**Nomination of Loretta E. Lynch to be Attorney General of the United States**
**Questions for the Record**
**Submitted February 20, 2015**

**QUESTIONS FROM SENATOR PERDUE**

References to Senator Perdue's first set of Questions for the Record are referred to below as "QFR" followed by the number of the relevant question.

1. In QFR #1, I asked you to explain your understanding of the limits of the president's discretion to enforce federal law. In your answer, you referred me to the Office of Legal Counsel but conceded that there are "of course, recognized constitutional limitations on the President's authority." Please state with particularity your understanding of the limits on the president's authority, making specific reference to the "constitutional limitations" you mentioned in your original answer. Please consult any relevant legal authorities, including Supreme Court precedent, *see, e.g.,* Justice Jackson's *Youngstown* concurrence, in order to explain your understanding of the scope and nature of the limitations you cited.

**RESPONSE**: Under our system of separated powers, it is the President's obligation to take care that the laws are faithfully executed, and he cannot abdicate his responsibility to enforce duly-enacted laws. Nor can he, consistent with the Constitution and its allocation of powers between the branches, attempt to, in effect, legislate or to rewrite laws under the pretense of exercising his enforcement discretion.

2. In response to QFR #4a, you explained your "personal belief that it would be better for individuals is this country to be working to support themselves and their families and contributing to our economy rather than remaining unemployed." Notwithstanding your personal belief, if you are confirmed as Attorney General, will you commit to enforcement all provisions of federal law that concern employment of illegal immigrants or other persons unlawfully within the United States?

**RESPONSE**: Yes.

3. In response to QFR #5a regarding whether you would commit to the assignment of a special prosecutor to the IRS targeting case, you stated that "the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment." Please explain whether you believe that the IRS targeting case would present: (1) a conflict of interest; or (2) other extraordinary circumstances in the public interest meriting the assignment of a special prosecutor. Essentially, please answer the original

question either negatively or affirmatively: Will you commit to the assignment of a special prosecutor in this matter? Please answer "yes" or "no" and explain your answer.

**RESPONSE**: In my current position as United States Attorney for the Eastern District of New York, I am not privy to the details of the current investigation concerning allegations of improper targeting of certain tax exempt organizations by IRS employees. It is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. If confirmed as Attorney General, I can assure the Committee that I will request a briefing concerning the status of the investigation and can assure the Committee that all aspects of the investigation will be conducted in accordance with Department policies and procedures. Based on the information currently available to me, I have no reason to question the ability of our career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally and therefore, have no reason to conclude that a conflict of interest exists that would preclude our career prosecutors from discharging their responsibilities.

4. In response to QFR #5b, you provided a form response that was identical to your responses to QFR #5a. This is a straightforward, binary question that I request you answer either negatively or affirmatively: Do you believe it was appropriate to assign management of the Department of Justice's investigation of IRS targeting to a DOJ lawyer who contributed to President Obama's campaign? Please answer "yes" or "no" and explain your answer.

**RESPONSE**: In my current position as United States Attorney for the Eastern District of New York, I am not privy to all of the facts concerning the assignment of a career prosecutor from the Civil Rights Division to the investigative team looking into allegations that IRS employees targeted certain tax-exempt organizations. It is my understanding that the attorney that you are referring to is a career prosecutor and one member of a team assigned to the investigation who is working alongside a career prosecutor from the Criminal Division along with agents from the FBI and TIGTA. It is also my understanding that the Department has concluded that the attorney's engagement in lawful political activity did not amount to a conflict that disqualified the attorney from the investigation under applicable regulations. Lastly, I am aware that in 2014, then-Deputy Attorney James Cole publicly testified before the House Committee on Oversight and Government Reform and explained why the Department concluded that the attorney's assignment to the investigation was in accordance with applicable regulations. If confirmed as Attorney General, I will ensure that that the investigation is conducted in accordance with Department policies and procedures.

5. In response to QFR #5c, you provided a form response that was identical to your responses to QFRs #5a and #5b. Again, this is a straightforward, binary

question that I request you answer either negatively or affirmatively: Do you believe that assigning management of the Department of Justice's investigation of IRS targeting to a Department of Justice lawyer who contributed to President Obama's campaign could reasonably be expected to create the appearance of partiality or lack of objectivity on the part of the Department of Justice? Please answer "”yes” or “no” and explain your answer.

**RESPONSE**: In my current position as United States Attorney for the Eastern District of New York, I am not privy to all of the facts concerning the assignment of a career prosecutor from the Civil Rights Division to the investigative team looking into allegations that IRS employees targeted certain tax-exempt organizations. It is my understanding that the attorney that you are referring to is a career prosecutor and one member of a team assigned to the investigation who is working alongside a career prosecutor from the Criminal Division along with agents from the FBI and TIGTA. It is also my understanding that the Department has concluded that the attorney’s engagement in lawful political activity did not amount to a conflict that disqualified the attorney from the investigation under applicable regulations. Lastly, I am aware that in 2014, then-Deputy Attorney James Cole publicly testified before the House Committee on Oversight and Government Reform and explained why the Department concluded that the attorney’s assignment to the investigation was in accordance with applicable regulations. If confirmed as Attorney General, I will ensure that that the investigation is conducted in accordance with Department policies and procedures.

