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

## QUESTIONS FROM SENATOR VITTER

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

**RESPONSE**: It is my understanding that this issue is currently the subject of pending litigation and that this issue has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief for a full discussion of this issue.

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

**RESPONSE**: Although as the United States Attorney for the Eastern District of New York I am not an expert in immigration law, I am aware that the Immigration and Nationality Act (INA) is the principal law governing immigration to the United States.

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

**RESPONSE**: The Department of Justice does not administer visa programs. Because your question involves matters outside the purview of the Department of Justice's responsibilities and expertise, and this issue is not part of my practice as the United States Attorney for the Eastern District of New York, I respectfully recommend that you direct your question to the agencies responsible for administering visa programs.

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

**RESPONSE**: Because your question involves matters outside the purview of the Department of Justice's responsibilities and expertise, and this issue is not part of my practice as the United States Attorney for the Eastern District of New York, I respectfully recommend that you direct your question to the U.S. Department of Labor.

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

**RESPONSE**: Because your question involves matters outside the purview of the Department of Justice's responsibilities and expertise, and this issue is not part of my practice as the United States Attorney for the Eastern District of New York, I respectfully recommend that you direct your question to the U.S. Department of Labor.

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

**RESPONSE**: It is my understanding that this issue is currently the subject of pending litigation and that this issue has been addressed in a brief filed by the Department. I would respectfully refer you to the Department's brief and to the Office of Legal Counsel's published opinion for a full discussion of this issue.

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

**RESPONSE**: My understanding is that the deferred action guidance issued by the Department of Homeland Security does not rely on DHS's parole authority. Further, my understanding is that that guidance does not grant deferred action on a systematic basis. Instead, it establishes a series of factors, to be applied on a case-by-case basis, by those individuals responsible for enforcing our nation's immigration laws in order to prioritize the limited resources afforded to the agency.

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

**RESPONSE**: My understanding is that the deferred action guidance issued by the Department of Homeland Security does not rely on DHS's parole authority. Further, my understanding is that that guidance does not grant deferred action on a systematic basis. Instead, it establishes a series of factors, to be applied on a case-by-case basis, by those individuals responsible for enforcing our nation's immigration laws in order to prioritize the limited resources afforded to the agency.

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

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

**RESPONSE**: Yes.

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

**RESPONSE**: As United States Attorney and a federal prosecutor, I take very seriously the obligation not only to vigorously prosecute criminal cases but also to zealously uphold defendants' rights in the criminal justice system. Both the actual fairness of criminal trials and their perceived fairness are critically important. *Brady* violations undermine a defendant's right to a fair trial and can undermine the public's perception of the fairness of the criminal justice process.

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

**RESPONSE**: No, although I believe even one *Brady* violation is too many.

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

**RESPONSE**: If I am confirmed as Attorney General, I will take very seriously the professionalism of all attorneys and staff of the Department of Justice. The Department's dedicated career professionals devote their lives to keeping our communities safe and to ensuring that criminals are brought to justice honorably and ethically. If a *Brady* violation occurs, the personnel responsible must be held accountable.

10. *Brady* is founded on the constitutional right to due process, and courts have long held that defendants sued by the government in civil proceedings are entitled to due process.

a. Do you agree that the Department of Justice's obligations to safeguard the constitutional rights of defendants under *Brady* should apply equally in civil matters prosecuted by the Department of Justice? If not, why not?

**RESPONSE**: As I understand the law, federal courts have in only a few instances found *Brady* applicable in civil proceedings, such as in unusual cases where the potential consequences "equal or exceed those of most criminal convictions." *Demjanuk v. Petrovsky*, 10 F.3d 338, 50 (6th Cir. 1993). I agree that *Brady* should apply in such cases.

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

**RESPONSE**: If I am confirmed as Attorney General, in leading the Department, I will take appropriate actions to ensure that Department attorneys comply with the Constitution and the laws enacted by Congress as interpreted by the Supreme Court.

