

**Hearing before the Senate Committee on the Judiciary
Oversight of the Department of Justice**

March 1, 2023

SENATOR BLUMENTHAL

Question for Attorney General Garland

As you know, in December 29, 2022, Congress passed the Fairness for 9/11 Families Act as part of the omnibus spending bill. The support of the Department of Justice in passing this legislation was enormously helpful. As intended, this bipartisan legislation would provide a catch-up payment for thousands of 9/11 victims, spouses and dependents who were excluded from the U.S. Victims of State Sponsored Terrorism Fund when it was first established in 2015.

The Fairness for 9/11 Families Act does not include a specific deadline for when payments from that appropriation will be made. The only information to date was posted on the United States Victims of State Sponsored Terrorism (USVSST) Fund website on January 27, 2023 but does not contain any timeline for issuance of payments. As I understand it, the USVSST Fund already has all information necessary to calculate payments and has been allotted additional staff to process the applications during 2023.

- 1. Could you please provide a timeline, and some guidance to the Committee, for how and when the funds that were appropriated in the Fairness for 9/11 Families Act will be distributed?**

Response: The Fairness for 9/11 Families Act, enacted on December 29, 2022, directed the Special Master to make lump sum catch-up payments to certain 9/11-related claimants from the U.S. Victims of State Sponsored Terrorism (USVSST) Fund, in amounts equal to those calculated by the Comptroller General, Government Accountability Office (GAO).¹ The legislation also appropriated funds for use only as “such sums necessary” to make these payments; GAO had estimated they would total approximately \$2.7 billion.

¹ See U.S. Government Accountability Office, *GAO-21-105306: U.S. VICTIMS OF STATE SPONSORED TERRORISM FUND: Estimated Lump Sum Catch-Up Payments*, August 11, 2021, <https://www.gao.gov/assets/gao-21-105306.pdf>

Questions for the Record
Senate Committee on Judiciary
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On April 10, 2023, the USVSST Fund issued letters informing eligible 9/11-related claimants of their lump sum catch-up payment amounts.² On April 20, 2023, the USVSST Fund began issuing the payments. The USVSST Fund advises that it has issued over 90 percent of 9/11-related lump sum catch-up payments within one month after sending payment amount letters to eligible claimants. The USVSST Fund continues to issue 9/11-related lump sum catch-up payments on a rolling basis.

² See Press Release, U.S. Dep’t of Just., Department Announces Total Distribution of Over \$6B to Victims of State Sponsored Terrorism (April 10, 2023), <https://www.justice.gov/opa/pr/justice-department-announces-total-distribution-over-6b-victims-state-sponsored-terrorism>.

SENATOR JOHN CORNYN
Questions for Attorney General Merrick Garland

- 1. I asked you as a part of your confirmation about properly obtaining compensation for victims of human trafficking, specifically in the form of fines levied on perpetrators. You replied “I understand there have been challenges to securing funds from criminals who are responsible for these horrific offenses. If confirmed, I will seek to expand and further efforts to obtain funding for victims, who often lack resources to obtain needed services.”**
 - a. Please explain with specificity how the Department has improved securing these funds from criminals, as well as the expansion of efforts to obtain funding for victims.**

Response: Protecting and vindicating the rights of vulnerable individuals is central to the Department’s mission. Traffickers exploit their victims’ labor, services, or coerce them to engage in sex acts, including the sexual exploitation of children, for the traffickers’ profit, often leaving these victims with next to nothing. In order to rebuild their lives and access supportive services, victims and survivors need access to financial remedies to secure necessary services and opportunities to restore their financial independence.

Available financial remedies include: court-ordered restitution under 18 U.S.C. § 1593 for victims of Chapter 77 human trafficking crimes; court-ordered restitution under 18 U.S.C. § 2429 for victims of sexual exploitation crimes; and Special Assessments levied under 18 U.S.C. § 3014 and paid into the Crime Victims Compensation Fund. The Department may also use asset forfeiture to recover property that can be converted into funds that can be applied toward compensating crime victims. *See* 18 U.S.C. § 1594(f)(1).

To enhance the Department’s overall capacity to protect human trafficking victims and survivors and assist them to secure financial remedies, the Department’s National Strategy to Combat Human Trafficking³, released January 31, 2022, calls for expanded outreach and training to enhance the Department’s ability to secure and enforce restitution orders. The Department is actively implementing measures to fulfill these high-priority directives under the Strategy. During the past year, the Department has convened eight trainings for investigators and prosecutors on strategies for conducting effective financial investigations in cases involving human trafficking and related violations, and has included training on restitution, forfeiture, and other financial remedies in all major human trafficking trainings to enhance law enforcement capacity to secure financial relief for trafficking victims and survivors. The Department has

³ *See* U.S. Dep’t of Just., *National Strategy to Combat Human Trafficking*, January 2022, <https://www.justice.gov/opa/press-release/file/1467431/dl>

developed additional on-demand training resources on effective use of financial penalty provisions.

2. **When the BOP Director was before the committee, I submitted questions for the record about whether individuals in BOP custody had access to support services if they are victims of sexual abuse, including hotline services. Those questions were not responded to. The last time the BOP answered questions related to these services was in 2021. The former BOP Director testified that they “certainly encourage [prisoners] to come forward, whether it’s by staff or the use of the hotline, to report things of that nature.” The Prison Rape Elimination Act, 42 U.S.C. § 15601 et seq., requires prisoners both to have access to an external reporting mechanism and access to support services.**

- a. **Is the former BOP Director’s testimony accurate?**

Response: Bureau of Prisons (BOP) advises that all those incarcerated in BOP facilities have access to both internal and external methods to report sexual abuse. Because the Department and BOP are committed to eradicating sexual misconduct by staff in federal prisons, the Department has worked with the BOP to develop additional options and supports since the time of that testimony. The Department will continue to work with the BOP to ensure that staff who engage in this behavior are held accountable, to bring criminal charges where appropriate, and to implement the reforms needed to deter it.

- b. **Do all federal prisoners have access to both of these things?**

Response: BOP advises that support services exist for all incarcerated individuals within the BOP system to report sexual abuse and to seek crisis intervention and emotional support following an instance of sexual abuse.

- **Reporting:** BOP advises that all those incarcerated in BOP facilities have access to both internal and external methods to report sexual abuse. Internally, individuals can report to any staff member, verbally or in writing through email or paper forms. They can report sexual abuse through filing an Administrative Remedy and contacting the BOP’s Office of Internal Affairs. Individuals in custody are also able to report sexual abuse directly to the Department’s Office of the Inspector General using email or postal mail. Those e-mails cannot be accessed by BOP staff. The family members of incarcerated individuals can email a report of sexual abuse through the public website, which includes a page allowing users to “Report a Concern.”⁴ Additionally, the Department’s Office on Violence Against Women, in partnership with its Bureau of Justice Assistance, funded

⁴ See Federal Bureau of Prisons, *Report a Concern*, <https://www.bop.gov/inmates/concerns.jsp>.

the Urban Institute to develop a comprehensive plan for the design and implementation of an additional service line for survivors in local, state, Tribal, and federal confinement facilities. All allegations of sexual misconduct are taken seriously and investigated.

- **Support Services:** The first line of emotional support services for individuals incarcerated in a BOP facility who have experienced sexual abuse is mental health assistance from mental health providers at the facility or from another facility as necessary. BOP advises that incarcerated adults in all facilities have access to the National Sexual Assault Hotline. Additionally, many institutions have a memorandum of understanding with community advocacy agencies to provide support services to incarcerated adults.

c. What efforts has the BOP made to ensure those in custody have access to support services?

Response: The first line of emotional support services for individuals incarcerated in a BOP facility who have experienced sexual abuse is mental health assistance from mental health providers at the facility or from another facility as necessary. BOP advises that incarcerated adults in all facilities have access to the National Sexual Assault Hotline. Additionally, many institutions have a memorandum of understanding with community advocacy agencies to provide support services to incarcerated adults. BOP’s staff have also collaborated with the Urban Institute, which has received funding from the Department to develop a comprehensive plan for the design and implementation of a service line for incarcerated individuals to access services external to BOP.

d. How many prisoners have access to emotional support services? How many facilities provide them?

Response: BOP advises that all incarcerated adults in all BOP facilities have access to some form of emotional support services.

e. How many prisoners have access to hotline support services? How many facilities provide them?

Response: BOP advises that all incarcerated individuals have access to the National Sexual Assault Hotline as it is a national service. Each institution is responsible for developing the procedures to allow the adults in custody to access this service. Additionally, BOP’s staff have collaborated with the Urban Institute, which has received funding from the Department to develop a comprehensive plan for the design and implementation of a service line for incarcerated individuals to access services external to BOP.

f. How many prisoners have access to other kinds of support services, including accompaniment to forensic exams?

Response: BOP advises that an individual can have a BOP employee accompany them to a forensic examination. This individual is typically the facility psychologist but can be another staff member. Facilities that have a memorandum of understanding with a community advocacy agency can connect with that agency to arrange for a crisis support individual to accompany the individual to the forensic examination.

g. What steps has BOP taken to ensure that female inmates are protected from sexual abuse?

Response: The Department has zero tolerance for sexual misconduct, including by BOP employees. It is a top priority to prevent and root out sexual misconduct, and this is an issue that requires a whole-of-Department response. The Department has prioritized prosecution of these cases. In July 2022, the Deputy Attorney General established a working group to conduct a comprehensive review of the Department’s response to allegations of sexual misconduct by BOP staff and to develop recommendations for improvement. In November 2022, the working group submitted a report to Department leadership that included more than 50 recommendations to better protect the safety and wellbeing of those in BOP custody and better hold accountable those who abuse positions of trust, including by enhancing prevention, reporting, investigations, prosecutions, and employee discipline.⁵ Coming out of that work, the Deputy Attorney General also formed a standing advisory group that continues to track implementation of these recommendations. Among other duties, the Deputy Attorney General instructed the advisory group to form teams to tour six women’s facilities throughout the country. These Sexual Assault Facility Evaluation and Review (SAFER) Teams completed their tours of the facilities in the summer of 2023 and provided findings and recommendations for follow-up to the Deputy Attorney General.

According to BOP, other ongoing efforts include:

- All BOP investigators have received trauma-informed and victim-centered investigations training;
- BOP’s Director sent out a BOP-wide message reiterating the gravity of sexual misconduct and the zero-tolerance policy for sexual abuse of any kind;
- BOP hired a new Prison Rape Elimination Act (PREA) Coordinator;
- BOP’s Women and Special Populations Branch has been proactively visiting all BOP facilities with women in custody to conduct snapshot cultural assessments and make recommendations for both local and national enhancements in gender responsiveness and sexual safety;
- BOP is working with other federal partners to implement a national hotline for the use of those in their care, along with their families and representatives, to report sexual abuse; and

⁵ <https://www.justice.gov/dag/page/file/1549051/download>.

- BOP is developing a video for incarcerated women regarding reporting options and sexual safety.

In March 2023, the Deputy Attorney General visited Federal Correctional Institution, Dublin, which had been the location of sexual misconduct committed by several former BOP employees who were later prosecuted. The Department has continued to assess the progress toward improving the culture at various women’s institutions and monitor BOP’s implementation of the Department’s Sexual Misconduct Working Group’s recommendations. This work includes in-person visits by the Deputy Attorney General or her staff to various women’s facilities throughout the country.

h. What changes have been made since the OIG’s 2018 recommendations on female prisons?

Response: BOP advises as follows: Program review guidelines were developed and implemented in 2018 to ensure compliance with the Female Offender Manual. BOP’s Women and Special Populations Branch (WASPB) added additional positions to create dedicated points of contact for women, pregnancy/postpartum/parenting, transgender individuals, veterans, aging and disabled, and community stakeholder engagement, as well as positions to provide direct support and guidance for special populations in each region. A 24-hour mandatory program titled “Warden and Institution Executive Staff Management of Female Offenders” is facilitated by The Moss Group to ensure executive leadership in institutions housing incarcerated women receive gender-responsive and trauma-informed care skills training. Resolve trauma treatment is offered in all female institutions, and six additional gender-responsive programs have been developed to address trauma. A National Policy and Program Coordinator gathers, maintains, and prepares monthly pregnancy and postpartum reports and tracks and monitors each incarcerated pregnant woman to ensure she is evaluated for interest and eligibility in pregnancy programs. The BOP administers a voluntary questionnaire to gather feedback for each incarcerated woman in postpartum status. The Female Offender Manual mandates access to feminine hygiene products for all incarcerated women. Compliance is assessed during program review and during Women’s Institution Cultural assessments conducted by WASPB. The Female Offender Manual also requires that gender-responsive programs be provided for women in pretrial detention.

i. Do female prisoners in BOP custody have adequate access to counseling and care?

Response: BOP advises as follows: Staff in the psychology services departments provide a wide variety of assessment and treatment services designed to address mental health concerns and promote opportunities for self-improvement within all BOP institutions that house female offenders. These individuals are screened upon arrival to the institutions for mental health problems, suicidal thoughts, history of abuse or trauma, risk for potential abusiveness or victimization, substance use history, and other risk factors. At intake, they are advised how to

obtain mental health services, counseling, and care during their incarceration. In addition, there are several avenues of communication established within BOP institutions to inform the inmate population of available mental health services, evidence-based programming, and groups, as well as ways to contact staff in the psychology services department for mental health concerns.

j. Are there currently effective avenues for female prisoners to take to report sexual abuse or rape?

Response: BOP advises as follows: All incarcerated adults in BOP facilities have access to both internal and external methods to report sexual abuse. Upon arrival at the institutions, at the time of intake screenings, and through admissions and orientation procedures, incarcerated individuals are informed of ways to report sexual abuse or rape to any staff member, either orally or in writing through email or paper forms. They are informed that an individual can also report sexual abuse through filing an Administrative Remedy, can confidentially email the Department’s Office of Inspector General using the Sexual Abuse Reporting Mailbox (which cannot be accessed by BOP staff and officials), and can write to the Department’s Office of Inspector General using paper mail. Information is also disseminated to incarcerated individuals through posters indicating ways to report sexual abuse, which are posted in the inmate housing units and other inmate traffic areas throughout the institutions.

3. The Debbie Smith Act is a cornerstone of our efforts to end the rape kit backlogs.

a. How is DOJ working to administer, and what progress is DOJ making on reducing the rape kit backlog nationwide?

Response: The Office of Justice Programs (OJP) advises as follows:

Efforts to reduce the sexual assault kit backlog and otherwise increase the capacity of publicly funded crime labs across the United States are vastly important public safety priorities for the Department. The Department has two complementary relevant flagship grant programs: the National Sexual Assault Kit Initiative (SAKI) and the DNA Capacity Enhancement for Backlog Reduction (CEBR) Program, which is authorized under the Debbie Smith Act. Both programs assist state and local governments in their efforts to reduce their sexual assault kit backlogs and increase the capacity for publicly funded crime labs to process DNA samples for entry into the Federal Bureau of Investigations (FBI) Combined DNA Index System (CODIS).

Thanks to the support of Congress, in Fiscal Year (FY) 2022, OJP awarded more than \$130 million to help state, local, and Tribal governments process more DNA samples and improve investigations and prosecutions of sexual assault cases involving sexual assault kit evidence. In addition, in FY 2022, the Department funded over \$12 million in forensic science research and development which improves crime lab capabilities and reduces forensic backlogs. Over the years, these site-based awards and associated training and technical assistance have helped

identify and test hundreds of thousands of sexual assault kits and find serial violent offenders. In addition, OJP’s National Institute of Justice (NIJ) published *Best Practices for DNA Laboratory Efficiency* in May 2022.⁶

From FY 2015 through FY 2022, more than \$320 million has been awarded under SAKI, supporting 82 state and local jurisdictions to enhance the capacities and capabilities of state and local jurisdictions. SAKI sites represent 30 statewide jurisdictions and 52 municipal jurisdictions that collectively cover approximately 60 percent of the U.S. population. SAKI has been instrumental in resolving thousands of cases of sexual assault, homicides and developing insights about serial offending behaviors. To date SAKI has resulted in over 85,000 kits tested to completion, yielding 35,061 new CODIS uploads, resulting in approximately 16,468 CODIS hits, including more than 11,146 DNA matches to individuals who have two or more convictions for violent crimes, and more than 2,500 convictions. These impacts will continue to aid investigation and crime prevention practices.

The CEBR Program increases the number of forensic DNA and DNA database samples processed for entry into CODIS. Since 2005, funding from the CEBR Program has directly supported testing of nearly 1.5 million forensic cases, including the testing of sexual assault kits and homicide cases. With more than 615,000 forensic DNA profiles uploaded to CODIS, CEBR funding has contributed to approximately half of the 1,226,160 profiles in CODIS to date. CEBR funding is responsible for over 290,000 CODIS hits, which is nearly half of the 637,830 CODIS hits to date.

4. The last National Strategy on Child Exploitation Prevention and Interdiction was published in 2016. By law, it should be updated every two years. This was codified in the PROTECT Our Children Act of 2008, introduced by then-Senator Biden.

a. When is the updated strategy expected?

Response: The Department’s 2023 National Strategy for Child Exploitation Prevention and Interdiction Report was submitted to Congress on June 13, 2023.

⁶ National Institute of Justice, *National Best Practices for Improving DNA Laboratory Process Efficiency*, May 26, 2022, <https://nij.ojp.gov/topics/articles/best-practices-dna-laboratory-efficiency>.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for the Hon. Merrick Garland, Attorney General of the United States

1. Since January of 2021, how many prosecutions has the Department of Justice brought under 18 U.S.C. § 1507?

Response: In May 2022, the Attorney General took the unprecedented step of directing the U.S. Marshals Service (USMS) to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows:

During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. Their first priority is to protect the life and safety of the Justices and their families. As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the justices.” In February 2024, the Director further testified that “The Attorney General’s order was very clear, actually, crystal clear. Protect the lives of the Justices. He made sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety.”⁷ In 2022, a federal grand jury returned an indictment charging a man who allegedly traveled from California to Maryland with the intent to kill a Justice of the United States Supreme Court. The Executive Office for United States Attorneys (EOUSA) has not identified any prosecutions brought under § 1507 during this timeframe.

2. Since January of 2021, how many arrests have been made for a purported violation of 18 U.S.C. § 1507?

⁷ *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

- a. If the number of arrests made under 18 U.S.C. § 1507 exceeds the number of prosecutions, please provide the reasoning behind each decision not to pursue a Section 1507 prosecution.**

Response: In May 2022, the Attorney General took the unprecedented step of directing the U.S. Marshals Service (USMS) to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows:

During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. The Marshals’ first priority is to protect the lives and safety of the Justices and their families. As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the Justices.” In 2022, a federal grand jury returned an indictment charging a man who allegedly traveled from California to Maryland with the intent to kill a Justice of the United States Supreme Court. EOUSA has not identified any prosecutions brought under § 1507 during this timeframe.

- 3. Has the Department of Justice sought any legal opinion, from OLC or otherwise, related to the constitutionality of 18 U.S.C. § 1507?**

Response: The Department has not determined that §1507 is unconstitutional.

- 4. Has any component of the Department of Justice been given trainings on 18 U.S.C. § 1507 since January of 2021? If so, please forward the materials used in such trainings, and any video or audio recording, if made.**

Response: In May 2022, the Attorney General took the unprecedented step of directing the U.S. Marshals Service (USMS) to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS further advises as follows: The USMS Director’s direction to USMS employees from the start has been to prioritize the safety and security of the Justices and their families. This direction is translated into operational guidance provided to Deputy U.S. Marshals assigned to the

protective mission at the Justices’ homes. The guidance is provided by the USMS Judicial Security Division and USMS Office of General Counsel, helping ensure that front-line deputies have clear, consistent direction based on the operational environment. During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission.

5. On January 23, 2023, the Richmond, Virginia FBI Field Office produced a briefing memorandum which apparently targeted traditionalist Catholics, stating such Catholic groups “were increasingly composed of ‘Racially or Ethnically Motivated Violent Extremists’” and that such Catholic groups presented opportunities for “tripwire” and “source development.” When asked about this memorandum at your March 1, 2023 hearing, you repeatedly referred to it as “appalling” and stated that the FBI is looking into how such a memorandum came to be produced.

a. Is Stanley Meador, the Special Agent in Charge (SAC) of the Richmond Field Office that issued this briefing memorandum, still in charge of the Richmond Field Office?

Response: Yes.

b. Has SAC Meador, or any other agent affiliated with this memorandum, been disciplined in any way, or ordered to undergo training?

Response: Attorney General Garland and FBI Director Wray have publicly and strongly rejected the intelligence product. The FBI advises as follows: As previously explained, the January 23 Domain Perspective failed to meet FBI standards, and the FBI took steps to immediately remove it from their official system of record upon learning of the document. The FBI also has provided legal, intelligence tradecraft, and domestic terrorism terminology refresher training for relevant personnel, and reminded personnel to follow existing standards and guidance on working domestic terrorism matters and appropriate tradecraft when producing intelligence products. The FBI also conducted a review of the process preceding the creation of the January 23 intelligence product.

6. For the third time this year, your Department of Justice has filed a motion to transfer venue to move a case out a single judge division in Texas,⁸ arguing that remaining in such a division would harm “the public’s interest in the fair administration of justice.” This is beyond the pale and I am surprised the Department of Justice would

⁸ *Texas v. DHS*, 23-cv-00007 at Doc. 5; *Utah v. Walsh*, 2:23-cv-00016 at Doc. 15; *Texas v. Garland*, 5:23-cv-00034 at Doc. 10.

make such an outrageous argument, let alone adopt what appears to be a practice of making such motions.

a. Did you know that your Department of Justice was making such motions?

i. If so, did you approve this litigation tactic?

Response: The Department’s professionals who make such decisions do so in consideration of the facts and the law and do so in an objective manner consistent with Departmental policies. Without commenting on this or any other particular matter, the Department makes many filings every day, and the Attorney General does not review all of them.

b. Will the Department continue to make such motions in the future?

Response: Department attorneys will make transfer of venue motions when doing so is consistent with the facts, the law, and Departmental policy.

c. Do single judge divisions carry the imprimatur of second class status among the district courts?

Response: No.

d. Do the judges in such divisions discharge their duties less fairly and less rigorously than judges in multi-judge divisions?

Response: Where the Department has filed a transfer of venue motion in district court, the Department’s filing outlines the rationale for each motion.

e. Has the Department of Justice made similar motions to transfer venue in single judge divisions located in Democratic states, such as Utica, New York or Rutland, Vermont?

Response: Department attorneys make transfer of venue motions in any jurisdiction when doing so is consistent with the facts, the law, and Departmental policy. Where the Department has filed a transfer of venue motion in district court, the Department’s filing outlines the rationale for each motion.

7. How many Bureau of Prisons (BOP) prisoners that were born male are presently housed in female BOP facilities?

Response: BOP advises that as of October 4, 2023, there are ten transgender females housed in BOP female facilities.

a. How many of these prisoners were previously convicted of sexual crimes or are registered sex offenders?

Response: BOP has stated the following: “All requests for gender-affirming placement are evaluated by the BOP. The BOP assesses each request on a case by case basis to protect the safety of the individual being considered for transfer as well as the safety of others at the potential location of transfer. The BOP will consider factors including, but not limited to, an inmate’s security level, criminal and behavioral/disciplinary history, current gender expression, programming, medical, and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. This review therefore takes into account their prior convictions, including for sex offenses, when making a placement assessment. For as long as the BOP has been making these assessments, BOP is unaware of any instances of sexual assault in a female facility by transgender individuals approved by the BOP to transfer to a female facility consistent with their gender identity.”

8. How many BOP prisoners that were born male are currently applying for transfer to a female BOP facility?

Response: BOP advises that as of October 19, 2023, there are 196 transgender individuals in BOP facilities who have requested a gender affirming transfer and/or gender affirming surgery; 169 of which are transgender females.

a. How many of these applicants were previously convicted of sexual crimes or are registered sex offenders?

Response: BOP has stated the following: ”All requests for gender-affirming placement are evaluated by the BOP. The BOP assesses each request on a case by case basis to protect the safety of the individual being considered for transfer as well as the safety of others at the potential location of transfer. The BOP will consider factors including, but not limited to, an inmate’s security level, criminal and behavioral/disciplinary history, current gender expression, programming, medical, and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. This review therefore takes into account their prior convictions, including for sex offenses, when making a placement assessment. For as long as the BOP has been making these assessments, BOP is unaware of any instances of sexual assault in a female facility by transgender individuals approved by the BOP to transfer to a female facility consistent with their gender identity.

9. Since January of 2021, how many incidences of sexual assault have been committed by male-born BOP prisoners housed at women’s facilities?

Response: BOP advises that there have been no reported criminal sexual assaults committed by transgender female incarcerated individuals while in BOP facilities.

- a. **How many of the accused perpetrators were previously convicted of a sexual offense?**

Response: BOP advises that there have been no reported criminal sexual assaults committed by transgender female incarcerated individuals while in BOP facilities.

10. The National School Boards Association (NSBA) sent you a letter on September 21, 2021, asking for parents of students to be investigated as domestic terrorists. You issued a letter on October 4, 2021, doing just that, ordering the FBI to convene meetings to discuss “strategies” to address the purported “disturbing spike in harassment, intimidation, and threats of violence” against school board members.

- a. **Given that the NSBA subsequently withdrew their letter, apologized, and expressed regret for sending the letter, do you now concede that sending your October 4, 2021 memorandum was a mistake?**
- b. **Your October 4, 2021 memorandum was never actually withdrawn. Do you plan on withdrawing it now that the basis for this memo—that is, the September 21, 2021 NSBA letter—has itself been withdrawn?**

Response to a–b: The October 4, 2021, memorandum was about addressing violence and threats of violence against school administrators, board members, teachers, and staff. The memorandum made clear in its opening paragraph that “spirited debate about policy matters is protected under our Constitution, [but] that protection does not extend to threats of violence or efforts to intimidate individuals based on their views.” The one-page memorandum called for the Department to convene meetings within 30 days with federal, state, local, Tribal, and territorial law enforcement partners to discuss strategies for addressing violence and violent threats against school officials. Those meetings were convened.

11. On August 3, 2019, Patrick Crusius opened fire at a Walmart in El Paso, Texas, killing 23 people, and injuring 23 more. Based on his own writings, Crusius committed the mass killing out of his hatred for Hispanics. Despite these egregious facts, you decided not to seek the death penalty, doing so, according to the Wall Street Journal, over the recommendation of career prosecutors.

- a. **Since becoming Attorney General, how many cases did you overrule the recommendation of career DOJ prosecutors as to whether to impose the death penalty? Please list these cases.**

Response: The Department’s policies and procedures for deciding whether to authorize a capital prosecution are contained in the Justice Manual (9-10.000, *et seq.*) and are followed in capital-eligible cases. Pursuant to that process, each case considered by the Attorney General includes recommendations from different levels of the Department, from career prosecutors and appointees, including the U.S. Attorney for the district where the case is being prosecuted, persons on the Attorney General’s Review Committee on Capital Cases, and the Deputy Attorney General.

The Committee consists of attorneys from the Office of the Deputy Attorney General, attorneys from the Office of the Assistant Attorney General for the Criminal Division, senior prosecutors from the National Security Division, and Assistant U.S. Attorneys from various districts across the country.

Ultimately, the Attorney General makes a decision on each capital-eligible case after considering input from these various sources. Pursuant to Justice Manual 9-10.050, “[t]he decision-making process preliminary to the Department’s final decision is confidential. Information concerning the deliberative process may only be disclosed within the Department and its investigative agencies as necessary to assist the review and decisionmaking process.”

12. During the second round of questioning on March 1, 2023, I asked you about leaks at the Department of Justice.

- a. Is it appropriate for any Department of Justice employee, other than an official spokesman, to leak or reveal investigatory information to anyone not involved in the investigation?**

Response: All employees of the Department of Justice must adhere to 28 U.S.C. 50.2, Release of Information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings, as well as the Department’s Confidentiality and Media Contacts Policy, Justice Manual §§ 1-7.000 *et seq.*, the Federal Rules of Criminal Procedure, and all relevant statutes.

- b. Have you ever authorized any Department of Justice employee, other than an official spokesman, to speak to the media regarding an investigation?**

Response: All employees of the Department of Justice must adhere to 28 U.S.C. 50.2, Release of Information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings, as well as the Department’s Confidentiality and Media Contacts Policy, Justice Manual §§ 1-7.000 *et seq.*, the Federal Rules of Criminal Procedure, and all relevant statutes.

13. You held a press conference on August 11, 2022 concerning the search of Mar-a-Lago, where you announced that you personally approved the decision to seek a search warrant for the residence. On the same day, the Washington Post published

a story that described classified documents relating to nuclear weapons were among the items sought in the search. The story credited “people familiar with the investigation.” The New York Times published a story on August 22, 2022 noting the number of classified documents seized by the FBI. The story credited “multiple people briefed on the matter.” It also described how the government had recovered more than 300 documents with classified markings since President Trump left office, crediting the same source.

- a. Do you have any knowledge regarding to whom the Washington Post referred to when it credited “people familiar with the investigation,” as a source?**
- b. Do you have any knowledge regarding who the New York Times referred to when it credited “multiple people briefed on the matter,” as a source?**
- c. Did you, or anyone on your leadership team, authorize any Department of Justice employee, other than an official spokesman, to speak to the Washington Post, New York Times, or other media outlets on this matter?**
- d. Do you have any knowledge of leaks, authorized or unauthorized, from employees working on the investigation regarding former President Donald Trump’s handling of government documents?**
- e. Are you currently investigating the source of the leaks that have resulted from the search at Mar-a-Lago?**
- f. If you became aware of such a leak, what action or procedures would you follow?**

Response to a–f: All employees of the Department of Justice must adhere to 28 U.S.C. 50.2, Release of Information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings, as well as the Department’s Confidentiality and Media Contacts Policy, Justice Manual §§ 1-7.000 *et seq.*, the Federal Rules of Criminal Procedure, and all relevant statutes. Violations may result in referrals to the Office of the Inspector General, the Office of Professional Responsibility, and in certain cases, to federal prosecutors.

14. You have appointed Jack Smith and Robert Hur as special counsels for the investigations into former President Trump and President Biden’s handling of classified documents.

- a. What criteria did you use to select Jack Smith?**
- b. What criteria did you use to select Robert Hur?**

Response to a–b: Jack Smith was appointed to serve as Special Counsel on November 18, 2022. Robert Hur was appointed to serve as Special Counsel on January 12, 2023. Mr. Smith and Mr. Hur were appointed consistent with the Special Counsel regulations. Consistent with 28 C.F.R. Section 600.3, each is “a lawyer with a reputation for integrity and impartial decisionmaking, and with appropriate experience to ensure both that the investigation will be conducted ably, expeditiously, and thoroughly, and that investigative and prosecutorial decisions will be supported by an informed understanding of the criminal law and Department policies.”

15. The Office of Legal Counsel’s issued a memo on October 16, 2000 that stated, “the indictment or criminal prosecution of a sitting President would unconstitutionally undermine the capacity of the executive branch to perform its constitutionally assigned functions.”

- a. If Special Counsel Robert Hur decided to indict President Biden while in office, could he do so under Department policy?**
- b. Would you interfere in any decision by Special Counsel Hur to indict President Biden?**

Response to a–b: Office of Legal Counsel memoranda represent the legal determinations of the Department. Pursuant to 28 C.F.R. Section 600.7(a), the Special Counsel must “comply with the rules, regulations, procedures, practices and policies of the Department of Justice.”

16. According to Ryan-Marie Houck, the wife of sidewalk counselor Mark Houck, the FBI sent two dozen agents, clad in body armor, and equipped with rifles, helmets, and shields, to arrest Mr. Houck, doing so despite Mr. Houck’s offer to self-surrender. During the arrest the agents are alleged to have pointed rifles at Mr. and Mrs. Houck.

- a. Do you believe that it was a mistake to send such an overwhelming display of force to arrest Mr. Houck?**

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

SENATOR DICK DURBIN
Committee on the Judiciary on
“Oversight of the Department of Justice”
Questions for the Record
March 8, 2023

Questions for Merrick Garland, Attorney General, Department of Justice

- 1. The First Step Act (FSA) required the Justice Department to establish a risk and needs assessment system for incarcerated individuals. Under this system—which is called PATTERN—individuals with minimum and low-risk scores earn credits for early release at a higher rate than those with higher risk scores, and only those with minimum and low scores can receive a sentence reduction. Data indicates that the PATTERN system continues to over-predict recidivism for Black, Hispanic, and Asian Americans, an issue that I have been raising for years. Last November, Senator Grassley and I wrote you a letter that again raised concerns about racial disparities in the PATTERN system.**
 - a. What steps has the Department taken to reduce these racial disparities and ensure the risk assessment system is more “dynamic,” so that incarcerated individuals who put in the work can reduce their risk scores over time?**

Response: The Bureau of Prisons (BOP) advise as follows: In March 2023, NIJ, in consultation with BOP, completed its second annual revalidation of the risk assessment tool, PATTERN. This past year, BOP has also successfully implemented the revised PATTERN version 1.3, including the new “cut points”—announced in the First Step Act Annual Report published in April 2022—for PATTERN’s risk level categories under the “general tool.” These new cut points have helped mitigate various racial and ethnic disparities associated with prior risk level categories and enhance opportunities for eligible individuals to earn time credits that accrue toward prerelease custody and supervised release, while maintaining public safety. Last year, NIJ and ATJ engaged with stakeholders, including hosting two external engagement sessions to solicit feedback on PATTERN. That input is informing the Department’s continued efforts in the coming year to reduce racial disparities associated with PATTERN.

- 2. The FSA allows individuals who participate in recidivism-reduction programming to earn time credits towards early release. After several false starts, it seems these provisions are finally starting to function as intended. As of December 28, 2022, the Justice Department calculates that approximately 12,000 people have received the benefits of Earned Time Credits. However, as Senator Grassley and I said in our November 2022 letter, the Bureau of Prisons’ Earned Time Credit auto-calculator continues to assign and retract credits without adequate explanation or opportunities for review and appeals.**

- a. **Will the Justice Department commit to an audit of the Earned Time Credit auto-calculator and to allowing appeals for individuals who believe their Earned Time Credits have been calculated incorrectly?**

Response: In November 2022, BOP finalized a new policy for awarding earned time credits, which informs incarcerated individuals and staff of the process for earning, documenting, applying, forfeiting, and restoring time credits pursuant to the statute. Through the new policy, the BOP Director exercised her discretion to make several changes to how BOP calculates time credits, including to increase the availability of time credits for individuals who participate in evidenced-based programming or productive activities, consistent with the First Step Act. According to the BOP, BOP’s automated calculation of credits for individuals promotes consistency, allows BOP to provide accurate calculations on a routine basis, and allows individuals in custody to track their time credits and prepare for prerelease from custody.

The Department is committed to ensuring that earned time credits are awarded in accordance with the FSA and BOP policy. As of January 28, 2023, BOP reports as follows: More than 13,500 individuals had been released earlier from Residential Reentry Centers (RRCs), home confinement (HC), and secure facilities based on receiving credits under the FSA. An estimated 3,800 individuals have been placed in an RRC or HC and have a projected release method based on the application of earned time credits. In addition, approximately 10,650 individuals currently in secured custody are expected to receive an earlier release date or transfer to pre-release custody based on the application of earned time credits.

3. **A provision in the CARES Act, which Senator Grassley and I championed, gave the Federal Bureau of Prisons expanded authority to safely transfer individuals to home confinement during the Covid-19 Emergency Period, and for 30 days following its termination. This program has been a tremendous success. Of approximately 12,000 people who have been released on early home confinement under the CARES Act since March 2020, only 19 (less than 0.2 percent) were returned to prison for committing a new offense.**
 - a. **What does the success of the CARES Act home confinement program demonstrate about how to safely reduce incarceration rates in our criminal justice system?**

Response: BOP advises as follows: BOP’s core mission is to ensure safe prisons, humane correctional practices, and rehabilitation opportunities so that people reenter society as good neighbors. Consistent with the FSA’s emphasis on transitioning individuals to a community setting, the Department has expanded the use of home confinement for individuals who do not pose a danger to the community. Since the enactment of the CARES Act on March 26, 2020, BOP advises that it has placed approximately 13,000 individuals in home confinement under

CARES Act authority, and of those, less than one percent have been returned to secure custody due to new criminal conduct.

BOP further advises as follows: With appropriate contracts and resources in place, community confinement can be a safe step to support a successful transition to reentry. Existing laws, such as the Second Chance and First Step Act, include statutory criteria on who is eligible for earlier placement in community confinement settings such as home confinement or residential reentry centers. The CARES Act, for the first time in BOP history, allowed the agency to transition individuals to community confinement for much longer periods than permitted under prior legal authority. BOP reports that data establishes that in all but a small fraction of cases, the individuals have been successful in those community settings.

- 4. The Department’s Civil Rights Division is tasked with conducting “pattern-or-practice” investigations to address serious systemic issues involving excessive force, discriminatory policing, and any other constitutional violations by law enforcement agencies. This is an important responsibility in light of officer-involved killings that have exposed failures in certain agencies’ policies and practices. Last year, President Biden issued an Executive Order focused on encouraging effective, accountable policing to enhance public trust and public safety.**
 - a. What progress has the Department made in implementing the President’s directive to strengthen communication with state attorneys general to help identify relevant data and information from the public that can assist in these federal pattern-or-practice investigations?**

Response: The Department’s law enforcement agencies, the Civil Rights Division, and the Office of Justice Programs (OJP) advise as follows:

The implementation of President Biden’s Executive Order 14074 “Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety” is a priority for the Department, and it is part of the Department’s broader work that includes enforcement, funding, training, and technical assistance to support constitutional policing and strengthen police-community trust. Over the last year, the Department has worked diligently to implement over 90 deliverables of the Executive Order. Some examples include the completion of reports on the Department’s Implementation of the Death in Custody Reporting Act of 2013; the Department’s review of the transition of State, Tribal, local, and territorial law enforcement agencies to the National Incident-Based Reporting System (NIBRS); and the Department’s efforts to ensure that restrictive housing in Federal detention facilities is used rarely and applied fairly. The Department’s law enforcement agencies and the OJP have also reviewed their programs and authorities to prohibit the transfer or purchase of weapons and equipment from the controlled equipment list identified in the Executive Order. The Department continues to work

with our Federal, State, Tribal, local, and territorial law enforcement agency partners to improve the submission of data to the FBI National Use-of-Force Data Collection.

In terms of federal pattern-or-practice and civil rights investigations, the Department strengthened communication with State Attorneys General on pattern or practice investigations.

As far as strengthening communication with state attorneys general to help identify relevant data and information from the public that can assist in these federal pattern-or-practice investigations, State Attorneys General, to date, have not been heavily involved in pattern or practice investigations of police misconduct. There are, however, efforts to expand their role. Specifically:

- Attorneys General in California, Colorado, Illinois, Nevada, and Virginia have statutory authority to conduct pattern or practice investigations. Except for California, this authority is fairly recent.
- Attorneys General in some states may have general or common law authority to conduct such investigations. For example, New York’s Attorney General launched an investigation of stop and frisk practices in New York City under her general authority. Such systemic suits, however, are infrequent.
- In June 2020, 18 State Attorneys General wrote to Congressional Leadership seeking legislation to expand federal pattern or practice investigatory authority to the states.

The Civil Rights Division has taken steps to strengthen its relationships with State Attorneys General across the board, and specifically as to pattern or practice investigations.

- In the fall of 2021, the Civil Rights Division’s Special Litigation Section formed a working group with State Attorneys General that have pattern or practice or similar authority.
- The Special Litigation Section conducted a training in December 2021 for State Attorney General offices. Although it predated the Executive Order, the session reinforced the relationship with State Attorneys General and spurred an ongoing dialogue between them and the Section through telephone calls and email exchanges.
- The Special Litigation Section has continued to assist State Attorneys General through individual consultations with lawyers from those offices, as needed.

The Special Litigation Section plans to hold an additional training on pattern or practice investigations in 2023, although the date has not been set.

SENATOR FEINSTEIN

**Oversight of the Department of Justice
Attorney General Garland
U.S. Department of Justice
Questions for the Record
Submitted March 8, 2023**

- 1. *Victims of Crime Act* grants are the primary source of government funding for victim service organizations. The balance in the Crime Victims Fund (CVF), which supports these grants, is critically low due to several years of low deposits. Despite passage of the *VOCA Fix to Sustain the Crime Victims Fund Act of 2021*, which helped substantially increased deposits to the CVF, deposits remain substantially lower than their historical average.
 - a. Members of DOJ leadership have made public statements⁹ about reducing penalties to encourage corporations to self-report criminal violations and to encourage cooperation with investigations. How have these policy changes impacted the type and amount of penalties assessed, and how in turn have these changes impacted deposits into the Crime Victims Fund?****

Response: On September 15, 2022, the Department issued a memorandum entitled, “Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group” (the Monaco Memorandum), which set forth a directive for the Department components who prosecute corporations to review policies on corporate voluntary self-disclosure. The Monaco Memorandum instructed components without a written policy to draft and publicly share such a policy.

On January 17, 2023, the Criminal Division revised the Division’s Corporate Enforcement Policy, which provides incentives for companies that voluntarily self-disclose misconduct, cooperate with the government’s investigation, and fully remediate. In order to receive a benefit under this policy, companies must fully disgorge and repay all ill-gotten gains, which, because of the Victims of Crime Act (VOCA) Fix, are remitted to the Fund whether through a non-prosecution (NPA) or deferred prosecution agreement (DPA).

On February 23, 2023, the Voluntary Self-Disclosure (VSD) policy for U.S. Attorneys’ Offices (USAO) was published. According to the policy, in exchange for meeting the standards for voluntary self-disclosure, full cooperation, and timely remediation, absent the presence of an

⁹ Assistant Attorney General Kenneth A. Polite, Jr. Delivers Remarks on Revisions to the Criminal Division’s Corporate Enforcement Policy, DOJ ([January 17, 2023](#)) & Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group, DOJ ([September 15, 2022](#))

aggravating factor, the USAO may choose not to impose a criminal penalty, and in any event will not impose a criminal penalty that is greater than 50% below the low end of the U.S. Sentencing Guidelines fine range.

The revised Criminal Division Policy and U.S. Attorney’s Office Voluntary Self-Disclosure Policy were recently implemented and cannot yet be quantified.

b. You also said in your introduction that the Justice Department is prioritizing individual accountability in corporate white collar cases, rather than corporate accountability. How has this prioritization impacted deposit levels for the Crime Victims Fund?

Response: The Department remains committed to addressing violations of law by corporations and, in doing so, remains focused on holding individuals accountable where appropriate. This means that the Department will hold individuals who break the law accountable, regardless of their position, status, or seniority, and will not permit culpable individuals to hide behind the corporate veil. This commitment to holding individuals accountable does not come at the expense of corporate accountability. The Monaco Memorandum issued in 2022 and the policies promulgated for the U.S. Attorneys’ Offices in response to that memorandum demonstrate those priorities by incentivizing companies to cooperate by making evidence and witnesses available to allow the Department to have the best opportunity to hold individuals and corporations accountable.

c. What is the Justice Department doing to ensure that policy changes regarding prosecution prioritization do not reduce deposits into the Crime Victims Fund?

Response: Since enactment of the VOCA Fix, the Department notified all litigating components of the changes resulting from the VOCA Fix, modified the Department’s debt collection tracking system to ensure that monies collected from DPAs and NPAs are deposited into the Fund, and provided training and guidance to ensure the VOCA Fix Act is implemented appropriately. In addition, the Department continues to advise litigating components of the availability of the Fund as a repository for fines, amounts paid pursuant to DPAs and NPAs, and other penalties. Indeed, OVC has met with the Department components responsible for the largest contributions to the Fund to highlight the importance of these resources and the support they provide crime victims. For example, fund resources can be used to support counseling, shelter, reimbursement of lost wages, medical care, funeral expenses, and other critical supports to victims and survivors of crime. OVC has briefed the Antitrust Division, Criminal Division, Attorney General’s Advisory Committee of U.S. Attorneys, and Executive Office for U.S. Attorneys. OVC has also met with line prosecutors to emphasize the importance of the Fund, and how the funds impact victim assistance programs in their districts.

The correlation between Fund deposits and criminal investigations is complex, and the amount of deposits into the Fund in a given year are not an indication of the Department’s approach to criminal corporate accountability. To the contrary, the Department’s dedicated prosecutors and investigators work tirelessly to combat white collar crime committed by individuals and corporations alike. For example, financial penalties from criminal antitrust violations are the Fund’s primary funding source. However, criminal antitrust investigations take time, as the life cycle of a major cartel investigation is typically around five years. The successful prosecution of antitrust cartels may lead to clusters of settlements in a given year as co-conspirators decide to seek resolution around the same time, resulting in the Antitrust Division collecting large criminal fines and penalties some years and limited fines and penalties in other years.

d. What is the Justice Department doing to ensure that decreased deposits into the Crime Victims Fund do not negatively impact grants made to victim service providers?

Response: The Department is grateful for Congress’s efforts to pass the VOCA Fix. According to the Office for Victims of Crime (OVC), since FY 2018, the Crime Victims Fund (Fund) balance has declined by 74 percent and the obligation cap has been lowered. As a result, the allocations for all states and territories have decreased. Since enactment of the VOCA Fix in 2021 through April 2023, nearly \$1 billion was deposited into the Fund from NPAs and DPAs – a direct result of the VOCA Fix and the Department’s efforts to increase deposits into the Crime Victims Fund. When the VOCA Fix passed in 2021, courts were still experiencing delays and recovering from the impacts of the pandemic, resulting in a corresponding delay in many prosecutions. As courts resume normal processes, the Department anticipates seeing the full effects of the law.

OVC is the office within the Department responsible for administering the Fund. OVC has met with other offices within the Department, including the offices responsible for the largest contributions to the Fund (Antitrust Division, Criminal Division, and the Executive Office for U.S. Attorneys) to discuss the Victims of Crime Act, and the resources and support provided to victims stemming from case fines and penalties. OVC has also met with the Attorney General’s Advisory Committee of U.S. Attorneys, the Antitrust Division, the Environment Natural Resources Division, the Environmental Protection Agency, and the Executive Office for United States Attorneys leadership on the importance of the Fund, and how it affects victim assistance programs in their districts. This engagement with U.S. Attorneys facilitates further understanding and awareness of the Fund.

