SALLY QUILLIAN YATES

April 13, 2015

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

The Honorable Patrick J. Leahy
Ranking Member
United States Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy:

Thank you again for giving me the opportunity to appear before the Committee on March 24, 2015. Enclosed please find my responses to the Questions for the Record that I received from Chairman Grassley and Senators Sessions, Perdue, Tillis, Feinstein, Durbin and Franken.

Sincerely,

Sally Q. Yates

Sally Quillian Yates

Enclosures

**Senator Grassley, Chairman**
**Questions for the Record**
**Sally Yates**
**Nominee to be United States Deputy Attorney General**

1. **In April 2014, the Department of Justice submitted a report to the President examining the FBI whistleblower regulations.[1]In January of this year, the U.S. Government Accountability Office (GAO) published a report examining those regulations and the Department's handling of FBI whistleblower complaints.[2] During the March 24 hearing, you indicated that you had not reviewed the Department's report. I encourage you to review the Department's analysis and recommendations, as well as those of the GAO.**

   **In its April 2014 report, the Justice Department recommended expanding whistleblower protections to disclosures made to the second-in-command of an FBI field office.[3] Despite the urgings of employees, whistleblower advocates, and even the Office of Special Counsel, however, the Department did not recommend expanding protections to disclosures made to direct supervisors or other management within an FBI employee's chain of command.**

   **As the Department notes, "[The Office of Special Counsel (OSC)] believes that to deny protection unless the disclosure is made to the high-ranked supervisors in the office would undermine a central purpose of whistleblower protection laws."[4] The U.S. Government Accountability Office (GAO) report examining the Department's handling of FBI whistleblower cases similarly stresses that employees who report to a "nondesignated entity," whether they intend to officially blow the whistle or not, leaves those employees with "no recourse" against retaliation.[5] GAO explains that it is common for whistleblowers in the FBI to report wrongdoing to their immediate supervisors, and some report concerns without realizing or expecting to make a "whistleblower disclosure."[6] Moreover, internal FBI policy *encourages* reporting**

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[1] Department of Justice Report on Regulations Protecting FBI Whistleblowers (Apr. 2014), at 12-13 (The current regulations protect disclosures made to the first-in-command of an FBI field office) [Hereinafter "DOJ Report"].

[2] U.S. Government Accountability Office, Report to the Chairman, Committee on the Judiciary, U.S. Senate, Whistleblower Protection: Additional Actions Needed to Improve DOJ's Handling of FBI Retaliation Complaints (Jan. 2015) [Hereinafter "GAO Report"].

[3] DOJ Report at 12-13.

[4] *Id.* at 14.

[5] GAO Report at 18.

[6] *Id.* at 19; Notably, the impulse to report wrongdoing to a direct or immediate superior is common in the private sector as well as in the government. *See* Ethics Resource Center, Inside

**wrongdoing within the chain of command.[7] The policy "specifically prohibits retaliation against employees who report compliance risks to any supervisor in the employees' chain of command, as well as additional specified officials, but *does not offer any means of pursuing corrective action if an employee experiences retaliation for such a disclosure*."[8]**

**It is not surprising, then, that during the course of its review the Department examined its handling of 89 FBI whistleblower cases, and determined that 69 of them were deemed "non-cognizable." A "significant portion" of those involved disclosures that were "not made to the proper individual or officer under 28 C.F.R. § 27.1(a)."[9]**

**a. Given the clear findings of both reports that a significant number of FBI whistleblowers are left with no recourse for reporting wrongdoing, why shouldn't the law or regulations protect disclosures made to direct supervisors and others within an FBI employee's chain of command?**

**RESPONSE:** I believe strongly that whistleblowers play an important role in discovering and preventing waste, fraud, and abuse in the government, and I can assure you that the Department takes reports of retaliation very seriously. The Department is working with the FBI to improve the process for adjudicating claims of retaliation. These changes will ensure that the Department has a fair and efficient process for adjudicating these claims, and include expanding the list of persons to whom a protected disclosure may be made. As Acting Deputy Attorney General, and if confirmed, I will work to ensure that our employees, whether at the FBI or in any other part of the Department, do not face retaliation for making a protected disclosure.

**b. The Department released its report recommending changes to the FBI whistleblower regulations almost a year ago. What steps has the Department taken to implement its own recommendations, and when will the changes that the Department already has recommended take effect?**

**RESPONSE**: The Department has already taken a number of steps to implement the recommendations in the report, including providing whistleblowers with access to Alternative Dispute Resolution, implementing a policy of referring any final decision that includes a finding of unlawful reprisal to the FBI Office of Professional Responsibility – copying the FBI Director, expanding resources for the office that handles appeals of FBI whistleblower cases, committing to publicly release the Office of Attorney Recruitment and Management (OARM) annual reports

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the Mind of a Whistleblower: A Supplemental Report of the 2011 National Business Ethics Survey, at 11 (2012) ("In 2011, 56 percent of first reports were made to the employee's direct supervisor."); *available at* http://www.ethics.org/files/u5/reportingFinal_0.pdf.

[7] GAO Report at 19 n. 41 (citing Policy Directive 0032D, Non-Retaliation for Reporting Compliance Risks (Feb. 11, 2008) and Policy Directive 0727D Update (Sept. 23, 2014)).

[8] *Id.*

[9] DOJ Report at 7.

in the future, and working with the DOJ Office of the Inspector General (OIG) to develop improved training for FBI employees. Implementation of the other recommendations in the report requires additional regulatory authority, and the process of drafting those regulations is ongoing.

2. **During the March 24 hearing, I asked you whether the FBI regulations should be amended to clarify that FBI whistleblower disclosures to Congress are protected. I also noted that the Department recommended in its April 2014 report establishing sanctions for violations of protective orders in the context of OARM proceedings.[10] During the Committee's March 4 hearing examining the FBI whistleblower regulations, witnesses from the first panel noted that this sanctions proposal could be used to significantly disadvantage whistleblowers in Department proceedings. The proposal also has no exception for disclosures to Congress or the Department of Justice Inspector General, and thus could function as gag orders.**

    a. **Will the Department's proposed regulations incorporate provisions endorsed by GAO, the IG, and the FBI at the Committee's March 4, 2015 hearing to explicitly protect disclosures made by FBI employees to Congress?**

**RESPONSE**: The Department's review of the regulations necessary to implement this change is ongoing. While we do not yet know everything that will be incorporated into the regulations, we will seriously consider these suggestions.

As you noted, the Department's report of April 2014, indicated that the Department supports revising its regulations and/or OARM's procedures, as appropriate, to include a provision providing sanction authority similar to that provided to Merit System Protection Board (MSPB) administrative judges under 5 C.F.R. § 1201.43. Under that provision, MSPB judges may impose sanctions upon the parties "as necessary to serve the ends of justice." As amended in October 2012, see 77 FR 62350, 62366, the rule provides that an MSPB judge must provide appropriate prior warning, allow a response to the actual or proposed sanction when feasible, and document in the record the reasons for any resulting sanction.

OARM has used protective orders in the past only in limited circumstances, including where the parties have requested the investigative file from FBI's Office of Professional Responsibility (OPR) or OIG. In those cases, the parties have agreed to enter a joint stipulated protective order to prevent the release of privacy-protected or sensitive law enforcement information. Although it has yet to had occasion to do so, OARM could also issue a protective order if necessary to protect from harassment a witness or other individual who testifies before it.

    b. **Do you agree that the proposal to sanction whistleblowers for violating protective orders could severely disadvantage FBI whistleblowers that do not have routine access to investigative files outside the OARM process? Why or why not?**

[10] *Id.* at 14-15.

**RESPONSE**: The purpose of this proposal is to ensure that FBI whistleblowers have access to OIG and FBI OPR investigative files during the OARM process. OARM has used protective orders in the past only in limited circumstances, including where the parties have requested the investigative files. In those cases, the parties have agreed to enter a joint stipulated protective order to prevent the release of privacy-protected or sensitive law enforcement information. As noted above, this proposal is very narrow and is similar to the authority provided to MSPB administrative judges.

c. **Do you agree that the sanctions proposal could be used to thwart Congressional oversight of whistleblower cases? Why or why not?**

**RESPONSE**: As explained above, the purpose of the proposal is to ensure that whistleblowers have access to the documents they need as part of the OARM proceedings, while at the same time preventing the release of privacy-protected or sensitive law enforcement information.

d. **Why should there not at least be an exception to these gag orders for disclosures to Congress and the Inspector General?**

**RESPONSE**: As explained above, our review of the regulations is ongoing. While we do not yet know everything that will be incorporated into the regulations, we will seriously consider these suggestions.

e. **Will the Department include this recommendation in its proposed regulatory amendments? Why or why not?**

**RESPONSE**: As explained above, our review of the regulations is ongoing. While we do not yet know everything that will be incorporated into the regulations, we will seriously consider these suggestions.

3. **On October 10, 2014, Representative John Conyers and I wrote to Acting Assistant Attorney General Karl Thompson requesting that the Office of Legal Counsel provide to the House and Senate Judiciary Committees a copy of the opinion requested by Inspector General Michael Horowitz regarding OIG's access to Department records.[11] When will the OLC complete the opinion? Will you commit to making the opinion public by a date certain?**

**RESPONSE**: I believe that the Inspector General plays a particularly critical role at the Department of Justice in helping us to identify misconduct or malfeasance, or simply waste, fraud and abuse, and that the Inspector General should receive all documents that he needs to complete his reviews. I understand that OLC, in response to a request from former Deputy

[11] Letter from Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary and John Conyers, Ranking Member, U.S. House of Representatives Committee on the Judiciary to Karl R. Thompson, Acting Assistant Attorney General (Oct. 10, 2014).

Attorney General James Cole, is preparing a legal opinion addressing the circumstances in which the Inspector General is legally authorized to gain access to information obtained pursuant to the Federal Wiretap Act, Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 U.S.C. §§ 2510-2522 (2012); grand jury material protected by Rule 6(e) of the Federal Rules of Criminal Procedure; and information obtained pursuant to section 1681u of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (2012). I expect their work to be completed as soon as possible. Although it is my understanding that the Inspector General has never been denied access to Title III or Rule 6(e) material when necessary to complete his reviews, I am developing a department-wide policy that will expedite the production of such documents to the Inspector General, and I expect that policy to be finalized in the coming weeks.

4. **On March 18, 2015, I sent a letter to the Director of the U.S. Marshals Service, Stacia Hylton, asking for information about the alleged misuse of Asset Forfeiture Funds to purchase extravagant office furnishings.[12] In that letter, I also asked for information about whistleblower allegations that the Marshals Service is unlawfully spending funds allocated for Joint Law Enforcement Operations.**

   **On March 19, 2015, I sent another letter regarding the Marshals Service to you.[13] I inquired about whistleblower allegations that Director Hylton recommended an individual for a lucrative contract position, even though he was not qualified. The whistleblower alleges that the Assistant Director of the Marshals Service's Asset Forfeiture Division, Kimberly Beal, improperly influenced subordinates to waive the contract qualifications in order to hire the contractor, in hopes of obtaining her current position.**

   a. **Will you commit to providing my office with a timely and thorough response to this letter?**

**RESPONSE:** I understand that the Marshals Service and the Department responded to your March 18, 2015 and March 19, 2015 letters, and we will respond promptly to the follow-up letter that we received from you on April 7, 2015.

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[12] Letter from Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary to Stacia A. Hylton, Director, U.S. Marshals Service (Mar. 18, 2015), *available at*: http://www.grassley.senate.gov/sites/default/files/judiciary/upload/2015-03-18%20CEG%20to%20USMS%20%28Misuse%20and%20Waste%20of%20AFF%20Resources%29.pdf.

[13] Letter from Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary to Sally Quillian Yates, Acting Deputy Attorney General (Mar. 19, 2015), *available at*: http://www.grassley.senate.gov/sites/default/files/judiciary/upload/2015-03-19%20CEG%20to%20DOJ%20%28USMS%20Contracting%29.pdf.

b. **Will you investigate these very serious allegations of using Department funds to award highly-paid contract work to favored insiders, who the Department has determined are unqualified to perform that work?**

**REPSONSE:** I believe strongly in the rights and protections afforded to all government employees who report wrongdoing or mismanagement, in accordance with the federal laws that you helped write. I can also assure you that I take seriously all allegations of employee misconduct. The Department remains committed to addressing any such allegations and taking action where appropriate.

5. **State and local governments are outright ignoring Immigration and Customs Enforcement (ICE) detainers and putting criminal aliens back on the street, instead of helping ICE deport them. Earlier this month, in a hearing before the House Committee on Oversight and Government Reform, the Director of U.S. Immigration and Customs Enforcement, Sarah Saldaña, testified that since January 1, 2014, state and local jurisdictions have declined more than 12,000 ICE detainer requests. She further testified that "there are over 200 jurisdictions, including some of the largest in the country, that refuse to honor ICE detainers, while some have also denied ICE access to their jails and prisons." At that same hearing Director Saldaña was asked: "Would it help you if we clarified the law to make it clear that it was mandatory that those local communities cooperate with you?" Director Saldaña immediately replied: "Thank you, amen, yes."**

   **Would you, like Director Saldaña, also support legislation requiring state and local law enforcement to comply with immigration detainer requests by the feds, especially if the individuals in question are criminals? If no, how would you, as a liaison to law enforcement officials in states, get them to comply with detainers?**

**RESPONSE:** If confirmed as Deputy Attorney General, I would look forward to working with the Committee on any legislation that would help to improve our immigration system in a manner that protects national security and public safety. Moreover, I will continue to engage with state and local law enforcement partners to achieve consistent policies for the apprehension, detention, and removal of undocumented aliens. I will continue the Department's efforts to work closely with the Department of Homeland Security and state and local law enforcement partners to ensure that national security and public safety are our top priorities in the enforcement of our immigration laws.

6. **Since October 2013, I have three times requested from the Department information on its handling of twelve specific instances of misconduct by employees of the National Security Agency. It has been reported that these employees intentionally and willfully abused the agency's surveillance authorities by spying on private citizens, many of whom were their spouses or significant others. When the Attorney General testified before the Judiciary Committee on January 29, 2014, he promised to provide a "fulsome response to indicate how these cases were dealt with by the Justice Department" and that he would "do that soon."**

**Almost a year and a half later, the Department has provided me only the most cursory information – that it "declined to prosecute these individuals for varying reasons, including issues with jurisdiction and venue."[14] The Department also indicated that prosecuting these cases would risk disclosing sensitive and classified information in open court, but this isn't a sufficient response.**

**Will you arrange to have my staff briefed, in a classified setting if necessary, on the details of why these individuals have not been held criminally accountable for abusing these surveillance authorities?**

**RESPONSE**: Generally speaking, prior to seeking charges in a matter, prosecutors evaluate the facts and the law, and make decisions about whether evidence supports guilt of a crime beyond a reasonable doubt, which is the burden of proof to obtain a conviction on criminal charges. Charging decisions in specific cases are made in accordance with the Principles of Federal Prosecution. See United States Attorneys' Manual 9-27.000, http://www.justice.gov/usam/usam-9-27000-principles-federal-prosecution.

With respect to the matters you refer to, it is the Department's long-standing practice not to disclose non-public information about investigations that did not result in publicly filed criminal charges. Still, we appreciate your interest in this issue and have provided the following information to address your request for information consistent with our law enforcement and litigation responsibilities. As the Department noted in letters dated November 10, 2014 and March 9, 2015, NSA Inspector General Dr. George Ellard identified seven reports of possible wrongdoing by individuals that had been sent to, or discussed with, the Department since 2004.