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

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

**RESPONSE**: I am not specifically familiar with the rules regarding all of the permissible types of identification that may presently be required at airports. However, we have many instances of violence, and credible threats of violence, directed towards airports and airplanes. As a New Yorker, I know first-hand the loss of life that terrorists have caused through plane hijackings. There is no doubt that certain security measures are imperative.

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

**RESPONSE**: As with airports, we have many instances of violence, and credible threats of violence that have been directed towards government buildings, including the horrific attack on the Alfred P. Murrah Federal Building in Oklahoma City. There is no doubt that certain security measures are imperative.

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

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

**RESPONSE**: I cannot speak to Attorney General Holder's views, nor do I have any categorical views on these issues in the abstract. My general understanding is that the Department considers questions of the validity of voting practices, such as state voter identification laws, based on the particular requirements of the federal law being enforced, based on the particular facts of the practice being investigated, and based on the particular law and facts in the jurisdiction.

As the Supreme Court held in *Crawford v. Marion County Election Board*, voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. I understand that before the *Shelby County* decision, the Department did preclear some voter identification laws, such as in Virginia and New Hampshire.

The analysis of a voter ID law is very specific to the particular law, the particular jurisdiction, and a wide range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act. As such, it is difficult for me to comment on the merits of any law (or in the abstract) without a full understanding of how the law actually operates in a particular jurisdiction.

b. Do you "disagree with the Supreme Court's decision upholding such laws in 2008 in *Crawford v. Marion County?*"

**RESPONSE**: The decisions of the Supreme Court represent the law of the land.

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

**RESPONSE**: I cannot speak to Attorney General Holder's views. If I am confirmed as Attorney General, I am committed to enforcing all the federal laws within the Department's jurisdiction, including the Voting Rights Act, according to their terms, in an even handed manner.

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

**RESPONSE**: As the Supreme Court held in *Crawford v. Marion County Election Board*, voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. I understand that before the *Shelby County* decision, the Department did preclear some voter identification laws, such as in Virginia and New Hampshire.

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

**RESPONSE**: As the Supreme Court held in *Crawford v. Marion County Election Board*, voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. I understand that before the *Shelby County* decision, the Department did preclear some voter identification laws, such as in Virginia and New Hampshire.

The analysis of a voter ID law is very specific to the particular law, the particular jurisdiction, and a wide range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act. As such, it is difficult for me to comment on the merits of any law (or in the abstract) without a full understanding of how the law actually operates in a particular jurisdiction.

15. Does in-person voter fraud exist?

**RESPONSE**: I am not personally familiar with the specifics of studies regarding these issues. Accordingly, I do not have any categorical views on these issues in the abstract.

16. Is voting essential to a democracy?

**RESPONSE**: Yes. Enforcing the federal laws that protect the right of our citizens to vote and protect of integrity of our elections are both core missions of the Department of Justice.

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

**RESPONSE:** Aliens do not have any federal right to vote in our federal elections. Various federal statutes enacted by Congress provide criminal penalties for false assertions of United States citizenship in connection with registration and voting, as well as criminal penalties for aliens voting in elections for federal office. If I am confirmed as Attorney General, I am committed to enforcing those statutes in an even-handed manner.

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

**RESPONSE**: This presents legal questions that I have not studied in depth, but my understanding is that the laws regarding the eligibility to vote of felons who have served their sentences vary from state to state.

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

**RESPONSE**: Aliens do not have any federal right to vote in our federal elections. Various federal statutes enacted by Congress provide criminal penalties for false assertions of United States citizenship in connection with registration and voting, as well as criminal penalties for aliens voting in elections for federal office. If I am confirmed as Attorney General, I am committed to enforcing those statutes in an even-handed manner.

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

**RESPONSE**: The Department enforces a number of federal voting rights statutes, including the NVRA. If I am confirmed as Attorney General, I am committed to enforcing all of those laws in an even-handed manner.