Additionally, the Department recognizes that keeping the Fund solvent is essential to providing crime victims with compensation and assistance critical for emotional, physical, and financial support in the aftermath of crime. The Department has a robust training curriculum that emphasizes the availability of the Fund as a repository for fines, amounts paid pursuant to DPAs and NPAs, and other criminal monetary penalties. In addition to trainings and guidance set forth

in the Justice Manual, the Department has published a number of resource materials to assist prosecutors in ensuring that asset recovery is taken into consideration at every stage of a criminal prosecution. Moreover, the Department actively informs prosecutors of any legislative changes that impact the Fund. For example, the Department immediately implemented and educated prosecutors on the changes made by the VOCA Fix Act.

2. Thank you for your leadership in implementing the *Preventing Online Sales of E-Cigarettes to Children Act*. Under this law, any person or business that sells, transfers or ships e-cigarettes must now register with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

a. To date, how many sellers of e-cigarettes have registered with ATF?

Response: The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) administers the Prevent All Cigarette Trafficking (PACT) Act, 15 U.S.C. § 375 et. seq., which similarly bars the shipment of untaxed tobacco and Electronic Nicotine Delivery Devices (ENDS) in violation of state law. The PACT Act requires distributors to register with ATF, states, and localities where these products are shipped into, and report sales into these jurisdictions.¹⁰ The PACT Act also requires distributors who engage in delivery sales to comply with state and local tax, and regulatory laws involving the distribution of ENDS to minors.¹¹ According to the ATF, there are currently 1,117 ENDS delivery sellers registered with ATF.

b. How has ATF coordinated with state and local governments to support the enforcement of state registration requirements and seller compliance with tribal, state, and local taxes on e-cigarette products?

Response: According to the ATF, ATF coordinates with state and local governments to support the enforcement of state registration requirements and seller compliance with Tribal, state, and local taxes on e-cigarette products in a number of ways, to include but not limited to:

- ATF assisted the United States Postal Service (USPS) in promulgating the updates to USPS PACT Act regulations after electronic nicotine devices (ENDS) were added to the PACT Act.
- ATF has initiated bimonthly meetings with the Food and Drug Administration (FDA) regarding coordinating enforcement efforts involving the illegal distribution of ENDS, focusing on illegal sales to underage consumers.
- ATF Special Agents, auditors, and attorneys are working with the Consumer Protection Branch in the Department as well as state authorities on criminal investigations involving the illegal distributions of ENDS.

¹⁰ See 15 U.S.C. § 376.

¹¹ See 15 U.S.C. § 376a.

- ATF meets regularly with the National Association of Attorneys General (NAAG) on PACT Act ENDS related issues.
 - ATF attended the national convention of the Federation of State Tax Administrators and presented on the amendments to the PACT Act involving ENDS.
 - ATF receives nominations from State Tax Officials regarding ENDS distributors who are not in compliance with the PACT Act and has placed these nominations on the PACT Act non-compliant list.
 - ATF updated its web page to provide the public with guidance regarding the ENDS Amendments to the PACT Act.¹²
 - ATF conducts outreach to the ENDS industry and has appeared at industry seminars to provide guidance and promote voluntary compliance with the PACT Act.
- c. Has ATF provided updates to its list of retailers who are not compliant under the updated tobacco regulations and shared with delivery carriers and the Attorney General of each state? Of these noncompliant retailers, how many were noncompliant due to the delivery or sale of e-cigarette products?**

Response: One of the primary enforcement tools under the PACT Act is the List of Unregistered or Noncompliant Delivery Sellers (non-compliance list), authorized under 15 U.S.C. § 376a(e), which allows ATF to bar any common carrier from shipping tobacco or ENDS on behalf of any person who has been placed on the list. ATF receives and investigates nominations for the list from state, local, and Tribal governments and distributes the list every four months to anyone ATF believes can promote the effective enforcement of the PACT Act, which includes the State Attorney Generals, the tax administrators of every State, the USPS, common carriers, credit card companies, and other Federal agencies involved in the regulation of tobacco law firms representing tobacco distributors.

ATF advises that currently there are 79 domestic entities and 391 international entities on the PACT Act non-compliance list. While ATF has placed numerous ENDS distributors on the list, ATF does not categorize companies placed on the list by the type of product they distribute.

Under the PACT Act, there are criminal and civil penalties if a person knowingly distributes tobacco, or ENDS sold by a party on the non-compliance list. The maintenance and distribution of the non-compliance list has resulted in multiple companies reforming their business activities to comply with state law and has prevented millions of dollars in tax evasion. During recent years, in Massachusetts, ATF investigations have led to the successful prosecutions of a dozen defendants involved in PACT Act violations. Additionally, ATF has settled several civil cases involving violations of the PACT Act and the Contraband Cigarette Trafficking Act (CCTA). This has resulted in the companies agreeing to come into full compliance with the CCTA and

¹² See ATF.gov at <https://www.atf.gov/alcohol-tobacco/prevent-all-cigarette-trafficking-pact-act>.

PACT Act and pay civil fines under the PACT Act, cumulatively forfeiting millions of dollars in illegal proceeds under the CCTA.

- 3. After the enactment of the *Preventing Online Sales of E-Cigarettes to Children Act*, any electronic device that aerosolizes and delivers cannabidiol (CBD), tetrahydrocannabinol (THC), and other substances that are used to create the psychological effects of cannabis are now regulated with the same ATF requirements as e-cigarettes.**
 - a. How is the Justice Department coordinating with the Food and Drug Administration to understand the landscape of state regulation of cannabis products and better inform federal regulation exercised under the Administration’s existing authorities?**

Response: ATF takes the position that because ENDS is defined in the PACT Act, at 15 U.S.C. § 375(7)(A), as “any electronic device that, through an aerosolized solution, delivers nicotine, flavor, or any other substance to the user inhaling from the device,” cannabis vapes are regulated under the PACT Act.¹³

ATF has communicated this position to industry members that distribute cannabidiol ENDS. In Indiana, ATF conducted an enforcement action leading to the seizure of ENDS from traffickers who legally purchased the ENDS on the East Coast and then illegally transported them to Indiana in violation of the PACT Act.¹⁴ ATF also issued a letter to a distributor of ENDS intended for cannabis consumption indicating that ATF is considering placing that company on the PACT Act non-compliance list. While the illegal distribution of Cannabis ENDS is regulated by the PACT Act, DEA and the FDA maintain primary enforcement authority.

¹³ See ATF.gov Frequently Asked Questions (FAQS) regarding Electronic Nicotine Delivery Systems, *available at* <https://www.atf.gov/qa-category/electronic-nicotine-delivery-systems-ends>, specifically “Are non-nicotine vapes such as cannabidiol (CBD), tetrahydrocannabinol (THC) and etc. also regulated as ENDS?” *available at* .

¹⁴ In accordance with 21 U.S.C. § 881, the Attorney General has the authority to seize, forfeit, and remit or mitigate the forfeiture of property. The Attorney General has delegated to the Director of ATF, without a time limit, administrative seizure and forfeiture authority under title 21, United States Code. See Final Rule 2012R-9P, “Authorization to Seize Property Involved in Drug Offenses for Administrative Forfeiture,” 80 Fed. Reg. 9987 (February 25, 2015).

RANKING MEMBER LINDSEY O. GRAHAM
Questions for the Record of Attorney General Merrick Garland
U.S. Senate Committee on the Judiciary
“Oversight of the Department of Justice”
Submitted March 8, 2023

Resource Allocation

1. On October 27, 2021, in response to a QFR regarding Task Forces, you stated on page 50 that one of the task forces created since you became Attorney General included: “A dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judges, and Members of Congress, formed to assess the most prevalent threats and recommend measures to further strengthen the Department’s efforts to deter and combat those threats.” Please provide the following information:
 - A. What date was the Task Force created?
 - B. Please provide the Task Force’s leadership structure.
 - C. How many full and part-time personnel have been assigned to the Task Force since it began?
 - i. Of that number, how many are DOJ Trial Attorneys?
 - ii. Of that number, how many Assistant United States Attorneys (“AUSAs”) are detailed to the Task Force?
 - a. Of those AUSAs, how many are in person and how many are remote?
 - b. Of those AUSAs, at which U.S. Attorney’s offices are they employed?
 - iii. Of that number, how many paralegals are assigned to the Task Force?
 - iv. Of that number, how many legal assistants are assigned to the Task Force?
 - v. Of that number, how many contractors are assigned to the Task Force?

- vi. Of that number, please identify how many law enforcement personnel (and the identities of their respective agencies) are assigned or detailed to the Task Force?**
- D. Given the unlawful behavior by protestors in front of several Justices’ homes last summer, as those very Justices were deliberating the *Dobbs* case, how, if at all, did this Task Force respond to the protests outside the Justices’ homes after the leak of the draft *Dobbs* opinion?**
- E. What are the essential elements to prove a violation of 18 U.S.C. §1507?**
- F. What steps, if any, did this Task Force take to ensure that 18 U.S.C. §1507 was understood and that agents on the ground were aware of this statute’s applicability during the time that the Justices still had the *Dobbs* matter under advisement?**
- G. Given the nature of the protests, including the shouts and signs, and that the protests occurred at the Justices’ homes while the Justices still had the *Dobbs* matter under advisement, do you agree that there was proof beyond a reasonable doubt to find that the protestors had the “intent of influencing any judge...in the discharge of his duty,” in violation of 18 U.S.C. §1507?**
- H. Had a draft opinion of *Obergefell v. Hodges* legalizing same-sex marriage been leaked, would you have enforced violations of 18 U.S.C. §1507 against people similarly protesting in front of the homes of Justices Kennedy, Sotomayor, Ginsburg, Breyer, and Kagan?**
- I. Please define “peaceful protest”.**
- J. Please provide the USA-5 data for all AUSAs detailed (in person and remote) to the Task Force.**
- K. Please provide the USA-5 equivalent for DOJ Trial Attorneys assigned to the Task Force.**

Response to A–K: In March 2021, the Department formed a dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judges, and Members of Congress to assess the most prevalent threats and implement measures to further strengthen the Department’s capacity to deter and combat those threats. Composed of components across the Department, the Task Force promulgated helpful recommendations. For example, one of the Task Force’s recommendations was the creation of a permanent Judicial Security working group to discuss matters of judicial security. That group has been established and includes leadership from the U.S. Marshals Service (USMS), the Administrative Office of the U.S. Courts, the Judicial

Conference, as well as the Deputy Attorney General’s Office. It meets on a regular basis to address these issues.

In May 2022, the Attorney General took the unprecedented step of directing the U.S. Marshals Service (USMS) to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows: During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. Their first priority is to protect the life and safety of the Justices and their families. As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the Justices.” In February 2024, the Director further testified that “The Attorney General’s order was very clear, actually, crystal clear. Protect the lives of the Justices. He made sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety.¹⁵” In 2022, a federal grand jury returned an indictment charging a man who allegedly traveled from California to Maryland with the intent to kill a Justice of the United States Supreme Court.

2. Please provide answers to the following questions regarding DOJ’s allocation of resources for the investigation and prosecution of all January 6th matters, including misdemeanors and felonies:

A. Since the events of January 6, 2021 (“January 6th”) at the U.S. Capitol, how many total federal prosecutors have been assigned to work on January 6th cases?

i. Of that total number, how many are DOJ Trial Attorneys?

ii. Of that total number, how many are AUSAs from the DC-U.S. Attorney’s Office?

¹⁵ *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

- iii. **Of that total number, how many are AUSAs detailed from other districts?**
 - a. **Of those AUSAs, how many are or were in person and how many are or were remote?**
 - b. **Of those AUSAs, please list the specific districts and dates of detail.**
- B. **Since the events of January 6, 2021 (“January 6th”) at the U.S. Capitol, how many legal support staff have been assigned to work on January 6th cases?**
 - a. **Of that total number, how many paralegals, including those detailed from other districts, have been assigned to January 6th cases?**
 - b. **Of that total number, how many legal assistants, including those detailed from other districts, are assigned to January 6th cases?**
 - c. **Of that total number, how many contractors, including those detailed from other districts, are assigned to January 6th cases?**
- C. **Since the events of January 6, 2021 (“January 6th”) at the U.S. Capitol, please state how many law enforcement personnel have been assigned or detailed to January 6th cases? Please include the identities of their respective agencies.**
- D. **Please provide the USA-5 data for all DC-U.S. Attorney’s Office AUSAs who have worked on January 6th cases.**
- E. **Please provide the USA-5 data for all AUSAs detailed (in person and remote) who have worked on January 6th cases.**

Response to A–E: The Department is committed to ensuring accountability for those criminally responsible for the January 6, 2021, assault on our democracy. The violence and destruction of property at the U.S. Capitol building on January 6 showed a deliberate and inexcusable disregard for our institutions of government and the orderly administration of the democratic process. In the aftermath of the attack on the Capitol, the Department was faced with one of the largest, most complex, and most resource-intensive investigations in its history. The United States Attorney’s Office for the District of Columbia (USAO-DC) and its law enforcement partners have worked tirelessly to investigate and prosecute those responsible for the attack.

At the time, the USAO-DC and its law enforcement partners faced significant challenges in responding to these cases, including the number of matters, the unusual nature of the offenses, and an unprecedented deadly pandemic. The Department quickly recognized the need for a more

sustainable solution to address the ongoing challenges posed by January 6. The USAO-DC reports that it established a dedicated team within its office to streamline its operations and enhance its ability to efficiently prosecute the high volume of cases. The USAO-DC now has a designated section to handle January 6 cases, which, as of May 2023, currently consists of approximately 70 full-time Assistant United States Attorneys and Special Assistant United States Attorneys and approximately 77 full-time support staff, including contractors. More than fifty percent of the support staff who work on the January 6 prosecutions are assigned to our Discovery Unit. Additional support is provided by attorneys and support staff from around the Department. While some of these additional attorneys and support staff were not dedicated full time to these cases, they performed work related to one or more of these cases, and USAO-DC leadership devotes significant time to overseeing the section.

As of May 2023, the USAO-DC reports that in total, since January 6, 2021, over 250 attorneys have worked on January 6 cases. Of those attorneys, some were full-time, some were part-time, some were detailees, and some were assigned on an ad hoc basis. Over this time period, there have been more than 1,100 defendants arrested in nearly all 50 states and the District of Columbia. Additional responsive statistics are available on the Capitol Breach Investigation Resource Page.¹⁶

The latest Capital Breach updates can be found at: [Capitol Breach Investigation Resource Page | USAO-DC | Department of Justice](#).¹⁷ A detailed a snapshot of the investigation can be found by clicking the “latest update” link under the Capitol Breach Response section.

Charging Memos

- 3. Your December 16, 2022, charging memos announce a policy that federal prosecutors should charge fewer offenses that carry a mandatory minimum sentence, and that this policy “applies with particular force in drug cases.” However, your policy makes no exception for fentanyl, fentanyl-analogue, or fentanyl related substance cases. Assume the following hypothetical: A person possesses with intent to distribute a mandatory minimum triggering amount of fentanyl or fentanyl-analogue, but this person has no significant criminal history, no gun, no violence, no use of minors, no death or serious bodily injury, and no ties to cartels or large-scale criminal organization. Would an AUSA be in violation of your new policy if he charged that person with a violation of 21 U.S.C. 841(b)(1)(A) or (b)(1)(B), and sought a mandatory minimum sentence?**

Response: The December 16, 2022, charging memorandum regarding drug cases states: “As stated in the General Policies Memorandum, ‘charges that subject a defendant to a mandatory minimum sentence should ordinarily be reserved for instances in which the remaining charges ...

¹⁶ <https://www.justice.gov/usao-dc/capitol-breach-cases/>.

¹⁷ <https://www.justice.gov/usao-dc/capitol-breach-investigaiton-resource-page>

would not sufficiently reflect the seriousness of the defendant's criminal conduct, danger to the community, harm to victims’ and ‘such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation.^{18”}”

It further states: “in cases in which Title 21 mandatory minimum sentences are applicable based on drug type and quantity, prosecutors should decline to charge the quantity necessary to trigger a mandatory minimum sentence if the defendant satisfies all of the following criteria:

- The defendant’s relevant conduct does not involve: the use of violence, the direction to another to use violence, the credible threat of violence, the possession of a weapon, the trafficking of drugs to or with minors, or the death or serious bodily injury of any person;
- The defendant does not have a significant managerial role in the trafficking of significant quantities of drugs;
- The defendant does not have significant ties to a large-scale criminal organization or cartel, or to a violent gang; and
- The defendant does not have a significant history of criminal activity that involved the use or threat of violence, personal involvement on multiple occasions in the distribution of significant quantities of illegal drugs, or possession of illegal firearms.^{19”}

- 4. Using the same hypothetical, what if a U.S. Attorney’s Office, in an effort to aggressively address fentanyl, had a policy that such a defendant would always be charged with a mandatory minimum, so long as the proof demonstrated beyond a reasonable doubt that the defendant possessed a sufficient quantity of fentanyl? Would you consider such a local policy to be in violation of your December 16, 2022 charging policy?**

Response: As stated above, the December 16, 2022, charging memorandum regarding drug cases states: “As stated in the General Policies Memorandum, ‘charges that subject a defendant to a mandatory minimum sentence should ordinarily be reserved for instances in which the remaining charges ... would not sufficiently reflect the seriousness of the defendant's criminal conduct, danger to the community, harm to victims’ and ‘such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation.^{20”}”

It further states: “in cases in which Title 21 mandatory minimum sentences are applicable based on drug type and quantity, prosecutors should decline to charge the quantity necessary to trigger a mandatory minimum sentence if the defendant satisfies all of the following criteria:

¹⁸ Memorandum from Attorney General Merrick Garland on Additional Department Policies Regarding Charging Pleas, and Sentencing in Drug Cases (Dec. 16, 2022) https://www.justice.gov/d9/2022-12/attorney_general_memorandum_-_additional_department_policies_regarding_charges_pleas_and_sentencing_in_drug_cases.pdf

¹⁹ *Id.*

²⁰ *Id.*

- The defendant’s relevant conduct does not involve: the use of violence, the direction to another to use violence, the credible threat of violence, the possession of a weapon, the trafficking of drugs to or with minors, or the death or serious bodily injury of any person;
 - The defendant does not have a significant managerial role in the trafficking of significant quantities of drugs;
 - The defendant does not have significant ties to a large-scale criminal organization or cartel, or to a violent gang; and
 - The defendant does not have a significant history of criminal activity that involved the use or threat of violence, personal involvement on multiple occasions in the distribution of significant quantities of illegal drugs, or possession of illegal firearms.²¹”
- 5. Would the possession with intent to distribute (or distribution, or conspiracy to distribute) a mandatory minimum triggering quantity of fentanyl *alone* justify charging an offense carrying a mandatory minimum sentence?**

Response: As stated above, the December 16, 2022, charging memorandum regarding drug cases states: “As stated in the General Policies Memorandum, ‘charges that subject a defendant to a mandatory minimum sentence should ordinarily be reserved for instances in which the remaining charges ... would not sufficiently reflect the seriousness of the defendant’s criminal conduct, danger to the community, harm to victims’ and ‘such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation.’²²”

It further states: “in cases in which Title 21 mandatory minimum sentences are applicable based on drug type and quantity, prosecutors should decline to charge the quantity necessary to trigger a mandatory minimum sentence if the defendant satisfies all of the following criteria:

- The defendant’s relevant conduct does not involve: the use of violence, the direction to another to use violence, the credible threat of violence, the possession of a weapon, the trafficking of drugs to or with minors, or the death or serious bodily injury of any person;
- The defendant does not have a significant managerial role in the trafficking of significant quantities of drugs;
- The defendant does not have significant ties to a large-scale criminal organization or cartel, or to a violent gang; and
- The defendant does not have a significant history of criminal activity that involved the use or threat of violence, personal involvement on multiple occasions in the distribution of significant quantities of illegal drugs, or possession of illegal firearms.²³”

- a. During the hearing, you repeatedly said that this policy was focused on ensuring that DOJ’s resources are appropriately used. How would an AUSA**

²¹ *Id.*

²² *Id.*

²³ *Id.*

charging a non-mandatory minimum quantity under Title 21 constitute a better use of resources than simply charging the factually accurate type of controlled substance and quantity that triggers a mandatory minimum sentence?

Response: The December 16, 2022, memorandum reaffirms “the priority the Department has placed on focusing our prosecutorial resources on combating violent crime.²⁴” By using mandatory minimums and other prosecutorial tools to target these serious public safety threats, the Department is seeking to apply the most serious penalties to the most serious offenders.

b. Do you think fentanyl traffickers are more or less likely to sign a cooperation plea agreement when charged with offenses that carry mandatory minimum sentences or when they’re charged with offenses that carry no mandatory minimum sentence?

Response: The decision to cooperate with the government is a significant one that involves many different considerations for each individual defendant.

c. Your new policy authorizes and encourages federal prosecutors to be factually inaccurate in charging instruments in order to comply with your directive to avoid charging offenses that carry mandatory minimum offenses or in treating cocaine base cases as if they were cocaine hydrochloride cases. Given that your policy encourages prosecutors to regularly charge factually inaccurate drug types and/or drug quantities, what professional responsibility risks does your new policy create for federal prosecutors?

Response: The policy does not authorize or encourage prosecutors to be factually inaccurate. To the contrary, the December 16, 2022, memorandum states: “prosecutors must always be candid with the court, the probation office, and the public as to the full extent of the defendant’s conduct and culpability, including the type and quantity of drugs involved in the offense and the quantity attributable to the defendant’s role in the offense, even if the charging document lacks such specificity.²⁵”

d. Did you consider how your policy affects the Rules of Professional Conduct, especially Rule 3.8 – Special Duties of a Prosecutor?

Response: Nothing in the memorandum is inconsistent with the Rules of Professional Conduct, including Rule 3.8.

²⁴ *Id.*

²⁵ *Id.*

- e. Prior to implementing this policy of generally seeking charging instruments (indictments, information, complaints) that fail to state accurate drug types and/or quantities, did you consult with the Office of Professional Responsibility and/or DOJ’s Professional Responsibility Advisory Office? If so, what concerns, if any, were expressed?**

Response: By requiring federal prosecutors to be candid with the court, the probation office, and the public about the facts of each case, the memoranda are consistent with the Rules of Professional Conduct. Federal prosecutors are instructed to comply fully with their ethical and professional responsibility obligations.²⁶

- 6. Your December 16, 2022, charging memo states: “The Department will develop and implement a software program that enables real-time, trackable reporting by districts and litigating divisions of all charges brought by the Department that include mandatory minimum sentences” (“real-time tracking program”). Please answer the following questions about this real-time tracking program:**

- a. Is the purpose of this real-time tracking program to encourage U.S. Attorney’s Offices and DOJ litigating components to charge more or fewer offenses that carry mandatory minimum sentences?**

Response: The Department is in the process of updating the United States Attorneys’ case management system to track information on the number of defendants charged and convicted of offenses carrying mandatory minimum sentences. Such information will assist Department leadership in assessing the implementation of the December 16, 2022, memoranda.

- b. Can you assure me that the use or lack of use of mandatory minimums will play no role in the performance evaluation of any federal prosecutor, U.S. Attorney’s Office, of DOJ litigating component?**

Response: Federal prosecutors are evaluated annually based on performance work plans developed with their supervisors. The work plans and the evaluations are conducted by an immediate supervisor in accordance with Department personnel policies.

- c. Have you instructed, or do you intend to instruct, the Executive Office of U.S. Attorneys Evaluation and Review Staff (EARS), to use data from this real-time tracking program in conducting their EARS evaluations of U.S. Attorney’s Offices?**

²⁶ See Justice Manual 1-4.010.

Response: The EARS teams review a wide variety of materials and data when conducting reviews of U.S. Attorneys’ Offices. That has traditionally included data from the United States Attorneys’ case management system.

d. Will you provide me, on a quarterly basis, data harvested from this real-time tracking program, including raw statistical data?

Response: The Department is in the process of updating the United States Attorneys’ case management system to track information on the number of defendants charged and convicted of offenses carrying mandatory minimum sentences, in order to assist Department leadership in assessing the implementation of the December 16, 2022, memoranda.

e. How much is DOJ spending on this real-time tracking program?

Response: The Department is using existing resources to update the United States Attorneys’ case management system to track information on the number of defendants charged and convicted of offenses carrying mandatory minimum sentences. Those resources are also used for the regular operation and maintenance of the system.

f. Does DOJ have similar real-time tracking systems in place to monitor violent crime and fentanyl/fentanyl-analogue indictments? If not, why not?

Response: The United States Attorneys’ case management system includes general information on the charges filed and outcomes of criminal cases. Additionally, the Department publishes an annual statistical report on the work of the United States Attorneys’ Offices.²⁷

Men in Women’s Bureau of Prison (BOP) Facilities

7. During the hearing, I asked if you were aware that there were approximately 1200 biological male inmates seeking to be reclassified to female facilities within the BOP. You stated that you were unaware of that statistic. You further stated that BOP reclassification decisions for such inmates are made on a case-by-case basis, taking into account security concerns, but that all inmates will be treated with “dignity and respect.” Please answer the following questions:

a. Do biological males have XY chromosomes?

Response: The National Institutes of Health’s National Human Genome Research Institute states in its X Chromosome Infographic: “Typically, biologically female individuals have two X

²⁷ See <https://www.justice.gov/media/1279221/dl?inline>

chromosomes (XX) while those who are biologically male have one X and one Y chromosome (XY). However, there are exceptions to this rule.”²⁸

b. Do biological females have XX chromosomes?

Response: The National Institutes of Health’s National Human Genome Research Institute states in its X Chromosome Infographic: “Typically, biologically female individuals have two X chromosomes (XX) while those who are biologically male have one X and one Y chromosome (XY). However, there are exceptions to this rule.”²⁹

c. Are there objectively valid reasons to house biological male inmates separate from biological female inmates within the BOP? If so, what are those reasons?

Response: BOP Program Statement 5200.08, “Transgender Offender Manual,” provides that housing unit assignments “will consider on a case-by-case basis that the inmate placement does not jeopardize the inmate’s wellbeing and does not present management or security concerns.”

d. Please provide any formal or informal BOP policy that guides the decision-making process for placement of biological males in female BOP facilities.

Response: BOP Program Statement 5200.08, “Transgender Offender Manual,” addresses housing assignments.³⁰

e. How many inmates with XY chromosomes are presently housed in BOP facilities with inmates who have XX chromosomes?

Response: BOP reports that as of October 2023, there are 10 transgender females housed in BOP female facilities.

f. Is it your position that, in this context, “dignity and respect” includes?

i. Believing a biological male inmate’s subjective claim that he’s a female?

Response: Director Peters has stated that BOP takes into account transgender individuals’ “views as well as everyone’s views on where they think that they can be better served from a

²⁸ <https://www.genome.gov/about-genomics/fact-sheets/X-Chromosome-facts>.

²⁹ Id.

³⁰ See <https://www.bop.gov/policy/progstat/5200-08-cn-1.pdf>.

safety security perspective or a programming and treatment perspective. And we take safety and security of the assignment of those individuals very seriously.”³¹

ii. Providing a biological male inmate with medications to alter his appearance in order to accommodate his subjective claim that he’s a female?

Response: Director Peters has stated that BOP has “a policy...to rely on a community standard of health care and make individualized decisions” and that BOP relies on “a community standard of care to make individualized medical decisions based on what is appropriate for that individual on a case by case.”³²

iii. Providing surgeries, such as genital castration or chest implants, to accommodate a biological male inmate’s subjective claim that he’s a female?

Response: Director Peters has stated that BOP has “a policy...to rely on a community standard of health care and make individualized decisions” and that BOP relies on “a community standard of care to make individualized medical decisions based on what is appropriate for that individual on a case by case.”³³

iv. Providing and dispensing condoms in female BOP facilities that house biological male inmates in the same cells as biological female inmates?

Response: BOP has reported that it does not provide condoms to incarcerated individuals in BOP facilities.

v. Providing birth control pills to biological male inmates who claim to be female?

Response: BOP has stated as follows: BOP trains employees to understand the complexities of housing individuals who are transgender inside BOP facilities. BOP has an official decision-

³¹ *Hearing on Oversight of the Fed. Bureau of Prisons Before S. Comm. on Judiciary*, 118th Cong. at (Sept. 12. 2023) (statement of Colette Peters, Dir., Fed. Bureau of Prisons), <https://www.judiciary.senate.gov/committee-activity/hearings/09/13/2023/oversight-of-the-federal-bureau-of-prisons>.

³² *Hearing on Oversight of the Fed. Bureau of Prisons Before S. Comm. on Judiciary*, 118th Cong. at 15-16 (Sept. 12. 2023) (statement of Colette Peters, Dir., Fed. Bureau of Prisons), <https://www.judiciary.senate.gov/committee-activity/hearings/09/13/2023/oversight-of-the-federal-bureau-of-prisons>.

³³ *Hearing on Oversight of the Fed. Bureau of Prisons Before S. Comm. on Judiciary*, 118th Cong. at 15-16 (Sept. 12. 2023) (statement of Colette Peters, Dir., Fed. Bureau of Prisons), <https://www.judiciary.senate.gov/committee-activity/hearings/09/13/2023/oversight-of-the-federal-bureau-of-prisons>.

making body on all issues affecting the transgender population. It meets monthly to offer advice and guidance on unique measures related to treatment and management needs of transgender inmates and/or inmates with gender dysphoria, including training, designation issues, and reviewing all transfers for approval. Clinical guidance on the most current research-driven clinical medical and psychiatric care of transgender inmates will be provided at the direction of BOP’s Medical Director. The bottom line is that BOP must ensure the safety of the transgender individual, other incarcerated individuals, and BOP employees.

vi. Providing feminine hygiene products to biological male inmates who claim to be female?

Response: BOP advises that standard items are provided to female inmates and inmates identified in BOP records as transgender females.

- 8. At a staff-level meeting with U.S. Marshals Service and FBI Officials on February 16, 2023, representatives of those agencies could provide no justification as to why protestors at the homes of Supreme Court justices have been neither arrested or prosecuted for violation of 18 U.S.C. § 1507 (“Section 1507”), which makes it a crime to picket, parade, or otherwise demonstrate near a residence occupied by a judge when doing so with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing the judge in the discharge of his or her duty. Please respond to the following**
- A. Is it true that zero individuals have been arrested for alleged violations of Section 1507 at or near the residences of Supreme Court Justices?**
 - B. Do you admit that protestors have held signs stating, inter alia, “Don’t Like Me At Your House? Get Out [sic] My Uterus”³⁴?**
 - C. Do you deny that protestors have chanted phrases such as “no privacy for us, no peace for you,”³⁵ as indicated in Supreme Court Marshal Gail Curley’s letter to Virginia Governor Glenn Youngkin dated July 2, 2022?**
 - D. If DOJ sought to criminally charge protestors under Section 1507, would the signage or statements referenced above be relevant facts?**

¹ *Abortion protests: Security tightened around court justices*, available at <https://www.bbc.com/news/world-us-canada-61382289>.

² Letter from Gail Curley to Glenn Youngkin, July 2, 2022, available at <https://twitter.com/katieleebarlow/status/1543335497350668302?s=20>.

- E. Could the signage or statements references above be sufficient to establish a protestor’s “intent of influencing [a justice] in the discharge of his [or her] duty”?**
- F. If a protestor located at the residence of a justice exclaims that the justice will have “no peace” if the justice does not rule in the manner they wish, has the protestor violated Section 1507?**
- G. Why have no prosecutions been brought under Section 1507?**

Response to A–G: In May 2022, the Attorney General took the unprecedented step of directing the U.S. Marshals Service (USMS) to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows:

During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. Their first priority is to protect the lives and safety of the Justices and their families. As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the Justices.” In February 2024, the Director further testified that “The Attorney General’s order was very clear, actually, crystal clear. Protect the lives of the Justices. He made sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety.”³⁶

In 2022, a federal grand jury returned an indictment charging a man who allegedly traveled from California to Maryland with the intent to kill a Justice of the United States Supreme Court. In that instance, Deputy U.S. Marshals fulfilled their protective responsibility by standing their post and protected the Supreme Court Justice from potential harm.

While the Department cannot speculate on hypotheticals, as a general matter, the decision regarding whether to initiate prosecution and what specific statutes to charge is dependent on the totality of circumstances, consistent with the Principles of Federal Prosecution, set forth in § 9-

³⁶ *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

27.000 of the Justice Manual. In addition, as a matter of policy, the Department generally does not comment about specific allegations of misconduct.

H. Is it the position of DOJ that Section 1507 is facially unconstitutional?

Response: The Department has not determined that § 1507 is unconstitutional.

I. Is it not true that that five Supreme Court protestors were indicted under Section 1507 in 2015, pleaded guilty, and were sentenced to terms of probation?³⁷

Response: In April 2015, the U.S. Attorney’s Office for the District of Columbia filed a criminal information charging five individuals who had interrupted a Supreme Court oral argument with two misdemeanor offenses, one of which was a § 1507 violation. The defendants pleaded guilty in 2017.

J. Is it not true that Section 1507 was a basis for the arrest of three Supreme Court protestors in November 2022?³⁸

K. The criminal complaint against these three protestors, Emily Archer, Nicole Enfield, and Dianne Baker, contains a charge only for violation of 40 U.S.C. § 6134, and not for Section 1507.³⁹ Please explain why these three protestors were not charged with a 1507 violation.

Response to J–K: On November 2, 2022, three individuals were arrested by the Supreme Court police after interrupting a Supreme Court oral argument. The U.S. Attorney’s Office for the District of Columbia subsequently filed a criminal complaint charging the individuals with violating 40 U.S.C. § 6134. As stated above, the decision to initiate prosecution and what specific statutes to charge is dependent on the totality of circumstances and falls within federal prosecutors’ discretion, consistent with the Principles of Federal Prosecution.

L. Have you or any of your subordinates had conversations with the U.S. Attorneys for the Eastern District of Virginia or the District of Maryland regarding the potential of bringing charges under Section 1507 against protestors at the homes of Supreme Court justices.

³ See 99Rise protestors charged with Class A misdemeanor in federal court, *available at* <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/04/06/99rise-protesters-charged-with-class-a-misdemeanor-in-federal-court/>; Judgments filed August 9, 2017, U.S. District Court for the District of Columbia Docket No. 15-cr-48.

⁴ *Women disrupt Supreme Court arguments to protest Dobbs decision*, *available at* <https://www.cnn.com/2022/11/02/politics/women-disrupt-supreme-court-protest-dobbs/index.html>.

⁵ Criminal Complaint filed Nov. 3, 2022, U.S. District Court for the District of Columbia Docket No. 22-mj-00241.

Response: The USMS, like the Department’s other law enforcement components, routinely coordinates with U.S. Attorneys’ offices around the country on charging decisions.

M. Has the FBI investigated any potential Section 1507 violations related to protest at the home of Supreme Court Justices?

Response: Standard Department policy is not to confirm or deny the initiation or existence of any investigation.

N. During your testimony, you indicated that the Deputy U.S. Marshals posted at the residences of Supreme Court justices have full authority to enforce federal law, thus suggesting that it would be within the purview of the USMS to enforce Section 1507.

- i. Please provide examples of instances in which the U.S. Marshals Service has effectuated arrests for obstruction of justice-related charges.**

Response: One example of an instance involving a USMS arrest for obstruction is referenced in *United States vs. Leung*, 360 F.3d 62, 66 (2d. Cir. 2004).

- ii. At the staff briefing on February 16, 2023, USMS Deputy Director of Judicial Security Jennifer Armstrong indicated that enforcing Section 1507 was not the purview of the Marshals Service, as their primary mission was to ensure the physical security of the justices.**

1. Was Ms. Armstrong mistaken?

Response: The USMS states that its top priority is to protect the Justices, their families, and their property. As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the [J]ustices.”

- 2. How do you explain the discrepancy between your testimony suggesting that the Deputy U.S. Marshals are free to make arrests under Section 1507, and Ms. Armstrong’s statements that it would be outside the scope of their duties to effectuate such arrests?**

Response: As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the

Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the [J]ustices.”

- iii. If it were alleged that associates of a criminal defendant were engaging in efforts to intimidate jurors in a criminal case, would the U.S. Marshals Service be the primary agency responsible for investigating these allegations?**

Response: The investigating agency would depend on the circumstances around the allegation, the location, and the resources available.

O. Is obstruction of justice protected by the First Amendment?

Response: No.

Disparate Enforcement of FACE ACT

9. In the early morning of September 23, 2022, a large swath of FBI agents arrested Mark Houck at his home in eastern Pennsylvania, following Mr. Houck’s indictment for violating the FACE Act. Mr. Houck was later acquitted by a jury of his peers, after only an hour of deliberations.

A. Please indicate the number of FBI Agents present for the arrest of Mr. Houck.

- i. Is it true that the FBI agents who effectuated the arrest of Mr. Houck carried ballistic shields?**
- ii. Is it true that the FBI agents who effectuated the arrest of Mr. Houck brandished firearms?**
- iii. Is it true that the FBI agents who effectuated the arrest of Mr. Houck brandished long-guns?**

Response to A(i)–(iii): Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

B. On July 29, 2015, former Congressman Chaka Fattah, along with a number of associates were indicted on racketeering charges.⁴⁰ Mr. Fattah was later convicted and sentenced to 10 years in prison.⁴¹

a. For purposes of the criminal indictment in the above-referenced case, was Mr. Fattah arrested at his home by the FBI?

Response: Without reference to any particular matter, the FBI has stated that, in general, determinations of how to make arrests under arrest warrants are made by operational personnel on the ground in accordance with standard policies and procedures.

C. If he was not, please described the circumstances under which Mr. Fattah was taken into custody. For example, was he permitted to voluntary surrender?

Response: Without reference to any particular matter, the FBI has stated that, in general, determinations of how to make arrests under arrest warrants are made by operational personnel on the ground in accordance with standard policies and procedures.

D. On January 29, 2019, Philadelphia City Council member Robert Henon was indicted on bribery charges.⁴² Mr. Henon was convicted and sentenced to three and a half years in prison.⁴³

a. News reports indicate that rather than being arrested, “Henon’s lawyer, Brian McMonagle, made arrangements for Henon to turn himself in a day early.”⁴⁴ Is it correct that Mr. Henon was permitted to voluntarily surrender?

Response: Without reference to any particular matter, the FBI has stated that, in general, determinations of how to make arrests under arrest warrants are made by operational personnel on the ground in accordance with standard policies and procedures.

⁴⁰ Indictment filed July 29, 2015, U.S. District Court for the Eastern District of PA Docket No. 2:15-cr-00346.

⁴¹ Former Congressman Chaka Fattah Sentenced to 10 Years in Prison for Participating in Racketeering Conspiracy, available at <https://www.justice.gov/opa/pr/former-congressman-chaka-fattah-sentenced-10-years-prison-participating-racketeering>

⁴² Indictment filed Jan. 29, 2019, U.S. District Court for the Eastern District of PA Docket No. 2:19-cr-00064.

⁴³ Ex-Philly City Councilmember Bobby Henon sentenced to 3½ years in prison, available at <https://www.inquirer.com/news/live/bobby-henon-sentencing-prison-john-dougherty-philadelphia-20230301.html>

⁴⁴ Philadelphia City Councilman Bobby Henon Pleads Not Guilty To Federal Corruption Charges, available at <https://www.cbsnews.com/philadelphia/news/philadelphia-city-councilman-turns-self-in-following-federal-indictment-involving-john-dougherty-ibew-local-98-union-members/>

- E. Please indicate the circumstances under which former District Attorney R. Seth Williams was taken into custody following his March 21, 2017 indictment in U.S. District Court for the Eastern District of PA Case No. 2:17-cr-00137-PD.**

Response: Without reference to any particular matter, the FBI has stated that, in general, determinations of how to make arrests under arrest warrants are made by operational personnel on the ground in accordance with standard policies and procedures.

- F. Please admit or deny that Mr. Houck’s attorney contacted the U.S. Attorney’s office in the Eastern District of PA offering to voluntarily surrender.**

- a. Who decided that Mr. Houck should not be permitted to the voluntary surrender?**

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

- G. Why was Mr. Henon and/or Mr. Fattah – two prominent Democratic politicians – permitted to voluntarily surrender, while Mr. Houck was not?**

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

- H. Under what circumstances are indicted individuals permitted to voluntarily surrender?**

Response: Without reference to any particular matter, the FBI has stated that, in general, determinations of how to make arrests under arrest warrants are made by operational personnel on the ground in accordance with standard policies and procedures.

- I. Does permitting non-violent offenders to voluntarily surrender not comport with your May 20, 2022 Memorandum, which emphasizes de-escalation tactics.**

Response: Without reference to any particular matter, the FBI has stated that, in general, determinations of how to make arrests under arrest warrants are made by operational personnel on the ground in accordance with standard policies and procedures.

- J. Why was a prosecutor from Washington, DC sent to assist with the prosecution of Mr. Houck?**

a. Is it because the U.S. Attorney’s Office was not deemed competent to handle this prosecution, which amounted to at most simple assault?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

b. Does it reflect the priority of enforcing the FACE Act against pro-life advocates?

Response: The Civil Rights Division advises as follows:

Without reference to any particular matter, Congress enacted the FACE Act in 1994 in response to an increase in violence toward providers and patients of reproductive health services. Notably, the FACE Act does not distinguish among types of reproductive health services. As the Department states on its website, “The FACE Act is not about abortions. The statute protects all patients, providers, and facilities that provide reproductive health services, including pro-life pregnancy counseling services and any other pregnancy support facility providing reproductive health care.”⁴⁵ Working with state and local law enforcement partners, the Department will investigate and, where supported by the facts and the law, prosecute the use of force, threats of force, or obstruction intended to interfere with reproductive health care. Federal or state civil actions, in certain circumstances, can also be filed by either the government or private individuals to obtain remedies not available through a criminal prosecution.

The Department’s Civil Rights Division, along with U.S. Attorneys’ Offices around the country, prosecutes FACE Act violations. The prosecutions rest on the straightforward proposition—that violence, threats of violence, and obstruction intended to interfere with reproductive health care have no place in the national discussion of reproductive health care. Since the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, the Department has received multiple reports of potentially unlawful conduct directed at pregnancy centers, their staff, and their patients. Federal authorities are investigating these reported incidents and are working to identify the perpetrators. In January 2023, the Department secured indictments against two Florida residents for allegedly spray-painting threats on pregnancy centers in the State. A superseding indictment at the end of March 2023 added two defendants. As in every investigation, the Department will follow the facts and the law wherever they lead and will take appropriate action at the conclusion of these ongoing investigations, which may include prosecution under the FACE Act.

Since the *Dobbs* decision, the Department has met with pro-choice groups and pro-life groups to discuss the protections under the FACE Act. The Department urged them to encourage

⁴⁵ U.S. Dep’t of Just., *Protecting Patients and Health Care Providers* (May 22, 2023), <https://www.justice.gov/crt/protecting-patients-and-health-care-providers>.

reproductive health care providers, whatever the nature of their services, to report to the FBI any violence or threats of violence they encounter.

K. Is it not true that the Philadelphia District Attorney’s Office declined to prosecute Mr. Houck for the incident charged by the U.S. Attorney’s Office?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

a. Is it not true that the Philadelphia DA could have charged Mr. Houck for assault and/or battery under Pennsylvania law?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

10. On October 17, 2022 date, Congressman Chip Roy sent a letter to DOJ requesting copies of a FOIA request response related to FACE Act prosecutions.⁴⁶

A. Will you turn over the requested FOIA response documents to Congressman Roy?

Response: The Department responded to Representative Roy’s inquiry on December 6, 2022.

B. Please provide me with the statistics on all prosecutions under the FACE Act since its enactment in 1994, including indication of whether the reproductive healthcare facility involved was an abortion provider, or a non-abortion-referring crisis pregnancy center, or of a different nature.

Response: The Civil Rights Division reports that since January 1994, the Department has charged more than 98 cases involving 162 defendants with FACE Act-related violations.

⁴⁶ See Press Release, Chip Roy, House of Representatives, DOJ stonewalls congressional demands for FACE Act prosecution data, (October 26, 2022), <https://roy.house.gov/media/press-releases/doj-stonewalls-congressional-demands-face-act-prosecution-data>.

Regulating Gender Transition Procedures for Minors

11. On March 31, 2022, DOJ issued guidance asserting that states and localities could be in violation of a slew of federal anti-discrimination laws (including Section 1557 of the Affordable Care Act, Title IX, and Section 504 of the Rehabilitation Act) should they bar access to “gender-affirming care.”

A. Is it your view that states could have no compelling interest in regulating gender transition procedures for minors?

Response: Protecting civil rights was one of the founding purposes of the Justice Department. This remains central to our mission. The Department is committed to protecting the civil and constitutional rights of all Americans, including those of transgender people. The Department is dedicated to protecting the rights of all youth, including transgender youth.

B. Is it not true that your letter of March 31, 2022 suggested that states could lose funding under various federal laws if they regulate gender transition procedures for minors?

Response: Protecting civil rights was one of the founding purposes of the Justice Department. This remains central to our mission. The Department is committed to protecting the civil and constitutional rights of all Americans, including those of transgender people. The Department is dedicated to protecting the rights of all youth, including transgender youth. According to the Civil Rights Division, it wrote to state attorneys general in March 2022 to emphasize that transgender youth, like all individuals, are protected from unlawful discrimination under federal law. These protections come from the due process and equal protection clauses of the Constitution, in addition to federal statutes and regulations.

C. Is Arkansas Act 626 of 2021 unconstitutional or otherwise contrary to federal law? If so, why?

Response: The Department submitted a statement of interest and an amicus brief in the *Brandt v. Rutledge* (now *Brandt v. Griffin*) litigation challenging Act 626 and in the appeal to the Eighth Circuit. Those filings outline the Department’s views.

D. It Utah Senate Bill 16 of 2023 unconstitutional or otherwise contrary to federal law? If so, why?

Response: The Department has not publicly addressed this bill, and standard Department policy is not to comment on or confirm the existence of any pending investigations or otherwise discussing our internal deliberative processes. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in

our legal filings, including those in the *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

E. Is the South Dakota House Bill 1080 of 2023 unconstitutional or otherwise contrary to federal law? If so, why?

Response: The Department has not publicly addressed this bill, and standard Department policy is not to comment on or confirm the existence of any pending investigations or otherwise discussing our internal deliberative processes. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

F. Is the Mississippi House Bill 1124 of 2023 unconstitutional or otherwise contrary to federal law? If so, why??

Response: The Department has not publicly addressed this bill, and standard Department policy is not to comment on or confirm the existence of any pending investigations or otherwise discussing our internal deliberative processes. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

G. Do you agree that some individuals regret decisions made as minors to undergo gender-transition procedures?

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Department will continue to work tirelessly to make real the promise of equal justice under the law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

H. Do you agree that the use of puberty blockers by pre-pubescent children can cause sterilization?

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Department will continue to work tirelessly to make real the promise of equal justice under the

law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender people are reflected in our legal filings, including those in the *Brandt v. Rutledge* (now *Brandt v. Griffin*) litigation.