According to the available records, the Department declined to prosecute these individuals for varying reasons, including issues with jurisdiction and venue. We have not identified a record why one matter from 2005 was declined. As we previously described to you and as you note above, in some of these instances, significant concerns were raised that pursuing these matters in open criminal proceedings would risk disclosing sensitive information about highly classified systems.

If it would be helpful, please have your staff contact the Department's Office of Legislative Affairs to schedule a briefing on this topic.

7. **On March 9, 2015, I was joined by 52 of my Senate colleagues in a letter to the Director of ATF regarding ATF's actions to limit access to rifle ammunition. One day after the letter, ATF withdrew the ammunition ban proposal. The Second Amendment is a fundamental right and as such it requires not only access to firearms but to ammunition. If law-abiding gun owners cannot obtain rifle ammunition, or face substantial difficulty in finding ammunition available and at reasonable prices because**

[14] Letter from Assistant Attorney General Peter J. Kadzik to Senator Charles E. Grassley (March 9, 2015).

**government entities are banning it, then the fundamental nature of the Second Amendment is at risk.**

a. **Do you agree that the Second Amendment, as a fundamental right, requires access to ammunition?**

**RESPONSE:** I was not involved in the initial review of ATF's proposed framework, but I support ATF's decision to refrain from issuing a final framework at this time. My understanding is that ATF will process the comments it received, further study the issues raised therein, and provide additional open and transparent process (for example, through additional proposals and opportunities for comment) before proceeding with any framework.

As the Acting Deputy Attorney General, and if confirmed, I will review any future proposal to ensure it maintains fidelity to the statute and strikes an appropriate balance for all of the important interests involved, including those of law enforcement and sportsmen.

As with any issue within the purview of the Department of Justice, I will ensure that any proposal is lawful under the Constitution, including the Second Amendment, and federal law.

b. **Do you believe that the ATF can regulate ammunition out of existence? If so, are there no limits on ATF regulating ammunition? If there are limits, what are they?**

**Response:** As explained above, I believe that any proposed ATF regulation must be consistent with the statute and strike an appropriate balance for all of the important interests involved, including those of law enforcement and sportsmen. As with any issue within the purview of the Department of Justice, I will ensure that any proposed regulation is lawful under the Constitution, including the Second Amendment, and federal law.

c. **If confirmed, what will you do to ensure that the federal government does not limit access to ammunition, such as M855, a steel-core bullet, as a pretext for limiting the exercise of the Second Amendment?**

**RESPONSE:** As explained above, I believe that any proposed ATF regulation must be consistent with the statute and strike an appropriate balance for all of the important interests involved, including those of law enforcement and sportsmen. As with any issue within the purview of the Department of Justice, I will ensure that any proposed regulation is lawful under the Constitution, including the Second Amendment, and federal law.

8. **Recently, it was reported that Lois Lerner's missing emails in the IRS targeting scandal may have been stored in storage sites in Pennsylvania and West Virginia. Amazingly, the IRS never looked for the missing emails at these sites. But what was perhaps even more disturbing, however, is that when one of the parties affected by IRS targeting asked the District Court to appoint an independent investigator to look for these emails at these storage sites, Department of Justice lawyers objected.**

a. **Why did the Department object to independent investigators having access to these off-site storage facilities?**

**RESPONSE:** The plaintiffs in *True the Vote, Inc. v. Internal Revenue Service* (D.D.C.), *appeal pending*, asked the District Court to authorize a third party forensic expert to search all IRS computers for Ms. Lerner's missing emails. In denying plaintiff's request on August 7, 2014, Judge Walton shared the government's concerns that allowing the search would compromise the tax return information of third parties in violation of the tax confidentiality protections of 26 U.S.C § 6103. The court also noted that ". . . while the recovery of the emails at issue is certainly in the public interest to the extent that government records were included among those emails, the public interest is already being served through the ongoing TIGTA investigation."

b. **What has the Department done to rectify the situation?**

**RESPONSE:** Throughout my career at the Department of Justice, I have developed tremendous faith in the ability of career prosecutors and professional law enforcement agents to conduct investigations in a fair, objective, professional, and impartial manner, without regard to politics or other outside influence. I can assure you that the Department is conducting a thorough, fair, and impartial investigation of the IRS targeting matter.

9. **I have serious concerns about how DOJ whistleblowers are treated. Under federal law, "the right of employees… to petition Congress … or to furnish information to either House of Congress… may not be interfered with or denied."**

   **To give you one example, I wrote to DOJ regarding allegations that the Office of Justice Programs, or OJP, knowingly granted millions of taxpayer dollars to states that incarcerated vulnerable minors in violation of federal funding requirements. Additionally, I requested that OJP notify employees of their rights to cooperate with the Judiciary Committee's inquiry.**

   **In response, DOJ asserted that its "current procedures for advising employees of their rights regarding whistleblower protections are sufficient." However, there are allegations that OJP management has impeded this Committee's inquiry by physically moving individuals with knowledge to other departments, preventing suspected whistleblowers from applying for positions, and allowing individuals within the Office of General Counsel to improperly influence a review of this matter.**

   a. **As acting Deputy Attorney General, what steps have you taken to ensure that DOJ personnel – and OJP employees in particular – understand their rights to cooperate with the Judiciary Committee?**

**RESPONSE:** As the Department has explained in its letter to you, we regularly advise Department personnel of their rights with respect to disclosures of information regarding waste, fraud, abuse, or misconduct. This includes through required No Fear Act training and through public postings available to all employees and to the public at large.

b. **Will you ensure that all DOJ personnel properly notify employees of their rights to cooperate with congressional inquiries?**

**RESPONSE:** As stated above, the Department regularly advises Department personnel of their rights with respect to disclosures of information regarding waste, fraud, abuse, or misconduct.

c. **Can you state with complete confidence that OJP has not punished whistleblowers or wrongfully impeded this Committee's right to the juvenile justice grant inquiry?**

**RESPONSE**: I believe that the Department has responded to the allegations you have cited above, both in a briefing on March 27, 2015, and in a letter dated April 1, 2015.

d. **Are you aware of whistleblowers being silenced within the DOJ? If so, what steps will you take to ensure whistleblowers are treated fairly under the law?**

**RESPONSE:** I am not aware of whistleblowers being silenced within DOJ, but if the Committee believes that it has information to the contrary, I would appreciate the chance to review it and ensure that whistleblowers are treated fairly.

10. **As you know, in 2013, the Department of Justice decided that it would not seek to strike down state laws in Colorado, Washington, and elsewhere that have legalized the recreational use of marijuana, so long as these states implement effective regulatory regimes that protect key federal interests. This policy is outlined in the August 29, 2013 Cole Memorandum.**

    a. **In some of these states, like Colorado, businesses are currently advertising the availability of recreational marijuana on websites and on television news programs such as 60 Minutes. Do you believe that individuals that manufacture and distribute marijuana in that state are breaking federal law, no matter what state law permits?**

**RESPONSE:** The Department and the Administration do not support the legalization of marijuana, nor do I. I have been committed to enforcing the Controlled Substances Act (CSA) throughout my career as a prosecutor, and that commitment will continue if I am confirmed as Deputy Attorney General.

The Department remains committed to enforcing the CSA and federal money laundering laws in a way that most efficiently uses its limited resources to address the most significant threats to public health and safety, particularly with respect to violent offenders and gang activity, among other key priorities outlined in the Department's August 2013 and February 2014 guidance to all United States Attorneys on these issues.

a. **I understand the Department of Justice is not gathering data on the federal priorities identified in the Cole Memorandum to evaluate whether that policy needs re-visiting. Yet these priorities are already being negatively affected,**

**including through the increasing diversion of recreational marijuana to nearby states like Iowa. This sounds to me like the Department does not want to know how its policy is functioning. Even the New York Times has editorialized that it's important to evaluate whether the states are "holding up their end of the bargain." Do you believe the Department should be systemically collecting data related to these federal priorities in a centralized place, establishing metrics, and analyzing the data for the purpose of evaluating whether the policy outlined in the Cole Memorandum is working, and if you are confirmed will you commit to taking these steps?**

**RESPONSE:** The Department of Justice currently possesses and utilizes quantitative and qualitative measurements to inform federal drug enforcement efforts. The Drug Enforcement Administration publishes an annual National Drug Threat Assessment (NDTA) Summary, which provides timely strategic drug-related intelligence. The 2014 NDTA Summary addressed emerging developments related to the trafficking and use of primary illicit substances of abuse, including marijuana, and the nonmedical use of controlled prescription drugs. The Executive Office for United States Attorneys compiles U.S. Attorneys' Offices case-related data through the Legal Information Online Network System and regularly provides statistical information that reflects the efforts of the United States Attorneys' Offices in prosecuting violations of federal law. The Organized Crime Drug Enforcement Task Force (OCDETF) Executive Office collects data on OCDETF cases on a national, regional, and district level through the Management Information System. The OCDETF strategy aims to reduce the availability of drugs by disrupting and dismantling major drug trafficking organizations and money laundering organizations and related criminal enterprises.

These data collection systems collectively assist in informing the Department's counterdrug policy, establishing law enforcement priorities, and making resource allocations. The Department of Justice also relies on other federal agencies and programs, such as the High Intensity Drug Trafficking Area program and the National Institute on Drug Abuse, to conduct public safety and public health studies.

The Department will continue to consider data of all forms—including existing federal surveys on drug usage, state and local research, and, of course, feedback from the community and from federal, state, and local law enforcement—on the degree to which existing Department policies and the state systems regulating marijuana-related activity protect federal enforcement priorities and the public. The Department will continue to collect data and make these assessments through its various components and will continue to work with the Office of National Drug Control Policy and other partner agencies throughout the government to identify other mechanisms by which to collect and assess data on the effects of these state systems.

b. **In some of these states there is a specific problem presented by edible marijuana products falling into the hands of children. Some of these marijuana products, as well as other products containing different illegal drugs like methamphetamine, are marketed and packaged like candy. Would you support legislation to address this problem by increasing the penalties for those manufacturers or distributors of controlled substances that know, or have reasonable cause to**

**believe, that their controlled substances will be distributed to minors? If confirmed, would you commit to working with me on such legislation?**

**RESPONSE:** I share your concern about edible marijuana products and the possibility that these products could fall into the hands of children. These concerns are reflected by the Department's explicit enforcement priority of preventing the distribution of marijuana to minors, as well as the Department's enforcement priority of addressing threats to public health. I can assure you that our federal prosecutors, in every part of the country, will not hesitate to prosecute individuals and businesses whose conduct involves distribution to minors or poses serious public health risks due to the dangers associated with consumption – accidental or intentional – by minors. If I am confirmed as Deputy Attorney General, I look forward to continuing to work with this Committee to address this issue in a comprehensive manner that most effectively protects public health and safety.

c. **Attorney General Holder has indicated that he believes that marijuana businesses in states like Colorado should have access to the U.S. banking system. Do you agree? If so, doesn't depositing the proceeds of marijuana businesses into banks violate the federal laws prohibiting money laundering, and do you believe it is appropriate for the nation's top law enforcement officer to advocate for conduct that violates those laws?**

**RESPONSE:** I remain committed to enforcing the Controlled Substances Act (CSA) and federal money laundering laws in a manner that efficiently applies the Department's limited resources to address the most significant threats to public health and safety.

Pursuant to the Department's February 14, 2014 guidance, investigations and prosecutions of offenses related to financial transactions based upon marijuana-related activity are focused on using the Department's limited investigative and prosecutorial resources to address the most significant public health and public safety threats. Accordingly, in determining whether to charge individuals or institutions with offenses related to financial transactions based upon marijuana-related activity, prosecutors should assess this activity in light of the Department's stated enforcement priorities. Further, as made clear in the Department's February 14, 2014 guidance, financial institutions must continue to apply appropriate risk-based anti-money laundering policies, procedures, and controls sufficient to address the risks posed by customers engaged in marijuana-related activity, including by conducting customer due diligence designed to identify conduct that implicates any of the eight priority factors. As the Department of Justice's and the Department of the Treasury's FinCEN guidance are designed to complement each other, it also is essential that financial institutions adhere to guidance issued by FinCEN on this subject.

**11. I have four times requested from the Department of Justice the Office of Legal Counsel ("OLC") opinion advising the President's decision to exchange five senior Taliban commanders (the "Taliban 5") for Sgt. Bowe Bergdahl. During your testimony, you stated your reluctance to "revisit the issue." But, of course, this Committee has an important oversight function of the Department, and simply choosing not to answer is not sufficient.**

**According to testimony by Department of Defense General Counsel, Stephen Preston, before the House Armed Services Committee last June, the OLC advice offered to the President was provided via email.**

**a. Is this accurate?**

**RESPONSE:** OLC plays a vital role within the Executive Branch in providing unbiased, thorough advice with respect to the legal questions its clients ask the Office to consider. In order to ensure that OLC attorneys continue to provide full and frank advice that considers all sides of every issue, and that agencies and the President continue to trust OLC to provide confidential and unvarnished advice, the Department's longstanding practice across administrations of both parties has generally been to disclose OLC opinions only through the formal publication process and not to disclose less formal forms of confidential legal advice. Therefore, to preserve and protect the Executive Branch's proper functioning under the Constitution, some materials need to remain confidential.

However, I appreciate your interest in understanding the legal rationale for the Administration's conclusion that the transfer of the five individuals was lawful. To assist you in understanding the rationale for that decision, I understand the Department previously provided to you a memorandum that was provided to the Government Accountability Office (GAO).

If confirmed as Deputy Attorney General, I will continue to be committed to ensuring that where possible, consistent with national security and other confidentiality interests, this Committee has the information it needs to understand the basis for the Department's actions.

**b. If accurate, please provide the email correspondence providing the advice.**

**RESPONSE:** As explained above, in order to ensure that OLC attorneys continue to provide full and frank advice that considers all sides of every issue, and that agencies and the President continue to trust OLC to provide confidential and unvarnished advice, the Department's longstanding practice across administrations of both parties has generally been to disclose OLC opinions only through the formal publication process and not to disclose less formal forms of confidential legal advice. Therefore, to preserve and protect the Executive Branch's proper functioning under the Constitution, some materials need to remain confidential.

**c. If not accurate, please provide the document that was furnished to the President before he released the Taliban 5.**

**RESPONSE:** As explained above, in order to ensure that OLC attorneys continue to provide full and frank advice that considers all sides of every issue, and that agencies and the President continue to trust OLC to provide confidential and unvarnished advice, the Department's longstanding practice across administrations of both parties has generally been to disclose OLC opinions only through the formal publication process and not to disclose less formal forms of confidential legal advice. Therefore, to preserve and protect the Executive Branch's proper functioning under the Constitution, some materials need to remain confidential.

d. **Notwithstanding your responses to Questions (b) and (c), please provide the dates when the advice was sought by the administration and when it was provided.**

**RESPONSE:** As explained above, in order to ensure that OLC attorneys continue to provide full and frank advice that considers all sides of every issue, and that agencies and the President continue to trust OLC to provide confidential and unvarnished advice, the Department's longstanding practice across administrations of both parties has generally been to disclose OLC opinions only through the formal publication process and not to disclose less formal forms of confidential legal advice. Therefore, to preserve and protect the Executive Branch's proper functioning under the Constitution, some materials need to remain confidential.

