Nomination of Jeff Sessions to be Attorney General of the United States
Questions for the Record
Submitted January 17, 2017

QUESTIONS FROM SENATOR FEINSTEIN

1. News reports have indicated that President-Elect Trump's chosen National Security Advisor, Retired Army Gen. Michael Flynn, engaged in multiple communications with the Russian Ambassador Sergey Kislyak, on the same day that President Obama announced sanctions against Russia.

   a. Have you communicated with President-Elect Trump about these communications to the Russian Ambassador? Have you spoken with anyone else on the transition team (including General Flynn) or President-Elect Trump's staff? If so, please specify who you communicated with, and when.

RESPONSE: No.

   b. If confirmed, you will be interacting frequently with General Flynn in his capacity as National Security Advisor. Will you recuse yourself from any FBI or Justice Department investigation into whether Flynn's communications were permissible under the law, including the Logan Act? If not, why not?

RESPONSE: I am not aware of a basis to recuse myself from such matters. If a specific matter arose where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed. As I made clear at my confirmation hearing, I will always be fair and work within the law and the established procedures of the Department.

2. At your hearing, Senator Coons asked whether you would support legislation to strengthen and uphold sanctions against Russia for the cyber-attack it organized that was designed to influence the American elections. You responded that "That is something that is appropriate for Congress and the Chief Executive to consider. In other words, how do you respond to what is believed to be a cyber attack from a major nation? It is difficult just to say, well, we are going to prosecute the head of the KGB or some group that has participated in it—no longer a KGB, of course. So in many ways, the political response, the international foreign policy response, may be the only recourse."

   In fact, the federal criminal code contains numerous criminal statutes levying serious penalties that might be available in a case involving allegations of international hacking. In addition, the Department of Justice has used these to prosecute individuals in the past. In addition, the Department may be required to decide whether to bring criminal charges against any person who committed these hacks, aided and abetted these hacks, or conspired to commit these hacks.

a. The Department has charged similar cases against state-sponsored individuals associated with the Iranian government, as well as members of the Chinese military. Will you commit that the Department will take any and all steps necessary to enforce federal statutes that were violated, and not just rely on political diplomacy?

RESPONSE: If confirmed, I will examine, and where appropriate, enforce, the federal statutes referred to above.

b. Have you reviewed either the classified or unclassified assessments by the Intelligence Community regarding Russian activities and intentions in recent U.S. elections?

RESPONSE: No.

c. Do you agree with the Intelligence Community's assessments? If not, please specify those assessments with which you disagree.

RESPONSE: I have not reviewed their assessments, but I assume I would have no reason to disagree with their assessments.

d. Given the extent of your involvement in President-Elect Trump's political campaign, will you recuse yourself from any decision regarding whether to bring federal criminal prosecutions in connection with Russian hacking of the election? If not, why not?

RESPONSE: I am not aware of a basis to recuse myself from such matters. If a specific matter arose where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed. As I made clear at my confirmation hearing, I will always be fair and work within the law and the established procedures of the Department.

e. Please identify all persons with whom you have spoken who share your view that the U.S. response to Russian hacking should be limited to "the political response, the international foreign policy response."

RESPONSE: My view is not that the response "should be limited" to a political or international foreign policy response. When I testified before the Committee, I was merely suggesting that in some cases, such a response may be the only recourse. As you point out, federal criminal statutes may be applicable. However, I am not privy to the facts or details of any ongoing investigations and my knowledge of the subject is limited to what is contained in public reporting, so I do not know what the appropriate response should be in this particular case.

3. The Department of Justice Inspector General recently wrote to Congress indicating that the OIG would be reviewing a number of issues with respect to the Hillary Clinton email server investigation.

   When asked during your oral testimony how you would handle any investigation involving Secretary Clinton or the Clinton Foundation, you stated, "I believe the proper thing for me to

do would be to recuse myself from any questions involving those kind of investigations that involve Secretary Clinton and that were raised during the campaign or could be otherwise connected to it."

a. Does your commitment to recuse yourself extend to the recently-announced review by the Department of Justice's Office of the Inspector General into a number of issues with respect to the Hillary Clinton email server investigation? If not, why not?

RESPONSE: I stand by my commitment to recuse myself from any investigation of Secretary Clinton or the Clinton Foundation. I do not have sufficient information with respect to the Inspector General's investigation at this time and so I am unable to make a decision about recusal in that matter. If I am fortunate enough to be confirmed as Attorney General and a specific matter arose where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed.

b. If confirmed, who will handle any recommendations made by DOJ regarding any investigation involving Secretary Clinton or the Clinton Foundation? Who will handle recommendations by the Inspector General?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, in any matter where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed.

c. Senator Grassley posed the following question to Attorney General Lynch after her hearing, and I would pose the same question: "Given the clear language of the Inspector General Act, will you give me your commitment that, if confirmed, you will not stonewall the Inspector General or delay his work?"

RESPONSE: The role of the Inspector General is critical to any agency's operation and provides a vital service to the general public. If I am fortunate enough to be confirmed as Attorney General, I will respect the independence of the Inspector General and cooperate with him or her in every way possible.

d. Will you also give me your commitment that you will not allow any subordinate official at the Department to stonewall or delay the Inspector General's work?

RESPONSE: Yes.

4. You testified at your hearing that the Supreme Court's decision in *Roe v. Wade* is "the law of the land. It has been so established and settled for quite a long time and it deserves respect. And I would respect it and follow it."

a. How will you "respect it and follow it"?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, my personal convictions on the issue of abortion—which are well known—would not hinder me in my duty to faithfully enforce federal law and adhere to Supreme Court precedent on this issue.

b. What is your understanding of the meaning of a case being "settled law"?

RESPONSE: The 1973 decision of *Roe v. Wade* established a constitutional right to privacy that included the right to an abortion. Though limitations to this right have been upheld as constitutional by the Court in later cases, the basic premise of *Roe* has not been disrupted, meaning that it is settled law. There have been clarifying opinions on the subject of abortion since then.

c. Do you commit that the Department of Justice will not file amicus briefs or in other ways try to alter case law on reproductive rights?

RESPONSE: Such decisions would depend upon the unique circumstances of the case or cases as they arise. If I am fortunate enough to be confirmed, I will ensure all matters receive a thorough and careful evaluation to ensure the fair administration of justice and will follow the law and the Constitution without reservation.

5. You also testified at your hearing that the *Roe* decision "violated the Constitution and really attempted to set policy and not follow law."

a. If you believe a case is "the law of the land" and "settled for a long time" but you also believe the case "violated the Constitution," how would that impact the conduct of the Justice Department under your leadership? Are there other Supreme Court cases you believe to be settled law, yet which you also believe violate the Constitution? If so – please list each and explain the constitutional provision that is violated.

RESPONSE: As a Senator, I have expressed opinions on a number of Supreme Court cases. As Attorney General, my role would be very different. If a matter arose before the Department and circumstances demanded a fresh analysis of a Supreme Court decision, that would be conducted by the Solicitor General and the attorneys at the Justice Department. Asking the Supreme Court to overrule its own precedent is a very serious matter that requires careful, case-specific analysis at the time of the litigation. If I am fortunate enough to be confirmed, I will ensure all matters receive a thorough and careful evaluation to ensure the fair administration of justice and will follow the law and the Constitution without reservation.

6. Senator Hirono asked you at your hearing whether you would "direct or advise your Solicitor General to weigh in before that Supreme Court which has an opportunity to overturn *Roe v. Wade*?" You responded that the decision is "firmly ensconced as the law of the land, and I do not know we would see a change in that."

   In that same answer, you told Senator Hirono that "cases seldom come up on such a clear issue. They come up at the margins" of the constitutional right to have an abortion as set forth in *Roe*.

a. If confirmed, will the Justice Department under your leadership argue that Roe v. Wade and its progeny (e.g., Planned Parenthood v. Casey, Whole Woman's Health v. Hellerstedt) should be overturned? Please answer yes or no.

RESPONSE: Such decisions would depend upon the unique circumstances of the case or cases as they arise. I will not pre-judge the issues. If I am fortunate enough to be confirmed, I will ensure all matters receive a thorough and careful evaluation to ensure the fair administration of justice and will follow the law and the Constitution without reservation. As stated above, asking the Supreme Court to overrule its own precedent would be a very serious matter that would only come as the result of careful, case-specific analysis at the time of the litigation.

7. Violence at women's health clinics remains a very serious issue. In the fall of 2015, for example, a Colorado man killed three people at a clinic. At your hearing, you testified that you will "enforce the laws that make clear that a person who wants to receive a lawful abortion cannot be blocked by protesters and disruption of a doctor's practice…I am pro-life, as you know, but we have settled on some laws that are clearly effective, and as Attorney General, you can be sure we would follow them." You also testified that medical professionals who provide abortions "deserve the same protection that any entity, business or otherwise or health care entity is entitled to…[Maybe] [e]ven more so, because we have a specific law about abortion clinics." That law, of course, is the Freedom of Access to Clinic Entrances Act (FACE) of 1994.

8. Part of the Justice Department's efforts to enforce FACE and protect women and providers from violence at women's health clinics is the National Task Force on Violence Against Health Care Providers, which was established in 1998 by then-Attorney General Janet Reno and which is staffed through the Department's Civil Rights Division. The Task Force includes DOJ attorneys as well as investigators from the FBI, ATF, and the U.S. Marshals Service.

a. Will you ensure that the National Task Force on Violence Against Health Care Providers has adequate resources?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will endeavor to direct and utilize the resources of the Department in the most effective manner possible to ensure the enforcement of federal law.

b. Will you ensure that the Department will continue to be active and engaged on issues related to patient and provider safety at women's health clinics, including by bringing relevant cases under FACE and interacting with groups that represent providers and clinics?

