

Exhibit 16

United States Senate

WASHINGTON, DC 20510

March 28, 2019

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Barr:

We write to express our opposition to any attempt to reinterpret the United States' obligations under the United Nations' Single Convention on Narcotics of 1961 (Single Convention), which governs the international regulation of controlled substances like marijuana. We have concerns that any changes will unnecessarily hinder the advancement of research on the effects of marijuana for medicinal or therapeutic purposes.

While the Single Convention contained a research exception for the production of controlled substances, the treaty intended to limit the production and distribution of the controlled substances outside of the direct oversight and supervision of the federal government. However, after years of limited research on the effects of medical marijuana, and after many states had moved forward with legalization, the Drug Enforcement Administration (DEA), in consultation with the National Institute on Drug Abuse (NIDA) and the Food and Drug Administration, reassessed their need to provide an adequate supply of research-grade marijuana.

On August 12, 2016, the DEA issued a request for applications to manufacture marijuana for research purposes.¹ In the agency's analysis of the Single Convention, the DEA outlined five conditions for the lawful cultivation of marijuana under Articles 23 and 28 of the treaty. The DEA, as the agency delegated with carrying out the functions of the Single Convention, must:

1. Designate the areas in which, and the plots of land on which, cultivation of the cannabis plant for the purpose of producing cannabis shall be permitted;
2. License cultivators authorized to cultivate cannabis;
3. Specify through such licensing the extent of the land on which the cultivation is permitted;
4. Purchase and take physical possession of all cannabis crops from all cultivators as soon as possible, but not later than four months after the end of the harvest; and
5. Have the exclusive right of importing, exporting, wholesale trading and maintaining stocks of cannabis.

¹ 21 CFR Part 1301, <https://www.federalregister.gov/documents/2016/08/12/2016-17955/applications-to-become-registered-under-the-controlled-substances-act-to-manufacture-marijuana-to>.

Historically, this operated as a single contract with the National Institute on Drug Abuse (NIDA), through which the federal government was able to maintain a monopoly of the wholesale distribution of the cultivated marijuana. However, to increase the supply of the research-grade marijuana, the DEA revised its oversight and supervisory role. As the agency explained:

DEA believes it would be consistent with the purposes of articles 23 and 28 of the Single Convention for DEA to register marijuana growers outside of the [National Institute on Drug Abuse]-contract system to supply researchers, provided the growers agree that they may only distribute marijuana with prior, written approval from DEA.

We agree with DEA's analysis that the registration scheme meets the federal government's obligations under the Single Convention. Furthermore, the registration of new manufacturers of research-grade marijuana meets a real need in our country to advance the science behind medical marijuana. No additional changes to our interpretation of the Single Convention are needed to meet this goal.

We believe the licensed production of marijuana for research is critically important. After over two and a half years of delay, it is imperative that you advance the process for registering new manufacturers of research-grade marijuana. We thank you for your consideration of our concerns, and we look forward to the opportunity to work with you this issue.

Sincerely,



BRIAN SCHATZ
United States Senator



CORY A. BOOKER
United States Senator

cc: Uttam Dhillon
Acting Administrator
U.S. Drug Enforcement Administration

Exhibit 17

United States Senate

WASHINGTON, DC 20510

April 2, 2019

The Honorable William Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Barr:

We write to follow up on previous inquiries about the status of pending applications submitted to the Drug Enforcement Administration (DEA) for licenses to manufacture marijuana for scientific research. These inquiries were made in a previous letter sent to then-Attorney General Jeff Sessions encouraging the Department of Justice to finalize its review of the applications. The Department has not responded to the letter, sent on July 25, 2018. Inquiries were also made by both Senator Chuck Grassley¹ and Ranking Member Dianne Feinstein² in questions for the record for your confirmation hearing, to which you responded by committing to review the letter and the status of the pending applications. We are encouraged by your comments, and we look forward to working with the Department on this issue.

Our nation's need for meaningful federally sanctioned research is critical. Research and medical communities should have access to research-grade materials to answer questions around marijuana's efficacy and potential impacts, both positive and adverse. Finalizing the review of applications for marijuana manufacturing will assist in doing just that.

For nearly fifty years, the University of Mississippi has had the sole contract with the National Institute on Drug Abuse to grow cannabis for research purposes. To expand the number of manufacturers, the DEA submitted a notice in the Federal Register on August 11, 2016, soliciting applications for licenses to manufacture marijuana for research purposes. Under this notice, DEA explained its legal authority to "increase the number of entities registered under the Controlled Substances Act (CSA) to grow (manufacture) marijuana to supply legitimate researchers in the United States."³ However, over two year and a half years have passed since the DEA's initial notice without any new schedule I marijuana manufacturer registrations.

On April 25, 2018, during testimony before the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, in response to questioning, Sessions stated: "We are moving forward and we will add, fairly soon . . . additional suppliers of marijuana under

¹ "Questions for the Record, William P. Barr, Nominee to be United States Attorney General: Questions from Senator Grassley," <https://www.judiciary.senate.gov/imo/media/doc/Barr%20Responses%20to%20Grassley%20QFRs1.pdf>.

² "Questions for the Record, William P. Barr, Nominee to be United States Attorney General: Questions from Senator Feinstein," <https://www.judiciary.senate.gov/imo/media/doc/Barr%20Responses%20to%20Feinstein%20QFRs1.pdf>.

³ <https://www.federalregister.gov/documents/2016/08/12/2016-17955/applications-to-become-registered-under-the-controlled-substances-act-to-manufacture-marijuana-to>.

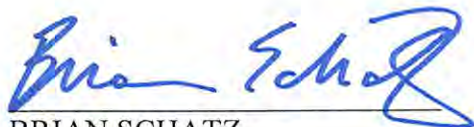
the Controlled [Substances Act].”⁴ In a prior hearing, Sessions testified: “It would be healthy to have some more competition in the [marijuana] supply.”⁵

To prevent further delays in approving the pending DEA applications for licenses to manufacture marijuana for research purposes, we ask you to respond to the following questions and requests by April 23, 2019:

- 1) What is the current status of each marijuana manufacturer application?
- 2) What steps have both DEA and DOJ taken to review each marijuana manufacturer application currently pending?
- 3) By what date do you estimate the DEA will have completed its review of all the marijuana manufacturer applications and commence registration of new marijuana manufacturers?
- 4) Please share DOJ’s analysis of the Single Convention and if the opinion of the Justice Department is the same or similar to that of DEA’s.
- 5) If there are legal barriers to licensing multiple schedule I marijuana manufacturers under the Single Convention, please identify and explain them.
- 6) What impact, if any, did the enactment of the 2018 Farm Bill have on the pending applications? If any of the pending applications were to manufacture hemp-derived CBD for research purposes, does DOJ intend to notify those applicants that a bulk manufacturer registration is no longer needed? If so, when? If not, why not?

In your response to Senator Grassley, you said: “I support the expansions of marijuana for manufacturers for scientific research consistent with law,” and in your response to Senator Feinstein, in reference to the pending applications, you said: “If confirmed, I can commit to reviewing the matter.” We look forward to working with you on this effort, and we thank you for your attention to this matter.

Sincerely,



BRIAN SCHATZ
United States Senator



DIANNE FEINSTEIN
United States Senator

⁴ “Attorney General Sessions on Justice Department Budget Request,” C-SPAN, 25 April 2018, <https://www.c-span.org/video/?444368-1/attorney-general-declines-resign-mueller-rosenstein-fired>.

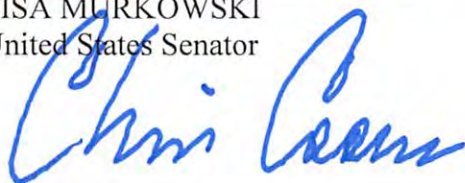
⁵ “Justice Department Oversight Hearing,” C-SPAN, 18 Oct. 2017, <https://www.c-span.org/video/?434413-1/attorney-general-interviewed-special-counsel>.



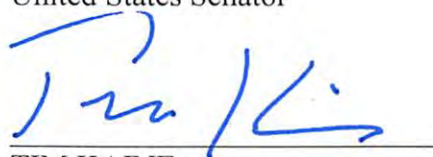
LISA MURKOWSKI
United States Senator



CORY GARDNER
United States Senator



CHRISTOPHER A. COONS
United States Senator



TIM Kaine
United States Senator

Exhibit 18

Congress of the United States
Washington, DC 20515

May 7, 2019

The Honorable William Barr
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Uttam Dhillon
Acting Administrator
Drug Enforcement Administration
8701 Morrissette Drive
Springfield, VA 22152

Dear Attorney General Barr and Acting Administrator Dhillon:

We write to urge you to do more to speed research on the medicinal benefits of cannabis.

Some of us have written to the Department of Justice (DOJ) and Drug Enforcement Administration (DEA) before on the topic of cannabis, and we write again because the matter is of such importance. There is tremendous evidence that cannabis has the power to treat a variety of medical ailments; that is why 33 states and the District of Columbia have made it legal for that purpose.

In fact, the federal government recognizes the healing properties of cannabis as well. So far the Food and Drug Administration (FDA) has approved one compound produced by the plant and two compounds which are synthetic substances mimicking ones produced by the plant, all known as cannabinoids, for medical use. More research is needed, however, to make additional products available.

Unfortunately, the federal government stands in the way. The application process to research cannabis is one that is arduous and long. First, one who wishes to engage in this research must at the very least work with three separate federal entities – the National Institute on Drug Abuse (NIDA), DEA, and FDA. Approval is required by DEA, which involves a site inspection, and FDA. This is not including any involvement by governments at the state or local level.

Second, there is only one federally-approved grower of cannabis for research in the United States – the University of Mississippi. Researchers must wait to be provided the cannabis to begin their work. Beyond any delays in time this adds, the cannabis itself is generally regarded as having poor quality. The University of Mississippi also does not offer cannabinoids.

It is thus not surprising that those who want to research cannabis are frustrated. Some wait months or even years to have their applications approved. And then they have to deal with raw materials that do not always lend themselves to proper research.

We recognize DEA has taken concrete steps to improve research prospects, but they do not go far enough. Specifically, we applaud DEA for improving its application process for research by putting it entirely online in early 2018. But, as John Hudak, a senior fellow at the Brookings Institution, told *Rolling Stone* in February 2018, that is just a “very small drop in the bucket” in terms of speeding up the process. And, we appreciate that DEA has increased its quota in 2019 for growing

cannabis for research purposes by more than five times, writing in the December 28, 2018 *Federal Register* notice approving the quota that it was due to “increased usage projections for federally approved research projects.” But, that does not address any delays in receiving cannabis, its quality, or what is presented as materials for research options.

We urge you then to go beyond these steps and do whatever you can to speed up and improve the research application process. Please let us know what you are considering to change the application process so it moves more quickly and what additional resources from Congress would help in that regard.


One action which would be beneficial is to act on one of the 26 pending applications to grow cannabis for research purposes; these applicants could provide better raw materials for research. Some of us have written with questions about these applications previously; we never received a response. So, we would like to re-ask those questions here:

1. What is the current status of the 26 cannabis manufacturer applications? How long has each been pending before DOJ and DEA?
2. What steps have the DEA and DOJ taken to review the cannabis manufacturer applications currently pending? What are the reasons these applications have not been approved?
3. When do you estimate the DEA and DOJ will complete their review of all of the cannabis manufacturing applications and begin approving some as new manufacturers?
4. In the past 12 months, excluding Schedule I Bulk Manufacturer registrations for cannabis, how many other DEA registrations has DOJ reviewed?

We hope DOJ and DEA share our goal of bringing safe and effective medical treatments to those who are suffering as quickly as possible; we believe cannabis can be part of the solution, but we need more research to make that happen.

Thank you for reviewing our request, and we look forward to a prompt response.

Sincerely,



Eric Swalwell
Member of Congress

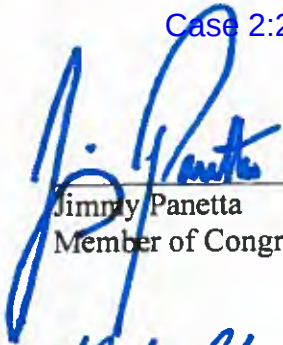

Matt Gaetz
Member of Congress


Steve Cohen
Member of Congress M.C.

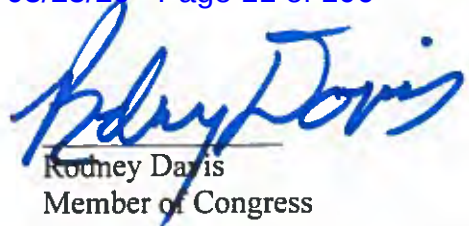

Don Young
Member of Congress

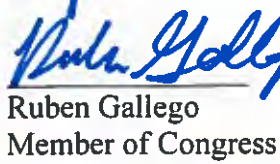

Earl Blumenauer
Member of Congress

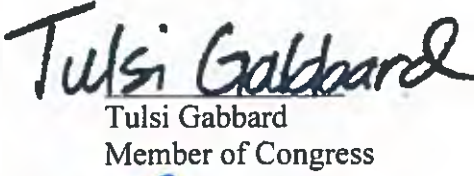

David P. Joyce
Member of Congress

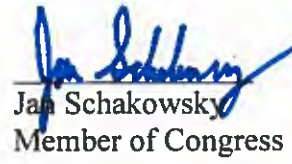

Jimmy Panetta
Member of Congress

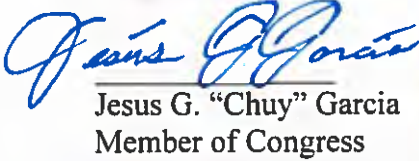

Zoe Lofgren
Member of Congress

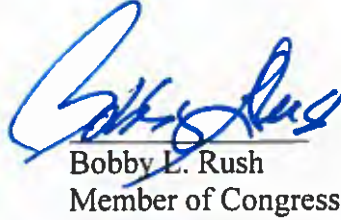

Rodney Davis
Member of Congress


Ruben Gallego
Member of Congress


Tulsi Gabbard
Member of Congress


Jan Schakowsky
Member of Congress


Jesus G. "Chuy" Garcia
Member of Congress


Bobby L. Rush
Member of Congress


Barbara Lee
Member of Congress

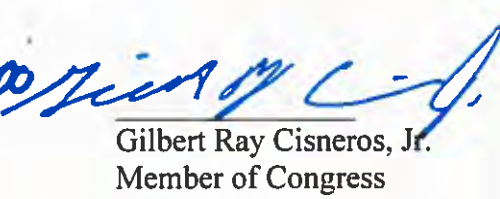

Ro Khanna
Member of Congress

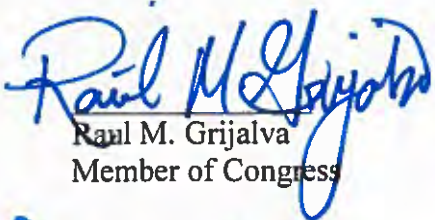

Debbie Dingell
Member of Congress

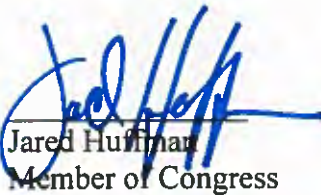

Diana DeGette
Member of Congress

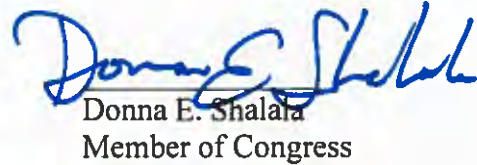

Scott Peters
Member of Congress


J. Luis Correa
Member of Congress

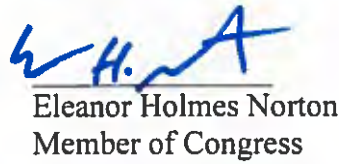

Gilbert Ray Cisneros, Jr.
Member of Congress

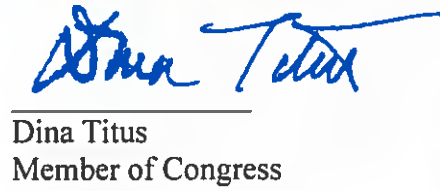

Raul M. Grijalva
Member of Congress

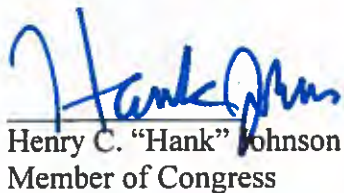

Jared Huffman
Member of Congress


Donna E. Shalala
Member of Congress


Seth Moulton
Member of Congress


Eleanor Holmes Norton
Member of Congress


Dina Titus
Member of Congress


Henry C. "Hank" Johnson
Member of Congress


Peter A. DeFazio
Member of Congress


Rashida Hall
Member of Congress

Cc: Dr. Nora D. Volkow, Director, National Institute on Drug Abuse

Exhibit 19

**COMMERCE, JUSTICE, SCIENCE, AND RE-
LATED AGENCIES APPROPRIATIONS FOR
FISCAL YEAR 2019**

WEDNESDAY, APRIL 25, 2018

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 2:32 p.m., in room SD-192, Dirksen Senate Office Building, Hon. Jerry Moran (Chairman) presiding.

Present: Senators Moran, Shelby, Alexander, Murkowski, Collins, Graham, Boozman, Capito, Lankford, Kennedy, Shaheen, Leahy, Feinstein, Coons, Schatz, Manchin, and Van Hollen.

U.S. DEPARTMENT OF JUSTICE

STATEMENT OF HON. JEFF SESSIONS, ATTORNEY GENERAL

OPENING STATEMENT OF SENATOR JERRY MORAN

Senator MORAN. Good afternoon. I call the hearing to order.

Mr. Attorney General, welcome to the committee, the Committee on Commerce, Justice, Science Appropriations Subcommittee. We're here to examine the Department of Justice's fiscal year 2019 budget request.

I am pleased to welcome you to this subcommittee. My colleagues and I are very much interested in hearing from you in your—hearing your testimony, considering your testimony today. Your input is not only helpful, but necessary, as we review the President's spending priorities for the Justice Department.

While this hearing is about the Department's fiscal year 2019 budget request, I would suspect that you will hear about a number of other issues unrelated to the Department's resource and funding needs. My focus in this hearing is to better understand your top funding priorities and to emphasize those that are important to our Nation.

The Department of Justice is responsible for, and involved in, many important national priorities. Arguably, the greatest responsibility includes keeping Americans safe, which carries a new meaning, given the growing national security threats of today, and upholding the rule of law. This requires that Congress adequately fund our Nation's law enforcement efforts, including counterterrorism and cybersecurity initiatives.

INVESTIGATION OF CONSPIRACY TO BOMB SOMALI IMMIGRANTS

In Kansas, the Department recently successfully investigated and convicted individuals who conspired to bomb residents of Somali immigrants to our State. The work done by the FBI, by the Liberal Kansas Police Department, the Seward County Sheriff's Office, the Ford County Sheriff's Office, the Garden City Police Department, the Dodge City Police Department, and the Finney County Sheriff's Office, along with the Kansas Highway Patrol and the Kansas Bureau of Investigation, and the United States Attorneys Office showed, in my mind, be a model for Federal and local partnerships. I trust the Department will seek to replicate the successes of these entities with the funds in this request.

FIX NICS AND STOP SCHOOL VIOLENCE ACT

The President's fiscal year 2019 budget proposal of 28.4 billion for the Department of Justice. I note that—however, I note that the many agencies and departments this budget request was created and produced before the recently enacted fiscal year 2018 bill, which was finalized and has recently become law. For example, both the Fix NICS Act and the Stop School Violence Act authorized important safety initiatives, but were signed into law in the 2018 omnibus after your fiscal year 2019 budget submission. As a co-sponsor of both pieces of legislation, I look forward to hearing the Department's plan to implement these two important policies.

Furthermore, this administration has made it a priority to combat violent crime, which is reflected as one of the Department's highest priorities. Specifically, the administration seeks 109.2 million to enhance ongoing efforts to reduce violent crime and to combat transnational criminal organizations in the fiscal year 2019 budget request. For example, the Department requested increased funding to expand the Project Safe Neighborhood Initiative. Project Safe Neighborhood's main focus is the extradition of illegal firearms—I'm sorry, the eradication of illegal firearms and violent gang activity. The program is designed to improve police and community relations, which is strongly supported by many from law enforcement officials in my State of Kansas. The subcommittee looks forward to hearing more details about this program.

NATIONAL INTEGRATED BALLISTICS INFORMATION NETWORK

I also look forward to hearing about the impact of emerging technologies, such as those being utilized by the National Integrated Ballistics Information Network, known as NIBIN. NIBIN allows law enforcement officials to share ballistic intelligence across the United States, making law enforcement resources more efficient and effective.

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW FUNDING

The Department and administration have also prioritized solving the problem of illegal immigration. The fiscal year 2019 request seeks 65.9 million in immigration-related programs, program enhancements to support border security and enforcement efforts. For example, the 2019 request outlines that this funding would hire 150 attorneys for the Executive Office for Immigration Review,

which oversees the Nation's immigration courts and the Board of Immigration appeals, and provide 25 million for technology improvements to transform current paper operating system to an electronic filing system.

OPIOIDS

The Department is also involved in helping to combat ongoing opioid epidemic. According to the Center for Disease Control and Prevention, opioid overdoses in the U.S. have surpassed motor vehicle accidents as the number-one cause of accidental death in the country. The crisis needs to be aggressively addressed, and I look forward to working with the Department to ensure adequate resources to—are provided to do just that.

LEGAL ORIENTATION PROGRAM AND HELP DESK

Last, Mr. Attorney General, I want to thank you for your attention and acknowledgment of a letter that Senator Shaheen and I sent to you exactly 1 week ago regarding the Executive Office of Immigration Review, Legal Orientation, and Immigration Help Desk Programs. We also spoke on the phone earlier this week, and I would appreciate it if you address this matter in more detail in this hearing. I know that you would agree that ensuring congressional direction is—ensuring that congressional direction is followed is extremely important.

Again, I thank you for your service as our Attorney General and the important testimony that we will hear from you today as our subcommittee begins its work on the fiscal year 2019 budget for the Department of Justice.

I now recognize the Senator from New Hampshire, Senator Shaheen, the Ranking Member.

STATEMENT OF SENATOR JEANNE SHAHEEN

Senator SHAHEEN. Thank you very much, Mr. Chairman. This is our first hearing together, and I look forward to working with you on this subcommittee.

I'm very pleased that Attorney General Sessions is here with us this afternoon. Thank you for being here, and thank you for taking time to speak with me last week on the phone.

I want to begin by thanking the 115,000 career employees of the Department of Justice. They are working hard every day to keep Americans safe from crime and terrorism. The breadth of issues that the Department handles on a daily basis is vast.

CONCERNS ABOUT PROPOSED CUTS

I do have a concern that, as I look at the budget proposal for fiscal year 2019, the Department has requested addressing these numerous missions with less funding, a reduction of \$1.9 billion, which is 6.2 percent less than the level provided in the omnibus we passed last month. Now, while I was very pleased to see the funding levels preserved for lifesaving grant programs under the Office of Violence Against Women, I'm concerned about some of the drastic reductions and eliminations that have been proposed for other programs.

OPIOIDS

As you know very well, the Justice Department is on the front lines fighting the deadly, uncontrolled opioid epidemic. As Senator Moran said and as every Member of this subcommittee knows, this is an epidemic that we have seen across this country. It's also an epidemic that is still gaining strength.

I just met with a group of family members and the Addiction Policy Forum who spoke about the challenges that they face. They reminded me that we lost, as Senator Moran said, about 63,000 Americans last year to the opioid epidemic. And, for every one of those people lost, there is a family who is suffering and is experiencing that loss.

DEA AND 360 STRATEGY

So, I certainly support enforcement and prosecution efforts, but I believe they should be paired with prevention and treatment responses as well. This balanced approach is something that I've heard support for from police chiefs, from judges, and from other criminal justice professionals in New Hampshire. The critical need to help children and families grappling with the opioid crisis in their neighborhoods and within their own families is very real. Even the DEA has focused on a comprehensive approach to opioids with their three-fold 360 Strategy that targets enforcement, diversion control, and community outreach. Manchester, New Hampshire, which is our largest city—and I know, as Attorney General, you've already been there, and we appreciate that—was one of the first locations chosen for the 360 Program. The DEA has seen real success there, not only in tackling heroin and opioid trafficking, but by partnering with social service and other community groups, such as the Boys and Girls Club of Manchester, to provide prevention and education programs for young people that are so critical.

FENTANYL

New Hampshire has also been grappling with the dramatic rise of fentanyl, the synthetic opioid that's approximately 50 times more potent than heroin and 100 times more powerful than morphine. Unfortunately, New Hampshire leads this Nation in overdose deaths from fentanyl. Sadly, it's now spreading across the country, and it's something that has overwhelmed State crime labs, which are already backlogged with testing crime scene evidence.

CONCERNS ABOUT ELIMINATING COPS

We provided a total of \$447 million for Justice grant programs, \$299 million more than we provided in the fiscal year 2017 budget, to help communities respond to the opioid crisis with a balance of enforcement, treatment, and prevention programs. I'm interested to hear how the Department plans to expand these programs and what your fiscal year 2019 budget request will do. I'm concerned that, right now, it calls for eliminating key programs, like the COPS Anti-Heroin Task Forces, which we funded at \$32 million. It calls for dramatic cuts in programs like the Coverdell Program, which we talked about, and I know is something that you care a lot about, because you authored that legislation.

BYRNE JAG

I'm also concerned about the continued hold on the fiscal year 2017 Byrne-JAG awards to our States. This program is the backbone for helping State and local law enforcement with crime prevention efforts across the country. I know that my police chiefs in New Hampshire are very frustrated, waiting to receive funding that they had expected months ago. According to Nick Willard, the police chief in Manchester, a city that responded to 800 overdose calls last year, he now has fewer police officers on the street conducting drug operations without their Byrne-JAG funding. I know you would agree that getting these grant awards to law enforcement for programs like this is critically important.

When we spoke last week, you indicated that once a decision was reached in the pending Seventh Circuit Court of Appeals case, that the Justice Department would release Byrne-JAG funding from fiscal year 2017. That Court did issue its decision on April 19, so I'm interested to know when these awards will be released. I'm concerned when I see that the Justice Department has filed yet another motion on Monday evening that will further delay these awards.

So, Mr. Attorney General, thank you again for being here. I look forward to your testimony and to our discussion today.

Senator MORAN. Senator Shaheen, thank you very much. In the newness of the moment of actually having the gavel in my hand, I failed to acknowledge my desire to work very closely with you and to make certain that this subcommittee does its work in a timely and a bipartisan way. I would tell you that the previous subcommittees that I've chaired, both of those bills have passed through the full committee with unanimous vote, and I look forward to seeing if we can't accomplish that in this arena, as well.

I also would say that I have a high priority of making certain that all 12 appropriation bills that our full Appropriations Committee will address march their way across the Senate floor, approved by the House, and signed by the President. I want the appropriations process to work, and I pledge to you to do everything I can to accomplish that goal.

In that regard, I'm honored to recognize the Chairman of the full committee, who has stated on so many occasions this committee is going to do its work. And I look forward to not only hearing Senator Shelby's remarks today, but, in particular, working with him to make sure that we accomplish our goals in this subcommittee.

The Senator from Alabama, the Chairman of the committee, is recognized.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Senator Moran.

I will be brief. I just want to welcome my former colleague, Jeff Sessions, the Attorney General of the United States, to this appropriation hearing. We will be working with the Justice Department to help fund the requisite programs. Of course, that includes the FBI, because it has to be done. And I hope, under Chairman Moran and Ranking Member Shaheen, that we can move this bill to the

floor as fast as possible, and not go from crisis to crisis, you know, in—with some certainty.

With that, I'm going to have a number of questions, but I'd like to do them for the record. And I would ask my—unanimous consent that my opening statement be made part of the record, Mr. Chairman.

Senator MORAN. Without objection, so ordered.
[The information follows:]

PREPARED STATEMENT OF SENATOR RICHARD C. SHELBY

Chairman Moran and Ranking Member Shaheen, I would like to thank you for calling this hearing to examine the President's fiscal year 2019 funding request for the Department of Justice.

I am also pleased to welcome my friend, Attorney General Sessions, to this subcommittee hearing. Your input is certainly helpful and necessary as we review the President's spending priorities for the new fiscal year.

In today's world, the Department of Justice serves a vital role in ensuring our country's national security and upholding the rule of law. As such, I am looking forward to working with Attorney General Sessions and all of my colleagues on the subcommittee in drafting a bill that funds the Department in an appropriate and sufficient manner.

Senator MORAN. I now have the honor of recognizing the Ranking Member of the full committee, the Senator from Vermont, Senator Leahy.

STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. Thank you, Mr. Chairman.

And I'm glad to hear what you said about regular order. Senator Shelby and I have been working closely on that. We had a long meeting, the two of us, with the Republican and Democratic leaders last night, and plot out ways to get most of the bills done within the fiscal year.

Attorney General Sessions, welcome. Finally, we have you in the Appropriations Committee. I'm sorry it's only your first appearance here in 16 months. Because we have to make appropriations, and we have to ask, after we make appropriations, how the funds are expended. And, in my years on this committee—and I think this can be said by Members of both sides of the aisle—we consider the oversight operations of this committee very important. And for the operations of your Department, there is an urgent need for oversight.

INTEGRITY AND INDEPENDENCE OF DOJ

I want to begin with one thing. While you and I may disagree on many policies, I've known you long enough to know if there's one area where you and I are in total agreement—total agreement—and that is that we care deeply about the integrity of the Justice Department. You and I have felt that way whether we've had a Republican or a Democratic President. We have both stated so many times in the Judiciary Committee our concern about the integrity of the Justice Department. And I worry that the walls intended to protect the independence and credibility of our law enforcement institutions are at the risk of crumbling. I am very concerned how the President's relentless and, I think, baseless attacks on senior DOJ and FBI leadership, including attacking you for your

recusal for the Russia investigation, something you were required to do—you just followed the law, and you did the right thing—is simply without precedent. And I believe it's wrong.

SPECIAL COUNSEL ROBERT MUELLER AND DEPUTY ATTORNEY
GENERAL ROSENSTEIN

We've also learned that the President wanted to fire Special Counsel Robert Mueller last year. The President's allies are now going on television, apparently at the direction of the White House, to build a case for firing your second in command, Rod Rosenstein. Some of the President's allies in the Congress have, I think, irresponsibly even talked about impeaching Rod Rosenstein.

Now, I've been here 44 years. I've never seen such attacks. And again, that's attacks against people in Democratic or a Republican administration. I worry that they are being done to interfere with your Department, the Department of Justice, a place that you and I have always tried to protect the Department's ability to complete an investigation into how and with whom Russia attacked our democracy. And you're at the helm of a Justice Department under siege. This is your chance to talk to us about how you're going to protect it.

IMPORTANCE OF PROTECTING EQUAL RIGHTS FOR ALL

And, in that regard, don't let the Justice Department turn its back on its tradition being a guardian of equal justice for all, including the most vulnerable in our society, the most disadvantaged. We have to be careful. Civil rights, voting rights, immigration. In other words, giving equal protection to all, including the most vulnerable in our society.

So, Mr. Chairman, those are the areas I will question, because the Department of Justice is there for all of us, for every American. And I want to make sure the Attorney General has the tools and the ability to do that.

Senator MORAN. Senator Leahy, thank you very much.

We now will recognize our witness today. I welcome once again Attorney General Sessions to this subcommittee hearing. And I recognize you for your opening statement.

SUMMARY STATEMENT OF HON. JEFF SESSIONS

Attorney General SESSIONS. Thank you very much, Chairman Moran and Ranking Member Shaheen, distinguished Members of this subcommittee, friends, and former colleagues. Thank you for the opportunity to be with you.

I'm particularly pleased to be able to congratulate my former senior Senator for 20 years, Senator Shelby, for being chosen to Chair this historic committee. It is a tremendous honor, Senator Shelby. And my sincere congratulations to you. And you can know for sure how much I've appreciated our good relationship for 20 years.

IMPORTANCE OF WORKING WITH LOCAL LAW ENFORCEMENT AND
FALLEN OFFICER

It's been an honor of a lifetime to serve as the Attorney General of the United States and to represent the men and women of the Department of Justice. You can be sure—really sure that I understand the importance of the office I hold, and I will strive to be worthy of it.

Every single day, the 115,000 men and women of the Department work to protect our national security against terrorist threats, reduce violent crime in our communities, stop deadly drug dealers and their organizations, and strengthen the rule of law. So, today I'd like to lay out some of the priorities reflected in our budget request.

First of all, the Department has rapidly moved to improve partnerships with the 85 percent of law enforcement officers who serve at the State, local, and Tribal levels. We know that we cannot succeed without them to make America safe.

And yesterday, we were once again reminded of the sacrifice we ask of our men and women in blue. Officer Crystal Almeida and Rogelio Santander responded to a routine call at a Home Depot in Dallas, but they did not return home. And today we mourn with the family of Officer Santander, and pray for the recovery of Officer Almeida. The men and women of law enforcement deserve our respect, they deserve our support, they deserve our commitment in our work to reduce crime.