12. **In a 2010 memorandum on the best practices for OLC legal advice and written opinions, Acting Assistant Attorney General David J. Barron wrote, "[I]n deciding whether an opinion is significant enough to merit publication . . . the Office [of Legal Counsel] operates from the presumption that it should make its significant opinions fully and promptly available to the public." In fact, "[T]his presumption furthers the interests of Executive Branch transparency, thereby contributing to accountability and effective government, and promoting public confidence in the legality of government action," he stated.**

    **The OLC released its legal advice to the public regarding the President's executive amnesty action the day before the President announced his order, but the Office still has not released its advice on the President's exchange of the Taliban 5 for Sgt. Bowe Bergdahl. Clearly, the Department of Justice deemed its advice on executive amnesty as "significant" enough to warrant contemporaneous release with the execution of the order.**

    **Whatever opinion the Department offered to the President on releasing five senior Taliban commanders is clearly a matter of significant public interest since these terrorists will likely return to the battlefield, and the President released them in exchange for a soldier who has since been charged with deserting his unit. All of this was done in the face of a statute that was written to prevent enemy combatants from being released from Guantanamo Bay and returning home to plan further attacks against the United States and our allies.**

    **In light of the Department's own presumption on the importance of releasing those OLC opinions that are "significant," please explain why either the Department does not consider its advice on the exchange of terrorists for Sgt. Bergdahl to be one of its "significant opinions" deserving of public disclosure, or, alternatively, what factors lead the Department to believe the presumption has been overcome.**

**RESPONSE:** As I stated in my testimony before the Committee, it is important that Congress and the public understand the legal basis for actions by the Government. As noted above, OLC plays a vital role within the Executive Branch in providing unbiased, thorough advice with respect to the legal questions its clients ask the Office to consider. In order to ensure that OLC attorneys continue to provide full and frank advice that considers all sides of every issue, and

that agencies and the President continue to trust OLC to provide confidential and unvarnished advice, the Department's longstanding practice across administrations of both parties has generally been to disclose OLC opinions only through the formal publication process and not to disclose less formal forms of confidential legal advice.

Although the Department now favors publication of significant OLC opinions where possible, as the OLC best practices memorandum signed by Acting Assistant Attorney General David J. Barron ("Best Practices Memo") explains, countervailing considerations—such as the preservation of internal Executive Branch deliberative processes; protecting the confidentiality of information covered by the attorney-client relationship between OLC and its Executive Branch clients; and protecting classified and other sensitive information relating to national security—may make it improper or inadvisable to publish OLC legal advice. In such circumstances, it is customarily up to the agency that received the legal advice to explain the legal basis for any action it ultimately takes. If confirmed as Deputy Attorney General, I will continue to be committed to ensuring that where possible, consistent with national security and other confidentiality interests, this Committee has the information it needs to understand the basis for the Department's actions.

**13. As specified below, please explain the discrepancy between (a) and (b).**

**a. As mentioned in Question 13, the Acting Assistant Attorney General's 2010 memorandum continues:**

**Timely publication of OLC opinions is especially important where the Office concludes that a federal statutory requirement is invalid on constitutional grounds and where the Executive Branch acts (or declines to act) in reliance on such a conclusion . . . so that Congress can consider those reasons and respond appropriately, and so that the public can be assured that Executive action is based on sound legal judgment and in furtherance of the President's obligation to take care that the laws, including the Constitution, are faithfully executed.**

**b. In addition, according to Department of Defense General Counsel, Stephen Preston's testimony, "The administration sought the guidance from the Department of Justice on the applicability and impact of the 30-day notice requirement . . . and received guidance from the Department of Justice." He stated, "The question was the constitutional implications of its application in the [Bergdahl exchange]. And the administration determined that it was necessary to forego the full 30-day formal notice." He further stated that "the exercise of [the President's] constitutional authority is in tension with [the National Defense Authorization Act of 2014] . . . [so] the statute yields to the constitutional authority either as a matter of interpretation or through the application of separation of powers principles."**

**The Acting Assistant Attorney General's own reasoning was that "[t]imely publication of OLC opinions is especially important where the Office concludes that a federal statutory requirement is invalid on constitutional**

**grounds and where the Executive Branch acts (or declines to act) in reliance on such a conclusion."**
**Moreover, Mr. Preston stated that the administration received legal advice from the Department, and given that advice, the administration determined that the 30-day notice statutory requirement was invalid in this circumstance on constitutional grounds.**

**Please explain how the Department can reconcile the refusal to release this legal advice with its own internal guidelines on the release of opinions which invalidate laws based on constitutional grounds.**

**RESPONSE:** As noted above, OLC plays a vital role within the Executive Branch in providing unbiased, thorough advice with respect to the legal questions its clients ask the Office to consider. In order to ensure that OLC attorneys continue to provide full and frank advice that considers all sides of every issue, and that agencies and the President continue to trust OLC to provide confidential and unvarnished advice, the Department generally does not disclose OLC opinions except through the publication process described in the Best Practices Memo and generally does not disclose less formal forms of confidential legal advice.

Although the Department favors publication of significant OLC opinions where possible, as the Best Practices Memo explains, countervailing considerations—such as the preservation of internal Executive Branch deliberative processes; protecting the confidentiality of information covered by the attorney-client relationship between OLC and its Executive Branch clients; and protecting classified and other sensitive information relating to national security—may make it improper or inadvisable to publish OLC legal advice. In such circumstances it is customarily up to the agency that received the legal advice to explain the legal basis for any action it ultimately takes. This practice is consistent with the Best Practices Memo, which recognized that some Department legal advice is not appropriate for release outside of the Executive Branch and is designed to ensure that Congress can receive explanations of the legal basis for Executive Branch conduct while preserving the confidentiality of the attorney-client communications of Executive Branch lawyers. If confirmed as Deputy Attorney General, I will continue to be committed to ensuring, where possible consistent with national security and other confidentiality interests, that this Committee has the information it needs to understand the basis for those Department's actions.

**14. During my years in the Senate, I have been committed to combating fraud, waste, and abuse in the government and government programs. I believe that the False Claims Act has proved to be the most effective tool in the effort to prevent fraud and abuse against the government and has enabled the government to recover over $40 billion since 1986. The *qui tam* provisions of the False Claims Act encourage citizens, who have knowledge and evidence of false claims of fraud, to report the illegal activity. These patriotic whistleblowers are the federal government's greatest allies in the fight against fraud.**

**As the Senate author of the 1986 Amendments to the False Claims Act, I am one of the Act's biggest supporters and defenders. It is my hope that as the Deputy Attorney**

**General, you will also vigorously support the False Claims Act and its *qui tam* provisions.**

a. **As Deputy Attorney General, will you vigorously enforce the False Claims Act?**

**RESPONSE:** Yes. I am committed to enforcing the False Claims Act and will continue that commitment if confirmed as Deputy Attorney General. As you are aware, the False Claims Act plays a critical role in the Department's ability to ensure honest and accurate conduct on the part of those doing business with the Government. As you may know, the Department recovered nearly $6 billion in settlements and judgments in Fiscal Year 2014. We are proud to note that this marks the fifth straight year that False Claims Act recoveries have exceeded $3 billion. Since 1986, the Department, working with United States Attorneys' Offices, government agencies, and private citizens, has returned more than $45 billion in public monies to government programs and the Treasury. I thank you for your continued leadership on this issue over three decades.
In addition, nearly $3 billion of the nearly $6 billion recovered by the Department this past Fiscal Year were associated with *qui tam* cases. Since 1986, the Department has recovered over $30 billion in *qui tam* cases. If I am confirmed as Deputy Attorney General, I will continue my longstanding, robust use of the False Claims Act and its *qui tam* provisions, including by ensuring that the Department has adequate resources to investigate and pursue FCA cases.

b. **Do you have any question as to the constitutionality of the FCA and the *qui tam* provision?**

**RESPONSE:** No, I do not have any question as to the constitutionality of the False Claims Act and the *qui tam* provisions.

c. **Will you oppose efforts by industry groups, including the health care industry and the defense industry, to weaken the False Claims Act and the *qui tam* provisions of the FCA?**

**RESPONSE:** As stated above, the False Claims Act is one of the government's most effective tools for combatting fraud, protecting taxpayers and supporting the integrity of government programs. The Department's enforcement of the FCA has unquestionably deterred additional potential fraud schemes that would have otherwise had an impact on the federal fisc. I will oppose efforts to weaken the Act, including its *qui tam* provisions.

d. **Will you ensure that Civil Division attorneys aggressively enforce the False Claims Act, and will you work with the U.S. Attorneys to ensure their vigorous support and enforcement of the False Claims Act and the *qui tam* provisions of the FCA?**

**RESPONSE:** Yes. I will ensure that Civil Division attorneys aggressively enforce the False Claims Act, and I am committed to working with the U.S. Attorneys to ensure their vigorous support and enforcement of the False Claims Act and the *qui tam* provisions.

e. **Will you agree to promote a close working relationship between *qui tam* relator's counsel and the Justice Department for the purpose of establishing the public/private relationship envisioned when the FCA was signed into law by President Reagan?**

**RESPONSE:** Yes. I will promote a close working relationship between *qui tam* relator's counsel and the Justice Department for the purpose of establishing the public/private relationship.

**15. Starting in 2010, the Department of Justice (DOJ) filed complaints against Arizona, Alabama, South Carolina, and Utah because of their pro-enforcement immigration laws. If confirmed, would you support the continuance of this policy of filing complaints against states that have passed such laws?**

**RESPONSE:** I believe that coordination and engagement between law enforcement entities is critical in our efforts to enforce our immigration laws. I support efforts to engage with state and local law enforcement partners to achieve consistent policies for the apprehension, detention, and removal of undocumented aliens. If I am confirmed as Deputy Attorney General, I will continue the Department's efforts to work closely with our federal, state, and local law enforcement partners to ensure that national security and public safety are our top priorities in the enforcement of our immigration laws. In considering questions of the validity of state laws seeking to regulate immigration, I will evaluate them on a case-by-case basis under the principles set forth by the Supreme Court in its 2012 decision in *Arizona v. United States*.

**16. While Department of Justice filed lawsuits against states that enacted pro-enforcement immigration laws, other cities enacted policies that expressly prohibited law enforcement from cooperating with the federal government on undocumented immigrant issues. What steps would you take to encourage sanctuary communities to reverse their ordinances?**

**RESPONSE:** As noted above, I believe that coordination and engagement between law enforcement entities is critical in our efforts to enforce our immigration laws. I support efforts to engage with state and local law enforcement partners to achieve consistent policies for the apprehension, detention, and removal of undocumented aliens. If I am confirmed as Deputy Attorney General, I will continue the Department's efforts to work closely with our federal, state, and local law enforcement partners to ensure that national security and public safety are our top priorities in the enforcement of our immigration laws.

**17. While Sanctuary Communities refuse to cooperate with the federal government, they continue to collect money from DOJ grant programs. Would you advise the Attorney General to instruct the Department to withhold grant money for sanctuary communities that refuse to comply with our immigration laws?**

**RESPONSE:** Our priority is keeping the public safe. The Department's grant programs can play a critical role toward this end. For instance, we provide key grants to communities, ranging from support for new law enforcement personnel, law enforcement technology and equipment, and many forms of assistance for victims and at-risk youth. Any penalty for a community's

failure to enforce U.S. immigration laws must be balanced against the important public safety function that grant funds play. As such, if I am confirmed as Deputy Attorney General, I would consider all options on how to respond to communities that fail to enforce U.S. immigration laws in a manner consistent with federal priorities.

**18. The administration has acknowledged that over 36,000 convicted criminals were released from ICE custody in fiscal year 2013, and an additional 30,000 were released in fiscal year 2014. Many of these criminals were guilty of heinous crimes, including homicide, sexual assault, abduction, and aggravated assault. Yet, Immigration and Customs Enforcement (ICE) used its discretion and released these criminals back into the community. Do you believe the government, unless ordered by a court, should release convicted criminal aliens guilty of dangerous crimes, such as murder, rape, and kidnapping?**

**RESPONSE**: As United States Attorney in the Northern District of Georgia, my office pursued federal criminal prosecutions of dangerous undocumented aliens, prioritizing prosecution of those with violent criminal records and those engaged in gang activity. I believe that the government's removal efforts should prioritize the most dangerous undocumented aliens, particularly those involved in terrorist activity, violent crime, gang activity, and those with criminal records. Questions concerning the exercise of discretion by Immigration and Customs Enforcement (ICE) are best directed to the Department of Homeland Security, which administers the immigration detention system and is responsible for determining whether to release particular aliens from its custody.

**19. DHS cited the 2001 Supreme Court decision *Zadvydas v. Davis*, 533 U.S. 678 (2001), as another reason so many illegal aliens with criminal records were released. In *Zadvydas*, the court held that immigrants admitted to the United States that are subsequently ordered removed could not be detained for more than six months. Four years later, the Court extended this decision to people here illegally in *Clark v. Martinez*, 543 U.S. 371 (2005). Since *Zadvydas*, Congress has tried to pass legislation to require DHS to detain criminal aliens beyond six months. Would you support such legislation?**

**RESPONSE:** While I cannot comment on specific legislation I have not yet reviewed, if confirmed as Deputy Attorney General, I would certainly look forward to working with the Committee on any legislation that would help to fix our country's immigration system. This would include proposals that are both consistent with constitutional limits and designed to address the issues created by *Zadvydas*, including protecting the public from terrorists and criminal aliens who pose a threat to public safety.

**20. The Fourth Circuit Court of Appeals issued a decision in 2014 that provides a loophole for violent gang members who are here illegally to remain in the United States. In *Martinez v. Holder*, 740 F.3d 902 (4th Cir. 2014), Martinez appealed a Board of Immigration Appeals decision that denied him "withholding of removal" relief because he was a former member of the violent MS-13 gang in El Salvador. The Fourth Circuit reversed the decision holding that Martinez's former gang membership was "immutable" and met the "particular social group" element of the statute.**

a. **Do you agree that the Fourth Circuit decision creates a dangerous threat to national security?**

**RESPONSE**: I understand that finding that an alien falls under a "particular social group" is only one of several elements that the alien has to meet under the law to qualify for withholding of removal. Apart from the specifics of this case, I believe that the government's removal efforts should prioritize the most dangerous aliens, including members of criminal gangs.

b. **After the Fourth Circuit handed down its decision, concern was expressed over the effect this decision could have on national security and public safety. Chairman Goodlatte of the House Judiciary Committee along with Representative J. Randy Forbes wrote a letter to AG Holder to express their concern with the holding and ask whether he would appeal or seek review of the decision. However, Holder did not appeal or seek review of this dangerous decision.**

i. **Would you agree that the DOJ, under AG Holder, should have appealed the 4th circuit decision?**

**RESPONSE:** Decisions in the matter described in this question took place while I was United States Attorney for the Northern District of Georgia. As such, I was not involved in this case. However, having spent over two decades as a prosecutor, I know firsthand that many factors go into the decision whether to seek review of a court of appeals decision. It is my understanding that the Department continues to litigate this issue in other cases. If I am confirmed as Deputy Attorney General, I will work to ensure that national security and public safety are our top priorities in the enforcement of our immigration laws.

ii. **Since it wasn't appealed, what do you see as a remedy to the problem?**

**RESPONSE**: I believe that when it comes to immigration policy, the Government's removal efforts should prioritize the most dangerous undocumented aliens, including members of criminal gangs, along with those involved in terrorist activity and violent crime.

