

Chairman Durbin

Responses to Questions from Chairman Durbin to Lisa O. Monaco, Nominee to be Deputy Attorney General

1. You have spent a great deal of time discussing cyber threats and the national security implications for the country. Specifically, you have emphasized the breadth of these threats against both the federal government and the private sector and the wide range of actors who may be behind them.
 - a. What do you believe will be the gravest cyber threats in the years to come?

RESPONSE: In my experience, cyberattacks, particularly from nation states, are one of the greatest threats to our national security. In my prior government service, I have focused intently on the rise of malicious cyber activity and have treated cyberattacks by nation-state actors as a top priority because of the sophistication of such attacks and the potential for harm and disruption they pose to our national and economic security.

Cyber-attacks from malicious nation-state and non-state actors alike—as well as from criminal groups sometimes acting at their behest—have become increasingly sophisticated, dangerous and destructive. Efforts by nation states in particular to engage in geopolitical one-upmanship using cyber means—through the rampant theft of intellectual property, large scale data theft and espionage activity, ransomware, and exploitation of the supply chain to expand the reach and impact of malign cyber activity—will pose significant threats for years to come.

If confirmed, I look forward to receiving a full briefing on the recent SolarWinds cyber-attack, the recent exploitation targeting Microsoft Exchange Server vulnerabilities, as well as the other current pressing cyber threats facing our country. But without question, and as is clear from public reporting, the SolarWinds attack underscores the serious risks to both the private and public sector networks of malign nation-state activities in cyberspace.

- b. Do these threats flow from nation-states? From private actors? From those seeking to make a profit?

RESPONSE: The significant array of cyber threats we face includes both nation-state and non-state actors alike, including, at times, in connection with the same incident. If confirmed, I will work to ensure that the Department prioritizes protecting the American people and our private and public sector institutions from all types of cyber-attacks, and brings to justice the malign actors who perpetrate such attacks.

- c. If you are confirmed, what will your top priorities be when it comes to preventing and responding to cyber threats?

RESPONSE: President Biden has repeatedly warned of the continued risks posed by vulnerabilities in U.S. cyber infrastructure, and recent events have unfortunately only underscored this point. If confirmed as Deputy Attorney General, I will immediately

prioritize assessing the Department’s current efforts and capacity to fully support the President’s efforts to address this significant threat. That includes providing our nation’s law enforcement and intelligence community with the tools and training necessary to collect evidence and gather intelligence, attribute attacks, and bring malicious cyber actors to justice.

2. Time and time again under President Trump, the Justice Department’s independence was compromised and the pursuit of equal justice under law came in second to the pursuit of Trump’s interests.

In a February 2020 op-ed, you praised former Attorney General Janet Reno and former Federal Bureau of Investigation Director Robert Mueller for their “reverence for the [Department], for upholding the norms and traditions of independence and of doing justice without fear or fervor, and never, ever, letting politics or partisanship influence an investigation or prosecution decision.”

- a. In your view, why is it so important for the Justice Department to maintain its independence?

RESPONSE: In my view, the Department’s independence is critical to earning—and keeping—the faith of the people it serves. The Department of Justice is entrusted with a unique role and mission in our government. It must act as an executive agency bound to advance the President’s lawful policy objectives and as an independent investigator and prosecutor in conducting its law enforcement function. In so doing, it must act independently and free from political interference or influence so that the American people—whom all Justice Department employees serve—can have confidence that the laws are applied fairly and in an even-handed manner. The American people must have confidence that there are not different rules for different people. That is what the rule of law means.

As Attorney General Levi put it, “[n]either the law in general nor the criminal law in particular can be entirely enforced by the government. Ultimately, enforcement must spring from the faith of citizens.” And for citizens to have faith in the Department, he said, “people must believe, if not in the wisdom of a particular law, at least in the fairness and honesty of the enforcement process.” I am committed to those same values of fairness, honesty, and independence in the enforcement process.

- b. Would you have the same reverence for the Department as your mentors?

RESPONSE: Yes. During my 15 years at the Department, I formed a reverence for the Department as an institution, for its people, for its mission, and for the enduring values that it represents. I am deeply committed to the independence of the Department of Justice, and to reaffirming the norms, policies, and traditions that protect its independence. Likewise, President Biden has been clear that he is fully committed to ensuring that the Department operates with impartiality and independence and that his Administration will adhere to those important guardrails. If confirmed, I will insist that the Department’s decisions in all enforcement matters be based solely on the facts and the law.

3. In addition to your work as a national security and homeland security advisor in the White House, you have served in many roles at the Justice Department, including line prosecutor, FBI Counselor, Associate Deputy Attorney General, and Assistant Attorney General for the National Security Division.

a. How have those jobs prepared you to serve as Deputy Attorney General?

RESPONSE: I grew up as a lawyer and public servant in the Department of Justice. I served in different positions over 15 years across Republican and Democratic administrations, tackling a host of issues—in a nonpolitical fashion—from violent crime, to public corruption, to national security. In each role, I learned from and valued the work of career professionals across the Department and its law enforcement agencies. Each role has reinforced for me that with power comes profound responsibility to protect the rights and liberties that we are all guaranteed by the Constitution.

b. Please discuss the benefits and importance of having an experienced leadership team at the Justice Department.

RESPONSE: Because of my experiences at the Department, I understand that the Justice Department’s leadership is responsible for ensuring that the Department lives up to its values and adheres to the norms that ensure the rule of law is upheld. Leadership of the Department sets the tone. My goal, if confirmed, is to reaffirm the core values that the Department of Justice has long represented: independence, fairness, and devotion to the rule of law.

c. Please discuss the importance of having a Justice Department leadership team that listens to different perspectives and works to bridge gaps.

RESPONSE: I believe that it is critical that leaders engage with a wide range of perspectives on difficult issues in order to craft well-considered, effective, just policy. While serving as the Assistant Attorney General for the National Security Division and, later, as White House Homeland Security Advisor, I sought to engage with a wide variety of stakeholders on issues, and I would bring that approach to the Department, should I be confirmed as Deputy Attorney General.

d. What are some of the issues you have worked on that required you to engage with groups and individuals across the ideological spectrum?

RESPONSE: Individuals across the ideological spectrum have strong views on the FISA process and the use of this authority. In the various leadership roles I have held in the federal government, I have engaged with stakeholders, Members of Congress, and others on issues implicating privacy, transparency and fulfilling the government’s duty to protect national security consistent with the rule of law. This engagement was intended to foster trust and confidence in how the government exercises its authority, which I believe is critical to ensuring that the government maintains trust in how it makes use of this powerful intelligence tool.

Ranking Member Grassley

Responses to Questions from Ranking Member Grassley to Lisa O. Monaco, Nominee to be Deputy Attorney General

1. The Justice Department’s deputy attorney general can have an important role in overseeing special counsel investigations. Special Counsel John Durham is currently overseeing an investigation that “include[s] but is not limited to Crossfire Hurricane and the investigation of Special Counsel Robert S. Mueller, III.”¹ During your Committee hearing, you told me that you had no involvement in Crossfire Hurricane. I respect your answer. I also want to make sure that I understand the situation.

As President Obama’s homeland security advisor in 2016, you announced that the Obama administration was conducting a “full review” of the 2016 election, given concerns about Russian interference.² You have spoken in support of the Obama administration’s handling of this investigation, defended James Comey’s conduct, and appear to have been personally involved in the 2016 investigation.³ In a 2017 Politico interview, where you discussed your work as President Obama’s lead advisor on homeland security, you took issue with the idea that you did nothing around the Russia investigation:

“There has been this theory we didn’t do anything, which I take issue with,” Monaco says in the interview, describing a decision by the administration — despite the extraordinary nature of a series of cyberattacks targeting the American political process itself — to treat the Russian intervention using the same law enforcement-focused approach it had in previous major hacks by “malicious” state actors.⁴

The article also contains language like the following, where you described actions that you took in response to Russia-related concerns:

“We treated it very much in the way that we have done other malicious activity by cyber actors,” Monaco says, choosing to turn the case over to the FBI and intelligence agencies to figure out how and when to “attribute” the attack publicly without giving away the evidence used to reach that conclusion. “We applied the same framework that we have in other contexts, whether it was China stealing intellectual property, whether it’s Iran committing denial of service attacks on our financial institutions,

¹ U.S. Dep’t of Just., Office of the Att’y Gen., Order No. 4878-2020, *Appointment of Special Counsel to Investigate Matters Related to Intelligence Activities and Investigations Arising Out of the 2016 Presidential Campaigns* (Oct. 19, 2020), <https://www.politico.com/f/?id=00000176-2008-d692-a977-3c7afcd50000>.

² Anna Mulrine Grobe, *Obama orders review of US election amid Russian hacking concerns*, The Christian Science Monitor (Dec. 9, 2016), <https://www.csmonitor.com/World/Passcode/2016/1209/Obama-orders-review-of-US-election-amid-Russian-hacking-concerns>.

³ See, e.g., Susan B. Glasser, *Did Obama blow it on the Russian hacking?*, The Global POLITICO (Apr. 3, 2017), <https://www.politico.eu/article/did-obama-blow-it-on-the-russian-hacking-us-elections-vladimir-putin-donald-trump-lisa-monaco/>.

⁴ *Id.*

whether it's North Korea in the Sony attack," Monaco says. "We applied a framework and a playbook that we have done many times."⁵

Your repeated use of "we" seems to indicate that you had personal involvement in issues that were at least related to Operation Crossfire.

This is also the impression that elected officials have held. When Representative Jim Jordan (R-OH) and Representative Mark Meadows (R-NC) requested documents on the Russia investigation in 2019, for example, their request included materials from meetings that you had attended as President Obama's national-security advisor.⁶

In addition, you worked for Robert Mueller when he was the FBI director, and you rose to become his chief of staff. Last year, you described Mr. Mueller as a mentor with "the truest compass of anyone I've ever known."⁷ During a 2018 interview, you also publicly defended both his special counsel investigation and the findings that he was putting forward.⁸

- a. Was there any overlap between issues you worked on in any way, as President Obama's lead advisor on national security, and Operation Crossfire? If there was an overlap, and if you are able to publicly explain that overlap in any way, what was the overlap?

RESPONSE: As I testified, I was not involved in Crossfire Hurricane. Based on my recollection, my comments in the cited article were in response to questions about the U.S. Government's policy response to Russian interference in the 2016 presidential election and which were announced publicly in December of 2016. That response included imposition of sanctions on Russian individuals and entities, expulsion of Russian intelligence operatives, and closure of Russian compounds in the United States. As the White House Homeland Security Advisor, I was involved in formulating these policy responses to Russia's malicious cyber activity—just as I was involved in coordinating the U.S. Government's responses to other significant cyber threats and incidents.

- b. Do you have any conflict of interest—from your work in the Obama administration or for any other reason—that requires you to recuse from Special Counsel Durham's investigation?

RESPONSE: Because I am not in the Department yet, I do not know the details of Mr. Durham's investigation or any aspect of it that may come before me, and therefore cannot make an informed assessment at this time. If I am confirmed, I will consult with the Department of Justice's career ethics officials about recusal questions posed by this or any

⁵ *Id.*

⁶ Jennifer Hijazi, *GOP Digs for Obama Intel on Russian Election Meddling*, Courthouse News Service (Mar. 5, 2019), <https://www.courthousenews.com/gop-digs-for-obama-intel-on-russian-election-meddling/>.

⁷ See Lisa Monaco, *The Soul of the Justice Department: Who Must Stand Up For It Now*, Just Security (Feb. 14, 2020), <https://www.justsecurity.org/68689/the-soul-of-the-justice-department-who-must-stand-up-for-it-now/>.

⁸ PBS Newshour, *Trump tweets on Andrew McCabe taints Justice Department decision, says former official* (Mar. 19, 2018), <https://www.pbs.org/newshour/show/trump-tweets-on-andrew-mccabe-taints-justice-department-decision-says-former-official>.

other matter that comes before me. In all cases, I will make decisions based on the facts, the law, and the applicable rules, policies, and practices.

- c. Did you ever discuss the Mueller investigation with Special Counsel Mueller, anyone on his team, or anyone else who had any connection to this investigation? If you did, what was discussed?

RESPONSE: To the best of my recollection, I did not discuss the investigation with Director Mueller or any member of his team during the pendency of the investigation.

- d. Do you have any conflict of interest—from your years working directly for Mr. Mueller, from your subsequent communication with him or others, from your public support of his investigation and its findings, or for any other reason—that requires you to recuse from Special Counsel Durham’s investigation?

RESPONSE: I pledge to approach any prosecution that comes before me fairly and impartially, based only on the facts and the law. I do not know the details of Mr. Durham’s investigation or any aspect of it that may come before me, and therefore cannot make an informed assessment as to recusal at this time. If I am confirmed, I will consult with the Department of Justice’s career ethics officials about recusal questions posed by this or any other matter that comes before me. In all cases, I will make decisions based on the facts, the law, and the applicable rules, policies, and practices.

2. Will you commit, if confirmed, to follow the advice of the Justice Department’s career ethics officials on recusal decisions?

RESPONSE: During my prior tenure at the Department of Justice, it has been my consistent practice to seek and follow the advice of the Department of Justice’s career ethics officials, and I expect to continue that practice, absent a contrary determination about the necessity of my recusal by the Attorney General, *see* 28 C.F.R. § 45.2(b).

3. When new nominees oversee the Justice Department, they need to decide whether to continue existing prosecutions and investigations. Some of these are politically contentious such as those brought by federal authorities in Ohio against Republican Larry Householder and Democrat P.G. Sittenfeld. In cases like that there can be a risk that decisions to discontinue existing prosecutions and investigations will be made on political or ideological grounds, rather than on legal grounds. If you are confirmed as deputy attorney general, will you commit to generally continuing federal corruption prosecutions that are already underway?

RESPONSE: Although I am not familiar with the matters cited, I can commit that, if confirmed, I will insist that the Department’s decisions in all enforcement matters be based solely on the facts and the law, and I will consult with the career prosecutors and subject matter experts in the Department about federal corruption prosecutions that are underway, as necessary and appropriate.

4. 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: I understand that the issue to which you refer is subject to pending litigation involving the Archivist of the United States. Because I am not presently at the Department, I am not aware of all the relevant facts about this case. If confirmed, I would approach this matter as I would any case: by working with subject-matter experts at the Department, including career lawyers, and by ensuring that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

5. What factors should go into the Justice Department’s decision to change course on litigation?

RESPONSE: Based on my experience in the Justice Department, decisions in litigation can generally be influenced by changes in facts, changes in law, and, on occasion, changes in policy.

6. *The Hill* reports that some former Trump appointees now hold career positions in the federal government. They did so because various liberal activist groups are trying to purge them from the federal payroll. These potentially include four individuals in national security positions, nine individuals in environmental regulation positions, and three Justice Department officials.⁹ 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?

⁹ Brett Samuels, *Dozens of Trump appointees ‘burrow’ into Biden government*, *The Hill* (Mar. 9, 2021), <https://thehill.com/homenews/administration/542324-dozens-of-trump-appointees-burrow-into-biden-government>.

RESPONSE: Decisions with regard to personnel at the Justice Department should be made consistent with civil service laws and Departmental policies, without regard to any prohibited considerations. If confirmed, I will make personnel decisions within my purview consistent with federal law, including the civil service laws, and with Departmental policies, without regard to any prohibited considerations.

7. Did you “burrow” at the outset of the George W. Bush administration?

RESPONSE: No.

8. A liberal advocacy group said of Trump “burrowers,” “having them filled with antagonists of the Biden administration could sabotage progress on the many crises we’re grappling with.”
- a. Were you an “antagonist” to the George W. Bush administration when you left Attorney General Reno’s office to be an AUSA?
 - b. As an AUSA did you “sabotage progress on the many crises” the Bush administration grappled with?

RESPONSE: No. I have had the privilege of serving in different positions in the Justice Department over 15 years, across Republican and Democratic administrations. As an Assistant U.S. Attorney, I tackled violent crime, fraud and public corruption cases, and served on the Department’s Enron Task Force, helping to expose complex corporate fraud after one of the biggest corporate collapses in American history.

9. Is it appropriate for the Biden administration to consider willingness to work on difficult or sensitive cases when considering whether or not to promote a Senior Litigation Counsel to a career director position?

RESPONSE: During my 15 years in the Department, I developed a deep admiration for the career men and women who serve there. Personnel decisions with respect to career positions should be made consistent with civil service laws and departmental policies, without regard to any prohibited considerations.

10. Would it have been appropriate for the Trump administration to consider willingness to work on difficult or sensitive cases when considering whether or not to promote a Senior Litigation Counsel to a career director position?

RESPONSE: I cannot speak to specific or hypothetical personnel decisions made by the Trump administration. But, in general, all administrations must make decisions consistent with civil service laws and departmental policies, without regard to any prohibited considerations.

11. 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.”

- a. Will the Department commit to abiding by and upholding this rule?
- b. Do you think it is appropriate for the Justice Department to direct settlement funds toward third-party organizations that Congress has affirmatively defunded?

RESPONSE: As indicated in your question, I understand that the Department of Justice has enacted regulations that govern when settlements may properly include payments to third parties. See 28 C.F.R. § 50.28. This regulation was adopted after I left government, and so I am unfamiliar with the particulars of the policy. If I am confirmed, I would carefully consider the matter as appropriate, including both the reasons why this practice developed and the reasons why it was changed.

12. In July of 2020, the European Court of Justice struck down the Privacy Shield program, invalidating a critical mechanism for transferring data to the U.S. from the EU in a cost-effective manner that was of particular benefit to U.S. small and medium-sized enterprises. This has raised significant concerns about the continued viability of trans-Atlantic data flows for American businesses at an important moment for U.S. economic recovery. The Department of Commerce is leading an interagency effort to negotiate a successor privacy framework in which the Department of Justice is participating. If confirmed, will you work with your interagency colleagues to encourage a quick and balanced resolution to the Privacy Shield issue?

RESPONSE: The July 2020 decision by the European Court of Justice invalidating the EU-U.S. Privacy Shield Framework poses challenges for critically important global data flows. I am not presently at the Department, so I am not familiar with the specifics of the Department of Justice’s participation in the Department of Commerce’s interagency effort to negotiate a successor privacy framework. If confirmed, however, I would support Department efforts to promote cross-border data protection and transfers that protect privacy and promote the competitiveness of U.S. companies.