I. Do you agree that the use of puberty blockers by pre-pubescent children can create health risks related to bone-density?

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Department will continue to work tirelessly to make real the promise of equal justice under the law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

G. Do you agree that there exists discord within the American medical community as to the appropriate screening and safeguards prior to the use of gender-transition procedures?⁴⁷

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Department will continue to work tirelessly to make real the promise of equal justice under the law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

J. Are you aware that a recent whistleblower alleges that gender transition procedures at St. Louis Children’s Hospital are “permanently harming” children in “morally and medically appalling” procedures with little oversight?⁴⁸

i. Is DOJ investigating these whistleblower allegations?

⁴⁷ *The Battle Over Gender Therapy*, available at <https://www.nytimes.com/2022/06/15/magazine/gender-therapy.html>.

⁴⁸ *Whistleblower lifts lid on St. Louis kids gender clinic: ‘Morally and medically appalling,’* available at <https://nypost.com/2023/02/09/whistleblower-lifts-lid-on-st-louis-kids-gender-clinic/>.

Response: As described in Justice Manual § 1-7.400, standard Department policy is not to comment on or confirm the existence of any pending investigations.

K. Are you aware that national health boards in Sweden and Finland that restricted access to puberty suppressants for minors?

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Justice Department will continue to work tirelessly to make real the promise of equal justice under the law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

i. Is it the position of DOJ that similar restrictions enacted in the U.S. would be unconstitutional or otherwise contrary to federal law?

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Department will continue to work tirelessly to make real the promise of equal justice under the law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

L. Could any of the above-referenced facts establish a compelling basis for a state to restrict gender-transition surgeries for minors?

Response: Transgender persons deserve to be able to live free from discrimination, harassment, violence, and threats of violence. Transgender youth deserve to be protected. And members of the transgender community—like all of us—deserve to be treated with dignity and respect. The Department will continue to work tirelessly to make real the promise of equal justice under the law for everyone in our country, including transgender persons. The Department’s views on key legal issues involving the rights of transgender youth to access gender-affirming health care are reflected in our legal filings, including those in *Brandt v. Rutledge* (now *Brandt v. Griffin*), *Poe v. Drummond*, and *Doe v. Thornbury*.

Requirements of 40 CFR 266.506 (b)(3)

12. Pursuant to report language included in the Consolidated Appropriations Act, 2023 can you provide a detailed explanation of DEA’s interaction with stakeholders on how to meet the requirements of 40 CFR 266.506 (b)(3)?

Response: The DEA states as follows: DEA has been engaging and continues to engage with relevant industry stakeholders on this issue. DEA has had one on one with engagement industry members to review their products for controlled substance destruction. In order to continue this important discussion, DEA published an Advance Notice of Proposed Rulemaking to facilitate the receipt of substantive information from industry stakeholders.⁴⁹ DEA is currently drafting this ANPRM and is working to publish it as expeditiously as possible. It is DEA’s hope that information provided in response to this notice will assist DEA in identifying additional methods and technology to meet the requirements of federal regulation.

Crime Victims Fund

13. Deposits into the Crime Victims Fund (CVF) have plummeted in recent years. We passed the VOCA Fix to Sustain the Crime Victims Fund Act unanimously in 2021 with the understanding that the decrease in deposits was due primarily to an increased reliance on deferred prosecution and non-prosecution agreements. While the VOCA Fix has increased deposits, comprising two-thirds of deposits in Fiscal Year 2022, overall deposits into the CVF are still substantially lower than their annual average between Fiscal Years 2007 and 2017, before the precipitous drop that began in Fiscal Year 2018. While the Office for Victims of Crime administers VOCA, decisions impacting deposits are not within OVC’s purview. These questions should be answered by the components within DOJ whose actions directly impact deposits.

- a. What are the trends and variables that have led to such a substantial decrease in monetary penalties being deposited into the Crime Victims Fund, even after the VOCA Fix? Please address the quantity of cases being both prosecuted and settled, the monetary penalties associated with those cases, changes to DOJ staffing, changes in DOJ enforcement priorities, the impact of the COVID-19 pandemic, changes in DOJ guidance, changes in DOJ practice, and any other changes that have or may have impacted deposits.**

Response: The Criminal Division and Office of Justice Programs advises as follows:

⁴⁹ Controlled Substance Destruction Alternatives to Incineration, 88 Fed. Re. 74379 (proposed Oct. 31, 2023)
<https://www.federalregister.gov/documents/2023/10/31/2023-23984/controlled-substance-destruction-alternatives-to-incineration>

Providing services and support for victims is a top priority for the Office of Justice Programs (OJP). In FY 2024, the President’s Budget requested an obligation cap of \$1.2 billion for victim programs supported by the Crime Victims Fund (CVF). The proposed reduction in FY 2024 seeks to align spending with estimated projections for revenue to protect the balance of the Fund over the long term so that it can continue to serve victims in the years ahead. In recognition of the critical importance of the Fund’s programs to support victims of crime, the proposed funding strategy represents the most effective means to maximize funding for the Fund in a sustainable manner.

Additionally, criminal monetary penalties, by their very nature, are difficult to collect. Criminal defendants may be incarcerated or deported, with no assets for making payments on these assessments. According to litigating offices within the Department, the government’s ability to collect fines has also been frustrated with some interpretations of 18 U.S.C. § 3572 that require the imposition of a payment schedule at sentencing in every case, rather than requiring such imposition only upon a finding that it is in the interest of justice to do so. These interpretations frustrate the government’s efforts to quickly recover penalties from delinquent defendants for deposit into the CVF. As a result of this misinterpretation, minimal payment schedules imposed at sentencing cannot thereafter be changed, except by the court and upon a showing of a substantial change in the defendant’s economic circumstances.

The correlation between Fund deposits and criminal investigations is complex, and the amount of deposits into the Fund in a given year are not an indication of the Department’s approach to criminal corporate accountability. To the contrary, the Department’s dedicated prosecutors and investigators work tirelessly to combat white collar crime committed by individuals and corporations alike. The Office of Justice Programs reports that financial penalties from criminal antitrust violations are the Fund’s primary funding source. However, criminal antitrust investigations take time, as the life cycle of a major cartel investigation is typically around five years. The successful prosecution of antitrust cartels may lead to clusters of settlements in a given year as co-conspirators decide to seek resolution around the same time, resulting in the Antitrust Division collecting large criminal fines and penalties some years and limited fines and penalties in other years.

b. What actions is DOJ taking to increase deposits into the Crime Victims Fund, and what more can DOJ do to increase deposits? What barriers exist to increasing deposits?

Response: The Department is grateful for Congress’s efforts to pass the VOCA Fix in 2021. According to the Office for Victims of Crime (OVC), since FY 2018, the Crime Victims Fund (CVF) balance has declined by 74 percent and the obligation cap has been lowered. As a result, the allocations for all states and territories have decreased. Since enactment in 2021 through April 2023, nearly \$1 billion was deposited into the CVF from NPAs and DPAs—a direct result of the VOCA Fix and the Department’s efforts to ensure maximum deposits into the Fund. When

the VOCA Fix passed in 2021, courts were still experiencing delays and recovering from the impacts of the pandemic, resulting in a corresponding delay in many prosecutions are thus delayed. As courts resume normal processes, and cases are tried, the Department anticipates seeing the full effects of the law.

The OVC is the office within the Department responsible for administering the CVF. OVC states that it has met with other offices within the Department, including the offices responsible for the largest contributions to the Fund (i.e., Antitrust Division, Criminal Division, and the Executive Office for U.S. Attorneys) to discuss the Victims of Crime Act, and the resources and support provided to victims stemming from case fines and penalties. OVC has also met with the Attorney General’s Advisory Committee of U.S. Attorneys, the Environment Natural Resources Division, the Environmental Protection Agency, and the Executive Office for United States Attorneys on the importance of the Fund and how it affects victim assistance programs. This engagement with U.S. Attorneys will continue regularly to facilitate further understanding and awareness of the Fund.

Additionally, the Department recognizes that keeping the Fund solvent is essential to providing crime victims with compensation and assistance critical for emotional, physical, and financial support in the aftermath of crime. The Department has a robust training curriculum that emphasizes the availability of the Fund as a repository for fines, amounts paid pursuant to DPAs and NPAs, and other criminal monetary penalties. In addition to trainings and guidance set forth in the Justice Manual, the Department has published a number of resource materials to assist prosecutors in ensuring that asset recovery is taken into consideration at every stage of a criminal prosecution. Moreover, the Department actively informs prosecutors of any legislative changes which impact the Fund. For example, the Department immediately implemented and educated prosecutors on the changes made by the VOCA Fix Act.

c. Are there other authorizing changes Congress should consider to increase deposits into the Crime Victims Fund?

Response: The Department would welcome the opportunity to work with Congress to discuss other authorizing changes Congress should consider to increase deposits into the Crime Victims Fund.

Illegal Gambling

14. Illegal sports books and casinos are readily accessible on the internet to every American, including minors. Access through the dark web is not required to find these sites. Instead, they come up at the top of search results.

a. What is DOJ’s level of concern about illegal sports books and casinos, and what is it doing to address the issue?

Response: Criminal Division advises as follows: It continues to be the policy of the Department to prosecute internet gambling companies that operate in violation of federal law. This includes enforcing laws that protect our financial systems, such as bank fraud and money laundering. Further, the Department continues to prioritize the most egregious conduct, including conduct tied to organized crime, or conduct in which gambling activity is part of a larger criminal scheme. In compliance with state laws that prohibit gambling by minors, online gambling sites generally require electronic visitors or site users to attest to their status as an adult before being permitted entry to the site. Where gambling businesses violate state laws prohibiting wagering by minors, which in turn becomes a violation of the federal definition of “illegal gambling business,” it is the Department’s policy to prosecute, where appropriate, such businesses for conducting illegal gambling businesses by knowingly allowing minors to gamble, whether on-line or in-person.

SENATOR CHARLES GRASSLEY
Questions for the Record
“Oversight of the Department of Justice”
March 8, 2023

1. **During the hearing, I asked you about whether U.S. Attorney Weiss is truly independent from politically appointed Justice Department officials in the Hunter Biden criminal matter. Specifically, I asked about his ability to make charging decisions without getting permission from President Biden’s political appointees. In response, you stated that U.S. Attorney Weiss has been “advised that he has full authority to make those kind [sic] of referrals that you’re talking about or to bring the cases in other jurisdictions if he feels it’s necessary. And I will assure that if he does he will be able to do that.” You also stated that U.S. Attorney Weiss has “full authority” to bring a case in another jurisdiction and “he’s been advised that he is not to be denied anything that he needs.”¹**

With respect to the Hunter Biden criminal matter, please answer the following:

- a. **Has the IRS recommended criminal charges against Hunter Biden? If so, when?**
- b. **Was an IRS Special Agent’s Report issued recommending criminal charges against Hunter Biden? If so, when and is the Justice Department involved?**
- c. **Did the Justice Department Tax Division recommend criminal charges against Hunter Biden? If so, when and was the recommendation accepted?**
- d. **Has the Justice Department ever decided that certain investigative steps could not be taken by U.S. Attorney Weiss?**
- e. **Were investigative steps, such as the execution of search warrants, service of subpoenas and/or interviews of witnesses or subjects proposed by investigative agencies but denied by the Justice Department?**
- f. **Has the Justice Department denied a request for the use of grand jury subpoenas?**
- g. **Procedurally, has U.S. Attorney Weiss’ office had sole authority on the issuance and timing of service of grand jury subpoenas or have there been occasions where Justice Department Tax Division personnel have asserted control over the process?**
- h. **Has the Justice Department Tax Division approved, declined or given discretion to U.S. Attorney Weiss’ office to initiate criminal proceedings against Hunter Biden?**

- i. Has the Justice Department denied an interview of Hunter Biden by IRS agents?**
- j. Were investigators’ questions intended for subjects or witnesses limited in topic and scope to prevent questions related to President Biden?**

Response to a–j: Special Counsel Davis Weiss was appointed on August 11, 2023, and provided a transcribed interview to the House Judiciary Committee on November 7, 2023.

Consistent with the Special Counsel regulations, at the conclusion of Mr. Weiss’ work, he will provide the Attorney General with a report explaining the prosecution or declination decisions reached by him. As with each Special Counsel, who has served since the Attorney General has taken office, the Attorney General is committed to making as much of the Special Counsel’s report public as possible, consistent with legal requirements and Department policy.⁵⁰

- 2. Since 2016, how many case opening requests did the Justice Department Public Integrity Section send to the FBI’s Washington Field Office? Of those, how many targeted Republicans? Taxpayer dollars appropriated by Congress paid for those decisions, will you commit to producing that data to the committee?**

Response: The Department does not track the political affiliation of individuals investigated. It is Department policy that partisan politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges.

- 3. Since August last year, I’ve sent you three letters based on protected whistleblower disclosures about political bias infecting Justice Department and FBI decision-making.² I’ve also sent you a letter based on whistleblower disclosures about sexual misconduct by Department officials.³ The Department hasn’t challenged the accuracy of those disclosures. Accordingly, why haven’t you provided me responsive letters and document productions?**

Response: The Department is committed to cooperating with information requests from Congress, consistent with Executive Branch confidentiality interests. On November 25, 2022, the FBI responded to your several letters regarding allegations of political bias within the FBI.

- 4. As you are aware, a number of whistleblowers have alleged to my office that the FBI gave preferential treatment to the Biden family by shutting down investigative**

⁵⁰See Speech, U.S. Dep’t of Just., Attorney General Merrick B. Garland Delivers a Statement (Aug. 11, 2023) <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-statement>

activity and sources with respect to potentially criminal information on Hunter Biden.⁴

First, it’s been alleged that the FBI developed information in 2020 about Hunter Biden’s criminal financial and related activity. It is further alleged that in August 2020, FBI Supervisory Intelligence Analyst Brian Auten opened an assessment which was used by a FBI Headquarters (“FBI HQ”) team to improperly discredit negative Hunter Biden information as disinformation and caused investigative activity to cease. Based on allegations, verified and verifiable derogatory information on Hunter Biden was falsely labeled as disinformation.

Importantly, it’s been alleged to my office that Mr. Auten’s assessment was opened in August 2020, which is the same month that Senator Johnson and I received an unsolicited and unnecessary briefing from the FBI that purportedly related to our Biden investigation and a briefing for which the contents were later leaked in order to paint the investigation in a false light.

Second, it has been alleged that in September 2020, investigators from the same FBI HQ team were in communication with FBI agents responsible for the Hunter Biden information targeted by Mr. Auten’s assessment. The FBI HQ team’s investigators placed their findings with respect to whether reporting was disinformation in a restricted access sub-file reviewable only by the particular agents responsible for uncovering the specific information. This is problematic because it does not allow for proper oversight and opens the door to improper influence.

Third, in October 2020, an avenue of additional derogatory Hunter Biden reporting was ordered closed at the direction of ASAC Thibault. My office has been made aware that FBI agents responsible for this information were interviewed by the FBI HQ team in furtherance of Mr. Auten’s assessment. It’s been alleged that the FBI HQ team suggested to the FBI agents that the information was at risk of disinformation; however, according to allegations, all of the reporting was either verified or verifiable via criminal search warrants. In addition, ASAC Thibault allegedly ordered the matter closed without providing a valid reason as required by FBI guidelines. Despite the matter being closed in such a way that the investigative avenue might be opened later, it’s alleged that FBI officials, including ASAC Thibault, subsequently attempted to improperly mark the matter in FBI systems so that it could not be opened in the future. As Attorney General, you oversee the FBI and have an obligation to the country to take these allegations seriously, immediately investigate, and take steps to institute fixes to these and other matters before you. Please provide and answer the following:

- a. **All leads sent to the Washington Field Office (WFO) that were under the purview of ASAC Thibault that were ordered closed by ASAC Thibault and/or denied for opening by the Justice Department’s Public Integrity Section.**
- b. **All opened and closed cases initiated by the WFO that were under the purview of ASAC Thibault that were ordered closed by ASAC Thibault and/or denied for opening by the Justice Department’s Public Integrity Section.**
- c. **Does the Justice Department have a criteria that it uses to evaluate whether information is or isn’t disinformation? If so, what is that criteria?**
- d. **With respect to the August 2020 FBI briefing given to Senator Johnson and me:**
 - i. **A copy of the FBI 302 for the briefing;**
 - ii. **All intelligence reporting, products, and analysis that formed the basis of the briefing;**
 - iii. **The name(s) of the person(s) who recommended that Senator Johnson and I be briefed;**
 - iv. **A description of the process for deciding to brief us; and**
 - v. **All records, including emails, relating to the briefing.**

Response to a–d: The FBI responded to your requests regarding allegations of political bias within the FBI’s Washington Field Office on November 25, 2022. The Department and FBI responded to your questions about the August 2020 briefing on other occasions, including August 17, 2020; April 30, 2021; June 11, 2021; and November 29, 2022.

5. **On March 28, 2022, March 29, 2022, and April 5, 2022, Senator Johnson and I gave speeches on the Senate floor introducing bank records relating to Hunter Biden’s and James Biden’s financial connections to the communist Chinese regime.⁶ Based on reports of the scope of Mr. Weiss’s investigation, these bank records are relevant to his work. It’s unclear what records DOJ and FBI maintain with respect to Hunter and James Biden’s financial associations with the communist Chinese government. Moreover, it’s unclear whether the records that DOJ and FBI have in their possession with respect to Hunter and James Biden have been shared with Mr. Weiss.**
 - a. **With respect to the records that the Justice Department and FBI maintain on Hunter Biden and James Biden and their potential criminal conduct and affiliations with foreign governments and persons, has that information,**

including derogatory information, been shared with Mr. Weiss? If not, why not?

- b. Does the Justice Department or FBI maintain records from Wells Fargo, USAA, Bank of America, TD Bank, JPMorgan Chase, PNC, Morgan Stanley, Citibank, Bank of New York Mellon, Bank of China and First National Bank of Omaha relating to Hunter Biden, James Biden, Sara Biden, John R. Walker, Eric Schwerin, Devon Archer and corporate entities linked to them, including but not limited to, Hudson West III and the Lion Hall Group? If not, why not?**

Response to a–b: These matters are under Special Counsel David Weiss, who was appointed on August 11, 2023. He provided a transcribed interview to the House Judiciary Committee on November 7, 2023.

Consistent with the Special Counsel regulations, at the conclusion of Mr. Weiss’ work, he will provide the Attorney General with a report explaining the prosecution or declination decisions reached by him. As with each Special Counsel who has served since the Attorney General has taken office, the Attorney General is committed to making as much of the Special Counsel’s report public as possible, consistent with legal requirements and Department policy.⁵¹

- 6. On January 19, 2021, then-President Trump issued a memorandum to the Attorney General, the Director of National Intelligence and the Director of the Central Intelligence Agency directing them to declassify certain Crossfire Hurricane records for public dissemination. On February 25, 2021, Senator Johnson and I requested an update from the Justice Department with respect to when a full and complete set of declassified records would be provided to Congress.**

Since then, our respective staffs have had countless emails and phone calls requesting updates, to which the Department has consistently failed to provide any substantive response. Indeed, to-date, the Justice Department has not produced a single declassified record to Congress and the American people. What role does the Justice Department have in producing the declassified Crossfire Hurricane records to Congress? What steps have you taken to ensure the records are produced to Congress?

Response: According to the Office of Legislative Affairs, the Department provided related materials to your office on January 20, 2022. The Office of Legislative Affairs is available to discuss this issue further with your office.

⁵¹See Speech, U.S. Dep’t of Just., Attorney General Merrick B. Garland Delivers a Statement (Aug. 11, 2023) <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-statement>.

7. Has Special Counsel Durham submitted a report of his investigation to the Justice Department? If so, when will the report be made public without redactions?

Response: On Friday, May 12, 2023, Mr. Durham submitted a 306-page unclassified report “in a form that will permit public dissemination,” consistent with Attorney General Barr’s October 19, 2019, order appointing Mr. Durham Special Counsel, and a 29-page classified annex. On Monday, May 15, 2023, the Attorney General released Mr. Durham’s report in full, without any additions, redactions, or other modifications.

8. Does the Justice Department have a specific policy regarding the use of materials and information related to U.S. citizens who reside in the United States provided by foreign governments, including the fruits of surveillance carried out by a foreign state’s intelligence services?

Response: The Attorney General’s Guidelines for Domestic FBI Operations and the FBI’s Domestic Investigations and Operations Guide (updated September 17, 2021) contain policies that apply to the use of information provided by foreign governments and how information concerning U.S. persons is used, retained, and disseminated.

9. In August 2022, I wrote a letter with Sens. Cornyn, Cotton and Cruz asking about the Brookings Institution’s potential obligation to register as a foreign agent under the Foreign Agent’s Registration Act.⁵² To date, the Justice Department has not provided a substantive response to our inquiry. Did the Justice Department ever formally investigate the conduct of the Brookings Institution related to its relationship with the State of Qatar? If so, what is the status of the investigation? If not, why not?

Response: As explained in the Department’s response, dated May 1, 2023, to your August 2022 letter, longstanding policy and practice of the Department prevents us from confirming the existence of, or describing the nature of, any investigation or potential other actions the Department might take, such as through the issuance of a letter of inquiry or a letter of determination in the context of the Foreign Agents Registration Act. Relatedly, the Department cannot confirm whether a private entity has sought an advisory opinion on whether it has an obligation to register under FARA because the Department protects the identity and confidential business information contained in such requests to encourage voluntary compliance with FARA.

⁵² <https://www.grassley.senate.gov/news/news-releases/senators-push-doj-on-fara-compliance-of-brookings-institution>

10. According to the Justice Department, it determined that Al Jazeera Media Network is “an agent of the Government of Qatar” and ordered its social media subsidiary unit, AJ+, to register under the Foreign Agents Registration Act.⁵³ Why has the Justice Department not required Al Jazeera Media Network or AJ+ to register under FARA?

Response: The National Security Division advises as follows: On September 14, 2020, the Department sent AJ+ a letter outlining its registration obligation under FARA. On May 9, 2022, the Department withdrew the September 14, 2020, letter. The Department’s withdrawal was based on its assessment of the information about AJ+ available to it at that time.

11. The False Claims Act has been the government’s best tool to fight fraud against the government and recover taxpayer dollars. Earlier this year, the Department announced that in Fiscal Year 2022, the False Claims Act was responsible for recovering \$2.2 billion lost to fraud. Since my amendments to modernize and strengthen the law were enacted in 1986, more than \$72 billion has been recovered through False Claims Act cases, and it likely has saved billions more in taxpayer dollars by deterring would be fraudsters.

Whistleblowers also play a key role in the False Claims Act’s success. The law’s *qui tam* provision allows whistleblowers to root out and expose fraudulent and abusive uses of taxpayer dollars by bringing lawsuits against alleged fraudsters on behalf of the government and share in any recoveries. However, the False Claims Act is constantly under attack by those who seek to weaken its provisions and make it harder for the government to recover taxpayer dollars subject to fraud. What effect would a weakened False Claims Act have on the Department’s ability to not only hold fraudsters accountable, but to deter would be fraudsters from defrauding the government?

Response: The False Claims Act is central to the Department’s ability to protect federal programs from fraud and abuse. The Department vigorously investigates and pursues cases under the False Claims Act and, according to the Civil Division, in the fiscal year ending September 30, 2022, obtained more than \$2.2 billion in settlements and judgments from civil cases involving fraud and false claims against the government. A weakening of this law would be expected to reduce the amounts the Department is able to reclaim on behalf of the government and the taxpayers and weaken general deterrence of those who seek to defraud the federal government.

⁵³ <https://www.grassley.senate.gov/news/news-releases/qatari-backed-media-still-not-registered-under-foreign-agents-law-despite-justice-department-determination-senators-want-to-know-why>

12. On February 23, 2023, the Department of Justice Office of the Inspector General (DOJ- OIG) released a report evaluating the Federal Bureau of Prisons’ (BOP) efforts to address sexual harassment and sexual assaults committed by inmates toward staff.⁵⁴ The DOJ- OIG report found that BOP had inadequate data on inmate-on-staff sexual harassment, was not consistently identifying the gender of the victims, and did not identify the specific nature of inmates’ prohibited conducted against staff. The DOJ-OIG reported that “BOP’s inability to fully identify and effectively mitigate inmate-on-staff sexual harassment has negative effects on both the BOP and its staff and can lead to unsafe work environments.”⁵⁵

As part of this evaluation, the DOJ-OIG initiated a survey and conducted interviews of BOP personnel across the country to assess the prevalence and effects of inmate-on-staff sexual harassment and BOP’s efforts to address this inmate misconduct.⁵⁶ According to the survey, 40% of respondents said that they had been sexually harassed by an inmate since being employed by BOP, and of those 69% were women.⁵⁷ The DOJ-OIG reported that through their interviews with BOP staff, they found that “inmate-on-staff sexual harassment occurs across BOP institutions and BOP staff believe that it particularly affects employees who are women” which is further evidenced by the results of the survey.⁵⁸

The DOJ-OIG made nine recommendations for BOP to fully ascertain the prevalence and scope of inmate-on-staff sexual harassment, to mitigate and address inmate-on-staff sexual harassment, and to improve staff training on inmate-on-staff sexual harassment.

- a. What actions has the Department taken to ensure that BOP is implementing the recommendations made in the February 23, 2023, DOJ-OIG report?**

Response: BOP advises as follows:

BOP is managing these incidents through early correctional intervention and the consistent application of the discipline process. Incidences of sexual misconduct toward employees are dealt with as violations of the code of conduct and an incident report is generated by the local employees and the inmate discipline process will follow. Additionally, these incidents are

⁵⁴ U.S. Dep’t of Just., Office of the Inspector General, Evaluation of the Federal Bureau of Prisons’ Efforts to Address Sexual Harassment and Sexual Assault Committed by Inmates Toward Staff, (February 23, 2023), <https://oig.justice.gov/reports/evaluation-federal-bureau-prisons-efforts-address-sexual-harassment-and-sexual-assault>.

⁵⁵ *Id.* at i.

⁵⁶ *Id.* at 34.

⁵⁷ *Id.* at 18.

⁵⁸ *Id.* at i.

referred to the local United States Attorney’s Office for prosecution where appropriate. BOP provides training for all employees on reporting incidents, writing clear incident reports, and mitigating inmate-on-staff sexual harassment. Institutional controls can also be utilized, on a facility-by-facility basis, to prevent inmate-on-staff sexual harassment.

BOP is currently working to add specific gender codes to incident reports relating to sexual offenses for inmate-on-staff incidents. BOP has issued a notice of proposed rulemaking wherein all sexual acts will be combined into a single 100 series level offense, which reflect prohibited acts at the greatest severity level. The Disciplinary Hearing Officer will be authorized to key this Additional Tracking Identifier (ATI) for any guilty findings for all sexual acts.

Additionally, training on incident report codes and elements of offenses was added to inmate discipline training for Lieutenants, Captains, Investigative Intelligence staff, Case Managers, and Unit Managers. Once those individuals are trained, they will then provide the training at their respective institutions to their assigned staff.

As recommended by the Office of Inspector General in recommendation 5, BOP is organizing a multi-disciplinary team to assess BOP institutions to determine which corrective actions from the class action settlements concerning FCC Coleman and FCC Victorville should be implemented Bureau-wide or in additional institutions.

BOP intends to include a training needs assessment as part of the comprehensive mitigation strategy and will ensure its training addresses resources available to staff who witness or experience inmate-on-staff sexual harassment once updated.

b. What actions has the Department taken to ensure that BOP institutions across the nation are addressing inmate-on-staff sexual harassment allegations and punishing inmates who engage in this misconduct?

Response: BOP states as follows: BOP is managing these incidents through early correctional intervention and the consistent application of the discipline process. Incidences of sexual misconduct toward employees are dealt with as violations of the code of conduct and an incident report is generated by the local employees and the inmate discipline process will follow. Additionally, these incidents are referred to the local United States Attorney’s Office for prosecution where appropriate. BOP provides training for all employees on reporting incidents, writing clear incident reports, and mitigating inmate-on-staff sexual harassment. Institutional controls can also be utilized, on a facility-by-facility basis, to prevent inmate-on-staff sexual harassment.

c. In Recommendation 1 of the report, the DOJ-OIG recommended that BOP add a field to their Discipline and Administration Reintegration Tracking System (DARTS) to specifically identify the prohibited conduct engaged in

by an inmate to better track inmate-on-staff sexual harassment; however, BOP responded that only their two most serious categories of offenses (100 and 200 level) require additional identifiers and “lesser” offenses (300-400) do not, even though “lesser” offenses include sexual harassment offenses. Does the Department agree with BOP’s assertion that “lesser” inmate-on-staff sexual harassment specific incidents should not be tracked through DARTS? Please explain. What guidance has the Department provided or plans to provide to BOP on tracking 300 and 400 level incidents of inmate-on-staff sexual harassment?

Response: BOP advises as follows: BOP is currently working to add specific gender codes to incident reports relating to sexual offenses for inmate-on-staff incidents. BOP has issued a notice of proposed rulemaking wherein all sexual acts will be combined into a single 100 series level offense, which reflect prohibited acts at the greatest severity level. The Disciplinary Hearing Officers will be authorized to key this Additional Tracking Identifier (ATI) for any guilty findings for all sexual acts.

- d. The working group established by Deputy Attorney General Lisa Monaco to review the Department’s approach to instances of sexual misconduct by BOP employees released a report on November 2, 2022.⁵⁹ The report stated that “BOP should address sexual harassment perpetrated by inmates against staff” and “impose meaningful consequences for such conduct.”⁶⁰ What guidance has the Department provided to BOP staff to address this part of the working group’s recommendation?**

Response: BOP states as follows:

BOP’s Director sent out a Bureau-wide message reiterating the gravity of sexual misconduct and the zero-tolerance policy for sexual abuse of any kind. The Department continually discusses ways to prioritize investigations and prosecutions to ensure the safety of staff and the individuals in custody. BOP has also prioritized this work and appointed a point of contact to coordinate BOP’s ongoing work with that of the Advisory Group.

BOP is managing these incidents through early correctional intervention and the consistent application of the discipline process. Incidences of sexual misconduct toward employees are dealt with as violations of the code of conduct and an incident report is generated by the local employees and the inmate discipline process will follow. Additionally, these incidents are

⁵⁹ Principal Associate Deputy Attorney General Working Group of DOJ Components, *Report and Recommendations Concerning the Department of Justice’s Response to Sexual Misconduct by Employees of the Federal Bureau of Prisons*, U.S. Dep’t of Just., (November 2, 2022), <https://>.

⁶⁰ *Id.* at 8.

referred to the local United States Attorney’s Office for prosecution where appropriate. BOP provides training for all employees on reporting incidents, writing clear incident reports, and mitigating inmate-on-staff sexual harassment. Institutional controls can also be utilized, on a facility-by-facility basis, to prevent inmate-on-staff sexual harassment.

BOP is currently working to add specific gender codes to incident reports relating to sexual offenses for inmate-on-staff incidents. BOP has issued a notice of proposed rulemaking wherein all sexual acts will be combined into a single 100 series level offense, which reflect prohibited acts at the greatest severity level. The Disciplinary Hearing Officer will be authorized to key this Additional Tracking Identifier (ATI) for any guilty findings for all sexual acts.

Additionally, training on incident report codes and elements of offenses was added to inmate discipline training for Lieutenants, Captains, Investigative Intelligence staff, Case Managers, and Unit Managers. Once those individuals are trained, they will then provide the training at their respective institutions to their assigned staff.

As recommended by the Office of Inspector General in recommendation five of the report, BOP is organizing a multi-disciplinary team to assess BOP institutions to determine which corrective actions from the class action settlements concerning FCC Coleman and FCC Victorville should be implemented Bureau-wide or in additional institutions.

BOP intends to include a training needs assessment as part of the comprehensive mitigation strategy and will ensure its training addresses resources available to staff who witness or experience inmate-on-staff sexual harassment once updated.

13. During COVID, we saw farmers and ranchers receive low payments from the Big 4 packers while families across America faced record high rising meat prices. It’s critical for the Justice Department to coordinate with the Department of Agriculture in its activities on agriculture antitrust matters.

a. How is the Justice Department working with the Department of Agriculture to enforce the Packers and Stockyards Act?

Response: The Antitrust Division advises as follows: At the beginning of 2022, the Departments of Justice and Agriculture issued a joint statement reaffirming their commitment to enforcing federal competition laws, including the Packers and Stockyards Act. Since issuing that statement, the Department has filed a lawsuit and proposed consent decrees against several poultry processors—including Cargill, Sanderson Farms, Wayne Farms, and George’s—to address deceptive practices that harm chicken growers and to end a long-running conspiracy to suppress worker pay at processing plants. Under the terms of the consent decrees, a court-appointed monitor has broad authority to ensure that the processors comply with the antitrust laws. The

processors have also agreed not to share competitively sensitive information about plant workers’ pay and committed to pay \$90 million to poultry workers. The Department will continue to collaborate with the Department of Agriculture to protect competition for the benefit of farmers, ranchers, growers, workers, and American families. The Antitrust Division and Department of Agriculture also launched [farmerfairness.gov](https://www.farmerfairness.gov), a new online tool that allows farmers and ranchers to anonymously report potentially unfair and anticompetitive practices in the livestock and poultry sectors.

b. Are there any recommendations you’d make to strengthen your work with the Department of Agriculture?

Response: The Antitrust Division advises as follows: Fairness for farmers, ranchers, and growers is a key priority for the Department. For example, the Department has taken initial steps towards dismantling the tournament system. Our relationship with the Department of Agriculture remains strong and the Department has made active efforts to further strengthen it. For example, the Department signed an interagency memorandum of understanding with the USDA in 2022, building on our 1999 memorandum of understanding. The Department is committed to continue working with the USDA to increase one another’s ability to investigate and enforce the Packers and Stockyards Act and other authorities that promote fair and competitive agricultural markets.

14. It’s important that foreign antitrust agencies be transparent in their operations, ensure there is due process and procedural fairness, and refrain from industrial policy and extraterritorial application of their laws.

a. Does the Justice Department support advance U.S. core interests of due process and procedural fairness in competition investigations abroad?

Response: The Department believes due process and procedural fairness in the application of laws, domestically and internationally, is vitally important.

15. The Justice Department Antitrust Division has indicated that they will be bringing criminal cases under Section 2. However, there is concern that the Antitrust Division has not provided any guidance about such criminal enforcement.

b. When will the Justice Department Antitrust Division provide guidance about criminal enforcement under Section 2?

Response: Assistant Attorney General Jonathan Kanter of the Antitrust Division has explained that “if the facts and the law, and a careful analysis of Department policies guiding our use of prosecutorial discretion, warrant a criminal Section 2 charge, the Division will not hesitate to

enforce the law.”⁶¹ He has explained further that Section 2 “prohibits monopolization,” and that the Department will, in enforcing the law, “assess conduct on its merits, and based on the entire course of conduct involved,” and will not limit its inquiry into conduct that gives rise to monopolies, but will also challenge “[m]onopoly maintenance” through conduct that “helps to prevent the erosion of monopoly positions and thereby harms competition.”⁶² He has reiterated that the Division has an affirmative statutory duty to challenge conduct that suppresses or destroys competition, and that Section 2 was designed to prohibit this conduct.

16. At the March 1, 2023 oversight hearing, I asked whether the Department of Justice still considered Nicolás Maduro a fugitive of U.S. justice and, if so, if you would commit to diligently pursuing his arrest. You responded that you did not know what his current status was and would answer in writing.

a. Please provide that response.

b. If the Department of Justice is no longer pursuing Nicolás Maduro’s arrest, please explain why.

Response to a–b: The Department publicly announced the indictment of Maduro in 2020.⁶³ The Department has not dismissed or resolved those charges.

17. In your October 27, 2021 responses to questions for the record, you stated that “in March 2021, the Department formed a dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judges, and Members of Congress[.]” On August 3, 2022, I told Assistant Attorney General Polite that neither my staff nor the Congressional Research Services had been able to confirm the existence of this task force and asked the Department of Justice for more information. AAG Polite testified that he would “get more details to [us.]” On August 15, 2022, I followed-up with a letter to you informing you that it doesn’t look like this task force exists. Since then, my staff has followed up with yours, multiple times, and, incredibly, we still have not received any information on this task force.

⁶¹ See Speech, U.S. Dep’t of Just., Assistant Attorney General Jonathan Kanter Delivers Opening Remarks at 2022 Spring Enforcers Summit (April 4, 2022) <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-opening-remarks-2022-spring-enforcers>.

⁶² See Speech, U.S. Dep’t of Just., Assistant Attorney General Jonathan Kanter Delivers Keynote at the University of Chicago Stigler Center (April 21, 2022) <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-keynote-university-chicago-stigler>.

⁶³ See Press Release, U.S. Dep’t of Just., Nicolás Maduro Moros and 14 Current and Former Venezuelan Officials Charged with Narco-Terrorism, Corruption, Drug Trafficking and Other Criminal Charges (Mar. 26, 2022), <https://www.justice.gov/opa/pr/nicol-s-maduro-moros-and-14-current-and-former-venezuelan-officials-charged-narco-terrorism>.

- a. **Does this task force exist?**
- b. **If not, will you create it and when can we expect its creation?**
- c. **If the task force does exist, please provide the number of matters it is investigating and explain the resources the task force has.**

Response a–b: In March 2021, the Department formed a dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judges, and Members of Congress to assess the most prevalent threats and implement measures to further strengthen the Department’s capacity to deter and combat those threats. Composed of components across the Department, the Task Force promulgated helpful recommendations. For example, one of the Task Force’s recommendation was the creation of a permanent Judicial Security working group to discuss matters of judicial security. That group has been established and includes leadership from the U.S. Marshals Service (USMS), the Administrative Office of the U.S. Courts, the Judicial Conference, as well as the Deputy Attorney General’s Office. It meets on a regular basis to address these issues.

18. In your October 27, 2021 responses to questions for the record, you mentioned that the Department of Justice recently created “Joint Task Force Alpha, a law enforcement task force that is marshaling the investigative and prosecutorial resources of the Department of Justice...to enhance U.S. enforcement efforts against the most prolific and dangers human smuggling and trafficking groups operating in Mexico and the Northern Triangle countries of Guatemala, El Salvador, and Honduras.”

- a. **After two years of work, what results, if any, has this task force yielded?**

Response: The Joint Task Force Alpha advises as follows:

On June 7, 2021, Attorney General Garland announced the establishment of Joint Task Force Alpha (JTFA), a law enforcement task force intended to marshal the investigative and prosecutorial resources of the Justice Department, in partnership with the Department of Homeland Security (DHS), to enhance U.S. enforcement efforts against the most prolific and dangerous human smuggling and trafficking groups operating in Mexico and the Northern Triangle countries of Guatemala, El Salvador, and Honduras. JTFA’s goal is to disrupt and dismantle human smuggling and trafficking networks operating in those countries, with a focus on networks that endanger, abuse, or exploit migrants, present national security risks, or engage in other types of transnational organized crime.

JTFA consists of federal prosecutors from U.S. Attorneys’ Offices along the Southwest Border (District of Arizona, Southern District of California, Southern District of Texas, and Western

District of Texas), the Criminal and Civil Rights Divisions, the FBI, the Drug Enforcement Agency, and the Organized Crime Drug Enforcement Task Forces (OCDETF), which maximizes coordination of multi-agency, prosecutor-led investigations along with law enforcement agents and analysts from DHS’s Immigration and Customs Enforcement and U.S. Customs and Border Protection. JTFA also works closely with Operation Sentinel, a DHS operation focused on countering transnational criminal organizations affiliated with migrant smuggling.

Since it was formed, JTFA has made significant progress in combating smuggling networks. JTFA has targeted organizations that have the most impact on the United States and coordinated significant smuggling indictments and extradition efforts in U.S. Attorneys’ Offices across the country. According to the Task Force, to date, JTFA’s work with its partners has resulted in criminal charges and over 260 domestic and international arrests of leaders, organizers, and significant facilitators of human smuggling activities; 150 convictions, many with significant prison sentences; the seizure of drugs, firearms, ammunition and vehicles; and substantial asset forfeiture. For example:

- On September 13, 2022, the Justice Department announced that eight alleged human smugglers were arrested and indicted through a JTFA operation. According to the indictment, the alleged smugglers transported migrants into and within the United States in “deplorable conditions for profit.” The migrants were allegedly citizens of Mexico, Guatemala, and Colombia.⁶⁴
- On March 16, 2023, at a JTFA meeting in El Paso, Texas, the Justice Department and DHS announced the first ever extraditions from Guatemala to the United States on charges of human smuggling resulting in death, and the first Guatemalan human smuggling extraditions to the United States of any kind in nearly five years. This announcement followed extensive coordination and cooperation between U.S. and Guatemalan law enforcement authorities that led to the indictment and arrest of four leaders of a smuggling operation, as well as the apprehension of 15 additional targets in Guatemala, in August 2022. Pursuant to an extradition request, Guatemalan authorities ordered the extradition of the leaders to the United States to face charges for their alleged roles in the offense. The indictments and extraditions, as well as the assistance provided by U.S. authorities to Guatemalan law enforcement, were coordinated under JTFA.⁶⁵ On November 1, 2023, the Justice Department announced

⁶⁴ See Press Release, U.S. Dep’t of Just., Eight Indicted in Joint Task Force Alpha Investigation and Arrested as Part of Takedown of Prolific Human Smuggling Network (Sept. 13, 2022), <https://www.justice.gov/opa/pr/eight-indicted-joint-task-force-alpha-investigation-and-arrested-part-takedown-prolific-human>.

⁶⁵ See Press Release, U.S. Dep’t Just., Justice Department Announces Historic Guatemalan Human Smuggling Extraditions at Joint Task Force Alpha Summit (Mar. 16, 2023), <https://www.justice.gov/opa/pr/justice-department-announces-historic-guatemalan-human-smuggling-extraditions-joint-task>.

that JFTA had secured significant sentences—ranging from 10 years and one month in prison to 30 years in prison—for these four leaders of a smuggling operation.⁶⁶

- On June 27, 2023, the Justice Department announced the indictment and arrest of four additional individuals involved in allegedly smuggling migrants in a tractor-trailer near San Antonio in June 2022, leading to the deaths of 53 migrants.⁶⁷ (The driver and another individual were charged in June 2022 right after the discovery of the migrants.) As of February 2024, all four defendants have pleaded guilty.

19. In the same response, you also noted a new Anticorruption Task Force fighting corruption in El Salvador, Guatemala, and Honduras. On September 15, 2022, President Biden identified these three countries, among others, as major drug transit or major illicit drug producing countries.

a. What results has the Anticorruption Task Force produced?

Response: The Anticorruption Task Force advises as follows:

In June 2021, Attorney General Garland announced the establishment of the Northern Triangle Anticorruption Task Force to further the Department’s commitment to combat official corruption in Central America, and in particular in El Salvador, Guatemala and Honduras. The Task Force is part of the Department’s engagement in the region to address a cause of migration. In establishing the Task Force, the Department officials noted that corruption undermines government services and the rule of law, including critical institutions that provide health, education, and other services to those most in need. Corruption also undermines investment incentives necessary to generate employment. The Anticorruption Task Force is composed of representatives from each of the following Criminal Division components:

- The Foreign Corrupt Practices Act (FCPA) Unit of the Criminal Division’s Fraud Section, which enforces the U.S. criminal statute that generally prohibits certain persons — including U.S. companies and individuals, foreign companies whose shares trade on a U.S. stock exchange, and non-U.S. persons who engage in corrupt acts in the United States — from paying bribes overseas to obtain or retain business;

⁶⁶ See Press Release, U.S. Dep’t of Just., Four Defendants Extradited from Guatemala Sentenced for Roles in Deadly International Human Smuggling Conspiracy (Nov. 1, 2023), <https://www.justice.gov/opa/pr/four-defendants-extradited-guatemala-sentenced-roles-deadly-international-human-smuggling>.

⁶⁷ See Press Release, U.S. Dep’t of Just., Four Arrested for Tractor-Trailer Smuggling Incident that Resulted in 53 Deaths (June 27, 2023), <https://www.justice.gov/opa/pr/four-arrested-tractor-trailer-smuggling-incident-resulted-53-deaths>.

- The Kleptocracy Asset Recovery Initiative in the International Unit of the Money Laundering and Asset Recovery Section (MLARS), which is focused on recovering assets linked to foreign corruption and prosecuting related money laundering, especially when corruption proceeds are found in the United States or were obtained or transferred through abuse of the U.S. financial system.
- The Narcotic and Dangerous Drug Section (NDDS), which enforces federal narcotics laws against the manufacturing, importation, and distribution of illegal drugs into the United States and laundering of profits or of funds to promote or facilitate narcotics trafficking, including corruption resulting from narcotics trafficking (“narco-corruption”). NDDS has developed a focused practice in the Northern Triangle Region, and particularly in Guatemala to disrupt the command and control of the most prolific drug trafficking organizations where U.S. law provides extraterritorial jurisdiction over their unlawful conduct.
- The work of the Task Force is also supported by special agents of the FBI International Corruption Unit, the U.S. Drug Enforcement Administration (DEA), and the U.S. Department of Homeland Security (DHS). Allegations are investigated by these law enforcement agencies, working in cooperation with the legal attachés and country representatives at our U.S. embassies, as well as with the Department’s Office of International Affairs (OIA).

To further the work of the Task Force, the Department has taken the following steps, among others:

- The FBI created and administers a tip line for receiving tips in Spanish and English related to potential violations of U.S. laws involving corruption:

In October 2021, the Department announced the establishment of a tip line administered by the FBI in El Salvador so that anyone with information about corrupt actors in El Salvador, Guatemala, and Honduras who are violating U.S. laws or moving proceeds of their crimes in or through the United States may report the conduct in Spanish or English at combatiendocorrupcion@fbi.gov. The FBI is reviewing actionable tips regarding possible corruption or movements of ill-gotten funds submitted through the tip line and is referring actionable tips to the Department’s Anticorruption Task Force. Then, the Task Force determines, among other things, whether the tip indicates a possible jurisdictional link to the United States – including use of the U.S. financial system – that would allow prosecutors in the component groups of the Task Force to investigate, to prosecute, and, where appropriate, to forfeit and return stolen assets to the people of El Salvador, Guatemala, and Honduras.

- The Task Force advertised the Kleptocracy Asset Rewards Program for information leading to the restraint, forfeiture, or return of stolen assets linked to violations of U.S. law:

Individuals can provide information to the U.S.-based reward program by email or mail. FBI, DHS, U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), and the Internal Revenue Service (IRS) review tips to determine if they are appropriate for further investigation and should be assigned to specific agencies. Recommendations for rewards are made by U.S. law enforcement agencies in consultation with their Department of Justice colleagues.