21. **The 287(g) program allows ICE to delegate some of its immigration enforcement authority to participating states. In 2012, ICE announced that it would no longer renew its 287(g) agreements stating, "other enforcement programs, including Secure Communities, are a more efficient use of resources." However, Secure Communities serves a completely different function. The 287(g) program trains local officers to determine whether a person is lawfully in the country, whereas Secure Communities only allows local law enforcement to identify undocumented aliens after their incarceration. Secretary Johnson has announced that the Secure Communities program is being discontinued, and replaced by another program. So, statutory authority exists for the administration to elicit state and local cooperation with the federal government; nevertheless, this administration refuses to use it.**

a. **Do you support the 287(g) program, and similar programs, that authorize the federal government to allow states to participate in enforcing federal law?**

**RESPONSE:** In my position as the United States Attorney for the Northern District of Georgia, I had no role in addressing ICE's implementation of the 287(g) program and have not yet had occasion to consider the issue in my current role as Acting Deputy Attorney General. This said, if I am confirmed as Deputy Attorney General, I will continue the Department's efforts to work closely with our partners to foster public safety, secure our borders, and protect our national security through the enforcement of federal immigration laws.

b. **In your opinion, should the 287(g) program be made available to local law enforcement agencies that want to protect their communities and participate in immigration enforcement?**

**RESPONSE:** As indicated above, the 287(g) program is not one that I have had any role in implementing. The question appears to involve matters within the purview of the Department of Homeland Security and I am not in a position to comment further. I am committed, however, to the Department's efforts to work closely with our partners to foster public safety, secure our borders, and protect our national security through the enforcement of federal immigration laws.

c. **As states and local law enforcement approach you for help in enforcing federal law, will you find a way to work with them, or will you ignore them, as the current Attorney General has?**

**RESPONSE:** As stated above, I am committed to the Department's efforts to work closely with our partners to foster public safety, secure our borders, and protect our national security through the enforcement of federal immigration laws.

**22. In June 2014, DOJ announced a program, justice Americorps, where it will issue $2 million in grants to lawyers to represent unaccompanied minors who crossed the borders illegally. Under current law, there is no right to a lawyer in a removal proceeding. The law provides only that an immigrant may obtain a lawyer, "at no expense to the government." Do you agree that the statutory language is clear: the government may not provide a lawyer to immigrants in a removal proceeding at the expense of the taxpayers?**

**RESPONSE:** Although I was not involved in the development or implementation of this program, I understand that it is designed to provide funding for legal representation to certain unaccompanied alien children in immigration proceedings in order to increase the efficient and effective adjudication of those proceedings. I believe that the law to which this question refers is 8 U.S.C. § 1362, which provides that an alien's right to counsel in immigration proceedings does not include a right of representation at the government's expense. It does not appear that the statute bars the government from exercising its discretion to fund legal representation in certain of those proceedings.

**23. By its very nature, justice Americorps has due process and equal protection issues. The Department is treating similar people in similar situations differently. How can the**

**administration avoid due process and equal protection issues if it provides lawyers to some immigrants in removal proceedings, but not to others? Couldn't such a policy lead to the requirement of providing a lawyer to all immigrants in removal proceedings?**

**RESPONSE:** I understand that aliens in removal proceedings have only the right to a full and fair hearing, a guarantee that does not require the appointment of taxpayer-funded counsel. The Department has not identified any due process or equal protection issues with the program.

**24. Immigration is a civil proceeding, and as a Constitutional matter, the government is not required to provide counsel in civil proceedings. Are you concerned that if the government starts providing counsel to individuals in removal proceedings, the government could be required to provide counsel in other civil proceedings?**

**RESPONSE**: No. I am not concerned that justice Americorps creates a problematic precedent for other proceedings. The government does not have a constitutional obligation to provide counsel to individuals in removal proceedings.

**25. ICE has brought removal charges against only 143,000 of the 585,000 removable aliens encountered in fiscal year 2014. That's a mere 24 percent of removable aliens that ICE encountered in 2014. What's even more troubling is that nearly 900,000 aliens who have final removal orders still remain in the country. Now, however, all people with final removal orders are encouraged to seek deferred action and other relief made available through the President's recent executive action.**

**a. Do you support the administration's catch-and-release actions?**

**RESPONSE:** Throughout my career, I have worked to foster public safety, secure our borders, and protect our national security through the enforcement of federal immigration laws. If I am confirmed as Deputy Attorney General, I would continue these efforts. After a judge has issued a removal order, the matter is within the jurisdiction of the Department of Homeland Security, and I would respectfully direct you to DHS regarding this question.

**b. Don't you agree that individuals whom a judge has ordered removed, should, in fact, be removed?**

**RESPONSE**: After a judge has issued a removal order, the matter is within the jurisdiction of the Department of Homeland Security, and I would respectfully direct you to DHS regarding this question.

**26. At your hearing, you stated that your 2010 position on mandatory minimum sentences has changed because of "fiscal reality." You indicated that money for prosecutors and federal agents is being diverted to prisons instead. If money is shifted from prisons to prosecutors and federal agents, who would presumably do their jobs in investigating and prosecuting additional federal crimes, why would the result not be increased numbers of convicted federal offenders who would be sentenced to prison, adding to the cost of the BOP budget?**

**RESPONSE:** Mandatory minimum sentences are an important tool for prosecutors, and a tool that should be used effectively and efficiently. As I explained both in 2010 and at my confirmation hearing last month, prison spending has increasingly displaced other critical public safety investments, including resources for investigations, prosecutions, prevention, intervention, prison reentry, and aid to local law enforcement. We must find a way to allocate our limited resources without compromising public safety.

Your question asks whether this effort is, essentially, self-defeating—whether better funding for agents and prosecutors will eventually result in more prisoners. I believe the issue is best viewed in the broader context of the Department's Smart on Crime Initiative. One of the goals of the initiative is to encourage prosecutors and agents to focus on the quality of their cases, not simply the quantity. This allows the Department to devote the time and energy needed to prosecute the worst of the worst—and to ensure that these complex, resource-intense cases are resolved successfully and expeditiously. By prioritizing the most dangerous suspects, the Department can better utilize its prosecutors and agents while reducing the burden on BOP's budget.

The initial results are promising. Since the start of the Smart on Crime Initiative, the number of federal drug cases has declined, but the average guideline minimum sentence for drug trafficking cases has risen, indicating a focus on more serious cases and more significant or violent defendants. Moreover, the rate of guilty pleas has risen and, despite concerns raised by some, drug defendants have cooperated with the government at the same rate as before the Initiative. In many ways, the early success of the initiative parallels similar criminal justice reforms in the states—including my home state of Georgia—where the violent crime rate has declined along with a reduction in prison admissions and the cost of incarceration.

**27. I don't see how "fiscal reality" can form the basis for the shift in your position on mandatory minimum sentences. You testified at the hearing that BOP "takes up about two-thirds of the Department's budget." That statement seems to bear little relation to reality. According to the Congressional Research Service, in 2014, BOP spending represented 25% of the Department's discretionary budget authority. That is no greater a proportion of DOJ's budget than was true in the 1990's. And in 2010, when you heartily endorsed mandatory minimum sentences and recommended to the Sentencing Commission that additional such sentences be created, BOP spending represented nearly as high a percentage of DOJ's budget then as now, at 23%. Since "fiscal reality" cannot form the basis for your changed view of mandatory minimum sentences, what in fact did?**

**RESPONSE:** At my hearing, I realized that I had inadvertently misspoken moments after giving the two-thirds figure, but did not have a chance to correct my statement. To this end, I appreciate your giving me the opportunity to clarify my testimony here. Today, BOP's budget comprises a little less than one-third of the Department's budget. However, since Fiscal Year 1994, the federal prison population has more than doubled. In Fiscal Year 2015, BOP's budget authority is $6.9 billion, compared to $3.1 billion in 1998 and $3.8 billion in 2000. And, as BOP's budget authority has increased, prison spending has increasingly displaced other critical public safety investments – such as resources for investigation, prosecution, prevention, intervention, prison reentry, and aid to local law enforcement.

To be clear, however, I reiterate a statement I made at my hearing: I believe that mandatory minimum sentences are an effective tool for prosecutors. That was my view in 2010, and continues to be my view now. We simply have an obligation to use that tool as effectively and as efficiently as possible and, as a career prosecutor, I would not support anything that I believe would undermine public safety. As I stated in response to question 26, above, the Department has proven through its criminal justice reforms that conserving the public's precious resources and maintaining public safety are not mutually exclusive. Both of these have been focuses throughout my career, and will continue to be priorities for me, should I be confirmed as Deputy Attorney General.

**Senator Jeff Sessions**
**Questions for the Record**
**Sally Quillian Yates**
**Nominee to be United States Deputy Attorney General**

**1. Do you believe that President Obama has exceeded his executive authority in any way? If so, how?**

**RESPONSE:** Neither in my capacity as the United States Attorney for the Northern District of Georgia, nor in my current capacity as Acting Deputy Attorney General, have I been charged with determining when and whether the President has exceeded his executive authority. However, I can assure you that, if confirmed as Deputy Attorney General, I would commit to consistently and effectively enforcing the law within the confines of the Constitution. I can also assure you that I believe that the Attorney General and the Deputy Attorney General have an obligation to follow the law and the Constitution and to give their independent legal advice to the President.

**2. On April 23, 2014, Deputy Attorney General Cole announced a new clemency initiative, under which the President intends to grant clemency to "perhaps thousands" of convicted federal drug offenders, including those who have limited ties to gangs and drug cartels. This policy would give federal drug offenders the benefit of changes in law that took place after they were convicted, even though many of these legislative changes were specifically negotiated to not apply retroactively. On March 20, 2015, President Obama stated that he plans to grant clemency "more aggressively" during the remainder of his term. If confirmed, you will be in a position to advise the President on clemency and pardon petitions.**

**a. Do you agree that the pardon power exists to mitigate injustice in individual cases?**
**b. Do you agree that the pardon power should not be used to target laws that the President disagrees with on policy grounds?**
**c. How will you ensure that the individuals whose petitions are granted under this policy are not dangerous criminals convicted of serious federal offenses?**

**RESPONSE:** Commutation reduces a sentence that is currently being served, in whole or part, but does not change the fact of conviction. Clemency, either in the form of a pardon or commuted sentence, is an extraordinary remedy, but may be appropriate in some circumstances consistent with the interests of justice.

As you know, the Constitution gives the President the exclusive authority to grant or deny clemency petitions without restriction. That authority has never been delegated to any person or agency. Presidents, however, have sought advice from the Department of Justice on the exercise of their authority for more than a century.

The Department has an extensive clemency review process, which factors in the views of the United States Attorney in the district of conviction, the sentencing judge, and the Bureau of

Prisons. It has been the Department's practice that all recommendations for commutation made by the Department to the President under the initiative include a period of supervised or prerelease custody for the Petitioner. The President alone decides which petitions are granted.

Under the clemency initiative announced by Deputy Attorney General Cole on April 23, 2014, the Department will consider six criteria when reviewing clemency applications from federal inmates. Among those criteria are several specifically designed to ensure that dangerous criminals are not released under this policy, including that the applicants are "non-violent, low-level offenders without significant ties to large scale criminal organizations, gangs, or cartels," they lack a "significant criminal history;" they have "demonstrated good conduct in prison;" and that they "have no history of violence prior to or during their current term of imprisonment."

3. **I am told that litigating attorneys within Main Justice are paid significantly more than similarly-situated federal prosecutors within the 93 U.S. Attorney Offices across the country. This pay variance is especially large at the entry level, and can differ as much as $30,000 between similarly situated Assistant U.S. Attorneys and Justice Department trial attorneys. I am also told that the Department has the authority to correct the problem because it arises out of the uneven treatment in pay of Assistant U.S. Attorneys, covered under the specialized Administratively Determined pay schedule for Assistant U.S. Attorneys, and the pay of all other Department attorneys, covered under the government-wide General Schedule. Serving as vice chair of the Attorney General's Advisory Committee, you must have been aware of this situation. Do you believe it is justified? If not, will you take action to correct it?**

**RESPONSE:** As the United States Attorney for the Northern District of Georgia, I witnessed on a daily basis the talent and dedication of our Assistant U.S. Attorneys—many of whom have passed up higher paying jobs in the private sector to do the work that they love. I think it is important that all federal prosecutors—both at Main Justice and in the Districts—are compensated in a fair and equitable way for the hard work that they do.

Before I was appointed Acting Deputy Attorney General, I had the opportunity to serve as vice chair of the Attorney General's Advisory Committee, which was briefed by a working group of Department officials on the topic of disparity between the General Schedule and the Administratively Determined pay schedule. The topic continues to be examined. As Acting Deputy Attorney General, I remain committed to ensuring appropriate compensation for all Department attorneys, and I will continue that commitment if confirmed.

4. **In response to a question at your nomination hearing regarding what your priorities will be if confirmed, you stated:**

   **"It's important that we not be generating stat[istics] but actually having an impact on the communities that we serve to make them as safe as possible. And so one of the things that I would like to do is to work with our law enforcement agencies to ensure that they are focused on making an impact on the safety of the communities rather than just, as I said, generating stat[istics]."**

**Starting in the 1990s, the "broken windows" crime prevention theory was used in New York with great success. Do you believe there is a danger in failing to prosecute smaller crimes as those smaller crimes lead to larger crimes and undermine public safety?**

**RESPONSE:** Throughout my career as a federal prosecutor, I have followed the facts and the law in making commonsense decisions about which cases to prosecute. Given the Department's limited resources, we simply cannot prosecute every violation of federal law. This said, we are nonetheless committed to protecting the safety and security of the American people. In instances where there is evidence of a crime that may not rise to a violation of federal law, we will work with our state and local partners to address those crimes.

**5. If confirmed, would you advocate for legislation to close the so-called "gun show loophole"?**

**RESPONSE:** As a United States Attorney and a career prosecutor, protecting the public from violent crime has been among my top priorities. I will continue that commitment if confirmed as Deputy Attorney General. As a general matter, I believe the Department should do what it can to ensure that firearms do not wind up in the hands of criminals and others who are prohibited by law from having them, and would look forward to working with Congress toward this goal.

**6. In April 2013, the Senate rejected measures that would have instituted a ban on so-called "assault weapons" and large capacity magazines, required universal background checks, and created new high criminal penalties for firearms offenses. In October 2014, Attorney General Holder referred to these as "really reasonable gun safety measures." Do you agree with Attorney General Holder's statement?**

**RESPONSE:** As noted above, throughout my career as a federal prosecutor, one of my highest priorities has been to protect Americans from violent crime, including gun crime. I am sure we agree that the Department should do what it can to prevent criminals and others who are prohibited by law from obtaining firearms. Background checks are an important step to help block criminals and other prohibited persons from easily—and unlawfully—procuring firearms.

In addition, as you know, high capacity magazines allow semi-automatic weapons to fire a large number of rounds without reloading, often with tragic results, as we saw in Tucson, Aurora, and Newtown. Large capacity magazines also increase the danger to law enforcement officers, because criminals can fire more rounds before having to reload.

**7. Have you ever expressed an opinion on whether the death penalty is unconstitutional? If so, what was that opinion? If not, do you have such an opinion and what is it?**

**RESPONSE:** I believe the death penalty is constitutional, and while I was U.S. Attorney in Atlanta, my office sought the death penalty.

**8. President Obama was quoted in a January 2014 article in *The New Yorker* as saying the following: "I smoked pot as a kid, and I view is as a bad habit and a vice, not very different from the cigarettes that I smoked as a young person up through a big chunk of my adult life. I don't think it is more dangerous than alcohol." Do you agree with the President's statement?**

**RESPONSE:** The Department and the Administration do not support the legalization of marijuana, nor do I. As a United States Attorney, a career prosecutor, and the Acting Deputy Attorney General, I have been committed to the enforcement the Controlled Substances Act (CSA), and if confirmed as Deputy Attorney General I will continue that commitment. Likewise, the Department has not wavered in enforcing the CSA and federal money laundering laws, but does so in a way that most efficiently uses its limited resources to address the most significant threats to public health and safety, particularly with respect to violent offenders and gang activity, among other key priorities outlined in the Department's August 2013 and February 2014 guidance to all United States Attorneys on these issues.

