

**QUESTIONS FOR THE RECORD
ROD J. ROSENSTEIN
NOMINEE TO BE DEPUTY ATTORNEY GENERAL**

SENATOR DIANNE FEINSTEIN, RANKING MEMBER

1. Russian Interference with Elections

At your confirmation hearing, I asked you about the U.S. intelligence community's assessment that Vladimir Putin ordered a Russian influence campaign designed to interfere with the 2016 presidential election. During your hearing, you committed reading this report (titled "Assessing Russian Activities and Intentions in Recent U.S. Elections and released on January 6, 2017.

a. Do you believe Russia interfered in our election?

RESPONSE: As I testified at the hearing, I am familiar with the issue from media accounts and I have no reason to doubt the conclusion of the intelligence community. Having read the entire unclassified report, including the caveats in Annex B, I have no reason to doubt the assessment of our intelligence community.

b. If not, why not?

RESPONSE: See response to 1(a).

c. Prior to your hearing, did anyone suggest or advise you not to read the public, unclassified report? If so, who gave you that suggestion or advice, and why?

RESPONSE: No. I was familiar with the issue from media accounts that I read both before and after the issuance of the report on January 6, 2017. Prior to my confirmation hearing, no one told me not to read the report. If I am confirmed, I will obtain a briefing about the actual evidence; I will not base my decision-making on a redacted public report that does not identify the evidence.

2. Appointment of Special Counsel

Attached are two letters (dated December 30, 2003 and February 6, 2004) that then-Deputy Attorney General Comey wrote to Patrick Fitzgerald regarding his appointment as "special counsel" to investigate and prosecute the disclosure of Valerie Plame's covert identity.

a. Was Deputy Attorney General Comey's appointment of Mr. Fitzgerald lawful?

RESPONSE: I have not researched this specific issue, but to the best of my knowledge, the Deputy Attorney General has authority to assign responsibility for any case to any U.S. Attorney.

- b. Was Deputy Attorney General Comey correct that a delegation of the authority of the Attorney General to investigate a matter is not necessarily defined and limited by 28 CFR Part 600?**

RESPONSE: I have not researched this specific issue, but to the best of my knowledge, the Deputy Attorney General has authority to assign responsibility for any case to any U.S. Attorney.

- c. If confirmed, would you have the same authority to delegate the authority of the Attorney General to investigate any matter from which the Attorney General is recused? Do you believe that the position and authorities of any such delegation would be defined and limited by 28 CFR Part 600?**

RESPONSE: I have not researched this specific issue, but to the best of my knowledge, the acting Attorney General would exercise the same authority as the Attorney General, and the acting Attorney General could define the position and authorities as deemed appropriate.

- d. If confirmed, will you undertake an assessment of whether to appoint a special counsel to handle any pending or contemplated investigations into Russian interference in the 2016 election, including any investigations that involve contacts between the Trump campaign, transition team, or administration and Russia? What factors will you consider?**

RESPONSE: If I am confirmed as Deputy Attorney General, I will handle any potential or current investigation into Russian interference in the election in the same way I handle other matters: I will evaluate the facts and the law, consider the applicable regulations, consult with career professionals, and exercise my best judgment. The factors I will consider depend, as with all investigations, on the applicable law and regulations, as well as the facts of the case.

- Will you commit to making a decision only after a thorough and careful review of all relevant facts, as well as consultation with career ethics professionals within the Justice Department?**

RESPONSE: Yes.

- Will you also commit to informing the Committee of your decision, and the basis for your decision, within a month of taking office?**

RESPONSE: I do not know the facts or the status of any investigation, and I have not consulted with agents and prosecutors and intelligence community professionals who may have relevant information. I know from my personal experience handling investigations that involve classified information that when the intelligence community discloses information to the Department of Justice, it does so with the understanding and on the condition that any decision to disclose classified information is retained by the intelligence community. At this time, without having fully reviewed this matter, I am not in a position to comment further or commit to a future course of action.

3. Attorney General Recusal from Investigations into Russian Election Interference

On March 2, Attorney General Sessions issued a public statement saying “I have decided to recuse myself from any existing or future investigations of any matters related in any way to the campaigns for President of the United States.” In his March 6 letter to the Committee, Attorney General Sessions acknowledged our concerns as to “why [he] had not recused [himself] from ‘Russian contacts with the Trump transition team and administration.’” He then wrote “I understand the scope of the recusal described in the Department’s press release would include any such matters.” At your hearing you were asked to clarify your understanding of the scope of this recusal statement.

- a. Can you confirm that Attorney General Sessions has recused himself from any existing or future investigations of any matters related in any way to Russian contacts with the Trump campaign, transition team, and administration?**

RESPONSE: Based on public sources, I understand that the Attorney General is recused “from any existing or future investigations of any matters related in any way to the campaigns for President of the United States,” and any matters involving “‘Russian contacts with the Trump transition team and administration.’”

- b. If you cannot confirm this now, will you commit, if confirmed, to obtaining the information that you need and advising the Committee, within two weeks of your confirmation, as to the scope of the Attorney General’s recusal?**

RESPONSE: If I am confirmed, I will consult with career officials to ensure that I act in accordance with applicable law and regulations and that anyone who should be recused from a matter has no involvement in the matter. At this time, without having fully reviewed this matter, I am not in a position to comment further or commit to a future course of action. Questions regarding the scope of the Attorney General’s recusal should be addressed to the Attorney General.

- c. In particular, will you commit that, if confirmed, you will confirm for the Committee that Attorney General Sessions has recused himself from any existing or future investigations of any matters related in any way to Russian contacts with the Trump campaign, transition team, and administration and, if that is not the case, explain the Attorney General’s ongoing involvement?**

RESPONSE: See response to 3(b).

