



Department of Justice

DEPARTMENT OF JUSTICE RESPONSES

To

**QUESTIONS FOR THE RECORD FROM
THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY**

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE PATRICK LEAHY**

1. In September the Senate Judiciary Committee held a hearing to examine the Justice Department Inspector General’s report on the FBI’s unacceptable handling of the Larry Nassar investigation. While the Justice Department initially declined to bring charges against the FBI agents involved in this investigation, I was encouraged to learn that the Department is now reviewing that declination decision based on “new information that has come to light.”
 - a. Attorney General Garland, do you have any updates with regard to that review and its timeline?

RESPONSE:

As the Deputy Attorney General testified before the Senate Judiciary Committee on October 5, 2021, the Assistant Attorney General for the Criminal Division, Kenneth Polite, undertook a review of the September 2020 decision not to bring federal criminal charges against two former FBI special agents in connection with their involvement in the FBI’s investigation of Lawrence Nassar. The Criminal Division’s review was led by experienced prosecutors who carefully reviewed and analyzed the evidence gathered in the investigation. On May 26, 2022, the Criminal Division’s decision to adhere to its prior decision not to bring federal criminal charges was made public.

The Criminal Division’s decision does not in any way reflect a view that the Justice Department condones the conduct of the former agents; nor does it reflect a view that the investigation of Lawrence Nassar was handled as it should have been. As I have testified before Congress, the institutional failures here are unspeakable and quite apparent.

2. Key provisions related to the Foreign Intelligence Surveillance Act (FISA) authorized under the USA FREEDOM Act have expired. Congress must not only reauthorize these authorities but reform them. That includes the pro-civil liberties reforms made by the Lee-Leahy amendment that garnered 77 votes last Congress, would strengthen the amici process, and improve the disclosure of exculpatory evidence in the FISA court system.
 - a. During your confirmation hearing, you spoke about serious problems with the FISA application process, something we learned from the DOJ Inspector General’s recent report. Will you commit to working with Senator Lee and me to pursue FISA reforms to provide greater protections to the civil liberties of all Americans?

RESPONSE:

The Justice Department welcomes the opportunity to work with you and Senator Lee on this issue. An important way to maintain the public’s trust in the use of the Foreign Intelligence Surveillance Act is to ensure adherence to the civil liberties protections built into the Act.

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE CORY BOOKER**

1. According to press reports, President Biden is using his clemency authority to commute the sentences of a subset of people on home confinement. A memo sent on September 10, 2021, from the Bureau of Prisons (BOP) and correspondence with the Office of Pardon Attorney confirmed that the Biden Administration currently is expediting clemency consideration for people on home confinement who have between 18 and 48 months remaining on sentences for nonviolent drug offenses.
 - a. What is the Department of Justice (DOJ) doing to ensure that clemency petitions are quickly reviewed and transferred to the President? What specific aspects of the clemency process have been expedited?
 - b. The Office of the Pardon Attorney has a large backlog of cases—roughly 15,000 petitions for pardon or commutation are currently pending. What is DOJ doing to expedite the clemency petitions pending for people on home confinement under the CARES Act?

RESPONSE:

Individuals on home confinement under the CARES Act for non-violent drug offenses who have between 18 and 48 months remaining on their sentences are eligible for the expedited screening program. However, the Office of the Pardon Attorney continues to accept and process clemency petitions from all eligible individuals. In all cases, clemency review is individualized and includes an assessment based on a totality of relevant and appropriate factors. Individuals who have been identified as meeting the parameters of the expedited screening program who submit commutation petitions using the standard form receive priority consideration. On April 26, 2022, the President granted clemency to 78 individuals, including three pardons and 75 commutations.

In addition, with respect to individuals on home confinement under the CARES Act, on December 21, 2021, the Office of Legal Counsel issued an opinion concluding that section 12003(b)(2) of the CARES Act and the Bureau’s preexisting authorities give the Bureau discretion to permit prisoners on extended home confinement to remain there even after the COVID-19 national emergency ends.

In light of that opinion, I have directed that the Department engage in a rulemaking process to ensure that the Department lives up to the letter and the spirit of the CARES Act. The proposed rule is presently under review. The Department will exercise its authority so that those who have made rehabilitative progress and complied with the conditions of home confinement, and who in the interests of justice should be given an opportunity to continue transitioning back to society, are not unnecessarily returned to prison.

2. The decision to limit expedited clemency review will exclude many individuals transferred to home confinement as a result of the CARES Act. While everyone transferred was convicted

of a nonviolent offense, many are serving sentences for non-drug-related offenses or have sentences with more than 48 months remaining.

Why are individuals with nonviolent offenses being excluded from clemency review if they have non-drug-related offenses or greater than 48 months remaining on their sentence?

RESPONSE:

Individuals on home confinement under the CARES Act for non-violent drug offenses who have between 18 and 48 months remaining on their sentences are eligible for the expedited screening program. However, the Office of the Pardon Attorney continues to accept and process clemency petitions from all eligible individuals. In all cases, clemency review is individualized and includes an assessment based on a totality of relevant and appropriate factors.

3. One of the pillars of the First Step Act is that it enables individuals who are incarcerated in BOP facilities to, under certain circumstances, earn increased time in pre-release custody—that is, to move from prison to a halfway house or home confinement. This serves both the individuals and society as it encourages participation in recidivism-reduction activities such as educational programs or prison jobs. It has been reported that DOJ in some cases has denied individuals earned time credits because the programs they participated in did not qualify, and that DOJ is reviewing the list of qualifying programs.
 - a. Can you describe the implementation of earned time credits and DOJ’s review of qualifying programs? What are the criteria for determining whether a program qualifies for earned time credits?
 - b. Is DOJ making efforts to ensure that the programs are as robust as possible in order to encourage participation and help reduce recidivism?
4. BOP recently reopened a comment period for a proposed rule that would revise its procedures regarding time credits. Specifically, the proposed rule would limit eligibility of earned time credits under the First Step Act for D.C. Code Offenders. The First Step Act specifically included people in BOP custody as covered by the First Step Act. What is DOJ’s position on this issue?

RESPONSE:

On January 13, 2022, the Department of Justice announced that a new rule had been submitted to the Federal Register implementing the Time Credits program required by the First Step Act (FSA) for persons incarcerated in federal facilities who committed nonviolent offenses. The final rule can be viewed here:

<https://www.federalregister.gov/documents/2022/01/19/2022-00918/fsa-time-credits>. In

April, the Department released the 2022 FSA Annual Report, which describes application of the new time credits rule at section 2(B)(4). The report can be viewed here:

<https://www.ojp.gov/first-step-act-annual-report-april-2022>.

Inmates are eligible to earn time credits retroactively back to Dec. 21, 2018, the date the First Step Act was enacted, subject to a Federal Bureau of Prisons' (BOP) determination of eligibility. Eligible inmates may earn 10 to 15 days of time credits for every 30 days of successful participation in Evidence Based Recidivism Reduction Programs and Productive Activities.

BOP reports that time credits earned through programming by eligible inmates are tracked. The earned credits can be applied toward earlier placement in pre-release custody, such as Residential Reentry Centers (RRC) or home confinement (HC). Additionally, at the BOP Director's discretion, up to 12 months of credit can be applied toward Supervised Release (SR).

BOP advises that implementation of the time credits rule is occurring on a rolling basis, beginning with immediate releases for inmates whose time credits earned exceed their days remaining to serve, are less than 12 months from release, and have a SR term. Accordingly, the BOP reports that it has been transferring eligible inmates out of BOP facilities and into RRC, HC, and SR since the time credits rule was finalized and many more transfers will take place as BOP calculates and applies time credits for eligible incarcerated individuals.

To determine which programs qualified for FSA Time Credits, BOP advises that experts reviewed the scientific literature on each program and assigned them to the appropriate category based on the FSA's statutory definitions. Additionally, an external vendor was used to independently assess programs submitted for consideration by outside entities. BOP reports that it offers a wide variety of programs applicable to the FSA. For instance, more than 80 programs have been approved and published in the FSA Program Guide. All of these approved programs were designed to address one or more of the BOP's 13 defined needs areas.

BOP reports that it has utilized FSA funds to build new programming in areas where there is a high demand. Examples of ongoing work include new programs for inmates with serious mental illness and those requiring structured family engagement. BOP has also been focused on building capacity in its programs through adding staff.

To assess program outcomes, the BOP reports that it has partnered with contract researchers. Three solicitations were announced in 2021, and program evaluation work has commenced. Both long- and short-term metrics are being used to assess not only recidivism impacts, but effects on other variables of interest such as symptom reduction and behavioral change.

5. When George Floyd was murdered by a police officer in Minneapolis, thousands of people took to the streets demanding an end to the police violence. Since then I have worked with my colleagues in Congress, with civil rights organizations, and with some of the largest law enforcement organizations in the country to find a common ground to address the historic and systemic issues of police misconduct. One area of broad agreement is that there is no public data about how many people are killed by police or how often police use excessive

force. Law enforcement officials believe there is value in having this data so that they can identify harmful practices and address them. Yet we have no way of knowing the full picture because, unlike with the Uniform Crime Reporting program, there is no uniform system for collecting and reporting data. In 2015, the Federal Bureau of Investigation (FBI) began developing a national police use-of force database, and, in 2019, it started collecting data from police departments. The FBI is supposed to make the data public, but right now none of the data from nearly 5,000 departments that have voluntarily reported have been published. When will the data on use-of-force incidents that DOJ and FBI have collected be made public?

RESPONSE:

Pursuant to the requirements of the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3521, the Office of Management and Budget (OMB) reviews and approves federal agencies' requests to implement data collection efforts. With respect to the FBI's National Use-of-Force Data Collection, OMB has stipulated that the FBI must achieve participation from law enforcement agencies representing at least 60% of all sworn law enforcement officers in the United States in order to publish data on use-of-force incidents. On May 31, 2022, the FBI released 2021 data based on a participation level of 63%. The FBI also released 2022 first quarter data. See <https://www.fbi.gov/news/press-releases/press-releases/fbi-releases-2021-and-first-quarter-2022-statistics-from-the-national-use-of-force-data-collection>.

6. The data that the FBI currently collects is small. It is limited to uses of force that result in death or serious bodily injury, but that doesn't give us a full picture of the incidents—that is, we want to know whether an officer inappropriately used deadly force even if the person was lucky enough to survive. And we want to know when kids are being mistreated. A study that was released just last week of 3,000 use-of-force incidents across 25 law enforcement agencies found that children under 16 made up more than 50% of those who were handled forcibly, even though they make up 15% of the population. Kids as young as 6 were handcuffed, stun gunned, and pinned to the ground. Those statistics are alarming.
 - a. Does DOJ plan to expand and improve the quality of the data collected?
 - b. Is DOJ working with law enforcement agencies to help facilitate reporting?

RESPONSE:

With respect to efforts to expand and improve data submission by law enforcement agencies, the FBI advises that on January 1, 2021, it fully transitioned to a new system, known as the National Incident-Based Reporting System (NIBRS), to collect and disseminate comprehensive data relative to crimes committed within the United States on an annual basis. The NIBRS collects more comprehensive crime data than the prior system, making it a more effective tool for law enforcement, policymakers, and analysts to understand crime and make better informed decisions. The FBI reports that this transition has provided greater context at the national level to allow the FBI and its contributing agencies to identify and address evolving crime issues.

In July 2021, the FBI made another new system – NIBRS Collection Application (NCA) – available to non-transitioned states and local agencies. NCA enables users to directly enter and submit crime data to the FBI for processing, retention, and publication.

The FBI reports that it continues to focus on stakeholder engagement with state law enforcement agencies to help ensure violent crime and other crime data are available to the law enforcement community and other users. The FBI also advises that it is assisting with state-based data transition efforts by making resources available such as technical assistance, data integration support, training.

7. DOJ grants to law enforcement support law enforcement agencies' efforts to acquire and use new technologies. Civil rights groups have raised concerns that these technologies rely on algorithms that replicate and exacerbate racially discriminatory practices. How has DOJ exercised oversight and accountability mechanisms to ensure that law enforcement agencies are not using these grant funds on technologies that can effectively exacerbate problems of racial discrimination?

RESPONSE:

On the compliance side, each applicant for a Department of Justice grant must certify prior to acceptance of an award (typically, through the Office of Justice Program's (OJP's) "Certified Standard Assurances" and "General Conditions") that it will comply (and it will require any subrecipient to comply) with applicable civil rights laws and nondiscrimination provisions. The Office for Civil Rights (OCR) at OJP enforces these civil rights laws and nondiscrimination provisions by reviewing and investigating administrative complaints received from individuals or groups who believe that they have experienced discrimination from an organization that receives funding from the Department. If, after evaluation and investigation, it is determined that the complaint has merit, the OCR works with the Department funding recipient to remedy the complaint and ensure compliance.

On the programmatic side, OJP's Bureau of Justice Assistance (BJA), in partnership with the National Police Foundation, plans to embark on a series of executive-level discussions with law enforcement practitioners, community-based organizations, researchers, private sector industry, and other privacy experts to develop guidance around the use of new technologies by law enforcement.

8. Under your tenure, DOJ has opened three pattern-or-practice investigations of police departments, including in Minneapolis, where George Floyd was murdered. The Department has stated that these cases can take anywhere from six months to a year to investigate. There is, however, a case that was opened under 34 U.S.C. § 12601 in December 2016 into the Orange County Attorney's Office and Sheriff's Department systematic violations of defendants' 14th Amendment due process rights that has never been resolved. What is the status of that case and does DOJ have plans to issue findings? Are there other cases that have remained open this long and do you have a plan for resolving them?

RESPONSE:

Longstanding policy and practice of the Department generally prevents us from commenting on any investigations beyond the charging and other public documents.

9. President Biden proposed \$5 billion in community violence prevention funding in his Build Back Better plan. This type of investment in addressing the scourge of gun violence is long overdue and I firmly believe that we cannot address the gun violence epidemic solely through law enforcement. Rather we need effective public safety solutions rooted in crime prevention, community health, rehabilitation, and support for crime victims. What efforts is DOJ making to support community-based violence intervention strategies?

RESPONSE:

In FY 2021, the Office of Community Oriented Policing Services (COPS) prioritized applications for jurisdictions that supported Community Violence Intervention (CVI) programs and that sought to hire officers who would engage directly with CVI teams and other community stakeholders. For example, two areas of focus for the 2021 COPS Hiring Program (a \$156 million program) were gun violence reduction and CVI. In addition, the 2021 School Violence Prevention Program (a \$53 million program) prioritized applicants with high rates of gun violence, with an emphasis on wraparound services for students most likely to engage in, or be victimized by, gun violence.

Similarly, last year, OJP reports that it prioritized existing resources to support CVI strategies. OJP also engaged with the field through a series of listening sessions, which are informing the development of a toolkit to assist communities in developing and enhancing CVI strategies. The Department also coordinated with the White House and other federal agencies to develop a series of webinars on CVI. For FY 2023, the President's Budget requests \$250 million for CVI, an increase of \$200 million over the FY 2022 enacted level.

In FY22, the Consolidated Appropriations Act provided \$50 million in Community Based Violence Intervention and Prevention Initiative (CVIPI). On April 19, 2022, OJP released two solicitations seeking applications for CVIPI. These solicitations are intended to prevent and reduce violent crime in communities by supporting comprehensive, evidence-based violence intervention and prevention programs, including efforts to address gang and gun violence, based on partnerships among communities, residents, local government agencies, victim service providers, community-based organizations, law enforcement, hospitals, researchers, and other community stakeholders.

10. In 2006, the FBI issued a report sounding the alarm bell of the infiltration of white supremacists in law enforcement. Among other things the FBI investigation found that, "Although white supremacist groups have historically engaged in strategic efforts to infiltrate and recruit from law enforcement communities, current reporting on attempts reflects self-initiated efforts by individuals, particularly among those already within law enforcement

ranks.”¹ It also found that infiltration can jeopardize the safety of law enforcement sources and personnel. More recently, a hack exposed law enforcement officers who are members of the anti-government and nativist group the Oath Keepers. This issue is a serious threat to our national security and to the communities that police are sworn to protect and serve.

What steps is DOJ taking to address the infiltration of law enforcement by white supremacists? And is the Department investigating law enforcement affiliations with white supremacy?

RESPONSE:

Taking appropriate steps to help ensure that government employees have integrity, are trustworthy, and do not engage in unlawful acts is very important to us. We have internal vetting processes for employees. For instance, the FBI reports that every new applicant to the FBI is thoroughly vetted by the FBI’s Security Division, which conducts a comprehensive Background Investigation in accordance with applicable Executive Orders and ODNI guidelines. The Department is conducting an internal review, working with all of our law enforcement components, to look at these vetting and background check processes. That review is ongoing.

¹ FBI Counterterrorism Division, FBI Intelligence Assessment, White Supremacist Infiltration of Law Enforcement (Oct. 17, 2006), https://oversight.house.gov/sites/democrats.oversight.house.gov/files/White_Supremacist_Infiltration_of_Law_Enforcement.pdf.

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM RANKING MEMBER CHARLES GRASSLEY**

1. Under your leadership, the Department expunged Andrew McCabe’s record of lying to government officials under oath several times over three different occasions. At the October 27 oversight hearing, you stated that it would have cost more to defend McCabe’s termination, specifically saying: “the assessment made by the litigators was that the bill to the taxpayers would be higher if we didn’t resolve the matter as it was resolved.” Please provide all records relating to the referenced assessment.

RESPONSE:

As I testified before the Senate Judiciary Committee on October 27, 2021, the Department’s settlement with Mr. McCabe was based upon an assessment by experienced attorneys regarding the prospects of success in the case and the likelihood of losing on the merits.

2. At the October 27 oversight hearing, you stated that Susan Hennessey, an employee in the National Security Division, “has nothing whatsoever to do with the [Special Counsel] Durham investigation.”² As you are aware, on June 29, 2021, Senator Johnson and I sent you a letter that raised concerns about Ms. Hennessey’s political bias against the Durham investigation based on negative public comments she made about it and asked whether or not she had been recused from the matter.³ In your July 13, 2021, response letter you failed to say that Ms. Hennessey “has nothing whatsoever to do” with Durham’s investigation and failed to answer all of our questions relating to Ms. Hennessey; namely, whether she has been officially recused from the Durham investigation, including whether or not she has any access to Durham investigation records and the report. As you are also aware, on February 3, 2021, and March 9, 2021, we wrote letters to you with respect to Nicholas McQuaid, the then-Acting Assistant Attorney General for the Criminal Division and current Principal Deputy Assistant Attorney General for the Criminal Division, and his conflicts of interest in the Hunter Biden criminal case.⁴ In those letters, we specifically raised concerns about the fact that Mr. McQuaid worked with Hunter Biden’s criminal attorney until he was hired by the Biden Administration on

² *Oversight of the Department of Justice: Full Committee Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (Oct. 27, 2021), <https://www.judiciary.senate.gov/meetings/10/20/2021/oversight-of-the-department-of-justice>.

³ Letter from Sen. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, & Sen. Ron Johnson, Ranking Member, Permanent Subcomm. on Investigations, to Merrick Garland, Attorney General, U.S. Dep’t of Justice (June 29, 2021), https://www.judiciary.senate.gov/imo/media/doc/grassley_johnson_to_justice_dept.hennesseyconflicts.pdf.

⁴ News Release, On Day One, Biden Installed Law Partner Of Son’s Defense Lawyer At DOJ Criminal Division, Charles E. Grassley (Feb. 3, 2021), <https://www.grassley.senate.gov/news/news-releases/on-day-one-biden-installed-law-partner-of-sonsdefense-lawyer-at-doj-criminal-division>; see also Letter from Sen. Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary, & Sen. Ron Johnson, Ranking Member, Permanent Subcomm. on Investigations, to Monty Wilkinson, Acting Attorney General, U.S. Dep’t of Justice (Mar. 9, 2021), https://www.grassley.senate.gov/download/grassley-johnson-to-justice-dept_mcquaid-follow-up.

January 20, 2021. On February 19, 2021, and March 23, 2021, you failed to provide adequate responses to answer the threshold questions about whether Mr. McQuaid has or had any role in the Hunter Biden criminal case and whether he has been recused from it. In light of your recent testimony, where you found the ability to publicly state that Ms. Hennessey “has nothing whatsoever to do” with the Durham investigation, there is no basis upon which you can continue to refuse to answer these threshold questions relating to Mr. McQuaid:

- a. Does Mr. McQuaid have anything whatsoever to do with the Hunter Biden criminal matter? If so, please explain.
- b. Has Mr. McQuaid been recused from the Hunter Biden criminal matter? If so, when? Please provide all records showing that he is recused.

RESPONSE:

As the Justice Department explained in letters dated February 19, 2021, March 22, 2021, and February 2, 2022, the then-Acting Assistant Attorney General received ethics and professional responsibility training when he entered service at the Department of Justice. He also signed the Ethics Pledge as required under the Executive Order on Ethics Commitments by Executive Branch Personnel (Executive Order 13989), pursuant to which—as well as pursuant to applicable standards set forth in statutes, regulations, and longstanding Department policies and procedures—he is recused from matters in which he has a financial interest or a personal business relationship, including matters involving his former law firm. Beyond that, we cannot comment about the matters on which particular attorneys work.

3. Approximately 80% of all economic espionage prosecutions brought by the Justice Department allege conduct that would benefit the communist Chinese government, and there is at least some nexus to China in around 60% of all trade secret theft cases. In November of 2018, the Trump Justice Department responded to these concerns by unveiling the China Initiative. The Initiative focused on identifying priority trade secret theft cases and ensuring that those investigations are fully resourced; developing an enforcement strategy concerning non-traditional collectors—like members of China’s Thousand Talents Program; and identifying opportunities to better address supply chain threats. Director Wray recently testified that the bureau opens around 700 Chinese espionage investigations a year. Under the Biden administration, the Initiative appears to have been dismantled. In addition, a number of prosecutions brought under the China Initiative were also recently dismissed by the Biden administration. Over a two-day period in July, five prosecutions of researchers were dropped.⁵ These dismissals came days before Deputy Secretary of State Wendy Sherman traveled to China. A prosecution against a Huawei executive was also resolved with a relatively light deferred prosecution agreement.⁶

⁵ Shawna Chen, *DOJ Drops Cases Against 5 Chinese Researchers*, AXIOS (July 24, 2021), <https://www.axios.com/doj-chineseresearchers-china-initiative-56dc2651-15b6-400d-add1-6f46fca7eb88.html>.

⁶ Aaron Katersky, *US Enters Deferred Prosecution Agreement With Detained Huawei Executive Weng Manzhou*, ABC NEWS

- a. Has the Department shut down the China Initiative? If so, why?
- b. The Biden Justice Department seems to be eager to shed these cases and take a much softer and even supportive approach with China. Is the Justice Department going to pursue economic espionage and other misconduct from China aggressively? If so, what metrics can you show Congress to prove it?

RESPONSE:

The Justice Department remains fully committed to enforcing the criminal laws that protect intellectual property, critical and emerging technology, and other national assets essential to our nation’s security and prosperity. And as I testified before the Senate Judiciary Committee on October 27, 2021, the Department places a high priority on countering threats to national assets posed by the government of the People’s Republic of China.

To ensure we do so in a way that is consistent with the foundational values of the Justice Department, and make decisions about prosecutions based on the facts and the law, and not based on race, ethnicity, national origin, or any other improper factor, I asked the Assistant Attorney General for the National Security Division to undertake a review of our approach to countering those threats.

In remarks delivered on February 23, 2022, the Assistant Attorney General described the Division’s new “Strategy for Countering Nation-State Threats.”

4. Under Attorney General Barr, the Justice Department created Joint Task Force Vulcan to specifically combat the deadly violent gang MS-13. Since President Biden’s inauguration, the Justice Department has seemingly made no mention of Joint Task Force Vulcan. Additionally, because your Department hasn’t responded to my oversight letter from early August about MS-13 and Joint Task Force Vulcan, it’s completely unclear what the Department is doing about MS-13.
 - a. Does Joint Task Force Vulcan still exist? If not, why not? If it does exist, what are its current staffing and funding levels, and how do these levels compare to this time last year?
 - b. If the Biden Administration has decided to disband Joint Task Force Vulcan, are there currently any Department-wide task forces or initiatives to replace it? If so, which ones?

RESPONSE:

The work of Joint Task Force Vulcan is ongoing and remains an important piece of the Department’s comprehensive approach to combating the violent criminal activities of MS-13 and other transnational criminal organizations. The Department’s effort to disrupt and defeat MS-13 is also led by experienced and dedicated prosecutors in the Criminal Division’s Organized Crime and Gangs Section (OCGS) and numerous United

(Sept 24, 2021), <https://abcnews.go.com/Business/us-enters-deferred-prosecution-agreement-detained-huaweiexecutive/story?id=80216600>.

States Attorneys' offices in districts with MS-13 presence. Examples of the Department's ongoing efforts to combat MS-13 include but are not limited to:

- *United States v. Miguel Diaz*, in which, on April 25, 2022, an MS-13 leader was sentenced to life in prison for racketeering offenses connected to five murders in Maryland and Virginia. See <https://www.justice.gov/opa/pr/ms-13-leader-sentenced-life-prison-racketeering-offenses-connected-five-murders-maryland-and>.
- *United States v. Rivas Moreiera, et al.*, in which, on April 7, 2022, seven MS-13 members were charged with racketeering conspiracy and murder in aid of racketeering, along with other crimes, related to the planning and execution of a violent attack against rival gang members that resulted in two deaths, two attempted murders, and a nationwide lockdown of all inmates in the Federal Bureau of Prisons (BOP) for almost a week. See <https://www.justice.gov/usao-edtx/pr/7-ms-13-members-charged-double-murder-inside-federal-penitentiary-beaumont-texas>.
- *United States v. Brayan Torres et al.*, in which, on January 7, 2022, a federal judge in the District of Maryland unsealed a superseding indictment charging nine members of MS-13 with racketeering conspiracy involving murder, extortion and money laundering. See <https://www.justice.gov/opa/pr/nine-ms-13-gang-members-indicted-racketeering-conspiracy>.

The Justice Department is committed to continuing its comprehensive effort to combat MS-13 and other dangerous gangs. The Department regularly reviews its various anti-gang initiatives and, when appropriate, will use lessons learned to improve other initiatives or consider structural or operational revisions to ensure that the Department's efforts to defeat transnational criminal organizations are as effective as possible.