SPIKE IN CRIME RATES AND INCREASED PROSECUTIONS

After two decades of declining crime in 2015 and 2016, the violent crime rate went up by nearly 7 percent. Assaults went up 10 percent, rape went up nearly 11 percent, murder increased in those 2 years more than 20 percent. That's the largest increases since 1968. President Trump, our Federal officers, our local law enforcement partners are determined that this crime rate rise will not continue.

Our prosecutions of illicit drugs, gun violators, violent crime, gangs, opioids, and immigration offenses are going to go up, too. In 2017, we brought cases against more violent criminals than any year in decades. We charged the most Federal firearms prosecutions in a decade. We convicted nearly 500 human traffickers and 1200 gang members. Your strong support, Congress's support for our work means that we can sustain our Project Safe Neighborhood Program, where our United States Attorneys will meet with your local community leaders and law enforcement leaders to develop crime reduction plans based on local needs. This is a program that has proven to be—to work. Scientifically, it's been analyzed. And I feel great support for it when I travel around the country. Indeed, there are some good signs in the preliminary data that the increases in murder and violent crime appear to have been slowed, and violent crime may have actually begun to decrease.

OPIOIDS AND OVERDOSES

We also embrace the President's goal of reducing prescription drugs sold in the United States by one-third over the next 3 years.

This is an important step in reducing addiction and overdose deaths. We are simply prescribing too many drugs in this country. This Department is going after drug companies, doctors, pharmacists, and others who violate the law. And we will use civil, criminal, and sound regulatory powers to do so. I've directed that every United States Attorneys Office establish an opioid coordinator to focus on this dramatic problem.

As Senator Shaheen noted, the largest cause of death for Americans under age 50 is overdose—drug overdoses. That is a stunning statistic. We've got to do something about it. We've already charged hundreds of people suspected of contributing to the ongoing opioid crisis, including over 50 doctors for opioid-related crime; some, very serious criminals. Sixteen of these doctors prescribed more than 20.3 million pills illegally.

ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES

Our Organized Crime Drug Enforcement Task Forces have also indicted more than 6,500 defendants in opioid-related investigations, and forfeited more than \$150 million. With powerful drugs like fentanyl and heroin on our streets, we are—experience overdose deaths the likes of which we've never seen before. This must end. We are out of time. We have to see results now. And I truly believe we can make—change this dynamic.

DRUGS AND THE SOUTHERN BORDER

Amazingly, in the last month alone, the DEA seized a total of more than 90 kilograms, 2.2 pounds per kilogram, of suspected fentanyl in cases from Detroit to New York to Boston. Fentanyl is 50 times as powerful as heroin, and it's so powerful that an amount equivalent to a pinch of salt is powerful enough to be deadly. So, we must acknowledge that the vast majority of fentanyl, methamphetamine, heroin, and cocaine first come across our southern border. It almost all is coming across the southern border. And we are working with our Department of Homeland Security partners to reduce and ultimately end illegal immigration, which will also help us to take on transnational criminal organizations and reduce the drugs flowing across the border. We're streamlining and increasing prosecutions and targeting criminal aliens. Congress has provided us, thankfully, enough funding for 100 new immigration judges in the recent omnibus, which will help us keep up with the caseload.

LEGAL ORIENTATION PROGRAM AND EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Mr. Chairman, I'd like to address one matter that I know is important to the subcommittee, the Legal Orientation Program. You and Senator Shaheen both raised it with me. I reviewed the situation, and I have previously expressed some concerns about the program. And the Executive Office for Immigration Review has expressed its intent to pause two parts of the five-part program, pending the results of a formal review of the program. I recognize, however, that this subcommittee has spoken on this matter. And, out of deference to the subcommittee, I've ordered that there be no

pause while the review is being conducted, and I look forward to evaluating such findings as are produced and will be in communication with this subcommittee when they are available.

Our explicit goals for the Department of Justice are to reduce violent crime, reduce the surging increase in homicides, reduce overdose deaths, and to reduce prescription opioids. I believe these priorities are the priorities of the American people and, I believe, your priorities.

PRAISE OF U.S. LAW ENFORCEMENT

So, finally, let me say with all the strength that I can muster, no nation has a finer group of law officers than those who comprise the FBI, the DEA, the ATF, and United States Marshals Service. They are now, now in 24 hours a day in every corner of America, working courageously and faithfully to protect this Nation and our people. And when we face criticism, we're not going to be defensive. When questions arise, even if misplaced, we will take necessary action to establish that concerns are either not true or take strong action against any wrongdoing. This Department, above all others, can never get too big for its britches or think itself in any way as above the law that we must apply to others. We know the Government always wins when justice is done.

So, Mr. Chairman, I'm looking forward to discussing these matters with you and Members of the subcommittee.

[The statement follows:]

PREPARED STATEMENT OF HON. JEFFERSON B. SESSIONS III

Good afternoon, Chairman Moran, Ranking Member Shaheen and other distinguished Members of the subcommittee. I am honored to appear before you today to present the President's fiscal year 2019 budget for the Department of Justice.

Let me start by thanking you for your strong support for the Department in the recently completed fiscal year 2018 Omnibus Appropriations bill. President Trump's fiscal year 2019 budget proposal totals \$28 billion for the Department of Justice to support Federal law enforcement and the criminal justice priorities of our State, local, and Tribal law enforcement partners. The request represents a comprehensive investment in the Justice mission and includes increases in funding to help us reduce violent crime, enforce the Nation's immigration laws, combat the opioid epidemic, and continue our priority commitment to national security.

The Department of Justice is facing a severe challenge. We must confront rising violent crime and surging homicide rates. Illicit drug production and supplies are up worldwide. Illicit drug prices are low, supplies are high, and purity is at record levels. This is true for the core dangerous drugs: fentanyl, heroin, methamphetamine, and cocaine. In addition, the Nation is beginning to make reductions in opioid prescriptions, and we must have further significant reductions in manufacturing and prescribing highly addictive opioids.

Our DOJ team, along with our Federal, State, and local partners, have high motivation and determination. We have been redeploying our resources this past year to focus directly on these problems. Let me say clearly, Mr. Chairman, you and this subcommittee have been strongly supportive. We are determined to use every new dollar you have worked to provide us to achieve the maximum benefit in our efforts against these deadly drugs.

The President has ordered us to support State and local law enforcement, dismantle transnational organized crime, and reduce crime. For the last year, we have aggressively carried out that agenda and have already seen notable successes that benefit the American people.

The key Department funding priorities include:

—*Combating Violent Crime.* The budget allocates an additional \$109.2 million to support the President's initiatives to reduce violent crime by targeting the worst of the worst transnational criminal organizations, violent gangs, and drug traf-

fickers ravaging our Nation. A smart and sustained effort of this kind with our State and local partners will produce good results.

- Drug Enforcement and the Opioid Crisis.* The budget requests \$295 million to combat the opioid epidemic that is destroying lives and whole communities. It will allow us to target the drug trafficking organizations, the drug companies, pharmacists, and pharmacies that are moving too many prescription drugs into America.
- Enforcing Immigration Laws.* This budget requests an additional \$65.9 million to maintain the efficacy and efficiency of immigration enforcement and adjudication programs and processes. Of note, this budget requests 75 new immigration judges (IJs) and support staff. Our goal is to responsibly end the lawlessness in our system and offer a lawful system that works to advance the national interest.
- State, Local, and Tribal Assistance.* The budget provides \$3.9 billion in discretionary and mandatory funding for State, local, and Tribal law enforcement assistance, who comprise 85 percent of all law enforcement officers in America. Critical programs aimed at protecting the life and safety of State and local law enforcement personnel, including the Public Safety Partnership Program and the Project Safe Neighborhood Program, demonstrate our continuing commitment to supporting State, local and Tribal law enforcement.
- Reprioritizing and Reshaping Resources for a More Efficient Department.* In line with the President’s Executive order on a “Comprehensive Plan for Reorganizing the Executive Branch,” we are committed to establishing a leaner Federal Government that reduces both bureaucracy and costs to the American taxpayer. The Department is proposing a number of initiatives to achieve savings, to reduce the size of government, and maximize agency performance.

COMBATING VIOLENT CRIME

Protecting the American people from violent crime is a top priority for the Department of Justice. Unfortunately, in recent years, crime has been on the rise in too many places across the country. FBI statistics show that, in 2015 and 2016, the United States experienced the largest increases in violent crime in a quarter-century.¹ Over those 2 years, violent crime increased by nearly 7 percent. Robberies, assaults, and rapes all increased, and homicide increased by a shocking 20 percent.

In 2017, the Department made some great strides, including the launch of the enhanced Project Safe Neighborhoods (PSN) initiative, which brings together all levels of law enforcement and the communities they serve to develop effective, locally based strategies to reduce violent crime. Led by our 94 United States Attorney’s Offices, PSN task forces are hitting the streets across America to apprehend and bring violent criminals to justice. I am asking Congress for additional PSN funding for fiscal year 2019, totaling \$140 million, because I believe nothing will be more effective at reducing violent crime.

Under this program, I am asking a great deal of our United States Attorneys. I am empowering them and holding them accountable for results. To put them in the best position to impact and reduce violent crime, I have directed the re-allocation of resources and will be enlisting and deploying 300 additional violent crime prosecutors across the United States this year. So far, the Department has brought cases against the greatest number of violent criminals in at least 25 years—since the Department began tracking a “violent crime” category. Although preliminary numbers for 2017 show a decrease, violent crime rates are still excessively high.²

The fiscal year 2019 budget also requests \$109.2 million in program enhancements to reduce violent crime and combat transnational criminal organizations. These resources will enable the Department to dismantle the worst criminal organizations, target the most violent offenders, and protect the public. This includes increased funding for the Bureau of Alcohol, Tobacco, Firearms and Explosives’ (ATF) National Integrated Ballistic Information Network (NIBIN) in order to centralize the correlation process that enables ballistic identification services for law enforcement partners in a more accurate, efficient and streamlined manner. Further, it supports expediting ATF’s processing of National Firearms Act (NFA) applications, which will allow for technical advancements to ensure the most accurate and timely

¹U.S. Dep’t of Justice, Fed. Bureau of Investigation, *Crime in the United States, 2016*: Table 1 & n.6, <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/table-1>; for data years prior to 1995, see U.S. Dep’t of Justice, Fed. Bureau of Investigation, *UCR Data Tool*, <https://www.ucrdatatool.gov/index.cfm>.

²Press Release: Fed. Bureau of Investigation, FBI Releases Preliminary Semiannual Crime Statistics for 2017, (Jan. 23, 2018), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-preliminary-semiannual-crime-statistics-for-2017>.

firearms registrations to support the enforcement of the NFA and provide certifications in support of criminal trials. Finally, it will provide ATF additional resources to provide assistance to cities with surging firearms violence by augmenting and enhancing ATF's regional Crime Gun Intelligence Centers.

It will also provide funding to the Organized Crime and Drug Enforcement Task Forces (OCDETF) with \$4.6 million for the establishment of a Co-Located Strike Force to target those transnational criminal organizations that pose the greatest threat to our national security and the safety of American citizens. The Criminal Division (CRM) is also requesting \$13 million for Mutual Legal Assistance (MLAT) Reform. This critical funding will support 37 attorneys and 35 paralegals who support prosecutors domestically and abroad by navigating foreign laws, treaties, and other requirements, to secure the return of fugitives to face justice and to obtain the evidence needed to convict them. The Office of International Affairs (OIA) often seek evidence needed to thwart terrorist plots or seek the removal of violent criminals hiding in America's cities. Finally, the U.S. Marshals Service, the oldest American Federal law enforcement agency tasked with apprehending dangerous and wanted fugitives, is seeking \$7.3 million for the development and implementation of a comprehensive information technology (IT) integration project called the "Capture Initiative." This will consolidate operational data and improve business and mission capabilities at the headquarters and in the field, while ensuring their data is protected from cybersecurity risks.

DRUG ENFORCEMENT AND THE OPIOID CRISIS

The United States is in the midst of the deadliest drug epidemic in American history. According to the Centers for Disease Control and Prevention (CDC), more than 63,600 Americans died from drug overdoses in 2016, a 21 percent increase from the previous year.³ Over 42,200, or approximately two-thirds, of these overdose deaths were caused by heroin, fentanyl, and prescription opioids. The President declared this scourge a National Public Health Emergency in October 2017, and the Department remains committed to doing its part to protect the American people from the impact of drugs and drug-related crime nationwide.

The fiscal year 2019 budget requests \$295 million in program enhancements and transfers for the Drug Enforcement Administration (DEA) to combat the opioid crisis and bolster drug enforcement efforts. These resources will enable the Department to target those drug trafficking organizations most responsible for the opioid epidemic and drug-related violence in our communities, as well as ensure the life and safety of first responders who are on the front lines protecting the American people.

In fiscal year 2017, Congress funded the establishment of six heroin enforcement teams, comprised of DEA Special Agents and State and local task force officers. These teams have already begun to combat the trafficking in heroin, fentanyl analogues and the violence associated with drug trafficking that is ravaging our communities. DEA continues to aggressively pursue enforcement actions against international and domestic drug trafficking organizations, and in fiscal year 2019 we are seeking \$31.2 million to fund an additional eight new heroin enforcement groups to be deployed to DEA Field Divisions that have identified heroin as the first or second greatest threat to their area. The funding will also increase the number of DEA Special Agents at Field Divisions to target the Mexican Transnational Criminal Organizations (TCOs) that pose the greatest drug threat to the United States.

Further, the fiscal year 2019 request also supports \$9.7 million for DEA to expand its Fentanyl Signature Profiling Program (FSPP) as it works to link fentanyl seizures to international and domestic trafficking networks responsible for fueling the opioid crisis. It would also provide funding for DEA's drug identification technology and personal protective equipment for agents in the field to minimize exposure to deadly opioids during enforcement actions and allow DEA to convert the El Salvador Formally Vetted Unit to a Sensitive Investigative Unit (SIU).

Finally, the President's budget proposes to permanently transfer \$254 million to DEA from the Office of National Drug Control Policy (ONDCP) for facilitating coordination of the High Intensity Drug Trafficking Areas (HIDTA) Program along with other drug enforcement assets. Transferring the HIDTA grants to DEA will enable us to focus on combating drug trafficking in areas where the threat is the greatest and where there is a coordinated law enforcement presence.

³Hedegaard H, Warner M, Miniño A. Drug Overdose Deaths in the United States, 1999–2016. NCHS Data Brief, no 294. Hyattsville, MD: National Center for Health Statistics. 2017. Available from: <https://www.cdc.gov/nchs/data/databriefs/db294.pdf>.

ENFORCE IMMIGRATION LAWS

We are a strong, prosperous, and orderly nation and such a nation must have a lawful system of immigration. Let no one contend that we reject immigration and want to “wall off America” from all lawful immigration. We admit 1.1 million immigrants lawfully to permanent legal status—green card status—every year, the highest numbers in the world. Indeed, at this unprecedented rate we will soon have the largest percentage of non-native born in our Nation’s history with the percentage continuing to rise every year thereafter. Thus, the good and decent people of this country are right to insist that this country should end the illegality, create a rational immigration flow, and protect the Nation from criminal aliens. It cannot be that someone who illegally crosses the border and 2 days later arrives in Sacramento, Dubuque, Louisville, or Central Islip is home free—never to be removed.

It cannot be the policy of a great nation to reward those who unlawfully enter its country with legal status, Social Security, welfare, food stamps, and work permits. Meanwhile those who engage in this process lawfully and patiently and wait their turn are disadvantaged. Our citizens, want our Government to think about their needs and to consider their interests. They have dreams too. Immigration law is the province of the Federal Government. This administration and this Justice Department are determined to make it work fairly and effectively for the people.

The fiscal year 2019 President’s budget strengthens the Nation’s security through stronger enforcement of the Nation’s immigration laws. The Department is requesting \$65.9 million in immigration-related program enhancements for fiscal year 2019, which will enhance border security and immigration enforcement. These investments will also improve our ability to conduct immigration hearings to help combat illegal immigration to the United States by expanding capacity, improving efficiency, and removing impediments to the timely administration of justice. This budget supports the Department’s efforts, along with our partners at the Department of Homeland Security, to fix our immigration system.

The Executive Office of Immigration Review (EOIR) oversees the Nation’s immigration courts and the Board of Immigrant Appeals. At the beginning of fiscal year 2018, there were nearly 650,000 cases pending nationwide, a 25 percent increase from fiscal year 2016 and by far the largest pending caseload before the agency, marking the eleventh consecutive year of increased backlogs. To maintain efficacy and efficiency of immigration enforcement and adjudication programs, the Department’s request includes \$39.8 million for 75 new immigration judges (IJs) and support staff. Further, \$25 million is included in this request for EOIR to modernize its wholly paper-based case-related system to provide for electronic submission of all case-related information, establish Record of Proceedings (eROP), establish electronic case adjudicatory aids for IJs, improve its case management processes and end-to-end workflow, and eventually transition to a paperless courtroom.

STATE, LOCAL, AND TRIBAL ASSISTANCE

Federal law enforcement officers constitute only 15 percent of the total number of law enforcement officers nationwide; therefore, 85 percent of the officer support relies upon strong partnership with State and local law enforcement. The Department supports its partners in State and local law enforcement, who have critical intelligence about violent crime in their communities, and whose actions are crucial in the fight against violent crime and the opioid epidemic. The fiscal year 2019 budget continues its commitment to State, local and Tribal law enforcement by investing approximately \$3.9 billion in discretionary and mandatory funding in programs to assist them. Funding has been prioritized to meet the most pressing law enforcement concerns—violent crime and opioid abuse—and to help the victims of crime.

We are also confronting the State and local jurisdictions that have undertaken to undo our immigration laws through so-called “sanctuary policies.” Such policies undermine the moral authority of law and undermine the safety of the jurisdictions that adopt them. Police are forced to release criminal aliens back into the community—no matter what their crimes. Think about that: Police may be forced to release pedophiles, rapists, murderers, drug dealers, and arsonists back into the communities where they had no right to be in the first place. They should—according to law and common sense—be processed and deported. These policies hinder the work of Federal law enforcement; they are contrary to the rule of law, and they have serious consequences.

Sanctuary jurisdictions feign outrage when they lose Federal funds as a direct result of actions which contradict Federal law. Some have even decided to go to court so that they can keep receiving taxpayer-funded grants while continuing to impede Federal immigration enforcement. We intend to fight this resolutely. We cannot con-

tinue giving Federal grants to cities that actively undermine the safety of Federal law officers and intentionally frustrate efforts to reduce crime in their own cities. These jurisdictions that knowingly, willfully, and purposefully release criminal aliens back into their communities are sacrificing the lives and safety of American citizens in the pursuit of an extreme open borders policy. It is extreme, because if a jurisdiction will not deport someone who enters illegally and then commits another crime, then who will they deport?

This is not just a bad policy; it is a direct challenge to the laws of the United States. It places the lives of our fine law enforcement officers at risk; I cannot and will not accept this increased risk because certain elected officials want to make a statement. Our duty is to protect public safety and protect taxpayer dollars and I plan to fulfill those duties.

RESTRUCTURING INITIATIVES

The administration is committed to establishing a leaner, more productive Federal Government that reduces both, bureaucracy and costs to the American taxpayer. Since 2017, the Department of Justice has undertaken efforts to refocus resources and return our efforts to our core mission. To support the President's Executive order on reorganizing the executive branch, the Department of Justice has begun taking steps to streamline and improve its good stewardship of taxpayers' dollars. As part of the fiscal year 2019 President's budget, the Department is proposing a number of initiatives to achieve savings, to reduce the size of government, and maximize agency performance. Highlights of the restructuring initiatives include:

- The Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) responsibilities related to alcohol and tobacco enforcement will transfer to the Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau. ATF will retain its current enforcement responsibilities for firearms and explosives, while re-focusing their resources on violent crime. As part of that, ATF will pursue a workforce refresh effort, leveraging attrition from its retirement-eligible workforce to reinvigorate a cadre of Special Agents and Investigators to work on ATF's violent crime initiatives.
- The Bureau of Prisons (BOP) will shift to historical inmate-to-staff ratios. It will also close two Regional Offices and two stand-alone minimum-security prison camps, which is anticipated to achieve over \$122 million in savings.
- Beginning in fiscal year 2018, the Department will merge administrative support and certain grant management staff for the three Department grant offices. These grants benefit our State and local partners who are on the front lines fighting crime and battling the opioid crisis. The Department plans to build one grants management system to streamline the grants process. As part of this effort in fiscal year 2019, the Department will consolidate the Office of Community Oriented Policing (COPS) into the Bureau of Justice Assistance at the Office of Justice Programs (OJP).
- The budget also proposes to transfer the Community Relations Service (CRS) to the Civil Rights Division, who will then be able to perform its community mediation work in a more centralized manner and at a greater savings to the taxpayer.
- Finally as previously noted, the HIDTA grant program will transfer from ONDCP to DEA. This change will eliminate redundancies within Federal organizations by reallocating this program, which supports States and communities fighting the scourge of illegal drugs, into the same agency leading the enforcement efforts in those communities.

CONCLUSION

Chairman Moran, Ranking Member Shaheen and Members of the subcommittee, it is my pleasure to highlight our efforts to be good stewards of the resources and authorities bestowed on us as we strengthen the Department's ability to ensure safety, equality, and justice for all Americans. As Attorney General, I am committed to making the Department of Justice run as efficiently and effectively as possible, without adding to the burden of the American taxpayer. I thank you for your past support of the Department's financial needs, and for the opportunity to present our fiscal year 2019 budget request. I look forward to working with you through the upcoming fiscal year to ensure that the Department of Justice remains on solid financial footing and can accomplish its multiple and varied missions effectively.

Senator MORAN. Mr. Attorney General, thank you very much.

Let me, first, use this as an opportunity to say how wholeheartedly I agree with your assessment of the law enforcement offi-

cial at the Department of Justice and across the country, and how worthy they are of our respect and support. And I appreciate the sentiments that you expressed on their behalf. And I would assume I join all my colleagues in indicating our full faith and belief in those who work every day to protect the lives and safety of Americans here at home. So, thank you for those strong words, and I commend you for them.

RULE OF LAW AND LEGAL ORIENTATION PROGRAM

Secondly, let me thank you for your response. As I indicated in my opening statement, Senator Shaheen and I corresponded with you in regard to the pause of the Legal Orientation Program. And I want to thank you for your recognition of congressional words, actions. They're—the pause would be in contravention of this subcommittee and the full Appropriations Committee, and actually Congress's direction that no pause occur. And I appreciate you again recognizing the rule of law and your support for Members of this subcommittee in our desire to see that program continue. So, thank you for the response that you gave us here today. I'm pleased to hear it.

Now, let me turn to my questions. Let me, first, say that opening statements by other Members of the subcommittee can be made part of your 7 minutes or could be made as a request by unanimous consent to be made part of the record.

CENSUS CITIZENSHIP QUESTION

Let me ask about the Census. Mr. Attorney General, this past December, the Department of Justice sent an official letter to the Census Bureau requesting that it reinstate a question on the citizenship status to the 2020 Census forms. This subcommittee also has jurisdiction over the funding of the Census. So, just let me give you the opportunity to explain why the Department made this request. And will you elaborate on how the data gathered would be used?

Attorney General SESSIONS. I would be pleased to discuss it, as much as I can. The matter is in litigation, so I have some handicap in discussing all matters that you might be interested in.

The Census, I believe it's common sense and would be appropriate to ask whether or not an individual being surveyed is a citizen of the United States, or not. It had previously been in the Census and remains a part of the annual survey that's done. So, I think that's where we are. It can help us in determining a number of issues, particularly in our Civil Rights Division. And they—our attorneys have compiled some legal reasons we think that would justify that question, and would be pleased to send that to you.

[The information follows:]

16

December 12, 2017

Dr. Ron Jarmin
 Performing the Non-Exclusive Functions and Duties of the Director
 U.S. Census Bureau
 United States Department of Commerce
 Washington, D.C. 20233-0001

Re: Request To Reinstate Citizenship Question On 2020 Census Questionnaire

Dear Dr. Jarmin:

The Department of Justice is committed to robust and evenhanded enforcement of the Nation's civil rights laws and to free and fair elections for all Americans. In furtherance of that commitment, I write on behalf of the Department to formally request that the Census Bureau reinstate on the 2020 Census questionnaire a question regarding citizenship, formerly included in the so-called "long form" census. This data is critical to the Department's enforcement of Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting. To fully enforce those requirements, the Department needs a reliable calculation of the citizen voting-age population in localities where voting rights violations are alleged or suspected. As demonstrated below, the decennial census questionnaire is the most appropriate vehicle for collecting that data, and reinstating a question on citizenship will best enable the Department to protect all American citizens' voting rights under Section 2.

The Supreme Court has held that Section 2 of the Voting Rights Act prohibits "vote dilution" by State and local jurisdictions engaged in redistricting, which can occur when a racial group is improperly deprived of a single-member district in which it could form a majority. See *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). Multiple Federal courts of appeals have held that, where citizenship rates are at issue in a vote-dilution case, citizen voting-age population is the proper metric for determining whether a racial group could constitute a majority in a single-member district. See, e.g., *Reyes v. City of Farmers Branch*, 586 F.3d 1019, 1023-24 (5th Cir. 2009); *Barnett v. City of Chicago*, 141 F.3d 699, 704 (7th Cir. 1998); *Negrn v. City of Miami Beach*, 113 F.3d 1563, 1567-69 (11th Cir. 1997); *Romero v. City of Pomona*, 883 F.2d 1418, 1426 (9th Cir. 1989), overruled in part on other grounds by *Townsend v. Holman Consulting Corp.*, 914 F.2d 1136, 1141 (9th Cir. 1990); see also *LULAC v. Perry*, 548 U.S. 399, 423-442 (2006) (analyzing vote-dilution claim by reference to citizen voting-age population).

The purpose of Section 2's vote-dilution prohibition "is to facilitate participation . . . in our political process" by preventing unlawful dilution of the vote on the basis of race. *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997). Importantly, "[t]he plain language of section 2 of the Voting Rights Act makes clear that its protections apply to United States citizens." *Id.* Indeed, courts have reasoned that "[t]he right to vote is one of the badges of citizenship" and that "[t]he dignity and very concept of citizenship are diluted if noncitizens are allowed to vote." *Barnett*, 141 F.3d at 704. Thus, it would be the wrong result for a legislature or a court to draw a single-member district in which a numerical racial minority group in a jurisdiction was a majority of the total voting-age population in that district but "continued to be defeated at the polls" because it was not a majority of the citizen voting-age population. *Campos*, 113 F.3d at 548.

These cases make clear that, in order to assess and enforce compliance with Section 2's protection against discrimination in voting, the Department needs to be able to obtain citizen voting-age population data for census blocks, block groups, counties, towns, and other locations where potential Section 2 violations are alleged or suspected. From 1970 to 2000, the Census Bureau included a citizenship question on the so-called "long form" questionnaire that it sent to approximately one in every six households during each decennial census. See, e.g., U.S. Census Bureau, *Summary File 3: 2000 Census of Population & Housing—Appendix B at B-7* (July 2007), available at <https://www.census.gov/prod/cen2000/doc/sf3.pdf> (last visited Nov. 22, 2017); U.S. Census Bureau, *Index of Questions*, available at https://www.census.gov/history/www/through_the_decades/index_of_questions/ (last visited Nov. 22, 2017). For years, the Department used the data collected in response to that question in assessing compliance with Section 2 and in litigation to enforce Section 2's protections against racial discrimination in voting.

In the 2010 Census, however, no census questionnaire included a question regarding citizenship. Rather, following the 2000 Census, the Census Bureau discontinued the "long form" questionnaire and replaced it with the American Community Survey (ACS). The ACS is a sampling survey that is sent to only around one in every 38

households each year and asks a variety of questions regarding demographic information, including citizenship. See U.S. Census Bureau, *American Community Survey Information Guide at 6*, available at [https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS Information Guide.pdf](https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS%20Information%20Guide.pdf) (last visited Nov. 22, 2017). The ACS is currently the Census Bureau's only survey that collects information regarding citizenship and estimates citizen voting-age population.

The 2010 redistricting cycle was the first cycle in which the ACS estimates provided the Census Bureau's only citizen voting-age population data. The Department and State and local jurisdictions therefore have used those ACS estimates for this redistricting cycle. The ACS, however, does not yield the ideal data for such purposes for several reasons:

- Jurisdictions conducting redistricting, and the Department in enforcing Section 2, already use the total population data from the census to determine compliance with the Constitution's one-person, one-vote requirement, see *Evenwel v. Abbott*, 136 S. Ct. 1120 (Apr. 4, 2016). As a result, using the ACS citizenship estimates means relying on two different data sets, the scope and level of detail of which vary quite significantly.
- Because the ACS estimates are rolling and aggregated into 1-year, 3-year, and 5-year estimates, they do not align in time with the decennial census data. Citizenship data from the decennial census, by contrast, would align in time with the total and voting-age population data from the census that jurisdictions already use in redistricting.
- The ACS estimates are reported at a 90 percent confidence level, and the margin of error increases as the sample size—and, thus, the geographic area—decreases. See U.S. Census Bureau, *Glossary: Confidence interval (American Community Survey)*, available at https://www.census.gov/glossary/#term_ConfidenceintervalAmericanCommunitySurvey (last visited November 22, 2017). By contrast, decennial census data is a full count of the population.
- Census data is reported to the census block level, while the smallest unit reported in the ACS estimates is the census block group. See *American Community Survey Data* 3, 5, 10. Accordingly, redistricting jurisdictions and the Department are required to perform further estimates and to interject further uncertainty in order to approximate citizen voting-age population at the level of a census block, which is the fundamental building block of a redistricting plan. Having all of the relevant population and citizenship data available in one data set at the census block level would greatly assist the redistricting process.

For all of these reasons, the Department believes that decennial census questionnaire data regarding citizenship, if available, would be more appropriate for use in redistricting and in Section 2 litigation than the ACS citizenship estimates.

Accordingly, the Department formally requests that the Census Bureau reinstate into the 2020 Census a question regarding citizenship. We also request that the Census Bureau release this new data regarding citizenship at the same time as it releases the other redistricting data, by April 1 following the 2020 Census. At the same time, the Department requests that the Bureau also maintain the citizenship question on the ACS, since such question is necessary, *inter alia*, to yield information for the periodic determinations made by the Bureau under Section 203 of the Voting Rights Act, 52 U.S.C. § 10503.

Please let me know if you have any questions about this letter or wish to discuss this request I can be reached at (202) 514-3452, or at Arthur.Gary@usdoj.gov.

Sincerely yours,

Arthur E. Gary
General Counsel
Justice Management Division

Senator MORAN. General, thank you very much.

COPS REALIGNMENT TO OJP

Let me turn to the Community Oriented Policing Services (COPS) Program. Your fiscal year 2019 request proposes transfer the COPS office of the—I'm sorry—the COPS office to the Department Office of Justice Programs. But, in executing this transfer, the program itself will take a \$176 million reduction from fiscal year 2018 enacted levels. As you know, the COPS Program has received broad bipartisan support from this subcommittee in the

past. And, Attorney General, could you explain to me, to the subcommittee, why this restructuring is useful or necessary?

Attorney General SESSIONS. Well, it is popular with this subcommittee, and popular with the Congress. Most Presidents often have not been as supportive as the Congress has. So, once again, our budget is below the request you had asked. We do believe that we can save money and be—provide more money for the grants themselves by consolidating the COPS Program in the Bureau of Justice—Office of Justice Programs and its subcomponent, Bureau of Justice Statistics. They have the infrastructure, the teamwork, and the capability of managing grants. And we think that would be a nice step to improve productivity and efficiency. It would not undermine the program, in my view, in any way. It's very popular with our law enforcement officers. And we also are creating a circumstance and recommending that more of the money be available as a priority to school resource officers to deal with violence in schools.

Senator MORAN. Thank you for your response.

HIGH INTENSITY DRUG TRAFFICKING AREAS (HIDTA)

Let me turn to HIDTA, the High Intensity Drug Trafficking Areas. Your fiscal year 2019 request, you propose to transfer the HIDTA Program from the Office of National Drug Control Policy under the Executive Office of the President to the Drug Enforcement Administration. So, HIDTA initiatives provide assistance through Federal grants to State, local, and Tribal law enforcement agencies operating in areas determined to be critical drug trafficking regions of the United States, including, unfortunately, several in Kansas. Often, these HIDTA initiatives work hand in hand with the Drug Enforcement Administration. I understand there are a large number of special agents within the DEA that are solely dedicated to the HIDTA Program. While I understand the desire and rationale of supporting the transfer of this program to DEA, I also recognize the concerns, expressed by some of my colleagues and by certain law enforcement entities in Kansas, that this transfer may hamper an important and successful grant program by moving it to an agency with no grantmaking experience. Can you address these concerns and elaborate on why you believe that this programmatic shift is necessary?

Attorney General SESSIONS. Chairman Moran, the President challenged all of us to seek to improve the efficiency and productivity of the Government. You are correct that DEA and the HIDTA organization have worked closely together for many, many years—I guess, actually since the beginning. I remember when it was created. The—HIDTA reports through, or to, the ONDCP, the Office of National Drug Control Policy. That is a policy function. Bill Bennett was the first, I believe, Director. And it was supposed to coordinate the various Federal agencies that deal with drugs and to make sure that our budgets were properly constructed of all, whether it's State Department, Defense Department, or Health and Human Services, wherever money is being spent on drugs.