13. Do you believe potential voter fraud, or other elections abnormalities, are concerns that the Justice Department should take seriously?

RESPONSE: I believe that the Department should investigate credible allegations of voter fraud. The Department of Justice plays a pivotal role in protecting the right to vote and ensuring that elections are not influenced by fraud.

14. Following George Floyd’s death in 2020, you signed a statement issued by Harvard’s Belfer Center for Science and International Affairs. The statement says in part: “We do not tolerate the destruction of our communities or violence, and perpetrators should be arrested and prosecuted. But we reject a militarized response to protests to deny citizens their constitutional rights. Moreover, the blanket use of the label ‘terrorists’ to justify the use of para-military and military force is both factually wrong and legally unsupportable—

contradicting core constitutional principles.¹⁰ The statement calls for police reforms on “force and accountability and transparency.”¹¹

This statement appears to reject the “terrorist” label in describing the domestic violence that occurred in summer 2020. Do you believe that any of the domestic extremism that occurred in summer 2020, including attacks on federal courthouses, qualifies as domestic terrorism?

RESPONSE: Attacks on federal courthouses and other government buildings are crimes. My understanding is that some of the events that occurred during the summer of 2020 may continue to be under investigation by the Department. Because I am not in the Department, and therefore am not aware of all the relevant facts, I am not in a position to comment on any particular investigation. But, as I said during my confirmation hearing, “domestic terrorism has a very clear definition in our law. . . . If any facts that are presented to me meet that definition, that would seem to be domestic terrorism.” That legal standard is the same regardless of where on the political spectrum those engaging in such violence may fall.

15. Do you believe we should be defunding police services, or otherwise withdrawing resources in any way, in order to redirect those resources to other government services?

RESPONSE: I do not support defunding the police. I believe that law enforcement has a difficult job and police departments should have the resources they need to do their job safely, well, and accountably, and in a way that builds community trust. 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 agree that 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.

16. As deputy attorney general, would you take any steps to shift resources away from direct law enforcement services?

RESPONSE: Please see my response to Question 15.

17. Is setting a police station on fire in order to communicate a message to government actors as part of a riot an act of terrorism?

RESPONSE: As Attorney General Garland noted, an attack on government property is a clear crime and a serious one and should be punished. The act described in the question may satisfy the statutory definition of terrorism, but it would depend on additional facts and circumstances, including the intent of the violent perpetrator.

¹⁰ See Belfer Ctr. for Sci. & Int'l Affairs, *Statement of Homeland and National Security Leaders* (June 15, 2020), <https://www.belfercenter.org/publication/statement-homeland-and-national-security-leaders>.

¹¹ *Id.*

18. 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: I am not familiar with the details of Operation Legend. I am, however, aware of indications of rising violent crime in too many of our communities and am deeply concerned about it. Addressing surges in violent crime must be a top priority of the Justice Department. In particular, I would look forward to meeting with our federal law enforcement agencies and our state and local law enforcement partners to understand what is driving these trends and evaluate the Department's current violent crime initiatives. If confirmed, I will ensure the Department works with our state and municipal law enforcement partners—as well as the communities most impacted by this violence—to take concrete steps to stem this tide.

19. The First Step Act became law two years ago. Since its passage, I've focused on the implementation of this comprehensive criminal-justice law. The COVID-19 pandemic has impacted 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.

The virus impeded programming available, however, 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 deputy attorney general to ensure that programming is available for inmates and effective in reducing recidivism?

RESPONSE: If confirmed, I intend to work to ensure that the Bureau of Prisons advances implementation of the First Step Act and would welcome the opportunity to work with Congress to do so. Because I am not yet in the Department, I am not familiar with the specifics of the programming issue you raise. If confirmed, I look forward to working diligently on COVID-19 safety issues, as well as on programming in prisons that effectively reduces recidivism.

20. 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's inspector general on this issue year last, particularly in light of COVID-19. Specifically, we asked him to 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 share your concern and that of Chairman Durbin that the First Step Act be fully implemented. I have not yet had the opportunity to study the details of its current implementation, but I look forward to doing so if confirmed, and I anticipate taking steps to ensure its full implementation, including by issuing directives and guidance where necessary.

21. The First Step Act requires that nonviolent inmates receive more opportunities to earn time credits through participating in recidivism-reduction programming. This will undoubtedly lead to more inmates in prerelease custody, such as halfway houses. The First Step Act authorizes \$75 million each year through FY 2023. It will be absolutely vital that some of this funding be used for the expansion and creation of new residential reentry centers.

As deputy attorney general, will you use the funding available to you to adequately fund these residential reentry centers to handle the increase of inmates put in prerelease custody?

RESPONSE: If confirmed, I will strive to use available resources to adequately fund these residential reentry centers.

22. 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. How will you navigate the Justice Department's enforcement of federal law in states where marijuana has been legalized?

RESPONSE: I share Attorney General Garland's view that it is not 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 also share the Attorney General's view that 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 as the Justice Department's role 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. I share Attorney General Garland's view that it is not 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 also share the Attorney General's view that 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: I am aware that laws criminalizing the use of marijuana have contributed to mass incarceration and racial disparities in our criminal justice system, and have made it difficult for millions of Americans to find employment due to criminal records for non-violent offenses. The President has indicated that he favors decriminalizing the possession of marijuana and legalizing the use of marijuana for medical purposes. If confirmed, I would work to implement any relevant policy that is consistent with the law.

- 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 issue. If I am confirmed, I look forward to learning about it, and determining whether the Department has programs or resources that could assist state and local partners and be helpful to promoting public safety in this area.

- e. While President Biden is opposed to legalizing 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: Based on my prior experience, I agree that it is important to focus our attention on violent crimes and other crimes that greatly endanger our society—including large scale distribution and criminal enterprises—and that prosecutions for simple marijuana possession are not an effective use of limited federal resources. Disparate treatment in these prosecutions has had a harmful impact on people and communities of color, including stymied employment opportunities and social and economic instability.

- f. Are you aware of 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: This an area that has continued to evolve since I last served in government. If I am confirmed, I would expect to be briefed on the extent to which drug trafficking organizations are engaged in such activities and what measures are being taken by the Department in response. In general, I share Attorney General Garland's view that we need to be sure that there are no end runs around the state laws by criminal enterprises, and that kind of enforcement is important.

23. 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 details of the Elder Justice Initiative, but I share your commitment to seeking justice for the elderly. 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. 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?

RESPONSE: I am not familiar with the specific requirements of the statute, but, if confirmed, I will work to ensure that the Department abides by statutory requirements and vigorously enforces all laws that protect the Nation's elderly from fraud and abuse.

24. Section 3204 of the SUPPORT for Patients and Communities Act provided that specialty pharmacies may distribute Medication Assisted Treatments directly to providers.

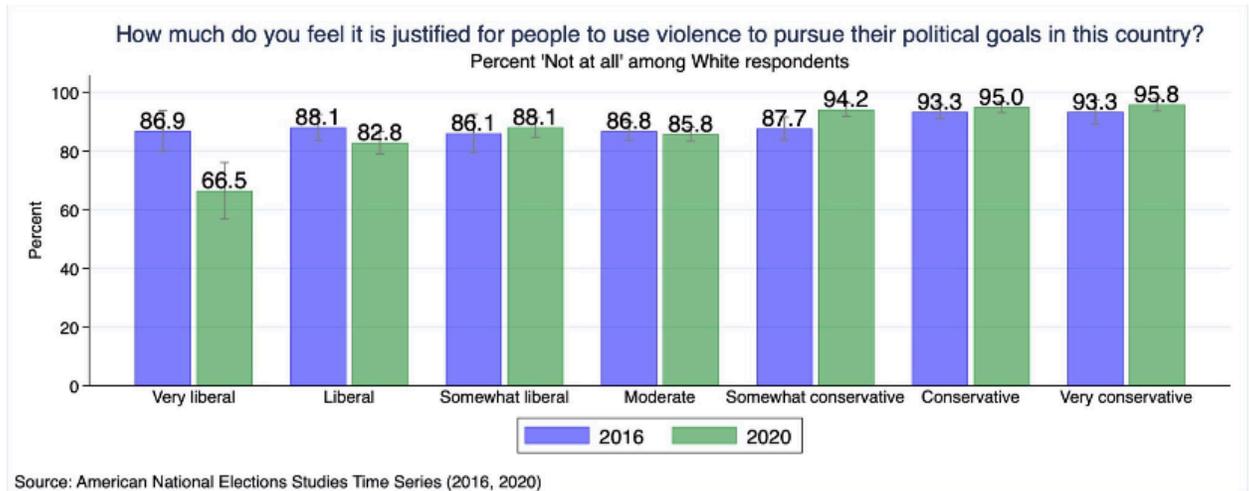
- a. Section 3204 of the Act requires the practitioner to administer treatment to the patient named on the prescription or dispose of the medication within 14 days of receipt of the controlled substance, a period of time which can be modified by DOJ. Comments to the DEA Interim Final Rule for the SUPPORT Act have suggested that the fourteen 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 rulemaking process and working with Department personnel to ensure it is efficient and effective.

25. I believe that classwide scheduling of fentanyl analogues is an important issue. 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: Fentanyl analogues are sold illicitly and have caused senseless fatalities. I understand the evidence reflects that criminals will constantly alter the chemical composition of these drugs to evade scheduling. If confirmed, I look forward to examining and addressing this serious problem along with Attorney General Garland.

26. See the attached chart:



- a. How would you describe the trend it presents?
- b. Is this trend a problem? If so, how would you account for it?

RESPONSE: I do not know enough about the underlying circumstances or data reflected in the chart to comment on what it may or may not show. But violence from any ideological direction is unacceptable, and, if confirmed, I am committed to the evenhanded investigation and prosecution of all such acts.

27. 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 presently at the Department, I am not aware of the details of the Department's response to your request. I respect the oversight role of the Committee and, if confirmed, I will look into the matter.

28. 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.

If confirmed, will you ensure that the investigation and prosecution of human trafficking offenses remains a top priority for the Department? How will you do so?

RESPONSE: Human trafficking is a heinous crime and, if confirmed, combatting it will be a top priority. As Deputy Attorney General, I would support the Department's efforts to use all available law enforcement tools to identify trafficking networks, vigorously prosecute perpetrators, and hold accountable those who prey on some of the most vulnerable members of our society. I would also seek to build on the Department's record of strengthening strategic anti-trafficking partnerships and providing strong and effective assistance to survivors.

29. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform.

- a. Would you allow a member of the Federalist Society to serve on your staff as Deputy Attorney General?

RESPONSE: Yes.

- b. Do you agree with Attorney General Garland that a member of the Federalist Society should be allowed to serve on front-office staff within the Justice Department?

RESPONSE: Yes.

- c. Do you agree with Attorney General Garland that a member of the Federalist Society should be allowed to be promoted to chief, assistant chief, section head, or any other career supervisory position in the Justice Department?

RESPONSE: Yes.

30. During an interview with CBS in 2020, you were asked about countries that have and have not managed their pandemic responses well. You spoke about the importance of "speed, decisiveness, and a willingness to speak clearly about the problem."¹² You added:

And then, frankly, also what we've seen is those countries that were willing to put in place measures, and quite drastic measures when you think about it, based on our sense of civil liberties and freedom of movement, those who have been able to flatten the curve quickly are the ones who put in place

¹² CBS News, *Lisa Monaco speaks with Michael Morell on "Intelligence Matters,"* (Apr. 15, 2020), <https://www.cbsnews.com/news/transcript-lisa-monaco-speaks-with-michael-morell-on-intelligence-matters/>.

very quickly measures that are quite foreign to us, and do not jive with the American sensibility.¹³

- a. Do you believe that a pandemic should change the civil liberties to which Americans are entitled, whether in the short term or in the long term?
- b. Do you believe that a pandemic should, as a matter of the rights to which Americans are entitled, change freedom of movement?
- c. Do you believe that, in a pandemic, houses of worship should have the same civil rights as grocery stores, gyms, theaters, hair salons, and other non-religious entities?

RESPONSE: Religious liberty is a founding American principle and is enshrined in the Constitution’s First Amendment and protected by other federal laws. If I am confirmed, I will seek to ensure that the Department of Justice scrupulously follows the Constitution and federal law, including provisions protecting religious and other civil liberties. I also understand that state and local authorities, charged in the first instance with protecting public health, must address public health imperatives in the context of a global pandemic.

31. 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). However, I am not familiar enough with the details of that specific proceeding to have a view on the District Judge’s actions in the matter.

32. What measures do you personally intend to take to ensure that the Justice Department never receives the same rebuke from the Foreign Intelligence Surveillance Court as occurred in the Carter Page FISA application?

RESPONSE: FISA is a powerful tool to protect against national security threats, but the government must use FISA consistent with statutory safeguards, and internal policies, procedures and oversight mechanisms in order to protect privacy and civil liberties and to keep the trust and confidence of the American people. As the former Assistant Attorney General for National Security, I take very seriously the government’s obligations to be scrupulously accurate in presentations to the FISA Court.

The conclusions by Department’s Inspector General that there were “serious performance failures” during the FISA process with respect to the subject of his review is extremely concerning. Based on publicly available information, it is my understanding that Director Wray and others in the Department have already undertaken corrective actions and that the FISA Court commissioned a review from an external expert for further recommendations. If confirmed, I will meet with the Inspector General to hear directly

¹³ *Id.*

from him about his review and to understand his assessment of the current process and what additional steps should be taken. I will also meet with the FBI Director and the NSD leadership to understand the status of implementation of corrective actions.

33. When the Justice Department was being built during the Great Depression, the Treasury Section of Fine Arts commissioned artists to create 68 murals for its halls, depicting scenes, figures and subjects “cover[ing] everything from Rome and the Bible to medieval Europe to English common law and the U.S. Constitution.”¹⁴ In a January 5, 2009, NPR article, a Justice Department tour guide explained that “we drip symbolism in this building. This building is a sermon, a hymn to justice.”¹⁵ The article described the murals as “real art on the walls, showing America at its worst, and the redemptive power of law and justice.”¹⁶ Do you agree that this public art is important and ought to be maintained and displayed where it is?

RESPONSE: The Main Justice Department building is an impressive work of architecture with a deep and important history. My own personal experience in my many years at the Department was that the building’s features and the public artwork within it reinforced the Department’s dedication to the cause of justice.

34. As deputy attorney general, you would have broad responsibility 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, for every 100 immigrants who claimed credible fear from Fiscal Year 2008 through Fiscal Year 2019, only 14 were ultimately granted asylum.

Under the law, asylum can be granted if individuals have a well founded fears of persecution in their home countries 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

¹⁴ The Living New Deal, “Kennedy Department of Justice: Robinson Murals – Washington D.C.” available at: <https://livingnewdeal.org/projects/department-justice-boardman-robinson-murals-washington-dc/>

¹⁵ Ari Shapiro, NPR, “Murals Depict Power of Law and Justice,” Jan. 5, 2009, available at: <https://www.npr.org/templates/story/story.php?storyId=98783331>

¹⁶ *Id.*

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: If confirmed as Deputy Attorney General, I would not have responsibility to issue decisions that would be binding on immigration courts, the Board of Immigration Appeals, and the Department of Homeland Security. My understanding is that such responsibility is provided to the Attorney General pursuant to 8 U.S.C. § 1103(a)(1) and 8 C.F.R. § 1003.1(h). In my career, I have not had the occasion to study this issue in detail and, if I am confirmed, I would do so as appropriate. Asylum is part of American law and the Department of Justice and the State Department have an obligation to apply the federal asylum laws.

35. 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 Christopher 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 Chinese government can be made more comprehensive or robust?

RESPONSE: This initiative began after I left the Department, and I have not conducted a comprehensive review of it. The continuing threat posed by China’s aggressive and coercive actions—whether in stealing intellectual property, conducting espionage, repressing its people, asserting power globally—is well documented and was a focus of mine in my prior tenure in government. The Department of Justice has an important role to play in countering China and its adversarial actions, which pose the top security threat to the United States’ interests and values.

One of the hallmarks of my career has been reorganizing the Department of Justice’s National Security Division to meet modern and multidimensional threats like those currently posed by China, including by using an all-tools approach. It is critical in matters such as responses to nation-state cyber threats and economic espionage that the Department pursue a coordinated approach that brings to bear our full authorities and that we work closely, where appropriate, with the Intelligence Community and other departments and agencies. As I stated during the hearing, I credit the previous administration for continuing and building on that approach in many areas, including in

the investigation of malicious cyber activity by Chinese state sponsored actors. If confirmed as Deputy Attorney General, I expect to press the FBI, the National Security Division, and the Criminal Division, in conjunction with the work of other agencies across the U.S. Government, to examine every aspect of this security threat and implement programs to address it appropriately.

36. You signed an open letter in April 2020 that called for cooperation between the United States and China.¹⁷ Pointing to Chinese factories that made protective gear and medicines—and to American ability to coordinate medical and global responses to the pandemic—the letter said: “No effort against the coronavirus—whether to save American lives at home or combat the disease abroad—will be successful without some degree of cooperation between the United States and China.”¹⁸

The United States faces a complicated situation, however, in dealing with China. The international community has reached a consensus that China is committing crimes against humanity—and arguably genocide—in the Xinjiang province. In the Xingjian province alone, the Chinese government is believed to have committed “forced sterilization and involuntary birth control, family separation, physical and sexual abuse, forced marriage, and other violations.”¹⁹ Recent reports indicate almost unspeakable human rights abuses in China’s Xingjian detention centers.²⁰ China has also demonstrated an unswerving commitment to stamping out basic Chinese civil rights, including the right to dissent, well beyond Xinjiang.

On the world stage, China persists in unprovoked military aggression toward Japan, Taiwan, and other nations.²¹ China has also demonstrated a consistent commitment to stealing American military and intellectual secrets. During your tenure as Assistant Attorney General for National Security, you spoke about the United States’ criminal prosecution against companies that transmitted American technologies to China. As you said in 2012, “Due in part to the efforts of these companies, China was able to develop its

¹⁷ See Josh Chin, *U.S. Foreign-Policy Experts Call for Cooperation With China on Coronavirus*, *The Wall Street Journal* (Apr. 3, 2020), <https://www.wsj.com/articles/u-s-foreign-policy-experts-call-for-cooperation-with-china-on-coronavirus-11585926082>; see also 21st Century China Center, *Saving Lives in America, China, and Around the World*, UC San Diego, <https://china.ucsd.edu/opinion/statement/index.html>.

