:

The twenty undersigned environmental groups write today on behalf of our millions of members and supporters to express our strong support for the slate of four nominees to lead the United States Justice Department (“DOJ”): Judge Merrick Garland, to be Attorney General of the United States, Vanita Gupta to be Associate Attorney General, Kristen Clarke to be Assistant Attorney General for the Civil Rights Division, and Lisa Monaco to be Deputy Attorney General. We urge the Senate Judiciary Committee to support all four nominees.

As the nation’s top law enforcement agency, the Justice Department is responsible for safeguarding our civil and constitutional rights, including our right to live free from toxic air and polluted waters. The Department and the American people need and deserve leadership committed to that mission and to our country’s ongoing progress toward equal justice and racial equality.

Judge Garland, Ms. Gupta, Ms. Clarke, and Ms. Monaco are the leaders we need. They are all accomplished public servants who understand that the DOJ should serve the *people* by upholding the rule of law and defending our Constitution. President Biden said it best when he declared that they “are eminently qualified, embody character and judgment that is beyond reproach, and have devoted their careers to serving the American people with honor

and integrity. They will restore the independence of the Department so it serves the interests of the people not a presidency, rebuild public trust in the rule of law, and work tirelessly to ensure a more fair and equitable justice system.”

These nominees face a daunting task. Over the past four years, political appointees at DOJ focused on the interests of the former president, and sometimes worse, the interests of corporate special interests. As a result, DOJ rolled back environmental and voting rights enforcement, restricted civil and human rights, including LGBTQ rights, at every turn,<sup>1</sup> and implemented extreme policies on access to justice and immigration. Those policies put lives in peril and increased burdens for already vulnerable communities. Their lax enforcement also abetted the previous administration’s “energy development above all” agenda that threatened our public lands, waters, and wildlife. Moreover, it undermined the career professionals who swore an oath to serve and protect the American people and ensure justice for all.

### **The Environment is a Civil and Human Right**

Because a healthy environment is a civil and human right, we need a Justice Department that defends and enforces our laws, and that supports the right of the public to enforce environmental laws when the government fails to do so.

Over the last four years, the Justice Department worked to weaken rather than strengthen our environmental laws. We need the DOJ to advocate instead for the broad power of federal agencies to implement statutes like the Clean Air Act, Clean Water Act, Endangered Species Act and the National Environmental Policy Act, as Congress intended. We need leadership that understand science is about facts, not politics or corporate influence, and that human caused climate change is a scientific fact that desperately needs our collective attention.

The Justice Department must also reverse course to vigorously enforce our laws after four years that saw a 90% reduction in corporate penalties and enforcement actions.<sup>2</sup> The burden of that neglect has fallen disproportionately—as it always does in our nation—on Black, Brown, Latinx, and Asian people, Native Americans, immigrant communities and wage workers. The Justice Department must recognize this, and must also recognize that our pollution control system has perpetuated sacrifice zones in these marginalized communities, that our public lands policies have deprived indigenous communities of sacred lands, and

<sup>1</sup> <https://civilrights.org/trump-rollbacks/>.

<sup>2</sup> Public Citizen 2018 report at 13 (see <https://www.citizen.org/sites/default/files/corporate-enforcement-public-citizen-report-july-2018.pdf>). See also - [https://www.washingtonpost.com/national/health-science/civil-penalties-for-polluters-dropped-dramatically-in-trumps-first-two-years-analysis-shows/2019/01/24/7384d168-1a82-11e9-88fc-f9f77a3bcb6c\\_story.html](https://www.washingtonpost.com/national/health-science/civil-penalties-for-polluters-dropped-dramatically-in-trumps-first-two-years-analysis-shows/2019/01/24/7384d168-1a82-11e9-88fc-f9f77a3bcb6c_story.html); <https://www.nytimes.com/2020/10/13/climate/pollution-lawsuits-trump-environment.html>

that federal policies place the greatest burdens of the climate crisis on those least able to bear them. As our nation reckons with its racist past and the need for justice, the Biden-Harris Administration's DOJ leadership must do its part to advance environmental justice.

Finally, we need a Justice Department that will recognize the public's right to seek justice in court. Without court access, the environmental laws aren't worth the paper they are written on. For the past four years, the Justice Department actively sought to restrict citizens' right to seek justice in courts, and to grossly restrict the scope of things they can do once they get there. In particular, the last Administration's appointees actively applied a restrictive view of "standing doctrine" to prevent people from suing about damage to the environment. It is critical that Judge Garland, Ms. Gupta, Ms. Clarke, and Ms. Monaco reverse that damage.

### **Conclusion**

While there is much to do to restore the public faith in the Justice Department, we believe that Judge Garland, Ms. Gupta, Ms. Clarke, and Ms. Monaco are up to that challenge. We urge the Senate Judiciary Committee to swiftly confirm all four nominees in the weeks ahead.

Sincerely,

Alaska Wilderness League  
 Christian Council of Delmarva  
 Corazón Latino  
 Defenders of Wildlife  
 Earthjustice  
 Endangered Habitats League  
 Endangered Species Coalition  
 Environmental Defense Fund  
 Environmental Law & Policy Center  
 Environmental Working Group  
 GreenLatinos  
 Howling For Wolves  
 Natural Resources Defense Council  
 League of Conservation Voters  
 Sierra Club  
 Southern Utah Wilderness Alliance  
 The Climate Reality Project  
 The Wilderness Society  
 Western Environmental Law Center  
 Western Nebraska Resources Council



**Judge Louis J. Freeh, Former Director  
Federal Bureau of Investigation**

Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C.

Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C.

February 19, 2021

Re: Nomination of Judge Merrick Garland for United States Attorney General

Dear Mr. Chairman and Senator Grassley:

I am very pleased to support the nomination of my friend and former United States Department of Justice (DOJ) colleague, Judge Merrick Garland, for the position of United States Attorney General. Based on my personal and professional relationship and knowledge of Judge Garland for over twenty-eight years, I can attest to his outstanding legal skills, superb law enforcement leadership qualities, and personal character for integrity, fairness, bipartisanship, and total political independence. I know that Judge Garland will be an Attorney General of exceptional quality and vision, who will guide and lead the DOJ according to its highest traditions.

I first met Judge Garland as FBI director in 1993 when he was serving as the Principal Deputy Associate Attorney General. In that senior role, I had occasion to interact with Judge Garland on a weekly basis on almost every major FBI and DOJ issue. Both myself and senior FBI officials always found Judge Garland to be completely briefed and prepared to act on the most complex criminal justice matters, and consistently demonstrated a keen awareness and support for our 'line FBI Agents' and all the challenges and dangers of their critical work. Judge Garland has the rare ability to apply his brilliant legal knowledge, prosecutorial experience, private law practice experience and now judicial talents to solve real, complex problems which the FBI and DOJ must address. In every interaction, we found Judge Garland to be fair-minded, highly competent, professional, humble and yet assertive when needed. Most importantly, Judge Garland always demonstrated the highest ethical principles in all his conversations and actions, and made decisions in a completely non-political manner.

After the Murrah Federal Building in Oklahoma City was devastated by a terrorist bombing in April 1995, then Attorney General Janet Reno and I sent Judge Garland to take over the early prosecutorial phase of this attack, then the deadliest act of domestic terrorism in US history. We



**Judge Louis J. Freeh, Former Director  
Federal Bureau of Investigation**

could not have had more confidence in Judge Garland and his meritorious service there exceeded our expectations. I know he will do the same as our next Attorney General.

In twenty-six years of federal service, I have been appointed by both Democrat and Republican presidents to serve our great Nation. I know that if confirmed by your Committee, Judge Garland will continue to render extraordinary and apolitical service to the DOJ, for which we will all be immensely proud.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Louis Freeh", is positioned above the printed name.

Louie Freeh  
(302) 824-7139

Cc: Honorable Patrick J. Leahy  
Honorable Lindsey Graham  
All Judiciary Committee Members



## Major County Sheriffs of America

1727 King Street, Suite 316, Alexandria, Virginia 22314 | mcsheriffs.com

**President**  
Sheriff Peter J. Koutoujian  
Middlesex Sheriff's Department  
Medford, MA

**Vice President**  
Sheriff Dennis Lemma  
Seminole County Sheriff's Office  
Sanford, FL

**Vice President -  
Government Affairs**  
Sheriff Michael J. Bouchard  
Oakland County Sheriff's Office  
Pontiac, MI

**Vice President -  
Homeland Security**  
Sheriff Michael Chapman  
Loudoun County Sheriff's Office  
Leesburg, VA

**Treasurer**  
Sheriff Robert Gualtieri  
Pinellas County Sheriff's Office  
Largo, FL

**Secretary**  
Sheriff Leon Lott  
Richland County Sheriff's Office  
Columbia, SC

**Past President**  
Sheriff Grady Judd  
Polk County Sheriff's Office  
Winter Haven, FL

**Region 1 Representative**  
Sheriff Bill Brown  
Santa Barbara County  
Sheriff's Office  
Santa Barbara, CA

**Region 2 Representative**  
Sheriff Bill Waybourn  
Tarrant County Sheriff's Office  
Fort Worth, TX

**Region 3 Representative**  
Sheriff Earnell Lucas  
Milwaukee County Sheriff's Office  
Milwaukee, WI

**Region 4 Representative**  
Sheriff Garry McFadden  
Mecklenburg County  
Sheriff's Office  
Charlotte, NC

**Executive Director**  
Kimberly J. Wagner

**General Counsel**  
Steven H. Cook

The Honorable Dick Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the Major County Sheriffs of America (MCSA), I write to express support for the nomination of Judge Merrick B. Garland to serve as Attorney General of the United States. The MCSA is a professional law enforcement association of the 103 largest elected sheriffs' offices in the nation, representing over 120 million citizens.

As elected officials dedicated to public safety, we value experience, aptitude, and expertise. Judge Garland's public service and demonstrated background within the field of criminal justice make him a highly qualified candidate. As a Federal prosecutor, he investigated and tried cases involving public corruption, drug trafficking, and fraud. Later, as a Deputy Assistant Attorney General and Principal Associate Deputy Attorney General, he oversaw some of the Department's most significant prosecutions, including coordinating every aspect of the government's response to the Oklahoma City bombing.

The Attorney General of the United States requires not only a strong command of all justice areas, but also the ability to work cooperatively with a broad community of law enforcement agencies and leaders across the country. Judge Garland has cultivated a reputation as a consensus-builder. We believe he will strive to work closely with the public safety community, including the MCSA.

The MCSA urges the Committee and members of the Senate to swiftly confirm Judge Garland as the next Attorney General of the United States. MCSA would look forward to working with him to help protect our nation.

Respectfully,

Sheriff Peter Koutoujian, President  
Major County Sheriffs of America

cc: Majority Leader Chuck Schumer, Minority Leader Mitch McConnell, and Senate Committee on the Judiciary





February 22, 2021

United States Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

Ujima, Inc. is a national Culturally Specific Services Issue Resource Center funded by the Administration of Children and Families, Family and Youth Services Bureau within the U.S. Department of Health and Human Services by and through the Family Violence Prevention and Services Act. We are also a technical assistance provider to HBCU grantees of the Campus Technical Assistance and Resource Project funded by the Office on Violence Against Women within the U.S. Department of Justice by and through the Violence Against Women Act. The name Ujima was derived from one of the Kwanzaa principles which means Collective Work and Responsibility. This principle is critical to addressing violence against Black women in the United States. Ujima Inc. through its education and outreach; training and technical assistance; resource development; research; and public policy efforts mobilizes the Black community and allies to strengthen our families, recognizing that the safety and viability of our families is connected to the health and well-being of our individual neighborhoods and communities at large. We are part of a network of domestic violence programs that work collaboratively to promote practices and strategies to improve our nation's response to domestic violence, sexual assault, and community violence.

Survivors of intimate partner violence seek help from a multitude of systems for safety and healing, however those same systems can cause harm and are often difficult to navigate. Black women are almost 3x as likely to be killed by an intimate partner than white women – we are particularly concerned this statistic will increase as we grapple with the COVID-19 pandemic and bias in legal and social welfare systems. We believe Judge Garland is uniquely qualified to lead the U.S. Department of Justice during this unprecedented time. His unwavering commitment to upholding the rule of law and ensuring the rights of all citizens will usher in a new era of equity throughout the Department of Justice. For centuries, Black communities have endured disparate treatment from an innately carceral legal system, and the plight of Black women has been constantly silenced and overlooked. Ujima Inc. works tirelessly to reverse this trajectory. We welcome the opportunity to provide an intuitive cultural perspective and inform new initiatives dedicated to addressing the plight of Black women and legal responses and remedies under Judge Garland's leadership.

We fully support the confirmation of Judge Merrick Garland as Attorney General for the U.S. Department of Justice.

Respectfully,

Karma Cottman  
Executive Director

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

NEIL L. BRADLEY  
EXECUTIVE VICE PRESIDENT &  
CHIEF POLICY OFFICER

1615 H STREET, NW  
WASHINGTON, DC 20062  
(202) 463-5310

February 23, 2021

TO THE MEMBERS OF THE COMMITTEE ON THE JUDICIARY:

The U.S. Chamber of Commerce supports the nomination of Chief Judge Merrick Garland to be Attorney General of the United States. Judge Garland is eminently qualified to lead the Department of Justice. He is a renowned jurist, respected leader, and a good and decent man.

Judge Garland's extensive experience in the Judicial and Executive Branches make him an excellent choice to lead the Department. Judge Garland honed his understanding and reverence for the rule of law, including his intricate involvement with criminal law, administrative law, and civil litigation, through years of leadership on the U.S. Court of Appeals for the D.C. Circuit, at the Department of Justice, and in private practice.

His broad experience prosecuting and defending cases, issuing legal opinions, and leading the D.C. Circuit as the Chief Judge of that court would serve him well in leading an organization as complex and consequential as the Department of Justice. Judge Garland is already familiar with the inner workings of the Department of Justice, having previously served as the principal associate deputy attorney general, a deputy assistant attorney general in the Department's criminal division, and an assistant United States Attorney.

Judge Garland knows the importance of fair prosecution, adherence to the law, and administrative procedure. We are confident that he would successfully lead the Department, and we welcome the opportunity to work with him and his team on issues important to the business community. We thank the committee for scheduling the February 22 and 23 hearings to consider his nomination, and we look forward to his confirmation to be the Attorney General of the United States.

Sincerely,



Neil L. Bradley



February 23, 2021

The Honorable Richard Durbin  
Chairman  
Senate Judiciary Committee  
Washington DC 20510

The Honorable Charles Grassley  
Ranking Member  
Senate Judiciary Committee  
Washington DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of Everytown for Gun Safety, America's largest gun violence prevention organization, I write to express our strong support for the nomination of Judge Merrick Garland to serve as the next Attorney General of the United States. With the pervasive threat of gun violence in our communities and the elevated threat of armed extremism, it is clear that Judge Garland is the right leader for the Justice Department in this critical time for our nation.

Each day in America, more than 100 people die and over 230 are wounded by gun violence. For tens of thousands of Americans, gun violence is not a statistic but a daily lived reality that has only become worse during the COVID-19 pandemic. Addressing this crisis will require new leadership at the Department of Justice that will prioritize public safety and dedicate federal resources to evidence-based solutions that can save lives.

Judge Garland is uniquely prepared to serve as our nation's next Attorney General with a significant record of experience as a senior federal law enforcement official and as a member of the United States Court of Appeals for the District of Columbia Circuit. He will focus federal resources on keeping guns out of the hands of dangerous individuals by ensuring our background check system is strong. He will protect communities that are ravaged by gun violence by taking meaningful steps to prevent gun trafficking and hold corrupt gun dealers accountable. Despite baseless attacks from the gun lobby, Judge Garland has a strong record of enforcing gun laws on the books and he demonstrated that his views on the Second Amendment were well within the judicial mainstream during his time on the Court of Appeals.

Judge Garland's leadership in the aftermath of the bombing of the Oklahoma City Federal Building -- one of the worst acts of terror on American soil -- demonstrates the approach he will take as our nation's chief law enforcement official. During his successful efforts to bring the perpetrators to justice, Judge Garland was widely recognized not only for building a solid legal foundation for the case, but also for his humanity in caring about the needs of the survivors, their relatives and the community. As our nation confronts the growing threat of armed white supremacy after the January 6th Insurrection attempt at the U.S. Capitol, Judge Garland is a tested and proven leader who will ensure that those responsible are held accountable under the law.

During this challenging moment, we are confident that Judge Garland will bring renewed focus on preventing gun violence and strengthening public safety. We fully support his confirmation and hope that the Judiciary Committee will act quickly to send this important nomination to a vote before the full Senate.

Respectfully submitted,

John Feinblatt  
President, Everytown for Gun Safety Action Fund



February 23, 2021

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

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

Re: Letter in Support of Merrick Garland, nominee for Attorney General

Dear Majority Leader Schumer, Chairman Durbin, Minority Leader McConnell, and Ranking Member Grassley:

I am writing to you to offer my enthusiastic support for Judge Merrick Garland, President Biden's nominee to be the Attorney General of the United States Department of Justice.

Having served 15 years as a federal prosecutor, I understand the importance of an impartial, independent and credible Justice Department. Judge Garland's extensive experience in the federal judiciary, commitment to fairness and impartiality, and stellar reputation and legal expertise position him to lead the Department into a new era of fairness and justice.

During Judge Garland's 23 years of service on the United States Court of Appeals for the District of Columbia Circuit, he has earned a reputation for his thoughtful, impartial commitment to justice. I am confident that his leadership and vision would restore trust in the Justice Department.

Since my time as a federal prosecutor, I have had the privilege of serving as Executive Director of [Fair and Just Prosecution](#) (FJP). FJP works with a network of state and local elected prosecutors from around the country, and members of our network often coordinate with the Justice Department and U.S. Attorneys. As we continue to strive for a criminal legal system that is equitable and effective, it is essential that we have federal leaders and partners like Judge Garland who embrace, and will take the lead in, advancing these objectives.

In representing the United States in all federal prosecutions, operating the Bureau of Prisons, and working alongside local jurisdictions, the Department of Justice guides our national approach to prosecution. The Department is at its best when it is independent from political influences. Judge Garland's experience in the federal judiciary positions him to restore the Justice Department's mandate to pursue objectivity and fairness. Judge Garland would also bring a needed commitment to the rule of law and the pursuit of justice as we grapple as a nation with a multitude of challenges including the impact of the novel coronavirus on our justice system and those behind bars, mounting calls to reckon with longstanding issues around systemic racism, and the dire need to address police accountability and oversight.

I encourage you to swiftly confirm Judge Garland immediately upon the conclusion of this week's hearings.

Please do not hesitate to contact me if I can be of any further assistance.

Sincerely yours,

  
Miriam Krinsky  
Executive Director  
Fair and Just Prosecution



February 23, 2021

United States Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Grassley, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way urges the Senate to confirm D.C. Circuit Judge Merrick Garland as the next attorney general of the United States. As a nominee with unquestioned integrity and experience, Garland is highly qualified to restore the Justice Department to its proper role as the chief enforcer of civil rights and protector of democracy.

Perhaps no member of the executive branch has a greater role than the attorney general in eliminating societal inequities—especially the racial injustice that has infected our nation from its founding—and moving us toward the full democracy we aspire to be. But for the past four years, the individuals chosen by Donald Trump to run the Justice Department have betrayed its mission, using it instead to attack civil rights and to serve Trump’s personal interests. As just a few examples, the Justice Department in the past four years:

- defended voter suppression measures premised on false claims of voter fraud, including a Texas voter ID law that the department itself had recognized was passed with the deliberate intention to discriminate;
- ended the practice of using consent decrees with local police that mandate an end to abusive practices by law enforcement;
- collaborated with the Trump administration’s efforts to unlawfully add a citizenship question to the 2020 census designed to strip targeted communities of political representation;
- infamously ordered the inhumane separation of immigrant children from their parents;
- gave cover for the unlawful rescission of DACA, then helped perpetrate an evidentiary fraud upon the judicial system in defending that decision;
- carried out Trump’s vow to ban Muslims from entering the country;
- mischaracterized the results of Special Counsel Robert Mueller’s report in order to protect Trump from the consequences of his campaign’s contacts with Russian intelligence and his obstruction of the investigation into those contacts;
- defended efforts to block women from exercising their right to abortion;
- distorted religious liberty from its proper role as a shield into a sword to empower individuals and organizations to engage in unlawful discrimination against LGBTQ+ people;

- undermined constitutionally mandated separation of church and state;
- abused prosecutorial discretion and investigative activities to reward Donald Trump's political allies and threaten those perceived as his political enemies; and
- supported a meritless lawsuit urging the Supreme Court to strike down the entire Affordable Care Act, using a legal argument so weak and dishonest that career Justice Department officials refused to sign the brief.

Tasked with the immense responsibility of repairing the damage caused by the Trump administration's assault on the Department of Justice and the rule of law that has so weakened our democracy, the next attorney general must have unquestioned integrity, a deep reservoir of knowledge, and decades steeped in the laws that the Justice Department is responsible for enforcing. In nominating Merrick Garland, President Biden has made an excellent choice for this critical moment in our nation's history.

Garland has served as a judge on the D.C. Circuit since 1997, including seven years as its chief judge. A quarter century considering an array of extraordinarily complex and important legal matters affecting the entire country has given him unquestionable expertise in the issues that will be his to address as attorney general.

Garland is well prepared to lead the Department's work against white supremacist individuals and organizations engaged in political violence. Indeed, during his service at the Department in the 1990s before becoming a federal judge, he helped lead its responses to the Oklahoma City bombing, the Unabomber, and the Montana Freeman. [At his confirmation hearing](#), he recognized the continuing and growing threat of white supremacist violence:

I don't think that [the January 6 insurrection] is necessarily a one-off. FBI Director Wray has indicated that the threat of domestic terrorism, and particularly of white supremacist extremists, is his number one concern in this area. This is coupled with an enormous rise in hate crimes over the past few years. There is a line from Oklahoma City and there's another line from Oklahoma City all the way back to the experiences that I mentioned in my opening with respect to the battles of the original Justice Department against the Ku Klux Klan.