4. Politicization of Justice Department / Communications with the White House

During your confirmation hearing, Senator Whitehouse asked about policies restricting communications between the White House and Justice Department as a means of protecting the

Department of Justice from political interference. You responded: “I believe the department’s policy is and will be, that communications with the White House concerning cases, that’s the most sensitive matter . . . need to be cleared through the office of the deputy attorney general.”

While you focused on cases, the Justice Department’s longstanding policy has been broader in scope, restricting communications concerning “pending or contemplated criminal or civil investigations or cases.”

- a. **Do the same restrictions that apply to cases apply to pending or contemplated investigations? If not, what is the policy regarding investigations and why are investigations and cases treated differently, particularly if one goal of these policies is to defend the Department against political interference?**

RESPONSE: The Department of Justice policy regarding communications with the White House applies to pending or contemplated criminal or civil investigations or cases.

- b. **Would direct contact between a White House adviser and the U.S. Attorney handling a case comply with Justice Department policy regarding communications between the White House and Justice Department? If there are circumstances when this would comply with policy, please explain those circumstances. Please also explain the possible remedies where such contact does not comply with policy.**

RESPONSE: Whether such a communication would violate the Department’s policy depends on the facts and circumstances. Under the policy, initial communications should involve only the Attorney General or Deputy Attorney General, and the Counsel to the President, Deputy Counsel to the President, the President or the Vice President. If that situation were to arise, I would thoroughly review the applicable rules and regulations and consult with the career officials at the Department to determine whether the communication violated Department policy, and if so, what the appropriate remedy would be.

- c. **What would you do, as a U.S. Attorney, if you were contacted directly about a pending case by a White House adviser?**

RESPONSE: I would act in accordance with Department of Justice protocols, including the memorandum on communications with the White House issued by former Attorney General Holder. As per the terms of that memorandum, initial communications between the Department of Justice and the White House should involve only the Attorney General or the Deputy Attorney General. I am not in a position to comment on a hypothetical, as the course of action would depend upon the facts and circumstances of the matter.

- d. **Who, if anyone, in the White House can be granted access to investigative materials, including warrant applications or interview records?**

RESPONSE: According to the memorandum issued by Attorney General Holder regarding communications with the White House, “the Justice Department will advise the White House concerning pending or contemplated criminal or civil investigations or cases

when—but only when—it is important for the performance of the President’s duties and appropriate from a law enforcement perspective.” “Initial communications between the Department and the White House concerning pending or contemplated criminal investigations will involve only the Attorney General or the Deputy Attorney General, from the side of the Department, and the Counsel to the President, the Principal Deputy Counsel to the President, the President or the Vice President, from the side of the White House.”

- e. **What steps would you take if you were asked, as Deputy Attorney General, to grant someone in the White House access to materials related to a pending or contemplated investigation or case, including warrant applications or interview records?**

RESPONSE: I would review the applicable Department regulations and policies and consult with career officials to determine the best way to proceed.

- f. **If you are confirmed as Deputy Attorney General, what will you do to protect the Justice Department – at every level – from political interference or influence?**

RESPONSE: I am familiar with the Department’s policies concerning communications with the White House and Congress. The policies provide important guidance. If confirmed as Deputy Attorney General, I will commit to following and enforcing applicable Department policies and procedures related to such contacts. I also will remind Department of Justice supervisors and employees that if they hear opinions directly or indirectly through the media or in any other forum from interested persons with political or other motivations – including White House officials and legislators – I expect them to comply with their oath of office and make independent decisions based upon the facts and circumstances of each individual case.

5. Responsiveness to Congress

During Attorney General Sessions’ confirmation hearing, Chairman Grassley asked the Attorney General to commit to responding to requests for information from the Chairman. He also asked the Attorney General to make the same promise to answer my requests as the Ranking Member. I thank Chairman Grassley for that courtesy.

The Attorney General assured us that he would respond promptly to the Chairman’s **and** to my requests.

- **Will you commit to doing the same?**

RESPONSE: Yes.

6. Torture / Enhanced Interrogation

During Attorney General Jeff Sessions' confirmation hearing he stated that it would be "absolutely improper and illegal" for any U.S. government department or agency "to use waterboarding or any other form of torture." Attorney General Sessions also assured the Senate Judiciary Committee that he and other appropriate officials would be fully briefed on the contents of the full 6,700 page Senate Intelligence Committee (SSCI) report on the CIA's detention and interrogation program to the extent that it is pertinent to the operations and mission of the Department of Justice.

a. Do you agree that waterboarding is torture, and that it is illegal?

RESPONSE: Yes. It is my understanding that under federal law, it is impermissible for either the military or our intelligence agencies to subject detainees to cruel, inhuman, or degrading treatment. Further, federal law has specifically limited interrogations outside of the federal law enforcement context to the techniques contained in the Army Field Manual.

b. If confirmed, will you read the full SSCI report on the CIA's detention and interrogation program to ensure we do not repeat the mistakes of the past?

RESPONSE: I plan to get a briefing about the full report.

c. Do you agree that Federal law is clear that it is unlawful for either the military or our intelligence agencies to subject detainees to cruel, inhuman, or degrading treatment, or to use interrogation techniques that are not prescribed by the Army Field Manual?

RESPONSE: Yes.

7. Protecting Whistleblowers

Whistleblowers play an important role in identifying waste, fraud, abuse, and mismanagement in the federal government. During Attorney General Sessions's nomination hearing, Chairman Grassley – a longtime champion of whistleblower protections and rights – called whistleblowers "patriotic people that want the government to do what the government is supposed to do."

a. Will you commit to protect and encourage whistleblowers in the Justice Department?