- The Task Force has coordinated with the Department of Justice’s Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) program to provide training and mentoring on corruption investigations and prosecutions:

As part of the operations, Task Force members have coordinated with Resident Legal Advisors based in the three Northern Triangle countries as part of OPDAT programs to provide training and mentoring to prosecutors and investigators working on corruption matters in the region and to refer matters for further consultation with U.S. and local prosecutors and investigators as appropriate. In total there have been more than 7 such engagements.

In addition, OPDAT’s Resident Legal Advisors (RLAs) have also assisted the Task Force by advising component prosecutors on regional developments and possible investigative leads.

- The Resource Guide to the Foreign Corrupt Practices Act, Second Edition, was translated to Spanish and made available to the public:

The FCPA unit of the Criminal Division’s Fraud Section has published a detailed compilation of information and analysis regarding the FCPA and related enforcement in the *Resource Guide to the Foreign Corrupt Practices Act* (FCPA). In March 2023, with support from OPDAT and in connection with the work of the Task Force, the FCPA Unit released a Spanish Edition of the guide. The Spanish Edition represents the first time the guide has been published in a foreign language.

- Task Force prosecutors and investigators brought the following public law enforcement actions:

Under U.S. federal law, information about the existence of ongoing criminal investigations and their progress is not available to the public to protect the integrity of

the investigation and the protected privacy interests at certain phases of the investigation. The Task Force reports the following public actions that its members have taken:

MLARS’ trial attorneys supported the forfeiture action of the government of Honduras in prosecuting corruption and fraud in Honduran courts in connection with the misappropriation of government resources for mobile hospitals and other equipment to fight the COVID epidemic in Honduras. The United States has obtained U.S. court orders restraining over \$4 million in U.S. bank accounts pending the outcome of the forfeiture proceedings in Honduras. OIA and the OPDAT RLA program provided important support for the work.

MLARS, and HSI prosecuted the brother of the former executive director of the Honduran Institute of Social Security (IHSS) for conspiring to launder bribe payments and public funds embezzled from IHSS and use them to purchase real estate in the New Orleans area. MLARS worked with OPDAT and the U.S. Embassy in Honduras to reach an agreement to return over \$1 million in real estate proceeds forfeited through the criminal case to Honduras for the benefit of the people that the corruption scheme harmed. Honduran officials have conducted their own investigation and prosecutions of senior agency officials and their co-conspirators, including the former IHSS executive director himself.

20. After the tragic death of George Floyd, rioters across the country caused up to \$2 billion in damage to private and public property. You said that the Department of Justice “is committed to investigating, disrupting, and bringing to justice those who engage in violence in violation of federal law.”

a. To date, how many investigations has the Department of Justice opened?

Response: While the violence of the summer and fall of 2020 took place during the prior administration, the Department brought serious federal charges where it was appropriate to do so against individuals who perpetrated violence. Some of the cases included felony charges for attempted arson, assault of a federal officer, and civil disorder charges. The Department will continue to pursue those who violate federal law, including those who commit violent assaults on law enforcement.

b. How many people have been charged and with which offenses?

Response: Many of the alleged offenses in the aftermath of the death of George Floyd arose under state and local law rather than federal law, and thus were prosecuted by state and local authorities rather than by the Department. Press reports indicate that state and local law

enforcement arrested more than 17,000 people in the 50 largest cities that had organized protests.⁶⁸

EOUSA and the Criminal Division advise as follows: The Department has brought serious federal charges where it was appropriate to do so against individuals who perpetrated violence. Some of the cases have included felony charges for attempted arson, assault of a federal officer, and civil disorder charges. The Department will continue to pursue those who violate federal law, including those who commit violent assaults on law enforcement.

21. In cases where crimes fall exclusively within state or local jurisdictions, what assistance, if any, has the Department of Justice provided to state and local law enforcement?

Response: The Department’s law enforcement components advise as follows:

In cases where crimes like mass shootings fall exclusively within state or local jurisdictions, the Department and its components, including FBI, DEA, USMS, ATF, and other law enforcement components, provide operational and victim assistance.

For example, FBI advises that FBI’s agents serve as the United States government’s full-time hostage and crisis negotiators in both criminal and terrorist matters. The FBI’s Crisis Management Unit enhances the FBI’s ability to prepare for, respond to, and successfully resolve any sort of critical incident or major investigation. If it is a crisis that happens without warning, the FBI deploys to begin operations, organize themselves, and begin working with partner agencies as soon as possible. In the horrific tragedy in Lewiston, Maine, the FBI Boston Division supported law enforcement partners, deploying more than 350 special agents, analysts, task force officers, and support personnel to assist in this investigation. In addition to this extra manpower, all our specialty teams were activated, including Evidence Response, SWAT, the Hostage Rescue Team, and the Victim Services Response Team, just to name a few.

Additionally, FBI states that in response to the notification of a critical incident, the Criminal Justice Information Services (CJIS) Division’s operational programs are activated in a variety of ways. Generally, the National Threat Operations Section (NTOS) processes the intake of tips from the public and collaborates with FBI field office partners on tailored intake processes; the CJIS Division Operations Center may generate a CJIS Watch Report for the FBI field office operations center which is comprised of searches in all CJIS systems on identifiers provided;

⁶⁸ Meryl Kornfield, Austin Ramsey, Jacob Wallace, Christopher Casey and Veronica Del Valle, *Swept Up by Police* WASH. POST (Oct. 20, 2020); see Anita Snow, *AP tally: Arrests at widespread US protests hit 10,000*, APNEWS (June 4, 2020).

and/or the National Instant Criminal Background Check System (NICS) Section may issue a Notoriety report comprised of information located in NTOS or NICS holdings.

Additionally, USMS advises that it has a long history of providing state and local law enforcement with investigative expertise and assistance through a national network of criminal investigators who locate and apprehend dangerous fugitives. The USMS also has the ability to adopt state and local warrants, which allows for the pursuit of fugitives on a local, regional, national, and international level. In October 2023, USMS deployed assets to the District of Maine to assist with locating the suspect in the mass shooting in Lewiston, Maine.

ATF advises while each incident is different, ATF responds to all mass shootings and supports our local, state, federal, Tribal, and territorial law enforcement partner in various ways as needed based on the circumstance. For instance, ATF agents often help secure parameters, interview victims and witnesses, and search for the shooter, when appropriate. ATF also brings to the table its full investigatory capabilities, particularly its crime gun intelligence expertise. ATF’s National Tracing Center, the Nation’s only crime gun tracing facility, conducts crime gun traces to provide investigative leads to our law enforcement partners. ATF’s National Integrated Ballistics Information Network (NIBIN) helps our law enforcement partners potentially generate critical investigative leads by matching the unique “fingerprint” of shell casings found at a crime scene with other shooting incidents. ATF’s Touch DNA technology enables our law enforcement partners to extract DNA evidence from spent cartridge casings and firearms. In short, ATF is the partner that our state, federal, Tribal, and territorial law enforcement partners need when a mass shooting occurs.

Additionally, the ATF’s National Integrated Ballistic Information Network (NBINS) is the only interstate automated ballistic imaging network in operation in the United States and is available to most major population centers in the United States. NIBIN relies on the close coordination of its partner law enforcement agencies at the local, state, federal, tribal and territorial levels to compile their data and share intelligence about violent crimes.

In addition to information-sharing and other partnerships with state and local law enforcement, the DEA notes that when it is asked to assist in critical incidents, DEA engages its Special Response Teams.

OJP advises as follows:

In the aftermath of a crime, the Department also works to respond with grant funding. The Office for Victims of Crime (OVC) advises that it also provides support to states using VOCA formula grants for Victim Compensation and Assistance programs, which are state-run programs. Another way OVC supports in the aftermath of crime, but exclusive to mass violence is through the Antiterrorism and Emergency Assistance Program (AEAP). Through AEAP, OVC provided resources to places like: Lewiston, ME, Uvalde, TX, and Buffalo, NY.

OJP also provides federal leadership, grants, training, technical assistance, and other resources to improve the nation’s capacity to prevent and reduce crime, assist victims, and enhance the rule of law by strengthening the criminal and juvenile justice systems. Its six program offices support state and local crime-fighting efforts, fund thousands of victim service programs, help communities manage sex offenders, address the needs of youth in the system and children in danger, and provide vital research and data. OJP provides states, local, and Tribal law enforcement with the tools and best practices they need to reduce crime and combat victimization.

OJP’s largest grant-making program office, the Bureau of Justice Assistance (BJA), focuses its programmatic and policy efforts on providing a wide range of resources, including training and technical assistance, to law enforcement, courts, corrections, treatment, reentry, justice information sharing, and community-based partners to address chronic and emerging criminal justice challenges nationwide. This includes the Edward Byrne Memorial Justice Assistance Grant program, which is the leading source of federal justice funding to state and local jurisdictions.

In addition to grants provided through OJP, the Office of Community Oriented Policing Services (COPS Office), puts money directly in the hands of the nation’s chiefs and sheriffs to reduce violent crime. According to the COPS Office, all training and technical assistance provided by the COPS Office is designed to reduce violent crime. The COPS Office is the component of the Department responsible for advancing the practice of community policing by the nation’s state, local, territorial, and Tribal law enforcement agencies through information and grant resources. Since 1994, the COPS Office has invested more than \$14 billion to add community policing officers to the nation’s streets, enhance crime fighting technology, support crime prevention initiatives, and provide training and technical assistance to help advance community policing.

22. Recently, Honoring Our PACT Act was enacted into law, which grants service members, their families, and others who were injured by contaminated water at Camp Lejeune the ability to sue the United States for health-related damages. Notably, and unlike other federal laws that permit claims against the U.S. Government, the PACT Act did not include any caps on attorneys’ fees.

Given the historic number of potential claimants, the plaintiffs’ bar has seized upon this opportunity and by some estimates spent over \$145 million on television and social media advertising so far. Some firms are charging over 40% or even 50% of any recovery despite the PACT Act’s anticipated lower burden of proof for these claims.

- a. **What is the Department of Justice doing to rein in these misleading advertisements and to assist the impacted claimants?**
- b. **How will the Department of Justice ensure just settlements—where the lawyers do not end up pocketing as much or even more money than their clients?**

Response to a–b: The Department shares your interest in achieving speedy, just, and equitable resolution to claims brought under the Camp Lejeune Justice Act (CLJA). That is why, in September 2023, the Department, along with the Department of the Navy, announced an Elective Option (EO) to help veterans and others more quickly resolve qualifying claims under the CLJA; offers under that framework have already been made to some claimants, and the latest guidance on it can be found at www.navy.mil/clja.

The Civil Division advises as follows:

To date, tens of thousands of claimants have filed CLJA administrative claims with the Department of the Navy, which they are required to do before bringing a CLJA lawsuit. In addition, there are currently over 1,000 CLJA lawsuits pending in the Eastern District of North Carolina. Because these matters are currently in pending litigation, Department policy limits our ability to comment further.

Additionally, on October 27, 2023, the Department filed a Statement of Interest Regarding Attorneys’ Fees in the CLJA cases pending in the Eastern District of North Carolina. The Statement of Interest sets forth the Department’s position that CLJA actions are subject to the fee limitations in 28 U.S.C. § 2678 of the FTCA, and that those limitations apply both to “administrative claims presented to the agency” and to “[l]itigation settlements and judgments.” The filing is publicly available. The Department has also clarified on the Department’s webpage that “the FTCA’s fee cap provision and the associated fines and penalties apply to all claims made under the CLJA,” and that, accordingly, “contingency fee arrangements with Camp Lejeune claimants cannot exceed 20% for administrative claims or 25% for suits filed in court.” The website also explains that “[s]uch attorney’s fee caps apply to any judgment or settlement amount after any applicable offsets for health and disability benefits.”⁶⁹

23. I’ve been trying to get the Biden Administration to issue a views letter on the bipartisan No Oil Producing and Exporting Cartels Act (NOPEC). In the past, AAG Makan Delrahim expressed his support for this legislation.

⁶⁹ U.S. Dep’t of Justice, Environmental Torts Litigation Section, <https://www.justice.gov/civil/environmental-tort-litigation-section> (last visited Oct. 27, 2023).

a. Do you support NOPEC? Can you commit to me that we will get a views letter from the Justice Department on the bill?

Response: Longstanding Department policy and practice prevents the Department from expressing support for legislation or committing to send a views letter on a specific piece of legislation before completing a consultation with other federal agencies, coordinated by the Office of Management and Budget.

24. The Promoting Security and Justice for Victims of Terrorism Act (PSJVTA), which strengthened the jurisdictional provisions of the Anti-Terrorism Act of 1992, helps ensure American victims of international terrorism have their day in court against the PLO and Palestinian Authority. The Justice Department’s voice is critical, as some judges continue to minimize or outright ignore Congress’ clear intent and role in protecting Americans abroad. Will you commit to keeping my office informed of the progress of this important litigation?

Response: The Department shares your concern about the need for American victims of international terrorism to pursue justice against terrorist organizations and state sponsors of terror, and the Department supports opportunities for Americans who fall victim to acts of international terrorism to seek accountability in U.S. courts. However, the Department may not be able to provide updates on litigation since the victims are usually represented by private counsel, and the Department may not be informed of their legal strategies or attorney-client communications. The Department intervened in two cases: *Fuld v. PLP* and *Waldman v. PLO*. The Office of Legislative Affairs will do its best to keep your office informed of public filings in this litigation.

SENATOR MIKE LEE
Questions for the Record
Hearing: Oversight of the Department of Justice
March 8, 2023

- 1. Please share anything in writing that shows the U.S. Marshals were given charging authority from you for protesters in front of the United States Supreme Court Justices’ homes.**

Response: In May 2022, the Attorney General took the unprecedented step of directing the U.S. Marshals Service (USMS) to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows:

During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. Their first priority is to protect the life and safety of the Justices and their families.

Pursuant to 28 U.S.C. § 566, U.S. Marshals, Deputy U.S. Marshals, and any other USMS officials designated by the Director may “make arrests without warrant for any offense against the United States committed in his or her presence, or for any felony cognizable under the laws of the United States if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing such felony.” As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the [J]ustices.” In February 2024, the Director further testified that “The Attorney General’s order was very clear, actually, crystal clear. Protect the lives of the Justices. He made sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety.”⁷⁰

- 2. Were the U.S. Marshals made the decision-makers on charges regarding the protesters at the Justices’ homes following the leak of the *Dobbs* decision?**

⁷⁰ *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

Response: Decisions about whether and what federal offenses to prosecute in any specific case are made by Department prosecutors, consistent with the Principles of Federal Prosecution.

3. Explain what specifically has been done to protect family members of the Justices since that was added to the responsibility of U.S. Marshals Service.

Response: In May 2022, the Attorney General took the unprecedented step of directing the USMS to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows: During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. The Marshals’ first priority is to protect the lives and safety of the Justices and their families.

4. 18 U.S.C. §1507 prohibits picketing or parading near a court or the residence of a judge “with the intent of interfering with, obstructing, or impeding administration of justice, or with the intent of influencing any judge, ... in the discharge of his duty.” Has DOJ charged any protestors outside the Supreme Court Justices’ homes with a violation of 18 U.S.C. §1507 since the leak of the draft opinion in *Dobbs*?

Response: In May 2022, the Attorney General took the unprecedented step of directing the USMS to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows: During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. The Marshals’ first priority is to protect the lives and safety of the Justices and their families. As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the [J]ustices.” In February 2024, the Director further testified that “The Attorney General’s order was very clear, actually, crystal clear. Protect the lives of the Justices. He made

sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety.⁷¹” In 2022, a federal grand jury returned an indictment charging a man who allegedly traveled from California to Maryland with the intent to kill a Justice of the United States Supreme Court. EOUSA has not identified any prosecutions brought under § 1507 during this timeframe.

5. Is it true that despite the weekly protests outside of the Justices’ homes for almost a year (since the *Dobbs* leak), that the only person who has been arrested in connection with these protests—whether under 18 U.S.C. §1507 or any other statute—was someone who *turned himself over to law enforcement revealing his plan to kill Justice Kavanaugh*? If this is true, what should that tell us about the ability of either the Marshals or the FBI to effectuate arrests under §1507?

Response: In May 2022, the Attorney General took the unprecedented step of directing the USMS to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

The USMS reports as follows: During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. The Marshals’ first priority is to protect the lives and safety of the Justices and their families. That priority was validated when a California man who allegedly traveled to Washington to murder Justice Kavanaugh, was deterred by the sight of Deputy U.S. Marshals protecting Justice Kavanaugh’s residence. In that instance, Deputy U.S. Marshals fulfilled their protective responsibility by standing their post and protected the Supreme Court Justice from potential harm. As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the Justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the [J]ustices.” In February 2024, the Director further testified that “The Attorney General’s order was very clear, actually, crystal clear. Protect the lives of the Justices. He made sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety.⁷²”

⁷¹ *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

⁷² *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

6. Similar to January 6th, has the FBI interviewed protestors based on their appearance in video footage from the Justices’ homes? If no, why?

Response: Standard Department policy is not to confirm or deny the initiation or existence of any investigation.

7. Does DOJ brief the Justices and family members on threats that they are tracking against each Justice? Will you brief the Judiciary Committee on the number and intensity of threats on all nine Justices quarterly? If certain Justices are not being threatened, are they so advised and is the level of protection provided altered?

Response: The USMS advises as follows: The USMS and the Supreme Court Marshal have committed to ensure that each Justice has an appropriate protection. The USMS does not comment on the process of threat notifications and the methods by which protectees are provided briefings. For any additional information on this topic, the Department defers to the Marshal of the Supreme Court.

8. Are threat mitigation steps provided to each Justice and their family members? If tangible expenses are prescribed, does DOJ cover the cost of enhanced security, if necessary?

Response: The USMS has stated that it does not comment on the process of threat notifications and the methods by which protectees are provided briefings.

9. What recommendations does the U.S. Marshals Service have to enhance security for Justices and their families?

Response: The Department recommends addressing enhanced security questions directly to the Marshal of the Supreme Court.

10. Explain the roles of security for Justices including Supreme Court police, all federal, state, local police involved in protests and threats to a Justice or their family members. What are each of the roles? Do you believe the roles are clear to stakeholders right now?

Response: The USMS advises as follows:

The Supreme Court Police have historically taken responsibility for the Justices within the National Capital Region and the security of the Supreme Court building. USMS has, upon request, provided security to the Justices outside the National Capital Region.

In May 2022, the Attorney General took the unprecedented step of directing the USMS to provide 24/7 protection at the residences of Supreme Court Justices. This is the first time in history the Department has provided 24/7 protection for them at their homes. That protective mission continues today.

During the first year and a half of the mission, from May 2022 through December 30, 2023, the USMS mobilized 1,577 operational and administrative personnel, for at least one rotation during one of the last three fiscal years, to execute the residential protection mission, drawing from 93 of the 94 federal judicial districts. USMS personnel from across the nation continue to be mobilized for the mission. As the USMS Director has said, “The Attorney General has been clear from the very beginning and on repeated occasions that the Marshals’ number one priority is to protect the justices, their families and their property. He has also from the beginning made clear that we have the full authority to enforce any federal statute, including 1507, to the extent doing so doesn’t compromise the lives and safety of the justices.” In February 2024, the Director further testified that “The Attorney General’s order was very clear, actually, crystal clear. Protect the lives of the Justices. He made sure that we still had full authority to make arrest, but not to engage in any activity that would compromise their safety.”⁷³

USMS works in partnership with state and local law enforcement every day in cases that involve both federal and state/local crimes.

11. You mentioned a certain number of U.S. Marshals who are tasked with protecting Supreme Court Justices. Is it the same group of professionals or do they rotate? Do they do field operations to find those threatening the Justices or are they only stationed to wait for something bad to happen?

Response: The USMS advises as follows: The USMS continues to staff this detail with resources from Districts and Divisions throughout the country. Since May of 2022, USMS has deployed over 1,200 U.S. Deputy Marshals to SCOTUS protection details on varying rotations. USMS has also increased the number of intelligence analysts supporting protective intelligence/investigations. Open-Source Intelligence screening and other analyses are applied to all Justices, and each is assigned to a specific analyst for this enhanced screening. Additionally, USMS maintains a 24/7 Command Center for communications directly related to SCOTUS protective operations and also coordinates information sharing and communication through this Command Center and USMS’s Office of Protective Intelligence to the Supreme Court Police. USMS has provided protective risk and residential vulnerability assessments to SCOTUS. USMS

⁷³ *Oversight of the United States Marshals Service: Hearing Before the Subcomm. on Crime and Federal Government Surveillance of the H. Comm. on the Judiciary*, 118th Cong. (Feb. 14, 2024) (testimony of Director Ronald L. Davis);

has also provided Supreme Court Police with strategic knowledge regarding planning and executing protective operations both domestic and international.

12. Are the U.S. Marshals authorized to protect the immediate family of the U.S. Supreme Justice to which they are assigned when the Justice is not home?

Response: The USMS has stated that it provides a 24/7 protective detail for each of the Justices’ residences, and that protection extends to the family members living inside the residence.

13. A few weeks ago, the Senate Judiciary Committee invited the Department of Justice to brief staff on protests at the Justices’ homes and any arrests or prosecutions under 18 U.S.C. §1507. Senator Cruz’s staff made clear that they wanted to discuss Section 1507. The briefers came to the briefing claiming not to have read Section 1507. Why would the Department of Justice schedule a briefing on a statute but fail to read the statute?

Response: Consistent with parameters negotiated with staff, the Department agreed to provide a bipartisan briefing on February 16, 2023, regarding the security of Supreme Court Justices, along with the attendant threat landscape. According to OLA, the Department’s briefers addressed those agreed-upon topics during the briefing, as well as 18 U.S.C. §1507, then answered a number of questions raised by staff from both sides of the aisle.

14. At the hearing, I asked you about the overly aggressive arrest and prosecution of Mark Houck, a pro-life protestor in Philadelphia, for FACE Act violations because he pushed a Planned Parenthood escort who was verbally harassing his 12-year old son. According to Mr. Houck’s wife, around 7 am on a Friday morning “a SWAT team of about twenty-five came to my house with about fifteen vehicles and started pounding on our door.... And then they had about five guns pointed at my husband, myself, and basically at my kids.” How can you justify using this much force when Mr. Houck’s attorney both called and emailed an assistant U.S. Attorney saying Mr. Houck would accept a summons and surrender himself?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

15. It has been reported that the FBI disputes Mrs. Houck’s claims that the FBI used a SWAT team consisting of twenty-five agents to arrest Mr. Houck. If yes, please provide details on the number of agents and the tactics used to arrest Mark Houck on September 23, 2022.

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

16. Regarding the FACE Act charges against Mr. Houck, Judge Gerald Pappert said “doesn’t the statute seem to be a little stretched here.” Not surprisingly, the jury acquitted Mr. Houck of all charges. Why did the Department of Justice Pursue the prosecution?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

17. The current standard for warrantless, backdoor searches of U.S. persons’ communications by the FBI is “reasonably like to return evidence of a crime.” Do you believe the standard should be heightened to protect the civil liberties of Americans?

Response: The National Security Division advises as follows:

To clarify, in the context of national security investigations conducted pursuant to Foreign Intelligence Surveillance Act (FISA) authority, a query involves using a term to retrieve specific information from a database of information that has already been lawfully collected by the government. Queries of such databases do not result in new collection of data, but merely retrieve data already in an agency’s computer system. Queries of Section 702 data are critical to identify links between foreign threats and the United States, ranging from terrorism, malicious cyber activities, to hostile nation state behavior. To conduct a query of lawfully collected Section 702 data in an agency’s system, the query must be reasonably likely to retrieve foreign intelligence information. In the case of FBI, they may also query Section 702 information if the query is reasonably likely to return evidence of a crime from 702 collection. Outside the context of FISA and national security investigations, querying lawfully collected information is a common practice for investigators, and courts have not required that the government obtain a warrant before querying lawfully collected information.

In addition, FISA already has strong rules to protect privacy with respect to U.S. person queries of Section 702 data. Intelligence Community (IC) elements may collect, retain, and disseminate information concerning U.S. persons only pursuant to procedures approved by the Justice Department after consultation with the Director of National Intelligence. In addition to the querying procedures that require that any queries of Section 702 data be reasonably likely to retrieve foreign intelligence information or, in the case of FBI, evidence of a crime, the Section 702 minimization procedures restrict the retention and dissemination of any information of or concerning a U.S. person incidentally collected under Section 702. The FISC has repeatedly approved the government’s procedures under Section 702, finding the querying and minimization procedures to be consistent with the Fourth Amendment.

There have been significant querying errors by FBI in recent years, which the Department and the FBI find unacceptable and have worked to correct. To that end, the FBI has implemented multiple remedial measures to address these query compliance issues. In April 2021, the Attorney General directed the FBI to submit to the Deputy Attorney General a detailed work plan to institute internal proactive compliance measures to bring further rigor and accountability to the Constitutional, statutory, and compliance FISA framework. A description of the remedial measures can be found on the Department website.⁷⁴ As a result of these remedial measures, there has been a dramatic reduction in the number of U.S. person queries and improved query compliance by the FBI. On page 85 of its April 2023 opinion, publicly released in July 2023, the FISC found a 1.7% noncompliance rate with the query standard for 702 information.

18. How is a warrantless search of Americans’ communications consistent with the Fourth Amendment?

Response: The National Security Division states as follows:

Section 702 targeting is only permitted for non-U.S. persons outside of the United States to acquire foreign intelligence information. All courts to have considered the issue of 702 targeting, including the FISC, FISC-R, and three courts of appeals, have found Section 702 targeting to be reasonable under the Fourth Amendment because of the targeting, minimization, and querying procedures.

With respect to U.S. person queries, the FISC has said no warrant requirement is needed, and no other federal court has affirmatively held a warrant is required. A query involves using a term to retrieve specific information from a database of information that has been lawfully collected by the government pursuant to FISA. A query of Section 702 acquired information is not a “search” within the meaning of the Fourth Amendment, and the law does not require the government to obtain a warrant to query communications collected under section 702.

In particular, the FISC has explained that, while it considers the reasonableness of the government’s procedures (including query procedures) “as a whole” in considering the compliance of Section 702 collection with the Fourth Amendment, the “querying of information lawfully acquired under section 702” is *not* “a distinct Fourth Amendment event requiring a reasonableness determination independent of the other circumstances of acquisition.”⁷⁵ Outside the context of FISA and national security investigations, querying lawfully collected information is a common practice for investigators, and courts have not required that the government obtain a warrant to conduct database checks of such information. In multiple criminal cases in which Section 702 information has been affirmatively used against a defendant, federal courts other

⁷⁴ See U.S. Dep’t of Just., , Recent Efforts to Strengthening FISA Compliance (2023), https://www.justice.gov/d9/pages/attachments/2023/03/03/recent_efforts_to_strengthen_fisa_compliance_02.28.23.pdf.

⁷⁵ 402 F. Supp. 3d 45, 86 (FISA Ct. 2018).

than the FISC have upheld the program’s constitutionality and declined to state that the Fourth Amendment requires a warrant to conduct U.S. person queries of section 702 data.

19. The ODNI’s recently declassified (December 21, 2022) semiannual report on compliance with Section 702, lists multiple concerning incidents of noncompliance with the “evidence of a crime” standard by the FBI. The report lists multiple issues of noncompliant 702 searches involving U.S. persons including searches of prospective FBI employees, members of a local political party, individuals recommended to participate in the FBI Citizens Academy, journalists, and a Congressman. And, this isn’t the first year this has happened. What disciplinary action has been taking with regard to employees who conducted noncompliant backdoor searches of the Section 702 database?

Response: The National Security Division states as follows:

The declassified SAR—the 24th “Semiannual Assessment of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, submitted by the Attorney General and the Director of National Intelligence” (24th Joint Assessment) —covered the reporting period timeframe of December 1, 2019 through May 31, 2020.⁷⁶ Accordingly, it reflects compliance data that predates the reforms that the Department and FBI have since put into place to improve compliance—including new accountability and field office health measures—described below.

When the FBI has detected intentional misuse of the authority for improper purposes, it has taken appropriate action to address that misuse. For example, in 2017, when the Department oversight identified that an FBI contractor was conducting improper queries for personal reasons, the contractor had their security clearance revoked and was terminated from their position with the FBI. When compliance incidents are unknowing or unintentional, the FBI has retrained employees and issued supplemental guidance to address noncompliant queries.

20. What action has the Department of Justice taken to eliminate these noncompliance issues plaguing the Section 702 program and protect the civil liberties of U.S. persons?

Response: The National Security Division advises as follows:

The Department and the FBI have implemented significant remedial measures that would address Section 702 noncompliance incidents identified in the 24th Joint Assessment, had they

⁷⁶ OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, *ODNI Releases 24th Joint Assessment of Section 702 Compliance* (Dec. 21, 2022), intelligence.gov/assets/documents/702%20Documents/declassified/24th-Joint-Assessment-of-FISA-702-Compliance.pdf.

been in place at the time, and promote protection of civil liberties consistent with Department’s core mission.⁷⁷ For example:

1. **Opt-in settings:** In June 2021, the FBI changed the default settings in the systems where it stores unminimized Section 702 information so that FBI personnel with access to unminimized FISA Section 702 information need to affirmatively “opt-in” to querying such information, reducing the risk of inadvertent queries.
2. **Batch query approval requirements:** Also in June 2021, FBI instituted a policy requiring prior FBI attorney approval before FBI personnel can conduct a “batch job” that would result in 100 or more queries. In June 2023, FBI leadership expanded this remedial measures to require attorney pre-approval for all batch job queries.
3. **Sensitive query approval:** FBI personnel must now obtain attorney pre-approval to conduct queries that present certain investigative sensitivities. In addition, the FBI’s Deputy Director must also personally approve certain types of sensitive queries—such as those involving domestic public officials—before they may be conducted.
4. **Case-specific justification requirements:** FBI systems now require agents and analysts to enter a case-specific justification for every Section 702 query using a U.S. person query term before accessing any content retrieved by such a query. In June 2023, Director Wray directed his leadership team to go beyond that recommendation and to record the justification for all U.S. person Section 702 queries at the time the queries are performed, rather than at the time that an FBI user seeks to view the content of any Section 702 information retrieved using a U.S. person query term.
5. **New training requirements:** In November 2021, the Department, ODNI, and the FBI issued new comprehensive guidance to all FBI FISA users on the proper application of the query rules, and in December 2021, the FBI instituted new mandatory training on that guidance, which personnel were required to complete by the end of January 2022. The FBI expanded and updated this training at the end of 2022. On an annual basis, all FBI personnel with access to unminimized FISA information are required to complete the expanded and updated query training or lose access to FISA systems. The guidance and mandatory training

⁷⁷ See U.S JUSTICE DEP’T, *Recent Efforts to Strengthen FISA Compliance* (Feb. 28, 2023), [recent efforts to strengthen fisa compliance 02.28.23.pdf \(justice.gov\)](#); see Press Releases, FEDERAL BUREAU OF INVESTIGATION, *FBI Releases FISA Query Guidance* (Apr. 24, 2023), <https://www.fbi.gov/news/press-releases/fbi-releases-fisa-query-guidance#Background-Information:%20November%202021%20FBI%20FISA%20Query%20Guidance%20Documents>.

directly address misunderstandings about the rules applicable to queries of unminimized FISA information and instruct personnel on how to properly apply the query rules. In addition, the text of FBI’s Section 702 querying procedures was revised to more clearly spell out the query standard to FBI personnel. The results of those interagency efforts were two documents: the “FBI FISA Query Guidance” and a two-page desk reference companion document entitled “FBI FISA Query Guidance Nutshell.” Both documents were issued to all FBI national security personnel in November 2021 and made available to the public on April 24, 2023.⁷⁸

In addition to these new remedial measures, the FBI announced in June 2023 that they would establish a new policy with escalating consequences for performance incidents involving negligence, including centralized tracking of individual employee performance incidents over time. They also announced new Field Office Health Measures (FOHM). The Department’s National Security Division (NSD) continues to conduct audits of FBI’s queries of unminimized Section 702 information. Based on the results of these ongoing reviews, NSD has provided supplemental guidance on compliance trends to FBI, and FBI has updated its mandatory query-related training.

Compliance and oversight are an ongoing process, and FBI and NSD continue to assess the efficacy of existing remedial measures to address the query compliance issues and determine additional remedial measures that are needed to improve compliance. In May 2023, the FBI released the results of initial query audits conducted by its Office of Internal Auditing (OIA).⁷⁹ Based on FBI OIA’s second, post-reform audit, the FBI had a 96% compliance rate for FISA queries, a 14% improvement from OIA’s first baseline audit, which was conducted before the reforms. FBI OIA provided 11 compliance recommendations, all of which Director Wray accepted and directed the FBI to implement. Those recommendations require a case-specific justification for each U.S. person query term before a user runs the query, rather than before viewing any content returned.

In July 2023, the FISC publicly released its April 2023 opinion, which noted the FISC found a 1.7% noncompliance rate with the query standard for 702 information.

21. In January of this year, the Bureau of Prisons released the “Transgender Offender Manual.” Section 2 of this manual is a list of definitions, including this definition of gender: “a construct used to classify a person as male, female, both, and neither. Gender encompasses aspects of social identity, psychological identity, and human

⁷⁸ FEDERAL BUREAU OF INVESTIGATION, *FBI Releases FISA Query Guidance* (Apr. 24, 2023), <https://www.fbi.gov/news/press-releases/fbi-releases-fisa-query-guidance#Background-Information:%20November%202021%20FBI%20FISA%20Query%20Guidance%20Documents>.

⁷⁹ FEDERAL BUREAU OF INVESTIGATION, *FBI Releases Results of OIA FISA Query Audit*, (May 11, 2023), [fbi.gov/news/press-releases/fbi-releases-results-of-oia-fisa-query-audit](https://www.fbi.gov/news/press-releases/fbi-releases-results-of-oia-fisa-query-audit).

behavior.” The manual also defines “gender identity as “a person’s sense of their own gender.” Are the Bureau housing inmates based on these definitions of gender and gender identity, instead of their biological sex?

Response: BOP has stated the following: All requests for gender-affirming placement are evaluated by the BOP. The BOP assesses each request on a case by case basis to protect the safety of the individual being considered for transfer as well as the safety of others at the potential location of transfer. The BOP will consider factors including, but not limited to, an inmate’s security level, criminal and behavioral/disciplinary history, current gender expression, programming, medical, and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. This review therefore takes into account their prior convictions, including for sex offenses, when making a placement assessment. For as long as the BOP has been making these assessments, BOP is unaware of any instances of sexual assault in a female facility by transgender individuals approved to transfer to a female facility consistent with their gender identity.

22. Section 6 of the Transgender Offender Manual, “Housing and Programming Assignments”, states “a transgender or intersex inmate’s own views with respect to his/her own safety must be given serious consideration.” Are the views of non-transgender inmates regarding their safety given equally serious consideration when potentially being housed with transgender inmates?

Response: BOP has stated the following: All requests for gender-affirming placement are evaluated by the relevant BOP officials. The BOP assesses each request on a case by case basis to protect the safety of the individual being considered for transfer as well as the safety of others at the potential location of transfer. The BOP will consider factors including, but not limited to, an inmate’s security level, criminal and behavioral/disciplinary history, current gender expression, programming, medical, and mental health needs/information, vulnerability to sexual victimization, and likelihood of perpetrating abuse. This review therefore takes into account their prior convictions, including for sex offenses, when making a placement assessment. For as long as the BOP has been making these assessments, BOP is unaware of any instances of sexual assault in a female facility by transgender individuals approved to transfer to a female facility consistent with their gender identity.

23. During the sentencing of Philip Enformes the Department of Justice represented on the record that they would not retry him for any of the counts the jury hung on. His sentence was later commuted by President Trump after he had served 4.5 years in prison. However, once you were confirmed, the DOJ announced that they are going to break from hundreds of years of precedence and retry Philip Esformes despite his sentence having been commuted. Does the Department of Justice plan to retry other people who were granted pardons and commutations by President Trump?

Response: Mr. Esformes’ case, *U.S. v. Esformes*, 1:16cr20549 (S.D. Fla. 2016), is currently pending before the U.S. District Court for the Southern District of Florida. The government’s explanation for charging Esformes is cited in its court filings.

24. Is prosecuting Mr. Esformes again once his sentence has been commuted in violation of the Fifth Amendment’s double jeopardy clause? Why or why not?

Response: Mr. Esformes’ case, *U.S. v. Esformes*, 1:16cr20549 (S.D. Fla. 2016), is currently pending before the U.S. District Court for the Southern District of Florida. The government’s explanation for charging Esformes is cited in its court filings.

25. My office has heard from conservative organizations that their Freedom of Information Act requests are being universally declined by the Department of Justice. Is this the case? For example, Advancing American Freedom has submitted the following FOIA requests to investigate what they believe is a pattern of selective investigation and prosecution by the Department of Justice and received no response. Please provide an explanation for the Department of Justice’s failure to respond to each individual request.

- a. **On September 21, 2022, Advancing American Freedom filed a FOIA request seeking production of records and external communications related to the DOJ’s subpoena of Eagle Forum of Alabama.**
- b. **On September 30, 2022, Advancing American Freedom and fifteen other organizations filed a FOIA request for DOJ information related to its failure to investigate or prosecute attacks on pro-life organizations.**
- c. **On February 23, 2023, Advancing American Freedom filed a FOIA request regarding the FBI Richmond Field Office’s leaked Intelligence Note pertaining to “radical-traditionalist Catholics” and any external communications related to Christian beliefs, the FBI’s investigation of those beliefs, an unredacted and unedited version of the leaked memorandum, and other relevant records.**

Response a-c: The Office of Information Policy, which administers FOIA policy, advises as follows:

The request in question (a) is addressed to EOUSA and OIP, however, OIP has no record of receiving this request. EOUSA received this request on June 6, 2023, and issued its final response on September 13, 2023, accounting for 511 pages. As of April 22, 2024, OIP has no record of receiving this request, and, relatedly, has no record of receiving a FOIA administrative appeal concerning EOUSA’s final response dated September 13, 2023.

On October 11, 2022, OIP received AAF’s request, dated September 30, 2022, referenced in question (b). In March 2023, AAF filed suit. The parties subsequently worked together to clarify the scope of the request and to agree upon search terms, which they did at the end of May 2023. OIP proposed a processing schedule whereby OIP would endeavor to issue a final response in early December 2023, with rolling interim responses in between. Plaintiff agreed to this schedule. OIP issued its first interim response on October 6, 2023, accounting for 181 pages. OIP issued its second interim response on November 9, 2023, accounting for 66 additional pages, and issued its final response on January 10, 2024, accounting for 14 additional pages. The parties to this litigation are currently conferring about next steps and whether further proceedings will be required.

The request in question (c) was addressed to the FBI and OIP. OIP received this request on March 8, 2023. A search for responsive electronic records is currently in process. The FBI received this request on August 28, 2023. On September 1, 2023, the FBI issued a response to parts 1-6 of the request indicating these parts were overbroad. For part 7, a search for records has been completed and responsive records have been assigned for processing.

26. Please provide the status of the FBI investigation of the shooting of two individuals in a Utility Task Vehicle by a Ute Tribe Fish and Wildlife Officer that occurred in Duchesne County, Utah on July 17, 2022. If the FBI investigation is complete, please provide information on any further action anticipated by the Department of Justice.

Response: Standard Department policy is not to comment on or confirm or deny the existence of any pending investigations.

SENATOR ALEX PADILLA
Questions for the Record
Senate Judiciary Committee
“Oversight of the Department of Justice”
March 1, 2023

Questions for Attorney General Merrick Garland:

- 1. On January 21, 2023, a gunman opened fire inside Star Ballroom Dance Studio in Monterey Park, California. Tragically, he killed eleven people and injured nine others. This tragedy shocked the nation and reminded us that the scourge of gun violence is ever-present throughout our communities. In 2022, there were over 600 mass shootings in the United States, and less than three months into 2023, there have been over 84.**
 - a. The U.S. Supreme Court’s decision in *Bruen* has undermined public safety, leaving people to fear the worst when they enter into public spaces. In light of that decision, how is the Department of Justice coordinating with local and state officials to better protect our communities from gun violence?**

Response: The Department—through ATF in particular—works side-by-side with our federal, state, Tribal, and local partners to carry out our shared mission to make the public safer and reduce violent gun crime.

ATF states as follows: ATF provides unique, specialized expertise and important resources to our partners, including the National Integrated Ballistic Information Network (NIBIN) and its associated NIBIN National Correlation and Training Center (NNCTC); Crime Gun Intelligence Centers (CGICs) and Strike Forces; and the National Tracing Center (NTC). Use of these systems allows investigators to obtain valuable, timely intelligence that can help them identify, apprehend, and charge dangerous and prolific shooters. ATF’s Crime Gun Intelligence Mobile Command Center (MCC) provides investigators with a state-of-the-art facility that can be used as a temporary CGIC offering accessibility to areas where NIBIN access and resources are currently limited or unavailable. ATF’s MCC is deployable (upon availability) anywhere in the United States to assist with responding to violence or initiatives.

- 2. Last year, the “Empowering and Enforcing Environmental Justice Act” was introduced in the House and the Senate in hopes of strengthening efforts at the Justice Department to hold polluters accountable for environmental crimes. The bill would codify an Environmental Justice Office and an Environmental Justice Section at the Department to address longstanding environmental injustices against vulnerable communities and ensure the Department effectively enforces our environmental laws.**

- a. **There was a recent launch for a new Office of Environmental Justice at the Department, however, there’s currently no statute that codifies such an office into law. Codification would provide continuous resources and support to the Department as it assists communities that sorely need help. How confident are you that a future administration would maintain this new office if it were not required by law?**

Response: The Department appreciates Congressional interest in environmental justice and efforts to ensure that environmental justice remains an enduring priority for the federal government. The Office of Environmental Justice states as follows:

Environmental justice can be advanced by enforcement of multiple statutes, regulations, and programs, which is why the Department’s Comprehensive Environmental Justice Enforcement Strategy (CEJES) provides a set of principles and actions to be pursued across the Department to work vigorously and transparently to secure environmental justice with the full set of legal tools at its disposal.

The new Office of Environmental Justice enhances the Department’s efforts by serving as a resource for the Department as it implements the CEJES, supporting environmental justice investigations and litigation, facilitating outreach by the Department to communities with environmental justice concerns, and engaging all Justice Department bureaus, components, and offices in the collective pursuit of environmental justice. Though it is possible that future administrations might shift priorities away from overburdened communities, the Department believes that this two-pronged approach—integrating environmental justice considerations throughout the Department’s day-to-day work and establishing a central office with the resources to support those efforts—will help ensure the Department’s continued focus on this critical mission. The Department would welcome the opportunity to provide technical assistance on legislation in this area if that would be of assistance, including any proposals involving the Department’s new Office of Environmental Justice and its institutional role.

3. **The U.S. Supreme Court decision in *Dobbs* overturned settled precedent that women had a constitutional right to an abortion. In doing so, the Court effectively removed abortion protections for millions of women across the country. The Justice Department subsequently established the Reproductive Rights Task Force, seeking to coordinate its ongoing efforts to protect access to reproductive health care.**
 - a. **Could you detail some of the work the Reproductive Rights Task Force, and the Department of Justice as a whole, has undertaken to ensure that access to reproductive health care is protected in the aftermath of the *Dobbs* decision?**

Response: On July 12, 2022, the Justice Department announced the establishment of the Reproductive Rights Task Force. The Task Force formalized an existing working group and efforts by the Department to identify ways to protect access to lawful reproductive health care following the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization et al.*

Acting Associate Attorney General Benjamin Mizer chairs the Task Force, and it consists of representatives from the Department’s Civil Division, Civil Rights Division, U.S. Attorney community, Office of the Solicitor General, Office for Access to Justice, Office of Legal Counsel, Office of Legal Policy, Office of Legislative Affairs, Office of the Associate Attorney General, Office of the Deputy Attorney General, and Office of the Attorney General.

The Department established the Reproductive Rights Task Force as a whole-of-Department effort to closely scrutinize these new, complex, and widespread threats to reproductive health for any infringements on federal protections.

The Task Force advises as follows:

By design, the Task Force model allows the Department to be coordinated and deliberative in our response. Task Force staff are working daily on the impacts of the *Dobbs* decision, and we have not hesitated to act—be it through our affirmative litigation, the enforcement actions of the Civil Rights Division, and our other work advising agencies and conducting outreach to stakeholders on our collective efforts to protect reproductive healthcare.

The Task Force has taken a number of important actions to defend reproductive freedoms that are protected by federal law. *First*, the task force is vigilantly monitoring state and local laws that may conflict with federal law.

In August 2022, the United States filed suit against the State of Idaho, asserting that the State’s abortion ban is preempted to the extent of its conflict with the Emergency Medical Treatment and Labor Act (EMTALA). EMTALA provides that every hospital that receives Medicare funds must offer necessary stabilizing treatment (or an appropriate transfer to a hospital that can provide such treatment) to an individual who arrives at the emergency department suffering from an emergency medical condition that, if left untreated, could be reasonably expected to place the individual’s health in serious jeopardy or result in serious impairment to the individual’s bodily functions or serious dysfunction of any bodily organ or part. The Department won a preliminary injunction from the district court blocking the enforcement of the State’s abortion ban as applied to medical care required by EMTALA. After proceedings in the Ninth Circuit, the Supreme Court in January 2024 stayed the district court’s preliminary injunction and granted a writ of certiorari to hear the case. The Supreme Court heard argument on April 24, 2024.

The Department has it made it clear that we will defend the bedrock constitutional protections for women who reside in States that have restricted access to comprehensive reproductive care and must remain free to travel to States in which that care is lawful. Last November, the Department filed a statement of interest in two lawsuits challenging the Alabama Attorney General’s threat to prosecute people who provide assistance to women seeking lawful out-of-state abortions. The statement of interest explains that the threatened Alabama prosecutions infringe the constitutional right to travel. It also makes clear that states may not punish third parties for assisting women in exercising that right.

The Department has also made clear that under the First Amendment, individuals must also remain free to inform and counsel each other about the reproductive care that is legally available across State lines.