5. In September, President Biden issued a vaccine mandate that applies to Executive Branch employees, which includes immigration judges, attorneys, and other employees of the Department of Justice. On September 15, the Department issued a memo stating that all visitors entering DOJ buildings or facilities—except for those entering to “obtain a public service or benefit”—must complete a form attesting that they are fully vaccinated or present a negative COVID-19 test result from within three days prior to entry. Subsequent to that memo, the Executive Office for Immigration Review made a determination that illegal immigrants and their lawyers are visitors entering Department facilities to “obtain a public service or benefit” and are, therefore, exempt from the mandate.
 - a. Why are American employees subject to harsher rules than illegal immigrants and their lawyers?

- b. Do you agree with one Justice Department official quoted in the media that “a double standard undermines the rationale for the vaccine mandate and puts everyone at risk?”⁷

RESPONSE:

EOIR advises that it is balancing the competing needs of public service and public health. EOIR takes seriously its roles to both protect the health and safety of the individuals within its space while also ensuring all individuals are provided with appropriate due process under the law. In light of EOIR’s need to balance its mission with the public health issues associated with the pandemic, EOIR has adopted a measured approach to the COVID-19 testing and vaccination requirements. EOIR continues to adapt and adjust to new and changing local, state, and federal guidance concerning COVID-19 protocols.

6. I condemn all forms of domestic terrorism – right or left. Public concerns have been raised about the unequal treatment of those who rioted in the summer of 2020 and those who were present at the Capitol riot on January 6. This concern is echoed by a federal judge assigned to various January 6 cases. U.S. District Court Judge Trevor McFadden questioned why federal prosecutors had not brought more cases against those accused in the 2020 summertime protests, and suggested that DOJ was being too hard on January 6 defendants compared to those who were arrested during the protests following George Floyd’s murder. Further, U.S. District Judge Royce C. Lamberth found that a January 6th defendant’s civil rights had been abused with a severe delay for surgery for a broken wrist and referred the matter to the Attorney General for investigation. By contrast, the Department has dismissed many cases related to the riots at the federal courthouse in Portland, Oregon. In June, I wrote to you regarding the dismissal of more than half of the federal prosecutions regarding the assault on the courthouse. The Department has failed to respond. This can’t be stressed enough: the facts and the law must be applied equally in order for the public to keep faith in it. And the rule of law must stand even for the most unpopular defendants.
 - a. What are you doing to build the Department’s expertise in its neglected, left-wing anarchist extremism program?
 - b. What are you doing to prove that you’re treating rioters who attack government buildings the same?

RESPONSE:

The Department is committed to investigating, disrupting, and bringing to justice those who engage in violence in violation of federal law, regardless of any underlying ideology. The FBI, working with state and local law enforcement, has opened and continues to pursue investigations involving violent activity. U.S. Attorneys’ offices in multiple jurisdictions have brought charges where the facts show that a federal crime has been

⁷ Stephen Dinan, *Illegal Immigrants Exempt From DOJ’s Vaccine Mandate At Deportation Hearings*, THE WASHINGTON TIMES (Oct. 20, 2021), <https://www.washingtontimes.com/news/2021/oct/20/illegal-immigrants-exempt-doj-vaccine-mandate-dep/>.

committed. In cases where crimes fall exclusively within state or local jurisdictions, the Department provides regular assistance as appropriate.

The Justice Department has dedicated substantial investigative and prosecutorial resources from components across the Department and in dozens of jurisdictions nationwide to bring charges in numerous cases in connection with violence during the summer and fall of 2020 that was aimed at government institutions.

The Justice Department has and will continue to aggressively pursue those who engage in violent criminal activity such as the destruction of property and violent assaults on law enforcement.

7. On August 31, 2021, the U.S. completed the total withdrawal of American military and diplomatic forces from Afghanistan. There is a concern that Afghanistan will now turn into the same type of safe haven for terrorism that allowed the 9/11 hijackers to plan and train there at will. On September 28, 2021, I sent an oversight letter to the Department about their efforts to identify and stop Afghanistan “traveler” cases, where individuals might travel to Afghanistan and become radicalized against the U.S. Director Wray publicly stated at the Homeland Security Committee’s Worldwide Threats Hearing that Afghanistan could become a safe haven.⁸ We must do what we can to ensure that ISIS or other terror groups do not use Afghanistan as a safe haven to recruit and train Americans as radicalized lone wolf terrorists.
 - a. Has the Department seen any uptick in terrorism “traveler” cases to Afghanistan, or anywhere else, since the U.S. withdrawal earlier this summer?
 - b. Has the Department taken any new steps or instituted any new measures since the U.S. withdrawal from Afghanistan to address the possibility of traveler cases abroad given the near certainty that Afghanistan will revert into a pre-9/11 terrorism safe haven?

RESPONSE:

Combating terrorist threats is one of the Justice Department’s highest priorities. The Department will continue to devote all needed and appropriate resources to respond to a wide range of terrorism threats, including threats posed by those who seek to travel abroad to join terrorist groups.

The FBI reports that it has worked closely with the U.S. Intelligence Community (USIC), Customs and Border Protection, and international partners to track threat reporting emanating from Afghanistan and monitor any travel of FBI subjects and individuals potentially associated with foreign terrorist organizations (FTOs) in the region. The FBI also reports that it monitored our investigations for homegrown violent extremist (HVE) reactions to the Afghanistan withdrawal and worked with the National Counterterrorism

⁸ *Threats to the Homeland: Evaluating the Landscape 20 Years After 9/11: Full Committee Hearing Before the S. Comm. on Homeland Security & Governmental Affairs, 117th Cong. (Sept. 21, 2021)*, <https://www.hsgac.senate.gov/hearings/threats-to-thehomeland-evaluating-the-landscape-20-years-after-9/11>.

Center (NCTC) and the Department of Homeland Security (DHS) to develop indicators to help identify an increased HVE threat to the United States.

In addition, the FBI advises that it continues to track all threat reporting emanating from Afghanistan for any potential threats to the United States from FTOs in coordination and collaboration with the Intelligence Community. The FBI continues to work with domestic and international partners to track threat reporting from Afghanistan.

8. Recently released emails appear to show that Hunter Biden and Joe Biden may have shared joint bank accounts.⁹ Given the fact that Hunter Biden is under criminal investigation by the Department relating to financial matters, what are the conditions under which a special counsel would be warranted? In addition, have you ever discussed the Hunter Biden criminal case with President Biden or anyone in the White House?

RESPONSE:

Longstanding policy and practice of the Justice Department generally prevents us from commenting on or confirming or denying the existence of any investigation.

9. On July 20, 2021, I wrote a letter to the Department with respect to a July 5, 2016, FBI Electronic Communication (EC) from the Washington Field Office, which showed that the FBI conducted an “assessment” on the non-profit group, Concerned Women for America (CWA). That assessment was publicly reported on July 14, 2021.¹⁰ The EC noted that the assessment was done “to determine the possibility of fraudulent activity” relating to “embezzlement” and “corporate fraud” and also noted an “[i]ntelligence” aspect to the FBI’s review.¹¹ Much of the EC is redacted; however, the unredacted portions cause serious concern about the FBI potentially targeting CWA without a sufficient basis. For example, the EC notes that part of the predicate for the assessment included the fact that CWA allegedly received a score of 70.45 from Charity Navigator and an alleged two-star rating. The EC also noted that the FBI could not locate any derogatory information on CWA and its officers in what may be searchable government databases, which are blocked by redactions. The EC concludes with a recommendation that the FBI not open an investigation into CWA. The Department has failed to respond to my letter.
 - a. Please provide a complete and unredacted copy of the July 5, 2016, FBI Electronic Communication on CWA.
 - b. Please provide a full description of all activities the FBI engaged in with respect to CWA and what the FBI believed to be the authorized purpose to engage in such activity.

⁹ Fox News Staff, *Turley: There Are Now Serious Questions About A Biden Family ‘Influence-Peddling Operation’*, FOX NEWS (Oct 13, 2021), <https://www.foxnews.com/media/joe-hunter-biden-finances-influence-peddling-investigation-turley>.

¹⁰ Patrick Eddington, *The FBI’s Unjustified Targeting of Concerned Women for America*, THE ORANGE COUNTY REGISTER (July 14, 2021), <https://www.ocregister.com/2021/07/14/the-fbis-unjustified-targeting-of-concerned-women-for-america/>.

¹¹ *Id.*

- c. On what date did the FBI begin the assessment of CWA and why? On what date did the FBI close the assessment?
- d. Please provide all Electronic Communications and related records, including 302s, with respect to CWA.
- e. Please provide a list of all agencies that the FBI interfaced with during its assessment of CWA.
- f. For each year dating back to January 1, 2016, how many “assessments” did the FBI perform? Please provide a list for each year and note what type of assessment was conducted and the party subject to the assessment.

RESPONSE:

I understand that the FBI responded to your letter on December 10, 2021. As that letter noted, with respect to your questions regarding particular assessments, longstanding policy and practice of the Department generally prevents us from commenting on or confirming or denying the existence of any investigation or sharing criminal subject or victim information.

10. On June 9, 2021, I wrote to you requesting information relating to the FBI’s relationship with the Department of Commerce’s (DOC) Investigations and Threat Management Service (ITMS). As I noted in my letter, I am concerned about ITMS’s rogue intelligence and law enforcement activity. On September 3, 2021, the DOC Office of General Counsel released a report titled, “Report of the Programmatic Review of the Investigations and Threat Management Service.”¹² In the report, the DOC found that ITMS did not possess adequate legal authority to investigate an array of criminal activity it sought to address.¹³ For example, ITMS neither had the authority to submit or execute search warrants nor conduct counterintelligence investigations, yet it did so anyway.¹⁴ As a result of the totality of ITMS’s conduct, the DOC recommended the elimination of the entire ITMS unit and to redistribute the remaining responsibilities to other units within the DOC.¹⁵

On August 27, 2021, the FBI provided a response to my June 9, 2021, letter. In that letter, the FBI stated that it participated in ITMS-led briefings “regarding ongoing cybersecurity concerns and potential investigative cases” with respect to the 2020 Census. However, the letter failed to provide any detail or context with respect to those

¹² U.S. DEP’T OF COMMERCE, OFFICE OF THE GENERAL COUNSEL, REPORT OF THE PROGRAMMATIC REVIEW OF THE INVESTIGATIONS AND THREAT MANAGEMENT SERVICE (Sept. 3, 2021), [20210903-ITMS-Report.pdf \(commerce.gov\)](https://www.commerce.gov/sites/default/files/20210903-ITMS-Report.pdf).

¹³ *Id.* at 7–8.

¹⁴ *Id.* at 11, 14–15, 24. *See also* U.S. SENATE COMMERCE COMMITTEE MINORITY STAFF, COMMITTEE INVESTIGATION REPORT: ABUSE AND MISCONDUCT AT THE COMMERCE DEPARTMENT (July 2021), <https://www.commerce.senate.gov/services/files/C4ABC46A-7CB0-4D51-B855-634C26E7CF70>.

¹⁵ U.S. DEPARTMENT OF COMMERCE, OFFICE OF GENERAL COUNSEL, REPORT OF THE PROGRAMMATIC REVIEW OF THE INVESTIGATIONS AND THREAT MANAGEMENT SERVICE, at 7, 24 (Sept. 3, 2021), [20210903-ITMS-Report.pdf \(commerce.gov\)](https://www.commerce.gov/sites/default/files/20210903-ITMS-Report.pdf).

concerns and cases. In addition, the letter noted that the FBI provided “analytical and investigative assistance to ITMS” but failed to provide any detail with respect to those efforts.

Moreover, the letter also noted that the FBI “passively receives criminal referrals from ITMS,” but failed to provide any documentation or information relating to those criminal referrals. In light of ITMS’s brazen use of false authority to conduct law enforcement and intelligence activity and the clear relationship between the FBI and ITMS, please provide the following information:

- a. A list of all briefings FBI attended with ITMS relating to “ongoing cybersecurity concerns and potential investigative cases” with respect to the 2020 Census. In the list, please provide the date the briefing took place, the title, the subject matter to be discussed, attendees and all supporting documentation. If the FBI participated in briefings or similar activity with ITMS outside the scope of “ongoing cybersecurity concerns” and “potential investigative cases” relating to the 2020 Census, please provide the same information.
- b. With respect to the FBI’s provision of “analytical and investigative assistance to ITMS,” please describe, in detail, what that assistance was for, when the assistance was provided, what assistance was provided and all supporting documentation.
- c. With respect to FBI’s statement that it “passively receives criminal referrals from ITMS,” please describe the process and purpose for which the FBI receives these “passive criminal referrals.” In addition, please provide a list of all criminal referrals, passive or otherwise, that ITMS provided to the FBI and a description of the activity that the FBI engaged in with respect to each referral.

RESPONSE:

Longstanding policy and practice of the Justice Department generally prevents us from commenting on or confirming or denying the existence of any investigation. However, as a general matter, the FBI is the lead federal agency for investigating cyberattacks and intrusions. The FBI relies on our unique mix of authorities, capabilities, and partnerships to impose consequences against our cyber adversaries. And the Department collects and shares intelligence and engages with victims while working to unmask those committing malicious cyber activities, wherever they are.

The FBI advises that it participated in ITMS-led briefings regarding ongoing cybersecurity concerns and potential investigative cases with respect to the 2020 Census. At that time, the FBI reports that ITMS provided briefings to the working group regarding ongoing cybersecurity concerns and potential investigative cases.

In accordance with the FBI’s Domestic Investigations and Operations Guide, the Attorney General’s Guidelines for Domestic FBI Operations, and other applicable laws and guidance, the FBI predicates investigations of individuals based on an allegation or

information indicating that a federal crime or a threat to national security has occurred or may occur in the future.

The Justice Department respectfully refers you to the Department of Commerce for additional information regarding ITMS.

11. On June 8 of this year, the news website ProPublica began publishing a series of articles that appear to be based upon confidential taxpayer information that was leaked or hacked from the Internal Revenue Service. Almost immediately, Treasury Secretary Yellen stated that the matter had been referred to the Department of Justice, among other law enforcement entities. With other Senators, I sent two letters to the Department asking for an investigation and asking several questions. The Department of Justice responded to both letters with a single form letter providing no information beyond “Department policy will preclude us from providing your office with any information related to this matter outside the public record.” This response is wholly inadequate and the American taxpayer deserves more accountability.
 - a. Do you agree that the leak or hack of confidential taxpayer data from the IRS is a serious issue and the investigation of this matter should be a priority for the Department of Justice and the FBI?
 - b. Do you agree or disagree with the response of the IRS in a letter of September 13 to myself and Senator Crapo that, “We do not yet know whether there has been a data breach or a threat of a data breach”?

RESPONSE:

Longstanding policy and practice of the Justice Department generally prevents us from commenting on or confirming or denying the existence of any investigation. However, as a general matter, the Justice Department takes seriously any allegation of the disclosure of confidential taxpayer information. The Secretary of the Treasury has testified that the Internal Revenue Service is looking into this matter, as is the Treasury Inspector General for Tax Administration.

12. On October 6 of this year, I sent a letter to the Department and to the Bureau of Alcohol, Tobacco, Firearms and Explosives asking questions to follow-up on reporting that ATF had improperly assigned law-enforcement personnel to exclusively administrative positions and that those improperly classified positions could mistakenly qualify for law enforcement benefits, such as Law Enforcement Availability Pay.
 - a. A document that I included as an attachment to my letter noted that the Office of Personnel Management found that 94 positions had been misclassified. It appears that these positions are within the Human Resources and Professional Development units at ATF. Has the Department of Justice investigated whether this practice of misclassified employees occurred throughout ATF and in other Bureaus? If so, how prevalent is it? If not, why not?
 - b. Reporting on this issue notes that a whistleblower at ATF brought this matter to the attention of his supervisors and believes his employment was terminated as a result. Do you support the efforts of whistleblowers to bring matters of concern to

light? Do you and the Department of Justice oppose any effort to retaliate against any whistleblower?

RESPONSE:

As the Department noted in its April 8, 2022, response to your letter, the Department's Justice Management Division (JMD) and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), working with the Office of Personnel Management (OPM), have reviewed the positions that OPM determined ATF had misclassified and concurred that 53 positions were misclassified. ATF's own internal review identified 17 additional positions that were misclassified. Of the misclassified positions, 15 are unencumbered (vacant). JMD and ATF advise that they have been working diligently to implement corrective actions with respect to these 70 positions and continue to work with OPM to resolve classification determinations on the remaining positions identified by OPM.

In addition, the Department has contracted with the National Academy of Public Administration to conduct a review of all law enforcement components within the Department and ensure that positions have been and will continue to be correctly classified.

The Justice Department shares your view that whistleblowers do a great service and provide essential information about violations of law and rules, and about the mismanagement and waste of taxpayer funds. Any retaliation against whistleblowers is intolerable.

13. On June 29, 2021, and August 4, 2021, I worked with Chairman Durbin to send letters to the Director of the Bureau of Prisons asking several questions about the maintenance of accounts that are held on behalf of federal prisoners. These letters were sent in response to reporting that prisoners were not required to satisfy debts such as child support and victim restitution. It was reported that convicted sex criminal Larry Nassar had thousands of dollars flow through his account while making minimal payments towards court ordered restitution. The Department of Justice responded to our letters with a note that it planned reforms. My staff and Chairman Durbin's staff have continued to press for full responses to the questions contained in both letters.

- a. What is the status of reforms to the administration of prisoner accounts maintained by the Bureau of Prisons? Are prisoners being required to satisfy, based on their ability to pay, their financial obligations? Please provide copies of any new policies or procedures the Bureau of Prisons or the Department have developed to ensure prisoners must satisfy their financial obligations.

RESPONSE:

I share your concern and agree that inmates must not be permitted to use Bureau of Prisons accounts to engage in unlawful activity or avoid obligations like court-ordered restitution. That is why in August 2021, the Deputy Attorney General issued a directive to the Bureau of Prisons to implement appropriate reforms to its current policies and

procedures that would strengthen monitoring and reporting of these accounts, as well as identify funds that should be encumbered for financial obligations.

Implementation of this directive is underway. As one step in addressing these issues, the Bureau of Prisons issued additional guidance to wardens on account monitoring and is currently revising its Program Statement regarding the Inmate Financial Responsibility Program. In addition, the Department is evaluating appropriate BOP policies and procedures with respect to offsets. The Department also continues to consult with the Department of Treasury on this, as appropriate.

The Department’s leadership is working closely with the Bureau of Prisons to continue to identify areas for improvement and to implement reforms.

- b. Does the Bureau of Prisons recognize child support judgements that are applicable to federal prisoners and help prisoners to meet those obligations?

RESPONSE:

The Bureau of Prisons advises that it recognizes all verifiable child support judgments. BOP advises that—in an effort to help meet prisoners meet those obligations—once staff verify child support orders sent to the Bureau, BOP staff will meet with the inmate to develop a plan to make payments for all obligations owed on the federal case and child support.

- c. Will you ensure that the Department and the Bureau of Prisons regularly update myself and Chairman Durbin regarding efforts to reform the administration of prisoner accounts, and ensure that the BOP fully responds to our letters?

The Bureau of Prisons advises that it is committed to responding to your inquiries and is working to gather the information and data you have requested.

- 14. On October 6, 2021, Deputy Attorney General Lisa Monaco announced a new civil cyber-fraud initiative to use the False Claims Act to combat new and emerging cyber threats to the security of sensitive information and critical systems.
 - a. To what extent is the Department focused on situations involving non-compliance or deficient cybersecurity, as opposed to cases involving an actual breach?
 - b. In terms of initiating its own cases, will the Department be receiving regular reports from the Department of Defense Cyber Crime Center or from the Supplier Performance Risk System?
 - c. Are there particular types of non-compliance that the Department will be mostly focused on?
 - d. How will the Department define “deficient” cybersecurity products and services, and what criteria will it use to trigger an investigation into whether a given product or service is “deficient”?
 - e. Does the Department plan to hire additional personnel or set up a specific task force to bring these specific cybersecurity cases? If so, how many?

f. How will the Department calculate damages in these particular cases?

RESPONSE:

The Justice Department recognizes that most entities and individuals who do business with the government abide by contract terms and obligations, and that cyber intrusions may result even when a contractor has a robust monitoring, detection, and reporting system. However, when contractors knowingly fail to implement and follow required cybersecurity requirements or misrepresent their cybersecurity practices or capabilities, False Claims Act (FCA) enforcement is an important part of the federal response.

The goal of the initiative is to hold accountable those entities that put government information or assets at risk by knowingly providing deficient cybersecurity products or services, misrepresenting their cybersecurity practices or protocols, or violating obligations to monitor and report cybersecurity breaches. Thus, a violation may arise in the context of an actual breach, but a breach is neither necessary nor sufficient for FCA liability.

The Department is collaborating closely with its Department of Defense partners on the Initiative, including identifying the best ways to share information to support the objectives of the Initiative.

As noted above, the initiative is designed to hold accountable those entities that put government information or assets at risk. We anticipate focusing in particular on contractors and grantees who knowingly: fail to comply with statutory, regulatory, or contractual cybersecurity standards; misrepresent their cybersecurity practices to induce or retain a contract or grant; or fail to monitor or report cybersecurity breaches or other incidents.

As in other areas of FCA enforcement, the Department will assess the deficiency of cybersecurity products and services on a case-by-case basis by looking to the requirements set by statutes, regulations, contracts, and grants, and assessing the materiality of those requirements. The Department anticipates initiating investigations based on a variety of sources, including tips, whistleblower complaints, agency referrals, and self-disclosures, where the information received indicates that a FCA violation may have occurred.

The Department will rely on the personnel in its Civil Division, Commercial Litigation Branch (Fraud Section), and in the United States Attorneys' offices to pursue these matters and is committed to ensuring that they have the necessary resources to do so. The Department also anticipates relying on the expertise and resources of its federal partners, as well as outside experts and consultants.

The Department will follow the same approach it uses in other FCA matters and calculate damages based on the loss sustained by the government on a case-by-case basis.

15. This committee held a hearing about serious deficiencies in the FBI's investigation of Larry Nassar, the disgraced former doctor of USA Gymnastics. Nonetheless, the

Department did not send a representative to our important oversight hearing. Director Wray did appear. How do you explain the Department's refusal to appear? How will victims feel empowered if the Department does not even come to hear their testimony?

RESPONSE:

The Justice Department was represented by the Director of the FBI at the Senate Judiciary Committee's September 15, 2021, oversight hearing concerning the report released by the Justice Department's Inspector General on July 14, 2021, entitled *Investigation and Review of the Federal Bureau of Investigation's Handling of Allegations of Sexual Abuse by Former USA Gymnastic Physician Lawrence Gerard Nassar*. The Justice Department's Inspector General, Michael Horowitz, also testified alongside Director Wray at the September 15, 2021, hearing. In addition, on October 5, 2021, the Deputy Attorney General testified before the Senate Judiciary Committee and recognized the many courageous women athletes who have spoken out and testified on behalf of the hundreds of survivors of Larry Nassar's horrific sexual abuse, thanking the Committee and the Inspector General for "bringing to light a system that inexcusably failed [the survivors] and the scores of other survivors."

16. In July of this year, I wrote to the Department asking that it reopen the investigation of the FBI agents whose egregious misconduct appear to have allowed numerous assaults to continue long after Nassar's victims first came forward. I was pleased to learn in October the Department agreed to reevaluate those investigations. What is the timeline for your review?

RESPONSE:

As the Deputy Attorney General testified before the Senate Judiciary Committee on October 5, 2021, the Assistant Attorney General for the Criminal Division, Kenneth Polite, undertook a review of the September 2020 decision not to bring federal criminal charges against two former FBI special agents in connection with their involvement in the FBI's investigation of Lawrence Nassar. The Criminal Division's review was led by experienced prosecutors who carefully reviewed and analyzed the evidence gathered in the investigation. On May 26, 2022, the Criminal Division's decision to adhere to its prior decision not to bring federal criminal charges was made public.

The Criminal Division's decision does not in any way reflect a view that the Justice Department condones the conduct of the former agents; nor does it reflect a view that the investigation of Lawrence Nassar was handled as it should have been. As I have testified before Congress, the institutional failures here are unspeakable and quite apparent.

17. The child sexual tourism statute, 18 U.S.C. 2423, contains language that may limit its application in cases where gymnasts were abused overseas. Will you commit to working with my office on a statutory fix to the child sexual tourism statute to ensure evil conduct like Larry Nassar's never happens again?

RESPONSE:

Yes. The Department looks forward to working with you to ensure that this never happens again.

18. Regarding your October 4, 2021, memo discussing, “Partnership, among federal, state, local, tribal, and territorial law enforcement to address threats against school administrators, board members, teachers, and staff” (October 4 memo), how many U.S. Attorneys have convened meetings with federal, state, local, Tribal, or territorial leaders to discuss the subject matter of that memo?

RESPONSE:

The October 4, 2021, memorandum directed the FBI and the United States Attorneys “to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district within 30 days of” the memorandum’s issuance. There are 93 United States Attorneys across the country.

19. Prior to issuing your October 4 memo, what analysis did you conduct, if any, to determine how that memo might chill the speech of those who wish to communicate with school officials throughout the United States?

RESPONSE:

As I said in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why the October 4, 2021, memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.” These protections clearly and importantly cover debate concerning school board policies.

The memorandum is entitled “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff.” The Justice Department has a responsibility to keep the American people safe.

20. What instructions, if any, did you provide the various U.S. Attorneys, or any other Department of Justice personnel, about protecting the First Amendment rights of parents and other citizens who contact their local school officials to express their concerns about school administration when executing your October 4 memo’s directions?

RESPONSE:

My October 4, 2021, memorandum is addressed to the Director of the FBI, the Director of the Executive Office for U.S. Attorneys, the Assistant Attorney General of the Criminal Division, and the United States Attorneys. The memorandum makes absolutely clear in the

first paragraph that “spirited debate about policy matters is protected under our Constitution.”

21. Since issuing your October 4 memo, how many reports to federal law enforcement have local officials made about communications or other contacts with citizens? What is the Department of Justice’s protocol for storing information provided in such reports that involve activity not reasonably suspected of rising to the level of federal criminal activity, including but not limited to the following matters:
- a. Who stores that information?
 - b. How is it stored?
 - c. How long is it stored for?
 - d. What are the standards for sharing that information with other Department of Justice personnel?
 - e. What are the standards for sharing that information with personnel outside of the Department of Justice?

