

# Congress of the United States

Washington, DC 20510

April 8, 2022

The Honorable Merrick B. Garland  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Garland:

The United States Attorney's Office for the District of Delaware is currently investigating a number of Hunter Biden's activities, including his potential involvement with foreign businesses, avoiding proper disclosures of foreign business interests to the United States government, and outstanding tax liabilities.

It is increasingly clear that Hunter Biden took advantage of his father's position as Vice President to develop business relationships with clients in Ukraine, China, and Kazakhstan. Additionally, it is clear from emails secured from Hunter Biden's laptop that he used a cash gift from a Ukrainian Natural Gas company, Burisma, of which he was a board member, to pay off personal tax liabilities. Finally, Hunter Biden likely facilitated lobbying for foreign entities through third-party channels without registering for the Foreign Agents Registration Act.

It appears that Hunter Biden used his position as son of then-Vice President Biden to gain wealth and influence in foreign countries, using questionably sourced money to pay tax liabilities, and lobbying on behalf of foreign entities without proceeding through the proper channels. We are concerned that in the case of Hunter Biden the Department has an actual conflict of interest and certainly has the appearance of a conflict of interest that could prevent a fair and impartial investigation of his activities. You were nominated to your position by Hunter Biden's father and ultimately work for him.

President Trump and his Administration endured closer scrutiny from the Department of Justice for lesser accusations. The then-Attorney General appointed a Special Counsel to investigate President Trump based on the Steele Dossier: a salacious and unverified political smear campaign. It was argued then that a Special Counsel was necessary because the Department could not be seen to impartially investigate the sitting President. This same standard applies here.

Under Department of Justice regulations, you have the power to appoint a Special Counsel when it is determined that criminal investigation of a

person is warranted and that the investigation of that person “by a United States Attorney’s Office or litigating Division of the Department of Justice would present a conflict of interest for the Department or other extraordinary circumstances.”

We believe that in the case of Hunter Biden a Special Counsel must be appointed to preserve the integrity of this investigation and any subsequent prosecution. A Special Counsel would also ensure there is no bias in the investigation or undue influence from the White House.

As Attorney General, you are responsible for pursuing impartial justice regardless of political considerations. Trust in government institutions has eroded in recent years. You have the ability in this situation to help restore some of that trust for the American people. Under the extraordinary circumstances established by Hunter Biden and President Biden’s relationships, we ask that you appoint a Special Counsel to oversee this critical investigation.

Sincerely,



Tom Rice  
Member of Congress



Gregory F. Murphy, M.D.  
Member of Congress



Jim Banks  
Member of Congress



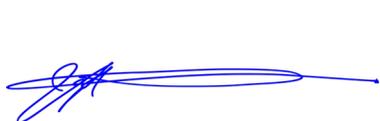
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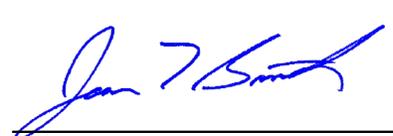
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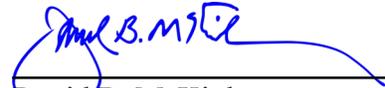
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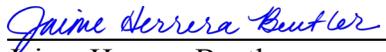
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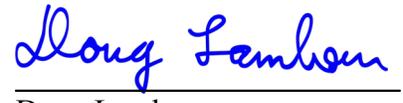
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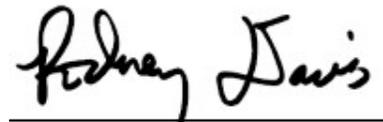
  
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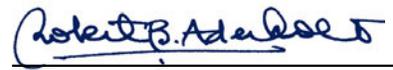
  