Second, the Department is advising federal agencies on legal issues related to reproductive health in the aftermath of *Dobbs*, and defending agencies as litigation arises. The Department is vigorously defending the FDA against multiple legal challenges concerning mifepristone, a safe and effective medication that FDA approved more than two decades ago. Most notably, in December 2023, the Supreme Court granted the government’s petition for a writ of certiorari challenging the Fifth Circuit’s unprecedented ruling in *Alliance for Hippocratic Medicine v. FDA* that would override FDA’s scientific judgment by reimposing conditions of use on mifepristone that FDA has determined are no longer necessary to ensure the drug is safe and effective and that its benefits outweigh its risks. Because of the Supreme Court’s April 2023 stay of the lower courts’ rulings in *Alliance*, mifepristone will remain available nationwide, under its currently approved conditions of use, as that case is reviewed by the Supreme Court. On March 26, 2024, the Supreme Court heard argument in the case. Beyond the FDA, the Department also worked closely with the Defense Department on its policy allowing servicemembers and their dependents to receive funding to travel out of state for abortion care. Additionally, the Department advised the Department of Veterans Affairs on its interim final rule and final rule allowing access to reproductive health services at VA clinics.

Third, the Civil Rights Division of the Department is continuing its critical, ongoing enforcement of the Freedom of Access to Clinic Entrances (FACE) Act that prohibits anyone from injuring, intimidating, or interfering, or attempting to do so, with access to or the provision of reproductive health services—including abortion services, pharmacies that provide reproductive health services, and pregnancy counseling services—through violence, threats of violence, physical obstruction, or property damage. The Department’s enforcement of the FACE Act reflects the overriding principle that violence, and threats of violence have no place in the public discourse on reproductive healthcare.

Since January 2021, the Department has charged more than a dozen cases involving dozens of defendants with FACE Act-related violations. The Department is working to ensure that federal prosecutors across the country are equipped to bring FACE Act cases, and the Department’s

National Task Force on Violence Against Reproductive Health Care has prepared training for State Attorney Generals offices, which can similarly bring civil actions under the FACE Act.

In addition, the Department has advised reproductive healthcare providers—including both facilities that perform abortions and pregnancy centers—on how to protect against attacks and vandalism. The Department has encouraged all reproductive healthcare providers to report any violent incidents or threats.

- 4. Amongst the tools that the Biden Administration has said it is utilizing to address the root causes of migration is to combat migrant smuggling and trafficking. For years, smuggling organizations and cartels have been preying on vulnerable migrants fleeing persecution. These migrants are financially exploited, threatened, and placed in grave danger- sometimes leading to their death. Just last year, we witnessed the deaths of 53 migrants in Texas who were found on a sweltering summer day in a truck with no ventilation.**

In June 2021, the establishment of Joint Task Force Alpha was announced. This task force is a partnership between the Department of Justice and the Department of Homeland Security to enhance U.S. enforcement against human smuggling and trafficking groups in Mexico, Guatemala, El Salvador, and Honduras.

- a. Could you discuss what success Joint Task Force Alpha has had in prosecuting smuggling and trafficking networks?**

Response: The Joint Task Force Alpha advises as follows:

On June 7, 2021, Attorney General Garland announced the establishment of Joint Task Force Alpha (JTFA), a law enforcement task force intended to marshal the investigative and prosecutorial resources of the Justice Department, in partnership with the Department of Homeland Security (DHS), to enhance U.S. enforcement efforts against the most prolific and dangerous human smuggling and trafficking groups operating in Mexico and the Northern Triangle countries of Guatemala, El Salvador, and Honduras. JTFA’s goal is to disrupt and dismantle human smuggling and trafficking networks operating in those countries, with a focus on networks that endanger, abuse, or exploit migrants, present national security risks, or engage in other types of transnational organized crime.

JTFA consists of federal prosecutors from U.S. Attorney’s Offices along the Southwest Border (District of Arizona, Southern District of California, Southern District of Texas, and Western District of Texas), from the Criminal Division and the Civil Rights Division, along with law enforcement agents and analysts from DHS’s Immigration and Customs Enforcement and U.S. Customs and Border Protection. The FBI and the DEA are also part of the Task Force, which also works closely with Operation Sentinel, a DHS operation focused on countering transnational

criminal organizations affiliated with migrant smuggling. Since it was formed, JTFA has made significant progress in combating smuggling and trafficking networks.

JTFA has successfully increased coordination and collaboration among the Justice Department, DHS, and other interagency law enforcement participants, and with foreign law enforcement partners, including El Salvador, Guatemala, Honduras, and Mexico. JTFA has targeted organizations that have the most impact on the United States and coordinated significant smuggling indictments and extradition efforts in U.S. Attorneys’ Offices across the country. According to the Task Force, to date, JTFA’s work with its partners has resulted in criminal charges and over 260 domestic and international arrests of leaders, organizers and significant facilitators of human smuggling activities, 150 convictions, significant prison sentences, seizure of drugs, firearms, ammunition and vehicles, and substantial asset forfeiture. For example:

- On September 13, 2022, the Justice Department announced that eight alleged human smugglers were arrested and indicted through a JTFA operation. According to the indictment, the alleged smugglers transported migrants into and within the United States in “deplorable conditions for profit.” The migrants were allegedly citizens of Mexico, Guatemala, and Colombia.⁸⁰
- On March 16, 2023, at a JTFA meeting in El Paso, Texas, the Justice Department and DHS announced the first ever extraditions from Guatemala to the United States on charges of human smuggling resulting in death, and the first Guatemalan human smuggling extraditions to the United States of any kind in nearly five years. This announcement followed extensive coordination and cooperation between U.S. and Guatemalan law enforcement authorities that led to the indictment and arrest of four leaders of a smuggling operation, as well as the apprehension of 15 additional targets in Guatemala, in August 2022. Pursuant to an extradition request, Guatemalan authorities ordered the extradition of the leaders to the United States to face charges for their alleged roles in the offense. The indictments and extraditions, as well as the assistance provided by U.S. authorities to Guatemalan law enforcement, were coordinated under JTFA.⁸¹ On November 1, 2023, the Justice Department announced that JTFA had secured significant sentences—ranging from 10 years and one month in prison to 30 years in prison—for these four leaders of a smuggling operation.⁸²

⁸⁰ See Press Release, U.S. Dep’t of Just., Eight Indicted in Joint Task Force Alpha Investigation and Arrested as Part of Takedown of Prolific Human Smuggling Network (Sept. 13, 2022), <https://www.justice.gov/opa/pr/eight-indicted-joint-task-force-alpha-investigation-and-arrested-part-takedown-prolific-human>.

⁸¹ See Press Release, U.S. Dep’t of Just., Justice Department Announces Historic Guatemalan Human Smuggling Extraditions at Joint Task Force Alpha Summit (Mar. 16, 2023), <https://www.justice.gov/opa/pr/justice-department-announces-historic-guatemalan-human-smuggling-extraditions-joint-task>.

⁸² See Press Release, U.S. Dep’t of Just., Eight Indicted in Joint Task Force Alpha Investigation and Arrested as Part of Takedown of Prolific Human Smuggling Network (Sept. 13, 2022), <https://www.justice.gov/opa/pr/four-defendants-extradited-guatemala-sentenced-roles-deadly-international-human-smuggling>.

- On June 27, 2023, the Justice Department announced the indictment and arrest of four additional individuals involved in smuggling migrants in a tractor-trailer near San Antonio in June 2022, leading to the deaths of 53 migrants.⁸³ (The driver and another individual were charged in June 2022 right after the discovery of the migrants.) As of February 2024, all four defendants have pleaded guilty.
5. **Studies have shown that individuals who are represented during their immigration hearings have a higher success rate of being granted asylum. Unfortunately, the demand for attorneys to represent immigrants far exceeds the number available. As a result, the Department of Justice has a Recognition and Accreditation Program that allows certain non-attorneys to represent individuals in immigration court and before the Board of Immigration Appeals.**

Recently, allegations have surfaced that the accreditation process and renewals were taking months to complete. There have also been allegations that there is not enough permanent staff at the Department’s Office of Legal Access Programs to administer the Recognition and Accreditation Program.

- a. **Does the Department have a plan to reduce wait times for the accreditation and renewal process?**

Response: The Department’s Executive Office for Immigration Review (EOIR) oversees the Recognition and Accreditation Program (R&A).

EOIR advises as follows: Although there have been backlogs in the processing of R&A applications in recent years, EOIR is now current in its processing, and the R&A Program is operating with a working inventory of applications both for recognition of organizations and accreditation of individuals to serve as representatives before the Department of Homeland Security and EOIR. Applicants generally can expect a determination on their application in less than two months of a complete submission. Additionally, those awaiting renewal are not impacted by processing times because they are allowed to continue their representation for so long as their renewal application is pending.

- b. **Will the Department be asking for specific appropriations for FY24 in the President’s Budget to ensure this program can function without glitches and long wait times?**

⁸³ See Press Release, U.S. Dep’t of Just., Four Arrested for Tractor-Trailer Smuggling Incident that Resulted in 53 Deaths (June 27, 2023), <https://www.justice.gov/opa/pr/four-arrested-tractor-trailer-smuggling-incident-resulted-53-deaths>.

Response: While not specific to the R&A, the Department’s FY 2024 budget request sought \$1.45 billion for EOIR, which included a request for 965 new positions and reflects a 69.2 percent increase over the FY 2023 enacted budget. The FY24 budget request also included \$150 million in discretionary grant funding to support legal representation. These increases in staffing and discretionary funding will support any changes necessary to promote the continuing success of the R&A Program.

6. One of the biggest challenges of our immigration system is the backlog of cases that often take years to process. The Department of Justice seems to be making some strides in completing cases more quickly. At the end of FY22, the Executive Office of Immigration Review had almost 2 million pending cases. By November 2022, immigration judges had closed 375,000 cases – nearly three times the rate of FY2021.

a. What processes has the Justice Department adopted that have led to an increased rate in completions of these immigration cases?

Response: The Department has implemented a multi-pronged approach to reducing backlogs at EOIR.

EOIR advises as follows: First, the Department has focused on building the immigration judge corps, increasing the number of immigration judges by nearly 300 judges since January 2021. Second, we are approaching hiring holistically—as we hire immigration judges, we are adding legal staff and headquarters staff in appropriate numbers to support the judge corps. Third, we have instituted various docket initiatives to resolve cases in a more efficient manner, while preserving docket space for cases that require a hearing. These initiatives include off-docketing cases that are not ripe for adjudication, establishing specialized dockets to resolve less complex matters more quickly, and encouraging pre-hearing conferences to resolve cases or narrow issues prior to trial. We have also leveraged internet-based technology to maximize the number of hearings that can be scheduled. Finally, the Department’s regulatory agenda further supports the efforts to increase case resolutions. For example, a limited representation rule that took effect in 2022 increased efficiency by expanding the circumstance in which practitioners may assist pro se individuals in proceedings. Specifically, the rule allows practitioners to enter a limited appearance when they provide document assistance by helping individuals prepare forms, motions, briefs, applications, or other documents. Additionally, last fall we issued a notice of proposed rulemaking that would restore longstanding procedures such as administrative closure which allow immigration judges to efficiently manage their limited docket time.

b. Is the Department actively pursuing other ways to more rapidly decrease the backlog?

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Department of Justice”
March 1, 2023

Response: EOIR advises as follows: The Department’s work throughout the past two years has resulted in an increase in the resolution of cases, and the efforts outlined above are working to bring more cases to resolution more quickly. In FY 2022, EOIR saw more cases to resolution than ever before, and in FY 2023, EOIR nearly doubled that record, But the backlog of cases is also at an all-time high because the Department of Homeland Security filed a record number of new cases in FYs 2022 and 2023, filing new cases at approximately twice the rate of case completions. The number of cases pending before EOIR is primarily dependent on the number of cases the Department of Homeland Security files with the agency. The FY 2024 budget request included \$367.1 million and 948 positions, which the Department expects to assist with continuing the positive trajectory of more case resolutions through greater staffing to both adjudicate cases and support initiatives to increase efficiencies further.

SENATOR THOM TILLIS
DOJ Oversight - Questions for the Record

Law Enforcement

- 1. Do you believe that the current penalties for assaulting or killing a federal law enforcement officer are sufficient? Why or why not?**

Response: The Justice Department has no more important responsibility than keeping the American people safe, including the men and women who serve our nation as sworn law enforcement officers. In recent years, the Department has increased its efforts to deter and combat threats to the law enforcement community. For example, in March 2021, the Department formed a dedicated Task Force on the Safety of Federal Prosecutors, Law Enforcement Agents, Judges, and Members of Congress to assess the most prevalent threats and implement measures to further strengthen the Department’s capacity to deter and combat those threats. The Justice Department has and will continue to aggressively pursue those who commit violent assaults on law enforcement to the full extent of the law.

- 2. Do you agree that Congress should consider proposals which would allow DOJ to prosecute those who assault and kill state or local law enforcement?**

Response: The Department stands ready to work with Congress relating to assaults against law enforcement.

- 3. What objections would you have to increasing penalties for those who assault and kill law enforcement officers at the federal, state, or local level?**

Response: The Department would need the opportunity to review any such proposal before providing an assessment.

- 4. Will you commit to working with me to enact legislation, like the *Protect and Serve Act*, which will increase penalties for those who assault and kill our brave men and women in blue at the federal, state, and local levels?**

Response: The Department committed to reviewing the Protect and Serve Act. Subsequent to the hearing, the Department has shared technical assistance about the bill with your office and stands ready to provide any further assistance as needed.

Immigration – Sanctuary Cities

- 5. Do you agree with me that sanctuary city policies create pull factors for illegal immigrants, particularly those with criminal backgrounds or intentions?**

Response: The policies you are referring to were adopted by state and local governments, not the federal government. The Department of Homeland Security is the federal agency primarily responsible for immigration enforcement and border security, and the Department refers you to them for any assessment of the effect of such policies on immigration.

6. What is the Department of Justice’s position on why cities and states can choose to ignore federal immigration law?

Response: The U.S. Supreme Court has identified the principles governing when federal immigration law preempts state or local law. The Department cannot answer in the abstract how those principles would apply to a given circumstance. But the Department will continue to assess whether state or local laws comply with federal law and take appropriate action in response.

7. Do you support allowing state and local governments to ignore federal immigration law? Why or why not?

Response: The Department maintains a collaborative approach with states and cities, recognizing their vital role as partners in law enforcement. This includes the enforcement of immigration laws, where cooperation between federal and local authorities is crucial.

8. In the case of Ned Byrd, a Sheriff’s Deputy murdered in Wake County, one of the murderers pled guilty to a federal crime of possession of a firearm by an illegal immigrant. Is the Department continuing to investigate this case to determine any additional federal charges to bring against the murderers in this case? Please explain.

Response: Standard Department policy is not to confirm or deny the initiation or existence of any investigation.

Immigration – Asylum

9. What specifically is the Department of Justice doing to ensure that asylum claims are legitimate, and that our asylum system is not being abused?

Response: EOIR states as follows: EOIR maintains a Fraud and Abuse Prevention Program (Program) that continues to educate EOIR staff about fraud and the Fraud Program referral process. Ongoing education, coupled with training on these issues, helps to ensure that EOIR judges and staff take immigration fraud and abuse very seriously and know when it might be appropriate to refer incidents of fraud to law enforcement or prosecutors. In addition to training, the Program affirmatively notifies judges about fraud schemes through a variety of methods, including disseminating a periodic email newsletter to all EOIR staff, visiting court locations,

and maintaining a fraud tip telephone and email system that allows EOIR staff and the public to rapidly report fraud.

10. During your tenure, in how many cases have you or the Department made the determination that an asylum application is frivolous?

Response: EOIR states as follows: The determination of whether an asylum application is frivolous is a determination of law made by immigration judges pursuant to 8 C.F.R. § 1208.20 in individual adjudications. The consequences of such a finding are very serious because if an immigration judge finds that a noncitizen has filed a frivolous asylum application, the individual is subject to a lifetime bar of eligibility for most forms of immigration relief. EOIR’s case tracking databases do not track asylum denials by reason, such as whether an asylum application is denied due to a finding that it is frivolous. Immigration judges apply the relevant law to the facts of each case to determine whether the criteria for making a determination of frivolousness has been met.

11. What efforts have you taken to ensure that frivolous asylum claims are addressed, and that illegal immigrants who make frivolous claims are punished accordingly under the law?

Response: EOIR advises as follows: The determination of whether an asylum application is frivolous is a determination of law made by EOIR’s adjudicators pursuant to 8 C.F.R. § 1208.20. Judges adjudicate each asylum application on a case-by-case basis. Consequences for filing a frivolous asylum application include a lifetime bar from seeking immigration benefits. All immigration judges provide detailed, on-the-record advisals to noncitizens who express their desire to file an asylum application with the court. *See* INA §§ 208(d)(4), (6); 8 C.F.R. § 1208.20.

In addition to the warning before a noncitizen files an asylum application, the immigration judge also states on the record that it is their duty, as a judge, to advise them of the consequences if they present a frivolous application for asylum. The immigration judge proceeds to explain, in straightforward terms, that if a person lies to an immigration court, or if they present information or documents that they know are false, they could be barred for the rest of their life from any immigration benefits in the United States. Lastly, the immigration judge asks the noncitizen if, hearing the advisals, they still wish to file their application or, if already filed, wish to continue with it.

12. What are you doing to prevent illegal immigrants from not showing up for their immigration court hearings? What are you doing to apprehend and penalize those who abscond from their hearings and break our laws?

Response: According to EOIR, barring extenuating circumstances, immigration judges will order a noncitizen removed if they fail to appear for an immigration hearing, when the judge finds the noncitizen received proper notice of the hearing and the Department of Homeland Security (DHS) proves that the noncitizen is removable under U.S. immigration law. DHS is responsible for executing orders of removal issued by immigration judges.

13. What is the number of illegal immigrants who failed to appear for their asylum proceedings at EOIR? Of these, how many subsequently received a negative ruling as a result? Of these, how many have in fact been apprehended and removed from the country?

Response: EOIR states as follows:

EOIR tracks removal orders *in absentia*, which occur when a noncitizen does not appear for their hearing and the judge finds that proper notice of the hearing was provided to the noncitizen and DHS has proven the noncitizen is removable. EOIR reports that in FY 2023, EOIR issued 161,760 in absentia orders.

DHS is responsible for executing orders of removal issued by immigration judges, and EOIR does not track how many noncitizens DHS removes following an immigration judge’s order of removal.

14. Is the 10-year penalty for absconding from an asylum hearing a large enough penalty in light of the abuse of our asylum system? Would you support increasing this penalty?

Response: The Department stands ready to work with Congress, through the Administration, on proposals to improve the asylum process and to build a fair, orderly, and humane immigration system.

15. Do you believe we need to reform our asylum laws to ensure they are not being abused? What specific reforms within the Department do you support to reduce frivolous asylum claims?

Response: The Department stands ready to work with Congress, through the Administration, on proposals to improve the asylum process and to build a fair, orderly, and humane immigration system.

Bipartisan Safer Communities Act

I am proud of the work we did to enact the *Bipartisan Safer Communities Act*. This landmark legislation provided an opportunity for us to come together and find solutions that will improve public safety while preserving our Second Amendment rights.

The bipartisan negotiations resulted in a carefully crafted compromise that permitted federal funding for state extreme risk protect orders (ERPO) if they met strict constitutional requirements. The Department recently released community safety funding which included grants to states for their ERPO programs.

16. How many states received funding for ERPO programs through the Byrne SCIP?

Response: The Department appreciates your commitment to working to combat the epidemic of gun violence. As you know, the BSCA was a monumental achievement, and the Department is taking significant steps to fully implement the law, including the grant programs established or supplemented by the legislation.

OJP reports the following: The Byrne State Crisis Intervention Program (Byrne SCIP), established by the BSCA, made available \$150 million per year for five fiscal years to support state crisis intervention programs, including ERPO programs. OJP’s Bureau of Justice Assistance (BJA) has made combined Fiscal Year 2022 and Fiscal Year 2023 awards to 51 states, territories, and the District of Columbia (grantee jurisdictions).

17. How did the Department evaluate the constitutionality of these ERPO programs before deciding to award these grants?

Response: OJP advises as follows: BJA works diligently to ensure that Byrne SCIP closely tracks the statutory language, purposes, and requirements of the BSCA, including ensuring pre- and post-deprivation due process rights in grantee jurisdictions that choose to implement ERPO laws. All ERPO programs funded by Byrne SCIP are required to meet the constitutional due process requirements and protections listed in the statute. This obligation is made clear in the program solicitation⁸⁴ and further detailed in the FAQs⁸⁵ for applicants.

18. Please provide any guidance the agency has developed for the states on how to implement or amend a ERPO law so that the law will meet constitutional due process protections.

⁸⁴ See U.S. Dep’t of Just., FY 2022 - 2023 Byrne State Crisis Intervention Program Formula Solicitation, <https://bja.ojp.gov/funding/awards/list>

⁸⁵ See U.S. Dep’t of Just., *Byrne State Crisis Intervention Program Frequently Asked Questions* (Sept. 2023) <https://bja.ojp.gov/doc/byrne-scip-faq.pdf>.

Response: OJP states as follows:

On June 7, 2021, the Department posted ERPO model legislation to its website.⁸⁶ Drawing on similar laws adopted across the country, this model legislation provides a framework for states to consider as they determine whether and how to craft laws to allow law enforcement, concerned family members, and others to seek these orders and to intervene before warning signs turn into tragedy.

In addition, Byrne SCIP also requires grantee jurisdictions to form Crisis Intervention Advisory Boards to inform and guide their grant activities. Such a Board must include representatives from law enforcement, the community, courts, prosecution, behavioral health providers, victim services, and legal counsel. Program and budget plans must be developed in coordination with (and receive approval from) the Board. At this stage, most of the grantee jurisdictions are still in the process of forming their Crisis Intervention Advisory Boards and developing their program plans and budgets to submit to BJA. Accordingly, the Department does not yet know how many grantee jurisdictions plan to use Byrne SCIP funding for ERPO programs.

BJA will monitor grantees’ use of funds to ensure compliance with the grant requirements listed in the solicitation. When a state, Tribe, territory, or the District of Columbia accepts the award, they are agreeing to follow the grant requirements detailed in the solicitation—which, as noted above, include constitutional and statutory protections applicable to any ERPO-related activities the grantee jurisdiction opts to undertake. BJA compliance monitoring includes desk reviews, site visits, and training and technical assistance support. In addition, BJA’s performance measures for Byrne SCIP pose specific questions to grantees using funds for ERPO to determine how they are ensuring the provision of due process. These performance measures must be completed by the grantee in the BJA Performance Management Tool four times per year to report on the grantee’s activities during the prior three months.⁸⁷

Drug Networks

Our nation is facing an unprecedented crisis due to the flooding of fentanyl into the United States. During fiscal year 2022, the U.S. Customs and Border Protection (CBP) seized 14,100 pounds of fentanyl at the border. For fiscal year 2023, CBP has already seized 8,600 pounds. Combined, that is enough to kill over 5.1 billion people. As of this year, the Drug Enforcement Agency (DEA) has already seized over 4.5 million fentanyl pills and over 800

⁸⁶ See U.S. Dep’t of Just., *Commentary for Extreme Risk Protection Order Model Legislation* (June 7, 2021) <https://www.justice.gov/doj/reducing-gun-violence/commentary-extreme-risk-protection-order-model-legislation#model>.

⁸⁷ See U.S. Dep’t of Just., *Byrne State Crisis Intervention Program Performance Measures Questionnaire* (Oct. 2023) <https://bjaj.ojp.gov/funding/performance-measures/byrne-scip-measures.pdf>.

pounds of fentanyl in our U.S. interior. The three main players fueling this poison into our communities are the Sinaloa Cartel, the Jalisco New Generation Cartel (CJNG), and the Chinese Communist Party who are providing the precursors to the Mexican cartels.

19. What measures is the Department of Justice taking to address the influx of narcotics, like fentanyl into our communities?

Response: The Department is using all available resources to combat drug trafficking, increase access to evidence-based treatment, and prevent drug overdose and poisoning deaths in the United States. The Department is working closely with federal, state, local, Tribal, and territorial law enforcement partners here and abroad to stop deadly synthetic drugs from entering our neighborhoods and to aggressively investigate and prosecute those responsible for manufacturing and trafficking these drugs.

The Department’s litigating, law enforcement, and grantmaking components have reported the following:

Investigative and Prosecution Efforts

The Department has investigated hundreds of fentanyl cases that have led to significant arrests, seizures, and prosecutions, including many with direct links to the Mexican cartels responsible for the majority of the fentanyl in the United States, most notably the Sinaloa and Jalisco New Generation cartels. DEA, for example, has built an entirely new strategic layer with two counter threat teams for the Sinaloa Cartel and the Jalisco Cartel. These counter threat teams map the cartels, analyze their networks, and develop targeting information on the cartel members wherever they operate around the world.

These efforts are producing significant results. On April 14, 2023, the Department announced charges against a subset of members and associates of the Sinaloa Cartel, known as the Chapitos, for their alleged role in the transportation of lethal amounts of fentanyl, cocaine, heroin, and methamphetamine into the United States. The charges were the product of proactive enforcement efforts and the dedication of significant prosecutorial resources. More recently, on October 3, the Department announced the unsealing of eight indictments in the Middle and Southern Districts of Florida charging China-based companies and their employees with crimes relating to alleged fentanyl and methamphetamine production, distribution of synthetic opioids, and sales resulting from precursor chemicals. The indictments build on prosecutions announced in June and mark the second set of prosecutions to charge China-based chemical manufacturing companies and nationals of the People’s Republic of China (PRC) for trafficking fentanyl precursor chemicals into the United States.

In May, the DEA announced the results of “Operation Last Mile,” a year-long national operation, targeting operatives, associates, and distributors affiliated with the Sinaloa and Jalisco Cartels

responsible for the last mile of fentanyl and methamphetamine distribution on streets and social media. Operation Last Mile resulted in the arrests of 3,337 associates of the Sinaloa and Jalisco Cartels in the United States. On September 15, 2023, Ovidio Guzman Lopez, one of El Chapo’s four sons and a leader of the Chapitos’ global fentanyl supply chain, was extradited from Mexico to face charges filed in the Northern District of Illinois.

Additionally, the Department has taken action against all parties involved in the prescription opioid supply chain, from manufacturers and distributors to national pharmacies, doctors, and pharmacists. Accountability has been a top priority in these efforts. For instance, in December 2022, the Department sued one of the largest prescription drug distributors in the country, alleging that over the course of nearly a decade, the company violated the Controlled Substances Act by failing to report at least hundreds of thousands of suspicious orders of controlled substances to the DEA as required by law. The alleged unlawful conduct includes filling and failing to report numerous orders from pharmacies that the company knew were likely facilitating diversion of prescription opioids. The Department has similarly filed lawsuits against two major chain pharmacies, alleging those companies defied federal law, and has brought civil and criminal actions against a bevy of doctors and local pharmacies⁸⁸.

Likewise, due to the alarming increase in overdose fatalities resulting from the consumption of counterfeit pills containing fentanyl, the Department has intensified its efforts to investigate corporate entities that are involved in the production, supply, or vending of fake pills. These include investigations into e-commerce sites and social media platforms that may be allowing traffickers to sell counterfeit pills to teens and young adults, as well as investigations into companies that may be allowing precursor chemicals and equipment used to make illegal synthetic drugs to get into the hands of drug trafficking organizations.

U.S. Attorneys’ Offices also work to hold those who sell deadly doses of fentanyl responsible for the deaths that result from their unlawful conduct. These significant cases require substantial resources and have been made more challenging by the Supreme Court’s decision in *Burrage v. United States*, 571 U.S. 204 (2014), which can make such cases difficult to prove.

Multi-Agency Efforts

The Department’s Organized Crime Drug Enforcement Task Forces (OCDETF) coordinated a multi-agency effort led by seven U.S. Attorneys’ Offices to combat the fentanyl/opioid epidemic in West Virginia and neighboring states. This operation is an alliance of more than 20 federal, state, and local OCDETF partners, including substantial intelligence and operational contributions by several High Intensity Drug Trafficking Area (HIDTA) partners. OCDETF

⁸⁸ USA v. Walmart, 1:20-cv-01744 (D. Del.); United States ex rel. White et al. v. Rite Aid Corp., et al., No. 1:21-cv-1239 (N.D. Ohio)

created and launched a three-phase, national strategic initiative to focus investigative efforts on illuminating command and control elements of transnational criminal organizations smuggling fentanyl, methamphetamine, and other dangerous synthetic drugs through the mail and along highway transshipment corridors through Michigan, Ohio, West Virginia, Kentucky, and Pennsylvania. More recently, and as a result of these synchronized efforts, federal prosecutors developed eight new OCDETF cases against criminal networks targeting dozens of high-level criminals allegedly responsible for the trafficking of fentanyl, opioids, and comingled drugs in the Midwest region, including West Virginia.

Fentanyl OCDETF National Strategic Initiative (FONSI) incentivizes investigative teams to think outside-the-box, target criminal organizations early in their lifecycle, and identify command and control elements of larger criminal networks responsible for importation and trafficking of opioids. FONSI brings together 14 United States Attorney’s Offices where lead OCDETF prosecutors coordinate efforts of more than 30 federal, state, and local law enforcement agency partners; and 13 regional and national HIDTA teams across the Southwest and the Pacific OCDETF regions to investigate and prosecute fentanyl traffickers.

Additionally, the FBI uses a proactive approach to combat fentanyl via the FBI-led Joint Criminal Opioid and Darknet Enforcement Team (JCODE). JCODE began in 2018 as an FBI-led, multi-agency initiative to target criminal activity on the Darknet, particularly the trafficking of fentanyl and other opioids. The JCODE team encompasses the Department and 12 federal law enforcement agencies working together to advance a strategic approach targeting drug trafficking organizations utilizing the Darknet to facilitate their illicit activities. JCODE recently announced Operation SpecTor, which the Department deemed to be the “Largest International Operation Against Darknet Trafficking of Fentanyl and Opioids.”

At the local level, the FBI’s Safe Streets and Gang Program uses its Safe Streets Task Forces to target violent street gangs that are increasingly distributing opioids, such as fentanyl. The FBI continues to support multi-agency task forces such as OCDETF to combat the ongoing opioid epidemic.

The Department has also demonstrated a commitment to educating the communities we serve about the dangers these opioids pose. JCODE publicized Operation ProtecTor, a proactive public outreach campaign to share information highlighting the seriousness of the opioid epidemic and the significant role of the Darknet. Other proactive FBI intelligence efforts include conducting network mapping and producing finished intelligence regarding key facilitators engaged in the production, trafficking, and financing of illicit fentanyl operations affecting the United States.

Finally, the Department’s commitment to combatting the opioid crisis is clear from the creation and targeted efforts of the Appalachian Regional Prescription Opioid (ARPO) Strike Force, led by the Criminal Division’s Fraud Section. Since its inception in late 2018, ARPO has partnered

with federal and state law enforcement agencies and U.S. Attorneys’ Offices throughout Alabama, Kentucky, Ohio, Virginia, Tennessee, and West Virginia to prosecute medical professionals and others involved in the illegal prescription and distribution of opioids. Over the past four and a half years, ARPO has charged over 115 defendants collectively responsible for issuing prescriptions for over 115 million controlled substance doses. In addition, in 2022, the Fraud Section launched the New England Prescription Opioid Strike Force to identify and prosecute unlawful prescriptions and diversion of opioids and other controlled substances in Maine, New Hampshire, and Vermont. These enforcement efforts make clear that the Department will hold accountable medical professionals who have forsaken their medical duty accountable for profit during their role in the opioid crisis.

Legislative Efforts

The Department is working with Congress on legislative proposals to address the fentanyl crisis. In September 2021, the Administration submitted its Recommendations to Congress on Fentanyl-Related Substances, which is a “long-term, consensus approach that advances efforts to reduce the supply and availability of illicitly manufactured fentanyl-related substances.”⁸⁹ Under the Administration’s proposal, the entire fentanyl-related substance class would be added to Schedule I of the Controlled Substances Act because of the similarity to fentanyl in pharmacology, structure, and potential for abuse. The Administration’s proposal also includes a more expeditious off-ramp to deschedule or reschedule specific fentanyl-related substances if the Secretary of Health and Human Services finds that the specific substance does not have a high potential for abuse after a scientific and medical evaluation. The Department welcomes the opportunity to work with Congress to discuss these and other legislative proposals to address the fentanyl crisis in this country.

Community Outreach

In addition to investigating and prosecuting those responsible for this crisis, the Department is committed to supporting programs aimed at addressing the substance use crisis that is devastating communities across the nation. Individual U.S. Attorneys’ Offices have initiated innovative efforts to conduct outreach to their communities to educate youth about the dangers of opioids and to highlight the importance of other lifesaving tools, such as naloxone. For example, the U.S. Attorney in the Southern District of West Virginia has participated in multiple events to encourage individuals to learn how to use naloxone to save the lives of their friends and neighbors.

In September 2021, DEA launched the One Pill Can Kill initiative as a public awareness campaign to highlight the dangers of fentanyl to every household in every community. This campaign is consistent with the Department’s obligation to make Americans aware of the deadly

⁸⁹ Press Release, Biden-Harris Administration Provides Recommendations to Congress on Reducing Illicit Fentanyl-Related Substances (Sept. 2, 2021) <https://www.whitehouse.gov/ondcp/briefing-room/2021/09/02/biden-harris-administration-provides-recommendations-to-congress-on-reducing-illicit-fentanyl-related-substances/>

threat from counterfeit pills containing lethal doses of illicit fentanyl. DEA has also conducted a series of operational surges as part of the One Pill Can Kill campaign. The most recent enforcement operation ran from May to September 2022 and resulted in the seizure of more than 10.2 million fentanyl pills and approximately 980 pounds of fentanyl powder—the equivalent of 36 million potentially lethal doses. The effort also resulted in the seizure of 338 weapons, including rifles, shotguns, pistols, and hand grenades.

The Department’s OJP supports state, local and Tribal public safety, public health, and behavioral health entities by serving as a critical source of funding, training and technical assistance, and research for prevention and intervention efforts to improve responses to and outcomes for individuals with substance use needs at every point along the justice continuum. This support includes, but is not limited to, training law enforcement personnel on de-escalation and crisis intervention training; diverting individuals with substance use conditions away from the justice system, as appropriate; providing substance use treatment and recovery support services for adults and youth during incarceration and effective continuity of care upon their reentry into the community. In Fiscal Year 2022, OJP awarded over \$340 million to address substance use disorders and fight the overdose epidemic.⁹⁰

20. What is the Department of Justice doing to dismantle drug cartels, such as the CJNG and Sinaloa Cartel from operating in our country?

Response: DEA advises as follows:

The Sinaloa and Jalisco Cartels are the two drug cartels responsible for the influx of fentanyl in the United States, posing the greatest drug threat the United States has ever faced. These ruthless, violent, criminal organizations have associates, facilitators, and brokers in all 50 states in the United States, as well as in more than 40 countries around the world.

DEA has built an entirely new strategic layer with two counterthreat teams for the Sinaloa Cartel and the Jalisco Cartel. These counterthreat teams map the cartels, analyze their networks, and develop targeting information on the cartel members wherever they operate around the world.

These efforts are producing significant results. On April 14, 2023, the Department announced charges against a subset of members and associates of the Sinaloa Cartel, known as the Chapitos, for their alleged role in the transportation of lethal amounts of fentanyl, cocaine, heroin, and methamphetamine into the United States. The charges were the product of proactive enforcement efforts and the dedication of significant prosecutorial resources. Moreover, last year DEA announced the results of a year-long national operation, “Operation Last Mile,” targeting

⁹⁰ See Press Release, U.S. Dep’t of Just., Justice Department Awards More Than \$340 Million to Address Substance Use Disorders and Fight the Overdose Epidemic (Oct. 14, 2022), <https://www.justice.gov/opa/pr/justice-department-awards-more-340-million-address-substance-use-disorders-and-fight-overdose>.

operatives, associates, and distributors affiliated with the Sinaloa and Jalisco Cartels responsible for the last mile of fentanyl and methamphetamine distribution on streets and social media. Operation Last Mile resulted in the arrests of 3,337 associates of the Sinaloa and Jalisco Cartels in the United States. On September 15, 2023, Ovidio Guzman Lopez, one of El Chapo’s four sons and a leader of the Chapitos’ global fentanyl supply chain, was extradited from Mexico to face charges filed in the Northern District of Illinois.

ATF also has made strides in dismantling the firearms trafficking networks that provide the guns that arm the cartels, including high-caliber weapons.

In addition to these efforts, the Department continues to make gains in our relationship with our law enforcement partners around the world, including in Mexico. The Attorney General has met with Mexican counterparts to discuss, among other things, fentanyl trafficking and the cartels, including during a trip to Mexico City on October 5, 2023. Mexican law enforcement must be an ally in this fight, and the Department continues to drive cooperation forward.

21. Has the Department of Justice made any progress in finding Ismael Zambada Garcia, leader of the Sinaloa Cartel? In addition, what progress has the department made in finding Nemesio Oseguera-Cervantes, leader of the CJNG?

Response: Standard Department policy is not to comment on or confirm the existence of any pending investigations.

22. Can you provide an update of the Department of Justice Money Laundering and Forfeiture Unit’s work to go after Mexican drug cartels and Chinese shell companies laundering narcotic earnings for the cartels?

Response: The Criminal Division and the Drug Enforcement Administration advises as follows:

The Criminal Division’s Money Laundering and Asset Recovery Section (MLARS), Money Laundering and Forfeiture Unit (MLFU) investigates and prosecutes professional money launderers and gatekeepers who provide their services to criminal organizations. That includes Mexican drug cartels, as well as individuals and entities using the latest and most sophisticated money laundering tools and techniques. MLFU also litigates civil forfeiture cases for the Criminal Division and, in appropriate cases, in partnership with United States Attorneys’ Offices. It provides support to the Criminal Division in cases involving significant or complex criminal forfeiture allegations. MLFU serves as the Criminal Division’s experts on domestic forfeiture and, in this role, provides advice to other Criminal Division attorneys and United States Attorneys’ Offices.

An example of MLFU’s work is the prosecution of a Chinese money laundering organization, led by Xizhi Li, that obtained contracts from Mexican drug trafficking organizations to launder

drug proceeds through foreign and domestic front companies.⁹¹ MLFU continues to investigate numerous additional Chinese trade-based money laundering schemes, some of which MLFU believes are engaged in handling Latin American drug proceeds. In addition, MLARS has a full-time prosecutor stationed at the DEA Special Operations Division who supports money laundering investigations, including by Chinese organizations laundering narcotics proceeds.

OCDETF’s investigative efforts focus on identifying, targeting, and disrupting and dismantling illicit finance infrastructures of Mexican transnational organized crime actors. One objective is to uncover Chinese money launderers and illicit finance components of Mexican criminal organizations responsible for the distribution of illicit fentanyl and other dangerous drugs into the United States.

23. What additional resources does the unit need from Congress to tackle the money laundering matter?

Response: On March 9, 2023, the Administration released its budget for FY 2024. The Department is included in the President’s budget request,

24. Has the Department of Justice taken any legal action against any Chinese based companies or shell companies that are providing the fentanyl precursors to the Mexican cartels?

Response: The Criminal Division and the Drug Enforcement Administration advise as follows:

On October 3, the Justice Department announced the unsealing of eight indictments in the Middle and Southern Districts of Florida charging China-based companies and their employees with crimes relating to alleged fentanyl and methamphetamine production, distribution of synthetic opioids, and sales resulting from precursor chemicals. OFAC took complementary actions by designating 28 individuals and entities involved with the international proliferation of illicit drugs. This announcement built on prosecutions announced in June to charge China-based chemical manufacturing companies and nationals of the People’s Republic of China (PRC) for trafficking fentanyl precursor chemicals into the United States and in April, when the Department charged four individuals in China for allegedly working with the Sinaloa Cartel to ship fentanyl precursors from China to Mexico.

On June 23, 2023, the Department announced Operation Killer Chemicals which includes three indictments charging four PRC companies and eight Peoples Republic of China nationals who worked for the companies with fentanyl trafficking conspiracy. Two of the PRC nationals have

⁹¹ See Press Release, [U.S. Dep’t of Just., Leader of Money Laundering Network Responsible for Laundering Millions of Dollars in Drug Proceeds Sentenced to 15 Years in Prison \(Oct. 26, 2021\)](https://www.justice.gov/opa/pr/leader-money-laundering-network-responsible-laundering-millions-dollars-drug-proceeds), <https://www.justice.gov/opa/pr/leader-money-laundering-network-responsible-laundering-millions-dollars-drug-proceeds>.

been taken into custody. The indictments allege that the defendants provided their customers with raw materials and the scientific knowledge to make fentanyl. Moreover, the defendants spoke openly of having customers in America and Mexico, and, specifically in Sinaloa, Mexico, the location where the Sinaloa Cartel is based. Other indictments include in 2018 of Jian Zhang (District of North Dakota) and Xiaobing Yan (Southern District of Mississippi), and in 2018 of Fujing Zheng and his father Guanghua Zheng (Northern District of Ohio).⁹²

25. On January 30, 2023, the Texas Department of Public Safety busted a fentanyl laboratory that was disguised as a car rental company. The bust led to 17 pounds of precursor from China, counterfeit Xanax pills, cocaine, and methamphetamine.

a. What steps is the Department of Justice taking to eradicate illicit narcotic laboratories in the United States and to hold individuals accountable?

Response: DEA advises as follows:

DEA is committed to defeating the Sinaloa and Jalisco Cartels, the two organizations most responsible for the fentanyl and methamphetamine in our communities. As part of our effort to target the Sinaloa and Jalisco Cartels and their networks, DEA has mapped out the associates of these cartels based in China and Mexico, as well as identified more than 200 members and associates in the United States. The Department continues to work with our state, local, and federal partners to take enforcement action against these networks. In the last two years, DEA coordinated the dismantlement and removal of hazardous materials from over 1,000 domestic illicit drug laboratories and illicit hazardous environments. To do this dangerous work, DEA conducted training attended by nearly 1,100 DEA special agents and our state and local partners.

The Department advises a myriad of investigative components in the conduct of investigations of suspected or alleged offenses against the United States, among them violations of the Controlled Substances Act and other drug-related statutes. The Department can request an investigation and may in some cases coordinate a team of agents representing different state and/or federal level agencies having investigative jurisdiction of the suspected violations. The Department brings and prosecutes criminal cases against priority criminal actors. Persons and entities that operate and assist in the operation of illicit narcotic laboratories are among the Department’s priority targets,

⁹² See Press Release, U.S. Dep’t of Just., Department of State Offers Reward for Information to Bring Chinese Fentanyl Trafficker to Justice (Aug. 31, 2021), <https://www.justice.gov/usao-nd/pr/department-state-offers-reward-information-bring-chinese-fentanyl-trafficker-justice>; See Press Release, U.S. Dep’t of Just., Chinese National Indicted in Southern District of Mississippi Designated by U.S. Treasury Department as Significant Foreign Narcotics Trafficker (Aug. 22, 2019), <https://www.justice.gov/usao-sdms/pr/chinese-national-indicted-southern-district-mississippi-designated-us-treasury>; See Press Release, U.S. Dep’t of Just., Two Chinese Nationals Charged with Operating Global Opioid and Drug Manufacturing Conspiracy Resulting in Deaths in Akron (Aug. 22, 2018), <https://www.justice.gov/usao-ndoh/pr/two-chinese-nationals-charged-operating-global-opioid-and-drug-manufacturing-conspiracy>.

especially if the manufacturing operation involves fentanyl or its analogues or other synthetic opioids.

b. Can you provide the number of individuals who have been convicted in 2022 and 2023 for running illicit narcotic laboratories in the United States?

Response: EOUSA advises as follows: The Department does not separately track prosecutions related to running illicit drug labs in the United States. Individuals who are involved in clandestine drug laboratories can be prosecuted under a number of different federal statutes. Most commonly, prosecutors would charge defendants with unlawfully manufacturing controlled substances, in violation of 21 U.S.C. § 841(a)(1). This is the general federal drug trafficking statute that also prohibits unlawful distribution of controlled substances, dispensing of controlled substances, and possessing controlled substances with intent to manufacture, distribute or dispense a controlled substance. Crimes related to illicit drug labs also could be prosecuted under 21 U.S.C. § 846 (attempt/conspiracy), 21 U.S.C. § 841(c) (unlawful possession of chemicals used to manufacture controlled substances), 21 U.S.C. § 841(f) (unlawful possession/distribution of certain chemicals), 21 U.S.C. § 843 (unlawful activities related to certain machines and lab equipment), 21 U.S.C. 856 (maintaining a premises for manufacturing controlled substances), or other federal statutes depending on the facts of the case.

26. What resources does the Department of Justice have available for North Carolina’s state and local law enforcement to help tackle the illicit drug problem? Are there any resources that are readily available for North Carolina’s rural law enforcement officers?

The Department works regularly with local, state, and federal partners in North Carolina to conduct joint investigations and enforcement operations. DEA states as follows: DEA utilizes a robust Task Force Officer (TFO) Program, which offers North Carolina counterparts the opportunity to assign officers/detectives to local DEA offices to facilitate and coordinate investigative efforts. In addition to the TFO Program, which uniquely positions DEA to coordinate intelligence and investigations, DEA works closely with numerous local drug task forces and the North Carolina State Bureau of Investigation to identify additional opportunities to leverage partnerships and combat cartel activity throughout the state of North Carolina and beyond. In these collaborative efforts, DEA offers investigative expertise and experience as well as the funding required for controlled drug purchases and the court-authorized interception (wiretaps) of communications over electronic devices being used to facilitate drug trafficking in North Carolina.

The Department will continue to leverage partnerships and deploy any increased personnel or funding in a manner consistent with our mission of fighting the cartels to create a safer place for North Carolinians. In addition to addressing the supply side of the illicit drug problem, the Department also addresses the demand side.

OJP advises as follows:

OJP provides grant funding and training and technical assistance (TTA) that supports both state and local law enforcement to address substance use and misuse in their communities, including, but not limited to, through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program and the Comprehensive Opioid, Stimulant, and Substance Use Program (COSSUP). These programs and related TTA support prevention, harm reduction, treatment, and recovery support services. For example, OJP has provided several grants to North Carolina to support a variety of activities led by and including law enforcement, including law enforcement assisted diversion, the provision of evidence-based substance use treatment and recovery services, overdose prevention programs to reduce fatal and non-fatal opioid overdose, and providing officers with technology support tools to identify substances in the field and refer individuals in need of treatment. OJP understands the unique challenges that rural communities and rural law enforcement face in addressing their communities’ substance use needs and have made specific efforts to support those needs.