RESPONSE: Yes.

b. What steps will you take to confirm and convey these protections to Department employees?

RESPONSE: Strong protections for whistleblowers are important to ensure that governmental misconduct is investigated and appropriately addressed. If I am confirmed as Deputy Attorney General, I will endeavor to ensure that employees of the Department of Justice are informed of their rights and protections when they help appropriate individuals identify and prevent misconduct, including through regular review of, and if necessary, updates to the policies and procedures of the Department. I believe that the Inspector General has an effective program to reassure and protect whistleblowers.

8. Sally Yates

When the last nominee for Deputy Attorney General, Sally Yates, came before this Committee, Senator Sessions—who, as you know, is now the Attorney General—asked her whether she would stand up to the President if she believed his actions were unlawful. She responded: “I believe the attorney general or the deputy attorney general has an obligation to the law and the Constitution, and to give their independent legal advice to the president.”

- a. Do you agree with Sally Yates that the Attorney General and the Deputy Attorney General have an obligation to the law and the Constitution and to give independent legal advice to the President?**

RESPONSE: Yes.

- b. Will you make the same commitment to this Committee that Sally Yates made—that you will stand up to the President if you believe his actions are ever unlawful?**

RESPONSE: Yes.

In your written statement, you noted that the first question for the Justice Department is “What can we do?” and the second is “What should we do?” In announcing her decision that the Department would not defend Executive Order 13769 under her tenure, Sally Yates explained that it was her responsibility as the Acting Attorney General to consider whether the order was “not only legally defensible” (i.e., what can we do) but consistent with “this institution’s solemn obligation to always seek justice and stand for what is right” (i.e., what should we do).

- c. Setting aside whether you agree or disagree with her decision, was she wrong to consider the Justice Department’s “solemn obligation to always seek justice and to stand for what is right”?**

RESPONSE: A prosecutor should always strive to seek justice and stand for what is right.

- d. In your view, is that a legitimate consideration? If not, why not and how does that differ from determining, in your words, “what should [the Justice Department] do”?**

RESPONSE: In my view, the decision-making process should not stop with the question of whether a proposed action is within our lawful authority. Instead, it requires an institutional

decision about what is best for the Department. It does not mean that every Justice Department employee is free to disregard policy judgments made by the Congress, client agencies or supervisors and substitute his or her own individual view.

e. What factors do you consider in determining “what should we do”?

RESPONSE: As stated above, in making a discretionary decision, the decision-making process should not stop with the question of whether a proposed action is within our lawful authority. Appropriate considerations vary depending upon the nature of the issue and the relevant facts and circumstances. As I elaborated in my written statement, our decision on how to achieve justice must be informed by an appreciation of the intended and unintended consequences.

9. Preservation of Records

a. In your experience, how do prosecutors and investigators usually ensure that a business or non-governmental organization preserves documents that might be relevant to a criminal investigation?

RESPONSE: In my experience, prosecutors may issue a subpoena, obtain a search warrant, send a request or obtain a court order to preserve records.

b. At what point in an investigation would you typically send a request or order to preserve records?

RESPONSE: The timing of a request or order to preserve records depends on the facts of the investigation, including the nature of the investigation and whether it is overt or covert.

c. Does the Department take different or additional steps to ensure that materials are being preserved once an investigation becomes publicly known or discussed through, for example, media reports?

RESPONSE: Whether or not an investigation is known to the holder of relevant documents is an important consideration in determining what steps to take.

10. Duty of Candor

In an exchange with Senator Whitehouse during your confirmation hearing, you acknowledged that “the duty of candor is not just an internal department policy, it’s an ethical rule governing lawyers so I would certainly enforce that rule.”

a. Please explain your understanding of what the duty of candor requires with regards to statements of fact presented by Justice Department attorneys to a court?

RESPONSE: All Justice Department attorneys are expected as part of their official duties to be candid with courts, and they are bound by their applicable jurisdiction's rules of professional conduct. *See* 28 U.S.C. § 530B. The requirements of these rules vary depending on the jurisdiction. For instance, District of Columbia Rule of Professional Conduct 2.1 requires that attorneys exercise independent professional judgment and render candid advice.

- b. Are Justice Department attorneys under an obligation to disclose factual information that may not support the Department's legal arguments? What if that information is known to the executive branch (including the Justice Department attorneys handling a case) but is not otherwise publicly available or obtained through discovery?**

RESPONSE: All Department attorneys are bound by their applicable jurisdiction's rules of professional conduct. *See* 28 U.S.C. § 530B. The requirements of these rules vary depending on the jurisdiction. Whether a Department attorney is under an affirmative obligation to disclose factual information that "may not" support their arguments depends on the nature of the case, the nature of the underlying factual information, and the rules of professional conduct that bind the attorney.

- c. What would you do – as a U.S. Attorney or as the Deputy Attorney General – if you were given an agency memorandum that did not support the legal arguments that you were seeking to advance in court? If you would not disclose that memorandum (or the information it contains), why not? And if not, do you believe this serves the public interest and if so, please explain?**

RESPONSE: As a U.S. Attorney, and if I am confirmed as the Deputy Attorney General, I would respect Department policies, judicial rules and my jurisdiction's rules of professional conduct. In the situation described above, I would review the applicable rules and consult with career officials to determine the best course of action.

11. Voting Rights / Voter Fraud

In January 2017, just days after being sworn in, President Trump wrote on Twitter that he would "be asking for a major investigation into VOTER FRAUD". Attorney General Sessions has echoed that belief that voter fraud is a major problem threatening the integrity of our elections. But the fact of the matter is that there is simply no evidence showing wide scale voter fraud.

