

July 17, 2017

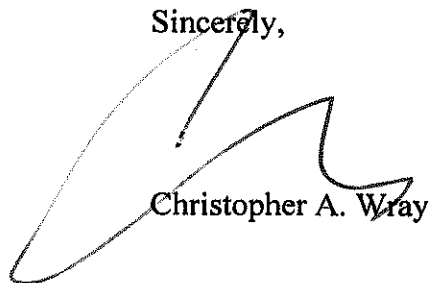
The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

Enclosed please find responses to Questions for the Record that I received from Ranking Member Feinstein, as well as Senators Leahy, Durbin, Whitehouse, Franken, Coons, Blumenthal, and Hirono, following my appearance before the Senate Judiciary Committee on July 12, 2017.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher A. Wray". The signature is stylized with a large, sweeping initial letter and a long, horizontal tail that loops back under the name.

Christopher A. Wray

**QUESTIONS FOR THE RECORD
CHRISTOPHER A. WRAY
NOMINEE TO BE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION**

QUESTIONS FROM SENATOR FEINSTEIN

1. **If you are confirmed as FBI Director, what specific and concrete steps will you take to ensure the FBI remains independent and free from political interference?**

RESPONSE: First, I believe that there is only one right way to do the job as Director of the FBI: with strict independence, by the book, playing it straight, and faithful to the Constitution, our laws, and the best practices of the institution, without regard to any partisan political influence. That is the commitment I brought to my prior service to the Department and, if confirmed, that is the commitment I would bring to being Director of the FBI. Second, to perform my duties consistent with those principles, I would take concrete steps to ensure that the mission of the FBI is fulfilled consistent with those principles and free from partisan political influence. The Department of Justice has policies in place governing communications between the White House and the Department, including the FBI. If confirmed, I intend to follow the Department's policies.

2. **At your hearing, you testified, “[d]uring my time as Principal Associate Deputy Attorney General, to my recollection, I never reviewed, much less provided comments on or input on, much less approved, any memo from John Yoo on this topic.” During your time as Principal Associate Deputy Attorney General, did you review, provide comments or input on, or approve any OLC memos on rendition, detention, or interrogation drafted by Jay Bybee, Patrick Philbin, Jack Goldsmith, or anyone else at OLC? If so, please describe which memos and your involvement.**

RESPONSE: I believe torture is wrong, unacceptable, illegal, and ineffective. To the best of my recollection, I was not asked to and did not comment on or approve any memos issued by OLC regarding rendition, detention, or interrogation while serving as Principal Associate Deputy Attorney General.

3. **When you were at the Department of Justice, did you have any concerns about any of the memos issued by the Office of Legal Counsel regarding the use of so-called “enhanced interrogation techniques” on detainees? If so, did you raise those concerns with anyone within the government? Do you have any concerns about those memos now?**

RESPONSE: I held two different jobs at the Department of Justice during the period in which OLC issued the referenced memos. In the first position, Principal Associate Deputy Attorney General, to the best of my recollection, I was not asked to and did not

comment on or approve any memos issued by OLC regarding the use of so-called “enhanced interrogation techniques.” Accordingly, I did not have contemporaneous concerns about the memos.

In the second job as Assistant Attorney General for the Criminal Division, I likewise do not recall having substantive involvement in the review or consideration of any issues related to OLC’s work on such memos. As I testified, under my direction I insisted that the Criminal Division not provide comments or contributions to any OLC memo that could undermine the ability of the Criminal Division to investigate and prosecute individuals who had violated the torture statute or other relevant criminal statutes. Thus, my memory is that career prosecutors in the Counterterrorism Section with experience investigating and prosecuting individuals under the torture statute provided comments to OLC about their experience and understanding only on the general meaning of the statute and its elements and without reference to any specific techniques or conduct. Our commitment to that position during my tenure is best illustrated by our prosecution of a CIA contractor, David Passaro, for the abuse of an Afghan detainee.

As for my views now, I believe that torture is wrong, unacceptable, illegal, and ineffective. Under my leadership if confirmed, I would continue the policies that prohibit FBI personnel from participating in any such conduct.

4. You stated during the hearing that waterboarding is torture and is illegal. **Do you believe that the following techniques are also torture and therefore illegal: extreme sleep deprivation; so-called “walling”; forced nudity; stress positions; “rectal rehydration”; and ice water “baths”?** If not, why not? **Would any of these techniques be appropriate for use by the FBI or any other government agency?**

RESPONSE: It is my understanding that Congress has prohibited all interrogation techniques not approved in the Army Field Manual. As I said during my hearing, both of my predecessors at the FBI, Director Mueller and Director Comey, implemented policies prohibiting the use of torture. I believe that is the right policy for the FBI. If confirmed, I intend to continue this policy.

5. In 2009, Ali Soufan, an FBI agent who was key to major terrorism investigations, testified that FBI interrogators have traditionally used the Informed Interrogation Approach. He further testified that the so-called enhanced interrogation techniques used by the CIA during the Bush administration were operationally “ineffective, slow, and unreliable,” and ultimately harmful to counterterrorism efforts.
 - a. **Will you commit to ensuring that the FBI never engages in torture, and that it adheres to its policy of using the Informed Interrogation Approach outlined in the Army Field Manual?**

RESPONSE: Yes.

- b. Will you commit to reading the Senate Intelligence Committee's report on the CIA's detention and interrogation program?**

RESPONSE: Yes.

- 6. When you were at the Department of Justice during the Bush Administration, did you ever have any discussions with DOJ or FBI officials regarding the treatment of detainees at Guantanamo Bay or other facilities maintained overseas by the U.S.? If so, what was the nature and substance of those discussions?**

RESPONSE: I recall during my time as Assistant Attorney General having discussions about referrals to the Criminal Division of matters involving allegations of detainee abuse at facilities maintained overseas by the U.S. Those referrals were investigated appropriately and, where the facts and law allowed, were successfully prosecuted. I do not otherwise specifically recall having discussions with DOJ or FBI officials regarding treatment of detainees at Guantanamo Bay or other facilities maintained overseas by the U.S. when I was at the Department of Justice.

- 7. What constitutional rights do you believe apply to individuals detained in the United States?**

RESPONSE: At a minimum, it is my understanding that, as interpreted by the Supreme Court of the United States, individuals detained in the United States as part of a criminal prosecution are afforded certain protections under the First, Fourth, Sixth, Seventh, Eighth, and Fourteenth Amendments to the Constitution. If confirmed, I will seek to ensure that the FBI follows all applicable laws, legal precedents, and FBI policies related to detainee treatment.

- 8. What constitutional rights do you believe apply to detainees at Guantanamo Bay? What constitutional rights do you believe apply to detainees at overseas facilities operated or controlled by the U.S. government?**

RESPONSE: I have not studied the extent of constitutional guarantees as applied to these individuals. If confirmed, I will seek to ensure that the FBI follows all applicable laws, legal precedents, and FBI policies related to detainee treatment domestically and at any overseas facilities.

- 9. Do you support using Guantanamo Bay to detain, interrogate, and prosecute new terrorism suspects?**

RESPONSE: I have not studied this issue and, therefore, I am not able to provide my position on it.

10. You indicated during the hearing that you have read the January 6, 2017, unclassified assessment by the Intelligence Community regarding Russian interference in the 2016 presidential election.

a. Do you fully accept the Intelligence Community's assessment?

RESPONSE: Although I have not seen the underlying information that was considered when compiling the report, I have no reason to doubt it.

b. Have you discussed Russian interference in the 2016 election with anyone in the White House, Justice Department, or FBI? If so, what did you discuss, and with whom?

RESPONSE: No.

c. Have you discussed the ongoing investigation of Russian interference, including possible ties to Trump associates, with anyone in the White House, Justice Department, or FBI? If so, what did you discuss, and with whom?

RESPONSE: No. As I testified, when I met with Attorney General Sessions and Deputy Attorney General Rosenstein regarding the FBI Director position, Deputy Attorney General Rosenstein very briefly referenced Special Counsel Mueller's appointment; we did not discuss any ongoing investigations.

11. You served as New Jersey Governor Chris Christie's lawyer during a federal investigation into whether he abused his power to shut down lanes on the George Washington Bridge as a form of political retribution. It has been reported that Governor Christie—who was a top campaign surrogate of candidate Trump and continues to advise the President—personally lobbied the President to choose you as his next FBI director.

a. What is your understanding of Governor Christie's role in your nomination?

RESPONSE: I am not aware of Governor Christie having had any role in recommending my name to the Attorney General, the Deputy Attorney General, or anyone at the White House before I was interviewed for the nomination on May 30, 2017. Sometime after I was initially interviewed by the President, it is my understanding that Governor Christie was contacted by the White House regarding my nomination. I was not a party to any such discussions, but I understand that Governor Christie may have said positive things about me that were in substance limited to what Governor Christie has also said publicly in support of my nomination.

b. Did you talk with Governor Christie about the firing of Director Comey? If so, what did you discuss?

RESPONSE: No.

- c. Did you discuss the ongoing investigations of Russian interference—including possible ties to Trump associates? If so, what did you discuss?**

RESPONSE: No.

- d. What steps will you take to avoid even the appearance that your relationship with Governor Christie might influence your independence from the President or his Administration?**

RESPONSE: To the extent that there are matters involving Governor Christie before the FBI, I would consult the appropriate ethics officials and follow the applicable rules and procedures.

12. In 2008, as a former senior official with the Justice Department, you submitted an amicus brief to the Supreme Court in *District of Columbia v. Heller*. Your brief stated: “Reading the Second Amendment to secure the right of a law-abiding individual to possess a common handgun for personal defense in his own home does not call into question any existing federal firearms regulations, including those restricting possession of machineguns.” One of the FBI’s primary responsibilities is enforcing this nation’s gun laws.

- a. Are there any current federal firearms regulations—such as those regulating machine guns and silencers—that you believe are unconstitutional and therefore unenforceable? Please explain.**

RESPONSE: I have not undertaken a review of federal firearms regulations sufficiently to have an opinion about whether there are any such regulations that are vulnerable to challenge. I am committed to the enforcement of federal laws and applicable regulations consistent with the Constitution.

- b. Will you commit to vigorously enforcing this nations gun laws, and also commit to enforcing and implementing all existing gun laws and regulations?**

RESPONSE: I am committed to fully and fairly enforcing all laws within the Department’s jurisdiction, including federal firearms laws. If confirmed, I will consult with relevant FBI personnel so as to ensure that the FBI fully and fairly enforces such laws.

- c. Do you agree that cities and local governments should still be able to regulate firearms, to at least some degree?**

RESPONSE: I have not studied this issue to be able to speak to it adequately. If confirmed, I would continue to support the FBI’s partnerships with state and local

law enforcement to reduce crime, including gun-related crime.

d. How do you intend to coordinate with state and local officials in investigating gun crimes, including gun trafficking crimes that also have a federal nexus?

RESPONSE: Partnerships and coordination between federal and state, local, and tribal law enforcement is critical to fighting violent crime and gun violence. The FBI has particular capabilities that can support, supplement, and complement the efforts of ATF and other federal law enforcement agencies, and with state and local law enforcement. If confirmed, I will work to ensure that the FBI's resources are aligned to most effectively protect the public, from supporting and partnering with other federal, state, local and tribal law enforcement agencies, to vigorously investigating and prosecuting in federal court the violent criminals that endanger our communities.

13. The amicus brief you joined in *Zubik v. Burwell* last year explained that you and others joined the brief as former Justice Department officials to “explain that Petitioners’ notion of moral complicity is a familiar concept in the criminal law that the Justice Department recognizes and applies in other contexts.”

Why did you believe that the criminal law’s concept of complicity – which requires no balancing of others’ rights – could apply in the context of the *Zubik* case, which requires balancing organizations’ moral belief against women employees’ federally-protected right to contraception access through their health plan?

RESPONSE: In *Zubik v. Burwell*, I joined an amicus brief prepared on behalf of former Department of Justice officials that did *not* focus directly on the question presented (“Whether the HHS Mandate and its ‘accommodation’ violate the Religious Freedom Restoration Act (“RFRA”) by forcing religious nonprofits to act in violation of their sincerely held religious beliefs, when the Government has not proven that this compulsion is the least restrictive means of advancing any compelling interest.”). Instead, the amicus brief focused on the issue of whether moral complicity was a concept recognized under the law such that it could be considered by the Court as part of its overall analysis.