¹⁸ *Id.*

¹⁹ See, e.g., U.S. Dep’t of State, *2020 Report to Congress Pursuant to Section 5 of the Elie Wiesel Genocide and Atrocities Prevention Act of 2018 (P.L. 115-441)*, Bureau of Conflict and Stabilization Operations (Aug. 7, 2020), <https://www.state.gov/2020-Report-to-Congress-Pursuant-to-Section-5-of-the-Elie-Wiesel-Genocide-and-Atrocities-Prevention-Act-of-2018>.

²⁰ Ivan Watson & Rebecca Wright, *Allegations of shackled students and gang rape inside China's detention camps*, *CNN* (Feb. 19, 2021), <https://www.cnn.com/2021/02/18/asia/china-xinjiang-teacher-abuse-allegations-intl-hnk-dst/index.html>.

²¹ See, e.g., Ben Blanchard, *Taiwan reports large incursion by Chinese air force*, *Reuters* (Jan. 23, 2021), <https://www.reuters.com/article/us-taiwan-china-security/taiwan-reports-large-incursion-by-chinese-air-force-idUSKBN29S0BK>; Brad Lendon & Yoko Wakatsuki, *Japan’s air force faces a ‘relentless’ burden, imposed by China*, *CNN* (July 29, 2020), <https://www.cnn.com/2020/07/28/asia/japan-china-fighter-jet-scrambles-intl-hnk-dst/index.html>.

first modern military attack helicopter with restricted U.S. defense technology.”²² The Justice Department’s China Initiative currently estimates that “[a]bout 80 percent of all economic espionage prosecutions brought by the [Justice Department] allege conduct that would benefit the Chinese state, and there is at least some nexus to China in around 60 percent of all trade secret theft cases.”²³

- a. Do you agree that China is violating human rights in the Xinjiang province?

RESPONSE: Yes. China is engaged in gross human rights violations that are immensely troubling.

- b. Do you commit to supporting and enforcing economic sanctions against China for its human-rights abuses?

RESPONSE: China’s human rights abuses must be met with serious costs. If confirmed, I would work to ensure that Department of Justice continues to enforce strict sanctions against the China’s malicious, illegal, and unfair practices.

- c. Do you commit to overseeing the Justice Department in a manner that supports the ongoing, robust protection of American military and intellectual secrets from China?

RESPONSE: Strategic competition with China is a defining feature of the 21st century. China’s theft of military secrets and intellectual property to support their global and military ambitions poses challenges to our security, prosperity, and values. It erodes our military-technological edge, challenges our global standing, and hurts American workers.

During my time in government, I have repeatedly observed China’s criminal conduct related to espionage and theft of commercial property, and I have made combatting this behavior a top priority. Several high-profile investigations into China’s cyber-enabled economic espionage began during my leadership of the National Security Division, including the investigation that led to the first-ever U.S. criminal charges against members of the Chinese People’s Liberation Army for cyber espionage targeting U.S companies.

The bottom line is that we need to keep raising the costs until their unacceptable behavior stops. If confirmed, I will remain committed to ensuring that all resources are brought to bear against national security threats such as espionage and theft of trade secrets.

- d. Is the Chinese Communist Party an enemy of the United States?

RESPONSE: I view China’s aggressive and coercive actions as posing the top security threat to the United States’ interests and values. I agree with Secretary of State Blinken

²² U.S. Dep’t of Justice, *United Technologies Subsidiary Pleads Guilty to Criminal Charges for Helping China Develop New Attack Helicopter* (June 28, 2012), <https://www.justice.gov/opa/pr/united-technologies-subsidiary-pleads-guilty-criminal-charges-helping-china-develop-new>.

²³ U.S. Dep’t of Justice, *Information About the Department of Justice’s China Initiative and a Compilation of China-Related Prosecutions Since 2018*, National Security Division (Feb. 11, 2021), <https://www.justice.gov/nsd/information-about-department-justice-s-china-initiative-and-compilation-china-related>.

that China represents the most significant challenge to the United States of any country in the world—and that, in his words, “[o]ur relationship with China will be competitive when it should be, collaborative when it can be, and adversarial when it must be.” When China bullies our allies, steals American intellectual property, and assaults freedom in Hong Kong, they are acting in adversarial ways. If confirmed, I will work closely with Congress and assess the Department’s current structure and capacity to counter such threats.

37. After President Trump issued a proclamation on international travel September 2017, you signed a joint declaration in a lawsuit brought by Hawaii and others.²⁴ The declaration objected to President Trump adding Chad, North Korea, and Venezuela to the list of countries affected by his travel policies, partly because no citizen of these countries had carried out or planned a terrorist attack on American soil in the past 40 years.²⁵

Earlier this month, the Justice Department unsealed criminal charges against three North Korean intelligence officials, who are now accused of hacking scores of companies and financial institutions.²⁶ The defendants appear to have tried to steal more than \$1.3 billion in an effort to circumvent United States sanctions. Their hacking victims include Sony Pictures, Britain’s National Health Service, and the Bangladeshi national bank. North Korea has also been astonishingly unfriendly to American visitors, including college student Otto Warmbier, who appears to have been tortured to death by the North Korean government after North Korean accused him of attempting to steal a propaganda poster.

In addition, Venezuela is now known for suppressing free speech, arbitrarily imprisoning its citizens, torturing them, killing individuals without due process of law, and permitting attacks on human rights advocates. While the United States has diplomatic relations with interim president Juan Guaidó and Venezuela’s democratically elected National Assembly, Venezuelan president Nicolas Maduro has defined himself in part through his outspoken opposition to the United States.²⁷

- a. Do you commit to supporting and enforcing economic sanctions against North Korea for its human rights abuses and illegal hacking activities?
- b. Do you commit to overseeing the Justice Department in a manner that supports the ongoing, robust protection of the United States government and American companies from North Korean hacking?
- c. Is the North Korean government an enemy of the United States?

RESPONSE 37a-c: If I am confirmed, I plan to use the full extent of Department authorities to support a whole-of-government effort to identify and disrupt—whether through criminal prosecution or other means at the U.S. Government’s disposal, including

²⁴ Joint Decl. of Former Nat’l Sec. Offs., *Hawaii v. Trump*, No. 17-cv-50, Doc. 383-1 (D. Haw. Oct. 15, 2017) (SJQ Attachments at 12c_2017-10-15_Hawaii v. Trump, Case No. 17-cv-00050-DKW-KSC, D. Haw., [Declaration]).

²⁵ *Id.* at 8.

²⁶ Katie Benner, *U.S. Charges 3 North Koreans With Hacking and Stealing Millions of Dollars*, The New York Times (Feb. 17, 2021), <https://www.nytimes.com/2021/02/17/us/politics/north-korea-hacking-charges.html>.

²⁷ U.S. Dep’t of State, *Venezuela: U.S.-Venezuela Relations*, <https://www.state.gov/countries-areas/venezuela/>.

sanctions—nation-state hackers, including those from hostile nation states such as North Korea, who conduct destructive cyberattacks and cyber-enabled theft.

The Department appears to already be addressing this threat. As you note above, an indictment unsealed in February charged three North Korean computer programmers with a wide-ranging criminal conspiracy to steal more than \$1.3 billion of money and cryptocurrency from financial institutions and companies. The hackers were part of the same conspiracy responsible for the 2017 global WannaCry ransomware attack.

When I had the privilege of serving as the Assistant Attorney General for National Security, I made the pursuit of nation-state cyber hackers and their efforts to steal intellectual property, steal research and development, and commit espionage a top priority. To further that work, I created the first nationwide network of national security cyber specialists in U.S. Attorneys' offices around the country. I hope to continue this effort, which can play an important role in exposing North Korea's destabilizing activities and efforts to threaten U.S. allies and partners and in holding those responsible accountable.

- d. Do you commit to supporting and enforcing economic sanctions against Venezuela for its human rights abuses?
- e. Do you support American relationships with Venezuela's democratically elected interim president, Juan Guaidó, and its democratically elected National Assembly?
- f. Is the Venezuelan government an enemy of the United States?

RESPONSE 37d-f: I agree with Secretary of State Blinken, who has called Nicolás Maduro a brutal dictator and stressed the importance of a peaceful, democratic transition in Venezuela through free and fair elections. The President's March 3, 2020 continuation of the national emergency with respect to Venezuela found that the Government of Venezuela continues to engage in "the erosion of human rights guarantees, persecution of political opponents, curtailment of press freedoms, use of violence and human rights violations and abuses in response to antigovernment protest, and arbitrary arrest and detention of antigovernment protestors, as well as the exacerbating presence of significant government corruption."

If confirmed as Deputy Attorney General, I will seek to build upon the important efforts the Department has undertaken to seek justice for the victims of human rights violations worldwide and to enforce sanctions against illegal, abusive, and corrupt activities in Venezuela. I look forward to working with you and the Committee to effectively address these issues.

- 38. Iran's Islamic Revolutionary Guard Corps (IRGC), which the Council on Foreign Relations has described as "an ideological custodian of Iran's 1979 revolution," supports activities and groups that are internationally recognized as terrorist activities and groups.²⁸ The

²⁸ Council on Foreign Relations, *Iran's Revolutionary Guards* (May 6, 2019), <https://www.cfr.org/backgrounder/irans-revolutionary-guards>.

IRGC's Hezbollah connections are well documented, for example, and the United States has recognized since 1997 that Hezbollah is a foreign terrorist organization.²⁹

- a. Do you commit to supporting and enforcing economic sanctions against the IRGC for its ongoing support of terrorist activities and organizations?
- b. Do you commit to overseeing the Justice Department in a manner that supports the ongoing, robust protection of the United States and its people from the IRGC?
- c. Is the IRGC an enemy of the United States?

RESPONSE: Iran remains the foremost state sponsor of terrorism and a threat to our forces and partners in the region. The same is true of the Islamic Revolutionary Guard (IRGC), which is a designated terrorist organization and serves as a branch of Iran's military. We must also be constantly alert to the threat posed by Iran-supported non-state militia groups that the Biden Administration has stated were responsible for recent attacks against the United States and coalition personnel in Iraq.

The Department plays an important role in enforcing sanctions against Iran and designated terrorist organizations such as the IRGC. If confirmed as Deputy Attorney General, I will continue these efforts, and the Department will continue working with law enforcement partners and use all available tools to combat funding for terrorist organizations, such as the IRGC, and support the U.S. Government's actions against terrorist activities and organizations to protect the United States and its people.

39. The United States has recognized since 1997 that the Hamas organization is a foreign terrorist organization.³⁰

- a. Do you commit to supporting and enforcing economic sanctions against Hamas for its terrorist activities?
- b. Do you commit to overseeing the Justice Department in a manner that supports the ongoing, robust protection of the United States and its people from Hamas?
- c. Is Hamas an enemy of the United States?

RESPONSE: The Department of Justice plays an important role in enforcing sanctions against designated terrorist organizations such as Hamas. If confirmed as Deputy Attorney General, I will continue these efforts, and the Department will continue working with law enforcement partners and use all available tools to combat funding for designated terrorist organizations, and will support the U.S. Government's actions against terrorist activities and organizations to protect the United States and its people. This would include

²⁹ See *id.*; see also, e.g., U.S. Dep't of State, *Foreign Terrorist Organizations*, Bureau of Counterterrorism, <https://www.state.gov/foreign-terrorist-organizations/>.

³⁰ See *id.*

continuing the existing work of the Department to bring cases against those who would seek to provide material support to Hamas.

40. The Cuban government is well known for its human rights violations, including arbitrary detention, dissent suppression, and horrible prison conditions. Cuba has consistently resisted efforts to monitor its human rights abuses, including efforts by the Organization of American States' Inter-American Commission on Human Rights. Cuba has also repeatedly chosen to give refuge to American fugitives, including Joanne Chesimard, who was convicted of executing a New Jersey police officer in 1977. She escaped from prison and was placed on the FBI's list of Ten Most Wanted Terrorists.
- a. Do you commit to supporting and enforcing economic sanctions against Cuba for its human rights abuses?
 - b. Do you believe it is appropriate for the United States to take action against Cuba for harboring American fugitives?
 - c. If you are confirmed, what will you do to bring American fugitives in Cuba to justice?
 - d. Is the Communist Party of Cuba an enemy of the United States?

RESPONSE: The Biden Administration has made clear that support for democracy and human rights must be core components of any U.S. Government efforts to support the Cuban people to determine their own future. If confirmed as Deputy Attorney General, I am committed to enforcing U. S laws with respect to Cuba that promote those goals and to continuing to prioritize the apprehension of fugitives abroad.

41. The year 2020 was marked by a great deal of left-wing violence. Riots broke out in numerous cities. More than 900 officers were injured in the line of duty. At least 25 people died. Estimates of the damage run over two billion dollars. The FBI opened more than 300 domestic terrorism cases in response to this violence. Nationally, more than 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 contrasts with the bipartisan condemnation of the attack on the Capitol by right-leaning supporters of former President Trump.

In one form or another, there is much general conversation around domestic terrorism. During your Committee hearing, you spoke a number of times about the domestic terrorism as a threat that is "metastasizing" throughout the nation. 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 for the Department. I believe the role of the Department is to investigate and prosecute acts of violence and other crimes regardless of associated ideology or from whatever end of the political spectrum it may come.

- 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 as Deputy Attorney General, I will take seriously my responsibility to ensure that the priorities of the Department are adequately resourced and that the professionals in the Department have the tools to do their job. I will 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.

42. Former Attorney General Barr has observed that the FBI, while it had robust programs for white supremacy 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. Will you commit to reviewing your anarchist extremism program for weaknesses and fixing those weaknesses? Please explain exactly how you will conduct this review.

RESPONSE: Because I am not in the Department, I am not familiar with the specific programs or infrastructure referred to in the question. If I am confirmed, I will meet with Director Wray to understand the current allocation of resources across all threats—including all forms of violent extremism. Apart from any specific program, confronting domestic terrorism—regardless of associated ideology—will be a top priority of mine, should I be confirmed.

43. 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 the specific program referred to in the question. If I am confirmed, I look forward to learning more about it and any related efforts. Apart from any specific program, confronting domestic terrorism will be a top priority of mine, should I be confirmed.

44. When speaking to the Harvard Kennedy School Forum in 2014, as a member of the Obama administration, you announced a counterterrorism policy known as countering violent extremism (CVE).³¹ You called on local communities to report “warning signs a person was becoming radicalized to violence,” such as children suddenly “becoming confrontational,” religious individuals unexpectedly “clash[ing] over ideological differences,” or friends showing “a new interest in watching or sharing violent material.”³² Civil rights groups subsequently expressed concern that, in addition to being based on discredited theories of terrorism radicalization, CVE “improperly identif[ies] First Amendment-protected religious and political activities as precursors to, or predictive of terrorist attacks.”³³ These concerns were raised by groups including the ACLU, Arab American Institute, and New York University’s Brennan Center for Justice.³⁴

a. Do you support CVE policies today?

RESPONSE: My participation in the April 2014 event was part of a commemoration of the one-year anniversary of the Boston Marathon bombings. During my remarks, I described a few of the steps the government was then taking to work closely with community leaders, local law enforcement, and partners outside government to “build[] greater resilience into our communities to resist the pull of violent extremism.”

In general, I support using the Department’s different tools and resources to address violent extremism, including engagement with community partners inside and outside of government. As for the specific programs I identified six years ago, because I am not currently in government, I am not aware of their current status. If confirmed, I look forward to learning more about the current state of such programs in the context of the current threat environment.

b. How do you respond to civil rights groups’ concerns that CVE targets individuals for practicing religious rights protected by the First Amendment?

RESPONSE: Because I am not currently in government, I do not know enough about the specifics of current programs to evaluate the criticisms of those programs you reference. However, in my prior experience, I have had the opportunity to hear from those who are concerned that CVE programs unfairly target certain groups. If confirmed, I am committed to the proposition that any action the Department takes, including those designed to address violent extremism, must be consistent with and protective of the rights protected by the First Amendment.

³¹ Lisa Monaco, Address at Harvard Kennedy School Forum: Countering Violent Extremism and the Power of Community (Apr. 15, 2017), <https://obamawhitehouse.archives.gov/the-press-office/2014/04/16/remarks-assistant-president-homeland-security-and-counterterrorism-lisa->.

³² *Id.*

³³ Letter from Brennan Center for Justice et al. to U.S. Department of Homeland Security Deputy Secretary Alejandro Mayorkas at 1 (June 6, 2014), <https://www.brennancenter.org/sites/default/files/analysis/DHSEnvoy%20060614.pdf>.

³⁴ *Id.* at 2.

- c. How do you respond to civil rights groups' concerns that CVE targets individuals for practicing political rights protected by the First Amendment?

RESPONSE: Please see my response to Question 44b above.

45. You wrote in 2018 that, “[i]n short, the administration should follow the lead of the British government, which recently designated far-right extremism as a major threat to national security and reorganized its counterterrorism operations to better meet that threat.”³⁵ On the other hand you told me when we talked that the focus of law enforcement should be “on conduct and not ideology” and that “violence motivated by any ideology should not be tolerated.”

- a. Are those two sets of statements, in your view, in tension with each other?

RESPONSE: I do not view those statements as being in tension with each other. Above all, regardless of which ideological direction the violence comes from, as Attorney General Garland has said, criminal violence needs to be investigated and prosecuted. The passage quoted in the question described the United Kingdom’s renewed focus on domestic threats to national security. I continue to believe that domestic violent extremism must be a priority for the Department, regardless of motivating ideology.

- b. Do you intend to reorganize Justice Department priorities to focus on one part of the political spectrum?

RESPONSE: No. I agree with Attorney General Garland that regardless of which ideological direction the violence comes from—left, right or from any direction—it needs to be investigated and prosecuted.

- c. How will you approach domestic extremism in a way that ensures the law is applied evenly to all people, regardless of their political persuasions?

RESPONSE: If confirmed, I will dedicate the Department to investigating and prosecuting all instances of violent extremism, regardless of motivating ideology or viewpoint. And as I testified, in the Department’s role as an independent investigator and prosecutor, it must act free of any political or partisan influence. Throughout my career, those norms have been my North Star.

