**Nomination of Jeff Sessions to be Attorney General of the United States**
**Questions for the Record**
**Submitted January 24, 2017**

## QUESTIONS FROM SENATOR HIRONO

1. In your response to my written question 1a., you indicated that you would "follow and enforce the law as defined by the courts, including the FACE Act". The question was whether you agree with the 2002 decision of the Ninth Circuit Court of Appeals (*Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coalition of Life Activists*, 290 F.3d 1058, 1062-66 (9th Cir.2002) (en banc)) that "WANTED posters targeting abortion providers" constitute actionable threats under the FACE Act. Your position on this would be important in jurisdictions where the courts have not made a determination about this type of actionable threat against abortion providers, and the Department of Justice would have to decide whether to bring an action under the FACE Act.

    a. Do you agree with the decision in the Ninth Circuit?

**RESPONSE:** I have not had the opportunity to study this case. If I am fortunate enough to be confirmed as Attorney General, I will conduct a thorough review of departmental matters pending in the courts to ensure the fair administration of justice. I will follow the law and the Constitution as defined by the courts.

    b. Would you direct prosecutors to pursue cases under the FACE Act against this type of threat jurisdictions where the Ninth Circuit decision is not controlling?

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

2. In your response to my written question 2a., you stated that "An example of an extreme view would include those that call for the harming or killing those who do not share your religious beliefs." This seems to indicate that there are other views that might also be considered "extreme" for the purpose of "enhanced vetting."

    a. Are there other religious views that you would consider extreme?

**RESPONSE:** Question 2a. asked "how would you characterize what constitutes an extreme view," in the context of "extreme vetting." My answer, which is restated above, merely provided an example. I have nothing further to add.

3. In your response to my written question 2b., you suggested that there is a historical context as to whether one religion is more likely to "exhibit more extreme and dangerous views than others."

a. Which U.S. Government official(s) would properly determine whether a view is "extreme" or "dangerous" for the purpose of extreme vetting?

**RESPONSE:** The administration of our various immigration and visa programs are largely within the purview of the Department of State and the Department of Homeland Security. If I am fortunate enough to be confirmed as Attorney General, my role in determining the ability of certain individuals to enter the United States will be limited. But in that capacity, I would ensure that adequate Department of Justice resources and assets are devoted to supporting the critical mission of determining who among the millions who seek to enter the United States pose a threat to our safety and security.

b. How would you ensure that enhanced vetting would not result in impermissible profiling or discrimination based on religious views?

**RESPONSE:** As I indicated above, the administration of our various immigration and visa programs are largely within the purview of the Department of State and the Department of Homeland Security. If a question of law arose regarding vetting policies, the Department of Justice would provide guidance as to any relevant law or constitutional provision.

4. In response to my written question 3b., you wrote, "[a]s I testified before the Committee, I would not pre-judge a specific case, nor would I commit that there would never be any changes to consent decrees that have been entered into, particularly if departments have either complied or have made other improvements that might justify the withdrawal or modification of the consent decree."

a. In the absence of compliance or improvements made on the part of the parties bound by the consent decree, will the Department of Justice under your leadership maintain, enforce, and defend against proposed changes to that consent decree?

**RESPONSE:** Such determinations would depend on the specific facts and circumstances of each case. The Department must follow the facts wherever they lead, and make decisions regarding any potential changes based upon the facts and the law. That is what I always did as a United States Attorney, and it is what I will insist upon if I am fortunate enough to be confirmed as Attorney General.

b. In 2008, you wrote that consent decrees "constitute an end run around the democratic process."[1] Given your hostility to consent decrees and your refusal to provide assurances that you will maintain, enforce, and defend against changes to an existing consent decree entered into between a police department and the Justice Department, how can this Committee be confident that those decrees are safe from premature changes?

**RESPONSE:** I reject the assertion that I am hostile to consent decrees. The foreword I penned clearly states that "consent decrees are, and will remain, an important part of the settlement of litigation in America." It continues: "important improvements…can be made to the process."

[1] http://www.alabamapolicy.org/wp-content/uploads/API-Research-Consent-Decrees.pdf

As I have not studied any of the consent decrees to which the Department is currently a party, nor have I been privy to the negotiations, and because the facts and circumstances of each vary dramatically, I cannot offer further comment.

c. During the hearing, you said that consent decrees are "not necessarily a bad thing." Can you please provide a situation in which you would consider a consent decree a "bad thing"?

**RESPONSE:** I provided an example in the foreword referenced here. When I became Attorney General, the State was bound by a consent decree because my predecessor entered into an agreement, which I believed violated the state constitution. I opposed this action, and my position was ultimately approved by the Eleventh Circuit.

d. Under what circumstances would you oppose a consent decree regarding allegations of police misconduct?

**RESPONSE:** Such determinations would depend on the specific facts and circumstances of each case. The Department must follow the facts wherever they lead, and make decisions regarding any potential changes based upon the facts and the law, and consistent with established procedures of the Department. That is what I always did as a United States Attorney, and it is what I will insist upon if I am fortunate enough to be confirmed as Attorney General.

5. In response to my written question 4c., you responded, "I have not devoted significant study to this issue. However, if I am confirmed, if such matters come before the Department of Justice, I will carefully and objectively evaluate the facts and circumstances of each case and endeavor to uphold and defend the Constitution in the pursuit of justice."

   a. As I noted in written question 4c., you strongly defended the use of "forced arbitration" clauses during your time in the Senate, including in a statement on the floor of the Senate.[2] Please provide any sources you relied upon in preparing your remarks on the Senate floor.

**RESPONSE:** While I cannot recall the sources relied on in the 17-year-old speech referenced in the above question—which were likely relied on by staff—I would note that the text of the speech references an Alabama law firm's newsletter and also mentions that a number of groups had raised concerns about the legislation mentioned in the speech, which I said should be "explored more fully." I also noted that "the arbitration process must be fair." In fact, I proposed and filed legislation to ensure the arbitration process was fair for all.

6. The Consumer Financial Protection Bureau has studied the issue of forced arbitration in an extensive report to congress. The report is available here: http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf

[2] https://www.congress.gov/congressional-record/2000/3/28/senate-section/article/s1810-2?q=%7B%22search%22%3A%5B%22financial%22%5D%7D&r=5

a. Given the information in this report, does that change your response to question 4c: “If confirmed, will you defend rules enacted by banking regulators that limit the use of forced arbitration in consumer banking contracts to the full extent of the law?

**RESPONSE:** In any contract, the parties must agree to all the terms and clauses included in the contract document, including an arbitration clause. This is basic contract law, and the basic premise of the Federal Arbitration Act for over 75 years. If the contract was obtained through exploitation, fraud or coercion, then the consequences of those actions, whether under contract law or criminal law, would apply. Acceptable arbitration provisions in contracts should be conducted fairly and, in the past, I have offered detailed legislation to ensure fairness.