I did not understand the position stated in the amicus brief to claim that the criminal law’s concept of complicity applied directly to the context of the *Zubik* case. Instead, I understood the brief to be informing the Court that the criminal jurisprudence concerning the concept of complicity could be “instructive for particular aspects of Petitioners’ claim.” Brief of *Amici Curiae* Former Justice Department Officials in Support of Petitioners, *Zubik v. Burwell*, p. 11 (January 11, 2016). For example, as the amicus brief argued, it would be inconsistent for the Department of Justice to dismiss the concept of moral complicity in the context of the *Zubik* case, when it routinely brings charges for complicity with criminal acts (e.g., aiding and abetting, conspiracy, etc.). *Id.*

- a. Why was this critical requirement of balancing left out of your amicus brief's discussion of protections for religious exercise?**

RESPONSE: I did not participate in the drafting of the amicus brief. At the time, I understood the brief to be focusing only on the narrow question as to whether moral complicity was a cognizable legal concept that could be considered as simply one part of the consideration of the larger question presented.

- 14. If you are confirmed, what will be your strategy to make sure that all witnesses and victims feel safe in reporting hate crimes and other crimes that the FBI investigates?**

RESPONSE: Hate crimes based on bigotry or prejudice cannot be tolerated. If confirmed, I will fully and fairly enforce federal hate crime statutes and will ensure that the FBI uses appropriate resources to help victims feel safe in reporting hate crimes. As I am not familiar with the current efforts being made by the FBI in this regard, I am unable to provide a strategy at this time.

- 15. The FBI has collected data on hate crimes since 1990 when Congress passed the Hate Crime Statistics Act. However, it's becoming increasingly clear that the FBI's tally is incomplete. While the FBI typically reports 7,000 to 10,000 hate crimes, the Bureau of Justice Statistics estimates that the true number may approach 300,000, which is approximately 30 times the FBI estimation.**

- a. How will the FBI work to account for these discrepancies so that there is more accurate reporting?**

RESPONSE: I share the concern about the need for accurate data to help us better understand the number, nature, and scope of hate crimes. I am not yet familiar, however, with the methods by which state and local governments collect and report data regarding hate crimes to the FBI. If confirmed, I will learn more so as to be in a better position to judge how such reporting could be improved.

- b. What do you intend to do to make it easier for local agencies to report this crucial data to the FBI?**

RESPONSE: Please see my response to Question No. 15(a) above.

- 16. The Southern Poverty Law Center has collected data showing that the number of anti-Muslim hate groups have tripled in 2016, going from 34 in 2015 to 101 last year. What should the FBI do to address this?**

RESPONSE: While I am not familiar with the data you cite, I believe crimes motivated by bigotry or prejudice cannot be tolerated. It is important for the FBI to aggressively investigate and prevent hate crimes in partnership with communities, and I am committed to ensuring that all Americans receive the protection of the law. If confirmed, I will fully and fairly enforce federal hate crime statutes and will ensure that the FBI devotes appropriate resources to bring justice on behalf of hate crime victims.

17. Since the 2016 election, there has been a tremendous amount of rhetoric from this Administration that some believe has fostered anti-Muslim behavior. This deeply troubles me, and offends the core religious tolerance enshrined in our Constitution.

a. Do you agree that the use of such rhetoric alienates certain communities, thereby undermining national security?

RESPONSE: I am unable to assess the specific statements to which this question is directed. As a general matter, I believe that it is important to keep a productive dialogue with communities, including Muslim communities.

b. Despite some of the divisive rhetoric from this Administration toward certain minority groups, how will you yourself promote better outreach to marginalized communities?

RESPONSE: The FBI's mission is to work on behalf of all Americans. It is important, therefore, for law enforcement agencies, like the FBI, to have strong and trusting relationships with all of the communities they serve. This both better serves the community and enables law enforcement to more effectively fight crime and protect our national security. I am not familiar yet with the FBI's current approach to outreach. If confirmed, I will assess such efforts and look for opportunities for improvement.

18. The Administration has proposed a 22% cut in the Byrne Justice Assistance Grant (Byrne JAG) formula grant program (representing a cut of about \$3.5 million to California), which supports state and local law enforcement efforts nationwide. **Do you agree with the deep spending cuts to the Byrne JAG program proposed by this Administration? What can be done by the FBI to better support local law enforcement?**

RESPONSE: I have not studied any funding proposals and am not familiar with the President's budget request as it pertains to the Byrne JAG program. As a general matter, I believe it is important for the FBI to support state and local law enforcement and, if confirmed, I will look into ways in which the FBI can provide such support.

19. Many domestic abusers who have been convicted of a misdemeanor crime of domestic violence or who are subject to a protection order are able to illegally stockpile guns and ammunition. Local domestic violence programs often attempt to help victims by seeking

enforcement of federal law and removal of the firearms, but they are unable to get assistance from the ATF and other federal agencies like the FBI. Similarly, local law enforcement is often overwhelmed by the sheer number of firearms in the possession of domestic violence offenders.

- a. How will the FBI work with the ATF improve their response to cases like these, and what kind of resources will you pledge to devote to make sure that guns are not as accessible to prohibited domestic abusers who pose a dangerous risk to those around them?**

RESPONSE: I am not familiar with the current FBI and ATF efforts on this issue. If confirmed, I look forward to learning how the FBI can improve its work with ATF and with federal, state, local, and tribal law enforcement to keep firearms out of the hands of persons prohibited from having them.

- b. What commitment can you make to have more FBI agents and FBI victim assistants trained and ready to respond to dangerous situations like this?**

RESPONSE: Please see my response to Question No. 19(a) above.

20. Despite the well-documented danger domestic abusers with firearms pose to their victims, their communities, and law enforcement, only a very small proportion of protective order and misdemeanor domestic violence records are being submitted to National Crime Information Center's Protection Order Files and the National Instant Criminal Background System. **In what ways can the FBI take action to improve entry of these records to make sure guns don't end up in the wrong hands?**

RESPONSE: I am not familiar with issues relating to state and local authorities' submission of protective order and misdemeanor domestic violence records to the National Crime Information Center's Protection Order Files and the National Instant Criminal Background System. I look forward to learning more about this issue so I can learn whether there are ways in which the system can be improved to keep firearms out of the hands of persons prohibited from possessing them.

21. Following the murders of 9 churchgoers at Emanuel AME church in South Carolina in June 2015, the FBI announced that the FBI National Instant Criminal Background System (NICS) did not obtain information regarding the gunman's drug arrest record, which should have prohibited him from buying a handgun. When the initial background check was being processed, the FBI NICS section put a "delay" on the background check to obtain more information about the gunman, but because the FBI had not completed its review within 3 days, the dealer was legally permitted to complete the sale to the gunman. **Given that gun prohibitor records cannot be obtained in a timely fashion in every instance, would you support legislation that eliminates the 3-day delay requirement that allows a gun dealer to transfer a gun without a completed background check?**

Why or why not?

RESPONSE: The murders at Emanuel AME Church were a horrific tragedy, and my heart goes out to the victims of those crimes. I am not familiar with the circumstances of how the perpetrator in that case obtained the firearms he used to commit those crimes. Keeping firearms out of the hands of prohibited persons is critically important to keeping our communities safe, and I look forward to learning more about this issue if confirmed.

22. The *New York Times* recently ran a piece about the use of the dark web by drug traffickers and other criminal enterprises to secretly do business with users. The problem of criminals using the “dark web” to conceal their tracks and traffic their goods is a problem that is only going to grow in the coming years. **How do you plan to address the use of the dark web to apprehend and stop those who are engaged in criminal activity?**

RESPONSE: Although I have not studied this issue in detail, I understand that the “dark web” is often used to conduct criminal activity such as drug trafficking, child pornography, terrorism, and other illegal activities. This is a significant challenge for law enforcement. If confirmed, I am committed to learning more about this issue and determining how the FBI can best investigate crimes committed by using the “dark web”.

23. You have previously discussed the importance of the Foreign Agents Registration Act (FARA), which requires any individual working on behalf of a foreign government in the United States to disclose that relationship to the Department of Justice. You have stated that the law is important so that people can “assess the credibility and agendas” of someone who is working on behalf of a foreign entity. **What steps can the FBI take to more effectively and aggressively investigate and enforce FARA?**

RESPONSE: FARA is a critical tool for today’s counterintelligence efforts. In general, it requires persons acting as agents of foreign principals in a political or quasi-political capacity to publicly disclose their relationship with the foreign principal. I am not in a position to comment on what steps the FBI has taken to investigate and enforce FARA-related activities, but, if confirmed, I will work to ensure that FARA is robustly utilized to combat today’s counterintelligence threat.

24. When you were in charge of the Justice Department’s Criminal Division, you addressed concerns that increased attention to counterterrorism could lead prosecutors to lose focus on certain other priorities, like going after organized crime enterprises. Although I feel strongly that the FBI must treat counterterrorism as a top priority, I’m concerned that other areas will not receive the attention or resources they deserve. **How will you ensure that the FBI devotes adequate resources to investigations for human trafficking, organized crime, public corruption, and other crimes?**

RESPONSE: The FBI has many important missions and priorities. I am not familiar

specifically, however, with how the FBI is presently allocating its resources to meet those many missions and priorities. If confirmed, I will closely study the resource allocations to ensure that the FBI fulfills its many missions and priorities as effectively as possible.

25. My colleagues and I wrote to Director Comey and others about alarming allegations reported in the *New Yorker* that detailed a Trump Tower construction project in Azerbaijan and possible violations of the Foreign Corrupt Practices Act (FCPA). **If there is a credible allegation that the Trump Organization or family members or associates of President Trump have violated the FCPA, will the FBI investigate those allegations thoroughly?**

RESPONSE: I am not familiar with the media reporting referenced in your question. As I have testified, if confirmed, I would be committed to following the facts and law, wherever they might lead, and regardless of the target. If the FBI is provided credible evidence suggesting that a crime had been committed, I would expect the FBI to investigate appropriately and, if merited, to support the prosecution of such crimes.

**QUESTIONS FOR THE RECORD
CHRISTOPHER A. WRAY
NOMINEE TO BE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION**

QUESTIONS FROM SENATOR LEAHY

1. **What concrete steps will you take to protect the FBI from improper political influence from the White House?**

RESPONSE: First, I believe that there is only one right way to do the job as Director of the FBI: with strict independence, by the book, playing it straight, and faithful to the Constitution, our laws, and the best practices of the institution, without regard to any partisan political influence. That is the commitment I brought to my prior service to the Department and, if confirmed, that is the commitment I would bring to being Director of the FBI. Second, to perform my duties consistent with those principles, I would take concrete steps to ensure that the mission of the FBI is fulfilled consistent with those principles and free from partisan political influence. The Department of Justice has policies in place governing communications between the White House and the Department, including the FBI. If confirmed, I intend to follow the Department's policies.

As I know from my prior service at the Department of Justice, I feel confident that the men and women of the FBI are committed to conducting their work free of fear, favor, or partisan influence. If confirmed, I will support the FBI in fulfilling its mission in a way that is independent and free from political influence.

2. Former Office of Legal Counsel attorney John Yoo testified that he provided you the now infamous OLC memo that provided legal justification for the CIA's torture program. Mr. Yoo actually named you as a recipient in his testimony. He also testified that the memos could not have been issued without approval from the Attorney General or the Deputy Attorney General's office – this was at a time when you were the Principal Associate Deputy Attorney General.

In 2005, OLC formally withdrew the Yoo memo, which OLC attorneys stated "should not be relied upon for any purpose" and was later described as "legally flawed."

This matter was discussed at your hearing, but I would like you to also respond in writing after reviewing any and all relevant materials you have at your disposal to refresh your recollection.

Did you or anyone who reported to you have any role in reviewing Mr. Yoo's March 2003 memo regarding interrogation techniques on enemy combatants?

RESPONSE: To my recollection, I was not asked to and did not comment on or approve Yoo’s March 2003 memorandum – nor, to my knowledge, did anyone who reported to me as Principal Associate Deputy Attorney General.

3. During a Federalist Society event on originalism and criminal procedure in 2005, you discussed the extent to which foreigners were protected by the Fourth Amendment while on American soil. You brought up the case of *U.S. v. Verdugo-Urquidez*,¹ in which the Supreme Court held that a citizen and resident of Mexico who was transported to and incarcerated here in the United States was not protected by the Fourth Amendment because he was not a member “of the people.” Regarding the case, you stated:

A drug trafficker was arrested by the DEA in Mexico and brought to the United States and incarcerated. He was raised in the United States. It was an unreasonable search and seizure issue, and the U.S. Supreme Court found that he was not “a member of the people,” and therefore he had no Fourth Amendment rights. *I think that might be a good way of handling undocumented aliens.*²

I asked you about this matter at your hearing, and you stated that that you “haven’t studied Fourth Amendment jurisprudence on this topic in a long time” and “haven’t looked at those remarks or that issue in a long time.”