46. As both a government official and private citizen, you have worked with the Aspen Forum to promote partnerships between the government and Silicon Valley.³⁶ You have called for

³⁵ Lisa Monaco & Ken Wainstein, *We’ve declared war on foreign terrorism. Why not do the same for domestic threats?*, The Washington Post (Nov. 5, 2018), https://www.washingtonpost.com/opinions/weve-declared-war-on-foreign-terrorism-why-not-do-the-same-for-domestic-threats/2018/11/05/707c3d5c-e13a-11e8-ab2c-b31dcd53ca6b_story.html.

³⁶ See, e.g., Dan Verton, *Social media and the crowdsourcing of terror*, FedScoop (July 15, 2015), <https://www.fedscoop.com/social-media-and-the-crowdsourcing-of-terror/>; Ellen Nakashima, *Obama’s top national security officials to meet with Silicon Valley CEOs*, The Washington Post (Jan. 7, 2016), <https://www.washingtonpost.com/world/national-security/obamas-top-national-security-officials-to-meet-with-silicon-valley-ceos/2016/01/07/>

social media companies to remove both “Islamist militant content” and “domestic extremist content” from their websites and other online platforms.³⁷

- a. In the context of homeland security, please describe what legal standard is appropriate for the federal government to apply when it seeks to work through private parties to remove online content.

RESPONSE: Any action the Department of Justice takes in this area—or any other—must be consistent with the First Amendment and any other federal law intended to protect privacy and civil liberties. In my experience, the actions of the government in the area of terrorist propaganda and online recruitment efforts have largely focused on urging companies to enforce their own terms of service, such as educating companies when their platforms were misused by terrorist groups such as ISIS and al Qaeda to recruit, radicalize, and mobilize individuals to violence.

- b. In the context of homeland security, please describe the standard that is appropriate for private companies to apply when they remove online content.

RESPONSE: While the First Amendment restricts the government’s regulation of speech, it does not apply to private companies, and each private company may therefore have its own standards—or terms of service—governing its platform. In the context of homeland security and efforts to address the use of social media platforms by terrorist groups such as ISIS and al Qaeda to recruit, radicalize, and mobilize individuals to violence, however, I have worked to forge partnerships with private companies to address threats both at home and abroad. As the White House Homeland Security Advisor, for example, I developed strategies to highlight circumstances in which these platforms were being misused by terrorist organizations. If confirmed, I would look forward to engaging with the private sector on ways to make it more difficult for foreign and domestic terrorists to exploit their platforms.

- c. What is the constitutional legal standard that protects unpopular online speech?

RESPONSE: The constitutional standards that protect speech, including unpopular speech, from restrictions by the government—most notably, the First Amendment—protect it whether it is online or offline.

47. During a 2014 interview on responding to domestic extremism, you were asked whether the government should respond with “a law enforcement response, [or] whether it’s a debate about gun control, or whether it should be a mental health response or something else like that, or are you talking about a combination of all these things?”³⁸ You said, “All

178d95ca-b586-11e5-a842-0feb51d1d124_story.html; The Aspen Institute, *Craig Newmark Philanthropies Donates \$1.6M to Help Launch Aspen Institute Technology & Cybersecurity Policy Initiatives* (Nov. 8, 2018), <https://www.aspeninstitute.org/news/press-release/craig-newmark-gift-technology-cybersecurity-initiatives/>.

³⁷ Monaco, *We’ve declared war on foreign terrorism*.

³⁸ PBS NewsHour, *Counterterrorism adviser on understanding and responding to homegrown extremism* (Apr. 17, 2014), <https://www.pbs.org/newshour/show/counterterrorism-adviser-on-understanding-and-responding-to-homegrown-extremism>.

of them.”³⁹ In addition, you served on the New York State Counterterrorism Panel, which published recommendations in January 2019.⁴⁰ The panel recommended legislation prohibiting the ownership or sale of bump stocks, which attach to semiautomatic weapons and increase their rate of fire.⁴¹ The panel also recommended legislation to regulate and track materials like Tannerite, which is a brand name for an explosive kit commonly used at gun ranges for target practice.⁴²

- a. The Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment protects an individual’s right to possess a firearm, regardless of the individual’s participation in a “well regulated Militia.” In 2009, the Supreme Court expanded that right in *McDonald v. Chicago*, 561 U.S. 742 (2010), when it held that the Fourteenth Amendment’s Due Process Clause incorporated the Second Amendment. How do you describe the legal standard that protects Americans’ Second Amendment rights?
- b. What role does the Justice Department have in protecting the right to keep and bear arms?
- c. What steps will you take to ensure this right is protected?

RESPONSE 47a-c: If I am confirmed as Deputy Attorney General, my views of the Second Amendment will be guided by the *Heller* and *McDonald* opinions. In *Heller*, Justice Scalia’s opinion for the Supreme 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.

- d. Do you think that the same gun control laws should apply to terrorism suspects and non-suspects?

RESPONSE: There may be reasons why, consistent with the Second Amendment, individuals who pose threats are not entitled to have guns, whether because they are felons or are otherwise barred by law. In that case, there must be a fair opportunity to determine that they are not permitted to have a gun.

³⁹ *Id.*

⁴⁰ New York State Counterterrorism Advisory Panel, *New York State Counterterrorism Advisory Panel Recommendations* (Jan. 2019) (SJQ Attachments at 12a_2019.01.00_NYS Counterterrorism Advisory.pdf).

⁴¹ *Id.* at 36.

⁴² *Id.*

48. 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: The President is a strong supporter of gun safety measures. While I have not yet carefully studied these particular measures or developed positions on them, I share Attorney General Garland’s view that, as a general matter, we should be careful that people who are entitled to have guns get the background checks that allow 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.

49. 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. If I am confirmed, I would work with the ATF to ensure that rules are transparent, consistent, and fairly applied.

50. During his administration, President Obama signed an executive order requiring the United States to release information about people killed by American drones outside active war zones.⁴³ You said in 2019 that “this is a tool that is going to need to be used in the future, given the threats that we face.”⁴⁴

Law enforcement is increasingly using drones for domestic law enforcement purposes. Drones enable more surveillance of citizens. They are more mobile. They are cheaper than police officers. And they can hover over homes and peer through windows, observing what

⁴³ NPR, *Drone Strikes And Transparency*, Weekend Edition Sunday (Mar. 10, 2019), <https://www.npr.org/2019/03/10/701987084/drone-strikes-and-transparency>.

⁴⁴ *Id.*

humans cannot. As law enforcement employs more domestic drones, I am concerned that the security of the people in their persons, papers, and effects not be compromised.

- a. Do you support the domestic use of drones for surveillance or other uses?
- b. If drones are used domestically, should the government release information to the American people about drone use?
- c. The Justice Department has issued guidelines and policies regarding unmanned aircraft systems. Do you agree with any of the guidelines or policies that the Justice Department has issued? If so, please specify which ones you support.

RESPONSE: As I am not currently at the Department, I am not aware of all the guidelines and policies in place regarding unmanned aircraft systems.

I understand, however, that the Department currently uses unmanned aircraft systems (UAS) to support specific operational needs, such as crime scene response and investigation. I also understand that the Department operates UAS pursuant to a Department policy developed in coordination with the Department of Justice Working Group, which includes privacy, policy, legal, law enforcement, and grant-making components. Among other things, the policy requires components to assess the potential intrusiveness and impact of UAS operations on privacy and civil liberties, limits data retention, and requires the issuance of an annual report summarizing components' UAS operations to ensure the public is informed about the Department's UAS operations.

If confirmed, I look forward to carefully examining the Department's efforts in this area, including efforts to ensure the Department's UAS operations are guided by all applicable, constitutional, statutory, and regulatory provisions—including privacy and civil rights and civil liberties protections.

51. Last Congress, I coauthored the bipartisan Promoting Security and Justice for Victims of Terrorism Act. This bill passed Congress with State Department support 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 Justice Department has the duty to defend the constitutionality of duly enacted laws when they are 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: I understand that the Department of Justice's longstanding practice is to defend the constitutionality of laws passed by Congress so long as there is a reasonable argument to be made that the law is constitutional, and so long as the law does not violate the separation of powers by infringing on executive authority. If I am confirmed, I will uphold that traditional practice.

52. In 2020, the DEA was only able to hold one National Drug Take Back Day due to COVID-19. The need for the Take Back program is evidenced by the fact that, despite the pandemic challenges, the DEA collected nearly 493 tons of unwanted or expired medication that had been disposed of in more than 4,500 collection sites across the country. It's a great example of the private sector, local communities, the States, and federal authorities all working together to address a national problem. The DEA recently announced the next Take Back day will be April 24th. But with the public having stocked up on drugs in response to COVID-19 and with many children still at home where these drugs might be in ample supply, it might be prudent to consider scheduling additional Take Back days. If confirmed, might you commit to: examining the important role the DEA plays in helping the public dispose of these drugs; work with the DEA and others to determine whether additional Take Back days are warranted and feasible; and determine what, if anything, is needed to schedule more?

RESPONSE: I share your concern with how COVID-19 has affected our law enforcement efforts, including the important work of the DEA in partnering with our local communities to address prescription drug abuse. Americans require a safe and effective means to dispose of expired or unwanted prescription medication. If confirmed, I would look forward to examining in greater depth these issues and the feasibility of scheduling further National Take Back Days.

Senator Klobuchar

Responses to Questions from Senator Klobuchar to Lisa O. Monaco, Nominee to be Deputy Attorney General

There are times where we can identify mergers that were allowed to close that may have merited additional scrutiny because they have harmed competition or where a merger settlement has been ineffective.

1. Do you agree that antitrust enforcement would benefit from taking a look back at the effects of significant mergers and studying competitive conditions in industries with high market concentrations or dominant companies?

RESPONSE: I believe it is essential that the Department uses all available tools to address today's competition and antitrust challenges, including reviewing the effects of significant mergers, where appropriate. Like Attorney General Garland, I believe that healthy competition is the lifeblood of our economy, and that all companies—in every industry—should be given a fair chance to compete and thrive. If I am confirmed, I look forward to consulting with the Department's antitrust lawyers to identify and advance any reviews or actions necessary to ensure that we are protecting economic freedom and opportunity by promoting free and fair competition.

2. Would you support requiring companies that settle Department merger challenges to provide the Department with post-merger information and data for several years afterwards to enable your staff to better assess the effectiveness of merger consent decrees?

RESPONSE: Because I am not presently at the Department, I am not aware of the details of current practices at the Department related to the settlement of merger challenges. I understand that this type of data can be helpful in assessing the effectiveness of consent decrees in the antitrust context. If I am confirmed, I would look forward to studying the issue and would welcome the opportunity to work with you on this important area.

Senator Lee

Responses to Questions from Senator Lee to Lisa O. Monaco, Nominee to be Deputy Attorney General

1. 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 to oppose any legislative or executive action that would alter in any way the Religious Freedom Restoration Act's protection for Americans of all faiths?

RESPONSE: If confirmed, I will endeavor to faithfully and fairly enforce all federal laws, including laws that protect religious liberty like the Religious Freedom Restoration Act. I have not had occasion to consider any potential legislative amendments to the Act. If asked to consider such an amendment, I would be informed by my strong belief in religious liberty and I would approach this matter as I would any other: by working with subject-matter experts at the Department, including career lawyers, to carefully understand the relevant facts and law.

2. In 2018, you coauthored a piece with Ken Wainstein in the Washington Post titled "We need to declare war on domestic terrorism." In that piece, you suggested that the Trump Administration "restore vital funding to programs that combat violent extremism in all its forms – including far right-wing extremism." Do you think there's a difference between "domestic extremism" and "domestic terrorism?" What is that difference?

RESPONSE: In that op-ed, Mr. Wainstein, the former homeland security advisor to President George W. Bush, and I drew on our experiences responding to foreign terrorism to assess how the government might best address domestic violent extremism. In that context, our use of the term domestic "violent extremism" is consistent with the one previously used by the FBI Director, namely "violent criminal acts in furtherance of ideological goals stemming from domestic influences," including "racial or ethnic bias, or strong anti-government or anti-authority sentiments."¹ The term "domestic terrorism" is defined under federal law as "violence against a civilian population done to coerce or to intimidate and done for a political end." *See* 18 U.S.C. § 2331(5).

3. What groups would you consider to be "far right-wing extremis[ts]?"

RESPONSE: As Mr. Wainstein and I stressed in the article, we must take seriously violent extremism in all its forms. If confirmed, I would look forward to being fully briefed on the full scope of the current domestic violent extremist threat from groups and individuals

¹ FBI Director Christopher Wray, Statement Before the Senate Judiciary Committee, Mar. 2, 2021, *available at* <https://www.fbi.gov/news/testimony/oversight-of-the-federal-bureau-of-investigation-the-january-6-insurrection-domestic-terrorism-and-other-threats>.

advocating violence, as any threat assessment must be fact-based and grounded in the most current analysis of intelligence officials.

4. Are there any groups that deserve attention from law enforcement on the “far left-wing?”

RESPONSE: I believe that we must take seriously violent extremism in all its forms. If confirmed, I would look forward to being fully briefed on the full scope of the current domestic violent extremist threat from groups and individuals advocating violence, as any threat assessment must be fact-based and grounded in the most current analysis of intelligence officials.

5. FBI Director Christopher Wray once said—in relation to domestic terrorism— that “[w]e don’t really think of threats in terms of left, right, at the FBI. We’re focused on the violence, not the ideology.” Do you agree with that approach?

RESPONSE: Yes. As I stated during my confirmation hearing, “regardless of which direction the violence comes from, to quote Attorney General Garland, ‘left, right or from any direction,’ it needs to be prosecuted. It needs to be investigated and prosecuted.”

6. You have noted before that there is no mechanism for designating a domestic group a terrorist organization—do you think that should change?

RESPONSE: No. Designating domestic groups poses First Amendment challenges that are not present as it relates to foreign terror organizations.

What did you mean in your 2018 article (co-authored with Ken Wainstein and published in the Washington Post) by “declare war on domestic terrorism?”

RESPONSE: I did not use that phrase. That term appeared in a title provided by the publisher after the article was submitted. The article itself suggested that there had been “an insufficient focus by the federal government on the threat of domestic terrorism” and recommended “a strategic approach to this homeland security challenge.”

7. Would “declaring war on domestic terrorism involve increased funding for certain agencies? Increased surveillance of certain groups?

RESPONSE: Neither I nor my co-author used the term or advocated “declaring war on domestic terrorism.” I have previously suggested that additional funding could be beneficial to combatting domestic violent extremism. Before making any concrete proposal for more funding as the Deputy Attorney General, I would want to gather more information about what additional funding might be needed at this time.

8. In the 2018 article referenced above, you stated that “the federal government should be working closely with social media companies, which have made strides in taking down Islamist militant content on their platforms, and encourage them to do the same with domestic extremist content. How would you distinguish between “domestic extremist content” that needs to be targeted for censorship versus content that is simply out of the political mainstream?

RESPONSE: The reference was to content that would violate a company’s terms of service by promoting violent criminal acts.

9. After the attacks by looters and rioters on federal buildings and businesses that occurred this past summer in Portland, Seattle, New York, Washington, DC, Kenosha and other cities across America, will you commit to investigate whether there was coordination involved in those events?

RESPONSE: If confirmed, I will make decisions about investigations based on the facts and the law, without regard to partisan or other improper considerations. As I testified, violence is unacceptable from whatever ideological direction it comes from and should be prosecuted.

10. In your testimony, you said that you “think we need to understand better the scope and severity of the challenge posed by hate crimes.” How do you define a “hate crime?”

RESPONSE: Under federal law, a hate crime is defined as a crime committed because of the victim’s race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. See, e.g., 18 U.S.C. § 249. For purposes of collecting data, the Federal Bureau of Investigation similarly defines a hate crime as a criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.

11. Do you believe speech alone—which no attendant conduct—should ever constitute a hate crime?

RESPONSE: Freedom of speech is a fundamental value protected by the First Amendment, and the Department of Justice is responsible for upholding that right. The Supreme Court has recognized that the First Amendment’s protections reach speech that may be considered offensive, and 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). Generally, the Court has excluded from First Amendment protection only “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).

12. As you’re aware, former Attorney General Barr appointed U.S. Attorney John Durham as special counsel to investigate matters related to intelligence activities and investigations arising out of the 2016 presidential campaigns. While some may dismiss this investigation as partisan because it involves government surveillance of former President Trump’s campaign, I believe it’s imperative that we understand what happened in order to restore the American people’s trust in the Department of Justice and the FBI. Do you believe Mr. Durham should be allowed to complete his investigation and that any unclassified portions of the resulting report should be released to the public?

RESPONSE: I understand that Mr. Durham has been allowed to stay on, and I have no reason to think that that wasn’t the right decision. As Attorney General Garland testified, he is “committed to transparency and to explaining Justice Department decision making.”

I share those commitments. As the Attorney General explained, however, it would first be important to understand the nature of Mr. Durham’s investigation and the nature of any report.

13. 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.

14. Do you believe Civil Asset Forfeiture is a legitimate use of government authority?

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 civil forfeiture have been a source of controversy. If I am confirmed, I would look forward to examining these issues and would welcome the opportunity to learn more from you and your office.

15. What are your thoughts on the Department of Justice’s (“DOJ”) policy concerning civil asset forfeiture?

RESPONSE: I understand that aspects of the Department’s forfeiture program 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 input from you and other Members of Congress.

16. 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?

RESPONSE: I am not familiar with how the Fund operates and whether it creates any misaligned incentives. 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 input from you and other Members of Congress.

17. Do you think this incentive for law enforcement agencies to participate in equitable sharing is a problem? If so, is it something you will work to address?

RESPONSE: Please see my response to Questions 15 and 16 above.

18. Attorney General Barr stated that incentives behind asset forfeiture require “constant vigilance.” Do you share that view?

RESPONSE: Please see my response to Questions 15 and 16 above.

19. How do you plan to ensure that agencies have the right incentives in place?

RESPONSE: Please see my response to Questions 15 and 16 above.

20. Are you willing to work with members of the U.S. Senate to reform civil asset forfeiture?

RESPONSE: Yes. If I am confirmed, I would welcome the opportunity to work with you and other Senators and review any proposals regarding civil asset forfeiture, alongside the Department’s leadership and career lawyers.

21. 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. 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: If confirmed, I intend to meet with the Bureau of Prison leadership to understand the current issues impacting prison capacity, including the COVID-19 pandemic as well as the recent Executive Order.

22. 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 work to address the impact of COVID-19 across the Department, including the risks attendant to operations in and transfers to federal facilities.