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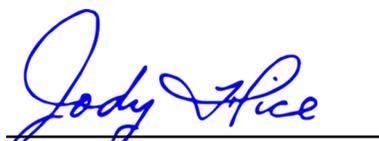
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Byron Donalds  
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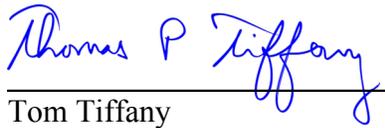
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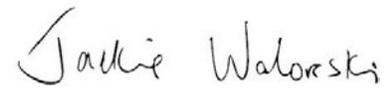
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John Rose  
Member of Congress



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Member of Congress



Blake D. Moore  
Member of Congress



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Matthew Rosendale, Sr.  
Member of Congress



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Guy Reschenthaler  
Member of Congress



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Pete Stauber  
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Mike Garcia  
Member of Congress



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Brian Fitzpatrick  
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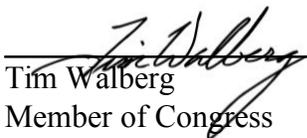
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Clay Higgins  
Member of Congress



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Michael Guest  
Member of Congress



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Tim Walberg  
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Jerry L. Carl  
Member of Congress



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Lance Gooden  
Member of Congress

**CQ Congressional Transcripts**

Oct. 21, 2021

Oct. 21, 2021 Final

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# House Judiciary Committee Holds Hearing on Justice Department Oversight

## LIST OF PANEL MEMBERS AND WITNESSES

JERROLD NADLER:

The House Committee on the Judiciary will come to order. Without objection, the chair is authorized to declare recesses of the community at any time. We welcome everyone to this morning's hearing and oversight of the Department of Justice. Before we begin, I would like to remind members that we have established an email address and distribution list dedicated to circulating exhibits motions or other written materials that members might want to offer as part of our hearing today.

If you would like to submit materials, please send them to the email address that has been previously distributed to your offices and we will circulate the materials to staff and members -- to members and staff as quickly as we can. I would also remind all members that guidance from the Office of Attending Physician states that face coverings are required for all meetings in an enclosed space such as committee hearings, except when you were recognized to speak.

I will now recognize myself for an opening statement. Good morning, Mr. Attorney General, and thank you for appearing before our committee today. When the Department of Justice performs as it should, it is a champion of the Bill of Rights, the protector of the rule of law, and the cornerstone of the institutions that make up our republic.

As attorney general, you have the responsibility to keep the department functioning at this high level, preserving the Constitution for our children and our children's children. You have assumed this enormous responsibility at a crossroads in our nation's history. For four years,

the democratic institutions you have sworn to protect, first as a judge, and now, as attorney general, were deeply undermined by the former president and his political enablers.

During that time, the Trump administration leveraged the department to protect the president and his friends, and to punish his enemies, both real and imagined. And when the former president lost the last election, he summoned the top law enforcement officers in the country and demanded that they use the full power of the federal government to install him for another term.

Trump's plan failed, at least in part, because at least some department officials refused to help him overturn the election. Even now, however, the ex-president and his allies continue to cast doubt on the last election and appear to be drafting a plan to overturn the next one. And next time, we may not be so lucky.

Your task as attorney general is unenviable, Judge Garland, because you must build back everything DOJ lost under the last administration: its self-confidence, its reputation in the eyes of the American people, and an institutional respect for our Constitution and the rule of law. And it is not enough just to right the ship, as the chief law enforcement officer of our nation, it is also your responsibility to help the country understand and reckon with the violence and the lawlessness of the last administration while maintaining the department's prosecutorial independence.

On January 6, insurgents stormed the Capitol building in what appears to be a preplanned, organized assault on our government, seeking to overturn the votes of their fellow Americans and believing in the lie told to them by President Trump and his followers. I commend the department for doing the important work of bringing those responsible for the violence of January 6 to justice.

I ask only that you continue to follow the facts and the law where they lead because although you have rightly brought hundreds of charges against those who physically trespassed in the Capitol, the evidence suggests that you will soon have some hard decisions to make about those who organized and incited the attack in the first place.