RESPONSE: As I testified before the Committee, if I am fortunate enough to be confirmed as Attorney General, I will faithfully follow and enforce federal laws as defined by the courts, including the FACE Act and all other federal laws that the Attorney General is authorized to enforce. I will use the resources of the Department to ensure the full and fair enforcement of

federal law. Any specific enforcement decisions or actions would depend upon the facts and circumstances of each case.

9. At the nomination hearing, I asked you about a provision of the Justice for Victims of Trafficking Act, which sets aside at least $5 million and up to $30 million of funding for grants or programs for "the provision of health care or medical items or services to victims of trafficking." (18 U.S.C. § 3014(h)(1)-(2))

   I read the following from Senator Cornyn's floor remarks explaining that these funds are subject to the Hyde Amendment and its important exceptions:

   "[E]veryone knows the Hyde amendment language contains an exception for rape and the health of the mother. So under this act, these limitations on spending wouldn't have anything to do with the services available to help those victims of human trafficking."

   You testified that you were "not aware of how the language for this grant program has been established," but that you "would follow the law."

   Please review the provision and Senator Cornyn's explanation above to answer the following question:

   a. Will you commit that these grant funds will not be denied to service providers who assist victims of sex trafficking in obtaining the comprehensive health services they need, including an abortion?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I would consult with the attorneys at the Justice Department to analyze the Hyde Amendment and the statutory language in question to determine what the intersection of these laws dictates in regard to anti-trafficking expenditures.

10. In response to Senator Hatch's question about the importance of religious freedom, you testified that "It would be a very high priority of mine."

    a. If confirmed, how would you ensure that enforcement of religious freedoms will not harm women's access to healthcare, including contraception, or the rights of LGBT individuals?

RESPONSE: The Supreme Court has held that there are protections available under the Religious Freedom and Restoration Act for religious individuals and businesses. However, I have not personally studied the parameters of the Court's relevant decisions on this question or their impact. If I am confirmed, when such matters come before the Department of Justice, I will carefully and objectively evaluate the facts and circumstances of each case and endeavor to uphold and defend the Constitution in the pursuit of justice.

b. Do you believe that a business open to the public has a right under the First Amendment to refuse to serve an individual because that individual is gay, or lesbian, or bisexual, or transgender?

RESPONSE: That question has not been clearly settled by the Supreme Court or by statute. Typically, these matters are decided by state-enacted public accommodation laws and it is unlikely that the federal government would be directly involved in such cases. However, if I am so fortunate as to be confirmed as the Attorney General, it will be my duty to uphold and defend the Constitution and to do so in keeping with Supreme Court precedent.

11. The Office of Government Ethics (OGE) wrote a letter to Congress warning that President-Elect Trump's nominees' hearings are taking place even before OGE has completed its review of all of the nominees to ensure there are no ethical, financial or criminal concerns. The Director of OGE stated: "I am not aware of any occasion in the four decades since OGE was established when the Senate held a confirmation hearing before the nominee had completed the ethics review process."

    On May 6, 1998, you expressed similar concerns when discussed your experience as a former prosecutor and stressed the importance of adhering to ethics laws. You also stressed the role of OGE in preventing government corruption and analyzing whether waivers should be provided.

    In this particular speech, you were speaking in opposition to legislation that would have allowed someone paid by the IRS employees' union to participate on an IRS oversight board. You stated that such an arrangement flouted OGE advice, and was arguably criminal. You stated, in part:

    > *We have crafted over the years a series of laws that are designed in such a way that those laws protect the public from conflicts of interest and other types of unhealthy relationships that would put that person in office in a position in which his total fidelity is to anything other than the government which he represents.*
    >
    > *Somewhere in the Book of Ecclesiastes the preacher said "A bribe corrupts the mind." A conflict of interest corrupts the mind. The person is torn. You cannot serve two masters. You can only serve one master.*
    >
    > *You can't serve two masters.*

    After making these comments, you then enumerated the conflicts of interest statutes in the criminal code. Those statutes are aimed at preventing officials with financial interests from making government decisions clouded by financial interests.

a. If you are confirmed—and President-Elect Trump's other nominees are confirmed—you will work together closely together in the President's Cabinet. If any of President-Elect Trump's nominees are confirmed prior to ethics clearance and a criminal conflict of interest is discovered, will you recuse yourself from the investigation?

RESPONSE: The Attorney General is different from other cabinet members because he or she is responsible for fair enforcement of the law. I am not aware of a basis to recuse myself from such investigations. If a specific matter arose where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed. As I made clear at my confirmation hearing, I will always be fair and work within the law and the established procedures of the Department.

b. If you do not recuse yourself, what steps will you take to ensure that the Department faithfully investigates and prosecutes, if appropriate, such violations?

RESPONSE: All investigations by the Department of Justice must be initiated and conducted in a fair, professional, and impartial manner, without regard to politics or outside influence. The Department must follow the facts wherever they lead, and make decisions regarding any potential charges based upon the facts and the law, and consistent with established procedures of the Department. That is what I always did as a United States Attorney, and it is what I will insist upon if I am confirmed as Attorney General.

12. Last week, President-Elect Trump announced that he would retain ownership of his company while shifting assets into a trust managed by his sons; make "no new foreign deals"; subject any new domestic business deals to review by an ethics adviser whom he would appoint; give up his position as an officer at the Trump Organization; and limit communications with company executives to profits and loss statements.

    The Director of OGE said that "stepping back from running his business is meaningless from a conflict of interest perspective." He also stated that "the plan does not comport with the tradition of our Presidents over the past 40 years. This isn't the way the Presidency has worked since Congress passed the Ethics in Government Act in 1978 in the immediate aftermath of the Watergate scandal."

    a. President-Elect Trump has decided to maintain his financial interests in entities that are likely to be impacted by his Presidential decisions – such as decisions about laws to sign, executive actions to take, treaty negotiations, military decisions, and domestic policy decisions. Do you believe that if his financial interests are impacted by his decisions, this violates the anti-corruption principles that you identified in 1998? If yes, what are the proper steps for the Attorney General to take in such a situation? If not, why not? Please explain your answer in detail.

RESPONSE: The question posited is not one on which I have devoted any study, and would depend on a number of facts and specific circumstances. Therefore, I am not in a position to offer even an informal opinion on it. If confirmed as Attorney General, I would provide legal advice on such matters only after examining the relevant facts and circumstances presented, and consulting with the Office of Legal Counsel and any other component of the Department having expertise bearing on such matters.

b. You testified that you would be willing to say "no" to the President. Have you communicated with President-Elect Trump about his business interests and how to

resolve any conflicts arising from those interests? If your answer is yes, please describe those communications. If your answer is no, do you plan to? Please explain your rationale.

RESPONSE: I have not communicated with the President regarding his business interests or how to resolve any conflicts arising from those interests. If confirmed as Attorney General, I would provide legal advice on such matters only after examining the relevant facts and circumstances presented, and consulting with the Office of Legal Counsel and any other component of the Department having expertise bearing on such matters.

President-Elect Trump has claimed on many occasions that he cannot release his tax returns because of an ongoing audit by the Internal Revenue Service ("IRS").

a. Do you believe the President-elect should release his tax returns when the IRS audit is complete? If not, why not?

RESPONSE: As required by a law passed by Congress, President Trump released a financial disclosure form that is available to the public. I have not studied it. However, it is my understanding that no law requires the disclosure of a President's tax returns. The mandated financial disclosure provides public disclosure of the key financial matters that Congress believed necessary.

b. If confirmed, as a general matter, what specific steps do you envision taking to ensure that any legal issues arising from President-Elect Trump's business interests are handled in the same manner by the Department as any other American citizen?

RESPONSE: All investigations by the Department of Justice must be initiated and conducted in a fair, professional, and impartial manner, without regard to politics or outside influence. The Department must follow the facts wherever they lead, and make decisions regarding any potential charges based upon the facts and the law, and consistent with established procedures of the Department. That is what I always did as a United States Attorney, and it is what I will insist upon if I am confirmed as Attorney General.

c. You were extensively involved in President-Elect Trump's political campaign. If the IRS determines that the President-Elect has potentially violated a criminal or civil tax law, and the case is referred to the Department of Justice, will you recuse yourself from any decisions that are made regarding possible criminal or civil actions? If not, why not?

RESPONSE: I am not aware of a basis to recuse myself from such matters. However, if a specific matter arose where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed. As I made clear at my confirmation hearing, I will always be fair and work within the law and the established procedures of the Department.

d. If you do not recuse yourself, what steps will you take to ensure the Department of Justice thoroughly investigates any allegations and appropriately pursues any civil or criminal enforcement action that is within the Department's jurisdiction?

RESPONSE: See response to 12(b).

13. There is a clause of the Constitution that prohibits foreign government payments to federal officials. This clause is called the Emoluments Clause. It states:

> "No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."

This Clause has become more and more important as President-Elect Trump's dealings abroad and conversations with foreign leaders have become known.

According to longstanding Office of Legal Counsel (OLC) opinions, this clause was intended by the Framers to preserve the independence of officers of the United States from corruption and foreign influence. One of the relevant OLC opinions states: "Those who hold offices under the United States must give the government their unclouded judgment and their uncompromised loyalty."

a. OLC opinions clearly establish that the President is covered by the Emoluments Clause. Will you assure the Committee that you will uphold this OLC precedent?