Although the U.S. Constitution and congressional statutes are filled with protections for civil rights, much of the responsibility for turning those promises into enforceable real-world rights belongs to the Justice Department. Indeed, at his hearing, Garland stressed that the fundamental reason the department exists is "to secure the civil rights promised by the 13th, 14th and 15th Amendments," the post-Civil War measures that made racial equality part of the Constitution. Importantly, he dispensed with the fiction that America has lived up to its obligations in that regard, telling members of the Senate Judiciary Committee:

Communities of color and other minorities still face discrimination in housing, education, employment, and the criminal justice system; and bear the brunt of the harm caused by pandemic, pollution, and climate change.

One reason that federal, state, and local governments have not done enough to combat discrimination is the distortion of democracy brought about by racially discriminatory voter suppression measures. In 2013, the ultra-right conservative majority on the Supreme Court opened the door to more of such measures in the notorious 5-4 *Shelby County v. Holder* decision, which struck down the formula Congress used to make new laws affecting voting rights in certain states with a history of racial discrimination subject to preclearance. At his hearing, Garland committed to working with Congress to develop a new factual record that would allow the Justice Department to once again use that “important tool.”

Garland also recognizes the vital role played by the Justice Department in curtailing abusive law enforcement practices. For instance, at his hearing, he affirmed that consent decrees have “proven effective” in eliminating patterns and practices of unconstitutional conduct by police departments, a sharp and welcome departure from the department’s position during the Trump era. He also committed to using all of the tools Congress has given the Justice Department to bring about reform in police departments.

Garland also recognizes that the Justice Department’s impact on the lives of long-marginalized communities is not limited to laws of community-wide application, but also includes the daily decisions of those working in the area of criminal justice. He cited the observations of former Attorney General Robert Jackson:

The prosecutor has more control over life, liberty, and reputation than any other person in America. [The prosecutor's] discretion is tremendous.... While [prosecutors] at [their] best are one of the most beneficent forces in our society, when [they] act from malice or other base motives, [they are] one of the worst.

In his exchanges with committee members, he recognized and condemned racial disparities in sentencing and the damaging impact they have on people of color. He noted that:

[It] is wrong and it's the kind of problem that will then follow a person for the rest of their lives. It will make it impossible to get a job. It will lead to a downward economic spiral for their family.

He praised the First Step Act as taking important actions to address racial inequity in criminal sentencing, but he made a welcome recognition that it is “not enough.”

The next attorney general will have a profoundly important role to play in restoring the Justice Department, protecting democracy, and eradicating the longstanding structures of institutional



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racism. We believe that Merrick Garland will ably lead the Department, and we urge senators to vote for his confirmation.

Sincerely,

A handwritten signature in cursive script, reading "Marge Baker".

Marge Baker  
Executive Vice President for Policy and Program



February 22, 2021

The Honorable Dick Durbin  
Chair, Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Chuck Grassley  
Ranking Member, Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chair Durbin and Ranking Member Grassley:

The U.S. Institute Against Human Trafficking (USIAHT), a national nonprofit, faith-based organization working to end human trafficking in the United States, respectfully urges you to swiftly confirm Judge Merrick Garland as the next Attorney General of the United States.

Judge Garland is uniquely qualified for the position of Attorney General. As Chief Judge on the U.S. Court of Appeals, Special Assistant to the Attorney General, Assistant U.S. Attorney for the District of Columbia, and as Deputy Assistant Attorney General in the Criminal Division of the U.S. Department of Justice, Judge Garland has an exemplary record as a prosecutor and judge.

Sex Trafficking is modern-day slavery, happening everywhere in the United States. The victims can be U.S. citizens or any nationality, age, socioeconomic status, or gender. Sex Trafficking is a highly profitable crime that exploits an adult through force, fraud, or coercion or that engages a child in any form of commercial sexual exploitation. The U.S. Department of Justice and the Attorney General play a pivotal role in our nation's efforts to combat this scourge.

His record of achievement within the Judiciary and at the Department of Justice provides USIAHT with the utmost confidence that as Attorney General, Judge Merrick Garland will continue to aggressively investigate and prosecute human trafficking cases, while also leading the Department to cultivate new and innovative strategies to combat the systematic buying and selling of our nation's children.

Sincerely,

Kevin Malone, Chairman

<b>MAILING ADDRESS</b>	<b>TAMPA, FL (HQ)</b>	<b>LAS VEGAS, NV</b>	<b>LOS ANGELES, CA</b>	<b>WASHINGTON DC</b>	<b>AUSTIN, TX</b>
P.O. Box 272463	12353 Hampton Park Blvd.	P.O. Box 97238	1750 E. Florence Ave.	1629 K St. N.W., Suite 300	500 E. St. Johns Ave.
Tampa, FL 33688	Tampa, FL 33624	Las Vegas, NV 89193	Los Angeles, CA 90001	Washington DC 20006	Ste 2.680, Austin, TX 78752
844.600.7774	813.895.3390	702.727.3400	323.457.0100	202.798.0700	512.384.1800



USIAHT.org

info@usiaht.org



February 24, 2021

The Honorable Dick Durbin  
Chairman  
Committee on the Judiciary  
U.S. Senate  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
U.S. Senate  
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

The Constitutional Accountability Center supports the nomination of Judge Merrick Garland to be the next Attorney General of the United States. He has shown his commitment to the principles of liberty, equality, and fairness; the character to rise above partisan politics and be independent of the president; and his fidelity to the text, history, and values of the whole Constitution. We urge the Senate Judiciary Committee to advance his nomination to the full Senate.

Garland's testimony to the Senate Judiciary Committee, followed by glowing support from key witnesses, explains why he can lead the Department of Justice out of the ethical morass of the Trump years and back to the Department's founding principles—to serve, as he said, as “the lawyer for the people of the United States” rather than for the president who nominated him.

In his testimony, Garland reminded the Senate that the Department of Justice “was founded during Reconstruction in the aftermath of the Civil War to secure the civil rights that were promised in the 13th, 14th and 15th Amendments.” For the first time in at least 40 years—and possibly in living memory—a nominee to be U.S. Attorney General has cited in his opening statement to the Judiciary Committee the three constitutional Amendments that brought about a [second founding](#) of our nation. In connecting them to the mission of the Department he would lead, Garland showed he understands that these critical amendments paved the way for many of our most fundamental rights, transforming our nation's charter from one that countenanced slavery and its badges and incidents, to one that promises equality and protection from state abuses of fundamental rights, including the right to vote.

In fact, Garland said that voting “is the fulcrum of our democracy.” He recognized that the “first Attorney General appointed by President Ulysses Grant to head the new Department led it in a concerted battle to protect [voting rights for Black people] from the violence of white extremists, successfully prosecuting hundreds of cases against white supremacist members of the Ku Klux Klan.” Garland also said that not only is there an “opportunity to bring cases both where there was intention to discriminate [in voting, and] where there's an overall disparate impact with respect to discrimination,” but also that “the voting rights section of the civil rights division was established for the purpose of pursuing those cases, and we would do so.”

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**Constitutional Accountability Center**

1200 18th Street NW, Suite 501, Washington, D.C. 20036  
Phone: 202-296-6889 | Twitter: [@MyConstitution](#)

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[theusconstitution.org](https://theusconstitution.org)

Kristine A. Kippins, Director of Policy  
[kristine@theusconstitution.org](mailto:kristine@theusconstitution.org)

These statements and commitments are incredibly encouraging, coming on the heels of a Trump Administration that fomented violent election conspiracy theories which, in turn, were built on years of voter suppression that continues to this day at the behest of conservative state legislators around the nation.

Garland also testified that he is “dedicated to ensuring that the laws of our country are fairly and faithfully enforced, and the rights of all Americans are protected.” With this commitment, Garland can help turn the page on the past four years of political interference in the administration of justice, as well as neglect of critical issues such as police abuse of Black Americans and other people of color. In his testimony, for example, Garland left “no question that there is disparate treatment in our justice system,” and what “underlies that is the disparate treatment of” Black people and communities of color. We encourage him to draw on these observations and to keep his commitments, using his position to make our criminal justice system fair to all in America.

As Wade Henderson, Interim President of the Leadership Conference on Civil and Human Rights, later testified, the team of Garland as Attorney General, together with Vanita Gupta as Associate Attorney General and Kristen Clarke as Assistant Attorney General for Civil Rights, “makes for one of the strongest teams the Department has ever fielded.”

We look forward to their combined leadership of the Department of Justice.

Sincerely,



**Elizabeth B. Wydra**  
President

[ewydra@theusconstitution.org](mailto:ewydra@theusconstitution.org)

Phone: 202-296-6889 | Twitter: [@ElizabethWydra](https://twitter.com/ElizabethWydra)

cc: Members, U.S. Senate Committee on the Judiciary



P.O. Box 3325 Newtown, CT 06470

February 24, 2021

Dear Senators:

We are families and survivors who have been directly impacted by gun violence in our nation. We are writing to urge you to confirm Judge Merrick Garland, President Joe Biden's nominee for Attorney General, to lead the U.S. Department of Justice.

The next U.S. Attorney General will be tasked with addressing many crises in our nation including gun violence, the rise of violent domestic terrorism, and police violence.

- Gun sales have surged and there has been a significant spike in gun deaths and injuries during the pandemic. Homicides have increased by double digits in more than a dozen major cities in 2020. Childhood deaths have risen by 40 percent in 2020 and teenage deaths are up by 37 percent. This past year, the United States experienced 612 mass shootings, a 47 percent increase from 2019. Numerous data points indicate that suicides are on the rise across the country as a growing number of Americans are taking their lives amidst the economic and social distress of Covid-19.
- A string of mass shooting incidents in El Paso, Texas; Gilroy, California; and Dayton, Ohio brought the threat of domestic terrorism into focus in 2019. According to [the Homeland Threat Assessment](#) released in October 2020, "Ideologically motivated lone offenders and small groups pose the most likely terrorist threat to the Homeland, with Domestic Violent Extremists presenting the most persistent and lethal threat." On January 6, 2021, we witnessed the violent insurrection in the U.S. Capitol. Shortly after the insurrection, the Acting Secretary of Homeland Security issued [a National Terrorism Advisory System \(NTAS\) Bulletin](#) due to "ideologically-motivated violent extremists with objections to the exercise of governmental authority and the presidential transition, as well as other perceived grievances fueled by false narratives, could continue to mobilize to incite or commit violence."
- Recent incidents that took the lives of Breonna Taylor, George Floyd, and Rayshard Brooks shed a light on America's history of police violence. There is [a call from the gun violence prevention community](#) to acknowledge that black lives matter and police violence is gun violence. We are pushing for anti-racist public health approaches to be prioritized with community-based policing and investments in community-based solutions to end gun violence.

Judge Garland has been lauded for his flawless and inspiring work as the leading federal prosecutor in the Oklahoma City bombing case after a domestic terrorist killed 168 people including 19 children in 1995. He brought everyone to the table including the families, survivors, and the first responders who were most impacted by the bombing. Throughout his career, Judge Garland has demonstrated his commitment to civil rights. In his recent acceptance speech when nominated by President Biden for Attorney General, he expressed that one of his top priorities will be “ensuring racial equity”.

Today, there is a call for stronger enforcement of our gun laws. More than [260 people who have been arrested and charged](#) for crimes related to the January 6th insurrection must be prosecuted, and police reform is necessary. Judge Garland’s expertise, knowledge, and history of fairly and swiftly prosecuting domestic terrorists and white extremists makes him uniquely qualified to lead the Department of Justice.

In 1997, Merrick Garland was confirmed by the Republican-controlled Senate with a 76–23 vote for the U.S. Circuit Court of Appeals for the District of Columbia seat and he has served as a Chief Judge since 2013. The Department of Justice plays a significant role in enforcing the nation’s gun laws. Judge Garland, with his extensive knowledge of the Second Amendment, will ensure that the DOJ has the tools necessary to do its job and help to end the gun violence crisis in America.

We are still angry and disappointed that Judge Garland was not confirmed to replace Justice Antonin Scalia for the Supreme Court of the United States in 2016 due to political gamesmanship. We urge all Senators to choose their country over party and confirm Merrick Garland as our next Attorney General. We are confident that he will bring the families and the survivors who are most impacted by gun violence, domestic terrorism, and police violence to the table to make our nation safer and restore justice to the Justice Department.

Thank you for your consideration.

Sincerely,  
 Families and survivors directly impacted by gun violence  
*Megan Ackerman, Los Angeles, California*  
*Elizabeth Adams, Gulf Breeze, Florida*  
*Katherine Aker, Tujunga, California*  
*Mayra and Daniel Alvear, Orlando, Florida*  
*Miyoshia Bailey, Chicago, Illinois*  
*Sharon Baker, Goshen, Indiana*  
*Michelle Barnes-Anderson, Brooklyn, New York*  
*Teche Bergeron, Las Vegas, Nevada*  
*Terri Betz, Sutherlin, Oregon*  
*Stephanie Bishop, Atlanta, Georgia*  
*Michael Bishop, Pine Mountain, Georgia*  
*Jeri Bishop, Pine Mountain, Georgia*  
*Paul Bocanegra, San Jose, California*  
*Susan Bolle, Tiburon, California*  
*Tika Bordelon, Seattle, Washington*  
*Shaundelle Brooks, Naahville, Texas*  
*Susan Browder, Gainesville, Florida*  
*Stephanie Brown, Chicago, Illinois*  
*Linda Brundage, East Lansing, Michigan*  
*Amy Bruner, Cedar Rapids, Iowa*  
*Valerie Burgest, Chicago, Illinois*

*Milagros Burgos, Chicago, Illinois*  
*Rafael Burgos, Chicago, Illinois*  
*Julie Butcher, La Crescenta, California*  
*Barbara Campbell, Newtown, Connecticut*  
*Tom Campbell, Danbury, Connecticut*  
*Janice Cannon, Chicago, Illinois*  
*Keren Carter, Concord, California*  
*Shirley Carter, Dallas, Texas*  
*Monica Cassaberry, Brooklyn, New York*  
*Heather Chapman, Parkland, Florida*  
*Lauren Child, South Pasadena, California*  
*David Christman, Athens, Georgia*  
*James A Clark Jr, Colorado Springs, Colorado*  
*Patrice Collins, New Haven, Connecticut*  
*Nicole Cook, Parkland, Florida*  
*Michele Cooper, San Diego, California*  
*Yvonne Crasso, Middletown, Connecticut*  
*Marie Curtis, Oakhurst, New Jersey*  
*Deborah Davis, Hartford, Connecticut*  
*Marina Delgado, San Pedro, California*  
*Judith DeNunzio, Beech Mountain, North Carolina*  
*Carolyn Dixon, South Jamaica, Queens, New York*  
*doreen dodgen-magee, tualatin, Oregon*  
*Tara Donnelly, Easton, Connecticut*  
*Jane Dougherty, Littleton, Colorado*  
*Brad Dupee, Boulder, Colorado*  
*Annika Dworet, Coral Springs, Florida*  
*Mitchell Dworet, Coral Springs, Florida*  
*Christine Evans, San Diego, California*  
*Gail Finney, Davis, California*  
*Kathleen Florence, Oak lawn, Illinois*  
*Adam Friedman, Washington, District of Columbia*  
*Mary Fryer, San Francisco, California*  
*Randy Gardner, South Pasadena, California*  
*Kim Gatbunton, Lakewood, Washington*  
*Gerald F. Gaudin, Metairie, Louisiana*  
*Carol Gaxiola, SAHUARITA, Arizona*  
*Wayne Gilbert, Tiburon, California*  
*Jordan Gomes, Sandy Hook, Connecticut*  
*Roxanna Green, Tucson, Arizona*  
*Shanequa Griffin, New York, New York*  
*Shirell Gross, North Hollywood, California*  
*Fred Guttenberg, Parkland, Florida*  
*Holly Hall, Temecula, California*  
*Archer Heinzen, Alexandria, Virginia*  
*Pamela Hight, New York, New York*  
*Gerry Hills, Phoenix, Arizona*  
*Rebecca Hindman, Santa Clarita, California*  
*Dr Robert Hofland, PhD, Torrance, California*

*Kelley Ireland, Tucson, Arizona*  
*Kinnon John, San Leandro, California*  
*dolene john, Brooklyn, New York*  
*Rachael Joseph, Minneapolis, Minnesota*  
*Nadine Joseph, Brooklyn, New York*  
*Joshua Kadish, Reseda, California*  
*Paul Kaneko, Santa Cruz, California*  
*Alyssa Kilpatrick, Sierra Madre, California*  
*Bill Kingston, New Castle, New Hampshire*  
*Carolee Koehn, Lakewood, Colorado*  
*Kerry Kraemer, Lockport, Illinois*  
*Pamela Lane, Fortuna, California*  
*Honora Laszlo, Arlington, Virginia*  
*Edward Laurson, Denver, Colorado*  
*Jenn Lawlor, Bethel, Connecticut*  
*Tom Lawlor, Bethel, Connecticut*  
*Lisa Litberg, Morton Grove, Illinois*  
*Mia Livas Porter, Los Angeles, California*  
*Don Lococo, Newtown, Connecticut*  
*Mary Long, Chicago, Illinois*  
*Kim Lutz, Glen Ellyn, Illinois*  
*Jacinda Maatu, Bridgeport, Connecticut*  
*Sara Macaluso, Los Angeles, California*  
*Ann Madsen, Lynnwood, Washington*  
*Patricia Maisch, Tucson, Arizona*  
*Denise Marks, Valencia, Pennsylvania*  
*Veronica Maul, Crowley, Texas*  
*Marcel McClinton, Houston, Texas*  
*Kimberly McFadden, Mundelein, Illinois*  
*Christine Miller, Sandy Hook, Connecticut*  
*Dionne Miller, Sauk Village, Illinois*  
*Brenda Mitchell, University Park, Illinois*  
*Cindy Montoya, Los Angeles, California*  
*Sydney Montstream-Quas, Barrington, Rhode Island*  
*Giselle Morch, Silver Spring, Maryland*  
*Jenny Morgan, Grand Prairie, Texas*  
*Peter Murchison, Ridgefield, Connecticut*  
*David O'Connor, Shoreline, Washington*  
*Manuel Oliver, Parkland, Florida*  
*Corey E. Olsen, Delafield, Wisconsin*  
*Rick & Martha Omilian, Plainwell, Michigan*  
*Gregory Orfalea, Washington, District of Columbia*  
*Marc Orfanos, Thousand Oaks, California*  
*Tymaeus Orfanos, Thousand Oaks, California*  
*Patricia Padauy, Parkland, Florida*  
*Deborah Parker, Tucson, Arizona*  
*Natalie Pavia, Thousand Oaks, California*  
*Nicholas Payne, New Milford, Connecticut*  
*Joan Peterson, Cloquet, Minnesota*



Sandy Phillips, Boerne, Texas  
Lonnie Phillips, Boerne, Texas  
Maria Pike, Chicago, Illinois  
Chip Pryde, Flat Rock, North Carolina  
Mary Reed, Tucson, Arizona  
Judi Richardson, South Portland, Maine  
Wayne Richardson, South Portland, Maine  
Madison Roeschke, Santa Clarita, California  
Rosa Rosenberg, Los Angeles, California  
Kelly Rotella, St Charles, Illinois  
Liz Russell, Napa, California  
Elizabeth Saint, Stratford, Connecticut  
April Schentrup, Seattle, Washington  
Susan Schmidt-Orfanos, Thousand Oaks, California  
Judy Schneider-Wallace, Everett, Washington  
Gail Schwartz, Parkland, Florida  
Tangela Sears, Miami, Florida  
Clare Senchyna, San Francisco, California  
Ruth Senchyna, Albany, New York  
Jessica Sewell, Stockton, California  
Pam Simon, Tucson, Arizona  
Kristin Song, Guilford, Connecticut  
Manjula Stokes, Santa Cruz, California  
Gladys T. Bolingbrook, Illinois  
Cathy Taylor, Midlothian, Texas  
Sheena Tucker, Queens, New York  
Carolyn Tuft, Salt Lake City, Utah  
Lenie Urbina, Sandy Hook, Connecticut  
Michele Voigt, Greenwich, Connecticut  
Gail Warek, Sandy Hook, Connecticut  
Leslie Washington, Cape Girardeau, Missouri  
Bethany Webb, Huntington Beach, California  
Angela Weber, Coral Springs, Florida  
Jan Weisel, Woodinville, Washington  
Jane Weiss, Snohomish, Washington  
Stephanie Wells, Carlsbad, California  
Wendy Wheatcroft, San Diego, California  
Brenda Whitney, Laguna Niguel, California  
Larriccia Wiley, Dallas, Texas  
Elsie Wilkens, St Louis, Missouri  
Anita Wills, San Leandro, California  
Maria José Wright, Miami, Florida  
Frederick Wright, Miami, Florida  
Abbie Youkilis, Cincinnati, Ohio  
Missy Zeitsoff, Santa Barbara, California

Dear Senator,

As the relatives of Robert F. Kennedy, for whom the Department of Justice is named, we give our wholehearted support to Judge Merrick Garland as our country's next attorney general. His commitment to justice and truth continues Robert Kennedy's legacy, and we ask that you confirm him.

We were grateful to hear from Judge Garland that his first priority as attorney general will be to prosecute the mob that took over the Capitol on January 6, and that he will pursue the domestic terrorists that the Department of Defense has labeled the primary threat to America's stability. Robert F. Kennedy and two of his brothers served as senators, and their grandfather, two nephews, and one grandson served in the House of Representatives. The Capitol is a sacred place where the people's voices are heard and their work pursued. We cannot allow mob rule.

One of Robert Kennedy's first public missions was to fight the dominance of a different kind of mob, even as J. Edgar Hoover avowed that it didn't exist. It was not until mafiosi were caught on tape and Robert Kennedy was going to introduce legislation to put them in prison that Hoover relented. Bobby said of the contrast between the mob and law-abiding Americans, "Either they will own the country or we will."

That is an apt description of Merrick Garland's own first priority. In dealing with it, he will face the challenge of supporting law enforcement while ridding its ranks of violent extremists, precisely the challenge that Hoover did not want to face. Judge Garland's courageous actions after the Oklahoma City bombings demonstrate that he has the character and legal acumen to bring to justice those who would destroy our country.