6. QFR #7 asked whether your Department of Justice would use so-called “gunwalking” as a valid investigative technique. You did not answer the question and instead cited “guidance” issued to U.S. Attorney’s Offices. Please state either negatively or affirmatively whether the Lynch Department of Justice will view gunwalking as a legitimate investigatory technique to be used by federal law enforcement agencies. Please answer “yes” or “no” and explain your answer.

**RESPONSE**: It is not clear to me what this question means by “gunwalking,” but it is my understanding that the Attorney General has stated unequivocally, and the Inspector General’s report found that the tactics employed in Operation Fast and Furious were flawed, and that the IG report also found that the operation failed to adequately mitigate risks to public safety, and that the Department has taken extensive steps to ensure that such tactics are not used again in the future.

7. In response to QFR #11 and its subparts regarding the Louisiana school voucher litigation, you stated that “I cannot comment on this issue because it is my understanding that it is in active litigation.” Currently, the Department or Justice is not a party to that litigation. Accordingly, I again respectfully request that you answer QFR #11 and its subparts.

**RESPONSE**: The Department intervened and has been a party to the *Brumfield v. Dodd* case since 1975. *Brumfield* remains in active litigation. *Brumfield v. Dodd* is a case that was brought by black students and families four decades ago on behalf of all black schoolchildren in Louisiana. In

1975, the State of Louisiana was placed under federal court order to end the State's practice of directing resources to private schools in a manner that kept its education system segregated, in violation of the Constitution and federal law. That order remains in place today.

8. In response to QFR #11b, you stated that "I cannot comment on this issue because it is my understanding that it is in active litigation." That QFR, however, does not concern the Louisiana litigation but addresses prospective litigation that you may choose to undertake if you are confirmed. Accordingly, I again respectfully request that you describe whether you will use Justice Department resources, like your predecessor has, in an effort to obstruct, monitor, or regulate school-choice programs. Please answer "yes" or "no" and explain your answer.

**RESPONSE**: I cannot speculate on what litigation will be undertaken in the future. The Department does not oppose Louisiana's school voucher program, and has not sought to prevent any student from participating in the state's voucher program.

9. In response to QFR #11c, you stated that "I cannot comment on this issue because it is my understanding that it is in active litigation." The question asked only whether your Justice Department would consent to discontinue the reporting requirement if you are confirmed. The Department of Justice is not currently a party to the litigation. Please answer "yes" or "no" and explain your answer.

**RESPONSE**: The Department has been a party to the *Brumfield v. Dodd* case since 1975. *Brumfield* remains in active litigation. Since 1985, the State of Louisiana has had a legal obligation in *Brumfield* to report information about state assistance to private schools. Consistent with that requirement, the United States asked the State of Louisiana to provide basic information regarding the school voucher program and the impact of the State's funding and assignment of students through that program on the state's court-ordered desegregation obligations.

10. QFR #12 addressed the 2013 report by the DOJ's Inspector General that revealed disturbing systemic problems related to the operation and management of the DOJ's Civil Rights Division and specifically asked whether you would commit to implementing those recommendations. Instead of answering either negatively or affirmatively, you stated that you would commit to ensuring "responsive [ness]." Please specifically answer whether you will commit to implementation of the 2013 report's recommendations, not whether you will ensure "responsive[ness]," as a general matter, to recommendations by the Inspector General.

**RESPONSE**: I have not had an opportunity to review the Office of the Inspector General's (OIG) 2013 report about the Civil Rights Division. However, I understand that the Division has already taken steps to implement many of the recommendations contained in the report. If confirmed as Attorney General, I will ensure that the Civil Rights Division has responded, as appropriate, to the recommendations in the OIG report.

11. In response to QFR #l3c, you cited the "Smart on Crime" initiative as the basis for your decision to consent to Judge Gleeson's order to vacate Francois Holloway's sentences for armed carjacking. One of the five principles of the Smart on Crime initiative announced in the Attorney General's August 2013 report is "Protecting Americans from *violent crime*" (emphasis added). *Smart on Crime: Reforming the Criminal Justice System for the 21st* Century, Department of Justice (Aug. 2013), *available at* http://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf at 2. The Attorney General explained that "Smart on Crime" is designed to target "*non-violent, low-level offenses*" and "certain people who have committed *low-level, nonviolent* drug offenses, *who have no ties to large-scale organizations*, gangs, or cartels...." (emphasis added). *Id.* at 3. The report further states that the Bureau of Prisons may consider reductions in sentences for inmates facing extraordinary and compelling circumstances "who did not commit *violent crimes*" (emphasis added). *ld.* The report repeatedly emphasizes that the initiative is aimed at low-level and nonviolent offenders. *See, e.g., id.* at 1-4. Accordingly, please explain your belief that the "Smart on Crime" initiative justified the early release of Francois Holloway, a violent, recidivist offender who organized and ran a chop shop that processed stolen and carjacked cars.