RESPONSE: While I have not reviewed the OLC opinions referred to above, nor have I devoted any study to this issue, in general, OLC opinions should be overturned only rarely and after careful study and reflection. If I am confirmed, I have no reason to believe that the Office of Legal Counsel would change its approach to such matters.

b. Do you agree that cabinet officers are covered by the Clause?

RESPONSE: While I have not devoted any study to this issue, it is my understanding that cabinet officers are covered by the Foreign Emoluments Clause.

c. OLC opinions clearly establish that foreign state-owned or state-controlled businesses are "presumptively foreign states under the Emoluments Clause" – so that U.S. officials cannot receive emoluments from foreign state-owned businesses. Will you assure the Committee that OLC will not change its view during President-Elect Trump's administration?

RESPONSE: It is my understanding that OLC opinions have examined ownership and control exercised by foreign states in determining whether a business should be deemed a foreign state under the Emoluments Clause. If I am confirmed, I have no reason to believe that the Office of Legal Counsel would change its approach to such matters.

d. What is the proper enforcement mechanism for an emoluments violation?

RESPONSE: The Constitution is the supreme law of the land, and all federal office holders are obligated to abide by its terms. If confirmed as Attorney General, I will discharge all of the responsibilities of the office based upon my understanding of the requirements of the Constitution.

14. As Attorney General you will be charged with enforcing the Voting Rights Act. This obligation is all the more important after the Supreme Court's 2013 decision in *Shelby County, Alabama v. Holder*, which struck down a key component of the Voting Rights Act.

That same year, however, you spoke about voting rights issues and declared that "there's just huge areas of the South where there's no problem."

In 2013, the Department of Justice sued the State of Texas, alleging that its voter ID law violated the Voting Rights Act. And just last year, the *en banc* Fifth Circuit Court of Appeals agreed, holding that Texas' voter ID law violated the Voting Rights Act and "diminished African Americans' and Hispanics' ability to participate in the political process."

Also in 2013, the Department of Justice sued the State of North Carolina, alleging that a state law had been adopted with the purpose, and would have the result, of denying or abridging the right to vote on account of race, color, or membership in a language minority group, in violation of the Voting Rights Act. And just last year, the Fourth Circuit Court of Appeals found that a North Carolina law, including voter ID provisions, was enacted with discriminatory intent and "restricted voting and registration in five different ways, all of which disproportionately affected African Americans".

a. If you are confirmed, will the Justice Department continue to investigate claims that voter ID laws have a disproportionate impact on minority voters, and bring charges if the evidence supports bringing such a case? Please answer yes or no. If yes, will the Department work to investigate those matters quickly?

RESPONSE: As I testified before the Committee, government cannot create laws designed to improperly inhibit the right of any eligible citizens to vote. The voting rights of Americans are protected by federal law, including the Voting Rights Act. The Supreme Court held in *Crawford v. Marion County Election Board* that voter identification laws are neither *per se* unconstitutional, nor do they necessarily violate the Voting Rights Act. The analysis of such laws are specific to the particular law, the jurisdiction, and a wide range of factors that Congress has identified as relevant in determining whether a particular voting practice comports with the Voting Rights Act. If I am confirmed as Attorney General, I am committed to enforcing all of the federal laws within the Department's jurisdiction, and particularly the laws regarding voting, in a fair and even-handed manner.

b. Texas has sought Supreme Court review of the Fifth Circuit's decision in Veasey v. Abbott, the Texas voter ID case. In October, the Justice Department filed a brief in

opposition to Texas's petition for certiorari. If confirmed, do you plan to continue defending the position that the Justice Department has taken since 2013—that Texas's law violates the Voting Rights Act? If not, please explain.

RESPONSE: If I am confirmed as Attorney General, I will enforce the law and the Constitution. This question implicates an ongoing legal matter that I likely will be called upon to review and therefore it would be inappropriate for me to comment at this time. However, as with all cases, I will carefully and objectively evaluate the facts and circumstances of the case and endeavor to uphold and defend the Constitution in the pursuit of justice.

c. If confirmed, will the Justice Department change its position in any current voting rights case? If so, please identify all such cases.

RESPONSE: This question implicates ongoing legal matters that I will be called upon to review if confirmed; therefore, it would be inappropriate for me to comment at this time. I will carefully and objectively evaluate the facts and circumstances of each case and endeavor to uphold and defend the Constitution in the pursuit of justice.

15. During the hearing, I asked you, "Do you believe that the government can, pursuant to a general authorization to use military force, indefinitely detain Americans in the United States without charge or trial?"

    You answered: "Classically, the answer is yes. Classically, if you captured a German soldier, they could be held until the war ended. That was done, I'm sure, at the Civil War and most wars since."

    I responded: "I'm talking about Americans."

    You then stated:

    "I hear you. So then the question is, we're in a war like we have now that's gone on multiple years and I would think the principle of law certainly would appear to be valid. But as reality dawns on us, and wars might be even longer, you know, it's honest to discuss those issues.

    "So I respect your willingness to think about that and what we should do, but in general I do believe – and Senator Graham has argued forcefully for many years – that we are in a war and when members who – unlike the Japanese who were never proven to be associated with a military regime like the Japanese government, these individuals would have to be proven to be connected to an enemy, a designated enemy of the United States."

    "So I am – I probably explained more than I should, but that's basically the arguments and the issues we're facing. I respect your concerns and I'm sure they will continue to be debated in the future."

    a. Do you believe that an American citizen or lawful permanent resident apprehended in the United States can, pursuant to an authorization to use military force, be indefinitely

detained by the U.S. Government without charge or trial? I am not asking about detention pursuant to criminal or immigration proceedings, but specifically detention pursuant to an authorization to use military force. Yes or no, and please explain your answer.

The following discussion took place between you and Senator Graham:

Senator Graham. So as to how long an enemy combatant can be held, traditionally under the law of war, people are taken off the battlefield until the war is over or they are no longer a danger. Does that make sense to you?
Senator Sessions. It does make sense, and that is my understanding of the traditional law of war.
Senator Graham. … When do you think this war will be over? Do you think we'll know when it's over?
Senator Sessions. I've asked a number of witnesses in armed services about that, and it's pretty clear we're talking about decades before we have a complete alteration of this spasm in the Middle East that just seems to have legs, and will continue for some time.

b. Is it your understanding that the law allows the U.S. Government to militarily detain American citizens or lawful permanent residents captured in the United States for decades pursuant to an authorization to use military force? Yes or no, and please explain your answer.

RESPONSE to (a) – (b): Under current law, it would appear that the United States may detain an active member of al Qaeda or other enemy combatants for as long as the conflict persists. As you know, in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), a plurality of the Supreme Court stated that "[t[here is no bar to this Nation's holding one of its own citizens as an enemy combatant." The plurality relied in part on *Ex Parte Quirin*, 317 U.S. 1 (1942), in which the Court held that Congress authorized the military trial of a U.S. citizen who entered the country with orders from the Nazis to blow up domestic war facilities, but was captured before he could execute them. *See also Padilla v. Hanft*, 423 F.3d 386 (4th Cir. 2005); *Al-Marri v. Pucciarelli*, 534 F.3d 213 (4th Cir. 2008). Of course, citizens can contest their detention in federal court by writ of *habeas corpus*.

16. The Department of Justice currently is confronted with a clear conflict in federal and state law, and a determination of how to use federal enforcement resources in marijuana cases. 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, in place.

    Federal law, as you know, prohibits numerous actions with respect to marijuana, including possession of marijuana with the intent to distribute it.
    In December 2014, Congress passed an appropriations bill that contained the following provision:

> None of the funds made available in this Act to the Department of Justice may be used, with respect to any of the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming, or with respect to the District of Columbia, Guam, or Puerto Rico, to prevent any of them from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Subsequently, the Ninth Circuit – in an opinion written by Judge Diarmuid O'Scannlain, and joined by Judges Carlos T. Bea and Barry G. Silverman – 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." (*United States v. McIntosh*, Aug. 16, 2016)

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: As former Attorney General Loretta Lynch herself said during her confirmation hearings almost two years ago, marijuana is still a criminal substance under federal law, and it is also still illegal under federal law not only to possess marijuana, but to distribute marijuana. I echo Attorney General Lynch's comments, and commit, as she did, to enforcing federal law with respect to marijuana, although the exact balance of enforcement priorities is an ever-changing determination based on the circumstances and the resources available at the time.

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: While I am generally familiar with the Cole memorandum, I am not privy to any internal Department of Justice data regarding the effectiveness of the policies contained within that memorandum. If I am fortunate enough to be confirmed as Attorney General, I will certainly review and evaluate those policies, including the original justifications for the memorandum, as well as any relevant data and how circumstances may have changed or how they may change in the future.

17. The National Academy of Sciences just released a report entitled "The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research" (2017). 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 National Academy of Sciences also stated: "One of the therapeutic uses of cannabis and cannabinoids is to treat chronic pain in adults. The committee found evidence to support that patients who were treated with cannabis or cannabinoids were more likely to experience a significant reduction in pain symptoms. For adults with multiple sclerosis-related muscle spasms, there was substantial evidence that short-term use of certain "oral cannabinoids" – man-made, cannabinoid-based medications that are orally ingested – improved their reported symptoms. Furthermore, in adults with chemotherapy-induced nausea and vomiting, there was conclusive evidence that certain oral cannabinoids were effective in preventing and treating those ailments."

The National Academy of Sciences also stated: "Regarding the link between marijuana and cancer, the committee found evidence that suggests smoking cannabis does not increase the risk for cancers often associated with tobacco use – such as lung and head and neck cancers."