21. In 2013, the Department of Justice filed a lawsuit against Louisiana's school voucher program, known as the Louisiana Scholarship Program, alleging that the program violated federal desegregation orders resulting from the 1975 case *Brumfield v. Dodd*. The Department argued that allowing voucher students to transfer out of their public schools would disrupt the racial balance in public school systems that the desegregation orders are meant to protect. However, subsequent research commissioned by Louisiana found that in the majority of districts the movement of students improved or did not affect racial balance. In districts where the program had a negative impact, the effect was "miniscule". Nevertheless, the Eastern District of Louisiana ruled that Louisiana must provide detailed information to the Department of Justice on each student applicant at least 10 days before the vouchers are awarded. Please answer the following questions detailing how this information will be used if you are confirmed:

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

**RESPONSE**: I cannot comment on the specifics of *Brumfield v. Dodd* because it is my understanding that it is in active litigation. It is also my understanding that the Department has not taken a position against school voucher programs. That would continue to be my position if I am confirmed as Attorney General.

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

**RESPONSE**: Every child should have access to a good education, in a quality school, regardless of his or her race. The Department has worked for decades to ensure that every student is able to enjoy the fundamental rights guaranteed by the Constitution and the Supreme Court's decision in *Brown v. Board of Education*.

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

    a. What is your view on this practice?

**RESPONSE**: I believe it is important for lawful businesses to be able to have access to our nation's banking system, and that banks should assess risk on an individualized, rather than categorical, basis. As the United States Attorney for the Eastern District of New York, I have not had occasion to gain personal familiarity with the "de-risking" process you describe, but, If I am confirmed as Attorney General, I commit to learning more about and working with Congress on these issues.

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

**RESPONSE**: As noted above, I believe it is important for lawful businesses to be able to have access to our nation's banking system, and I agree with banking regulators that banks should make case-by-case determinations rather than assess risk on a categorical basis.

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

**RESPONSE**: The role of the Department of Justice is to enforce the law and as a career prosecutor and the United States Attorney for the Eastern District of New York, I can assure you that I, and my fellow prosecutors and law enforcement partners, take this role seriously. Our job is to investigate specific evidence of unlawful conduct and enforce the law. Our cases should target businesses that are violating the law, not those acting lawfully.

I also know from my time as United States Attorney that the Department's professionals work every day to uphold the law and protect the American people. I believe that, to ensure that our efforts are effective, the Department also must make sure to prevent any potential misunderstanding of its efforts that could be detrimental to lawful businesses. If confirmed as

Attorney General, I will make clear that it is imperative that we inform financial institutions that any investigations of financial institutions are based on specific evidence that a financial institution is breaking the law, and not on the institution's relationships with lawful industries or companies.

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

**RESPONSE**: I believe that no individual or company, no matter how large or how profitable, is above the law, and none is categorically exempt from prosecution. Rather, when evidence suggests beyond a reasonable doubt that a company or individual has engaged in criminal conduct, the Department will prosecute to the full extent of the law, consistent with longstanding Department of Justice policy. As with all cases, the Department considers the strength of the evidence and other long-standing policy considerations (*see, e.g.*, United States Attorney's Manual (USAM) 9-28.300) in determining whether to prosecute a financial institution.