So, I think it is a better organizational structure, that that function of ONDCP remain as its priority, and the actual investigating and prosecuting cases be done through the DEA. But, the HIDTA

teams, the HIDTA people, the community leaders that form the councils that lead the HIDTAs, will remain in effect. The only difference would be that the grant money would come out of—be managed from DEA. And that would, we hope, engender an even closer relationship.

Senator MORAN. General, thank you.

Now my opportunity to recognize the Ranking Member of the subcommittee for her questioning.

Senator SHAHEEN. Thank you, Mr. Chairman.

LEGAL ORIENTATION PROGRAM

And thank you, Attorney General Sessions, for your decision on the Legal Orientation Program. I'm pleased to hear that you have responded to the concerns that Senator Moran and I raised.

METHODOLOGY OF THE EFFICIENCY STUDY

I would just point out that one of the other items in that letter was a request for information regarding the methodology of the efficiency study that is underway. I hope that information would be forthcoming to us as soon as that's available.

Attorney General SESSIONS. I will make sure that happens.

[The information follows:]

The Department of Justice has provided its methodology for the Legal Orientation Program (LOP) efficiency study to the Senate Appropriations Committee under separate cover.

Senator SHAHEEN. Thank you.

HIDTA AND DEA AND GRANTS

I wanted to follow up on Senator Moran's question about the HIDTA Program, because that has also been very important in New Hampshire. I'm sure, when you were there, you heard how helpful the program has been in addressing our opioid epidemic and actually capturing some of the drugs that have been coming across the border into New Hampshire. I appreciate your interest in efficiency, although I've heard from the folks who participate in HIDTA in New Hampshire that they are very happy where they are. But, as Senator Moran pointed out and as you acknowledged, the DEA is not a grant making agency. What is the DEA's plan for managing funding with this proposed move?

Attorney General SESSIONS. Well, we at the Department of Justice have tremendous experience in grant programs, in managing. We will be very supportive of DEA, which is our subordinate agency, in helping them to establish that kind of activity. But, again, I would say the actual funding, of course, will be Congress's decision. The leadership in the HIDTA community organizations would remain the same, but their grant money would be managed from DEA, which I do believe would help make that a tighter and better relationship. They'd still have their own independence and their own leadership teams. But, the—I think it could enhance the—that. And I do believe ONDCP probably never was created or expected to be a grant program of this kind.

COST OF GRANT MAKING MECHANISM

Senator SHAHEEN. Is there any assessment of what the cost of setting up that grant making mechanism would be within—

Attorney General SESSIONS. I believe—

Senator SHAHEEN [continuing]. The DEA?

Attorney General SESSIONS [continuing]. There is some expense in the initial setup, but I believe we can be able to do the grant program at certainly no more expense than currently exists, and maybe better, with our deep experience in grant making in the Department of Justice. So, it would go from the—basically, the White House ONDC office—ONDCP—to the Department of Justice.

Senator SHAHEEN. Well, I look forward to hearing more about that.

BYRNE JAG GRANTS

As I said in my opening statement, I am hearing from police chiefs throughout New Hampshire about their concern that the expected funding from the Byrne-JAG program has not yet been forthcoming. The Seventh Circuit released its decision on April 19, which held that the Justice Department exceeded its legal authority in placing conditions on Byrne-JAG. When you and I discussed this matter on the phone, you pointed out that, win or lose, those grants would go out. So, I just wondered what I should tell the police chiefs in New Hampshire about when they might expect funding.

COORDINATION WITH LOCAL, FEDERAL LAW ENFORCEMENT
REGARDING IMMIGRANTS

Attorney General SESSIONS. Senator Shaheen, we intend to get that money out. Sooner is better than later. But, the litigation is an important piece of litigation, and we placed only the most minor of requirements on the grant program. We asked our State and local partners, “If you want to get the Byrne law enforcement grant”—we asked them to do two things. One was to, “Give us notice 48 hours before an illegal alien who you’ve arrested for some crime is released, and to allow us to pick that individual up at the detention facility rather than releasing them on the streets and having our ICE officers and others have to try to find a criminal that needs to be arrested.” And that’s a very dangerous thing, places law officers at risk. That’s what the Homeland Security officials pleaded with us to ask for, so we pared it down to a minimal thing we ask of them. We didn’t ask the police to interview people. We didn’t ask them to go arrest people for us or anything like that. Only to give us notice before release and to allow us to pick the individual up, more—far more safely, at the detention facility.

Senator SHAHEEN. Well, this is a longstanding congressionally-mandated formula grant program. Why does DOJ think it can place conditions on this program which has been operating for so many years based on the mandate that Congress has given it? Could you also address whether you plan to hold funding for fiscal year 2018 in the same way that you’ve been holding it for fiscal year 2017?

Attorney General SESSIONS. Well, to the first part of your question, this is a statute Congress passed, 34 U.S.C. 10102(a)(6), and it says, “The Assistant Attorney General of OJP shall exercise such other powers and functions as may be vested in the Assistant Attorney General pursuant to this chapter or by delegation of the Attorney General, including placing special conditions on all grants and determining priority purposes for formula grants.” So, we felt, when we went to court, that these minor conditions for receiving a Federal grant were very reasonable, and we’re deeply disappointed that the court has not, at least to this moment, seen itself able to agree. And we’ll, of course, abide by the law, but we do want to review the situation and see if we cannot improve it.

Senator SHAHEEN. I’m out of time, but just briefly, I know DOJ filed another motion with the Seventh Circuit on April 23. Do you expect to continue to go all the way up to the Supreme Court with your motions if you’re denied again the Seventh Circuit?

Attorney General SESSIONS. I’ll have to talk with our lawyers. They worked hard on this case. And we’ve not seen—so, one thing about it, it’s one thing to deal with the merits, it’s another matter to deal with a preliminary injunction. So, we have an injunction that I think went beyond the law, in the sense that—the case was first raised in Chicago. It has its own unique set of laws and policies. But, the judge issued an order, then bound the entire United States. Many of those are in—perfectly happy to comply with these requirements of the Department of Justice. So, it’s a frustrating matter. It’s a big deal. And I just would—I think—I have to say, I’ve been appreciative of our law enforcement leaders, who I think, by and large, agree that these minimum requirements are legitimate. So, they’ve been patient with us. But, I am worried about it. We’re working hard to bring it to a conclusion.

Senator SHAHEEN. Thank you. I appreciate that. For States like New Hampshire, where we have no sanctuary cities, it puts us at a special disadvantage.

Senator MORAN. Senator, thank you.

I now recognize the Vice Chairman of the full committee, Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

ATTORNEY GENERAL RECUSAL AND MICHAEL COHEN INVESTIGATION

Attorney General, last week I sent you a letter regarding your commitment to recuse from “any existing or future investigations of any matters related in any way to the campaigns for President”. Are you recused from the Federal investigation of the President’s attorney, Michael Cohen, which reportedly involves matters directly related to the campaign, including possible campaign finance violations?

Attorney General SESSIONS. Senator Leahy, I am honoring the recusal in every case, in every matter that comes before the Department of Justice. I committed to that in my confirmation hearing, and I have honored that, and will continue to honor that. In—

Senator LEAHY. Did it include Cohen?

Attorney General SESSIONS. It is the policy of the Department of Justice that those who’ve recuse themselves not state the details of

it or any—or confirm the existence of a investigation, or the scope or nature of that investigation.

Senator LEAHY. I understand——

Attorney General SESSIONS. And so, I feel like, following the rules of the Department, which I'm trying to teach all of our people to do, that I should not answer that question. It would be inappropriate for me to do so.

Senator LEAHY. I know the question was not a surprise to you, and nor is your answer a surprise to me, but recusal here is not discretionary. It's required by Justice Department regulations when you have a "political relationship" with the President, which you've already acknowledged, and the President has a "specific and substantial interest" in the investigation. Now, the Federal judge granted the President's request to formally intervene in this matter, which is here in Judge Kimba Wood's order. And I'll be glad to give you a copy of this if you like. But, Judge Wood allows the President to formally intervene in this matter, so he is a member—or he is part of that investigation. And I would suggest he has a "specific and substantial interest". So, wouldn't—by Justice Department regulations, doesn't that require you to be recused?

Attorney General SESSIONS. Senator Leahy, it—I am required to be recused from any matter involving the substance of the cases—matters you raised in your opening statement, absolutely. And I will comply with that. But, to—it is not—it is the policy of the Department that if you get into discussing the details of those matters, you can reveal the existence, scope, or breadth, or nature of a matter, they would be inappropriate.

Senator LEAHY. And so——

Attorney General SESSIONS. So, I think the best answer for me, having given it some thought, is to say that I should not announce that. In fact, recusals that happen all the time in the Department are not made public, but they're internally binding.

Senator LEAHY. Have you sought any advice of career ethics officials about whether you should or should not recuse yourself in the Cohen matter?

Attorney General SESSIONS. I have sought advice on those matters, and I have not met with the top ethics person on it, but I can assure you I have not violated my recusal.

Senator LEAHY. And you do agree that the Justice Department regulations require recusal when you have a "political relationship" with somebody who has a "specific and substantial interest" in the investigation. That is basically the regulation, is it not?

Attorney General SESSIONS. That is the regulation, I believe, 600 some—part 1. But, that's the regulation that I felt required me——

Senator LEAHY. I know.

Attorney General SESSIONS [continuing]. To recuse myself.

ATTORNEY GENERAL RESIGNATION REGARDING FIRING OF DEPUTY
ATTORNEY GENERAL ROSENSTEIN

Senator LEAHY. It was reported last weekend that you told the White House Counsel you would consider resigning as Attorney General if the President fired Deputy Attorney General Rosenstein. I'm not going to ask about that conversation. But, if the President were to improperly fire either the Deputy Attorney General who

supervises the Russia investigation or the Special Counsel, would you resign in opposition?

Attorney General SESSIONS. Senator Leahy, that calls for a speculative answer—or question calls for speculation. I just am not able to do that.

Senator LEAHY. And were you surprised by that question? You don't have to answer that. Your smile answers the question.

LEGAL ORIENTATION PROGRAM

And, lastly, on the—you've been asked about the Legal Orientation Program (LOP). Whatever study is being done there, that will be open and transparent, will it not?

Attorney General SESSIONS. We will do so. And, look, I have some doubts about that program. The committees believe in that program. We'll talk about it and—before any action occurs.

Senator LEAHY. Yes, because we have appropriated the money, and we have directed the program to go forward. So, I would hope that you do not take any action on it without being in touch with both the senior Republicans, senior Democrats of the committees that have instructed it.

Thank you, Mr. Chairman.

Senator MORAN. Mr. Vice Chairman, thank you very much.

Senator from Maine, Senator Collins.

Senator COLLINS. Thank you, Mr. Chairman. And let me, first, congratulate you. And I very much look forward to working with you and the Ranking Member.

ELDER FRAUD

Mr. Attorney General, before I turn to my questions, I want to thank you for your leadership on an issue that matters greatly to me. And that is fraud and scams that are directed against our senior citizens. You've really taken a leadership role on this. I know the Department announced, in February, that more than 250 defendants had been charged with scamming more than a million Americans, for a total amount in excess of a half a billion dollars. It's an issue we've been trying to get the Justice Department to pay attention to for years, and I very much appreciate your leadership.

I'd now like to turn to my questions, which may not be quite as pleasing to your ears as my thank you.

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

The administration has now lost its third Deferred Action for Childhood Arrivals (DACA) case in Federal court. That program and the fate of the group of young people for whom there is a pretty widespread consensus that we should try to help continues to be clouded by uncertainty. Given the repeated failures in court and the fact that the President has repeatedly indicated that border security remains a high priority for him, wouldn't it make sense for the administration to revisit the bipartisan DACA compromise that was proposed earlier this year, that received 54 votes on the Senate floor, which would have funded the President's border security program in its entirety while providing a pathway to citizenship for DACA young people who have good records?

Attorney General SESSIONS. Senator Collins, I do believe there is an opportunity for legislation by Congress. I served 20 years on your side of the table. My good—my feeling is that that's possible. I've said that in a number of hearings that I've been in since I've been Attorney General. So, I think that's possible.

I would say that two district courts, one in New York and California, did issue injunctions stopping the simple removal of the memoranda, really, is all it was, of the Homeland Security to enact DACA. DACA was, basically, rejected by Congress. Congress did not pass it. And the President had said repeatedly he could not do it on his own. But, once he—it was not passed in Congress, then the President got his Homeland Security team to enact this matter. I think it was unlawful. It's pretty much the finding of the Fifth Circuit in a related case involving DACA. And there was a court in Maryland that rejected this kind of injunction. So, three courts ruled on this DACA, two said it was not sustainable, and one said it was.

So, we believe that the right thing is legislation. I would like to see law—look, I'll be frank. My view is, a plan that will end the illegality along with some relief for the DACA young people is possible. It can be done. And the President has laid out a number of options, and it's been unfortunate that it hasn't come together.

Senator COLLINS. Well, Mr. Attorney General, many of us on this panel worked very hard to try to get that done and to put DACA in law. And I think that, had the Department of Homeland Security not issued a very misleading press release the night before the vote, accompanied by a veto threat by the President, we were there. At one point, I could count the 60 votes.

But, we want to legislate in that area. I agree with you that it should be legislated. And I hope that, with the court rulings, that there is an extra impetus for the administration to work with us. And it's also an opportunity for the President to get a very high priority of his in strengthening the border, which we also need to do.

Attorney General SESSIONS. Yes.

Senator COLLINS. So, I thank you.

Attorney General SESSIONS. Senators, I—just let me say, I think this is doable, but it cannot be done if we haven't fixed the illegal immigration flow. And my concern about the bill that you referred to was, it did not sufficiently close the loopholes and fix some of the problems that we have. If we could get that done, I think the possibility of a successful legislation would be greater. That's what the President said. And I think you—I think it could be done.

Senator COLLINS. Thank you, Mr. Chairman.

Senator MORAN. Senator from Hawaii, Senator Schatz.

Senator SCHATZ. Thank you, Mr. Chairman. Congratulations, Mr. Chairman. I'm looking forward to working with you. I will miss you on the MILCON VA Subcommittee, but I understand and forgive you.

CENSUS CITIZENSHIP QUESTION

But, Mr. Attorney General, thank you for being here. I want to follow up on a question that Chairman Moran asked about the citizenship question on the Census. Communities of color advocacies—

excuse me—advocacy organizations around the Census are, frankly, worried that the presence of that question is going to discourage participation in immigrant communities. And I understand that it's on the long form, and I understand that it's not without precedent that we're doing that. But, I have two questions for you. First, how do you respond to those communities of color who are worried that this will simply scare people to not respond to the Census at all, number one? And number two is, you've indicated that the Civil Rights Division wants the data, and I'm wondering why.

Attorney General SESSIONS. I'll be glad to send you the letter that they—we produced regarding this issue, detailing the advantages of it—having the information. I do note that it is being asked on the other survey. And I would suggest that—I've learned it's the 12th question on the form—the last question, I believe. It shouldn't scare people. They don't have to answer it. And—really—and so, I would think that that's a very reasonable thing. And I believe the concerns over it are overblown.

[The information follows:]

December 12, 2017

Dr. Ron Jarmin
Performing the Non-Exclusive Functions and Duties of the Director
U.S. Census Bureau
United States Department of Commerce
Washington, D.C. 20233-0001

Re: Request To Reinstate Citizenship Question On 2020 Census Questionnaire

Dear Dr. Jarmin:

The Department of Justice is committed to robust and evenhanded enforcement of the Nation's civil rights laws and to free and fair elections for all Americans. In furtherance of that commitment, I write on behalf of the Department to formally request that the Census Bureau reinstate on the 2020 Census questionnaire a question regarding citizenship, formerly included in the so-called "long form" census. This data is critical to the Department's enforcement of Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting. To fully enforce those requirements, the Department needs a reliable calculation of the citizen voting-age population in localities where voting rights violations are alleged or suspected. As demonstrated below, the decennial census questionnaire is the most appropriate vehicle for collecting that data, and reinstating a question on citizenship will best enable the Department to protect all American citizens' voting rights under Section 2.

The Supreme Court has held that Section 2 of the Voting Rights Act prohibits "vote dilution" by State and local jurisdictions engaged in redistricting, which can occur when a racial group is improperly deprived of a single-member district in which it could form a majority. See *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). Multiple Federal courts of appeals have held that, where citizenship rates are at issue in a vote-dilution case, citizen voting-age population is the proper metric for determining whether a racial group could constitute a majority in a single-member district. See, e.g., *Reyes v. City of Farmers Branch*, 586 F.3d 1019, 1023-24 (5th Cir. 2009); *Barnett v. City of Chicago*, 141 F.3d 699, 704 (7th Cir. 1998); *Negrn v. City of Miami Beach*, 113 F.3d 1563, 1567-69 (11th Cir. 1997); *Romero v. City of Pomona*, 883 F.2d 1418, 1426 (9th Cir. 1989), overruled in part on other grounds by *Townsend v. Holman Consulting Corp.*, 914 F.2d 1136, 1141 (9th Cir. 1990); see also *LULAC v. Perry*, 548 U.S. 399, 423-442 (2006) (analyzing vote-dilution claim by reference to citizen voting-age population).

The purpose of Section 2's vote-dilution prohibition "is to facilitate participation . . . in our political process" by preventing unlawful dilution of the vote on the basis of race. *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997). Importantly, "[t]he plain language of section 2 of the Voting Rights Act makes clear that its protections apply to United States citizens." *Id.* Indeed, courts have reasoned that "[t]he right to vote is one of the badges of citizenship" and that "[t]he dignity and very concept of citizenship are diluted if noncitizens are allowed

to vote.” *Barnett*, 141 F.3d at 704. Thus, it would be the wrong result for a legislature or a court to draw a single-member district in which a numerical racial minority group in a jurisdiction was a majority of the total voting-age population in that district but “continued to be defeated at the polls” because it was not a majority of the citizen voting-age population. *Campos*, 113 F.3d at 548.

These cases make clear that, in order to assess and enforce compliance with Section 2’s protection against discrimination in voting, the Department needs to be able to obtain citizen voting-age population data for census blocks, block groups, counties, towns, and other locations where potential Section 2 violations are alleged or suspected. From 1970 to 2000, the Census Bureau included a citizenship question on the so-called “long form” questionnaire that it sent to approximately one in every six households during each decennial census. See, e.g., U.S. Census Bureau, *Summary File 3: 2000 Census of Population & Housing*—Appendix B at B–7 (July 2007), available at <https://www.census.gov/prod/cen2000/doc/sf3.pdf> (last visited Nov. 22, 2017); U.S. Census Bureau, Index of Questions, available at https://www.census.gov/history/www/through_the_decades/index_of_questions/ (last visited Nov. 22, 2017). For years, the Department used the data collected in response to that question in assessing compliance with Section 2 and in litigation to enforce Section 2’s protections against racial discrimination in voting.

In the 2010 Census, however, no census questionnaire included a question regarding citizenship. Rather, following the 2000 Census, the Census Bureau discontinued the “long form” questionnaire and replaced it with the American Community Survey (ACS). The ACS is a sampling survey that is sent to only around one in every 38 households each year and asks a variety of questions regarding demographic information, including citizenship. See U.S. Census Bureau, *American Community Survey Information Guide at 6*, available at [https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS Information Guide.pdf](https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS%20Information%20Guide.pdf) (last visited Nov. 22, 2017). The ACS is currently the Census Bureau’s only survey that collects information regarding citizenship and estimates citizen voting-age population.

The 2010 redistricting cycle was the first cycle in which the ACS estimates provided the Census Bureau’s only citizen voting-age population data. The Department and State and local jurisdictions therefore have used those ACS estimates for this redistricting cycle. The ACS, however, does not yield the ideal data for such purposes for several reasons:

- Jurisdictions conducting redistricting, and the Department in enforcing Section 2, already use the total population data from the census to determine compliance with the Constitution’s one-person, one-vote requirement, see *Evenwel v. Abbott*, 136 S. Ct. 1120 (Apr. 4, 2016). As a result, using the ACS citizenship estimates means relying on two different data sets, the scope and level of detail of which vary quite significantly.
- Because the ACS estimates are rolling and aggregated into 1-year, 3-year, and 5-year estimates, they do not align in time with the decennial census data. Citizenship data from the decennial census, by contrast, would align in time with the total and voting-age population data from the census that jurisdictions already use in redistricting.
- The ACS estimates are reported at a 90 percent confidence level, and the margin of error increases as the sample size—and, thus, the geographic area—decreases. See U.S. Census Bureau, *Glossary: Confidence interval (American Community Survey)*, available at https://www.census.gov/glossary/#term_ConfidenceintervalAmericanCommunitySurvey (last visited November 22, 2017). By contrast, decennial census data is a full count of the population.
- Census data is reported to the census block level, while the smallest unit reported in the ACS estimates is the census block group. See *American Community Survey Data* 3, 5, 10. Accordingly, redistricting jurisdictions and the Department are required to perform further estimates and to interject further uncertainty in order to approximate citizen voting-age population at the level of a census block, which is the fundamental building block of a redistricting plan. Having all of the relevant population and citizenship data available in one data set at the census block level would greatly assist the redistricting process.

For all of these reasons, the Department believes that decennial census questionnaire data regarding citizenship, if available, would be more appropriate for use in redistricting and in Section 2 litigation than the ACS citizenship estimates.

Accordingly, the Department formally requests that the Census Bureau reinstate into the 2020 Census a question regarding citizenship. We also request that the Census Bureau release this new data regarding citizenship at the same time as it releases the other redistricting data, by April 1 following the 2020 Census. At the same time, the Department requests that the Bureau also maintain the citizenship question on the ACS, since such question is necessary, *inter alia*, to yield informa-

tion for the periodic determinations made by the Bureau under Section 203 of the Voting Rights Act, 52 U.S.C. § 10503.

Please let me know if you have any questions about this letter or wish to discuss this request I can be reached at (202) 514-3452, or at Arthur.Gary@usdoj.gov.

Sincerely yours,

Arthur E. Gary
General Counsel
Justice Management Division

Senator SCHATZ. Okay. Let's move on.

OPIOID EPIDEMIC AND MEDICAL MARIJUANA

I really appreciate what you're doing on opioids, and I am especially pleased that this subcommittee and others are working in a bipartisan fashion to solve this problem. And I want you to interpret the following line of questioning not in an adversarial way.

I want to ask you about medical marijuana, and I want to tell you that I'm the son of a principal investigator, and I came to the question of medical marijuana with great skepticism. But, there are credible scientific studies that show that, where medical marijuana is legal, opioid overdose deaths have gone down. And these studies are published in the Journal of the American Medical Association and the RAND Corporation, with the input from the National Institute on Drug Abuse.

The opioid epidemic is a major crisis. And I'm wondering whether you think, given your history as a successful conservative politician with a certain set of beliefs about marijuana, in particular, whether, given two things happening at once—there's all kinds of new data that shows an inverse correlation between the availability of medical marijuana and opioid deaths and opioid prescriptions and opioid illegal activity, and your commitment to try to reduce this opioid epidemic—do you have at least an aperture to look at these data and reconsider your opposition to medical marijuana and marijuana in general?

Attorney General SESSIONS. Medical marijuana, as one physician told me, whoever heard of taking a medicine when you have no idea how much medicine you're taking and ingesting it in the fashion that it is, which is, in itself, unhealthy. However, I think there can be—there may well be some benefits from medical marijuana, and it's perfectly appropriate to study that. I do not believe, at this point, that—I think one study that suggested there's no—that there's some sort of inverse relationship between increased marijuana use and reducing of deaths. I did see that. I've asked my staff to take a look at it, because science is very important. And I don't believe that will be sustained, in the long run. The American Medical Association is absolutely resolutely opposed to marijuana use. I think so is the Pediatric—

Senator SCHATZ. Mr. Attorney General—

Attorney General SESSIONS [continuing]. Association. They've—

Senator SCHATZ. Sure. My final—

Attorney General SESSIONS [continuing]. Studied it over years. So, it's a matter of science. And—

Senator SCHATZ. Sure.

Attorney General SESSIONS [continuing]. I think we should—

Senator SCHATZ. My final question—

Attorney General SESSIONS [continuing]. Be free to discuss it.

Senator SCHATZ. My final question. The DEA, in August of 2016, called for applications to produce more federally-approved research-grade marijuana. Since then, the Department of Justice has received 25 applications, but none of them have been responded to either with an approval or denial. What is the status of those applications?

Attorney General SESSIONS. We are moving forward, and we will add—fairly soon, I believe, the paperwork and reviews will be completed, and then we will add additional suppliers of marijuana under the controlled circumstances. But, there is—a lot of people didn't know, I didn't know—a treaty—international treaty of which we are a member, that requires certain controls in that process. And the previous proposal violated that treaty. We've now gotten language I believe complies with the treaty and will allow this process to go forward.

Senator SCHATZ. If the Chair will indulge me, one final comment.

We're all evolving on this issue, some quicker than others, maybe some too quick. And I really believe that we have to do this in the proper way. I think there are good civil rights reasons for decriminalizing and for pursuing a Federalist approach around this. But, if we're narrowly addressing the question of whether or not this is medicine, then we do need the Department of Justice, the FDA, and everybody to work together to pursue that question, double-blind studies and all. And I also think that we need to understand we are in a humanitarian crisis when it comes to the opioid epidemic, which means that we may have to cast aside some of the things that we've believed all of our lives as it relates to other drugs and look at harm reduction. I appreciate you keeping an open mind along those lines.

Thank you.

Attorney General SESSIONS. Thank you, Senator Schatz.

Senator MORAN. Senator, thank you.

Senator from Oklahoma, Senator Lankford.

Senator LANKFORD. Thank you, Mr. Chairman.

Let me add to that conversation a little bit before we—before I jump into a line of questions.

MEDICAL MARIJUANA

I am one of the skeptical individuals that, so far, has not evolved on this issue of marijuana. I have a hard time believing that, if only more of our parents smoked more marijuana, our kids would be so much better and our families would be so much better, and employment would be so much better if more of our employees smoked more marijuana. I just have a hard time believing that.

And, as far as medicinal issues, this is an area the NIH has done active work on. And NIH is—currently has several billion dollars that the Appropriations Committee has allocated to them to be able to study pain medications that are nonaddictive, to try to address that. And that was entirely appropriate to do. We have an opioid epidemic. I'd rather not swap an opioid epidemic with addiction to marijuana and just say we solved the problem. We didn't solve the problem, long term.

And so, I'd love to be able to continue to maintain this. There are ways to be able to manage all kinds of different things to be able to manage pain. But, my preference would be that our Nation doesn't become more and more addicted to marijuana to be able to solve our opioid addiction.

ATF REORGANIZATION

With that, let me mention a couple of things. Budget related. You have made some recommendations on combining some entities and moving some things around, specifically with ATF. And I'd like to get a chance to talk to you a little bit more about that. What proposals are you making with ATF, in particular, to be able to work on some efficiencies?

Attorney General SESSIONS. Well, the Alcohol, Tobacco, and Firearms originally came out of the Department of Treasury. And when—because revenue collectors collected revenue, the old moonshining-chasing ATF guys collected—because you weren't paying taxes on your moonshine. So, that's the history of it. But, over the years, ATF has shifted far more to being the front-line agents on violent crime, bombs, explosives, arson, and firearms. So, that's where the trend has gone. So, this agreement, I think, is a smart one. It moves the tax part of ATF that still exists back to Treasury and keeps a leaner, more focused ATF on firearms and explosives in the Department of Justice.

BUREAU OF PRISONS AND COMPONENT REALIGNMENT

Senator LANKFORD. How long do you think it would take to make that transition?

Attorney General SESSIONS. I think we could do it within the year, and we would expect to, if Congress would approve it. ATF has accepted it. The—their leadership is supportive. So, I believe it's something that would be good, be efficient, and a smart realignment of resources.

Senator LANKFORD. Okay. Any other areas of realignment of resources that you'd recommend with DEA, ATF, FBI, any of those, as well, that you would recommend that are similar to that?

Attorney General SESSIONS. Well, we've made a number of recommendations for consolidation in the Bureau of Prisons. We've made some within some of the regional offices of Community Relations Service. We've had a number of other changes that we are proposing.

Senator LANKFORD. All right. Well—

Attorney General SESSIONS. We believe that every dollar that we can properly expend at the point of the spear effectively carrying out the taxpayer desire rather than feeding a bureaucracy is good for America. And that's our goal.

ATF AND FBI INVESTIGATIONS

Senator LANKFORD. Okay. That would be helpful.

Your predecessor, Eric Holder, and I had multiple conversations over several years about an issue between ATF and FBI and their processes of how they actually do an investigation. FBI has one set of processes, ATF has another set of processes. It came out most

evident during the Fast and Furious time period, around 2010 and 2011, when there was a close examination of the processes that ATF went through to be able to do that investigation for Fast and Furious, and the FBI agents immediately stepped out and said, “We would never be allowed to do what ATF did.” So, during that time period, a lot of conversations that I had with Eric Holder was, Is there a study to be able to look at and try to figure out if these two processes need to be aligned, if ATF needs to have more similar structure to what FBI does? How does that work? Eric Holder, over and over again, told me, year after year, “We’re going to take a look at it. We’re going to take a look at it,” but I don’t think they ever did. I never got a report back to try to finalize that. Could you help us take a look at that again? This is not trying to hurt ATF, but trying to figure out, if we’ve got good, established processes, why do we have two different sets of processes in two different entities there?

Attorney General SESSIONS. I would be glad to discuss—

Senator LANKFORD. Great.

Attorney General SESSIONS [continuing]. That with you and see if—what kind of problems exist. I don’t think there are any process—processes that should have justified Fast and Furious, where assault weapons are allowed to walk—

Senator LANKFORD. Right.

Attorney General SESSIONS [continuing]. As we call it, across the border to—

Senator LANKFORD. Well, that was the number-one thing I heard from FBI—

Attorney General SESSIONS. So, I don’t know what—how that happened yet. I know you’ve dug into it as—probably as deeply as anybody in Congress. So, thank you for that.

Senator LANKFORD. Okay.

CRIME VICTIMS FUND

Let me ask one more strange question. Are we out of crime victim needs? So, the Crime Victims Fund is out there. It has about \$10 billion sitting in it. Do we have that fully established, all crime victim issues are taken care of, and we don’t need to allocate additional dollars towards that area?

Attorney General SESSIONS. No.

Senator LANKFORD. Well, that \$10 billion has sat there and has been used as what’s called a Changes in Mandatory Program, year after year.

Attorney General SESSIONS. CHIMPS.

Senator LANKFORD. And it’s had this fake spending, year after year. I did notice, in your budget, that you’re recommending that we not use that as a pay-for, that we set a ceiling on that spending, save that money for crime victims, and not try to shift that over to somewhere else.

Attorney General SESSIONS. Our budget would eliminate that procedure. It’s something I’ve opposed, but it’s stuck. It’s been—perhaps as a Member of this subcommittee, something might happen. But, it is a—it’s something that’s continued for a long time. We propose fixing that problem.

Senator LANKFORD. Well, I met yesterday with a group of crime victims, and they had a real concern that that money is used, not for crime victims, but is used for a gimmick in Congress. And they'd love to see that money actually go to crime victim organizations and uses for that.

With that, I yield back.

Senator MORAN. Senator, thank you.

Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman. And congratulations to you. Look forward to working with you and the Ranking Member and others.

Mr. Attorney General, welcome.

DACA

And I want to associate myself with the comments of Senator Collins with respect to DACA. And that's obviously part of an ongoing discussion, but we've got to address this critical issue.

ROLE OF THE PARDON ATTORNEY

We all have an interest in protecting the integrity of the Justice Department. And, as a Member of the Senate Judiciary Committee, you made a statement at a hearing that I thoroughly agree with. And I'm quoting, "The power to pardon is a legitimate power. It is one that ought to be exercised with great care." And then you end it, saying, "I believe in the role of the Pardon Attorney," unquote. The Pardon Attorney is an office within the DOJ, is it not?

Attorney General SESSIONS. It is a position in the Department of Justice.

Senator VAN HOLLEN. And can you think of any pardon, during the 8 years of the Obama administration, that did not go through the Office of the Pardon Attorney?

Attorney General SESSIONS. I don't recall. I know the—a number did during the Clinton administration.

[The information follows:]

At the hearing on April 25, 2018, Senator Van Hollen asked: "[C]an you think of any pardon during the 8 years of the Obama administration that didn't—that did not go through the Office of the Pardon Attorney?" I was unable to recall during the hearing. I have since researched the matter and would like to supplement my testimony with the following answer:

The Constitution provides the President with plenary power to grant clemency by way of commutation, pardon, or remission of restitution. The Office of the Pardon Attorney is a Department of Justice component that processes clemency applications for the President. There is, however, no requirement that the President only grant clemency to individuals whose applications have been processed by the Pardon Attorney. Senator Van Hollen asked whether President Obama pardoned any individuals whose applications were not processed by the Pardon Attorney. Based on information provided by the Pardon Attorney, it is my understanding that the Pardon Attorney did not process applications for four Iranians (Nima Golestaneh, Bahram Mechanic, Khosrow Afghahi, and Tooraj Faridi) who were pardoned by President Obama in January of 2016.