However, the National Academy also stated: "Evidence suggests that cannabis use prior to driving increases the risk of being involved in a motor vehicle accident. Furthermore, evidence suggests that in states where cannabis use is legal, there is increased risk of unintentional cannabis overdose injuries among children."

The National Academy also noted that there are numerous challenges and barriers to conducting research on the beneficial and harmful effects of cannabis and cannabinoid use.

During the last session of Congress, Senators Grassley, Leahy, Tillis and I introduced legislation to reduce barriers associated with researching marijuana. 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 indeed 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, wouldn't you agree it is important that we know as much as possible about the health-related and other impacts of marijuana usage?

RESPONSE: Yes.

b. What do you intend to do as Attorney General to advance our knowledge in that area? Are there specific regulations that you would ease related to marijuana research? If so, which ones?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will defer to the American Medical Association and the researchers at the National Institutes of Health and elsewhere about the medical effects of marijuana. Without having studied the relevant regulations in depth, I cannot say whether they may need to be eased in order to advance research; but, I will review this. If confirmed, will be to enforce federal law, under which marijuana is currently a Schedule One controlled substance—defined as a drug with no currently accepted medical use and a high potential for abuse.

18. Senator Leahy asked you about the most recent FBI hate crimes statistics. The FBI's most recent annual hate crimes report found that in 2015, there were 5,818 single-bias incidents involving 7,121 victims. Of those victims, 17.7 percent were targeted because of their sexual orientation; and 1.7 percent because of their gender identity. We also know that these numbers are likely underreported.

    a. Senator Graham asked you "If a state is not prosecuting crimes against people based on their sex, their race, whatever reason, then it's proper for the federal government to come in and provide justice, don't you think?" You responded "I do."

    Do you similarly agree that if a state is not prosecuting crimes against people based on their sexual orientation or gender identity, it is likewise proper for the federal government to "come in and provide justice," in accordance with the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, my duty will be the pursuit of equal enforcement of the law for all Americans. From time to time, this duty may necessitate federal involvement in a state where federal law is not being followed or where equal justice under the law is not being administered.

    b. ***Do you believe it is inappropriate for the Justice Department to prosecute cases under the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009 if the state is prosecuting the same defendant based on the same factual scenario?***

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 follow the facts wherever they lead, and make decisions regarding any potential charges based upon the facts and the law, and consistent with established procedures of the Department. That is what I always did as a United States Attorney, and it is what I will insist upon if I am confirmed as Attorney General.

    c. ***Five states do not have any hate crimes laws—including South Carolina, where Dylann Roof was recently convicted and sentenced by a jury on federal hate crimes and firearms charges. Additionally, 14 states have hate crimes laws that do not include sexual orientation, and 28 states have hate crimes laws that do not include gender identity—but sexual orientation and gender identity are covered under the Shepard-Byrd Act. Under your leadership, if confirmed, what steps will the Department take to ensure hate crimes that occur in these states continue to be prosecuted?***

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 follow the facts wherever they lead, and make decisions regarding any potential charges based upon the facts and the law, and consistent with established procedures of the Department. That is what I always did as a United States Attorney, and it is what I will insist upon if I am confirmed as Attorney General.

d. ***Can you assure the Committee hate crimes enforcement will remain vigilant? Yes or no. If your answer is yes, please detail the steps you will take to ensure that enforcement of such crimes across the country remains a priority. For example, in 2015, the Civil Rights Division – in conjunction with U.S. Attorneys Offices and the FBI –organized a series of regional hate crimes trainings in Mississippi, California, Oregon, Kansas and Florida. These meetings helped to train local and federal law enforcement in how to recognize, investigate, and prove hate crimes. They helped to educate communities and engage them in the process of ensuring public safety. And they helped to encourage better hate crime reporting and data collection. If the answer is no, please explain your rationale.***

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, the Department will be vigilant in the full enforcement of all federal laws. I will endeavor to direct and utilize the resources of the Department in the most effective manner possible to ensure the enforcement of federal law. The specific steps I will take to ensure the enforcement of any particular law will be decided after careful evaluation of any current practices of the Department and the effectiveness of those practices.

e. ***Many other crimes—crimes involving the possession and distribution of illegal drugs, for example—are criminalized at both the state and federal level. Please provide to the Committee all other examples where you, as a Senator, sought evidence that states were doing an inadequate job prosecuting certain crimes before you voted to criminalize certain conduct at the federal level, or voted increase penalties for certain conduct at the federal level. If there are no other examples you can identify, please say so.***

RESPONSE: Over the course of nearly 20 years serving in the Senate, I have cast numerous votes against federal action or interference when I believed that principles of federalism demanded it. A review of my voting history and public statements clearly reflect an adherence to this philosophy. Nevertheless, if I am fortunate enough to be confirmed as Attorney General, my duty will be to enforce federal laws enacted by Congress and I will do so without reservation.

19. The career civil service in our country is a fundamental part of the guarantee to all Americans that nobody will be targeted for investigation or prosecution based on political beliefs or favoritism. That means that protection for career Department of Justice attorneys is extremely important. During the Bush Administration, even the hiring of career Department attorneys, particularly in the Civil Rights Division, became politicized.

You did an interview on *American Family Radio* on November 7, 2016, the day before the election, and the radio host stated that, in her view, the Department of Justice was "being filled, packed, with left-wing attorneys." She called Department attorneys "the left of the left," and "a nightmare."

She then asked you, "If Donald Trump is elected, what would happen to the Justice Department, do you think?"

You responded: "First, you are exactly right." You then noted you had spoken with former Attorney General John Ashcroft about how, in your view, "If Hillary Clinton is elected, there will be four more years of filling every spot in the Department of Justice with these secular, progressive, liberals that are going to make the Department even less traditional and lawful in its policies, more of a political machine, and that is the wrong direction. But every other cabinet person, place will be the same—whether it's EPA, whether it's the Department of Commerce, the Department of Education, the Department of Health and Human Services—all of those Departments will be packed with also, now, for 12 consecutive years, with the secular left. It just—is. And this is another reason this election's stakes are so high."

a. Please explain your comments on this radio program. What did you mean by your statements?

RESPONSE: These comments were made in response to my perception that individuals within the Department were using their own opinions of "truth" to decide when particular laws ought to be enforced, rather than consulting federal statutes or the Constitution. Abdicating a duty to enforce the law based on one's personal belief that an act clearly prohibited by law is nonetheless acceptable would fit my definition of "unlawfulness." The Department of Justice is an organization composed overwhelmingly of career professionals who do their duty every day. I will provide leadership that respects their professionalism and insists upon it. I will strive to enforce laws and set priorities that are consistent with the Constitution and the legislated intent of Congress.

b. Will you assure this Committee that the Department of Justice will not make any hiring, promotion, transfer, termination, or evaluation determinations based on an individual's political or religious beliefs?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, the Department will follow federal law and Departmental regulations regarding all personnel decisions.

20. U.S. Attorneys are, as you know, selected with the advice of their home-state senators—and they are subject to an approval process for those senators known as a blue slip, which you yourself have used many times.

a. How do you and the Administration intend to consult with home-state senators from both parties and ensure that politics is kept out of the U.S. Attorney appointments?

RESPONSE: While I have not discussed this matter with the President, I have no expectation that this process will deviate from the precedent set by prior Administrations and hope that the Senate will follow its traditions so that the process works to the benefit of the American people.

21. In your Committee Questionnaire, you listed four civil rights cases on your list of top ten "most significant litigated matters which you personally handled." I would like to better understand your role in these cases, and the extent to which you "personally handled" them. For each of these four cases—*Davis v. Board of School Commissioners of Mobile County, United States v. Concunah County*, *United States v. Dallas County Commission*, and *United States v. Marengo County Commission*—please list the following:

    a. Every pleading or document filed with the court that you not only read, but also edited or otherwise substantially contributed to the arguments or positions developed therein.

RESPONSE: It is my understanding that these pleadings and documents have been entered into the record for this hearing. As each pleading or document evidences, I was responsible for all of the content consistent with my ethical obligations under the Alabama State Bar's professional responsibility regulations and Rule 11 of the Federal Rules of Civil Procedure. My name and signature on the pleadings signified my full support of the pleading, that it was justified, and it represented my view as to what was appropriate, just as it did in criminal or other cases that I did not personally try.

    b. Every hearing, oral argument or other court proceeding in which you directly participated.

RESPONSE: These cases were adjudicated over thirty years ago and I did not keep a record of every hearing, oral argument, or other court proceeding associated with them. My role as U.S. Attorney was to represent to the court my decision in these cases.

    c. Any other role you may have had in litigating or supervising other government attorneys who worked on these cases.

RESPONSE: The role I had in these cases was equal to that of my five co-counsel in that we were each responsible for all of the content contained in the filings and for all representations made to the court, consistent with our ethical obligations under our State Bar's professional responsibility regulations and Rule 11 of the Federal Rules of Civil Procedure.

22. At your hearing, you were asked about your vote against reauthorization of the Violence Against Women Act in 2013. The law included important expanded protections for vulnerable groups, including LGBT, Native American, and immigrant victims, in an effort to ensure that all victims of violence are protected.

    You testified that you voted against the bill because of "some specific add-on revision in the bill that caused my concern." You also testified that "[o]ne of the more concerning provisions was a provision that gave tribal courts jurisdiction to try persons who were not tribal members."

a. Which provisions of the law do you mean to indicate were "add-ons"?