The Justice Department needs to be bringing cases to protect against voter intimidation and systemic voter suppression against minorities. Unfortunately, the Justice Department recently took a step in the wrong direction when it reversed its position in the Texas voter ID case in the Fifth Circuit. The Justice Department's move to withdraw its claim that the Texas ID was enacted with discriminatory intent was wrong, and it sends absolutely the wrong message. The Justice Department should be doing everything it can to protect the right to vote, not suppressing it.

- a. Do you believe there is credible evidence that over 2.5 million people voted illegally in the last election?**

RESPONSE: I am not aware of the context or basis for the remarks and therefore am not in a position to comment.

- b. What steps will you take to ensure strong voting rights enforcement continues?**

RESPONSE: The Department of Justice plays a key role in investigating and bringing cases to prevent violations of federal voting rights laws. If I am confirmed, I will fairly, effectively and appropriately enforce voting rights laws and other laws within the Department's jurisdiction.

12. Hate Crimes

Since the 2016 election, there has been an alarming rise in hate crimes against Muslims, LGBTQ individuals, Jews, and other minorities. These heinous crimes— targeting individuals because of their faith, race, nationality, sexual orientation, or gender identity—have no place in a society built upon the principles of tolerance and inclusion.

According to some estimates, since November 9, 2016, there have been over 250 incidents of assault, harassment, vandalism, and bomb threats against religious, racial and other minorities across the country. More than 100 of these acts were allegedly perpetrated by individuals who specifically invoked President Trump and his election victory while committing the crime. In just the last two months, there have been more than 100 bomb threats against Jewish community centers, schools and institutions across the country. Four mosques have been set on fire. On February 23rd, a man of Indian descent was brutally shot and killed by a Kansas native who reportedly screamed “get out of my country” before he opened fire. And this month, a Sikh-American man was shot in his driveway in a Seattle, Washington suburb by an assailant who allegedly told him to “go back to your own country.”

- a. As Deputy Attorney General, will you commit to investigating and prosecuting hate crimes to the fullest extent of the law?**

RESPONSE: Yes.

- b. As Deputy Attorney General, you will have a significant influence over decisions made by the Attorney General, and by extension, the President. If Attorney General Sessions decides not to prosecute a clear violation of federal hate crime laws, would you be willing and able to convince him otherwise?**

RESPONSE: Any decision by the Justice Department to initiate a prosecution must be conducted in a fair, professional, and impartial manner, and only after careful consideration of the facts and law presented by the case. The Department must make decisions regarding any potential charges based upon the facts and the law, and consistent with established procedures of the Department. That is how I handled cases as a U.S. Attorney, and it is how I will handle cases if I am confirmed to be Deputy Attorney General. If I disagree with a decision by the Attorney

General, I would discuss the matter with him and, if I believe that I am correct, I would try persuade him.

- c. **On February 23rd, two men of Indian descent were shot by a man who screamed “get out of my country” before he opened fired and subsequently bragged about shooting foreigners. This incident is being investigated as a potential hate crime. Do you believe this murder should be prosecuted as a federal hate crime? If not, why not?**

RESPONSE: I cannot comment on pending investigations.

13. Guns and Assault Weapons

Last month, the Fourth Circuit upheld Maryland’s ban on **assault weapons and large-capacity magazines** in a **10-4** decision. The Court held that the ban is constitutional under the Supreme Court decision in *D.C. v. Heller* and that that the banned assault weapons and large-capacity magazines were not protected by the Second Amendment, because they are “like . . . weapons that are most useful in military service.” (*Kolbe v. Hogan*)

To date, five separate Courts of Appeals have ruled to uphold an assault weapons bans and/or large capacity magazine ban under the Second Amendment.

- **Will the Department of Justice support these decisions and not file briefs to ask the Supreme Court to rule against these cases?**

RESPONSE: Such decisions generally depend upon the unique factual and legal circumstances of the case or cases. If I am confirmed, I will ensure that all matters receive a thorough and careful evaluation to ensure the fair administration of justice.

14. Travel Ban / Muslim Ban

In January, the President signed an executive order that banned people from seven Muslim-majority countries, including legal permanent residents and people with valid visas, from entering the country. As a result, scores of people were wrongfully turned away, in some cases children were separated from their parents, and chaos erupted at airports around the United States. Shortly after that, the Ninth Circuit Court of Appeals upheld a temporary injunction against the order, explaining that it did not believe the government would be able to prove that the executive order was lawful.

As you know, the President recently signed a revised executive order that he says fixes the flaws in the original order. Among other changes, the revised order explicitly states that it does not apply to legal permanent residents or valid visa holders – a sign the Administration actually understands the legal problems posed by the overbreadth of the first executive order – but still prohibits people from several Muslim-majority countries from entering the United States.

- a. **Did you have any role in drafting or advising on the original Muslim ban executive order? Did you have any role in drafting or advising on the revised executive order?**

RESPONSE: No.

- b. **Do you believe that it is lawful to discriminate against immigrants based on their religion?**

RESPONSE: No.

- c. **It's my understanding that the Trump administration continues to believe the original executive order, even as applied to legal permanent residents and valid visa holders, was lawful. Do you agree?**

RESPONSE: I understand this case remains pending, so it would not be appropriate for me to comment.

15. Office of Legal Counsel / Executive Orders

I understand that the Office of Legal Counsel (“OLC”) reviewed the travel ban executive order for “form and legality” before it was signed. Because the Deputy Attorney General oversees OLC, I would like more information about that process.

- a. **First, generally, what is your understanding of OLC’s role in ensuring that executive orders are legal?**

RESPONSE: I understand that it is the longstanding tradition of administrations of both parties to ask the Office of Legal Counsel to review executive orders for form and legality before they are issued.