The most enduring legacy of Robert F. Kennedy is his commitment to civil rights: the defense of the Freedom Riders, the integration of the Universities of Mississippi and Alabama, the prosecution of the Ku Klux Klan, the Civil Rights Act of 1964, the Voting Rights Act of 1965.

Kathleen recalls driving with her father in D.C. long ago, passing apartment house after apartment house, and her father saying, "The children in these homes have the same dreams as you, the same talents; they just don't have the same opportunities. That is wrong. It must be changed." Robert Kennedy saw potential where others could not, and he opened up opportunities that had never before existed.

We are confronted by the same challenges today, particularly in voting rights, in the actions of some of our police officers, and in great disparities in housing, health, and jobs. Merrick Garland's record shows he is dedicated to the kind of justice that does not simply punish but lifts people up so their best selves can be fulfilled.

Although there are many other issues that must be addressed to rebuild a nation of laws equally distributed and fairly defended, let us end with the one that Judge Garland said was the worst offense of the previous administration, and the one that would have profoundly

outraged Robert Kennedy, a father of 11--the deliberate separation of parents from their children. The lack of human feeling, of compassion, of love in this strategy of cruelty stands in stark contrast

to the values that we learnt from our family and that many Americans know to be the true spirit of democracy. We are not just equal in the eyes of the law but are brothers and sisters together with the hopes and dreams to live our lives in safety and respect.

In his testimony, Judge Garland said that he was willing to step off the bench because he had a higher calling. He saw that his talents were precisely the ones that our nation needs at this moment in our history. We will be fortunate to have this extraordinary person at the helm at the Department of Justice.

Sincerely,

Mrs. Robert F. Kennedy

The Honorable Kathleen Kennedy Townsend

Ms. Meaghan Kennedy Townsend

Mr. David McKean

Ms. Rose "Kat" Kennedy Townsend

Dr. Kerry Kennedy Townsend Meltzer & Mr. Max Meltzer

Ms. Gail Evertz

Mr. Maxwell T. Kennedy

Mrs. Victoria Kennedy

Mr. Maxwell T. Kennedy Jr.

Ms. Summer Kennedy

Ms. Noah Kennedy

Ms. Kerry Kennedy

Mr. Robert F. Kennedy Jr.

Mr. Chris Kennedy & Mrs. Sheila Kennedy

Mr. Timothy Shriver

Ms. Kate Kennedy

Ms. Linda Potter

Ms. Sarah Kennedy & Mr. Jam Sulahry

Mr. Thomas Shriver

Ms. Claire Kennedy

Ms. Kathleen Shriver

Ms. Rory Kennedy & Mr. Mark Bailey

Ms. Courtney Kennedy

Ms. Riley Kennedy

Ms. Rory G. Kennedy

Ms. Mickey Kennedy

Mr. David DiCamillo

Ms. Rowen Kennedy

The Honorable Joseph P. Kennedy III

Mr. Christopher K. McKelvy

The Honorable Edward M. Kennedy Jr. & Dr. Katherine "Kiki" Kennedy

William Kennedy Smith, MD



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
28 LIBERTY STREET  
NEW YORK, NY 10005

LETTITIA JAMES  
ATTORNEY GENERAL

(212) 416-8050

February 25, 2021

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

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

Dear Majority Leader Schumer, Minority Leader McConnell, Chairman Durbin and Ranking Member Grassley:

We, a diverse coalition of state attorneys general, charged with defending the rights of our states and their citizens and committed to protecting and upholding the rule of law, write today to strongly support the nominations of Merrick Garland, Lisa Monaco, Vanita Gupta, and Kristen Clarke to lead the United States Department of Justice (DOJ). This extraordinarily qualified slate of nominees—led by Merrick Garland—will help restore our justice systems, promote equity under the law, and defend the rights of all Americans.

As state attorneys general, each of us solemnly swore to discharge dual roles both as the chief counsel for the states we represent and the “people’s lawyer” for our constituents whose most basic rights have been violated. We sought office to protect the most vulnerable among us and to bring justice to those who would seek to harm and exploit them. We believe that—by supporting these superlative nominees—we are fulfilling those duties by advocating for Department of Justice leadership that shares these values and will support that fundamental work as partners.

In both experience and temperament, Judge Garland is well suited to lead the Department through these divisive times. If confirmed, Judge Garland will be among the most qualified Attorney Generals in our nation’s history. He has served in DOJ leadership positions under Presidents of both parties and distinguished himself as jurist as a United States Circuit Judge and then as the Chief Judge of the United States Court of Appeals for the District of Columbia. In those roles, Judge Garland has developed a well-earned reputation for independence, fairness,

and the ability to build consensus. His nomination has garnered support from all across the political spectrum, including two Republican former-United States Attorneys General.

Just as importantly, Judge Garland's legal philosophy is precisely what is needed in this moment. Upon his nomination, Garland said, "the essence of the rule of law is that like cases are treated alike: That there not be one rule for Democrats and another for Republicans, one rule for friends, another for foes, one rule for the powerful, and another for the powerless." This country desperately needs a Department of Justice that respects the rule of law and believes every person equal in the eyes of justice. Under Merrick Garland's leadership, that is just what we will have.

President Biden's other DOJ nominees—Lisa Monaco, Vanita Gupta, and Kristen Clarke—are equally inspired and fitting choices for this critical inflection point in our nation's history. Lisa Monaco, nominee for Deputy Attorney General, is a highly respected national security professional, having served as one of President Obama's top counterterrorism advisers, held a wide range of senior Justice Department roles under three Presidents, and helped transform the FBI following 9/11. Her experience coordinating governmental management and response to homeland security crises—from terrorist attacks to pandemics—will be essential in to our national recovery from COVID-19.

Vanita Gupta, nominated as Associate Attorney General, has decades of experience improving our criminal justice system, an essential task for the new administration. From overturning wrongful convictions as line attorney for the NAACP Legal Defense Fund to spearheading the American Civil Liberties Union's National Campaign to End Mass Incarceration to revolutionizing the use of patterns and practices investigations to transform local police departments as head of DOJ Civil Rights, Gupta has been at the forefront of justice reform for her entire career.

Kristen Clarke is one of the legal community's fiercest defenders of marginalized communities and most committed champions of equity under the law. Clarke has significant frontline experience from her time at the NAACP Legal Defense Fund and in the DOJ Civil Rights Division and has demonstrated her leadership and coalition-building prowess as the president and executive director of the National Lawyers' Committee for Civil Rights Under Law. We are particularly excited about Clarke's background as the Chief of the Civil Rights Bureau of the New York State Attorney General's Office, where she secured landmark agreements with banks to address unlawful redlining and employers to address barriers to reentry for people with criminal backgrounds, among numerous other accomplishments.

As attorneys general, we know first-hand the qualities and qualifications necessary to defend both the sovereignty of the state and the rights of individuals. We applaud President Biden for nominating such a sterling slate of candidates to lead the Justice Department and are proud to give our unqualified endorsement to all four nominees.

Sincerely,



Letitia James  
New York State Attorney General

A blue ink signature of William Tong, featuring a stylized 'W' and 'T'.

William Tong  
Connecticut Attorney General

A black ink signature of Kathleen Jennings, written in a cursive style.

Kathleen Jennings  
Delaware Attorney General

A black ink signature of Karl Racine, consisting of a large, stylized 'K' and 'R'.

Karl Racine  
District of Columbia Attorney General

A black ink signature of Clare E. Connors, featuring a large, stylized 'C'.

Clare E. Connors  
Hawaii Attorney General

A black ink signature of Kwame Raoul, written in a cursive style.

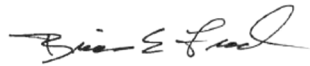
Kwame Raoul  
Illinois Attorney General

A handwritten signature in black ink that reads "Tom Miller". The signature is fluid and cursive, with the first name "Tom" and last name "Miller" clearly distinguishable.

Tom Miller  
Iowa Attorney General

A handwritten signature in black ink that reads "Aaron M. Frey". The signature is written in a cursive style, with the first name "Aaron" and last name "Frey" being prominent.

Aaron M. Frey  
Maine Attorney General

A handwritten signature in black ink that reads "Brian E. Frosh". The signature is written in a cursive style, with the first name "Brian" and last name "Frosh" being prominent.

Brian E. Frosh  
Maryland Attorney General

A handwritten signature in blue ink that reads "Maura Healey". The signature is written in a cursive style, with the first name "Maura" and last name "Healey" being prominent.

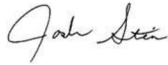
Maura Healey  
Massachusetts Attorney General

A handwritten signature in blue ink that reads "Aaron Ford". The signature is written in a cursive style, with the first name "Aaron" and last name "Ford" being prominent.

Aaron Ford  
Nevada Attorney General



Hector Balderas  
New Mexico Attorney General



Josh Stein  
North Carolina Attorney General



Ellen F. Rosenblum  
Oregon Attorney General



Josh Shapiro  
Commonwealth of Pennsylvania Attorney General

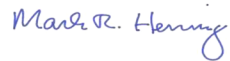


Peter Neronha  
Rhode Island Attorney General



A handwritten signature in black ink, appearing to read "TJDJ." with a stylized flourish.

Thomas J. Donovan, Jr.  
Vermont Attorney General

A handwritten signature in blue ink, appearing to read "Mark R. Herring" in a cursive script.

Mark R. Herring  
Virginia Attorney General

A handwritten signature in blue ink, appearing to read "Bob Ferguson" in a cursive script.

Bob Ferguson  
Washington State Attorney General



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February 21, 2021

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, DC 20510

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

**Re: Letter in Support of the Honorable Merrick B. Garland**

Dear Senator Schumer, Senator McConnell, Senator Durbin and Senator Grassley:

On behalf of the National Coalition on Black Civic Participation and the Black Women's Roundtable ("The National Coalition"), I write to enthusiastically endorse the Honorable Merrick B. Garland as the Attorney General of the United States.

The National Coalition is a non-partisan civil rights and social justice organization dedicated to increasing civic engagement and voter participation in Black and underserved communities, with a vision in which all people, from young people to seniors, have the tools to participate in the democratic process at the local, state, national and global levels. The National Coalition is driven to eliminate barriers to civic participation so that marginalized communities can attain greater social and economic justice. The Black Women's Roundtable is the women and girls leadership development, mentoring and empowerment arm of The National Coalition.

Judge Garland is one of the most distinguished judges in our nation, who nevertheless comes from a humble background and has exhibited a long-standing commitment for civic participation. His grandparents fled antisemitism in Eastern Europe and relocated to the United States, where Judge Garland learned what it meant to be civically engaged. He paid his college tuition by working as a tutor, at a shoe store, and went on to law school to become one of the

*Page 2 of 2*  
*The National Coalition/BWR's Letter of Support*  
*For Judge Garland's Nomination for AG*

most well-respected judges in America. When President Biden announced Judge Garland's nomination, Judge Garland acknowledged his grandparents and the difficult journey they undertook to come to America, understanding the blessings of America were made possible by their journey and through his own civic engagement.

In his prior service to the United States in the Justice Department, Judge Garland recognized that the rule of law in our nation must not allow for one rule for certain privileged communities, and one rule for another; one rule for one race, and another rule for another race. That in fact, the Justice Department's mission must include ensuring equal justice under the law.

For far too long, Black and underserved communities have not been afforded equal justice under the law. Judge Garland has pledged that the Justice Department under his leadership will always stand on the promise of equal justice under law. He has promised that he will devote himself to racial equity and independence. This pursuit of racial equity similarly stands at the core of the Coalition's mission -- to break down barriers for people of color to fully participate in our democracy.

The National Coalition therefore looks forward to working with Judge Garland and the other Justice Department nominees -- Lisa Monaco, Vanita Gupta, and Kristen Clarke -- to help realize a more fair and just United States of America.

I urge the U. S. Senate Judiciary Committee to successfully vote to confirm and report out Judge Garland's nomination, and it is my hope that the full Senate will confirm him.

Thank you for your consideration.

Sincerely yours,



Melanie L. Campbell  
 President & CEO, NCBCP  
 Convener, Black Women's Roundtable

# AFL-CIO

## LEGISLATIVE ALERT

March 1, 2021

The Honorable Richard Durbin, Chairman  
The Honorable Charles Grassley, Ranking Member  
Senate Committee on the Judiciary  
United States Senate  
Washington, D.C 20510

Dear Chairman Durbin and Ranking Member Grassley:

I am writing on behalf of the AFL-CIO to urge swift confirmation of Judge Merrick B. Garland to be Attorney General of the United States. The multiple crises facing our nation make it more important than ever to have a chief law enforcement officer with Judge Garland's demonstrated commitment to integrity, independence, and justice for all.

Judge Garland's distinctive career makes him singularly prepared to lead the Department of Justice during these challenging times. As he stated in his hearing before the Senate Judiciary Committee, "If confirmed, I will supervise the persecution of white supremacists and others who stormed the Capitol on January 6th, a heinous attack that sought to disrupt a cornerstone of our democracy -- the peaceful transfer of power to a newly elected government." Indeed, he is uniquely well prepared for this enormous task, as he led the Justice Department's 1990's investigation and prosecution of the Oklahoma City Federal Building, Atlanta Olympic, and "Unabomber" bombings. For almost 25 years, he has served as a judge on the U.S. Court of Appeals for the District of Columbia Circuit Court, and during this time he has considered a multitude of complex legal issues with nationwide ramifications. He has received uniform praise for his effective service as Chief Judge of the D.C Circuit Court and as Chair of the Executive Committee of the Judicial Conference of the United States.

Judge Garland also has made clear his commitment to the mission of the Department of Justice. As he testified, the Department was created "to secure the civil rights promised by the post-Civil War Constitutional Amendments," and it is responsible for enforcing the rights guaranteed by the Constitution and federal statutes. He further testified that the expertise, skills, and experience Lisa Monaco, Vanita Gupta, and Kristen Clarke will bring to their respective roles as Deputy Attorney General, Associate Attorney General, and Assistant Attorney General for the Civil Rights Division are greatly needed. He did not mince words, stressing that, "we do not yet have equal justice. Communities of color and other minorities still face discrimination in housing, in education, in employment and in the criminal justice system, and they bear the brunt of the harm caused by the pandemic, pollution, and climate change."

Judge Garland is not only eminently qualified to serve as Attorney General, he also would bring the values and commitment to equal justice that our nation sorely requires at this time. He and his team deserve swift confirmation.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Samuel', with a stylized flourish at the end.

William Samuel  
Director, Government Affairs

March 1, 2021

The Honorable Richard J. Durbin  
Chairman, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Charles E. Grassley  
Ranking Member, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Durbin & Ranking Member Grassley:

We, the undersigned, are more than 150 former United States Attorneys and other senior Department of Justice officials. Collectively, we have served in 46 states and the District of Columbia under both Democratic and Republican Administrations. We write in support of President Biden's nomination of Judge Merrick B. Garland to serve as Attorney General of the United States and to express our strong belief that Judge Garland is not only supremely qualified for the position, but is also well-equipped to address the many challenges before us.

Judge Garland has dedicated much of his life to the American justice system. Following his Second Circuit and Supreme Court clerkships, he began his career at the Department of Justice before moving to private practice, where he represented clients in commercial cases with a focus on administrative and antitrust law. Judge Garland later served as an Assistant U.S. Attorney in the District of Columbia, where he prosecuted narcotics activity and white-collar crime, as Deputy Assistant Attorney General for the Criminal Division, and as Principal Associate Deputy Attorney General. In this last role, he worked on many of the Department of Justice's most crucial investigations, including the Oklahoma City bombing and the UNABOMBER case. He became deeply respected by his colleagues for his commitment to evenhanded application of the law without regard for political pressures or media scrutiny.

Throughout his twenty-four years on the bench, Judge Garland has demonstrated his commitment to the Constitution and the rule of law. He has been praised for his absolute fidelity to statutory law as clarified by precedent. His lifelong commitment to civil rights has often been manifested in his decisions that have ensured that individuals are protected from unlawful discrimination regardless of age, race, or gender.

Judge Garland's familiarity with public and private litigation in varied areas of the law, as well as his time on the D.C. Circuit, make him well-suited to lead the Department of Justice. Moreover, his reputation for impartiality and his steadfast commitment to fairness will inspire a Department that prioritizes its independence and integrity.

The work and reputation of the Department of Justice are as important as they have ever been. Judge Garland is the right person to ensure the fair administration of justice, whether related to national security, public integrity, civil rights, antitrust, crime, or other pressing issues. He is also the right person to do so with integrity, humility, and a complete understanding of the substantial responsibility on his shoulders at this time. As Judge Garland himself expressed when he was nominated, the rule of law is the very foundation of our democracy. And we can unequivocally state that Judge Garland is the right person to ensure that the rule of law remains, in our national consciousness, one of our most deeply-held values.

We are confident that Judge Merrick Garland will dedicate himself to the Department of Justice and its values, and we urge the Senate to confirm him promptly as the next Attorney General of the United States.

Sincerely,

**Alberto R. Gonzales**

Attorney General of the United States,  
2005 – 2007

**Eric Holder**

Attorney General of the United States,  
2009 – 2015; Deputy Attorney General,  
1997 – 2001; U.S. Attorney, District of  
Columbia, 1993 – 1997

**Loretta Lynch**

Attorney General of the United States,  
2015 – 2017; U.S. Attorney, E. District of  
New York, 2010 – 2015

**Michael B. Mukasey**

Attorney General of the United States,  
2007 – 2009

**Stuart M. Gerson**

Acting Attorney General of the United States,  
1993; Assistant Attorney General,  
1989 – 1993

**Peter Keisler**

Acting Attorney General of the United States,  
2007; Assistant Attorney General for the Civil  
Division, 2003 – 2007; Acting Associate  
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March 8, 2021

U.S. Senate  
Washington, DC 20510

Dear Senator:

On behalf of our 3 million members and the 50 million students they serve, we urge you to VOTE YES on Judge Merrick Garland's nomination as U.S. Attorney General, in which capacity he will be responsible for ensuring the fair and impartial administration of justice for all Americans—in the words of Thomas Jefferson, "the most sacred of the duties of government." Votes on this nomination may be included in NEA's Report Card for the 117th Congress.

Judge Garland is known for his integrity and independence, which will be vital for restoring the public's trust in the Department of Justice. He is also a consensus builder. At the U.S. Court of Appeals for the District of Columbia, where he has been an appellate judge for over 23 years, he collaborates with other judges to come to unanimous rulings that rarely draw dissents.

He is especially well equipped to lead the investigation into the Jan. 6 attack on the Capitol by white supremacists and other extremists seeking to disrupt the peaceful transfer of power fundamental to the rule of law. As a prosecutor in the Department of Justice, Judge Garland oversaw the federal response to the Oklahoma City bombing that sought to spark a revolution and topple our government—an experience he called "the most important thing I have ever done in my life."

At this critical juncture, America needs an Attorney General who is committed to protecting the civil rights of everyone, particularly Black, Brown and Indigenous groups, and to reforming our flawed criminal legal system. We need an Attorney General who is committed to ending all forms of discrimination; addressing white supremacy and hate violence; and advancing racial, gender, disability, ethnic, religious, immigrant, and LGBTQ+ justice.

By temperament and experience, Judge Garland is eminently qualified to fulfill those roles. We strongly urge you to confirm his nomination as U.S. Attorney General.

Sincerely,

Marc Egan  
Director of Government Relations  
National Education Association

February 18, 2021

The Honorable Judge Merrick B. Garland  
Attorney General-Designate  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

*Via email*

Dear Attorney General-Designate Garland:

Congratulations on your nomination to lead the U.S. Department of Justice (DOJ). For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. Your nomination comes at a moment when America faces an overdue reckoning with racial injustice that can start to be addressed with policies such as adopting a federal use-of-force standard, decriminalizing marijuana, ending mandatory minimum sentencing, and abolishing the death penalty. We applaud President Biden's pledge to heal our country and reform our criminal legal system, and we look forward to working with him and DOJ to advance our shared goals.

At your confirmation hearing before the Senate Judiciary Committee on February 22, we urge you to make clear that under your leadership DOJ will adopt policies to build a more racially just criminal legal system. In addition to matters we anticipate that you already plan to address, we urge you to make clear, on-the-record commitments on five critical issues: mass incarceration; policing; COVID-19 in federal detention; the death penalty; and solitary confinement.

#### *Mass Incarceration*

As you know, while the United States has less than 5% of the world's population, we have 20% of the world's incarcerated people.<sup>1</sup> And those we incarcerate are disproportionately Black and Hispanic.<sup>2</sup> Mass incarceration has deepened racial injustice, shattered neighborhoods, and separated families, all without evidence that it has improved public safety.<sup>3</sup> The origins of mass incarceration and its racially-disparate impacts go back at least fifty

<sup>1</sup> Peter Wagner and Wanda Bertram, *What percent of the U.S. is incarcerated?*, Prison Policy Initiative (Jan. 16, 2020), <https://www.prisonpolicy.org/blog/2020/01/16/percent-incarcerated/>.

<sup>2</sup> Katie Mettler, *States imprison black people at five times the rate of whites—a sign of a narrowing yet still-wide gap*, Wash. Post (Dec. 4, 2019) (stating the ratio between Black and white people in federal prison is 7:1, and the ratio between white and Hispanic people is 4.6:1), <https://www.washingtonpost.com/crime-law/2019/12/04/states-imprison-black-people-five-times-rate-whites-sign-narrowing-yet-still-wide-gap/>.

<sup>3</sup> ACLU, *A Presidential Roadmap to Ending Mass Incarceration*, at 5, (Jul. 2019), <https://www.rightsforall.org/wp-content/uploads/070919-CJ-Briefing-Roadmap.pdf>.



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years, to when the federal government declared its War on Drugs and began instituting tough-on-crime sentencing policies like mandatory minimum sentencing laws. Merely reversing Trump era policies will not do enough to end mass incarceration. Reducing the federal prison population will require substantial changes to DOJ charging and sentencing policies.