- a. **Please re-read *U.S. v. Verdugo-Urquidez* and address in detail how this case should be applied, as you suggested, to undocumented immigrants.**

RESPONSE: This case was raised by an audience member during a panel I was speaking on in 2005. The Court held in *United States v. Verdugo-Urquidez* that the Fourth Amendment does not apply to search and seizure by U.S. agents of property owned by a non-resident alien and located in a foreign country. Accordingly, this case would apply most directly to non-resident aliens subject to search and seizure of property located outside the United States.

- b. **Please also specifically address whether you believe Fourth Amendment protections against unreasonable search and seizure apply in full to undocumented immigrants here in the United States. If not, please describe any scenarios in which you believe undocumented immigrants voluntarily present in the United States are entitled to less protection under the Fourth Amendment.**

RESPONSE: Although I have not studied this issue, it is my general understanding that aliens who are present in the United States may be entitled

¹ 494 U.S. 259 (1990)

² Christopher Wray, Panelist, “Originalism and Criminal Law and Procedure,” Federalist Society 2005 National Lawyer’s Convention (Nov. 10, 2005) (emphasis added).

to Fourth Amendment protections while located in the United States, depending on the circumstances.

4. We have seen an alarming rise in hate crimes against minority communities. In May, two men were murdered and another was seriously injured when they bravely stepped in to protect two Muslim teenage girls from hate-filled abuse in Portland, Oregon.

Nearly every day we hear stories of our neighbors facing violence and harassment because of their race, religion, sexual orientation, or gender identity. I fear these extremist forces within our society are now emboldened, and we are not doing enough to stop it.

Our law enforcement officials and political leaders must send a message that toxic, hateful rhetoric will not be tolerated, and must denounce bigotry wherever they encounter it. The FBI must also do more to address this growing domestic threat.

- a. **What specific steps will you take to address the recent spike in hate crimes?**
- b. **Will you commit to reaching out directly to targeted minority communities to offer them support and resources?**

RESPONSE: Hate crimes based on bigotry or prejudice cannot be tolerated. If confirmed, I will seek to ensure that suspected violations of federal hate crime statutes are investigated appropriately and will also see that the FBI devotes appropriate resources to help ensure victims feel safe in reporting hate crimes. As I am not familiar with the current effort being made by the Bureau in this regard, I am unable to speak to what specific steps could be taken over and above those currently being done. As a general matter, I am committed to reaching out to communities to ensure that they are supported and protected from violence.

5. When Director Comey appeared before this Committee for an oversight hearing in May, I asked him whether the FBI was investigating any improper contacts between FBI employees and Trump-surrogate Rudy Giuliani.

During the 2016 election, Mr. Giuliani regularly bragged about having a backchannel to the FBI. He said that numerous agents “talk[ed] to [him] all the time” regarding the investigation into Secretary Clinton’s emails, and even claimed detailed knowledge of the FBI’s past and future actions.³ Former FBI agent Jim Kallstrom made similar claims.⁴

Director Comey told me that the FBI was already looking into this matter and that the

³ <http://www.cnn.com/2016/11/04/politics/rudy-giuliani-hillary-clinton-email-fbi>;

<https://www.nytimes.com/2016/11/04/nyregion/as-trump-ally-rudy-giuliani-hints-at-ties-to-the-fbi.html>

⁴ <http://www.thedailybeast.com/articles/2016/11/03/meet-donald-trump-s-top-fbi-fanboy>

agency would report its findings to the Committee in some fashion.

Will you commit to continuing this investigation and commit, as Director Comey did, to report your findings back to Congress?

RESPONSE: I am not familiar with the circumstances referenced in your question and therefore am not in a position to comment or make a commitment at this time.

6. As I mentioned during your hearing on Wednesday, for years I have worked with Chairman Grassley to address concerns related to the FBI's flawed hair and fiber analysis testimony. This came to light in 2012, following the exoneration of three men in Washington, D.C., who were wrongly convicted after FBI analysts gave inaccurate testimony. In 2015, the Bureau announced that examiners' testimony in at least 90 percent of trial transcripts analyzed by the Bureau as part of its Microscopic Hair Comparison Analysis Review contained erroneous statements. Some 93 percent of FBI agents or analysts either provided testimony with erroneous statements, or submitted laboratory reports with erroneous statements. In cases in which examiners provided testimony to inculcate a defendant at trial, erroneous statements were made in 96 percent of the cases. For defendants who received the death penalty, errors were identified in 94 percent of cases.

In order to review more than 3,000 cases of potentially innocent defendants, the FBI reached out to the offices that prosecuted those cases to get trial transcripts. I appreciate the serious efforts the FBI made to correct this injustice. But I am still concerned that certain cases are now considered "closed" simply because the FBI made a couple attempts to contact the relevant offices by mail or phone. If the FBI received no response, the case was marked "closed."

The fact that there could still be more innocent defendants in prison due to this faulty testimony is a miscarriage of justice. And it needs to be corrected.

- a. **I asked Director Comey this question in May and he promised me he would follow-up with me. Days later he was fired. So I will ask you: If confirmed, for any case where there is a missing transcript, will you commit to having an agent conduct in-person visit to attempt to secure whatever documents are necessary to determine whether an error was made?**
- b. **In your opinion, what responsibility does the FBI have for ensuring that any forensic science techniques used by the FBI labs have been scientifically validated and that the testimony provided in cases is scientifically validated?**
- c. **Can you commit to ensuring that a root cause analysis is fully undertaken in this instance?**

RESPONSE: Accurate scientific and forensic analysis is critical to ensuring and maintaining the integrity of our criminal justice system. I am unfamiliar with the details surrounding both the FBI's Microscopic Hair Comparison Analysis Review and ongoing efforts to address the results of that review. I am committed to ensuring that the forensic science techniques utilized by the FBI are reliable and that testimony by FBI examiners is accurate. If confirmed, I look forward to learning more about this important issue so as to be in a position to judge what actions need to be taken to serve the interests of justice.

7. In 2004 when you were head of the Justice Department's Criminal Division, I asked you during a Committee hearing what the Department knew about and how it was responding to abuses at Abu Ghraib prison or any other place where there was evidence of torture. You testified that you only knew of abuse through recent press reports and the "news media."

That answer turned out to be less than complete. You had received notice from the CIA Inspector General weeks earlier that a detainee in U.S. custody at Abu Ghraib had died of "blunt force injuries" and the matter was being treated as a homicide. I would like clarification on your original response.

- a. **When did you first become aware of any abuses at Abu Ghraib prison?**

RESPONSE: I do not recall when I first learned about the abuse at Abu Ghraib prison.

- b. **How do you explain your incomplete answer to me on a matter of such significance?**

RESPONSE: I recall this exchange at a hearing on May 5, 2004, where I appeared before the Senate Judiciary Committee. At the time, I sought to respond accurately to the question you had posed. Following that hearing, you sent a letter to the Department dated May 7, 2004, expressing concern about my response. The Department replied that same day in a letter dated May 7, 2004, in which my response was clarified and supplemented. The response letter explained that the Department was not involved in investigations of civilian contractors over whom the Department would have jurisdiction under the Military Extraterritorial Jurisdiction Act (MEJA), that such investigations were being conducted by the Department of Defense (DoD), and that the Department had not received a referral from DoD pertaining to this matter. Additionally, the letter confirmed that the Department had received formal referrals for criminal investigation from the CIA pertaining to the treatment of detainees by CIA-associated personnel.

8. During the Presidential campaign, President Trump repeatedly called for surveillance of mosques in the United States.

a. How would you respond to an instruction from the White House or Justice Department to conduct general surveillance of mosques unrelated to a specific, ongoing investigation, or to conduct assessments or investigations of Muslim-American civil society leaders?

RESPONSE: I cannot speculate on a hypothetical question about how I would respond to such a request. As in all matters, I would look at the individualized facts of the situation and follow the law and any policies of the FBI and the Department in determining what the next, appropriate steps might be.

b. How would you instruct FBI agents to respond?

RESPONSE: Please see my response to Question No. 8(a) above.

**QUESTIONS FOR THE RECORD
CHRISTOPHER A. WRAY
NOMINEE TO BE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION**

QUESTIONS FROM SENATOR DURBIN

For any questions with subparts, please respond to each subpart separately.

1. As we discussed in my office, the City of Chicago has been plagued by a surge in gun violence, with nearly 2000 people having been shot so far this year. Attorney General Sessions announced on June 30 that “we cannot accept these levels of violence in Chicago,” and I agree. Yet Attorney General Sessions is looking to cut Justice Department grant funding for cities like Chicago unless local police departments participate in the federal responsibility of immigration enforcement.

There is no evidence that undocumented immigrants are responsible in any meaningful way for the surge in Chicago violence. But law enforcement in Chicago will tell you that if the Justice Department cuts funding under programs like Byrne-JAG, it would significantly hurt the effort to reduce gun violence.

- a. **Do you believe that cutting DOJ funding to Chicago will reduce gun violence in the city?**

RESPONSE: I share your concern about the surge in violent crime in Chicago. If confirmed, I look forward to working with state and local law enforcement to fight that crime and to helping make Chicago and other cities facing a surge in violence safer for all residents. I am not familiar with the Department’s current budget and funding of grants to Chicago, and therefore am not in a position to comment further at this time.

- b. **Will you commit that if you are confirmed you will oppose efforts by DOJ to cut violence prevention funding that goes to Chicago, such as Byrne-JAG funding, because of disagreements over immigration policy?**

RESPONSE: Please see my response to Question No. 1(a) above.

2. When this Committee was considering your 2003 nomination to be head of the DOJ Criminal Division, I had an exchange of questions with you about the importance of prosecuting gun trafficking cases. We are seeing a flood of straw-purchased and illicitly-trafficked guns coming in to the streets of Chicago, where they are used to commit crimes and keep entire neighborhoods in fear. You told me back in 2003 that “investigating and prosecuting gun traffickers has been, and will remain, a top priority for the Justice Department.”

- a. **Will you commit that if you are confirmed you will continue to make investigating gun traffickers a top priority?**

RESPONSE: As I stated in my testimony before the Committee, I support efforts to address gun violence aggressively and effectively, including prosecuting gun traffickers. When I served as Assistant Attorney General for the Criminal Division, protecting the public from violent gun-related crime was among my top priorities. Likewise, as an Assistant U.S. Attorney, I prosecuted multiple straw-purchaser cases. Properly enforced, federal gun laws can reduce crime in our cities and communities. Those who deliberately violate federal gun laws should be investigated and prosecuted where the facts and evidence support such action. If confirmed, I will ensure that FBI resources are deployed appropriately to complement and support the efforts of ATF and state, local, and tribal law enforcement agencies to ensure that crimes involving firearms are vigorously investigated and prosecuted.

- b. **Will you oppose DOJ funding cuts to the City of Chicago if such cuts would undermine the ability of federal, state and local law enforcement to work together to investigate and prosecute gun traffickers?**

RESPONSE: I am not familiar with the Department's current budget and funding requests. If confirmed, I look forward to reviewing the Department's funding proposals that affect FBI resources.

3. A growing body of research has shown that when children are exposed to violent trauma, either through witnessing violence or becoming victims themselves, these children are at increased risk of perpetuating the cycle of violence. The Justice Department's Defending Childhood Initiative has made important strides in promoting awareness of the impact of childhood trauma and developing strategies for addressing and reducing it. I am also working with Senate colleagues on legislation to enhance access to trauma-informed care for children and youth who have been exposed to trauma and to promote best practices for trauma-informed care among federal, state and local stakeholders.

- a. **Do you agree that addressing youth exposure to trauma, including through appropriate mental health interventions, can help prevent violence in our communities?**

RESPONSE: I am not presently familiar with the research you reference, but I agree it is critical to protect children from violence and the trauma related to violence. I look forward, if confirmed, to learning more about ways in which the FBI can work to prevent violence and the related trauma from affecting our children and youth.

- b. **Will you commit to work with me on efforts to address and reduce youth exposure to trauma?**

RESPONSE: I welcome the opportunity to work with you and identify appropriate

ways in which the FBI can further its mission by addressing and reducing youth exposure to trauma.

4.