- b. **If OLC signs off on an executive order for form and legality, does that necessarily mean that the way the administration implements the order will be legal? Or might that be a different analysis in some cases?**

RESPONSE: The legality of the implementation of a law may turn in part on the facts of that implementation, which may arise during the implementation itself.

- c. **It is my understanding that, in the ordinary course, a proposed executive order must be sent to the Office of Management and Budget and to any interested agencies for review. This process—which is required by an executive order that has been in place since 1962—helps make sure that the agencies that will be implementing the order will have input and a full understanding of what is**

expected of them once the order is in place. The [Washington Post](#) reported that, in the case of the travel ban order, it appears that this process was not followed. Do you think the interagency process that I just described is important to ensuring the legality and integrity of all executive orders that come out of the White House?

RESPONSE: Administrations of both parties have decided to consult with OLC regarding executive orders, so I believe the process probably is valuable.

d. Will you commit to ensuring that the interagency process is followed for executive orders in the future, as required by the 1962 executive order?

RESPONSE: I support the process.

e. What considerations should the Attorney General take into account when deciding whether to overrule OLC?

RESPONSE: The Attorney General is responsible for the entire Justice Department, which includes components with wide-ranging duties. The components may have different views about any particular matter. The Attorney General should consult with career professionals and component heads and consider the law and the facts, along with the interests and perspectives of all Department components, when making decisions for the Department.

f. Do you agree that a decision to overrule OLC should never be made for political reasons?

RESPONSE: Decisions at the Justice Department should be made on the basis of a sound view of the law and the facts, in consultation with the experienced public servants.

16. VAWA

As a prosecutor with decades of experience, you know first-hand that ensuring justice is done is not just about criminal prosecution, but also protecting victims and responding to their needs.

That is why the Violence Against Women Act is such an important law. It provides critical resources for federal, state, and local law enforcement, but it also provides grant resources to service providers working directly with women to help them safely rebuild their lives.

I recently joined a letter with the Chairman urging the President to support funding for VAWA programs in this year's budget process. It is amongst my highest priorities to fight to ensure we fund these vital services that protect all victims – including LGBT individuals, Native Americans, and immigrants.

a. In your role as Deputy Attorney General, how will you support the enforcement of the Violence Against Women Act?

RESPONSE: If I am confirmed as the Deputy Attorney General, I will support appropriate enforcement of all laws under the jurisdiction of the Department of Justice, including the Violence Against Women Act. The Department's Office on Violence Against Women works to provide federal leadership regarding reducing violence against women and administering justice for and strengthening services to victims of domestic violence, dating violence, sexual assault, stalking, and other crimes. I intend to support the work of that Office.

b. Will you work to ensure that the President and his advisors understand the importance of this law?

RESPONSE: If I am confirmed as the Deputy Attorney General, I will work to ensure that the President understands the Department's priorities, including the enforcement of laws such as the Violence Against Women Act.

17. Incomplete Information for NICS

The National Instant Criminal Background Check System (NICS) received more than 22.2 million background check requests in 2015, 35 percent more than just six years ago.

Following the murders of nine churchgoers at Emanuel AME church in Charleston, South Carolina in June 2015, FBI Director Comey announced that NICS did not get information regarding the gunman's drug arrest record within three days -- a key fact that would have prevented him from obtaining a gun.

The issue of incomplete records in the FBI's NICS database is a significant problem for law enforcement. This is because without complete records, even when a background check is done, law enforcement do not uncover that the person seeking to buy the gun should not be able to do so.

In fact, I was deeply disappointed several weeks ago when President Trump signed a law to repeal a rule that allowed the Social Security Administration to share information regarding those with severe mental illnesses with the FBI's NICS database. The rule was simply implementing the law that was passed after the Virginia Tech shooting to shore up deficient records in FBI NICS.

- **What steps do you propose to ensure that the FBI NICS database is as accurate and complete as possible?**

RESPONSE: Although I am not familiar with the details of this issue, I agree that it is important to ensure that the NICS database contains accurate and complete records. If I am confirmed as Deputy Attorney General, I expect to review whether there are additional actions the Department can take to ensure accuracy and completeness of records in the NICS.

18. Protecting Victims of Sex Abuse

Your office recently prosecuted a 57 year old youth gymnastics coach who was convicted and sentenced just last week of child pornography offenses. Prior to his arrest, this man had worked as a youth gymnastics coach in Maryland for over 30 years, during which he amassed a vast collection of videos and images of children being sexually abused. According to his plea agreement, this man admitted that he has a sexual preference for girls aged 8 to 12 years, the same age group he coached at the gym. In fact, he also admitted that he was attracted to the “body type” of many of the girls he coached. Disturbingly, investigators found pictures displaying young girls in gymnastics leotards throughout his home along with digital media containing over 40,000 images and over 100 videos of child pornography.

This is not the only youth gymnastics coach your office has prosecuted. In 2007, your office prosecuted a 41 year old youth gymnastics teacher who was convicted and sentenced for possession of child pornography. According to press releases, 21 pairs of girls’ underpants were recovered from his bedroom along with hundreds if not thousands of videos and photographs depicting the sexual abuse of children that he had collected over a period of 20 years. At the time, you stated that this case was a “top priority” for your office precisely because “he worked with so many children in his job as a gymnastics instructor.”

- a. Would you agree that had there been any reason to suspect that these coaches that you prosecuted were sexually abusing children at their gyms, you would have wanted those with information to come forward immediately to law enforcement authorities?**

RESPONSE: Yes.