23. 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 details of the contracts the U.S. Marshalls Service has with privately owned facilities. If I am confirmed, the Department will work to ensure that the operations of the U.S. Marshalls Service are not negatively impacted.

24. 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.

25. Do you believe agencies should try to “aggressively” interpret statutes in order to accomplish White House priorities?

RESPONSE: If confirmed, I will faithfully and fairly enforce the law, without regard to politics or partisanship. I am committed to ensuring that my legal advice on matters of statutory interpretation, as on any other matter, reflects my independent judgment.

26. Do you believe it is appropriate for agencies to address a problem through regulations where Congress is deadlocked on an issue?

RESPONSE: I agree with Attorney General Garland that the mere fact that the Executive Branch disagrees with congressional inaction cannot create regulatory authority that would not otherwise exist. But, as the Attorney General has explained, congressional action or inaction can be relevant to the scope of the Executive’s authority as articulated by Justice Jackson in his concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

27. Would you be in favor of agencies addressing problems like immigration, transgendered students in sports, and other controversial issues through regulation?

RESPONSE: Whether an agency has the authority to address an issue depends on the context, including an analysis of the agency’s relevant legal authorities and the specific nature of the regulation at issue. For example, Congress has 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).

28. As Deputy Attorney General, what will you do if the President takes a position that is contrary to the law or not in the interests of the United States?

RESPONSE: I am committed to the independence of the Department of Justice and the fair and impartial administration of justice. As Deputy Attorney General, if confirmed, I would advise the Attorney General and, when called upon, the President, based on my best independent judgment of what the law requires.

29. If confirmed, you may be asked to 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: It is the Department’s responsibility to advise on the legality and constitutionality of proposed executive actions—and to do so with professionalism and independence. Every Administration executes the policy priorities set by the President, and the Deputy Attorney General must provide candid and well-informed advice to ensure

that those priorities are accomplished consistent with the Constitution and applicable law. If the proposed course of action does not meet that stringent standard, the Department can counsel legally acceptable alternatives and, if there are none, must clearly state that.

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: Exercising prosecutorial discretion is a necessary and important part of enforcing the law, including to ensure that limited resources are used appropriately. However, the Executive Branch cannot decide that it will not enforce a law at all, based on a policy disagreement.

31. Is there a point where “prosecutorial discretion” simply becomes “executive fiat?”

RESPONSE: Please see my response to Question 30.

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 is responsible for enforcing the law. In my experience, including as an Assistant United States Attorney, I understand that the appropriate exercise of prosecutorial discretion is an important part of that function. As the Supreme Court has recognized, 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). As the Court further explained, when deciding whether to bring any enforcement action an “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. 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 share the view of many, including the Department’s Inspector General, that this was a flawed operation. If confirmed, I will work with the Department’s law enforcement components to ensure that investigations are conducted appropriately.

34. 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 am not familiar with the specifics of this issue, but I share Attorney General Garland’s view 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.

35. 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: I am not familiar with current ATF proposals or pending technical decisions on particular firearm features or accessories.

36. Do you support banning specific types of firearms?

RESPONSE: While I would have to study the specifics of any particular proposal, I understand that the President has been a strong advocate of taking steps to reduce gun violence, including by passing legislation to ban assault weapons and high-capacity magazines, as well as legislation to reform liability for firearms manufacturers. On policy matters, the role of the Department as an executive agency is to advance the President’s policy objectives so long as they are consistent with the law.

37. Do you support banning large magazines?

RESPONSE: Please see my response to Question 36.

38. Do you support holding firearms manufacturers liable for damage caused by people using their firearms to commit a crime?

RESPONSE: Please see my response to Question 36.

39. The Biden Administration has defined “equity” 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.” Do you agree with that definition?

RESPONSE: I have reviewed the recent “Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” and the definition of equity contained therein and I agree with the Attorney General that it aligns with foundational legal principles and is consistent with federal laws, including laws that forbid discriminatory conduct.

40. What is the difference between “equity” and “equality?”

RESPONSE: They are both nouns. The dictionary defines “equity” as the quality of being fair and impartial; “equality” is defined as the state of being equal.

41. In order to achieve “equity,” is it ever necessary to discriminate against members of some groups in favor of others?

RESPONSE: The Executive Order’s (referenced above) definition of “equity” aligns with foundational legal principles and is consistent with federal laws, including laws that forbid discriminatory conduct.

42. 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: As Attorney General Garland has observed, disparate impact and discriminatory intent are distinct legal principles, for which there are statutory remedies. 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.

43. How do you define “systemic racism?”

RESPONSE: As I understand it, systemic racism refers to historic patterns or practices that have had a disparate impact on communities of color and other communities.

44. How do you define “critical race theory?”

RESPONSE: I am not a legal academic and do not have a definition.

45. Do you distinguish “critical race theory” from “systemic racism,” and if so, how?

RESPONSE: As I noted above, I am not a legal academic and do not have a definition of critical race theory.

46. 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: There are aspects of the criminal justice system that have operated to have a disparate and discriminatory impact on communities of color—as has been recognized in the adoption of certain bipartisan reforms such as the Fair Sentencing Act. I do not believe that the existence of systemic racism in society means that any particular institution or individual is systemically racist.

47. 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.” Do you plan to institute “anti-racist” policies in the divisions under your supervision at the Justice Department? If so, which policies do you plan to institute?

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 including laws to address acts of unlawful racial discrimination.

48. What current policies of the Justice Department are “racist”?

RESPONSE: Please see my response to Question 47.

49. 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.

50. 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. 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: FISA is a powerful tool that our intelligence and law enforcement professionals can use to deal with a range of national security threats. But to keep the trust and confidence of the American people, the government must use FISA consistent with the rule of law, and in a way that effectively protects privacy and civil liberties.

In my prior government service, I worked to increase and improve FISA transparency and the rigorous oversight over this authority while preserving its important role in protecting national security. That work included efforts to ensure passage of the USA FREEDOM Act, which contained important reforms to the FISA process and implementing Presidential Policy Directive 28, a set of new guidelines to govern signals intelligence activity at home and abroad. In my view, the intelligence community must constantly evaluate how it uses the tools at its disposal, consider whether changes are needed, and take into account how the technology and threat has evolved. If confirmed, I am committed to

doing just that. I would also look forward to reviewing legislative proposals and engaging with you and this Committee on this important issue.

51. 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. 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*?

RESPONSE: The Department of Justice’s legal interpretations and practices must be consistent with the Constitution, including new Supreme Court precedents.

52. 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: Attorney General Garland has stated that he 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. If confirmed, I would look forward to assisting in this process as needed.

53. 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: I cannot speculate as to how a hypothetical program would operate, but I can assure you that, if confirmed, I would direct that any such program be conducted in accordance with Americans’ constitutional rights, including rights protected by the Second Amendment.

54. Please state for the record your thoughts on the Second Amendment?

RESPONSE: If I am confirmed as Deputy Attorney General, my views of the Second Amendment will be guided by the *Heller* and *McDonald* opinions. In *Heller*, Justice Scalia’s opinion for the Supreme 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.

55. 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. Will you commit that, if confirmed, this would also be the case under your leadership?

RESPONSE: I am not aware of the details of the operation you referenced. I think the laws should be fairly and faithfully enforced, free of any political or partisan influence. If confirmed, I will insist that the Department’s decisions in all enforcement matters be based solely on the facts and the law.

56. 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 will DOJ handle any attempts to establish more of these sites throughout the country?

RESPONSE: I have not had the occasion to study this issue in detail. If I am confirmed, I would welcome the opportunity to do so.

57. 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 *United States v. Safehouse*, No. 20-1422 (3d Cir. 2021), is currently the subject of a petition for rehearing en banc, filed on February 26, 2021. Because I am not presently at the Department, I am not aware of all the relevant facts about this case.

58. Do you believe that as the DAG 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?

RESPONSE: If confirmed, I would take an oath to support and defend the Constitution of the United States, as I have many times before. My decisions as Deputy Attorney General would be in keeping with this oath and in furtherance of the Department’s mission.

59. 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: As noted above, if I am confirmed, I will take an oath to support and defend the Constitution of the United States. My decisions as Deputy Attorney General would be in keeping with this oath and in furtherance of the Department's mission. The Deputy Attorney General serves as the Chief Operating Officer of the Department, and personnel management is a critical part of the job. All Department employees also take an oath to support and defend the Constitution of the United States and work on behalf of the American people. If an employee violates this oath, my approach as a manager would be straightforward: address the misconduct and then make sure that there is follow-up and implementation of any recommended fixes.

60. For purposes of federal law, when does life begin?

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.

61. Does the definition of when human life begins for purposes of federal law differ from the scientific definition of when human life begins?

RESPONSE: Please see my response to Question 60.

62. 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).

63. Do you support laws penalizing fetal homicide?

RESPONSE: I have not had the occasion to study this issue. If confirmed, I will enforce the laws of the United States.

64. 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: If confirmed, I will enforce the laws of the United States.

65. 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 the occasion to study this law. If confirmed, I will enforce the laws of the United States.

66. Are there any circumstances which justify the killing of an innocent human being?

RESPONSE: Existing federal and state laws prohibit homicide. If confirmed, I will enforce the laws of the United States, including criminal homicide statutes.

67. Do you support the Born Alive Infants Protection Act?

RESPONSE: Please see answer to Question 68.

68. 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 the occasion to study the legislation referenced in your questions. If confirmed, I will enforce the laws of the United States.

69. 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: 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 the allegations referenced in your question.

70. 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. In your role as DAG, will you try to ensure that this investigation will be allowed to proceed without interference under your leadership of the Department of Justice?

RESPONSE: As the nominee for Deputy Attorney General, I do not have information about this investigation. I am deeply committed to the independence of the Department of Justice, which must enforce federal law without fear or favor. If confirmed, I will insist that the Department's decisions in all enforcement matters be based solely on the facts and the law.

71. In your testimony, you indicated that, if confirmed, you would assume the role of running the day-to-day operations of the Department of Justice and its 115,000 employees. Does this role extend to both policy-making and administrative matters? When do you envision being involved, and when not?

RESPONSE: The Deputy Attorney General serves as the Chief Operating Officer of the entire Department—inclusive of matters within its policymaking, law enforcement roles, and administrative functions. This work is done in concert with the responsible components of the Department, and the dedicated subject matter experts of the Department. If I am confirmed, it would be my honor to work again with the Department's 115,000 employees to uphold the rule of law, to protect the American people from domestic and foreign threats, and to pursue equal justice under law.

72. Over the past year, we have watched with growing concern as many Utahns have experienced the loss of family and loved ones due, not only to the COVID-19 pandemic, but also to the scourge of opioid addiction. As I'm sure you know, the rate of drug overdose deaths has risen alarmingly during the COVID pandemic due to a host of factors including social isolation, inaccessible treatment services such as physician visits or medication assistance, and disruption of daily life. How do you plan to direct the Drug Enforcement Agency to address these problems?

RESPONSE: The opioid epidemic is one of the most pressing problems in this country. I believe we need a comprehensive response at the federal, state, and local levels—and one that uses not only enforcement, but also prevention, early intervention, and treatment for individuals suffering from substance use disorders, and that provides reentry services so that individuals do not relapse.

Focusing on the Drug Enforcement Administration, I believe that stopping substances like fentanyl and synthetic opioids from flooding our communities should be one of the agency's top priorities. If confirmed, I would work to ensure that the agency has the tools it needs to investigate and disrupt the cartels and their supply chains, take down online dark markets, and enforce the law against manufacturers, distributors, and diversionary pill mills who are helping fuel this crisis by illegal practices.

73. The Department of Health and Human Services, the Justice Department and the Drug Enforcement Agency have a crucial role to play in faithfully implementing the laws that Congress passes and in advancing policies consistent with those laws. Could you please outline the role that you expect, if confirmed, to play in both the policy-making and operations of agencies such as the DEA?

RESPONSE: The DEA, as with all components of the Department of Justice, is overseen by the Deputy Attorney General. If confirmed, I would look forward to working with the Department's components, including the DEA, on both policy and operational issues.

74. If confirmed, will you pledge to be available to Congress to discuss and resolve issues which may arise with sub-agencies, such as the DEA, in the Justice Department so we may make certain the law is being followed faithfully?

RESPONSE: I share Attorney General Garland's view that it is important for the Department to be responsive to congressional inquiries. I take that obligation seriously.

Senator Cruz

Responses to Questions from Senator Cruz to Lisa O. Monaco, Nominee to be Deputy 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. Because a previous nominee declined to provide any response to subparts of a question, questions are listed separately even when they continue or expand upon the topic in the immediately previous question and rely on facts or context previously provided.

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 disagree 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.

II. Questions

[Crossfire Hurricane and related]

1. You were involved in the Obama-Biden administration's investigation into potential Russian misconduct during the 2016 presidential campaign. Please describe, to the fullest extent possible, your role and involvement in that investigation.

RESPONSE: As the White House Homeland Security Advisor, I was involved in the U.S. Government's policy response to Russian interference in the 2016 presidential election and which were announced publicly in December 2016. That response included imposition of sanctions on Russian individuals and entities, the expulsion of Russian intelligence

operatives, and closure of Russian compounds in the United States. In addition, I worked with the Department of Homeland Security to provide assistance to state election officials to enhance cybersecurity.

2. Will you recuse from any involvement in Special Counsel John Durham's investigation? If not, why not?

RESPONSE: Because I am not in the Department yet, I do not know the details of Mr. Durham's investigation or any aspect of it that may come before me, and therefore cannot make an informed assessment. If I am confirmed, I will consult the Department of Justice's career ethics officials about recusal questions posed by this or any other matter that comes before me. In all cases, I will make decisions based on the facts, the law, and the applicable rules, policies, and practices.

3. Were you in any way involved in the process whereby General Flynn was labelled as a possible counterintelligence risk and candidate for surveillance?

RESPONSE: No, and I am not aware of a process as described in your question.

4. If the answer to question 3 is "no," please explain why, as Deputy National Security Advisor, you were not aware of a concern that the incoming National Security Advisor was working for a foreign government.

RESPONSE: To the best of my recollection, I am not aware of a process as described in Question 3.

5. Have you read the January 20, 2017 email, declassified by former Acting Director of National Intelligence Grenell, sent by then-NSA Susan Rice to herself explaining why the Obama-Biden administration withheld national security information from General Flynn?

RESPONSE: Yes.

6. What is your reaction to the email referenced in question 5? If you have not read it, please explain why, up to this day, you still have not read it.

RESPONSE: It appears to be a description of a discussion among members of President Obama's national security team.

7. Do you agree with Susan Rice's contention in her email that the administration's actions were "by the book"?

RESPONSE: I was not in the meeting that Ambassador Rice referenced in the email. I note that the referenced email states that President Obama "reiterated that our law enforcement team needs to proceed as it normally would by the book."

8. On January 5, 2017, 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 General Flynn. Were you,

before or on January 5, made aware of this meeting? If not, when did you come to learn of this meeting?

RESPONSE: To the best of my recollection, I learned of the meeting some time after January 5, 2017.

9. If you had been the Deputy Attorney General during this meeting, would you have pushed back and made clear that the sidelining of an incoming National Security Advisor was dangerous and unprecedented? If you had been invited to this meeting as Deputy NSA, would you have done the same?

RESPONSE: I was not in the referenced meeting and therefore cannot speculate as to how I may have reacted.

10. Have you read the Inspector General report on the Crossfire Hurricane investigation and related FISA abuse? If not, will you commit to reading it?

RESPONSE: I have read the public report and understand that the Inspector General found “serious performance failures” with respect to certain FISA applications.

Based on publicly available information, it is my understanding that Director Wray and others in the Department have already taken steps to address issues and recommendations identified by Inspector General Horowitz. If confirmed, I will prioritize learning more about these important efforts, including by meeting with the Inspector General to hear directly from him about his review and to understand his assessment of the current process and what additional steps should be taken. I will also meet with the FBI Director and the NSD leadership to understand the status of implementation of corrective actions.

11. Do you believe the FBI’s handling of the “Steele dossier” was appropriate?

RESPONSE: I have read the Inspector General’s report and have no reason to disagree with its conclusions.

12. Do you agree that terminating John Durham would create at least the appearance of impropriety?

RESPONSE: I understand that Mr. Durham has been allowed to continue his work, and I have no reason to think that was not the right decision.

13. You have stated that you “don’t think that Comey is a partisan actor.” Do you stand by that comment?

RESPONSE: Yes.

14. You have stated that Department of Justice investigations “should be completely walled off from partisan political considerations and White House interference.” Will the investigation into the January 5, 2017 meeting, and associated events, be “completely walled off”? If so, please explain how, and what it means to “wall off” the investigation.

RESPONSE: As I stated during my confirmation hearing, the Justice Department is an independent investigator and prosecutor, and in this function must act free of any political or partisan influence. Although I do not know the details of Mr. Durham's investigation, the same principle applies to it like any other investigation.

15. Will you commit to working with your colleagues at the top of the Department to ensure that no individual found to have engaged in improper conduct related to Crossfire Hurricane is employed by Department of Justice or the FBI?

RESPONSE: If I am confirmed as Deputy Attorney General, 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 be both searching and also fair.

16. Will you commit to reporting to this Committee on the reasons for retaining any culpable individuals, in the event such individuals remain at DOJ or the FBI?

RESPONSE: If I am confirmed as Deputy Attorney General, 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 be both searching and also fair.

17. 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 am not in the Department, I am not familiar with the considerations informing the Department's position in this matter.

18. How will you accommodate Americans who hold strong religious convictions, especially when you are faced with pressure from the Biden administration to loosen, and perhaps even undo, exemptions from laws that burden religious exercise?

RESPONSE: Religious liberty is a bedrock principle of this country and is enshrined in the Constitution's First Amendment as well as other federal laws. If confirmed, I will endeavor to faithfully and fairly enforce all federal laws, including laws that protect religious liberty.

19. What do you understand to be the scope of Section 230, and the immunity it grants?

RESPONSE: 47 U.S.C. § 230(c) provides:

(1) Treatment of publisher or speaker. No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability. No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

The Act defines an “interactive computer service” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server.” 47 U.S.C. § 230(f).

20. Does Section 230 immunize content publishers only?

RESPONSE: I have not had occasion to conduct a legal analysis of the relevant statute and case law. I understand that the extent of immunity conferred by Section 230 is the focus of several legislative proposals. If I am confirmed, I look forward to reviewing those proposals and studying this issue.