And we must acknowledge the simple truth that none of the individuals who attacked the Capitol that day appeared out of thin air. According to the Southern Poverty Law Center, membership in white nationalist groups grew 55 percent during the Trump presidency. Membership in hate groups, overall, remains historically high.

The COVID-19 epidemic, as with many national crises, brought out both the best and the worst of our fellow Americans. While everyday heroes struggled to save lives and keep people safe, anti-Asian hate crimes and hate incidents skyrocketed. Innocent people lost their lives and communities were shattered.

I know DOJ and its components are key to the Biden administration's National Strategy for Countering Violent Extremism, and I am looking forward to hearing more about how DOJ is working to prevent violent extremists from gaining further foothold in our country. This growth in extremist ideology is echoed in an epidemic of violence and intimidation directed at our health care professionals, teachers, essential workers, school board members, and election workers.

To be clear, we are a country that prizes democratic involvement at every level of government. The right to be heard, to have a voice, is guaranteed by our Constitution. But nobody has a right to threaten his fellow citizens with violence. You were absolutely right to ask the FBI and federal prosecutors to meet with local law enforcement agencies and set up dedicated lines of communication so that we can confront this spike in violence head-on. There is a broader pattern here.

In each of these cases, former President Trump's big lie, the rise in hate crimes against citizens of Asian descent, and the growing threats of violence against public servants, the same set of individuals have leveraged the same sorts of misinformation, stoked the same sorts of grievances, and shown remarkably little interest in solving our problems.

But this country, and your tenure as attorney general, cannot be defined only by the outrages of the last four years. We have much more to do to deliver on our nation's fundamental promise of liberty and justice for all. Black and brown Americans deserve to live in a country

where they can trust that their local police departments will protect, not endanger, their families.

I applaud you for taking steps to limit the use of chokeholds and no-knock warrants, and we must continue to work together to address the issues that allow for our criminal justice system to so disproportionately impact people of color. Across the country, state legislatures are restricting the right to vote in service of the most cynical political motives.

Your department has rightly stepped in to secure our next election, and Congress owes you a Voting Rights Restoration Act that will give you the tools you need to consign these nakedly undemocratic efforts to the dustbin of history where they belong. Similarly, Texas' law to ban abortion after six weeks and punish abortion providers is designed to restrict its citizens' constitutionally protected rights.

It does so by offering to pay a bounty to those who would turn in their neighbors, co-workers, or even strangers if they suspect someone violated the law or helped a woman get an abortion after six weeks. This deliberately creates an atmosphere of fear and suspicion that stops women from seeking help. It is a dangerous law that is repugnant to the Constitution, and I thank you for the department's swift action to protect these essential rights.

We cannot become a country where only some people in some states enjoy their constitutional rights. As attorney general, you have the power to help our country navigate the generational trauma of oppression and move past the challenges of the last four years. Thank you again for appearing before us today.

I look forward to your testimony. I now recognize the ranking member of the Judiciary Committee, the gentleman from Ohio, Mr. Jordan for his opening state.

JIM JORDAN:

Thank you, Mr. Chairman. The chairman just said the Trump DOJ was political and went after their opponents. Are you kidding me? Three weeks ago, the National School Boards Association writes President Biden asking him to involve the FBI and local school board

matters. Five days later, the attorney general of the United States does just that, does exactly what a political organization asked to be done.

Five days. We've sent -- Republicans on this committee have sent the attorney general 13 letters in the last six months, takes weeks and months to get a response. Eight of the letters, we've got nothing. They just gave us the finger saying, "We're not going to get back to you." And all our letters were actually sent to the attorney general.

Here's a letter sent to someone else asking for a specific thing to be done. And in five days, the attorney general does it. Here's what the October 4th memo said, "I'm directing the FBI to convene meetings with local leaders. These meetings will open dedicated lines of communication for threat reporting." Dedicated lines of communication for threat reporting, a snitch line on parents, started five days after a left-wing political organization asked for it. That's not political, I don't know what is. Where's the dedicated lines of communication with local leaders regarding our southern border, something that frankly is a federal matter?