- b. Would you support legislation that would require adults who work with young children, and who are affiliated with national sports organizations like USA Gymnastics, to immediately report to law enforcement or other authorities when they learn of facts indicating that sexual abuse is being committed against a minor?**

RESPONSE: It is important to protect children from sexual abuse. I have not studied the details of legislation specific to your question; if I am confirmed as Deputy Attorney General, the Department will work with you on this important issue.

I am deeply concerned that both of these men coached young children at gyms overseen by USA Gymnastics, the national governing body for the sport of Gymnastics in the United States which sets rules and policies for more than 3,000 gyms across the country with 125,000 athletes in its membership. Just last year, the Indianapolis Star reported that top officials at USA Gymnastics had failed to disclose to law enforcement allegations of sexual abuse at their member gyms. They also revealed that USA Gymnastics makes no effort to track coaches who have had allegations made against them. In fact, Indianapolis Star uncovered many instances in which coaches had been removed from one gym for sexual abuse allegations only to apply for a job at another and begin abusing children again.

- c. **Do you agree that as the national governing body of Gymnastics, an organization like USA Gymnastics should develop and enforce policies, mechanisms, and procedures to prevent the abuse of minors in their facilities?**

RESPONSE: Yes.

- d. **In particular, where predators can escape accountability by simply moving from one gym to another, do you agree that a national governing body should provide notice to all member gyms once a sexual abuse allegation has been made?**

RESPONSE: I commend organizations that take steps to protect children from predators.

- e. **Would you support a bill that would require such organizations to take these important, affirmative steps as well as to report suspected child abuse to law enforcement agencies?**

RESPONSE: I commend organizations that take steps to protect children from predators. I would need to study the details of the proposed legislation.

19. Enforcement of Federal Marijuana Laws

Currently, twenty-eight states and the District of Colombia have legalized medical or recreational marijuana, or both. This includes Colorado, Washington, and most recently, California. An additional 14 states have laws in place related to cannabidiol, a non-psychoactive component of marijuana. Seventeen more states will consider legislation to legalize marijuana this year.

Despite these state laws, under the federal Controlled Substances Act, marijuana is still considered a Schedule I drug, making it illegal to possess or distribute.

Given the disparity between these state and federal law, the Department of Justice must determine how it will use scarce federal enforcement resources in marijuana cases.

- a. **How do you intend to balance federal marijuana enforcement with other enforcement priorities, given the number of states that have legalized recreational or medical marijuana under their own laws?**

RESPONSE: I support the enforcement of all federal criminal statutes in a manner that efficiently utilizes the Department's resources to address the most significant threats to public health and safety. If confirmed, I will examine the Department's existing guidance on enforcement and, in consultation with others in the Department, determine an appropriate policy that strikes the appropriate balance given Department priorities.

- b. **If confirmed, do you plan to continue the policies contained in the "Cole Memo", which set forth eight enforcement priorities for federal marijuana enforcement? If**

you do intend to change the Cole Memo, how do you intend to change it?

RESPONSE: As the U.S. Attorney for the District of Maryland, I have followed the policies contained in the Department’s memoranda on marijuana. If I am confirmed as Deputy Attorney General, I will review and evaluate those policies in light of law enforcement needs.

20. Enforcement of Federal Marijuana Laws (cont’d)

In December 2014, Congress passed an appropriations bill that prohibited the Department of Justice from using federal funds to interfere with a state’s implementation of medical marijuana laws. Subsequently, the Ninth Circuit Court concluded that this language, “at a minimum, . . . prohibits DOJ from spending funds from relevant appropriations acts for the prosecution of individuals who engaged in conduct permitted by the State Medical Marijuana Laws and who fully complied with such laws.”

a. What is your interpretation of this ruling?

RESPONSE: I am informed that the Ninth Circuit interpreted what is known as the “Rohrabacher-Farr Amendment.” The Court held that this provision “prohibits DOJ from spending funds from relevant appropriations acts for the prosecution of individuals who engaged in conduct permitted by the State Medical Marijuana Laws and who fully complied with such laws.” *United States v. McIntosh*, 833 F.3d 1163, 1177 (9th Cir. 2016). The court also held that “[i]ndividuals who do not strictly comply with all state-law conditions regarding the use, distribution, possession, and cultivation of medical marijuana have engaged in conduct that is unauthorized, and prosecuting such individuals does not violate [the provision].” *Id.* at 1178. Finally, it held that the private persons in that case “are entitled to evidentiary hearings to determine whether their conduct was completely authorized by state law, by which we mean that they strictly complied with all relevant conditions imposed by state law on the use, distribution, possession, and cultivation of medical marijuana.” *Id.* at 1179.

b. If confirmed, under your leadership, would the Department pursue those individuals who use medical marijuana or medical marijuana businesses operating in compliance with their state laws?

RESPONSE: The Department’s policy under the Cole memoranda is to enforce the Controlled Substances Act against marijuana-related crimes that implicate federal enforcement priorities. If I am confirmed as Deputy Attorney General, I will review and evaluate those policies in light of law enforcement needs.

21. Marijuana Research

The National Academy of Sciences recently released a report entitled “The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research.” According to the press release issued with the report, this report was “an in-depth

and broad review of the most recent research to establish firmly what the science says and to highlight areas that still need further examination.”

The report found that cannabis or cannabinoids may be helpful in treating certain medical conditions. However, the overwhelming conclusion was that more research is needed to definitively determine the potential beneficial and harmful effects of marijuana, but existing regulatory barriers make this research difficult to complete.