**9. DEA Administrator Michele Leonhart has testified before Congress that "it's important to have the facts about marijuana out there in ways that kids, teens, young adults, parents can look at it to see that what they've been sold – that [legalization] is no big deal – is not true." Do you agree with Administrator Leonhart?**

**RESPONSE:** Again, I do not support the legalization of marijuana, nor does the Department or the Administration. As a career prosecutor, I can assure you that I have been committed to enforcing the CSA throughout my career, and if confirmed as Deputy Attorney General, I will continue that commitment. Likewise, the Department remains committed to enforcing the CSA with regard to marijuana, as well as all other illegal drugs. Moreover, marijuana potentially falling into the hands of children is of particular concern to the Department and to me. These concerns are reflected by the Department's explicit enforcement priority of preventing the distribution of marijuana to minors, as well as the Department's enforcement priority of addressing threats to public health.

I also believe that it is important that the American public has the facts about marijuana and other dangerous drugs. To that end, while I am either acting or confirmed as Deputy Attorney General, the Department will continue to work with the Office of National Drug Control Policy and other partner agencies throughout the government to make that information available and accessible to the public.

**10. The American Medical Association has stated that it believes "(1) cannabis is a dangerous drug and as such is a public health concern; (2) the sale of cannabis should not be legalized."**

**a. Do you agree with that statement?**
**b. Do you support the legalization of marijuana at either the state or Federal level?**
**c. Do you support the legalization of medical marijuana, as proposed in S. 683 (introduced in the 114th Congress)?**

**d. Will you speak out against efforts to eliminate the enforcement of Federal drug laws?**

**RESPONSE:** As noted above, I do not support the legalization of marijuana, nor does the Department or the Administration. As a former United States Attorney and a career prosecutor, I have been committed to the enforcement the Controlled Substances Act (CSA), and if confirmed as Deputy Attorney General I will continue that commitment. Likewise, the Department remains committed to enforcing the CSA and federal money laundering laws in a way that most efficiently uses its limited resources to address the most significant threats to public health and safety. I can assure you that the Department does not support efforts to minimize or eliminate its enforcement of federal drug laws. As I noted in my hearing, I would welcome the opportunity to work with Congress on all issues, including federal drug enforcement.

**Senator David Perdue**
**Questions for the Record**
**On the Nomination of Sally Quillian Yates**
**To be Deputy Attorney General of the United States**
**March 31, 2015**

1. **As a former federal prosecutor, I know you are familiar with the concept of prosecutorial discretion. What, if any, are the limits of the President's discretion to enforce federal law?**

**RESPONSE:** There are certainly legal limits to prosecutorial discretion and a President's authority. Defining and drawing those limits, however, requires knowing all of the facts relevant to a particular issue, carefully examining the pertinent legal authorities, and reviewing any relevant judicial opinions.

2. **In his Memorandum Opinion and Order in *Texas v. United States*, B-14-254 (S.D. Tex. Feb. 16, 2015), Judge Hanen enjoined the implementation of President Obama's Deferred Action for Parental Accountability Program ("DAPA") and of the "three expansions/additions to the [Deferred Action for Childhood Arrivals Program, hereinafter "DACA"]," finding that the government had "clearly legislated a substantive rule without complying with the procedural requirements under the Administrative Procedure Act." *Mem. Op.* at 123. Do you agree that in promulgating and implementing DAPA and the DACA expansions, the government acted unlawfully?**

**RESPONSE:** As I noted in my testimony, this is an issue on which reasonable people can disagree. As Acting Deputy Attorney General, and if I am confirmed as Deputy Attorney General, I commit to follow the referenced preliminary injunction nationwide unless and until the injunction is stayed, lifted, or altered by the district court itself or by an appellate court. This matter is currently in litigation and so, as Acting Deputy Attorney General, it would not be appropriate for me to opine further. Therefore, I would respectfully direct you to the Department's court filings in this matter. As I noted in my testimony before the Committee, I stand by the Department's filings in this matter.

3. **According to press reports, at a recent hearing on the injunction in the *Texas* case, Judge Hanen told the government that "I was made to look like an idiot. I believed your word that nothing would happen." The judge was referring to the more than 100,000 three-year DACA renewals the government processed in the weeks following issuance of the injunction. Is it the Justice Department's position that the government is authorized to continue processing of DACA renewals during the pendency of the *Texas* injunction? If so, please explain the legal basis for your answer.**

**RESPONSE:** The Justice Department's view is that the government is not authorized to continue processing three-year DACA renewals during the pendency of the Texas injunction. Beyond that, as Acting Deputy Attorney General, it would not be appropriate for me to opine on the active litigation. I would respectfully direct you to the Department's court filings in *Texas et al. v. Johnson et al*. (SDTX Case No. B-14-254) that address these issues.

4. **With respect to the President's executive actions on immigration implemented through the DACA and DAPA programs, please explain whether you share the view of Attorney General nominee Loretta Lynch that the Office of Legal Counsel memorandum setting forth the argument for the President's actions are constitutional and "reasonable."**

**RESPONSE:** As mentioned in my answer above, the legality of the President's executive actions on immigration is currently a matter of pending litigation. As Acting Deputy Attorney General, it would not be appropriate for me to opine on the active litigation.

5. **Please explain your view on how, or whether, the President's executive action on immigration implemented through the DACA and DAPA programs comports with the Constitution's Take Care Clause and Congress's Article I authority over immigration and naturalization.**

**RESPONSE:** As mentioned in my answer above, these issues currently are matters of pending litigation. As Acting Deputy Attorney General, it would not be appropriate for me to opine on active litigation. The Department's position is set forth in court filings in *Texas et al. v. Johnson et al*. (SDTX Case No. B-14-254), and I stand behind the Department's filings in this matter.

6. **It's now indisputable that the Internal Revenue Service ("IRS") targeted conservative organizations that were seeking to obtain tax-exempt status. Senate investigators with the Permanent Subcommittee on Investigations found that over 80% of the targeted groups had a conservative political ideology. The Department of Justice ("DOJ" or "Department") responded by initiating a criminal probe led by a Civil Rights Division attorney who had contributed to President Obama's campaign in 2012. Little, if any, progress has been made in that investigation thus far.**

    a. **With respect to IRS targeting of individuals and organizations who ostensibly identify with a conservative or Tea Party viewpoint, do you believe that reassignment of the DOJ's investigation to a special prosecutor is appropriate?**

**RESPONSE:** Since I began my career as a line prosecutor in the United States Attorney's Office for the Northern District of Georgia 25 years ago, moving on to be a supervisor and then head of that office, and now as the Acting Deputy Attorney General, I have had the honor of witnessing the work of the career criminal prosecutors of the Department. I can assure you that these men and women work on a daily basis in pursuit of justice, following the facts and the law.

In this case, I know that career prosecutors from the Department's Criminal Division and Civil Rights Division are working alongside professional law enforcement agents from the FBI and the Treasury Inspector General for Tax Administration (TIGTA). I understand that before I was in my current role, the Attorney General carefully considered your question and determined that the appointment of a special prosecutor is not warranted.

    b. **Do you believe it was appropriate to assign management of the DOJ's investigation of IRS targeting to a DOJ lawyer who contributed to President**

**Obama's campaign?**

**RESPONSE:** As stated above, it is my understanding that the investigation is being conducted by a team of experienced career prosecutors and law enforcement agents from the Department and the TIGTA.

c. **Do you believe that assigning management of the DOJ's investigation of IRS targeting to a DOJ lawyer who contributed to President Obama's campaign could reasonably be expected to create the appearance of partiality or lack of objectivity on the part of the DOJ?**

**RESPONSE:** As I have described above, through my experience at the Department, I am confident that our career prosecutors follow the facts and the law without any regard to politics or other inappropriate considerations. It is also my understanding that the investigation is being conducted by a team that includes attorneys from the Criminal and Civil Rights Divisions and agents from the FBI and TIGTA.

d. **If you are confirmed, will you commit to keeping Congress informed in a more timely way than the current DOJ leadership has about the status of the investigation?**

**RESPONSE:** If I am confirmed as Deputy Attorney General, I look forward to working with Congress to accommodate your information needs, consistent with our law enforcement and litigation responsibilities.

7. **National security is always of paramount importance for the Justice Department. The January 2015 Paris attack and the rise of ISIS are episodes that show two emerging national security threats that you will confront, if confirmed: foreign fighters and so-called "lone wolf" attacks.**

a. **In your view, does the recent emergence of these threats have any impact on the debate over the impending renewal of the Foreign Intelligence Surveillance Act of 1978 ("FISA")?**

**RESPONSE:** National security threats posed by foreign fighters and lone-wolf attacks should inform the congressional debate regarding the reauthorization of certain expiring FISA provisions. It is important that our intelligence and law enforcement professionals have access to all available and appropriate investigative tools and techniques to deal with the ever-evolving threat presented by terrorism and other national security threats, while also ensuring that we use those tools in a way that effectively protects privacy and civil liberties. If I am confirmed as Deputy Attorney General, I will work with Congress to ensure the Intelligence Community has the authority necessary to meet our national security needs consistent with our shared commitment to privacy and civil liberties.

b. **Do you believe that the current "bulk collection" regime under FISA Section 215 is lawful?**

**RESPONSE:** Yes. The "bulk collection" program under Section 215 operates pursuant to court order, has been reviewed and approved by nineteen federal judges, and is subject to rigorous oversight by all three branches of government.

c. **Do you believe that the incidental collection provision, Section 702, is lawful?**

**RESPONSE**: Yes. Section 702 collection operates pursuant to court authorization, is subject to rigorous oversight by all three branches of government, and has been reviewed and found constitutional by our courts. Section 702 may only be used to target non-United States persons located outside the United States and may not be used to target foreigners for the purpose of targeting Americans' communications. Some communications of Americans, however, may be incidentally collected when an American communicates with a Section 702 target located outside the United States. Congress understood that this would be the case when it drafted Section 702, and required that collection under this program be governed by court-approved procedures to minimize the acquisition, retention, and dissemination of Americans' communications consistent with our need for foreign intelligence information. If confirmed as Deputy Attorney General, I will ensure that Section 702 collection continues in a lawful manner that meets our national security needs and appropriately protects privacy and civil liberties.

d. **President Obama has indicated that he supports a legislative reform of Section 215's bulk collection regime. What are your thoughts on amending Section 215?**

**RESPONSE**: If confirmed as Deputy Attorney General, I will work with Congress to amend Section 215 in a manner consistent with the President's proposal to end the Section 215 bulk telephone metadata program and establish a new mechanism to preserve the capabilities we need without the government holding this bulk metadata.

e. **Do you think law enforcement currently has sufficient investigative and legal authority to address the increasing threat from foreign fighters and "lone wolves"?**

**RESPONSE**: It is important that our intelligence and law enforcement professionals have access to all available and appropriate investigative tools and techniques to deal with the ever-evolving threat presented by terrorism and other national security threats, while also ensuring that we use those tools in a way that effectively protects privacy and civil liberties. If confirmed as Deputy Attorney General, I will work with law enforcement and Congress to evaluate any gaps in existing authorities and to ensure all appropriate tools are brought to bear to respond to these threats.

8. **Are you committed to transparency between the DOJ and Congress, and will you commit to prompt, complete, and truthful responses to requests for information from Congress about outstanding issues related to Operation Fast and Furious?**

**RESPONSE**: I appreciate the importance of transparency as well as congressional oversight of the Department's programs and activities. I commit to working with you to get you the information you need, while preserving the Executive Branch's proper functioning and the separation of powers, and consistent with the Department's law enforcement interests.

As you are aware, there is ongoing litigation related to your question, and I understand that the

Department has produced documents consistent with the district court's order in that litigation.

9. **Do you believe that detainees currently being held at the United States Naval Base at Guantanamo Bay, Cuba, are entitled to criminal trials in the civilian court system within the United States?**

**RESPONSE**: Consistent with the 2001 AUMF, as informed by the law of war, and subject to habeas review of the lawfulness of their detention by the courts, continued detention of enemy combatants at the military facility at Guantanamo Bay is lawful.

Although every case presents its own unique set of facts that would bear on a decision about appropriate trial venue, I can attest to the ability of our criminal justice system to serve as one effective tool among several to address the threat posed by terrorists. I would support the careful evaluation of all lawful options in the fight against terrorism, including military, diplomatic, economic, law enforcement, and intelligence activities, and including prosecutions in federal courts or in military commissions in appropriate cases.

10. **In 2013, the DOJ intervened in litigation over the Louisiana Scholarship Program, a state initiative that provides school vouchers to low-income families. An analysis by the State of Louisiana found that the program promoted diversity in Louisiana schools and actually assisted in speeding up federal desegregation efforts. Most of the schoolchildren who benefit from this program are members of minority groups. This year, more than 13,000 students applied and nearly 7,500 schoolchildren were awarded a scholarship voucher. These children now get the chance to excel and attend high-quality schools that their parents can choose for them because of the program. Ultimately, after public pressure, the Justice Department backed off trying to kill the program entirely, but still insisted that the State provide demographic data about the students to a federal judge overseeing the lawsuit. Accordingly, now Louisiana has to provide data for the upcoming school year and for every school year as long as the program is in place.**

    a. **Do you agree with the DOJ's decision to intervene in this case?**

    b. **If confirmed, will you use Justice Department resources to obstruct, monitor, or regulate school-choice programs?**

    c. **Will you commit to asking the federal district court with jurisdiction over this case to discontinue the reporting requirement if you are confirmed?**

**RESPONSE**: Because this issue is in active litigation, I cannot comment on this matter at this time. It is my understanding that the Department sought the Court's assistance in ensuring that Louisiana provided information on its school voucher program in a timely fashion as required by court orders, and that Louisiana implemented its voucher program in full compliance with federal law, including the desegregation orders in the case. The Court ultimately granted the relief that the United States had been seeking. It is also my understanding that the Department has not taken a position against school voucher programs. That would continue to be my position if I am confirmed as Deputy Attorney General.

**11. A 2013 report by the DOJ's Inspector General revealed disturbing systemic problems related to the operation and management of the DOJ's Civil Rights Division. If confirmed, will you commit to implementing the recommendations made by the Inspector General in that report?**

**RESPONSE**: If I am confirmed as Deputy Attorney General, I will commit to ensuring that all Department components are responsive to recommendations made by the Office of Inspector General, including those recommendations made to the Civil Rights Division.

**12. Do you agree with the recommendation of the U.S. Sentencing Commission in its 2011 report to Congress, *Mandatory Minimum Penalties in the Federal Criminal Justice System*, that Congress should amend 18 U.S.C. § 924(c) to confer on federal district judges the discretion to impose concurrent sentences under that provision?**

**RESPONSE**: I believe that mandatory minimum sentences are an important tool for prosecutors—and a tool that should be deployed effectively and efficiently. In 2010, I had the opportunity to testify before the Sentencing Commission as it was considering the issue of mandatory minimums, including the mandatory sentences for certain firearm offenses under 18 U.S.C. § 924(c). As I noted then, Section 924(c) has been subject to some criticism, in part because it appears that the statute may have been originally intended to target recidivist offenders, but nonetheless requires judges to impose lengthy consecutive sentences regardless of the defendant's criminal history. If I am confirmed as Deputy Attorney General, I look forward to continuing the dialogue between the Department, the Sentencing Commission, and Congress regarding the use and application of mandatory minimums. It would be premature for me to opine on that specific recommendation before soliciting input from all relevant stakeholders, including prosecutors and law enforcement.