21. If an internet platform curates content, and specifically selects what a user sees and what remains hidden, is that platform engaged in publishing?

RESPONSE: Please see my response to Question 20.

22. Do you believe that corporations like Facebook, Twitter, and Google should have a special immunity from liability, not available to traditional outlets like the New York Times, even when those corporations are engaged in publishing? Please explain why.

RESPONSE: Please see my response to Question 20.

23. Would it be appropriate for the Department of Justice to work in any way with Facebook, Twitter, or Google to limit the availability or reach of constitutionally protected speech or information?

RESPONSE: As Attorney General Garland also stated on this point, the Department is bound to enforce the First Amendment’s protections.

24. Many big technology platforms are funded or financed in part by the Chinese Community Party. Do you see the self-censorship of American media companies at the behest of a fundamentally anti-western, anti-American regime, as a problem? If not, why not?

RESPONSE: The Chinese government’s repression of its people including through censorship of speech and content online is antithetical to American values. Censorship is among the many areas on which the United States and China have a fundamental

disagreement. While I have not had occasion to study this issue in detail, if confirmed, I look forward to learning more about it from you and others as relates to matters within the purview of the Department.

25. In your public and private-sector pursuits, you have worked with Big Tech to remove “Islamic militant content” and “domestic extremist content.” How do you defined “domestic extremist content”?

RESPONSE: Throughout my career, I have forged partnerships to protect this country from threats at home and abroad. In the area of terrorist propaganda and online recruitment efforts, that work has included efforts to encourage technology platforms to enforce their terms of service, such as educating companies when their platforms were misused by terrorist groups such as ISIS and al Qaeda to recruit, radicalize, and mobilize individuals to violence.

26. You have also spoken about the need to “build bridges between Washington and Silicon Valley.” Please explain what you mean by this.

RESPONSE: Throughout my career, I have forged partnerships to protect this country from threats at home and abroad. As the White House Homeland Security Advisor, for example, I developed strategies to highlight circumstances in which platforms were being misused by terrorist organizations such as ISIS and al Qaeda to recruit, radicalize, and mobilize individuals to violence. In my experience, the ability for policymakers to speak directly to technology companies can help address significant challenges such as terrorism and cybersecurity.

27. What role, if any, should the Department of Justice have with regard to content restrictions on social media platforms?

RESPONSE: Any action the Department of Justice takes in this area must be consistent with the First Amendment. I understand, for example, that the Department is currently active in this regard with respect to child pornography. Congress has enacted statutes consistent with the First Amendment that ban the display and distribution of child pornography on the internet, and the Department plays an important role in enforcing those statutes.

28. Is domestic extremism a bigger threat to the United States than foreign extremism?

RESPONSE: The FBI Director recently testified that “we elevated racially and ethnically motivated violent extremism to our highest threat priority, on the same level as ISIS and home grown violent extremists” and also noted that “[t]he most significant threat to our homeland is posed by lone actors who often radicalize online and seek out soft targets to attack with easily accessible weapons. We see these individualized threats manifested within both domestic violent extremists (DVEs) and homegrown violent extremists

(HVEs).”¹ I understand that to mean that the FBI has assessed its highest threat priority as having both domestic and international dimensions.

29. 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: Violence is unacceptable from whatever ideological direction it comes from, and, if I am confirmed, I will direct that prosecutorial decisions be made without regard to politics.

30. Do you believe that unlawfully setting a building on fire, amidst general rioting, is a violent act?

RESPONSE: Unlawfully setting fire to a building is a clear and serious crime and should be punished.

31. 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: I share Attorney General Garland’s view that 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.

32. Do you believe that an individual who attended the Trump rally on January 6, 2021, but did not commit any unlawful or violent act, should be prohibited from holding a political position in the Department of Justice?

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.

33. Do you believe that an individual who attended a protest during the summer of 2020, but did not commit any unlawful or violent act, should be prohibited from holding a political position in the Department of Justice?

RESPONSE: Please see my answer to Question 32.

34. Is participation in a riot grounds for termination from the Department of Justice?

RESPONSE: I am not familiar with the administrative termination procedures in the Department, but I believe that unlawful conduct is likely a ground for termination.

¹ FBI Director Christopher Wray, Statement Before the Senate Judiciary Committee, Mar. 2, 2021, *available at* <https://www.fbi.gov/news/testimony/oversight-of-the-federal-bureau-of-investigation-the-january-6-insurrection-domestic-terrorism-and-other-threats>.

35. What is the definition of “domestic terrorism”?

RESPONSE: The federal code defines domestic terrorism, at 18 U.S.C. § 2331(5):

[T]he 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.

36. At his hearing, Attorney General Garland said that an attack on a courthouse while in operation, and trying to prevent judges from actually trying cases, “plainly is domestic extremism.” And when pressed, he mentioned also that an attack “simply on government property at night or any other kind of circumstances” is a clear and serious crime. But he seemed to make a distinction between the two, describing the latter (and only the latter) as an “attack on our democratic institutions.” Do you agree with these comments?

RESPONSE: I believe the Attorney General’s approach to domestic terrorism and mine are the same, which is that domestic terrorism has a very clear definition in our law and turns on the intent of the violent perpetrator.

37. Last summer, we saw over 50 days of civil unrest in which rioters assaulted federal courthouses, federal officers, and local law enforcement personnel and facilities with hammers, lasers, baseball bats, fireworks, Molotov cocktails, chemicals, and other weapons. The riots resulted in injuries to 270 federal law enforcement officers. Do you believe this was “domestic terrorism?” Please explain why or why not.

RESPONSE: Because I am not in the Department and therefore am not aware of all the relevant facts, I am not in a position to comment on any particular investigation. But if confirmed, I will make decisions about investigations based on the facts and the law, without regard to partisan or other improper considerations. That includes decisions about whether any violent conduct falls within the definition of domestic terrorism. Regardless of which ideological direction the violence comes from, domestic terrorism needs to be investigated and prosecuted.

38. The Boston Marathon bomber, Dzhokhar Tsarnaev, murdered three people and injured 264 others with pressure cooker bombs. A court of appeals recently reversed his death sentence, and the Department of Justice appealed to the Supreme Court. Will you advocate for maintaining the Department's position in the Tsarnaev case?

RESPONSE: I am very familiar with the Boston Marathon bombing and the horrific damage it wrought on the City of Boston and the attendees and participants of the Boston Marathon. It was only weeks after becoming President Obama's homeland security advisor in 2013 that the Tsarnaev Brothers carried out this heinous bombing. I am extremely proud of the incredible work of the FBI agents, the law enforcement partners, and of the Department of Justice prosecutors, in bringing Dzhokhar Tsarnaev to justice. As a Department nominee, it would not be appropriate for me to comment on the specifics of the appeal in this ongoing case.

39. Even if the appeal is unsuccessful, prosecutors will have the opportunity to again seek the death penalty. Will you advocate for the Department of Justice to seek the death penalty on remand, if necessary?

RESPONSE: If confirmed, I will consult with the career prosecutors and other experts on the case and make decisions, or provide advice to the Attorney General as appropriate, based on the facts and the law and any applicable policy guidance.

40. You were in the Department of Justice during the time when Operation Choke Point was active. Did you have any involvement, or in any way advise or participate, in this initiative? If so, please explain.

RESPONSE: I do not recall having any involvement in the Operation referenced.

41. Please describe your understanding of the Operation Choke Point initiative.

RESPONSE: I do not recall having any involvement in the Operation referenced.

42. Do you believe Operation Choke Point was an appropriate use of the Department of Justice's investigatory power?

RESPONSE: I do not recall having any involvement in the Operation referenced.

43. Do you personally own any firearms? If so, please list them.

RESPONSE: No.

44. Have you ever personally owned any firearms? If so, please list them.

RESPONSE: No.

45. In 2019 and 2020, you signed Amicus briefs in opposition to the Trump administration's effort to secure emergency funds to build the border wall. These briefs argued that the widely reported and documented turmoil at the southern border was merely a "manufactured crisis,"

propped up by “falsehoods” and “fearmongering.” Today, illegal border crossings are up substantially, in large part because of the Biden administration’s lax standards and unwillingness to enforce immigration law. Do you believe there is currently a crisis at the border?

RESPONSE: The amicus brief you reference was specific to the President’s declaration of a national emergency for the purpose of circumventing Congress’s appropriations process to construct a wall at the southern border. Indeed, the brief acknowledged that “our nation faces real immigration and national security challenges” which demand “a thoughtful, evidence-based strategy.” I am generally aware of what has been publicly reported concerning the situation at the southern border. Confronting the humanitarian, security, and public health aspects of that situation will require a whole-of-government response.

46. During the hearing for his nomination to be the Attorney General of the United States, Senator Hawley asked Attorney General Garland, “[d]o you believe that illegal entry at America’s borders should remain a crime?” Do you believe that illegal entry at America’s borders should remain a crime? If so, why? If not, why not?

RESPONSE: As I testified, the President has been clear that he does not support decriminalization of the border, and neither do I.

47. 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: I understand that the statutory requirements referenced in the question are the subject of active litigation. I have not had the occasion to study this issue in detail and, because I am not presently at the Department, I am not aware of the details of these cases.

48. Do you believe that, were the Department’s resources not limited, it should enforce every immigration law in its jurisdiction?

RESPONSE: I support immigration enforcement that is consistent with the laws on the books to ensure public safety, secure our borders, and protect our national security in collaboration with the Department’s agency partners.

49. Is it appropriate for the executive to refuse to enforce a law, absent constitutional concerns?

RESPONSE: The Department of Justice is responsible for enforcing the law. In my experience, including as an Assistant United States Attorney, I understand that the appropriate exercise of prosecutorial discretion is an important part of that function. As the Supreme Court has recognized, 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). As the Court further explained, when deciding whether to bring any enforcement action an “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.*

50. Does the same principle apply in a different political context, such as if a Republican president were to order the IRS not to collect taxes?

RESPONSE: The legal principle I described in my response to Question 49 does not depend on the political context.

51. Could a President concerned with the impact of immigration on domestic employment decide to enforce the laws more stringently than intended by Congress?

RESPONSE: Whenever the Executive Branch enforces a statute enacted by Congress it must act consistently with the statute.

52. According to an official Social Security Administration (SSA) fact sheet, “noncitizens authorized to work in the United States by the Department of Homeland Security (DHS) can get a Social Security number” (SSN) and, further, noncitizens “need a Social Security number to work, collect Social Security benefits, and receive other governmental services.” This same fact sheet makes clear that nonimmigrants lawfully present in the United States who plan to apply for work authorization may also apply for an SSN using the USCIS Form I-765. Nonimmigrants with work-authorization include, for example, visa holders under the following categories: H, L, O, P, T, N or R. As such, in conjunction with their visa, these nonimmigrants routinely apply for, and are granted, Social Security numbers. Each year, the visas of many work-authorized aliens with SSNs expire and these aliens overstay – meaning they do not depart the country consistent with the terms of their visa. Given this, do you agree that “nonresident alien individuals,” who are no longer in the country legally, may in fact possess a Social Security Number?

RESPONSE: I am not familiar with the practices of the Social Security Administration or the practices you identify in this question. Accordingly, I am not able to offer an opinion on this issue.

53. Have you been to the southwest border? If so, when, and in what capacity?

RESPONSE: Yes. As the Assistant to the President for Homeland Security and Counterterrorism, I toured the southern border and received numerous briefings regarding security measures from officials from Customs and Border Protection and Immigration and Customs Enforcement, as well as state and local officials.

54. Should an illegal alien who is convicted of murder or sexual assault in the United States be deported immediately?

RESPONSE: The prioritization of deportations would not be within my purview if confirmed as Deputy Attorney General. Murder and sexual assault are serious crimes which I understand to provide grounds for removal. *See* 8 U.S.C. § 1227(a)(2). Immigration laws govern both the process and timing of a non-citizen’s removal.

55. 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: The prioritization of deportations would not be within my purview if confirmed as Deputy Attorney General. Driving while intoxicated is a serious offense, and if confirmed, I will faithfully and fairly enforce the laws of the United States.

56. The abandonment of immigration enforcement 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 concerns are specifically identified by the INA as grounds for inadmissibility to the United States. How will the Department of Justice address this?

RESPONSE: As Attorney General Garland explained, 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.

57. Will you commit to ensuring that, especially during a pandemic, illegal aliens are not released into the United States without regard to public health and safety?

RESPONSE: If confirmed, I will faithfully and fairly enforce the law, including our nation's immigration laws.

58. Are there any differences, under federal law, between the rights of a citizen and the rights of an illegal alien? Please describe any differences.

RESPONSE: I understand that, generally, rights afforded to citizens and certain rights afforded to non-citizens differ, as do rights among non-citizens depending on their immigration status. Relevant constitutional and statutory provisions provide the legal basis for those differences. Some of those constitutional and statutory provisions apply to all persons in the United States, while others differentiate based on citizenship status or immigration status.

59. Can you commit to bringing the same vigor and completeness of enforcement to the immigration laws, duly passed by Congress, as is brought to other laws? If not, why not?

RESPONSE: If I am confirmed as Deputy Attorney General, I will vigorously enforce the laws of the United States.

60. President Biden last month issued an Executive Order blocking the Department of Justice from renewing contracts with privately-operated detention centers. Unlike the Federal Bureau of Prisons, the U.S. Marshals Service does not have its own facilities, and relies heavily on private operators to fulfill its unique mission of serving the federal courts. Please explain why the U.S. Marshals Service should not be allowed to renew its contracts with private facility operators.

RESPONSE: I am not able to offer an opinion on this issue, as I am not familiar with the details of U.S. Marshals Service’s contracts with private facility operators.

61. What is the definition of “defunding the police”?

RESPONSE: I do not support defunding the police. I believe that law enforcement has a difficult job and police departments should have the resources they need to do their job safely, well, and accountably, and in a way that builds community trust.

Senator Sasse

Responses to Questions from Senator Sasse to Lisa O. Monaco, Nominee to be Deputy Attorney General

1. 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?

RESPONSE: Through my many experiences serving in the Department of Justice, I understand that the Department holds a unique place in our government. It wears two hats. The Department is an independent investigator and prosecutor. In that function it must act free of any political or partisan influence. But the Department is also an executive agency which implements the President's lawful policy objectives. In that role, the Department advises the President whether a particular policy is consistent with the law based on an independent and rigorous assessment and advances the policies of the President to the extent permissible under and consistent with the law as enacted by Congress.

2. 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?

RESPONSE: I agree with Attorney General Garland that, with respect to matters of policy, the Department follows the direction of the President. Where there is room under the law for the President's agenda to be pursued, it should be pursued. But the Department has an obligation to advise the President whether his policies are consistent with the law.

3. Please list some instances during your previous time in the Department of Justice 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.

RESPONSE: In my prior service in the Department of Justice I regularly approached both policy issues and individual cases based on the facts and law presented and when called upon provided my best independent judgment. One instance that comes to mind relevant to your question occurred when I served as the Assistant Attorney General for National Security. I advocated for the designation of Boko Haram as a foreign terrorist organization well in advance of an administration decision to so designate the organization. I did so based on my independent analysis of the information that in my judgment met the applicable standard.

4. Do you agree that the Chinese Communist Party (CCP) is our greatest geostrategic and ideological adversary on the international stage?

RESPONSE: I view China’s aggressive and coercive actions as posing the top security threat to the United States’ interests and values. I agree with Secretary of State Blinken that China represents the most significant challenge to the United States of any country in the world—and that, in his words, “[o]ur relationship with China will be competitive when it should be, collaborative when it can be, and adversarial when it must be.”

5. Please familiarize yourself with the Department’s China Initiative. In general, how would you evaluate the Department’s China Initiative?

RESPONSE: My general understanding of the Department’s national security initiative regarding China is that it seeks to address actions by China to steal intellectual property, conduct malicious cyber activity and espionage. The continuing threat posed by China’s aggressive and coercive actions—whether in stealing intellectual property, conducting espionage, repressing its people, asserting power globally—is well documented and was a focus of mine in my prior tenure in government. The Department of Justice has an important role to play in countering China and its adversarial actions, which pose the top security threat to the United States’ interests and values.

One of the hallmarks of my career has been reorganizing the Department of Justice’s National Security Division to meet modern and multidimensional threats like those currently posed by China, including by using an all-tools approach. It is critical in matters such as responses to nation-state cyber threats and economic espionage that the Department pursue a coordinated approach that brings to bear our full authorities and that we work closely, where appropriate, with the Intelligence Community and other departments and agencies. As I stated during the hearing, I credit the previous administration for continuing and building on that approach in many areas, including in the investigation of malicious cyber activity by Chinese state sponsored actors. If confirmed as Deputy Attorney General, I expect to press the FBI, the National Security Division, and the Criminal Division, in conjunction with the work of other agencies across the U.S. Government, to examine every aspect of this security threat and implement programs to address it appropriately.

6. Was the Department’s China Initiative needed, and if so, why?

RESPONSE: Please see my response to Question 5 above.

7. What has been the Department’s China Initiative’s greatest successes?

RESPONSE: I have not conducted a comprehensive review that enables me to provide an informed answer to this question beyond that which I have provided in Question 5 above. If confirmed, I look forward to learning more about the Department’s current efforts, including where they may be adjusted or strengthened.

8. What has been the Department’s China Initiative’s most notable failures?

RESPONSE: I have not conducted a comprehensive review that enables me to provide an informed answer to this question beyond that which I have provided in Question 5 above.

If confirmed, I look forward to learning more about the Department's current efforts, including where they may be adjusted or strengthened.

9. What steps can the Department in concert with other agencies take to convince the venture capital and academic community to take the threat posed by the CCP seriously?

RESPONSE: Throughout my career, I have made it a priority to work across sectors, including with private companies, to proactively address national security concerns. If confirmed, I would look forward to reviewing the Department's current outreach and other efforts to educate and empower the business and academic communities to, among other things, protect their information and assets and to reinforce their legal obligations. A critical mission of the Department is to work with our interagency partners to protect against actors that seek to exploit our country's open investment climate to harm our national security interests. With respect to academia, the Department can continue to play an important role both in raising awareness about the threat on campuses and considering initiating criminal investigations in cases where individuals and companies have deceived U.S. authorities about their connections to China.