RESPONSE: My testimony referred to the tribal-jurisdiction provision. This provision was not part of the original Violence Against Women Act, or a part of the 2000 and 2006 reauthorizations (which I supported). Further, as I recall, the addition of this provision was the principal reason why eight of the nine Republican members of the Senate Judiciary Committee opposed the 2013 bill.

b. If the provision on tribal jurisdiction had not been part of the bill, would you have supported the bill's protection from discrimination for LGBT victims? If not, why not?

RESPONSE: My principal concerns about the 2013 VAWA reauthorization centered on the tribal jurisdiction provision. The 2013 Act also includes a provision that prohibits recipients of federal grants (such as women's domestic-violence shelters) from discriminating on the basis of, among other things, sex, gender identity, and sexual orientation. This provision includes an exception that a grantee may carry out sex segregation or sex-specific programming if it can show that such programming is "necessary to the essential operation of a program," and if it provides comparable services to individuals who cannot be provided with sex-segregated or sex-specific programming. My and other Senators' concerns about this provision centered on the fact that, on its face, its broad prohibition would appear to preclude operation of a women-only (or women and children-only) domestic violence shelter, and the Act's exception to this prohibition appears narrow and is unclear. Although a woman who has been the victim of violence at the hands of a husband or boyfriend may be better served by services that are provided outside the presence of men, it is unclear whether a women's domestic-violence shelter would be able to meet the Act's requirement that it show that providing women-only services is "necessary to the essential operation" of the shelter. I believe that, in some circumstances, it is appropriate for VAWA grant recipients to provide services that are limited to women. To the extent that VAWA 2013's new anti- discrimination provision is construed to, for example, prevent or make it difficult for a women's domestic violence shelter to provide services that it believes should be limited only to women, I continue to have serious reservations about that provision. In the past, I have received strong objections from a respected women and children's shelter on this very issue.

c. If the provision on tribal jurisdiction had not been part of the bill, would you have supported the bill's expanded protections for immigrant victims? If not, why not?

RESPONSE: My principal concerns about the 2013 VAWA centered on the tribal jurisdiction provision. The 2013 Act also includes a provision that expands the U visa program. U visas are available to aliens who have been victims of domestic violence and other crimes—they are intended to allow the alien to assist with a prosecution of the offense. These visas allow an alien to remain in the United States for four years and seek permanent-resident status. The Judiciary Committee received numerous statements from American citizens who have been victims of marriage fraud perpetrated by aliens who have abused the U visa program. These aliens have married a U.S. citizen without the intention of remaining married, and then falsely accused their spouse of domestic violence or other crimes in order to obtain a U visa and remain in the United States. During the Judiciary Committee's consideration of the VAWA reauthorization, an

amendment was offered as an alternative to VAWA 2013 that would have applied basic anti-fraud protections to the U visa program. These proposals would have required that an alleged crime that justified a U visa be recently reported, that it be under actual investigation, and that U.S. Citizenship and Immigration Services interview the parties (including the alleged perpetrator, if the victim consents) to determine if the allegations are credible. The Committee's then-majority refused to include any of these anti-fraud measures in VAWA 2013, and instead expanded the number of visas available from 10,000 to 15,000. I continue to have concerns about fraud, and believe that the 2013 Act's expansion of the program should have been accompanied by provisions that would prevent such abuse of the program.

d. Now that the 2013 reauthorization of the Violence Against Women Act has been implemented for three years, including the provision on tribal jurisdiction, do you still oppose it? If so, why? And would you seek to challenge that provision of the law? Would you seek to challenge any other provisions of the law?

RESPONSE: If I am confirmed as Attorney General, I will enforce all federal laws, including the 2013 reauthorization of VAWA. I understand that a pilot program has been initiated that seeks to conform tribes' exercise of criminal jurisdiction over non-Indians to the requirements of the Sixth Amendment. I will carefully study this program before reaching any legal conclusions about the VAWA tribal jurisdiction provision.

During my meetings with Senators in preparation for this hearing, I have heard numerous concerns about non-enforcement in these matters. I will work to improve this issue. Sexual assault and other violent crime on Indian reservations are very serious problems—in some places, the problem has reached epidemic proportions. The federal government exercises criminal jurisdiction over many Indian reservations. If I am confirmed as Attorney General, I will be committed to ensuring that federal law enforcement resources are fully deployed to investigate and prosecute crime on federal reservations, and will request additional resources where existing resources are inadequate. Finally, I would note that on many Indian reservations, state and local authorities exercise criminal jurisdiction. State and local law enforcement resources greatly exceed those of federal and tribal governments combined. On the exclusively federal reservations where federal law enforcement has proved to be inadequate to reduce high levels of violent crime, Congress may consider allowing state and local authorities to exercise criminal jurisdiction. State and local law enforcement has proven effective on many existing Indian reservations, and the extension of such criminal jurisdiction to both Indians and non-Indians in Indian country does not offend constitutional guarantees.

I am not aware of any other provision of the law that raises constitutional concerns.

e. If confirmed, will you recommend that the Administration support reauthorization of the law as-is?

RESPONSE: If I am confirmed as Attorney General, I will study the law and its impact to determine whether improvements can be made.

23. A 2016 report from the American Association of University Women states: "At the rate of change between 1960 and 2015, women are expected to reach pay equity with men in *2059*. But even that slow progress has stalled in recent years. If change continues at the slower rate seen since 2001, women will not reach pay equity with men until *2152*." ("The Simple Truth about the Gender Pay Gap," Fall 2016)

    In addition, the Bureau of Labor Statistics' data from 2014 showed that women earned dramatically less than men in occupations from legal, to sales, to education, to technology, to healthcare.

    a. Do you believe that there is a pay gap for women in which women are discriminated against and paid less for doing substantially similar or the same work even when factors such as education or experience are accounted for?

RESPONSE: Any discrimination against a woman, because she is a woman, would violate federal law. I will enforce the law to the letter where evidence of such discrimination exists, if I am fortunate enough to be confirmed as Attorney General. There should be equal pay for equal work.

24. Lilly Ledbetter had worked for Goodyear in Gadsden, Alabama for 19 years, mostly as a manager. During the years she worked at Goodyear, her pay "slipped in comparison to the pay of male area managers with equal or less seniority." (Ginsburg dissent.) The problem Lilly Ledbetter had a problem, however, because she had no idea she was being discriminated against. By the time she found out, it had been going on for years.

    In a 5-4 decision, the Supreme Court concluded her claims were barred. The Court ruled the deadline to bring a case started to run at the time the discrimination first occurred – not when she found out it happened. This decision meant employers could discriminate with impunity so long as they kept it hidden from their employees for 180 days.

    Congress voted to overturn this decision in the Lilly Ledbetter Fair Pay Act of 2009. Four Republican women Senators voted for the law. At the hearing, you were asked about your vote against the legislation. You testified, "We had a hearing on it in the Judiciary Committee. A number of witnesses testified, and the testimony, as I understood it, was that [Lilly Ledbetter] did in fact have notice, and the Court found that she had notice, and that is why they had that statute of limitations was enforced. You need a statute of limitations of some kind, and if they do not know, then you can allow it to continue indefinitely. But as I understood, that was the ruling. So it was less problematic for future cases than was discussed, but my recollection is not perfectly clear on that issue. That was one of the factors I remember being involved in my decision."

    a. Now that you have had an opportunity to review the issue and the Supreme Court's decision, please discuss the reasons you were opposed to the Lilly Ledbetter Fair Pay Act of 2009. Are you still opposed to the law?

RESPONSE: It is my recollection that the legislation would have effectively eliminated the statute of limitations for Title VII pay discrimination claims as long as an employee is receiving paychecks. This would appear to undermine the traditional goals that limitations periods seek to further even where, as here, according to testimony at Judiciary Committee hearings, a person had actual notice of alleged pay disparity, long before filing the action. Nevertheless, no position I took as a Senator would hinder me from enforcing any duly-enacted law.

b. Please provide with specificity the basis of your statement at the hearing: "We had a hearing on it in the Judiciary Committee. A number of witnesses testified, and the testimony, as I understood it, was that [Lilly Ledbetter] did in fact have notice, and the Court found that she had notice, and that is why they had that statute of limitations was enforced."

RESPONSE: On Tuesday, September 23, 2008, the Senate Judiciary Committee held a hearing entitled "BARRIERS TO JUSTICE: EXAMINING EQUAL PAY FOR EQUAL WORK." Lilly Ledbetter, Cyrus Mehri, and Lawrence Lorber testified about the case and the Supreme Court's ruling in favor of the employer, Goodyear. Testimony offered by the witnesses, and the facts that were exposed in the case, indicated that Ms. Ledbetter's record included poor performance reviews and repeated layoffs. Nevertheless, she waited more than five years before filing a claim.

25. Pursuant to 8 C.F.R. § 1003.1, the Attorney General has authority to certify cases of the Board of Immigration Appeals (BIA) to himself. Through this authority, the Attorney General can establish or reverse precedent in immigration law. According to the Congressional Research Service, in the past this authority has been used very rarely: it was used in just five cases by Attorney General Mukasey, and in just three cases by Attorney General Holder.

a. Do you believe that, in line with established practice, this authority for the Attorney General to decide immigration appeals himself or herself must be used sparingly—leaving the adjudicative process to function as it usually does with decisions made by immigration judges and members of the board of immigration appeals?

RESPONSE: My understanding is that this authority is entirely discretionary. Decisions to use such authority would only be decided on a case-by-case basis, and I cannot speculate as to how often that authority should be exercised.

b. If confirmed as Attorney General, what criteria do you intend to consider in deciding which BIA cases you will seek to certify to yourself?