For example, the COSSUP solicitation includes a specific category for applications from rural or Tribal areas. The Department also supports demonstration projects focused on rural jurisdictions, such as the COSSUP Reaching Rural: Advancing Collaboration Solutions initiative. This initiative was designed for rural justice and public safety practitioners; public health and behavioral health practitioners; city, county, and Tribal leaders; and community groups to build deeper networks, particularly across sectors; adopt bold solutions to the persistent challenge of substance use and misuse in rural communities; and reimagine how diverse systems with different missions can engage with one another to more effectively serve justice-involved individuals with substance use or co-occurring disorders. A team of fellows from Harnett County, including a representative from the Harnett County Sheriff’s Office, is participating in this effort.

Crime Victims

The Children’s Advocacy Centers (CACs) of North Carolina have over 45 CACs established throughout the State of North Carolina. The CACs are composed of forensic interviewers, therapists, advocates, and medical experts that serve children that are impacted by abuse.

In 2021, I was proud to be an original cosponsor of the VOCA Fix to Sustain the Crime Victims Fund Act, which was signed into law. This meaningful legislation helps to collect funds directly from deferred prosecution agreements and directs it to crime victims funding for CACs.

27. What is the current status of the VOCA Fix Act? Has the legislation been fully implemented? If not, what roadblocks is the Department of Justice facing to implement it the law?

Response: The Department is grateful for Congress’s efforts to pass the VOCA Fix. The Office of Victims of Crime (OVC) states as follows:

Since FY 2018, the Crime Victims Fund (CVF or Fund) balance had declined by 74 percent and the obligation cap had been lowered. As a result, the allocations for all states and territories had decreased. Since enactment in 2021 through April 2023, nearly \$1 billion was deposited into the CVF from NPAs and DPAs – a direct result of the VOCA Fix and the Department’s efforts to increase deposits into the CVF. When the VOCA Fix passed in 2021, courts were still experiencing delays and recovering from the impacts of the pandemic, resulting in a corresponding delay in prosecutions. As courts resume normal processes, and cases are tried, the Department anticipates seeing the full effects of the law.

The OVC is the office within the Department responsible for administering the Fund. OVC has met with other offices within the Department, including the offices responsible for the largest contributions to the CVF (Antitrust Division, Criminal Division, Executive Office for U.S. Attorneys) to discuss the Victims of Crime Act, and the resources and support provided to victims stemming from case fines and penalties. OVC has also met with front line U.S. Attorneys on the importance of the Fund, and how it affects victim assistance programs in their districts. This engagement with U.S. Attorneys will continue regularly to facilitate further understanding and awareness of the Fund.

Additionally, the Department recognizes that keeping the CVF solvent is essential to providing crime victims with compensation and assistance critical for emotional, physical, and financial support in the aftermath of crime. The Department has a robust training curriculum that emphasizes the availability of the Fund as a repository for fines, DPAs and NPAs, and other criminal monetary penalties. In addition to trainings and guidance set forth in the Justice Manual, the Department has published a number of resource materials to assist prosecutors in ensuring that asset recovery is taken into consideration at every stage of a criminal prosecution. Moreover, the Department actively informs prosecutors of any legislative changes which impacts the Fund. For example, the Department immediately implemented and educated prosecutors on the changes made by the VOCA Fix Act.

28. Can you provide the year by year impact that VOCA Fix Act has had on crime victim funding since its enactment?

Response: OVC reports the following: Since enactment of the VOCA Fix Act in 2021 through April 2023, nearly \$1 billion was deposited into the CVF fund from NPAs and DPAs, which is a direct result of the VOCA Fix and the Department’s efforts to increase deposits into the Fund.

During that same period, \$1.15 billion from criminal fines, penalties, gifts, donations, and bequests were deposited into the Fund. Since FY 2018, the CVF balance had declined by 74 percent and the annual obligation cap had been lowered by Congress by 57 percent to ensure solvency. As a result, the allocations for all states and territories had decreased. The VOCA Fix has enabled a new funding stream to flow into the Fund rather than into the general Treasury; however, the VOCA Fix alone cannot bring about immediate stability to the CVF.

In March of 2022, the Violence Against Women Act (VAWA) Reauthorization Act of 2022 was signed into law, which I was proud to cosponsor. The VAWA Reauthorization Act provides critical resources for victims of violence such as increasing the authorized amount of grant funding to support domestic violence prevention and response organizations that provide victim services.

29. What is the current status of the VAWA Reauthorization Act of 2022? Has the legislation been fully implemented? If not, what roadblocks is the Department of Justice facing to implement it?

Response: OVW advises as follows:

VAWA 2022 reauthorization implementation is well underway. Department components, including OVW, are working together and with other federal agencies to successfully implement VAWA 2022, including numerous reporting recommendations. The Department looks forward to continuing to share announcements, reports, and updates with Congress in the months ahead.

OVW has undertaken a range of activities to implement provisions of VAWA 2022. Most new grant provisions in the 2022 reauthorization of VAWA did not take effect until this past October, so the roll-out of those changes began with the Office’s FY 2023 grantmaking. OVW’s FY 2023 solicitations reflect the many statutory improvements that Congress made to existing OVW grant programs in VAWA 2022. Of the newly authorized VAWA 2022 grant programs, only the Restorative Justice program received an appropriation in FY 2022. Therefore, OVW has already completed significant planning activities for the Restorative Justice program, including researching promising practices, seeking insights from a range of stakeholders, and soliciting technical assistance proposals in advance of issuing awards. For other new VAWA 2022 grant programs that first received appropriations in FY 2023, OVW has initiated planning activities, including assigning managers and staff to new programs. As with the Restorative Justice program, OVW is formulating program plans to ensure it makes the best use of these new opportunities.

In addition, OVW has identified and deployed resources to support Tribal implementation of VAWA 2022 provisions that recognize expanded special Tribal criminal jurisdiction (STCJ) over non-Indian offenders. To this end, OVW issued a competitive award to the Tribal Law and Policy Institute (TLPI) to provide technical assistance to Tribes seeking to exercise and

implement STCJ and co-hosted an August 2022 meeting of Tribes focused on STCJ. To support implementation of STCJ in Alaska, OVW issued a special solicitation for Tribes in Alaska interested in designation through the Alaska Pilot Program. The Department announced its implementation plan for the Alaska STCJ Pilot Program on October 20, 2023.

On April 11, 2023, following extensive consultation with Tribal leaders and experts, OVW issued an interim final rule governing VAWA 2022’s newly authorized program to reimburse Tribes for expenses incurred in exercising STCJ. This new rule will enable OVW to administer the Tribal Reimbursement Program in Calendar Year 2024.

30. Has the Department of Justice started distributing the grant funding to support domestic violence prevention and response organizations?

Response: OVW states as follows:

As described above, OVW has taken significant steps to prepare to distribute grant funding that Congress newly authorized by VAWA 2022 and appropriated in FY 2023. The Office appreciates the need to get new programs out the door as quickly as possible. At the same time, whenever OVW has the opportunity to administer new grant programs, it takes great care to ensure our approach tracks with Congress’s intent, matches the needs in the field, and makes the best use of taxpayer funds.

OVW’s process for launching a newly appropriated program includes a number of steps: reviewing existing evaluations or other research relevant to the new programming, conducting focus groups and other inquiries to ascertain current efforts (see, e.g., ongoing efforts regarding Restorative Justice program described above), and determining how to measure grantee success, identifying the most appropriate funding model (i.e., grant program or pilot/demonstration initiative, competitive or non-competitive awards), to name a few.

31. Has the grant funding under the Sexual Assault Nurse Examiner (SANE) provision of VAWA been appropriately allocated to grantees?

Response: OVC advises as follows: OVC announced grants under the “Sexual Assault Nurse Examiner Training Program Grants” section of the VAWA Reauthorization Act of 2022 (Section 1318) in September 2023. More than \$3 million in funding was awarded to a technical assistance provider to establish regional SANE training programs. An additional \$2 million was awarded to supporting new sites. One goal of this work will be to establish a Center of Excellence in Forensic Nursing to prepare current and future SANES/SAFEs to be professional-ready and meet the applicable State certifications and licensure requirements.

32. How much has the State of North Carolina received in SANE funding from the VAWA reauthorization?

Response: OVC advises as follows: OVC funds organizations, not states, under the SANE funding related to the VAWA reauthorization. While OVC will make awards under the OVC FY 2023 Expanding Access to Sexual Assault Forensic Examinations program, no applications from organizations in North Carolina were received.

33. Has the Department of Justice addressed the 2018 Office of Inspector General (OIG) report about VAWA grants not being closed in an appropriate time?

Response: A March 2018 report published by the Department’s Office of the Inspector General (OIG) examined the grant closeout process across the Department’s three grant-making offices—the OJP, the COPS Office, and OVW. The report included 61 findings, 29 of which pertained to OVW.

According to OVW, it worked closely with its grantees and the OIG to resolve the findings. A September 2021 memorandum from the OIG informed OVW that the status of the report is fully closed.

a. Will the Department of Justice conduct audits to ensure victims and grant recipients get the resources in a timely manner?

Response: OVW states as follows: OVW prioritizes equipping grantees with the resources, training, and technical assistance they need to serve survivors and hold offenders accountable. Recently, OVW’s Grants Financial Management Unit has hired additional staff to provide financial management at all junctures of the grant cycle, including processing grant awards and completing financial review of grant budgets. OVW’s FY 2024 Budget request included additional financial staff to not only increase efficiency in OVW’s financial management but also bolster the technical assistance and training OVW provides to grantees and applicants.

Social Media Impact on Children

I understand that the internet and social media platforms can be beneficial to our daily lives. Like keeping us connected with friends and family across the country. We must also recognize that internet and social media have become the virtual interstate system for the sale of narcotics to the distribution of child sexual abuse material (CSAM). In 2021, National Center for Missing & Exploited Children (NCMEC) cyberline received 29 million reports of suspected online child sexual abuse material (CSAM).

34. What action is the Department of Justice taking to hold individuals accountable for possessing and distributing child sexual abuse material? Is DOJ able to investigate all reports of suspected online CSAM? If not, what actions is the Department taking to

improve its response and investigate the extraordinary number of suspected CSAM reports?

Response: Child sexual abuse material is abhorrent, and the Department is committed to stopping its production and transmission online through vigorous enforcement of the law. The Criminal Division advises as follows:

The advent of so many different online platforms with global reach, and the proliferation of encryption and anonymizing technology, has complicated the identification, interdiction, and investigation of online child sexual exploitation. Smartphones, for example, are fully encrypted devices that fit in a pocket that offenders can use to produce, livestream, store remotely, access, send, and receive child sexual abuse material, and engage with other offenders or children on any manner of social media and encrypted messaging apps. The Tor network hosts hidden services where hundreds of thousands of offenders congregate in communities dedicated to the sexual abuse of children. Artificial intelligence (AI) provides offenders with new and easy-to-use methods to create instantaneous photo-realistic child sexual abuse material with or without the use of an actual minor.

The child exploitation threats have grown exponentially in scale, complexity, and dangerousness. The Department is doing everything it can to prevent and stop child sexual exploitation, hold offenders accountable, and protect victims, but the solutions to address child exploitation require action not just from the Justice Department and law enforcement partners, but also from Congress, the technology industry, our NGO and interagency partners, and others. Even with unlimited resources, law enforcement will not be able to investigate and prosecute every instance of online child exploitation crime. The Justice Department’s goals and objectives must continue to be focused on utilizing technology and law enforcement collaboration to prioritize the worst offenders and rescue children actively being harmed. Additionally, it is critical that the Department continue its engagement with other stakeholders to improve online safety, mandated where possible, and the pursuit of other prevention and outreach efforts.

One noteworthy part of the law enforcement response is the work done by the ICAC Task Forces, a national network of 61 coordinated task forces across federal, state, and local law enforcement and prosecutorial agencies. The ICAC Task Forces are the primary entities that receive investigative CyberTips in the United States, receiving approximately 500,000 of the 32 million reports referred globally in 2022. This number has more than quadrupled in six years, yet at the same time, their resources have only increased a modest 34%. This mismatch between crime reports and law enforcement resources puts ICAC Task Forces in an untenable position. They feel an obligation to investigate every CyberTip they receive without regard to its quality, but they are not given the resources to keep up with the growth of CyberTips and are forced to make triage decisions based on woefully inadequate information.

The ICAC Task Forces are funded in large part by grants from Congress that the Department administers. One practical step that Congress can take immediately is to appropriate funds for these critical efforts as requested in the President’s budget. Notwithstanding the ICAC resource shortfalls, work is being done to try to address some of the concerns. In the last two years, for example, the National Center for Missing and Exploited Children (NCMEC) has instituted measures within the CyberTipline system to assist with deconfliction, deduplication, triaging, and automation, all of which seek to improve the efficiency of the law enforcement response. But it is also important to understand that CyberTips only account for a portion of online child exploitation material. Some technology companies search for and report child exploitation occurring on their platforms; others do not. And the CyberTipline does not account for the vast amount of child sexual exploitation shielded behind encryption and anonymization on the Tor network.

35. What tools and resources does the Department of Justice have available for State and local law enforcement, specifically to go after individuals who possess and distribute child sexual abuse material? Are there additional tools and resources Congress can provide to assist state and local law enforcement to fight CSAM?

Response: As part of Project Safe Childhood, U.S. Attorneys’ Offices and the Criminal Division’s Child Exploitation and Obscenity Section, federal, state, and local resources are utilized to locate, apprehend, and prosecute individuals who use the Internet to exploit children, as well as to identify and rescue victims. EOUSA and the Criminal Division advise as follows:

The Justice Department manages the ICAC Task Force Program, which receives over \$30 million in annual funding and represents more than 5,200 federal, state, local, and Tribal law enforcement and prosecutorial agencies. In FY 2022 alone, ICAC task force programs conducted more than 167,000 investigations and over 76,770 forensic exams. These efforts resulted in the arrests of more than 10,200 individuals. Additionally, the ICAC program trained nearly 34,000 law enforcement personnel, more than 2,500 prosecutors, and more than 6,600 other professionals working in the ICAC field. One practical step that Congress can take immediately is to increase the appropriation of funds for these critical efforts to the higher level requested in the President’s budget.⁹³

The Justice Department also works closely with and provides funding to the National Center for Missing and Exploited Children (NCMEC), which runs the Child Victim Identification Program, the nationwide clearinghouse on CSAM, among other relevant programs. Of note, in addition to federal law, CSAM offenses are criminalized by every state in the country, which account for a significant number of prosecutions annually. While additional funding, particularly funding targeting technical, centralized support for the ICAC program, is always needed to yield

⁹³ Report, White House Task Force Addresses Online Harassment and Abuse https://www.whitehouse.gov/wp-content/uploads/2024/05/White-House-Task-Force-to-Address-Online-Harassment-and-Abuse_FINAL.pdf

increased results, it is equally important to apply the resources available strategically and ensure that other stakeholders play their part to fight CSAM.

In early 2022, the Department shared with Congress extensive legislative proposals that offer some potential solutions to several significant challenges inherent in the fight against online child exploitation. The Justice Department stands ready to work with Congress to address legislation to combat child sexual abuse material.

36. Does the Department of Justice have sufficient resources to assist victims of child sexual abuse material? What additional funding or authorities does DOJ need from Congress in order to best serve victims?

Response: The Criminal Division states as follows:

The Department continues to engage in work that assists victims of child sexual abuse material and enhances victims’ voices. On June 5, 2023, the Department published its Notice of Proposed Rulemaking proposing regulations that implement the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, an Act that established the Child Pornography Victims Reserve to provide defined monetary assistance to eligible individuals who are depicted in child sexual abuse material that is the basis for certain convictions.⁹⁴ In October 2022, the revised Attorney General Guidelines for Victim and Witness Assistance were issued. Additionally, as part of the legislative proposals submitted to Congress last year, the Justice Department proposed legislative reforms to enact provisions designed to afford child victims better protections in the federal criminal justice system, including enhancing courtroom protections and facilitating the appointment of a trustee or fiduciary for restitution. The Justice Department also supports additional legislative reform to support victim rights, such as enhancing a victim’s ability to report and remove CSAM and permitting victims of CSAM to pursue civil remedies against online providers.

Additional measures are needed to respond to the increase in victims of CSAM offenses. Steadily increasing each year, the annual number of defendants federally prosecuted by the Justice Department for producing CSAM nearly tripled from FY 2008 to FY 2019. Data from the Sentencing Commission shows a 422% increase in the prosecution of production offenders from FY 2005 to FY 2019. Each production defendant signifies not only new CSAM, but new victims of abuse and exploitation. The Department has also seen increases in the number of victims per offender. Single cases can involve thousands of victims, overburdening the Victim Witness Specialists in investigative and prosecutorial agencies. Changes in technology have caused this dramatic increase in the number of offenders and victims of these offenses, taxing existing

⁹⁴ Implementing the Child Pornography Victims Reserve, 88 Fed. Reg. 36516 (proposed June 5, 2023) (codified at 28 C.F.R. pt. 81).

resources.⁹⁵ Artificial intelligence (AI) provides offenders with new and easy-to-use methods to create instantaneous photo-realistic child sexual abuse material with or without the use of an actual minor.

37. What specific actions has DOJ taken to investigate, prosecute, and prevent crimes related to the advertising and sale of illicit narcotics to children on social media?

Response: The Justice Department uses all available resources in a whole-of-government approach to combat drug trafficking in the United States, including online sales of illegal narcotics. Cartels are using social media to advertise and sell their deadly drugs to Americans, especially young Americans.

Dismantling illicit social media drug marketplaces is critical to stemming the flow of dangerous drugs into our communities. This is not just happening on the dark web. Pills are also being sold on mainstream social media networks. Often, pills are sold as legitimate pharmaceuticals but are actually just fentanyl and filler.

Recognizing the threat these marketplaces pose to our communities, the Department is pursuing cases linked to the sale of fake pills containing fentanyl on social media.

38. How has the Department of Justice had engaged with social media platforms to improve child safety, and to prevent illicit narcotics from being sold online? How receptive have social media platforms been to working with DOJ? In what ways could they be better partners in the fight to keep our children safe online?

Response: Engagement between the Department, other Executive Branch agencies, and social media platforms is the subject of pending litigation. The Department is unable to comment further on the topic at this time, other than to confirm the Department will comply with any and all court orders in the case.

FACE Act Prosecutions

As you are aware, in September 2022, Mark Houck was arrested at gunpoint by 15-20 FBI agents in front of his family in connection to an incident where he allegedly shoved a Planned Parenthood abortion facility escort who was harassing his 12-year-old son. Mr. Houck was facing up to 11 years imprisonment, but he was acquitted of all charges on January 30, 2023 by a Pennsylvania jury. Additionally, in October 2022, the Justice

⁹⁵ Implementing the Child Pornography Victims Reserve, 88 Fed. Reg. 36516 (proposed June 5, 2023) (codified at 28 C.F.R. pt. 81).

Department indicted 11 eleven pro-life activists under the FACE Act for allegedly disrupting and blocking an abortion clinic in Tennessee. To understand the Department’s position and use of the FACE Act, can you provide a thorough response the following questions:

39. What factors led to the Justice Department and FBI for executing an arrest warrant against Mr. Houck instead of using less aggressive tactics?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

40. Were you made aware of the search warrant and the excessive tactics used by the SWAT team to arrest Mr. Houck?

Response: Mr. Houck has filed a Federal Tort Claims Act claim against the United States. As a result, the Department cannot comment further at this time.

41. Can you provide the number of FACE Act investigations that the Department and FBI have opened from 2020-2023?

Response: According to the Civil Rights Division, between January 2021 and July 2023, the Department has charged 21 cases involving 52 defendants across all cases with FACE Act-related violations.⁹⁶

42. Of those FACE Act investigations from 2020-2023, can you outline how many were regarding abortion facilities, pregnancy centers, and places of worship?

Response: The FBI states as follows:

The FBI is committed to investigating violations of the FACE Act—like all other violations—in a fair and objective manner. The FBI takes these cases very seriously. Although we cannot comment on ongoing investigations, the FBI will use every tool within its authorities to identify and bring perpetrators to justice.

Following the May 2022 leak of the U.S. Supreme Court’s draft opinion in *Dobbs v. Jackson Women’s Health Organization (Dobbs)*, and the subsequent decision, the FBI observed an increase in abortion-related threats of violence and activity targeting both pro-life and pro-choice entities. These investigations were conducted in approximately 27 FBI field offices and included

⁹⁶ [Recent Cases on Violence Against Reproductive Health Care Providers](https://www.justice.gov/crt/recent-cases-violence-against-reproductive-health-care-providers), U.S. Dep’t of Justice (Updated May 30, 2023)

involvement by our local and state law enforcement partners. A significant portion of this activity involved some type of offense against a medical facility or religious institution.

Federal authorities, including the FBI, are committed to vigorously pursuing investigations into crimes against reproductive care health clinics and pregnancy counseling services across the country. In January of this year, for example, the FBI announced that it is offering rewards up to \$25,000 for information leading to the identification, arrest, and conviction of suspects in a series of attacks on reproductive health service facilities.⁹⁷

43. How does the Department and FBI determine whether to open a FACE Act investigation? Does the Department and FBI investigate FACE Act cases that are handled and closed by State Courts?

Response: The FBI advises as follows: The FBI is the primary federal agency responsible for investigating allegations regarding violations of federal civil rights statutes. These laws are designed to protect the civil rights of all people within U.S. territory. The FBI opens hundreds of civil rights cases each year, and it is a responsibility the Bureau takes very seriously. Specifically, the civil rights program investigates hate crimes, color of law violations, and Freedom of Access to Clinic Entrances (FACE) Act violations. The FBI also supports the investigations of state and local authorities. The FBI investigates violations of the FACE Act statute through both our Criminal Investigative Division and Counterterrorism Division.

44. What guidance have you provided to the Department to prevent the FACE Act from being weaponized to prevent pro-life Americans from being targeted?

Response: The Reproductive Rights Task Force advises as follows: As the Department states on its website, “The FACE Act is not about abortions. The statute protects all patients, providers, and facilities that provide reproductive health services, including pro-life pregnancy counseling services and any other pregnancy support facility providing reproductive health care.” The Department has reached out to groups representing pregnancy resource centers and religious groups to ensure their awareness of FACE Act protections and to facilitate open lines of communication. Since the *Dobbs* decision, the Department has met with pro-choice groups and pro-life groups to discuss the protections under the FACE Act. The Department urged them to encourage reproductive health care providers, whatever the nature of their services, to report to the FBI any violence or threats of violence they encounter.

Felony Streaming & Commercial Piracy

⁹⁷ See Press Release, FBI Offering \$25,000 Rewards for Information in Series of Attacks Against Reproductive Health Service Facilities (Jan. 19, 2023), <https://www.fbi.gov/news/press-releases/fbi-offering-25000-rewards-for-information-in-series-of-attacks-against-reproductive-health-service-facilities>.

45. Pirate streaming is an illegal industry that creates significant harms and poses major risks. Pirate streaming costs the U.S. economy at least \$29 billion and 230,000 jobs a year. These sites are used by criminals to spread ransomware and other malware. And piracy sites undermine national security by enabling banned terrorist channels to broadcast in the U.S.

This Committee works hard to address this problem, and in 2020 Congress passed legislation to make commercial streaming piracy punishable as a felony. I know that the Justice Department in both Republican and Democratic administrations alike called for passage of such legislation for many years to give it the tools it needs to pursue today’s criminal infringers.

a. Can you please update the Committee on the DOJ’s enforcement efforts using these new tools since the enactment of that act?

Response: The Criminal Division and EOUSA state as follows:

Streaming piracy remains a priority for the Department, and the Department continues to pursue criminal prosecutions of large-scale commercial streaming piracy operations using applicable statutory tools, including criminal copyright statutes and the new criminal offense (18 U.S.C. § 2319C) created in the Protecting Lawful Streaming Act (PLSA). The first defendant to be charged under 18 U.S.C. § 2319C, Joshua Streit, ultimately pleaded guilty to related computer intrusion offenses. Streit was sentenced in March of this year to 3 years’ imprisonment and ordered to pay nearly \$3 million in restitution to victims of his illicit-streaming conduct, and \$500,000 in forfeiture for his role in operating a pirate streaming site that offered unauthorized streams of various professional sports events. Based on his conduct, in addition to the PLSA, Streit was also charged with wire fraud, extortionate threats, and computer intrusion.

The Department continues to pursue major illicit streaming services using criminal statutes that predate the PLSA, including criminal copyright infringement, wire fraud, and money laundering. For example, earlier this year the founder of the pirate TV service Gears TV, Omar Carrasquillo, was sentenced to 66 months’ imprisonment and ordered to pay more than \$30 million in forfeiture and \$15 million in restitution. Several of the eight individuals charged in 2019 for their roles in operating pirate streaming services Jetflix/iStreamitAll, among the largest pirate streaming sites at the time, have since pleaded guilty, and have received sentences as high as 57 months.

46. My understanding is that there are at least seven felony streaming cases that have been referred to the DOJ. These involve illegal streaming subscription services that are operated from the U.S. To date I am not aware that indictments have been sought in any of these cases. Can we expect to see action soon from the DOJ on these or other cases under the new felony streaming law?

Response: The Criminal Division and EOUSA state as follows:

It is not appropriate for the Department to comment on specific pending cases. As a general matter, however, the Department is in frequent contact with representatives of affected industries and has actively sought their assistance in identifying large-scale illicit streaming sites. As noted above, prosecution of large-scale commercial pirate streaming sites remains a priority, and the Department will pursue such cases with all appropriate statutory tools available.

Although the new offense created by the PLSA provides felony penalties in a wider range of streaming cases, the Department continues to rely for enforcement on existing criminal copyright statutes and other criminal laws (such as wire fraud and computer intrusion), in lieu of or in addition to charges under 18 U.S.C. § 2319C, for several reasons.

First, although § 2319C provides enhanced felony penalties for individuals operating illicit streaming sites, it does not include forfeiture authority for criminal proceeds or for property used to facilitate streaming piracy offenses. Because forfeiture is an important tool in shutting down and deterring commercial piracy operations, where possible, the Department continues to rely on pre-PLSA criminal statutes with accompanying forfeiture authority, such as traditional criminal copyright statutes.

Second, although as part of the PLSA new criminal penalties were enacted at the end of 2020, amendments to the United States Sentencing Guidelines that incorporate the new criminal offense at 18 U.S.C. § 2319C did not take effect until November 1, 2023. While the Guidelines applicable to copyright offenses have long posed a challenge to sentencing in streaming cases (because sentences are determined largely by “infringement amount,” and the Guidelines Commentary only provides guidance on valuing individual copies of works, rather than performances or streams of copyright works), the lack of a specifically designated Guidelines provision applicable to § 2319C or method of calculation of infringement amount has left additional uncertainty as to how courts should sentence cases charged under the new statute. The 2023 amendments to the Sentencing Guidelines tie § 2319C offenses to the same Guidelines provision applicable to copyright offenses. Unfortunately, despite the Department’s recommendation to the Commission to address the issue, the Commission declined to amend the Guidelines to provide additional clarity or guidance to courts regarding how the “infringement amount” should be determined in cases involving illicit internet streaming, or to address the PLSA’s enhancements for offenses involving “works being prepared for commercial public performance.”

47. Former Senator Leahy and I partnered together to enact the Protecting Lawful Streaming Act. This bill finally closed the so-called “streaming loophole” by giving DOJ the authority to pursue felony charges against large scale, commercial piracy organizations. Importantly, this law doesn’t allow the DOJ to target individual

streamers, companies pursuing licensing deals in good faith, or internet service providers. This law is what we call a win-win for everyone.

- a. Thus far, how many prosecutions been pursued under the Protecting Lawful Streaming Act? Of these prosecutions, how many have been successful, and what have been the sentences issued to criminals?**

Response: The Criminal Division and EOUSA state as follows: To date, one defendant charged under § 2319C has been sentenced. Joshua Streit, who operated an illicit streaming site that provided unauthorized streams of a variety of professional sporting events and related content, was charged in the Southern District of New York with violations of 18 U.S.C. § 2319C, as well as wire fraud, computer intrusion, and extortionate threats. In March 2023, after pleading guilty to computer intrusion, Streit was sentenced to 3 years’ imprisonment, as well as nearly \$3 million in restitution for victims of illicit streaming and \$500,000 in forfeiture.

- b. What specific steps has the DOJ undertaken to educate rights holders about the Protecting Lawful Streaming Act and to work with them to enforce their rights? And what has the response been from rights holders to these steps?**

Response: The Criminal Division and EOUSA state as follows:

The Department circulated guidance to federal prosecutors regarding the PLSA in early 2021. Further, the Department also regularly communicates with representatives of rights-holders and other groups affected by copyright piracy to exchange information regarding emerging piracy trends that law enforcement and the private sector are observing; to highlight the availability and importance of criminal enforcement; and to invite and encourage referrals to law enforcement agencies. Many of these same stakeholders were involved in the working group your staff convened in 2020 to draft the bill that became the PLSA, and so are already familiar with the text and substance of the PLSA.

The Department continues to engage in outreach to make rights holders aware of criminal enforcement against piracy as well as civil and other remedies that may be available to them. The Department has long looked to rights holders to seek out their expertise in identifying large-scale piracy sites that have evaded civil enforcement efforts. The Department hosts an annual meeting for law enforcement and IP industry representatives to discuss the Department’s efforts in combating intellectual property rights violations, including through criminal enforcement of digital piracy, and this annual meeting includes rights holders associated with the copyright industries. Similarly, the Department supports and participates in the IP Summit hosted by the National Intellectual Property Rights Coordination Center (IPR Center), which includes multiple representatives from the copyright industry. Both events include substantial discussion of copyright enforcement in the digital era.

48. Some countries have taken a different and more holistic approach to combatting piracy. For example, what are your thoughts on site blocking via *no-fault injunctions*, which is a remedy relied upon by other countries, but not the U.S.?

Response: The Criminal Division and EOUSA state as follows:

Beyond criminal prosecution, the Department employs a range of legal authorities to disrupt illegal piracy operations, including the authority to forfeit facilitating property and proceeds traceable to copyright offenses. For example, during last year’s FIFA World Cup Finals (in December 2022), the Department (through the U.S. Attorney’s Office for the District of Maryland, in conjunction with the Criminal Division’s Computer Crime and Intellectual Property Section and in collaboration with the Department’s International Computer Hacking and Intellectual Property (ICHIP) Network and rights holders), worked with HSI Baltimore to seize a total of 78 domain names being used by illicit streaming sites that offered pirated versions of World Cup soccer matches. The first round of 55 domain name seizures was conducted on December 10, shortly before the tournament’s quarterfinal matches. Investigators then developed additional leads (based on, among other things, information from rights holders and public social media discussions regarding still-active pirate streaming sites) and effectuated seizures of a second round of 23 domain names on the eve of the widely watched World Cup final and third place match. These domain seizures, which relied on existing forfeiture authorities for property connected to copyright crimes, significantly disrupted the ability of multiple commercial pirate streaming sites to operate and collect revenue during the World Cup tournament. In addition, in the wake of these seizures, some streaming sites, including those that were not directly targeted for seizure during the operation, announced that they would no longer provide unauthorized streams of soccer matches, indicating that Operation Offsides had a deterrent effect beyond the specific domains that were seized.

The Department has employed other legal tools, including restraining orders and injunctions, to disrupt internet sites engaged in or facilitating criminal conduct (such as servers involved in the command and control of botnets), and will continue to explore the use of such authorities in appropriate cases.

The Department remains keenly aware that government actions to block, disable, or disrupt internet sites and servers can have significant implications for the protection of freedom of expression. Therefore, in considering the use of any existing legal authorities to disrupt internet sites, or contemplating new legal authorities to facilitate such actions, extra care is warranted.

49. The House Committee on Appropriations report in explanation of the accompanying bill making appropriations for Commerce, Justice, Science, and Related Agencies for FY22, p. 61, states: “*Illegal Pirate Sites.—Significant commercial scale infringing activities continue unabated, posing a significant threat to the livelihoods of authors, creators, and copyright owners, while perpetrating a fraud on unsuspecting, law-abiding consumers. A*

Study by Frontier Economics on ‘The Economic Impacts of Counterfeiting and Piracy’ estimates that by 2022, the global value of piracy would be \$384–856 billion, with estimated tax losses to governments at \$199–\$270 billion. Because of the harm to consumers and the creative sector, the Committee directs the Department of Justice to prioritize criminal copyright infringement cases, to work closely with prosecutors in local district U.S. Attorney’s Offices, and to detail within existing reports on copyright enforcement activities the investigations and prosecutions brought under existing legal authorities.”

Can you please provide an update on how the DOJ is prioritizing criminal copyright cases and how the DOJ is working closely with prosecutors in local district U.S. Attorney’s Offices to combat significant commercial scale infringing activities?

Response: The Criminal Division and EOUSA state as follows:

The Department, through the Criminal Division and U.S. Attorneys’ Offices, continues to place a high priority on combating large-scale copyright piracy across a range of media and in multiple jurisdictions, using a variety of legal tools. Within the past two years the Department has obtained convictions, significant prison sentences, and sizable forfeiture and restitution orders against multiple high-profile sites and their operators, including the illicit operation of the Gears TV/Reloaded and JetFlicks/iStreamItAll services. Last year the Department obtained indictments against two Russian nationals responsible for operating Z-Library, one of the world’s largest e-book piracy sites, and earlier in the year obtained a nearly 21-month sentence against a British member of the SPARKS release group, which had been one of the largest sources of pirated movie and television content on the internet before much of the group’s infrastructure was taken down in 2020. The Department worked with HSI, the National Intellectual Property Rights Coordinator Center, and rights holders to disrupt dozens of illicit sports streaming services during the 2022 World Cup tournament in Qatar.

The Department’s Criminal Division engages in regular outreach efforts with representatives of copyright-intensive industries and other stakeholders to encourage and facilitate referrals of potential criminal IP cases and provides regular training to agents and prosecutors on criminal investigations and prosecution of criminal copyright cases. The Department provided specific guidance on the PLSA to the United States Attorneys’ Offices both shortly after enactment and in subsequent Department trainings, highlighting its potential application in criminal piracy cases, and offers technical assistance to those Assistant United States Attorneys who may be interested in bringing criminal charges under the new PLSA.

Cybersecurity

50. What impact do you see emerging technologies, such as artificial intelligence, having on helping stop cybersecurity-related crimes and on perpetrating such crimes? What is the

DOJ doing to prepare for the advent of more sophisticated AI – again, both in terms of using artificial intelligence as a tool to help combat crime and as a tool used to perpetrate crime?

Response: Like most emerging technologies, artificial intelligence (AI) has the potential to enhance the capabilities of both law enforcement and criminals. AI may be used to quickly identify patterns in large amounts of data, which can help law enforcement more efficiently identify criminal conduct. At the same time, the Department has been considering how to prevent criminals from using AI to more easily identify victims and flaws in cybersecurity. Large language models can also be used by cybercriminals to quickly develop convincing phishing and spear-phishing emails and texts. Some models could be used to refine malicious code, including ransomware, to make it more effective. The Department is involved in Administration initiatives to identify how AI can support our mission, including in combating cybercrime. In addition, to prepare to combat crime perpetrated with AI, the Department is building expertise in AI and has engaged with AI providers.

51. Could you please discuss the practical implications regarding DOJ’s ability to protect the public from child predators, foreign-based IP criminal networks, domestic terror threats, and traffickers with the proliferation of the use of encryption, such as end-to-end encryption, on various popular digital platforms?

Response: The proliferation of end-to-end and user-only-access encryption is a serious issue that increasingly limits law enforcement’s ability, even after obtaining a lawful warrant or court order, to access critical evidence and information needed to disrupt threats, protect the public, and bring perpetrators to justice. It is important to address law enforcement’s legitimate need to protect public safety, while at the same time recognizing civil liberties, economic, and cybersecurity concerns.

52. What are the top priorities that Congress should address to help your agency and the Administration better fight cybersecurity attacks? Are there additional authorities which Congress should provide to assist you in preventing, investigating, and prosecuting cybercrimes?

Response: In addition to the actions the Department is already taking with existing authorities, collaborations, and resources, as reflected in the Comprehensive Cyber Review, the Department’s number one need in this area is the ability to recruit and retain a best-in-class cyber workforce. None of the vital work the Department does to keep Americans safe and provide them justice is possible without our people. Keeping up with increasingly sophisticated threats requires significant specialized skills that are in high demand elsewhere in the federal government and in the private sector. Appropriations from Congress will determine the extent to which the Department is able to achieve that critical goal.

The Department has presented to Congress a number of legislative proposals that would make investigations more effective and efficient as well as possible criminal prohibitions and penalties to better disrupt and deter malicious actors. These include:

- Proposal to amend Section 18 U.S.C. § 1030(c) to add language specifying penalties for the crime of conspiracy to violate the Computer Fraud and Abuse Act, which is currently not specified in the Act.
- Proposal to amend 18 U.S.C. § 3238 by eliminating the requirement that an extradited defendant be tried in the venue where “first brought” into the United States and permitting an extradited defendant to be tried in any applicable venue in the United States, potentially saving millions of dollars of U.S. taxpayer funds.
- Proposal to amend 18 U.S.C. § 1510(b)(3), which prohibits covered financial institutions from notifying others of certain subpoenas they receive, to cover certain virtual asset service providers (VASPs) that operate as money services businesses, and to expand the anti-tip-off prohibition in 18 USC § 1510(b) to cover additional notable serious offenses.

The Department looks forward to working with Congress to make sure the Department can detect, disrupt and deter those who would harm our country, its people, and its interests.

53. We continue to see an increase of cyberattacks, threatening our national, economic, and personal security. This was highlighted in the DOJ’s July 2022 “Comprehensive Cyber Review” report. To combat future cyberattacks we need a coordinated, whole-of-government approach to this issue.

- a. What must be done to improve coordination among the many actors that play a role in combatting cyberattacks, stopping future attacks, and bringing the bad actors to justice?**

Response: The Department works closely with other federal agencies and foreign, state, local, Tribal, and territorial law enforcement partners as part of a whole-of-government approach to combat cyber threats. The Department (via the FBI) does so as co-chair, along with CISA, of the Joint Ransomware Task Force, which was created by the Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA). Within the Joint Ransomware Task Force structure, the Department and FBI coordinate numerous lines of effort against ransomware, including threat ecosystem mapping and actor prioritization; disruption operations; and the sequenced use of investigative and prosecutorial tools in conjunction with sanctions and rewards for information leading to arrest.

One aspect of this coordination is through federal cybersecurity centers like the National Cyber Investigative Joint Task Force (NCIJTF). NCIJTF is composed of over 30 partners from law enforcement agencies, the U.S. Intelligence Community, and the Department of Defense.

Through its leadership of the NCIJTF, the FBI manages efforts to coordinate, integrate, and share information on cyber threat investigations. Specifically, when a significant cyber incident occurs, the Department engages with DHS’s Cybersecurity and Infrastructure Security Agency (CISA) on our respective response efforts under Presidential Policy Directive 41. The FBI and the broader Department focus on threat response, and CISA focuses on asset response.

The Department continues to evolve and adopt lessons-learned aimed at increasing coordination and information sharing throughout the government. For instance, consistent with a whole-of-government approach, the Department has established coordination processes with the Department of Defense and agencies in the intelligence community for handling ransomware threats. FBI liaisons detailed to partner agencies also help manage information sharing and operational issues that arise daily.

b. How is DOJ coordinating amongst its components to effectively coordinating within its various areas of expertise to address cyber incidents and cybercrimes?

Response: The Department ensures close coordination on cyber investigations, which are primarily conducted through the Criminal Division, National Security Division (NSD), and the FBI. These components, and other Department components as appropriate, confer in weekly intra-departmental meetings focused on cyber operational and policy issues. Additionally, the Criminal Division, NSD, and FBI regularly exchange personnel on detail assignments to encourage a more comprehensive understanding of the Department’s cyber threat activities. The recently instituted Cyber Fellows Program is another way the Department is working to develop new prosecutors and ensure cross-component coordination. Each fellow will rotate through the Criminal Division’s Computer Crime and Intellectual Property Section, NSD’s Counterintelligence and Export Control Section, and the U.S. Attorney’s Offices to gain exposure to a broad range of the Department cyber cases. Additionally, the Department implements specialized coordination, as needed, to address evolving cyber threats. For example, to address increasing, significant ransomware attacks, the Department adopted enhanced reporting mechanisms and focused additional personnel and effort on disrupting, investigating, and prosecuting ransomware and digital extortion crimes. The Department’s broader reporting requirements for cyber and cyber-enabled crime investigations, including for ransomware activity, requires affirmative deconfliction checks and updated recordkeeping in case management systems, and Urgent Reports to inform Department leadership of major developments in significant investigations and litigation.

c. How are you ensuring that the DOJ is effectively coordinating with other government agencies, including CISA and the Secret Service, on these issues?

Response: The Department works closely with other federal agencies and foreign, state, local, Tribal, and territorial law enforcement partners as part of a whole-of-government approach to

combat cyber threats. The Department (via the FBI) does so as co-chair, along with CISA, of the Joint Ransomware Task Force, which was created by the Cyber Incident Reporting for Critical Infrastructure Act (CIRCA). Within the Joint Ransomware Task Force structure, the Department and FBI coordinate numerous lines of effort against ransomware, including threat ecosystem mapping and actor prioritization; disruption operations; and the sequenced use of investigative and prosecutorial tools in conjunction with sanctions and rewards for information leading to arrest.

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Lastly, the Department has a long, productive history of working with the U.S. Secret Service on cyber investigations. The U.S. Secret Service has been the investigative agency responsible for some of the largest data breach cases the Department has prosecuted and remains a valued law enforcement partner. The Criminal Division has regularly provided training to the U.S. Secret Service and coordinated with them on law enforcement policy matters.

d. How have you and how will you continue to increase cooperation between private actors and companies – particularly companies engaged in cutting edge research and development of emerging technologies – and the federal government on these issues?

Response: The Department’s strong partnerships with the private sector have been essential to combating cyber threats. For example, private sector collaboration has been key in the Department’s disruption efforts against transnational criminal cyber organizations for many years and has provided critical support in operations that have dismantled infrastructure used for botnets and ransomware attacks. Also, the Department serves as a member of CISA’s Joint Cyber Defense Collaborative (JCDC) alongside the private sector and other federal agencies.

JCDC promotes sharing of cyber risk information across these groups and develops proactive cyber plans. Additionally, CCIPS conducts outreach to the private sector through participation in industry conferences, contacts with trade organizations, and ad-hoc conversations. CCIPS’ Cybersecurity Unit develops white papers on topical cybersecurity issues, such as intelligence gathering on the Dark Web, creating a vulnerability disclosure program, and working with law enforcement before, during, and after a cyber incident. The Department continues to look for ways to enhance these relationships and partnerships with the private sector. Forthcoming victim reporting requirements will be another opportunity for future beneficial engagement.

54. In the DOJ’s July 2022 “Comprehensive Cyber Review” report it was stated the DOJ would establish the following the following to combat fast-changing cyber threats: (1) National Cryptocurrency Enforcement Team (NCET); (2) Civil Cyber-Fraud Initiative (CCFI); (3) Cyber Fellowship; and (4) Ransomware and Digital Extortion Task Force.

a. What actions have been taken by each of these four efforts and what progress has been made in each to improve cyber threat responses?

Response: The National Security Division, FBI, and Criminal Division advise as follows:

The Department’s ransomware work has resulted in a wide array of efforts aimed at disrupting the ransomware ecosystem. In November 2021, the Department announced the seizure of \$6.1 million in funds traceable to ransom payments received by a Russian national charged with conducting Soninke/Reville ransomware attacks.⁹⁸ In October 2022, Sebastian Vachon-Desjardins of Canada, received a 20-year sentence for his role in NetWalker ransomware attacks, and he was ordered to forfeit.⁹⁹ Cooperation with Canada proved instrumental in the successful prosecution of Vachon-Desjardin. In January 2023, the Department announced a months-long disruption campaign against the Hive ransomware group wherein the FBI penetrated Hive’s computer networks, captured.¹⁰⁰ In June 2023, in conjunction with the U.S. Attorney’s Office for the District of New Jersey, the Department announced charges against and the arrest of Ruslan Magomedovich Astramirov deploying numerous LockBit ransomware and other cyberattacks against computer systems in the United States, Asia, Europe, and Africa as part of the LockBit ransomware campaign. In addition to demonstrating the Department’s determination to seek opportunities to disrupt the ransomware ecosystem, instances like the prosecution of Vachon-Desjardins and the Hive disruption action demonstrate the Department’s focus on international collaboration. The Department further supports international collaboration by supporting the

⁹⁸ See Press Release, U.S. Dep’t of Just., Ukrainian Arrested and Charged with Ransomware Attack on Kaseya (Nov. 8, 2021), <https://www.justice.gov/opa/pr/ukrainian-arrested-and-charged-ransomware-attack-kaseya>.

⁹⁹ See Press Release, U.S. Dep’t of Just., Canadian National in Connection with Ransomware Attacks Resulting in the Payment of Tens of Millions of Dollars in Ransoms (Oct. 4, 2022) <https://www.justice.gov/opa/pr/canadian-national-sentenced-connection-ransomware-attacks-resulting-payment-tens-millions>.

¹⁰⁰ See Press Release, U.S. Dep’t of Just., U.S. Department of Justice Disrupts Hive Ransomware Variant (Jan. 26, 2023), <https://www.justice.gov/opa/pr/us-department-justice-disrupts-hive-ransomware-variant>.

White House’s Counter Ransomware Initiative, which brings together a multitude of countries focused on preventing and combating ransomware attacks.

The Department continues to collaborate with various federal agencies. Deconfliction continues internally within Department components. The Criminal Division’s Computer Crime and Intellectual Property Section and the FBI’s Cyber Division collaborate on ransomware investigations and prosecutions. Both entities prioritize support for ransomware cases and use the FBI’s Standardized Approach for Banding Ransomware (SABR) in its prioritization of these cases. Externally, the Department deconflicts investigations through the National Cyber Investigative Joint Task Force (NCIJTF). One way the Department works to strengthen public-private partnerships is through participation in the Joint Cyber Defense Collaborative (JCDC) established by the DHS’s Cybersecurity and Infrastructure Security Agency (CISA). The JCDC unites public and private sector partners to gather, analyze, and share actionable cyber risk information. The Department and DHS further collaborate on the Cyber Safety Review Board, which was established pursuant to President Biden’s Executive Order 14028 on “Improving the Nation’s Security.”

In August 2021, the Department announced the creation of a new Cyber Fellowship program designed to develop a new generation of prosecutors and attorneys equipped to handle emerging national security threats. Two classes of three fellows each have joined the Cyber Fellows program. Each fellow is working through their rotations in the Criminal Division’s Computer Crime and Intellectual Property Section (CCIPS), NSD’s Counterintelligence and Export Control Section, and the U.S. Attorneys’ Offices to gain exposure to a broad range of the Department’s cyber cases.