**13. As the former U.S. Attorney for the Northern District of Georgia and the former Vice Chair of the Attorney General's Advisory Committee, you are no doubt familiar with the DOJ's recent "Smart on Crime" Initiative, which addresses a number of criminal justice issues like prioritizing prosecutions, sentencing disparities, recidivism, and incarceration of non-violent offenders. Attorney General Holder has advocated reduction of the federal sentencing guideline levels that apply to most drug-trafficking offenses, including trafficking of hard drugs like heroin. The Holder Justice Department also announced a new clemency initiative last year that invites clemency petitions from offenders who meet a number of criteria. Thousands of offenders, including drug traffickers, fall within those criteria.**

**a. What are your views on those DOJ initiatives and proposals?**

**b. Do they make the work of federal prosecutors harder?**

**c. Do they make the American People safer?**

**d. Are you going to continue them if you are confirmed as Deputy Attorney General?**

**RESPONSE to a-d:** As I evaluate Department policies, it is critical that that our sentencing and corrections policies protect the public, are fair to both victims and defendants, reduce recidivism, and control the prison population. The Smart on Crime Initiative is allowing the Justice Department to help ensure that our sentences are sensible, effective, and proportional to the crime; to hold offenders accountable; to conserve precious public safety resources; and to improve outcomes. Since Smart on Crime was announced, federal prosecutors are able to better focus resources on the most serious offenders, and the result has been enhanced public safety. Under the policies announced as part of the Initiative, Federal prosecutors are able to better focus resources not on quantity of prosecutions, but rather on the most serious offenders. The result has been a steady decline in the prison population and enhanced public safety. It has also meant an enhanced focus on fewer, but more significant, defendants being admitted to BOP custody. After the Initiative was announced, the number of drug cases brought federally has declined, but the average guideline minimum sentence for drug trafficking cases has risen, indicating a focus on more serious cases and more significant or violent defendants. Moreover, the rate of guilty pleas has risen, and, despite concerns raised by some, drug defendants have cooperated with the government at the same rate as before the Initiative.

Importantly, this Initiative is based on models from states, like my home state of Georgia, which successfully enacted criminal justice reforms to address the high cost of incarceration. In Georgia, like other states, not only have prison admissions and cost of incarceration fallen but, since the enactment of reforms, violent crime has decreased as well.

As Acting Deputy Attorney General, I have continued to implement the Smart on Crime Initiative with an eye towards reducing the prison population. Prison spending has increasingly displaced other critical public safety investments – such as resources for investigation, prosecution, prevention, intervention, prison reentry, and aid to local law enforcement. I look forward to working with Congress to ensure that we maximize resources to enhance public safety.

e. **Do you believe that these or other DOJ initiatives should be expanded to encompass early release for violent offenders who have served a substantial portion of their sentences?**

f. **Do you believe that these or other DOJ initiatives should be expanded to encompass early release for offenders who have received so-called "stacked" or consecutive mandatory minimum sentences under 18 U.S.C. § 924 or other provisions of federal law?**

**RESPONSE to e-f:** As you know, more than 90% of federal offenders will eventually be released to the community, including many who have a history of violence. Congressional policy has for decades recognized that modest incentives are appropriate to encourage good behavior in prison and participation in recidivism reducing programs. Under current law, all prisoners accrue good time credits. While this law is part of sensible corrections policy, we must be careful to ensure that violent offenders are sentenced in a manner that reflects the seriousness of their conduct and protects society from future harm. I also believe it is critical to do everything we can to reduce reoffending, especially among those who have a history of dangerousness. There are a number of proposals that have been introduced in Congress over the past few years to better reduce reoffending. I look forward to working with Congress to explore how to accomplish this goal in

the most effective and just way.

**14. The 2013 Cole Memorandum explains the DOJ's priorities on enforcement of federal law regarding marijuana offenses. Several jurisdictions have recently legalized cultivation and distribution of marijuana for personal use, in effect, initiating a series of state regulatory regimes that contravene federal drug laws.**

**a. Do you agree with the current DOJ enforcement policies and priorities outlined in the Cole Memorandum?**

**RESPONSE:** I have been committed to enforcing the Controlled Substances Act (CSA) throughout my career as a prosecutor, and that commitment will continue if I am confirmed as Deputy Attorney General. The Cole Memorandum articulates eight priority areas for the enforcement of federal marijuana laws. In addition, the Cole Memo acknowledges the importance of examining the particular circumstances of each case and the authority of the Department to pursue investigations and prosecutions that otherwise serve an important federal interest. As such, the Department's focus is on applying its limited investigative and prosecutorial resources to enforcing the CSA in a manner that addresses the most significant threats to public health and safety.

To be clear, the Department and the Administration do not support the legalization of marijuana, nor do I. The Department remains committed to enforcing the CSA and federal money laundering laws in a way that most efficiently uses its limited resources to address the most significant threats to public health and safety, particularly with respect to violent offenders and gang activity.

**b. Do you consider the DOJ's policy, as it is being implemented now, to reflect legitimate enforcement discretion consistent with the Take Care Clause?**

**RESPONSE**: As I have seen firsthand through my over two decades as a federal prosecutor, the Department uses its discretionary enforcement authority in a manner that seeks to focus limited investigative and prosecutorial resources to address the most significant public health and public safety threats. This principle applies in all areas of civil and criminal enforcement. In every instance, prosecutors across the country must determine how limited resources are marshaled to best confront those threats. The Department's policies, including in the area of marijuana enforcement as in others, are crafted to provide guidance on doing so in an effective, consistent and rational way, while leaving prosecutors discretion within the constraints of that guidance to take into account the particular circumstances of each case.

**c. If you are confirmed, how do you plan to measure the effect of the DOJ's policy on the federal interest in enforcement of drug laws?**

**RESPONSE**: If I am confirmed as Deputy Attorney General, I will ensure that the Department continues to consider data of all forms. These data can include the results of existing federal surveys on drug usage, state and local research, and, of course, feedback from the community and from federal, state, and local law enforcement. The degree to which existing Department policies and the state systems regulating marijuana-related activity protect federal enforcement priorities and the public is an important issue, and one on which I will remain focused in my current position,

and if confirmed. The Department will continue to collect data and make these assessments through its various components and will continue to work with our partners throughout the government to identify other means by which to collect and assess data on the effects of these state systems.

**15. A number of commentators have expressed the opinion that voter fraud simply doesn't exist or the alternative opinion that, if it does, it is a minor problem with no real effect on the integrity of elections.**

**a. Do you agree that voter fraud does not exist or is so insignificant that it does not threaten the integrity of elections?**

**RESPONSE**: I am not personally familiar with the specifics of studies regarding the prevalence of voter fraud. The Department of Justice has a number of important law enforcement responsibilities, including investigating and prosecuting violations of the federal criminal laws that criminalize various types of election fraud. If I am confirmed as Deputy Attorney General, I can assure you that where the Department finds credible evidence of voter fraud, it will enforce the federal criminal laws regarding election fraud, according to their terms, as appropriate.

**b. Do you think that voter fraud is a *bona fide* issue that states should be entitled to address with voter ID laws?**

**RESPONSE**: As the Supreme Court held in *Crawford v. Marion County Election Board*, voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. I understand that before the *Shelby County* decision, the Department did preclear some voter identification laws under Section 5 of the Voting Rights Act, such as in Virginia and New Hampshire.

The analysis of a voter identification law is very specific to the particular law, the particular jurisdiction, and a wide range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act. As such, it is difficult for me to comment on the merits of any law (or in the abstract) without a full understanding of how the law actually operates or would operate in that jurisdiction. Nor can I comment on voter identification laws that are the subject of pending litigation to which the Department is a party.

**16. First Amendment freedoms that protect the press became a lot more tenuous during Mr. Holder's administration of the DOJ. In May 2013, the Department obtained phone records for the Associated Press ("AP") without the knowledge of that organization, reportedly as part of an investigation of an AP story on CIA operations in Yemen. It then came to light that in 2010 the Holder Justice Department obtained a warrant to search the emails of Fox News reporter James Rosen – the Department claimed that Rosen was a potential co- conspirator with a State Department contractor in violation of the Espionage Act. Since then, the DOJ has issued new guidelines governing how it obtains evidence from journalists. The guidelines maintain that notice of a subpoena may be withheld only if notifying the journalist would present a "clear and substantial threat" to an investigation or to national security.**

a. **Do you agree that the Department's treatment of journalists has been heavyhanded and that reform of DOJ practices was necessary?**

**RESPONSE**: I take very seriously any legal process used with respect to the news media. Any such processes must strike an appropriate balance among several vital interests, including protecting national security; ensuring public safety; promoting effective law enforcement and the fair administration of justice; and safeguarding the essential role of the free press in fostering government accountability and an open society. To this end, I believe that the revisions to the Department's policies and practices regarding the use of certain law enforcement tools to obtain information from, or records of, members of the news media struck that balance. Significantly, the revised policies and practices cover law enforcement tools and records, and ensure thorough, high-level consideration of the use of those tools to obtain information from, or records of, members of the news media.

b. **Do you believe that the DOJ investigations described above pose a serious risk of chilling free speech?**

**RESPONSE**: I believe that a free press plays a critical role in ensuring government accountability, but that as a general matter, persons entrusted with safeguarding national security information should be held accountable when they violate that trust. I believe the Department's revised media policies and practices strike the proper balance among several vital interests, including protecting national security; ensuring public safety; promoting effective law enforcement and the fair administration of justice; and safeguarding the essential role of the free press in fostering government accountability and an open society.

c. **Do you support the new guidelines?**

**RESPONSE**: Yes. I support the new guidelines. The revised policies and practices strike the proper balance among several vital interests, including protecting national security; ensuring public safety; promoting effective law enforcement and the fair administration of justice; and safeguarding the essential role of the free press in fostering government accountability and an open society.

d. **As a former federal prosecutor, you are no doubt aware of the balance between individual liberties and the need to conduct thorough and effective investigations. Do the guidelines strike the right balance?**

**RESPONSE**: Yes, in my view, the Department's revised policies and practices strike the proper balance between among several vital interests, including protecting national security; ensuring public safety; promoting effective law enforcement and the fair administration of justice; and safeguarding the essential role of the free press in fostering government accountability and an open society.

e. **Going forward, how should the Justice Department distinguish itself from the Holder Justice Department when it comes to investigation of journalists?**

**RESPONSE**: Members of the news media play a critical role in our society. As a result, the use

of certain law enforcement tools to obtain information from, or records of, non-consenting members of the news media should be seen as extraordinary measures. If I am confirmed as Deputy Attorney General, I would give careful consideration to, and closely scrutinize, any request for authorization to use law enforcement tools to obtain information from, or records of, a member of the news media; or to investigate or prosecute a member of the news media. In my view, the revised media policies and practices both provide an appropriate framework with which to conduct this critical analysis, and strike the appropriate balance between law enforcement and free press interests.

**17. There have been significant developments recently at the DOJ regarding policies on civil asset forfeiture in response to abuses by U.S. Attorney's Offices and federal and state agencies. Attorney General Holder recently announced that the DOJ will end the Equitable Sharing Program, which essentially apportions billions of dollars in seized assets between federal, state, and local authorities – a huge pool of money that clearly created a risk of encouraging aggressive, if not unlawful, seizures from individuals who are not charged with a crime, have not been indicted, and have not enjoyed any due process whatsoever.**

**a. Do you believe that there have been inappropriate or excessive seizures by your office or by the DOJ with respect to civil asset forfeitures, adoptive seizures, and equitable sharing practices?**

**RESPONSE**: Attorney General Holder's January 16, 2015, Order generally prohibited the practice of federal adoptions of assets seized by state and local law enforcement. It did not end the Equitable Sharing Program, but came as part of the Department's comprehensive, ongoing review of the Asset Forfeiture Program, including the Equitable Sharing Program.

As part of that ongoing review, the Department recently announced additional important policy changes in this area. On February 11, 2015, the Department issued follow-on guidance on task force participation and adoption. Most recently, on March 31, 2015, the Department issued guidance restricting seizures for structuring violations unless a defendant has been criminally charged, there is probable cause that the structured funds are tied to additional criminal activity, or the U.S. Attorney or Chief of the Asset Forfeiture and Money Laundering Section (AFMLS) personally determines that there is a compelling law enforcement interest served by the seizure.

**b. What steps do you plan to take, if confirmed as Deputy Attorney General, to ensure that the DOJ returns wrongfully seized assets promptly and does not continue to seize assets wrongfully?**

**RESPONSE**: I take seriously the concerns that have been raised about civil asset forfeiture. As mentioned above, the Department has embarked on an ongoing review of its Asset Forfeiture Program, which has so far resulted in the policy change on adoptions. If I am confirmed as Deputy Attorney General, I look forward to continuing that review to ensure that Asset Forfeiture tools are used effectively and appropriately to take the profit out of crime and return assets to victims, while safeguarding civil liberties and the rule of law.

I should note that the Department's March 31, 2015, guidance on structuring imposes a 150-day

deadline to file a criminal charge or civil complaint against seized structured funds. If no charge or complaint is filed within this time period, the new guidance requires DOJ prosecutors to direct the seizing agency to return the full amount to the person from whom it was seized unless the claimant consents to extending the deadline or the U.S. Attorney or Chief of AFMLS personally approves an extension.

**Senator Thom Tillis**
**Questions for the Record**
**Sally Quillian Yates**
**Nominee to be United States Deputy Attorney General**

1. **As you know, the Inspector General serves as an independent checking power to deter fraud and promote efficiency within the Department of Justice and other agencies. Under the Inspector General Act, the Inspector General has the authority, "to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act." 5 U.S.C. App. § 6 (a)(1). This information includes Title III wiretap information, grand jury documents, and consumer credit information under the Fair Credit Reporting Act. In some situations, the Attorney General may prohibit investigations, audits, or issuance of subpoenas if the Attorney General provides written notice to the Inspector General explaining the reason such action complies with 5 U.S.C. App. § 8E (1), (2), and (3).**

   **According to testimony from Inspector General Michael Horowitz in 2013, the Department of Justice obstructed his authority to access non-privileged documents. Instead, the practice implemented by Attorney General Holder required the Inspector General to receive written permission before the Inspector General obtained access to non-privileged records. In my view, this practice violates the plain reading of the Inspector General statute and requires the Inspector General to give deference to the very agency it is supposed to audit, which clearly defeats the statutory purpose and independence vested in the Inspector General by statute. To me, it seems like the Attorney General and Deputy Attorney General would welcome recommendations from the Inspector General to promote efficiency and eliminate fraud and waste to increase the Department's resources.**

   **As acting Deputy Attorney General, has this practice continued since your appointment?**

**RESPONSE**: I believe that the Inspector General plays a particularly critical role at the Department of Justice in helping us to identify misconduct or malfeasance, or simply waste, fraud and abuse, and that the Inspector General should receive all documents that he needs to complete his reviews. I understand that OLC, in response to a request from former Deputy Attorney General James Cole, is preparing a legal opinion addressing the circumstances in which the Inspector General is legally authorized to gain access to information obtained pursuant to the Federal Wiretap Act, Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 U.S.C. §§ 2510-2522 (2012); grand jury material protected by Rule 6(e) of the Federal Rules of Criminal Procedure; and information obtained pursuant to section 1681u of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (2012). I expect their work to be completed as soon as possible. Although it is my understanding that the Inspector General has never been denied access to Title III or Rule 6(e) material when necessary to complete his reviews, I am

developing a department-wide policy that will expedite the production of such documents to the Inspector General, and I expect that policy to be finalized in the coming weeks.

a. **If yes, specifically explain your statutory interpretation that gives the Attorney General the ability to violate the plain meaning of the IG's powers under the statute.**

   i. **Furthermore, specifically explain where you find statutory authority to require the Inspector General to comply with the current administration's practice of requiring written permission from the Attorney General in order for the IG to access non-privileged documents?**

   ii. **Specifically explain what power the Inspector General holds to effectively audit, recommend efficiency proposals, and eliminate waste if the Attorney General can unilaterally withhold access information that is not privileged?**

   iii. **If the Attorney General can unilaterally withhold information from the Inspector General contrary to the IG statute, what prevents other components within the Department from obstructing investigations and interfering with the independent powers specifically given to the Inspector General?**

b. **If no, please specifically explain what steps you will take ensure the independence of the Inspector General's statutory authority and ability to audit the Department of Justice and how you will prioritize his recommendations.**

**RESPONSE (to a-b)**: As explained above, I believe that the Inspector General plays a critical role at the Department of Justice in helping us to identify misconduct and malfeasance as well as waste, fraud and abuse. To ensure the independence of the Inspector General, I am working hard to develop a new department-wide policy that will expedite the production of documents to the Inspector General, and I expect that policy to be finalized in the coming weeks.

c. **In addition, this month, OIG issued a report entitled "The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components." This report reviewed the Department of Justice's law enforcement components and their handling of internal sexual misconduct and sexual harassment allegations. The report specifically stated, "The OIG's ability to conduct this review was significantly impacted and delayed by the repeated difficulties we had in obtaining relevant information from both the FBI and DEA as we were initiating this review in mid-2013."**

   i. **Do you believe the Department's law enforcement components have the authority to unilaterally withhold information from the Office of Inspector General? If yes, please explain your justification.**

ii. **If no, please explain what steps you will take to ensure that the Department's law enforcement components do not continue to obstruct investigations by the Office of the Inspector General.**

**RESPONSE (to c)**: As I explain above, I am working hard to develop a department-wide policy that will expedite the production of documents to the Inspector General, and I expect that policy to be finalized in the coming weeks.