Senator VAN HOLLEN. I—starting with the Obama administration.

Attorney General SESSIONS. Okay.

Senator VAN HOLLEN. Two terms, 8 years.

Attorney General SESSIONS. I don't—

Senator VAN HOLLEN. I don't think there was one.

Attorney General SESSIONS. I don't know, actually.

Senator VAN HOLLEN. And I don't think there was a single pardon during the presidency of George W. Bush that did not go through the Office—the Pardon Office. And, you're right, the comment you made was in connection with pardons made by President Clinton. But, my question to you is, Do you stand by that statement that you made, back during that hearing, that the Pardon Attorney ought—the pardon power ought to be exercised with great care, and that you believe in the role of the Pardon Attorney in that process? Do you stand by that statement?

Attorney General SESSIONS. I don't think that statement needs modifying, but it's obviously in context that the President of the United States clearly has a constitutional power to——

Senator VAN HOLLEN. I understand, Senator.

Attorney General SESSIONS [continuing]. Execute pardons——

Senator VAN HOLLEN. I——

Attorney General SESSIONS. Let me finish.

Senator VAN HOLLEN. No——

Attorney General SESSIONS [continuing]. Execute pardons without inquiring of the Pardon Attorney.

Senator VAN HOLLEN. And I'm not——

Attorney General SESSIONS. It's been done very frequently in history.

Senator VAN HOLLEN. Well, Mr. Attorney General, I'm not——

Attorney General SESSIONS. But, we do have a——

Senator VAN HOLLEN. Mr. Attorney General—Mr. Chairman, if I could—Mr. Chairman—I'm not disputing the President's pardon authority. I'm——

Attorney General SESSIONS. Well——

Senator VAN HOLLEN [continuing]. Actually—I'm just quoting——

Attorney General SESSIONS. Well, let——

Senator VAN HOLLEN [continuing]. A statement you made that I agree with——

Attorney General SESSIONS. I'll——

Senator VAN HOLLEN [continuing]. With respect to the role of the Pardon Attorney. And, at the time, you made comments in the hearings, saying that not going through that process was an abuse of power. So, my question to you is whether or not you think not going through the Pardon Attorney is an abuse of the power—not an unauthorized power, but do you think it's an inappropriate use of that power?

Attorney General SESSIONS. I don't know that I used that phrase, "abuse of power," because it's clearly not. It's clearly within the power of the President to execute pardons without the Pardon Attorney. If you're doing a lot of pardons, and you want to have a lot of cases, and you want to have them reviewed by independent force, the Pardon Attorney provides a real asset to a chief executive before executing a pardon.

Senator VAN HOLLEN. Did the pardon of Sheriff Joseph Arpaio go through the Pardon Attorney Office?

Attorney General SESSIONS. I don't believe it did.

Senator VAN HOLLEN. Yes. Did the——

Attorney General SESSIONS. Certainly——

Senator VAN HOLLEN [continuing]. Pardon of Scooter Libby go through that—

Attorney General SESSIONS. The—

Senator VAN HOLLEN [continuing]. Office?

Attorney General SESSIONS. I don't believe it did.

Senator VAN HOLLEN. Okay. But, do you agree with what you said earlier, that that is the appropriate course of action for a pardon? I'm not asking you what the President's authority is. I'm asking you what you think the appropriate course of action is to make sure that the public has confidence in the integrity of the process.

Attorney General SESSIONS. There are opportunities that the Pardon Attorney can be utilized very effectively, and it has been, over time. But, I don't think it's in any way required that any President seek the opinion of—

Senator VAN HOLLEN. It's not a—

Attorney General SESSIONS [continuing]. The Pardon Attorney.

Senator VAN HOLLEN [continuing]. Requirement. I'm just—you're—I'm quoting from the statement you made, saying it was abuse of process in a particular case made by President Clinton.

Let me ask you about something else that I also think we agree on, in part, which—

Attorney General SESSIONS. Well, I would just say, the pardons President Clinton made were stunning, shocking, and unacceptable on the merits.

Senator VAN HOLLEN. And—

Attorney General SESSIONS. But, the two—Arpaio was 80-some years of age, and he was convicted of a misdemeanor.

Senator VAN HOLLEN. Mr. Attorney General, I'm not—

Attorney General SESSIONS. And Mr. Libby is a well known—

Senator VAN HOLLEN. In both cases—

Attorney General SESSIONS [continuing]. Circumstances of that case.

Senator VAN HOLLEN. In both cases, as you know, they did not go—

Attorney General SESSIONS. He contributed greatly to—

Senator VAN HOLLEN [continuing]. Through what you described was the appropriate process.

NATIONAL PUBLIC SAFETY PARTNERSHIP AND CITY OF BALTIMORE

Let me ask you about the National Public Safety Partnership, PSP, which is a program established by the administration to help fight violent crime, one that I support. The City of Baltimore was invited to apply in a letter from the Justice Department, back in 2017. The Justice Department said to the City, "We've concluded that your jurisdictions have levels of violence that exceed the national average, and that you're ready to receive the intensive assistance from the Department." Then they got these three criteria that were listed by the Department with respect to what you refer to as sanctuary cities. And the City's application was denied.

Here's what I want to say at this point in time. Baltimore City does not have jurisdiction over the detention centers in Baltimore City. That's a State of Maryland decision. So, we may have differences on the criteria you set out with. And, as Senator Shaheen said, the Seventh Circuit has reviewed this, and I think those deci-

sions are going to apply also to your criteria in the National Public Safety Partnership Program. But, setting that aside, I hope you'll work with me on this—Baltimore City. We have a violent crime problem, and the City of Baltimore does not have—the laws are State laws regarding DHS as—the access of the Department of Homeland Security to their jails. So, I'd just ask for your commitment to see if we can look for a way to see if they can qualify for the funds.

Attorney General SESSIONS. I would be glad to do that. We have had some—I think more than one—at least one circumstance in which the jail was run by somebody else other than the jurisdiction that appeared to be. So, that created a problem and actually led to the approval on the grant. So, I'll be glad to look at that.

Senator VAN HOLLEN. Thank you.

Senator MORAN. Senator, thank you.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. And, to both you and the Ranking Member, know that I look forward to working with you as you execute this appropriations bill through your committee and move it onto the floor. Look forward to that commitment.

Mr. Attorney General, it's good to see you again. Thank you for the conversation last week.

MARIJUANA LEGALIZATION

I wanted to raise again with you the subject of marijuana. Alaska is one of those States that has moved forward, not only with the medical marijuana, but also the sale and cultivation of recreational use, a very aggressive State regulation. This was not something that I had supported through that statewide initiative. In fact, I worked against it. But, it was passed resoundingly through the State. My constituents expect me to work to represent them.

ALASKA H.J. RES. 21

Mr. Chairman, I'd like unanimous consent to enter into the record a resolution that was recently passed by the Alaska Legislature.

Senator MORAN. Without objection.

[The information follows:]

SENATE CS FOR SS FOR HOUSE JOINT RESOLUTION NO. 21(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/17/18
Referred: Rules

Sponsor(s): REPRESENTATIVES GUTTENBERG, Drummond, Tarr, Kawasaki, Kito, Gara, Parish, Lincoln, LeDoux

SENATORS Begich, Wielechowski, Egan, Gardner

A RESOLUTION

1 **Urging the federal government to respect the authority of the state to regulate**
2 **marijuana use, production, and distribution; and urging the federal government to**
3 **reconsider its listing of marijuana as a schedule I controlled substance.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 **WHEREAS** art. I, sec. 22, Constitution of the State of Alaska, establishes a right to
6 privacy, stating "The right of the people to privacy is recognized and shall not be infringed";
7 and

8 **WHEREAS** the Alaska Supreme Court held in *Ravin v. State*, 537 P.2d 494, 511
9 (Alaska 1975), that there is "no adequate justification for the state's intrusion into the citizen's
10 right to privacy by its prohibition of possession of marijuana by an adult for personal
11 consumption in the home . . ."; and

12 **WHEREAS** the citizens of the state voted to legalize marijuana by way of Ballot
13 Measure No. 2, an "Act to tax and regulate the production, sale, and use of marijuana," on
14 November 4, 2014; and

15 **WHEREAS** the state has prioritized the federal marijuana enforcement objectives

1 stated in the August 29, 2013, memorandum from the United States Department of Justice to
2 all United States Attorneys, including preventing the distribution of marijuana to minors,
3 preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and
4 cartels, preventing the diversion of marijuana from states where it is legal under state law in
5 some form to other states, preventing state-authorized marijuana activity from being used as a
6 cover or a pretext for the trafficking of other illegal drugs or other illegal activity, preventing
7 violence and the use of firearms in the cultivation and distribution of marijuana, preventing
8 drugged driving and the exacerbation of other adverse public health consequences associated
9 with marijuana use, preventing the growing of marijuana on public land and the attendant
10 public safety and environmental dangers posed by marijuana production on public land, and
11 preventing marijuana possession or use on federal property; and

12 **WHEREAS** the state has implemented regulations under 3 AAC 306 that respect and
13 support the federal priorities listed in the Department of Justice's August 29, 2013,
14 memorandum; and

15 **WHEREAS** the American Medical Association supports public health-based
16 strategies, rather than incarceration, for individuals possessing cannabis for personal use and
17 urges the federal government to review its listing of marijuana as a schedule I controlled
18 substance with the goal of facilitating clinical research and development of cannabinoid-based
19 medicines and alternative delivery methods; and

20 **WHEREAS**, on August 1, 2017, Alaska Attorney General Jahna Lindemuth sent a
21 letter to United States Attorney General Jeff Sessions stating that former federal policy, as
22 articulated in the Department of Justice's August 29, 2013, memorandum, represented "a
23 pragmatic approach that effectively created space for states to be responsive to their residents
24 while also protecting federal priorities" and requesting the federal government to engage
25 directly with states to discuss potential approaches before reaching any final decisions on
26 changes to the Department of Justice's marijuana enforcement policies; and

27 **WHEREAS**, on January 16, 2018, Attorney General Lindemuth and the attorneys
28 general of 18 other states, districts, and territories sent a letter urging the United States
29 Congress to advance legislation to allow states that have legalized medical or recreational use
30 of marijuana to bring legal marijuana-related commerce into the banking system; and

31 **WHEREAS** Alaska Governor Bill Walker and the governors of Colorado,

1 Washington, and Oregon sent a letter, dated April 3, 2017, urging United States Attorney
 2 General Jeff Sessions and United States Secretary of the Treasury Steve Mnuchin to engage
 3 with states where marijuana has been legalized before embarking on any changes to federal
 4 regulatory and enforcement systems; and

5 **WHEREAS** Alaska Governor Bill Walker sent letters to United States Attorney
 6 General Jeff Sessions, dated August 1, 2017, and August 14, 2017, stating the manner in
 7 which Alaska's regulatory framework governing state-licensed marijuana businesses
 8 addresses federal interests and urging the federal government to maintain policies that respect
 9 the state's authority; and

10 **WHEREAS**, on January 18, 2018, United States Senators Lisa Murkowski and Dan
 11 Sullivan joined with 14 other Senators from around the country in a letter to the Director of
 12 the United States Department of the Treasury's Financial Crimes Enforcement Network
 13 expressing continuing support for a 2014 Financial Crimes Enforcement Network guidance on
 14 Bank Secrecy Act expectations regarding marijuana-related businesses; and

15 **WHEREAS** United States Representative Don Young is cosponsoring H.R. 4779
 16 (REFER Act of 2018), which would prohibit the United States Department of Justice from
 17 using federal funds to "detain, prosecute, sentence, or initiate civil proceedings against an
 18 individual, business or property, that is involved in the cultivation, distribution, possession,
 19 dispensation, or use of cannabis," when those activities are conducted in compliance with
 20 state law and local regulations; and

21 **WHEREAS** United States Attorney General Jeff Sessions' rescission of the
 22 Department of Justice's August 29, 2013, memorandum and other federal guidance on state
 23 marijuana policy demonstrates a need to address federal law;

24 **BE IT RESOLVED** that the Alaska State Legislature urges the federal government to
 25 respect the authority of the State of Alaska to regulate marijuana use, production, and
 26 distribution and forbear any federal interference in marijuana policy of states where marijuana
 27 has been legalized, and urges the United States Congress to address these issues while
 28 respecting states' rights; and be it

29 **FURTHER RESOLVED** that the Alaska State Legislature urges the federal
 30 government to reconsider its listing of marijuana as a federal schedule I controlled substance.

31 **COPIES** of this resolution shall be sent to the Honorable Donald J. Trump, President

30-LS0820J

1 of the United States; the Honorable Jeff Sessions, Attorney General of the United States; and
2 the Honorable Lisa Murkowski and the Honorable Dan Sullivan, U.S. Senators, and the
3 Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

SCS SSHJR 21(JUD)

-4-

New Text Underlined [DELETED TEXT BRACKETED]

HJR021C

Senator MURKOWSKI. This is H.J. Res. 21. It was passed unanimously out of both houses, and it urges the Federal Government to respect the authority of the State of Alaska to regulate marijuana use, production, and distribution, and generally respect States' rights.

Mr. Attorney General, we have talked about this in the aftermath of your decision to withdraw the Cole Memorandum. I had been disappointed with that, and expressed that I was concerned that the Department of Justice was less than a full partner with the States. I do understand that the White House has expressed support for legislation that will respect State supremacy when it comes to regulation, in the spirit of Federalism. I think that that—the comments that were made by my colleague from Hawaii, in terms of Members evolving on this, is important, but I do think, as we're seeing the States move forward, legislation like this is timely.

The States are telling us, though, that they need the Department of Justice to be a partner in the orderly administration of States' regulatory regimes, and not standing in the way as an obstacle. So, I would—I understand your position on this. Again, we've had many conversations. But, I would hope that we could have your assurance that, within the Department of Justice, that the Department will not be an obstacle to the consideration of this sort of legislation that may move forward.

Attorney General SESSIONS. Well, I can't make a commitment about what position we would take at this time, until we know exactly what's involved. But, it's not so much on a question of supremacy as a question of simple law. Alaska can pass laws about drugs that make certain drugs illegal that Washington does not make illegal and, therefore, can't be prosecuted in Federal court, but could be in Alaska. Likewise, the Federal Government has passed some laws regarding marijuana that I'm not able to remove from the books. The Congress—you—have passed them. They're on the books. And I just feel like that our priorities—look, I'll be frank—our priorities are fentanyl, heroin, methamphetamine, cocaine. People are dying by massive amounts as a result of those drugs. We have very few, almost zero—virtually zero small marijuana cases. But, if they're a big dealer and illegally acting and violating Federal law, we—our Federal agents may work that case. I don't feel like I'm able to give a pass, some protection, some sanctuary for it. That's maybe the only difference we have at this point on how—

Senator MURKOWSKI. And I—

Attorney General SESSIONS [continuing]. It will play out.

Senator MURKOWSKI [continuing]. I do understand that. Again, I recognize that, if there is a venue or an opportunity for us to advance legislation on this, that there is that open door for conversation about, truly, the inherent conflicts that we're seeing coming out of the States and working with—on the Federal level.

Let me ask you another—

Attorney General SESSIONS. I would be glad to do that.

TRIBAL JUSTICE PROGRAMS

Senator MURKOWSKI [continuing]. Another issue that I raised with you earlier. And this is regarding support for Tribal justice programs. In the fiscal year 2018 budget, we were able to include a funding stream for victims of violent—Victims of Crime Act funds for Tribes. It's a set-aside—it's a 5 percent set-aside. It's about \$130 million to help for victims on Tribal lands. We had completed a study in Alaska—well, actually, it was a broader study, it was a 2016 study from the National Institute of Justice. More than four out of five Alaskan Native and American Indian women report having experienced violence in their lifetime. More than half report having experienced sexual violence in their lifetime. Nearly 40 percent have experienced violence in the past year, 14 percent who have experienced sexual violence in the last year. Our statistics when it comes to Alaskan Native women and American Indian women are horrible when it comes to domestic violence, when it comes to the sexual assault. And so, I think that we are making a small step forward with this small set-aside—small set-aside—and first time ever to see anything going towards those on Tribal lands and in Alaska, where we have different issues, in the sense of not having Indian country, but a recognition that we must address this. So, 5 percent, I would like to see that increased. I would hope that we'd be able to work with the Department of Justice to address this issue, because we have not made a difference in reducing these horrible statistics.

Attorney General SESSIONS. Senator Murkowski, thank you, actually, for raising that. I'm hearing—I heard that before I was confirmed. You and I talked about it. I've traveled the country, meeting with U.S. Attorneys. I hear it a lot in their districts. Just came back from Albuquerque, and we talked about the Navajo Tribal lands and the problems that they have.

This budget, the President's budget, actually is frugal compared to—it's a frugal budget, but it has more for Tribal issues than the—even your 2018 budget. And it does it the way you suggested, through set-asides. A 7 percent set-aside is recommended for the Office of Justice Programs. All those programs, 7 percent would be set aside for Tribal individuals and 5 percent of the Crime Victims Fund. I believe Congress has not yet got to those numbers.

But, I do agree with you that it is a very difficult situation, and Alaska has a particularly unusual situation without having specific Tribal lands that receive specific funds from the Government. So, I will be glad to continue to work with you on it.

Senator MURKOWSKI. Good. And that's why so many of these funds, whether it's the Byrne grants, the VAWA funding, the DNA backlog, the Victim of Crime Act, the Crimes Against Children, all of these grant fund opportunities are so significant for us. So—

Attorney General SESSIONS. I did—

Senator MURKOWSKI [continuing]. Put that on your list.

Attorney General SESSIONS. Let me—okay. I would note that, just yesterday, I had a meeting with your United States Attorney in—here in DC—Bryan Schroder. He's on our—my 15-member Attorney Generals Advisory Committee. And he and U.S. Attorney from Oklahoma—northern Oklahoma—chair the Subcommittee on

Indian Affairs. And they—we both talked about this specifically—they would like to see us do some things better than we have in the past. They're providing strong leadership. And I know he'll be glad to share his thoughts with you or your staff.

Senator MURKOWSKI. Good. They're good guys. Thank you.

Thank you, Mr. Chairman.

Senator MORAN. Thank you, Senator.

Senator from California, Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

And welcome back, Attorney General. I'm sure you've missed us terribly.

[Laughter.]

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

Senator FEINSTEIN. I want to follow up on something that Senator Collins said. Senator Collins and Senator Manchin essentially convened a large group of bipartisan Senators on the DACA situation to try to see if some proposal could be put together. Virtually everything went down on the floor. And, in conversations since, what I've learned is that, in negotiations with the President, Senator Schumer tried to consummate a deal, where the President essentially got what he wanted with respect to border security if the DACA bill went through. Well, that was clearly not successful. You referred to certain loopholes, in your conversation with Senator Collins. I'm wondering if you could be more precise, because we are really very interested and involved in trying to find a solution.

Attorney General SESSIONS. Well, thank you. Your support for this would be very important. I think there's a bipartisan opportunity to join together and say, once and for all, we believe we should have a lawful system of immigration, and we're going to support things that actually work to help achieve that. I've not so jokingly said, for years, Congress will pass anything on immigration, as long as it doesn't work. If it works, somehow it never passes. But, we've got the Flores consent decree that's been in place for 20 years, that's causing monumental problems, particularly in California. We have the situation where you say, as the critics say, magic words and you're in, backlog case systems, people get released on bail, they don't show up for their hearings, and all of that. There's a whole host of problems like that, that I think most of—

Senator FEINSTEIN. DACA—

Attorney General SESSIONS [continuing]. Members of Congress of both parties would probably work to fix.

Senator FEINSTEIN. Well, is it the number? In the number—in the bill that Senator Graham and Senator Durbin were cosponsors of, I think the total number was 3.3 million. Was that the problem—

Attorney General SESSIONS. That is a big—

Senator FEINSTEIN. I don't—

Attorney General SESSIONS [continuing]. Number. Yes, that's—

Senator FEINSTEIN [continuing]. Believe the problem—

Attorney General SESSIONS [continuing]. A problem.

Senator FEINSTEIN [continuing]. Was in the bill, because it was discussed and discussed and discussed, and then it all came a crop-

per in the votes. So, it would be very helpful if you could be helpful to us and just identify some specifics that we could look at and try to put something together.

Attorney General SESSIONS. Well, I think that's—

Senator FEINSTEIN. Would you do that?

Attorney General SESSIONS [continuing]. That's certainly a fair request, yes—

Senator FEINSTEIN. Okay.

Attorney General SESSIONS [continuing]. I will.

Senator FEINSTEIN. Okay.

BUMP STOCKS

Let me go on, then, to bump stocks. DOJ recently started the rulemaking process to ban bump stocks under the National Firearms Act. And I have it in my assault weapons bill, which has some 29–30 cosponsors right now. But, ATF has said, for years, it can't ban bump stocks because the National Firearms Act doesn't allow it. ATF repeated this position in April of 2017, and has repeatedly stated in public that ATF cannot ban bump stocks under current law. That's why we have proposed legislation to do so. How long do you expect this rulemaking to take? And if you find out what we found out, will you support a legal ban?

Attorney General SESSIONS. I would need to review the legislation, but we have done intensive legal research. It always seemed to me that a bump stock converts a gun to, effectively, a fully automatic weapon. How can this be a close call? However, I acknowledge that the lawyers at ATF did a lot research. It's a lot of complicated—it's a complicated matter. And they concluded it was not. And we've continued to review that. We believe we've changed that view in the Department of Justice. And we believe the regulation could be effective to solve the problem. And it's up for comment now, made public. Hopefully, that would move forward and would solve the problem.

Senator FEINSTEIN. By when do you expect the rulemaking will conclude?

Attorney General SESSIONS. I think it won't be much longer. I'm not sure, but I think in just a few months—90 days, I believe, is what's left on the—

Senator FEINSTEIN. Okay.

Attorney General SESSIONS [continuing]. Time.

Senator FEINSTEIN. Thank you.

FBI NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) DATABASE

The Justice Department announced a policy change, 1 month ago, indicating that it would remove records of certain fugitives from the FBI's NICS gun background check databases. Now, previously, all fugitives were recorded in the NICS database so they couldn't buy guns. Now only fugitives who cross State lines are included in the database. I understand that local law enforcement organizations have strongly opposed the change. It's puzzling to me as to why the Department would do that, why you would want armed fugitives.

Attorney General SESSIONS. Well, the issue I'm most familiar with is the one involving whether or not a warrant for your arrest, and a person is, therefore, a fugitive if they're running from arrest, but haven't been convicted. The statute is pretty clear, you have to be convicted before you can have a gun—your Second Amendment right to possess a—

Senator FEINSTEIN. Even in the—

Attorney General SESSIONS [continuing]. Firearm.

Senator FEINSTEIN [continuing]. Case that the fugitive had committed a major felony?

Attorney General SESSIONS. Apparently, that is the law. In other words, you lose your right if you've—

Senator FEINSTEIN. These are—

Attorney General SESSIONS [continuing]. Been convicted—

Senator FEINSTEIN [continuing]. Fugitives who—

Attorney General SESSIONS [continuing]. Of—

Senator FEINSTEIN [continuing]. Crossed State lines. I don't understand what the Department sees is the need to do this.

Attorney General SESSIONS. Well, I am—I would just—

Senator FEINSTEIN. Why—

Attorney General SESSIONS [continuing]. Say I will review the State—

Senator FEINSTEIN [continuing]. Has me worried.

Attorney General SESSIONS [continuing]. Line question. I should know—be able to answer that, but I'm not able to. But, I do know the warrant problem is a product of statutory language.

Senator FEINSTEIN. Okay. I'm over my time.

Thank you, Mr. Chairman.

Senator MORAN. Thank you, Senator Feinstein.

Senator from Arkansas.

Senator BOOZMAN. Thank you, Mr. Chairman.

Senator MORAN. I—no, it's—I'm correct.

Senator BOOZMAN. Thank you, Mr. Chairman.

And thank you, Attorney General Sessions, for being here. And we do appreciate your hard work and the great job that you're doing.

Attorney General SESSIONS. Thank you.

BYRNE JAG GRANTS

Senator BOOZMAN. I'd like to talk a little bit about the Byrne JAG, also, in the sense that in Arkansas we are doing a good job of helping you in your efforts regarding following the law, you know, being helpful. As I go around the State, though, and I talk to my county sheriffs, I talk to my local law enforcement and individuals regarding the importance of this, this is not a whole lot of money, but it really is the difference in being able to stand up the Drug Task Force forces that they have. You know, these are small departments. I'm out and about as much as anybody, as were you when you were a Senator representing your folks. But, when you talk to the people that are on the ground, again, not having this funding really is making a big difference in a very negative way. Can you talk about, for those States, for those individuals that are doing a good job, when it's going to get released?

Attorney General SESSIONS. Senator Boozman, it's just maddening to us that people who totally support our ICE officers and allow them to do the minimal things they ask of local law enforcement can't get this money. So, what happened was, a suit was filed in Chicago that said that they may or may not be in violation of our grant conditions. And they not only wanted to block us from denying Chicago, they denied the whole—the judge issued a nationwide injunction. And Chicago's law and circumstances are unique. All these other people who comply with the Department of Justice, all the other people that have other and different laws and backgrounds, are enjoined by the same single Federal judge, one out of 600. Now the whole process is stopped. And law enforcement has been impacted. And we are determined to try to deal with this issue in an appropriate way.

It's painful for me not to see the money go out, particularly to the people who want to help us and work with us every day. But, they've been pretty supportive and understanding, I've got to say, although I know it's difficult for them. So, I hear you. We're working on it. It's a high priority of mine.

Senator BOOZMAN. Okay. We appreciate that. And it is important, an important issue.

DRUG COURTS

Another thing that I'd like to talk to you a little bit about is the—when we look at the fiscal year 2019 budget request, it will reduce the Drug Court funding by more than 40 percent, reduce Veterans Treatment Courts by 70 percent. When you look at the recidivism rate as a result of being in Drug Court, it's dramatically lower than those people being incarcerated. Also, when you put somebody in jail—they're required to work when they're in Drug Court, but when you put somebody in jail, not only are you—you're—the recidivism rate and all that, but also the family is going to wind up probably on some sort of public welfare assistance because you've lost an income earner. And so, I'd really appreciate it if you'd look at that and—just kind of review that, look at the statistics. I think those programs—if there's an answer, instead of reducing those programs, I think they should be increased dramatically.

Attorney General SESSIONS. Well, Congress works its will. And the—we have a tight budget, and we—but, I do agree with you, Senator Boozman. I helped initiate the—

Senator BOOZMAN. Right.

Attorney General SESSIONS [continuing]. Establishment of a Drug Court in Mobile, Alabama, in the early 1980s—

Senator BOOZMAN. Right.

Attorney General SESSIONS [continuing]. One of the first in the country. And it's still in existence. And I think it's a positive thing, in general. I've kept up with it over the years. It's—it deals with the kind of State cases that are often—are smaller offenders, addicted offenders, single mothers, single fathers, whatever, that it's just a difficult time. And some of them can work their way through that Drug Court and stay with their families and save the cost of incarceration.

Senator BOOZMAN. You're exactly right. And, again, have to work, have to stay clean, with a drug test, where the judge has the hammer, you know, to actually—

Attorney General SESSIONS. Right.

Senator BOOZMAN [continuing]. Put them in prison. So—

Attorney General SESSIONS. If they misbehave, the judge—

Senator BOOZMAN. Exactly.

Attorney General SESSIONS [continuing]. They come before the judge repeatedly, and he addresses them directly. It has a real impact.

Senator BOOZMAN. Well, thank you very much.

Thank you, Mr. Chairman—

Attorney General SESSIONS. Thank you.

Senator BOOZMAN [continuing]. Madam Chair.

Senator SHAHEEN [presiding]. Thank you, Senator Boozman.

Senator Manchin. Yes, Senator Manchin.

Senator MANCHIN. Thank you, Madam Chairman.

Thank you, Mr. Sessions. Good to have you here.

Let me say, first of all, I want to thank you. We had a major drug raid, and you all were very much involved in that and made it happen, and I personally want to thank you for the State of West Virginia. It was a major drug raid between Detroit and Huntington, West Virginia. You all led it, you were involved in it. We had all agencies working together. It made a big, big impression. It made a big help on us. So, thank you for that, sir.

Attorney General SESSIONS. Thank you.

BOP AUGMENTATION

Senator MANCHIN. Also, I want to say that the Bureau of Prisons routinely uses a process known as augmentation to assign custodial duties to noncorrectional staff—teachers, plumbers, fill gaps in staffing, and all that. At the Hazelton Federal Corrections Center—Hazelton Federal Corrections Center in West Virginia—there have been over 60 major security incidents since the beginning of this year, including one inmate—inmate's death earlier this month. Now, I shot—fought to ensure that the recently passed omnibus bill included language directing the Bureau of—to curtail its over-reliance on augmentation, people who then have these types of experiences, and instead hire additional full-time correctional staff before continuing to augment existing staff. So, despite all this, the Director of Bureau of Prisons, Mr. Mark Inch, sent a memo out last week stating that, "Augmentation is an important mechanism used by our agency to operate safely and efficiently." So, only thing I can ask, Mr. Sessions, is, What do we have to do to get Mr. Inch's attention in that and ask for some help?

Attorney General SESSIONS. Well, the augmentation has gone on for a long time, Senator Manchin.

Senator MANCHIN. Yes.

Attorney General SESSIONS. And it's established policy. And everybody that participates in augmentation is supposed to, and I believe is, also trained, and they—in the incarceration management, number one.

Senator MANCHIN. This is—

Attorney General SESSIONS. So, I think—

Senator MANCHIN. This is a tough one.

Attorney General SESSIONS [continuing]. That this really—

Senator MANCHIN. This is a tough prison.

Attorney General SESSIONS. What?

Senator MANCHIN. This is a tough prison, here.

Attorney General SESSIONS. Well, facts could be different—

Senator MANCHIN. Sure.

Attorney General SESSIONS [continuing]. In different situations, but the augmentation program, to eliminate that would be highly expensive. I mean, you would have to hire entirely new guard for one person to spend 2 hours through the lunchroom helping—

Senator MANCHIN. I gotcha.

Attorney General SESSIONS [continuing]. Keep an eye on things.

Senator MANCHIN. We're just understaffed. I think that's it, in a nutshell, in that prison, with the amount of population base we have. If you could just look into that, sir, and if your staff could give us the attention we need, then we'd be greatly appreciative, because they're having serious problems there. And the staff morale is low. We're having a hard time keeping people now because of the danger. That's all we're asking for.

Attorney General SESSIONS. All right.

Senator MANCHIN. And I know you will do that, and I appreciate it.

FBI AGENT/POLICE PAY AND BENEFITS DISPARITIES

I have another one, too, which is important. I'm proud to have FBI presence in Clarksburg, West Virginia. As you know, the NICS unit is there. This facility performs a wide variety of functions, such as housing the Criminal Justice Information System, where the FBI's National Instant Criminal Background Check System is located, working in conjunction with WVU, implementing the cutting-edge study of biometrics in the field of criminal justice, being a resource for law enforcement, cybersecurity, and combating cybercrime. In order to protect the important work conducted at these facilities, there are approximately 75 police officers assigned to the site in Clarksburg. Additionally, there are about 173 other officers serving at sites in Washington, DC, Quantico, Virginia, and New York City. Because of an inadvertent error committed while drafting the legislation intended to establish the FBI police force, these officers, these 70—they're not being—receiving the same pay and benefits that they are entitled to with what jobs they're doing. I think it's a snafu when all this was written.

I mentioned this to Director Wray yesterday, so he knows it and his staff has it, but I wanted to also put it on your radar screen, sir. So, I would just like to have the—you know, your help, if you will, on this, because it's just an unfairness in the system. We've been trying to correct—and this was done in 2002. We have the code, the section, everything else that—whoever you want us to work with on your staff, too, to check that out, I'd be happy to do.

Attorney General SESSIONS. Well, that's a reasonable request, and we'll follow up with Director Wray. And if we can be of assistance, we will.

OPIOID EPIDEMIC

Senator MANCHIN. The opioid addiction that we have—and we’ve talked about this before—trying to change the law back to where the DEA can do its job—you and I have talked about—

Attorney General SESSIONS. Right.

Senator MANCHIN. I think we’ve given—and you were telling me you need the language from us to do that. Or do you have the ability to change that?

Attorney General SESSIONS. I appreciate the conversations we’ve had on it. I thought we were—had reached an accord on the language. But, if not, I’ll be glad to follow up and see if we can’t get that done.

Senator MANCHIN. Yes. Okay.

Attorney General SESSIONS. I appreciate your interest and leadership on it.

Senator MANCHIN. Well, we’re ground zero. West Virginia is number one. We had 909 deaths, out of a population of 1,800,000 people. So, we’re just off the charts. And—but, your attention is going to be greatly appreciated, but it’s helping immensely. This drug raid made a big difference. And we can do more.