- a. **Do you agree that simply bringing more federal gun prosecutions isn't enough by itself to prevent gun violence?**

RESPONSE: I believe that investigating and prosecuting federal firearms violators is a critical piece of an effective gun violence prevention effort. In my experience, however, confronting gun violence requires more than just investigations and prosecutions. If confirmed, I look forward to learning how the FBI can work even more effectively with its federal, state, local, and tribal partners to reduce gun violence.

- b. **Do you agree that an effective strategy to reduce gun violence would benefit from Justice Department investments in youth violence prevention efforts like the programs administered by the Office of Juvenile Justice and Delinquency Prevention and anti-recidivism efforts like the programs administered under the Second Chance Act?**

RESPONSE: I am not familiar at this time with the FBI's role in or effort to complement programs administered by OJJDP, including the Second Chance Act. From my prior experience in the Department, I have no reason to doubt that the Department, including OJJDP, could play an important role in a multi-pronged strategy to reduce gun violence.

5. **If you are confirmed, how will you work to deter, prevent, and punish Russian interference in our elections?**

RESPONSE: As I stated in my testimony, ensuring that our elections are conducted free from corruption, interference, or influence by foreign nation states or non-state actors is critical to our democracy and republican form of government. If confirmed, I will engage with career professionals at the FBI and in other parts of the intelligence community to assess and counter as effectively as possible the threats we may face from Russia and other foreign actors.

6. **Will you commit, if you are confirmed, to inform Congress and this Committee if you become aware that the President or Administration are sharing information with the Russians about the United States' capabilities and vulnerabilities when it comes to cyber security?**

RESPONSE: If confirmed, I am committed to ensuring that unlawful leaking or dissemination of sensitive or classified information is aggressively investigated and, if warranted, prosecuted. I would work closely with the Department's leadership to respond to Congress' oversight needs consistent with its law enforcement, litigation, and national

security responsibilities.

7.

- a. **What is your understanding of the scope of Attorney General Sessions' recusal commitment from investigations into campaign or Russia-related matters?**

RESPONSE: As I stated in my testimony, I am not currently familiar with the full scope of Attorney General Sessions' recusal commitment.

- b. **If you are confirmed and if Attorney General Sessions were to ask you for information about the FBI's or the Special Counsel's involvement in such investigations, how would you respond?**

RESPONSE: As I stated in my testimony, without knowing the full scope of Attorney General Sessions' recusal commitment, I cannot speak to what course of action I would take in such a situation other than to say that I would consult with career ethics and legal officers at the FBI and Department of Justice and make sure that my actions followed all relevant procedures.

8. **Do you believe that Acting FBI Director Andrew McCabe is a man of honesty and integrity?**

RESPONSE: I respect Acting Director Andrew McCabe's many years of public service. I understand that the Department of Justice Office Inspector General has announced that it is undertaking a review of allegations concerning Acting Director McCabe. In light of this ongoing review, it is not appropriate for me to comment.

9. At your confirmation hearing, I asked about your involvement with the Bristol-Myers Squibb investigation and settlement. You replied: "... I don't think so. I was aware of the Bristol-Myers investigation. I think it's possible that the settlement may have occurred after I had left the Criminal Division."

A June 7, 2017 *Politico* article reports that you collaborated with then-U.S. Attorney Chris Christie on the criminal investigation into the accounting practices of Bristol-Myers Squibb. A June 1, 2017 *USA Today* article reported that Governor Christie specifically stated that he worked together with you "'a lot,' ...including on a fraud investigation into the drug maker Bristol-Myers Squibb."

You left the Criminal Division in May 2005. The Deferred Prosecution Agreement in the Bristol-Myers Squibb case was signed on June 15, 2005. It resulted from a years-long investigation by the Corporate Fraud Task Force, which you served on, of the company's actions in 2000-2001. Please take this opportunity to refresh your recollection on this matter. **What was your involvement in the investigation and settlement of the Bristol-Myers Squibb case?**

RESPONSE: I was generally aware of the ongoing Bristol-Myers Squibb investigation during my time as Assistant Attorney General for the Criminal Division. However, the resolution was finalized after I had left the government. I was not involved in negotiating or approving that resolution, and I do not recall receiving any information about the case or the terms of the resolution that later became the subject of public comment and criticism.

10. Attorney General Sessions has rescinded the Smart on Crime initiative, which directed federal prosecutors to consider several factors in determining whether to charge stiff mandatory minimum penalties or exercise prosecutorial discretion to charge a lower-level offense. As head of the Criminal Division, you were largely responsible for the promulgation and implementation of the “Ashcroft Memo,” which, like the new Sessions Memo, required federal prosecutors to charge the most serious, readily provable offense carrying the longest possible sentence. In contrast, you helped craft and publicly supported the Thompson/McNulty Memos on prosecuting corporate defendants. These memos, like Smart on Crime, set forth factors for prosecutors to consider in deciding whether to exercise discretion in charging corporate defendants.

You seem to have supported the use of prosecutorial discretion for corporations, while you took a different approach when it comes to nonviolent drug offenses. How do you explain this difference?

RESPONSE: I served in the Department under two Attorneys General, Janet Reno and John Ashcroft, who promulgated memoranda regarding charging decisions. In addition to those memoranda, I also followed the Principles of Federal Prosecution and the Principles of Federal Prosecution of Business Organizations. I sought at all times, whether the case involved an individual or business entity, to ensure that only charges that were supported by the facts and law were brought consistent with those policies and memoranda.

11. **Have you ever prosecuted a case where you felt a mandatory minimum sentence didn’t allow you to pursue the appropriate sentence based on the facts and circumstances of that case?**

RESPONSE: No, I have never personally prosecuted a case where I felt a mandatory minimum sentence prevented me from pursuing the appropriate sentence.

12. Federal prisons now consume one quarter of DOJ’s budget, which undermines other important priorities, like FBI funding.

- a. **Are you concerned about the impact of BOP’s budget on other law-enforcement priorities?**

RESPONSE: I am not familiar with the current budgetary challenges of the Department. If confirmed, I look forward to working to ensure that the Department's budget continues to provide adequate funding for the FBI to fulfill its many missions and priorities.

- b. **Are you concerned that increasing the length of federal sentences and/or the size of the federal prison population could exacerbate this problem?**

RESPONSE: I am not familiar with the present budgetary challenges facing the Department, the relative needs in that budget of BOP versus other DOJ components, or how meeting sentencing goals is impacting prison populations. Therefore, I am not in a position to respond to your question. If confirmed, I will work to ensure adequate resources are provided to the FBI so it can fulfill its many missions and priorities.

- c. **How do you think the Justice Department should address this problem?**

RESPONSE: Please see my response to Question No. 12(b) above.

13. For years, I have worked with Chairman Grassley on bipartisan criminal justice reform legislation. The Sentencing Reform and Corrections Act does not repeal any mandatory minimums, and does not lower any maximum sentences. It would simply allow federal judges to determine, on a case-by-case basis when the harshest penalties should apply to low-level nonviolent drug offenses. This legislation was endorsed by former AG Michael Mukasey, the National District Attorneys Association, and other law-enforcement leaders. **Will you commit to review this legislation and give me your reaction to it?**

RESPONSE: I am not familiar with the details of the legislation. If confirmed, I can commit to working with the Department and the Committee regarding legislation that supports the FBI's mission and priorities.

14. At your hearing, we discussed the importance of law enforcement working with the Muslim-American community. Former FBI Directors Robert Mueller and James Comey have both testified about this issue before Congress. In 2004, then-Director Mueller thanked the Muslim and Arab-American communities "for their assistance and for their ongoing commitment to preventing acts of terrorism." He went on to say that "all of us understand that the evolving threats we face today, and those we will face tomorrow, can only be defeated if we work together."

And in 2015, then-Director Comey testified that "we've worked so hard over the last 15 years to build relationships of trust that allow us to find out who might be trouble and to stop it. That's in everybody's interest. And anything that gets in the way, that erodes that relationship of trust, is not a good thing."

If you are confirmed, what specific steps will you take to maintain and build this relationship of trust that Director Comey described?

RESPONSE: During my prior public service, I observed that law enforcement obtained leads from Muslim-Americans and I appreciated the importance of those lines of communication. If confirmed, I will seek to maintain and build trust with all Americans, including Muslim-Americans. I will likewise work to ensure that the FBI works with all communities to better prevent crime and protect our national security. As I am not familiar with the FBI's current efforts in this regard, I am not able to state additional specific steps that may be appropriate at this time.

15. There has been a troubling rise in incidents of hate that have led to an environment of fear, particularly affecting the Muslim-American community. The data supports their concerns—in November, the FBI released its annual hate crime incident report, which found that in 2015, hate crimes increased by 6%. Much of this surge came from a 66% increase in reported hate crimes targeting American Muslims. The significant number of recent hate incidents that have reportedly occurred across the nation in recent months seems to indicate that the situation has worsened since that report was published.

a. **Are you concerned about the increase in hate crimes, including the particular increase in crimes motivated by anti-Muslim bias?**

RESPONSE: I am concerned anytime I hear of crimes being committed, whether hate crimes or otherwise. I am not familiar with the data you cite, but I believe firmly that crimes motivated by bigotry or prejudice cannot be tolerated.

b. **If confirmed, what steps will you take to address this disturbing trend?**

RESPONSE: I am committed to protecting the lives and liberties of all Americans. For that reason, it is important for the FBI to aggressively investigate and prevent hate crimes. If confirmed, I will review the FBI's current enforcement program and ascertain what opportunities may exist to improve the effort to combat hate crimes.

16. In 2012, I chaired a hearing of the Subcommittee on the Constitution, Civil Rights, and Human Rights that examined hate crimes and the threat of domestic extremism. After the hearing, at my request, the FBI began tracking hate crimes against Arab Americans, Hindu Americans, and Sikh Americans, among others. This is a positive step, but if state and local law enforcement agencies don't report hate crimes, we can't understand the full extent of the problem and what steps must be taken to address it.

In a speech to the Anti-Defamation League, then FBI Director Comey highlighted this issue, noting:

We need to do a better job of tracking and reporting hate crime to fully understand what is happening in our communities and how to stop it. There are jurisdictions that fail to report hate crime statistics. Other jurisdictions claim there were no hate

crimes in their community—a fact that would be welcome if true. We must continue to impress upon our state and local counterparts in every jurisdiction the need to track and report hate crime. It is not something we can ignore or sweep under the rug.

- a. **Do you agree with former Director Comey?**

RESPONSE: I share the concern about the need for accurate data to help us better understand hate crimes so as to improve our ability to combat them.

- b. **Will you commit that, if you are confirmed, you will take steps to ensure that the FBI works to improve hate crime reporting by state and local law enforcement?**

RESPONSE: I am not yet familiar with the methods by which law enforcement agencies report hate crimes. If confirmed, I look forward to learning more about how such reporting processes can be improved and what the FBI itself can do in that regard.

- c. **Recent reports indicate that many federal law enforcement agencies—including the FBI itself—have failed to report hate crimes. If confirmed, how will you address this issue?**

RESPONSE: Please see my response to Question No. 16(b) above.

- d. We also know that victims of hate crimes often decide not to report incidents to law enforcement due to reasons ranging from mistrust to language barriers. **If confirmed, what steps will you take to reach out to affected communities and encourage victims of hate crimes to come forward when these incidents occur?**

RESPONSE: Please see my response to Question No. 14 above.

- e. At my 2012 hearing on hate crimes and the threat of domestic extremism, we also discussed the threat posed by white supremacist and other extremist groups. Experts have documented a sharp-rise in far-right hate groups in the last several years. For example, in February, the Southern Poverty Law Center reported “the near-tripling of anti-Muslim hate groups.” **If confirmed, how do you plan to address the domestic terrorism threat from these types of homegrown extremist groups?**

RESPONSE: I am not yet familiar with the current threat assessments regarding white supremacist or other homegrown extremist groups of the type described in your question. If confirmed, I look forward to learning more about this issue so as to be able to ascertain how the FBI can best address such threats.

17. As head of the Criminal Division in 2004, you worked on the Justice Department’s “Ballot Access and Voting Integrity Initiative,” which sought to “protect the integrity of the election process by increasing the Department’s efforts and effectiveness in combating election fraud.”

All of us agree that when incidents of election fraud occur, they should be investigated and prosecuted to the fullest extent of the law. However, we know that these incidents are rare. A 2014 analysis by law professor Justin Levitt found only 31 incidents of voter fraud out of hundreds of millions votes cast since 2000.

- a. **Do you believe that widespread voter fraud exists in the United States?**

RESPONSE: I believe that ensuring access to vote and preserving the integrity of our voting process is critical to our democracy and republican form of government. I have not kept up with these issues since my tenure as Assistant Attorney General for the Criminal Division. I am not able, therefore, to express an informed opinion about the extent of voter fraud in the United States today.