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

**RESPONSE**: I believe the exchange you reference occurred in connection with a press conference, which the Department counsels nominees should not be considered interviews for the purpose of the Senate Judiciary Questionnaire. Nonetheless, I am happy to discuss below the HSBC matter you have cited. On December 11, 2012, the Department filed an information charging HSBC Bank USA with violations of the Bank Secrecy Act and HSBC Holdings with violating U.S. economic sanctions (the two entities are collectively referred to as "HSBC"). Pursuant to a deferred prosecution agreement ("DPA"), HSBC admitted its wrongdoing, agreed to forfeit $1.256 billion, and agreed to implement significant remedial measures, including, among other things, to follow the highest global anti-money laundering standards in all jurisdictions in which it operates. In order to ensure that HSBC fulfills its commitments, the Department required the installation of a corporate monitor, who supervises HSBC's implementation of remedial measures and evaluates HSBC's ongoing compliance with anti-money laundering requirements and U.S. economic sanctions. As the United States District Judge who approved the deferred prosecution found, "the DPA imposes upon HSBC significant, and in some respect extraordinary, measures" and the "decision to approve the DPA is easy, for it accomplishes a great deal." The Department will monitor compliance with the DPA and act appropriately to ensure implementation.

I want to reiterate, particularly in the context of recent media reports regarding the release of HSBC files pertaining to its tax clients, that the Deferred Prosecution Agreement reached with HSBC addresses only the charges filed in the criminal information, which are limited to violations of the Bank Secrecy Act for failures to maintain an adequate anti-money laundering program and for sanctions violations. The DPA explicitly does not provide any protection against prosecution for conduct beyond what was described in the Statement of Facts. Furthermore, I should note the DPA explicitly mentions that the agreement does not bind the Department's Tax Division or the Fraud Section of the Criminal Division.

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

    a. If you become the Attorney General, what role will the DOJ play in prosecuting these violations?

    b. Will you prosecute more of these cases than the DOJ has in previous years?

    c. Will you make protecting patients privacy through pursuing HIPAA violators a priority of yours, should you be confirmed as Attorney General?

**RESPONSE**: Protection of patient privacy under HIPAA remains of paramount concern to the Department, and HIPAA criminal violations have been and will continue to be prosecuted when warranted. It is my understanding that criminal matters have been referred to the Department by the Secretary of Health and Human Services (HHS) as well as the Federal Bureau of Investigation (FBI). In addition to prosecution, the Department is committed to offering training and guidance about HIPAA. After the 2003 effective date of the original HIPAA medical privacy rules, the Department provided training for prosecutors and agents regarding the HIPAA criminal statute and continues to provide periodic updates regarding HIPAA prosecutions and other medical privacy statutes through the United States Attorney's bulletin and training sessions. If I am confirmed as Attorney General, the Department will continue its commitment to protecting patient privacy under my stewardardship.

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

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

**RESPONSE**: My Office has been a leader in aggressively prosecuting disaster fraud committed in the wake of Hurricane Sandy, charging eight defendants with attempting to illegally exploit the horrific damage caused by that superstorm. In addition, allegations related to the possibility of fraud identified in Magistrate Judge Brown's November 7, 2014 Memorandum and Order are being evaluated by the Office of Inspector General at the Department of Homeland Security.

Upon entry of the November 7, 2014 Memorandum and Order, my Office worked closely with FEMA to achieve compliance and obtain the additional information from third party contractors the court had ordered to be disclosed. On November 10, 2014, FEMA contacted its Direct Servicing Agent and requested it to obtain the information described in the order from its contractors.  Because FEMA lacks control of the third party contractors and was relying solely on voluntary cooperation of the third party contractors to achieve compliance, on November 21, 2014, FEMA also sought reconsideration and objected to the order.  On December 8, 2014, Magistrate Judge Brown issued a clarification order.  The December 8th Order directed that, to the extent that third party contractors did not voluntarily provide additional information, FEMA was authorized to issue subpoenas to the firms to compel production of the materials.  Consistent with the December 8th Order, on December 12, 2014, my Office issued subpoenas to third party contractors that did not voluntarily comply with the court's order and then produced all of the information it obtained to the plaintiffs.  My Office was thus able to ensure full compliance with the court's order.

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

**RESPONSE**:  Members of my staff work with FEMA in identifying allegations of fraudulent activity that should be referred to the Office of Inspector General at the Department of Homeland Security.