Attorney General SESSIONS. U.S. Attorney Mike Stuart is—

Senator MANCHIN. Mike’s—

Attorney General SESSIONS [continuing]. So excited. I got a letter from him, and it reminded me when I was young U.S. Attorney—

Senator MANCHIN. You got a—

Attorney General SESSIONS [continuing]. But he was on steroids, I told him, compared to me. He was so excited.

Senator MANCHIN. We’ve got a good guy there.

Attorney General SESSIONS. He is really fired up to do—make some changes there. And we’re going to support him.

Senator MANCHIN. Yes, he’s well liked. He’s well liked, and he’ll do a good job. We’re really proud to have Mike.

Thank you, sir.

Attorney General SESSIONS. Thank you.

Senator MORAN [presiding]. Senator from South Carolina, Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman.

Mr. Attorney General, I think you’re doing a very good job for the country, and many of us up here have your back, and I want you to know that.

Attorney General SESSIONS. Thank you.

BUDGET REDUCTION FOR FISCAL YEAR 2019

Senator GRAHAM. As to the budget, it’s a 6-percent reduction over fiscal year 2018 levels. Do you think now is the time to reduce the Department of Justice’s budget, given the threats we face?

Attorney General SESSIONS. Well, we submitted a frugal budget. It comes through the Office of Management and Budget, in trying to achieve a total number for the government.

Senator GRAHAM. Well, let me ask you—

Attorney General SESSIONS. I would just follow up to say it was submitted before the 2018—

Senator GRAHAM. Okay.

Attorney General SESSIONS [continuing]. Appropriations, and did, in fact, raise—spent—raise—helped us give us—

Senator GRAHAM. Yes.

Attorney General SESSIONS [continuing]. Some money extra.

Senator GRAHAM. So, the money you got extra, you think you can spend it wisely to make—

Attorney General SESSIONS. We're going to work very hard to do that.

Senator GRAHAM. Okay, thank you.

Attorney General SESSIONS. Absolutely.

THE WIRE ACT

Senator GRAHAM. All right. The Wire Act, I know you've recused yourself from reviewing the Wire Act. Is that correct?

Attorney General SESSIONS. That's correct.

Senator GRAHAM. I talked to Mr. Rosenstein about that, months ago. And Senator Feinstein—are very worried that this bizarre interpretation of the Wire Act by the Obama administration is going to lead to holy hell ungoverned spaces when it comes to Internet gambling. Could you please tell him to give me an answer. Or do I have to tell him?

Attorney General SESSIONS. Deputy Rosenstein?

Senator GRAHAM. Rosenstein, yes.

Attorney General SESSIONS. I will pass—

Senator GRAHAM. Okay.

Attorney General SESSIONS [continuing]. Along your—

Senator GRAHAM. Okay. Other than—

Attorney General SESSIONS [continuing]. Request.

Senator GRAHAM [continuing]. That one glitch, do you agree with me he's doing a good job?

Attorney General SESSIONS. He works every day to do the job that he is called upon to do that got dropped in his—

Senator GRAHAM. Do you have confidence in him?

Attorney General SESSIONS. I do have confidence in him.

Senator GRAHAM. I do, too. Thank you.

GUANTANAMO BAY

Guantanamo Bay (GITMO). The President issued an executive order saying he would use GITMO when appropriate. Do you agree with that?

Attorney General SESSIONS. Yes.

Senator GRAHAM. Do you think we're ever going to use it in my lifetime?

Attorney General SESSIONS. Nobody—well, you and I have spent a lot of time working on it together, since I've been Attorney General and before.

Senator GRAHAM. Right.

Attorney General SESSIONS. So—I don't know.

Senator GRAHAM. Well, I just would—

Attorney General SESSIONS. I'll just have to be honest with you.

Senator GRAHAM. You have been—

Attorney General SESSIONS. It could be, certainly, if—

Senator GRAHAM. Yes.

Attorney General SESSIONS [continuing]. We have a surge and—

Senator GRAHAM. Right.

Attorney General SESSIONS [continuing]. Arrest these—

Senator GRAHAM. Well, we've got 489 prisoners that we've captured from our operations around Raqqa. They're going to get out of jail. They're in a makeshift prison held by the Syrian Democratic Forces. It's not a nation-state, and these are really hardcore killers, some of them. Two of them are with the Beatles. You've heard of the Beatles, right? Not the rock group, but the beheaders.

Attorney General SESSIONS. I do know the Beatles.

Senator GRAHAM. Okay. Well, two of these people are in our custody. They're insisting on a fair process. I intend to give them one. But, they cut off the heads of an—of American citizens and our allies. And I know where you're at. I would appreciate it if you would push the administration to live up to the President's promise to use it wisely when it comes to GITMO. Would you please do that?

Attorney General SESSIONS. I will remain focused on that.

THE WAR ON TERROR

Senator GRAHAM. Okay. Now, when it comes to the war on terror, Raqqa may have been taken back, but we've got to hold it. From your point of view, the threat streams that you're aware of, are they growing regarding radical Islam threat toward the homeland?

Attorney General SESSIONS. We don't think there's been any significant reduction. I do believe General Mattis deserves credit for his tactics of crushing ISIS, and I think a lot fewer of them got out than perhaps they intended, which means there are fewer of them available to come to America to kill Americans. But, we'll—I think time will tell how many come out of that war zone and attack us.

Senator GRAHAM. Is this a priority—

Attorney General SESSIONS. There's definitely many that prefer to do that, and desire to do that.

Senator GRAHAM. Is this a priority of your Department, to make sure that we—we're up and running when it comes to these threats?

Attorney General SESSIONS. It is. The FBI may—almost a third of its budget is national security matters. I asked them, "Was that enough?" some time ago, and I was told the right answer.

Senator GRAHAM. So—

Attorney General SESSIONS. And the answer was, "Well, we've got enough, because we'll assign anybody doing anything to focus on terrorism if it's a threat to us. It's our number-one priority."

Senator GRAHAM. One of the tools they use to recruit out of area, out of theater, is the social media outlets, like Facebook and other social media devices. They use it actively to recruit. I know you're aware of a recent dustup with Cambridge Analytica, but a terrorist organization using social media to recruit terrorism in our own backyard, would you support Congress weighing in and trying to find some control over this?

Attorney General SESSIONS. Senator Graham, I think it's a growing, real problem. I—FBI has a great deal of insight into this program. We want to encourage them to be forthcoming about ideas

to deal with the future. But, you are correct, it needs more attention.

Senator GRAHAM. Congratulations on the CLOUD Act. It really helps our ally, Great Britain. And your office was terrific. Thank you.

Attorney General SESSIONS. And Senator Graham was the number-one advocate for that, which—it was one of our top priorities in Department of Justice, and will—and, without your help, it would not have passed.

Senator MORAN. Senator Coons.

Senator COONS. Thank you, Chairman Moran. And welcome to your new position here at CJS. I look forward to working with you and with Ranking Member Shaheen.

And, Mr. Attorney General, welcome. I enjoyed working with Senator Graham, and I'm glad we made progress on the CLOUD Act. I do think it was an important step forward.

I have three questions I'd like to ask, if I might. I think I'm the last man standing, so we'll work through them, if we could. And then, I think we're at the end.

Senator MORAN. As long as they occur within 5 minutes—

Senator COONS. I will do my—

Senator MORAN [continuing]. You're recognized.

[Laughter.]

Senator COONS [continuing]. Level best.

NICS DENIAL NOTIFICATION ACT

First, as you know, Attorney General, my home community of Wilmington has faced significant levels of gun violence, something the Department has worked with us on in the past. I've tried to find ways that we, in the Federal Government, can help local law enforcement confront this challenge. So, I'm working with Senator Toomey, of Pennsylvania. We have crafted and introduced a bill, the NICS Denial Notification Act, which recognizes that if someone who is a person prohibited—convicted felon, adjudicated mentally ill, convicted of domestic violence—goes into a gun shop, fills out their background check form, says, "Yes, I can buy a gun," and they're denied, that's information that would be helpful for local law enforcement to know. Would you agree that that's helpful for State and local law enforcement?

Attorney General SESSIONS. Yes, it could be.

Senator COONS. There were 120,000 NICS denials last year. The State of Pennsylvania, State of Virginia, they run it through the—the State police run it, so they know when there's a NICS denial, and they have prosecuted hundreds of people. My home State, and about 30 others, it's run independently of State law enforcement. All this bill would do is to require notification to State law enforcement when there is a denial of a NICS application. Do you think that would be a constructive step forward, in terms of empowering State and local law enforcement to take timely action, where a person prohibited is trying to get access to a weapon?

Attorney General SESSIONS. I would be pleased to review that. I'm aware that you are offering something of that nature, but I haven't studied it. I think it's got potential and would be pleased to do so. We also are directing our United States Attorneys to pros-

ecute more aggressively people who lie to get a gun. And some of those are caught on the—well, most of them are—NICS denials are, basically, people who have lied when they—

Senator COONS. That's right. The were lie-and-try—

Attorney General SESSIONS [continuing]. Seek it.

Senator COONS [continuing]. Offenses.

Attorney General SESSIONS. We call it the lie-and-try—

Senator COONS. Yes.

Attorney General SESSIONS [continuing]. That's correct.

Senator COONS. Well, I look forward to working with you on that.

HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA)

One other thing I wanted to ask is about HIDTA, the High-Intensity Drug Trafficking Areas Program under ONDCP. I worked hard to make sure New Castle County, Delaware, which is our northern-most county, was included in the Philadelphia/Camden HIDTA area. And I'm concerned about changes you're proposing to the program that, as I understand it, would lead it to focus on enforcement activities, but not combating addiction. HIDTA and other ONDCP programs have balanced enforcement with community efforts to try and fight addiction. Why reinvent the wheel when ONDCP, in my view, has already been providing needed assistance to communities across the country?

Attorney General SESSIONS. This has been a matter discussed for many years. We've been asked to reorganize the Government to make it more effective. The HIDTA investigative teams that are funded through this grant program have been a part of the ONDCP, the Office of Drug Control Policy. It was set up as a policy entity, and a little bit like the National Security Council that says, "We're spending all this money. Let's make sure all these departments are doing it the right—in a coordinated way." So, we think that ONDCP needs to focus back on that, and that the actual management in the field of task forces that prosecute and investigate drug use is better coordinated with the DEA. But, the HIDTA officials, the people of the local communities that serve on the HIDTA boards would be retained. The grant money would simply be managed by DEA. And I think it would create a closer working relationship.

Senator COONS. I look forward to looking into that further. We may disagree on exactly how to manage it, but I agree with you, it's a longstanding debate.

MICHAEL COHEN INVESTIGATION

Let me close with just a few questions about the U.S. Attorneys Office in the Southern District and the investigation of Michael Cohen. If I understood correctly your exchange with Senator Leahy earlier—I just want to make sure I understand. If you discover any connection between this investigation into Mr. Cohen and the ongoing investigation into allegations of Russian interference or anything related to the 2016 election, would you recuse yourself?

Attorney General SESSIONS. Yes.

Senator COONS. Thank you. And have you discussed that investigation into Mr. Cohen with anyone outside of DOJ, including the President?

Attorney General SESSIONS. I don't think in any significant—well, I'll just say this. The communications I might have to anyone in the White House, I believe are the kind of communications that should not be revealed. I believe I have the right to—and responsibility to maintain confidence in those. So, I just am not able to go down that road.

Senator COONS. So, in exerting executive privilege there—asserting executive privilege there, I'll move forward.

A last question. Has the President or anyone in the administration discussed with you the possibility of President Trump pardoning Michael Cohen?

Attorney General SESSIONS. I am not able to reveal the contents of any communications I might have with the President of the United States or his top staff.

Senator COONS. Given the previous conversation you had with Senator Van Hollen, it's my hope that, if President Trump proceeded to pardon Michael Cohen, in violation of longstanding policy, and did not consult with the Pardon Attorney, did not consult with DOJ, that you would express strong objection to that and would consider resigning if that step were taken. Hopefully, it will not come to that.

Thank you for the chance to question you today, and thank you for your service, Mr. Attorney General.

Attorney General SESSIONS. Thank you, Senator Coons.

Senator MORAN. Mr. Attorney General, we're about to conclude our hearing. We're going to have a quick round. I was hoping that Senator Coons would leave before I indicated the potential of a second round, but—Senator Coons, anything you want to add to what you've questioned the Attorney General?

Senator COONS. Thank you very much for the opportunity. No, I have completed my questions.

Senator MORAN. Very good.

I'll recognize Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

TRIALS FOR INTERNATIONAL TERRORISM SUSPECTS

I want to follow up on the issue that Senator Graham raised about Guantanamo. He specifically mentioned the Beatles. On March 5, I sent the Justice Department a letter based on discussions that we had with the families of the Americans who were killed, we think, by the Beatles, one of whom was a constituent of mine, James Foley, but also included Steven Sotloff and Kayla Mueller. One of the things that we heard very strongly from the families of those Americans murdered by those terrorists—executed, really—is that they wanted to see that the people who killed them were brought to justice. They didn't feel like putting them in Guantanamo, where no one would know and other terrorists would not be able to see that they were brought to justice and held accountable for their deeds, was an appropriate way to deal with them. So, I wonder if today you can tell me if you, as the Attorney General, and the Justice Department will advocate with this administration that those terrorists be brought to justice either in some international venue or in civilian courts in the United States.

Attorney General SESSIONS. Well, I believe I can say with certainty they will be brought to justice. There has been a discussion. Senator Graham, for example, believes—and he's studied this for years; he's actually, on his military duty, spent time at prisons in—

Senator SHAHEEN. Right.

Attorney General SESSIONS [continuing]. Afghanistan and places, so he's an expert—but, he thinks the normal and best procedure is for people to be brought to Guantanamo, where they're not—they're—as prisoners of war, that they can be interrogated as normal prisoners of war, they're not provided attorneys, and they're not set for trial and don't get discovery and—of the government. And then, if a decision is made to bring them to the United States for trial or tried by military commission in Guantanamo, that's the best approach. I have advocated that with him in—when I was in the Senate. So, that's my general view of it.

We have had success bringing—trying a lot of these cases in Federal court. Even though the rules of evidence are stricter, the discovery rules require the government to produce more evidence, sometimes could tend to reveal the—how they got caught and our techniques of catching them, and our intelligence that way.

So there's no dispute about these individuals being brought to trial. I have been disappointed, frankly, that the British—they were British citizens, they renounced their citizenship, or rejected, had it pulled, but that they are not willing to try the cases, but tend to want to tell us how to try them. So—and they have certain evidence—

So, it's a complex matter. We are spending a good deal of time on it. I believe you can say with confidence that we expect to have these individuals tried and held accountable for their horrific acts.

Senator SHAHEEN. Thank you. As you point out, we've been successful in Federal court when we've brought those terrorist cases. In fact, we've been more successful in civilian courts than in military tribunals. I would urge you and the administration to take into account the wishes of the families, who lost their loved ones because of those terrorists, and not provide another opportunity for terrorists to be able to use Guantanamo as a recruiting tool. I certainly hope you will do that.

SPECIAL COUNCIL AND FIRING AUTHORITY

I would like to change the subject now. There have been a number of questions here regarding your recusal from issues relating to the 2016 presidential campaign and the work of Special Counsel Mueller. I have a couple of general questions that I hope you can answer despite your recusal from questions regarding the Mueller investigation.

Outside of misconduct, dereliction of duty, incapacity, conflict of interest, or other good cause, the conditions outlined in 28 C.F.R. 600, can the Attorney General, or his designee, fire a Special Counsel?

Attorney General SESSIONS. Well, let me just say this. I expected somebody would press this, but I am recused from that matter, and this thing—one matter at stake, and I'm recused from that. So, I believe it is not appropriate for me to opine or give my thoughts

at this point, given the fact that I'm recused. So, I appreciate your inquiry, but I think it is not appropriate for me to comment.

Senator SHAHEEN. Will you also not comment on whether, in your legal view, the President can fire a Special Counsel appointed under the same regulation?

Attorney General SESSIONS. I feel the same way about that question.

Senator SHAHEEN. Okay.

Mr. Chairman, if I can just ask one more question. I know I'm over my time.

Senator MORAN. Please continue.

CENSUS CITIZENSHIP QUESTION

Senator SHAHEEN. I want to go back to the Census questions. There have been some questions about the citizenship question that is to be included in the next Census. Now, my understanding is that the last time this question was included in the Census was in 1950. And so, I have a question about why now the Justice Department feels like it needs to include that question. The answer that I've been given is that it's used in enforcing the Voting Rights Act. Since we haven't used it since 1950, why is it necessary now? Does the Justice Department plan on using the information from the question for immigration enforcement?

Attorney General SESSIONS. Well, we've submitted a written statement about that. The matter is under litigation today, and I am reluctant—and it's really—wouldn't be appropriate for me to discuss the merits and argue the pros and cons about it, if you'll forgive me on that. But, we have a written document to the Census Bureau, and they are—we are representing them in court.

Senator SHAHEEN. Thank you, Mr. Chairman.

Senator MORAN. Thank you, Senator Shaheen.

Senator from Louisiana, Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

General, I think you're doing a wonderful job. I wanted to tell you that first.

Attorney General SESSIONS. Thank you.

Senator KENNEDY. You're a better man than I am. I can tell you, I—you've shown a lot of patience. You know, first they want you to recuse yourself, and then they want you to answer questions about it.

IMMIGRATION ENFORCEMENT

You and I have talked about this before. You know, we are a nation of immigrants, which we're proud of. You know, I think we've let in more folks from other countries in our—into our country than any other nation. And it's—I'm flattered that people want to come here. I mean, when's the last time you read about somebody trying to sneak into China? You know, they want to come here. And that's great. But, we're a nation of laws, and we're not following our laws on immigration. Is there anything we can do about sanctuary cities, in terms of legislation, that would help you?

Attorney General SESSIONS. Absolutely. For example, there—I think we could authorize explicitly—I didn't—I thought it was already sufficiently authorized, but you'd explicitly authorize or pass

legislation that mandates a cooperative relationship with State and local areas. Also——

Senator KENNEDY. I would have thought that would be implicit.

Attorney General SESSIONS. I——

Senator KENNEDY. No?

Attorney General SESSIONS. But, you know, Senator Kennedy, there's nothing like the improvement we've seen in law enforcement. You have—in Louisiana, you've got cities, you've got parishes in cities, in all these—jurisdictions each have their borders and their jails, and we honor each other's holds and hold people til somebody can come over and pick them up because they've got charges in another jurisdiction or another State or to the Federal Government. And this is an ideological, open-borders, radical policy that a city or a county refuses—after they've apprehended somebody who's entered the country unlawfully, who's committed perhaps a major crime, they refuse to honor the ICE officers when they come to pick them up. And that means the ICE officers have to go out in the community, place themselves and maybe neighbors at risk to try to apprehend sometimes dangerous criminals. And I cannot agree to that. I cannot accept having our officers placed at that kind of risk. And it's important matters, not a little matter. And I think these cities need to reevaluate what they're saying. I don't think they know what they're saying. I don't think they understand the implications of their refusal to cooperate with brother and sister law officers like our ICE officers. We cooperate with them. And that's why we've been so—that's been a part of the 30-year decline in crime, is this partnership between Federal and State officers. This is the biggest breach of that relationship I've seen in my 40 years of law enforcement.

SPECIAL COUNSEL AND RULE OF LAW

Senator KENNEDY. Well, it just strikes me—I mean, we've talked a lot lately about the rule of law and the Mueller investigation, which I'm not going to ask you to comment on, because you did correctly recuse yourself. We talked a lot about the rule of law, but it doesn't seem to apply when we talk about immigration laws. I mean, there are parts of immigration law I don't agree with, but I'm going to follow it. Now, I'm going to try to help my colleagues in Federal, State, or local government to follow it until we change it, if we ever change it. And I just don't get it. I'm sorry, I don't. I mean, I understand the politics of it. But, when you have the mayor of a city pick up the phone and, you know, tip off some folks who are in violation of Federal law, that they may be arrested, you know, the Federal agents are coming in, I don't understand a world like that. I don't.

Attorney General SESSIONS. Well, if a person can cross the border on Monday and end up in San Francisco on Wednesday, hauling dope and gets arrested with cocaine or heroin, why would the city not want ICE, after they've served their time, to take them out of the country like the law contemplates? I find, like you, that's amazing.

Senator KENNEDY. We're——

Attorney General SESSIONS. I also want to thank you——

Senator KENNEDY [continuing]. Spending billions and billions—I think I saw a figure of 36 billion—I’m sure that—that may be inaccurate; I’m—my memory’s bad, but—that we spend on border enforcement. But, if you get through—and, I’m sorry, I’m not saying if you can make it to New Orleans, you’re home free. And I know our mayor disagrees with us on that, but it’s an attitude.

But, anyway, if there’s—I’ll call you separately. I want to stay within my time. But, thank you for your service.

Attorney General SESSIONS. Thank you. And thank you for being alert to this issue and helping us, and raising it.

Senator MORAN. General Sessions, I think we’re about to conclude. Let me ask just a couple of followup questions, if—that I have.

IMMIGRATION JUDGES

The Department has requested funding for 75 new immigration judges and support staff to help alleviate the immigration court system backlog. As you would know, this subcommittee provided funding for 100 additional immigration judges in the fiscal year 2018 omnibus. Can you explain how these additions will enable the court to decrease that backlog? And also, speak to the expedited hearing process that the Department has developed.

Attorney General SESSIONS. We’ve had a real problem for a number of years. In 2014, we only had 284 judges. With this funding, we believe we’ll hit 559. That still may not be the optimum number, but it is a monumental improvement. We simply have more and more individuals who are making facial claims for asylum or other relief that justifies hearings. And it just—it’s placing more and more stress on it. We have to be able to have prompt hearings, give people fair adjudication. And really, they need to be held in custody until the hearing is over, because, when you release them from custody because you can’t bring them to speedy trial that they’re entitled to, you can be ordered by the courts to release them, and they aren’t coming back for trial. It’s a loophole of monumental proportions, and there are a number of them. But, that’s one of the biggest. And the judge—more judges will—I can’t tell you how appreciative we are to the Congress for doing that. It also helps the legitimate immigrant claimant to get his—his or her case heard promptly.

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW CASE MANAGEMENT SYSTEM

Senator MORAN. Well, General, I have a lot to learn in this new capacity. One of the surprises was to learn that the Executive Office of Immigration Review utilizes a management system that’s based on paper. And your request includes \$25 million to develop an electronic case management system. Can you tell us about how this will work and what a difference it will make?

Attorney General SESSIONS. We are looking to get more productivity and more legitimate and a better decisionmaking process from our judges. And we think the \$25 million will pay for itself many times over. And we would appreciate that reform. And I believe it will help the system considerably.

Senator MORAN. Is this a onetime request, or there'll be requests for additional funding for this purpose in the future?

Attorney General SESSIONS. I think the initial cost will be the most significant. Whether we'll have the annual cost in the budget line item or not, I don't know. Probably so.

Senator MORAN. Are you aware of other places within your Department in which you're still operating off of a paper-based system?

Attorney General SESSIONS. I think the—we're working to improve the ATF process by which firearms and their serial numbers are noted. That's not sufficiently computerized, either. And it slows that down and costs money, we think, in the long run. So, we'd like to be able to get a much quicker turnaround on that. And we are planning to improve that system, also.

[The information follows:]

At the hearing on April 25, 2018, Chairman Moran asked: "Are you aware of other places within your Department in which you're still operating off—off of a paper-based system?" I responded: "I think the—we're working to improve the ATF process by which firearms and their serial numbers are noted. That's not sufficiently computerized either. And it slows down, and costs money, we think, in the long run. So we'd like to be able to get a much quicker turnaround on that. And we—we're planning to improve that system also." I believe this response requires further clarification as to the ATF process to which I was referring, and as to the steps the Department is taking to improve the efficiency of that process. Consequently, I would like to supplement my testimony with the following information:

The paper-based ATF process that the Department is working to make more efficient is the crime gun tracing process. ATF is the only U.S. law enforcement agency with the authority to trace firearms; it fulfils this duty through its National Tracing Center in Martinsburg, West Virginia. The NTC receives an average of 20 million paper records per year from Federal Firearms Licensees. These records consist primarily of FFL Out of Business Records (OBR), OBR records are critical to the firearms tracing process, and ATF images these records as a "picture", which is not searchable using automated technology. As a result, when a trace is conducted, ATF manually searches these records to look for the relevant serial number. The process of manually searching images for firearm serial numbers is obviously inefficient, and can result in incomplete traces due to manual error.

To improve the efficiency and accuracy during a crime gun trace, the Department is exploring ways to use new technologies to "tag" the serial number field in the image of those records, so that automated (computerized) means may be used to assist solely in the review of the serial number field of the record image. If we are able to develop this technology, significant cost savings would be realized, human error would be reduced, and trace results on crime guns would be more quickly provided to law enforcement.

Consistent with long-standing appropriations restrictions on consolidation or centralization of FFL records, the use of "tag" technology would be strictly limited to the serial number field of an image, and would not allow for the automated or computerized search of record fields containing firearm owner information. The Department does not intend to seek any change to the current appropriations restrictions as they apply to consolidation or centralization of records used in the firearm tracing process.

DEPARTMENT OF JUSTICE FISCAL YEAR 2018 SPEND PLAN

Senator MORAN. Let me ask, finally, about a spend plan. I look forward to receiving the Department's spend plan that's required by Section 532 of the CJS bill. As you know, several programs within the Department, such as veteran courts and Tribal assistant grants programs, received a significant increase. We talked a bit about that in the conversation that you had with one of my colleagues. They received a \$14 million increase and \$35 million in-

crease, respectively. As we also indicated, there's a—Fix NICS and STOP Act were passed in the omnibus bill, and—which I hope will be outlined in your spend plan how you intend to spend and implement those laws. And additionally, the Appropriations Committee included 3.3 billion to fight against opioid and prescription drug abuse crisis. Of this amount, 299.5 million was specifically included for the Department to fund anti-opioid grant programs. Can you speak to the type of comprehensive planning and initiatives the Department has undertaken to ensure those—these investments will have a maximum benefit?

Attorney General SESSIONS. I can. We're excited about that. I will share to you, Chairman and Ranking Member, we are determined to use that money quickly. We don't need New Hampshire waiting—or without having this deaths reduced. And we've got a series of ideas with DEA how to improve it, such as, we can extend people from 57 to 60, age 60. If we just go through the normal hiring process, we may be 2 or 3 years before we get to the numbers that we are authorized to get to. So, we could do that. We can take—even people who have already retired can work 20 years—20 hours a week. We're thinking about contracting with State and local police departments to—with people who have retired from them—experienced narcotics officers, many of them highly trained and very experienced—we could contract with them. And the DEA has, at my request and meeting with Ron Patterson and—Rob Patterson, he's on top of it. Well, we're going to have 400 added to task forces that we'll be able to fund that.

So, I guess what I—we, by—May 7, I believe is the day, we are—intend to have you a plan. Deputy Rosenstein and I have talked about it. Lee Loftus, our JMD leader, is behind me and helping me. He's been at this for many years. We're determined to try to meet that goal and have plans that we can use the money you've given us, and not 3 years from now, but now, because we face a crisis.

Senator MORAN. General, thank you. I had expected that—perhaps a more pro forma response to my question. And I'm pleased to see that you're moving with alacrity. That's a—an encouraging development. Let us know how we can be of help. We want to see the results when we authorize the spending.

Attorney General SESSIONS. Thank you.

OPIOID EPIDEMIC

Senator MORAN. I think—oh, let me ask just this final question about that. On this opioid battle, how well can you assure me of the cooperation and coordination between the Department of Justice and other Federal agencies in this battle?

Attorney General SESSIONS. Well, the President reached a bipartisan solution, I understand, to spend 6 billion additional dollars on the opioid crisis. That is a sizable increase, no doubt about it. We are getting only a small part of it. I don't know exactly what percentage, but it's certainly not the major. I expect that the prevention program, which I totally support, will be funded. But, it doesn't need an unlimited amount of money. You can run a very good prevention program for a reasonable amount of money. And you've got treatment, which is very expensive. And I'm sure that will get more money. There'll be some research—and I'm talking

about FDA, the Department of Homeland Security, the Department of Health and Human Services, VA—all of them have roles to play, and others, in the drug matters. And I would say you're entitled to keep an eye on all of us, and probably need to, because when you run a massive department, and you get some more money for a certain project, and the Secretary's got a million challenges to deal with, and sometimes things don't get done with the alacrity we'd like to see.

Senator MORAN. We have a funding responsibility, as a Congress. We have an oversight of equal value, in my view. And we need do both better.

General, thank you very much. I appreciate your testimony. It's been a long afternoon, I'm sure, for you, but I appreciate the responses that you've given.

I always ask a—when I chair a hearing, the witnesses if they have anything they'd like to add for the record, something they want to correct, something they want to add, a question that they didn't feel like they were—that they'd been asked, that they'd like to answer. You may feel like you've been asked everything.

Attorney General SESSIONS. Well, I don't have much to add, except I would appreciate it, if I have misspoken in any way, I'll try to correct that. And I thank you, because really the 2018 appropriations was beneficial, and it provided us additional resources, and we are going to do our best to use them as you would like us to.

Senator MORAN. General, thank you very much.

ADDITIONAL COMMITTEE QUESTIONS

If there are no further questions this afternoon—the Senators may submit additional questions to the subcommittee's official for the—for the subcommittee's official hearing record. We request the Department of Justice respond within 30 days.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED TO HON. JEFF SESSIONS

QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

MADOFF VICTIM FUND

Question 1a. Attorney General Sessions, last year I asked Deputy Attorney General Rod Rosenstein about the delay in issuing and the methodology used to determine distribution amounts from the Madoff Victims Fund. I also followed up with a letter on this matter on July 20, 2017. The Fund was created by the Department in 2012 to recompense victims of the Madoff Ponzi scheme. Despite recovering approximately \$4 billion, up to this point only roughly \$1.3 billion has been distributed to victims. The delay in distribution is concerning, and even more troubling in light of the fees paid to the Special Master, who is tasked with administering payments to victims.

Please explain, in detail, the process for approving; disapproving; reconsidering disapproved claims; and the payment of approved claims from the Madoff Victims Fund.

Answer. In order to return seized funds to victims of crime, the Department of Justice (Department) follows the Petition for Remission process set forth at 28 C.F.R. Part 9. Pursuant to those regulations, the Department, the Criminal Division, the Money Laundering and Asset Recovery Section (MLARS) and the United States Attorney's Office for the Southern District of New York (SDNY) selected Richard C. Breeden Fund Services, LLC to serve as Special Master to administer

the Madoff remission process. The District Court for the Southern District of New York granted the government's motion to forego restitution in favor of remission, agreeing that calculation of restitution would be impracticable and that the government's appointment of a special master to review individual victim claims would be more efficient and cost-effective.

MLARS and SDNY worked with the Special Master to develop the Madoff Victims Fund (MVF) and a distribution plan. Claim forms and a website were developed and published in 2013, and an April 2014 deadline for filing petitions with MVF was set. Since that time, the Special Master and Department personnel have been hard at work evaluating more than 65,400 petitions claiming approximately \$78 billion in losses on Madoff-related investments. Petitions came from individuals and entities in 137 countries. As part of that process, the Special Master and his team have reviewed more than 403,000 individual Madoff transactions in 13 currencies, and evaluated approximately 4.5 million pages of back-up documentation. As part of that review, the Special Master identified almost 31,000 petitions (for losses totaling approximately \$27 billion) that were incomplete—meaning that nearly half of the petitioners were notified of the deficiencies and given an opportunity to address the deficiency and file an eligible claim. While this took more time, it ensured the process was available to more eligible victims.

The extensive review process is necessary to confirm which petitions are eligible and that the amount claimed is accurate. Because the total amount available to compensate victims is only about \$4 billion—and petitioners claimed \$78 billion in losses—ineligible or overstated petitions pose a serious risk of diluting the potential recoveries of eligible victims. Similarly, if the Department had begun making payments before potentially eligible victims had been given an opportunity to address deficiencies, it would have risked running out of funds before paying some eligible victims.

The Department has now largely completed its review, and has issued rulings on approximately 62,000 petitions, approving over 39,000. To date, MLARS has approved transfer of over \$1.3 billion from the U.S. Marshals Service for distribution to approved victims with an eligible loss. It is important to note that sufficient reserves must be withheld from distribution to account for any pending appeals, collateral recovery adjustments, and claims that remain under review. Additional information regarding the ongoing MVF remission review can be found at www.madoffvictimfund.com.

Question 1b. Please provide the total amounts recovered by the Department, paid to the victims, and paid to the Special Master. If payments to the Special Master are not distributed solely from the Fund, please describe the source of these payments and provide the total amount of fees paid to date.

Answer. The Department has recovered approximately \$4 billion dollars through various civil and criminal forfeiture actions related to the Madoff fraud scheme. Over \$1.31 billion has been distributed to victims, and the Department intends to distribute billions more. The special master has been paid \$51.4 million from the forfeited funds—representing under 4 percent of the total paid to victims to date.

Question 1c. What processes and mechanisms does the Department have in place to oversee the distributions to the victims?