- b. **Did your experiences in the Ballot Access and Voting Integrity Initiative lead you to believe that our elections have been tainted by widespread voter fraud?**

RESPONSE: During my tenure as Assistant Attorney General for the Criminal Division, I believed that the issue was sufficiently serious to merit the Department’s Initiative and the successful investigation and prosecution of a number of cases of voter fraud. I am not familiar, however, with the current information necessary to provide an informed belief about whether recent elections have been affected by voter fraud.

- c. **President Trump has said that 3 to 5 million people voted illegally in the 2016 election. Do you agree with the President’s statement?**

RESPONSE: I do not know enough of the relevant facts to be able to provide an informed response to this question.

18. In May, the President created a so-called “election integrity” commission, which even he has admitted—via Twitter—is solely focused on the issue of voter fraud. Given the rarity of election fraud, many of us are concerned that this commission was created to suppress the vote.

We have seen this game before. Just look at North Carolina, where Republicans passed a sweeping law purportedly designed to “combat voter fraud and promote public confidence in the electoral system.” A three-judge federal circuit court disagreed, finding that the legislature had “target[ed] African Americans with almost surgical precision” and “enacted... the law with discriminatory intent.”

Will you commit to ensuring there is a full and comprehensive investigation of any steps taken by the commission or individuals associated with the commission that appear to be in violation of the Voting Rights Act or other Federal laws?

RESPONSE: If confirmed, I will make every effort to ensure that the FBI fully and fairly investigates criminal conduct affecting or relating to the rights of all Americans to vote.

19. During your hearing I asked you about a December 30, 2004 Office of Legal Counsel (OLC) memorandum, “Definition of Torture Under 18 U.S.C. §§ 2340–2340A” (https://www.justice.gov/sites/default/files/olc/opinions/2004/12/31/op-olc-v028-p0297_0.pdf). When the memo was issued you were Assistant Attorney General of the Criminal Division. The memo states, “The Criminal Division of the Department of Justice has reviewed this memorandum and concurs in the analysis set forth below.” Footnote 8 of the memo further states, “[W]e have reviewed this Office’s prior opinions addressing issues involving treatment of detainees and do not believe that any of their conclusions would be different under the standards set forth in this memorandum.” In other words, under the new memorandum OLC continued to approve CIA “enhanced interrogation techniques” including waterboarding, forced nudity, sleep deprivation, and painful stress positions. I said I would give you time to review the memorandum before asking you about it.

- a. **Do you recall reviewing and concurring with this December 2004 memo? If not, how do you explain the fact that the memo states that the Criminal Division reviewed and concurred with it while you were head of the Division?**
- b. **When you concurred with this opinion, were you aware of the conclusions of prior opinions referenced in Footnote 8? If not, did you ask what these conclusions were? Did you consider these conclusions relevant to whether you should concur with the December 2004 memo?**
- c. **When you concurred with this opinion, were you aware of any allegations that detainees in U.S. custody had been abused? If so, did it occur to you that the conclusions of prior OLC opinions about torture might be relevant to these allegations?**

RESPONSE: I do not recall personally reviewing or approving the December 2004 memo. My memory is that career prosecutors in the Counterterrorism Section – which was within the Criminal Division at the time – who had experience investigating and prosecuting individuals under the torture statute, provided comments to OLC about their experience and understanding of the general meaning of the statute, but without reference to any specific techniques or conduct. As was consistent with the Criminal Division’s longstanding practice, the Division would not have commented in advance on the use of specific techniques or conduct in order not to jeopardize future investigations or prosecutions of individuals who violated the relevant statutes.

The construction of the December 2004 memo reflects this view. First, footnote 8 appears immediately before the portion of the memo that states, “The Criminal Division of the Department of Justice has reviewed this memorandum and concurs in the analysis *set forth below.*” (emphasis added). As I read the memo today, the placement of that footnote before the statement of Criminal Division’s concurrence indicates that the Criminal Division did not sign off on the portion of the memo that includes footnote 8. Moreover, the use of the pronoun “We” and phrase “this Office” in footnote 8 sets out that it was the Office of Legal Counsel’s opinion – and not the Criminal Division’s – that prior conclusions by the OLC would not be different under the standards set forth in the December 2004 memo.

Second, the Criminal Division’s practice of not commenting on specific forward-looking policies or techniques is reflected in the language set out in footnote 11 of the December 2004 memo – which is within the portion of the memo in which the Criminal Division concurred. That footnote states, “Our task is only to offer guidance on the meaning of the statute, not to comment on policy.” This language is consistent with the practice I described to you in my hearing.

As the construction of the memo demonstrates, the Criminal Division avoided commenting about specific techniques or conduct in order to preserve to the fullest extent possible the Criminal Division’s ability to investigate and prosecute abuse of detainees for torture or other related violations.

I was aware at the time the 2004 memo was published that detainees had been abused. In fact, notwithstanding any opinion written by OLC, under my leadership in June 2004, the Criminal Division secured the indictment of David Passaro, a CIA contractor, for abusing a detainee in Afghanistan.

- 20. Prior to your departure from the Criminal Division, were you briefed on or did you review and/or concur with any drafts or versions of three memos regarding interrogation that were issued by then OLC Principal Deputy Assistant Attorney General Steven Bradbury in May 2005? If yes, please provide a detailed description of your role in these memos.**

RESPONSE: I do not specifically recall reviewing or being involved with any of the OLC memos issued by then Principal Deputy Assistant Attorney General Bradbury, which I understand were all issued after my departure from the Department.

- 21. In response to my questions, then FBI Director Robert Mueller and then FBI General Counsel Valerie Caproni both testified to this Committee that interrogation techniques such as painful stress positions, threatening detainees with dogs, forced nudity, mock execution, and waterboarding, are “abusive under all circumstances.”**

- a. Do you agree?**

- b. **Will you commit that, if you are confirmed, you will ensure that FBI personnel never use these or any other abusive interrogation techniques?**

RESPONSE: Yes. Consistent with the testimony of then FBI Director Mueller and then FBI General Counsel Valerie Caproni, I agree that interrogation techniques such as painful stress positions, threatening detainees with dogs, forced nudity, mock execution, and waterboarding are “abusive under all circumstances.” If confirmed, I will continue the FBI policy of ensuring FBI personnel never use or participate in these or other abusive interrogation techniques.

22.

- a. **Have you read the unclassified summary of the Senate Intelligence Committee’s report on the CIA’s rendition, detention, and interrogation program?**
- b. **If so, do you agree with its conclusions?**
- c. **If not, will you commit that you will review this report and notify me if you agree with the report’s conclusions?**

RESPONSE: I have not yet read the report but, if confirmed, I will do so.

23. Since 9/11, DOJ has successfully prosecuted more than 500 terrorists in federal courts, while only eight have been convicted in military commissions at Guantanamo (and four of those were later overturned). In response to my question, then Director Comey testified “We have about a 20-year track record in handling particularly Al Qaeda cases in federal courts and federal prosecutors are effective at accomplishing two goals in every one of these situations: getting information and incapacitating the terrorists.” **Do you agree with former Director Comey?**

RESPONSE: Yes.

24. In an April 11, 2017 memo, Attorney General Sessions directed every U.S. Attorney’s office to prioritize the prosecution of immigration offenses and to designate a Border Security Coordinator to oversee prosecution of these offenses. This mandate ignores geographic differences and forces every federal prosecutor to focus limited resources on immigration regardless of whether it is a priority for that district. For example, in Illinois in 2016 only 5.3% of all federal prosecutions were for immigration crimes and other threats, like gun violence, are a much higher priority.

Do you believe that immigration offenses are one of the most serious criminal or national security threats that our country faces?

RESPONSE: Depending on the nature of the conduct, the offender, and the circumstances, the investigation and prosecution of violations of immigration laws can be an effective part of combating serious criminal and national security threats.

How will this directive affect the FBI's use of limited resources to address terrorism and other threats?

RESPONSE: I have not studied the April 11, 2017, memorandum and am not familiar enough with the FBI's current use of its resources to respond knowledgeably to this question. If confirmed, I will make every effort to ensure that the FBI uses its limited resources as efficiently and effectively as possible to protect the lives and liberties of all Americans from terrorism and other threats while following the directives and policies set out by the Department of Justice.

25. Since World War II, the U.S. has led the world in resettling refugees from around the world. National security leaders – Republicans and Democrats – have said that accepting refugees – especially Muslim refugees – who are fleeing war and terror advances U.S. national security interests. They argue that refugee resettlement supports the stability of our allies in the Middle East, who have been overwhelmed by Iraqi and Syrian refugee flows and counters ISIS propaganda that we are waging a war on Islam. See here: <https://www.humanrightsfirst.org/sites/default/files/FormerNatSecOfficialsLetterRefugees.pdf> **Do you agree?**

RESPONSE: I understand the refugee policy of the United States to be determined primarily through legislation passed by Congress and signed by the President. If confirmed as Director of the FBI, I would make every effort to ensure that the FBI fully and fairly complies with any applicable laws governing refugees.

**QUESTIONS FOR THE RECORD
CHRISTOPHER A. WRAY
NOMINEE TO BE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION**

QUESTIONS FROM SENATOR WHITEHOUSE

1. In 2008, former Office of Legal Counsel Deputy John Yoo named you as someone who would have reviewed a March 2003 OLC memo to the Department of Defense about military interrogation of “enemy combatants” held outside the United States. During your confirmation hearing, you stated: “during my time as principal associate deputy attorney general, to my recollection, I never reviewed, much less provided comments on or input on and much less approved, any memo from John Yoo on this topic.” **Given your non-involvement, why do you think Mr. Yoo named you as someone who would have reviewed that 2003 memo? Separately, please describe in detail any involvement you have had, in any capacity, with the drafting, editing, or review of any memos concerning the use of “enhanced interrogation techniques” or torture.**

RESPONSE: I do not know and I do not think I could responsibly speculate as to why Mr. Yoo testified as he did.

When I served as Principal Associate Deputy Attorney General, to the best of my recollection, I was not asked to and did not comment on or approve any memos issued by OLC regarding the use of so-called “enhanced interrogation techniques.”

When I served as Assistant Attorney General for the Criminal Division, I likewise do not recall having substantive involvement in the review or consideration of any issues related to OLC’s work on such memos. As I testified, under my direction I insisted that the Criminal Division not provide comments or contributions to any OLC memo that could undermine the ability of the Criminal Division to investigate and prosecute individuals who had violated the torture statute or other relevant criminal statutes. Thus, my memory is that career prosecutors in the Counterterrorism Section with experience investigating and prosecuting individuals under the torture statute provided comment to OLC about their experience and understanding only on the general meaning of the statute and its elements and without reference to any specific techniques or conduct. Our commitment to that position during my tenure is best illustrated by our prosecution of a CIA contractor, David Passaro, for the abuse of an Afghan detainee.

As for my views now, I believe that torture is wrong, unacceptable, illegal, and ineffective. Under my leadership, if confirmed, I would continue the policies that prohibit FBI personnel from participating in any such conduct.

2. **Please describe, to the best of your knowledge, the process by which you were selected to be the nominee to be Director of the FBI. Did you inquire about the**

position, and to whom? By whom were you approached about the position, and when? What questions, if any, did the Administration ask you before selecting you as the nominee to be Director of the FBI?

RESPONSE: On May 20, 2017, I was first contacted by Deputy Attorney General Rosenstein about whether I would be willing to be considered for the FBI Director position. I had not inquired about the position before the Deputy Attorney General contacted me. I then met with Attorney General Sessions and the Deputy Attorney General together. After that meeting, I had two meetings at the White House, both of which were attended by senior White House and Department of Justice personnel. As I stated when I testified before the Committee, over the course of this process I was asked general questions about my background and my experiences from my past service in the Department. I also talked about my commitment in the war on terror and explained that, if I were to become FBI Director, I would approach the job with independence, straight, and by the book. Following those meetings, the President briefly called me on approximately June 5, 2017, and advised that he intended to nominate me to be Director of the FBI. On June 7, 2017, I was announced as the intended nominee.

QUESTIONS FOR THE RECORD
CHRISTOPHER A. WRAY
NOMINEE TO BE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

QUESTIONS FROM SENATOR FRANKEN

1. Americans have a fundamental right to privacy, and I believe that in order to protect this right, our citizens must have a basic understanding of the tools law enforcement uses to keep them safe. Facial recognition technology is one of those tools; it allows law enforcement agencies to identify an individual merely by scanning his or her face. When this tool is used appropriately—and when we can trust that the results it produces are accurate—facial recognition can provide valuable benefits to public safety and security.