Since February 2022, with the appointment of the first Director of the NCET, the NCET has grown to over two dozen attorneys and staff dedicated to three primary lines of effort. First, the NCET has worked to identify, pursue, and support investigations involving the criminal use of digital assets, with a particular focus on virtual currency exchanges and platforms that are enabling the misuse of digital assets to commit or facilitate criminal activity. Since that time, NCET members have led and supported international enforcement efforts to dismantle online illicit platforms, including the international coordinated takedown of the Bitzlato criminal exchange, responsible for illicitly facilitating billions of dollars of transactions; worked on cutting-edge investigations involving the theft and exploits of DeFi platforms, including by North Korean actors seeking to illicitly generate revenue in contravention of sanctions; and led the coordination of seizure warrants totaling over \$112 million in cryptocurrency investment scams known as “pig butchering” schemes.

Second, the NCET has worked to set the Department’s strategic priorities regarding digital asset technologies and identify areas for increased investigative and prosecutorial focus. To that end, the NCET led the Department’s efforts in issuing two reports in response to President Biden’s Executive Order 14067 on “Ensuring Responsible Development of Digital Assets”: How to

Strengthen International Law Enforcement Cooperation for Detecting, Investigating, and Prosecuting Criminal Activity Related to Digital Assets (June 2022) and The Role of Law Enforcement Agencies in Detecting, Investigating, and Prosecuting Criminal Activity Related to Digital Assets (September 2022), and in September 2022 established the Digital Asset Coordinator Network, a network of more than 150 designated federal prosecutors from across the Department that serves as the Department’s primary forum for prosecutors to obtain and disseminate specialized training, technical expertise, and guidance about digital asset crimes.

Third, the NCET has led the Department’s efforts to coordinate with domestic and international law enforcement partners, regulatory agencies, and private industry to combat the criminal use of digital assets, as well as provide support and training to federal, state, local, and international law enforcement to build capacity to investigate and prosecute crimes involving digital assets in the United States and around the world. Since February 2022, NCET members have undertaken over 150 engagements and trainings on digital assets with law enforcement and private sector partners across six continents.

The Department launched the Civil Cyber-Fraud Initiative in October 2021, and its work is active and ongoing. The Civil Cyber-Fraud Initiative combines expertise in civil fraud enforcement, government procurement, and cybersecurity to contribute to the government-wide effort to combat new and emerging cyber threats to the security of sensitive government information and critical systems. The Initiative seeks to hold accountable entities or individuals that put government information or systems at risk in connection with government contracts or grants by knowingly providing deficient cybersecurity products or services, knowingly misrepresenting their cybersecurity practices or protocols, or knowingly violating obligations to monitor and report cybersecurity incidents and breaches.

Since the Initiative was announced, the Department has received a significant number of referrals from within the government as well as from whistleblower complaints disclosing alleged cybersecurity violations by government contractors or grantees. Three matters have been resolved, two of which involve the failure to protect sensitive health and/or personal information, and the most recent of which involves cybersecurity deficiencies in information technology services. In March 2022, Comprehensive Health Services (CHS), a provider of global medical support services, agreed to pay \$930,000, in part to resolve allegations that it knowingly misrepresented its compliance with contract requirements to provide medical support services at government-run facilities in Iraq and Afghanistan by failing to use a secure electronic medical record system to store medical records, including the confidential identifying information of United States service members, diplomats, officials and contractors working and receiving medical care in Iraq.¹⁰¹

¹⁰¹ See Press Release, U.S. Dep’t of Just., Medical Services Contractor Pays \$930,000 to Settle False Claims Act Allegations Relating to Medical Services Contracts at State Department and Air Force Facilities in Iraq and

In March 2023, Jelly Bean Communications Design LLC and its owner¹⁰² agreed to pay \$293,771 to resolve allegations that they knowingly violated contract requirements when they failed to secure personal information on a federally funded Florida children’s health insurance website that they created and maintained.¹⁰³ The United States alleged that Jelly Bean knowingly failed to properly maintain, patch, and update software systems, and more than 500,000 applications for medical assistance were exposed. Through the pursuit of matters like these, as well as outreach to industry stakeholders, the Civil Cyber-Fraud Initiative aims to build resilience, increase timely reporting of incidents and breaches, promote adherence to cybersecurity obligations, reduce the competitive disadvantage for responsible vendors, and recover damages for affected federal programs and agencies.

In September 2023, Verizon Business Network Services LLC agreed to pay over \$4 million to resolve allegations that it had failed to completely satisfy certain cybersecurity controls in connection with an information technology service provided to federal agencies. In connection with the settlement, the Department acknowledged that Verizon took a number of significant steps entitling it to credit for cooperating with the government.

b. What additional efforts does DOJ intend to undertake to combat cyber threats?

Response: With respect to cyber threats, the Department continues to prioritize prevention and placing victims at the center of its mission. The Department will also continue to message the importance of incident reporting by victims of cybercrime. Victim reporting can make a significant difference in the ability of the Department to recover stolen funds or obtain and use decryption keys in a timely manner. As the Attorney General said at the announcement of the Hive ransomware disruption, “[s]ince July of last year, we provided assistance to over 300 victims around the world, helping to prevent approximately \$130 million in ransom payments.” The Department will continue to work with victims to counter ransomware, mitigate harm, and prevent losses.

Afghanistan (Mar. 8, 2022), <https://www.justice.gov/opa/pr/medical-services-contractor-pays-930000-settle-false-claims-act-allegations-relating-medical>.

¹⁰² See Press Release, U.S. Dep’t of Just., Jelly Bean Communications Design and its Manager Settle False Claims Act Liability for Cybersecurity Failures on Florida Medicaid Enrollment Websites (Mar. 14, 2023), <https://www.justice.gov/opa/pr/jelly-bean-communications-design-and-its-manager-settle-false-claims-act-liability>.

¹⁰³ Letter from Jonathan J. Wroblewski, Dir., Off. of Pol. and Legis., Crim. Div., U.S. Dep’t of Just., to J. Carlton W. Reeves, Chair, U.S. Sent’g Comm’n (Feb. 15, 2023), <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/DOJ3.pdf>.

Transcript of Pub. Hearing on Proposed Amends., U.S. Sent’g Comm’n (Feb. 24, 2023), https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/0224_Transcript.pdf.

The Department also seeks to hire and retain experienced cyber prosecutors and investigators. Due to the technical nature of ransomware and other cyber threats, a knowledgeable and experienced workforce can make a significant difference in case outcomes. The Department hopes to make cybercrime-focused positions within the Department competitive and attractive.

55. In light on past DOJ budget requests directed toward protecting our nation from cyberattacks and cybercrime, how has the DOJ prioritized the spending of these resources to minimize fragmentation, overlap, or duplication of efforts between the DOJ and other agencies?

Response: The Comprehensive Cyber Review builds on past reports such as the Cyber Digital Task Force report in laying out the Department’s unique role to play in contributing to the whole of government effort to address cybersecurity. The Department is mindful that many players have interests impacted by transnational organized cybercrime and we are more effective when we recognize and welcome the efforts of others toward the same goal of protecting our country from criminal threats.

56. In 2021 we heard from the DOJ in our Ransomware hearing that the reluctance to report ransomware incidents and payments made may be driven by concerns “including a fear of regulatory action or reputational harm, or of an interruption to business operations.” In 2022 the Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA) was signed into law.

a. Does this law go far enough in addressing the reporting issue? What more can be done?

Response: The Department has yet to form an opinion on the impact of CIRCIA on ransomware reporting because CIRCIA has yet to be fully implemented. The Act required CISA to publish a notice of public rulemaking (NPRM) within two years of enactment of the Act, meaning the NPRM must be published by March 2024. CISA has an additional 18 months after publication of the NPRM to issue a final rule. Per CIRCIA, that must occur no later than August 2025.

The liability and other legal protections provided under CIRCIA were designed to address areas of concern that the private sector identified as disincentives to reporting. The Department hopes these protections will spur more industry reporting, but the Department will be unable to assess whether CIRCIA achieved that goal until the final rule is issued and reporting trends can be observed.

The Department has previously recommended language to amend a subsection of CIRCIA in 6 U.S.C. § 681e(c)(3), to clarify that a report could not be used against the entity submitting the

report but information that appeared in CIRCIA reports could be used to investigate and prosecute the criminals responsible for the cyber incident.

b. What are the primary concerns you have heard from the private sector regarding reporting requirements? How are you working to address these concerns?

Response: The most common concern the Department has heard during the Department’s outreach to the private sector about cyber incident reporting requirements is duplicative mandatory reporting requirements imposed by multiple federal regulatory agencies and state authorities. The Department does not play a role in mandatory cyber incident reporting but have been working with CISA to help alleviate the reporting burden on entities that have suffered a breach or ransomware attack. Working with CISA, the Department is identifying information that both agencies require for our respective post-incident response activities so that information may be collected once by the appropriate agency and shared with other agencies as necessary rather than being produced separately for each.

c. Thus far, to what extent has the DOJ collaborated with the Cybersecurity and Infrastructure Security Agency (CISA)? How would you characterize the success of this collaboration thus far?

Response: There is regular, frequent collaboration between the Department and CISA on cyber matters. CISA’s Office of the Chief Counsel and the Criminal and National Security Divisions are in frequent contact on legal and policy matters affecting each agency. For instance, the Cybersecurity Information Sharing Act of 2015 (CISA 2015) required the Department and DHS to jointly produce guidance for private entities on sharing cyber threat indicators and defensive measures consistent with the Act. Subsequently, the Department and DHS have regularly coordinated on further interpretation of CISA 2015 and published an updated CISA 2015 guidance document in 2020. Operationally, both agencies’ cyber centers have regular coordination calls regarding cyber incidents. The FBI has assigned liaisons assigned to CISA to facilitate coordination between the two agencies. The collaboration between the Department and CISA is good and improving.

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

Response: The Criminal Division advises as follows:

The Department has taken a number of steps, described below, to enhance the recruitment and retention of cyber professionals. It is important to note first, however, that the Department of

Homeland Security (DHS) has flexibilities to hire and compensate cyber-skilled professionals that are not available to the Department. Specifically, in 2014, Congress granted DHS the authority to create a talent management system for cybersecurity positions, and the Office of Personnel Management (OPM) subsequently approved amendments to Title 6 of the Code of Federal Regulations to create the DHS Cybersecurity Talent Management System (CTMS), which was launched in November 2021. DHS’s use of those authorities has permitted DHS to offer higher compensation (e.g., retention incentives tied to specific IT certifications) that are competitive with the private sector and use hiring flexibilities not offered to other federal agencies.

Although the Department had a relatively flat level of dedicated cyber prosecutors and other cyber workforce personnel since 2010, the Department has continued to achieve investigative and prosecutorial successes that are central to the nation’s cybersecurity. That cyber workforce personnel has included computer scientists, computer engineers, IT specialists, digital operations specialists, digital forensics specialists, electronics engineers, and cyber systems and security engineers.

To enhance the Department’s critical work on cybersecurity issues, in mid-2022, the Department conducted a strategic review to identify current and future challenges as well as additional steps that could be taken to address the Department’s need to recruit and retain professionals with cyber skills. The Department’s 2022 Comprehensive Cyber Review (CCR) identified the need for the Department to develop hiring and retention strategies to attract staff for hard-to-fill cyber/STEM positions (such as computer scientists, electronics engineers, electronics technicians, information technology specialists, and telecommunications managers) and to retain a best-in-class cyber workforce to fulfill the Department’s investigative, prosecutorial, policy and defensive responsibilities.

Specific actions taken since the publication of the CCR include an internal campaign to educate component leadership regarding existing incentive and other authorities, as well as the creation of a cross-component working group focused on the Department’s cyber-related workforce. This group is working directly with the Office of the National Cyber Director on current interagency initiatives related to the federal government’s cyber workforce to identify hiring and compensation solutions to address the challenges the Department faces compared to the private sector, as well as compared to DHS and the Department of Defense, in attracting and retaining cyber-skilled professionals. In addition, the FBI has also established a Cyber and Technical Talent Task Force that has multiple lines of effort underway focused on ways to better recruit and retain cyber talent.

Following the publication of the CCR, in January 2023, Congress enacted Public Law No. 117-347, which specifically includes a provision authorizing the Attorney General to provide additional incentive pay – in an amount up to 25 percent of the basic pay of an eligible employee – to individuals in the Department, including the Federal Bureau of Investigation.

In October 2023, the Department adopted a Cybercrime Incentive Pay policy implementing the authorities granted by Public Law No. 117-347. Subject to the availability of funds, this policy allows components within the Department to allow for incentive pay for employees appointed to a position that requires significant cyber skills and that aids in the prevention, investigation, or prosecution of cybercrime. Congress has thus provided the Department a significant additional tool to help recruit and retain professionals with skills needed to investigate, disrupt, and prosecute cybercrime. However, this new authority is subject to the availability of appropriations, and Congress has yet to appropriate additional funds to support this authority.

The Department looks forward to working with Congress to ensure that the Department has sufficient resources to hire and retain cyber professionals who are paid commensurate with their best-in-class skills.

Better Cybercrime Metrics Act

On May 5, 2022, President Biden signed into law the *Better Cybercrime Metrics Act*. I was proud to co-lead this legislation with Senator Brian Schatz. This important law is intended to build the foundation of cybercrime reporting to the Department of Justice to help improve our nation’s response to cybercrime.

This law requires the Attorney General to enter an agreement with the National Academy of Sciences to develop a taxonomy for categorizing cybercrime and cyber-enabled crime within 90 days. It then requires the National Academy of Sciences to submit a report summarizing its taxonomy and findings.

58. Can you please provide an update on the status of the report being prepared by the National Academy of Sciences? Do you expect the report to be completed on time?

Response: The FBI started the work with the National Academy of Sciences in September 2023 and is on track to have the preliminary report completed within one year.

59. Have you considered ways in which to apply this taxonomy in other contexts beyond the requirements of this law?

Response: The FBI CJIS Division added a section to the Statement Of Work for the consideration of including in the taxonomy the cybercrime portion of the VAWA Reauthorization Act of 2022.

60. Have you taken any actions to begin establishing a category in NIBRS for the collection of cybercrime and cyber-enabled crime?

Response: In 2013, to address cybercrime within the National Incident-Based Reporting System (NIBRS), the FBI added the offenses of Identity Theft and Hacking/Computer Invasion. Cybercrimes are identified with a location code of cyberspace. Within the NIBRS, law enforcement agencies can also denote whether an offender was suspected of using a computer to perpetrate a crime.

Antitrust

61. This year the DOJ sued Google for monopolizing multiple digital advertising technology products in violation of Sections 1 and 2 of the Sherman Act. What news, if any, can you share with the Committee regarding the status of this case?

Response: The Antitrust Division states as follows:

On January 24, 2023, the Department’s Antitrust Division, along with several State Attorneys Generals, filed a civil antitrust suit against Google for monopolizing certain digital advertising technologies in violation of Sections 1 and 2 of the Sherman Act. Google filed a motion to dismiss the lawsuit, which was denied in full by the district court on April 28, 2023.

Since filing of the complaint, the Department has also announced that nine additional states – Arizona, Illinois, Michigan, Minnesota, Nebraska, New Hampshire, North Carolina, Washington, and West Virginia – have joined the Department and the Attorneys Generals of California, Colorado, Connecticut, New Jersey, New York, Rhode Island, Tennessee, and Virginia as co-plaintiffs. Longstanding Department policy and practice prevents the Department from commenting on pending or potential cases or investigations beyond what is in the public record.

62. On June 8, 2022, the DOJ, the U.S. Patent and Trademark Office (USPTO), and the National Institute of Standards and Technology (NIST) announced the withdrawal of the 2019 Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments. In an accompanying press release it was stated that the “...Justice Department will review conduct by standards essential patent (SEP) holders or standards implementers on a case-by-case basis to determine if either party is engaging in practices that result in the anticompetitive use of market power or other abusive processes that harm competition.” Since that announcement what has been the finding of the DOJ? How many instances of case-by-case reviews have been conducted by the DOJ since that announcement?

Response: The Antitrust Division advises as follows: The Department has encouraged parties that are concerned about behavior in the standards development ecosystem to bring conduct to

the Department’s attention. While the Department cannot disclose any specific investigations or confidential complaints concerning disputes over the licensing or assertion of SEPs, the Department will not hesitate to act if conduct by SEP holders or implementers threatens to harm competition.

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

Response: The Antitrust Division states as follows: Yes, as the Department said in withdrawing the 2019 Policy Statement, “the Justice Department will review conduct by standards essential patent (SEP) holders or standards implementers on a case-by-case basis to determine if either party is engaging in practices that result in the anticompetitive use of market power or other abusive processes that harm competition.”¹⁰⁴

64. As you know, competition policy and antitrust enforcement can have important implications for intellectual property policy. Both have the shared goal of encouraging innovation and competition.

a. How do you think the DOJ should approach antitrust enforcement against what we think of as “big tech?”

Response: The Antitrust Division states as follows:

The Department follows the facts and the law where they lead, and where appropriate the Department will not hesitate to enforce Section 2 of the Sherman Act across all industries, including the technology sector.

In digital markets, too often, gatekeepers use their market dominance to exploit consumers, workers, and small businesses. It is among the Department’s priorities to meet this challenge by faithfully enforcing the antitrust laws as Congress intended. To date, the Department has filed

¹⁰⁴ See Press Release, U.S. Dep’t of Justice, Justice Department, U.S. Patent and Trademark Office and National Institute of Standards and Technology Withdraw 2019 Standards-Essential Patents (SEP) Policy Statement (June 8, 2022), <https://www.justice.gov/opa/pr/justice-department-us-patent-and-trademark-office-and-national-institute-standards-and>.

multiple lawsuits challenging anticompetitive conduct by digital platforms, including historic lawsuits against Google alleging that its anticompetitive conduct in markets related to search and digital advertising technology violate Sections 1 and 2 of the Sherman Act.

b. How should it coordinate its approach with other agencies – including the Commerce Department and the Federal Trade Commission – that also have competencies with respect to these issues? Can you provide some examples of such coordination?

Response: The Antitrust Division (Division) states as follows:

The Division has closely collaborated with other agencies, including the Federal Trade Commission, and it will continue to do so. For example, as part of the Division’s efforts to modernize merger guidelines, the Department has worked side by side with the FTC, including jointly issuing Draft Merger Guidelines in July 2023. The process prior to release involved hosting meetings with a wide variety of stakeholders affected by merger enforcement, including consumers, workers, entrepreneurs, start-ups, farmers, investors, and independent businesses as well as state and foreign antitrust enforcers. The Division continues to host workshops with the FTC to help familiarize the public with the guidelines and learn from public feedback.

As for the Department of Commerce, the National Telecommunications and Information Administration collaborated this year with the Division on a report on improving competition in the mobile application ecosystem.¹⁰⁵ And in partnership with the U.S. Patent and Trademark Office, the United States Department of Agriculture, and the Federal Trade Commission, the Department is working to better understand patent licensing practices, particularly in the seeds industry. This collaboration allows the agencies to discuss the challenges facing farmers, small and mid-sized seed businesses, and plant breeders, while helping to promote innovation and protect competition.

c. How will the DOJ approach cross-cutting issues related to data that have antitrust implications but that may also implicate intellectual property, national security, cybersecurity, privacy, and other concerns?

Response: The Antitrust Division advises as follows: The antitrust laws apply to data in the same way they apply to other inputs. There are no inconsistencies or contradictions with enforcing the antitrust laws and promoting intellectual property, national security, cybersecurity, and privacy. Indeed, vigorous competition can spur the development of intellectual property and drive firms to better protect national security, cybersecurity, and privacy. At the same time,

¹⁰⁵ See National Telecommunications and Information Administration, Competition in the Mobile App Ecosystem (Feb. 1, 2023), <https://ntia.gov/report/2023/competition-mobile-app-ecosystem>.

facing competition domestically makes companies more competitive in markets abroad and enhances the competitiveness of the United States economy.

65. Google and Facebook are two of the most powerful and most influential companies in the world. Both completely dominate their corners of the online service provider market. And more Americans now get their news from Facebook or Google than news publishers. What do you plan to do to address the powers of those big tech companies that control access to information?

Response: The Antitrust Division states as follows:

The Department is working to promote competition in digital markets on multiple fronts, from bringing historic lawsuits against digital gatekeepers, to partnering with State Attorneys Generals and international enforcers and supporting legislation—including the American Innovation and Choice Online Act, and other legislation from members of the Committee—that will strengthen our ability to address the problem of monopoly power in digital markets and beyond. For example, the Department filed a lawsuit—along with several State Attorneys Generals—to end Google’s long-running monopoly in markets related to digital advertising technologies.

While longstanding Department policy and practice prevents the Department from commenting on pending or potential cases or investigations beyond what is in the public record, please rest assured that the Department remains committed to protecting competition in digital markets, and the Department will follow the facts and law wherever they lead.

Intellectual Property

66. As Ranking Member of the Intellectual Property Subcommittee, I have a keen interest in the work you are doing to protect intellectual property rights. I have asked you on multiple occasions about what work you are doing to investigate and prosecute intellectual property crimes. Can you please provide an update on your efforts as Attorney General to defend intellectual property rights, including from foreign actors like the Chinese Communist Party?

Response: The Department takes very seriously the national security threat to the United States posed by theft of intellectual property. In February 2023, the Department announced the creation of the Department’s “Disruptive Technology Strike Force” (Strike Force), a partnership between the Department of Justice and the Department of Commerce designed to enforce U.S. laws protecting U.S. advanced technologies from illegal acquisition and use by nation-state adversaries.¹⁰⁶ The Strike Force is already having an impact on defending intellectual property

¹⁰⁶ See Press Release, U.S. Dep’t of Just., Justice and Commerce Departments Announce Creation of Disruptive

rights, including from foreign actors like the Chinese Communist Party. For example, on May 16 2023, Department officials from multiple components and five different U.S. Attorneys’ Offices announced criminal charges in five cases and four arrests in connection with the new Strike Force.¹⁰⁷ Three of the cases have a nexus to Chinese companies and citizens.

67. What can Congress do to further improve the DOJ’s policies and efforts relating to the prevention and investigation of intellectual property crimes? What are your top priorities with respect to the DOJ’s intellectual property mission?

Response: Disrupting efforts to illicitly acquire sensitive U.S. technologies to advance authoritarian regimes, facilitate human rights abuses, and other nefarious purposes is a top priority for the Department. Keeping sensitive technology out of the hands of foreign adversaries, including Russia, China, and Iran, is critical to protect U.S. national security and democratic values throughout the world. Task Force KleptoCapture is an interagency law enforcement task force that is dedicated to enforcing sanctions, export controls, and economic countermeasures imposed in response to Russia’s unprovoked military invasion of Ukraine. Preventing and investigating intellectual property crimes requires a whole-of-government approach, and the Department works closely with federal and state partners to accomplish this mission.

68. How have you and how do you continue to work proactively with the IP Enforcement Coordinator and alongside DOJ’s sister agencies, especially DHS, to coordinate IP enforcement across the government?

Response: The Antitrust Division advises as follows: The Department’s work with the White House’s Intellectual Property Enforcement Coordinator (IPEC) and with other departments and agencies are detailed in the IPEC’s April 2023 “Annual Intellectual Property Report to Congress” (IPEC 2022 Annual Report).¹⁰⁸ The IPEC 2022 Annual Report details the Department’s activities during FY2022 relating to intellectual property protection and enforcement and details certain IP-related activities of the Department’s Antitrust Division.

69. The DOJ’s Computer Hacking and Intellectual Property (CHIP) program in the past Administration placed a high priority on fostering international cooperation and coordination of criminal IP enforcement efforts. How have you continued this tradition? What plans does the DOJ have for its international enforcement efforts? Has

Technology Strike Force (Feb. 16, 2023), <https://www.justice.gov/opa/pr/justice-and-commerce-departments-announce-creation-disruptive-technology-strike-force>.

¹⁰⁷ See Press Release, U.S. Dep’t of Just., Justice Department Announces Five Cases as Part of Recently Launched Disruptive Technology Strike Force (May 16, 2023), <https://www.justice.gov/opa/pr/justice-department-announces-five-cases-part-recently-launched-disruptive-technology-strike>.

¹⁰⁸ The White House, IPEC Annual Intellectual Property Report to Congress (Apr. 4, 2023), https://www.whitehouse.gov/wp-content/uploads/2023/04/FY22-IPEC-Annual-Report_Final.pdf.

DOJ expanded or enhanced current programs such as the Global Law Enforcement Network of International Computer Hacking and Intellectual Property (“ICHIP”) program, which contains the Intellectual Property Law Enforcement Coordinator (IPEC) program, and if so, how has it done so?

Response: The Criminal Division states as follows: The Department continues to place a high priority on international cooperation and coordination on cases and capacity building to address the fundamentally transnational nature of much IP crime. Since 2008, the Criminal Division’s Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) and the Computer Crime and Intellectual Property Section (CCIPS) have worked closely with the State Department to develop the Department’s international outreach capability. Beginning as the IP Law Enforcement Coordinator network, the program has grown (and been renamed) as the U.S. Transnational and High-Tech Crime Global Law Enforcement Network, or GLEN, comprised of ICHIP attorney advisors, global cyber forensic advisors, and ICHIP special agents. As the demand for international training and case-based mentoring has grown, the work of the GLEN has developed to include both IP and cybercrime issues, in a manner similar to the domestic CHIP program administered by U.S. Attorneys’ Offices and coordinated through the Criminal Division. The IPEC 2022 Annual Report details the many engagements, trainings, workshops, and coordinated operations with foreign partners carried out by the GLEN and hosted by ICHIP Advisors with the assistance of experienced CHIP attorneys, federal agents, and members of the Judiciary during FY 2022. These engagements occurred throughout Latin America, Africa, Europe, and Asia, and covered topics including counterfeit pharmaceuticals, online copyright piracy, transnational trade in fake goods, and investigation of the financial and technical structures that enable illicit trade by IP-infringing criminal organizations.¹⁰⁹

CCP Police Stations

Recent reports have revealed appalling evidence of the Chinese Communist Party (CCP) carrying out illegal, transnational policing operations across 53 countries, including the United States, targeting overseas critics of the CCP for harassment, threats against their families in China and “persuasion” to get them to return home.

In November 2022, FBI Director Christopher Wray testified before the Senate Homeland Security and Government Affairs Committee. During the hearing, Director Wray was asked about the CCP running unauthorized police stations in the United States. Director Wray acknowledged that he was aware of the CCP police stations and that he was very concerned.

70. Does DOJ believe that these CCP police stations present a threat to the United States?

¹⁰⁹ *Id.* at 141-43.

Response: These police stations are a threat, and the Department will not tolerate attempts by any foreign power to undermine the rule of law upon which our democracy is based.

71. What action has the Department of Justice taken to shutdown these illegal CCP police stations operating in the United States?

Response: On April 17, 2023, the Department announced the arrest and charging of two defendants living in New York City in connection with allegedly opening and operating an illegal overseas police station, located in lower Manhattan, New York, for a provincial branch of the Ministry of Public Security (MPS) of the People’s Republic of China (PRC).¹¹⁰ On the same day, the Department announced the unsealing of two criminal complaints filed by the U.S. Attorney’s Office for the Eastern District of New York in federal court in Brooklyn charging 44 defendants with various crimes related to efforts by PRC Ministry of Public Security (MPS) national police to harass Chinese nationals in New York and elsewhere in the United States; the defendants comprise 40 MPS officers and two officials in the Cyberspace Administration of China alleged to have perpetrated transnational repression.¹¹¹ Additionally, on June 20, 2023, a federal jury in Brooklyn, New York, returned guilty verdicts against three defendants of charges including acting and conspiring to act in the United States as illegal agents of the PRC, conspiracy to commit interstate stalking, and interstate stalking as part of the PRC’s repatriation program, “Operation Fox Hunt.”¹¹² The Department will continue to take resolute actions to counter the PRC’s campaign of transnational repression.

72. How many individuals has the Department of Justice prosecuted for running these CCP police station?

Response: On April 17, 2023, the Department announced the arrest and charging of two defendants living in New York City in connection with allegedly opening and operating an illegal overseas police station, located in lower Manhattan, New York, for a provincial branch of the Ministry of Public Security (MPS) of the People’s Republic of China (PRC).¹¹³ On the same

¹¹⁰ See Press Release, U.S. Dep’t of Just., Two Arrested for Operating Illegal Overseas Police Station of the Chinese Government (Apr. 17, 2023), <https://www.justice.gov/opa/pr/two-arrested-operating-illegal-overseas-police-station-chinese-government>.

¹¹¹ See Press Release, U.S. Dep’t of Just., Defendants Accused of Creating Fake Social Media Accounts to Harass PRC Dissidents, and Working with Employees of a U.S. Telecommunications Company to Remove Dissidents from Company’s Platform (Apr. 17, 2023), <https://www.justice.gov/opa/pr/40-officers-china-s-national-police-charged-transnational-repression-schemes-targeting-us>.

¹¹² See Press Release, U.S. Dep’t of Just., Federal Jury Convicts Three Defendants of Interstate Stalking of Chinese Nationals in the U.S. and Two of Those Defendants for Acting or Conspiring to Act on Behalf of the People’s Republic of China (Jun. 20, 2023), <https://www.justice.gov/usao-edny/pr/federal-jury-convicts-three-defendants-interstate-stalking-chinese-nationals-us-and>.

¹¹³ See Press Release, U.S. Dep’t of Just., Two Arrested for Operating Illegal Overseas Police Station of the Chinese Government (Apr. 17, 2023), <https://www.justice.gov/opa/pr/two-arrested-operating-illegal-overseas-police-station-chinese-government>.

day, the Department announced the unsealing of two criminal complaints filed by the U.S. Attorney’s Office for the Eastern District of New York in federal court in Brooklyn charging 44 defendants with various crimes related to efforts by PRC Ministry of Public Security (MPS) national police to harass Chinese nationals in New York and elsewhere in the United States; the defendants comprise 40 MPS officers and two officials in the Cyberspace Administration of China alleged to have perpetrated transnational repression.¹¹⁴ Additionally, on June 20, 2023, a federal jury in Brooklyn, New York, returned guilty verdicts against three defendants of charges including acting and conspiring to act in the United States as illegal agents of the PRC, conspiracy to commit interstate stalking, and interstate stalking as part of the PRC’s repatriation program, “Operation Fox Hunt.”¹¹⁵ The Department will continue to take resolute actions to counter the PRC’s campaign of transnational repression.

73. Has the Department of Justice worked with State and local law enforcement to make them aware of the rogue CCP police stations? If so, please provide additional information about your work to educate and engage State and local law enforcement about this threat.

Response: The FBI’s relevant field offices work closely with state and local law enforcement, the relevant U.S. Attorneys’ Offices, other Department components, and other relevant Federal departments and agencies to address the threat posed by transnational repression.

Religious Freedom

Over the past few years the attacks on religious freedom and places of worship have increased. Since May 2020, there have been over 280 instances where Catholic Churches were attacked. This includes, over 120 attacks since the Supreme Court leak of the *Dobbs* ruling.

74. Since you were confirmed as Attorney General, how many individuals or groups has the Department of Justice prosecuted for attacking places of worship?

Response: The Civil Rights Division states as follows: Since Attorney General Garland was confirmed on March 11, 2021 through May 2023, approximately 15 individuals or groups have been charged under 18 U.S.C. § 247 for attacking places of worship or obstructing people in the

¹¹⁴ See Press Release, U.S. Dep’t of Just., Defendants Accused of Creating Fake Social Media Accounts to Harass PRC Dissidents, and Working with Employees of a U.S. Telecommunications Company to Remove Dissidents from Company’s Platform (Apr. 17, 2023), <https://www.justice.gov/opa/pr/40-officers-china-s-national-police-charged-transnational-repression-schemes-targeting-us>.

¹¹⁵ See Press Release, U.S. Dep’t of Just., Federal Jury Convicts Three Defendants of Interstate Stalking of Chinese Nationals in the U.S. and Two of Those Defendants for Acting or Conspiring to Act on Behalf of the People’s Republic of China (June 20, 2023), <https://www.justice.gov/usao-edny/pr/federal-jury-convicts-three-defendants-interstate-stalking-chinese-nationals-us-and>.

free exercise of religious beliefs. At least five other people were charged with religiously motivated offenses targeting houses of worship or people associated with houses of worship. In addition, the Department has prosecuted numerous cases involving individuals who were targeted because of their religion where the incident did not occur in or in close association with a house of worship, including dozens of prosecutions of antisemitic hate crimes and hate crimes targeting Muslims or those perceived to be Muslim. For example, the Department charged a resident of Troy, North Carolina with allegedly communicating threats to a Jewish organization and a Cornell University student with making online threats to Jewish students. The Department also opened a hate crimes investigation into the events leading to the tragic death of a six-year-old child and serious injuries suffered by his mother in Illinois in October 2023.

75. How many individuals or groups have been prosecuted for attacking places of worship since the Supreme Court leak of the *Dobbs* ruling?

Response: The Civil Rights Division states as follows: As of May 2023, and since the *Dobbs* leak, at least 10 individuals have been charged under 18 U.S.C. § 247 for attacking places of worship or obstructing people in the free exercise of religious beliefs. At least five other people were charged with religiously motivated offenses targeting houses of worship or people associated with houses of worship. In addition, the Department has prosecuted numerous cases involving individuals who were targeted because of their religion where the incident did not occur in or in close association with a house of worship, including dozens of prosecutions of antisemitic hate crimes and hate crimes targeting Muslims or those perceived to be Muslim. For example, the Department charged a resident of Troy, North Carolina with allegedly communicating threats to a Jewish organization and a Cornell University student with allegedly making online threats to Jewish students. The Department also opened a hate crimes investigation into the events leading to the tragic death of a six-year-old child and serious injuries suffered by his mother in Illinois in October 2023.

76. What resources does the Department of Justice have available to assist places of worship who have been viciously attacked?

Response: The Attorney General Guidelines for Victim and Witness Assistance prioritize a victim-centered, trauma-informed, and culturally sensitive approach to Department’s work to accord victims of federal crime their rights and provide them services under federal law. Training regarding these guidelines, the Crime Victims’ Rights Act, and the Victims’ Rights and Restitution Act, is mandatory for all Department personnel whose primary job responsibilities affect crime victims and witnesses, or who in the course of their duties are expected to come into contact with victims.

The FBI has victim specialists and U.S. Attorneys’ Offices and Department litigating components have victim-witness coordinators and liaisons who work with victims to ensure they receive appropriate services throughout the investigation and prosecution. The Department’s

Office for Victims of Crime maintains a website that compiles resources for victims, including victims of mass violence. The Community Relations Service provides an in-person facilitated program, Protecting Places of Worship, which educates local communities on how to prevent and respond to hate crimes that target religious institutions and fosters dialogue to strengthen relations between government, law enforcement, and faith communities.

77. Is the Department of Justice coordinating with State and local law enforcement to help prevent further attacks against places of worship?

Response: The FBI advises as follows:

The Department works every day with local, state, federal, and Tribal law enforcement to help combat acts of hate, including attacks against places of worship. These partnerships directly support the FBI’s investigations and operations and enable mutually beneficial information sharing that helps us better understand emerging threats and foster crime prevention initiatives.

The Department also provides Byrne JAG funding that state and local governments are able to use to increase patrols and deployments that bolster the security of organizations like places of worship. Additionally, the Department’s Community Relations Service offers an in-person facilitated training program to local communities and faith-based leaders that is called “Protecting Places of Worship.” This training program includes information about religious hate crimes, state and federal hate crime laws, law enforcement threat assessments, and ways to protect places of worship from potential hate crimes and other threats of violence.

During your confirmation hearing in February 2021, you stated: “If I am confirmed, I will seek to ensure that the Department of Justice upholds the rights of all Americans under the Constitution and the laws of the United States, including the provisions of the Constitution and laws securing religious liberty.”

In recent weeks, the FBI Richmond Division Office published an advisory that would target individuals based on their religious beliefs and worship practices. The advisory explicitly stated that “racially or ethnically motivated violent extremists (RMVEs) in radical-traditionalist Catholic (RTC) ideology almost certainly presents opportunities for threat mitigation.”

78. Attorney General Garland, do you believe that Catholics hold radical-traditionalist ideology?

Response: No.

79. As Attorney General, were you notified of the Richmond Division advisory? If not, what is your position on the advisory by the division?

Response: The Attorney General has stated that the analytical product from the FBI’s Richmond Field Office “is appalling” and “doesn’t reflect the methods that the FBI is supposed to be using.” The FBI states as follows: Immediately after FBI Headquarters learned of the product, FBI leadership ordered that it be withdrawn and removed from FBI systems. The FBI’s Inspection Division conducted a review into the process preceding the product’s publication. The FBI has also taken steps to ensure their standards and expectations are clear, including providing intelligence tradecraft and domestic terrorism terminology refresher training and reminders of the rules and safeguards that apply to human intelligence operations and the production of intelligence products.

80. Attorney General Garland, can you provide the number of individuals that have been prosecuted for exercising their religious beliefs?

Response: The Department and FBI do not target people of any faith because of their religious beliefs. A fundamental principle of the Attorney General’s Guidelines for FBI investigations and operations is that investigative activity may not be based solely on the exercise of rights guaranteed by the First Amendment. This includes our rights of religious freedom.

81. Are you committed to protecting Americans who freely exercise their rights under the First Amendment?

Response: Yes.

82. Do you believe that an independent agency, such as the FBI should be using data from the Southern Poverty Law Center to establish advisories? What actions do you plan to take as Attorney General to ensure the independence of the FBI and prevent other religious groups from being targeted?

Response: The FBI states as follows: The FBI must draw on a variety of sources while also rigorously examining those sources. The FBI conducted a review regarding how and why that rigorous examination may not have happened with respect to the development of an analytical product from the FBI’s Richmond Field Office.

Bureau of Prisons

Over the past few months, it has been brought to my attention that there are some severe structural problems at Federal Correctional Complex, Butner (FCC Butner) that are impacting working and living conditions. Furthermore, my office had an initial call with the Bureau of Prison that confirmed some of the problems at FCC Butner.

83. Have you been made aware of these problems that FCC Butner is having? If not, are you committed to assisting on this matter?

Response: The Department remains committed to ensuring that BOP facilities are adequately staffed and are safe environments in which to work and live. BOP reports as follows: Federal Correctional Institution II at the Federal Correctional Complex located in Butner, North Carolina, has received funding to replace roofs on 11 buildings (all building except the housing units, which do not have roofing concerns). It is funded at \$10.2 million, and this request is currently in the contracting process. The project for Food Service and the Laundry area roofing has been awarded to a contractor.

84. As Attorney General, are you committed to improving the living and working conditions at FCC Butner?

Response: The Department and BOP are committed to enhancing living and working conditions for the individuals under the care of BOP as well as BOP’s dedicated employees, including at the Federal Correctional Complex located in Butner, North Carolina.

85. What is the Department Justice and Bureau of Prisons doing to address the exodus of staff at federal facilities nationwide? Is augmentation a factor in staff leaving?

Response: Maintaining fully staffed institutions is a key priority for BOP and the Department. Adequate staffing levels give BOP flexibility and stability needed to carry out its mission, including increased capacity in First Step Act programs, and are critical to the safety and security of our institutions, wellness of our employees, and better outcomes for those in our custody. BOP facilities use a variety of recruitment and retention incentives to attract and keep employees. The Department appreciates your continued support of those efforts.

According to BOP, it uses augmentation as one tool to fill temporary gaps in posts with trained correctional staff to maintain safety and security. For example, if an officer calls in sick or is in training, or in emergency situations where additional personnel is needed urgently, the Bureau can ensure that critical law enforcement posts are filled.

86. What is the current number of vacancies at FCC Butner? What is the total number of vacancies in all federal prisons?

Response: BOP reports as follows: The Federal Correctional Complex located in Butner, North Carolina, consists of two medium-security institutions, a low-security institution, a camp, and a medical center. The total authorized staff complement for the full complex is 1,392. As of May 6, 2023, the full complex is staffed at 83.44%, with 224 vacancies. As of the same date, the Bureau’s overall staffing rate is 85.74%.

87. What can Congress do to assist in helping reduce the number of vacancies? Are there any hurdles that are impeding the hiring process for BOP? Should hiring decisions be moved to the individual prison level, or remain centralized?

Response: BOP advises as follows: Maintaining fully staffed institutions is a key priority for BOP, from the safety and security of our institutions, wellness of our employees, and better outcomes for those in our custody and their communities upon release. We are pursuing strategies to modernize hiring across the agency and give us the flexibility and stability we need to carry out our mission successfully. For example, we have used recruitment incentives, retention incentives, direct hire authority, pay flexibilities for medical professionals, and accelerated promotions for correctional officers as dictated by the needs of institutions. We welcome your support to continue funding the incentives we use to provide competitive compensation and compete for top talent.

88. What steps is the Department of Justice and Bureau of Prisons taking to screen inmate mail for contraband and illicit narcotics?

Response: BOP states as follows: Management of mail in a correctional environment is an especially demanding proposition. Staff must be familiar not only with the processing of personal and official mail, but also must be aware of situations that can lead to breaches of security and order in the institution. BOP has established administrative and engineering controls to identify suspicious mail and BOP continuously reviews the procedures for handling mail and updates the methods to keep up with emerging trends. For example, BOP has screening protocols in place, including the use of photocopying and hoods, if suspicious items are flagged for further analysis. All inmate packages are opened and inspected prior to distribution; legal/special mail is opened in the inmate’s presence and staff is instructed to check for contraband at this time. BOP has developed and disseminated policies to its employees to ensure that contraband does not make it into a correctional institution.

89. Attorney General, do you know how many Bureau of Prisons staff have been hospitalized due to fentanyl laced inmate mail?

Response: BOP states as follows: BOP does not have the specifics on the number of employees hospitalized due to fentanyl-laced mail. However, BOP prioritizes the safety and well-being of its dedicated employees and the individuals under BOP’s care. As outlined above, BOP has implemented measures to detect and prevent contraband, including fentanyl. BOP continues its commitment to a secure and safe correctional environment, enhancing its mail and other security protocols to address emerging trends.

90. Has the Department of Justice taken a position on extending the 2020 Bureau of Prisons pilot program to convert mail to electronic scans? If not, do you believe the pilot program is beneficial for the safety of inmates and staff?

Response: BOP states as follows:

BOP has successfully piloted mail scanning at two facilities, the Federal Correctional Institution located in Beckley, West Virginia, and the United States Penitentiary located in Canaan, Pennsylvania.

BOP believes that the mail scanning technology is beneficial. Both pilots established that the threat of synthetic drug introduction was significantly reduced at both sites. This conclusion was based on fewer positive urinalysis tests, increased intelligence indicating greatly increased prices for synthetic drugs, and no recorded attempted introductions of synthetic drugs through postal mail at either facility during the one-year pilot period.

First Step Act

As you are aware, the First Step Act was a crucial, bipartisan piece of legislation that seeks to reduce recidivism by encouraging inmate participation in recidivism reduction programs. One key provision is the use of earned time credits as an incentive for inmates to participate in reduction programs.

91. How is the process coming along to implement the earned time credits? Have all federal inmates been assigned all earned time credits which they are entitled to under the First Step Act? If not, what additional steps does DOJ need to take in order to fulfill that statutory requirement?

Response: BOP advises as follows:

In November 2022, BOP finalized a new policy for awarding earned time credits, which informs incarcerated individuals and staff of the process for earning, documenting, applying, forfeiting, and restoring time credits pursuant to the statute. Through the new policy, the BOP Director exercised her discretion to make several changes to how BOP calculates time credits, including to increase the availability of time credits for individuals who participate in evidenced-based programming or productive activities, consistent with the First Step Act (FSA). BOP’s automated calculation of credits for individuals, promotes consistency, allows BOP to provide accurate calculations on a routine basis, and allows individuals in custody to track their time credits and prepare for prerelease from custody.

The Department is committed to ensuring that earned time credits are awarded in accordance with the FSA and BOP policy. As of January 28, 2023, more than 13,500 individuals had been released earlier from Residential Reentry Centers (RRCs), home confinement (HC), and secure facilities based on receiving credits under the FSA. An estimated 3,800 individuals have been placed in an RRC or HC and have a projected release method based on the application of earned

time credits. In addition, approximately 10,650 individuals currently in secured custody are expected to receive an earlier release date or transfer to prelease custody based on the application of earned time credits.

92. How are the Bureau of Prison staffing shortages impacting the recidivism reduction programs? Are there wait lists at prisons to access programming? If so, how is DOJ and BOP working to provide greater access to recidivism reduction programming?

Response: BOP states as follows:

When the individuals in BOP’s custody sign up for an Evidence-Based Recidivism Reduction (EBBR) or Productive Activity (PA) program, BOP initially places those individuals on a waitlist; they may go directly into the program if there is available space. BOP’s Central Office monitors the waitlists, along with each institution’s programming needs, whether programming meets the needs of the individuals under BOP’s care, and the overall programming trends and needs.

Each BOP facility monitors its own population’s assessed needs, to help determine which programs to offer. Some large residential programs, such as the Residential Drug Abuse Program, target a subset of the population for intensive services. For programs like these, BOP monitors program completions and determines when and where more staffing is needed. For most programs, however, facilities have the ability to add cohorts and increase participant capacity, as needed. For example, if a facility is already offering Anger Management but has a disproportionately large group of individuals with needs remediated by the Anger Management program, the location could add an additional section of the program to meet the population needs.

93. Does FCC Butner have any issues with recidivism reduction programs? Is there a waitlist for inmates to enter into programming at FCC Butner?

Response: BOP advises as follows: When the individuals in BOP’s custody sign up for an EBBR or PA program, BOP initially places those individuals on a waitlist; they may go directly into the program if there is available space. The involved correctional departments recommend EBBRs and PAs that correspond with an individual’s needs areas. BOP’s Central Office monitors the waitlists, along with each institution’s programming needs, whether programming meets the needs of the individuals under BOP’s care, and the overall programming trends and needs. This is the process followed by the Federal Correctional Complex in Butner, North Carolina. Waitlists vary by interest and need.

94. How many inmates have been released or placed in home confinement as a result of earned time credits being applied?

Response: BOP states as follows:

In November 2022, BOP finalized a new policy for awarding earned time credits, which informs incarcerated individuals and staff of the process for earning, documenting, applying, forfeiting, and restoring time credits pursuant to the statute. Through the new policy, the BOP Director exercised her discretion to make several changes to how BOP calculates time credits, including to increase the availability of time credits for individuals who participate in evidenced-based programming or productive activities, consistent with the First Step Act (FSA). BOP’s automated calculation of credits for individuals, promotes consistency, allows BOP to provide accurate calculations on a routine basis, and allows individuals in custody to track their time credits and prepare for prerelease from custody.