RESPONSE:

The Department takes seriously its obligation to protect the security and privacy of the personal information it stores. Consistent with Section 208 of the E-Government Act of 2002 and Department policy, the Department prepares a privacy impact assessment (PIA) for all of its information systems that contain personally identifiable information. Each PIA explains how personally identifiable information is collected, used, shared, and stored; as well as the security standards that apply to the system. The Department’s PIAs are publicly available, subject to exceptions for “security reasons, or to protect classified, sensitive, or private information contained in an assessment,” as provided for by Section 208(b)(C) of the E-Government Act. DOJ components’ PIAs can be found here: <https://www.justice.gov/opcl/doj-privacy-impact-assessments>.

22. Has the Department of Justice conducted any analysis regarding recruitment and retention efforts of law-enforcement agencies throughout the country over the last year, such as measuring a drop in law-enforcement applicants or an increase in law enforcement resignations? If so, what are the results of that analysis and the reasons for it?

RESPONSE:

The Justice Department’s Bureau of Justice Statistics (BJS) advises that it conducts a Law Enforcement Management and Administrative Statistics survey every four years. Through that survey, BJS asks a nationally representative sample of law enforcement agencies a series of questions, including hires, departures, and different recruiting efforts they undertake. (See questions 18-27 of the survey at https://bjslecs.org/LEMAS_Local_2020_fillable.pdf). The most recent survey was conducted in 2021, and BJS advises that it expects to release the results of this survey by the end of 2022.

23. Has the Department of Justice conducted any analysis regarding diminished local police activities in neighborhoods throughout the United States over the last year? If so, what are the results of that analysis and the reasons for it? To what degree have federal law enforcement officers had to increase their activities on criminal matters that would have otherwise been normally handled by state and local law-enforcement agencies prior to mid-2020?

RESPONSE:

The Justice Department is responsible for enforcing federal law and defending the interests of the United States. While the Department prioritizes supporting our state and local law enforcement partners, the Department respects the jurisdiction and authority of our state and local partners over matters of non-federal criminal law.

24. Has the Department of Justice conducted any analysis regarding an increase in shootings targeting law-enforcement officers over the last year? If so, what are the results of that analysis and the reasons for it?

RESPONSE:

The FBI advises that it publishes data from the Law Enforcement Officers Killed and Assaulted (LEOKA) Data Collection each year to provide information about officers who were killed, feloniously or accidentally, and officers who were assaulted while performing their duties. Under the umbrella of the FBI's Uniform Crime Reporting (UCR) Program, LEOKA data has traditionally been released on FBI.gov on the UCR Publications webpage.

Beginning in May 2021, LEOKA data for 2020 and all future UCR data is released exclusively on the FBI's Crime Data Explorer (CDE) website where data users can access and sort a variety of data.

Over the years, researchers relying on the LEOKA Data Collection have been conducting in-depth research regarding incidents in which officers are killed or assaulted. The published research gives officers a sharper understanding of what types of scenarios and circumstances have resulted in fatalities and assaults. The FBI advises that these articles and publications also contain information obtained through extensive interviews with officers and offenders involved in critical incidents to develop lessons learned, trends, and curriculum development for the FBI's Officer Safety Awareness Training (OSAT). The objective of the Bureau's OSAT, which has been provided to thousands of law enforcement partners in the U.S. and around the world, is to assist law enforcement with identifying issues and circumstances that may contribute to officer deaths and assaults and help prevent them. To address the increase in threats against our nation's law enforcement officers, LEOKA trainers are studying the data with the purpose of shaping future training to help reverse this trend.

In addition, the Department’s COPS Office advises that it does include information on shootings targeting law enforcement officers in its annual Blue Alert report to Congress. The most recent report reflects data through 2020 and is available here:

https://cops.usdoj.gov/pdf/blue-alert/2021_report.pdf.

25. Pending legislation would restrict federal grants to anti-bias training for law-enforcement agencies. What is the specific nature of such anti-bias training? In such grant-qualifying anti-bias training, what do law-enforcement officers typically learn? Does such training ever consist of segregating law-enforcement officers by race for the purpose of providing them different training based on their race? If so, how would such training typically differ for a white law-enforcement officer than it would for a black law-enforcement officer? If so, how would such training typically differ for an Asian law-enforcement officer than it would for a Hispanic law-enforcement officer?

RESPONSE:

The Department’s Office of Legislative Affairs advises that it is not familiar with the legislation you have referenced in your question.

26. How have criminal actors increasingly used drone technology to achieve their ends? How has such technology exposed Americans to greater risk of terrorists attack, and what legislative tools are necessary for DOJ to effectively counter such risks? How has drone technology aided international criminal enterprises in transporting contraband materials into the United States, and what legislative tools are necessary for DOJ to effectively counter such activity?

RESPONSE:

Drones have become a standard item in the international terrorists’ toolkit. Al Qaeda, ISIS, and other terrorist groups have long used them for surveillance and kinetic attacks. Explosive-laden drones were used in the attempted assassination of the Prime Minister of Iraq in November 2021. The FBI reports that we have seen threats of a similar nature closer to home, including efforts to weaponize drones to launch attacks in the United States.

The use of drones has also become commonplace in many types of criminal activity within the United States. Traffickers and smugglers commonly use drones in cross-border criminal activities; others use drones to introduce contraband into prisons; and drones can be used to facilitate espionage, cybercrime, and anti-surveillance. Serious threats to public safety now include drone interference with wildfire suppression; the operation of airports and aircraft; and law enforcement, emergency response, and military operations.

Additional legal tools are needed to address the existing and evolving threats in this area. The Preventing Emerging Threats Act, 6 U.S.C. § 124n, is a critically important statute that permits the Departments of Justice and Homeland Security to use certain technological tools to counter the threat of terrorist and criminal drone activity. That statute will expire in October 2022, and it is critical that it be reauthorized and expanded.

In addition, the Justice Department, together with our interagency partners, has submitted legislative proposals to Congress designed to enable us to protect more facilities and assets; to better empower our state and local partners to help counter the threat; and to enhance criminal penalties for those who engage in serious and dangerous misuse of drones.

27. What is the Bureau of Prisons' current policy regarding the quarantining, testing, or other COVID-19 risk mitigation for inmates who are approaching their release dates? What, if any, is the Department's protocol for reducing such mitigations over time?

RESPONSE:

For inmates who have received a complete vaccination series, BOP advises that quarantine is no longer necessary prior to moving to community locations (e.g., full-term release, residential reentry centers, or home confinement). A transfer quarantine will be used for inmates who are not fully vaccinated who are transferring out of the Bureau of Prisons to community locations or to another Bureau facility or other correctional jurisdiction, depending on the COVID-19 operational level of the sending institution.

BOP reports that it has instituted a Modified Operation Matrix that directs institutions on what mitigation strategies they need to have in place. BOP pandemic guidance follows and integrates guidance and direction from the Centers for Disease Control and Prevention, the Occupational Safety and Health Administration, the Department of Justice, and established medical best practices.

28. Has the Bureau of Prisons conducted an analysis of the condition of its closed-circuit camera systems at its various facilities, including security failures that might have otherwise been prevented with more updated camera systems and what the technological needs might be for such upgrades? If so, what is the scope and nature of such security failures and what is the nature of the needed technological upgrades?

RESPONSE:

In response to a 2016 Office of the Inspector General report, the Bureau of Prisons reports that it developed a survey to assess the scope of video surveillance coverage in Bureau institutions, as well as the technology being used. From 2019 to 2021, the Bureau reports that it has invested \$6.7 million in the 45 identified sites with security camera system deficiencies, and that upgrades have been made at all 45 locations. These upgrades include hardware and software upgrades, as well as coverage of entrance/exit points and critical locations throughout the institutions. Additionally, the BOP advises that upgrades of the operating systems at all Bureau facilities have made it possible to increase the storage time of videos and, in many cases, to increase picture quality.

29. According to Deputy Attorney General Monaco, the Department began a 120 day review of cybersecurity challenges.¹⁶ Reportedly, the review will focus on cybersecurity issues including digital currency, supply chain attacks such as the SolarWinds incident, which compromised nine federal agencies last year, and the ways countries such as China and Russia use cyber operations against other nations. Please share all information and conclusions from that review.

RESPONSE:

The ongoing review and related efforts are designed to have three primary lines of effort. The first is to assess how the Department can improve our capability to investigate, prosecute, and disrupt malicious cyber actors and their evolving techniques. The second is to focus on building our resiliency as a Department. And the third is to prepare the next generation of the Department’s attorneys and agents who will be going after these threat actors.

The following initiatives are a direct result of the Department’s review:

- **The Department established a Ransomware and Digital Extortion Task Force.**
- **In October 2021, Department announced a new Civil Cyber-Fraud Initiative to utilize the False Claims Act to pursue cybersecurity-related fraud by government contractors and grant recipients.**
- **Also in October 2021, the Department established a National Cryptocurrency Enforcement Team (NCET) to tackle complex investigations and prosecutions of criminal misuses of cryptocurrency, particularly crimes committed by virtual currency exchanges, mixing and tumbling services, and money laundering infrastructure actors.**
- **The Department has also announced a new DOJ Cyber Fellowship program that is designed to develop a new generation of prosecutors and attorneys equipped to handle emerging national security threats.**
- **All U.S. Attorneys’ offices have been directed to report up the chain to DOJ headquarters any ransomware and digital extortion incidents in the same way we prioritize terrorist incidents. The requirement will allow the Department to make the necessary connections across all cases and investigations to confront and deter the global ransomware threat.**
- **The Department has also publicly announced the results of enforcement actions. For example, in June 2021, the Department announced that it seized \$2.3 million**

¹⁶ Maggie Miller, *Justice Department to Undertake 120 Day Review of Cybersecurity Challenges*, THE HILL (Apr. 30, 2021), <https://thehill.com/policy/cybersecurity/551195-justice-department-to-undertake-120-day-review-of-cybersecurity>.

in bitcoin, representing a significant portion of the proceeds of a ransom payment to bad actors in a group known as DarkSide, which had targeted Colonial Pipeline and resulted in critical infrastructure being taken out of operation. Also, in February 2022, the Justice announced that it seized over \$3.6 billion in cryptocurrency – the Department’s largest financial seizure ever – linked to the 2016 hack of Bitfinex.

- In addition, in November 2021, the Department announced charges against two foreign nationals for deploying Sodinokibi/REvil ransomware to attack businesses and government entities in the United States. Yaroslav Vasinskyi, a Ukrainian national, was arrested for conducting ransomware attacks against multiple victims, including a July 2021 attack against Kaseya, a multi-national information technology software company. The Department also announced the seizure of \$6.1 million in funds traceable to alleged ransom payments received by Yevgeniy Polyanin, a Russian national who was also charged with conducting Sodinokibi/REvil ransomware attacks.

30. The *First Step Act* is the product of bipartisan cooperation and support from government leaders. Passage of this law was a massive achievement; ensuring its sound and effective implementation is also critically important. The Department of Justice carries significant implementation responsibilities.

- a. As head of the Department of Justice, do you agree that your agency carries great implementation responsibilities and that as Attorney General this responsibility rests on your shoulders?

RESPONSE to Question 30a:

Yes. The First Step Act is a critical piece of bipartisan legislation that promised a path to an early return home for eligible incarcerated people who invest their time and energy in programs that reduce recidivism. I am committed to ensuring that the Justice Department does its part to honor this promise.

- b. What steps have you made, since confirmed as Attorney General, to implement the *First Step Act*?

RESPONSE to Question 30b:

The Department of Justice has made, and continues to make, significant progress implementing the *First Step Act*, much of which is described in the Justice Department’s April 2022 First Step Act Annual Report (FSA Report). The 2022 FSA Report can be viewed here: <https://www.ojp.gov/first-step-act-annual-report-april-2022>.

On January 13, 2022, the Department submitted to the Federal Register a final rule implementing the Time Credits program required by the First Step Act for persons incarcerated in federal facilities who committed nonviolent offenses. The final rule can be

viewed here: <https://www.federalregister.gov/documents/2022/01/19/2022-00918/fsa-time-credits>.

The Department also launched a new risk and needs assessment system. By way of background, the First Step Act of 2018 mandated that the Attorney General, in consultation with the Independent Review Committee (IRC), develop and implement a risk and needs assessment system for use with each person in the custody of the Bureau of Prisons. PATTERN is the risk assessment tool created pursuant to these mandates.

The Department's National Institute of Justice commissioned consultants to validate PATTERN. They issued their report in December 2021, recommending that the Department adjust to a modified version of the tool in the near term, version 1.3, which they found to have predictive accuracy. In the 2022 FSA Report referenced above, the Department announced the decision to implement the updated PATTERN 1.3 tool, as well as to change the cut points associated with the tool. The NIJ consultants, collaborating with the Department's subject matter experts, BOP staff, and external stakeholders and experts, will consider further refinements to the tool's inputs and scoring scheme.

In addition, NIJ is also working to improve the Department's First Step Act Implementation efforts working to award a contract in the new calendar year to support the evaluation of a subset of BOP's reentry programs. Findings from the long-term evaluation will support the Bureau as it continues to support the reentry process for individuals under its custody.

Finally, the Bureau reports that it has delivered more than 80 different programs to inmates across the agency based on individual assessment findings. Even with COVID-19 limiting gatherings, BOP reports that, as of June 9, 2022, approximately 75,000 inmates are participating in structured FSA programming. In addition, the Justice Department's FY 2023 request would allow BOP to hire nearly 600 new First Step Act staff.

31. I joined Chairman Durbin in sending you a letter on May 5, 2021, regarding the issue of a proposed rule on earned time credits. This rule, as proposed on November 25, 2020, would limit the incentive structure designed to increase program participation and would undercut the effectiveness of the *First Step Act*. In the letter, we asked that you reevaluate and amend the rule consistent with the *First Step Act's* goals of incentivizing and increasing program participation and reducing recidivism. Like I mentioned at the hearing on October 27, we've yet to receive a response to this letter. While the lack of responsiveness by the Department is unacceptable on its own, it's troubling that your silence implies that no changes would be made to this proposed rule.
- a. What feedback has the Department received to this proposed rule?
 - b. Will the Department adopt any changes to the rule prior to finalizing it?
 - c. When do you anticipate finalizing this rule?

RESPONSE:

On January 13, 2022, the Department submitted to the Federal Register a final rule implementing the Time Credits program required by the First Step Act for persons incarcerated in federal facilities who committed nonviolent offenses. The final rule can be viewed here: <https://www.federalregister.gov/documents/2022/01/19/2022-00918/fsa-time-credits>.

As explained in the Justice Department’s April 2022 First Step Act Annual Report, linked above, the Department made several significant changes to the rule as a result of feedback received during the public comment period. “The final rule eliminates the definition of a day as an 8-hour period, and instead defines a day as a calendar day, allowing eligible inmates to earn 10 to 15 days of time credits for every 30 days of successful participation in EBRR programs and PAs. In addition, subject to BOP’s determination of eligibility, inmates will be awarded time credits retroactively to December 21, 2018, the date of enactment of the First Step Act. The rule also explains the circumstances under which an inmate may forfeit time credits, reduces the amount of credits that may be forfeited for any given act, and shortens the period of time over which forfeited credits may be restored. Collectively, these provisions will ensure the broadest possible eligibility and application of time credits.”

BOP further reports that implementation of the rule is occurring on a rolling basis, beginning with immediate releases for inmates whose Time Credits earned exceed their days remaining to serve, are less than 12 months from release, and have a Supervised Release term. Some of these transfers have already begun, and many more will take place in the weeks and months ahead as BOP calculates and applies time credits for eligible incarcerated individuals.

32. On January 15, 2021, the Department of Justice Office of Legal Counsel (OLC) released a memo titled, “Home Confinement of Federal Prisoners after the COVID-19 Emergency.” This memo contemplates the eventuality of what happens to Bureau of Prisons inmates released to home confinement under the CARES Act “once the pandemic emergency ends.” At that time, “some inmates will have completed their sentences or be sufficiently close to the end to be eligible for home confinement,” while others “may have a substantial time to go before becoming eligible.” This opinion concludes that when the COVID-19 “covered emergency period” ends, or should the Attorney General revoke the finding, “the Bureau would be required to recall the prisoners to correctional facilities unless they are otherwise eligible for home confinement.” If this covered emergency period were to end as of October 18, 2021, 4,813 inmates would be returned to a Bureau of Prisons facility. It has been publicly reported that the Biden administration has begun asking inmates on home confinement by virtue of the CARES Act to submit commutation applications.¹⁷ These particular inmates fall into a specific category: drug offenders released to home confinement under the CARES Act with four years or less remaining on their sentences.

¹⁷ Sam Stein, *Biden Starts Clemency Process for Inmates Released Due to Covid Conditions*, POLITICO (Sept. 13, 2021), <https://www.politico.com/news/2021/09/13/biden-clemency-covid-inmates-511658>.

- a. How many individuals have received a request from the Department to submit a commutation application?
- b. Does the Department intend to expand the scope beyond the subset of those who are released to home confinement under the CARES Act and with less than four years remaining on their sentences?
- c. What is the timeline for reviewing and coming to a decision on these inmates' commutation applications?
- d. Does the Department plan to issue a proposed rule to address this issue? If so, please advise the anticipated contents of such proposed rule.

RESPONSE:

Individuals on home confinement under the CARES Act for non-violent drug offenses who have between 18 and 48 months remaining on their sentences are eligible for the expedited screening program. However, the Office of the Pardon Attorney continues to accept and process clemency petitions from all eligible individuals. In all cases, clemency review is individualized and includes an assessment based on a totality of relevant and appropriate factors. Individuals who have been identified as meeting the parameters of the expedited screening program who submit commutation petitions using the standard form receive priority consideration. On April 26, 2022, the President granted clemency to 78 individuals, including three pardons and 75 commutations.

In addition, with respect to individuals on home confinement under the CARES Act, on December 21, 2021, the Office of Legal Counsel issued an opinion concluding that section 12003(b)(2) of the CARES Act and the Bureau's preexisting authorities give the Bureau discretion to permit prisoners on extended home confinement to remain there even after the COVID-19 national emergency ends.

In light of that opinion, I have directed that the Department engage in a rulemaking process to ensure that the Department lives up to the letter and the spirit of the CARES Act. The proposed rule is presently under review. The Department will exercise its authority so that those who have made rehabilitative progress and complied with the conditions of home confinement, and who in the interests of justice should be given an opportunity to continue transitioning back to society, are not unnecessarily returned to prison.

33. On September 27, 2021, the Drug Enforcement Administration (DEA) issued a Public Safety Alert warning the American public of the "alarming increase in the lethality and availability of fake prescription pills containing fentanyl and methamphetamine."¹⁸ Drug trafficking organizations are falsely marketing pills as legitimate prescription pills, and selling them on social media and e-commerce platforms. This is particularly problematic since many of the purchases have been made by teens and youth. DEA Administrator

¹⁸ Public Safety Alert, "Sharp Increase in Fake Prescription Pills Containing Fentanyl and Meth," U.S. Drug Enforcement Administration (Sept. 27, 2021), <https://www.dea.gov/alert/sharp-increase-fake-prescription-pills-containing-fentanyl-and-meth>.

Anne Milgram has stated that social media companies aren't doing enough to crack down on these counterfeit pills.¹⁹

- a. What is the Department doing to counter the surge of counterfeit pills laced with fentanyl and meth?

RESPONSE to Question 33a:

As I testified before this Committee on October 27, 2021, the Justice Department is committed to keeping our country safe by addressing drug trafficking networks and overdose deaths. To these ends, DEA has stepped up its efforts nationwide to target the criminal drug networks flooding the U.S. with deadly, fentanyl-laced fake pills. On August 3, 2021, DEA launched a nationwide law enforcement effort to address the increase in the availability and lethality of fentanyl-laced fake pills. In the first two months of the effort, DEA worked in concert with federal, state, and local law enforcement partners to seize more than 1.8 million fentanyl-laced fake pills. In 2021, DEA seized more than 20.4 million potentially fake pills. DEA continues to focus its operational efforts on stopping the flow of deadly synthetic fentanyl, methamphetamine, and counterfeit pills into our communities. In addition, in September 2021, DEA launched the One Pill Can Kill public awareness campaign, which included DEA's first Public Safety Alert in six years, to warn the public of the threat of counterfeit pills.

The Justice Department would welcome the opportunity to brief your office on this important issue.

- b. Leaders of the law enforcement community have stated that identifying and prosecuting fentanyl analogues – including those hidden in counterfeit pills – is critical and that “serious consequences like mandatory minimums exist to deter and punish the kingpins, their traffickers, and the manufacturers who flood our communities with deadly drugs.”²⁰ Do you agree that these bad actors need to be deterred?

RESPONSE to Question 33b:

Yes.

- b. Representatives from victim awareness groups and those who have lost family members to fentanyl wrote to the Senate Judiciary Committee, noting that, “[d]rug

¹⁹ Kate Snow, *'1 Pill Can Kill': Officials Warn About Fake Prescription Drugs Laced With Fentanyl*, TODAY (Sept. 27, 2021), <https://www.today.com/health/fentanyl-danger-dea-s-anne-milgram-warns-about-fake-prescription-t232227>.

²⁰ Letter from Federal Law Enforcement Officers Association, National Narcotic Officers' Associations' Coalition, Major Cities Chiefs Association, International Association of Chiefs of Police, National Association of Police Organizations, Major County Sheriffs of America, National Sheriffs' Association, National District Attorneys Association, & Sergeants Benevolent Association, NYPD, to Sen. Dick Durbin, Chairman, and Sen. Chuck Grassley, Ranking Member, S. Comm. on the Judiciary (Sept. 13, 2021), <https://www.fleoa.org/news-story.aspx?id=10004>.

overdose deaths are preventable. . . [and] our government must use every tool to prevent senseless loss of life.”²¹ Do you agree?

RESPONSE:

Yes. Every life lost to a drug overdose is a tragedy.

34. At the hearing on October 27, you stated that “powder cocaine is as dangerous with crime rates as crack cocaine.” However, the U.S. Sentencing Commission cites in a recent report that “the rate of weapon involvement varie[s] depending on the type of drug involved, ranging from 38.9 percent in crack cocaine cases to 18.4 percent in marijuana and powder cocaine cases.”²² With this data in mind, please explain what you mean by “powder cocaine is as dangerous with crime rates as crack cocaine.” If you are citing different data or information to come to this point, please share it with the Committee.

RESPONSE:

The data cited in your question from the Sentencing Commission do indeed indicate that federally prosecuted crack cocaine offenders are more likely to have been in possession of a weapon than federally prosecuted powder cocaine offenders. However, this is not because crack cocaine is inherently a more dangerous drug than powder cocaine.

Evidence suggests that the difference in weapon involvement is less an indicator of the danger associated with the particular drug than it is an indicator of where in the distribution chain the federally prosecuted traffickers are coming from. Sentencing Commission reports have repeatedly shown that federal crack cocaine offenders are more likely to be low-level, retail traffickers compared to federal powder cocaine traffickers, who are more likely to be managers and importers. The Sentencing Commission has also repeatedly reported that street-level dealers generally are far more likely to carry weapons than managers or importers of large-scale drug operations. Drug trafficking can be violent, regardless of the drug involved.

35. In July of this year, multiple media outlets reported on the FBI’s role in the capture of Princess Latifa of Dubai. On February 24, 2018, Princess Latifa, daughter of United Arab Emirate (UAE) Prime Minister Sheikh Mohammed bin Rashid al-Maktoum, escaped from Dubai on a US-flagged yacht named “Nostromo.” Princess Latifa boarded the “Nostromo” 20 miles off the coast of Muscat, Oman, in international waters after reaching the vessel by dinghy and jet ski and sailing southward in the Indian Ocean for

²¹ Letter from VOID, Alexander Neville Opioid and Outreach Foundation, California Drug Induced Homicide, RADD, Drug Induced Homicide Foundation, Chair of Drug Abuse and Mental Health Committee, Mothers Against Drug Deaths, Environmental Progress, San Franciscans for Peace and Justice, St. Albert Priority, & We Are Not Alone Community, to Sen. Durbin, Chairman, & Sen. Grassley, Ranking Member, S. Comm. on the Judiciary (Sept. 10, 2021) (on file with author).

²² U.S. SENTENCING COMMISSION, FISCAL YEAR 2020: OVERVIEW OF FEDERAL CRIMINAL CASES, at 15 (Apr. 2021), https://www.uscc.gov/sites/default/files/pdf/research-and-publications/researchpublications/2021/FY20_Overview_Federal_Criminal_Cases.pdf.

eight straight days.²³ The media reported that the FBI appeared to have contacted the U.S.-based internet service provider of the “Nostromo” in an attempt to obtain geolocation data of the yacht in order to share it with the UAE government. The FBI was able to obtain the geolocation data without a search warrant by using a public safety exemption which provides authority in public safety circumstances. Did the FBI provide sensitive geolocation data to the United Arab Emirates government or any other foreign government relating to this matter?

RESPONSE:

The FBI’s practice is not to comment on matters of this nature.

²³ Kim Hjelmgaard & Kevin Johnson, *How The FBI Played A Role In The Capture Of Princess Latifa Of Dubai*, USA TODAY (July 12, 2021), <https://amp.usatoday.com/amp/7584218002>.

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE LINDSEY GRAHAM**

1. What is the legal effect of a final order of removal?

RESPONSE:

Upon the entry of a final order by an Executive Office for Immigration Review (EOIR) adjudicator, the noncitizen may be removed from the United States by the Department of Homeland Security. If a noncitizen appeals an administratively final order of removal to a federal circuit court of appeals and that court grants a judicial stay of removal, the removal process does not begin until the circuit court disposes of the appeal.

2. The current asylum backlog in the Executive Office for Immigration Review is approximately 1.5 million cases. What is your solution for solving this backlog?

RESPONSE:

The backlog of cases in the immigration court system is a serious problem that the Department is committed to addressing. The backlog has many causes, and we need to pursue – and are pursuing – a multipronged strategy to address it. EOIR is examining the administrative tools available to them. A critical component of our strategy is the budget. Put simply, EOIR needs more resources in order to adjudicate more cases. The Department appreciates the funding provided by Congress in the past, and we request full consideration of the President’s FY23 Budget request, which includes \$1.354 billion for EOIR.

3. At your confirmation hearing, I asked you to look into the problem of cartels abusing our asylum laws – have you looked into this problem and what enforcement policies are you implementing to fix it?

RESPONSE:

Our United States Attorneys and multiple sections within the Criminal Division – including our Human Rights and Special Prosecutions Section and Narcotics and Dangerous Drugs Section – advise that they remain focused on addressing the problem of transnational organized criminal networks who seek to abuse our asylum laws.