Perhaps the single most impactful action you can take, if confirmed as Attorney General, to begin to reduce mass incarceration is to stop charging mandatory minimums.<sup>4</sup> Your office will have the authority to expand the 2013 Holder memo, which gave prosecutors discretion to avoid charging mandatory minimums in certain drug cases.<sup>5</sup> We urge you to broaden this policy and direct prosecutors to not bring charges that trigger mandatory minimum sentences in all cases where alternative charges are available. You can also direct prosecutors to stop seeking a trial penalty to punish accused people for exercising their constitutional right to a fair trial,<sup>6</sup> and to stop seeking longer sentences based on acquitted conduct.<sup>7</sup> The Trump DOJ's efforts to thwart Congressional intent behind the FIRST STEP Act of 2018 should also be reversed: DOJ should support application of the Act's reduced penalties at all sentencings, including resentencings in cases where an illegal sentence was vacated.<sup>8</sup>

Your office will also have the power to begin to unwind the War on Drugs, starting with marijuana. At a minimum, that means rescinding the Sessions Memo on marijuana enforcement<sup>9</sup> and reinstating the Cole Memo discouraging federal prosecution of marijuana activity that complies with state law.<sup>10</sup> We urge you to go beyond that and commit to deprioritize marijuana prosecutions, as well as misdemeanor possession cases for all types of controlled substances. DOJ should also direct Health and Human Services (HHS) to begin a

<sup>4</sup> Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, The Sentencing Project (Nov. 5, 2018) ("At the federal level, the prison population expanded from 20,000 in 1980 to 189,000 by 2016. The combined effect of the surge in drug prosecutions and the expansion of mandatory minimum sentences was a key factor in this growth. As of 2016, 55% of the federal prison population had been sentenced under a mandatory provision."), <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>.

<sup>5</sup> Attorney General Eric Holder's Memorandum Re: Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases (Aug. 12, 2013), <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/ag-memo-department-policy-pon-charging-mandatory-minimum-sentences-recidivist-enhancements-in-certain-drugcases.pdf>.

<sup>6</sup> See Emma Andersson and Jeffery Robinson, *The Insidious Injustice of the Trial Penalty: "It is not the intensity but the duration of pain that breaks the will to resist."*, Fed. Sentencing Rep., Vol. 31 no. 4-5 (April/June 2019).

<sup>7</sup> Sarah Lustbader, *You Can Be Sentenced, Even If You Were Acquitted*, The Appeal (Nov. 12, 2019), <https://theappeal.org/you-can-be-sentenced-even-if-you-were-acquitted/>.

<sup>8</sup> See Brief for Amicus Curiae United States Senators Richard J. Durbin, Charles E. Grassley, and Cory A. Booker in Support of Defendant-Appellant and Vacatur, *United States v. Mapuatuli*, CA No. 19-10233, ECF No. 22 (9th Cir. May 12, 2020) ("Reduced to its simplest form, [DOJ's] interpretation assumes that Congress intended to give legal effect to sentences that otherwise are void. . . . That unquestionably is not what Congress intended.").

<sup>9</sup> Memorandum from Attorney General Jefferson B. Session Re: Marijuana Enforcement (Jan. 4, 2018), <https://www.justice.gov/opa/press-release/file/1022196/download>.

<sup>10</sup> Memorandum from Deputy Attorney General James M. Cole Re: Guidance Regarding Marijuana Enforcement (Aug. 29, 2013), <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

review of whether marijuana should remain a schedule I substance. If you are confirmed as Attorney General, you should also support the MORE Act, which de-schedules marijuana and includes reparative justice and reinvestment provisions for the communities of color that marijuana prohibition has most harmed.<sup>11</sup>

We urge you to commit to specific charging and sentencing policies that would have a quantifiable impact on mass incarceration at the federal level, and outline your plans for effectuating those policies at U.S. Attorney's Offices around the country.

### *Policing*

The police murder of George Floyd last year was another wake-up call for many Americans about racism in policing. It was also a reminder that past efforts to address racist police practices have failed repeatedly. If you are confirmed as Attorney General, your office will need to begin by reversing the damage done by the Trump administration's explicit endorsements of police violence and its wholesale retreat from the notion that the federal government has a role to play in promoting police transparency, accountability, and best practices.<sup>12</sup>

An important first step in reining in excessive police use of force is to set clear national standards, requiring all police departments to adhere to common-sense limitations and best practices. President Biden has already committed to the creation of a national, model use-of-force standard as one of his racial equity priorities.<sup>13</sup> We urge you to ensure that this model standard truly conforms to the best practices in the field by embracing the principles set forth in the PEACE Act, which would permit officers to use force only when necessary, proportional, and as a last resort, after less extreme alternatives are exhausted.<sup>14</sup> We further urge you to adopt this standard as a binding DOJ standard for federal agents, and to incentivize state and local police departments to adopt it.

We urge you to commit to remove arbitrary barriers against holding police departments and officers accountable for misconduct. That begins by rescinding the Sessions Memo that restricts DOJ's ability to negotiate consent decrees to address patterns or practices of police misconduct by state and local law enforcement agencies.<sup>15</sup> DOJ should further promote police accountability by supporting legislation that abolishes qualified immunity, a judge-

<sup>11</sup> See MORE Act of 2020, H.R. 3884, 116th Cong. (2020).

<sup>12</sup> See, e.g., Mark Berman, *Trump tells police not to worry about injuring suspects during arrests*, Wash. Post (July 28, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/07/28/trump-tells-police-not-to-worry-about-injuring-suspects-during-arrests/>; Jeff Sessions, Op-Ed, *Jeff Sessions: 'Avoid harmful federal intrusion'*, USA Today (Apr. 17, 2017), <https://www.usatoday.com/story/opinion/2017/04/17/jeff-sessions-avoid-harmful-federal-intrusion-editorials-debates/100579848/>.

<sup>13</sup> Mark Berman and Tom Jackman, *Biden, a longtime ally of police, will enter White House pushing for reform*, Wash. Post (Jan. 11, 2021), <https://www.washingtonpost.com/politics/2021/01/11/biden-police-reform/>.

<sup>14</sup> See Police Exercising Absolute Care with Everyone Act of 2019, H.R. 4359, 116 Cong. (2019).

<sup>15</sup> *Memorandum from Attorney General Jeff Sessions Re: Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities* (Nov. 7, 2018), <https://www.justice.gov/opa/press-release/file/1109621/download>.

made doctrine that allows police officers to escape liability for unconstitutional and illegal acts.<sup>16</sup>

Federal civil forfeiture, which allows law enforcement to seize and take property from someone who has not been convicted of a crime, has long been used to carry out the War on Drugs and has the same disproportionate impact on people of color. DOJ's participation in equitable sharing with state and local police also fuels police militarization, as police departments are able to purchase military weapons and equipment using the profits from forfeitures, with little oversight or accountability. For example, between 2008 and 2014, police departments spent \$2.5 billion from federal civil forfeiture seizures, with over \$177 million of that being spent on weapons,<sup>17</sup> and the DOJ Asset Forfeiture fund had a net balance of about \$1.5 billion in 2018.<sup>18</sup> We urge you to commit, at a minimum, to reissue Attorney General Holder's prohibition on equitable sharing to reduce abuse of civil asset forfeiture.<sup>19</sup> We further urge you to announce a prohibition on asset forfeiture for property seized by joint federal-state task forces, many of which focus on drug enforcement.

DOJ should also finally enforce the Death in Custody Reporting Act of 2013, which requires DOJ to publicly report data from state and local law enforcement departments on in-custody deaths.<sup>20</sup> Without official data, the public must rely on estimates of deaths in custody based on public reporting.<sup>21</sup> This is insufficient. We urge you to commit to take steps to ensure state and local police departments comply with the Act.

#### *COVID-19 in Federal Detention*

Trump's DOJ failed to use available levers for release to mitigate the spread of COVID-19 in detention facilities, allowing hundreds of individuals to die unnecessarily in the custody of the federal Bureau of Prisons (BOP) and the U.S. Marshals Service (USMS).<sup>22</sup> In the CARES Act, Congress expanded BOP's authority to release individuals from prison to home confinement during the pandemic.<sup>23</sup> But Attorney General Barr issued guidance restricting release by, among other things, excluding individuals with a minor disciplinary action in

<sup>16</sup> Jeffery Robinson, Carl Takei, and Paige Fernandez, *How Do We End Racism in Policing?*, ACLU (Feb. 2, 2021), <https://www.aclu.org/news/criminal-law-reform/how-do-we-end-racism-in-policing>.

<sup>17</sup> Alberto Cuadra, Ted Mellnik, and Shelly Tan, *Spending Seized Assets*, Wash. Post (Oct. 11, 2014), <https://www.washingtonpost.com/wp-srv/special/investigative/asset-seizures/>.

<sup>18</sup> Christopher Ingraham, *No, Asset Forfeiture will not Pay for the Wall*, Wash. Post (Jan. 14, 2019), <https://www.washingtonpost.com/business/2019/01/14/no-asset-forfeiture-will-not-pay-wall/>.

<sup>19</sup> See U.S. Dep't of Justice, *Attorney General Prohibits Federal Agency Adoptions of Assets Seized by State and Local Law Enforcement Agencies Except Where Needed to Protect Public Safety* (Jan. 16, 2015), <https://www.justice.gov/opa/pr/attorney-general-prohibits-federal-agency-adoptions-assets-seized-state-and-local-law>.

<sup>20</sup> See Death in Custody Reporting Act of 2013, 34 U.S.C.A. §60105 (formerly codified as 42 U.S.C.A. §13727).

<sup>21</sup> Ethan Corey, *How the Federal Government Lost Track of Deaths in Custody*, The Appeal (June 24, 2020), <https://theappeal.org/police-prison-deaths-data/>.

<sup>22</sup> See Federal Bureau of Prisons, *BOP: COVID-19 Update* (reporting at least 222 individuals incarcerated in BOP have died from the virus as of Feb. 16, 2021), <https://www.bop.gov/coronavirus/>; U.S. Marshals Service, *COVID-19 Prisoner Statistics* (reporting at least 28 COVID-19 related deaths as of Feb. 11, 2021), <https://www.usmarshals.gov/coronavirus/stats.html>.

<sup>23</sup> See *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act), P.L. 116-136 § 12003(b)(2) (2020).

the last 12 months<sup>24</sup> and requiring a minimum score on a risk assessment tool that has racially-disparate impacts.<sup>25</sup> And now, unless a memo issued in the final days of the Trump Administration is rescinded, those individuals who were released to home confinement will be sent back to prison at the conclusion of the pandemic even if they have successfully complied with the terms of their release from prison.<sup>26</sup>

Trump's DOJ also failed to use compassionate release to mitigate the spread of COVID-19. This process was recently expanded by the FIRST STEP Act of 2018: it allows individuals to request release from BOP and, if the request is denied or ignored, to request release from the court, based on age, illness, or other extraordinary and compelling reasons.<sup>27</sup> But the Trump DOJ either failed to act on or opposed nearly every request for compassionate release, allowing incarcerated people to die during the pandemic while their requests were pending.<sup>28</sup>

To address this tragedy, we urge you to commit to direct BOP and USMS to swiftly offer vaccinations with appropriate patient education and incentives to all persons in custody, including all persons incarcerated in private contract facilities. We also urge you to commit to safely decarcerate individuals by expanding BOP's use of home confinement and directing prosecutors to make individualized assessments of compassionate release motions.

#### *The Federal Death Penalty*

The federal death penalty is plagued by racial bias, geographic arbitrariness, and unfairness—just like the death penalty in the states.<sup>29</sup> The Trump administration recklessly carried out an unprecedented number of federal executions, all during the pandemic, leading to spikes in COVID-19 cases and subjecting staff, witnesses, loved ones of the victims, and people incarcerated in federal prisons alike to escalated risk of

<sup>24</sup> Memorandum from Attorney General William Barr to BOP Director Michael Carvajal (Mar. 26, 2020), <https://www.justice.gov/file/1262731/download>; Memorandum from Attorney General William Barr to BOP Director Michael Carvajal (Apr. 3, 2020), <https://www.justice.gov/file/1266661/download>.

<sup>25</sup> Based on DOJ's own analysis of the risk assessment tool it uses, PATTERN, only 7% of Black men in its data sample were classified as minimum, compared to 30% of White men. U.S. Dep't of Justice, *The First Step Act of 2018: Risk and Needs Assessment System*, at 62, Table 8 (July 2019), [https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system\\_1.pdf](https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system_1.pdf).

<sup>26</sup> U.S. Dep't of Justice, *Home Confinement of Federal Prisoners After the COVID-19 Emergency*, 45 Op. O.L.C. \_\_ (Jan. 15, 2021), <https://www.justice.gov/sites/default/files/opinions/attachments/2021/01/17/2021-01-15-home-confine.pdf>.

<sup>27</sup> See 18 U.S.C. § 3182(c)(1)(A).

<sup>28</sup> Justin William Moyer and Neena Satija, *Frail inmates could be sent home to prevent the spread of covid-19. Instead, some are dying in federal prisons*, Wash. Post (Aug. 3, 2020) ("the bureau routinely has opposed or not responded to requests for compassionate release"), [https://www.washingtonpost.com/local/public-safety/frail-inmates-could-be-sent-home-to-prevent-the-spread-of-covid-19-instead-some-are-dying-in-federal-prisons/2020/08/02/992fd484-b636-11ea-9b0f-c797548c1154\\_story.html](https://www.washingtonpost.com/local/public-safety/frail-inmates-could-be-sent-home-to-prevent-the-spread-of-covid-19-instead-some-are-dying-in-federal-prisons/2020/08/02/992fd484-b636-11ea-9b0f-c797548c1154_story.html).

<sup>29</sup> Cassandra Stubbs, *The Death Penalty in 2019: A Year of Incredible Progress, Marred by Unconscionable Executions*, ACLU (Dec. 13, 2019) ("Geography, money, and race are still the best predictors of who will receive the death penalty."), <https://www.aclu.org/news/capital-punishment/the-death-penalty-in-2019-a-year-of-incredible-progress-marred-by-unconscionable-executions/>.

infection.<sup>30</sup> Moreover, former Attorney General Barr adopted a protocol for lethal injection that inflicts torturous pain on people sentenced to death, and promulgated guidelines and regulations to accelerate the execution process at the expense of due process.<sup>31</sup>

We urge you to pledge to immediately suspend all federal executions, withdraw authorization of the death penalty in all pending trial cases, make it the policy of DOJ to not seek the death penalty in any case, and withdraw the execution protocol and the related federal regulations. We further urge you to support executive clemency for individuals currently on federal death row.

### *Solitary Confinement*

Prior to the pandemic, 80,000 men, women, and children in the United States were locked in isolation on any given day.<sup>32</sup> Although international human rights standards require that solitary confinement be used only as a last resort and under no circumstances for more than 15 days,<sup>33</sup> it is common for people in our nation's prisons to be isolated for months, years, and even decades.<sup>34</sup> Additionally, during the pandemic, infection rates and deaths have been exacerbated due to misguided attempts to mitigate the spread of the virus through increased use of solitary confinement in lieu of medical isolation.<sup>35</sup> The result has been nearly a 500% increase in the use of solitary confinement in 2020, with an estimated 300,000 people in solitary at any one time.<sup>36</sup>

To address the current spike in confinement, we urge you to commit to swiftly end the ineffective and inhumane use of solitary confinement by BOP and USMS during the pandemic, which has exacerbated the virus spread.<sup>37</sup>

DOJ should also pick up where it left off in 2016 with its *Report and Recommendations Concerning the Use of Restrictive Housing*, which sets forth specific policy recommendations

<sup>30</sup> Nathalie Baptiste, *How Trump's Rush to Execute Inmates Is Spreading COVID*, Mother Jones (Dec. 8, 2020), <https://www.motherjones.com/crime-justice/2020/12/how-trumps-rush-to-execute-inmates-is-spreading-covid/>.

<sup>31</sup> See Isaac Arnsdof, *Inside Trump and Barr's Last-Minute Killing Spree*, ProPublica (Dec. 23, 2020), <https://www.propublica.org/article/inside-trump-and-barrs-last-minute-killing-spreed>; U.S. Dep't of Justice, *Justice Manual*, 9-10.190, 200, 210 (rules added or amended by Attorney General Barr in Dec. 2020 and Jan. 2021 that accelerate the capital case process).

<sup>32</sup> Dan Nolan and Chris Amico, *Solitary by the Numbers*, Frontline (Apr. 18, 2017), <http://apps.frontline.org/solitary-by-the-numbers/>. "Solitary confinement" is defined as "confinement of prisoners for 22 hours or more a day without meaningful human contact." United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, Rule 44 ("The Mandela Rules").

<sup>33</sup> The Mandela Rules, Rules 43, 44.

<sup>34</sup> Stephanie Wykstra, *The Case Against Solitary Confinement*, Vox (Apr. 17, 2019), <https://www.vox.com/future-perfect/2019/4/17/18305109/solitary-confinement-prison-criminal-justice-reform>.

<sup>35</sup> See Unlock the Box, *Solitary Confinement is Never the Answer*, at 1, 5-6 (June 2020), <https://static1.squarespace.com/static/5a9446a89d5abbfa67013da7/t/5ee7c4f1860e0d57d0ce8195/1592247570889/June2020Report.pdf>.

<sup>36</sup> *Id.*, at 1, 3-4.

<sup>37</sup> See Letter from Senators Richard J. Durbin and Elizabeth Warren to Attorney General William Barr and BOP Director Michael Carvajal, at 1-2, 4 (Oct. 2, 2020), <https://www.warren.senate.gov/imo/media/doc/Letter%20from%20Warren%20and%20Durbin%20to%20AG%20Barr%20and%20Director%20Caraval%20re%20solitary%20confinement%20during%20COVID-19%20pandemic%2010.2.20%20FINAL.pdf>.



for limiting the use of restrictive housing in the BOP and other DOJ entities, as well as more general guiding principles for all correctional systems.<sup>38</sup> We urge you to commit to appoint a working group that includes public health professionals, criminal justice reform advocates, and directly impacted solitary survivors or their surviving family members to immediately implement the recommendations in that report, and empower them to propose updated recommendations on an established timeline.

We urge you to announce that the working group is a first step toward complying with the Mandela rules, which recognize that solitary confinement is inhuman torture and therefore ban solitary confinement lasting longer than 15 days and categorically ban solitary for people with serious mental illness, children, pregnant women, and other medically fragile individuals (except in extraordinary circumstances).<sup>39</sup> DOJ should incentivize states and localities to do the same.

Thank you for your consideration of these important issues facing DOJ. We look forward to hearing your testimony before the Senate Judiciary Committee on February 22, and working with you in the future. If you have any questions or need further detail, please feel free to contact senior policy counsel Aamra Ahmad ([aahmad@aclu.org](mailto:aahmad@aclu.org)).

Sincerely,



Cynthia W. Roseberry  
Deputy Director for Policy  
ACLU Justice Division

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<sup>38</sup> U.S. Dep't of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing* (Jan. 2016), <https://www.justice.gov/archives/dag/report-and-recommendations-concerning-use-restrictive-housing#principles>.

<sup>39</sup> The Mandela Rules, Rule 45.

## Government by Blog Post

*Josh Blackman*\*

### I. INTRODUCTION

Since Democrats lost their filibuster-proof majority in the Senate in the 2010 midterm elections—due in large part to the rising unpopularity of the Affordable Care Act (ACA) and the growing strength of the Tea Party—President Obama was largely unable to advance his agenda through the legislative process. Faced with Republican opposition at every step, Obama increasingly turned to executive power to take action where Congress would not. By 2011, the mantra of his presidency became “We can’t wait.” Charlie Savage reported that the President coined this slogan at a strategy meeting to “more aggressively use executive power to govern in the face of Congressional obstructionism.”<sup>1</sup> When Congress will not legislate to the President’s satisfaction, he will act alone. In a White House blog post fittingly titled “We Can’t Wait” the administration listed all of the President’s executive actions, stressing that he “is not letting congressional gridlock slow our economic growth.”<sup>2</sup> By my count, Obama has repeated this phrase at least a dozen times to justify taking executive action where Congress would not pass him the bill he wants.<sup>3</sup>

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\* Associate Professor, South Texas College of Law, Houston. This essay is adapted from *Unraveled: Obamacare, Religious Liberty, & Executive Power* (Cambridge University Press 2016). I would like to thank the members of the *FIU Law Review* and all of the participants of the symposium.

<sup>1</sup> Charlie Savage, *Shift on Executive Power Lets Obama Bypass Rivals*, N.Y. TIMES (Apr. 22, 2012), <http://nyti.ms/1SgzZnC>.

<sup>2</sup> *We Can’t Wait*, WHITEHOUSE.GOV (Oct. 24, 2011), [www.whitehouse.gov/economy/jobs/we-cant-wait](http://www.whitehouse.gov/economy/jobs/we-cant-wait).

<sup>3</sup> Press Release, The White House, Remarks by the President on the Economy and Housing (Oct. 24, 2011, 2:15 PM) (“So I’m here to say to all of you—and to say to the people of Nevada and the people of Las Vegas—we *can’t wait* for an increasingly dysfunctional Congress to do its job. Where they won’t act, I will. In recent weeks, we decided to stop waiting for Congress to fix No Child Left Behind, and decided to give states the flexibility they need to help our children meet higher standards.”) (emphasis added), [www.whitehouse.gov/the-press-office/2011/10/24/remarks-president-economy-and-housing](http://www.whitehouse.gov/the-press-office/2011/10/24/remarks-president-economy-and-housing); Press Release, The White House, Remarks by the President at a Campaign Event (Oct. 25, 2011, 7:36 PM) (“And so we’re going to keep on putting pressure on them, but in the meantime we’re saying we can’t wait for Congress, and we’re going to go ahead and do everything we can through executive actions—whether it’s this refinancing program, or tomorrow I’m going to be talking about making college more affordable for young people—we’re *not going to wait* for Congress.”) (emphasis added), [www.whitehouse.gov/the-press-office/2011/10/25/remarks-president-campaign-event-1](http://www.whitehouse.gov/the-press-office/2011/10/25/remarks-president-campaign-event-1); Press Release, The White House, Remarks by the President at Signing of Executive Order (Oct. 31, 2011, 12:50 PM) (“Congress has been trying since February to do something about this. It has not yet been able to get it done. And it is the belief of this administration, as well as folks like Bonnie and Jay, that we *can’t wait for action on the Hill*—we’ve got to go ahead and move forward.”) (emphasis added).