RESPONSE: I have not given thought to what criteria would be essential to a determination of whether to certify a case to myself for review.

26. The Department of Homeland Security (DHS) has acknowledged that its resources enable it to remove only a fraction of the undocumented population each year. You have also

recognized that financial considerations do not make it possible to identify and remove everybody who is in the country illegally.

a. Do you believe that young people who have qualified and received deferred action through the 2012 Deferred Action for Childhood Arrivals (DACA) program constitute high enforcement priorities?

RESPONSE: As you know, decisions about "enforcement priorities" with regard to our civil immigration system reside in the Department of Homeland Security. Should I be confirmed as the Attorney General, I will have no role in establishing the Department of Homeland Security's civil enforcement priorities.

b. What about the parents of children who are U.S. citizens or legal permanent residents?

RESPONSE: Please see response to 26(a).

c. Which types of individuals do you believe constitute high enforcement priorities?

RESPONSE: Please see response to 26(a).

27. 8 U.S.C. § 1373 establishes certain guidelines regarding communication between state and local governments and federal immigration agencies with respect to an individual's citizenship or immigration status. In interpreting this statute, the Department of Justice's Bureau of Justice Assistance (BJA) has concluded that it "does not impose on states and localities the affirmative obligation to collect information from private individuals regarding their citizenship or immigration status, nor does it require that states and localities take specific actions upon obtaining such information."

a. Will you adhere to BJA's current interpretation of 8 U.S.C. § 1373?

RESPONSE: Should I be confirmed as Attorney General, I will faithfully execute the laws for which I am responsible for administering.

b. If not, what is your interpretation of 8 U.S.C. § 1373? And what is your interpretation based on?

RESPONSE: I have not had the opportunity to undertake a detailed review of the BJA'S interpretation of the statute. If the BJA's interpretation of the statute is correct, I see no reason not to follow it.

28. The principle of birthright citizenship, regardless of the citizenship or immigration status of an individual's parents, is enshrined in the Citizenship Clause of the 14th Amendment. That clause provides that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The Supreme Court affirmed this principle almost 120 years ago in *U.S. v. Wong Kim Ark,* 169 U.S. 649 (1898), noting: "But citizenship by birth is established by the mere fact of birth

under the circumstances defined in the Constitution. Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization." And: "In the forefront both of the Fourteenth Amendment of the Constitution and of the Civil Rights Act of 1866, the fundamental principle of citizenship by birth within the dominion was reaffirmed in the most explicit and comprehensive terms."

a. Do you believe that a child born in the United States to undocumented parents is a citizen of the United States?

RESPONSE: As I testified before the Committee, under the current state of the law, children born in the United States become citizens.

b. With respect to a child born in the United States, under what circumstances do you believe that Congress can modify the scope of birthright citizenship by statute?

RESPONSE: I have not reviewed the details of that. I do know there is some dispute about whether or not the Congress could change the status of current law regarding birthright citizenship.

c. If you are confirmed, will the Justice Department file briefs in support of efforts to alter the constitutional provision regarding birthright citizenship?

RESPONSE: The determination as to how to handle a particular case is fact-specific, and I cannot speculate as to how the Department of Justice might litigate future hypothetical cases.

29. A number of states across the country, including California, have passed laws allowing undocumented students to qualify for in-state tuition. California's in-state tuition law has made it possible for undocumented students in the state to pursue higher education and develop the skills and knowledge to contribute more fully to their communities and our economy.

a. Do you believe that federal law prohibits states from providing access to in-state tuition for undocumented students?

RESPONSE: My current understanding is that responding to this question would require an analysis of the laws of each individual state, compared with applicable federal law. At this time, I cannot comment on this issue.

b. Do you intend to take any action against states that provide in-state tuition for undocumented students? If so, what type of legal action do you intend to pursue against these states?

RESPONSE: Should I be confirmed as Attorney General, I will faithfully execute the laws of the United States.

30. In *Plyler v. Doe*, 457 U.S. 202 (1982), the Supreme Court held that states cannot deny undocumented children free K-12 public education. In its opinion, the Court noted: "By

denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation."

a. Will you commit to upholding and enforcing Plyler v. Doe?

RESPONSE: Should I be confirmed as Attorney General, I will enforce the law as interpreted by the Supreme Court.

31. On a variety of occasions you have expressed strong concerns about Congress passing immigration reforms because you were worried about jobs being taken from American citizens. In 2013 you said, "Why would any member of Congress want to vote for a bill at a time of high unemployment, falling wages, to bring in a huge surge of new labor that can only hurt the poorest among us." And on the Senate Floor on June 23, 2016, you went so far as to say that all jobs created in the country during the period between 2000 and 2014 "went to the foreign born."

The *Washington Post*, as recently as Christmas 2016, reported that a Virginia vineyard owned by President-Elect Trump or his company had applied for six H-2A visas to work seasonal jobs. Additionally, as you know, President-Elect Trump's companies have applied for a number of H-2B visas, mostly in his hotel businesses, including 20 waiters and waitresses for his Trump International Beach Resort in Florida, in December 2016 alone. Further, the *Washington Post* reported that since 2013, President-Elect Trump's businesses have requested 513 employment-based visas, with 269 of these visas for foreign workers set to begin employment after President-Elect Trump declared his candidacy for President.

a. If any of these companies, or individuals working with these companies, is believed to violate federal criminal law, how will the Department of Justice proceed to investigate or prosecute individuals from the President's own companies?

RESPONSE: I believe that all investigations by the Department of Justice must be initiated and conducted in a fair, professional, and impartial manner, without regard to politics or outside influence. The Department must follow the facts wherever they lead, and make decisions regarding any potential charges based upon the facts and the law, and consistent with established procedures of the Department. That is what I always did as a United States Attorney, and it is what I will insist upon if I am confirmed as Attorney General.

b. You were extensively involved in President-Elect Trump's political campaign. Will you recuse yourself from any decisions regarding the investigation or prosecution of President-Elect Trump's own companies?

RESPONSE: I am not aware of a basis to recuse myself from such matters. However, if a specific matter arose where I believed my impartiality might reasonably be questioned, I would consult with Department ethics officials regarding the most appropriate way to proceed. As I made clear at my confirmation hearing, I will always be fair and work within the law and the established procedures of the Department.

32. Throughout the campaign, President-Elect Trump accused U.S. District Court Judge Gonzalo Curiel of being biased based on Judge Curiel's heritage. President-Elect Trump was quoted by the press as saying:

- "*He's a Mexican. We're building a wall between here and Mexico*." (Politifact, June 8, 2016, quoting Jake Tapper interview with CNN)
- "*I'm building a wall. It's an inherent conflict of interest*." (Wall Street Journal, June 3, 2016)
- "*It's an absolute conflict*" (Wall Street Journal, June 3, 2016)
- "*He's a member of a club, or society, very strongly pro-Mexican*" (John Dickerson, Face the Nation, Interview, June 5, 2016)
- "*I think the judge has been extremely hostile to me. I think it has to do with perhaps the fact that I'm very, very strong on the border. Very, very strong on the border. ... Now, he is Hispanic, I believe. He is a very hostile judge to me. I said it loud and clear*." (Fox News Sunday, February 27, 2016)

In addition, in an interview with John Dickerson on CBS News Mr. Trump was asked whether he believed a judge who is a Muslim would also be unfair to him. He said, "*that would be possible, absolutely*."

a. Would it ever be appropriate for the Department of Justice to seek a judge's recusal from a case involving the Trump administration based on the judge's race, gender, ethnicity, family heritage or national origin, religion, sexual orientation, or gender identity? If so, please explain.

RESPONSE: No.

b. Through the Office of Legal Policy and otherwise, the Department historically has had a significant role in the judicial nominations process. Can you assure the Committee that the Department of Justice will not support any efforts by the President-Elect to reject candidates for judicial positions based on their race, gender, ethnicity, family heritage or national origin, religion, sexual orientation, or gender identity?

RESPONSE: Yes.

33. After your initial submission of your Senate Judiciary Questionnaire ("Committee Questionnaire") on December 9, 2016, you made three subsequent supplemental submissions to address missing materials. These additional submissions included over 50 hours of audio and visual material and hundreds of pages of documents. Your initial submission was, therefore, incomplete.

    Additionally, the Committee never received the following requested material from your years as U.S. Attorney for the Southern District of Alabama or as Attorney General of Alabama: Interviews: Radio, television, and print interviews while you were U.S. Attorney for the Southern District of Alabama and Attorney General of Alabama.

Nominees regularly produce materials documenting statements to the press regardless of whether a full transcript is available, or whether the statements were part of a formal interview. I identified examples of such materials to you in a list on January 5, 2017. In a letter to me on January 6, 2017, you responded that you were not sure if the materials were responsive because you could not confirm the exact circumstances under which you made the comments. However, nominees are generally expected to produce press statements whether they were part of a formal interview or not. The burden to establish exactly how the comments were made is not on the Committee.

For example, a 1996 Birmingham News article available in a public database but missing from your materials indicates you made comments during an interview about strengthening criminal laws. (Stan Bailey, *Sessions Says Crime Laws Need Change*, BIRMINGHAM NEWS, Dec. 18, 1996 ("'I was most surprised at how much more difficult it is, it seems to be, to prosecute fraud and corruption,' Sessions said in an interview Tuesday.")) Another 1996 article missing from your materials but available in a public database indicates you made comments to the press regarding the National Rifle Association (NRA) at an event while you were campaigning for U.S. Senate. (Sean Reilly, *Sessions: NRA comments were a mistake*, MOBILE REGISTER, November 2, 1996 ("'I don't agree with that comment,' Sessions said Friday of the NRA letter. 'It's not something that should have been said.'")