Senator Hawley

Responses to Questions from Senator Hawley to Lisa O. Monaco, Nominee to be Deputy Attorney General

1. In a 2018 op-ed coauthored with Ken Wainstein, you wrote that “The federal government should be working closely with social media companies, which have made strides in taking down Islamist militant content on their platforms, and encourage them to do the same with domestic extremist content.” What is your definition of “domestic extremist content?”

RESPONSE: In that op-ed, Mr. Wainstein, the former homeland security advisor to President George W. Bush, and I drew on our experiences responding to foreign terrorism to assess how the government might best address domestic violent extremism. In that context, we used the term “domestic extremist content” to refer to content that promotes domestic violent extremism, or, put differently, content that seeks to encourage violent criminal acts in furtherance of ideological goals stemming from domestic influences.

2. If you are confirmed as Deputy Attorney General, and if this issue becomes a priority of the Department of Justice, how do you envision the federal government “working closely with social media companies” to remove “extremist content”?

RESPONSE: Throughout my career, I have forged partnerships to protect this country from threats at home and abroad. As the White House Homeland Security Advisor, for example, I developed strategies to highlight circumstances in which social media platforms were being misused by terrorist organizations such as ISIS and al Qaeda to recruit, radicalize, and mobilize individuals to violence. If confirmed, I would look forward to engaging with the private sector on ways to make it more difficult for foreign and domestic violent extremists to exploit their platforms.

3. If you are confirmed as Deputy 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: Yes. Regardless of which ideological direction violence comes from, it needs to be investigated and prosecuted without fear or favor.

4. If you are confirmed as Deputy Attorney General, what specific steps do you intend to take to prevent pressure from large multinational technology firms from influencing the decisions made by the Department of Justice?

RESPONSE: If confirmed, I will work to ensure that the Justice Department remains completely free from any improper influence—partisan, corporate, or otherwise. No company will be given special treatment.

5. If you are confirmed as Deputy Attorney General, do you intend to faithfully enforce the Religious Freedom Restoration Act as it is written today?

RESPONSE: If confirmed, I will endeavor to faithfully and fairly enforce all federal laws, including laws that protect religious liberty like the Religious Freedom Restoration Act.

6. If you are confirmed as Deputy Attorney General, would you independently recommend or advise 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: I have not had occasion to consider any potential legislative amendments to the Act. If asked to consider such an amendment, I would be informed by my strong belief in religious liberty and I would approach this matter as I would any other: by working with subject-matter experts at the Department, including career lawyers, to carefully understand the relevant facts and law.

7. If you are confirmed as Deputy Attorney General, would you independently recommend or advise that the Department of Justice suspend Special Counsel John Durham's investigation into the Crossfire Hurricane operation?

RESPONSE: I understand that Mr. Durham has been allowed to stay on, and I have no reason to think that was not the right decision.

8. If you are confirmed as Deputy Attorney General, would you independently recommend or advise 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: I understand that the issue to which you refer is subject to pending litigation involving the Archivist of the United States. Because I am not presently at the Department, I am not aware of all the relevant facts about this case. If confirmed, I would approach this matter as I would any case: by working with subject-matter experts at the Department, including career lawyers, and by ensuring that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

Senator Cotton

Responses to Questions from Senator Cotton to Lisa O. Monaco, Nominee to be Deputy Attorney General

1. Are you aware of any element of the Department of Justice currently examining, or are you aware of any element of the Department of Justice having been requested to examine, avenues by which the United States could re-adhere to the Treaty on Open Skies other than by submitting the treaty to the Senate for advice and consent to ratification?

RESPONSE: I am not presently at the Department, and so I am not aware of any efforts of or requests for the Department of Justice to examine this issue.

2. To the best of your knowledge, are there any legally available avenues by which the United States could re-adhere to the Treaty on Open Skies other than by submitting the treaty to the Senate for advice and consent to ratification? If you are aware of any other legally available avenues or believe any such avenues to exist, please list them.

RESPONSE: I have not had the occasion to study this issue and therefore do not have a view on the matter.

3. Do you believe that Article II, section 2, clause 2 of the Constitution requires that the United States submit a treaty to the Senate for advice and consent to ratification in order to re-adhere to a treaty from which the United States has previously withdrawn?

RESPONSE: I have not had the occasion to study this issue and therefore do not have a view on the matter.

4. Do you believe that it is important to enforce our nation's immigration laws?

RESPONSE: Yes.

5. Do you believe that it should remain a crime to illegally enter the United States?

RESPONSE: Yes. As I testified, the President has been clear that he does not support decriminalization of the border, and neither do I.

6. If an immigration court 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: While specific removal operations would not fall under my purview as Deputy Attorney General, I support immigration enforcement that is consistent with the laws on the books, public safety priorities, and resource constraints.

7. If an immigration court rules that an illegal alien who is a gang member must be deported, and all appeals are exhausted, should that alien be deported?

RESPONSE: Please see my response to Question 6.

8. Based on what you currently know, do you believe that the United States is facing a crisis at our southern border?

RESPONSE: I am generally aware of what has been publicly reported concerning the situation at the southern border. Confronting the humanitarian, security and public health aspects of that situation will require a whole-of-government response.

9. Does all crime qualify as “persecution” for the purposes of asylum eligibility under our immigration laws?

RESPONSE: In my career, I have not had the occasion to study this issue. If I am confirmed, I would welcome the opportunity to do so. I share Attorney General Garland’s view that asylum is part of American law and the Department of Justice and the State Department have an obligation to apply the federal asylum laws. If confirmed, I will faithfully and fairly enforce our nation’s immigration laws.

10. The crisis at our southern border has, among other things, overwhelmed our border security forces. Do you believe that this creates a potential national security threat?

RESPONSE: I believe that confronting the humanitarian, security and public health aspects of the situation at the border will require a whole-of-government response and, if confirmed, I intend to consult with other leaders across the Executive Branch on these issues in seeking to ensure secure, humane and effective enforcement of our immigration laws.

11. Does the United States currently deport too many alien gang members?

RESPONSE: Throughout my career in law enforcement and public safety, I have taken seriously the threat posed by transnational criminal organizations. I am not aware of current statistics concerning the United States’ deportation of gang members.

12. Is it true that, when a criminal gives the government “substantial assistance” in an investigation, they can be eligible for a reduced sentence, even below the mandatory minimum sentences such as those contained in our drug trafficking laws?

RESPONSE: Yes. Under Section 5K1.1 of the Sentencing Guidelines, as well as under 18 U.S.C. § 3553(e), a defendant can be eligible for a reduced sentence, upon a motion by the government, if he provides substantial assistance in an investigation or prosecution of another person, including a sentence below the mandatory minimum.

13. Do you believe that the prospect of facing a tough criminal sentence helps to motivate criminals to assist the government in its investigation?

RESPONSE: Seeking to avoid, or possibly shorten, one’s potential criminal sentence may be one factor that motivates some criminals to assist the government in investigations. At the same time, I know from my experience as a prosecutor that there can be a variety of motivations for those who assist the government in its investigations.

14. Do you believe that criminal sentences deter criminal conduct?

RESPONSE: I believe that our sentencing laws should work to keep people safe, including by promoting respect for the law and deterring criminal conduct, while also promoting possibilities for rehabilitation where appropriate.

15. Does weakening the sentences for a particular crime make it more likely or less likely that criminals will commit that crime in the future?

RESPONSE: I have not studied this particular empirical question, but, based on my experience in law enforcement, I understand that the reasons for recidivism are often complicated and multifaceted.

16. If you are confirmed as Deputy Attorney General, you will oversee the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Please describe how you believe the Supreme Court's ruling in *Heller v. D.C.* affects the ATF's authority 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," but also recognized that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id.* at 595, 626. The Bureau of Alcohol, Tobacco, Firearms, and Explosives must regulate firearms consistent with the Constitution and federal law.

17. Do you believe that the Supreme Court reached the right decision in *Heller v. D.C.*?

RESPONSE: The Supreme Court has made clear 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. 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.

18. 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 therefore cannot offer an opinion on that question.

19. 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 not familiar with this issue and cannot offer an opinion on that question.

20. Do you believe that DOJ's China Initiative has had a positive impact in combatting Chinese espionage and IP theft in the United States?

RESPONSE: This initiative began after I left the Department, and I have not conducted a comprehensive review of it. The continuing threat posed by China's aggressive and coercive actions—whether in stealing intellectual property, conducting espionage, repressing its people, asserting power globally—is well documented and was a focus of mine in my prior tenure in government. The Department of Justice has an important role to play in countering China and its adversarial actions, which pose the top security threat to the United States' interests and values.

One of the hallmarks of my career has been reorganizing the Department of Justice's National Security Division to meet modern and multidimensional threats like those currently posed by China, including by using an all-tools approach. It is critical in matters such as responses to nation-state cyber threats and economic espionage that the Department pursue a coordinated approach that brings to bear our full authorities and that we work closely, where appropriate, with the Intelligence Community and other departments and agencies. As I stated during the hearing, I credit the previous administration for continuing and building on that approach in many areas, including in the investigation of malicious cyber activity by Chinese state sponsored actors. If confirmed as Deputy Attorney General, I expect to press the FBI, the National Security Division, and the Criminal Division, in conjunction with the work of other agencies across the U.S. Government, to examine every aspect of this security threat and implement programs to address it appropriately.

21. Could curtailing or deprioritizing efforts to investigate and prosecute Chinese espionage potentially harm our national security?

RESPONSE: Strategic competition with China is a defining feature of the 21st century. China's theft of military secrets and intellectual property to support their global and military ambitions poses challenges to our security, prosperity, and values. It erodes our military-technological edge, challenges our global standing, and hurts American workers.

During my time in government, I have repeatedly observed China's criminal conduct related to espionage and theft of commercial property, and I have made combatting this behavior a top priority. Several high-profile investigations into China's cyber-enabled economic espionage began during my leadership of the National Security Division, including the investigation that led to the first-ever U.S. criminal charges against members of the Chinese People's Liberation Army for cyber espionage targeting U.S. companies.

The bottom line is that we need to keep raising the costs until their unacceptable behavior stops. If confirmed, I will remain committed to ensuring that all resources are brought to bear against national security threats such as espionage and theft of trade secrets.

22. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.

RESPONSE: The Department of Justice received these questions on March 12, 2021. I worked with Department attorneys, conducted research, and answered the questions. I finalized and approved all answers to the questions and authorized their transmission to the Committee on March 17, 2021.

23. Did any other individual write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each individual that wrote or drafted your answers. If the individuals are government officials, please also identify the department or agency with which they are employed.

RESPONSE: Individuals at the Department of Justice helped draft answers based on my guidance and publicly available information. Working with Department attorneys, I conducted research and answered the questions. I finalized and approved all answers to the questions and authorized their transmission to the Committee on March 17, 2021.

Senator Kennedy

Responses to Questions from Senator Kennedy to Lisa O. Monaco, Nominee to be Deputy Attorney General

1. Do you support Department of Justice employees receiving training in critical race theory? If so, why?

RESPONSE: Because I am not presently at the Department of Justice, I am not familiar with the training programs currently offered by the Department.

2. Given your role as Assistant Attorney General to the National Security Division of the Department of Justice, you must be intimately familiar with the Foreign Intelligence Surveillance Act process. What are the most significant areas of corruption you see within this process, and how would you, if confirmed, work to fix these issues?

RESPONSE: FISA is a powerful tool that our intelligence and law enforcement professionals can use to deal with a range of national security threats. But to keep the trust and confidence of the American people, the government must use FISA consistent with the rule of law and in a way that effectively protects privacy and civil liberties.

The conclusions by Department's Inspector General that there were "serious performance failures" during the FISA process with respect to the subject of his review is extremely concerning. Based on publicly available information, it is my understanding that Director Wray and others in the Department have already undertaken corrective actions and that the FISA Court commissioned a review from an external expert for further recommendations. If confirmed, I will meet with the Inspector General to hear directly from him about his review and to understand his assessment of the current process and what additional steps should be taken. I will also meet with the FBI Director and the NSD leadership to understand the status of implementation of corrective actions.

Senator Tillis

Responses to Questions from Senator Tillis to Lisa O. Monaco, Nominee to be Deputy 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: As Assistant Attorney General for National Security, I prioritized intellectual property enforcement, in particular the investigation and prosecution of malicious cyber activity—especially China’s widespread theft of intellectual property from American companies. In so doing, I reorganized how the Division was structured to combat the threat and created the first nationwide network of national security cyber specialists. If confirmed, I will draw on this experience and my work across the government to prioritize IP enforcement, which is critical to America’s economic and national security. If confirmed, I also would look forward to examining the Department’s current structure for IP enforcement and determining 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 agree that it is critical to have a strong and coordinated approach to intellectual property enforcement, and, during my time in the Department, I supported a whole-of-government approach to combatting national security cyber threats, including trade secret theft and economic espionage. If confirmed, I would look forward to working proactively with the IP Enforcement Coordinator and the Department’s sister agencies to coordinate IP enforcement and continue the Department’s efforts to combat these serious crimes.

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. Will you commit to using this new authority and make the prosecution of commercial piracy sites a tier one priority?

RESPONSE: I consider intellectual property enforcement a priority area. If confirmed, I will seek to ensure that the Department vigorously enforces the Protect Lawful Streaming Act.

- a. How soon can the Department 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?

RESPONSE 3a-b: 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.

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 in the *American Axle* case. But I can’t do it alone. If you are confirmed, will you support the Solicitor General finding 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: While I am not familiar with the *American Axle* case specifically, I share Attorney General Garland’s strong interest in seeing greater clarity in this area of the law. If confirmed, I would approach this matter, and the important issue of protecting the intellectual property of American creators and businesses more broadly, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the relevant facts and law.

Antitrust

1. 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: I believe it is essential that the Department use all available tools to address today’s competition and antitrust challenges. Like Attorney General Garland, I believe

that healthy competition is the lifeblood of our economy, and that all companies—in every industry—should be given a fair chance to compete and thrive. If confirmed, I will work with the Attorney General and the employees of the Department of Justice to see that our antitrust laws are vigorously enforced in every sector of the economy, including in the technology sector.

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. Recently 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 have not had the occasion to study the specific issue that you raise, I take seriously the Department’s role in enforcing antitrust laws and believe that it is essential that the Department use all available tools to address today’s competition and antitrust challenges, including where those challenges may impact access to information. If confirmed, I will work with Attorney General Garland and the employees of the Department of Justice to see that the Department vigorously enforces the antitrust laws in every sector of the economy, including in the technology sector.

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?

RESPONSE: I have not had the occasion to study the Department’s music consent decrees or, more broadly, the market for musical licensing. 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 and understand more from you and others who have studied this issue.

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?

RESPONSE: I am not familiar with the Department’s current competition policy or enforcement practices related to standard essential patents, and I have not previously had

occasion to study the issue. If confirmed, I would welcome the opportunity to learn more about the issue and review your letter.

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?

RESPONSE: I understand that the *Qualcomm* case concerns licensing practices with respect to standard-essential patents and involves the intersection of antitrust and intellectual property law. I have not had the occasion to study the *Qualcomm* case in detail and thus have not formed a view about the case or how I would approach similar issues if they arose in the future. If confirmed, I would welcome the opportunity to learn more about it from the Antitrust Division.

Section 230 and Telecommunications

1. 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: I have not had the occasion to study the Department's proposal regarding Section 230. In general, I understand that one of the rationales behind Section 230 at the time it was passed was to encourage online service providers to address illicit activity on their platforms. I understand that you and other members of the Committee have proposals about how the statute should be amended. If confirmed, I look forward to engaging with you and other members of Congress regarding those proposals.

Counterfeit Goods

1. 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 if you are confirmed 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, including those impacting vital public health efforts in connection with the COVID-19 pandemic. While I am not

familiar with the details of the Department's current efforts to stop the flow of counterfeit goods into the United States, I am generally aware that the Department has established a COVID-19 Fraud Task Force as part of its efforts to combat fraud related to the COVID-19 pandemic. If confirmed, I intend to get briefed promptly on those efforts and will coordinate with all appropriate government partners, including the Department of Homeland Security, to address the challenges posed by counterfeit PPE and other goods.

Cybersecurity and Privacy

1. 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. If you are confirmed, 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: If confirmed, I would look forward to getting a full briefing on the SolarWinds attack and understanding the current state of the government's investigation and response efforts. President Biden has repeatedly emphasized the magnitude of the threat posed by vulnerabilities in U.S cyber infrastructure. Throughout my career, I have focused intently on the rise of malicious cyber activity and have particularly treated cyberattacks by nation-state actors as a top priority because of the sophistication of such attacks and the potential for harm and disruption they pose to our national interests.

Without question, and as is clear from public reporting, the SolarWinds attack underscores the serious risks to both the private and public sector networks of malign nation-state activities in cyberspace. There is a clear imperative to do more to detect early indications of such activities on federal networks, to close gaps in the federal government's cybersecurity incident response process, and to ensure a more coordinated and centralized approach to significant incidents. If confirmed, I will prioritize assessing the Department's current structure and capacity to fully support the President's work to address this significant threat. I would also work to ensure our nation's law enforcement and intelligence community have the tools and training necessary to collect evidence and gather intelligence, attribute attacks, and bring malicious cyber actors to justice.

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?

RESPONSE: If confirmed, addressing cyber threats will be a top priority of mine—whether it is the foreign intelligence threat posed by nation-state espionage, the threat to our economic security posed by the theft of intellectual property at scale, or the disruption caused by criminal organizations that perpetrate ransomware and other attacks. Dating back to my time leading the Department's National Security Division, I prioritized closer collaboration and enhanced communication between the U.S. Government and the private

sector on these matters. This is particularly true, as you note, in the case of companies engaged in cutting-edge research and other emerging technologies, which are often both the targets of hostile nation-state activities and also play a critical role in identifying and reporting new threats. I have long supported a cross-sector, multilateral approach to investigate cyber threats and ensure the American people and institutions are safe and secure from cyberattacks.

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. If you are confirmed, what will you do to stop violence against law enforcement officers?

RESPONSE: I believe that working to ensure the safety and security of all public servants, including police officers, must be a top priority of the Department. If confirmed, I will work to ensure that the Department vigorously prosecutes federal offenses involving attacks on law enforcement officers. Moreover, as I noted in my opening statement, I believe that the Department must renew its work with law enforcement to protect public safety and build community trust, even as a once-in-a-century pandemic makes a difficult job all the more dangerous for our frontline 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.