If “We Can’t Wait” was President Obama’s mantra, the “Pen and Phone” was his method. In a cabinet meeting he explained, “We’re not just going to be *waiting* for legislation in order to make sure that we’re providing Americans the kind of help they need. I’ve got a pen and I’ve got

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www.whitehouse.gov/the-press-office/2011/10/31/remarks-president-signing-executive-order; Press Release, The White House, Remarks by the President on Head Start in Yeadon, Pennsylvania (Nov. 8, 2011, 11:43 AM) (“Our children deserve action. And we *can’t wait* for Congress any longer.”) (emphasis added), www.whitehouse.gov/the-press-office/2011/11/08/remarks-president-head-start-yeadon-pennsylvania; Press Release, The White House, Remarks by the President at the House Democrats Issues Conference (Jan. 27, 2012, 1:36 PM) (“On the other hand, where they obstruct, where they’re unwilling to act, where they’re more interested in party than they are in country, more interested in the next election than the next generation, then we’ve got to call them out on it. We’ve got to call them out on it. We’ve got to push them. *We can’t wait*. We can’t be held back.”) (emphasis added), www.whitehouse.gov/the-press-office/2012/01/27/remarks-president-house-democrats-issues-conference; Press Release, The White House, Remarks by the President on No Child Left Behind Flexibility (Feb. 9, 2012, 1:57 PM) (“In September, after waiting far too long for Congress to act, I announced that my administration would take steps to reform No Child Left Behind on our own. This was one of the first and the biggest “*We Can’t Wait*” announcements that we’ve made, because our kids and our schools can’t be held back by inaction.”) (emphasis added), www.whitehouse.gov/the-press-office/2012/02/09/remarks-president-no-child-left-behind-flexibility; Press Release, The White House, Remarks by the President on the Economy—Warrensburg, Missouri (July 25, 2013, 5:09 PM) (“And I’m going to take these plans all across the country, and I’m going to ask folks for help because, frankly, sometimes *I just can’t wait* for Congress. It just takes them a long time to decide on stuff.”) (emphasis added), www.whitehouse.gov/the-press-office/2013/07/25/remarks-president-economy-warrensburg-missouri; Press Release, The White House, Remarks by the President on the Economy—Jacksonville, Florida (July 25, 2013, 2:45 PM) (“Unfortunately, over the past two years, too many folks in Washington have been cutting these investments. The world *can’t wait* for Congress to get its act together.”) (emphasis added), www.whitehouse.gov/the-press-office/2013/07/25/remarks-president-economy-jacksonville-fl; Press Release, The White House, Remarks by the President on the National Network for Manufacturing Innovation (Jan. 15, 2014, 1:14 PM) (“Long term, the challenge of making sure everybody who works hard can get ahead in today’s economy is so important that we *can’t wait* for Congress to solve it. Where I can act on my own without Congress, I’m going to do so.”) (emphasis added), www.whitehouse.gov/the-press-office/2014/01/15/remarks-president-national-network-manufacturing-innovation; Press Release, The White House, Remarks by the President on Opportunity for All and Skills for America’s Workers (Jan. 30, 2014, 11:27 AM) (“Some of the ideas I presented I’m going to need Congress for. But America cannot stand still, and neither will I. So wherever I can take steps to expand opportunity, to help working families, that’s what I’m going to do with or without Congress. I want to work with them, but *I can’t wait for them*. We’ve got too much work to do out there.”) (emphasis added), www.whitehouse.gov/the-press-office/2014/01/30/remarks-president-opportunity-all-and-skills-americas-workers; Press Release, The White House, Remarks by the President on Jobs in American Infrastructure (Feb. 26, 2014, 2:40 PM) (“But what I also said at the State of the Union is, in this year of action, whenever I can partner directly with states or cities or business leaders or civic leaders to act on this opportunity agenda, I’m going to go ahead and do it. *We can’t wait*. We’ve got to move. We’ve got to get things going. Too many families are counting on it.”) (emphasis added), www.whitehouse.gov/the-press-office/2014/02/26/remarks-president-jobs-american-infrastructure; Press Release, The White House, Remarks by the President Before Cabinet Meeting (July 1, 2014, 11:04 AM) (“And part of the reason that I wanted to bring the Cabinet together today is to underscore for them my belief I think shared by most Americans that *we can’t wait* for Congress to actually get going on issues that are vital to the middle class.”) (emphasis added), www.whitehouse.gov/the-press-office/2014/07/01/remarks-president-cabinet-meeting; Press Release, The White House, Remarks by the President on the Economy (July 1, 2014, 2:22 PM) (“Middle-class families *can’t wait* for Republicans in Congress to do stuff. So sue me.”) (emphasis added), www.whitehouse.gov/the-press-office/2014/07/01/remarks-president-economy.



a phone.”<sup>4</sup> Specifically, he said, “I can use that pen to sign executive orders and take executive actions and administrative actions that move the ball forward”<sup>5</sup> to “advance a mission that . . . unifies all Americans.”<sup>6</sup> To accomplish this mission, the President insisted that his cabinet “use all the tools available to us, not just legislation.”<sup>7</sup> The President’s Chief of Staff, John Podesta, put it bluntly: “The upshot: Congressional gridlock does not mean the federal government stands still.”<sup>8</sup>

The Obama approach to governance was crystalized in a November 2014 *Saturday Night Live* parody of the *Schoolhouse Rock!* classic, titled “How a Bill Does Not Become a Law.”<sup>9</sup> A character dressed as a Bill, standing on the steps of Capitol Hill, was explaining to a boy how he would become a law. “Well first I go to the House, and they vote on me. But then I need from the Senate a majority. And if I pass the legislative test, then I wind up on the President’s desk.”<sup>10</sup> President Obama appears, and shoves the Bill down the steps. The boy shouts, “President Obama, what’s the big idea. That bill was trying to become a law.”<sup>11</sup> The smirking President tells the boy, “There’s actually an even easier way to get things done around here. It’s called an executive order.”<sup>12</sup> Another character, dressed as an Executive Order appears. “I’m an executive order,” he sings, “and I pretty must just happen.”<sup>13</sup> The boy asks, “Don’t you have to go through Congress at some point?”<sup>14</sup> The Executive Order, with cigarette in hand, dismisses the boy. “Oh that’s adorable, you still think that’s how government works.”<sup>15</sup> The bill climbs back up the stairs and sings, “Look at the midterm elections, people clearly don’t want this”<sup>16</sup> executive order. The Bill, gasping, climbs up the steps and sings, “We’re going to take you to court, we’re going to shut down all the Congress—”<sup>17</sup> Obama shoves the Bill down the stairs one

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<sup>4</sup> *Obama on Executive Actions: “I’ve Got a Pen and I’ve Got a Phone”*, CBS DC (Jan. 14, 2014, 1:05 PM), <http://cbsloc.al/1YhuYzX> (emphasis added).

<sup>5</sup> Rebecca Kaplan, *Obama: I Will Use My Pen and Phone to Take on Congress*, CBS NEWS (Jan. 14, 2014, 12:44 PM), <http://cbsn.ws/1PWUdS3>.

<sup>6</sup> *Obama on Executive Actions: “I’ve Got a Pen and I’ve Got a Phone”*, CBS DC (Jan. 14, 2014, 1:05 PM), <http://cbsloc.al/1YhuYzX>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Saturday Night Live: How a Bill Does Not Become a Law* (NBC television broadcast Nov. 22, 2014), [www.nbc.com/saturday-night-live/video/capitol-hill-cold-open/2830152](http://www.nbc.com/saturday-night-live/video/capitol-hill-cold-open/2830152).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

last time.

During the implementation of the Affordable Care Act,<sup>18</sup> President Obama repeatedly turned to this all-too-familiar pattern of *executive action*. (Note that executive action, an umbrella term that includes memoranda and other informal guidance documents from administrative agencies, is far broader than actual executive orders signed by the President.<sup>19</sup>) First, the impact of the Affordable Care Act made certain groups worse off. Second, as a result, Congress was pressured to modify the law to alleviate these negative externalities from the law. However, Democrats feared that Republicans would seize the opportunity to unravel other portions of the law. This halted any possible bipartisan support for legislative amendments. Third, in the face of this gridlock, President Obama turned to executive action to alter the ACA's onerous mandates. Specifically, he delayed and suspended the individual and employer mandates, as well as modified provisions affecting benefits for Congressional employees and coverage in the U.S. territories.

Each of these executive actions—implemented through formal notice-and-comment rulemaking or informal social-media blogging—came as a complete surprise. Each change posed risks to the long-term sustainability of the law. Each change relied on tenuous readings of the statute, and dubious assertions of executive authority to accomplish ends entirely at odds with what Congress designed. Each action was contested in court by states and private parties. However, because the executive actions had the effect of lifting burdens, rather than imposing any injuries, the government vigorously contested that no one had standing to bring suit. As a result, the ultimate legality of these moves was decided not by the courts, but by the President, who desperately acted alone to salvage his signature law.

One of the more disconcerting aspects of the law's implementation, beyond the numerous delays and waivers, has been the cavalier approach by which the government announced these changes. More often than not, the explanation of a modification would come in a social media update on the Department of Health and Human Services (HHS) blog (often on a Friday afternoon). For example, as Ezra Klein and Sarah Kliff observed, “on the Friday following the Fourth of July, [the administration] quietly released a 606-page regulation that delayed requirements for the marketplaces to

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<sup>18</sup> Patient Protection and Affordable Care Act, 26 U.S.C. § 5000A (2012).

<sup>19</sup> Gregory Korte, *Obama Issues “Executive Orders by Another Name”*, USA TODAY (Dec. 17, 2014, 1:16 PM), <http://goo.gl/gBS7QC> (President Obama had “already signed 33% more presidential memoranda in less than six years than Bush did in eight. He’s also issued 45% more than the last Democratic president, Bill Clinton, who assertively used memoranda to signal what kinds of regulations he wanted federal agencies to adopt. Obama is not the first president to use memoranda to accomplish policy aims. But at this point in his presidency, he’s the first to use them more often than executive orders.”).

verify workers' incomes and employment status."<sup>20</sup> One benefits lawyer lamented that this process "is how HHS often breaks controversial regulatory news."<sup>21</sup> It soon became a painful pastime of ferreting through these massive document dumps and attempting to find the actual basis for the rule previously announced in the blog post. And invariably, the policy, as stated in the blog post, doesn't quite match up what is in the rule. This was no longer a government of law, but a government by blog post.<sup>22</sup>

## II. "BUSINESSES CAME TO US"

Although the Affordable Care Act's exchanges launched on October 1, 2013, the crucial date was actually January 1, 2014. On this day, there would be three major milestones. First, the individual mandate would kick in, penalizing people who were uninsured or who had an insurance policy that did not meet the requirements of "minimum essential coverage."<sup>23</sup> Second, for the new year, the ACA's employer mandate required businesses with more than fifty employees to provide their full-time workers with a qualified health insurance plan or alternatively pay a penalty.<sup>24</sup> This mandate included the requirement for employers to provide their workers with cost-free access to contraceptives. Third, policies purchased on the ACA exchanges—subsidized by federal tax credits—would begin.

Congress directed that these three interlocking mechanisms would simultaneously go into effect on January 1, 2014, so that all Americans would benefit from health care reform at once. Or at least that was the plan. After millions of canceled plans, difficulties of signing up online, and opposition from the business community, President Obama would alter each of these mandates in ways Congress never intended.

The first crack in the ACA's armor formed in July 2013, months before HealthCare.gov launched. Since its inception, businesses lobbied the White House to delay or modify the employer mandate, in order to avoid the added cost of covering their employees.<sup>25</sup> Specifically, businesses warned that they would drop employees from full-time to part-time—less than thirty-hours per week—in order to avoid the ACA penalty. Neil

<sup>20</sup> Ezra Klein & Sarah Kliff, *Obama's Last Campaign: Inside the White House Plan to Sell Obamacare*, WASH. POST (July 17, 2013), <http://wapo.st/1oGgo92>.

<sup>21</sup> R. Pepper Crutcher, Jr., *Union Funds May Find Treasure Buried in HHS Rule Preamble*, AFFORDABLE CARE ACT REV. (Oct. 31, 2013), <http://www.acareview.com/2013/10/union-funds-may-find-treasure-buried-in-hhs-rule-preamble>.

<sup>22</sup> Josh Blackman, *Obamacare and Government by Blog Post*, LIBERTY LAW SITE (Mar. 10, 2014), <https://perma.cc/KP28-FEJR>.

<sup>23</sup> 26 U.S.C. § 5000A (2012).

<sup>24</sup> 26 U.S.C. § 4980H(a)–(c) (2012).

<sup>25</sup> Robb Mandelbaum, *The Employer Mandate Has Been Delayed. Will It Be Rewritten?*, N.Y. TIMES Blog (July 3, 2013, 5:51 PM), <http://goo.gl/qEOZF7>.

Trautwein, the Vice President of the National Retail Federation explained that if the mandate went into effect, employers would start cutting hours: “If you set a hard 30-hour limit for eligibility, you encourage employers to cut where they can. You’re not going to cut willy-nilly, but potentially you increase your part-time workforce.”<sup>26</sup>

Their rent-seeking worked. President Obama would later explain that “businesses came to us and said, ‘listen, we were supportive of providing health insurance to employees, in fact, we provide health insurance to our employees; we understand you want to get at the bad actors here, but are there ways to provide us some administrative relief?’”<sup>27</sup> And he did just that. On July 2, Mark Manzur, the assistant secretary for tax policy, took to social media to update the ACA’s status.

In a blog post titled *Continuing to Implement the ACA in a Careful, Thoughtful Manner*, the Obama administration nonchalantly suspended the employer mandate.<sup>28</sup> The ACA provides that the employer mandate “shall apply to months beginning after December 31, 2013.” That is, it goes into effect on January 1, 2014. However, Manzur blogged that the government “will provide an additional year before the ACA mandatory employer and insurer reporting requirements begin.”<sup>29</sup>

To justify this “transitional” policy, the blog post cited the “complexity of the requirements and the need for more time to implement them effectively.”<sup>30</sup> Although Manzur’s announcement was framed in terms of relaxing the ACA’s onerous reporting demands—over which the HHS secretary does have significant discretion—the true impact of this delay was to prevent the government from being able to impose penalties on non-compliant employers. The post mentions, almost as a side note, that “[w]e recognize that this transition relief will make it impractical to determine which employers owe shared responsibility payments . . . . Accordingly, we are extending this transition relief to [them].”<sup>31</sup> In other words, because employers were not obligated to report to the government how many uninsured workers they had, the government had no method of assessing the employer mandate’s penalty. With the click of a mouse—without so much as a tweet of advance notice to affected parties—the government announced that the employer mandate was suspended for *all* employers in 2014.

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<sup>26</sup> Sarah Kliff, *The Politics of Delaying Obamacare*, WASH. POST (July 2, 2013), <https://perma.cc/CRU6-7HGT>.

<sup>27</sup> *Interview with President Obama*, N.Y. TIMES (July 27, 2013), <http://goo.gl/K4qZJ7>.

<sup>28</sup> Mark Mazur, *Continuing to Implement the ACA in a Careful, Thoughtful Manner*, TREAS. NOTES (July 2, 2013), <https://goo.gl/vd0GvQ>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

Shortly after the blog post went viral, the Internal Revenue Service (IRS) released a notice regarding “transition relief,” announcing that the employer mandate’s penalty will not be “assessed for 2014.”<sup>32</sup> Mark Iwry, Deputy Assistant Secretary at Treasury, defended the delay by explaining that the agency has done this a dozen times before, without any Congressional objection: “On a number of prior occasions across administrations, this authority has been used to postpone the application of new legislation when the immediate application would have subjected taxpayers to unreasonable administrative burdens or costs.”<sup>33</sup>

Observers saw different motivations for the change, beyond administrative convenience. Sarah Kliff noted that beyond the “complexity of the [reporting] requirements,” some “observers saw a political motivation as well.”<sup>34</sup> Michigan Law Professor Nicholas Bagley was skeptical about the purported reason for the delay: “Affording transitional relief for a law that was enacted four years ago raised the question of, shouldn’t you have had your ducks in a row when you knew this was coming down the pike?”<sup>35</sup> The business community, which stood to benefit from this largesse, was pleased. “I think this is less about readiness and more about the fact that they’re trying to be flexible in their implementation,” said Rhett Buttle, vice president of the Small Business Majority.<sup>36</sup> “It does seem like an olive branch” to the business community, he said.<sup>37</sup> The businesses can’t wait, but their employees would have to.

### III. “LET’S MAKE A TECHNICAL CHANGE OF THE LAW”

The decision to delay the employer mandate came as a surprise to virtually everyone outside of the White House. The *Washington Post* reported that thirty minutes before the Treasury Department updated its status, the administration poked the Democratic leadership in the Senate and House.<sup>38</sup> They did not like it. This last-minute notice was deemed a slight, because only a week earlier on June 24, Jeanne Lambrew gave them no indication that the mandate would be delayed. The *Post*, quoting an anonymous White House official, attributed the secrecy to GOP opposition

<sup>32</sup> I.R.S. Notice 2013-45, 2013-31 I.R.B. 116, at 3 (July 9, 2013), <http://goo.gl/71ZFJI>.

<sup>33</sup> Sarah Kliff, *The White House Keeps Changing Obamacare. Is That Legal?*, WASH. POST (Aug. 7, 2013), <https://perma.cc/9BHZ-XJWE>.

<sup>34</sup> Sarah Kliff, *The Politics of Delaying Obamacare*, WASH. POST (July 2, 2013), <https://perma.cc/CRU6-7HGT>.

<sup>35</sup> Sarah Kliff, *The White House Keeps Changing Obamacare. Is That Legal?*, WASH. POST (Aug. 7, 2013), <https://perma.cc/9BHZ-XJWE>.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Amy Goldstein & Juliet Eilperin, *HealthCare.gov: How Political Fear Was Pitted Against Technical Needs*, WASH. POST (Nov. 2, 2013), <https://perma.cc/E5FT-JARS>.

to Obamacare: “It’s very hard for a staffer to talk to a member of Congress about a decision that’s not made yet.”<sup>39</sup> This delay was also the first major hint that something was awry with the ACA. Sarah Kliff wrote on *WonkBlog* that the delay of the employer mandate, along with the earlier delay of the launch of the small business insurance marketplaces, “could draw criticism that the administration will not be able to put into effect its signature legislative accomplishment on schedule.”<sup>40</sup>

Reportedly, the White House even kept the Treasury Department out of the loop until the very end. A March 2014 letter by House Oversight Committee Chairman Darrell Issa (R-CA) charged that “the White House Chief of Staff knew about the employer mandate delay prior to the head of the [Treasury] department implementing the program.”<sup>41</sup> Issa noted this approach raised “serious questions about whether the White House directed the delay of the employer mandate for political reasons.”<sup>42</sup> The Californian explained that Mark Mazur could not recall if any lawyers within the Treasury discussed if they had the legal authority to delay the mandate.

The President attempted to justify the delay by faulting the Republicans, whom he deemed unwilling to make a minor change to the law. “In a normal political environment,” Obama explained, “it would have been easier for me to simply call up the speaker and say . . . let’s make a technical change of the law.”<sup>43</sup> In a different time, the President suggested, “[t]hat would be the normal thing that I would prefer to do.” For example, in 1936, President Roosevelt’s implementation of Social Security had to be delayed because the government couldn’t figure out how to create twenty-six million unique numbers for workers.<sup>44</sup> President Lyndon B. Johnson signed Medicare into law on July 30, 1965, and it was scheduled to go into effect on July 1, 1966—a day the *New York Times* dubbed “M-Day.”<sup>45</sup> The enrollment effort successfully enrolled 93% of eligible seniors by 1966, in some cases forest rangers tracked down hermits in the woods.<sup>46</sup> But that wasn’t enough—President Johnson was able to persuade Congress to delay

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<sup>39</sup> *Id.*

<sup>40</sup> Sarah Kliff, *White House Delays Employer Mandate Requirement Until 2015*, WASH. POST (July 2, 2013), <https://perma.cc/3BVW-47QG>.

<sup>41</sup> Jonathan Easley, *Issa Questions Treasury’s Authority to Delay ObamaCare Employer Mandate*, THE HILL (Mar. 20, 2014), <https://perma.cc/2EXC-3S4B>.

<sup>42</sup> *Id.*

<sup>43</sup> George Will, *Obama’s Unconstitutional Steps Worse than Nixon’s*, WASH. POST (Aug. 14, 2013), <https://goo.gl/2CGOXi>.

<sup>44</sup> STEVEN BRILL, *AMERICA’S BITTER PILL: MONEY, POLITICS, BACKROOM DEALS, AND THE FIGHT TO FIX OUR BROKEN HEALTHCARE SYSTEM* 314 (2015).

<sup>45</sup> Sarah Kliff, *When Medicare Launched, Nobody Had Any Clue Whether It Would Work*, WASH. POST (May 17, 2013), <https://perma.cc/AW6A-6QW6>.

<sup>46</sup> *Id.*

the rollout by two months in order to get more people to enroll.<sup>47</sup> In 2013, however, President Obama said we were “not in a normal atmosphere around here when it comes to, quote-unquote, ‘Obamacare.’”<sup>48</sup> But this was not accurate—there in fact was bipartisan support to delay the employer mandate.

On July 17, two weeks after the Treasury Department shared its new posting, the House of Representatives passed the *Authority for Mandate Delay Act*.<sup>49</sup> The two-page bill would have delayed the implementation of the employer mandate until 2015.<sup>50</sup> That is *precisely* what the blog post accomplished, except it had the backing of the legislative branch. It was enacted on a 264-161 vote, with thirty-five Democrats voting yea.

In response to this bill, which would have unequivocally given him the authority to delay the mandate, the President issued a veto threat. The White House said the bill was “unnecessary.”<sup>51</sup> Underlying this veto threat was a concern that Republicans could later add amendments to the bill, which would unravel other provisions of the law. Because of the President’s executive action, the Democratic-controlled Senate—spared the need to take a tough vote—never even considered the bill.

With the employer mandate already delayed until January 2015, lobbying was enhanced to push it back even further. Harvard Professor John McDonough, who advised Senator Ted Kennedy, explained that the delay is “not a freebie.”<sup>52</sup> “Politically, it won’t get easier a year from now [to implement], it will get harder,” he said.<sup>53</sup> “You’ve given the employer community a sense of confidence that maybe they can kill this. If I were an employer, I would smell blood in the water.”<sup>54</sup>

Once again, the rent-seeking worked. Seven months after the initial blog post, the Treasury Department postponed the full implementation of the employer mandate until 2016.<sup>55</sup> But in doing so, the executive branch

<sup>47</sup> BRILL, *supra* note 44, at 315.