Speeches: For the fourteen years you served as U.S. Attorney for the Southern District of Alabama and Attorney General of Alabama, you listed just three speeches, and you had notes or transcripts for just one of these. During this time, you campaigned for Alabama Attorney General and the U.S. Senate.

You served as the U.S. Attorney for the Southern District of Alabama for 12 years. An online search shows that the current U.S. Attorney for the Southern District of Alabama has made at least ten speeches in the last five years. You also served for two years as Alabama Attorney General. An online search shows that the current Attorney General of Alabama has made at least seven speeches in the last year alone.

a. What steps did you or your staff take to ensure that the materials you provided to the Committee in response to the Questionnaire were complete? Please specifically detail the efforts you or your staff made to identify and locate materials from your time as U.S. Attorney and Alabama Attorney General.

RESPONSE: In preparing my response to the Committee's Questionnaire, my staff and I conducted a thorough review of my own files, searches of publicly available electronic databases, and consultation with the Senate Library, the Congressional Research Service, and relevant committee libraries and historical offices within the Senate. In an effort to be as responsive as possible, my staff also conducted further review of existing files from the era, including historical archives maintained in electronic research databases such as LexisNexis, WestLaw, and ProQuest, public search engines, and Internet archive services that maintain records of websites that no longer exist. Additionally, as records from my time as United States Attorney and Attorney General of the State of Alabama existed before the proliferation of the Internet and before electronic storage was as readily available as it is today, most of those

records do not exist in any electronic databases of which I am aware, and my staff and I consulted with the Alabama Attorney General's Office and with the United States Attorney's Office for the Southern District of Alabama to locate archived files from my time in those offices. All responsive records identified or located as a result of these searches were submitted to the Committee.

b. After your initial incomplete production, did you or your staff take any different or additional steps to gather a more complete set of materials? For example, did you or your staff attempt to identify and search newspaper archives of Alabama news publications that may be available in the state but not searchable nationwide? Did you or your staff ask the Alabama Attorney General to produce material in the state archive, or work with the state archives directly? Please detail your and your staff's efforts.

RESPONSE: After my initial voluminous production, which was more extensive than any Committee Questionnaire response by any Attorney General nominee in recent memory and encompassed more than 100 times the records produced by Attorney General Lynch,[1] items were brought to my attention as potentially responsive that had not been submitted. Some already had been submitted to the Committee, and some were not responsive items at all. A miniscule percentage of items, however, were responsive and subsequently submitted to the Committee in a supplemental response, which is a common practice for nominees. Additionally, in an effort to be as responsive as possible, my staff conducted additional searches to locate any other items that might have been missing.

34. During your hearing, you testified that "I've received hundreds – multiple hundreds of awards over my career." You have only listed 79 awards as part of your Committee Questionnaire.

a. What process did you use to determine which of the "multiple hundreds of awards" you have received would be listed on your Committee Questionnaire? Put another way: how did you decide which awards <u>not</u> to include on your Committee Questionnaire? Please outline what steps were taken to ensure a full inventory of your awards were provided.

RESPONSE: My comment that I had received "multiple hundreds of awards" was hyperbole and I should have been more careful with my words. I listed in my response to the Committee Questionnaire all awards that I was able to locate, identify, or remember.

b. Please provide the Committee with a list of any missing awards.

RESPONSE: I have already provided to the Committee all responsive items, including awards, that I was able to locate, identify, or remember.

[1] *Letter from Ranking Member Dianne Feinstein to Chairman Charles E. Grassley,* Dec. 13, 2016 ("Senator Sessions' production is, as I understand it, in excess of 150,000 pages of material. This is more than 100 times what Attorney General Lynch produced (1500 pages) and more than 29 times what Attorney General Holder produced (5100 pages)."

35. Since 2009, funding for the Byrne Justice Assistance Grant (Byrne JAG) program and the COPS Hiring program have dropped by 32 percent and 37 percent, respectively. Byrne JAG is the cornerstone federal justice assistance program, providing hundreds of millions of dollars to state and local law enforcement each year. The COPS Hiring program provides more than a hundred million in funding to hire new, or rehire, law enforcement or to increase community policing.

    Police officers need this support. And cutting support for this funding – or allowing cuts to be made – would undermine the brave law enforcement officers that put their lives on the line for communities every day. The cuts since 2009 have had real impact.

    a. Will you support increased funding for these essential programs?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will seek to best use the resources available to the Department of Justice to address violent and other crimes throughout the country, and to partner with State and local law enforcement agencies to help them address these issues. I will make funding decisions only after a careful evaluation of any current practice or program administered by the Department and the effectiveness of those practices to aid in the administration of justice. This will include a review of the Department's Inspector General's report criticizing program administration. As you know, resources are limited; therefore, prior to such an evaluation, it would be unwise for me to commit to an increase in funding for any specific purpose.

    b. In FY16, California received $30.3 million from Byrne-JAG and $11.725 million from the COPS program. Will you ensure funding for California law enforcement in these programs is not reduced, except as may be proportional to any overall reduction in the program by Congress?

RESPONSE: If I am fortunate enough to be confirmed as Attorney General, I will seek to best use the resources available to the Department of Justice to address violent and other crimes throughout the country, and to partner with State and local law enforcement agencies to help them address these issues. I will make funding decisions only after a careful evaluation of any current practice or program administered by the Department and the effectiveness of those practices to aid in the administration of justice. As you know, resources are limited; therefore, prior to such an evaluation, it would be unwise for me to commit to an increase in funding for any specific purpose.

36. I believe that the men and women who serve as state and local law enforcement officers are some of the finest and bravest public servants we have. The vast majority of police officers do exemplary work and build strong relationships with the community to keep the public safe. However, we also know that in many communities, trust between community members and state and local law enforcement is deeply frayed.

    I recently convened a pair of meetings with more than 50 African American community, religious and political leaders, and law enforcement officers in San Francisco and Los Angeles. A key point that emerged was that change must take root from the bottom up, but

the federal government – especially the Justice Department – has a role to play in recommending best practices and providing or supporting civilian oversight. In some cases, where the Department has found a pattern or practice of unconstitutional policing, the Department has entered consent decrees in order to ensure that needed reforms happen at an institutional level.

During your hearing, you told Senator Hirono that "there's a concern that good police officers and good departments can be sued by the Department of Justice when you just have individuals within the department who have done wrong, and those individuals need to be prosecuted."

a. Please list all investigations or proceedings under Section 14141 that the Civil Rights Division has undertaken since 1994 that you believe were undertaken erroneously and/or should not have been brought.

RESPONSE: I have not been privy to internal Department data and information regarding every investigation undertaken under this section. However, if I am fortunate enough to be confirmed as Attorney General, I will carefully evaluate the authorities and tools available to the Department, including this section, and partner with departments to provide best practices and information whenever appropriate.

37. In addition to Section 14141 investigations, the Justice Department's Office of Community Oriented Policing Services (COPS) provides, upon request, assistance to police departments to help develop long-term, holistic strategies to improve policing.

    In my home city of San Francisco, the COPS unit has helped identify specific areas for the San Francisco Police Department to improve its own policies, particularly in the wake of several use-of-force incidents that sparked protests across the state. The program under which the COPS office assisted the SFPD is called the Collaborative Reform Initiative, and it is a program that has collaborated with police departments nationwide, including in Baltimore, Memphis, Philadelphia, and Salinas.

    a. Will you commit to continuing this type of technical assistance for police departments that request it?

RESPONSE: While I am unfamiliar with the specific assistance provided to San Francisco, I agree it is important for law enforcement agencies to build trust and good relationships with the communities they protect, and the Community Oriented Policing Services Office of the Department of Justice can provide valuable information, resources, and technical assistance to law enforcement agencies looking to improve their practices. If confirmed, I will support their efforts.

38. In May 2016, the Department of Justice filed an indictment against South Carolina Police Officer Michael Slager after he fatally shot Walter Scott, an African American man. Officer Slager was indicted both on federal criminal civil rights and obstruction charges.

On December 6, MSNBC's Mika Brzezinksi asked Vice President-Elect Pence "Will the next administration support the feds continuing the case against Slager?" Vice President-Elect Pence replied, "Well, I think that'll be a decision that the Attorney General will review and make after January the 20th, and I'll let our designee and of course President-Elect [Trump] review that."

a. Have you discussed this case with President-Elect Trump, Vice President-Elect Pence, or other members of the transition team? Please specify.

RESPONSE: No.

b. Do Vice President-Elect Pence or President-Elect Trump have any reason to believe that you plan to withdraw a previously-filed indictment in this case—or any other criminal or civil rights cases the Justice Department is currently prosecuting?

RESPONSE: I have not discussed this case with the President or the Vice President and therefore cannot comment on what they may or may not believe. I have not had an opportunity to review this case and have not made any decisions with regard to it or any other pending cases. However, I do not anticipate withdrawing any pending prosecutions that are justified by the facts and circumstances of the case and relevant laws.

c. Do you believe it would be appropriate for President-Elect Trump to "review" any prosecutorial decisions you, or any other employees of the Department of Justice, make?

RESPONSE: No.

39. When I was chairman of the Senate Intelligence Committee, the Committee approved a full report on detention and interrogation – more than 6,700 pages and 38,000 footnotes. This report was produced based on a fulsome staff review of mostly CIA documents describing the Central Intelligence Agency's detention and interrogation program. It includes extensive information about the Justice Department's role in authorizing this program, but also how the CIA repeatedly provided inaccurate information to the Justice Department about the operation of the program.