Where's the dedicated lines of communication on violent crime in our cities? Violent crime that has went up in every major urban area where Democrats have defunded the police. Nope, can't do that. Can't do that. The Biden Justice Department is going to go after parents who object to some racist hate-America curriculum.

Nope, can't focus on the southern border where 1.7 million illegal encounters have happened this year alone. A record, a record number. MS-13 can just waltz right across the border, but the Department of Justice, they're going to open up a snitch line on parents. Think about this, the same FBI that Mr. Garland is directing to open dedicated lines of communication for reporting on parents, just a few years ago, spied on four American citizens associated with President Trump's campaign.

JIM JORDAN:

Clinton campaign hired Perkins Coie who hired Fusion GPS who hired Christopher Steele to put a bunch of garbage together, gave it to the FBI. They used that as the basis to open up an

investigation into a presidential campaign. Oh, and then investigation into a presidential campaign. Oh, and then there was Mr. Sussmann, Mr. Sussmann who worked at Perkins Coie, the firm hired by the Clinton campaign, He cut out all the middlemen. He just said, "I'm just going to go directly to the FBI," not just anyone at the FBI, who did he go to? Jim Baker, the chief counsel of the FBI, handed him a bunch of false information, told him false information, and, of course, he's been indicted by the special counsel.

A few weeks ago, the IG at the Department of Justice released a report that found that the FBI made over 200 errors, omissions, and lies in just 29 randomly selected FISA applications. But don't worry, the attorney general of the United States just put them in charge of a dedicated line of communication to report on parents who attend school board meetings.

Mr. Chairman, Americans are afraid. For the first time during my years in public office, first time, I talked to the good folks I get the privilege of representing in the 4th District of Ohio, folks all around the country, they tell me, for the first time, they fear their government. And, frankly, I think it's obviously -- obvious why.

Every single liberty we enjoy under the First Amendment has been assaulted over the last year. Stop and think about it. Americans were told you couldn't go to church, couldn't go to work, couldn't go to school. Small business owners were told, "You're not an essential business, close your doors," causing many of them to go bankrupt.

We were given curfews, stay-at-home orders. Last fall, in Ohio, you had to be in your home at 10. In Pennsylvania, when you were in your home, you had to wear a mask. In Vermont, when you were in your home, you didn't have to have to wear a mask because you weren't allowed to have friends and family over.

And, of course, there's always a double standard with these folks. Folks who make the rules never seem to follow them. And now, the Biden administration says get a vaccine or lose your job. Even if you've had COVID and have natural immunity, get a vaccine or you will lose your job. Oh, I almost forgot. The Biden administration also wants another dedicated line of communication for reporting.

They want a second snitch line. They want banks to report on every single transaction over \$600 for every single American to the IRS. The IRS, that agency with its stellar record of customer service, the IRS, you know, the same IRS that targeted conservatives the last time Joe Biden was in the executive branch.

Jefferson said once, "Tyranny is when the people fear the government." We are there. Sadly, we are there, but I don't think, I don't think the good people, I don't think the good people of this great country are going to cower and hide. I think your memo, Mr. Attorney General, was the last straw. I think it was the catalyst for a great awakening that is just getting started.

Pilots at Southwest Airlines, the Chicago police union, parents at school board meetings, Americans are pushing back because Americans value freedom. A few weeks ago, a few weeks ago, Terry McAuliffe said this, "I don't think parents should be telling schools what to teach." When the government tells parents, "We're smarter than you," Americans aren't going to tolerate it. When the attorney general of the United States sets up a snitch line on parents, Americans aren't going to tolerate it. I think they're going to stand up to this accelerated march to communism that we now see.

America is going to fight the good fight, they're going to finish the course, they're going to keep the faith because Americans value freedom. Mr. Chairman, we have a video we'd like to play.