RESPONSE: Under federal law today, specifically 18 U.S.C. § 111, it is a federal crime to assault, resist, oppose, impede, intimidate, or interfere with a federal officer while he or she is engaged in the performance of his or her official duties.

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?

RESPONSE: I do not support defunding the police. I believe that law enforcement has a difficult job and police departments should have the resources they need to do their job safely, well, and accountably, and in a way that builds community trust.

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?

RESPONSE: I understand that qualified immunity is a judicially created doctrine that applies to a range of circumstances, including policing. If confirmed, I would welcome the opportunity to work with Congress, as well as other stakeholders and partners, on the issues of qualified immunity and ensuring effective methods of police accountability.

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?

RESPONSE: Yes. Attorney General Garland has explained that he plans to make the First Step Act a priority. If confirmed, I would similarly welcome the opportunity to work with Congress to see that the 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?

RESPONSE: I do not currently have access to information about the operations and internal plans of the Bureau of Prisons. If I am confirmed, I expect to work with the Bureau on any necessary steps needed to fully implement the First Step Act and take other steps to advance these important goals.

3. Which criminal justice policy do you believe is the most important issue that needs to be addressed?

RESPONSE: I agree with Attorney General Garland's view 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.

4. President Biden issued an executive order directing the Attorney General not to extend any contracts for privately operated criminal detention facilities.
 - a. How is the Department of Justice interpreting "privately operated criminal detention facilities?"
 - b. Does this definition apply to pretrial detention by the U.S. Marshals Service? If so, please provide additional information about the decision to limit U.S.M.S. use of privately operated criminal detention facilities.

RESPONSE: Because I am not currently at the Department, I am not familiar with the details of how the Executive Order is being implemented.

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?

RESPONSE: Because I am not presently at the Department, I am not aware of all the relevant facts concerning the Crime Victim’s Fund and what I understand to be the decline in collections; however, I share your concern about this important issue. If confirmed, I would look forward to working with Attorney General Garland to help ensure that the Department of Justice’s victim services remain robust and effective.

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 the Administration on this issue if you are confirmed?
 - a. How would you expect to absorb the detainee population from private facilities into public facilities?

RESPONSE: I am not currently aware of the details of the Department of Justice’s contracts with private prison facilities. If I am confirmed, I expect to work with Attorney General Garland to see that particular policies do not negatively impact the enforcement of our immigration laws or the operation of our detention facilities.

Asylum

1. The Executive Office of Immigration Review will have extensive authorities over the removal process for illegal immigrants. How does the Biden Administration plan to define asylum?

RESPONSE: Providing safe haven to people fleeing persecution is a core legal and moral commitment of this country. The Department of Justice and the State Department have an obligation to apply federal asylum laws. President Biden has committed to restoring the asylum system to be faithful to the laws Congress has enacted, and, if confirmed, I will work to ensure that the Department advances this goal. I would also refer you to President Biden’s Executive Orders concerning immigration policy and enforcement.

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 goals of expanding the definition of asylum to encompass more general acts of crimes committed against individuals?

RESPONSE: In my career, I have not had the occasion to study the scope of asylum laws. If I am confirmed, I would welcome the opportunity to do so. I also understand that the issue to which you refer is the subject of ongoing litigation. If confirmed, I would approach this matter as I would any case, by working with subject-matter experts at the Department, including career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

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?

RESPONSE: Please see my response to Question 2.

4. What will the Biden Administration do to prevent family separations and reunite separated children?

RESPONSE: President Biden’s Executive Orders concerning immigration policy and enforcement provides information on the Administration’s immigration policy and enforcement. I agree with Attorney General Garland, who has expressed great concern at the prospect of children being torn from their parents and called the separation of families “shameful.” We must work to ensure that our country can safely receive, shelter, and transfer unaccompanied children and that the United States’ care of those children is consistent with legal requirements and in the best interest of the children. I share the Attorney General’s commitment to provide all the cooperation that we can to reunite separated children as part of a whole-of-government response.

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?

RESPONSE: I believe that the immigration court backlog presents a direct impediment to ensuring a fair and effective immigration system. If confirmed, I intend to confer with the Department’s career officials to understand what could be done to efficiently review immigration cases while nevertheless ensuring that the system operates consistent with principles of fairness, due process, and applicable law. To the extent the Department requires additional resources to reduce the backlog, I look forward to working with Congress on the issue.

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?

RESPONSE: I agree with Attorney General Garland that the Department of Justice's commitment to protecting public safety includes ensuring the safety and security of our communities by, among other things, promoting policies that enhance trust between law enforcement and those they serve. If I am confirmed, I will seek to ensure that the Department works collaboratively with state and local jurisdictions and law enforcement to advance these goals.

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. The Justice Department changed its position, and the Supreme Court agreed to drop these cases.

What is the Justice Department's current position on whether the federal government has the authority to condition federal grant funds on whether jurisdictions comply with federal immigration law?

RESPONSE: I understand that the matters referenced in the question are the subject of active litigation. Because I am not presently at the Department, I am not familiar with the considerations informing the Department's litigation position.

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?

RESPONSE: I understand that the matters referenced in the question are the subject of active litigation. Because I am not presently at the Department, I am not familiar with the considerations informing the Department's litigation positions. If confirmed, I would approach this matter as I would any case, by working with subject-matter experts across

the federal government, including the Department's career lawyers, in seeking to ensure that the Department undertakes a full and fair review of the facts and an objective analysis of the law.

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?

RESPONSE: Please see my response to Question 1.

3. If you are confirmed, 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, 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

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?

RESPONSE: I share your deep concern about international parental child kidnapping. If confirmed, I would look forward to learning more about this important issue and supporting the Attorney General's efforts to further strengthen the Department's work with left-behind parents and advocacy organizations to return every child kidnapped.

2. In your career how much have you engaged with the issue of parental child abduction either through individual cases or broader policy?

RESPONSE: While I have not had occasion to deal with the specific issue of parental child abduction, I have worked extensively with families of Americans held hostage and unlawfully detained abroad. I understand the anguish and devastation felt by parents separated from their children in these circumstances. I look forward to studying this important issue if confirmed, and I would also welcome the opportunity to learn more from you and other Members of Congress.

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?

RESPONSE: Please see my answer to Question 2 above. From my prior work with families in other contexts I know the importance of engaging directly with those who are impacted most acutely. I would welcome the opportunity to learn more about this issue from the impacted families.

4. How will you use your position to prevent and resolve cases of international parental child abduction? Will you commit to supporting US Attorneys and DOJ staff to aggressively prosecute cases of international parental child abduction?

RESPONSE: If confirmed, I look forward to supporting US Attorneys in their efforts to vigorously prosecute federal crimes, including those related to international kidnapping cases.

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?

RESPONSE: In his testimony, the Attorney General stated that he plans to assess the Department's current structure and capacity to help ensure that all the tools available to the Department, and its interagency partners, are being put to their best use to prevent and resolve cases of international parental kidnapping. If confirmed, I would look forward to supporting that effort. I have significant experience working through the interagency process from my prior tenure in the federal government—and coordinating that process when I served as Assistant to the President for Homeland Security and Counterterrorism and Deputy National Security Advisor—and I will seek to leverage that experience to more effectively resolve difficult, multi-agency issues, including in this important area.

6. 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 answer to Question 5 above.

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. 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 both the right to freely exercise one's religion and the right to assemble in peaceful protest. Although those rights protect different activities, both rights are fundamental.

2. If you are confirmed, what will you do to protect Americans' right to practice their faith during this incredibly difficult time?

RESPONSE: If confirmed, I will endeavor to faithfully and fairly enforce all federal laws within my purview, including the Constitution and laws that protect religious liberty.

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?

RESPONSE: I have not had occasion to consider any potential legislative amendments to the Religious Freedom Restoration Act. If asked to consider such an amendment, I would be informed by my strong belief in religious liberty. and I would approach this matter as I would any other: by working with subject-matter experts at the Department, including career lawyers, to carefully understand the relevant facts and law.

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 support continuing the Obama Administration's policy of leaving that opinion in place?

RESPONSE: I have not had occasion to consider or study this Office of Legal Counsel opinion. If asked to consider the issue matter, I would approach this matter as I would any other: by working with subject-matter experts at the Department, including career lawyers, to carefully understand the relevant facts and law.

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?

RESPONSE: The Constitution protects the fundamental right to engage in lawful, peaceful protest. The First Amendment protects speech and other expressive activity. It does not protect theft, arson, property damage, or violence.

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 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?

RESPONSE: On policy matters, the role of the Department as an executive agency is to advance the President's policy objectives so long as they are consistent with the law. I know that the President has been a strong advocate of taking steps to reduce gun violence. Like Attorney General Garland, I would not adopt or support any policy that is inconsistent with the law, including the Second Amendment and the laws 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.

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?

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. As to Ms. Clarke, who, like me, is a former prosecutor, I agree with Attorney General Garland that she is a person of integrity and that she is exactly the person we need to run the Civil Rights Division. I am confident that, if she is confirmed, she too will faithfully uphold all the provisions of the Constitution, as the oath requires.

3. What will you do if you are confirmed 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: 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. 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. Like Attorney General Garland, I have no basis whatsoever to believe that Ms. Clarke would use her position 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?

RESPONSE: I am not currently aware of the Department resources available for these purposes. As a general matter, like Attorney General Garland, I am very supportive of law enforcement using technology appropriately and effectively to respond to crime. If confirmed, I look forward to learning more about ways the Department can provide appropriate support to local law enforcement while protecting civil liberties.

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?

RESPONSE: In my prior time in government, I worked extensively on efforts to secure the release of those wrongfully detained abroad. I have seen close up the pain felt by the loved ones of those detained. While this matter arose after I left government and so I am not privy to all of the relevant facts, I understand the Attorney General has committed to reviewing the matter, and I look forward to assisting his efforts as appropriate.

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?

RESPONSE: As indicated in your question, I understand that the Department of Justice has enacted regulations that govern when settlements may properly include payments to third parties. See 28 C.F.R. § 50.28. This regulation was adopted after I left government, and so I am unfamiliar with the particulars of the policy. If I am confirmed, I would carefully consider the matter as appropriate, including both the reasons why this practice developed and the reasons why it was changed.

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?

RESPONSE: I have not had occasion to study the current Corporate Enforcement Policy in detail, but I am committed to the vigorous enforcement of federal anti-corruption laws. If I am confirmed, I will look forward to consulting with the relevant Department officials to learn more about the corporate enforcement policy and other efforts to foster compliance and cooperation with the Department and to identify ways in which such efforts might be further supported or improved.

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?

RESPONSE: The memos you reference were issued after I left the Department, and I have not had occasion to study them or the corresponding provisions of the Justice Manual. I agree with Attorney General Garland, however, that enforcement actions must be based on a violation of a statute or a legislative rule that has the force and effect of law, and that the violation of a guidance document cannot, by itself, form the basis for an enforcement action. Nevertheless, guidance documents may serve valuable functions like advising the public about how an agency understands and likely would apply the statutes it administers.

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?

RESPONSE: I agree with Attorney General Garland that the False Claims Act, and its qui tam provisions, play a critical role in the federal government's effort to fight fraud and abuse involving federal funds. I have not had the occasion to study this issue in detail but, if I am confirmed, I would welcome the opportunity to do so and to work with your office on it.

National Drug Takeback Day

In 2020, the DEA was only able to hold one National Drug Take Back Day due to COVID-19. The need for the Take Back program is evidenced by the fact that, despite the pandemic challenges, the DEA collected nearly 493 tons of unwanted or expired medication that had been disposed of in more than 4,500 collection sites across the country.

These are a great example of the private sector, local communities, the States, and federal authorities all working together to address a national problem. The DEA recently announced the next Take Back day will be April 24th. But extreme stress Americans are dealing with during the COVID-19 pandemic and with many children still at home where these drugs might be more accessible, I suggest you consider scheduling additional Take Back days this year.

If confirmed, will you commit to: examining the important role the DEA plays in helping the public dispose of these drugs; work with the DEA and others to schedule additional Take Back days are warranted and feasible; and determine what, if anything, is needed to schedule more?

RESPONSE: I share your concern with how COVID-19 has affected our law enforcement efforts, including the important work of the DEA in partnering with our local communities to address prescription drug abuse. Americans require a safe and effective means to dispose of expired or unwanted prescription medication. If confirmed, I would look forward to examining in greater depth these issues, including about scheduling further National Take Back Days.

Senator Blackburn

Responses to Questions from Senator Blackburn to Lisa O. Monaco, Nominee to be Deputy Attorney General

1. Reports indicate China is behind the latest cyberattack on Microsoft Exchange customers that infected tens of thousands of American businesses, government offices and schools. The United States is facing a litany of state-linked, state-supported cyberattacks targeting American businesses and government agencies from foreign enemies, and these attacks put our national security secrets and sensitive technology at risk. How do you plan to manage or mitigate the ever-growing threat of cyber-espionage moving forward?

RESPONSE: Combatting cybercrime and cyber-enabled espionage has long been a focus of my career. When I had the privilege of serving as the Assistant Attorney General for National Security, I elevated cybersecurity as a top national security priority, with a particular emphasis on the pursuit of nation-state cyber hackers. To further that work, I created the first nationwide network of national security cyber specialists in U.S. Attorneys' offices around the country. I also oversaw the investigation that led to the first-ever U.S. criminal charges against members of the Chinese People's Liberation Army for cyber espionage targeting U.S. companies.

If confirmed, I would prioritize receiving a full briefing on vulnerabilities in U.S. cyber infrastructure and recent cyberattacks, including the latest cyberattack on Microsoft Exchange customers. As a general matter, because nation-state cyberattacks can represent a foreign intelligence threat, a threat to our economic security, and a criminal matter, I support the adoption of a cross-sector, multilateral approach to investigating, disrupting, and deterring such cyber-attacks. I would also ensure that our nation's law enforcement and intelligence community are given the tools and training necessary to collect evidence and gather intelligence, attribute attacks, and bring malicious cyber actors to justice.

2. Federal law enforcement agencies have aggressively worked to disable "dark web" marketplaces such as the Silk Road to curtail criminals from acquiring controlled substances, guns, and other dangerous contraband. More must be done as other sites emerge and it becomes easier to carry out illicit transactions through digital currencies. How will you ensure that DOJ partners with the Department of Treasury to strengthen the cryptocurrency enforcement framework?

RESPONSE: Throughout my career, I have supported an all-tools, multilateral approach to combating cybercrime. I understand that the Department has continued to pursue this approach with regards to cryptocurrency enforcement, including bringing charges against two different defendants last month for participation in cryptocurrency schemes. Both prosecutions followed joint investigations by the FBI and IRS, and I consider those sorts of interagency partnerships critical to combatting cyberthreats.

If confirmed, I would look forward to reviewing the Department's efforts in this space and how the Department can continue improving interagency and international partnerships,

including with the Department of Treasury, to counter illicit transactions through digital currencies.

3. Today, the United States struggles with an unprecedented drug epidemic. According to the National Institute on Drug Abuse, nearly 50,000 people in the U.S. died due to an opioid related overdose in 2019. U.S. Customs and Border Protection seized more than 2,000 pounds of fentanyl which is more than enough to poison the entire American population. The culmination of prescription opioid drug misuse and illegal drug trafficking of methamphetamines, cocaine, heroin and cannabis has created a plethora of options for drug abusers. If confirmed as Deputy Attorney General, how do you plan address this public health emergency and to combat the domestic and international trafficking of illegal drugs?

RESPONSE: The opioid epidemic is one of the most pressing problems in this country. I believe we need a comprehensive response at the federal, state, and local levels—and one that uses not only enforcement, but also prevention, early intervention, and treatment for individuals suffering from substance use disorders, and that provides reentry services so that individuals do not relapse. That will involve continuing to work with our domestic and international partners to disrupt and dismantle the cartels and their supply chains, take down dark markets, and prosecute dangerous criminal enterprises, while also enforcing the law against manufacturers, distributors and diversionary pill mills that flout medical guidelines and fuel harmful addictions. If confirmed, I would prioritize efforts to stop fentanyl and synthetic opioids from flooding our communities.

4. Do you believe in defunding police services in order to reallocate resources to other government services?

RESPONSE: I do not support defunding the police. I believe that law enforcement has a difficult job and police departments should have the resources they need to do their job safely, well, and accountably, and in a way that builds community trust. I also support giving communities mental health and other resources so that police can do the job they are trained to do.

5. 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 Deputy Attorney General, will you promote a similar reenactment of these types of gun bans through the Bureau of Alcohol, Tobacco, Firearms and Explosives?

RESPONSE: I know that the President has been a strong advocate of taking steps to reduce gun violence. On policy matters, the role of the Department as an executive agency is to advance the President's policy objectives so long as they are consistent with the law.

6. Will you aggressively prosecute illegal reentry cases if you are confirmed as Deputy Attorney General, and how will you do so?

RESPONSE: If confirmed, I will faithfully and fairly enforce the law, consistent with public safety needs and resource constraints.

7. As Deputy Attorney General, how do you plan to address the law enforcement needs in cities experiencing a surge in violent crime and a spike in murder rates?

RESPONSE: I am aware of indications of rising violent crime in too many of our communities and am deeply concerned about it. Addressing surges in violent crime must be a top priority of the Justice Department. In particular, I would look forward to meeting with our federal law enforcement agencies and our state and local law enforcement partners to understand what is driving these trends and evaluate the Department’s current violent crime initiatives. If confirmed, I will ensure the Department works with these partners—as well as the communities most impacted by this violence—to take concrete steps to stem this tide.

8. What are some legal obstacles to President Biden’s proposal of maintaining marijuana’s status as a federally controlled substance while decriminalizing minor possession and expunging prior conviction records?

RESPONSE: I share Attorney General Garland’s view that it is important to focus our attention on violent crimes and other crimes that greatly endanger our society, and that prosecutions for simple marijuana possession are not an effective use of limited resources. I also share Attorney General Garland’s view that 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.

9. 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 (DOJ) 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 able to find needed capacity that meets federal requirements and standards for detainees, including the requisite level of medical care. 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 details of the contracts the Bureau of Prisons or the U.S. Marshals Service have with privately owned facilities. As Attorney General Garland has explained, the Department will work to ensure that the operations of the U.S. Marshals Service are not negatively impacted.

10. 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 details of the contracts the Bureau of Prisons or the U.S. Marshals Service have with

privately owned facilities. As Attorney General Garland has explained, the Department will work to ensure that the operations of the U.S. Marshals Service are not negatively impacted.