The Department is committed to ensuring that earned time credits are awarded in accordance with the FSA and BOP policy. As of January 28, 2023, 13,501 individuals have been released from RRCs, HC, and secure facilities under an FSA release code. An estimated 3,800 individuals have been placed in an RRC or HC and have a projected release method based the application of earned time credits. In addition, approximately 10,650 individuals currently in secured custody are expected to receive an earlier release date or transfer to prelease custody based on the application of earned time credits. The Department is committed to ensuring that earned time credits are awarded in accordance with the FSA and BOP policy.

95. In how many cases have inmates been returned to prison following a period of home confinement during FY21 and FY22?

Response: BOP reports as follows: Between the enactment of the CARES Act on March 26, 2020 and May 2023, BOP has placed more than 12,000 individuals in home confinement under CARES Act authority. Of those, only a fraction of one percent have been returned to secure custody due to new criminal conduct.

96. The First Step Act also included the medication-assisted treatment (MAT) program which provides access to opioid treatment medication throughout the federal prison system. What is the latest number of FCC Butner inmates that have been screened for participation in the MAT program? What is the total number that are participating in the MAT program?

Response: BOP states as follows: As of May 22, 2023, the Federal Correctional Complex in Butner, North Carolina, has screened more than 600 patients for the Medication-Assisted Treatment (MAT) program. Of those screened, 350 individual patients have been treated with MAT since 2021. More than 200 patients have been released or transferred from FCC Butner while in the MAT program. Currently, there are more than 150 patients in the MAT program in Butner.

97. How many inmates are currently eligible to receive treatment through the MAT program? Is there a waitlist for inmates enter the MAT program? What is the total number of inmates throughout the federal prison system that have received treatment through the MAT program?

Response: BOP advises as follows: Consistent with the First Step Act (FSA), BOP has expanded access to medication-assisted treatment for inmates with substance use disorder. Amid the opioid crisis, this program is an important treatment option for people with opioid use disorder. BOP provides all three FDA-approved medications in conjunction with individualized psychosocial interventions for offenders with opioid use disorder. MAT participation has increased over 120% since April 2022. In FY 2022, counting both those who received treatment in BOP’s facilities and those receiving treatment in community custody, 3,208 individuals participated in the MAT program. These individuals were engaged in psychosocial treatment and services to address individual treatment needs, including referrals to other programs such as vocational training and trauma treatment. In the first five months of FY23, 2,824 individuals have participated in MAT, with more individuals expected to join in the coming months. BOP anticipates continued growth of the MAT program moving forward.

98. I was proud to cosponsor, along with Senator John Cornyn, the Crisis Stabilization and Community Reentry Act of 2020. Can you please provide an update on implementation of this grant program, and the positive impacts which are being achieved as a result of its enactment?

Response: The Office of Justice Programs (OJP) states as follows:

In FY 2022, the first year of the program, OJP’s Bureau of Justice Assistance (BJA) awarded 11 grants totaling \$7,875,657 through the Improving Adult and Juvenile Crisis Stabilization and Community Reentry (CSCR) Program. This funding supports state, local, and Tribal governments, as well as nonprofit organizations, as they improve reentry, reduce recidivism, and address the treatment and recovery needs of people with mental health, substance use, or co-occurring disorders who are currently or formerly involved in the criminal justice system.

The program provides training and education for criminal and juvenile justice agencies, mental health and substance use agencies, and community-based health providers. This support focuses on best practices diversion models in crisis response services, engagements in recovery services and treatment, and access to medication while in an incarcerated care and during reentry into a community.

Individuals with serious mental illness are provided access to appropriate recovery supports, which may include peer support services, medication management, case management, and psycho-social therapy. Programs funded under this solicitation must ensure that individuals are screened, assessed, and identified for program participation and clinical services during pretrial

detention, or as early as possible upon incarceration and prior to release. Following release from incarceration or pretrial detention, participants should receive discharge planning services based on the results of their screening and assessment that support continuity of care and long-term recovery in the community.

The grant program has a specific focus on the intersection of crisis response and reentry and the emphasis on alternative approaches, innovations, and cross-system coordination across a wide range of stakeholders, so technical assistance for this grant program will reflect a more intensive model and a quicker path to implementation than most other Second Chance Act programs.

For more information about grants and funding opportunities, visit <https://www.ojp.gov/funding>

Rapid DNA Funding

I am supportive of funding for Rapid DNA instruments, which provide our local law enforcement agencies with an important tool to prevent crime and keep our communities safe. It is my understanding that the Department has resisted the use of grant funding for Rapid DNA, as well as for direct appropriations.

I am deeply concerned about the situation involving the award to the New Hanover County Sheriff’s Office. Specifically, the Department awarded the Sheriff’s Office a \$400,000 grant. The Sheriff’s Office then received a notice of denial for their grant, before being told that funds might still be awarded. This is no way to treat our local law enforcement officials.

In addition, I was proud to support a \$405,000 appropriation for the Jacksonville Police Department to purchase a Rapid DNA instrument in the most recent omnibus. Given the issues that New Hanover County experiences, I want to ensure that grant awardees and those who receive appropriations are not being improperly stopped from purchasing Rapid DNA instruments.

99. Can you please state, clearly, the Department’s policy on funding Rapid DNA instruments?

Response: Multiple Department components work together to determine the scope of funding for Rapid DNA projects. The FBI is the Department lead for Rapid DNA, primarily due to the Rapid DNA Act of 2017 which authorized the FBI Director to “issue standards and procedures for the use of Rapid DNA instruments and resulting DNA analyses.” The FBI is also the Department component responsible for the National DNA Index System (NDIS) and CODIS. The National Institute of Justice (NIJ) plays an important role in advising on Rapid DNA policy and has funded significant aspects of the original research into, and continued efforts to improve,

the technology. Finally, the Bureau of Justice Assistance (BJA) is the component responsible for application of Department policy for funding.

BJA advises as follows: The Department policy currently allows funding for Rapid DNA projects that are in compliance with NDIS standards, to include processing of reference buccal swabs for upload to CODIS by NDIS participating laboratories and for Rapid DNA Booking Devices. The use of Rapid DNA on crime scene samples is limited as such samples can present challenges for current Rapid DNA Technology. Presently, the Department only funds projects involving Rapid DNA testing on crime scene samples that involve Congressionally Directed Spending (CDS) projects (Byrne Discretionary Community Project Funding/Byrne Discretionary Grants Program). Under this exception, projects are expected to follow FBI published guidance including the “Non-CODIS Rapid DNA Considerations and Best Practices for Law Enforcement Use” and “Rapid DNA Testing for non-CODIS Uses: Considerations for Court” documents.

100. If the Department is opposed to allowing funding for Rapid DNA instruments, please provide a justification for your opposition.

Response: BJA advises as follows:

The Department is not opposed to funding Rapid DNA instruments, as demonstrated by the numerous active grant projects involving Rapid DNA for testing of reference buccal swabs. However, in recent years, there has been significant interest in the use of Rapid DNA on samples recovered from crime scenes, and it is the Department’s position that Rapid DNA technology is not yet suitable for testing crime scene samples, including sexual assault kits. This opinion is shared by leading forensic scientists in the United States and Europe, who in a July 2020 joint paper outlined the enhancements needed before the technology can be considered for crime scene samples.¹¹⁶

There are many challenges to overcome before Rapid DNA devices can be reliably used for crime scene sample analysis. The Department continues to assess how to address these challenges, including monitoring enhancements to Rapid DNA technology and interfacing with the Rapid DNA industry to help advance the technology. It is important to note that Rapid DNA instruments require significantly more DNA than conventional laboratory processing and have significantly lower success rates for producing usable DNA profiles. According to a May 2020 paper in the *Journal of Forensic Sciences*, Rapid DNA analysis of reference samples (which contain 100-1,000 times more DNA than a crime scene sample) resulted in a success rate of only

¹¹⁶ Rapid DNA for crime scene use: Enhancements and data needed to consider use on forensic evidence for State and National DNA Databasing – An agreed position statement by ENFSI, SWGDAM and the Rapid DNA Crime Scene Technology Advancement task Group. Hares, Knopper’s and Honorato. *Forensic Science International: Genetics* 48 (2020) 102349.

80 percent.¹¹⁷ This is adequate for samples where another can readily be obtained, such as buccal swabs; however, this is not an acceptable risk for use on crime scene samples which, by their nature, cannot be replenished.

Due to these and additional concerns (e.g., reference databases, considerations for court, interpretation of samples with multiple DNA donors), until the technology matures and is capable of addressing the issue brought forth by Hares et al (2020), Department policy only allows funding of projects involving Rapid DNA testing on crime scene samples in instances involving CDS projects (Byrne Discretionary Community Project Funding/Byrne Discretionary Grants Program).

101. Can you please provide an update on the status of the New Hanover County Sheriff’s Office grant award for a Rapid DNA instrument? When can the county expect to receive these funds?

Response: OJP advises as follows:

When OJP issued the award agreement to New Hanover County for the FY 2022 Byrne Discretionary Grant for the Rapid DNA project, it included an award condition stating that funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS. Following internal discussions on how to best allow New Hanover County to use grant funds to support rapid DNA for non-CODIS uses, BJA sent a letter to the County in March 2023 proposing changes to the award agreement to allow grant funds to purchase Rapid DNA equipment and supplies for non-CODIS uses if the county will agree to follow FBI guidelines for non-CODIS use and meet periodically with BJA’s training and technical assistance partner to confirm that the county is adhering to the FBI’s guidelines.

In that letter, BJA requested that the county 1) send a written agreement to the changes of the award conditions; and, if the county agrees to the changes, 2) send a written certification that the county has established policies and procedures that adhere to all practices outlined in both the FBI’s “Non-CODIS Rapid DNA Considerations and Best Practices for Law Enforcement Use” document and the “Rapid DNA Testing for Non-CODIS Uses: Considerations for Court” document, to include having consulted with the chief local prosecutor and employing an “A-swab/B-swab” strategy when collecting all crime scene DNA samples intended for use on a rapid DNA instrument. On May 12, 2023, New Hanover County sent BJA a letter agreeing to the award agreement changes (#1). New Hanover County subsequently submitted the required certification (#2) to BJA, and the County is able to obligate, expend, and draw down grant funds for the project.

¹¹⁷ Results of the 2018 Rapid DNA Maturity Assessment. Romeos, et al. Journal of Forensic Sciences 2020 May; 65 (3):953-959.

102. Are there any other outstanding grant awards that have been the subject to these conflicting communications? If so, what is the status of their grant awards, and when can they expect to receive funding?

Response: OJP states as follows: OJP issued two additional FY 2022 Byrne Discretionary Grant awards for projects funding Rapid DNA for crime scene use. Those awards were made to Spokane County, WA and East Baton Rouge Parish Sheriff’s Office, LA. The status of their respective awards is currently the same as New Hanover County. That is, both Spokane County and East Baton Rouge Parish Sheriff’s Office have sent letters to BJA agreeing to the proposed changes to the award agreement and submitted the required certifications; they are now able to obligate, expend, and draw down grant funds for the project.

103. Please provide a status update on the processing of the Jacksonville Police Department’s Rapid DNA appropriation for a Rapid DNA instrument.

Response: OJP states as follows: The City of Jacksonville, NC, submitted its application to the FY 2023 Byrne Discretionary Grant solicitation requesting funding for the “Implementation of a Rapid DNA Regional System for Investigations.” OJP issued the award agreement on August 10, 2023. BJA has subsequently held meetings with Jacksonville on the Rapid DNA requirements, and the City has submitted its certification agreeing to comply with these requirements. The budget was approved and there are currently no remaining holds on funds. The City therefore can obligate, expend, and draw down funds.

Third-Party Settlement Payments

During the Obama Administration, the Department of Justice instituted a policy of diverting of settlement proceeds with businesses to third-party groups without Congressional authorization and even for purposes that Congress may have decided not to authorize.

In 2017, Attorney General Sessions prohibited the Justice Department from entering into settlement agreements that direct or provide payments to non-governmental third parties. This prohibition was subsequently incorporated into the Code of Federal Regulations. In May 2022, you reinstated this practice.

I have been vocal that this is a fiscally and legally unsound practice, which can circumvent Congress’ intent. Ultimately, this practice allows whatever Administration is in power to direct sums, without Congressional oversight or approval, to favored causes and groups.

104. Do you share my concerns about this practice of creating “slush fund settlements” with third-party groups in litigation? Why or why not?

Response: On May 5, 2022, the Attorney General issued a memorandum that addressed concerns regarding settlement agreements that direct or provide payments to non-governmental third parties. That memorandum sets forth guidelines and limitations that govern the Justice Department’s approach to entering into such settlement agreements. The memorandum is available at:
https://www.justice.gov/d9/pages/attachments/2022/05/05/02._ag_guidlines_and_limitations_memorandum_0.pdf.

105. Will you, or will you not, support reinstating the previous ban on these “slush fund settlements” and ensuring taxpayer dollars are not being used for partisan or political purposes?

Response: On May 5, 2022, the Attorney General issued a memorandum that addressed concerns regarding settlement agreements that direct or provide payments to non-governmental third parties. That memorandum sets forth guidelines and limitations that govern the Justice Department’s approach to entering into such settlement agreements. The memorandum is available at:
https://www.justice.gov/d9/pages/attachments/2022/05/05/02._ag_guidlines_and_limitations_memorandum_0.pdf.

Acquitted Conduct

I am proud to have been a cosponsor of the *Prohibiting Punishment of Acquitted Conduct Act*, and believe the law should be amended to protect our constitutional liberties.

106. What is the Department’s position on whether acquitted conduct should be the basis of sentencing decisions?

Response: The Department is committed to ensuring that our sentencing system is fair and predictable. A sufficient, but not greater than necessary sentence requires a complete understanding of the defendant’s conduct, history, and circumstances of the offense. The Department believes that courts are best positioned to determine how much weight, if any, to give all relevant conduct at sentencing and to disregard any conduct unsupported by the evidence or insufficiently related to the offense of conviction. During the 2022-2023 amendment year, the Sentencing Commission considered amendments to the Sentencing Guidelines to limit the use of acquitted conduct at sentencing, but ultimately decided to defer further consideration of acquitted conduct. The Department submitted a letter and the United States Attorney for the Eastern

District of Virginia testified at a public hearing articulating the Department’s views on this important issue.¹¹⁸

107. Does the Department share my concern that sentencing which incorporates acquitted conduct is a potential constitutional violation? Why or why not?

Response: The Supreme Court has long recognized broad judicial discretion to impose sentences based on facts found by a preponderance of the evidence at sentencing. Curtailing courts’ discretion to consider conduct related to acquitted counts would be a significant departure from longstanding sentencing practice, Supreme Court precedent, and the principles of the Guidelines. Please see the Department’s letter and testimony before the Sentencing Commission articulating the Department’s views on this important issue.¹¹⁹

108. If the Department does not support removing acquitted conduct as the basis for sentencing decisions, are there any other reforms that the Department may support?

Response: The Department understands the concerns regarding acquitted conduct and remains ready to work with Congress on any alternative proposals. For the reasons stated in Department’s letter and testimony before the Sentencing Commission, the Department does not believe that acquitted conduct can practicably be excluded from the definition of relevant conduct.¹²⁰ Any reforms should be administrable, and any limitation on judicial discretion should be clearly defined and not invite litigation.

¹¹⁸ Letter from Jonathan J. Wroblewski, Dir., Off. of Pol. and Legis., Crim. Div., U.S. Dep’t of Just., to J. Carlton W. Reeves, Chair, U.S. Sent’g Comm’n (Feb. 15, 2023), <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/DOJ3.pdf>.
Transcript of Pub. Hearing on Proposed Amends., U.S. Sent’g Comm’n (Feb. 24, 2023), https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/0224_Transcript.pdf.

¹¹⁹ Letter from Jonathan J. Wroblewski, Dir., Off. of Pol. and Legis., Crim. Div., U.S. Dep’t of Just., to J. Carlton W. Reeves, Chair, U.S. Sent’g Comm’n (Feb. 15, 2023), <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/DOJ3.pdf>.
Transcript of Pub. Hearing on Proposed Amends., U.S. Sent’g Comm’n (Feb. 24, 2023), https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20230223-24/0224_Transcript.pdf.

¹²⁰ *Id.*

Pastor Cao

As co-chair of the Senate Human Rights Caucus, I want to raise again the case of Pastor John Cao, a lawful permanent resident of North Carolina who has been arbitrarily detained by the Communist Chinese Government since March 2017 and is currently being held in Kunming Prison. I am an advocate for Pastor Cao through the Defending Freedoms Project (DFP) of the Tom Lantos Human Rights Commission. The U.S. Commission on International Religious Freedom (USCIRF) is the advocacy partner for Pastor Cao through DFP. During your confirmation hearing, you committed to reviewing the case of Pastor John Cao if confirmed.

109. Have you reviewed his case? Now that you are confirmed as Attorney General, will you commit to me to do everything in your power to secure Pastor Cao’s release, including raising his unlawful detention each and every time you meet with your Chinese counterparts?

Response: Although the Department’s jurisdiction does not extend to this particular situation, the Department of State, which is responsible for helping U.S. citizens who have been arrested overseas, has stated that Washington is deeply concerned about Pastor Cao’s sentence and has urged China to release him as a U.S. legal permanent resident on “humanitarian grounds.”

International Parental Child Abduction

110. How many individuals were charged under the IPKCA during 2021 and 2022?

Response: According to the Executive Office for United States Attorneys, seven individuals were charged with violating 18 U.S.C. § 1204 in FY 2021 and FY 2022.

111. In how many cases has an extradition request been formally presented to a foreign government in each of 2021 and 2022? In how many of those cases was the individual successfully extradited to the United States?

Response: The Criminal Division and Executive Office for United States Attorneys states as follows:

In cases where international parental kidnapping charges are pending (whether in federal or state court), the Department takes appropriate steps that may best lead to return of the taking parent, based on the facts and circumstances of each case, the country involved, and whether the United States has an extradition treaty that covers parental kidnapping with that country. Based on the unique facts of each case, the Department may request extradition or seek the return of the taking parent through other legal means.

In calendar year 2021, the United States requested the return through the extradition process of four fugitives charged with international parental kidnapping under 18 U.S.C. § 1204; three of these fugitives were extradited to the United States. In calendar year 2022, the United States requested the extradition or other lawful return of two fugitives charged with international parental kidnapping under 18 U.S.C. § 1204. Both of these fugitives were returned to the United States. Additionally, in 2022, after requesting the provisional arrest with a view to extradition of two co-defendants in a case charged by a state prosecutor’s office, both fugitives consented to their surrender prior to submission of the extradition requests. Both fugitives were returned to the United States to face state international parental kidnapping charges.

112. How many individuals were convicted or pleaded guilty under the IPKCA during 2021 and 2022? Please provide a separate number of convictions and guilty pleas.

Response: According to the Executive Office for United States Attorneys, seven individuals were convicted of violating 18 U.S.C. § 1204 in FYs 2021 and 2022, and of those seven who were convicted, six pleaded guilty.

113. What was the average sentence imposed on those convicted or who plead guilty under IPKCA in 2021 and 2022? Please provide a separate average for convictions and for guilty pleas.

Response: The Executive Office for United States Attorneys states as follows: The statutory maximum sentence for a violation of 18 U.S.C. § 1204 is three years (36 months) imprisonment. The average sentence for those who were convicted of violating 18 U.S.C. 1204 in FY 2022 was 24 months of imprisonment. Those convictions were all the result of defendants who pleaded guilty. The average sentence for those who were convicted of violating 18 U.S.C. § 1204, and any other charges, in FY 2021 was 178 months imprisonment. The high average sentence results from two defendants having been sentenced for other offenses in addition to 18 U.S.C. § 1204.¹²¹ Those two defendants pleaded guilty. One defendant was sentenced to 18 months and 19 days in prison following a trial conviction.¹²² These numbers are based solely on those defendants sentenced to prison time. It does not include defendants who received a non-custodial or time-served sentence.

¹²¹ See Press Release, U.S. Dep’t of Just., Previously Convicted Sex Offender Sentenced to 35 Years in Federal Prison for Child Pornography and International Kidnapping (Jan. 22, 2021), <https://www.justice.gov/usao-nm/pr/previously-convicted-sex-offender-sentenced-35-years-federal-prison-child-pornography-and>; See Press Release, U.S. Dep’t of Just., West Virginia Woman Sentenced for Willful Retention of Top Secret National Defense Information and International Parental Kidnapping (Jan. 25, 2021), <https://www.justice.gov/opa/pr/west-virginia-woman-sentenced-willful-retention-top-secret-national-defense-information-and>.

¹²² See Press Release, U.S. Dep’t of Just., Anchorage Man Sentenced to Federal Prison for International Parental Kidnapping (May 7, 2021), <https://www.justice.gov/usao-ak/pr/anchorage-man-sentenced-federal-prison-international-parental-kidnapping>.

114. In how many of the cases prosecuted in 2021 and 2022 was the abducted child or children successfully returned to the left-behind parents?

Response: Because the return of a child is not part of the criminal proceeding, the Department does not track the return. The Department of State, however, plays a role in assisting parents to recover abducted children pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. The State Department publishes the Annual Report on International Child Abduction, which contains additional information about abduction cases, including abduction cases that were resolved, and is available at: <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data.html>.

Prescription Drug Monitoring Program Grants

BJA administers grants through the Harold Rogers Prescription Drug Monitoring Program to assist in the fight against the opioid crisis. States have been able to use PDMP fund in previous years to engage outside vendors. However, BJA recently made changes by which certain states must treat outside PDMP vendors as subrecipients. Because subrecipients cannot make a profit, many of these vendors are no longer eligible to assist in the fight against opioids.

115. Please provide a justification for this change in policy, the purpose of this change, and your analysis of the impact of the change.

Response: The Office of Justice Programs advises as follows:

BJA’s administration of grant awards is in accordance with all applicable legal authorities, including the Code of Federal Regulations (C.F.R.), specifically 2 C.F.R. § 200.331, with regard to subrecipient and contractor determinations. Within the past few years, it has come to BJA’s attention that the subrecipient and contractor definitions were not always being applied correctly in grantee budgets. BJA is working with grantees to ensure the correct determinations are in place for awards.

The definition of a “subrecipient” is found in the Office of Management and Budget regulation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. It provides, in relevant part, that “[c]haracteristics which support the classification of the non-federal entity as a subrecipient include when the non-federal entity: (1) determines who is eligible to receive what federal assistance; (2) has its performance measured in relation to whether objectives of a federal program were met; (3) has responsibility for programmatic decision-making; (4) is responsible for adherence to applicable federal program requirements specified in the federal award; and (5) in accordance with its agreement, uses the federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing

goods or services for the benefit of the pass-through entity.” *Id.* at § 200.331(a). In contrast, the above-referenced federal regulations define “contractor,” in relevant part, as an entity that “provides goods or services that are ancillary to the operation of the federal program.” *Id.* at § 200.331(b).

116. This policy has already had negative impacts on States, including one where the State can no longer use one of its long-time vendors. Is BJA considering waivers or a change to this policy as a result of these challenges?

Response: The Office of Justice Programs states as follows:

The Bureau of Justice Assistance strongly supports the goals of the Harold Rogers Prescription Drug Monitoring Program (PDMP) and continues to allow states to utilize PDMP grant funds to finance the PDMP of their choice. However, all grant recipients must administer their grant programs in compliance with 2 C.F.R. § 200 and classify recipients of grant funds from a prime recipient of grant funds per the requirements of 2 C.F.R. § 200. Consistent with 2 C.F.R. § 200.331, the agreement the prime recipient makes for the disbursement of funds to another nonfederal entity under the grant award must be that of a subrecipient if the funds are being used to carry out a program for the public purpose specified in authorizing statute.

BJA is working with PDMP grantees to ensure they are in compliance with 2 C.F.R. § 200 and can move forward with their projects.

117. Is this new rule generally applicable to all PDMP grantees? Or is it specific to particular states? Please explain.

Response: According to the Office of Justice Programs, this is not a new rule. All grant recipients must comply with 2 C.F.R. § 200.

118. Please provide a list of states which have been subject to this new policy.

Response: According to the Office of Justice Programs, this is not a new policy. All grant recipients must comply with 2 C.F.R. § 200.

119. Is BJA applying this change in grant rule applications to other grants beyond the Harold Rogers Program? Please explain why or why not.

Response: According to the Office of Justice Programs, this is not a new rule. All grant recipients must comply with 2 C.F.R. § 200.

Power Grid Attacks

In December, Moore County residents were left without power for almost a week as a result of attacks on Moore County’s power grid. While I am glad to see that the FBI is involved, I am concerned that there is still no answer as to who did this, and why. And in January, there was another attack on the power grid in nearby Randolph County, which the FBI is also helping to investigate.

120. What information, if any, can you provide about the status of the investigation into the power grid attacks in Moore County and in Randolph County? How has the FBI responded to these attacks, and what measures have been employed to find the criminals who did this?

Response: The Department remains deeply concerned about the shooting attacks on electrical substations that occurred in Moore County and Randolph County, North Carolina, in December 2022 and January 2023, respectively. Damaged or inoperable electrical substations can be devastating to surrounding communities. The FBI continues to assist Moore County and Randolph County law enforcement, the lead investigative entities for those attacks. Immediately after the first attack, the FBI made its laboratory services available for physical and forensic evidence processing and analysis, and then offered rewards in amounts up to \$25,000 for information about each of these attacks. The Department will use all tools at our disposal to assist in these investigations.

121. How many other attacks on power grids have been recorded in the past year? Of these, how many has the FBI been involved investigating?

Response: The FBI and EOUSA advise as follows: There are more than twenty open FBI investigations across the country on incidents related to the power grid and electricity infrastructure. While we are not able to disclose information about all of those FBI investigations, there are a few recent examples of investigations resulting in federal criminal charges that are worth highlighting. For example, in January 2023 the Western District of Washington U.S. Attorney’s Office charged two men in Washington State with, among other charges, conspiracy to damage energy facilities associated with attacks on four power stations in December 2022.¹²³ In February 2023, the Department announced the filing of a federal criminal complaint charging a Maryland woman and a Florida man with conspiracy to destroy an energy facility connected to a plot to attack multiple electrical substations around Baltimore.¹²⁴ The FBI disrupted this plot before the planned attacks could be carried out. In April 2023, two men were

¹²³ UNITED STATES ATTORNEY’S OFFICE, WESTERN DISTRICT OF WASHINGTON, *Two Charged with Attacks on Four Pierce County Power Substations* (Jan. 3, 2023), <https://www.justice.gov/usao-wdwa/pr/two-charged-attacks-four-pierce-county-power-substations>.

¹²⁴ UNITED STATES ATTORNEY’S OFFICE, DISTRICT OF MARYLAND, *Maryland Woman and Florida Man Face Federal Charges for Conspiring to Destroy Energy Facilities* (Feb. 6, 2023).

sentenced to 92 months and 60 months in prison in the Southern District of Ohio, for crimes related to a scheme to attack power grids with powerful rifles. And in July 2023, a federal grand jury returned an indictment charging a Canadian citizen with destruction of an energy facility and illegal firearm possession in relation to the May 2023 alleged damage to an electric substation near Ray, North Dakota. In addition to the Moore and Randolph County shooting incidents, the FBI maintains rewards of up to \$25,000 each for information regarding a November 2022 shooting at an electric substation in Maysville, Jones County, North Carolina, and a November 2022 vandalism at an electric substation in Tumwater, Washington.

122. How is the Department responding to these attacks on a national scale, and what additional resources or authorities do you need in order to find and prosecute the criminals in these cases?

Response: This threat requires a whole-of-government approach. Where there is a potential violation of Federal law such as destruction of an energy facility in violation of 18 U.S.C. § 1366, the FBI might take the lead investigative role, supported by federal, state, or local law enforcement. In other cases, other federal, state, or local law enforcement are in the lead, with FBI in support. The Department will include requests for additional resources or authorities through the Administration.

123. Does the Department recommend any statutory changes to increase penalties on those who commit these crimes?

Response: The Department looks forward to working with Congress on legislative proposals to address threats to critical infrastructure.

SENATOR PETER WELCH
Judiciary Committee Hearing:

Oversight of the Department of Justice

March 1, 2023
Questions for the Record

Questions for the Honorable Merrick B. Garland

Bipartisan Safer Communities Act

This year alone, Americans have already experienced nearly 100 mass shootings. Last year, over 40,000 people died from gun violence. Firearms are now the number one cause of death for children in the United States. Gun violence is a scourge on our communities. It’s shameful.

Last year, Congress took one step forward to address gun violence. We passed the Bipartisan Safer Communities Act—the most significant gun prevention legislation to become law in decades. The law made critical investments and reforms to DOJ programs to help reduce gun violence, which are already making an impact. Just a few weeks ago, the Department announced that Vermont would receive Bipartisan Safer Communities Act crisis intervention funding to support its Commission on Mental Health and the Courts Program. The funding will help provide behavioral health deflection training to Vermont judges, lawyers, and other court staff—improving outcomes for justice-involved individuals experiencing mental health and substance use issues.

Congress must ensure that the Bipartisan Safer Communities Act is implemented effectively and efficiently. And we must do more to prevent gun violence.

- 1. What are the biggest challenges facing the Department in implementing the Bipartisan Safer Communities Act—including provisions that provided for enhanced background checks for certain gun purchases?**

Response: The Department has no higher priority than keeping the American people safe. Gun violence has devastating effects on families, communities, and the entire nation. The BSCA provides the Department with essential tools to help prevent and reduce gun violence in communities across the country in order to save lives. The BSCA narrowed what was known as the boyfriend loophole by revising definition of “misdemeanor crimes of domestic violence” (MCDVs) to include violent offenses committed in the context of a current or recent dating relationship. On August 8, 2022, Federal Bureau of Investigation National Instant Criminal Background Check System (NICS) began denying firearms transactions based on this expanded MCDV definition. The Department is conducting outreach to our state, local, Tribal, and

territorial law enforcement partners, emphasizing the importance of documenting evidence of dating relationships in incident reports and court records as one means of notifying NICS about convictions that qualify under the expanded MCDV definition.

The BSCA also expanded background checks to include juvenile criminal and mental-health records for prospective firearm purchasers under the age of 21. According to the FBI, as of January 13, 2023, the FBI has been conducting these enhanced checks for all 43 jurisdictions it is responsible for processing. The Department understands that the 13 jurisdictions that conduct their own background checks, known as point of contact states, have fully implemented the BSCA enhanced checks as well. However, even post-implementation, a significant challenge to obtaining substantive information has been that many states have privacy laws restricting the sharing of mental-health records and/or juvenile adjudication records with NICS.

The Department is also utilizing its new criminal authorities, including the new straw-purchasing and firearm trafficking provisions (18 U.S.C. §§ 932 and 933, respectively). Since BSCA’s enactment on June 25, 2022, EOUSA reports that United States Attorneys’ Offices have charged over 200 defendants under §§ 932 and 933, and have already begun to obtain convictions, with one defendant in the Southern District of Texas receiving a sentence of 80 months in prison for trafficking firearms to the Southwest Border.

2. What steps can Congress take to support the Department in its enforcement efforts?

Response: The Department appreciates Congress’ passage of the BSCA and the commitment to combating gun violence. The BSCA has provided the Department with important new tools to address violent crime and to address the trauma of gun violence affecting so many communities. Many of the investigations and prosecutions that proceed under the BSCA’s new provisions are resource intensive. While Congress provided significant funding to NICS for implementation of the under 21 enhanced checks and other provisions, the BSCA did not include any additional funding for ATF or for federal prosecutors to implement the new criminal provisions, including enhanced enforcement of straw purchasing and firearms trafficking crimes. Accordingly, the Department has requested an additional \$71.1 million be appropriated to ATF for FY 2024 to assist in fulfilling its responsibilities under the new law.

3. What else is DOJ doing to help states address some of the drivers of gun violence?

Response: EOUSA and the Department’s law enforcement components advise as follows:

The Department is focused on protecting the public from the threat of violent crime. In 2021, the Department issued a Department-wide strategy to leverage the resources of our federal prosecutors, agents, investigators, criminal justice experts, and grant programs to combat the violent crime spike that began in 2020. Since then, every one of the U.S. Attorneys’ Offices across the country has worked alongside their state and local partners to implement district-

specific violent crime reduction strategies. The Department’s law enforcement components—the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and the U.S. Marshals Service (USMS)—have worked with their state, local, Tribal, and territorial law enforcement partners to seize illegal guns and deadly drugs and to prosecute those who commit acts of violence in our communities. In fiscal year 2023 alone, the Department prosecuted more than 14,500 individuals for violent crimes.

The Department has accelerated our efforts to fight gun violence on every front—from cracking down on criminal gun-trafficking pipelines, to updating regulations, to deepening our partnerships with state and local law enforcement. This includes preventing firearms from falling into the wrong hands. ATF has launched several gun violence strike forces around the country to specifically facilitate local, state, Tribal, and federal law enforcement efforts to identify and prosecute gun traffickers that are fueling the violence in our communities. ATF is also working more closely than ever with state and local partners to turn the evidence they collect at crime scenes into concrete leads, generating nearly 200,000 leads on violent criminals just since summer 2022. As the Department builds on this work, we are putting important new tools to use thanks to the enactment of the Bipartisan Safer Communities Act (BSCA) last year. Those include expanded background check requirements for juvenile criminal history and relevant mental health records before a firearm is sold to anyone under 21. Thanks to those requirements, more than 450 firearms have been kept out of the hands of young people who should not have access to them. These tools also include BSCA’s new proscriptions against illegal firearms trafficking and straw purchasing. The Department has already charged more than 170 defendants under the Act’s gun trafficking provisions and seized hundreds of firearms in connection with those cases.

The Department also continues to support community-led efforts that are vital to preventing violence before it occurs. In February 2023, the Department hosted the first-ever Community Violence Intervention and Prevention Initiative Grantee Convening, which saw more than 400 participants—representing the Department’s CVI grantees, local law enforcement officials, and community partners—come together in St. Louis. And in July 2023, the Department announced the investment of over \$238 million for the Department’s Byrne State Crisis Intervention Program, which will allow communities to implement programs that work to keep guns out of the hands of those who pose a threat to themselves or others.¹²⁵

¹²⁵ See ATF Final Rule 2021R-05F, “Definition of ‘Frame or Receiver’ and Identification of Firearms,” 87 Fed. Reg. 24652, available at: <https://www.federalregister.gov/documents/2022/04/26/2022-08026/definition-of-frame-or-receiver-and-identification-of-firearms>; ATF Final Rule 2021R-08F, “Factoring Criteria for Firearms with Attached ‘Stabilizing Braces,’” 88 Fed. Reg. 6478, available at: [govinfo.gov/content/pkg/FR-2023-01-31/pdf/2023-01001.pdf](https://www.govinfo.gov/content/pkg/FR-2023-01-31/pdf/2023-01001.pdf).

Environmental Law and Justice

Urgent action is required to fight climate change and secure a healthy and livable future for us, for our children, and for future generations. Not only are the actions of humankind making our planet hotter, but increased pollution is also making our citizens sicker. As we know, these key environmental issues disproportionately impact both communities of color and low-income communities. In May 2022, Associate Attorney General Vanita Gupta announced the Department’s Comprehensive Environmental Justice Enforcement Strategy, which describes the agency’s goals to advance environmental justice in communities that are disproportionately impacted by pollution and climate change.

4. What steps has the Department taken since May 2022 to implement this strategy and uplift marginalized communities?

Response: The Department’s announcement of its Comprehensive Environmental Justice Enforcement Strategy (CEJES) was an acknowledgement that overburdened communities and others facing environmental justice concerns have faced barriers to accessing the justice they deserve, particularly when it comes to health and quality of life burdens posed by environmental violations, legacy pollution, and climate change. For that reason, the Department created the Office of Environmental Justice (OEJ) to serve as the central hub and catalyst for our efforts to advance a comprehensive environmental justice enforcement strategy.

OEJ reports as follows:

In the time since OEJ was announced, the Department has taken important actions across the country to advance environmental justice for all Americans, including working to improve access to safe drinking water in Jackson, Mississippi;¹²⁶ securing convictions for mismanagement of industrial waste in West Virginia;¹²⁷ filing a comprehensive water rights settlement on behalf of Tribes in Montana to protect water resources that are becoming more vulnerable due to increasing temperatures and drought;¹²⁸ and securing a settlement agreement with the City of Houston to address illegal dumping in Black and Latino neighborhoods.¹²⁹ In partnership with the Department of Health and Human Services, the Department also reached an

¹²⁶ See Press Release, U.S. Dep’t. of Justice, United States Files Complaint and Reaches Agreement on Proposal with City of Jackson and State of Mississippi on Interim Solution to the Jackson Water Crisis (Nov. 29, 2022), <https://www.justice.gov/opa/pr/united-states-files-complaint-and-reaches-agreement-proposal-city-jackson-and-state>

¹²⁷ See Press Release, U.S. Dep’t. of Just., Fayette County Man and Business Plead Guilty to Clean Water Act Violations (Feb. 22, 2023), <https://www.justice.gov/usao-sdww/pr/fayette-county-man-and-business-plead-guilty-clean-water-act-violations>.

¹²⁸ U.S. Dep’t. of Just., Environment and Natural Resources Division FY 2022 Accomplishments Report at 40, available at <https://www.justice.gov/enrd/page/file/1580691/download>.

¹²⁹ See Press Release, U.S. Dep’t. of Just., Justice Department Announces Agreement in Environmental Justice Investigation of Illegal Dumping in the City of Houston (June 6, 2023), <https://www.justice.gov/opa/pr/justice-department-announces-agreement-environmental-justice-investigation-illegal-dumping>.

interim resolution agreement with the Alabama Department of Public Health regarding the development of equitable and safe wastewater disposal and management systems in Lowndes County, Alabama.¹³⁰

Many low-income communities, communities of color, and Tribal and indigenous communities along with individuals with disabilities and other communities most in harm’s way from climate change, face disproportionate environmental risks and burdens, which in turn affect health, lifespan, and quality of life. The Department’s commitment to seeking equal justice under the law—exemplified by the cases cited above and many others—encompasses a mandate to reduce the disproportionate adverse public health and environmental burdens borne by these overburdened and other communities with environmental justice concerns. And beyond these examples, the Office of Environmental Justice is working to support environmental justice investigations and litigation, facilitate outreach by the Department to communities with environmental justice concerns, and engage all Justice Department bureaus, components, and offices in the collective pursuit of environmental justice.

Immigration

When President Biden took office, he promised to “restore humanity and American values to our nation’s immigration system.” A key challenge in helping our nation achieve that goal is the significant backlog within our immigration court system, which the Department of Justice oversees. There are currently hundreds of thousands of cases in backlog, leaving people in limbo and severely hampering the effectiveness of our system overall. We must work to improve our immigration system and ensure that it is equitable, humane, and treats those involved in it with dignity and respect.

- 5. You inherited an immigration court system from the previous Administration with a backlog of over one million cases, significant staffing shortages, and inefficient policies. What steps have you taken to address these challenges, and what additional efforts are underway?**

Response: Reducing the immigration court backlog is one of the highest priorities for EOIR. EOIR reports as follows:

At the start of the Administration, the immigration courts faced a backlog of 1.3 million cases. In FY 2022, EOIR completed more than 300,000 cases, marking an all-time high. In FY23, EOIR completed approximately 550,000 cases, a more than 80% increase over last year’s record. The Department attributes its high number of case completions to several factors, including increased

¹³⁰ See Press Release, U.S. Dep’t. of Just., Departments of Justice and Health and Human Services Announce Interim Resolution Agreement in Environmental Justice Investigation of Alabama Department of Public Health (May 4, 2023), <https://www.justice.gov/opa/pr/departments-justice-and-health-and-human-services-announce-interim-resolution-agreement>.

hiring of judges and support staff, improved docket processes, and a focused regulatory agenda. EOIR recognizes that immigration judges are critical to the prompt and fair adjudication of immigration cases, and EOIR has increased its adjudicatory capacity by significantly expanding its immigration judge corps.

Since the start of the Administration, EOIR has increased the number of immigration judges by nearly 150%. Additionally, EOIR has leveraged internet-based technology to maximize the number of hearings that can be scheduled and introduced new backlog reduction efforts such as off-docketing cases that are not ripe for adjudication, establishing specialized dockets to resolve less complex matters quickly, and expanding the use of prehearing conferences to resolve cases or narrow issues prior to trial. EOIR continues to make data-based operational decisions to support the positive trajectory of its case resolutions.

6. What reforms should Congress consider to expedite the cases currently in backlog in an equitable, humane, and democratic manner, and to reduce backlogs moving forward?

Response: The Department appreciates the funding provided by Congress in the past and requests full consideration of the FY 2024 President’s budget, which includes additional funding for immigration judges, staff, and other improvements that will aid in backlog reduction.

Vermont Institutions and Restorative Justice

Members of this body – both Republican and Democrat – have called for substantive reforms to our criminal justice system. And with good reason. The U.S. makes up close to 5% of the global population, but we have more than 20% of the world’s prison population. And that population is disproportionately Black and Brown. That’s a reflection of a dysfunctional criminal justice system. As Congress considers criminal justice reforms, it is critical that we have access to as much research—and as many innovative models—possible to improve our existing system.

Vermont plays a leading role in developing those innovative approaches—including through the National Center on Restorative Justice. The organization is a partnership between Vermont Law School, the University of Vermont, and the University of San Diego, with funding from the Department. NCORJ conducts research on, educates the public about, and promotes the restorative justice approach to responding to crime. Rather than focusing solely on punishment in response to legal violations, the restorative justice model focuses on repairing harm. It seeks to empower victims, survivors, and the community to engage in the justice process.

7. Do you agree that the potential benefits of the restorative justice are valuable and should be further explored by the Department?

Response: The Office on Violence Against Women (OVW) states as follows:

The Department is actively engaged in developing the Restorative Practices Pilot Program established in the 2022 Violence Against Women Act Reauthorization. The program development effort to date has included conducting listening sessions with practitioners, exploring existing restorative justice models, identifying metrics for success, and seeking proposals for a technical assistance provider that will be ready to assist the first round of grantees.

Of the newly authorized VAWA 2022 grant programs, only Restorative Justice (RJ) received an appropriation in FY 2022. According to OVW, it has not yet issued an RJ grant program solicitation, but it has established an internal RJ working group, issued a Call for Concept Papers for RJ technical assistance, and is conducting ongoing listening sessions on the subject.

Additionally, Victims of Crime Act [victim assistance formula funding](#) can support restorative justice activities, including but not limited to, Tribal community-led meetings and peace-keeping activities, if such meetings are requested or voluntarily agreed to by the victim. According to OVC, victims must always have the opportunity to withdraw from participation, and there must be a reasonably anticipated beneficial or therapeutic value to the crime victim. Those funds are administered through State Administering Agencies (SAA), which are entities within state and territorial governments, and the District of Columbia, that are responsible for comprehensive criminal justice planning and policy development. Ultimately, the SAA maintains the discretion to determine what restorative justice activities it wishes to fund and has the responsibility of monitoring and overseeing the program.

8. Why is it important for the Department to support programs, like the National Center on Restorative Justice, that invest in the development of and research into less traditional models in the criminal justice system?

Response: Congress recognized the importance of the Department’s technical assistance and authorized OVW to spend up to 8% of its appropriation for its technical assistance program, with some exceptions that authorize OVW to spend more. According to OVW, for the last five years, the percentage spent on technical assistance has been largely consistent, ranging from just under 6% to 6.8%. OVW does anticipate some increased investments in technical assistance as it works with its grant community to implement new VAWA 2022 programming such as restorative practices and as new challenges such as online harassment and abuse arise.

OJP advises as follows:

This year, through BJA, accredited universities of higher education and accredited law schools were eligible to apply for funding to manage and expand the work of the National Center on Restorative Justice, with the overall purpose to educate, train, and build knowledge on restorative justice approaches, principles, and their application to criminal justice and community safety. This includes educating and training the next generation of justice leaders on the use of restorative justice within, or in alignment with, criminal justice systems.

In addition, the National Institute of Justice reports that through its FY 2022 Research and Evaluation on the Administration of Justice: Diversion and Restorative Justice Program, it funded the Urban Institute project *National Scan, Case Studies, and Evaluability Assessments of Restorative Justice Programs for Serious and Violent Harm*.

9. What steps can the Department take to support the implementation of these types of models, including the restorative justice model?

Response: OJP advises as follows: As the Department works to implement VAWA 2022, the Department is actively engaged in developing the Restorative Justice program. Currently, the Department is conducting listening sessions with stakeholders, exploring existing restorative justice models, identifying metrics for success, and seeking proposals for a technical assistance provider that will be ready to assist the first round of grantees.

Election Security and Infrastructure

American democracy is at risk. In recent elections, state and local election officials have faced threats and harassment—including in Vermont. Meanwhile, our election infrastructure is stretched thin. State officials need help to ensure that our voting systems are robust and secure. The Department of Justice has taken important steps to protect election workers and the right to vote—including by establishing an Election Threats Task Force. But more must be done.

10. How can the Department improve coordination with other federal agencies, like the Department of Homeland Security, to help state officials strengthen our election systems?

Response: The Department coordinates regularly with other federal agencies, including the DHS, in preparing and planning for significant upcoming elections. As part of those efforts, the Department and its federal counterparts prepare for potential issues and potential threats that may arise during the relevant election, including issues and threats specific to State election systems. For example, the Department and DHS, in partnership with other federal agencies, have conducted tabletop exercises designed to address election-related contingencies, all in an effort

to enhance election preparedness and to promote and ensure effective communication and coordination with State election and law enforcement officials.

11. Recent reports have documented coordinated efforts to copy state voting software and distribute it publicly—with potentially dangerous implications for election security and future elections.¹³¹ What steps, if any, is the Department taking to investigate these reports?

Response: The Department routinely intakes and assesses allegations of potentially criminal activity to determine whether the allegations are credible, may constitute possible violations of federal law, and warrant federal investigative action. As a matter of policy, the Department generally does not comment about specific allegations of misconduct, or the existence or non-existence of a particular investigation.

¹³¹ See Sue Halpern, “The Election Official Who Tried to Prove ‘Stop the Steal,’” *New Yorker*, September 7, 2022, <https://www.newyorker.com/news/american-chronicles/the-election-official-who-tried-to-prove-stop-the-steal>; Emma Brown, Aaron C. Davis, and John Swaine, “Advocates seek federal investigation of multistate effort to copy voting software,” *Washington Post*, December 13, 2022, <https://www.washingtonpost.com/investigations/2022/12/13/election-security-voting-machine-breach/>.