MADELEINE DEAN:

Mr. Chairman?

JIM JORDAN:

We have a video we'd like to play.

MADELEINE DEAN:

Mr. Chairman --

JERROLD NADLER:

Ms. Dean?

MADELEINE DEAN:

I object.

JERROLD NADLER:

What privilege does Ms. Dean seek recognition?

MADELEINE DEAN:

I object. I'm reserving my right to object to the video.

JIM JORDAN:

Why would --

MADELEINE DEAN:

May I inquire as to whether the gentleman has followed the Judiciary Committee's AV protocol by providing 48 hours' notice to the committee's clerk that he was going to use a video?

JIM JORDAN:

We provided notice. Well, first of all, there's no 48-hour rule, that's not in the committee rules. Second, we did let the committee staff -- the majority know that we had a video, and we gave the video to him this morning.

JERROLD NADLER:

Responding to the gentlelady's request, he did not. He did not supply the 48 hours rule --

JIM JORDAN:

Mr. Chairman --

MADELEINE DEAN:

I insist -- then I insist --

JERROLD NADLER:

Forty-eight hours' notice required by the rule.

JIM JORDAN:

Mr. Chairman --

MADELEINE DEAN:

Then I insist on my objection. Having failed to follow the bipartisan protocol, I insist on my objection. I object that --

JERROLD NADLER:

An objection has been heard. The video will not be shown.

JIM JORDAN:

I appeal the ruling of the chair.

UNKNOWN:

If a ruling has been made, there's been an objection.

JERROLD NADLER:

There's been no ruling that was -- there has been no ruling that was made -- there's been an objection.

JIM JORDAN:

Mr. Chairman, I'd like to speak regarding the --

JERROLD NADLER:

No, that's out of order. This is not debatable.

JIM JORDAN:

What's out of order is there is no rule that requires a 48-hour notice, that's what's out of order.

JERROLD NADLER:

There is such a rule.

JIM JORDAN:

There is not, not in our rules.

UNKNOWN:

Unless objected to.

CHIP ROY:

Mr. Chairman, what are you afraid of?

JERROLD NADLER:

There is such a rule. You objected last year. You were told there was such a rule.

CHIP ROY:

Is -- Mr. Chairman, what are our colleagues on the other side of the aisle afraid of?

UNKNOWN:

The gentleman was recognized --

CHIP ROY:

Are they afraid of videos of parents?

UNKNOWN:

[Inaudible] opening statement.

JERROLD NADLER:

The gentleman was recognized for his opening statement. Has he finished with his opening statement?

CHIP ROY:

Overruling any statement?

JIM JORDAN:

I'm not finished with all of this [Ph].

CHIP ROY:

I seek recognition for a moment for an inquiry.

JIM JORDAN:

It's not a rule --

JERROLD NADLER:

The gentleman can proceed with his opening statement.

JIM JORDAN:

It's not a rule, it's -- it's what you said. I think the term used is, it's protocol. [Inaudible]

JERROLD NADLER:

The gentlewomen objected --

JIM JORDAN:

[Inaudible] conduct of the committee, rules do. That's not a rule. We had a video. We understood you had a video.

CHIP ROY:

I seek recognition for a parliamentary inquiry.

JERROLD NADLER:

The gentlewoman objected because you failed to follow the rule. Her objection is sustained.

CHIP ROY:

Mr. Chairman, I seek --

JERROLD NADLER:

The gentleman have anything else --

CHIP ROY:

I seek recognition for a parliamentary inquiry.

JIM JORDAN:

We had -- it's -- I'll yield back in just a second and particularly if you're going to recognize this.

JERROLD NADLER:

The gentleman yields back?

JIM JORDAN:

No, I haven't yielded back yet. I said I will in a second. It's a video about parents at school board meetings. Moms and dads speaking at school board meetings, and you guys aren't going to let us play it?