During the last session of Congress, Senators Grassley, Leahy, Tillis and I introduced legislation to reduce these barriers. This legislation would expedite the Drug Enforcement Administration registration process to research marijuana, and allow doctors to use their existing registrations to conduct research and clinical trials on cannabidiol, rather than the Schedule I registration that is currently needed. It would also increase the scientific research base for marijuana by authorizing medical and osteopathic schools, as well as research universities and pharmaceutical companies, to conduct research using their own strains of marijuana and cannabidiol. The goal, if the science shows that marijuana or its components are helpful in treating certain medical conditions, is to develop medicines that can be brought to the market with FDA-approval, just like any other medicine. I believe this is important legislation and plan to reintroduce it again this session.

- a. Given the number of states that have legalized recreational and medical marijuana under their own laws, do you agree that it is important that we know as much as possible about the health-related and other impacts of marijuana use?**

RESPONSE: It is important to continue to research the health-related and other effects of marijuana from scientific and medical perspectives.

- b. If confirmed, what do you intend to do to advance our knowledge in that area? Are there specific regulations that you would ease related to marijuana research? If so, which ones?**

RESPONSE: I am committed to ensuring that the Department participates in scientific and medical research efforts regarding marijuana to the extent it can do so consistent with federal law, as well as Department policies and budgetary priorities. I have not studied the regulations in this area and whether any changes may be warranted.

22. Prescriber Education

As you are aware, our country is in the midst of an opioid epidemic. Every 16 minutes someone dies from an overdose involving opioids. Often, people move from abusing prescription opioids to abusing heroin. And, in 2015 alone, 13,000 Americans died from heroin overdoses.

You noted in your testimony that opioids has been a “real priority for us in Maryland because we’ve seen an explosion of overdose deaths that are attributed to opioid drugs throughout the entire society and I think it’s critically important for us to address that. Law enforcement is one part of it, but it’s a very good example of where it’s not just a law enforcement problem...”

I agree with you that the opioid epidemic is not just a law enforcement problem. It is my belief that members of the medical profession can and should play a critical role in addressing the opioid epidemic. However, many are not sufficiently trained in proper prescribing practices, how to recognize signs and symptoms of substance abuse, or how to treat substance use disorders.

The Department of Justice, through the Drug Enforcement Administration, has the ability to require those who dispense narcotics to demonstrate that they have received adequate training in these areas as a condition of receiving their registration to do so.

- **Given the epidemic we are currently facing, if confirmed, would you support efforts to change existing regulations to require members of the medical profession to demonstrate that they have received training on proper prescribing practices, how to recognize signs and symptoms of substance abuse, and how to treat substance use disorders as a condition of receiving their Drug Enforcement Administration registration that allows them to dispense powerful, potentially addictive controlled substances?**

RESPONSE: As I testified, opioid abuse is a serious problem to which I have devoted significant resources as the U.S. Attorney for the District of Maryland. It requires attention from law enforcement and educators, as well as the treatment and prevention communities. If I am confirmed as Deputy Attorney General, I am committed to addressing this problem. I have not studied the regulations in this area and whether any changes may be warranted, but I believe that educating medical professionals is important.

23. Increase in Methamphetamine Seizures at the California-Mexico Border

In 2006, the Combat Meth Epidemic Act, which I introduced, became law. This legislation requires precursor chemicals used to make methamphetamine, such as pseudoephedrine, to be sold behind the counter.

As a result of this law, production of methamphetamine in the United States has decreased. Unfortunately, production has shifted to Mexico, where transnational criminal organizations are producing increasing amounts of methamphetamine and smuggling it into our country.

It is my understanding that between 2009 and 2016, there was a 631 percent increase in methamphetamine seizures at the Southwest Border. The vast majority of these seizures occurred in California. And, between 2011 and 2015 in San Diego, there was an 82 percent increase in methamphetamine-related deaths.

- **Under your leadership, what steps would the Department take to counteract the increase in methamphetamine smuggling from Mexico? Are there additional tools or resources that Congress can provide to ensure these dangerous substances don't continue to cross our borders?**

RESPONSE: Drug trafficking across the border from Mexico is, as you point out, a significant problem. We must target the organizations and individuals that are responsible for smuggling drugs. The Department relies on its own law enforcement components, as well as state, local, other federal, and foreign law enforcement organizations to help prevent and prosecute smuggling. If I am confirmed as Deputy Attorney General, I will review our efforts and evaluate whether there are any additional tools that would be useful in addressing this problem.

24. Mexico and Heroin

As you likely know, heroin overdose deaths now outnumber shooting deaths. In 2015 alone, 13,000 U.S. citizens died from heroin overdoses. According to the Drug Enforcement Administration, the majority of heroin in the United States originates in Mexico.

In order to combat Mexican drug trafficking organization[sic] that peddle these deadly substances, Congress has provided more than \$2.6 billion in assistance through the Mérida Initiative since 2008. Much of this assistance has supported the kingpin strategy of pursuing high ranking drug traffickers. While this strategy has resulted in the capture of numerous drug traffickers, it has not reduced the flow of narcotics, including heroin, into the United States.

- a. What more can the United States, in coordination with our Mexican partners, do to reduce the amount of heroin and other illegal drugs trafficked into our country?**

RESPONSE: If I am confirmed as Deputy Attorney General, I will direct the Department to work with neighboring countries to address this problem. I also will evaluate whether there are other measures that we can take to protect communities from international drug trafficking.

- b. Are there new strategies or actions that you believe would be more effective in disrupting these drugflows?**

RESPONSE: If I am confirmed as Deputy Attorney General, I will work with the Department's components to evaluate whether there are new strategies or actions we can take to disrupt drug trafficking and drug flow into our country.

25. Increase in Fentanyl Seizures and International Cooperation

It is my understanding that the vast majority of synthetic drugs, including fentanyl, are produced in China. Illicit chemists produce the drugs in labs there and then ship them in small quantities to the United States directly, or to Mexico or Canada where they are then smuggled into the United States.