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

**RESPONSE**:  These are matters that are currently under investigation and in active litigation, so I cannot comment on them.  As set forth above, my Office has been a leader in prosecuting disaster fraud committed in the wake of Hurricane Sandy.

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

**RESPONSE**:  I am unaware of any pre-existing relationships of employees of my Office with officials and attorneys for the WYO carriers.

28. According to the Treasury Inspector General for Tax Administration (TIGTA), the Internal Revenue Service (IRS) used "inappropriate criteria to identify tax-exempt applications for review," as early as March of 2010.[1] Subsequently, the Department of Justice, numerous Congressional Committees, and TIGTA have all initiated additional investigations into IRS improprieties, which the IRS has used to justify not disclosing

[1] *"Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review"*, 5/14/13, http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf, pg. 30

information related to public FOIA requests[2] and which have brought to light attempts by the IRS to avoid public scrutiny of their actions.[3]

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

**RESPONSE**: I believe that it is critically important that all investigations by the Department of Justice are conducted in a fair, objective, professional, and impartial manner, without regard to politics or outside influence. We must follow the facts wherever they lead, and must always make our decisions regarding any potential charges based upon the facts and the law, and nothing more. That is what I have always done as a United States Attorney, and it is what I will do if I am confirmed as Attorney General.

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

**RESPONSE**: In the many years that I have worked with at the Department of Justice, I have developed tremendous faith in the ability of career prosecutors and professional law enforcement agents to conduct investigations in a fair, objective, professional, and impartial manner, without regard to politics or other outside influence. As the Attorney General and his predecessor have stated in memoranda directed to all Department employees during election years, "[s]imply put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges." *See* Memorandum of The Attorney General to All Department Employees Regarding Election Year Sensitivities (March 9, 2012, and March 5, 2008). I am committed to those principles.

It is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a

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[2] Defendant's Opposition to Plaintiff's Motion Seeking Discovery, *Judicial Watch, Inc. v Internal Revenue Service*, Case No. 1:13-cv-1559-EGS-JMF, 10/17/14, http://www.judicialwatch.org/wp-content/uploads/2014/11/JW-v-IRS-01559-def-oppo.pdf, pg. 4

[3] *Lois Lerner cautioned against email chatter amid lawmaker probes*, 7/9/14, http://www.politico.com/story/2014/07/lois-lerner-irs-lawyer-email-108722.html

[4] *Ted Cruz Leads the New Conservative Crusade Against the IRS*, 1/28/15, http://www.bloomberg.com/politics/articles/2015-01-29/ted-cruz-leads-the-new-conservative-crusade-against-the-irs

Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. Under those regulations, which I understand have been used very rarely, the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment. I have no reason to question the ability of our dedicated career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally. At the same time, I assure the Committee that, if I am confirmed as Attorney General, I will apply the Special Counsel regulations faithfully and will exercise my discretion as Attorney General in an appropriate manner.

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

**RESPONSE**: As noted above, it is my understanding that the investigation into IRS targeting of certain tax-exempt organizations is being conducted by career prosecutors in the Department's Criminal Division and Civil Rights Division, working alongside professional law enforcement agents with the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I also understand that the Attorney General has committed that those career professionals will carry out this investigation thoroughly and fairly, and he has determined that there is no need for the appointment of a Special Counsel under the Department's regulations, 28 C.F.R. § 600.1. Under those regulations, which I understand have be used very rarely, the Attorney General has the discretion to appoint a Special Counsel if an investigation or prosecution by the Department of Justice would present a conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment. I have no reason to question the ability of our dedicated career prosecutors and law enforcement agents to conduct the IRS investigation fairly and professionally. At the same time, I assure the Committee that, if I am confirmed as Attorney General, I will apply the Special Counsel regulations faithfully and will exercise my discretion as Attorney General in an appropriate manner.