A few years ago, I asked the Government Accountability Office to examine the FBI’s use of facial recognition and to determine whether the technology was accurate. The GAO released that report last year, and its assessment of the FBI’s use of facial recognition raised serious concerns about the Bureau’s failure to adequately test the system’s accuracy.

In addition to operating its own photo database, which includes close to 30 million photos, most of them criminal mug shots, the FBI is also able to search a vast network of outside databases that contain more than 411 million face photos. Now, most of those 411 million photos are civil photos—including state driver’s licenses photos. So it’s important to make sure that the FBI’s programs are regularly tested for accuracy. We need to make sure that law-abiding citizens aren’t mistakenly targeted for criminal investigation just because of a software glitch. But according to the GAO report, the FBI has not adequately tested its system for accuracy, nor has it regularly audited the system for misuse.

a. Are you familiar with the FBI’s use of facial recognition technology?

RESPONSE: I have not had the opportunity to study this issue. If confirmed, I look forward to learning more about it.

b. If confirmed, will you commit to reviewing the Bureau’s program, including its accuracy and whether there are sufficient safeguards in place to prevent abuse?

RESPONSE: Yes.

2. During your time at the Department of Justice, and following the Enron collapse, you dedicated a great deal of time to prosecuting financial crimes and curbing corporate fraud. In a 2003 speech, you stated that “sometimes bringing criminal charges against a corporation is the only fair and effective way to deal with a corporate culture that has been corrupted to the point that it tolerates and even encourages criminal activity.” But you also acknowledged that prosecuting a corporation is no substitute for prosecuting culpable individuals within that corporation.

I have long fought to rein in abuses in the financial services industry, because those abuses played an important role in helping to cause the financial meltdown and the Great Recession. But like many Americans, I'm frustrated that in the aftermath of the financial crisis, few executives faced prosecution, despite their role in overseeing widespread fraud. In fact, according to a 2015 report, just one executive—a mid-level bank official—went to jail as a result of criminal conduct related to the financial crisis. At Goldman Sachs, JPMorgan, and other big banks, the chief executives didn't even lose their jobs.

Some have asserted that the Department of Justice was concerned that prosecuting a big bank or its executives could disrupt the markets, but I worry that the lack of aggressive prosecution has ultimately allowed criminals to escape justice.

- a. In a 2004 speech, you argued that the threat of prosecution may be the only way to effectively deter corrupt corporations from engaging in criminal activity. How would you characterize the threat of prosecution today? In other words, do you think that there have been enough criminal prosecutions to sufficiently deter financial institutions from committing fraud or other crimes?**

RESPONSE: If confirmed, I would expect that, where there is evidence of criminal wrongdoing, the FBI would investigate and, when the evidence warrants, support prosecution of companies as well as the individuals who commit or direct such crimes.

As I said at my hearing, my work with the Enron Task Force and in a number of other corporate fraud prosecutions demonstrates that I am willing to follow the facts and the law wherever they may lead, including to the highest levels of a corporation.

- b. Should you be confirmed, what approach will you take in investigating abuses by Wall Street banks and other powerful companies?**

RESPONSE: Please see my response to Question No. 2(a) above. If confirmed, I would approach the investigation of criminal activity by banks and companies the same as with any other entity or individual. Where sufficient information existed to merit FBI investigation, I would work to ensure that the conduct in question was investigated vigorously. I likewise would work to ensure that, if the evidence and law supported it and prosecutors determined that a case or cases should be brought, the FBI would provide the necessary support to ensure the offenders were held accountable.

3. Minnesota has struggled with the issue of terrorist recruitment for quite some time—first with al Shabaab and now with ISIL. So this is an issue that I have been very focused on.

Minnesota is home to the nation's largest Somali-American population—a vibrant community that I'm proud to represent in the Senate—and I continue to hear from members of that community who have concerns about recruitment, who fear losing their young men and women to a worldview that preys upon disillusionment and discontent. I repeatedly

pressed the previous administration to work in concert with the local community to combat radicalization and recruitment. I also underscored how important it is that programs to counter extremism not engage in profiling, or serve as covers for surveillance.

- a. If confirmed, how will you work to ensure that programs to combat terrorist recruitment efforts are effective?**

RESPONSE: I share your and your constituents' concerns about radicalization and recruitment. I am not familiar presently with what the FBI is doing in this regard, but I look forward to learning more and engaging effectively to combat terrorist recruitment.

- b. In your view, what steps can the FBI take to ensure that such efforts meaningfully engage members of the local community?**

RESPONSE: At this time, I do not have sufficient information to recommend specific steps. If confirmed, I look forward to learning whether there are additional efforts the FBI can undertake to meaningfully engage members of local communities to address and prevent radicalization and terrorist recruitment.

- c. What steps should the FBI take to ensure that its work to fight terrorist recruitment does not rely upon racial, ethnic, or religious profiling?**

RESPONSE: Unbiased law enforcement practices strengthen trust in law enforcement and foster collaborative efforts between law enforcement and communities to fight crime and ensure public safety. If confirmed, I look forward to learning more about what the FBI can do to ensure that its work in combating terrorist recruitment is done appropriately.

**QUESTIONS FOR THE RECORD
CHRISTOPHER A. WRAY
NOMINEE TO BE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION**

QUESTIONS FROM SENATOR COONS

1. As Assistant Attorney General for the Criminal Division of the Department of Justice, your name was listed on the government's brief in opposition to certiorari in *Hamdi v. Rumsfeld*. The brief argued that a U.S. citizen could be detained indefinitely at Guantanamo Bay without a full opportunity to consult with counsel or have access to habeas corpus. **What role did you play in the *Hamdi* case?**

- a. **Did you review the brief prior to its filing?**
- b. **The Supreme Court did not accept the government's arguments and found the treatment of detainees at Guantanamo was unconstitutional. Did the Supreme Court's decision change your view of executive power?**

RESPONSE: Although my name appears on the brief in *Hamdi* because of my position as Assistant Attorney General for the Criminal Division, I do not recall playing a role in drafting the brief or developing the litigation strategy in that case. If confirmed, I will follow all relevant legal precedents and federal law regarding the limitations on the power of the President and Executive Branch.

2. I believe we must strike the proper balance between core privacy protections and the need to investigate crimes and keep us safe. How will you weigh long-held privacy interests when they are in tension with the FBI's investigatory interests?

- a. **Is there an example of a time you believe the FBI went too far and infringed upon constitutionally protected privacy rights?**

RESPONSE: I share your belief that it is critical to balance protecting people's privacy with the need to gain information to investigate crimes and keep us safe. While the FBI has accomplished many great things during its history, such as enforcing civil rights, disrupting organized crime, fighting public corruption, preventing terrorist attacks, and countering the threat of foreign powers, it also has had some darker periods when it infringed on the civil liberties of Americans, such as the Palmer Raids, COINTELPRO, and the surveillance of the Rev. Dr. Martin Luther King, Jr. If confirmed, I am committed to working to ensure that the FBI will follow the Constitution and laws, while doing all it can to keep us safe and hold criminals accountable.

3. **Based on your knowledge, do you believe country of origin is a reliable indicator of the national security risk an individual poses?**

RESPONSE: No, I do not believe that country of origin, by itself or in isolation, is a reliable indicator of the national security risk an individual poses.

4. **Based on your knowledge, do you believe that religion is a reliable indicator of the national security risk an individual poses?**

RESPONSE: No.

- a. **Will you commit to instructing the FBI that the agency should not surveil a house of worship unless there is probable cause of criminal activity?**

RESPONSE: I cannot speculate on a hypothetical question about how I would respond to such a request. As in all matters, I would look at the individualized facts of the situation and follow the law and any policies of the FBI and the Department.

5. **What steps would you take to encourage and incentivize participation in the FBI's Hate Crime Statistics Act data collection program?**

RESPONSE: I am not yet sufficiently familiar with the methods by which law enforcement agencies report hate crimes to the FBI to identify appropriate steps. If confirmed, I look forward to exploring how the program can be improved, the role that the FBI can play in such an effort, and the appropriate steps that can be taken.

6. I am concerned about violent crime rates, especially in my home town of Wilmington. **If confirmed, how would you work to improve the safety of our communities while improving relationships between law enforcement and the communities they serve?**

RESPONSE: If confirmed, I will commit to protecting lives and liberty across America in part by enhancing the relationships the FBI has with its law enforcement partners and with the thousands of communities in which it operates. I am not currently in a position to assess those relationships. However, at a minimum, if confirmed I expect to first seek to learn from FBI professionals about the state of the FBI's engagement and relationships with law enforcement and communities. I would welcome the opportunity to meet with and hear from federal, state, and local law enforcement partners and community leaders and organizations to get their perspectives and wisdom as to how together we can more effectively improve the safety of our communities.

7. The Department of Justice established the Violence Reduction Network in 2014. VRN provides a comprehensive approach to reducing violent crime in communities around the

country by deploying federal resources in a targeted, strategic, data-driven way to assist state and local law enforcement. Through its participation in the VRN, the Wilmington Police Department created a new homicide unit, and the homicide clearance rate rose from less than 10 percent to more than 50 percent on current-year cases. **Will you commit to reviewing the Violence Reduction Network and supporting the sustainability of improvements in cities that have participated in the program?**

RESPONSE: I am not familiar with this particular program. If confirmed, I look forward to learning more about this issue. I intend to apply the lessons we have learned in the fight against violent crime to support the most effective programs.

8. Last year, then-Attorney General Loretta Lynch announced that the FBI would launch a pilot project early in 2017 to begin collecting use-of-force statistics nationwide and create the first online national database of its kind on interactions the public has with law enforcement. Former FBI Director James Comey also testified about the importance collecting reliable nationwide data on the use of force in encounters with civilians. **Do you know the status of this program?**

a. **Will you work with state and local law enforcement to maximize utilization of the National Use-of-Force Data Collection program?**

RESPONSE: Obtaining accurate data is critical to policy-making. I am not yet familiar with the use-of-force data collection project you reference, but I understand how accurate data could be important. If confirmed, I will seek to get up to speed on that project and to explore how the FBI could improve or support such efforts.

9. Last year, Department of Justice employees, including employees at the FBI, started undergoing mandatory implicit bias training. **Will you take part in this training, as former Director James Comey did?**

RESPONSE: I am not familiar with the training you reference, but I believe that enforcement of our laws should be done free from bias. If confirmed, I would expect to take all training required of Department employees.

a. **Will you support continuing these trainings for all FBI agents?**

RESPONSE: The fair enforcement of our laws is critical to ensuring confidence in our criminal justice system. Although I am not familiar with the training you reference, I look forward to learning more about these programs if confirmed.

10. **What will you do to ensure vigorous investigation of cases involving suspected violations of the Ethics in Government Act, bribery and honest services laws, and anti-nepotism laws?**

RESPONSE: If confirmed, I will make every effort to ensure that the FBI fully and fairly investigates suspected criminal violations that implicate the integrity of our public officials.

11. The total volume of worldwide piracy in counterfeit products is estimated to be 2.5% of world trade (USD \$461 billion). Counterfeit products such as fake pharmaceutical drugs or faulty electronics can cause direct physical harm to Americans, and the profits from these illicit sales often go directly to the coffers of organized crime. **How will you use the FBI's resources to address this growing threat?**

RESPONSE: I share your concern about the impact that counterfeit products can have on Americans. As Assistant Attorney General for the Criminal Division, I oversaw efforts to combat both intellectual piracy and theft, and organized crime. I am not fully up to speed on the current state of this problem so I am not in a position to suggest how FBI resources should be used to address it. If confirmed, I will seek to learn the scope of the current problem, the efforts and resources the FBI is currently devoting to fight this problem, and whether additional resources should be committed.

QUESTIONS FOR THE RECORD
CHRISTOPHER A. WRAY
NOMINEE TO BE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

QUESTIONS FROM SENATOR BLUMENTHAL

1. My bill, the NO HATE Act (S. 662), aims to improve hate crime reporting by providing grants for law enforcement agencies to implement the latest crime reporting standard, the National Incident-Based Reporting System (NIBRS). Our goal is to incentivize complete reporting of hate crimes in every single jurisdiction. Under Mr. Comey's direction, the FBI set an ambitious goal to have all law enforcement agencies implement NIBRS by 2021. That deadline is fast approaching.