The Justice Department also works closely with DHS on issues of asylum fraud, which would include appropriate investigation and prosecution where cartels may be abusing our asylum laws such as by advising migrants to provide false asylum claims to U.S. officials. In particular, the Department works with DHS’s fraud protection programs and participates in the DHS Asylum Fraud Working Group. In addition, EOIR’s adjudicators continue to report instances of suspected fraud to EOIR’s Fraud and Abuse Prevention Program, which actively works with agency partners to deter abuse of the asylum system.

4. The National Security Division of the Department of Justice is responsible for combatting national security and cyber security threats facing our region and our nation. Protecting national security and ensuring public safety is the principal responsibility of the Justice Department.
 - a. Are you concerned about the national security risks posed by the situation we left behind in Afghanistan?
 - b. How is the National Security Division and the Joint Terrorism Task Force (JTTF) working to mitigate risks to the United States homeland posed by terrorists in the region of Afghanistan?
 - c. Are you concerned about the security risks posed by the influx of “vetted” Afghan parolees into the U.S.?
 - d. During the Senate Judiciary Committee oversight hearing on October 27, 2021, I asked you what you have done specifically, since the U.S. withdrawal from Afghanistan, to address the new threat to our national security created by that decision. You committed to put in writing what you have done. Please provide that information.

RESPONSE:

Together with our interagency partners, the Justice Department continues to closely monitor the security situation in Afghanistan. The FBI reports that it continues to track all threat reporting emanating from Afghanistan for any potential threats to the United States from FTOs in coordination and collaboration with our partners across the Intelligence Community. Among other things, DOJ resources supporting the effort have included the following:

- **The FBI reports that it has checked databases and helped vet Operation Allies Welcome entrants and deployed agents overseas to assist in conducting interviews at strategically located airports and ports of entry.**
- **FBI Divisions and field offices report that they have worked with the Unified Command Group on U.S. military bases that temporarily housed relocated individuals and FBI has helped with biometric screening and security interviews, including providing mobile biometric devices for fingerprinting relocated individuals.**
- **The FBI reports that it collects tips from the public through its 1-800 number and electronic tips website.**
- **The National Security Division, through its Counterterrorism Section, reports that it works daily with law enforcement partners, including the JTTFs, to investigate threats to the homeland posed by terrorists both domestically and internationally.**
- **In addition, the FBI reports that it continues to work with interagency partners to ensure that all Afghan parolees, refugees, and immigrants into the United States are vetted and that any identified law enforcement or national security**

concerns are appropriately investigated and addressed prior to their admittance to the United States.

- e. What is the Department of Justice doing to deter ransomware attacks?

RESPONSE:

The Department of Justice plays a central and indispensable role in the whole-of-society effort to address ransomware, including by prosecuting and otherwise deterring criminal actors, denying them the illicit profits they seek, and disrupting their use of resources to commit attacks. In addition to holding perpetrators responsible, the information the Department collects informs defensive efforts and helps victims recover.

The Department also contributes to a global environment that better enables ransomware perpetrators to be identified and deterred through operational partnerships and extensive capacity building efforts. The Department's Ransomware and Digital Extortion Task Force is a mechanism to ensure that Department leadership advances and harmonizes numerous efforts across the entire Department to address this serious and growing threat.

5. What process is the FBI following in its vetting of Afghan evacuees right now, and do you believe the FBI is doing a thorough job? How does the FBI plan to ensure it captures all derogatory information, not just the information that we happen to have in our databases? Will the FBI extensively interview evacuees and/or use something akin to the security advisory opinion process? Please explain.

RESPONSE:

The FBI advises that it is closely working with its partners to assist in the resettlement program for Afghan arrivals as part of Operation Allies Welcome and the vetting of refugees and others seeking entrance to the United States more broadly. On August 23, 2021, the FBI established a National Crisis Coordination Center (NC3) command post in support of the FBI's international and domestic response to the evolving situation in Afghanistan. The command post was comprised of FBI Divisions, the Department, and U.S. Intelligence Committee partners. The FBI reports that it continues to maintain information and intelligence exchange with state and local partners as the process continues, and that it anticipates continuing that work as the new arrivals are settled into communities.

As explained above, among other things, DOJ resources supporting the effort have included the following:

- **The FBI reports that it has checked databases and helped vet Operation Allies Welcome entrants and deployed agents overseas to assist in conducting interviews at strategically located airports and ports of entry.**

- **FBI Divisions and field offices report that they have worked with the Unified Command Group on U.S. military bases that temporarily housed relocated individuals and FBI has helped with biometric screening and security interviews, including providing mobile biometric devices for fingerprinting relocated individuals.**
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- **The National Security Division, through its Counterterrorism Section, reports that it works daily with law enforcement partners, including the JTTFs, to investigate threats to the homeland posed by terrorists both domestically and internationally.**
- **In addition, the FBI reports that it continues to work with interagency partners to ensure that all Afghan parolees, refugees, and immigrants into the United States are vetted and that any identified law enforcement or national security concerns are appropriately investigated and addressed prior to their admittance to the United States.**

After biometric and biographic information is collected from the Afghans seeking admission into the United States, the FBI advises that it checks that information against its holdings to identify national security and public safety concerns. As of September 1, 2021, the FBI had assisted in the vetting process for more than 70,000 Afghans seeking entrance to the U.S. since the military drawdown in Afghanistan. Vetting results are shared with interagency partners. In instances where derogatory information is identified, and where warranted, the FBI will conduct further investigation.

6. Is the FBI investigating reports of Afghan evacuees engaging in acts of assault, including sexual assault, on U.S. military bases?

RESPONSE:

As a general matter, the FBI reports that it continues to work with interagency partners in an effort to ensure that Afghan parolees into the United States are vetted and that any identified law enforcement or national security concerns are appropriately investigated. As I explained in my testimony before this Committee, longstanding Department policy and practice generally prevents us from commenting on or confirming or denying the existence of any investigation. However, to date, the Justice Department has made public criminal investigations and charges against four individuals who were evacuated from Afghanistan and paroled into the United States. Two individuals were charged with simple assault under 18 U.S.C. § 113(a)(8); one individual was charged with aggravated sexual abuse under 18 U.S.C. § 2241; and one individual was charged with abusive sexual contact under 18 USC § 2244.

7. Why are we paroling Afghan evacuees into the U.S. after a vetting process that takes only days or weeks? Have we learned how to complete a months-long vetting process in only a handful of days?

RESPONSE:

Decisions about paroling Afghans seeking entry into the U.S. are made by the Department of Homeland Security (DHS), not the Department of Justice. The FBI reports that it assists DHS but does not make final determinations.

8. What evidence do you have to support the claim that there has been a disturbing uptick in violence and threats of violence directed at teachers, school board members and school administrators? Please cite specific examples.

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association’s letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. As we were seeing before the October 4, 2021, memorandum was issued and we have seen since, there has been a disturbing increase in violence and threats of violence against public servants across the country. The Justice Department will not waver in its commitment to keeping these public servants safe.

More broadly, as I explained in a speech on January 5, 2022: “We have all seen that Americans who serve and interact with the public at every level — many of whom make our democracy work every day — have been unlawfully targeted with threats of violence and actual violence. Across the country, election officials and election workers; airline flight crews; school personnel; journalists; local elected officials; U.S. Senators and Representatives; and judges, prosecutors, and police officers have been threatened and/or attacked. These are our fellow citizens — who administer our elections, ensure our safe travel, teach our children, report the news, represent their constituents, and keep our communities safe.” As I explained during my testimony on October 27, 2021, “A core responsibility of the Justice Department . . . is protecting Americans from violence and threats of violence.”

9. Was anyone at the Department of Justice a collaborator with the National School Board Association (NSBA) and/or the White House regarding NSBA’s letter to President Biden, dated September 29, 2021?

RESPONSE:

Please see the response to Question 8. As I stated in my congressional testimony on October 21, 2021, no one in the White House or the National School Boards Association had spoken to me about the October 4, 2021, memorandum. As I further stated, “I am sure that the communication from the National [School Boards Association] was discussed

between [] the White House and the Justice Department, and that’s perfectly appropriate,” as the White House is “appropriately concerned about violence.”

10. Now that the NSBA has apologized for their letter to President Biden, will you retract the memo that was based on that letter?

RESPONSE:

I stated in my testimony on October 27, 2021, that the National School Boards Association letter this question appears to reference “apologizes for language in the [original] letter, but it continues its concern about the safety of school officials and school staff. The language in the letter that they disavow is language [that] was never included in my memo and never would have been. I did not adopt every concern that they had in their letter.”

11. Did you authorize the settlement of Andrew McCabe’s wrongful termination lawsuit? Did anyone at the White House suggest that the Department of Justice should settle?

RESPONSE:

As I testified before the Senate Judiciary Committee on October 27, 2021, the Department’s settlement with Mr. McCabe was based upon an assessment by experienced attorneys regarding the prospects of success in the case and the likelihood of losing on the merits.

12. What is the Department of Justice doing to curb the misuse and abuse of Foreign Intelligence Surveillance Act (FISA) applications?

RESPONSE:

The FBI and the Department have taken dozens of corrective measures to help ensure accuracy and completeness in FISA applications, as described in detail in OIG’s September 2021 report. These include new mechanisms and procedures designed to help ensure that FBI personnel provide attorneys in the National Security Division with all information that could undermine a probable cause determination—including information about the reliability of human sources—so that this information can be provided to the Foreign Intelligence Surveillance Court (FISC). Other corrective measures include a variety of new training requirements for FBI personnel and NSD attorneys.

In addition, NSD reports that it has expanded its oversight of FBI FISA applications to include “completeness reviews,” which are intended to ensure that all information that is material to a probable cause determination and contained in the FBI case file is provided to the FISC in an application requesting electronic surveillance or a physical search. And NSD and the FBI report that they have revised internal guidance governing procedures for ensuring the accuracy of applications submitted to the FISC, including by expanding on specific accuracy procedures and adopting new protocols to ensure all applications are accurate and complete.

13. Will you commit to allowing Special Counsel Durham to complete his investigation?

RESPONSE:

Special Counsel Durham's investigation is ongoing and will not be subject to any political or undue influence.

14. During your confirmation, you indicated a willingness to look into DEA's non-retrievable exceptions in 40 CFR 266.506. Can you provide a detailed update on how DEA plans to allow stakeholders to destroy hazardous waste that meets the non-retrievable standard of destruction through a process other than combustion? What is the timeline for determining this process and what additional steps need to be taken by DEA?

RESPONSE:

DEA advises that its regulations provide the legal standard by which DEA registrants must dispose of controlled substances to ensure that those drugs are non-retrievable. DEA regulations do not specify the means by which non-retrievability must be achieved.

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE MIKE LEE**

1. General Garland, under what jurisdictional authority is the Department of Justice tasked with protecting local school board members from being annoyed by their neighbors—parents of children who attend the neighborhood schools?

RESPONSE:

Parents who advocate with regard to school board policies are protected by the First Amendment. Moreover, as I stated in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why my October 4, 2021, memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.” The October 4, 2021, memorandum responded to concerns about violence, threats of violence, and other criminal conduct because the Justice Department has a responsibility to keep the American people safe.

2. Did you intend for ninety-four US Attorneys to be prosecuting parents who annoy or harass school board members by calling them too many times?
 - a. Did you intend for ninety-four US Attorneys to be prosecuting parents who annoy or harass School Board members by letting their unanswered phone calls continuously ring?
 - b. Did you intend for ninety-four US Attorneys to be prosecuting parents who annoy or harass school board members over the phone?
 - c. If you answered “no” to any subpart of question 2, can you please explain why the acting United States Attorney of Montana sent a letter to the Montana Attorney General, all Montana County Attorneys, All Montana Sheriffs, Montana Office of Public Instruction, and the Montana School Boards Association, suggesting these as possible avenues for prosecuting annoying parents upset with decisions made by their local school boards?

RESPONSE:

Parents who advocate with regard to school board policies are protected by the First Amendment. Moreover, as I stated in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why my October 4, 2021, memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.”

The memorandum responded to concerns about violence, threats of violence, and other criminal conduct because the Justice Department has a responsibility to keep the American people safe. As I further explained in my congressional testimony last October, there are federal statutes that address violence, as well as threats of violence, including 18 U.S.C. § 2261A. The Supreme Court has explained in *Virginia v. Black* “when intimidation is not

protected by the Constitution and that is when it is made with the intent of placing the victim in fear of bodily harm or death.”

3. In the recent Department of Justice oversight hearing, you claimed to have no knowledge of the memo sent by Acting United States Attorney for Montana, Leif Johnson. Have any other US Attorneys or Acting US Attorneys issued similar memos? If so, please provide copies of these communications to this committee.

RESPONSE:

The October 4, 2021, memorandum you reference is entitled “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff.” As its title suggests, this memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. The memorandum specifically directed the FBI and the United States Attorneys “to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district.” Such meetings were intended to “facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff,” and “open dedicated lines of communication for threat reporting, assessment, and response.”

4. Other than the memo you published on October 4th, what other direction did you give to US Attorneys relative to how they should pursue cases against annoying parents at school board meetings? If you did not intend for US Attorneys to be prosecuting parents for calling their school boards too many times, what additional direction did you give your US Attorneys to make sure they understood the scope of your direction?

RESPONSE:

My October 4, 2021, memorandum was addressed to the Director of the FBI, the Director of the Executive Office for U.S. Attorneys, the Assistant Attorney General of the Criminal Division, and the United States Attorneys. As I explained in my congressional testimony last October, “A legal reader would know *Virginia v. Black*, the Supreme Court definition of intimidation, and a legal reader would know 18 U.S.C. § 2261A, the definition of harassment.” As I stated: “[T]he Supreme Court has made quite clear that the word ‘intimidation’, with respect to the constitutional protection, is one that directs a threat to a person with the intent of placing the victim in fear of bodily harm or death.” Indeed, Justice Department employees “are well aware of where the First Amendment line is” as “these are the kinds of statutes that [both prosecutors and members of law enforcement] deal with every single day.”

5. In the oversight hearing, you clarified to me that while you specifically mentioned “harassment, intimidation, and threats of violence” in your October 4th memo, you only meant for statues regarding “intimidation” and “harassment” to be pursued by Federal Law Enforcement Officers if the “intimidation” was “made with the intent of placing the victim in fear of bodily harm or death.” Did you make that same clarification in

additional communications to your US Attorneys? If so, would you please provide the committee with a copy of those communications?

RESPONSE:

Please see the response to Question 4.

6. I was alarmed in the recent oversight hearing when I realized you could not—or would not—give the committee any concrete examples of threats of death or bodily harm which formed the basis of your reasoning for sending the October 4th memo. Please list here the “news reports” you relied on to make the decision on October 4th to involve the Department of Justice in what is a purely state matter—acts of unrest and violence at school board meetings.

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association’s letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. As we were seeing before the October 4, 2021, memorandum was issued and we have seen since, there has been a disturbing increase in violence and threats of violence against public servants across the country. The Justice Department will not waver in its commitment to keeping these public servants safe.

More broadly, as I explained in a speech to Department employees on January 5, 2022: “We have all seen that Americans who serve and interact with the public at every level — many of whom make our democracy work every day — have been unlawfully targeted with threats of violence and actual violence. Across the country, election officials and election workers; airline flight crews; school personnel; journalists; local elected officials; U.S. Senators and Representatives; and judges, prosecutors, and police officers have been threatened and/or attacked. These are our fellow citizens — who administer our elections, ensure our safe travel, teach our children, report the news, represent their constituents, and keep our communities safe.” As I explained during my testimony on October 27, 2021, “A core responsibility of the Justice Department . . . is protecting Americans from violence and threats of violence.”

7. Who brought the examples you listed in question 6 to your attention? What indication did you have that these instances were beyond the ability of local law enforcement to handle?

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association’s letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. As I explained, the purpose of the memorandum was “to have meetings to discuss whether there’s a problem, to discuss

strategies, to discuss whether local law enforcement needs assistance or doesn't need assistance."

8. Please provide the most thorough answers possible to the following questions. None of the information requested should be privileged.
 - a. Did you or any member of your staff meet with the National School Boards Association before you issued the October 4th memo?
 - b. Did you or any member of your staff meet with any other interested outside groups before issuing the October 4th memo?
 - c. Can you describe in detail what steps you took personally, or your staff took, to verify the contents of the National School Boards Association letter?
 - d. What specific death threats were mentioned in the letter? Please provide us the details of the examples you relied upon in issuing your memo.
 - e. What specific, independent investigative efforts did you or your staff undertake—outside of reading the examples cited in the National School Boards memo—to determine whether a legitimate, multi-state, coordinated effort to threaten school board members actually exists? Please be specific.

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association's letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. This memorandum was entitled "Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff." As its title suggests, this memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. As I further stated in my congressional testimony last October, the memorandum "reflects my views that we need to protect public officials from violence and threats of violence while at the same time protecting parents' ability to object to policies" they disagree with.

The memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. Specifically, it directed the FBI and the United States Attorneys "to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district." Such meetings were intended to "facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff," and "open dedicated lines of communication for threat reporting, assessment, and response." As I explained in my testimony last October, this is consistent with "what the Justice Department does every day:" "consult with our local and state partners and see whether assistance is necessary." Further, "[t]he purpose of this memorandum [was] to get our law enforcement to assess the extent of the problem, and if there is no problem, if states and local law enforcement are capable of handling the problem, then there [would be] no need for [federal] involvement."

9. In your October 4th memo, you wrote, “[i]n the coming days, the Department will announce a series of measures designed to address the rise in criminal conduct directed toward school personnel.” Please provide this committee with the details of those pending measures.

RESPONSE:

As I explained in a speech to Department employees on January 5, 2022: “We have all seen that Americans who serve and interact with the public at every level — many of whom make our democracy work every day — have been unlawfully targeted with threats of violence and actual violence. Across the country, election officials and election workers; airline flight crews; school personnel; journalists; local elected officials; U.S. Senators and Representatives; and judges, prosecutors, and police officers have been threatened and/or attacked. These are our fellow citizens — who administer our elections, ensure our safe travel, teach our children, report the news, represent their constituents, and keep our communities safe . . . In a democracy, people vote, argue, and debate — often vociferously — in order to achieve the policy outcomes they desire. But in a democracy, people must not employ violence or unlawful threats of violence to affect that outcome. Citizens must not be intimidated from exercising their constitutional rights to free expression and association by such unlawful conduct. The Justice Department will continue to investigate violence and illegal threats of violence, disrupt that violence before it occurs, and hold perpetrators accountable. We have marshaled the resources of the department to address the rising violence and criminal threats of violence against election workers, against flight crews, against school personnel, against journalists, against members of Congress, and against federal agents, prosecutors, and judges. In 2021, the Department charged more defendants in criminal threat cases than in any year in at least the last five. As we do this work, we are guided by our commitment to protect civil liberties, including the First Amendment rights of all citizens.”

10. One of the sources cited by the NSBA in their letter to you is a study done by the Armed Conflict Location & Event Data Project about demonstrations over Critical Race Theory (CRT) in the United States.²⁴ The NSBA’s purpose in citing this study is to demonstrate that anti-CRT demonstrations pose a threat to school board members. Notably, however, this study concludes that “despite its prominence within mainstream media and in state legislatures, CRT’s effect on demonstration trends within the United States has been limited compared to movements such as Black Lives Matter, Stop Asian Hate, and Cancel the Rents.” Do you agree with this statement? Is the general rise in demonstrations this past year as concerning to you as the rise in demonstrations at school board meetings?

RESPONSE:

I am unfamiliar with this study.

²⁴ The Armed Conflict Location & Event Data Project (ACLED), “Fact Sheet: Demonstrations over Critical Race Theory in the United States,” July 14, 2021, https://acleddata.com/acleddatanew/wp-content/uploads/2021/07/ACLED_Fact-Sheet_CRT-Demos_2021.pdf.

11. If there are credible instances of violence or threats of violence at school board meetings, why is Department “[c]oordination and partnership with local law enforcement” so “critical” (per the language of your memo) to handling these instances? Has state law enforcement expressed an inability to handle them?

RESPONSE:

Please see the responses to Questions 7 and 8.

12. Given the National School Board Association’s apology for incendiary language in its letter, and given the fact that local law enforcement has not apparently expressed a need for help in managing school board meetings, why is federal “coordination”—rather intervention—needed at all?

- a. Why would federal law enforcement be needed to “discuss[] . . . strategies for addressing threats”? Don’t state and local law enforcement already have strategies in place to do so?
- b. You stated in the hearing that federal law enforcement assists state and local law enforcement “every day.” If this kind of assistance occurs routinely, why was the issuance of this memo needed in the first place? Why do federal, state and local law enforcement need to meet to formulate new strategies to address potential violence if they are already doing so on such a regular basis? Isn’t there already a structure in place for federal law enforcement to assist state and local—if needed?

RESPONSE:

Please see the responses to Questions 7 and 8. In addition, in my testimony on October 27, 2021, I stated that the National School Boards Association letter this question appears to reference “apologizes for language in the [original] letter, but it continues its concern about the safety of school officials and school staff. The language in the letter that they disavow is language [that] was never included in my memo and never would have been. I did not adopt every concern that they had in their letter.”

13. The National Security Division was created after the attacks of September 11th to mirror changes made in the FBI to better address external threats against the nation. It combined two sections from the Criminal division – the counterterrorism section and counterespionage section with the Office of Intelligence and Policy Review, the lawyers who submit FISA applications to the FISA Court.

- a. Isn’t it true that, among other things, 28 C.F.R. § 0.72(a)(2) provides that the Assistant Attorney General for National Security (AAG/NS) shall “[d]evelop, enforce, and supervise the application of all federal criminal laws related to the national counterterrorism and counterespionage enforcement programs”?
- b. Why then, in the October 4, 2021 press release accompanying the memorandum, did you include the NSD on a task force to review school violence?

RESPONSE:

The October 4, 2021, memorandum does not mention the National Security Division. The memorandum specifically directed the FBI and the United States Attorneys “to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district.” Such meetings were intended to “facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff,” and “open dedicated lines of communication for threat reporting, assessment, and response.” As the Assistant Attorney General for the National Security Division stated in his testimony before this Committee in January 2022 when asked about this memorandum, the National Security Division is “available to consult with if the facts warrant.”

14. Is there evidence of terrorism, espionage, or other intelligence matters involving protests by parents at local school board meetings that would require the attention of the National Security Division? Do you expect to file applications for warrants under the Foreign Intelligence Surveillance Act to surveil these parents?

RESPONSE:

As I said in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why the memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.” These protections clearly and importantly cover debate concerning school board policies. As I stated in my congressional testimony on October 21, 2021: “I can’t imagine any circumstance in which the Patriot Act would be used in the circumstances of parents complaining about their children, nor can I imagine a circumstance where they would be labeled as domestic terrorism.” The same would hold equally true with respect to the Foreign Intelligence Surveillance Act.

15. Please list all task forces you have created or appointed since your confirmation as Attorney General.

RESPONSE:

The Justice Department currently maintains over 1,000 task forces that operate across our country and around the world. Over the past year that I have served as Attorney General, the Department has created and maintained a wide range of task forces, including:

- A COVID-19 Fraud Enforcement Task Force that is marshaling the resources of the Department of Justice in partnership with agencies across government to enhance enforcement efforts against COVID-19 related fraud.
- A Ransomware and Digital Extortion Task Force that has helped to lead the Department’s robust response to the threat of ransomware attacks. The Task Force has helped to launch additional coordinated enforcement efforts, including a

National Cryptocurrency Enforcement Team (NCET) to tackle complex investigations and prosecutions of criminal misuses of cryptocurrency, particularly crimes committed by virtual currency exchanges, mixing and tumbling services, and money laundering infrastructure actors and a new Civil Cyber-Fraud Initiative to utilize the False Claims Act to pursue cybersecurity-related fraud by government contractors and grant recipients.

- **Joint Task Force Alpha, a law enforcement task force that is marshaling the investigative and prosecutorial resources of the Department of Justice, in partnership with the Department of Homeland Security (DHS), to enhance U.S. enforcement efforts against the most prolific and dangerous human smuggling and trafficking groups operating in Mexico and the Northern Triangle countries of Guatemala, El Salvador, and Honduras.**
- **A new Anticorruption Task Force fighting corruption in El Salvador, Guatemala, and Honduras.**
- **An Election Threats Task Force that is addressing the rise in threats against election workers, administrators, officials, and others associated with the electoral process.**
- **A dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judges, and Members of Congress, formed to assess the most prevalent threats and recommend measures to further strengthen the Department’s efforts to deter and combat those threats.**
- **Task Force KleptoCapture, an interagency law enforcement task force dedicated to enforcing the sweeping sanctions, export restrictions, and economic countermeasures that the United States has imposed, along with allies and partners, in response to Russia’s unprovoked military invasion of Ukraine.**

16. After the tragic death of George Floyd last year, rioters across the country caused up to \$2 billion in damage to private and public property, and over 500 people were arrested for their involvement.²⁵ Is the Department of Justice involved in the investigation and prosecution of these individuals where appropriate? How many individuals have been arrested and prosecuted for the months-long attack on the federal courthouse in Portland, Oregon?

RESPONSE:

The Department is committed to investigating, disrupting, and bringing to justice those who engage in violence in violation of federal law, regardless of any underlying ideology. To these ends, the FBI, working with state and local law enforcement, has opened and continues to pursue investigations involving violent activity. U.S. Attorneys’ offices in

²⁵ <https://fee.org/articles/george-floyd-riots-caused-record-setting-2-billion-in-damage-new-report-says-here-s-why-the-true-cost-is-even-higher/>; <https://www.axios.com/riots-cost-property-damage-276c9bcc-a455-4067-b06a-66f9db4cea9c.html>; <https://nypost.com/2020/09/16/riots-following-george-floyds-death-could-cost-up-to-2b/>.

multiple jurisdictions have brought charges where the facts show that a federal crime has been committed. In cases where crimes fall exclusively within state or local jurisdictions, the Department provides regular assistance as appropriate.

The Justice Department has dedicated substantial investigative and prosecutorial resources from components across the Department and in dozens of jurisdictions nationwide to bring charges in numerous cases in connection with violence during the summer and fall of 2020 that was aimed at government institutions. The Justice Department has and will continue to aggressively pursue those who engage in violent criminal activity such as the destruction of property and violent assaults on law enforcement.

17. Would you agree that a state's decision to conduct a *meaningful* audit of an election can help foster faith in the electoral process?