2. **In a December 2014 Report entitled "Professional Misconduct: DOJ Could Strengthen Procedures For Disciplining Its Attorneys," the Government Accountability Office concluded: "The Department of Justice (DOJ) has made changes to improve its processes for managing complaints of attorney professional misconduct since 2011 but has not implemented plans to improve processes for demonstrating that discipline is implemented, or achieving timely and consistent discipline decisions."**

   a. **Surely we can agree that attorneys who have committed prosecutorial misconduct or who have been disciplined by a state bar have not always carried out their duties with integrity and professionalism. Do you, in fact, agree with that statement?**

   b. **Secondly, would you, consistent with any due process rights of such an employee, dismiss an employee who does not uphold the professional standards and duties required of them as an attorney and a Department of Justice employee?**

   c. **Would you agree that any attorney at the Department of Justice who has actually been disbarred should be dismissed?**

   d. **What actions have you taken as acting Deputy Attorney General to comply with the recommendations offered by the Government Accountability Office in its report?**

**RESPONSE (to a-d)**: I am committed to ensuring that all Department attorneys carry out their duties with the highest level of integrity and professionalism, and to pursuing appropriate discipline for those who do not. The Department takes into consideration all aspects of a candidate's suitability for employment when making hiring decisions, including whether the attorney has a history of professional misconduct. By their nature, professional misconduct findings are fact-based and varied, and the Department carefully considers the allegations and conclusions of any prior discipline or misconduct findings when evaluating an attorney's suitability for employment. I will follow the Department's suitability rules and policies as applied at the time of hiring, and will support measures that ensure Department attorneys carry out their duties using excellent judgment and consistently adhering to all applicable professional responsibilities. Public service is a public trust, and I believe it is important for the Department to maintain the highest standards for all of its employees.

It is my understanding that there has not been an instance where a person who has been disbarred has continued to serve as an attorney in the Department. Any time the Department takes disciplinary action against an employee for findings of misconduct, we are obligated to follow the due process and procedural statutory requirements for Adverse Actions set forth in 5 U.S.C. Chapter 75. By statute and Department policies, however, all Department attorneys are required to be active members of a state bar. If a Department attorney were disbarred and not an active member of a bar, then his or her employment with the Department would be terminated.

GAO made two recommendations to the Department in its report on professional misconduct. First, GAO recommended that the Department require components that impose discipline to demonstrate that they actually implemented the discipline. The Department adopted the recommendation, and this requirement is now part of the discipline process. Second, GAO recommended that the Department take steps towards expanding the jurisdiction of the Professional Misconduct Review Unit (PMRU) to all Department attorneys. The Department has done so, and all attorneys in the Department's litigating components are now subject to PMRU's jurisdiction.

3. **As of today, 34 states have passed laws requiring voters to show some form of identification at the polls. As of October 13, 2015, thirty one states have voter identification laws that are already in force. My home state of North Carolina enacted a Voter ID law in 2013, which doesn't even go into effect until 2016. As you are also likely aware, the Department of Justice filed a lawsuit challenging this reform. To date, both a Federal District Court Judge in North Carolina and the United States Supreme Court have refused to agree with the arguments advanced in the litigation by the Department of Justice. When Ms. Lynch was before the Committee, she continually stressed that the Department has limited resources and must "balance priorities with resources."**

    a. **Would you agree that the Department must set priorities and pursue the cases that the Department views as the most critical to the nation from a law enforcement perspective?**

    b. **Do you believe challenging the implementation of Voter Identification requirements that have been upheld by the Supreme Court in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), that are widely popular with the American public, and now law in a majority of states, is an appropriate "balance of priorities with resources" for the Department of Justice?**

        i. **If yes, please explain why you believe this is an appropriate use of Department resources?**

            1. **Furthermore, it is my understanding that there are no fewer than 10 Department of Justice lawyers working on the North Carolina case alone. This does not include the numerous attorneys working on other similar cases in Wisconsin, Texas, and Ohio. Do you feel this is an appropriate expense and use of the Department's time, money, and attorneys given the concerns expressed by Attorney General nominee Loretta**

**Lynch about "resource constraints" within the Department, and should these Voter ID cases receive priority over prosecuting cybercrimes, terrorism threats, and human trafficking?**

ii. **If no, please explain what criteria you would use to decide which cases should receive priority consistent with the Department's and the AG nominee's claims of "resource constraints?"**

**RESPONSE**: Because the right to vote is one of our most sacred rights, it is critical that all eligible citizens are able to register and to cast a ballot. For this reason, if confirmed as Deputy Attorney General, I will be committed to using every available tool to ensure that all eligible Americans can exercise the franchise.

As the Supreme Court held in *Crawford v. Marion County Election Board*, voter identification laws are not per se unconstitutional. Nor do they necessarily violate the Voting Rights Act. In fact, I understand that before the *Shelby County* decision, the Department did preclear some voter ID laws under Section 5 of the Voting Rights Act, such as in Virginia and New Hampshire. The analysis of any specific law, however, is very specific to the details of the law, the particular jurisdiction, and a range of factors that Congress has identified as relevant to determining whether a particular voting practice comports with the Voting Rights Act.

When considering questions under Section 2 of the Voting Rights Act, the Department considers whether there is a racially discriminatory purpose behind the enactment of a specific voting practice in a particular jurisdiction and/or whether the specific voting practice leads to a racially discriminatory result in that particular jurisdiction. In evaluating questions of discriminatory purpose under Section 2, the Department considers the factors discussed by the Supreme Court in the *Arlington Heights* case. Further, in evaluating questions under Section 2, the Department considers the Senate factors that are described in the 1982 legislative history of Section 2, and further discussed in the case law. Among the factors considered in making the evaluation of possible discriminatory purpose and discriminatory results is the nature, scope and severity of impediments faced by citizens in a particular jurisdiction regarding a specific voting practice, and what protections or alternatives may be available for citizens for whom a voting practice results in barriers to full and equal participation in the political process. A number of these questions are at issue in pending litigation in which the Department is participating, and for this reason, I am unable to comment further.

4. **In 1976, Congress established the Public Safety Officers' Benefits (PSOB) program, which is administered by the Department of Justice and provides lump-sum payments to eligible public safety officers and their survivors after a line-of-duty death or permanent and total disability. The program also provides educational benefits to an eligible officer's spouse and children. In 2009, the Government Accountability Office found that families of fallen or injured officers were waiting as long as a year and a half for a determination on a claim to the Public Safety Officer's Benefits Program.**

**Just this past week, Peter J. Kadzik, Assistant Attorney General, responded to a February 2015 inquiry from Senate Judiciary Chairman Grassley regarding this program. That communication indicates there are 36 pending PSOB death benefit claims pending at DOJ, a number of which have been pending for over four years.**

a. **This is an area where we cannot make excuses. In your time as acting Deputy Attorney General, what have you done to streamline this process and to ensure that outstanding PSOB claims are handled efficiently and quickly?**

b. **Notably, Mr. Kadzik's March 27, 2015 letter refers to a willingness to implement recommendations to improve the program's operation from the Department's Inspector General and the Office of Justice Program's Office of Audit, Assessment, and Management. Please explain whether you believe the program should have to be audited by two different entities just to ensure it is run efficiently and effectively. Please also explain what actions you will take to hold the employees managing the program accountable and to ensure that claims are managed in a timely manner in the coming years.**

**RESPONSE:** The Public Safety Officer Benefit (PSOB) is a critically important program, and the Department takes seriously our responsibilities in administering PSOB. As we indicated in a February 26, 2015, letter to Chairman Grassley, the Office of Justice Programs has undertaken several recent steps to streamline and improve our process of reviewing PSOB claims. Following the 2009 GAO report, OJP implemented a number of changes to the PSOB program in light of GAO's recommendations. Improvements include: hiring additional PSOB personal to handle outreach to claimants; hiring additional attorneys to review claims; limiting non-critical paperwork required by applicants; clarifying the process to revolve disputed medical evidence; and increasing collaboration with stakeholders. While these changes have improved some aspects of the claim determination process, we recognize that additional changes are needed to decrease the overall time period for processing claims. Thus, in January 2015, OJP's Assistant Attorney General directed the Office of Audit, Assessment and Management (OAAM) to conduct an internal business process improvement review, and recommendations from this review are expected later this year. We are also aware that the Department's OIG is conducting an independent audit of the PSOB Program. We look forward to reviewing the recommendations from both OAAM and OIG in order to assist our continuing efforts to improve the PSOB Program.

5. **In your testimony before the Senate Judiciary Committee, you stated, "I'm a big believer that you need to have strategic objectives and that's down to each and every component and employee of the Department of Justice having a strategy and goals they're setting. So that's something we're working on now."**

   a. **Please describe what observations you have had concerning the biggest challenges the department has had thus far concerning where the Department of Justice needs to improve the allocation of its resources?**

**RESPONSE**: As Acting Deputy Attorney General, I greatly appreciate this Committee's efforts to ensure the Department has the tools and resources it needs to vigorously enforce federal law, and keep our nation and communities safe. In order to fulfill our duties, the Department continues to work to restore the loss of staffing it incurred due to Sequestration and related budget constraints. Our people are the Department's strongest asset and the key to preserving and promoting public safety, yet the Department lost over 4,500 staff, including six percent of its attorneys and over 700 law enforcement agents.

In terms of strategic objectives and priorities, I believe the Department should stay the course on its number one objective to protect Americans from terrorism and other threats to sational security. In addition, we need to aggressively address all aspects of cybercrime, including criminal and national security threats; continue the fiscal savings and public safety enhancements of the Smart on Crime Initiative; strengthen our relationships with, and training and capabilities of, our law enforcement partners; protect vulnerable populations; and ensure we maximize the benefits of our information technology budget.

**b. What plan do you have for systematically reassessing these goals for your remaining time at the Department?**

**RESPONSE**: The Department is currently reviewing and updating its Priority Goals for FY 2016 and 2017. I recently met with the senior leadership of the Justice Management Division to launch this work. We have already begun the process of assessing our strategic and priority goals, and most importantly, establishing performance metrics for each of our identified goal areas to ensure we are providing proper management and oversight to our work and achieving our objectives.

**c. What issues and initiatives do you plan on prioritizing, if confirmed, over the next two years, and how and why did you reach your decisions?**

**RESPONSE**: First, the Department should continue its efforts outlined in the current strategic plan, specifically to: prevent terrorism and promote national security consistent with the rule of law; prevent crime, protect the rights of the American people and enforce federal law; and ensure the fair, impartial efficient and transparent administration of justice at all levels of government, including Tribal entities.

These core responsibilities are critical to the country. Additionally, in my meetings with our component heads, and in my recent meeting with the senior leaders of our management division, I've identified other priorities within these broad goals. For example, because prison and detention costs are 30 percent of our budget, it is important that we provide more systemic re-entry programming in our prisons as a mean of helping reduce recidivism and ultimately reducing incarceration costs. I also intend to elevate our focus on preventing and prosecuting cybercrime, which is an area with substantial risks to our economy, businesses, and citizens. I am working to strengthen the relationships between law enforcement and the communities they serve by providing better training to law enforcement and improved community policing programs. Finally, I've asked our management leaders to work to address what I perceive to be unevenness in our Information Technology capabilities in the Department. We need to

modernize our mission critical investigative and litigation tools to better support all aspects of delivering fair and impartial justice, including investigation, prosecution, discovery, and litigation operations. Finally, we need to continue hardening our networks and data centers so our infrastructure can provide and protect our mission-critical technology needs.

6. **This month, the Office of Inspector General (OIG) issued a report entitled "The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components." This report reviewed the Department of Justice's law enforcement components and their handling of sexual misconduct and sexual harassment allegations. Specifically, there were several instances of questionable reporting of sexual harassment by supervisors in the Drug Enforcement Agency (DEA), Bureau of Alcohol, Tobacco, Firearms, and Explosive (ATF), Federal Bureau of Investigation (FBI), and the United States Marshalls Service (USMS). OIG found that these supervisors were not disciplined or reprimanded for their improper reporting.**

   a. **While I am pleased to know that the OIG did not find many instances of improper reporting, I am concerned that the various supervisors that did not properly report sexual harassment were not disciplined. Do you intend to follow OIG's recommendation, namely that the Deputy Attorney General, "should ensure that the Department's zero tolerance policy on sexual harassment is enforced in the law enforcement components and that the components' tables of offenses and penalties are complimentary and consistent with respect to sexual harassment?"**

      i. **In addition, what procedures will you put in place to reprimand supervisors who fail to effectively report potential instances of sexual harassment and misconduct?**

**RESPONSE**: The solicitation of prostitution by Department personnel is inconsistent with the standards of the Department of Justice. Such activity creates a heightened risk of compromising national security and classified information, invites extortion and blackmail, and jeopardizes the Department's ability to execute its mission. On April 10, 2015, the Attorney General issued a memorandum reiterating that Department employees are prohibited from soliciting or procuring commercial sex. This prohibition covers all Department personnel, including attorneys, law enforcement officers, contractors, and subcontractors, and applies at all times during an individual's employment, contract, or subcontract, including while on personal leave. This policy prohibits accepting commercial sex purchased on one's behalf, and applies regardless of whether the sexual activity is legal or tolerated in a particular jurisdiction, foreign or domestic. Department employees who violate these prohibitions will be subject to suspension or termination. Supervisors and managers are subject to discipline for failing to report alleged violations.

   b. **The report also found that law enforcement agents in the DEA, who held Top Secret clearances, engaged in "sex parties" while working overseas.**

i. **Do you intend to follow the OIG's recommendation regarding an explicit ban on the solicitation of prostitution, even in foreign jurisdictions where such conduct may be legal?**

**RESPONSE**: As I stated above, and consistent with the OIG's recommendation, the Attorney General has issued a memorandum reiterating that Department employees are prohibited from soliciting or procuring commercial sex. This prohibition covers all Department personnel, including attorneys, law enforcement officers, contractors, and subcontractors, and applies at all times during an individual's employment, contract, or subcontract, including while on personal leave. This policy prohibits accepting commercial sex purchased on one's behalf, and applies regardless of whether the sexual activity is legal or tolerated in a particular jurisdiction, foreign or domestic.

c. **Finally, the report found that law enforcement components failed to have appropriate technology to archive, monitor and detect sexually explicit images and text messages. This failure limited the OIG's ability to determine the actual quantity of explicit emails, images, and texts transmitted; thus, the Department's failure hindered the OIG's ability to effectively investigate sexual harassment and misconduct claims.**

i. **What steps do you plan to take to ensure that sexually explicit communications are monitored and stored in a way to make sexual harassment and sexual misconduct claims investigations as transparent as possible?**

**RESPONSE**: Consistent with the Department's response to the OIG report, over the next few months, senior members of my staff will work closely with leadership and IT personnel in the Department's law enforcement components to ensure the proper preservation of text messages and images for a reasonable period of time. The Department will also work with the components to ensure that this information is available for misconduct investigations.