    This report was approved by a bipartisan vote in the Intelligence Committee of 9-6.

    After months of negotiations, the Executive Summary of this report was declassified with redactions. This summary runs 500 pages. The Committee sent copies of the full report to a number of relevant agencies, including the Department of Justice and FBI.

a. Have you read the Executive Summary?

RESPONSE: No.

b. Will you commit to reading the full report if confirmed – and instructing appropriate officials to read the full report, to ensure that we do not repeat the mistakes of the past?

RESPONSE: If confirmed, I will ensure that I and other appropriate officials are fully briefed on the contents of the report to the extent that it is pertinent to the operations and mission of the Department of Justice.

c. Will you commit that you will not return the Justice Department's copy of the report to the Senate?

RESPONSE: Yes.

40. At your hearing, Senator Graham asked you whether you support the continuation of use of Guantanamo Bay as a confinement facility for foreign terrorists.

The U.S. has been detaining individuals without charge or trial at the Guantanamo Bay detention facility for the past 15 years. A total of 780 people have been held at the facility since it opened. Of this number, approximately 540 were released during the George W. Bush administration, and 183 during the Obama administration. Another nine died in custody, six by suspected suicide. A total of 55 remain.

During this time, only a very small number of cases were prosecuted in the military commissions, fifteen in total. Eight of these resulted in convictions, three of which have been fully overturned on appeal; several others were partially overturned. A number of other appeals are pending. Other cases are bogged down in pre-trial hearings. The case against the five men accused in the September 11, 2001 attacks is in its fourth year of pre-trial hearings and a trial date is still years away.

Meanwhile, the government has prosecuted more than 500 terrorism suspects in federal court, including Dzohkar Tsarnaev, the Boston Marathon bomber; Faisal Shahzad, who tried to set off a car bomb in Times Square; and Umar Farouk Abdulmutallab, the so-called "underwear bomber," all of whom were convicted.

You have made comments indicating that individuals captured by the U.S. abroad should not be prosecuted in federal court, but rather in military commissions in Guantanamo.

a. Do you agree the Department of Justice has a record of success bringing terrorism-related criminal charges against hundreds of defendants since September 11, 2001?

RESPONSE: Yes. I also believe that the prosecution of terrorists in the military commission system would be successful if used.

b. As Attorney General, do you intend to stop prosecuting terrorist suspects in federal court? Do you intend to stop enforcing, for example, 18 U.S.C. § 2339B, which criminalizes the provision of material support or resources to a designated foreign terrorist organization?

RESPONSE: The statute you cite has proven to be a particularly valuable tool in the war on terrorism and I expect to vigorously prosecute offenses under that law where warranted.

41. In the past, you have asserted that existing gun laws must be enforced aggressively. You have said when you were the U.S. Attorney in the Southern District of Alabama, you committed yourself to prosecute violations of "hundreds of gun laws."

    You went so far as to claim you sent a newsletter to local law enforcement to bring you cases involving gun violations. You stated, "I created a newsletter and sent it to every sheriff. I said: If you have the kind of criminal that needs prosecuting under federal gun laws, you bring those cases to me and we will prosecute them."
    You also have the highest political rating from the National Rifle Association and consistently have voted against attempts to strengthen background checks and otherwise make federal gun laws stronger.

    a. Will you commit to fully enforcing existing gun laws, including by taking enforcement measures strongly opposed by gun rights groups?

RESPONSE: If I am confirmed, I will make enforcement of federal gun crimes a top priority and aggressively engage with state and local law enforcement partners to ensure consistent policies for the apprehension of those violating federal gun laws. I fully expect gun prosecutions to increase. Properly enforced, federal gun laws can reduce crime in our cities and communities.

b. **There have been legal challenges to federal, state and local gun laws since the *Heller* and *McDonald* decisions in 2008 and 2010.**

If confirmed, under what circumstances would the Department of Justice decline to defend a federal firearms law against a legal challenge?

RESPONSE: The Executive Branch has a clear and unwavering duty to vigorously defend the constitutionality of any law for which a reasonable defense may be made. This includes the responsibility to defend in court acts of Congress with which the President may disagree as a matter of policy. That is an important and a time-honored principle to which I fully subscribe. There are two exceptions: (1) where a statute intrudes upon the separation of powers by infringing on the President's constitutional authority, and (2) where there are no reasonable arguments that can be presented in defense of a statute. These are narrow exceptions, and require the most careful consideration before being adopted.

42. As you are aware, any person engaged in the business of dealing in firearms must conduct background checks on gun buyers. Courts have identified several factors to determine whether an individual is "engaged in the business" of buying and selling firearms; there is no specific threshold number of firearms purchased or sold that triggers the requirement. As ATF stated in its January 2, 2016 guidance document, "even a few firearms transactions, when combined with other evidence, can be sufficient to establish that a person is 'engaged in the business' of dealing in firearms."

For example, in *United States v. Shan*, the Second Circuit found that the defendant was properly convicted of dealing in firearms without a license when he sold just two firearms in a month and acknowledged that he had a source for more guns. The Sixth Circuit has similarly noted, "[T]he statute does not establish a minimum threshold for the number of guns sold." As a result of decisions like these, the Justice Department has brought cases against individuals who illegally sold guns without a license, only later to have those guns found at deadly crime scenes. In St. Paul, for example, a man transferred a gun at least 9 times after buying guns online and then trying to sell those guns on the secondary market. Court records indicated that several of the guns that were sold were part of drug trafficking crimes, and other "shots-fired" incidents.

This case is but one example of individuals buying guns and then illegally selling them to individuals without background checks, and the guns then being found at crime scenes.

a. Will you commit to investigating and prosecuting illegal gun dealers who are selling weapons without conducting a background check? If your answer is yes, please describe in detail your plan for doing so.

RESPONSE: When I served as a United States Attorney, protecting the public from violent gun-related crime was among my top priorities. As I testified before the Committee, I will enforce federal background check laws. Properly enforced, the federal gun laws can reduce crime in our cities and communities. Those who deliberately violate federal gun laws should be investigated and prosecuted. The Congress and government regulations set forth the circumstances and methods by which gun dealers may sell guns. If I am fortunate enough to be confirmed as Attorney General, violators will be prosecuted as appropriate.

43. In 2014, in *Abramski v. United States*, the Supreme Court held in a 5-4 decision that "a person who buys a gun on someone else's behalf while falsely claiming that it is for himself" violates the law prohibiting material false statements on federal gun forms.

This decision is vital to the prosecution of so-called "straw purchasers" who buy guns on behalf of those, such as felons, who cannot pass a background check. The Department of Justice's position in this case was that the buyer's "knowingly false statement that he was the actual purchaser of the handgun" violated the law.

The National Rifle Association's position was that this was "not a permissible construction" of the law.

a. If you are confirmed, will the Justice Department prosecute those who lie on federal firearm sale forms by falsely claiming they are the actual purchasers?

RESPONSE: Properly enforced, the federal gun laws can reduce crime in our cities and communities. Those who deliberately violate federal gun laws should be investigated and prosecuted. I have personally prosecuted and supported prosecutions of those who lie on these

forms. If I am fortunate enough to be confirmed as Attorney General, I will support the continued enforcement of federal gun laws, as appropriate.

b. Will you defend this law, including the Supreme Court's Abramski decision, against a constitutional challenge?

RESPONSE: It is appropriate for the Justice Department to consider the role of precedent whenever advocating before the Supreme Court. In addition, it is important for the Department to consider the facts of an individual case, and also to consider sound jurisprudence when determining the Justice Department's position on a legal issue. If I am fortunate enough to be confirmed as Attorney General, the Justice Department will fairly and thoroughly evaluate these factors in arguments before the Supreme Court.

44. The ATF – the agency that investigates gun crimes – lacks sufficient resources to carry out its statutory responsibilities. You and other Republican colleagues have said that we should focus on fully enforcing existing gun laws before passing new ones.

However, since Fiscal Year 2011 (the first year Republicans were in charge of the House during the Obama Administration), Congress appropriated $182.3 million over five years *less* than the agency said it needed, because of Republican opposition to greater funding.

Since Fiscal Year 2011, ATF has grown by a total of only 10 people or 0.2 percent (from 5,016 employees to 5,026 employees). Over the same period, the number of guns bought and sold in America skyrocketed. The FBI conducted 27 percent more background checks in 2014 than in 2011 (from 16.5 million to 21 million). In addition, I understand that 544 Special Agents (one-fifth of the total ATF Special Agent population) were eligible to retire last year.

The only way to truly enforce existing gun laws is to ensure agencies like ATF have the funding they need to do the job.

a. Would you agree that in order for gun laws to be fully enforced, we need ATF to be fully staffed and ATF investigators to be well-trained and well-equipped? Yes or no.

RESPONSE: Yes.

b. Will you commit, if you are confirmed as the Attorney General, to make sure that the DOJ budget request reflects the resources necessary to ensure that ATF can fully execute the mission given to it by Congress?

RESPONSE: Through my service as a United States Attorney, and as a Senator, I am aware of the difficult choices that the Justice Department has to make during this time of tight budgets. Such awareness should be present in any request for taxpayer funds. I understand the challenges that ATF faces and believe that with proper support and with vigorous prosecutions, ATF can be more productive without large increases in funding. If I am fortunate enough to be confirmed as

Attorney General, I will endeavor to direct and utilize the resources of the Department in the most effective manner possible to ensure the enforcement of federal law.