RESPONSE:

The right of all eligible citizens to vote is the central pillar of our democracy, and the Justice Department is committed to ensuring that American elections are secure and reflect the choices made on the ballots cast by eligible citizens. The Department will use all of the authorities at its disposal to zealously guard the right to vote.

While post-election activities are governed, in the first instance, by state law, regardless of the relevant state law, federal law imposes additional constraints on post-election activities with which every jurisdiction must comply. For this reason, in July 2021, the Department issued guidance to ensure states fully comply with federal law constraints related to post-election activities. Among other things, the guidance provides information that will assist states in complying with federal law when preserving and retaining election records.

18. I understand many left-wing advocates are pushing less comprehensive "risk-limiting audits which fail to give a complete picture of what could have gone wrong in an election. But many states find those limited audits to be completely unhelpful. Is there any federal law preventing a state from opting to conduct a more extensive audit that might help identify actual problems in the state election process moving forward?

RESPONSE:

In the first instance, audits are governed by state law. However, any state audit must be conducted in a manner that complies with federal law. For example, states must abide by federal laws requiring the preservation and retention of election materials. Further, states may not conduct an audit in such a way that would violate federal laws that prohibit intimidation of persons for voting or for attempting to vote.

19. What statute gives the Department of Justice authority to oversee how a state conducts a post-election audit?

RESPONSE:

There are federal laws that govern the preservation and retention of election materials and that protect against voter intimidation. For example, the Civil Rights Act of 1960 requires state and local election officials to maintain, for twenty-two months after the conduct of an election for federal office, “all records and papers” relating to any “act requisite to voting in such election...” 52 U.S.C. § 20701. With regard to voter intimidation, Section 11(b) of the Voting Rights Act provides that “[n]o person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote.” *Id.* § 10307(b).

20. I am very concerned by the May 5, 2021, letter sent to the President of the Arizona State Senate by Pam Karlan, the Principal Deputy Assistant Attorney General of the Civil Rights Division of the Department of Justice. As I read that letter, Ms. Karlan seems to be attempting to “intimidate” Arizona’s elected officials from conducting a thorough audit of its election. Is this kind of intimidation of elected state officials concerning to you? Why or why not?

RESPONSE:

There was no intimidation. The May 5, 2021, letter simply provided guidance about federal laws that might bear upon Arizona’s post-election activities.

21. In the Department of Justice oversight hearing, you said the Department had charged thousands of cases of criminal illegal crossing this year. Can you please provide the committee with the exact number of prosecutions?

RESPONSE:

The two most common criminal violations of the immigration laws are 8 U.S.C. § 1326, a felony, and 8 U.S.C. § 1325, a misdemeanor. Over 14,000 defendants were charged in fiscal year 2021 with illegal reentry offenses.

22. Recently, DOJ, in conjunction with the Department of Homeland Security, proposed a rule taking authority from the Executive Office of Immigration Review, which is housed in the Department of Justice, and moving that authority to the U.S. Citizenship and Immigration Services, which is housed in the Department of Homeland Security. Can you identify the authority among agencies which allows them to decide which of the responsibilities given to them by Congress they are going to keep and which they are going to siphon off to other agencies?

RESPONSE:

The Homeland Security Act of 2002 charges the Secretary of the Department of Homeland Security (DHS) “with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens.” 8 U.S.C. §1103(a)(1). Further, the Act transferred from the former Immigration and Naturalization Service to DHS the authority to adjudicate asylum applications, as well as the authority to conduct credible fear interviews and make credible fear determinations in the context of expedited removal. *Id.* § 1225(b)(1)(B); *see also* 6 U.S.C. § 271(b) (providing for the transfer of adjudication of asylum and refugee applications from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services, now USCIS).

With the creation of the DHS, Congress created a system that shares asylum jurisdiction between two Departments. The rule to which you refer is an effort to create a more efficient process that crosses the two Departments.

23. The Department of Justice website states there are currently 535 immigration judges working as employees of the Department of Justice. These judges have issued 1.2 million final orders of removal which have yet to be enforced by the Department of Homeland Security. Why would the Department of Justice cede authority to DHS when it refuses to honor the work the employees of the DOJ do to issue final removal orders?

RESPONSE:

The rule at issue seeks to create a more efficient process between DOJ and DHS.

24. On January 26th President Biden issued an executive order that terminates the use of private contractors with the BOP. Can you provide further guidance on whether this executive order applies to the United States Marshals Service?

RESPONSE:

***Executive Order 14006, Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities*, issued on January 26, 2021, provides that the “Attorney General shall not renew Department of Justice contracts with privately operated criminal detention facilities, as consistent with applicable law.” Consistent with the language of that order, USMS believes that it applies to any privately-operated detention facility where USMS houses pretrial detainees.**

25. The January 26th Executive Order states in part that “our current system of mass incarceration imposes significant costs and hardships on our society and communities and does not make us safer.” How does eliminating private prisons reduce mass incarceration? Does the administration have a plan for where inmates housed in private prisons will be relocated to?

RESPONSE:

With respect to Justice Department reviews and evaluations regarding the implementation of Executive Order 14006, including the impact on the justice system, the United States Marshals Service (USMS) reports that its Prisoner Operations Division conducted an assessment of all Intergovernmental Agreements (IGAs) with state and local agencies within proximity of the private facilities under direct contract with USMS. The USMS assessment examined IGA bedspace availability within 150 miles of the affected Federal courthouses to determine whether private facility populations could be absorbed. The Federal Bureau of Prisons (BOP) reports that it conducted a simultaneous review of its facilities proximate to USMS private detention facilities to determine bedspace suitability and availability for USMS needs. BOP has provided over 1,800 beds (over and above bedspace already provided for USMS use) to assist USMS in complying with EO 14006.

26. If the President's Executive Order applies to the USMS, what will the DOJ do to ensure that the estimated 62,000 USMS detainees continue to receive necessary bed space, transportation, access to the courts, and access to legal representation in accordance with the due process clause?

RESPONSE:

The USMS strives to ensure that prisoners in its custody are located as close as practicable to the federal court where they are being prosecuted. Minimizing the distance between the detention facility and the federal court reduces burdens to federal prosecutors, defense counsel, pretrial services, and the prisoners. Additionally, housing prisoners close to their homes affords them greater opportunity to maintain contact with family throughout the course of their legal proceedings. While housing prisoners a greater distance from the federal courts might result in logistical challenges, the USMS will continue to produce prisoners for required court proceedings and attorney meetings. Further, video-conferencing has been used successfully to conduct court proceedings, facilitate attorney-client meetings, and maintain contact with family.

27. Since President Biden issued the Order, exceptions have been made for privately operated detention facilities that contract with USMS. This includes the Willacy County Regional Detention Facility in Southern Texas, whose contract was extended for an additional six months in September. Do you know of any efforts by the Biden administration to alter the January 26th executive order to provide a permanent solution for these facilities and the detainees being housed there?

RESPONSE:

The Justice Department will continue working to implement the Executive Order in a responsible fashion.

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE TOM COTTON**

1. On what date did you first begin working on your October 4 memorandum?

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association’s letter, dated September 29, 2021, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. I began working on my memorandum sometime after the date of the letter.

2. On what date did the Department first begin drafting your October 4 memorandum?

RESPONSE:

Please see the response to Question 1.

3. Did the Department provide the White House with any drafts or copies of the October 4 memorandum before it was issued?

RESPONSE:

As I stated in my congressional testimony last October, “[n]o one in the White House spoke to me about” the October 4, 2021, memorandum. The memorandum “reflects my views that we need to protect public officials from violence and threats of violence while at the same time protecting parents’ ability to object to policies” they disagree with. As I further stated during my October 21, 2021, congressional hearing, “I am sure that the communication from the National [School Boards Association] was discussed between [] the White House and the Justice Department, and that’s perfectly appropriate,” as the White House is “appropriately concerned about violence.”

4. Please provide the Committee with copies of all public reports on which you relied when crafting your October 4 memorandum.

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association’s letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. As we were seeing before the October 4, 2021, memorandum was issued and we have seen since, there has been a disturbing increase in violence and threats of violence against public servants across the country. The Justice Department will not waver in its commitment to keeping these public servants safe.

More broadly, as I explained in a speech on January 5, 2022: “We have all seen that Americans who serve and interact with the public at every level — many of whom make our democracy work every day — have been unlawfully targeted with threats of violence and actual violence. Across the country, election officials and election workers; airline flight crews; school personnel; journalists; local elected officials; U.S. Senators and Representatives; and judges, prosecutors, and police officers have been threatened and/or attacked. These are our fellow citizens — who administer our elections, ensure our safe travel, teach our children, report the news, represent their constituents, and keep our communities safe.”

5. You stated during your testimony that you did not intend for your October 4 memorandum to have a chilling effect on free speech. The Department of Justice regularly issues directives and memoranda without accompanying press releases. If your only purpose was to ask the FBI and U.S. Attorneys to convene meetings and find out more about the alleged school board issues, why did the Department issue a press release on the topic and tout additional forthcoming measures?

RESPONSE:

As I said in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why my October 4, 2021, memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.” Further, the memorandum was entitled “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff.” As its title suggests, this memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. The memorandum specifically directed the FBI and the United States Attorneys “to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district.” Such meetings were intended to “facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff,” and “open dedicated lines of communication for threat reporting, assessment, and response.”

6. Please provide a list of all meetings or phone calls that staff of the Department of Justice attended with representatives of the National School Boards Association or the National Education Association since June 1, 2021.

RESPONSE:

It is both appropriate and necessary for the Department of Justice to meet with a wide array of stakeholders representing a range of voices. I do not know about all such meetings.

7. Please provide a list of all meetings or phone calls that staff of the Department of Justice attended with anyone outside of the Department of Justice regarding your October 4 memorandum prior to your issuing that memorandum.

RESPONSE:

Please see the response to Question 6.

8. Did you meet with senior leadership of the FBI about your October 4 memorandum before it was issued?

RESPONSE:

As I stated in my congressional testimony on October 27, 2021, “My understanding was that the memo or the idea of the memo had been discussed with the FBI before” it was issued.

9. On April 28, 2021, the FBI reportedly served a warrant on Alaskan small business owners Paul and Marilyn Hueper, forcibly entering their home and handcuffing them and two of their guests due to a tip that incorrectly identified Marilyn Hueper as having stolen a laptop from Speaker Pelosi’s office on January 6, 2021. A New York woman reportedly has since confessed to stealing the laptop in question. Last month, Senator Sullivan sent a letter to the Department, seeking an acknowledgement and apology from the FBI to the Huepers for the mistake. Have you responded to that letter? Do you believe that the Huepers deserve an apology for being wrongfully targeted in this enforcement action?

RESPONSE:

The FBI advises that Director Wray and the Bureau have responded to Senator Sullivan, including in a reply letter dated May 14, 2021.

10. In November 2018, the Department of Justice launched the “China Initiative,” which focuses on countering the Chinese Communist Party’s efforts to steal sensitive information and technology from the United States to enhance its own military and economic strength. In November 2020, the Department released a review of progress under the China Initiative, demonstrating strides in countering China’s coordinated campaign. The Department’s webpage for the China Initiative has not been updated since June 2021, and the most recent case example posted on the webpage comes from May 2021. Is the Department of Justice still actively executing the China Initiative?

RESPONSE:

The Justice Department remains fully committed to protecting the country against the threats posed by the People’s Republic of China (PRC) – in particular, espionage, cyber intrusions, and theft of intellectual property. As the Assistant Attorney General for the National Security Division said in February, the Department “will be relentless in

defending our country from China,” and will “continue to prioritize and aggressively counter the actions of the PRC government that harm our people and our institutions.” There has been no change in tools or resources allocated to address threats from PRC government policies, including espionage and intellectual property theft.

The Department continues to employ a rigorous, all-tools approach. In addition to opening criminal cases, where appropriate, the Department is actively engaging with and sharing information with the companies, universities, and international and local governments whose technology, innovations, research, and information may be at risk. The Department also chairs the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, which advises the Federal Communications Commission on national security and law enforcement concerns associated with applications for telecommunications licenses meeting certain thresholds of foreign ownership or control.

At the same time, to ensure we do so in a way that is consistent with the foundational values of the Justice Department, and make decisions about prosecutions based on the facts and the law, and not based on race, ethnicity, national origin, or any other improper factor, I asked the Assistant Attorney General for the National Security Division to undertake a review of our approach to countering those threats. In remarks delivered on February 23, 2022, the Assistant Attorney General described the Division’s new “Strategy for Countering Nation-State Threats.”

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE THOM TILLIS**

School Board Memo

1. I share the concerns raised by my colleagues about the actions taken by the Justice Department and the Biden Administration to intimidate parents and discourage them from exercising their First Amendment rights. This entire episode is beneath the dignity the Justice Department, and is an affront to the freedom of speech. It is absolutely critical that those responsible for this travesty are held accountable for their actions.
 - a. Who in the Department made the decision to draft this inflammatory memorandum?
 - b. Which individuals signed off on this memorandum before it was issued?
 - c. Did you direct individuals under your supervision to draft this memorandum? If so, when did you direct individuals to draft this memorandum?
 - d. If you did not direct your staff to draft this memorandum, who in the Department was responsible for first proposing this memorandum?
 - e. Who was primarily responsible for drafting this memorandum?
 - f. If you did not direct your staff to draft this memorandum, when did you become aware that it was being drafted? Did you provide any guidance or edits during the drafting of this memorandum?
 - g. Did the Department follow its usual policies and procedures when drafting and approving this memorandum? If not, in which ways did the Department depart from its policies and procedures?
 - h. Has the Department opened any investigations based on this memorandum? Have any arrests been made as a result of this memorandum? If so, what specific criminal statutes were used to charge individuals based on this memorandum?

RESPONSE:

I issued the memorandum you reference on October 4, 2021. It was entitled “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff.” As its title suggests, this memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. The memorandum specifically directed the FBI and the United States Attorneys “to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district.” Such meetings were intended to “facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff,” and “open dedicated lines of communication for threat reporting, assessment, and response.”

As I said in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why the memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our

Constitution.” These protections clearly and importantly cover debate concerning school board policies.

The October 4, 2021, memorandum responded to concerns about violence, threats of violence, and other criminal conduct because the Justice Department has a responsibility to keep the American people safe. The memorandum “reflects my views that we need to protect public officials from violence and threats of violence while at the same time protecting parents’ ability to object to policies” they disagree with. I signed the memorandum, and I worked on it.

2. It has been established that the National School Board Association was “in talks over the last several weeks with White House staff” before sending a letter to President Biden regarding threats against school board members. This admission raises many questions about the political nature and motivations behind this memorandum.
 - a. Did any White House staff contact any Department of Justice staff regarding this memo at any time before, during, or after it was drafted? If so, which Department officials were contacted by which White House officials?
 - b. Did the White House direct the Department of Justice to issue this memorandum? Did the White House exert any influence over the Department of Justice to issue this memorandum?
 - c. Did the White House play any role in the drafting of this memorandum? Did the White House offer any suggested language for this memorandum? Was the White House provided a copy of this memorandum before it was issued, and if so, did the White House provide any edits to the memorandum? If so, which edits were made at the suggestion or direction of the White House?

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association’s letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence. As I stated during congressional testimony last October, the memorandum “reflects my views that we need to protect public officials from violence and threats of violence while at the same time protecting parents’ ability to object to policies” they disagree with. I signed the memorandum, and I worked on it. As I also stated in my October 21, 2021 congressional testimony, “[n]o one in the White House spoke to me about” the October 4, 2021 memorandum, although “I am sure that the communication from the National [School Boards Association] was discussed between [] the White House and the Justice Department, and that’s perfectly appropriate,” as the White House is “appropriately concerned about violence.”

3. On October 13, Secretary of Education Miguel Cardona appointed Viola Garcia to the National Assessment Governing Board. Ms. Garcia is the President of the National School Boards Association, and was a signed author of the now infamous letter which compared parents to “domestic terrorists.” She wrote to the NSBA Board that the NSBA

had “been engaged with the White House and the Department of Education on these and other issues . . .”

- a. Is there any connection between the NSBA letter, the DOJ memorandum, and Ms. Garcia’s appointment to the National Assessment Governing Board?
- b. Was Ms. Garcia’s nomination predicated on pushing the political agenda against parents, as shown in the DOJ memorandum?

RESPONSE:

I do not believe that I know Ms. Garcia.

4. As you now know, the Acting U.S. Attorney for the District of Montana issued a memorandum to state and local officials outlining a list of “Federal Crimes Involving Harassment, Intimidation, and Threats of Violence.”
 - a. Have any other U.S. Attorney offices in any other district issued similar guidance related to the DOJ memorandum? Please provide copies of any additional guidance issued by other U.S. Attorneys.
 - b. How did the Acting U.S. Attorney for the District of Montana identify these specific statutes to prosecute parents?
 - c. Are these the statutes DOJ intends to use nationwide to prosecute parents for exercising their First Amendment rights?

RESPONSE:

The October 4, 2021, memorandum was entitled “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff.” As its title suggests, this memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. This memorandum responded to concerns about violence, threats of violence, and other criminal conduct because the Justice Department has a responsibility to keep the American people safe. As I explained in my congressional testimony last October, there are federal statutes that address violence, as well as threats of violence, including 18 U.S.C. § 2261A. The Supreme Court has explained in *Virginia v. Black* “when intimidation is not protected by the Constitution and that is when it is made with the intent of placing the victim in fear of bodily harm or death.”

Parents who advocate with regard to school board policies are protected by the First Amendment. Moreover, as I stated in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why my memorandum makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.”

Immigration

5. On July 1, I sent you a letter with seven other Senators related to your decision to vacate two immigration rulings, Matter of L-E-A and Matter of A-B. In that letter, we raised concerns that your decision to vacate these rulings would encourage more illegal immigration and lead to abuse of the asylum system.
 - a. At this time, my office has not received your response to this letter – when will a response be sent?
 - b. Did DOJ or the Biden Administration conduct an analysis of the impact of vacating Matter of L-E-A- and Matter of A-B- on illegal economic migration before taking this course of action? If so, did this analysis consider the pull factor of drawing more illegal immigrants to the border and enabling the cartels who profit from asylum abuse?
 - c. How many asylum seekers currently request asylum based on private criminal activity, and are being denied as a result? How many more asylum seekers would qualify due to the Biden Administration’s actions?
 - d. In light of a historic immigration backlog, DOJ requested an additional 100 immigration judges in its FY2022 budget request. If the Biden Administration’s promotion of asylum fraud goes through, will DOJ request additional judges to help process the inevitable wave of claims based on private criminal activity?
 - e. Has DOJ or the Biden Administration conducted a cost review to determine how much encouraging fraudulent asylum claims will cost the American taxpayer? What resources may be diverted from DOJ which could otherwise be directed towards protecting public safety and prosecuting dangerous criminals?
 - f. How many individuals have been approved for an asylum claim based on claims which would have been barred before you vacated these rulings?

RESPONSE:

On June 16, 2021, I issued decisions vacating decisions in which asylum had been denied to individuals who claimed persecution based on membership in a “particular social group.” *Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021) and *Matter of L-E-A-*, 28 I&N Dec. 304 (A.G. 2021). “Particular social group” is a complex issue, and consistent with past Attorneys General, I determined that complex questions of immigration law are better addressed in rulemaking. *See Matter of Compean*, 25 I&N Dec. 1, 2 (A.G. 2009). Rulemaking on this issue is consistent with the executive order directing the Secretary of Homeland Security and me to “promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a ‘particular social group’ as that term is used in 8. U.S.C. 1101(a)(42)(A).” Executive Order No. 14010, § 4(c)(ii) (Feb. 5, 2021).

With regard to your questions about funding for immigration judges, it is a priority for the Department to promote a fair, equitable, and efficient immigration court system by reducing the immigration court backlog and increasing access to legal representation. The hiring of additional immigration judges will help increase the Executive Office of Immigration Review’s adjudicatory and case processing capacities, which will help

decrease the pending caseload. The Department is committed to ensuring that immigration judges decide cases based on the law and the facts, and that all parties are treated with respect and dignity.

6. Recently, the Department of Justice and the Department of Homeland Security issued a joint proposed rule to amend asylum processing by allowing USCIS asylum officers to make an initial adjudication.
 - a. The proposed rule would still permit applicants to appeal their decision to an immigration judge for consideration. Did DOJ conduct an analysis of any kind to anticipate the likelihood that applicants will appeal their decisions to an immigration judge? In other words, does DOJ believe that most unsuccessful applicants will still appeal a decision to an immigration judge?
 - b. Does DOJ believe that having an initial determination in a non-adversarial asylum hearing will sufficiently prevent improper claims of asylum from being granted? What specific steps will DOJ take to ensure that improper claims are filtered out?
 - c. Did DOJ and DHS conduct an analysis to determine how this proposed rule would improve processing times? If so, can you provide estimates for how quickly an asylum claim would be adjudicated under this rule?
 - d. Did DOJ conduct an analysis of how this proposed rule would impact how quickly immigration judges are able to complete cases? If so, what were the results of that analysis?

RESPONSE:

On March 24, 2022, the Department of Homeland Security and the Department of Justice issued a rule to improve and expedite processing of asylum claims made by noncitizens subject to expedited removal, ensuring that those who are eligible for asylum are granted relief quickly, and those who are not are promptly removed. That rule is available here: <https://www.federalregister.gov/documents/2022/03/29/2022-06148/procedures-for-credible-fear-screening-and-consideration-of-asylum-withholding-of-removal-and-cat>.

The rule advances our efforts to ensure that asylum claims are processed fairly, expeditiously, and consistent with due process. As explained in the rule’s preamble, it is the Department’s view that “the American public is better served if claims for asylum or related protection that originate through the credible fear screening process [are] adjudicated—fairly and efficiently—not only within section 240 proceedings before IJs but also by asylum officers who specialize in such claims.” Indeed, asylum officers are “well-trained in making credibility determinations and assessing evidence,” and will be able to “consider evidence relevant to an applicant’s claim, including evidence that might be introduced as impeachment evidence in immigration court, and an asylum officer, where appropriate, can ask the applicant questions similar to those that a DHS attorney might ask in immigration court during a cross-examination.” As a result, a nonadversarial process “allows for the presentation and consideration of asylum and other protection claims in a manner that is fair and efficient.”

While preparing the rule, the Department of Justice and the Department of Homeland Security determined that it was not possible to quantify how many applicants who are unsuccessful before U.S. Citizenship and Immigration Services would ultimately pursue review of the asylum officer’s decision by an immigration judge.

The Department of Justice and the Department of Homeland Security anticipate this rule to improve processing times as compared with the procedures in effect without this rule. The Departments anticipate that, under the procedures set out in the proposed rule, most cases referred to the new system would have an initial adjudication within 90 days compared to the many months, or even years, that it would take for the same individual to receive a decision from an immigration court.

The length of time required for an immigration judge to conduct the review proceedings under this rule has not been quantified. However, because each case adjudicated by U.S. Citizenship and Immigration Services is one less case that would have been on an immigration judge’s docket, these judges will have additional time to adjudicate cases that would not have been otherwise addressed in the same period of time.

7. The immigration court backlog has grown exponentially over the past decade. At this time, there are approximately 1.45 million cases pending before an immigration judge.
 - a. What is the average time it currently takes to complete an immigration case before an immigration judge?
 - b. What actions is DOJ taking to reduce the immigration court backlog and more quickly adjudicate immigration cases?

RESPONSE:

According to EOIR, as of September 30, 2021, the median length of time across the previous fiscal year to complete a detained case was 47 days, and the median length of time to complete a non-detained case over that same time period was 1,411 days.

The backlog of cases in the immigration courts is a serious problem that the Department is committed to addressing. The backlog has many causes, and we need to pursue – and are pursuing – a multipronged strategy to address it. EOIR is examining the administrative tools available to them. A critical component of our strategy is the budget. Put simply, EOIR needs more resources in order to adjudicate more cases. The Department appreciates the funding provided by Congress in the past, and we respectfully request full consideration of the President’s FY23 budget request, which includes \$1.354 billion for EOIR, representing an increase of 78% over the FY 22 enacted level.

8. Earlier this year, I wrote a letter along with ten of my Senate colleagues regarding DOJ policy on sanctuary jurisdictions. I remain concerned that this policy change will only encourage more states and cities across the country to embrace dangerous sanctuary policies.
 - a. What is DOJ’s current position on sanctuary city policies that prohibit state and local governments from cooperating with federal authorities to enforce the law?

- b. On how many occasions has DOJ been unable to enforce the law and protect public safety due to sanctuary policies? Please be specific about the number of incidents in which sanctuary jurisdictions have declined to comply with DOJ requests.
- c. How many criminal aliens have been placed in federal custody who were released due to sanctuary policies? In how many instances did these individuals commit crimes during the time between their release and subsequent capture by federal authorities? Please provide specific about the number of arrests and which crimes were committed.

RESPONSE:

The Department's position is set forth in public guidance that was issued on April 22, 2021. See <https://www.ojp.gov/funding/explore/legal-notices>. Relevant Justice Department components advise that they do not maintain data responsive to subparts (b) and (c) of this question.

- 9. With the rampant lawlessness at our southern border, I am concerned that more criminal aliens are making their way into the country, putting public safety at risk. This is further fueled by the smugglers and traffickers who are using the surge at our border as a way to escape capture by our brave Border Patrol agents.
 - a. How many prosecutions of criminal aliens has DOJ pursued since January 20, 2021? How does that compare to prosecutions of criminal aliens during the preceding year?
 - b. How many criminal alien murderers, sex offenders, and drunk drivers were charged or prosecuted by DOJ since January 20, 2021? Please provide a specific breakdown of how many individuals were charged, prosecuted, and convicted.
 - c. Are individuals with convictions or indictments for murder, sex offenses, and drunk driving being placed into expedited removal proceedings before immigration judges? What are you doing to ensure they are expeditiously removed?
 - d. Please provide specific statistics about Americans who have been harmed or killed by criminal aliens since January 20, 2021. Please provide a breakdown of which crimes were committed against American citizens, and what charges were filed against the criminal aliens responsible.

RESPONSE:

The Justice Department makes prosecution decisions based on the individual facts and circumstances of each matter, consistent with the *Principles of Federal Prosecution*. With respect to the placement of individuals into expedited removal proceedings, that is solely a function of the Department of Homeland Security.