- a. **What steps will you take to ensure that all law enforcement agencies implement NIBRS?**

RESPONSE: I share your concern about the need for accurate data to help us better understand the scope of the hate crimes issue. Although I am not yet familiar with the methods by which law enforcement agencies report hate crimes, or the NIBRS, if confirmed I look forward to exploring how the FBI might be able to improve the reporting process.

Will you support the NO HATE Act?

RESPONSE: I have not studied the details of the NO HATE Act. If confirmed, I look forward to learning more about this legislation.

2. We also need to help law enforcement officers recognize a hate crime when it occurs so that they can accurately report it and so that victims get the justice they deserve.
 - a. **What factors do you believe are behind the recent rise in hate crimes, and what can the FBI do to better address this problem?**

RESPONSE: Hate crime based on bigotry or prejudice cannot be tolerated. I am committed to ensuring that all Americans receive the full protection of the law. At this time, I have limited knowledge of the scope of this problem nationally. If confirmed, I look forward to learning more about the scope of the problem, what efforts are currently being done to combat it, and what additional actions can be taken to address the problem.

- b. **Will you commit to improving training that the FBI offers to local and state law enforcement officers to recognize and understand hate crimes?**

RESPONSE: At this time, I am not yet familiar with the current training practices

or with the specific resources that the FBI may have to provide training with regard to recognizing and understanding hate crimes. I agree, however, that in order to effectively investigate such crimes, law enforcement needs to recognize and understand them. If confirmed, I will seek to gain a better understanding about if and how the FBI can be more effective in working with its state and local law enforcement partners regarding hate crimes.

3. **Under your direction, how would the FBI reach out to communities at risk of being targeted for hate crimes, including Jewish, Muslim, Sikh, and Hindu communities?**

RESPONSE: I am not presently familiar with current FBI outreach efforts. I know that it is critical for law enforcement to build strong community relationships in order to combat any kind of crime. If confirmed, I will get up to speed and ascertain what opportunities for improvement exist for FBI outreach to communities at risk of being targeted for hate crimes.

4. President Trump recently announced the formation of a Presidential Advisory Commission on Election Integrity.

a. **Do you believe that voter fraud occurs on a large scale in the United States?**

RESPONSE: I believe that access to, and the integrity of, our voting process are integral to our democracy and republican form of government. As Assistant Attorney General for the Criminal Division, I supported efforts to combat activities intended to deny access to voting, and I oversaw efforts to fight voter fraud. Since leaving the Department, however, I have not kept up with the issue and, therefore, am not in a position to comment knowledgeably on the risks and extent of voter fraud in the United States today.

b. **Do you believe that 3 to 5 million votes were cast fraudulently in the 2016 election?**

RESPONSE: I do not know enough of the relevant facts to be able to provide an informed response to this question.

c. **If your answer to either of these question is yes, what is the specific evidence that supports your belief?**

RESPONSE: Please see my responses to Question Nos. 4(a) and 4(b) above.

5. In 2015, the Bureau announced that examiners' testimony in at least 90 percent of trial transcripts analyzed by the Bureau as part of its Microscopic Hair Comparison Analysis Review contained erroneous statements. Some 93 percent of FBI agents or analysts either

provided testimony with erroneous statements, or submitted laboratory reports with erroneous statements. In cases in which examiners provided testimony to inculcate a defendant at trial, erroneous statements were made in 96 percent of the cases. For defendants who received the death penalty, errors were identified in 94 percent of cases. These findings were shocking to some of the core values of our criminal justice system. The Department and the FBI have since committed to working to conduct an investigation into FBI lab protocols, to determine whether additional steps should be taken, and to encourage states to conduct their own independent reviews where examiners were trained by the FBI. Going forward, it is critical for us to understand how the FBI Laboratory began to offer scientifically invalid testimony, how the problem persisted for so long, and how we can ensure that it will not happen going forward in cases involving hair analysis or any other forensic science tools and techniques.

- a. Are you familiar with the use of a “root cause analysis” process as part of an ongoing quality assurance program? What commitment can you make today to ensure that the root cause analysis is fully undertaken?**
- b. If you are confirmed to lead the Bureau, when could you report back to this committee on the current status of the root cause analysis? What other tools will you use in order to understand how this problem happened and ensure that it will not happen again in any context?**
- c. In your opinion, what responsibility does the FBI have for ensuring that any forensic science techniques used by the FBI labs or any FBI personnel have been scientifically validated and that the testimony provided in cases is scientifically validated?**
- d. Can you commit today to continuing to work with both the Innocence Project and the National Association of Criminal Defense Lawyers - the parties with which the Bureau has worked constructively in performing this review thus far?**

RESPONSE: While I am unfamiliar with the details surrounding both the FBI’s Microscopic Hair Comparison Analysis Review and the ongoing quality assurance program, I am committed to ensuring that the forensic science techniques utilized by the FBI are reliable and that the testimony offered by FBI examiners is accurate. If confirmed, I look forward to learning more about this important issue.

6. As you know, the FBI is responsible for enforcing federal laws that try to reduce incidents of gun violence. Although I’ve made no secret of the fact that I believe additional laws are necessary – such as universal background checks and bans on gun trafficking and straw purchases – I’m firmly in agreement with my Republican colleagues that the laws already on the books need to be enforced more strongly.

- a. **How will you ensure that the Bureau of Alcohol, Tobacco, and Firearms, the National Instant Background Check System, and other federal law enforcement agencies that seek to reduce gun violence and prevent incidents of illegal gun possession have the resources they need to fulfill their missions?**

RESPONSE: If confirmed, I will review the FBI's budget to ensure that the Criminal Justice Information System Division, which runs the National Instant Criminal Background Check System, has sufficient resources to fulfill the important mission of completing background checks for firearms purchases. Because budgets for ATF and other federal law enforcement agencies fall outside the purview of the FBI, I am not in a position to comment on their resources.

7. At your hearing, you told me that you “support efforts to deal with gun violence aggressively and effectively.” When I asked about legislation, you said that you “wouldn't rule out any common sense gun reform legislation without having a chance to review it.” Now that you have time to review, I would like to ask you about several recent legislative proposals to confront the problem of gun violence.

- a. **Would you support legislation to require universal background checks, such as the Manchin-Toomey proposal that was introduced in the 113th Congress as Senate Amendment 715 to S. 649?**
- b. **Would you support legislation to require that all required background checks are completed before a gun can be sold – even if they take longer than three days – such as the Background Check Completion Act that I introduced in the 114th Congress (S. 2213)?**

RESPONSE: I believe that those who deliberately violate federal gun laws should be investigated aggressively. I agree that background checks can be a critical part of the effort to keep guns out of the hands of individuals prohibited from possessing them. When I served as Assistant Attorney General for the Criminal Division, protecting the public from violent gun-related crime was among my top priorities. Likewise, as an Assistant U.S. Attorney, I prosecuted multiple straw-purchaser cases. Properly enforced, federal gun laws can help reduce crime in our cities and communities. I am not in a position to comment on specific legislation, but I look forward to learning more about it if confirmed.

8. It can be alarmingly easy for corporations to get away with criminal activity – chalking any penalties up as simply the cost of doing business, secure in the knowledge that the individual actors who made the decision to commit malfeasance will be effectively shielded from liability by the corporate form. Of course, “corporations” per se cannot act – any illegal or immoral actions are the result of decisions by particular individuals, and so I strongly believe it is important for our justice system to hold such individuals accountable. I understand that if confirmed as FBI Director, you will not make the decision about

whether to charge particular individuals with crimes – that is DOJ’s domain. Nonetheless, it is important to know how you would approach the issue of corporate crime.

- a. If confirmed, will you aggressively investigate issues of misconduct in the corporate sphere – both on the part of a corporation and by individuals whose personal commission of bad acts may lead to corporate wrongdoing?**

- b. What are the best strategies for the FBI and DOJ to ensure that when corporate misconduct comes to light, the individuals who are personally behind such misconduct are held accountable to the fullest extent of the law?**

RESPONSE: If confirmed, I will ensure that the FBI aggressively investigates suspected fraud and crime in all its forms, against individuals and companies alike. As I said at my hearing, my work with the Enron Task Force and in a number of other corporate fraud prosecutions demonstrates that I am willing to follow the facts and the law wherever they may lead, including to the highest levels of a corporation.

**QUESTIONS FOR THE RECORD
CHRISTOPHER A. WRAY
NOMINEE TO BE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION**

QUESTIONS FROM SENATOR HIRONO

1. You said during your hearing that you had not and would not give any assurances of personal loyalty to President Trump, that you did not expect to meet alone with the President except under extraordinary circumstances, and that you would inform Deputy Attorney General Rosenstein if you received any inappropriate contact from the President.

- a. **Please give an example of the circumstances under which you would think it appropriate to meet alone with the President.**

RESPONSE: One example of an appropriate circumstance could be a national security issue that required the FBI Director to speak directly to the President, particularly where real-time events did not allow for Department of Justice representatives to join in the meeting or discussion.

- b. **Would you consider any request by the President or other White House official for an assurance of personal loyalty to be inappropriate and worth reporting to the Deputy Attorney General? If you received such a request, are there additional actions you would take?**

RESPONSE: In the course of being chosen as the nominee to be the Director of the FBI, I was not asked for a loyalty pledge. I did not offer one. I would not take one.

- c. **Would you consider an inquiry by the President or other White House official into Special Counsel Mueller's investigation to be inappropriate and worth reporting to the Deputy Attorney General? If you received such an inquiry, are there additional actions you would take?**

RESPONSE: The Department has policies in place that govern how communications between the White House and the Department should be made. If confirmed, I will follow those policies. I would evaluate any situation with careful assessment of the particular circumstances, in consultation with the appropriate Department officials, and exercise my best judgment about what additional steps might need to be taken to protect the integrity any investigation.

2. **During the process leading up to your nomination, did you receive assurances that you would be free to do your job without threat of being fired? Who provided that assurance?**

RESPONSE: Throughout the nomination process, I have consistently understood that, if confirmed, I will be allowed to perform my job as Director of the FBI independently. As I stated at my hearing, I believe that there is only one right way to do the job as Director: with strict independence, by the book, playing it straight, and faithful to the Constitution, our laws, and the best practices of the institution, without regard to any partisan political influence. That is the commitment I brought to my prior service to the Department and, if confirmed, that is the commitment I would bring as Director of the FBI.

3. During your hearing, you stated that it would be “wise” for a candidate for federal office to inform the FBI if they were contacted by a representative of a foreign government claiming to have politically helpful information, and that this is “the kind of thing the FBI would want to know.”

- a. **Is there a legal obligation for someone in this situation to contact the FBI or some other law enforcement agency? If not, do you believe there should be?**

RESPONSE: Where a person has evidence of a crime, the person should report it to the FBI. Whether a failure to report such information would violate the law would depend on the facts and circumstances.

- b. **Whether or not there is a legal obligation, shouldn't it be expected for someone in this situation to contact the FBI?**

RESPONSE: Please see my response to Question No. 3(a) above.

- c. **If, as FBI Director, you were aware that someone in this situation had contacted the FBI, what actions do you think would be appropriate in response?**

RESPONSE: The FBI is in the business of investigating suspected criminal violations and threats to our national security. What actions might be appropriate would depend on the nature of the information reported.

4. In the May 9, 2017 memo that was used to justify the firing of Director Comey, Deputy Attorney General Rosenstein stated that the FBI was “unlikely to regain public and congressional trust until it has a Director who understands the gravity of the mistakes” made during the investigation into former Secretary Clinton’s use of a private email server, including Director Comey’s decision to publicly announce his conclusion that the case should be closed without prosecution, “and pledges never to repeat them.”

- a. **Are there situations in which you think it would be appropriate to publicly comment on an ongoing or closed investigation?**

RESPONSE: As a general matter, I believe the FBI should refrain from commenting on ongoing investigations and cases, as well as closed matters. As I said during my hearing, it was not my practice as a line prosecutor or as head of the Criminal Division to comment on ongoing or closed investigations. However, there are exceptional circumstances where it may be appropriate, consistent with FBI and Department policy, and in the public's interest, to provide information in a public setting regarding ongoing matters before indictment or formal charge, or closed matters.

b. Would you consider a foreign adversary government's attempt to interfere in an election to be such a situation?

RESPONSE: It would depend on the facts and circumstances as to whether public disclosure would be appropriate.

5. Your current law firm, King & Spalding, has provided extensive representation to large Russian state-owned oil companies Rosneft and Gazprom, and to companies doing business with Rosneft and Gazprom. In fact, your biography on the firm's website used to include as one of your clients: "An energy company president in a criminal investigation by Russian authorities."

a. While at King & Spalding, did you participate in any matters involving Rosneft or Gazprom, or share any confidential information with either company, or with entities engaged in business with either company?