Answer. The Department is well-versed in implementing the remission process and rendering decisions under the remission regulations. Career attorneys at MLARS review hundreds of individual victim remission petitions each year and manage multiple claims administration contracts that cover tens of thousands of additional petitions.

When the Department hires a claims administrator, it also imposes additional oversight. MLARS coordinates with the administrator to ensure the distribution plan comports with the regulations, and any documents or information provided by the administrator to petitioners are approved by MLARS. No decisions are conveyed to a petitioner until MLARS issues a decision on the petition. Ultimate responsibility for the remission decisions rests with the Department, not the administrator.

MLARS attorneys and financial personnel conduct site visits at both the contractor's offices and the bank selected to make payments. In the Madoff matter, MLARS staff conducted site visits at the Special Master's office and the bank at various stages throughout the remission process. MLARS also conducts audits at various stages of the remission process to review the recommendations and cleared checks.

Question 1d. What processes and mechanisms does the Department have in place to oversee and assess the reasonableness of the fees paid to the Special Master?

Answer. In accordance with the Federal Acquisition Regulation (FAR), a warranted Department of Justice Contracting Officer makes the determination that the

rates associated with the Special Master contract are fair and reasonable prior to any contract action. As part of each determination, the Contracting Officer is responsible for conducting price analysis that clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar services.

Question 1e. How has the Department factored in potential future distributions to victims that will be based on settlements distributed from the SIPA Trustee?

Answer. The Department and the Special Master have coordinated with the SIPA Trustee from the onset of the remission process. Data regarding the bankruptcy claims and subsequent payments has been shared with the Special Master on multiple occasions to ensure that no petitioner receives a payment from MVF funds if his total recovery from any source exceeds the MVF approved pro rata amount—which is currently 40 percent. In addition, the Department is holding funds in reserve for approved petitioners who are awaiting potential future distributions from the SIPA Trustee, intermediary funds, or other pending litigation. If future SIPA Trustee distributions occur, the petitioners will receive a payment from MVF only to the extent necessary to provide recovery up to the approved pro rata amount. MVF also requires petitioners to provide collateral recovery updates prior to each distribution of MVF funds.

Question 1f. How are the Department and the SIPA Trustee communicating to avoid double costs or payments? Please describe in detail the processes and mechanisms in place to ensure this line of communication is open and adequately used.

Answer. The remission petitioners and the bankruptcy claimants do not, for the most part, overlap. MVF has already approved over 39,000 petitions, while only approximately 2,600 bankruptcy claims have been approved. The legal standards for remission and SIPC recoveries are not the same and eligibility for filing differs. To the extent there is overlap, the Special Master has reviewed data from the SIPA Trustee to streamline MVF's claim process and ensure no double recovery occurs.

As explained above, the Department and the Special Master have coordinated with the SIPA Trustee from the onset of the remission process. Data regarding the bankruptcy claims and subsequent payments has been shared with the Special Master on multiple occasions to ensure that no petitioner receives a payment from MVF funds if his total recovery from any source exceeds the MVF approved pro rata amount—which is currently 40 percent. If future SIPA Trustee distributions occur, the petitioners will receive a payment from MVF only to the extent necessary to provide recovery up to the approved pro rata amount. MVF also requires petitioners to provide collateral recovery updates prior to each distribution of MVF funds.

ATF—AMERICAN TABLE OF DISTANCES

Question 2a. It is my understanding that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) uses the American Table of Distances (ATD) to determine where explosives storage magazines can be located.

Does the ATF use the American Table of Distances to determine where explosives storage magazines may be located? If so, please explain the Bureau's current measurement process and list any other metrics the ATF may use to determine safe distances for the storage of explosive magazines.

Answer. ATF adopted the American Table of Distances (developed by the Institute of Makers of Explosives (IME)) for the storage of explosive materials in 1971. The table is used by ATF to determine required distances from magazines containing high explosives or blasting agents to potential receptors such as other magazines, inhabited buildings, highways, and passenger railways. This table uses the weight of explosive materials in storage on one axis, and the type of receptor on the other axis.

ATF subsequently adopted the IME's appendix to the American Table of Distances, designed to calculate appropriate separation distances between high explosives, blasting agents, and stores of ammonium nitrate. In addition, ATF has adopted a Department of Defense table of distances for low explosives storage and a display fireworks table of distances modeled after a National Fire Protection Association table.

Question 2b. What other metrics are used by the explosives industry to measure safe storage distances? As technology improves and continues to advance, is ATF looking to alternative metrics or more efficient models, such as quantitative risk assessment, to measure how explosives will react?

Answer. In recent years, individuals in the explosives industry have explored the use of quantitative risk assessment (QRA) for siting explosives storage magazines.

The IME has involved ATF in discussions about the testing, modeling, and development of a QRA tool called the Institute of Makers of Explosives Safety Analysis for Risk (IMESAFR). Based upon such discussions, ATF has approved variances for use of the tool, and ATF continues to explore the possibility of adopting a QRA process for siting explosives magazines.

The IMESAFR program has its roots in the Safety Analysis for Risk (SAFR) software originally developed for the U.S. Department of Defense for assessing risk in its explosives operations. IMESAFR incorporates statistical analysis, computer modeling, and test data to provide, in part, a risk level to persons occupying buildings and traveling in vehicles near explosives operations. The IMESAFR model calculates risk in terms of the statistical expectation for loss of life from an explosives event. IMESAFR is currently the only explosives quantitative risk assessment program that ATF is aware of.

Question 2c. Would a change in measuring method require a statutory or regulatory modification?

Answer. Yes. In order for ATF to change or add methods used to calculate required distances from magazines to receptors, a regulatory change would be required. Currently, the regulations at 27 CFR, Part 555 (Commerce in Explosives) contain specific references to the tables described above, and offer no alternative, except by variance.

QUESTIONS SUBMITTED BY SENATOR JERRY MORAN

Question 1a. On December 12, 2017, The Modernizing Government Technology (MGT) Act was signed into law by the President of the United States. This Act authorizes CFO Act agencies (including DOJ) to establish IT working capital funds which may be used to streamline IT systems, replace legacy products, and support transitions to cloud computing for up to 3 years in order to further modernization efforts. This Act also creates a separate centralized Technology Modernization Fund (TMF) within the Department of the Treasury, to be managed by the General Services Administrator, as well as the government wide Technology Modernization Board (Board). The fiscal year 2018 omnibus appropriated \$100 million to the TMF, and the Board has received applications from nine agencies to use this funding.

The Department of Justice's fiscal year 2019 budget request included \$31.7 million for Justice Information Sharing Technology (JIST). The Department's CIO uses these appropriated dollars to ensure that IT investments are well-planned and align with the Department's overall strategy.

Please explain how outdated, legacy IT systems have impacted the Department's ability to execute its mission? Has this hindered the Department's law enforcement role?

Answer. The Department continues to effectively carry out its mission objectives through leveraging all operational IT assets. The Department remains committed to modernizing and replacing key mission and business IT systems. Similar to the challenges identified in the Report to the President on Federal IT Modernization, legacy IT systems, built with unsupported code, contain inherent vulnerabilities, such as out-of-support software, that increase an agency's risk for cyber-attacks and impede innovation.

Legacy IT systems do not hinder the Department's law enforcement role generally, though outdated IT systems and reliance on paper processes results in significant inefficiencies in processing cases at EOIR. The Department continues to make progress by leveraging multiple mechanisms for investing and maintaining IT infrastructure. Some of the key system replacement and modernization projects underway within the Department's law enforcement components are:

- FBI:* National Crime Information Center (NCIC) modernization is delivering new search capabilities and name-matching algorithms to the system deployed nearly 20 years ago. Enhancements to the National Instant Background Check System (NICS) enable faster and more accurate determination of gun purchase eligibility. Modernization of Next Generation Identification (NGI) infrastructure will improve response, biometrics analysis, and identity confirmation.
- USMS:* Capture program is replacing multiple end-of-life case management systems for custody management, prisoner transport, and fugitive case management built on custom code. The new system uses a modern, industry standard business process management system (BPMS) platform that enables system-to-system interoperability and information sharing.
- ATF:* Spartan is a business process modernization effort that includes the development of a case management system to replace a suite of applications, origi-

nally deployed in 1998, for criminal investigations and industry regulatory inspections. This single solution designed to replace the current systems will more effectively bring together ATF elements to carry out its mission. Spartan is being developed using the same BPMS technology platform being employed on six projects across the Department, including USMS Capture program and FBI New NICS. This technology platform simplifies solution support within ATF, and enables code sharing and cost avoidance for the Department.

—*EOIR*: The \$25 million enhancement request submitted in the President's fiscal year 2019 budget for the EOIR Courts and Appeals System (ECAS) will enable electronic filing of documents, create an electronic record of proceeding, and integrate state-of-the-art information management capabilities for Immigration Judges. These updates will reduce EOIR's reliance on paper processes, ensure that all parties can readily access official documents, leading to greater efficiencies that will reduce the backlog of immigration court cases.

—*BOP*: The BOP is conducting market research to modernize its Sentry prisoner management system, by analyzing options for migrating from a mainframe-based system to a micro-services architecture compatible with a cloud platform.

Question 1b. If so, how does the Department plan to replace these problematic systems?

Answer. Please see my response to question 1c.

Question 1c. Given the recent enactment of the Modernizing Government Technology Act, has the Department considered submitting an application to the centralized Technology Modernization Board or establishing a Working Capital Fund with the sole mission of replacing legacy IT systems? If not, why?

Answer. The Department does not plan to establish a new Modernizing Government Technology Act (MGT) working capital fund (WCF). Currently, the Department funds IT modernization through three primary means: (1) component requested appropriations; (2) the Justice Information Sharing Technology (JIST) appropriated account; and (3) special use accounts, such as the Working Capital Fund.

Component requested appropriations are the principal funding source for mission-specific IT modernization requirements. An example is the fiscal year 2019 request from the Executive Office for Immigration Review for a \$25 million IT modernization program increase to develop an electronic filing, case management, document management, and schedule management system.

The JIST account is the principal source for capitalizing enterprise-oriented and shared-service IT capabilities, as well as for cybersecurity investments. The JIST account is an annual, no-year fund under the direct control of the DOJ CIO. Funds are used to support multiyear projects for strategic investments critical to the Department's federated IT enterprise. Further, the JIST appropriation account currently includes a provision authorizing the Attorney General to transfer up to \$35.4 million into this account from other Department sources to fund enterprise IT investments. The House Appropriations Committee, Subcommittee on Commerce, Justice, Science, and Related Agencies, in its fiscal year 2019 appropriations mark-up proposes increasing this transfer authority to \$50 million.

Finally, special use funds such as Unobligated Balance Transfers (UBT) enable remaining balances on DOJ expiring appropriations to be deposited into a special account. Funding may be withdrawn and applied toward priority IT investments and modernization with congressional notification. UBT allocations are currently capped at \$30 million per fiscal year.

JIST transfer authority, and the use of UBT allocations, enhance the Department's ability to address IT modernization needs through existing accounts.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

Question 1a. Under the terms of your March 2017 recusal, you are recused "from any existing or future investigations of any matters related in any way to the campaigns for President." As I stated to you at the April 25, 2018, hearing, recusal is not discretionary; it is required by the clear terms of 28 C.F.R. § 452.

You have acknowledged that your March 2017 recusal was required under the regulations. Do you thus confirm that you have a "political relationship" with President Trump and/or then-candidate Trump?

Answer. This question calls for the personal knowledge of and is specifically directed to former Attorney General Jeff Sessions. As such, it would be inappropriate for the Department to respond to this question at this time.

Question 1b. Yes or no: Given that he has successfully intervened in the case, and it stems from an investigation involving his campaign, does President Trump have a specific and substantial interest in the criminal case against Michael Cohen?

Answer. Consistent with longstanding policy, the Department is unable to answer this question as it relates to an ongoing investigation.

Question 2a. In March, you fired the 21 year veteran and non-political Deputy Director of the FBI for lacking candor. I have seen the underlying reports and understand the seriousness of the allegations. Yet the President was goading you to fire him, counting down the days until his retirement. The President has attacked Mr. McCabe no less than 17 times on Twitter. He even reportedly told Mr. McCabe on the phone to ask his wife what it felt like to be a loser, referring to her failed run for State Senate in Virginia.

You fired Mr. McCabe just 26 hours before he was going to retire. It was also just hours after he was able to present his side of the story to the FBI. Are you aware of any other example of an Attorney General terminating a career employee on the same day that employee was able to present his or her case for leniency?

Answer. After an extensive and fair investigation and according to Department of Justice procedure, the Department's Office of the Inspector General (OIG) provided its report on allegations of misconduct by Mr. McCabe to the FBI's Office of Professional Responsibility (OPR). The FBI's OPR then reviewed the report and underlying documents and issued a disciplinary proposal recommending the dismissal of Mr. McCabe. Pursuant to Department Order 1202, and based on the report of the Inspector General, the findings of the FBI Office of Professional Responsibility, and the recommendation of the Department's senior career official, then Attorney General Jeff Sessions followed the recommendation made by FBI's Office of Professional Responsibility. The timing was a result of the Department's receipt of the previously listed materials. To the extent this question is specifically directed to or calls for the personal knowledge of former Attorney General Sessions, it would be inappropriate for the Department to respond further.

Question 3a. In January, the Departments of Justice and Homeland Security released a report on foreign-born individuals convicted of international terrorism since 9/11. The report has since been widely misused to instill fear of immigrants to justify the President's immigration agenda. In an interview on Fox News to discuss the release of the report, you said, "We know 73 percent of people arrested for terrorism were born abroad. So, if they had been properly screened and rejected, we wouldn't have had these attacks in our country."

Do you stand by that statement?

Answer. The Department stands by the content of the report, which is accurate and based on a sound statistical foundation. Undoubtedly, proper vetting and screening are critically important to our national security. To the extent this question is specifically directed to former Attorney General Jeff Sessions, it would be inappropriate for the Department to respond further.

Question 3b. That statement is misleading for three reasons: (1) you refer to "terrorism" generally, but the report in fact somehow omits the very real threat of domestic terrorism; (2) the report includes U.S. citizens; and (3) the report includes foreign defendants who never stepped foot in this country except when they were extradited here to face trial. Extradition is not immigration.

The White House still has that same misleading claim on its website today. Will you commit to telling the White House to take it down?

Answer. Please see my response to question 3a above.

Question 4. Acknowledging bipartisan concerns over the Department's plans to temporarily pause the Legal Orientation Program (LOP), you testified before us that LOP would instead continue to operate while the Department studies its cost-effectiveness. However, there are still serious concerns that the Department will attempt to skew the findings of this new study in order to justify a more permanent downsizing or termination of LOP.

Question 4a. Will the Department be conducting this new cost-effectiveness study, or will it be conducted by an independent third party?

Question 4b. If an independent third party is conducting the study, will it be empowered to gather and analyze raw data about LOP, or will it be instructed to analyze LOP data provided to it by the Department?

Question 4c. Will the Department commit to providing updates, on demand, to the Senate Appropriations Committee and the Senate Judiciary Committee about methodology, interim findings, or any other information related to the new study?

Answer. The study, broken into phases, is being conducted by a team consisting of both contractors and career Federal employees within EOIR, all of whom are trained analysts, statisticians, or operations researchers. In carrying out the study, EOIR requested data from the LOP contractor and from the Department of Homeland Security (DHS) that it believed would make the study more analytically robust. The Department repeatedly requested raw data from the LOP contractor since its review commenced in November 2017 but did not receive all of the data it requested. It also did not receive data from the Department of Homeland Security (DHS) until the review of Phase I was almost finished. Accordingly, Phase I of the review proceeded with the data available to EOIR at the time, and EOIR is currently re-running its analytics from Phase I based on the data it received from DHS. The results of the review will be provided to Congress.

Question 5a. Last year I offered an amendment to the CJS appropriations bill—which was adopted by voice vote and had been included in previous years—to ensure that the Justice Department would not waste its finite enforcement resources on medical marijuana users who are compliant with State law. You opposed my amendment, claiming that it would let money launderers evade prosecution—which I find odd, since I do not know of any State that allows money laundering.

In *United States v. McIntosh*, the Ninth Circuit held that defendants asserting compliance with State laws are entitled to an evidentiary hearing. Has your Department ever lost such a hearing? That is, is there any example of a suspected money launderer or other bad actor who successfully convinced a Federal judge he could not be liable because he was compliant with a State medical marijuana law?

Answer. In 2016, over one of my predecessor's objections, the U.S. Court of Appeals for the Ninth Circuit interpreted an appropriations rider regarding medical marijuana broadly to apply both to Department actions that prevent States from implementing their laws regarding medical marijuana and to Department prosecutions of certain individuals and organizations that operate under those laws. *United States v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016). The court held that the Department may not prosecute violations of the CSA with respect to marijuana unless a court concludes that the individuals or organizations are not in compliance with State medical marijuana law. Then Attorney General Sessions wrote to congressional leaders last year reiterating his predecessors' opposition to this rider, on the grounds that he, like his predecessors, thought it would be "unwise for Congress to restrict the discretion of the Department to fund particular prosecutions" and that "the Department must be in a position to use all laws available to combat the transnational drug organizations and dangerous drug traffickers who threaten American lives." Although this letter did not explicitly refer to money laundering (as does your question), it did provide an example of an individual who held an active Colorado license for operating a medical marijuana business but who also was the ringleader of a criminal organization that shipped marijuana out of State. The letter also stated that, "in the Ninth Circuit, many individuals and organizations that are operating in violation of the CSA and causing harm in their communities may invoke the rider to thwart prosecution."

That has come to pass. Numerous defendants have invoked this rider and courts throughout the Ninth Circuit have held so-called "McIntosh hearings." In one particular case, *United States v. Pisarski*, two defendants pleaded guilty to growing 32 kilograms, or 327 plants, and intending to sell it to others. As the briefs and decisions in that case explain, the defendants had \$416,125 in cash, multiple firearms, gold, silver, and an 18-foot tandem axle trailer on his property, all of which, by the defendants' admissions, were derived from the defendants' marijuana activities or intended to be used to facilitate those activities. Some of the cash was bundled in \$10,000 stacks and wrapped in vacuum-sealed black plastic. The firearms and ammunition consisted of a loaded Smith and Wesson .357 revolver, a Glock 21 .45 caliber pistol with a loaded magazine, an extra magazine, a Springfield .22 caliber bolt-action rifle, and a high-capacity magazine. After the guilty pleas, the district court halted the prosecution even though (1) a California government official testified that the defendants had not obtained required sellers' permits or reported sales taxes, (2) the defendants' claimed they only sold small, excess amounts of marijuana and yet provided no documentation that the \$416,125 in cash and the precious metals they possessed were offsets for their costs, as required by State law, (3) the defendants failed to establish that the members of the collectives to which they sold marijuana were qualified patients, and (4) the California State attorney general had previously issued guidelines stating that the circumstances under which the defendants operated were indicia of unlawful operations. The government has appealed.

Question 6a. You and I were prosecutors before we entered politics. We both know better than most how courts work. Which is why I was taken aback when the De-

partment announced that it would impose numeric quotas on immigration judges as part of their annual performance reviews. As a former prosecutor, you should know that if proceedings become tainted with even the appearance of unfairness because of quotas, there will be surely be an uptick in appeals.

Has the Department considered the unintended consequence of mounting appeals as a result of these quotas? Wouldn't that directly undermine their purported efficiency-based rationale?

Answer. The performance measures reflect a considered policy judgment regarding the efficiency that an experienced immigration judge working a regular schedule should reasonably be able to achieve. Similar measures are used for administrative judges at the Merit Systems Protection Board, the Department of Interior, the Board of Land Appeals, the Pension Benefit Guaranty Corporation, and the Railroad Retirement Board. In fact, immigration courts themselves have operated under case completion goals for years. Further, these measures are not quotas, which are fixed numbers with no deviation. Rather, the measures will be evaluated subject to six discrete factors, along with a seventh catch-all factor, before making a determination about an immigration judge's performance.

By regulation, immigration judges are required to adjudicate cases "in a timely and impartial manner," and the Department expects immigration judges to meet this responsibility. Suggestions that immigration judges cannot render both timely and impartial decisions create a false dichotomy that discredits the integrity and professionalism of the entire immigration judge corps, including the many immigration judges who can meet the performance measures. Accordingly, because the Department expects immigration judges to fulfill their duty to adjudicate cases both timely and impartially, we do not expect that the performance measures will provide a valid basis for appeal.

Question 7a. According to The Independent, the United Kingdom government is considering agreeing to the transfer of Alexandra Kotey and El Shafee Elsheikh to Guantanamo Bay, from their current reported detention by U.S.-backed Kurdish groups in northern Syria.¹

What plans, if any, does the Department have to bring these two individuals to face trial in the United States, to incarcerate them in Guantanamo Bay, or to otherwise transfer them from northern Syria?

Answer. The Department of Justice and our partners in the interagency are considering options for these individuals and will seek the option that best protects the national security of the United States.

Question 8a. On October 25, 2017, you appeared before the Senate Judiciary Committee at an oversight hearing, after which you were asked a number of written questions for you to answer under oath. Among these questions, I asked you about 28 U.S.C. § 540C, the provision authorizing the establishment of the FBI Police. Senator Manchin and I sent you a letter on February 9, 2018, which reiterated these questions. I have yet to receive your response to either my October 2017 questions or my February 2018 letter with Senator Manchin. Accordingly, please refer to the February 2018 letter and answer the following:

Are there legislative or other impediments preventing the Department from complying with Section 540C as written?

Answer. Please see my response to Question 8c.

Question 8b. What steps is the Department taking to ensure that uniformed FBI Police officers are not unfairly penalized through the denial of salary and benefits (including pension) to which they would be entitled if the FBI had established the FBI Police under Section 540C, as Congress intended?

Answer. FBI Police are paid in accordance with the current law.

Question 8c. Has the Department, or any other component of the U.S. Government, examined issues related to providing salary and benefits (including pension) to uniformed officers of an FBI Police force established under Section 540C? If so, please provide any conclusions and any reports or other documentation produced thereby.

Answer. Yes, the FBI has examined this issue. Normally, employees engaged in protective duties, such as the FBI Police, are not considered law enforcement officers for purposes of early retirement under either the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). Statutory excep-

¹ <https://www.independent.co.uk/news/uk/politics/isis-jihadists-the-beatles-latest-alexandra-kotey-el-shafee-elsheikh-donald-trump-guantanamo-bay-a8205286.html>.

tions have been made for other groups of employees engaged in protective duties, such as the Secret Service Uniformed Division. The U.S. Code (at 28 U.S.C. 540C(b)(5)) requires that pay and benefits of FBI Police be equivalent to members of the Secret Service Uniformed Division. However, the definition of a law enforcement officer in FERS (5 U.S.C. 8401(17)) does not extend to members of the FBI Police.

Question 9a. Last month, the Seventh Circuit issued a ruling effectively ending the Department's attempt to withhold law enforcement funds from cities and States that declined to cooperate with Federal immigration enforcement authorities. A unanimous panel concluded that the Department could not lawfully impose conditions on funds that Congress—with the power of the purse—has not imposed. As Vice Chairman of the Committee that appropriated these funds, I can tell you the court was correct. Yet your Department is now seeking a stay of the decision not because it was wrongfully decided on the merits, but instead on grounds that the nationwide injunction was too broad.

Is the Department's position that—in order to obtain these critical law enforcement resources that Congress has appropriated to keep our communities safe—would force every impacted jurisdiction to independently file suit?

Answer. Many jurisdictions throughout the country readily provide the modest law enforcement cooperation required by the reasonable Byrne JAG conditions.

While Byrne JAG is still the subject of active, ongoing litigation, the Department has released the vast majority of Byrne JAG awards for fiscal year 2017. As of October 11, 2018, the Department has awarded 859 fiscal year 2017 Byrne JAG awards to jurisdictions with no unresolved questions regarding their cooperation with the relevant conditions. The Department is reviewing the remaining jurisdictions that have not received awards and is working to resolve outstanding expeditiously.

Question 10a. In response to Chairman Moran's question regarding your Department's proposal to transfer the High Intensity Drug Trafficking Area (HIDTA) Program to the Drug Enforcement Administration (DEA), you said that the Office of National Drug Control Policy (ONDCP) was probably not created to or expected to administer a grant of this kind. However, Congress first established ONDCP in 1988 with the HIDTA program deliberately under its jurisdiction. Congress reauthorized the HIDTA Program and made its authority permanent as part of ONDCP in 1998. I do not accept your argument that ONDCP was not meant to be a grant making agency when Congress clearly and deliberately authorized it as such. In contrast, the DEA is not a grant making agency and would need to adjust administratively to take on the task of managing and administering a very large grant program. DEA is an operational law enforcement entity that works alongside and in coordination with HIDTAs, which serve as a coordination mechanism—a major reason why the HIDTA Program has thrived at ONDCP. You concede that it is ONDCP's role to coordinate and DEA's role to enforce.

Why does your budget, in direct contrast to Congress' authorization, suggest funding HIDTAs through DEA even though DEA is not a grant making entity and ONDCP has effectively administered HIDTA for decades?

Answer. While the Department's original intent had been to move HIDTA into the DEA to consolidate drug enforcement efforts, we understand that the fiscal year 2019 committee marks subsequently have not funded the program within DOJ. This being the case, the Department and the DEA will continue to work in close coordination with HIDTA to combat drug trafficking.

Question 10b. Your budget includes no new positions or funding in DEA to manage and administer the HIDTA grants, which, if transferred, would be one of the largest grant programs at the Justice Department. How do you expect DEA to properly and responsibly oversee those grants with no dedicated staff or additional M&A funding? Do you intend to have current DEA staff—who lack grant-making expertise—administer the program and, if so, how many staff do you propose to dedicate to this? What is the M&A cost estimate to effectively oversee the program?

Answer. The fiscal year 2019 budget includes \$254 million for the HIDTA program, which includes \$3.6 million for the National HIDTA Assistance Center to assist in the administration of the HIDTA program. Additionally, the Department of Justice has a well-established grant program expertise, and DEA will draw on the tremendous experience of these experts to further enhance the HIDTA program's effectiveness as a powerful enforcement tool to combat drug trafficking in the United States.

Question 10c. What evidence do you have that HIDTAs would be better administered through DEA? What practical and applicable data can you provide to this Committee in support of such a sweeping change?

Answer. The United States is in the midst of the worst drug epidemic in history. The solution to this epidemic will not come from one level of government alone, rather it will take the coordinated efforts and resources of Federal, State, local, and Tribal governments working together, and DEA offers such a coordination opportunity. While the Department's original intent had been to move HIDTA into the DEA, we understand that the fiscal year 2019 committee marks subsequently have not funded the program within DOJ. This being the case, the Department will continue to work in close coordination with HIDTA to combat drug trafficking.

Question 10d. What evidence does DOJ have that the current HIDTA program structure is insufficient, inefficient, or in need of any changes?

Answer. The Department's original intent had been to move HIDTA into the DEA to take advantage of operational synergies at DEA, however we understand that the fiscal year 2019 committee marks subsequently have not funded the program within DOJ. This being the case, the Department will continue to work in close coordination with HIDTA to combat drug trafficking.

QUESTIONS SUBMITTED BY SENATOR SHELLEY MOORE CAPITO

Question 1a. In March I sent a letter to your office regarding the decision to delay distribution of Byrne JAG Grants for fiscal year 2017 and the impact that this is having on localities in my State. While I certainly agree with the Department's efforts to implement robust enforcement of our Nation's immigration laws, my concern is that withholding these funds from States like mine, who have no sanctuary cities and have remained compliant with all relevant statutes, runs the risk of disrupting local law enforcement's ability to protect public safety. For instance, the city of Nitro, West Virginia employs a school resource officer to protect the high school using Byrne JAG funding. The delay in distributing these funds has resulted in a lot of uncertainty from city officials as to how they are going to continue funding this important resource. Additionally, my office has heard from the West Virginia State Police, who have expressed similar concerns regarding their ability to continue vital public safety programs, which include efforts to combat the opioid epidemic ravaging our State.

Please provide some insight as to whether the Department has considered resuming distribution of these funds and if so what the timeline for that might be?

Answer. While Byrne JAG is still the subject of active, ongoing litigation, the Department has released the vast majority of Byrne JAG awards for fiscal year 2017. As of October 11, 2018, the Department has awarded 859 fiscal year 2017 Byrne JAG awards to jurisdictions with no unresolved questions regarding their cooperation with the relevant conditions. The Department is reviewing the remaining jurisdictions that have not received awards and is working to resolve outstanding issues expeditiously.

Question 2a. The Department's budget calls for the elimination of nearly 1,200 positions, 400 correctional officers, and the closure of two standalone minimum security camps within the Bureau of Prisons. Over the last few months I have heard from a number of BOP officials in my State expressing their concerns over what they describe as dangerous levels of understaffing. They argue that the positions being eliminated have been intentionally left unfilled which has resulted in inmate-to-staff ratios that jeopardize officer and inmate safety alike. Just a few weeks ago an inmate was murdered during an altercation at USP Hazelton in West Virginia. BOP has had to rely on wide-spread augmentation of staff without adequate preparation and while staffing levels continue to decrease, inmate levels remain relatively unchanged.

How does the Department reconcile these staffing cuts with the fact that prison officials on the ground are characterizing staff shortages as a direct threat to their safety?

Answer. The first priority of the Bureau of Prisons (BOP) is the safety of staff, inmates, and the public. Over the past few years, the number and rate of serious assaults on staff have declined by more than 33 percent. Additionally, the inmate population continues to decline, from a high around 220,000 in 2013, to approximately 183,000 today. Thus far in fiscal year 2018, the population has decreased by almost 3,000. At the minimum security level, BOP facilities have approximately 2,000 empty beds. In light of the significant decrease in the inmate population that

BOP has experienced over the last several years, BOP has identified approximately 5,100 vacant authorized staff positions. Many of the positions identified have been unfunded by Congress for a number of years, including prior to the Federal hiring freeze imposed in January 2017. The administration's proposed fiscal year 2019 budget for BOP would eliminate 1,168 of the vacant positions. Therefore, the proposed elimination of these positions will not result in the loss or displacement of any staff members, or impact actual staffing levels at BOP facilities.

Although prosecutions are on the rise for major crime categories (such as weapons and drug trafficking offenses), it takes several months, if not longer, for offenders to go through criminal proceedings and ultimately get designated to Federal prisons after they are convicted and sentenced. Accordingly, there are a significant number of vacant positions that BOP is currently seeking to fill. The new hires will further reduce the need for augmentation and overtime, and will ensure that BOP facilities continue to operate safely.

Question 3a. The Office of National Drug Control Policy represents a critical resource to my State with regards to the High Intensity Drug Trafficking Areas Program and the Drug Free Communities Program. The Department's budget calls for moving programs under the purview of ONDCP into other agencies, and my concern is that doing so would negatively alter the structure of these programs by reducing their visibility on the State and local levels and possibly subjecting grant distributions to bureaucratic delays.

Has the Department considered the impact of this move in light of these concerns?

Answer. The Drug Enforcement Administration (DEA) is actively involved in High Intensity Drug Trafficking Areas (HIDTAs) throughout the Nation. This involvement includes close coordination with State and local law enforcement officers to identify and investigate the most significant drug traffickers and suppliers threatening local communities.

While the Department's original intent had been to, and enhance their close working relationships with State and local counterparts, we understand that the fiscal year 2019 committee marks subsequently have not funded the program within DOJ. This being the case, the Department and the DEA will continue to work in close coordination with HIDTA to combat drug trafficking.

QUESTIONS SUBMITTED BY SENATOR JAMES LANKFORD

Question 1a. Currently, there are two primary State and Local Law Enforcement Assistance programs that provide grant funding to State and local law enforcement to assist with DNA kit and sexual assault kit (SAKs) backlogs—the statutorily authorized Debbie Smith DNA Backlog Reduction grants administered by National Institute of Justice (NIJ) and the statutorily unauthorized Sexual Assault Kit Initiative (SAKI) administered by the Bureau of Justice Assistance (BJA).

Please provide the following financial data for funds appropriated to the Debbie Smith DNA Backlog Grant Program in fiscal year 2015, fiscal year 2016, and fiscal year 2017:

Appropriated amount spent on/awarded for testing DNA and sexual assault kits.

Answer. The Department of Justice (DOJ) appropriations acts for the specified fiscal years (2015, 2016, and 2017) did not contain any funds appropriated pursuant to 34 U.S.C. § 40701, the “Debbie Smith DNA Backlog Grant Program” statute.² Accordingly, the Department awarded no grants under that statutory authority in those years. Statutory authority for the National Institute of Justice's (NIJ) DNA capacity enhancement and backlog reduction programs and activities, and for the Bureau of Justice Assistance's (BJA) Sexual Assault Kit Initiative (SAKI), respectively, has come—solely—from two, separate appropriations line items enacted in the DOJ appropriations acts for each of the fiscal years mentioned.

The fiscal year 2017 statutory authority for NIJ's DNA capacity enhancement and backlog reduction programs and activities (enacted via language substantially similar to the language enacted in the two preceding fiscal years) makes funds available “for a DNA analysis and capacity enhancement program and for other local, State, and Federal forensic activities, including the purposes authorized under [34 U.S.C.