Law Enforcement

10. Our brave, hardworking men and women in blue put themselves in danger each and every day to keep our communities and our families safe. In 2020, 46 law enforcement officers were killed by criminals in the line of duty. Already this year, there have been 61 officers killed by criminals. In addition, the FBI reports that over 60,000 officers were assaulted in the line of duty in 2020.
- a. This is a shocking increase in assaults against law enforcement officers. What efforts is DOJ taking to investigate, prosecute, and deter violent assaults against the law enforcement community?
 - b. How many arrests have been made against those who have assaulted or killed a law enforcement officer in 2021?
 - c. How many federal prosecutions have been pursued against the criminals who have assaulted or killed law enforcement officers in 2021? What specific federal statutes have been used to prosecute these crimes and in how many cases?

RESPONSE:

The Justice Department has no more important responsibility than keeping the American people safe, including the men and women who serve our nation as sworn law enforcement officers. Although at this time the Department does not maintain publicly available data that is sufficient to be responsive to your questions, over the past year, the Department has increased its efforts to deter and combat threats to the law enforcement community. For example, in March 2021, the Department formed a dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judge, and Members of Congress to assess the most prevalent threats and implement measures to further strengthen the Department's capacity to deter and combat those threats.

In addition to the Department's own investigative and prosecutorial efforts, the Department is scaling up our support for state and local law enforcement partners nationwide. For example, the President's FY 2023 budget request seeks dedicated funding for the police, including:

- **A total of \$2.83 billion in discretionary and mandatory resources in FY23 for the Community Oriented Policing Service (COPS) to support the hiring of police and sworn law enforcement personnel nationwide and the implementation of community-based strategies to combat violent crime.**
- **A total of \$6.24 billion in discretionary and mandatory resources in FY23 for the Office of Justice Programs to support critical longstanding Justice Department grant programs – including Byrne Justice Assistant Grants and Project Safe Neighborhoods – as well as new programs that will provide state, local, and Tribal law enforcement partners with additional resources to prevent crime and reduce gun violence.**

- **In addition, the President is proposing a total of \$30 billion in new mandatory resources to support law enforcement and prevent crime.**

Bureau of Prisons

11. The First Step Act was a historic, bipartisan piece of legislation which seeks to reduce recidivism by encouraging inmate participation in recidivism reduction programming. One key provision is the use of earned time credits as an incentive for inmates to participate in programming.
 - a. According to the proposed rule titled “FSA Time Credits,” inmates are only eligible for credits earned after January 15, 2020. Have First Step Act earned time credits been applied to inmate sentences since January 15, 2020, or are they still being withheld pending the completion of the proposed rule? If earned time credits are being withheld until completion of the proposed rule, how quickly will DOJ be able to apply these credits to inmates?
 - b. Has DOJ applied earned time credits to any inmate sentences for programming which was completed prior to January 15, 2020?
 - c. How significant are waitlists for inmates to access programming, and how will you reduce these waitlists?

RESPONSE:

The First Step Act is a critical piece of bipartisan legislation that promised a path to an early return home for eligible incarcerated people who invest their time and energy in programs that reduce recidivism. I am committed to ensuring that the Justice Department does its part to honor this promise.

On January 13, 2022, the Department submitted to the Federal Register a final rule implementing the Time Credits program required by the First Step Act for persons incarcerated in federal facilities who committed nonviolent offenses. The final rule can be viewed here: <https://www.federalregister.gov/documents/2022/01/19/2022-00918/fsa-time-credits>. As part of the implementation process, the Federal Bureau of Prisons has begun transferring eligible inmates out of BOP facilities and into either a supervised release program or into Residential Reentry Centers or home confinement.

Under the FSA, eligible inmates may earn 10 to 15 days of time credits for every 30 days of successful participation in Evidence Based Recidivism Reduction Programs and Productive Activities. The earned credits can be applied toward earlier placement in pre-release custody, such as RRCs and HC. In addition, at the BOP Director’s discretion, up to 12 months of credit can be applied toward Supervised Release. Inmates are eligible to earn Time Credits retroactively back to Dec. 21, 2018, the date the First Step Act was enacted, subject to BOP’s determination of eligibility.

Implementation is occurring on a rolling basis, beginning with immediate releases for inmates whose time credits earned exceed their days remaining to serve, are less than 12 months from release, and have a Supervised Release term. Some of these transfers have

already begun, and many more will take place in the weeks and months ahead as BOP calculates and applies time credits for eligible incarcerated individuals.

With respect to reducing waitlists for inmates to access FSA programming, the Bureau reports that it offers more than 80 programs across sites. Programs are staged at different times throughout the incarceration period for all inmates, and there are varying priorities and needs for different individuals. The Bureau asks inmates to sign up for programs so they can plan cohorts and ensure every inmate gets the programs he or she needs prior to release. The Bureau builds capacity in programming through increasing staffing of its professional program delivery staff (i.e., psychologists).

12. Butner FCI had one of the worst COVID-19 outbreaks in any federal prison, and still ranks as having the most inmate deaths at 32. It was also the only facility where two staff members have died. In total, 1,157 inmates contracted and have recovered from COVID-19, making Butner the fourth highest facility in the country.

- a. Have all interested staff members been able to access a vaccine? If not, why have they not been able to receive a vaccine, and how is DOJ planning to ensure they have access to a vaccine?

RESPONSE to Question 12a:

BOP advises that all Bureau staff have been offered the COVID-19 vaccine.

- b. Are all inmates at Butner FCI eligible for the COVID-19 vaccine?

RESPONSE to Question 12b:

BOP advises that all inmates at FCI Butner have been offered the vaccine and that all newly admitted inmates will be offered the vaccine as part of the health intake and health assessment process.

- c. How many inmates have been vaccinated against COVID-19?

RESPONSE to Question 12c:

The Bureau of Prisons reports that as of April 21, 2022, 588 inmates at FCI Butner have received a complete vaccine series; 2,613 inmates have received a complete vaccine series at the entire Butner Complex; and 93,922 current inmates across the Bureau of Prisons have received a complete vaccine series.

- d. Have all inmates who want a vaccine been able to receive one? If not all interested inmates have been able to receive a vaccine, why have they not been able to receive a vaccine and how is DOJ planning to ensure they are able to receive a vaccine?

RESPONSE to Question 12d:

BOP reports that, as of March 14, 2022, 1,747 inmates in BOP custody have not yet been offered the vaccine. Of those, 1,264 have been in BOP custody for less than four weeks. The Bureau continues to offer inmates the vaccine. Inmates who previously refused the vaccine may still request and receive the vaccine.

13. On June 29, 2021, I joined a bipartisan letter with my seven of my Senate colleagues to BOP regarding concerns about reports that the inmate deposit fund program operates with little oversight, enables federal inmates to avoid paying child support and other debts, and fails to scrutinize inmate accounts for suspicious and potentially criminal activity. Deputy Assistant Attorney General Joe Gaeta responded on August 24, 2021. He stated that BOP would be implementing reforms, procedures, strengthen monitoring of accounts, and increase communication with law enforcement on suspicious activity.
 - a. Can you provide a status update on the policy implementation to ensure the deposit fund program has the necessary oversight?
 - b. What steps does BOP take to screen inmate transactions at Butner FCI for suspicious activity? Does BOP report suspicious activity to the Financial Crimes Enforcement Network?
 - c. Does BOP coordinate with other law enforcement entities such as the U.S. Marshals Service, the relevant U.S. Attorney, or any other law enforcement entity to monitor inmate trust fund accounts to ensure any financial obligation of an inmate is pursued?

RESPONSE:

I share your concern and agree that inmates must not be permitted to use Bureau of Prisons accounts to engage in unlawful activity or avoid obligations like court-ordered restitution. That is why in August 2021, the Deputy Attorney General issued a directive to the Bureau of Prisons to implement appropriate reforms to its current policies and procedures that would strengthen monitoring and reporting of these accounts, as well as identify funds that should be encumbered for financial obligations.

Implementation of this directive is underway. As one step in addressing these issues, the Bureau of Prisons issued additional guidance to wardens on account monitoring and is currently revising its Program Statement regarding the Inmate Financial Responsibility Program. In addition, the Department is evaluating appropriate BOP policies and procedures with respect to offsets. The Department also continues to consult with the Department of Treasury on this, as appropriate.

The Department's leadership is working closely with the Bureau of Prisons to continue to identify areas for improvement and implement reforms.

The Bureau advises that it regularly communicates and coordinates with outside law enforcement agencies to report suspicious financial activity through both direct reporting and participation on Justice Department task forces, such as the NJTTF, JTTFs, Vulcan, and Safe Streets.

The Bureau also advises that it provides the U.S. Marshals Service notification of all inmate receipts in excess of \$1,200 on a weekly basis. In addition, BOP reports that it provides the U.S. Marshals Service an inmate excess account balance report for account balances over \$1,200 every six months and upon request.

14. On September 23, 2021, I sent a bipartisan letter to BOP Director Carvajal with three of my Senate colleagues. The letter highlights the recent reports that BOP is failing to fully implement the First Step Act's medication-assisted treatment (MAT) program and use the appropriated funding by Congress to expand access to opioid treatment medication throughout the federal prison system.
 - a. At this time, I have not received a response to this letter. Can you please provide an update as to when we can expect a response to this letter?

RESPONSE:

The Bureau of Prisons advises that it responded to your September 23, 2021, letter on November 12, 2021.

- b. Can you provide the number of FCC Butner inmates that have been screened for participation in the MAT program? How many inmates are currently eligible to receive treatment through the MAT program?
- c. How many FCC Butner inmates are currently receiving treatment through the MAT program? What is the total number of inmates that have received treatment through the MAT program since the First Step Act was signed into law?
- d. What specific actions have you taken to expand access to the MAT program among federal inmates, particularly following the May 2020 Government Accountability Office report titled "Improved Planning Would Help BOP Evaluate and Manage Its Portfolio of Drug Education and Treatment Programs"? What is the status of your compliance with the GAO recommendations related to MAT treatment programs?
- e. Are there any additional concerns that we should be aware about when it comes to the MAT program or evidence based treatment? What additional funding or authorities would be helpful from Congress in order to fully implement the MAT program?

RESPONSE:

BOP reports that as of April 21, 2022, of the current population at FCC Butner, 242 individuals have been screened or are currently being screened for MAT services. BOP reports that as of April 21, 2022, a total of 21 individuals were receiving treatment through FCC Butner’s MAT program. BOP advises that a total of 1,611 inmates have received treatment through the MAT program since the First Step Act was signed into law in 2018.

The Bureau reports that it completed a comprehensive and collaborative review of all applicable divisions that would require additional personnel required to support the expansion of MAT. The Health Services Division, Reentry Services Division, and the Correctional Programs Division have worked to determine personnel requirements given the complex nature of delivering MAT services. This review included a review and evaluation of the program requirements for MAT expansion. In addition, the Bureau consulted with several external subject matter experts on MAT services delivery models to incorporate lessons learned and challenges faced by other correctional jurisdictions and/or community clinic operations. The Bureau incorporated this knowledge into agency trainings.

The Bureau advises that it is actively working with the Government Accountability Office regarding the implementation of the recommendations from the report entitled “Improved Planning Would Help BOP Evaluate and Manage Its Portfolio of Drug Education and Treatment Programs.” In addition, BOP advises that it is working with DEA and the Substance Abuse and Mental Health Services Administration on a model that would allow the Bureau to provide MAT at all Federal prison facilities. BOP expects this model to become operational in summer 2022.

15. Staffing remains a consistent challenge at BOP facilities across the country. While staff augmentation is a tool in extraordinary circumstances to fill vacant positions, I am concerned this is an unsustainable model and that DOJ and BOP must develop and implement strategies to address staffing shortages.
- a. How many positions currently remain vacant at FCI Butner? What is the current staff vacancy rate?
 - b. How much has Butner FCI been required to use augmentation to address staffing? What percentage of the current staff is being forced to perform tasks outside their training or expertise?
 - c. Does BOP have a specific plan to address any staff shortages at FCI Butner?
 - d. Do you support the use of direct hiring authority by BOP to ease staffing shortages at FCI Butner and nationwide?

RESPONSE:

Ensuring that BOP facilities are fully staffed by professionals with the necessary skills and expertise to ensure a safe and humane prison system is a priority for the Justice Department. That is why in FY 2023, the President’s Budget requests a total of \$8.18 billion for BOP to ensure the health, safety, and wellbeing of correctional staff and

incarcerated individuals. The Justice Department’s FY 2023 request would allow BOP to hire more than 700 new correctional officers and nearly 600 new First Step Act staff.

To address staffing shortages and ensure the staffing stability needed to carry out its mission successfully, BOP has focused on recruitment – including recruitment efforts to fill mission critical positions –and retention of staff. As a general matter, in certain appropriate circumstances, the use of direct hiring authority, and recruitment and retention initiatives such as accelerated promotion programs and special salary rates, have been beneficial in addressing staffing shortages at BOP facilities.

BOP reports that as of the pay period ending April 23, 2022, there are 120 vacant positions at the FCC, which is a 9.04% vacancy rate. As of that date, FCC Butner was staffed at its FY22 funding level of 90.36%.

BOP advises that no staff are being forced to perform duties outside of their training or expertise. All staff within the institution are trained as Federal Law Enforcement Officers with primary responsibility for the safety and security of inmates. Consequently, all institution correctional workers receive primary law enforcement pay and retirement. More broadly, BOP reports that through the first half of FY 2022, documented augmentation hours across all BOP facilities have decreased compared to each of the past two fiscal years.

Illicit Drugs

16. On September 30, 2021, U.S. Drug Enforcement Administration (DEA) Administrator Anne Milgram announced that a total of 9.5 million fake pills have been seized this year. 1.8 million fake pills were seized and 810 arrests were made nationwide in a two-month operation called “One Pill Can Kill.” Administrator Milgram highlighted that the fake pills laced are being produced by Mexican criminal drug networks and being sent to the United States.

- a. What efforts is DOJ taking to stop these illicit networks from distributing fake pills into our communities?
- b. In April 2021, the Raleigh, NC DEA field office representative also provided an alert that fake pills are being advertised to children on Snapchat by drug dealers. The advertisements on social media applications have already led to North Carolina children overdosing. What action is DOJ taking to stop drug dealers from using social media to advertise fake pills or other illicit drugs to our vulnerable children?
- c. What outreach is DOJ and the DEA doing to inform North Carolina parents of the threats of fake pills and illicit drugs in the community?

RESPONSE:

As I testified before this Committee on October 27, 2021, the Justice Department is committed to keeping our country safe by addressing drug trafficking networks and overdose deaths. To these ends, DEA has stepped up its efforts nationwide to target the

criminal drug networks flooding the U.S. with deadly, fentanyl-laced fake pills. On August 3, 2021, DEA launched a nationwide law enforcement effort to address the increase in the availability and lethality of fentanyl-laced fake pills. In the first two months of the effort, DEA worked in concert with federal, state, and local law enforcement partners to seize more than 1.8 million fentanyl-laced fake pills. In 2021, DEA seized more than 20.4 million potentially fake pills. DEA continues to focus its operational efforts on stopping the flow of deadly synthetic fentanyl, methamphetamine, and counterfeit pills into our communities. In addition, in September 2021, DEA launched the One Pill Can Kill public awareness campaign, which included DEA's first Public Safety Alert in six years, to warn the public of the threat of counterfeit pills. The Justice Department would welcome the opportunity to brief your office on this important issue.

DEA advises that it is focused on combating the drug trafficking threat on social media. Social media has emerged as a flourishing new marketplace to buy and sell counterfeit pills, opioids, and other illicit drugs. Drug traffickers are exploiting their access to Americans through social media to expand their reach, create new markets, and target new clientele. Dismantling illicit social media drug marketplaces is critical to stemming the flow of dangerous drugs into our communities and preventing overdoses.

Finally, DEA values its community partnerships and maintains a robust community outreach program throughout North Carolina. DEA works closely with North Carolina stakeholders to distribute and promote a variety of educational materials and toolkits, including DEA's recently released Public Safety Alert and the One Pill Can Kill public awareness campaign. DEA has partnered with Discovery Education to provide families, teachers, and students with no-cost, science-based digital lessons, virtual field trips, videos, and take-home materials about drug threats.

17. In North Carolina, our law enforcement officers are working tirelessly to stop the spike in illicit drug use and sales. In February 2021, the Caldwell County Sheriff seized 36,000 fentanyl pills. Most recently, in September 2021, New Hanover County Sheriff's office made a bust that led to 2 kilograms of cocaine and 20,000 bags of heroin.
 - a. What initiatives are DOJ and DEA taking to work with North Carolina local and state law enforcement to address the spike in illicit drugs in our streets?
 - b. What resources does DOJ have available for North Carolina state and local law enforcement to help tackle the illicit drug problem? Are there any resources that are readily available for North Carolina's rural law enforcement officers?
 - c. Does DOJ have any strategies or diversion plans that North Carolina local and state law enforcement can use to confront the spike in illicit drugs and overdoses? How are US Attorneys and other federal officials working with local and state officials to confront overdose deaths?

RESPONSE:

DEA's partnerships with state and local law enforcement are critical to stemming the tide of overdose deaths and to fulfilling DEA's mission to strategically identify and investigate the most violent drug traffickers who pose the greatest threat to American public health

and safety. In furtherance of this mission, DEA works on Task Forces with state and local law enforcement in Raleigh, Charlotte, Greensboro, Wilmington, and Asheville, North Carolina, often in collaboration with the High Intensity Drug Trafficking Areas (HIDTA) Program of the Office of National Drug Control Policy.

DEA advises that rural law enforcement have access to DEA intelligence products through EPIC Portal (<https://esp.usdoj.gov>) and the Homeland Security Information Network (<https://www.dhs.gov/homeland-security-information-network-hsin>). State and local law enforcement personnel can also access the Deconfliction and Information Coordination Endeavor (DICE) program via the EPIC Portal to conduct investigative deconfliction queries.

The DEA reports that its offices in North Carolina work daily with local, state, and federal partners to conduct joint investigations and enforcement operations. The DEA in NC utilizes a robust Task Force Officer (TFO) Program, which offers counterparts the opportunity to assign officers/detectives to local DEA offices to facilitate and coordinate investigative efforts. Currently there are 83 state and local officers/detectives assigned to the 5 DEA offices.

In addition to the TFO Program, which uniquely positions DEA to coordinate intelligence and investigations, the DEA in NC works closely with numerous local drug task forces and the NC State Bureau of Investigation to identify additional opportunities to leverage partnerships and combat cartel activity throughout the State of NC and beyond. In these collaborative efforts, the DEA in NC offers investigative expertise and experience as well as the funding required for drug purchases and the legal interception of electronic communication devices (wiretaps).

In addition to DEA's enforcement efforts in North Carolina, DEA advises that it has approved a Tactical Diversion Squad for Raleigh, North Carolina, that will be comprised of special agents, diversion investigators, task force officers and intelligence officers. DEA has provided State Attorneys General, to include the North Carolina AG, with access to customized data reports on suspicious ordering of controlled substances by DEA registrants (i.e., pharmacies, hospitals, practitioners, etc.) in their area of responsibility. Additionally, retail drug distribution reports (i.e., sales from distributors to retail such as pharmacies, hospitals, practitioners, etc.) are publicly available for all states at https://www.deadiversion.usdoj.gov/arcos/retail_drug_summary/index.html. DOJ and DEA are also working closely with their interagency partners to expand access to medication assisted treatment for individuals suffering from opioid use disorder.

Crime Victims

18. The State of North Carolina has 35 accredited and 12 provisional Children's Advocacy Centers (CAC). CAC's provide technical support, annual training, assistance with local center development, networking, and contacts with child abuse professionals across the U.S. Since COVID-19, North Carolina CAC's have seen their VOCA funding diminish. Congress passed the VOCA Fix Act of 2021 in July to address ongoing concerns about

funding for crime victims and to collect funds directly from deferred prosecution agreements.

- a. Has DOJ started implementing the VOCA Fix Act? What specific actions has DOJ taken to implement this law? When do you expect the law to be fully implemented?
- b. Can you please provide the most up to date information about the status of the Crime Victims Fund (CVF)? How much total funding did the CVF collect in FY21? How much of that funding was a result of the VOCA Fix Act?
- c. How much do you estimate the Crime Victims Fund will collect in FY22? How much of that funding do you estimate will be a result of the VOCA Fix Act?
- d. Does DOJ have any additional resources for North Carolina CAC's that need urgent assistance as they wait for VOCA funding?

RESPONSE:

The Department's Office of Justice Programs (OJP) has acted swiftly to implement the VOCA Fix to Sustain the Crime Victims Fund Act of 2021 (VOCA Fix). OJP's Office for Victims of Crime (OVC) has recalculated the formula allocations; developed a procedure for requesting no-cost extensions; and issued 3 bulletins regarding the match waiver, the law enforcement cooperation exception, and community violence intervention support. In accordance with the VOCA Fix, OVC also approved all state and territory no-cost extensions requests. These extensions allow states and territories to continue vital VOCA-funded programs instead of having to defund them.

In August 2021, the Deputy Attorney General notified the Executive Office of United States Attorneys (EOUSA) about the VOCA Fix with a focus on the first provision that redirects any funds (e.g., monetary penalties) from federal deferred prosecution and non-prosecution agreements that would otherwise be deposited in the general fund of the Treasury, to go instead into the Crime Victims Fund to stabilize this funding resource. The Deputy Attorney General directed the EOUSA and the Justice Management Division, in consultation with OJP, to prepare guidance and training to ensure that funds collected pursuant to deferred prosecution agreements and non-prosecution agreements that would otherwise be deposited in the General Fund of the Treasury be deposited in the Fund.

In Fiscal Year 2021, a total of \$774 million was deposited into the Crime Victims Fund (CVF) and balance of the CVF at the beginning of Fiscal Year 2022 was \$3.193 billion. As a direct result of the VOCA Fix, the CVF received \$254 million in deposits in September 2021, of which \$224 million were from new deferred/non-deferred prosecution receipts. The \$254 million deposited into CVF in September 2021 is the largest monthly amount deposited into the CVF in the last four fiscal years.

The Office for Victims of Crime reports that a total of \$417 million was deposited into the CVF so far in fiscal year 2022, of which \$265 million were from new deferred/non-deferred prosecution receipts. As of April 2022, the CVF's balance was more than \$2.9 billion, but OVC anticipates obligating \$2.6 billion of that balance by the end of FY 2022.

Because the VOCA Fix Act has been in effect for less than a year, the Department does not yet have sufficient information to make long-term projections on future deposits from deferred and non-prosecution agreements.

19. Since COVID-19, North Carolina has seen an increase in violence and dwindling funding. Without the necessary funding, advocate groups cannot provide the necessary assistance to victims. What is DOJ doing to ensure that resources and funding are adequately reaching grantees and advocate groups?

RESPONSE:

OVC advises that it supports efforts that help build the capacity of States to effectively manage their VOCA victim assistance and compensation awards. Those programs include State Administering Agencies Support Teams and the OVC VOCA Center, which is a new training and technical assistance center designed specifically to support Victim Assistance and Victim Compensation Administrators in managing and administering their VOCA funding to promote justice and healing for all victims of crime.

20. In 2012, the U.S. Government Accountability Office (GAO) reported that DOJ lacked visibility over the extent to which its grant programs overlap. Can you give me an update on what DOJ has done or is doing to manage the VAWA grant programs and ensure victims get the necessary resources? Do you believe Congress should combine VAWA grant programs to prevent overlap and ensure funding is efficiently distributed?

RESPONSE:

Although this report predated my current tenure at the Department, it is my understanding that, since 2016, the Department of Justice annually examines the extent of overlap within and across the Office of Justice Programs, Office on Violence Against Women (OVW), and the Office of Community Oriented Policing Services to better understand the areas in which the program offices may be awarding funds for similar purposes or targeting the same beneficiaries.

Information from this annual review assists the Department in identifying areas of overlap, enhancing coordination among complementary programs, and channeling funds to priority funding areas. It also enables the Department to mitigate the risks associated with unintended or impermissible duplication resulting from existing overlap.

In connection with the Department's ongoing efforts to streamline its management of grants, the Department has been transitioning over the past year to a unified grants management system for all three grantmaking offices. As the Deputy Attorney General stated in her response to the Questions for the Record from this Committee's October 5, 2021, hearing on Renewing and Strengthening the Violence Against Women Act (VAWA), the Department has not identified a current need to combine VAWA grant programs. The Department has implemented an annual analysis to identify overlap in its grant program solicitations.

In addition, OVW, which administers the Department’s VAWA grant programs, has taken steps to minimize potential grant duplication. In particular, OVW has developed a Recommendation Management System, which includes a feature to identify applications to multiple OVW grant programs from the same applicant, allowing OVW program specialists to check during its application review process whether the applications seek to fund duplicative activities.

21. In 2018, the DOJ Office of Inspector General (OIG) reported that that 42 percent of VAWA grants had not been closed in a timely manner.
- a. What is DOJ doing to ensure that proper audits are conducted so grantees and victims get the necessary resources and funding in an adequate time?
 - b. Do you believe the lack of timely grant closures is an internal problem by DOJ? Or do you think there is a legislative remedy to address this?

RESPONSE:

As the Deputy Attorney General stated in her response to the Questions for the Record from this Committee’s October 5, 2021, hearing on Renewing and Strengthening the Violence Against Women Act, each of the Department’s grantmaking components responded to the recommendations of the Office of the Inspector General (OIG). The OIG notified the Department on September 8, 2021, that the overall status of the report is now closed.

With regard to OVW specifically, OVW reports that it has remedied the findings regarding individual grant awards and has implemented the recommended policies, including a new policy that requires staff to review the general ledgers of 10% of closed awards. The Department is committed to ensuring the grantmaking components have the tools they need to effectively make, monitor, and close grant awards.

US Marshals Detention Space

22. As you may recall, on March 22, 2021, I sent a letter to you regarding the decision to close Rivers Correctional Institution (RCI) in Herford County, North Carolina. The closure of this facility resulted in hundreds of job losses in a very rural part of the state. We have heard from officials in the state concerned about access to detainee bedspace. Because RCI was closed, U.S. Marshals are required to travel significant distances across the state to transfer individuals for pre-trial detention. I understand there is interest from federal judicial officials, including the local U.S. Marshal, to permit the use of RCI to expand bed space.
- a. Are you aware of such interest from federal officials in the state?
 - b. Is DOJ willing to permit the use of RCI as additional bed space for the U.S. Marshals?
 - c. Is it DOJ’s opinion that President Biden’s executive order would prohibit the U.S. Marshals from using this facility? If so, have you raised this issue with President Biden to make clear the public safety interest of having access to these facilities?