RESPONSE: No.

b. If confirmed, how will you resolve any conflicts that your firm's representation presents? Will those representations interfere with your ability to investigate any Russian interference into American businesses or political processes?

RESPONSE: I would consult the appropriate ethics officials and follow the rules and procedures set forth in federal law.

c. What assurance can you give that the FBI will aggressively pursue investigations that touch on or involve your firm's Russian clients?

RESPONSE: My loyalty is to the United States. I have never represented a Russian company or any individual connected with the Russian government. If there are or were to be investigations in which King & Spalding was involved as counsel, I would consult with the appropriate ethics officials and take appropriate action with regard to my participating in such investigations.

6. You have spent the last 12 years of your career in private practice representing major corporations and public officials—including international financial institutions, pharmaceutical, health care, and telecommunication companies, and New Jersey Governor Chris Christie—in regulatory and criminal investigations.

- a. **What can we take away from your time in private practice to assure the American people you will be an aggressive and independent investigator of wrongdoing by corporations and public officials, including the current Administration?**

RESPONSE: As I stated in my hearing, I am committed to being independent, fair, impartial, and faithful to the law. During my service as an Assistant U.S. Attorney and later as the Assistant Attorney General for the Criminal Division, I prosecuted or supervised hundreds of criminal cases on behalf of the United States. Throughout this work, I demonstrated my dedication to public service and the rule of law. If confirmed, I pledge to continue following the facts and the law to address violations of criminal law, including corporate fraud and public corruption. Upon returning to public service, my duty would once again be solely to the United States, and I would honor that duty as I have in all of my prior law enforcement positions, ensuring that investigations of wrongdoing by corporations and public officials are conducted without favor, influence, or political partisanship.

- b. Your law partner, Bobby Burchfield, serves as the ethics advisor for the trust created in January to deal with the President's extensive conflicts of interest between his public service and the Trump Organization. That trust arrangement has been widely criticized by ethics experts as completely inadequate to assure the American people that President Trump is focused on the people's business, not his own bottom line. **Does your partner's status as ethics advisor pose any conflict of interest for you if matters arise involving the Trump Organization and questions about whether President Trump has truly separated himself from those business dealings?**

RESPONSE: I have not personally participated in the representation of, or done any work for, that trust. I would consult the appropriate ethics officials to determine whether there are any conflicts, and will follow the applicable rules and procedures.

- c. **Has your law firm represented members of the Trump family? If so, please tell us which members, the details of those representations, and whatever personal involvement you had in any of those representations.**

RESPONSE: To my knowledge, King & Spalding has not represented members of the Trump family individually. As has been widely reported, the firm does represent the Donald J. Trump Revocable Trust and The Trump Group. I have

not been personally involved in those representations.

d. How would you resolve conflicts of interest if the investigation into the Russian campaign to influence our election involves any Trump family members or businesses your firm has represented?

RESPONSE: I would consult the appropriate ethics officials and follow the rules and procedures set forth in federal law.

7. Since the election, we've seen an increase in hate crimes by far right extremists. The Southern Poverty Law Center is currently tracking over 1,600 extremist groups operating around the country. Despite having voted against the 2010 expansion of the federal hate crime statute, Attorney General Sessions has pledged to aggressively enforce the law.

a. Are you concerned about the rise in hate crimes?

RESPONSE: Crimes based on bigotry or prejudice cannot be tolerated. If confirmed, I will work to ensure that the FBI aggressively investigates suspected hate crimes and works effectively with its law enforcement partners and communities to ensure its efforts are as effective as possible.

b. If confirmed, what resources will you devote to investigating hate crimes?

RESPONSE: Please see my response to Question No. 7(a) above. If confirmed, I will devote the necessary resources to ensuring vigorous and appropriate investigations of suspected hate crimes. As I am not up to speed on the full scope of the problem nationwide, on what resources the FBI is devoting currently to such investigations, or on what additional resources might be available, I am not currently in a position to provide additional information.

8. Earlier this year, the Trump administration launched an office dedicated to the victims of crimes committed by undocumented immigrants—the Victims of Immigration Crime Engagement (VOICE) Office. Department of Homeland Security officials also said the office would provide services to victims of “crimes with an immigration nexus,” suggesting that the scope of the agency could expand beyond the undocumented, despite repeated evidence that shows that immigrants are less likely to commit crimes.

a. Are you aware of whether the FBI has a mechanism for tracking crimes committed against individuals because they are immigrants or perceived to be immigrants?

RESPONSE: I am not aware of whether the FBI has mechanisms for tracking crimes committed on the basis you have identified in your question.

- b. Are you concerned that the VOICE office will lead to more harassment and more hate crimes committed against anyone that is perceived to be an immigrant?**

RESPONSE: It is my understanding that the VOICE program is run by the Department of Homeland Security. I am not familiar enough with the activities of that program to express an informed opinion about it.

9. During your time as a senior official in the Bush Justice Department, you were involved in numerous issues arising from the “war on terror,” in which the Administration relied on broad views of executive power to justify limiting due process and undermining civil liberties. For example, your name was on the government’s brief in opposition to certiorari in *Hamdi v. Rumsfeld*, a challenge to the detention of a U.S. citizen detained at Guantanamo Bay. In addition, former Office of Legal Counsel Deputy John Yoo testified that you likely reviewed a draft of the infamous “torture memo,” which relied on a broad theory of executive power to conclude that the President had authority to conduct “enhanced interrogation” of “enemy combatants.”

- a. Do you subscribe to the broad theory of presidential executive authority, sometimes referred to as the “unitary executive” theory, that was the basis for indefinite detention, the torture memo, and the Bush administration’s illegal warrantless surveillance of Americans?**

RESPONSE: I have not studied the “unitary executive” theory and cannot speak to the legal analysis on which it is based. If confirmed, I will follow all relevant legal precedents and federal law regarding the limitations on the power of the President and the Executive Branch.

- b. If you do subscribe to that theory, how can you assure us that you would be able to maintain true independence from President Trump?**

RESPONSE: I believe that there is only one right way to do the job as Director of the FBI: with strict independence, by the book, playing it straight, and faithful to the Constitution, our laws, and the best practices of the institution, without regard to any partisan political influence. That is the commitment I brought to my prior service to the Department and, if confirmed, that is the commitment I would bring to being Director of the FBI.

- c. If you do subscribe to that theory, do you believe it would be inappropriate for the FBI Director to refuse to meet with the President one-on-one to discuss ongoing investigations? Or for the President to weigh in on ongoing investigations?**

RESPONSE: Please see my response to Question No. 9(b) above.

10. Following the September 11 attacks, the FBI launched an investigation called “PENTTBOM” in which over 750 aliens were arrested on immigration charges and held on the premise that they might have information about the attacks. According to the DOJ Inspector General’s report on the treatment of these detainees, you told the Director of the Bureau of Prisons (BOP) “not to be in a hurry” to provide detainees with access to communications, including with attorneys or family members, and to use policies restricting communications “to their legal limit in order to give officials investigating the detainees time to ‘do their job.’” You have denied having such a conversation.

a. Is it still your position that you did not have such a conversation?

RESPONSE: I do not recall ever instructing anyone at BOP “not to be in a hurry” to provide detainees with access to communications. I believe that my involvement was thoroughly reviewed during my confirmation process to be Assistant Attorney General for the Criminal Division in 2003.

In the PENTTBOM investigation immediately after September 11, 2001, my primary role involved consultation with members of the FBI, Criminal Division, U.S. Attorney’s Offices, and other components regarding criminal investigations and prosecutions. Immigration policy issues, including those regarding the detention of illegal aliens for immigration violations, were not part of my portfolio.

Consistent with my view at the time and as the OIG report itself makes clear, “Department officials never instructed [Hawk Sawyer] to violate BOP policies, but rather to take the policies to their legal limit in order to give officials investigating the detainees time to ‘do their job.’”

b. What would you have done if the BOP was going beyond what the law allowed?

RESPONSE: Were I to have been aware of a circumstance in which BOP was going beyond what the law allowed, I likely would have contacted the FBI and the DOJ Inspector General for their consideration and, if appropriate, investigation.

c. Do you think that any of your communications with the Director of the BOP contributed to detainee abuses described in the report?

RESPONSE: No.

d. Do you believe it would be appropriate for the DOJ, FBI, or BOP to take actions similar to those described in the report in response to potential

future terrorist attacks?

RESPONSE: No.

11. **How would you respond to an instruction from the White House to open an assessment, preliminary investigation, or full investigation against any specific individual, or to conduct surveillance on any individual? How would you respond to information that the White House had made such a request of another FBI official? Under what circumstances is it appropriate for the FBI to seek reporters' communications during leak investigations?**

RESPONSE: If a person who is employed at the White House has evidence of a crime or activity that poses a threat to national security, that person, like any other person, should report it through appropriate channels to the FBI. The Department of Justice has policies that apply to communications with the White House, and, if confirmed, I would follow those policies. As for your question regarding the seeking of reporters' communications during a leak investigation, the Department has a policy in place with safeguards designed to ensure appropriate respect for the freedom of the press. If confirmed, I would intend to follow that policy.

12. **In 2016, following criticism about the FBI's collection of information on hate crimes and police use-of-force incidents, the FBI began a pilot project to improve police data collection. The DOJ's Bureau of Justice Statistics is also working on developing its data collection efforts.**

- a. **Do you think the FBI's current efforts to collect data on hate crimes and police use-of-force incidents are sufficient? If not, what steps would you take to improve them?**

RESPONSE: I share your concern about the need for accurate data to help us better understand the scope of the hate crimes issue. I am not yet familiar with the methods by which law enforcement agencies report hate crimes, or the Bureau of Justice Statistics' work in the area. If confirmed, I look forward to learning about such methods and opportunities for improvement.

- b. **If confirmed, would you prioritize the FBI's data collection efforts? What steps would you take to improve the accuracy and consistency of data, particularly data obtained from law enforcement agencies across the country?**

RESPONSE: Please see my response to Question No. 12(a) above.

13. The Attorney General's Guidelines for Domestic FBI Operations give FBI agents broad

discretion, and allow race, religion, national origin, and First Amendment activity to be used as factors to justify scrutiny.

- a. **Do you think that individuals of a particular race, ethnicity, religion, or national origin are more dangerous or more likely to be extremist? If so, please identify which races, ethnicities, religions, or national origins those are.**
- b. **In making investigative decisions, when is it appropriate to take race, ethnicity, religion, or national origin into account? When is it appropriate to monitor individuals on the basis of these characteristics?**
- c. **Do you believe that the current Guidelines strike the right balance between preventing crime and terror and protecting civil liberties?**
- d. **Given the potential for abuse under the Guidelines, would you be willing to strengthen their protections to prevent assessments from being used in a discriminatory manner or as a political tool?**

RESPONSE: I do not believe that individuals of a particular race, ethnicity, religion, or national origin are more dangerous or more likely to be “extremists.” In making investigative decisions, the appropriateness of taking certain characteristics into account for monitoring individuals depends on the particular facts and circumstances. I have not reviewed the Attorney General’s Guidelines in recent years and am not up to speed on how those Guidelines are being followed presently. I, therefore, am not in a position to comment on whether any changes to the Guidelines should be considered.

14. **During the presidential campaign, President Trump called for surveillance of mosques in the United States. How would you respond to a request to surveil mosques or to investigate Muslim-American individuals or community leaders?**

RESPONSE: I cannot speculate on a hypothetical question about how I would respond to such a request. As in all matters, I would look at the individualized facts of the situation and follow the Constitution, the law, and any policies of the FBI and the Department.

15. **You stated during your hearing that you would not support the creation of a Muslim registry. If such a registry were created by another government agency, what would you do to prevent the use of FBI data in such a registry?**

RESPONSE: As I testified, religious freedom has always been very important to me, and I would want to pay close attention to any program that seemed to raise the kinds of concerns you note. I would look at the individualized facts of the situation and follow

the Constitution, the law, and any policies of the FBI and the Department.

16. **According to statistics from 2014, over 83 percent of FBI agents were white. In 2015, in a speech at Georgetown University, former Director Comey said, “The FBI is overwhelmingly white and male among my agent force . . . I have to change the numbers.” What will you do to improve diversity at the FBI?**

RESPONSE: I understand that diversity is one of the FBI's core values, and I believe that diversity is important to ensuring the FBI is recruiting the best talent it can. If confirmed, I will review the FBI's practices and recruitment efforts and make changes, as appropriate.