JERROLD NADLER:

The -- it will not be --

JIM JORDAN:

[Inaudible]

JERROLD NADLER:

An objection has been heard that you failed to give the 48 hours request required by the rule. And therefore --

CHIP ROY:

What rule? Mr. Chairman, what rule? Parliamentary inquiry, what rule?

JIM JORDAN:

You have to say what rule.

UNKNOWN:

[Inaudible] by the rule.

CHIP ROY:

Please present the rule.

JERROLD NADLER:

In the case of audiovisual materials, under the leadership of my predecessor, Chairman Goodlatte, a Republican, the committee developed a written protocol for managing the use of audiovisual materials in our hearings.

CHIP ROY:

But in protocol.

JERROLD NADLER:

This protocol simply requires members to provide 48 hours' notice they are going to use audiovisual materials. Until recently, this protocol was not controversial. It was a helpful tool we use to manage hearings and make sure videos played properly. The gentlewoman has objected to the materials because the gentleman did not provide the agreed-upon 48 hours' notice.

Playing audiovisual materials during a committee hearing is the equivalent of introducing printed materials into the hearing record. In the normal course of business, we do not object to each other's requests, but members have the right to object if they so choose, and an objection has been heard.

CHIP ROY:

Mr. Chairman, did we ever vote on that?

UNKNOWN:

The gentleman is recognized.

CHIP ROY:

That's a clever written statement, but our -- a protocol is not a rule.

JERROLD NADLER:

The gentleman was recognized for his opening statement.

UNKNOWN:

[Inaudible]

JIM JORDAN:

Mr. Chairman, obviously, you're not going to let us play it. Obviously, you're going to censor us, which is sort of the conduct of the left today, it seems, and Democrats today, it seems. I yield back the balance of my time.

JERROLD NADLER:

The gentleman yields back. A point of order -- the gentleman was saying his point of order.

That is not a point of order. As I said before, playing audiovisual materials during a committee hearing is the equivalent of introducing printed materials into the hearing record. In the normal course of business, we do not object to each other's requests, but members have the right to object if they so choose, and an objection has been heard.

UNKNOWN:

That's not available currently. The gentleman has not made available [Inaudible]

JERROLD NADLER:

The gentleman has not made a valid point of order.

UNKNOWN:

Now, we recognize the [Inaudible]

JERROLD NADLER:

The gentleman [Inaudible]

UNKNOWN:

Move the table, move the table. There's nothing to appeal.

JERROLD NADLER:

There's nothing to appeal. There's been no ruling. There's been no ruling.

There's just been an objection, and the objection has been heard.

Now, we'll introduce the attorney general. I will now introduce today's witness. Merrick Garland was sworn in as the 86th attorney general of the United States in March 11th, 2021. Immediately preceding his confirmation as attorney general, Mr. Garland was a judge of the United States Court of Appeals for the District of Columbia Circuit.

He was appointed to that position in 1997, served as chief judge of the circuit from 2013 to 2020, and served as chair of the Executive Committee of the Judicial Conference of the United States from 2017 until 2020. In 2016, President Obama nominated him for the position of associate justice of the United States Supreme Court.

Before becoming a federal judge, Attorney General Garland spent a substantial part of his professional life at the Department of Justice, including as special assistant to the attorney general, assistant United States attorney, deputy assistant attorney general in the Criminal Division, and principal associate deputy attorney general.

Earlier in his career, Attorney General Garland was in private practice, and he also taught at Harvard Law School. He earned both his undergraduate and law degrees from Harvard University. Following law school, he clerked for Judge Henry Friendly at the United States Court of Appeals for the 2nd Circuit and for Supreme Court Justice William Brennan.

JERROLD NADLER:

We welcome the attorney general, and we thank him for participating today. And if you'd please rise, I would begin by swearing you in. Raise your right hand. Do you swear affirm under penalty of perjury, that the testimony you're about to give is true and correct to the

best of your knowledge, information and belief, so help you God. Let the record show that the witnesses answered in the affirmative. Thank you and please be seated. Please note that your written statement will be entered into the record in its entirety.