- d. Will you commit to working with the U.S. Marshals in North Carolina to ensure they have access to detainee bed space which is practical and protects public safety?

RESPONSE:

The detention space requirements of the United States Marshals for the several judicial districts comprising the State of North Carolina have been acknowledged. USMS officials routinely assess bedspace requirements and availability for the several judicial districts comprising the State of North Carolina.

The Bureau of Prisons determined that it no longer needed the Rivers Correctional Institution to meet its correctional housing requirements. The GEO Group was notified in November 2020 that the BOP would not exercise an option period on the contract. Executive Order 14006 prohibits USMS from establishing any new contracts or agreements for the use of the Rivers Correctional Facility.

Finally, the USMS is actively working to identify government-operated detention space to fulfill the housing requirements of each judicial district comprising the State of North Carolina. Currently, the BOP is providing supplemental housing at one of its correctional facilities located in the State of North Carolina to meet those housing requirements.

International Parental Child Abduction

23. On October 1, 2021, I sent a letter with Senator Feinstein regarding the issue of international parental child abduction. Your responses to the questions posed in that letter are very important to help Senators consider legislation to improve our nation's response to IPCA crimes.
 - a. Can you please provide an update on the status of the October 1, 2021 letter, and when Senator Feinstein and myself can expect a response?
 - b. How many individuals have been charged under the IPKCA each year from 2010-2020?
 - c. In how many cases has an extradition request been formally presented to a foreign government each year from 2010-2020? In how many of those cases was the individual successfully extradited to the United States?
 - d. How many individuals were convicted or pleaded guilty under the IPKCA each year from 2010-2020? Please provide a separate number of convictions and guilty pleas.
 - e. What was the average sentence imposed on those convicted or who plead guilty under IPKCA each year from 2010-2020? Please provide a separate average for convictions and for guilty pleas.
 - f. In how many of the cases prosecuted each year from 2010-2020 was the abducted child or children successfully returned to the left-behind parent?
 - g. Which countries have participated in the Executive Symposia on Child Exploitation, Human Trafficking, and Model Laws? How much of the

programming is focused on IPCA? Does the Department have adequate funding to conduct additional symposia and address the IPCA crisis?

- h. You provided several examples of presentations and trainings provided to DOJ employees and federal, state, local, and tribal law enforcement officers and prosecutors. Since these trainings appear to have occurred in 2017 and 2018, are there additional trainings planned for 2021 and beyond to raise awareness of resources and authorities to combat IPCA? Will the Department incorporate more voices from leftbehind parents into these trainings?
- i. What efforts are being taken to expand outreach and education to civil courts and attorneys to help identify high-risk cases and prevent abduction from occurring?
- j. Are there any additional authorities which Congress can provide to DOJ to assist with its investigation and enforcement of our nation's IPCA laws?

RESPONSE:

The Department's Office of Legislative Affairs advises that the Department's response to the letter we received from you and Senator Feinstein was transmitted on March 21, 2022.

As that response noted, from FY 2010 to FY 2020, 127 defendants were indicted in federal court on charges of international parental kidnapping. The Department obtained 42 guilty pleas and 12 guilty verdicts at trial. For defendants convicted at trial, sentences in a given year averaged from approximately 15 to 30 months imprisonment. For defendants who pleaded guilty, sentences in a given year averaged from approximately ten to 21 months imprisonment. There is often a discrepancy between indictments and convictions in a given year because of the time needed to complete a prosecution. This is especially true in cases involving extradition proceedings.

In cases where international parental kidnapping charges are pending (whether in federal or state court), the Department takes appropriate steps that may best lead to return of the taking parent, based on the facts and circumstances of each case, the country involved, and whether we have an extradition treaty with that country. Based on the unique facts of each case, we may request extradition or seek the taking parent's return through other legal means. Since 2010, we have been successful in securing the return of taking parents when extradition was granted, the taking parent waived extradition, or the parent was deported to the United States. The Department does not track whether the child was returned because such return is not part of the criminal proceeding. The Department of State, rather than Department of Justice, plays a role in assisting parents to recover the children pursuant to the Hague Convention on the Civil Aspects of International Child Abduction.

As we previously indicated, the Departments of Justice and State conduct the Executive Symposia on Child Exploitation, Human Trafficking, and Model Laws. This week-long program is designed to improve the capacity of developing countries to address online child sexual exploitation and human trafficking. One day of the program includes training on international parental kidnapping and the Hague Convention. Since 2017, instruction on international parental kidnapping has been offered at five of the six separate week-long symposia. Those five programs were attended by high-level delegations of judges,

prosecutors, and law enforcement officials from 24 different countries in Africa, Central America, and the Caribbean, specifically Burkina Faso, Congo, the Democratic Republic of Congo, Kenya, Mauritania, Namibia, Niger, Rwanda, Senegal, Benin, Gabon, Ghana, Ivory Coast, El Salvador, Guatemala, Honduras, Antigua and Barbuda, Bahamas, Barbados, Belize, Guyana, Jamaica, St. Vincent and The Grenadines, and Trinidad and Tobago. Because these programs are offered through the Department of State's International Law Enforcement Academies (ILEA), we defer to the State Department with respect to your question about funding.

Similarly, given the involvement of the State Department's Office of Children's Issues on prevention of international parental kidnapping, we defer to them on your question about outreach and training to courts and civil attorneys.

We welcome the opportunity to incorporate the voices of left-behind parents at upcoming Department trainings and interagency collaborations, including the National Law Enforcement Training on Child Exploitation, the Federal Task Force on Missing and Exploited Children, and quarterly interagency meetings focused on the prevention of international parental kidnapping that are hosted by the State Department pursuant to the International Child Abduction Prevention and Return Act.

Cybersecurity

24. As co-chair of the Senate Cybersecurity Caucus, I am working to elevate the cybersecurity public policy conversation. What are the top priorities that Congress should address to help your agency and the Administration better fight cybersecurity attacks? Are there additional authorities which Congress should provide to assist you in preventing, investigating, and prosecuting cybercrimes?

RESPONSE:

The Justice Department would be happy to provide assistance on any pending legislation.

25. We have seen an increase of cyberattacks over the past year, threatening our national and economic security. To combat future cyberattacks we need a coordinated, whole-of-government approach to this issue.
- a. What must be done to improve coordination among the many actors that play a role in combatting cyberattacks, stopping future attacks, and bringing the bad actors to justice?
 - b. Please provide a list of the various components of the Justice Department that address cybersecurity incidents. How are you ensuring that the Justice Department is effectively coordinating within its various areas of expertise to address cyber incidents and cybercrimes?
 - c. How are you ensuring that the Justice Department is effectively coordinating with other government agencies, including CISA and the Secret Service, on these issues?

- d. 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:

The Department of Justice is committed to working with our federal, state, and local partners to combat cyber threats. Components across the Justice Department – including the Criminal Division, the National Security Division, our U.S. Attorneys’ offices, and the FBI – are working together and alongside our partners at all levels of government to bring to bear all available tools to ensure that we disrupt, investigate, and prosecute ransomware groups and the broader criminal ecosystem that allows them to flourish. To help ensure a coordinated approach, all U.S. Attorneys’ offices nationwide are reporting on ransomware and related criminal infrastructure cases. And the Justice Department’s Ransomware and Digital Extortion Task Force and National Cryptocurrency Enforcement Team bring together dedicated experts from across government to focus on enhancing our capabilities to disrupt the illicit use of digital assets.

The FBI is often a “first responder” to a cyber incident. With Cyber Task Forces located in each of its 54 FBI Field Offices across the country, the FBI is prepared to respond to and investigate cyberattacks and intrusions wherever they may occur. Its agents serve both as investigators and high-tech specialists capable of applying the most current technological know-how to collect evidence at the scene of a cyberattack or intrusion, analyze data forensically, and trace a cybercrime to its origins. Through its Cyber Division located at FBI Headquarters, the FBI provides leadership to its global efforts to investigate cyber threats, whether they stem from criminal or national security actors.

In addition, the Criminal Division’s Computer Crime and Intellectual Property Section (CCIPS) is responsible for implementing the Department’s national strategies in combating computer and intellectual property crimes worldwide by working with other government agencies, the private sector, academic institutions, and foreign counterparts. Section attorneys work to improve the domestic and international legal, technological, and operational infrastructure to pursue network criminals most effectively. Working in support of and alongside the U.S. Attorneys’ offices, CCIPS prosecutes violations of federal law involving cyber intrusions and attacks. The Cybersecurity Unit within CCIPS is designed to prevent computer crime by taking the expertise and knowledge gained through the prosecution of computer crime cases.

The investigation, disruption, and deterrence of national security cyber threats are among the highest priorities of the National Security Division (NSD). NSD has developed a specially trained group of attorneys within Counterintelligence and Export Control Section (CES), who partner with the FBI’s CYD and USAOs across the United States, to investigate, disrupt, and deter malicious cyber activity by nation-state actors or their proxies, or other malicious cyber activity that jeopardize national security.

U.S. Attorneys’ offices around the country have decades of experience developing and prosecuting cyber cases, and they have developed strong working relationships with all the federal law enforcement agencies working in their districts. They also work with potential local victims of cybercrimes, such as high-tech companies and public and private entities responsible for critical infrastructure. The U.S. Attorneys’ offices and CCIPS jointly established a network of criminal cyber experts more than fifteen years ago currently known as the Computer Hacking and Intellectual Property (“CHIP”) coordinator network. Prosecutors within the nationwide CHIP network receive training and resources that help ensure that they are prepared for the newest threats and are conversant in the newest technological trends being exploited by criminals. The CHIP program also aids in the coordination of multi-district prosecutions involving cyber threats.

All components of the Justice Department working on these issues interface regularly with other government agencies, including CISA and the Secret Service. CISA and the FBI collaborate regularly on pending threats. Department prosecutors are intimately involved with the Secret Service’s law enforcement work, including its investigations of online crime.

The Department of Justice believes in a whole-of-society approach, and that requires close cooperation and work with the private sector. The FBI regularly engages with the private sector to both identify threats and to identify potential solutions.

26. Last week, Deputy Attorney General Lisa Monaco spoke about various efforts being pursued by DOJ to combat cyber threats. These were the (1) Comprehensive Cyber Review, (2) Ransomware and Digital Extortion Task Force, (3) Civil Cyber-Fraud Initiative, and (4) the National Cryptocurrency Enforcement Team.
- a. Please provide a description of the purpose of each of these efforts, and the goals of each effort. How is DOJ measuring success in these efforts?
 - b. What actions have been taken by each of these efforts, and what progress has been made in each to improve cyber threat responses?
 - c. Are there additional efforts that DOJ intends to undertake to combat cyber threats?

RESPONSE:

The Comprehensive Cyber Review is designed to: (1) assess how we can improve our capability to investigate, to prosecute and disrupt these actors and their evolving techniques; (2) build our own resiliency as a department, as a multinational, global organization when it comes to cybersecurity; and (3) make sure we are doing what we can do to prepare the next generation when it comes to the Department’s attorneys and agents to go after these threat actors.

The Ransomware and Digital Extortion Task Force is designed to: (1) in an effort led by DOJ’s Computer Crime and Intellectual Property Section, enhance the Department’s ability to disrupt, investigate, and prosecute ransomware actors; (2) target the ransomware criminal ecosystem as a whole; (3) strengthen public-private partnerships; (4) work with federal partners; and (5) further international collaboration.

The National Cryptocurrency Enforcement Team will gather the expertise of prosecutors in the Criminal Division along with the U.S. Attorneys' offices to tackle complex investigations and prosecutions of criminal misuses of cryptocurrency, particularly crimes committed by virtual currency exchanges, mixing and tumbling services, and money laundering infrastructure actors.

The creation of the Civil Cyber-Fraud Initiative is a direct result of the Department's ongoing comprehensive cyber review.

All of these efforts take their place alongside the Department's existing and extensive efforts to fight cybercrime. As explained above, the Department of Justice has pursued a programmatic approach to fighting cyber threats since at least 1996, when the Department created the Computer Crime and Intellectual Property Section (CCIPS). CCIPS leads the Ransomware Task Force's effort to disrupt, investigate, and prosecute ransomware and digital extortion activity.

Recent Criminal Division successes in this field include the November 8, 2021, announcement of the indictment and arrest of Yaroslav Vasinskyi, 22, a Ukrainian national, with conducting ransomware attacks against multiple victims, including the July 2021 attack against Kaseya, a multi-national information technology software company; the simultaneous announcement of the seizure of \$6.1 million in funds traceable to alleged ransom payments received by Yevgeniy Polyanin, 28, a Russian national, who is also charged with conducting Sodinokibi/REvil ransomware attacks against multiple victims; the June 8, 2021 announcement of the seizure of over \$2.3 million, a significant portion of the proceeds of a May 8 ransom payment to individuals in a group known as DarkSide, which had targeted Colonial Pipeline resulting in critical infrastructure being taken out of operation; and the February 8, 2022, announcement of the seizure of over \$3.6 billion in cryptocurrency – the Department's largest financial seizure ever – linked to the 2016 hack of Bitfinex.

27. In August, I led the introduction of S. 2629, the Better Cybercrime Metrics Act along with Senators Schatz, Cornyn, and Blumenthal. This important legislation will help improve how we identify and report cybercrimes.
- a. Do you agree that this legislation is an important contribution in the fight against cybercrime?
 - b. Does DOJ support enactment of this legislation?
 - c. If this bill is passed, will you commit to its full implementation as quickly as possible? How would you insure that DOJ components will act quickly to implement its requirements?

RESPONSE:

The Justice Department welcomes the opportunity to work with Congress on legislation to fight cybercrime.

28. In June, you requested the largest increase in cyber resources for the Justice Department in over a decade, \$1.5 billion, for protecting our nation from cyberattacks and cybercrime. How will you prioritize spending of these resources to minimize fragmentation, overlap, or duplication of efforts between your Department and other federal government agencies?

RESPONSE:

The Justice Department structures its budget requests with the aim of reducing duplicative efforts across the Department. For example, the FBI reports that, through its model field office cyber squads, aims to deconflict operations and to reduce the kinds of redundancies contemplated by the question. In addition, the Department frequently coordinates with federal agencies across the federal government, including the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency, to ensure alignment on national cyber priorities.

29. In July, we heard from the Department of Justice in our Ransomware hearing that the reluctance to report ransomware incidents and payments made may be driven concerns “including a fear of regulatory action or reputational harm, or of an interruption to business operations.”

a. What other reasons are there for the failure to voluntarily report?

RESPONSE to Question 29a:

We have heard a wide variety of concerns about voluntary reporting, ones that the Department has worked hard to try to address. In addition to the concerns cited in the question, one we very often hear is that companies are concerned that sharing information with the government could waive applicable legal privileges, which is why the Administration supports congressional action to preserve any applicable privileges to promote better sharing.

b. Would you recommend a mandatory reporting scheme?

RESPONSE to Question 29b:

Yes.

c. If so, what assurances is the Justice Department prepared to give those who report incidents to address these concerns, including harm to reputation, regulatory retaliation, or harms to intellectual property?

RESPONSE to Question 29c:

The Justice Department has long worked to protect victims and works hard to do so in this area. We protect information shared with us consistent with the law and encourage

Congress to provide further protections to preserve any applicable privileges pertaining to data shared with the federal government.

- d. What policies should the government have to safeguard data provided by companies to combat ransomware attacks?

RESPONSE to Question 29d:

In addition to protections used to secure grand jury secrecy materials, the Department and the FBI use a variety of mechanisms to safeguard data provided by victim companies in cyber cases. These include, for instance, limiting access to the data to only those individuals who must access it for purposes of the investigation; keeping the data offline and in physically secure areas; and seeking court-authorized protective orders where appropriate to further protect the data.

30. DHS has implemented hiring practices aimed at recruiting and retaining cybersecurity professionals. Has DOJ taken similar efforts to implement hiring practices directed at the recruitment and retention of cybersecurity professionals? If so, please provide details about these efforts.

RESPONSE:

The Department is currently reevaluating its hiring practices to ensure that it can attract the necessary experienced personnel to fulfill its investigative, prosecutorial, and defensive responsibilities across dynamic cyber matters in light of the competitive market for capable cyber personnel. The Department is working toward developing a targeted strategy to build and maintain a best-in class cyber workforce, in order to execute its mission against current and future cyber challenges.

In addition to more competitive salaries, the Department's cyber workforce strategy is working toward implementing novel means of attracting talent, including by offering junior hires unique opportunities to combat cyber threats. For example, in August 2021, the Department announced the creation of its Cyber Fellows Program. This program will be available to new attorneys and will offer them the opportunity to develop as prosecutors across the Department's offices that specialize in cyber investigations and prosecutions.

31. On June 30, the U.S. Government Accountability Office listed 12 open priority recommendations, including two on cybersecurity.
 - a. What progress has the Justice Department made on these priority recommendations to-date?
 - b. With respect to the cybersecurity recommendations, has the Department fully implemented the coordination between its cybersecurity and enterprise risk management (ERM) functions?

RESPONSE:

Below is a status update on the Justice Department's progress in implementing the 12 Priority Recommendations GAO identified on June 30, 2021:

GAO Priority Recommendation #1: GAO recommended that the DEA Administrator develop and implement additional ways to use algorithms in analyzing Automated Reports and Consolidated Orders System (ARCOS) and other data to more proactively identify problematic drug transaction patterns. *See GAO-20-118. Drug Control: Actions Needed to Ensure Usefulness of Data on Suspicious Opioid Orders.* DEA advises that GAO closed this recommendation in January 2022 in light of the actions DEA took to develop and implement techniques to proactively use algorithms in analyzing ARCOS and other data and identify problematic drug transaction patterns.

GAO Priority Recommendation #2: GAO recommended that the DEA Administrator, in coordination with the Department-wide efforts on data strategy, establish and document a data governance structure to ensure DEA is maximizing its management of industry-reported drug transaction data. *See GAO-20-118. Drug Control: Actions Needed to Ensure Usefulness of Data on Suspicious Opioid Orders.* DEA advises that GAO closed this recommendation in August 2021 in light of the actions DEA took to establish and document a data governance structure to ensure that DEA is maximizing the management of industry-reported drug transaction data.

GAO Priority Recommendation #3: GAO has recommended that the Deputy Assistant Administrator for the Office of Diversion Control solicit input from distributors, or associations representing distributors, and develop additional guidance for distributors regarding their roles and responsibilities for suspicious orders monitoring and reporting. *See GAO-15-471. Prescription Drugs: More DEA Information about Registrants' Controlled Substances Roles Could Improve Their Understanding and Help Ensure Access.* In its work to implement this recommendation, DEA reports that it is developing a proposed Suspicious Orders regulation.

GAO Priority Recommendation #4: GAO has recommended that the DEA Administrator establish outcome-oriented goals and associated measurable performance targets related to opioid diversion activities, using data it collects, to assess how the data it obtains and uses supports its diversion control activities. *See GAO-20-118. Drug Control: Actions Needed to Ensure Usefulness of Data on Suspicious Opioid Orders.* To implement this recommendation, DEA reports that its Diversion Control Division is using advanced analytical, targeting, and risk assessment tools to provide and coordinate the collection, analysis, and dissemination of drug-related intelligence to DEA's Diversion Investigators and Special Agents. DEA's Diversion Control Division enhances DEA's investigative capabilities and productivity by examining objective and data-centric information. In addition, DEA reports that it is drafting a "Controlled Prescription Drug Enforcement Strategy" which will detail its strategic planning and identify DEA's outcome-oriented goals and associated measurable performance targets related to opioid diversion activities. DEA reports that it used GAO's findings to develop its Controlled Prescription Drug

Enforcement Strategy. DEA anticipates providing the final strategy to GAO in the summer of 2022 and requesting that it close the recommendation.

GAO Priority Recommendation #5: GAO has recommended that the Director of BOP develop and implement a reliable method for calculating staffing levels at BOP institutions. *See GAO -21-12. Federal Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs.* To assist its efforts to implement this GAO recommendation, BOP reports that it that it has contracted with an outside consultant, NTT Data Services, to create a new tool that will help BOP make real-time staffing calculations and predictive forecasting for staffing needs. BOP reports that the contractor has completed its Phase 1 tasking (Assessment) which included an assessment of existing BOP methods for calculating staffing levels, staffing processes and associated challenges. BOP further advises that the contractor is now at its backend of its Phase 2 tasking (Analyze) where they have defined comprehensive criteria and categorized mission variables to inform the Automated Staffing Tool Prototype which is currently in development. BOP anticipates that, at the end of June 2022, the contractor will deliver, and test with Correctional Services and HR staff, the Automated Staffing Tool Prototype for the Mid-Atlantic region’s Correctional Services department before expanding to additional regions.

GAO Priority Recommendation #6: GAO has recommended that the Director of BOP conduct a risk assessment of its overtime and augmentation use, including identifying risks to staff, inmates, and institution security; and determining actions to respond, as appropriate. *See GAO -21-123. Federal Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs.* To assist its efforts to implement this GAO recommendation, BOP reports that it is working with a contractor, which is currently assessing the use and risk of overtime and augmentation by institution and across the Bureau of Prisons. BOP advises that the contractor has delivered a Risk Analysis of Overtime, Augmentation, and Incentive Payment that analyzed usage and trends of current Overtime, Augmentation, and incentive payments. BOP further advises that the contractor has also analyzed the current Overtime Calculation Tool’s functionality and is soliciting input from Subject Matter Experts to develop recommendations for tool enhancement and implementation.

GAO Priority Recommendation #7: GAO has recommended that the Director of BOP should assess the outcomes of the staffing incentives it utilizes by developing performance measures and goals, measuring outcomes against them, and adjusting incentives, as appropriate. *See GAO -21-123. Federal Bureau of Prisons: Opportunities Exist to Better Analyze Staffing Data and Improve Employee Wellness Programs.* To assist its efforts to implement this GAO recommendation, BOP reports that it is working with a contractor, which is working to finalize a “Current State Risk Analysis of Overtime and Incentive Payment Usage.” BOP advises that the contractor has delivered a Risk Analysis of Overtime, Augmentation, and Incentive Payment that analyzed usage and trends of current Overtime, Augmentation, and incentive payments. BOP also reports that the contractor is beginning to implement one of its key recommendations: develop a Bureau-

wide incentive framework to standardize usage of incentives, consistent with OPM regulations and DOJ and BOP policy.

GAO Priority Recommendation #8: GAO has recommended that the Justice Department clarify in all current relevant DOJ guidance and communications – including FBI guidance and communications – to whom FBI employees may make protected disclosures and, further, explicitly state that employees will have access to recourse if they experience retaliation for reporting alleged wrongdoing to someone not designated in DOJ’s regulations. *See GAO 15-112. Federal Bureau of Investigation (FBI) Whistleblower Retaliation Complaints Whistleblower Protection: Additional Actions Needed to Improve DOJ’s Handling of FBI Retaliation Complaints.* To implement this recommendation, the Department has conducted an internal review and is developing proposed regulations.

GAO Priority Recommendation #9: GAO has recommended that Director of the Executive Office for Immigration Review (EOIR) should develop and implement a strategic workforce plan that addresses, among other areas, key principles of effective strategic workforce planning, including (1) determining critical skills and competencies needed to achieve current and future programmatic results; (2) developing strategies that are tailored to address gaps in number, deployment, and alignment of human capital approaches for enabling and sustaining the contributions of all critical skills and competencies; and (3) monitoring and evaluation of the agency’s progress toward its human capital goals and the contribution that human capital results have made toward achieving programmatic results. *See GAO-17-438. Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges.* To implement this recommendation, EOIR advises that it has begun work on developing a strategic workforce plan, which is intended to align with the Justice Department’s Strategic Plan, which is currently under development, as well as reoccurring workforce needs assessments. EOIR further reports that it is working to update its workforce modelling tool.

GAO Priority Recommendation #10: GAO has recommended that the Justice Department revise DOJ’s process for conducting improper payment risk assessments for Law Enforcement to help ensure that it results in a reliable assessment of whether the program is susceptible to significant improper payments. This should include preparing sufficient documentation to support DOJ’s risk assessments. *See GAO-19-112. Improper Payments: Selected Agencies Need Improvements in Their Assessments to Better Determine and Document Susceptibility.* To implement this recommendation, the Department’s Justice Management Division provided the GAO with a response on June 15, 2022. The response provides a summary of the FY 2022 Improper Payment Risk Assessment which includes the process for conducting the risk assessment, the factors used by the Department in determining whether a program is susceptible to improper payments, and the determination of whether any of the Department’s programs are considered susceptible to improper payments. A consolidation of the results from FY 22 component risks assessments, along with a quantitative comparison of the Department’s actual and estimated improper payments to OMB’s statutory thresholds, is also included.

GAO Priority Recommendation #11: GAO has recommended that the Justice Department develop a cybersecurity risk management strategy that includes the key elements identified in this report. *See GAO-19-384 Agencies Need to Fully Establish Risk Management Programs and Address Challenges.* The Department’s Justice Management Division (JMD) reports that it has developed a cybersecurity risk management strategy that includes each of the eight key elements identified in GAO’s report. On May 25, 2022, GAO closed this recommendation as implemented.

GAO Priority Recommendation #12: GAO has recommended that the Justice Department fully establish and document a process for coordination between cybersecurity risk management and enterprise risk management (ERM) functions. *See GAO-19-384 Agencies Need to Fully Establish Risk Management Programs and Address Challenges.* The Department’s Justice Management Division (JMD) reports that the Department has fully documented the relationship and coordination between cybersecurity risk management practices with the enterprise’s risk management functions in the Department’s Risk Management Procedures. On April 21, 2022, GAO closed this recommendation as implemented.

32. In July, the Justice Department submitted written testimony annexing proposed language for a draft “Cybercrime Mitigation Act.” It tracks two sections of the International Cybercrime Prevention Act, S.2139, a bipartisan bill that I cosponsored with Senators Whitehouse, Graham, and Blumenthal. However, certain provisions were omitted. For example, the proposed Cybercrime Mitigation Act does not create increased penalties for those who damage critical infrastructure computers and does not connect felonious computer fraud and abuse to racketeering activities.
 - a. Please explain why provisions that were part of the Cybercrime Prevention Act were not included in the proposal, and specifically address why provisions specifically addressing critical infrastructure would not be helpful.

RESPONSE:

I understand that the Office of Legislative Affairs has given informal feedback on your bill, and they would be happy to discuss this further with you.