<sup>48</sup> Wash. Post Staff, *TRANSCRIPT: President Obama’s August 9, 2013, News Conference at the White House*, WASH. POST (Aug. 9, 2013), <https://perma.cc/9BRB-RS5E>.

<sup>49</sup> Authority for Mandate Delay Act, H.R. 2667, 113th Cong. (2013); Final Vote Results for Roll Call 361, GOVTRACK (July 17, 2013), [www.govtrack.us/congress/votes/113-2013/h361#](http://www.govtrack.us/congress/votes/113-2013/h361#) (last visited Apr. 7, 2016).

<sup>50</sup> To delay the application of the employer health insurance mandate, and for other purposes. Authority for Mandate Delay Act, H.R. 2667, 113th Cong. (2013).

<sup>51</sup> Executive Office of the President, *Statement of Administration Policy* (July 16, 2013), <https://perma.cc/7YZL-T4BA>.

<sup>52</sup> Sarah Kliff, *The Politics of Delaying Obamacare*, WASH. POST (July 2, 2013), <https://perma.cc/CRU6-7HGT>.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Shared Responsibility for Employers Regarding Health Coverage, 79 Fed. Reg. 8544, 8574 (Feb. 12, 2014).

did not merely delay the requirement. Instead, it modified the mandate in a fragmented manner, with novel standards that deviated from Congress's design. First, for businesses with 50 to 100 full-time employees, the employer mandate penalty would not be assessed *at all* during 2015. For these companies, the employer mandate would be entirely delayed for two full years. According to the Small Business Administration, there are roughly eight million people (7% of all workers in America) at companies in this range.<sup>56</sup> Second, the mandate would only be partially implemented for businesses with more than 100 employees. In 2015, these businesses would not be subjected to the penalty if they offered health insurance coverage for at least 70% of their employees. Starting in 2016, an employer that offered coverage to 95% of its employees would not be subject to the penalty.

Absolutely none of this—not the bifurcation of employers, not the 70% transitional mandate, not the 95% final threshold—is in the ACA. The President suspended the employer mandate for 2014, partially waived it for 2015, and decided that in 2016 and beyond the mandate will never be fully implemented as Congress designed. The delay of the employer mandate would form the basis of a 2014 lawsuit brought by the United States House of Representatives.<sup>57</sup>

#### IV. "CONGRESS SHOULD LIVE UNDER THE SAME LAWS IT PASSES"

Influential corporations would not be the only beneficiaries of executive-action largess. In September 2009, while the ACA was being drafted, Senator Chuck Grassley (R-IA) proposed an amendment requiring members of Congress and their staff to use the newly-created exchanges. "The more that Congress experiences the laws we pass," Grassley said, "the better the laws are likely to be."<sup>58</sup> The veteran fiscal hawk added, "My interest in having Members of Congress participate in the exchange is consistent with my long-held view that Congress should live under the same laws it passes for the rest of the country."<sup>59</sup> The amendment provided that the federal government could only offer members of Congress and their congressional staff health insurance plans that were "created under" the ACA or "through an Exchange established under" the new law.<sup>60</sup>

<sup>56</sup> Sarah Kliff, *The White House Is Relaxing the Employer Mandate Again*, WASH. POST (Feb. 10, 2014), <https://perma.cc/LV2C-87FH>.

<sup>57</sup> See *U.S. House of Representatives v. Burwell*, 130 F. Supp. 3d 53 (D.D.C. 2015).

<sup>58</sup> *Grassley Amendment Makes Congress Obtain Coverage from Health Care Plan Established in Reform Bill*, GRASSLEY.SENATE.GOV (Sept. 30, 2009), <https://perma.cc/P55Z-EHD5>.

<sup>59</sup> *Id.*

<sup>60</sup> Patient Protection and Affordable Care Act, 42 U.S.C. § 18032(d)(3)(D)(i) (2012).



As a result of the amendment, unlike all other federal civil servants, Hill staffers would no longer be eligible for the generous Federal Employees Health Benefits Plan (FEHBP). Under FEHBP, the government pays approximately 75% of an employee's annual premium. This annual tax-free contribution of between \$5,000 and \$12,000 was *far* more generous than the income-adjusted subsidies available on HealthCare.gov. Indeed, many well-compensated congressional employees would be ineligible for any subsidies on the exchange. These high-earning civil servants would be put in the same position as other Americans who had to pay for their own insurance.

In 2009, while the Senate was crafting its health care reform bill, the House of Representatives was working on a parallel track. In contrast with the Grassley amendment, the House bill would have allowed members and their staff to remain on FEHBP, with the full 75% government-sponsored contribution. This provision, which would have maintained the status quo, would not make it into the final law. Due to the election of Senator Scott Brown in January 2010 and the urgent need to enact the Senate bill, the House was forced to accept Grassley's amendment without any debate. Representative Diana DeGette (D-CO), who voted for the ACA, explained, "We had to take the Senate version of the health care bill. This is not anything we spent time talking about here in the House."<sup>61</sup> Another House Democrat told the *New York Times*, "This was a stupid provision that never should have gotten into the law."<sup>62</sup> But it did.

Unsurprisingly, this provision was extremely unpopular on Capitol Hill. In May 2013, Senator Reid acknowledged that there was a "conflict" over how the ACA treats congressional staff.<sup>63</sup> The Senate Majority Leader said "we're trying to work that out" with House Speaker John Boehner.<sup>64</sup> *Politico* reported that during the summer of 2013, Boehner and Reid quietly collaborated to develop a "legislative fix" that would ensure that federal employees would not be disrupted.<sup>65</sup> The duo even personally lobbied President Obama at the White House, while using a cover story so as not to arouse suspicions.<sup>66</sup>

However, as the movement to repeal and replace Obamacare grew during July and August, the House GOP leadership abandoned any efforts

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<sup>61</sup> Robert Pear, *Wrinkle in Health Law Vexes Lawmakers' Aides*, N.Y. TIMES (July 29, 2013), <http://nyti.ms/1PX5PEG>.

<sup>62</sup> *Id.*

<sup>63</sup> Alexander Bolton, *Reid: More Funding Needed to Prevent ObamaCare from Becoming Train Wreck*, THE HILL (May 1, 2013), <https://perma.cc/LW3Y-5LWY>.

<sup>64</sup> *Id.*

<sup>65</sup> John Bresnahan, *Boehner's Fight for Hill Subsidies*, POLITICO (Oct. 1, 2013, 2:08 PM), <http://politi.co/23mlaYN>.

<sup>66</sup> *Id.*

to modify the ACA, short of total repeal. By September, a spokesman for Boehner explained, “We always made it clear that the House would not pass any legislative ‘fix.’”<sup>67</sup> Republicans now viewed this as a wedge issue that could force Democrats to negotiate over the ACA, lest their staff lose their truly-affordable care. The spokesman said that the Speaker “was always clear, however, that any ‘fix’ would be a Democratic ‘fix.’ His ‘fix’ is repealing Obamacare.”<sup>68</sup>

Responding to this gridlock, *Politico* wrote that President Obama became “personally involved in [the] dispute.” Senator Dick Durbin (D-IL) relayed, “The president is aware of it. His people are working on it.”<sup>69</sup> But once again, there was distinct risk that making modifications to the statute could open the door for Republican amendments that would impact other aspects of the law. Like with the employer mandate, the President was not willing to take that chance. A more attractive option, as noted by Senator Barbara Mikulski (D-MD), was for the President to act unilaterally. She explained that Democrats were “looking at what we can do with it administratively.”<sup>70</sup> Obama would do just that, and once again turn to the executive action to resolve a legislative impasse.

September 30 was the eve of the government shutdown. As the barricades on national parks were going up and HealthCare.gov was about to go down, the White House deployed a two-fold strategy. First, the Office of Personnel Management (OPM) announced that members of Congress and their staff would be able to purchase health insurance on the District of Columbia’s *Small Business Health Options Programs*, known as the D.C. SHOP exchange.<sup>71</sup> The ACA authorized these new SHOP exchanges to offer a health insurance marketplace for workers at small businesses with fewer than 50 employees.<sup>72</sup> OPM determined that after a congressional employee enrolled on the D.C. SHOP Exchange, the government could then provide the *same* contribution that was offered under the FEHBP.<sup>73</sup> Thus, there would be no meaningful disruption in benefits for Capitol Hill staffers. However, there is a problem with this approach. The House of Representatives and the Senate employ over 21,000 people—they were not in any sense small businesses.<sup>74</sup> Further, no other employees on the SHOP

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> John Bresnahan, *Obama on Hill’s ACA Mess: I’m on It*, POLITICO (July 31, 2013), <https://perma.cc/L3U8-ZRYT>.

<sup>70</sup> *Id.*

<sup>71</sup> See 78 Fed. Reg. 60,653, 60,653–54 (Oct. 2, 2013).

<sup>72</sup> 42 U.S.C. § 18024(b)(2) (2012); 45 C.F.R. § 155.710(b) (2015).

<sup>73</sup> 5 C.F.R. § 890.501(h) (2015).

<sup>74</sup> NORMAN J. ORNSTEIN ET AL., VITAL STATISTICS ON CONGRESS CH. 5: CONGRESSIONAL STAFF AND OPERATING EXPENSES, BROOKINGS INST. ET AL. (July 11, 2013), <https://perma.cc/ZTX2->

exchange would receive such a generous tax-free benefit.

Second, to address this deficiency, the Centers for Medicare and Medicaid Services (CMS) posted on its blog a new frequently asked question (FAQ)<sup>75</sup>: “How will Members of Congress and Congressional staff access health insurance coverage through an Exchange,” the agency rhetorically asked.<sup>76</sup> The answer: “CMS clarifies that offices of the Members of Congress, as qualified employers, are eligible to participate in a SHOP *regardless of the size*.”<sup>77</sup>

A sole FAQ by itself cannot be the source of legal authority. In a different case, a federal court ruled that the CMS could not rely on an FAQ on their blog (FAQ 33) as the basis to support its modification of the method used for calculating hospital-specific supplemental Medicaid payment limits.<sup>78</sup> The court found that because FAQ 33 was the “sole authority” for the government’s decision, it must be set aside as unlawful.<sup>79</sup>

Because of the SHOP FAQ, each congressional office was treated as a *separate* employer. Rather than viewing the entire Congressional workforce as a small business—which it was certainly not—CMS and OPM chopped up the Capitol into hundreds of distinct offices, each deemed its own small business—which they certainly were not. And even if an office had more than fifty employees, “regardless of the size,” it would still be treated as a *small business*. To paraphrase Justice Scalia’s dissent in *King v. Burwell*, “[w]ords no longer have meaning” if Congress is a bunch of small businesses.<sup>80</sup>

Further, once employees were enrolled on the D.C. SHOP exchange, under the OPM rule, they would be eligible for the full 75% government-provided contribution. Notwithstanding the Grassley Amendment, which expressly sought to put congressional employees on the same footing as Americans on the exchanges, now congressional employees would be in the *exact same* position as they were before the enactment of the ACA.

Senator Ron Johnson (R-WI) would challenge the legality of OPM regulation in 2014. The court dismissed the case because the Senator—who actually benefited from the more generous benefits—was not injured, and thus lacked standing. However, Judge William C. Griesbach was troubled

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<sup>75</sup> Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services, *Members of Congress and Staff Accessing Coverage Through Health Insurance Exchanges (Marketplaces)* (Sept. 30, 2013), <https://perma.cc/2RY5-JY5S>.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* (emphasis added).

<sup>78</sup> *Texas Children’s Hosp. v. Burwell*, 76 F. Supp. 3d 224, 238 (D.D.C. 2014).

<sup>79</sup> *Id.*

<sup>80</sup> *King v. Burwell*, 135 S. Ct. 2480, 2497 (2015) (Scalia, J., dissenting).

by what he saw as executive overreach.<sup>81</sup> Taking the allegations “as true,”<sup>82</sup> he wrote, the “executive branch has rewritten a key provision of the ACA so as to render it essentially meaningless in order to save members of Congress and their staffs from the consequences of a controversial law that will affect millions of citizens.”<sup>83</sup> Allowing the President to rewrite the law, and not enforce other requirements “would be a violation of Article I of the Constitution, which reposes the lawmaking power in the legislative branch.”<sup>84</sup> Although the scope of the change is minor, Griesbach concluded, “the violation alleged is not a mere technicality.”<sup>85</sup> The Seventh Circuit Court of Appeals affirmed the dismissal of the case on standing grounds, but did not address the underlying constitutional issue.<sup>86</sup>

#### V. “THE PRESIDENT SHOULD HONOR THE COMMITMENT” HE MADE

In October 2013, as Healthcare.gov sputtered along, a bipartisan consensus formed that the millions of people whose policies were canceled deserved relief. Senator Mary Landrieu (D-LA) introduced the *Keeping the Affordable Care Act Promise Act*.<sup>87</sup> The bill—whose title was a direct rebuke to the President’s broken promise<sup>88</sup>—would have grandfathered all active plans that were valid on December 31, 2013. Landrieu explained on the Senate floor, “When we passed the Affordable Care Act, we did so with the intention that if you liked your health plan, you could keep it. . . . A promise was made and this legislation will ensure that this promise is kept.”<sup>89</sup> Under her proposal, the individual mandate—which required that millions of American purchase new, more comprehensive plans—would be temporarily suspended. The bill was supported by moderate Democrat Joe Manchin of West Virginia and Republicans Susan Collins from Maine and Lisa Murkowski of Alaska.<sup>90</sup>

Senator Landrieu’s bill posed two risks for the Obama administration. First, delaying the mandate could undermine the stability of the health care

<sup>81</sup> Johnson v. U.S. Off. of Pers. Mgmt., 1:14-CV-009 (E.D. Wis. 2014), <http://goo.gl/L7N5I8>.

<sup>82</sup> *Id.* at 18.

<sup>83</sup> *Id.* at 18–19.

<sup>84</sup> *Id.* at 19.

<sup>85</sup> *Id.*

<sup>86</sup> Johnson v. U.S. Off. of Pers. Mgmt., 783 F.3d 655, 669 (7th Cir. 2015).

<sup>87</sup> Keeping the Affordable Care Act Promise Act, S. 1642, 113th Cong. (2013).

<sup>88</sup> Louis Jacobson, *Barack Obama Says That What He’d Said Was You Could Keep Your Plan “If It Hasn’t Changed Since the Law Passed”*, POLITIFACT (Nov. 6, 2013), <https://perma.cc/8WDK-RUBE>.

<sup>89</sup> Ezra Klein, *Obamacare Is in Much More Trouble than It Was One Week Ago*, WASH. POST (Nov. 13, 2013), <http://wapo.st/1qxmeLC>.

<sup>90</sup> Jackie Calmes & Jonathan Weisman, *Despite Fumbles, Obama Defends Health Care Law*, N.Y. TIMES (Nov. 6, 2013), <http://nyti.ms/1TEJp3>.

exchanges. If healthy people—no longer subject to the mandate’s penalty—failed to purchase comprehensive health insurance, the exchanges would be skewed by older, sicker patients, driving costs up. The American Academy of Actuaries warned that “delaying the implementation of the ACA’s individual mandate or extending the enrollment period for obtaining coverage could have negative consequences for health insurance coverage and costs.”<sup>91</sup> This could result in the dreaded adverse selection death spiral that the drafters of the ACA sought to avoid.<sup>92</sup>

*The New York Times* reported that Landrieu’s “legislation and a similar bill written by a Republican House member set off alarms among [White House] policy aides, who feared that letting consumers keep old plans could further undermine the health care law.”<sup>93</sup> In July, the House of Representatives passed the *Fairness for American Families Act*, which would have delayed the individual mandate for a year.<sup>94</sup> President Obama threatened to veto it, claiming it “would raise health insurance premiums and increase the number of uninsured Americans.”<sup>95</sup> Representative Chris Van Hollen (D-MD) added that if there was a delay of the individual mandate, “premiums would jump much higher,” which “would sabotage the entire purpose of the exchange.”<sup>96</sup>

Second, amending the law to delay the individual mandate created the risk that Republicans could attach amendments that would repeal other aspects of the law. Ezra Klein observed that “[o]nce Congress reopens Obamacare, no one knows where they stop. Landrieu’s bill, for instance, will also have to pass the House—and they’re going to want to attach provisions to it that Democrats won’t much like.”<sup>97</sup> Similar fears prevented the Democratic leadership from supporting legislative fixes for the employer mandate and for congressional employees’ health care.

As a result, pressure mounted on the President, once again, to take executive action to deal with the canceled plans. During Kathleen Sebelius’s appearance on *The Daily Show*, host Jon Stewart pointed out that businesses already received an administrative reprieve from the employer

<sup>91</sup> Jonathan Easely, *Actuaries: ACA Delays Would Cause Chaos*, THE HILL (Nov. 6, 2013, 4:31 PM), <http://bit.ly/1qwKKMJ>.

<sup>92</sup> See Nat’l Fed’n Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2614 (2012) (Ginsburg, J., dissenting).

<sup>93</sup> Sheryl Gay Stolberg & Michael D. Shear, *Inside the Race to Rescue a Health Care Site, and Obama*, N.Y. TIMES (Nov. 30, 2013), <http://nyti.ms/1MERH2E>.

<sup>94</sup> Fairness for American Families Act, H.R. 2668, 113th Cong. (2013).

<sup>95</sup> Executive Office of the President, Statement of Administration Policy (July 16, 2013), <https://perma.cc/7YZL-T4BA>.

<sup>96</sup> Ezra Klein, *What Republicans Don’t Understand About the Politics of Obamacare*, WASH. POST (Sept. 24, 2013), <http://wapo.st/1S0lrM7>.

<sup>97</sup> Ezra Klein, *Obamacare Is in Much More Trouble than It Was One Week Ago*, WASH. POST (Nov. 13, 2013), <http://wapo.st/1qxmeLC>.

mandate, but individuals with canceled policies were out of luck. “But would you say that’s a legitimate criticism that an individual doesn’t get to delay it, but a business does? Is that not legitimate?”<sup>98</sup> Sebelius could only muster a reply that individuals are not actually required to buy insurance. But if they go uninsured, she added, “[t]hey pay a fine at the end of the year . . . .”<sup>99</sup> (A year after the Supreme Court upheld the individual mandate as a *tax*, and Sebelius still referred to it as a *fine*.)

Even the 42nd President joined the fray, urging the 44th President to take action. President Clinton said that people should be allowed to keep their policies: “I personally believe, even if it takes a change in the law, that the president should honor the commitment the federal government made to those people and let them keep what they’ve got.”<sup>100</sup> Obama had once called Clinton the “Secretary of Explaining Things,” and the former President understood the risk of canceled policies all too well.<sup>101</sup> It was Harry and Louise’s fear—from the famous advertising campaign—that they would have to change their coverage that doomed *HillaryCare* in 1994.<sup>102</sup> House Speaker John Boehner relished in Clinton’s critique: “These comments signify a growing recognition that Americans were misled when they were promised that they could keep their coverage under President Obama’s health care law. The entire health care law is a train wreck that needs to go.”<sup>103</sup>

Hillary Clinton said nothing about the canceled policies.<sup>104</sup> In contrast with her husband’s loquaciousness, the former Secretary of State’s silence was deafening. On the campaign trail six years earlier, candidate Clinton’s health care plan featured an individual mandate, which would have also resulted in the cancellation of inadequate plans. To assuage the fears that derailed her healthcare reform two decades earlier, during a 2007 event in Iowa, Clinton made an all-too-familiar promise: “You can keep the doctors you know and trust. You keep the insurance you have. If you have private

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<sup>98</sup> Lucy McCalmont, *Sebelius Gets the Stewart Treatment*, POLITICO (Oct. 8, 2013), <http://politi.co/23mraRn>.

<sup>99</sup> *Id.*

<sup>100</sup> Jonathan Easley, *Clinton: Let People Keep Coverage*, THE HILL (Nov. 12, 2013 10:06 AM), <http://bit.ly/1ULC4i4>.

<sup>101</sup> Jonathan Cohn, *Bill Clinton Is Wrong. This Is How Obamacare Works*, NEW REPUBLIC (Nov. 12, 2013), <https://perma.cc/BTZ3-VT3U>.

<sup>102</sup> PAUL RUTHERFORD, *ENDLESS PROPAGANDA: THE ADVERTISING OF PUBLIC GOODS* 247 (2000); clintonlibrary42, “*Harry and Louise*” *Health Care Ads (Clinton Administration)*, YOUTUBE (Aug. 26, 2014), [bit.ly/1S7JCL6](http://bit.ly/1S7JCL6).

<sup>103</sup> Juliet Eilperin, *Bill Clinton Identifies 3 Big Problems with the Obamacare Rollout*, WASH. POST (Nov. 12, 2013, 2:56 PM), <https://perma.cc/JMD6-7SC4>.

<sup>104</sup> Josh Gerstein, *Obama’s Critic-in-Chief Strikes Again*, POLITICO (Nov. 12, 2013), <http://politi.co/1TEKZkf>.

insurance you like, nothing changes—you can keep that insurance.”<sup>105</sup>

Ironically, during the 2008 campaign, candidate Obama attacked the individual mandate. He likened Clinton’s plan to “solv[ing] homelessness by mandating that everyone buy a house.”<sup>106</sup> However, once Obama secured the nomination, he copied Clinton’s plan almost in its entirety—including the individual mandate. Neera Tanden, who had been Clinton’s adviser joined Obama’s policy staff. She recalled that when she asked the first term Senator what he thought of a mandate, Obama replied, “I kind of think Hillary was right.”<sup>107</sup> In the race for the White House in 2016, Clinton embraced the Affordable Care Act as her own. During a February 2016 debate in Milwaukee, Clinton boasted that “You know, before it was called Obamacare, it was called Hillarycare.”<sup>108</sup>

#### VI. “SABOTAGE THE HEALTH CARE LAW”

On November 5, President Obama and Vice President Biden met with sixteen Democratic Senators at the White House to discuss the dueling crises of HealthCare.gov and the canceled policies. At the confab, Senator Landrieu, and other vulnerable democrats who were up for re-election, dubbed the “2014ers,” criticized the President for nearly two hours in the Roosevelt Room. Reportedly, Biden was willing to serve as the scapegoat. “Just attack us,” he said.<sup>109</sup> “Blame us.”<sup>110</sup> *Politico* wrote that the vulnerable Senators were given a “green light to bash the White House and call for certain legislative fixes. But they’ve been urged by senior administration officials not to insist on delaying” the individual mandate.<sup>111</sup> According to a readout from the meeting, Obama “emphasized that he shared the Senators’ commitment to ensuring that Americans who want to enroll in health insurance through the Marketplaces are able to do so in time for insurance coverage to start as early as January 1st.”<sup>112</sup> But he stopped short of endorsing a delay.