Between 2009 and 2016, there was a 561 percent increase in fentanyl crossing our Northern and Southern borders. Fentanyl, which is 50 times stronger than morphine, and carfentanil, which is

100 times stronger than fentanyl, are being laced into heroin and cocaine with increasing frequency. These synthetic opioids have contributed to increases in drug overdose deaths.

- **If confirmed, what steps will the Justice Department take under your leadership to better work with China, Mexico, and Canada to prevent fentanyl, its analogues, and other synthetic drugs from being smuggled into the United States and to prosecute those responsible for manufacturing and trafficking these dangerous substances?**

RESPONSE: If I am confirmed as the Deputy Attorney General, I will work to address the fentanyl epidemic. Even small amounts can be harmful, including to law enforcement officers who come in contact with fentanyl. We must use all available tools to target the organizations and individuals responsible for the illegal manufacture, distribution or diversion of this dangerous drug.

26. A Public Health Approach to Drug Use

In recent years, the United States has taken a more comprehensive and public health approach to addressing drug use. In many states, non-violent drug offenders can participate in a drug court rather than serve a traditional jail sentence. Seventy-five percent of those who complete these programs remain arrest-free at least two years following their graduation.

Nationally, at least 53 police departments allow drug users to turn in their drugs and drug paraphernalia without fear of arrest or incarceration. Instead, the user is immediately connected to treatment. In Gloucester, Massachusetts, 95 percent of those who asked for help entered treatment. Through its 360 Initiative, the Drug Enforcement Administration has also begun to combine enforcement efforts with community-based prevention.

Despite the success of these initiatives, you have stated that the primary job of police and law enforcement is to send people to jail.

- a. Given the success of these initiatives, if confirmed, would you support treatment alternatives to incarceration? If so, which specific models do you support and why? If not, why not?**

RESPONSE: I do not recall saying that “the primary job of police and law enforcement is to send people to jail.” I generally say that the primary mission of law enforcement is to reduce crime, and that our primary tool to deter crime is sending people to prison. My office generally does not send drug users to federal prison for possession or use of small quantities of drugs. For some minor drug offenders who are not implicated in violence, a course of treatment rather than a jail sentence may be appropriate. If I am confirmed as Deputy Attorney General, I will work to ensure that we are protecting our communities from illegal drugs and drug offenders. I am open to pursuing any approach that has a sound grounding in law, fact, and research.

- b. Recognizing that incarceration alone will not address the root cause of addiction, which causes many to reoffend, if confirmed, what additional steps will you take to curb the use of illicit drugs in our country?**

RESPONSE: I believe that prevention is the most effective way to stop drug use and drug addiction. I think it is critical to persuade children and teenagers not to use illegal drugs, and to prevent people from becoming addicted to prescription medications. If I am confirmed as Deputy Attorney General, I will study this issue to determine whether there are additional steps the Department can take to prevent drug abuse and addiction.

27. Emoluments

The Foreign and Domestic Emoluments Clauses of the Constitution prohibit those holding federal office – including the President – from accepting gifts or items of value from a foreign state or from the United States. These provisions embody the fundamental principle that the President must not use the office to enrich himself. They guard against officeholders putting their interests above those of the nation or being corrupted. You have personally warned about the danger of individuals who view government service as “an opportunity to enrich themselves at the expense of the public.” (Interview on *Politics Hour with Kojo Nnamdi*, NPR, Jan. 13, 2012)

After fighting for a decade, the Trump Organization was granted a trademark for construction services by China on the heels of President Trump’s announcement that he would honor the “One China Policy.” The Trump Organization continues to lease the Old Post Office despite terms that prevent elected officials from receiving any benefit from the lease agreement.

- **If confirmed as Deputy Attorney General, what steps would you take to investigate and enforce the Emoluments Clauses as to all government officials?**

RESPONSE: I have not studied the Emoluments Clause. If I am confirmed as Deputy Attorney General, I will consult with career professionals and discharge all of the responsibilities of my office based on my understanding of the requirements of the Constitution.

28. Conflicts of Interest – Foreign Corrupt Practices - Azerbaijan Hotel Deal

A lengthy story in the March 13, 2017 issue of the *New Yorker* contains allegations that the Trump Organization signed multiple contracts to develop an “ultra-luxury property” in the capital of Azerbaijan. The article goes on to say that the people behind the project were close relatives of the country’s Transportation Minister--the minister’s son and the minister’s brother, who also was a member of parliament.

The article says that the Trump Organization’s oversight of the project was extensive. It contains allegations that contractors were paid in cash. It quotes the Assistant Dean at George Washington University Law School, Jessica Tillipman, who specializes in the

Foreign Corrupt Practices Act. She states: “The entire Baku deal is a giant red flag—the direct involvement of foreign government officials and their relatives in Azerbaijan with ties to the Iranian Revolutionary Guard. Corruption warning signs are rarely more obvious.”

If confirmed as Deputy Attorney General, you will have oversight over the Criminal Division’s Fraud Section—which enforces this law.

- a. If there are credible allegations that the Trump Organization has violated foreign corruption laws, will you ensure that those allegations are investigated thoroughly and fairly?**

RESPONSE: Yes.

- b. Can you guarantee that no political consideration will affect any investigation into foreign corruption relating to the Trump Organization?**

RESPONSE: All investigations by the Department of Justice should be initiated and conducted in a fair, professional, and impartial manner, without regard to partisan considerations.

- c. Can you guarantee that the Trump Organization will not receive any treatment from the Department of Justice that is more favorable than any other company would receive?**

RESPONSE: No person or organization should receive special treatment from the Justice Department because of its political affiliations.