Antitrust

33. The Justice Department’s Antitrust Division under the previous Administration took the view that the policies of the patent laws and the antitrust law are aligned, with the mutual aim of fostering dynamic competition through innovation. However, in June of this year, Acting Assistant Attorney General Richard Powers stated that the Antitrust Division is rethinking its approach to the intersection of antitrust and intellectual property.
 - a. Do you agree that reliable, predictable, quality patent rights promote vigorous, dynamic competition to the benefit of consumers and that the Antitrust Division should continue to support patent rights as a key driver of innovation and a competitive American economy?

- b. Do you agree that universities, companies and small inventors that commit time, resources and capital to engage in risky research and development (R&D) activities to develop the next generation of standards and that seek to be rewarded for their successful innovations to obtain fair and adequate compensation for the use of their patented technologies should be allowed and encouraged to assert their IP rights in good faith without being labeled as “patent trolls” or chilled by threats of antitrust enforcement action or private antitrust litigation?
- c. I understand the Department of Justice is considering revising the 2019 Joint USPTO, NIST and DOJ Policy Statement on Remedies for Standards-Essential Patents subject to Voluntary F/RAND Commitments. Is it doing this independently from the Secretary of Commerce?
- d. I understand the Justice Department’s Antitrust Division plans to provide “clearer guidance on what good faith licensing negotiation looks like and how bad faith conduct can hinder competition.” Will this guidance involve public consultations? Will it involve steps that each party should take, and how quickly it should act, before a court may declare the negotiations to have failed so the SEP holder may enforce remedies? Will it involve consultations with the United States Patent and Trademark Office, NIST, and the Secretary of Commerce? What role will patent policy play in this guidance?
- e. Does the Department of Justice intend to change the Antitrust Division’s policy, as reflected in that Policy Statement, that antitrust law should not normally play a role in FRAND licensing disputes between SEP holders and potential licensees? Will it wait until it has a Senate confirmed leader in place before making further changes?
- f. Can you commit that the Department of Justice’s Antitrust Division under will treat the non-sham assertion of intellectual property rights and requests for patent remedies provided under federal law as protected by the Noerr-Pennington Doctrine?

RESPONSE:

On June 8, 2022, the Department of Justice, the U.S. Patent and Trademark Office (USPTO), and the National Institute of Standards and Technology (NIST) announced the withdrawal of the 2019 Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments (2019 Statement). After considering public input on the 2019 Statement and possible revisions, the agencies concluded that withdrawal of the 2019 Statement is the best course of action for promoting both competition and innovation in the standards ecosystem.

As the press release accompanying that announcement explained, “[i]n exercising its law enforcement role, the Justice Department will review conduct by standards essential patent (SEP) holders or standards implementers on a case-by-case basis to determine if either party is engaging in practices that result in the anticompetitive use of market power or other abusive processes that harm competition.” The Antitrust Division expects that this “case-by-case approach will encourage good-faith efforts to reach F/RAND licenses and

create consistency for antitrust enforcement policy so that competition may flourish in this important sector of the U.S. economy.”

Finally, the application of the *Noerr-Pennington Doctrine* – as with many legal doctrines – depends upon the facts of a particular case.

34. The Supreme Court has recognized that private standards can have significant procompetitive advantages but that there need to be procedures that prevent the standard-setting process from being biased or manipulated by members with economic interest in stifling competition in violation of section 1 of the Sherman Act. In that context, are you prepared to ensure that the Department of Justice enforces Section 1 aggressively to prevent collusive activity by manufacturers of standards-compliant products that subvert the voluntary consensus-based processes of standards development organizations to deprive patent owners of fair and reasonable compensation for their standards-essential patented technologies?

RESPONSE:

The Department is committed to enforcing Section 1 when the facts suggest that an antitrust violation may have occurred.

35. An issue that is particularly important to me is the relationship between IP theft and competitiveness. In 2019, Senator Coons and I sent a letter to the Attorney General applauding the withdrawal of a previous 2013 policy that addressed patented technologies embedded in global standards. We were particularly concerned that the 2013 policy treated patents that are part of global standards differently than other patents in terms of the remedies available for IP theft. My concern is that while the United States is leading at the moment in technologies like 5G, China is becoming more competitive every day. Companies like Huawei with strong support from the Chinese government are challenging our leadership when it comes to innovation. And technological innovation is especially vital to a strong and growing economy.

President Biden has now issued an Executive Order directing the Attorney General and the Secretary of Commerce to reevaluate the current policy and consider returning to an approach of weaker protections for these patents. At the same time, however, the order stresses the importance of the United States maintaining its leadership in 5G.

In that same 2019 letter Senator Coons and I sent, we stressed the importance of coordination throughout the government. Not only the Department of Justice, but also the Patent and Trademark Office and the National Institute of Standards and Technology are responsible for setting policy on technologies embedded in global standards. Yet, the USPTO and NIST do not have confirmed leaders.

- a. Do you believe it is important for there to be confirmed leadership before any drastic changes are made to how this Administration treats patent protections?
- b. How will you specifically take into account global competitiveness with China when it comes to evaluating intellectual property policy?

RESPONSE:

As explained in response to Question 33, in keeping with President Biden’s July 9, 2021, Executive Order on Promoting Competition in the American Economy, staff from the Antitrust Division, USPTO, and NIST reviewed public comments that the agencies received on the December 6 Draft Policy Statement and concluded that withdrawal of the 2019 Policy Statement “best serves the interests of innovation and competition.”

Predictability and certainty about the licensing and enforcement of patent rights is important to patent holders and implementers participating in international standards development, as well as other stakeholders competing and innovating in the United States. The Department will continue to strive to be transparent about how it evaluates conduct that involves the licensing and enforcement of intellectual property, including how it will analyze antitrust concerns associated with that conduct.

36. 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 with ASCAP and BMI untouched.
- a. What are your thoughts about whether and when it would be appropriate to lift the consent decrees?
 - b. Do you believe there should be a free market in music? If not, why not?
 - c. Wouldn’t a truly free market in music licensing encourage innovation?
 - d. What is the rationale for allowing some companies to operate outside of consent decrees but not ASCAP and BMI?

RESPONSE:

The music industry is dynamic, and how consumers access music is constantly evolving. Digital streaming is now most common but new methods of distribution may be common in the future. Given the constantly changing marketplace, the Department has an obligation to ensure its decrees continue to fit the market realities on the ground.

Free markets are the cornerstone of American society, in part because of the innovation benefits that free markets provide. We should strive to achieve and maintain free markets in all industries, including music licensing, wherever possible. However, there have been times when market failures have necessitated the government’s involvement in an industry. In such cases, it is important to regularly assess the government’s involvement to ensure that it continues to be the appropriate response to market realities.

At the time the Department entered into consent decrees with ASCAP and BMI, both of which had amassed market power, the Department deemed the consent decrees necessary to address certain market failures. The courts agreed with that assessment.

37. What is your opinion about whether certain large market players like Google and YouTube have an obligation under antitrust law to make tools like Content ID available on equal terms to all creators?

RESPONSE:

Longstanding policy and practice of the Justice Department generally prevents us from commenting on ongoing litigation.

38. 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.
- a. How do you think the Department of Justice should approach antitrust enforcement against what we think of as “big tech”?
 - b. How should it coordinate its approach with other agencies—including the Commerce Department and the Federal Trade Commission—that also have competencies with respect to these issues?
 - c. How will the Department approach cross-cutting issues related to data that have antitrust implications but that may also implicate intellectual property, national security, cybersecurity, privacy, and other concerns?

RESPONSE:

Antitrust enforcement is based on a fact-intensive investigation in any industry. “Big tech” is no exception. The Antitrust Division has experience investigating and bringing cases challenging conduct by dominant firms.

Interagency collaboration is vital to effective antitrust enforcement. The Antitrust Division and the Federal Trade Commission regularly communicate when it comes to developing policies and guidance on enforcement across industries, including digital markets. Moreover, President Biden’s Executive Order on Promoting Competition in the American Economy calls on the antitrust enforcers to work closely with other federal agencies to promote competition. The Department looks forward to working with our agency partners to further a fair, open and competitive economy through a “whole of government” approach.

Each component of the Department is tasked with enforcing a different set of laws, but certain issues may implicate multiple policy considerations. It is important that the Department’s approach reflect the entirety and complexity of these cross-cutting issues. The Department has employed for many years an internal process to ensure that the equities of all Department components are reflected in policy and enforcement decisions.

39. 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. What do you plan to do to address monopoly powers generally and particularly those big tech companies that control access to information?

RESPONSE:

Access to information is essential for a healthy democracy. The Department will continue to enforce the antitrust laws to ensure that dominant firms are not able to use their market power anticompetitively.

Intellectual Property

40. I understand that 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. During your nomination hearing, I asked you what type of organizational structure you planned 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.
- a. What steps have you taken so far, and what do you plan to take in the coming year, to enhance the investigation and prosecution of intellectual property crimes?

RESPONSE:

Protecting Americans from intellectual property (IP) crimes is a priority for the Department of Justice. These crimes threaten our national security and economic security as well as public health and safety. The Department will leverage the broadest set of tools to prevent intellectual property crimes. Among other things, Justice Department attorneys and agents pursue complex intellectual property crime investigations around the world; train federal, state, and local law enforcement personnel; comment on and propose legislation; initiate and participate in international efforts to combat intellectual property crime; and provide case-based mentoring and litigation support to other law enforcement professionals.

To begin with, the Justice Department is committed to deploying a whole-of-Department approach to enforcing intellectual property rights. Within the Department, the Criminal Division's Computer Crime and Intellectual Property Section (CCIPS) acts as a focal point and force multiplier in the domestic and international prevention, investigation, and prosecution of intellectual property crimes.

Leveraging expertise across the Department's United States Attorneys' offices nationwide, CCIPS coordinates the Computer Hacking and Intellectual Property (CHIP) Network. The CHIP Network is comprised of dedicated federal prosecutors within each of the United

States Attorneys' offices who are specially trained in the investigation and prosecution of IP and computer crimes.

In addition, a dedicated section within the National Security Division focuses on state-sponsored crimes, including the theft of trade secrets and economic espionage. The National Security Division, in partnership with the Criminal Division and United States Attorneys across the country, coordinates the National Security and Cyber Specialist (NSCS) Network. Drawing upon the FBI's Joint Terrorism Task Force model, which has been successful in the counterterrorism realm, this Network consists of federal prosecutors and law enforcement professionals who focus on national security cyber offenses, including the theft of IP and other valuable information.

Preventing intellectual property theft is a priority for the FBI's criminal investigative program. The FBI also brings its wide-ranging expertise to bear in supporting efforts across the Justice Department to disrupt and dismantle international and domestic criminal organizations that steal, distribute, or otherwise profit from the theft of intellectual property. The FBI works to combat these types of crimes by collaborating with the public and private sectors, including third-party entities like online marketplaces, payment service providers, and advertisers to obtain intelligence, gather leads, and identify and disrupt criminal activities.

The Department also works closely with partners across the federal government to prevent the theft of intellectual property and enforce IP laws. For example, over the past year, the Justice Department has worked proactively to foster a productive relationship with the Office of the U.S. Intellectual Property Enforcement Coordinator in the Executive Office of the President. In addition, the Justice Department, including the FBI, works closely with the Department of Homeland Security and federal partners across government to promote successful investigations and prosecutions of intellectual property crimes through the DHS-led National Intellectual Property Rights Coordination Center (IPR Center).

The Justice Department also places a high priority on international cooperation and coordination in our intellectual property enforcement efforts. For more than two decades, the Department has worked to build partnerships with our international law enforcement counterparts through international casework, training, and outreach. These partnerships have been particularly vital in ensuring success in multi-national cases. The Department's international efforts are coordinated – with the support of the State Department – through the International Computer Hacking and Intellectual Property (ICHIP) Network.

The ICHIP Network consists of Justice Department attorneys who are deployed overseas to strengthen the capacity of foreign law enforcement authorities to enforce intellectual property rights and combat cybercrime; develop and deliver training designed to enhance the capacity of foreign counterparts to enforce intellectual property rights and combat cybercrime; and provide expert assistance in support of the U.S. intellectual property and cybercrime policies and initiatives around the world. The work of the ICHIP prosecutors based around the world – including in Europe, Africa, Asia, and Latin America, along with

DC-based legal experts – has led to many successes in obtaining international cooperation on intellectual property enforcement.

The Justice Department also works closely with state and local partners to proactively disrupt intellectual property crimes. Among other things, the Department has offered training and technical assistance on the subject of intellectual crime through the National Association of Attorneys General and the National White Collar Crime Center. These efforts are aimed at improving the capacity of criminal justice systems to address intellectual property enforcement. In addition, in Fiscal Year 2021, the Department’s Intellectual Property Enforcement Program awarded grants to state and local jurisdictions – including the North Carolina Secretary of State – to assist in preventing and reducing intellectual property theft and related crime.

41. In the past, the Department of Justice has contributed to legislative development updating criminal intellectual property laws, including felony streaming, enhancing penalties for counterfeit military goods, and creating a federal civil cause of action for misappropriation of trade secrets and permitting racketeering charges based on trade secret theft. What can Congress do to further improve the Department of Justice’s policies and efforts relating to the prevention and investigation of intellectual property crimes? What are your top priorities with respect to the Justice Department’s intellectual property mission?

RESPONSE:

Experts in the Department continue to monitor developments relating to intellectual property and the criminal law for potential legislative improvements. Although the Department does not currently have any specific legislative proposals relating to intellectual property, we stand ready to provide technical assistance on draft legislation in this area.

42. 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 crimes, and the theft of trade secrets.

RESPONSE:

As the response to Question 40 explains in detail, the Justice Department is committed to working closely with partners across the federal government to prevent the theft of intellectual property and enforce IP laws. Over the past year, the Department has worked proactively to foster a productive relationship with the Office of the U.S. Intellectual Property Enforcement Coordinator in the Executive Office of the President. In addition, the Justice Department, including the FBI, works closely with the Department of Homeland Security and federal partners across government to promote successful investigations and prosecutions of intellectual property crimes through the DHS-led National Intellectual Property Rights Coordination Center (National IPR Center).

The Justice Department is pursuing an equally robust approach to combating counterfeit products, online piracy, and copyright crimes, and the theft of trade secrets. Justice Department attorneys and agents also coordinate closely with the National IPR Center on initiatives related to consumer goods, counterfeit microelectronics, government supply chains, the automobile industry, and online sales of infringing goods.

With respect to combating counterfeit products, the Department's health and safety initiative brings together private, state, and federal enforcement resources to address the proliferation of counterfeit goods posing a danger to consumers, including counterfeit and illegally prescribed pharmaceuticals, automotive parts, and military goods. This initiative continues to result in a number of significant prosecutions in connection with counterfeit products.

In addition, the Department has continued to pursue significant, large-scale online piracy operations, resulting in significant prosecutions that have shuttered various online piracy sites. Justice Department prosecutors and the FBI also continue to emphasize the investigation and prosecution of commercial and state-sponsored trade secret theft. This continuing focus has led to the investigation and prosecution of numerous trade secret and economic espionage cases. These areas remain the Department's top domestic priorities in combating intellectual property crime in the future.

43. The Department of Justice's Computer Hacking and Intellectual Property (CHIP) program in the past Administration placed a high priority on fostering international cooperation and coordination of criminal IP enforcement efforts. Do you intend to continue this tradition? What plans does the Justice Department have for its international enforcement efforts? Does it intend to expand or enhance current programs, including the Intellectual Property Law Enforcement Coordinator (IPLEC) program?

RESPONSE:

The Justice Department will continue to pursue active engagement with our foreign counterparts to help ensure effective IP protections across the globe. The primary method for this engagement is through the ICHIP Network, which began with a single attorney in 2006 and has grown steadily into a global network of IP and cybercrime experts today. With support from the Bureau of International Narcotics and Law Enforcement (INL) at the Department of State, the Department now administers a fully staffed network including paired IP and cyber experts posted in Europe, Africa, Asia, and Latin America. The Department looks forward to the addition of at least one ICHIP agent advisor to the Network in the near future.

44. Last Congress, Senator Leahy and I partnered together to enact the Protecting Lawful Streaming Act. This bill finally closed the so-called "streaming loophole" by giving the Department the authority to pursue felony charges against large scale, commercial piracy organizations. Importantly, this law doesn't allow the Department to target individual streamers, companies pursuing licensing deals in good faith, or internet service providers. This law is what we call a win-win for everyone.

- a. Have you taken any action to ensure that the Justice Manual is updated to provide guidance on prosecutions under this law? If not, how soon can you update the Justice Manual to provide guidance?
- 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?
- c. Have any prosecutions been pursued under the Protecting Lawful Streaming Act? If so, how many? If not, why not?
- d. What steps is the Department of Justice doing to educate rights holders about the Protecting Lawful Streaming Act and to work with them to enforce their rights?

RESPONSE:

On January 27, 2021, the Justice Department’s Criminal Division issued guidance on the Protecting Lawful Streaming Act (PLSA), 18 U.S.C. § 2319C. That guidance makes clear that the statute applies only to commercial streaming sites.

With respect to enforcement actions taken under 18 U.S.C. § 2319C, while longstanding Department policies and practice generally prevent us from commenting on pending criminal investigations, the Department remains committed to using all available tools, including enhanced penalties under the PLSA, to pursue large-scale illicit streaming sites.

Since the December 2020 enactment of the PLSA, one criminal complaint charging violations of 18 U.S.C. § 2319C has been made public. On October 21, 2021, the United States Attorney for the Southern District of New York announced charges were filed in connection with intrusions into Major League Baseball computer systems as well as the illegal streaming of copyrighted content from MLB, the National Basketball Association, the National Football League, and the National Hockey League. (See <https://www.justice.gov/usao-sdny/pr/minnesota-man-charged-computer-intrusion-and-illegally-streaming-content-four-major>).

45. 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 saying 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.

- a. Will you direct the Solicitor General to find appropriate cases on patent eligibility and to urge the Supreme Court to take them up and finally provide clarity in this area of the law?

RESPONSE:

The Supreme Court called for the views of the Solicitor General in a case regarding patent eligibility, *American Axle & Manufacturing, Inc. v. Neapco Holdings LLC*, No. 20-891. As a general matter, the Solicitor General approaches decisions about whether to file briefs based on the facts, the law, and the best interests of the United States. The Department will follow that approach in all cases, including cases involving patent eligibility.

ATF Administration

46. As of the date of this correspondence, what is the number of FTISB evaluation requests still pending a final determination response from ATF to the requesting party?

RESPONSE:

ATF reports that, as of May 13, 2022, Firearms Technology Industry Services (FTISB) has 222 evaluation requests pending final determination. These 222 cases are comprised of 105 stabilizing brace and frame or receiver determinations submitted over one year ago; 20 receiver determinations submitted under one year ago; 80 import evaluations less than 60 days old; and 17 domestic evaluations of various types submitted recently. ATF further reports that frame or receiver determinations and stabilizing brace determinations have been delayed because of Department rulemaking on these subjects.

47. Of the pending evaluation requests disclosed in response to question 1, how many of them have been pending for over one year?

RESPONSE:

ATF reports that 102 evaluation requests have been pending for over one year and that approximately 85% of these pending evaluations involve the pending NPRMs.

48. Of the pending evaluation requests disclosed in response to question 2, how many of them have been pending for over two years?

RESPONSE:

ATF reports that 54 evaluation requests have been pending for over two years and that 100% of these pending evaluations involve pending NPRMs.

49. Does ATF (including FAT-D and/or FTISB) feel that it is empowered to issue determination letters that are conflicting or are based on conflicting interpretations of governing law or regulation?

RESPONSE:

ATF advises that differences in objective design features or manufacturer statements about a firearm may result in different classifications for different weapons. Therefore, perceived conflicts are generally the result of substantive differences in design or in evidence of intent. Many perceived conflicts are also attributable to members of the industry “blending” multiple determination letters on distinct weapons or devices in an attempt to gain a competitive advantage.

50. Does ATF feel that determination letters from FTISB or FAT-D have any precedential effect or implications within the ATF?

RESPONSE:

ATF advises that in classifying firearms, FTISB relies upon previous classifications to help ensure that if firearms are classified differently, such classifications are the result of overall configuration, physical characteristics, and objective design features that are relevant under the statutory definitions.

51. What is ATF’s current processing time for NFA eForm 6’s, paper form 6’s and paper form 4’s, respectively?

RESPONSE:

ATF reports the processing time for an electronic submission of Form 6 is 15 days; paper ATF Form 6 submissions are processed in 45 days; and paper ATF Form 4 applications are processed in 10 months.

52. Does ATF have a realistic goal for when Form 4’s will be available for e-filing (i.e. when will eForm 4’s be available), and what is that approximate date?

RESPONSE:

ATF reports that eForm 4’s are now available.

53. What steps is ATF and/or DOJ actively taking to expedite the approval timelines and delays for NFA eForm filings and paper form filings?

RESPONSE:

ATF reports that it is aware of the issues around approval timelines for NFA permit applications and is dedicating additional overtime resources to the research and perfection of pipeline applications. ATF advises that it will continue to surge application processing and that all business processes are being reexamined to maximize the efficiency of paper application handling and to leverage technology where possible.

54. Does DOJ and/or ATF believe that disabled persons, including disabled firearms enthusiasts, hunters, and sportsmen, are a substantial factor in the nation's present violent crime epidemic?

RESPONSE:

ATF advises that it does not maintain data responsive to this question.

55. Do DOJ and/or ATF believe that banning (or substantially increasing the regulation of) prosthetic equipment, such as "stabilizing braces" (aka "arm braces") used by disabled firearms enthusiasts, hunters, and sportsmen will have a substantial impact on reducing violent crime in the United States?

RESPONSE:

In June 2021, the Justice Department published a Notice of Proposed Rulemaking regarding "Factoring Criteria for Firearms with Attached 'Stabilizing Braces.'" See 86 Fed. Reg. 30826 (June 10, 2021). The proposed rule would not prohibit the use of stabilizing braces altogether; instead, it would clarify the circumstances under which stabilizing braces render a weapon subject to the requirements of the National Firearms Act. Specifically, this proposed rule would not impact "stabilizing braces" that are objectively designed and intended as a "stabilizing brace" for use by individuals with disabilities. As the proposed rule makes clear, such stabilizing braces are designed to conform to the arm and not as a buttstock.

56. Has the DOJ or ATF been providing assistance, guidance or advice in support of third-party civil lawsuits against those businesses within the firearms industry?

RESPONSE:

ATF reports that it has not provided assistance, guidance, or advice in support of third-party civil lawsuits against businesses that manufacture, import, sell, or distribute firearms.

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM THE HONORABLE MARSHA BLACKBURN**

1. Please identify all individuals who played a role in drafting, reviewing, and approving the October 4th DOJ memorandum concerning “harassment, intimidation, and threats of violence” at school board meetings.

RESPONSE:

I issued the memorandum you referenced on October 4, 2021, and I worked on the memorandum.

2. You testified that the October 4th DOJ memorandum was based on the NSBA letter and news reports. Please submit, for the record, the news reports you are referencing.

RESPONSE:

I issued the October 4, 2021, memorandum in the wake of the National School Boards Association’s letter, which I understood represented thousands of school boards and school board members, as well as news reports of threats of violence.

3. In the NSBA letter that you used as justification for the October 4th directive, NSBA noted that “in Virginia, an individual was arrested.” You have previously stated that this was justification for calling in the FBI. Is it standard practice at DOJ to take such dramatic actions based on mere accusations from special interest groups?

RESPONSE:

The October 4, 2021, memorandum was entitled “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement To Address Threats Against School Administrators, Board Members, Teachers, and Staff.” As its title suggests, this memorandum calls for partnership and coordination between federal and non-federal officials in assessing and addressing violence and threats of violence. The memorandum specifically directed the FBI and the United States Attorneys “to convene meetings with federal, state, local, Tribal, and territorial leaders in each federal judicial district.” Such meetings were intended to “facilitate the discussion of strategies for addressing threats against school administrators, board members, teachers, and staff,” and “open dedicated lines of communication for threat reporting, assessment, and response.”

As I explained in my testimony last October, this is consistent with “what the Justice Department does every day:” “consult with our local and state partners and see whether assistance is necessary.” As I further stated in my testimony, “[t]he purpose of this memorandum [was] to get our law enforcement to assess the extent of the problem, and if there is no problem, if states and local law enforcement are capable of handling the problem, then there [would be] no need for [federal] involvement...[the] memo does not say to begin prosecuting anybody, it says to make assessments.”

4. Will you guarantee to the Judiciary Committee, and make clear to the American people, that the DOJ under your leadership will not interfere with the rights of parents to attend school board meetings and express their concerns?

RESPONSE:

I have made this clear both to this Committee and to the American people. As I said in my congressional testimony last October, it is the job of parents to be involved in the education of their children, and it is “the role [of] the First Amendment to protect their ability to be involved.” That is why the October 4, 2021, memorandum I issued makes absolutely clear in the first paragraph that “spirited debate about policy matters is protected under our Constitution.” These protections clearly and importantly cover debate concerning school board policies.

On January 5, 2022, I gave a public speech to Department employees, stating: “The Justice Department will continue to investigate violence and illegal threats of violence, disrupt that violence before it occurs, and hold perpetrators accountable. We have marshaled the resources of the Department to address the rising violence and criminal threats of violence against election workers, against flight crews, against school personnel, against journalists, against members of Congress, and against federal agents, prosecutors, and judges. In 2021, the Department charged more defendants in criminal threat cases than in any year in at least the last five. As we do this work, we are guided by our commitment to protect civil liberties, including the First Amendment rights of all citizens. The Department has been clear that expressing a political belief or ideology, no matter how vociferously, is not a crime. We do not investigate or prosecute people because of their views. Peacefully expressing a view or ideology—no matter how extreme—is protected by the First Amendment. But illegally threatening to harm or kill another person is not. There is no First Amendment right to unlawfully threaten to harm or kill someone.”

5. You testified that you didn’t know Susan Hennessey—that you didn’t think you had met her before and that you were not aware of her partisan-charged remarks concerning the Durham investigation. Nonetheless, you assured me that she has no role in or oversight over the Durham investigation. Given your statements about not knowing who Susan Hennessey is, how were you able to guarantee me that she has no role in or oversight over the Durham investigation?

RESPONSE:

Special Counsel Durham has been conducting his investigation with his own staff. The Department abides by the regulations governing special counsels. *See* 28 C.F.R. § 600.1 et seq.

6. Within the DOJ, who has a role in or oversight over the Durham investigation?

RESPONSE:

Special Counsel Durham has been conducting his investigation with his own staff. The Department abides by the regulations governing special counsels. *See 28 C.F.R. § 600.1 et seq.*