<sup>105</sup> Rebecca Berg, *Hillary Clinton in 2007: “If You Have a Plan You Like, You Keep It”*, WASH. EXAMINER (Nov. 14, 2013, 12:00 AM), <http://washex.am/22gb4pV>.

<sup>106</sup> David Ono, *Vote 08: Barack Obama Wins Illinois*, ABC 7 (Feb. 5, 2008, 12:00 AM), <https://perma.cc/47ZU-HYZD>.

<sup>107</sup> Scott Gottlieb, *The Clintonian Roots of Obamacare*, 25 NAT’L AFF. 51, 62 (2015), <https://perma.cc/TZ5B-J7SH>.

<sup>108</sup> GOP War Room, *Clinton: Before It Was Called “Obamacare,” It Was Called “Hillarycare”*, YOUTUBE (Mar. 4, 2016), <https://www.youtube.com/watch?v=z2j5WmLAYRs>.

<sup>109</sup> Sheryl Gay Stolberg & Michael D. Shear, *Inside the Race to Rescue a Health Care Site, and Obama*, N.Y. TIMES (Nov. 30, 2013), <http://myti.ms/1MERH2E>.

<sup>110</sup> *Id.*

<sup>111</sup> Manu Raju & Seung Min Kim, *Dems Give W.H. Tight ACA Deadline*, POLITICO (Nov. 7, 2013, 6:19 PM), <https://perma.cc/ER2D-SKB3>.

<sup>112</sup> Press Release, The White House, Readout of the President’s Meeting with Senators on the Affordable Care Act (Nov. 6, 2013), <https://perma.cc/EYZ8-4DTY>.

As the pressure mounted, in the House of Representatives both Speaker Boehner and Minority Leader Pelosi agreed that Congress should take legislative action to deal with the canceled plans.<sup>113</sup> “I’m highly skeptical they can do this administratively,”<sup>114</sup> Boehner said, doubting that executive action could fix the situation.<sup>115</sup> Pelosi said “I want to do both”—a statute and administrative fix, for a “belt and suspenders” approach.<sup>116</sup> On November 15, the House of Representatives passed the *Keep Your Health Plan Act of 2013* on a bipartisan vote, 261–157.<sup>117</sup> The one-page bill—similar to Senator Landrieu’s proposal—would have allowed any plan that was valid in 2013 to be grandfathered into 2014.<sup>118</sup>

Thirty-nine Democrats crossed the aisle to vote aye. A senior adviser to Representative Pelosi said the defectors were trying to “insulate” themselves from the unpopular cancellations.<sup>119</sup> *The Washington Post* observed that the “vote was a striking show of Democratic disunity and the largest Democratic defection on a major piece of legislation this year.”<sup>120</sup> Fearing that the bill could pass the Senate—with the vulnerable 2014ers already backing a similar proposal from Senator Landrieu—the President issued a veto threat to the House bill.<sup>121</sup> President Obama claimed that it would “allow[] insurers to continue to sell” inadequate plans, and would “sabotage the health care law.”<sup>122</sup> But it was not the veto threat that prevented the Senate from taking action on the bill—it was the President’s newly announced executive action.

#### VII. OBAMACARE IS “NOT THE REASON WHY INSURERS HAVE TO CANCEL YOUR PLAN”

On November 14—one hour before the House of Representatives voted on the *Keep Your Health Plan Act*—the President announced what would become known as the *administrative fix*.<sup>123</sup> In a speech in the press

<sup>113</sup> Aaron Blake & Paul Kane, *Boehner, Pelosi Say Legislative Fix Needed for Obamacare*, WASH. POST (Nov. 14, 2013), <https://perma.cc/9VZA-UHZP>.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Keep Your Health Plan Act of 2013*, H.R. 3350, 113th Cong. (2013); Final Vote Results for Roll Call 587, GOVTRACK (Nov. 15, 2013), <https://www.govtrack.us/congress/votes/113-2013/h587>.

<sup>118</sup> H.R. 3350, 113th Cong. (2013).

<sup>119</sup> Sean Sullivan, *Pelosi Downplays Obamacare Defections; Clyburn Says Dems “Insulating” Themselves*, WASH. POST (Nov. 17, 2013), <https://perma.cc/CM4P-XMTW>.

<sup>120</sup> *Id.*

<sup>121</sup> Justin Sink, *White House Threatens Veto of Upton Bill*, THE HILL (Nov. 14, 2013, 9:21 PM), <http://goo.gl/wbxTmb>.

<sup>122</sup> Executive Office of the President, *Statement of Administration Policy* (Nov. 14, 2013), <http://goo.gl/NA0dz7>.

<sup>123</sup> Press Release, The White House, Statement by the President on the Affordable Care Act



room, Obama recognized the difficulties posed by the canceled policies. “I completely get how upsetting this can be for a lot of Americans,” he said, “particularly after assurances they heard from me that if they had a plan that they liked, they could keep it.”<sup>124</sup> In response, the President “offer[ed] an idea that will help.”<sup>125</sup> HHS would “extend” the ACA’s “grandfather clause” to “people whose plans have changed since the law took effect.”<sup>126</sup> The decree permitted “insurers [to] extend current plans that would otherwise be canceled into 2014, and [allowed] Americans whose plans have been canceled [to] choose to re-enroll in the same kind of plan.”<sup>127</sup> It would be up to state insurance commissioners and the individual insurance companies to decide whether to continue to sell policies that did not comply with the ACA’s mandate. However, neither would be required to embrace the fix.

Ironically, this executive action mirrored the *Keep Your Health Plan Act*—the same bill that Obama threatened to veto earlier that day because it would “sabotage” the ACA. Now, Obama was unilaterally implementing virtually the same reform, without the benefit of congressional support. Even more ironically, *The Wall Street Journal* observed, “Mr. Obama is doing through executive fiat what Republicans shut down the government to get him to do.”<sup>128</sup> One of the eleventh-hour attempts to avert a shutdown was a one-year delay of the individual mandate. President Obama refused to negotiate on this point—or any other for that matter—warning that such a delay would undermine the law. Yet, not even a month later, he did exactly that.

Shortly after the announcement, HHS memorialized the new policy in a letter, stating that non-compliant health plans “will not be considered to be out of compliance” in certain circumstances.<sup>129</sup> In other words, the very plans that the law rendered invalid because they did not provide “minimum essential coverage” would now be re-grandfathered. The administrative fix waived the “minimum essential coverage” rule for millions; people who renewed old, thrifty plans were exempted from the mandate and penalty.

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(Nov. 14, 2013, 12:01 PM), <https://perma.cc/2YYC-LP2U>.

<sup>124</sup> *Id.*; Politifact selected this assurance as 2013’s “Lie of the Year.” Angie D. Holan, *Lie of the Year: “If You Like Your Health Care Plan, You Can Keep It”*, POLITIFACT (Dec. 12, 2013, 4:44 PM), <http://goo.gl/wVIOP4>.

<sup>125</sup> Press Release, The White House, Statement by the President on the Affordable Care Act (Nov. 14, 2013, 12:01 PM), <https://perma.cc/2YYC-LP2U>.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Obama Repeals ObamaCare*, WALL ST. J. (Dec. 22, 2013, 5:26 PM), <http://on.wsj.com/1RHIX6h>.

<sup>129</sup> Letter from Gary Cohen, Dir., Ctr. for Consumer Info. & Ins. Oversight, Ctrs. for Medicare & Medicaid Servs., Dep’t of Health & Hum. Servs., to State Ins. Comm’rs, at 1 (Nov. 14, 2013), <https://goo.gl/Ws05A4> [hereinafter Cohen Letter].

After the President finished answering questions from the press, his Chief of Staff Denis McDonough met with the fifty-five members of the Democratic caucus.<sup>130</sup> *The Washington Post* reported that White House officials “tried to calm the group and pleaded for time to try to repair the damage without any legislative interference, pledging to fix the federal Web site.”<sup>131</sup> Afterwards, McDonough and his staff crossed the Hill to meet with 200 House democrats. In total, the urgent meetings ran nearly four hours. Ezra Klein recognized that the executive action “makes it easier for the White House to stop congressional Democrats from signing onto something like Landrieu’s” bill.<sup>132</sup>

The announcement of the administrative fix took the insurance industry by total surprise, once again. They were not prepared for the sudden “about-face” in light of the President’s previous opposition to a delay.<sup>133</sup> Even worse, President Obama could now blame the insurance companies, and not the law he implemented, for the cancellations. “[W]hat we want to do is to be able to say to these folks,” Obama said, “the Affordable Care Act is not going to be the reason why insurers have to cancel your plan.”<sup>134</sup> As Sarah Kliff observed, the President “described this policy decision as one allowing the White House to shift the blame for cancellations from the White House to the health plans.”<sup>135</sup> In other words, it will be the insurers’ fault if they don’t re-grandfather the plan canceled because of Obamacare.

The insurance companies were “furious” at the fix.<sup>136</sup> Karen Ignagni, president of America’s Health Insurance Plans, charged that the cancellations were a direct result of the ACA. “The only reason consumers are getting notices about their current coverage changing,” she said, “is because the ACA requires all policies to cover a broad range of benefits that go beyond what many people choose to purchase today.”<sup>137</sup> The law was working exactly as his senior adviser Jeanne Lambrew and others in the Obama administration had designed. But now that people were being harmed by these decisions, the White House was improvising.

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<sup>130</sup> Paul Kane & Jackie Kucinich, *Health-Care Law’s Problems Test Loyalty of Democrats in Congress*, WASH. POST (Nov. 14, 2013), <https://perma.cc/7MXT-2DEM>.

<sup>131</sup> *Id.*

<sup>132</sup> Ezra Klein, *Everything You Need to Know About the Plans to “Fix” Obamacare*, WASH. POST (Nov. 14, 2013), <http://wapo.st/1S6a1JJ>.

<sup>133</sup> Sheryl Gay Stolberg & Michael D. Shear, *Inside the Race to Rescue a Health Care Site, and Obama*, N.Y. TIMES (Nov. 30, 2013), <http://nyti.ms/1MERH2E>.

<sup>134</sup> Press Release, The White House, Statement by the President on the Affordable Care Act (Nov. 14, 2013, 12:01 PM), <http://1.usa.gov/25O3YNZ>.

<sup>135</sup> Sarah Kliff, *Insurers Are Furious About the White House’s New Obamacare Plan*, WASH. POST (Nov. 14, 2013), <http://wapo.st/1op24Bq>.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

Ignagni feared that “changing the rules after health plans have already met the requirements of the law could destabilize the market and result in higher premiums for consumers.”<sup>138</sup> She warned the administration that “additional steps must be taken to stabilize the marketplace and mitigate the adverse impact on consumers.”<sup>139</sup> After the announcement, an emergency meeting was convened between the President and health care executives to address what *The Washington Post* referred to as the “level of anxiety within the insurance industry about the administration’s policy fix.”<sup>140</sup> Robert Laszewski, an insurance industry consultant, wrote to his clients that day, “This puts the insurance companies who have successfully complied with the law, in a hell of a mess.”<sup>141</sup>

Also taken by surprise were the state insurance commissioners, who were now responsible for deciding whether to allow the noncompliant plans to be sold in their states.<sup>142</sup> Washington state insurance commissioner Mike Kreidler—who was an ACA supporter—immediately came out in opposition to the fix: “We will not be allowing insurance companies to extend their policies,” he said.<sup>143</sup> “I believe this is in the best interest of the health insurance market in Washington.”<sup>144</sup> Kreidler explained that he found out about the fix while he was at the gym that morning. He was surprised that the President pursued executive action, rather than a legislative amendment. “What I didn’t expect or anticipate,” he said, “was the fact the president would make this announcement” without any advance warning.<sup>145</sup>

After the President’s announcement, Kreider recalled, an email was sent out with “big exclamation points” scheduling an “emergency meeting of insurance commissioners.”<sup>146</sup> National Association of Insurance Commissioners (NAIC) president Jim Donelon told *The Washington Post*, “It only dropped in our laps yesterday morning.”<sup>147</sup> A statement from NAIC said the fix “threatens to undermine the new market, and may lead to higher

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<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Sarah Kliff, *How States Are Deciding Whether to Accept Obama’s Cancellation “Fix”*, WASH. POST (Nov. 15, 2013), <http://wapo.st/1S6aFHe>.

<sup>141</sup> Sarah Kliff, *The White House’s Obamacare Fix Is About to Create a Big Mess*, WASH. POST (Nov. 14, 2013), <http://wapo.st/1qxxqYR>.

<sup>142</sup> Cohen Letter, *supra* note 130, at 1.

<sup>143</sup> Sarah Kliff, *The Backlash to the Obamacare Fix Has Already Started*, WASH. POST (Nov. 14, 2013), <http://wapo.st/1ShboPJ>.

<sup>144</sup> *Id.*

<sup>145</sup> Sarah Kliff, *Wash. Insurance Regulator Supports Obamacare—and Rejected Obama’s “Fix.” Here’s Why.*, WASH. POST (Nov. 16, 2013), <http://wapo.st/1qxyFqY>.

<sup>146</sup> *Id.*

<sup>147</sup> Sarah Kliff, *Obama’s Meeting with Insurance Regulators Is Going to Be a Bit Awkward*, WASH. POST (Nov. 20, 2013), <http://wapo.st/1V0oqli>.

premiums and market disruptions in 2014 and beyond.”<sup>148</sup> Kansas Insurance Commissioner Sandy Praeger, a rare ACA supporter in a red state, lamented, “It’s just a big mess right now.”<sup>149</sup> She added, “I don’t know what to tell people.”

William P. White, the District of Columbia’s insurance commissioner rejected the administrative fix.<sup>150</sup> “The action today undercuts the purpose of the exchanges,” White said, “by creating exceptions that make it more difficult for them to operate.”<sup>151</sup> The next day, D.C. Mayor Vincent Gray fired White, stating that he was not authorized to criticize the President’s announcement. Council member Vincent Orange, who oversaw the District’s insurance department, explained, “[Y]ou can’t have the commissioner out there taking on the president, and the mayor being on a different page.”<sup>152</sup>

The delay of the individual mandate did not go through what is known as notice-and-comment rulemaking. This process affords the public with a thirty-day opportunity to comment on a regulation before it is published—and the agency is supposed to reply to objections. HHS explained that it had “good cause” to forego rulemaking, explaining that “[t]here have been unforeseen barriers to enrollment on the exchanges.”<sup>153</sup> Michael Greve—who helped launch the legal challenge in *King v. Burwell*<sup>154</sup>—quipped, “You don’t say. . . . [T]he ‘unforeseen barriers’ are principally a result of HHS’s own fantastic screw-up.”<sup>155</sup>

### VIII. “OBAMACARE ITSELF IS THE HARDSHIP”

Even with the November administrative fix in place, many canceled plans would remain canceled. Half of the states rejected the administrative fix, and even in those states that embraced it, many insurers refused to reissue certain canceled plans. Those affected customers would now be forced to purchase new policies on the exchanges. There was a growing

<sup>148</sup> Aaron C. Davis, *D.C. Insurance Commissioner Fired a Day After Questioning Obamacare Fix*, WASH. POST (Nov. 16, 2013), <http://wapo.st/1qwR0nH>.

<sup>149</sup> Juliet Eilperin & Amy Goldstein, *White House Relying More on Insurance Carriers to Help Fix HealthCare.gov*, WASH. POST (Nov. 9, 2013), <http://wapo.st/1RT1V1M>.

<sup>150</sup> Mike DeBonis, *D.C. Insurance Chief Is Undecided on Obamacare Exemptions*, WASH. POST (Nov. 14, 2013), <http://wapo.st/1V0p1K7>.

<sup>151</sup> Aaron C. Davis, *D.C. Insurance Commissioner Fired a Day After Questioning Obamacare Fix*, WASH. POST (Nov. 16, 2013), <http://wapo.st/1qwR0nH>.

<sup>152</sup> Aaron C. Davis, *Fired D.C. Insurance Commissioner Tried to Apologize for Criticizing Obamacare Fix*, WASH. POST (Nov. 18, 2013), <https://goo.gl/Ar7Nzb>.

<sup>153</sup> Michael S. Greve, *Obamacare’s Unforeseen Barriers*, LIBRARY OF LAW AND LIBERTY (Dec. 16, 2013), <https://perma.cc/R8Q6-5XE9>.

<sup>154</sup> *King v. Burwell*, 135 S. Ct. 2480 (2015).

<sup>155</sup> Michael S. Greve, *Obamacare’s Unforeseen Barriers*, LIBRARY OF LAW AND LIBERTY (Dec. 16, 2013), <https://perma.cc/R8Q6-5XE9>.

concern that it would be unfair to penalize people whose policies were canceled by the ACA and who were required to buy more expensive insurance or could not sign up on HealthCare.gov.

On December 19—with less than two weeks before the individual mandate would go into effect—a group of six vulnerable Senate Democrats wrote to Secretary Sebelius.<sup>156</sup> They requested “explicit clarity” on whether those who had canceled plans but could not buy new policies would be exempted from the mandate and penalty.<sup>157</sup> Senator Joe Manchin of West Virginia, one of the signatories of the letter, worried, “If it’s so much more expensive than what we anticipated, and if the coverage is not as good as what we’ve had, you’ve got a complete meltdown at that time.”<sup>158</sup> The law, he said, “falls of its own weight, if basically the cost becomes more than we can absorb.”<sup>159</sup>

The very next day, Secretary Sebelius wrote back to the sextet, acknowledging that “too many [consumers] have found [that] their policies bec[a]me unaffordable.”<sup>160</sup> In “half the states” that accepted the administrative fix, Sebelius wrote, the number of people with “canceled plans who do not have quality, affordable coverage for 2014 is clearly shrinking.”<sup>161</sup> Nonetheless, she noted, “despite all these efforts, there still may be a small number of consumers who are not able to renew their existing plans and are having difficulty finding an acceptable replacement in the Marketplace.”<sup>162</sup> Sebelius offered a “clarification” of the law.<sup>163</sup> “Those with canceled plans who might be having difficulty paying” for a compliant plan should “qualify for [a] temporary hardship exemption,” thereby excusing them “from the individual responsibility requirement.”<sup>164</sup> Yuval Levin, a conservative commentator, referred to the letter from the Senators as “bizarre kabuki theater.”<sup>165</sup> He quipped, “If you think a regulatory change announced Thursday was made in response to a letter

<sup>156</sup> *Obama Repeals ObamaCare*, WALL ST. J. (Dec. 22, 2013, 5:26 PM), <http://on.wsj.com/1RHix6h>.

<sup>157</sup> Letter from Mark R. Warner, U.S. Sen., et al., to Kathleen Sebelius, Sec’y, Dep’t of Health & Hum. Servs. (Dec. 18, 2013), <http://goo.gl/JZdbNE>.

<sup>158</sup> Aaron Blake, *Manchin: Obamacare Could Suffer “Complete Meltdown”*, WASH. POST (Dec. 22, 2013), <http://wapo.st/1ULJtOy>.

<sup>159</sup> Susan Cornwell, *Democratic Senator Says Obamacare Could Have “Meltdown,” Hurt Party*, REUTERS (Dec. 22, 2013), <http://goo.gl/7USvNs>.

<sup>160</sup> Letter from Kathleen Sebelius, Sec’y, Dep’t of Health & Hum. Servs., to Mark R. Warner, U.S. Sen., at 1 (Dec. 19, 2013), <https://perma.cc/QY67-BW3H>.

<sup>161</sup> *Id.* at 2.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Yuval Levin, *Pounding on the Panic Button*, NAT’L REV. (Dec. 20, 2013), <https://perma.cc/57K7-EHTU>.

sent Wednesday, I've got a bridge over the East River to sell you."<sup>166</sup>

In a memorandum issued the same day, HHS explained that anyone whose policy "will not be renewed," or whose new plan is "more expensive than" the canceled plan, "will be eligible for a hardship exemption."<sup>167</sup> These consumers were, in effect, excused from the individual mandate on a showing that their old policy was canceled or that a new policy was more expensive. This would be true in virtually every single case—this was especially true because there was no verification process in place to double-check these claims.

In her brief letter, Sebelius disrupted the intricate compromises the Obama administration reached years earlier to ensure that people would be required to purchase comprehensive plans. Stephen Brill observed that "the hard line on grandfathering that Lambrew and the other Obama people had taken had now completely backfired."<sup>168</sup> Further, the hardship exemption was in no way based on financial need—a person only needed to show that their plan was canceled. Ezra Klein admitted that "this puts the administration on some very difficult-to-defend ground."<sup>169</sup> Those who had their policies canceled—regardless of their income—are exempted; but other uninsured people are still subject to the penalty.

The legal basis for the hardship fix was sketched out by Professors Nicholas Bagley and Austin Frakt two months earlier, in an article aptly titled *Saving Obamacare Without Congress*.<sup>170</sup> First, the Professors explained that the law allows for a "hardship exemption" for anyone who has "suffered a hardship with respect to the capability to obtain coverage under a qualified health plan."<sup>171</sup> Second, Secretary Sebelius can "grant a certification" for particular individuals attesting that "there is no affordable qualified health plan available through the Exchange."<sup>172</sup> As a result, if these two provisions are put together, the scholars explained, "it could be a 'hardship' if there is 'no affordable qualified health plan available through the Exchange.'"<sup>173</sup>

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<sup>166</sup> *Id.*

<sup>167</sup> *Options Available for Consumers with Cancelled Policies*, CTR. FOR CONSUMER INFO. & INS. OVERSIGHT, CTRS. FOR MEDICARE & MEDICAID SERVS., DEP'T OF HEALTH & HUM. SERVS. (Dec. 19, 2013), <https://perma.cc/ZCQ3-YG9H>.