**Senator Dianne Feinstein**
**Questions for the Record**
**Sally Quillian Yates**
**Nominee to be United States Deputy Attorney General**

**1. On September 23, 2009, the Attorney General issued a memorandum establishing new policies and procedures governing the Department of Justice's invocation of the state secrets privilege.**

**The Attorney General's memorandum states that the "Department is adopting these policies and procedures to strengthen public confidence that the U.S. Government will invoke the privilege in court only when genuine and significant harm to national defense or foreign relations is at stake and only to the extent necessary to safeguard those interests."**

**As an accountability mechanism, the memorandum includes the following congressional reporting requirement: "The Department will provide periodic reports to appropriate oversight committees of Congress with respect to all cases in which the Department invokes the privilege on behalf of departments or agencies in litigation, explaining the basis for invoking the privilege."**

**On April 29, 2011, the Department issued its first periodic state secrets privilege report. That report discussed the two cases in which the privilege had been invoked under the new policy, but those are no longer the only two cases. A second periodic state secrets privilege report has not been issued.**

**When I asked Loretta Lynch at her hearing to provide the appropriate oversight committees with the second periodic report, she testified: "I certainly commit to you that I will do my best to ensure that the department lives up to its obligations that it has set forth."**

**I do not understand the significant delay in producing the second periodic report to the appropriate oversight committees of Congress. The Department, which invokes the state secrets privilege in litigation, has the information needed to provide to Congress, so there is no apparent reason for delay.**

**In your role as Acting Deputy Attorney General, will you commit to me that this report will be released by April 29, 2015, four years after the first periodic report was provided?**

**RESPONSE:** I recognize your interest in this issue, and assure you that the Department is actively working to finalize this report. We are working to release the report before April 29, 2015, or as soon thereafter as is practicable.

**Senator Richard Durbin**
**Questions for the Record**
**Sally Quillian Yates**
**Nominee to be United States Deputy Attorney General**

1. **In December 2014, the Justice Department issued updated "Guidance for Federal Law Enforcement Agencies regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity." Please describe what steps the Justice Department has taken to implement this Guidance. Is there an office in the Department that is primarily responsible for implementing the Guidance?**

**RESPONSE:** As a career prosecutor, I have dedicated my career to improving public safety. I recognize that racial profiling undermines the trust between police forces and the communities they serve, and I know firsthand that fair law enforcement is effective law enforcement. Consequently, I have directed my staff in the Office of the Deputy Attorney General to oversee the implementation of the Department's updated guidance, which is an ongoing process, and to provide me with regular updates.

My staff is working with the executive staff of the Department's Civil Rights Division and Office of Legal Policy to ensure that the Department's vision of unbiased, even-handed law enforcement, as reflected by the policy, is fully realized, and that progress is communicated to appropriate stakeholders, including interested civil rights groups. The implementation process has included meeting with the Department's components to determine what steps have been, or need to be, taken to implement the guidance, particularly with respect to training, data collection, and accountability. I am confident this process will lead to successful implementation of the updated guidance and I am committed to that goal.

2. **The Guidance states, "In order to ensure its implementation, this Guidance finally requires that Federal law enforcement agencies take the following steps on training, data collection, and accountability."**

   a. **With respect to training, the Guidance mandates, "Law enforcement agencies therefore must administer training on this Guidance to all agents on a regular basis, including at the beginning of each agent's tenure. Training should address both the legal authorities that govern this area and the application of this Guidance. Training will be reviewed and cleared by agency leadership to ensure consistency through the agency." What steps has the Justice Department taken to implement this requirement for Department employees? Has the Department created a curriculum or other materials for use in training? When will the first training take place? What assistance has the Department provided to other federal law enforcement agencies in implementing this requirement?**

   b. **With respect to data collection, the Guidance requires, "Each law enforcement agency therefore (i) will begin tracking complaints made based on the Guidance, and (ii) will study the implementation of this Guidance through targeted, data-**

**driven research projects." What steps has the Justice Department taken to implement this requirement for Department employees? What assistance has the Department provided to other federal law enforcement agencies in implementing this requirement?**

c. **With respect to accountability, the Guidance requires, "Therefore, all allegations of violations of this Guidance will be treated just like other allegations of misconduct and referred to the appropriate Department office that handles such allegations. Moreover, all violations will be brought to the attention of the head of the Department of which the law enforcement agency is a component." What steps has the Justice Department taken to implement this requirement for Department employees? What assistance has the Department provided to other federal law enforcement agencies in implementing this requirement?**

**RESPONSE:** I have directed my staff to oversee the implementation of the Department's updated guidance, which is an ongoing process. The implementation process will include meeting with the Department's components to determine what steps have been, or need to be, taken to implement the guidance, particularly with respect to training, data collection, and accountability. I am confident this process will lead to successful implementation of the updated guidance.

3. **The Justice Department's Bureau of Justice Assistance operates an important program called the John R. Justice (JRJ) program, which provides student loan repayment assistance to state and local prosecutors and public defenders across the nation.**

   **Congress enacted the JRJ program in 2008, modeling it after the Attorney Student Loan Repayment Program that the Department of Justice operates for its own attorneys. The JRJ program helps state and local prosecutors and public defenders pay down their student loans in exchange for a three-year obligation to continue serving in their positions. This has proven to be an effective recruitment and retention tool for prosecutor and defender offices. And since the Department of Justice is awarding hundreds of millions of dollars in grants each year to state and local law enforcement, which generates higher numbers of arrests and criminal cases, it is critical that we help prosecutor and defender offices keep experienced attorneys on staff to handle these cases.**

   **The JRJ program has helped thousands of prosecutors and defenders across the country. But for the program to remain successful, the Department of Justice must remain committed to this program and to carefully administering and overseeing it. Will you commit to work with me to keep this program operating effectively during your tenure if you are confirmed?**

**RESPONSE**: Yes, I commit to working with Congress to ensure that the Department's Bureau of Justice Assistance continues to properly oversee the John R. Justice program. As a career federal prosecutor and now as the Acting Deputy Attorney General, I know that it is critical to have a robust workforce of prosecutors and defense attorneys to support the criminal justice system.

**Senator Al Franken**
**Questions for the Record**
**Sally Quillian Yates**
**Nominee to be United States Deputy Attorney General**

1. **During our meeting last month I explained to you that I am very concerned about the proliferation of so-called "stalking apps" on mobile phones. These are apps that allow users to track the locations of victims, listen to their phone calls, or read their text messages. Stalking is illegal under state law, but federal law does not currently prohibit developers from creating apps that track geo-location data. I plan to reintroduce legislation on this topic, because I think we need to close that loophole.**

   **DOJ does have authority under existing wiretap laws to prosecute creators of apps that allow stalkers to listen to victims' phone calls, intercept text messages, or otherwise intercept content from victims' phones. And I'm pleased that DOJ prosecuted one app developer who created an app to do all those things. I had asked that you do just that.**

   **But looking ahead, first of all: will you work with me on my bill to make sure that the federal government has all the tools it needs to go after stalking apps and other location privacy problems? And second: I believe there is more DOJ could be doing now—specifically, DOJ could include more robust questions in the National Crime Victimization Survey regarding GPS stalking. Will you do that?**

**RESPONSE**: As Acting Deputy Attorney General, and as a career prosecutor, I share your concern about these "stalking apps" and I thank you for your attention to this issue. The Department is committed to cracking down on those who seek to profit from stalking-type applications by using them to commit individual privacy invasions. As you reference, an individual in the Eastern District of Virginia was recently prosecuted and pleaded guilty to advertising and selling a spyware application. In addition, the Administration's January 2015 legislative proposals to update cybercrime laws included provisions authorizing the forfeiture of proceeds from the sale of spyware, and adding the sale of spyware as a predicate offense under the money laundering statutes, both of which would increase our ability to go after those who propagate spyware such as stalking apps.

In addition to our criminal enforcement efforts, the Department also has available a range of resources for state and local authorities to address issues of cyberstalking. The Department's Office of Justice Programs and Office on Violence Against Women are providing grants, training, and technical assistance on this issue. We also have victim assistance funds available for victims of cybercrime. In addition, the Department's Bureau of Justice Statistics will be revising and expanding the National Crime Victimization Survey for 2016 to address cyberstalking and related issues, and we would welcome the opportunity to discuss this issue further with you and your staff.

2. **I want to ask you about efforts to rein in abuses in the credit rating industry—this is a topic you and I discussed when we met earlier and it is something that I have been focused on since I came into office, because those abuses played an important role in helping to cause the financial meltdown and the Great Recession. The current business model for credit rating agencies is deeply flawed. It's a system that allows banks to shop around among agencies to get a good initial rating on a financial product, and encourages the ratings agencies to loosen their standards to chase the business of big banks. The result is a "pay-to-play" system that encourages risky, inflated ratings at the expense of public investors. I've been working with a bipartisan group of colleagues, pushing for common-sense reforms to fix the system.**

   **I know that DOJ has been looking back at what happened in the financial crisis and working to hold the credit rating agencies accountable for the inflated ratings that contributed to the crisis. But so far, DOJ has filed suit against just one credit rating agency, S&P—a suit that S&P settled for nearly $1.4 billion. But when that suit commenced, the Department suggested that more suits might be forthcoming. I am deeply concerned that these risky practices remain business-as-usual for the big ratings agencies and that a simple slap on the wrist won't be enough to change the misaligned incentives of their flawed business model.**

   **Will you take an aggressive approach to holding the ratings agencies—including but not limited to S&P—accountable for their role in the financial crisis? And will you commit to ensuring that DOJ will remain vigilant and hold rating agencies accountable for engaging in the kind of "pay-to-play" schemes that led to the crisis in the first place?**

**RESPONSE:** Thank you for raising this issue in our meeting last month. I assure you that I am committed to using all of the Department's enforcement tools, both civil and criminal, to target financial fraud and to continue to pursue and hold accountable those who contributed to the financial crisis. The Department has aggressively prosecuted a wide range of complex and sophisticated financial fraud cases, and a number of major investigations remain ongoing. The Department's recent enforcement efforts demonstrate its focus on misconduct of every kind that contributed to the financial crisis, including that of credit rating agencies. The February 2015 settlement with Standard & Poor's Financial Services (S&P) is one example of the Department's efforts, and it is the largest penalty of its type ever paid by a ratings agency.

Another significant aspect of this resolution is S&P's admission of its own unlawful role in the financial crisis. Specifically, S&P admitted that, while it had promised investors and the public that its ratings would be independent and objective and not affected by any existing or potential business relationship, its decisions on its rating models were, in fact, affected by business concerns, and that it was with an eye to business concerns that S&P maintained and continued to issue positive ratings on securities despite a growing awareness of quality problems with those securities. This resolution, along with others of the last two years, demonstrates the Department's commitment to protect the integrity of our financial system and the best interests of the American people. In my current role as Acting Deputy Attorney General, and if confirmed, I can assure you that the Department will continue to remain vigilant in its efforts to

combat corporate fraud, and, above all, to ensure that the individuals who commit the fraud at those institutions are held to account.

3. **At the time of the founding of our nation, no one could conceive of the many technologies we have today. Even 20 years ago, we did not foresee the invention and prevalence of the smart phone—a device with which nearly everyone is now familiar.**

   **There is no question that new technologies—from drones to facial recognition software—have enormous potential in both commercial and law enforcement applications. But I am deeply troubled by the limited privacy protections current law grants. Our privacy laws just have not kept pace with technological innovation. We need to be thinking carefully about the privacy implications of these technologies, and we need to get clear, strong privacy laws on the books. How will you go about balancing privacy and law enforcement interests? Will you commit to carefully considering the privacy implications for any DOJ programs and working with me to update our laws?**

**RESPONSE:** I agree that it is important to balance privacy and law enforcement interests, and I am committed to carefully considering the privacy implications for any Department programs. As technology plays an increasingly important role in promoting public safety, the Department remains deeply committed to utilizing law enforcement resources in a manner that is consistent with the requirements and protections of the Constitution, and with high respect for the important privacy interests of the American people.

The Department's privacy compliance program has steadily evolved since the enactment of the Privacy Act of 1974. Privacy and civil liberties are key considerations taken into account in virtually all Department programs, and they play an important role in the decisions of the senior leadership of the Department. In February 2006, the Department created an Associate Deputy Attorney General position in the Office of the Deputy Attorney General to serve as the Department's Chief Privacy and Civil Liberties Officer (CPCLO), who reports to both the Deputy Attorney General and to the Attorney General. The CPCLO leads the Department's privacy and civil liberties program, and is supported by the Office of Privacy and Civil Liberties. In addition, the Department has designated a senior official within each component to serve as the Senior Component Official for Privacy to ensure privacy issues are reviewed at the component-level.

As demonstrated by the legal review and privacy assessments that have been conducted by our components and the development of privacy best practices and operational guidelines, the Department has always had a long-standing, firm commitment to preserving the privacy and civil liberties of the public that we serve. If confirmed, I will continue to uphold that commitment as Deputy Attorney General, and I will be happy to work with you on these important issues.

4. **DOJ's Antitrust Division is currently reviewing Comcast's proposed acquisition of Time Warner Cable. In March of last year, I sent a letter to the Antitrust Division, raising my concerns about the deal, which—if approved—would result in a company with unprecedented power in the telecommunications industry. It would threaten to seriously compromise the open, competitive nature of the Internet, while also raising**

**prices and restricting consumer choice. Strong antitrust enforcement by DOJ is essential to protecting consumers.**

**If confirmed, will you commit to reviewing the serious concerns about the proposed Comcast-Time Warner Cable deal that I and so many others have raised, and to doing all that you can to ensure that the Antitrust Division is empowered to stand up to telecommunications giants like Comcast?**

**RESPONSE:** I agree that vigorous enforcement of the antitrust laws by the Department is essential to protecting competition and consumers. Although I cannot comment on an active investigation, I can assure you that the Antitrust Division is conducting a comprehensive investigation of Comcast's proposed acquisition of Time Warner Cable. The Department appreciates your concerns and as part of its investigation will analyze the issues you have raised. The Department is also working closely with the FCC to ensure that competition is protected in the marketplace for video distribution, broadband, and content production.