² In fact, no appropriations have been enacted (and no grants have been made) to date pursuant to this statutory authority. The enacted language—enacted in annual DOJ appropriations acts—that provides the statutory authority for NIJ's backlog reduction and capacity enhancement activities, in particular, has remained substantially similar in each year over the past decade.

§ 40701]” (the “DNA and forensic program appropriation”) (Department of Justice Appropriations Act, 2017, Public Law No. 115–31, 131 Stat. 135, 204).

NIJ publishes an annual report, which it also provides to Congress, on the activities it funds with the DNA and forensic program appropriation. The report in each year includes a detailed discussion and breakdown of activities funded for the covered fiscal year, including the total amounts awarded by fiscal year under NIJ programs that make funds available for DNA testing (including evidence from sexual assault kits), among other things. Links to these reports for fiscal years 2015 through 2017 are provided below.

Fiscal Year 2015 Funding for DNA Analysis, Capacity Enhancement And Other Forensic Activities: <https://www.ncjrs.gov/pdffiles1/nij/249905.pdf>

Fiscal Year 2016 Funding for DNA Analysis, Capacity Enhancement, And Other Forensic Activities: <https://www.ncjrs.gov/pdffiles1/nij/250552.pdf>

Fiscal Year 2017 Funding for DNA Analysis, Capacity Enhancement, And Other Forensic Activities: <https://www.ncjrs.gov/pdffiles1/nij/251445.pdf>

Question 1b. Appropriated amount spent on/awarded for each of the authorized purposes for use of the funds under 34 U.S.C. § 40701(a)

Answer. Please see my response to Question 1a.

Question 1c. Appropriated amount spent on/awarded for each other section of 34 U.S.C. § 40701.

Answer. Please see my response to Question 1a.

Question 1d. Appropriated amount spent on/awarded for all other costs not included in 34 U.S.C. § 40701.

Answer. Please see my response to Question 1a.

Question 1e. Each amount under question 1a-1d, represented as a percentage of total amount spent on the Debbie Smith DNA Backlog Grant Program.

Answer. Please see my response to Question 1a.

Question 2a. Please provide the following financial data on funds used for the Sexual Assault Kit Initiative in fiscal year 2015, fiscal year 2016, and fiscal year 2017: Amount spent on/awarded for testing DNA and sexual assault kits.

Answer. Between fiscal years 2015 and 2017, SAKI appropriations have been authorized by each year’s Department of Justice appropriations act. This includes Public Law (Public Law) 113–235 in fiscal year 2015, Public Law 114–113 in fiscal year 2016, and Public Law 115–31 in fiscal year 2017. For example, the appropriations language that supports SAKI in fiscal year 2017 makes funds available “for a grant program for community-based sexual assault response reform.” (Department of Justice Appropriations Act, 2017, Public Law No. 115–31, 131 Stat. 135, 204).

SAKI supports the Department’s criminal justice priorities of reducing violent crime and supporting law enforcement officers and prosecutors by: (1) providing jurisdictions with resources to address sexual assault kits (SAKs) in their custody that have not been submitted to a forensic laboratory for testing with Combined DNA Index System (CODIS)-eligible DNA methodologies; and (2) improving investigation and prosecution in connection with evidence and cases resulting from the testing process.

The goal of SAKI is the creation of a coordinated community response that ensures just resolution to these cases, whenever possible, through a victim-centered approach, and to build jurisdictions’ capacities to prevent the development of conditions that lead to high numbers of unsubmitted SAKs. SAKI funding is intended to help law enforcement and prosecutors address all of the challenges associated with reducing the number of unsubmitted SAKs in their jurisdictions. This will give these jurisdictions the evidence and tools to solve and reduce violent crimes associated with sexual assault, while achieving the long-term goal of improving the criminal justice response to cases of sexual assault.

Unlike NIJ’s backlog reduction efforts, SAKI is focused on locating and testing previously unsubmitted evidence, rather than addressing backlogs in the testing process. Grantees are permitted to spend up to 50 percent of their awards on testing of unsubmitted SAKs; their remaining funds support other elements of the holistic SAKI approach discussed above. Based on the amounts awarded to SAKI jurisdictions between fiscal years 2015 and 2017, BJA estimates³ that:

³These amounts are estimates due to awards being made for a holistic approach that supports multiple programmatic activities in addition to testing of SAK evidence. These estimates were calculated by determining the maximum amount allowed to be used for testing (50 percent of all site based awards).

- \$15.1 million (41.6 percent of total SAKI awards) was spent on testing of unsubmitted SAKs in fiscal year 2015;
- \$15.7 million (38.9 percent of total SAKI awards) was spent on testing in fiscal year 2016; and
- \$17.6 million (47.4 percent of total SAKI awards) was spent on testing in fiscal year 2017.

BJA's SAKI program webpage provides detailed information on SAKI awards and activities funded in fiscal years 2015 through 2017: https://www.bja.gov/ProgramDetails.aspx?Program_ID=117#horizontalTab1.

Question 2b. Amount spent on/awarded for all other uses than testing sexual assaults kits—accounted for by use.

Answer. Please see my response to Question 2a.

Question 2c. An identification of source and authority of funds for each spend/award under questions 2a-2b.

Answer. Please see my response to Question 2a.

Question 2c. Each amount under question 2a-2b, represented as a percentage of total amount spent on SAKI.

Answer. Please see my response to Question 2a.

Question 3a. Has DOJ explored the possibility of consolidating these programs? Why or why not?

Answer. Please see my response to Question 3b.

Question 3b. Are there economies of scale, or otherwise implementable best practices based on commonality of purpose, scope, or practice, which can be pursued in the Debbie Smith DNA Backlog Grant Program and the Sexual Assault Kit Initiative?

Answer. The Department has explored the possibility of program consolidation (with respect to programs and activities in relation to sexual assault evidence kits) under both the current and previous administrations and has determined that the various programs serve different needs and are complementary. NIJ and BJA have engaged in deliberate coordination with respect to these initiatives to avoid unintentional program overlap. Therefore, though the two programs both have components that can address DNA testing of sexual assault evidence, the respective programs engage and focus on somewhat different criminal justice system stakeholders—and on different stages of the criminal justice process—and address distinct and separate issues. In the event that future enactments may result in a consolidation of activities, the Department would continue to strive to ensure that it leverages program resources in this area to maximize impact.

NIJ's DNA Capacity Enhancement and Backlog Reduction (DNA CEBR) grants program has different objectives and purposes than BJA's Sexual Assault Kit Initiative (SAKI). The DNA CEBR program funds States and units of local government with existing crime laboratories that conduct DNA analysis to process, record, screen, and analyze forensic DNA and/or DNA database samples, and to increase the capacity of public forensic DNA and DNA database laboratories to process more DNA samples, thereby helping to reduce the number of forensic DNA and DNA database samples awaiting analysis. The cases DNA CEBR grants fund have already been submitted by the law enforcement agency to the crime laboratory for DNA analysis. These cases include violent crime cases (such as homicides and other violent assaults) and property crimes, not just sexual assault kits (SAKs). As individual crime laboratory resources and demands vary across the Nation, DNA CEBR grant recipients use their own discretion to spend the funding for DNA laboratory capacity enhancement purposes, for DNA analysis of evidence from all types of case-work (including sexual assault evidence, DNA database samples from convicted offenders and, in applicable jurisdictions, arrestees), or for any combination of the two, based on the recipient jurisdiction's specifically-identified needs.

The main objectives of BJA's SAKI program are to (1) provide jurisdictions with resources to address SAKs in their custody that have not been submitted to a forensic laboratory for testing and (2) improve investigation and prosecution in connection with evidence and cases resulting from the testing process. The SAKI program ensures a coordinated community response that seeks just resolutions to these cases, whenever possible, through a victim-centered approach and to build jurisdictions' capacities to prevent the development of conditions that lead to high numbers of unsubmitted SAKs. And, unlike DNA CEBR, SAKI funds can be used to analyze forensic evidence associated with sexual assault cases besides DNA.

The overall goal of DNA CEBR, as stated above, is to enhance DNA testing capacity in State and local crime laboratories while reducing the numbers of forensic-DNA- and DNA-database samples awaiting testing. SAKI is a resource intended to help law enforcement and prosecutors address all of the challenges associated with SAKs that have never been submitted to a forensic laboratory for testing.

QUESTIONS SUBMITTED BY SENATOR DIANNE FEINSTEIN

LACK OF ATF RESOURCES

Question 1a. I strongly believe that ATF is consistently understaffed and underfunded, despite your assertions that DOJ will prioritize investigating and prosecuting gun crimes.

What is also difficult is that year after year, the bills produced by this subcommittee and its House counterpart include a number of policy riders that limit the Federal Government's ability to enforce existing gun laws. These provisions do everything from limiting ATF's ability to make commonsense updates to its definitions, to requiring sellers to report suspicious transactions, to properly classifying dangerous ammunition.

Can you describe how these appropriations riders and the underfunding of ATF impact the Department's ability to protect public safety?

Answer. ATF is subject to several specific restrictions on its use of appropriated funds. Some of these restrictions impose limits on ATF's regulatory authority. Examples include riders that prohibit ATF from using appropriated funds to require a physical inventory of firearms held by a Federal Firearms Licensee (FFL), consolidate or centralize FFL firearm acquisition or disposition information, electronically retrieve FFL out of business record information by name or personal identification code, or to change the definition of "curios or relics" in 27 C.F.R. 478.11. ATF exercises its existing lawful authority to carry out its mission, including regulating firearms in a manner consistent with statutory mandates. ATF has a crucial public safety mission of reducing firearms violence, combating firearms trafficking, and decreasing the risk posed to the public from explosives, bombs and arson. To fulfill its mission, ATF must continuously strive to maximize its limited resources. ATF is a lean, efficient organization, and has consistently adapted to tight budgetary circumstances. The Department's budget requests for ATF seek funding at a level sufficient to sustain existing operations while enhancing programs that most effectively combat violence related to firearms and explosives.

Question 1b. How can you actually enforce existing laws when Congress puts all of these obstacles in your way?

Answer. Notwithstanding these limits on its use of appropriated funds, ATF exercises its existing lawful authority to carry out its mission. In fiscal year 2018, the Justice Department charged more than 15,300 defendants with Federal firearms offenses, which is 17 percent more than the previous record.

CENSUS CITIZENSHIP QUESTION

Question 2a. On March 26, Commerce Secretary Ross issued a memorandum directing the Census Bureau to add a question on citizenship status on the 2020 Census. The memo stated that the citizenship question was being included at the request of the Justice Department because DOJ argued that census-level data on citizenship is needed to enforce the Voting Rights Act.

This data has never been required on census forms sent to all Americans since the passage of the Voting Rights Act. Why is it now needed?

Answer. The Department made this request to reinstate a citizenship question on the census in furtherance of its commitment to fair and consistent enforcement of the Nation's voting rights laws. As explained in the Department's letter, accurate citizenship data is "critical to the Department's enforcement of Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting. To fully enforce those requirements, the Department needs a reliable calculation of the citizen voting-age population in localities where voting rights violations are alleged or suspected."

Question 2b. What steps is your Department taking to protect voting rights now and how would DOJ's voting rights actions change if this new data is collected?

Answer. The Department of Justice is resolutely committed to the robust and evenhanded enforcement of the Nation's civil rights laws and to free and fair elections for all Americans. In February 2018, the Department filed and resolved a vot-

ing rights case involving the State of Arizona. Since January 2017, the Department has participated as a party in three cases brought under Section 2 of the Voting Rights Act. The Department has also successfully resolved three statewide cases and under the National Voter Registration Act. Each of those resolutions guarantees that Americans across the country will have a full and fair opportunity to register to vote and to remain registered. Additionally, the Department has filed three amicus curiae briefs in voting rights cases, including a case alleging unconstitutional denials of the right to vote and a case seeking equal access at polling places for members of a language minority group in one of America's largest cities.

The Department also has continued our election monitoring program as well as our outreach and enforcement work under Section 203 of the Voting Rights Act.

Section 203 of the Voting Rights Act protects the rights of members of language minority groups to participate in elections. The Department is also protecting the rights of military and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). The Department has assisted several States in achieving UOCAVA compliance in special elections in 2017 and 2018, and worked with States to achieve UOCAVA compliance through the 2018 midterm elections.

The Department is working to ensure that all of this year's elections are conducted in accordance with Federal law requirements. We are actively working with States and localities to ensure that members of language minority groups and our brave men and women in uniform have a full and equal opportunity to cast their ballots.

With regard to how the Department will use this census data, the Department's letter explained why "the decennial census questionnaire is the most appropriate vehicle for collecting [citizenship] data, and reinstating a question on citizenship will best enable the Department to protect all American citizens' voting rights under Section 2." As you may know, "[t]he Supreme Court . . . held that Section 2 of the Voting Rights Act prohibits 'vote dilution' by State and local jurisdictions engaged in redistricting[.]" Vote dilution can occur "when a racial group is improperly deprived of a single-member district in which it could form a majority." As many Federal courts of appeals have held, "where citizenship rates are at issue in a vote-dilution case, citizen voting-age population is the proper metric for determining whether a racial group could constitute a majority in a single-member district[.]" Thus, "[t]hese cases make clear that, in order to assess and enforce compliance with Section 2's protection against discrimination in voting, the Department needs to be able to obtain citizen voting-age population data for census blocks, block groups, counties, towns, and other locations where potential Section 2 violations are alleged or suspected."

Question 2c. Were you involved in making this recommendation? Did the Department discuss this with the White House? If so, with whom?

Answer. Since the Department submitted its letter, at least six lawsuits have been filed against the Department of Commerce challenging its decision to reinstate a question regarding citizenship to the 2020 Census questionnaire. The Justice Department is defending these lawsuits. In deference to the courts charged with hearing and resolving pending litigation involving the United States, it is longstanding Department policy not to comment on or discuss matters involved in active litigation. To the extent this question is specifically directed to former Attorney General Jeff Sessions, it would be inappropriate for the Department to respond further.

DOJ RULE TO BAN BUMP STOCKS

Question 3a. DOJ recently started the rulemaking process to ban bump stocks under the National Firearms Act.

However, ATF has repeatedly said for years that it cannot ban bump stocks, because the National Firearms Act does not allow it.

The ATF repeated this position as recently as April 2017, and the ATF Director has repeatedly stated in public that the ATF cannot ban bump-fire stocks under current law. That's why I proposed legislation to change the law.

Do you expect that DOJ's bump stock rule will be challenged in court?

Answer. On December 18, 2018, Acting Attorney General Matthew Whitaker announced that the Department of Justice has amended the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), clarifying that bump stocks fall within the definition of "machinegun" under Federal law, as such devices allow a shooter of a semiautomatic firearm to initiate a continuous firing cycle with a single pull of the trigger. The final rule will go into effect March 26, 2019; 90 days from the date of publication in the Federal Register. A lawsuit challenging the rule was filed following the announcement in December.

Question 3b. If DOJ's bump stock rule were struck down by the courts, would you support legislation to ban bump stocks?

Answer. Should Congress choose to propose legislation on this issue, the Department would be pleased to review it.

DOMESTIC VIOLENCE CRIMES AND GUNS

Question 4a. Domestic violence abusers who have been convicted of a misdemeanor crime of domestic violence or who are subject to a protection order are supposed to be prohibited from possessing firearms or ammunition under Federal firearms law.

However, I understand that many domestic violence abusers are, nevertheless, able to buy guns.

Local domestic violence programs often attempt to help victims by seeking removal of the firearms, but they are unable to get assistance from the DOJ and other Federal agencies. Similarly, local law enforcement is often overwhelmed by the sheer numbers of firearms in the possession of domestic violence offenders.

How will the DOJ improve their response to cases like these, which are likely to lead to homicides?

Answer. ATF will continue to work with State and local law enforcement to ensure that prohibited persons do not acquire or possess firearms and ammunition. ATF will also continue to educate individuals and organizations engaged in the business of the sale of firearms and ammunition of their responsibilities under the law. ATF's authority to seize firearms in such instances is limited to circumstances where it can establish probable cause that the firearms are possessed in violation of Federal law. ATF works closely with State and local partners on a case-by-case basis to determine if sufficient Federal seizure authority exists, and from that determination ATF proceeds accordingly.

In addition, the Department's Office on Violence Against Women has funded two technical assistance projects that address the safety concerns associated with domestic violence involving firearms. First, the National Resource Center on Domestic Violence and Firearms provides information for communities on best practices to address the safety of domestic violence victims where firearms are involved. Additionally, the Firearms Safety Enhancement Project provides specific technical assistance to identified communities to help them develop coordinated community responses that enhance safety in domestic violence cases involving firearms.

METHAMPHETAMINE

Question 5a. In 2017, the vast majority of the nearly 29,000 kilograms of methamphetamine seized at the Southwest Border was seized by the San Diego Sector.

Not surprisingly, San Diego has been especially hard hit by methamphetamine abuse. In 2016, there were 377 meth-related deaths in the county. This is the equivalent of one death every 23 hours.

That is why the COPS Anti-Methamphetamine Task Force grants—a program I helped establish in 2014—is so important. This program currently provides approximately \$8 million to State law enforcement agencies in 6 States to participate in meth-related investigative activities.

Given the significant increase in methamphetamine use and associated deaths, why does your budget propose eliminating funding for this program?

Answer. The Department remains committed to its methamphetamine related investigative and prosecutorial efforts. The budget does not fund these grants to State and local level task forces; however, it does include \$10 million for DEA to continue its clandestine methamphetamine laboratory cleanup. DEA also continues to train State and local law enforcement personnel from across the Nation through its clandestine lab course. Finally, DEA is committed to its robust engagement and partnership with the Government of Mexico. Through this partnership, we seek to stop the production and trafficking of methamphetamine and to support clandestine lab training for Mexican law enforcement personnel.

FIRING OF DEPUTY DIRECTOR MCCABE

Question 6a. Last month, the Justice Department allowed the Senate Judiciary Committee to review the Office of Professional Responsibility report on former FBI Deputy Director Andrew McCabe that led to his firing.

It's my understanding that Mr. McCabe submitted a response to the allegations against him, but his response was not included in the materials provided to the Senate Judiciary Committee.

It's important that we have the full record. Will you commit to providing the Committee Mr. McCabe's response?

Answer. On June 6, 2018, the Department provided the Senate Judiciary Committee with the FBI Office of Professional Responsibility report on former FBI Deputy Director McCabe, the Memorandum to the Attorney General from an Associate Deputy Attorney General, and the decision by then Attorney General Sessions. On June 12, 2018, less than one week later, Mr. McCabe's attorney filed a lawsuit against the Department, the Department's Office of Inspector General, and the FBI. In light of the pending litigation and to the extent this question calls for the personal knowledge of former Attorney General Jeff Sessions, it would not be appropriate to provide further comment or documentation regarding this matter.

Question 6b. Can you give me another example where an employee has been given just 7 days to respond to serious allegations of misconduct?

Answer. Federal law provides that when an agency has reasonable cause to believe that an employee has committed a crime for which a sentence of imprisonment may be imposed, and the agency is proposing removal (or suspension), a shortened 7-day period applies in which the employee may respond to the agency's proposed action. See 5 U.S.C. Section 7513(b); 5 C.F.R. 752.404. This provision may be invoked even in the absence of judicial action.

Question 6c. Is there another instance where an employee was fired the same day that he or she responded?

Answer. The Department does not as general matter comment on personnel decisions. Through an extraordinary accommodation in light of the enormous public interest in this matter the Department made available to the Senate Judiciary Committee the FBI Office of Professional Responsibility report on former FBI Deputy Director McCabe, the Memorandum to the Attorney General from an Associate Deputy Attorney General, and the decision by then Attorney General Sessions.

DISCLOSURE OF LAW ENFORCEMENT INFORMATION

Question 7a. Department officials have explained that providing the public or Congress with information during an active investigation "could compromise the reputational or privacy rights of uncharged parties, undermine any ongoing investigations of those parties, and give the misimpression that the Department's investigative steps are susceptible to political influence.

What are the risks of Congress requiring the Department to report on factual findings or investigative steps during an open investigation?

Answer. Over many years and many changes of administration, the Department has consistently articulated a concern that Congressional involvement in ongoing criminal investigations could politicize the criminal justice system or give the appearance of such, thus threatening the integrity of those investigations. The Department's longstanding policy of investigatory independence was more fully set forth in a January 27, 2000 letter from Robert Raben, Assistant Attorney General for the Office of Legislative Affairs, to John Linder, then-Chairman of the Subcommittee on Rules and Organization of the House Committee on Rules.

RECUSAL FROM TRUMP OR CLINTON INVESTIGATIONS

Question 8a. You previously committed to recusing yourself from "any matters related in any way to the campaigns for President of the United States," as well as issues related to Hillary Clinton's emails or the Clinton Foundation.

In March, however, you announced that you had asked the Inspector General and the U.S. Attorney in Utah to look into various matters related to Uranium One and the Clinton Foundation.

How is your referral of these matters consistent with your previous commitment to recuse from any matters involving the 2016 presidential campaigns or the Clinton Foundation?

Answer. Mr. Huber was asked to look into a number of matters and to report back to the Attorney General or Deputy Attorney General as appropriate. Mr. Huber will report to the Department consistent with the rules of professional responsibility and government ethics regulations that govern Department attorneys. To the extent this question is specifically directed to former Attorney General Jeff Sessions, it would be inappropriate for the Department to respond further.

HANDLING OF SEXUAL HARASSMENT CLAIMS

Question 9a. A June 2017 Inspector General report found systemic problems with how allegations of sexual misconduct were handled by the Justice Department's Civil Division. The report details several serious incidents of sexual misconduct.

In one instance, a senior male attorney groped two of his female colleagues without their consent. Shortly thereafter, he was transferred to another division and received no suspension or reduction in pay.

What steps have you personally taken to ensure the Department of Justice is free from sexual harassment and misconduct in the workplace?

Answer. On April 30, 2018, the Department issued a memorandum directing heads of components to address sexual harassment and sexual misconduct allegations with vigilance and seriousness. See <https://www.justice.gov/policies-and-directives-effect-relating-and-duty-conduct-including-sexual-misconduct>. The directive was the result of the Department's intensive efforts to address 2017 findings by Inspector General Horowitz regarding how the Department handles claims of sexual harassment and sexual misconduct. Components were directed to address such allegations through:

- Enhancing the management, investigation, and tracking of allegations of sexual harassment and sexual misconduct;
- Informing employees of how they can report allegations of sexual harassment or sexual misconduct;
- Ensuring that allegations are reported to component management, security offices, and OIG under applicable policies;
- Keeping employees informed of the progress of the component's reviews of their allegations;
- Proposing and imposing consistent and serious discipline for substantiated allegations;
- Considering ongoing investigations of sexual harassment and misconduct allegations or prior disciplinary actions for sexual harassment or misconduct when making decisions about awards (monetary and otherwise), public recognition, or favorable personnel actions (such as promotions); and
- Ensuring that employees are aware of the Department's policies regarding harassment, sexual misconduct, and other related on-and off-duty conduct.

With respect to disciplinary actions, the directive urges components to propose strong and meaningful disciplinary action to address substantiated allegations. For example, a penalty of at least a 15-day suspension (up to removal, including a demotion) should be proposed where a substantiated incident of sexual harassment or misconduct involves aggravating factors (such as sexual assault, stalking, repetition, quid pro quo for official actions, any form of voyeurism such as peeping, or retaliation for reporting prior misconduct); or where the subject has a supervisory role vis-à-vis the victim or was previously disciplined for sexual harassment or misconduct.

Finally, the directive provides for annual reporting and accountability, which will provide Department leadership greater visibility into how allegations of sexual harassment and sexual misconduct are handled.

With greater awareness of our policies prohibiting sexual harassment and misconduct, as well as renewed vigilance for reporting, investigating, and initiating consistent and decisive action on substantiated allegations, the Department continues to strive for a workplace free of sexual harassment and misconduct.

Question 9b. What are the penalties for employees who are involved in sexual harassment or misconduct? Are they sufficient?

Answer. Please see my response to 9a.

Question 9c. A June 2017 DOJ IG report on sexual harassment found the Civil Division engaged in a practice called "pass the trash," where an employee accused of sexual misconduct would be transferred to another division and not reprimanded or punished. The IG concluded that this is in conflict with the Department of Justice's zero tolerance policy for sexual harassment.

Are you familiar with the practice at DOJ called "pass the trash"?

Answer. Please see my response to 9a.

Question 9d. Are you aware of any Division at DOJ still engaging in the "pass the trash" practice?

Answer. Please see my response to 9a.

Question 9e. Can you assure the Committee it is no longer in practice anywhere in DOJ?

Answer. Please see my response to 9a.

Question 9f. Earlier this year, the Civil Rights Division launched an initiative to combat sexual harassment in workplace.

What enforcement actions will the Civil Rights Division begun to pursue under this Initiative?

Answer. In February 2018, the Division announced the launch of its Sexual Harassment in the Workplace Initiative (Initiative). This Initiative, which will be implemented by the Division's Employment Litigation Section, is intended to tackle sexual harassment in public sector workplaces. The Initiative focuses on local, State, and Federal Government employers. Specifically, the Initiative seeks to assist agencies with implementing policies and procedures designed to more quickly and efficiently identify potential sexual harassment or misconduct. The Initiative will also assist employers in the enforcement of standing policies and procedures, and will initiate interventions when necessary to improve the workplace for all employees. As part of the Initiative, the Division will prioritize the review and acceptance for litigation of sexual harassment charge referrals from the Equal Employment Opportunity Commission (EEOC).

Since the start of the Initiative, the Division has filed one enforcement action based on a charge of sex discrimination, and has received a favorable verdict in the bench trial of a sexual harassment case brought in Wyoming. In addition, the Division is conducting several sexual harassment investigations, and pursuant to long-standing Department policies, all information relating to these investigations is confidential.

Question 9g. What new resources are being provided to this initiative?

Answer. The Division will redirect existing attorney, paralegal, and paraprofessional resources to staff the Sexual Harassment in the Workplace Initiative. The Initiative staff members will work in conjunction with the United States Attorney's Offices. The Division's Employment Litigation Section has formed an internal taskforce that will focus on implementing the goals of the Initiative.

Question 9h. According to the Department, this Initiative will also develop policies for public sector employers to ensure that sexual misconduct allegations are properly reported and that the perpetrators face consequences.

Can you expand on the Department's plans for developing and implementing these policies?

Answer. Division staff will work with employers, civil rights advocates, and other Federal agencies, including the EEOC, to develop model anti-sexual harassment policies and trainings for State and local employers. The Division anticipates that these newly developed policies and tailored, interactive trainings will promote transparency and accountability within workplaces to prevent illegal harassment. The model policies and trainings also seek to provide safeguards against retaliation for persons who report sexual harassment. Additionally, the Division's outreach efforts will provide information to employers about their Title VII responsibilities and information to their employees about their Title VII rights and remedies.

"ENGAGING IN THE BUSINESS" INVESTIGATIONS AND PROSECUTIONS

Question 10a. The Department released a new guidance a couple of years ago outlining how and when a gun seller is "engaging in the business" of dealing firearms—and must therefore get a Federal license and run background checks on all buyers.

The ATF and DOJ committed to a more robust enforcement of dealers who illegally engage in the business without a license.

What has the Department done to fulfill this commitment since last year? Please share any tangible statistics or anecdotes indicating an increase in investigations.

Answer. Please see my response to Question 10b.

Question 10b. How has the Department changed its approach in order to fulfill this commitment? Has there been an uptick in arrests made for the "engaging in the business" charge?

Answer. ATF is committed to protecting our communities from violent criminals, criminal organizations, the illegal use and trafficking of firearms, and other Federal violations over which ATF has jurisdiction.

ATF has Criminal Enforcement groups enforcing Federal criminal laws and Industry Operations Investigators (IOIs) regulating the firearms industry. Special Agents and IOIs work collectively to accomplish our mission. Special Agents and IOIs participate in many gun shows across the Nation, educating the public on firearms laws and the requirements to obtain a Federal Firearms License. Special

Agents attempt to identify and interdict any illicit firearms transfers. Special Agents also attempt to identify individuals who are suspected of dealing in firearms without the required Federal Firearms License. When these individuals are identified, ATF takes all possible measures to stop any further criminal activity.

Statistics indicate that the number of prosecutions for violations of Title 18 USC 922(a)(1)(A), Dealing Firearms without a license, has increased from 178 during fiscal year 2017 to 253 for fiscal year 2018.

HANDGUNS THAT FIRE RIFLE ROUNDS

Question 11a. Over the past two decades, the gun industry has developed handguns that can fire rifle rounds, penetrating the standard body armor worn by law enforcement officers. This is extraordinarily concerning to our law enforcement officers.

Do you believe such handguns represent a threat to law enforcement?

Answer. Handguns firing rifle cartridges produce and utilize a higher chamber pressure than typical handgun ammunition and therefore fire projectiles at a greater velocity. When compared to traditional handguns keeping all other variables equal, Kevlar vests are less likely to stop these projectiles. However, the likelihood of any projectile penetrating a soft Kevlar vest is dependent on numerous variables, including distance, type of projectile, barrel length, and propellant powder load, among others.

Question 11b. Are such handguns generally subject to the National Firearms Act?

Answer. No. These handguns are not NFA firearms.

Question 11c. What will be the Department's plan to address this new type of weapon?

Answer. The Department will continue to regulate the production of these firearms under the Gun Control Act.

ONGOING LAWSUITS DEFENDED BY DOJ

Question 12a. I understand that your budget request includes additional funds for attorneys in the Federal Programs Branch of DOJ, which defends against lawsuits. Can you please provide a status on the additional amount of resources you would need going forward to defend the following?

Lawsuits defending against DHS' Travel Ban?

Answer. The litigation challenging the President's Executive Orders and Memoranda designed to protect the American people from terrorist attacks by foreign nationals admitted to the United States is now winding down at the district court level.

Question 12b. Lawsuits challenging the President's alleged acceptance of "emoluments," in violation of the "emoluments clause" in the Constitution?

Answer. There are currently three lawsuits alleging violations of the Foreign and Domestic Emoluments Clauses of the Constitution whenever the President's businesses receive any benefit from foreign and domestic government instrumentalities. One case is currently on appeal to the U.S. Court of Appeals for the Second Circuit, after a U.S. District Court dismissed the complaint. The remaining two cases are pending before district courts in Maryland and the District of Columbia. In both cases, dispositive motions have been fully briefed and arguments on the pending motions were held in early June.

Question 12c. Lawsuits challenging the bump stock ban rule that the DOJ is proposing?

Answer. On March 29, 2018, the Department of Justice issued a notice of proposed rulemaking to amend the Bureau of Alcohol, Tobacco, Firearms, and Explosives regulations to clarify that "bump fire" stocks, slide-fire devices, and devices with certain similar characteristics (bump-stock-type devices) are "machineguns" as defined by the National Firearms Act of 1934 (NFA) and the Gun Control Act of 1968 (GCA), because such devices allow a shooter of a semiautomatic firearm to initiate a continuous firing cycle with a single pull of the trigger. The comment period closed at midnight on June 27, 2018. ATF thoroughly assessed all comments received during the comment period before determining the content of a final rule. On December 18, 2018, Acting Attorney General Matthew Whitaker announced that the Department of Justice had amended the necessary regulations and that the final rule would go into effect March 26, 2019; 90 days from the date of publication in the Federal Register. With respect to fiscal year 2019, the Civil Division does not anticipate needing additional resources beyond our current fiscal year 2018 base budget,

which funds necessary Automated Litigation Support (ALS) services, and the fiscal year 2019 request for the purpose of defending any actions challenging any final regulation promulgated thereafter.

Question 12d. Lawsuits involving border wall “takings”—where the Federal Government will have to “take” real property from landowners on the Southern Wall?

Answer. Eminent domain proceedings to acquire real property are coordinated through the Department’s Environment and Natural Resources Division (ENRD). Notably, ENRD has worked on land acquisition for border security projects since the 1990s. At this time, the Department anticipates supporting acquisition efforts for this fiscal year primarily in the Southern District of Texas, and ENRD is closely coordinating with that District to ensure adequate staffing to support those activities. ENRD is examining options for addressing these needs using existing appropriations and staffing levels, while also seeking to hire at least 2 new personnel during this fiscal year to support this work.

Question 12e. FOIA lawsuits brought against Federal agencies, particularly with respect to ethics violations and the receipt of improper benefits by the EPA Administrator, the HUD Secretary, and the Interior Secretary?

Answer. In 2017, more than 560 cases were filed against Federal agencies under the Freedom of Information Act (FOIA). This represents an increase of approximately 29 percent over the prior calendar year, and an increase of more than 123 percent compared to 10 years ago. The Federal Programs Branch handled approximately 23 percent of the new FOIA suits brought in 2017, an increase of 17 percent over the prior year and a 99 percent increase compared to 10 years ago. The rising caseload of FOIA litigation is a major driver for the fiscal year 2019 Federal Programs increase in the President’s Budget. If this budget increase is granted, the Civil Division will be better positioned to address these cases.

FUNDING FOR DIRECT VICTIM SERVICES

Question 13a. Many victim service providers that receive Victim of Crime Act (VOCA) assistance funds have stated they need training and technical assistance to manage funds they receive to comply with auditing requirements, on top of the important work they do in providing direct assistance to victims.