<sup>168</sup> BRILL, *supra* note 44.

<sup>169</sup> Ezra Klein, *The Individual Mandate No Longer Applies to People Whose Plans Were Canceled*, WASH. POST (Dec. 19, 2013), <http://wapo.st/1MWSi5k>.

<sup>170</sup> Nicholas Bagley & Austin Frakt, *Saving Obamacare Without Congress*, BLOOMBERGVIEW (Oct. 21, 2013), <https://perma.cc/GYB8-N55G>.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

But there is an ironic quality to this reasoning. Congress created several categories of people who would be exempted from the ACA's mandate: "individuals who cannot afford coverage," "taxpayers with incomes below filing threshold," "member[s] of Indian tribes," and anyone who "suffered a hardship with respect to the capability to obtain coverage under a qualified plan."<sup>174</sup> Congress set a strict threshold for exemptions from the penalty due to inability to pay: those for whom the annual cost of coverage exceeds eight percent of their household income.<sup>175</sup> These are individuals with extremely low incomes.

HHS's blanket policy of exempting *anyone* whose insurance was "more expensive" than before, irrespective of annual income, is impossible to reconcile with the congressional scheme.<sup>176</sup> This hardship "exemption" swallows the rule. Ezra Klein aptly summarized the change: "in other words, Obamacare itself is the hardship."<sup>177</sup> Law Professor Seth Chandler joked, "Surely, however, the existence of the ACA itself can not be the human-caused event creating the hardship."<sup>178</sup> Through this administrative-law shell game, the executive swept away Congress's exemption design. *The Wall Street Journal* editorialized, "A tornado destroys the neighborhood or ObamaCare blows up the individual insurance market, what's the difference?"<sup>179</sup>

Once again the insurance industry was caught off guard by this distortion to the health care markets. Karen Ignani said, "This latest rule change could cause significant instability in the marketplace and lead to further confusion and disruption for consumers."<sup>180</sup> Analyst Avik Roy explained that the "Insurers are at their wits' end, trying to make sense of what to do next."<sup>181</sup> Jonathan Gruber explained that this delay is "by itself not a huge problem," however he added, "[m]ore widespread cracks in the mandate could start to cause enormous problems for insurers."<sup>182</sup> In March

<sup>174</sup> 26 U.S.C. § 5000A(e)(1)–(5) (2012).

<sup>175</sup> *Id.* § 5000A(e)(1)(A) (2012).

<sup>176</sup> *Options Available for Consumers with Cancelled Policies*, CTR. FOR CONSUMER INFO. & INS. OVERSIGHT, CTRS. FOR MEDICARE & MEDICAID SERVS., DEP'T OF HEALTH & HUM. SERVS. (Dec. 19, 2013), <https://perma.cc/ZCQ3-YG9H>.

<sup>177</sup> Ezra Klein, *The Individual Mandate No Longer Applies to People Whose Plans Were Canceled*, WASH. POST (Dec. 19, 2013), <http://wapo.st/1MWSi5k>.

<sup>178</sup> Seth Chandler, *Obama Administration Shocking Decision to Drop Individual Mandate—But Only for Some*, ACADDEATHSPIRAL.ORG (Dec. 19, 2013), <https://perma.cc/A56Q-3F58>.

<sup>179</sup> *Obama Repeals ObamaCare*, WALL ST. J. (Dec. 22, 2013, 5:26 PM), <http://on.wsj.com/1RHix6h>.

<sup>180</sup> Jennifer Haberkorn & Carrie Budoff Brown, *White House Broadens Obamacare Exemptions*, POLITICO (Dec. 20, 2013), <http://politi.co/1oGUh2f>.

<sup>181</sup> Avik Roy, *Utter Chaos: White House Exempts Millions from Obamacare's Insurance Mandate, "Unaffordable" Exchanges*, FORBES (Dec. 20, 2013), <http://onforb.es/1VC1QnS>.

<sup>182</sup> Dylan Scott, *Does New Obamacare Mandate Exemption Open a Pandora's Box?*, TALKING

2014, the Obama administration extended the hardship exemption until 2016—right in time for the presidential election.<sup>183</sup> The individual mandate—the purported cornerstone of the law, without which it could not function—was modified, delayed, and suspended in 2014 and 2015.

#### IX. “CLARIFY AN ISSUE”

One of the more obscure, but glaring, executive actions concerning the Affordable Care Act altered the health insurance markets in the U.S. territories. Insurers in Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands were required to guarantee policies to all customers—regardless of any preexisting conditions—and could not charge them higher premiums.<sup>184</sup> These provisions are known as guaranteed issue and community rating. However, residents in the territories were not subject to the individual mandate, and consumers could wait until they got sick to purchase policies.<sup>185</sup> As the D.C. Circuit observed in its *Halbig* decision, the mandates for guaranteed issue and community rating, when decoupled from an individual mandate, would throw the “insurance markets in the territories into turmoil.”<sup>186</sup> This is the proverbial death spiral that the authors of the Affordable Care Act purportedly sought to avoid—but with respect to the territories, mandated. Ezra Klein referred to the situation in the territories as the “oddest health reform disaster you’ve never heard of.”<sup>187</sup>

Recognizing this severe risk, the territories requested to “be excluded” from the guaranteed-issue and community-rating provisions to avoid this disarray.<sup>188</sup> On three separate occasions, however, HHS explained to the territories that Congress crafted the provisions to “apply . . . in the territories,” and they could not be waived administratively.<sup>189</sup> In unequivocal terms, the letter concluded that “HHS has *no legal authority* to exclude the territories from the guaranteed availability provision of the Affordable Care Act.”<sup>190</sup> The agency told the territories, “However

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POINTS MEMO (Dec. 20, 2013), <http://bit.ly/1oGV82P>.

<sup>183</sup> Jason Millman, *Will States Go Along with the Latest Obamacare Fix?*, WASH. POST (Mar. 7, 2014), <http://wapo.st/1qxIq8v>.

<sup>184</sup> *Halbig v. Burwell*, 758 F.3d 390, 410 (D.C. Cir. 2014).

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> Ezra Klein & Evan Soltas, *Workbook: The First Crack in the Individual Mandate*, WASH. POST (Dec. 20, 2013), <http://wapo.st/1qxIOE5>.

<sup>188</sup> Letter from Gary Cohen, Dir., Ctr. for Consumer Info. & Ins. Oversight, Ctrs. for Medicare & Medicaid Servs., Dep’t of Health & Hum. Servs., to Sixto K. Igisomar, Sec’y of Com. of N. Mar. I., at 2 (July 12, 2013), <http://goo.gl/27VpRH>.

<sup>189</sup> *Id.* at 1.

<sup>190</sup> *Id.* at 3 (emphasis added).



meritorious your request might be, HHS is *not authorized* to choose which provisions . . . might apply.”<sup>191</sup> The administration explained that their only remedy was to “seek legislative relief from Congress, which could enact legislation to create an exemption from the guaranteed availability provision or other changes as Congress deems appropriate.”<sup>192</sup>

What a difference a year makes. On July 16, 2014, CMS Administrator Marilyn Tavenner wrote to the Lieutenant Governor of the U.S. Virgin Islands to “clarify an issue” of the “application of certain Affordable Care Act provisions to health insurance issuers in the territories.”<sup>193</sup> Note, once again, the use of the term *clarify*. In the intervening year, however, HHS learned that “this interpretation is undermining the stability of the territories’ health insurance markets.”<sup>194</sup> As a result, once again, executive action was warranted. After a “careful review of this situation and the relevant statutory language,” Tavenner continued, HHS determined that the guaranteed-issue and minimum-essential-coverage provisions “*do not apply* to the territories.”<sup>195</sup> Insurers could now discriminate against patients with pre-existing conditions and deny them coverage.

It is impossible to reconcile the government’s turnabout. After the territories asked for clarification three times, and Congress did nothing to change the statute, the answer should have remained the same: *no*. However, because the law yielded unpopular consequences, the President took his own steps to disregard the plain text of the statute, and in the process destabilize the market. This is the exact problem a year earlier the government said it had “no legal authority” to resolve.<sup>196</sup>

## X. CONCLUSION

The President’s opposition to legislative changes to the ACA is not unreasonable. As Nicholas Bagley noted,

To some extent, the President’s willingness to press against legal boundaries is an understandable and even predictable response to the difficulties of implementing a complex statute in a *toxic and highly polarized political environment*. Congress’s unwillingness to work constructively with the White House to tweak the ACA has increased the pressure on the administration to move assertively to manage the

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<sup>191</sup> *Id.* (emphasis added).

<sup>192</sup> *Id.*

<sup>193</sup> Letter from Marilyn Tavenner, Adm’r, Ctr. for Medicare & Medicaid Servs., Dept. of Health & Hum. Servs., to Gregory R. Francis, Comm’r, Off. of the Lieutenant Gov., Div. of Banking & Ins., at 1 (July 16, 2014), <http://goo.gl/MYljpg>.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.* (emphasis added).

<sup>196</sup> Cohen Letter, *supra* note 130, at 3 (emphasis added).

challenges that inevitably arise in rolling out a massive—and critically important—federal program.<sup>197</sup>

There is no doubt that such a vote would be loaded with amendments to change other provisions of the law. After all House Republicans have voted fifty-plus times to repeal the law—a quixotic effort because the President would veto any repeal. (Though, many House Republicans were sent to Congress in 2010 and 2012 on a wave of popular opposition to the ACA, with an electoral mandate, however unrealistic, to try to repeal the law.)

But that's part of the ballgame. When Congress passes an unpopular law, on a straight party line vote,<sup>198</sup> that isn't working well, it can and should be changed. If Congress votes to take actions that the administration thinks will “sabotage” the law, the veto pen remains. The view that the ACA, as enacted in 2010 must remain unchanged—subject only to the unilateral changes made on a whim—strains credulity. The ad hoc, random manner in which the ACA has been amended, many of the revisions made for clear political advantages, should not be afforded the same presumption of constitutionality as other laws, duly enacted by Congress, and faithfully executed by the Chief Executive.

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<sup>197</sup> Nicholas Bagley, *The Legality of Delaying Key Elements of the ACA*, NEW ENG. J. MED. (May 22, 2014), [www.nejm.org/doi/full/10.1056/NEJMp1402641](http://www.nejm.org/doi/full/10.1056/NEJMp1402641) (emphasis added).

<sup>198</sup> Josh Blackman & Randy E. Barnett, UNPRECEDENTED: THE CONSTITUTIONAL CHALLENGE TO OBAMACARE 3–84 (“The ACA’s party-line vote was unprecedented for such a major law. Not a single Republican in the House or Senate supported this law. Forty-nine percent of the House of Representatives opposed it, hardly a mandate (no pun intended) for transformational change. . . . All of the landmark social welfare and civil rights laws enacted in the twentieth century were passed with bipartisan support, often through messy political compromises and bargaining. The Social Security Act of 1935 was supported by 77 Republicans in the House, who joined 288 Democrats. In the Senate, 15 Republicans joined 60 Democrats. The Civil Rights Act of 1964 passed the Senate by a vote of 73 in favor and 27 opposed. A bold coalition of 27 Republicans and 44 Democrats united to break a segregationist-led filibuster. The Social Security Amendments of 1965, which created Medicaid and Medicare, passed the House by a vote of 307–116, with 70 Republicans voting in favor. This monumental health care legislation cleared the Senate by a vote of 70–24; 13 Republicans crossed the aisle. The Civil Rights Act of 1968 was passed with broad bipartisan support as was the Voting Rights Act of 1965. In 1990, the Americans with Disabilities Act passed with 90 percent agreement in the House and Senate. The absence of any consensus for the ACA in 2009 was remarkable and proved an inauspicious start.”).

**Statement of Senator Benjamin L. Cardin**

**Nomination of the Honorable Merrick Brian Garland to be  
Attorney General of the United States**

**Senate Judiciary Committee**

**Monday, February 22, 2021**

Chairman Durbin, Ranking Member Grassley, and members of the Judiciary Committee, thank you for the opportunity to appear before the Committee today. I am proud to introduce my fellow Marylander Judge Merrick Garland to the Committee. I wholeheartedly and enthusiastically endorse his nomination to be the 86<sup>th</sup> Attorney General of the United States, and urge the committee and Senate to swiftly approve and confirm his nomination to lead the Department of Justice (DOJ). Judge Garland is uniquely qualified at this moment in history to serve as the people's lawyer and restore honor, integrity, and independence to DOJ.

Judge Garland graduated *summa cum laude* from Harvard College in 1974 and *magna cum laude* from Harvard Law School in 1977. Following graduation, he served as law clerk to Judge Henry J. Friendly of the U.S. Court of Appeals for the Second Circuit and to U.S. Supreme Court Justice William J. Brennan, Jr. From 1979 to 1981, he was Special Assistant to the Attorney General of the United States. He then joined the law firm of Arnold & Porter, where he was a partner from 1985 to 1989 and from 1992 to 1993. He served as an Assistant U.S. Attorney for the District of Columbia from 1989 to 1992, and as Deputy Assistant Attorney General in the Criminal Division of the U.S. Department of Justice from 1993 to 1994.

From 1994 until his appointment as U.S. Circuit Judge, he served as Principal Associate Deputy Attorney General, where his responsibilities included supervising the Oklahoma City bombing and UNABOM prosecutions. In 1997, he was appointed as a Judge of the U.S. Court of Appeals for the District of Columbia Circuit, often seen as the nation's second highest and most powerful court, given their review of federal agency actions and other matters. He served as Chief Judge of the DC Circuit from 2013 to 2020.

Judge Garland has published in the Harvard Law Review and Yale Law Journal, taught at Harvard Law School, and served as President of the Board of Overseers of Harvard University. He served as Chair of the Executive Committee of the Judicial Conference of the United States from 2017 to 2020.

Judge Garland has served both Democratic and Republican administrations in the Justice Department, including service under President Carter, the first President Bush, and President Clinton. He earned a reputation as a tough and fair prosecutor who took on complicated terrorism, violent crime, and corruption cases. He established a sterling reputation of handling cases with the utmost professionalism, and is seen by his peers as a modest man who is fundamentally a decent human being.

In 1997, the Senate reviewed his record in detail and confirmed him by an overwhelming, bipartisan vote of 76 to 23 to serve as a Judge on the U.S. Court of Appeals for the D.C. Circuit. I would note that many of the "no" votes for Judge Garland's previous confirmation had to do with a dispute over the proper size of the DC Circuit as opposed to concerns over Judge Garland's qualifications or fitness to serve as a judge.

As President Biden noted in his introduction of Judge Garland, despite his busy schedule and prestigious positions, he still makes time to volunteer regularly, tutoring students in Northeast DC, as he's done for 20 years. And I agree this really shows us the true character of Judge Garland, in terms of his commitment to public service, helping others, and not necessarily seeking out the limelight.

I am hopeful that Judge Garland's appointment will shore up and improve the morale at the Justice Department, as the Department renews its commitment to uphold civil rights and voting rights laws; protect the civil liberties and equal access to justice of all Americans; safeguard our national security and combat violent crime; and rout out systemic racism in our criminal justice system and government. As the only Cabinet department named after an ideal, I am convinced that Judge Garland will follow the facts, evidence, and law wherever it leads him, regardless of political pressure or outside influences.

Let me close by highlighting what President Biden and Judge Garland stated upon announcing his nomination. President Biden said forcefully: "You won't work for me. You are not the president's or the vice president's lawyer. Your loyalty is not to me. It's to the law, the Constitution."

Judge Garland said: "The rule of law is not just some lawyer's turn of phrase. It is the very foundation of our democracy. The essence of the rule of law is that like cases are treated alike, that there is not one rule for Democrats and another for Republicans, one rule for friends and another for foes."

Judge Garland noted President Biden's promise that he would have the "independent capacity" to decide who is subject to prosecution, based on the facts and the law. Judge Garland concluded that: "I would not have agreed to be considered for attorney general under any other conditions."

I again thank the Committee for allowing me to introduce Judge Garland today, and urge the committee and Senate to swiftly approve and confirm this nomination, so we can bring Senate-confirmed leadership to the Department of Justice as soon as possible.

## OUTLOOK

# The Capitol rioters speak just like the Islamist terrorists I reported on

People who feel robbed of their pride and purpose can become dangerous.

Perspective by [Jim Sciutto](#)

Jim Sciutto is chief national security correspondent and an anchor at CNN.

February 19, 2021 at 10:23 a.m. EST

In July 2005, while working as a foreign correspondent in London, I was alarmed to learn that two terrorists lived right down the street from me. The men had attempted to blow themselves up on the London transit system two weeks after the deadly “7/7” subway bombings that killed 52 commuters. Watching the failed suicide bombers being arrested at their apartment complex — stripped down to their underwear to ensure they weren’t wearing explosive vests — launched me on a reporting journey to answer a question: What had led these young men, living in Europe with Western freedom and opportunity, down the same path to terrorism I’d reported on so many times in the Middle East? In interviews with well-educated, often middle-class and seemingly moderate young men, I documented what was then the new and growing appeal in the West of Islamist violence built on false history and a deep, debilitating sense of victimhood.

Last month, I recognized many of the same forces driving my fellow Americans into extremism. I’m not equating the Jan. 6 rioters with those fighting to unite the world under a caliphate via a global campaign of terrorism. But domestic radicalism has deep parallels to jihadist terrorism: Both movements are driven by alienation from the political system and a resulting breakdown in social norms. For some groups and individuals, this breakdown leads to violence they see as justified to achieve political ends. Law enforcement officials are taking notice. The Department of Homeland Security now identifies American extremist violence, particularly among white-supremacist groups, as “the most persistent and lethal threat” on our shores. And, at least in recent years, violent acts by right-wing extremists have exceeded those of Islamist terrorists. Since 9/11, 114 people have been killed in attacks by right-wing terrorists in the United States vs. 107 by jihadist terrorists, according to data compiled by New America.

The similarities between domestic and Islamist terror groups are hard to avoid. Followers of both are drawn to a cause greater than themselves that gives them a shared identity and a mission to correct perceived wrongs, by whatever means necessary. At the core of this cause is a profound sense of victimization and humiliation. The terrorists I met from Afghanistan, Somalia, Saudi Arabia and West London all believed that their pride and purpose had been stolen from them — by, in their case, the United States and its allies — and so were drawn to a movement that promised to restore that pride and purpose, even by violence. Today's American extremists think (because they've been told by the former president and other leaders) the system is rigged against them and is bent on dismantling everything they believe in.

For both groups, their sense of oppression is built on fantasy. I interviewed many Islamist terrorists with middle-class upbringings, steady jobs and graduate degrees. Among the rioters who assaulted the U.S. Capitol were doctors, business owners and real estate agents — more victors than victims of the system. "The militants often experience their humiliations vicariously — 'our religion is supposedly under attack' for the jihadis, 'our race is purportedly under attack' for the Proud Boys," says Peter Bergen, who has written and reported on terrorism for more than 20 years. "It feeds into a sense of grievance that they then feel they need to act upon, even though it's not like they themselves have suffered personally."

Just as I had countless debates with Muslim extremists convinced that every event and institution (currency movements, the 2004 Iranian earthquake, the CIA, the United Nations) was diabolically conspiring against them, I now find myself having similar mind-numbing arguments with Americans about "deep state" plots, best exemplified by the "stolen" 2020 election and the Mueller investigation.

In both cases, adherents no longer believe that government or institutions will solve their problems. (Annual polling by Gallup shows that confidence in Congress, the presidency, the criminal justice system, newspaper and television news, banks, and big business is at or near historical lows.) So they feel compelled to take matters into their own hands, even by acts of violence. Invoking the spirit of the American Revolution, domestic extremists see themselves as performing their patriotic duty. Justice Department filings on several Capitol rioters noted their social media posts: "This is our 1776!" and "1776 has commenced." When police searched the home of one of the rioters, they found not only weapons, but an American flag altered to add the slogan "Don't Tread on Me" and signed by fellow members of the mob like a crude Declaration of Independence.

Similarly, during the "war on terror" in the Middle East, U.S. officials lamented the lack of public confidence in institutions and promised to fix them, in part to divert recruits away from extremism. Winning "hearts and minds," they assured us, was as essential as winning gun battles. Who can claim that the U.S. political system is winning the hearts and minds of the American people today?

In July 2016, during a presidential campaign marked by Donald Trump's already aggressive attacks on government, I asked then-Director of National Intelligence James Clapper if he ever applied the intelligence community's metrics for failed states to the United States. "If you apply those same measures against us, we are starting to exhibit some of them, too," he told me. "We pride ourselves on the institutions that have evolved over hundreds of years, and I do worry about the . . . fragility of those institutions." He described "legal institutions, the rule of law, protection of citizens' liberty, privacy" as "under assault."

Five years later, Clapper tells me he sees those same trends worsening. “I wish it wasn’t true, but it is hard not to objectively observe those trends are continuing,” he said. “We have armed fanatic mobs attacking the seat of our democracy. This is what happens in unstable countries.”

The United States is not the Middle East, but Biden administration officials have told me they view the domestic terrorist threat with increasing alarm, particularly after the Capitol insurrection. Law enforcement officials worry that the Capitol assault was the beginning of a new phase of domestic terrorism, with extremists emboldened by the attack’s scale and impact. Yet, many GOP lawmakers are attempting to move on from Jan. 6, downplaying the threat the rioters posed to Congress or dismissing efforts to investigate the attack as detrimental to unity — a push that would be impossible to imagine in the wake of an Islamist terror attack on the homeland.

Trump was acquitted in the Senate, which his most hardcore supporters surely saw as a vindication of the riot, too. Trump himself was emboldened to interfere more, not less, in the political process after his first impeachment acquittal. It seems likely that America’s domestic terrorists will feel the same. “Hardcore extremists consider January 6 not a day of infamy but a day of victory,” says Sen. Sheldon Whitehouse (D-R.I.), who was at the Capitol at the time. In that belief, they have one more thing in common with those failed terrorists from my old neighborhood in London: Violence, for the most extreme and most lost among us, is both a means and an end in itself.

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