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

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

**RESPONSE**: I have not had occasion as United States Attorney to consider this question, but if I am confirmed as Attorney General, I would support the President's efforts to engage with Congress on this issue.

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

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

**RESPONSE**: I have not had occasion as United States Attorney to consider this question, but I agree with the President that Congress has an important role to play. I would defer to Congress on how these important issues should be deliberated within the legislative branch.

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

a. Can you provide an update to my office regarding the DOJ's position and plan to move forward with a BLR that appears to be contrary to U.S. law, and on what appears to be a *de facto* change of U.S. policy without prior backing from the Executive or Congress, and based purely on the DOJ Antitrust Division staff opinion?

b. Has the DOJ in its BLR reviewed the fact that the Board of Directors of IEEE-USA, the US-based branch of the organization, voted on November 21 expressing its concerns about the proposed policy changes?

**RESPONSE**: It is my understanding that on February 2, 2015, the Department issued a business review letter to the Institute of Electrical and Electronics Engineers, Inc. (IEEE) announcing that the Department had no present intention to challenge under the antitrust laws an IEEE proposal to clarify the terms under which holders of patents essential to IEEE standards commit to make licenses available for use in implementing IEEE standards. That letter is available at http://www.justice.gov/atr/public/busreview/311470.htm. My understanding is that the Antitrust Division engaged in a thorough review, including reviewing submissions of, and numerous meetings with, both proponents and opponents of the proposed policy revision, prior to issuing the business review letter.

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

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

**RESPONSE**: I appreciate the opportunity to address the important, and often challenging, task of protecting the intellectual property ("IP") of American creators and businesses. As your question properly acknowledges, the protection of IP is increasingly linked with our ability to secure computer systems and to protect content online. Given the importance of this issue to the Department, if confirmed as Attorney General I look forward to supporting the continued work of CCIPS and the CHIP units both through staffing and increased technical capabilities. I also would work with Congress to ensure that the Department is able to address future threats in this area, particularly in developing the tools and resources to address the challenge posed by the cross-border nature of IP and computer crime.

My experience in the Eastern District of New York has shown that the CHIP program—a network of experienced and specially-trained federal prosecutors who aggressively pursue computer crime and IP offenses—is an essential part of the Department's work in this area.

CHIP attorneys are responsible for prosecuting computer crime and IP offenses; serving as the district's legal counsel on matters relating to those offenses, and the collection of electronic evidence; training prosecutors and law enforcement personnel in the region; and conducting public and industry outreach and awareness activities. In my district, as in many other districts confronting significant cybercrime and intellectual property crime threats, our CHIP attorneys are located within a larger unit with cybercrime responsibilities to ensure that there are sufficient resources to handle what may be complex and long-term cases. Specifically, our CHIP unit is located in our National Security and Cybercrime Section, and the prosecutors in that section are trained and experienced with both the cyber tools necessary to prosecute modern crimes and the national security tools necessary to provide the appropriate response when national security actors such as nation states or terrorists may be involved. I thus know from personal experience that the CHIP network is very important to the Department's efforts to deter IP and computer crimes, and I would fully support its efforts if confirmed as Attorney General.

My Office has also been fortunate to work together with CCIPS on a number of important cybercrime and IP cases. As you note, CCIPS was created at a time when computer technology and the global markets for digital IP were quite new. Today, however, computer crimes and modern IP property crimes are often extremely sophisticated and difficult to address. Successfully prosecuting those crimes require prosecutors who are not only versed in the specialized areas of the law, but who also understand the specialized factual contexts in which the crimes occur. Even in an Office such as mine which is home to an entire unit of prosecutors with those skills, we have found that collaborating with CCIPS on our cases adds value in many areas. For example, we collaborated closely with CCIPS on a recent case involving the large-scale manufacture of consumer products on Long Island. This case involved an initial seizure of more than four semi-trailer truckloads of evidence in five locations, including counterfeit ChapStick, Johnson's Baby Oil, Vicks VapoRub, Vicks Inhaler, Vaseline, Always sanitary pads, and other over-the-counter cold medicines and painkillers. My Office also regularly capitalizes on training programs established and run by CCIPS to ensure that our prosecutors stay on the cutting edge legally and technologically. Finally, CCIPS also contains a core group of computer forensics experts in its Cybercrime Lab who provide digital evidence forensics, as well as training and advice to prosecutors across the country and law enforcement agencies around the world. I know that assistance provided by the Cybercrime Lab has been crucial in a broad range of cases, from traditional cybercrime to terrorism. This important mission is critical to the Department's overall success in addressing the threat of computer and IP crime, and if confirmed, I would work with Congress to assure that CCIPS has the necessary resources to accomplish it.