What is DOJ doing to ensure that they have the appropriate training and technical assistance to manage the funds?

Answer. The Department, through the Office for Victims of Crime (OVC), works to ensure that every victim has access to a well-trained, knowledgeable service provider.

Recognizing the responsibility as a steward of public funds, the Department provides numerous opportunities to improve management and monitoring of Crime Victim Funds awarded to grantees. Grantees can use a portion of their administrative funds, up to 5 percent of their total funding, to provide training and technical assistance. Further, the Department has given other grants specifically for training and technical assistance. For example, in 2015, State VOCA Victim Assistance agencies received a discretionary grant to be used for training. OVC recently posted a fiscal year 2018 solicitation (OVC fiscal year 2018 Discretionary Training and Technical Assistance Program for VOCA Victim Assistance Grantees) for a total of \$12 million that makes training funds available to the State agencies again.

In addition, the Department facilitates training through the OVC Training and Technical Assistance Center. Cooperative agreements with partner organizations and grantees further assist the field in building its collective capacity to serve crime victims. The Department continues to build service capacity by offering a schedule of regional training and developmental support in critical areas such as needs assessment, program design, strategic planning, and evaluation. OVC continues to expand its outreach through in-person and Web-based trainings. OVC also manages State and national conference support programs that assist nonprofit organizations interested in hosting conferences on victim-related issues. Further, OVC operates a professional development scholarship program and maintains a speaker’s bureau and a database of consultants who are available to support OVC’s initiatives nationwide.

Question 13b. We have heard from victim service providers in California and elsewhere that providing “matching funds” for increased VOCA funds is a challenge and therefore prevents quality service providers from applying for funds.

What is the Department doing to expedite match waivers to ensure that victim service providers can apply for increased funds and provide important victim services?

Answer. OVC routinely receives requests for match waivers for the VOCA State Victim Assistance Formula Grant Program from State agencies. It reviews these requests promptly and frequently grants them. The waivers are typically processed within a few weeks of receipt.

Additionally, while many VOCA grant funds require a match by the subgrantee, there are many options available beyond a cash match. For example, in-kind and volunteer hours are options available to subgrantees in lieu of a cash match.

UNSUSTAINABLE PRISON COSTS

Question 14a. Mr. Sessions, your Department's Budget requests \$8.5 billion for Prisons and Detention Operations, which represents nearly 30 percent of the Department's total budget.

Do you believe that the continued growth of prison and detention operations is sustainable going forward?

Answer. The Department will continue to monitor the inmate population level and work with the administration and Congress to ensure that BOP and USMS have adequate resources to continue to operate safe and secure facilities. To the extent this question is specifically directed for former Attorney General Sessions, it would be inappropriate for the Department to respond further.

Question 14b. You issued a charging memorandum to all Federal prosecutors, directing them to charge all of their cases with the most punitive chargeable offense. This change in policy takes discretion away from prosecutors, and I worry that it could lead to even higher prison costs in the future.

How do you expect that this recent policy change will affect future resource requirements for the Bureau of Prisons and Marshals Service?

Answer. The Department, BOP, and USMS continue to analyze the impacts of these policies. The Department will continue to monitor the inmate population level and work with the administration and Congress to ensure that BOP and USMS have adequate resources to continue to operate safe and secure facilities.

Over the past year, the USMS detention population has increased by approximately 5,631 prisoners or 10.4 percent, from 53,991 on February 7, 2018 to 59,622 on February 7, 2019. Based on the number of prisoners received and the increase in the detention population over the past year, the USMS expects the number of prisoners to continue to increase over the next 18–30 months.

The Department is monitoring these changes closely and is assessing what effect these changes may have on resource allocation. To the extent this question is specifically directed for former Attorney General Jeff Sessions, it would be inappropriate for the Department to respond further.

VICTIM REPORTING OF CRIMES IN THEIR COMMUNITIES

Question 15a. I have heard concerns from local police officers that witnesses of violent crimes, and victims themselves, are reluctant to come forward to assist in criminal investigations because of some of the rhetoric that the President and this administration have used with respect to the immigration status or religious affiliation of an individual.

What is your strategy to make sure that all witnesses and victims feel safe in reporting crimes?

Answer. Combating hate crimes is among the highest priorities for the Department of Justice and the Civil Rights Division. The Department is working with law enforcement and affected communities to investigate and prosecute bias-motivated violence. We are also working to improve our training and outreach regarding identification, reporting, investigations, prosecutions of hate crimes.

Last year, the FBI participated in numerous hate crime trainings and outreach events. The FBI also developed the National Training Initiative (NTI), which aims to strengthen civil rights education throughout the Nation by providing standardized training and materials that field offices may provide their law enforcement partners, non-governmental organizations (NGOs), and community groups. As part of the NTI, the FBI conducts hundreds of seminars, workshops, and training sessions for local law enforcement, minority and religious organizations, and community groups to promote cooperation, reduce civil rights abuses, and provide education about civil rights statutes.

Our U.S. Attorney's Offices have also engaged in direct outreach to affected communities so that community leaders and others know who in each office is responsible for carrying out the Department's commitment to fighting hate crimes.

Earlier this year, the National Institute of Justice (NIJ) at the Office of Justice Programs issued a solicitation for proposals for research and evaluation to fill gaps in hate crimes research. Applications were accepted through May 2018. NIJ made one award of \$840,649 to the University of New Hampshire to conduct a national survey of hate crime incidents and victimization. The study will provide detailed data about hate crimes, analyze local policies that impact hate crime reporting, and identify successful investigation and prosecution strategies.

Additionally, the September 2017 issue of the Community Policing Dispatch, the e-newsletter by the Department's Office of Community Oriented Policing Services (COPS Office), consolidated some of COPS' most popular resources for combating bias-related crimes.

HUMAN TRAFFICKING AND INJUNCTION AUTHORITY

Question 16a. I want to congratulate the Department and all of its law enforcement partners for recently taking down Backpage, a website that has facilitated sex trafficking for years now. I have long urged the Department to act—and was pleased to hear about the recent takedown and guilty pleas.

While significant attention has been paid to the supply side of human trafficking (breaking up trafficking rings, monitoring websites like Backpage, and rescuing girls), I am concerned that we are still not doing enough to reduce the demand, and address the problem of trafficking over the Internet.

What is your strategy to address human trafficking over the Internet?

Answer. The Department shares your concern about human trafficking over the Internet. According to the 2017 Federal Human Trafficking Report prepared by the Human Trafficking Institute (available at <https://www.traffickingmatters.com/wp-content/uploads/2018/05/2017-Federal-Human-Trafficking-Report-WEB-Low-Res.pdf>), in 2017, the overwhelming majority (84.3 percent) of pending Federal criminal sex trafficking cases involved traffickers who used the Internet to advertise victims and solicit purchasers for commercial sexual services.

To address this, the Department is working in a variety of ways to combat Internet-facilitated sex trafficking, including sex trafficking of minors and sex trafficking of adults by force, fraud, or coercion. Sex traffickers utilize the Internet and social media in multiple ways, not only to advertise victims to customers, but also to recruit and groom vulnerable victims, and to intimidate victims and witnesses in an effort to obstruct investigations and prosecutions of the traffickers' enterprises. Experience has demonstrated that traffickers utilize multiple websites and social media platforms for all of these wide-ranging recruitment, advertising, and witness intimidation tactics. The Department is actively working to combat all forms of Internet-facilitated sex trafficking. Its strategies include:

- proactive investigations and enforcement operations to disrupt sex traffickers' social media-based recruitment activities;
- intelligence-driven targeting, investigations, and enforcement operations to detect trafficking indicators in the context of Internet commercial sex advertising;
- proactive investigation of evolving trends in Internet commercial sex advertising, including migration of advertising activity to new platforms;
- prosecution of commercial sex purchasers;
- public awareness, prevention efforts, and innovative partnerships aimed at protecting at-risk populations including children in foster care, adults in drug rehabilitation facilities, and individuals with intellectual disabilities;
- intensive training of Federal, State, local, Tribal, and international law enforcement partners on advanced strategies for detecting, investigating, and prosecuting Internet-facilitated sex trafficking, including investigation and prosecution of purchasers, advertisers, and facilitators;
- financial investigations that trace the proceeds of sex trafficking and asset forfeiture to seize the proceeds of sex trafficking and remove the tools of the trade; and
- working with survivor advocates to develop victim-centered, trauma-informed strategies for identifying, stabilizing, and protecting victims to prevent re-victimization.

The Department's comprehensive approach brings prosecutorial, policy, and public awareness resources to bear and includes: consolidating, sustaining and better deploying existing online tools and intelligence aimed at identifying trafficking offenders and victims, including children in the foster care system and other at-risk individuals; augmenting and improving the efficiency of targeted operations aimed at

rescuing victims of sex trafficking and apprehending those who exploit them, including customers; targeting online advertisers who knowingly facilitate sex trafficking; using asset forfeiture to seize websites domains used to enable sex trafficking and take away the proceeds of sex trafficking; and supporting an awareness campaign that encourages the public to assist in interdicting these offenses.

Question 16b. I have worked on legislation to update trafficking laws to include civil injunction authority to allow DOJ to bring civil cases against traffickers to prevent them from trafficking young victims, will you commit to using such authority?

Answer. The Department will utilize all available tools to combat the scourge of human trafficking.

HUMAN TRAFFICKING AND RESTITUTION FOR VICTIMS

Question 17a. In a 2015 law review article, the Human Trafficking Pro Bono Legal Center reported on the low rates of restitution orders in human trafficking prosecutions. In a study of Federal human trafficking cases brought over a four period, Federal courts failed to order restitution in nearly two-thirds of cases involving sex trafficking offenses.

They also found that the victims least likely to obtain restitution orders were children trafficked in the sex industry. Less than one-in-three defendants who commit sex trafficking offenses against children were ordered to pay restitution to their victims.

Can you discuss your efforts to ensure that prosecutors are trained to ensure that trafficking victims' receive restitution?

Answer. As the NGO found, prosecutors requested restitution in 63 percent of human trafficking cases, while courts granted it in only 36 percent of cases. The Department remains committed to ensuring prosecutors are trained to seek restitution orders from courts on behalf of victims of human trafficking. In November 2016 and November 2017, the Department led human trafficking trainings at the National Advocacy Center for Federal prosecutors, which contained specialized segments that emphasized strategies for securing restitution orders. In 2018, the Department conducted trainings at the National Advocacy Center that included presentations on restitution and forfeiture in child exploitation cases. Additionally, restitution and forfeiture were addressed at the 2017 National Law Enforcement Training on Child Exploitation, which was attended by approximately 1,200 Federal, State, local, and Tribal personnel. Federal prosecutors and law enforcement participating in the Anti-trafficking Coordination Team (ACTeam) Initiative also received training on mandatory restitution as part of their Advanced Human Trafficking Training Program (AHTTP).

The Department includes presentations on enforcement of mandatory restitution provisions in multiple training events each year for Human Trafficking Task Forces, and Federal, State, local, and Tribal law enforcement partners and prosecutors. In March 2017, the Department held webinars entitled "An Overview of Restitution in Human Trafficking Cases" and "Common Obstacles to Obtaining Restitution in Human Trafficking Cases." Additionally, in November 2017, the U.S. Attorneys' Bulletin published an article entitled Mandatory Restitution: Complying with the Trafficking Victims Protection Act" and another entitled "Follow the Money: Financial Crimes and Forfeiture in Human Trafficking Prosecutions."

In 2018, the Department produced forthcoming web-based on-demand training resources accessible to Federal prosecutors nationwide to disseminate best practices in enforcing the TVPA's mandatory restitution provisions. Also in 2018, the Department created a working group to refine strategies for successfully enforcing the TVPA's mandatory restitution provision.

LAUNDERING MONEY THROUGH REAL ESTATE INVESTMENTS

Question 18a. Law enforcement have recently described ongoing investigations into foreign buyers who use shell companies to buy luxury real estate in America to launder money.

Can you describe whether this is a growing trend, how it is a growing trend, and whether you are concerned about this trend going forward?

Answer. The pervasive use of front companies, shell companies, nominees, or other means to conceal the true beneficial owners of assets is one of the greatest loopholes in this country's anti-money laundering (AML) regime. We consistently see bad actors using these entities to disguise the ownership of dirty money derived from criminal conduct.

The Financial Action Task Force's (FATF's) 2016 review of the United States' AML/counter-terrorist financing (CTF) system highlighted this issue as one of the

most critical gaps in the United States' AML regime. The result, FATF said, is that U.S. law enforcement authorities "must often resort to resource-intensive and time-consuming investigative and surveillance techniques." These techniques include grand jury subpoenas, witness interviews, or foreign legal assistance to unveil the true ownership of shell or front companies associated with serious criminal conduct. This process can sometimes take years, and, in some cases, law enforcement may never be able to determine the owners of illicit proceeds.

With respect to real estate more specifically, the Department's ongoing civil asset forfeiture action to recover more than a billion dollars allegedly stolen from the Malaysian sovereign wealth fund, 1MDB, highlights how bad actors may use shell companies to buy luxury properties in an effort to launder and hide their illegal gains. Our publicly filed complaints in that matter allege that in 2014, the co-conspirators misappropriated approximately \$850 million in 1MDB funds and diverted it to several offshore shell entities. From there, the complaints allege, the funds stolen in 2014, in addition to money stolen in prior years, were used to purchase, among other things, high-end properties, as well as a 300-foot luxury yacht valued at over \$260 million, certain movie rights, tens of millions of dollars of jewelry, and artwork. See also the response below regarding Geographic Targeting Orders.

Question 18b. What steps do you think law enforcement should take to address this growing trend?

Answer. The U.S. Department of the Treasury's (Treasury) Financial Crimes Enforcement Network (FinCEN) has issued and expanded Geographic Targeting Orders (GTOs) in recent years focusing on the real estate sector. The Department looks forward to learning more about the information gathered by FinCEN, as well as to discussions on whether additional steps may be warranted to address the money laundering risks emanating from this and other at-risk sectors. In addition, the Treasury's Customer Due Diligence Final Rule is a critical tool that will make it more difficult for criminals to circumvent the law. The Department looks forward to continued discussions with Treasury regarding the effects of the CDD Rule since its implementation this May.

Other steps are needed to ensure that criminals cannot hide behind nominees, shell corporations, and other legal structures to frustrate law enforcement. When law enforcement is able to obtain information on the identities of the persons who ultimately own or control these legal entities, it can better see the full network of criminal proceeds as bad actors try to move money through our financial system. With proper law enforcement access to beneficial ownership information, the Department could bring more cases, more quickly, with more impact.

Question 18c. What steps do you think lawmakers should take to address this trend?

Answer. The Department looks forward to continued discussions with its inter-agency partners, Congress, and industry members regarding stronger laws that target individuals who seek to mask the ownership of companies, accounts, and sources of funds.

QUESTIONS SUBMITTED BY SENATOR CHRISTOPHER A. COONS

Question 1a. On April 9, 2018, the F.B.I. executed searches of the office, residence, and hotel room of Michael Cohen. It has been reported that these searches and related investigation are being run out of the U.S. Attorney's Office for the Southern District of New York. During the hearing you indicated that you would recuse yourself from any involvement or oversight of this investigation if you learned of any connection to the matters you have already recused yourself from, namely any events surrounding the 2016 election.

Have you consulted with any career ethics officials at the Department of Justice to determine if your recusal is warranted in the ongoing Southern District of New York investigation into Mr. Cohen? Please provide the dates of these discussions.

Answer. This question calls for the personal knowledge of and is specifically directed to former Attorney General Jeff Sessions. As such, it would be inappropriate for the Department to respond to this question at this time.

Question 1b. Since the hearing, have you discovered any connection between the investigation into Mr. Cohen and Special Counsel Mueller's investigation that would cause you to recuse yourself?

Answer. Please see my response to Question 1a.

Question 2a. In your letter to President Trump dated May 9, 2017, recommending the firing of FBI Director Comey, you stated, “It is essential that this Department of Justice clearly reaffirms its commitment to longstanding principles that ensure the integrity and fairness of Federal investigations and prosecutions.”

Do you agree with me that it would run counter to longstanding Department of Justice practices that ensure integrity and fairness of ongoing criminal investigations to discuss any aspect of an ongoing criminal investigation with anyone outside of the Department?

Answer. The Department’s long-standing policy is to keep confidential all aspects of an ongoing investigation. Consistent with this well-established policy, the Department’s longstanding practice is to decline to respond to all inquiries made during the pendency of a matter, as to disclose non-public information relating to an ongoing investigation would pose an inherent threat to the integrity of the Department’s law enforcement and litigation functions.

Question 2b. Since the hearing, have you discussed the ongoing investigation into Mr. Cohen with the President or anyone outside of the Department of Justice?

Answer. This question calls for the personal knowledge of and is specifically directed to former Attorney General Jeff Sessions. As such, it would be inappropriate for the Department to respond to this question at this time.

Question 2c. Since the hearing, has the President or anyone in the administration discussed with you the possibility of President Trump pardoning Mr. Cohen?

Answer. Please see my response to Question 2b.

Question 2d. If you elect to not answer any of the questions above, as you did during the hearing, please cite the specific justification you are relying upon for your decision to not answer.

Answer. Please see my response to Question 2b.

Question 3a. The Violence Reduction Network (VRN) proved to be an effective program for cities like Wilmington, Delaware to address violent crime and to connect local police with cutting-edge law-enforcement resources. For example, the clearance rates on homicides in Wilmington jumped to the 50–54 percent range, from a 20 percent clearance rate prior to VRN.

Moving forward, what is the Department going to do for cities, like Wilmington, that made progress combatting violent crime with the help of the Federal Government now that its participation in the VRN program has ended?

Answer. The Department is continuing to provide training and technical assistance through the National Public Safety Partnership (PSP), administered by the Bureau of Justice Assistance (BJA). Twelve PSP sites were announced in June 2017, and the Department announced five PSP sites in August 2018.

Both the former VRN and current PSP engagements are time-limited. This is partially because both programs’ goal is to develop locally based resources and create a sustainable and enduring capacity to combat violent crime at the local level. Nevertheless, the Department has many additional resources to offer jurisdictions in need of continuing support. For example, the Department offers a broad array of training, technical assistance, and grant programs to support State, local, and Tribal partners. BJA’s National Training and Technical Assistance Center provides no-cost training and technical assistance on a wide- variety of criminal justice topics for criminal justice practitioners, agencies, elected officials, community organizations, and citizen advocates.

The BJA also provides training and technical assistance to eligible law enforcement agencies through the National Resource and Technical Assistance Center for Improving Law Enforcement Investigations on a wide range of topics that are directly related to improving investigatory practices. Through the Collaborative Reform Initiative for Technical Assistance, the Office of Community Oriented Policing Services provides tailored technical assistance and resources to State, local, Territorial, and Tribal law enforcement. This Initiative is conducted in collaboration with national law enforcement membership associations and facilitates State and local law enforcement trainings lead by experts in a range of public safety, crime reduction, and community policing topics.

Additionally, the Department has reinvigorated and recommitted to the Project Safe Neighborhoods (PSN) program, a nationwide violent crime reduction program that uses evidence-based practices, targeted enforcement, and community-based prevention programs to reduce violent crime alongside State, local, and Tribal law enforcement and the communities we serve.

Project Safe Neighborhoods (PSN) was originally created in 2001. Within the first 5 years of PSN’s implementation, violent crime was reduced overall by 4.1 percent,

with reductions of up to 40 percent in certain areas. PSN is effective because it is an evidence-based program that strategically deploys resources consistent with the specific problems and needs of individual communities. One year into the commencement of PSN's reinvigoration and its success has already begun. Public data from 60 major cities show that violent crime decreased by nearly 5 percent in those cities in the first 6 months of 2018 compared to the same period 1 year earlier. The Department is confident that the funding provided to PSN will directly lead further decreases in violent crime and ultimately increase the safety of Americans.

Question 3b. Can you commit to keeping critical staffing and resources in place in cities like Wilmington to ensure any recent improvements in metrics are preserved?

Answer. Reducing violent crime has been one of the top priorities of the Department. In support of this priority, the Department has redirected resources toward programs and positions that will strengthen our efforts to improve the safety of communities across the country. For example, the Department has expanded the Organized Crime and Drug Enforcement Task Forces (OCDETF) Program to support local gang investigations aimed at identifying connections between local gangs and drug trafficking organizations at the national-level. The Department has also prioritized the investigation and prosecution of the violent criminal members of MS-13 by designating MS-13 as a "priority organization" for its OCDETF Task Forces and by spearheading increased international coordination between domestic law enforcement and its partners in El Salvador, Honduras, and Guatemala. This prioritization and coordination has resulted in the arrest of thousands of MS-13 members and their affiliates.

The Department has also greatly increased the number of Federal prosecutors directed to focus on violent crime. In May 2018, the Department announced the creation of 311 new Assistant United States Attorney (AUSA) positions, the largest addition of Federal prosecutor positions in decades. Of these new positions, 190 AUSAs across the country will focus on violent crimes. This announcement follows the creation of 40 additional AUSA positions in 27 locations across the country in December 2017. All 40 of these previously created positions are directed to focus on violent crime.

In addition to expanding the Department's own programs and staffing, the Department continues to provide critical resource support to State, local, and Tribal law enforcement partners. In fiscal year 2017, the Department awarded over \$207 million in grants to support State, local, and Tribal law enforcement, and violent crime reduction efforts across the country. These grants provided funding to hire additional officers, promote community policing, create additional Crime Gun Intelligence Centers, enhance law enforcement technology and information sharing, reduce the backlogs of DNA evidence in crime labs, and provide needed training and technical assistance. These measures will help ensure that every district, including the District of Delaware, has access to the resources, technology, and training they need to be successful.

The Department's National Institute of Justice (NIJ) is funding research to continue development and improvement of violence reduction strategies at the State and local levels. This includes research and evaluation of strategies to reduce street gangs and gang violence, gun violence, and persistent violence in communities.

Question 4a. Last month, there were several news reports that Ezra Cohen-Watnick, who formerly worked at the White House National Security Council, was hired at the Department of Justice to serve as your national security adviser.

Was Mr. Cohen-Watnick hired to serve as your national security advisor?

Answer. Mr. Cohen-Watnick is not a current employee of the Department of Justice.

Questions 4b. Given Mr. Cohen-Watnick's prior involvement with matters involving Congressman Nunes, has Mr. Cohen-Watnick recused himself, like you have, from any involvement in the ongoing Special Counsel's investigation?

Answer. Mr. Cohen-Watnick is not a current employee of the Department of Justice.

Question 4c. Has Mr. Cohen-Watnick consulted with any career ethics officials at the Department of Justice to determine if his recusal is warranted? Please provide the dates of these discussions.

Answer. Mr. Cohen-Watnick is not a current employee of the Department of Justice.

Question 5a. Former F.B.I. Director Comey has testified that, on several occasions, President Trump went outside traditional Department of Justice policies and channels to directly ask the director about ongoing F.B.I. investigations.

What have you done to ensure that the President and other White House officials use established channels and do not take actions that may violate existing policies and/or seek to influence ongoing investigations?

Answer. While the Department cannot speak to the specific event referenced in your question as it calls for the personal knowledge of former Attorney General Jeff Sessions, the Department of Justice is governed by procedures that place limits on the communications between the White House and the Department concerning ongoing investigations, criminal prosecutions, and civil litigation. The Department is committed to ensuring the integrity of its investigations, prosecutions, and litigation and strives to prevent undue political influence or the appearance thereof from compromising its core functions.

QUESTIONS SUBMITTED BY SENATOR CHRIS VAN HOLLEN

REPEAL OR MODIFICATION OF SPECIAL COUNSEL REGULATIONS

Question 1a. What is the Department of Justice's position on whether the Administrative Procedure Act's rulemaking requirements for public notice and comment apply to the regulations governing the special counsel—28 CFR part 600?

Answer. When the current regulations in Part 600 of 28 C.F.R. were promulgated as a final rule, they were not subjected to notice-and-comment rulemaking. The Department identified several reasons why the usual requirements of the Administrative Procedure Act (APA) for prior notice and public comment were inapplicable. See 64 Fed. Reg. 37,038, 37,041 (July 9, 1999).

Question 1b. Do you have the authority to repeal or modify the special counsel regulations unilaterally?

Answer. The current regulations were promulgated by the Attorney General as an exercise of his authority to, among other things “prescribe regulations for the government of his department, the conduct of its employees, [and] the distribution and performance of its duties.” 5 U.S.C. § 301; see also 28 U.S.C. § 509 (vesting in the Attorney General nearly all functions of officers, employees, and agencies of the Department of Justice); 28 U.S.C. § 510 (authorizing the Attorney General to “make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General”). Consistent with the above listed statutory authority and the APA, the special counsel regulations may be repealed or amended by the Attorney General.

Question 1c. Does your recusal from “campaign-related matters” prohibit you from repealing or modifying the special counsel regulations?

Answer. This question calls for the personal knowledge of and is specifically directed to former Attorney General Jeff Sessions. As such, it would be inappropriate for the Department to respond to this question at this time.

Question 1d. Does the president have the authority to repeal or modify the special counsel regulations unilaterally?

Answer. Please see my response to Question 1b.

Question 1e. Could you, or another administration official, unilaterally repeal or modify the provision stipulating that the Attorney General may only remove a special counsel for “misconduct, dereliction of duty, incapacity, conflict of interest, or for other good cause, including violation of Departmental policies”?

Answer. Please see my response to Question 1b.

Question 1f. Could you, or another administration official, unilaterally change who has the authority to remove the special counsel?

Answer. Please see my response to Question 1b.

SUBCOMMITTEE RECESS

The subcommittee now stands adjourned.

[Whereupon, at 4:48 p.m., Wednesday, April 25, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

Exhibit 20

People are lining up to grow marijuana for research. Trump's Justice Department won't let them.

The Trump administration has resisted Obama-era reforms to allow more marijuana growing for research.

By German Lopez | @germanlopez | german.lopez@vox.com | Mar 26, 2019, 8:30am EDT



Saeed Khan/AFP via Getty Images

George Hodgkin is ready to go. The moment he gets approval from the federal government, his company is ready, he said, to produce high-quality marijuana for research — and nearly two dozen university researchers are on board to buy it for studies that could help fill the surprisingly large void in what we know about marijuana's benefits and harms.

There's just one problem: The US Department of Justice won't give him the approval he needs to start producing weed. So the researchers clamoring for access to marijuana — to finally learn more about the drug's effects — can't get it, even as states move to legalize pot.

"We only want to provide clean, consistent, compliant cannabis for researchers," Hodgkin, CEO of the California-based Biopharmaceutical Research Company, told me. "We're sitting on one of the most sophisticated cannabis production facilities in the United States. And

it's empty, because the federal government is playing politics with something that is apolitical.”

Marijuana is already legal for recreational and medical purposes under **10 states' laws** and legal only for medical uses under **22 additional states' laws**. But it remains illegal **under federal law**, so researchers aiming for any federal funding or tied to a federally funded institution (including all major research universities) face big legal barriers if they want to study the drug.

For years, the federal government has allowed one approved grower, at the University of Mississippi, to supply weed to researchers who make it through an arduous application process. But the quality of this marijuana is terrible — it **looks more like oregano than pot**. Researchers have demanded higher-quality options for years.

That's where Hodgkin could come in. He and dozens of others applied under a **new federal program**, started under the Obama administration, that was supposed to get more federally approved growers for marijuana research.

Then Donald Trump won the 2016 election, and appointed Jeff Sessions, who vehemently opposes marijuana legalization, to head the Justice Department as attorney general. After that, the program **seemed to stall**: A former Drug Enforcement Administration (DEA) official who worked on the research program told me his agency was ready to move forward, but it couldn't without approval from the Justice Department. Sessions and his staff seemingly weren't willing to take any proactive steps that could in any way be seen as pro-marijuana.

After Sessions resigned last November, there was some hope that the program would move forward. But so far, that hasn't happened.

Asked about the program, Justice Department spokesperson Wyn Hornbuckle said he had “[n]o updates on this at the moment.” DEA spokesperson Rusty Payne said that his agency is “still working through the process with the Department.”

So people like Hodgkin have been left waiting for years, ready to grow marijuana for research but without the federal approval needed to do so.

“I feel like the government I fought to protect doesn't understand the urgency of this problem,” Hodgkin, a retired Navy SEAL who served in Afghanistan and Southeast Asia, said.

“My story should be the American dream: A Navy SEAL uses the GI Bill to get a graduate education and start a company that helps Americans and creates jobs. But sadly, the DOJ and DEA are playing politics with science and lives, and instead big government inertia and red tape are blocking critical research.”

We know surprisingly little about marijuana

People have been using marijuana for thousands of years, but we still don’t know a lot about it.

In 2017, the National Academies of Sciences, Engineering, and Medicine published the **best review of the research** on marijuana to date. Combing through more than 10,000 studies published since 1999, the review by a dozen-plus experts provided the clearest look at the scientific evidence on marijuana yet.

The review did find *some* research. It suggested that there’s promising evidence for marijuana’s use for chronic pain, multiple sclerosis, and cancer patients. But the review also found that marijuana may pose risks for respiratory problems if smoked, **schizophrenia and psychosis**, car crashes, lagging social achievement in life, and perhaps pregnancy-related problems.

But above all, the National Academies said that the evidence to date is weak and more good research is needed — warning that “conclusive evidence regarding the short- and long-term health effects (harms and benefits) of cannabis use remains elusive.”

The review blamed the lack of good research largely on government policies — particularly regulatory barriers linked to cannabis’s federal classification as a **highly restricted schedule 1 substance** — that make it difficult to conduct good studies on the drug. It noted, for one, that researchers “often find it difficult to gain access to the quantity, quality, and type of cannabis product necessary to address specific research questions.”

The National Academies called for these barriers to be cut down and more research to be funded so we can learn more about marijuana. It’s an especially pertinent call today — as states move to legalize marijuana for medical and recreational purposes and presidential candidates **join the calls for legalization**.

“The National Academies of Sciences, as well as scientists and researchers themselves, have repeatedly stressed that they need a greater diversity of research-quality cannabis,”

Hodgin said. “There shouldn’t be a government monopoly on something that’s so important.”

The government makes researching marijuana difficult

Under federal law, marijuana remains illegal. And as a schedule 1 substance, the federal government doesn’t acknowledge *any* safe use of marijuana — medical or otherwise.

But the federal government has historically allowed research on marijuana. As part of the process, researchers have to **get several approvals from multiple federal agencies** just to study cannabis. Once researchers clear those hurdles, they get the aforementioned weed from the University of Mississippi.

The quality of this marijuana is terrible. Not only does it *look* bad, but as **Christopher Ingraham and Tauhid Chappell reported at the Washington Post**, the pot appears to have less THC (the main psychoactive compound in marijuana) than claimed, and it has high mold and yeast levels. With quality this bad, it’s hard for researchers to draw conclusions about pot’s effects, especially in comparison to the higher-quality weed that people use in the real world.

The DEA, under the Obama administration in 2016, moved to allow more growers for marijuana research. The agency **explained**: “Based on discussions with [the National Institute on Drug Abuse] and [the Food and Drug Administration], DEA has concluded that the best way to satisfy the current researcher demand for a variety of strains of marijuana and cannabinoid extracts is to increase the number of federally authorized marijuana growers.” So it implemented a new policy to let more people, like Hodgin, apply to grow cannabis.

The DEA seemed fairly ambitious in its approach. It noted that this policy could not only allow more research into marijuana, but if the findings were positive and pharmaceutical companies therefore pursued marijuana-based products, the new policy would give them a federally legal supply of weed they didn’t have before.

In politics, the prospect of more research on marijuana is typically uncontroversial. Democratic senators like Brian Schatz (HI) and Amy Klobuchar (MN) and Republican senators like Chuck Grassley (IA) and Cory Gardner (CO), for example, have **pushed for the DEA’s new policy**.

But Sessions, who **once said that “good people don’t smoke marijuana”** and **tried to wage a war against marijuana legalization as attorney general**, argued that approving more cannabis researchers could violate international anti-drug treaties. As **Mike Riggs noted at Reason**, this is almost certainly untrue — given that countries like the UK and Israel, which are signatories of the same treaties, have allowed plenty of marijuana research within their borders. The former DEA official I spoke to called Sessions’s claim “bullshit,” pointing out that the DEA’s legal experts reached the opposite conclusion before Sessions intervened.

The argument, however, seemed to give Sessions and the Justice Department the cover they needed internally to oppose allowing more growers for research.

With Sessions gone from the Justice Department, and **William Barr recently replacing him**, that could change. Barr opposes legalization, but he nonetheless **told the US Senate** that he supports allowing more research.

Yet so far, there hasn’t been any noticeable movement. So people like Hodgin, ready to do the work to get more marijuana out there for research, are left waiting.

“I’ve been shocked and disheartened that the government isn’t representing the will of the people,” Hodgin said. “Democrats and Republicans have both argued the need for more marijuana to be produced for research. Why would [the Justice Department] ignore them?”





Pod Save America's Dan Pfeiffer on Joe Biden, beating Trump, and saving democracy

[READ MORE >>](#)