**RESPONSE**: As I described in my testimony before the Committee, our view of the matter was that we should review the case in a manner consistent with a number of initiatives being implemented by the Department—including, among others, the Smart on Crime initiative and the clemency initiative—focused on ensuring that offenders serve a period of time in prison proportional to the severity of their offenses. The ultimate sentencing determination was made by the Court.

12. Please explain whether the fact that Francois Holloway faced years of back-up time for a New York State drug-trafficking conviction factored into your decision to consent to Judge Gleeson's order to vacate Holloway's sentences for armed carjacking.

**RESPONSE**: It did not factor into my decision.

13. Please describe with specificity – citing case numbers, captions, etc. – all cases handled by the U.S. Attorney's Office for the Eastern District of New York during your tenure as U.S. Attorney in which the "Smart on Crime" initiative, or any other Department of Justice initiative, was cited in support of the early release of any offender from Bureau of Prisons' custody.

**RESPONSE**: In virtually all cases, defendants make requests and applications to the Court for leniency or a reduction in sentence based on a wide variety of grounds. Indeed, the Eastern District of New York receives hundreds of such requests per year. It would be impracticable to determine how many of these applications (some of which are made orally) cited the Smart on Crime or other Department of Justice initiatives. In all cases, it is the Court that decides what sentence to impose on any individual defendant, and whether there is a valid basis to revisit that sentence.

14. If confirmed, will you promulgate Department of Justice initiatives that recommend early release for violent or recidivist offenders?

**RESPONSE**: Any early release of offenders from federal imprisonment terms can only come as a result of—and must be in accordance with—the laws as enacted by Congress. Current law strictly limits early release of federal offenders. If confirmed, I will follow and abide by all of the corrections laws, including those concerning the confinement of federal prisoners.

15. You responded to QFR #13d with generalities regarding the professional responsibilities of federal prosecutors and judges and did not answer the question. Please specifically identify any Department of Justice initiatives that recommend early release for violent offenders.

**RESPONSE**: Any early release of offenders from federal imprisonment terms can only come as a result of—and must be in accordance with—the laws as enacted by Congress. Current law provides for limited early release opportunities, including, for example, opportunities to earn prison credits for good behavior, and for completion of residential drug treatment in prison. All of the Department of Justice efforts and initiatives strictly comply with program requirements, as set forth in federal law.

16. In response to QFR #14e, you wrote that "I do not support release of violent offenders for no corrections or public safety purpose." Do you believe that the release of Francois Holloway served a "corrections or public safety purpose"? If so, please explain your answer.

**RESPONSE**: I believe that under the unique circumstances of Mr. Holloway's case, the Court had the authority to reconsider the sentence originally imposed. Of course, the decision as to whether or not to reduce Mr. Holloway's sentence rested within the sole discretion of the Court. Ultimately, the Court determined, based on the circumstances of the offense, the punishment imposed on others involved in the same conduct, Mr. Holloway's behavior during his twenty years of incarceration, and other factors, that a reduction in sentence was appropriate.

17. If confirmed as Attorney General, will you review the sentences of violent offenders and consent to early release if such release would, in your judgment, serve a "corrections or public safety purpose"?

**RESPONSE**: If confirmed as Attorney General, I will follow and abide by all corrections laws, including those concerning the confinement of federal prisoners. I will, for example, implement congressionally enacted good behavior laws that provide prison credits for most federal offenders who do not commit misconduct during their imprisonment terms.

18. In response to QFR #14f, you wrote that "I recognize that some reforms of existing mandatory minimum sentencing statutes are needed." Please explain with specificity the nature of the reforms you state is necessary, citing relevant provisions of Title 18. Please state also whether you believe that the consecutive mandatory minimum provisions under 18 U.S.C. § 924 require reform and/or elimination.

**RESPONSE**: I agree with congressional policy, as embodied in the Sentencing Reform Act and subsequent legislation, that federal sentencing statutes should be reviewed periodically to determine whether the minimum and maximum penalties contained in those statutes should be modified. Because I have not studied data regarding the application of the many dozens of federal mandatory minimum sentencing statutes, I cannot at this time specify the particular reforms that may be needed. However, I can say that the Administration has indicated its support for the Smarter Sentencing Act, which would modify some mandatory minimum sentencing statutes, and I support some changes to the existing mandatory minimum structure for federal drug offenses. As to the mandatory minimum sentencing provisions contained in 18 U.S.C. § 924, I believe that strong penalties for those who use or possess weapons in the commission of violent and drug trafficking crimes, including mandatory minimum sentences, are important. At the same time, in certain circumstances, requiring 25-year consecutive sentences for successive instances that a weapon is possessed in connection with qualifying crimes can lead to exceedingly long sentences. I look forward to working with Congress to determine if any calibrations to the mandatory sentencing provisions for this offense might be appropriate.