33. During your confirmation hearing, you stated that you do not support the legalization of marijuana. As you may know, DC is continuing to proceed with implementation of the initiative even though language preventing DC from moving forward with legalization efforts was included in the bill.

    a. What is your position on DC's Initiative 71 given the passage of HR 83, the Consolidated and Further Continuing Appropriations Act, which was signed into law by the President on December 16, 2014?

**RESPONSE**: As the United States Attorney for the Eastern District of New York, I am not familiar with the details of the legislation you have cited. As I noted during my testimony before the Committee, it is not the position of the Department of Justice to support the legalization of marijuana, nor would it be the position if I am confirmed as Attorney General.

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

**RESPONSE**: As United States Attorney, and if I am confirmed as Attorney General, I am committed to enforcing the Controlled Substances Act (CSA). The Cole Memorandum sets out eight priority areas for federal marijuana enforcement, one of which is preventing the diversion of marijuana from states where it is legal under state law in some form to other states where it is not. In addition, the Cole Memorandum expressly states that the federal government reserves the right to challenge a state marijuana law if that state does not implement strong and effective regulatory and enforcement systems that will address the threat that state law could pose to public safety, public health, and other law enforcement interests. These same considerations and limitations apply in the District of Columbia. The Department's focus is on applying its limited investigative and prosecutorial resources to enforcing the CSA in a manner that addresses the most significant threats to public health and safety, as discussed in the Cole memorandum.

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

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

**RESPONSE**: School prayer is not an area that I have studied closely. I know that the First Amendment protects religious freedom through the Establishment Clause, which protects against government interference and overbearing in religious matters, and the Free Exercise Clause, which protects the right of individuals and religious communities to pursue their faiths as their consciences lead them. The First Amendment's Free Speech Clause also provides protections to individuals and religious communities to express their faiths.

It is my understanding that Supreme Court precedent establishes the principle that public schools may not sponsor official school prayer, may not endorse or prefer any particular religion, and may not prefer religion over nonreligion. I also understand that the Supreme Court has recognized a critical difference between school-sponsored religious speech, which the Establishment Clause proscribes, and student religious speech, which the Free Exercise Clause and Free Speech Clause protect.

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

**RESPONSE**: It is my understanding that students have the right to pray, either alone or with other students, before, during or after school on the same basis that students are permitted to gather for other expressive purposes.

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

**RESPONSE**: It is my understanding that the Department, through its Civil Rights Division, enforces Title IV of the Civil Rights Act of 1964, which permits the Department to bring suit where a school board has denied a student or students "equal protection of the laws" on the basis of religion. I understand that this provision is typically invoked when a student suffers harassment on the basis of religion, and does not ordinarily arise in the context of prayer. The only cases relating to student prayer or other student expression of religious belief or devotion in public schools of which I am aware of Department involvement in recent years are briefs filed by the Department in support of a student group in Pennsylvania that wanted to hold a Bible study and prayer group during an activities period, and a brief filed in support of a student who wished to sing a religious song in an evening talent show sponsored by the school.

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

**RESPONSE**: If I am confirmed as Attorney General, I will protect constitutional guarantees to freedom of religion.