Accordingly, I ask that you summarize your testimony in five minutes. To help you stay within that time limit, there's a timing light on your table. When the light switches from green to yellow, you have one minute to conclude your testimony. When the light turns red, it signals your five minutes have expired.

Attorney General Garland, you may begin.

MERRICK GARLAND:

Good morning, Chairman Nadler, Ranking Member Jordan, distinguished members of this committee. Thank you for the opportunity to appear before you today. My address to all Justice Department employees on my first day in office, I spoke about 3 co-equal priorities that should guide the department's work, upholding the rule of law, keeping our country safe and protecting civil rights.

The first core priority, upholding the rule of law, is rooted in the recognition that to succeed and retain the trust of the American people, the Justice Department must adhere to the norms that have been part of its DNA, since Edward Levi's tenure as the first post-Watergate attorney general. Those norms of independence from improper influence of the principled exercise of discretion and of treating like cases alike define who we are as public servants.

Over the past seven months that I have served as attorney general, the department has reaffirmed and where appropriate, updated and strengthened policies that are foundational for these norms. For example, we strengthened our policy governing communications between the Justice Department and the White House.

That policy is designed to protect the department's criminal and civil law enforcement decisions and its legal judgments from partisan or other inappropriate influence. We also issued a policy to better protect the freedom and independence of the press by restricting the

use of compulsory process to obtain information from or records of members of the news media.

The second priority is keeping our country safe from all threats, foreign and domestic, while also protecting our civil liberties. We are strengthening our 200 Joint Terrorism Task Forces, which are the essential hubs for international and domestic counterterrorism cooperation across all levels of government.

For FY 22, we are seeking more than \$1.5 billion, a 12 percent increase for our counterterrorism work. We are also taking aggressive steps to counter cyberthreats, whether from nation states, terrorists or common criminals. In April, we launched both a comprehensive cyber review and a Ransomware and Digital Extortion Task Force.

In June, we seized a \$2.3 million ransom payment made in bitcoin to the group that targeted Colonial Pipeline. Keeping our country safe also requires reducing violent crime and gun violence. In May, we announced a comprehensive violent crime strategy, which deploys all of our relevant departmental components to those ends.

We also launched five cross jurisdictional strike forces to disrupt illegal firearms trafficking in key corridors across the country. And to support local police departments and help them build trust with the communities they serve. Our FY 22 budget requests over \$1 billion for grants. We are likewise committed to keeping our country safe from violent drug trafficking networks, that are among other things fueling the overdose epidemic.

Opioids including illegal fentanyl caused nearly 70,000 fatal overdose dose address deaths in 2020. We will continue to use all resources at our disposal to save lives. Finally, keeping our country safe requires protecting its democratic institutions, including the one we sit in today from violent attack.

As the committee is well aware, the department is engaged in one of the most sweeping investigations in its history, in connection with the January 6th attack on the Capitol. The department's third core priority is protecting civil rights. This was a founding purpose when the Justice Department was established in 1870. Today, the Civil Rights Division's work

remains vital to safeguarding voting rights, prosecuting hate crimes, ensuring constitutional policing and stopping unlawful discrimination.

This year we doubled the size of the Civil Rights Division's voting section, and our FY 22 budget seeks the largest ever increase for the division totaling more than 15 percent. We have appointed department wide coordinators for our hate crimes work, and we have stepped up our support for the Community Relations Service, and the department wide efforts to advance environmental justice and tackle climate change.

We are also revitalizing and expanding our work to ensure equal access to justice. In the days ahead, we look forward to working with Congress to restore a standalone access to justice office within the department, dedicated to addressing the most urgent legal needs of communities across America. In addition to these core priorities, another important area of departmental focus, is ensuring antitrust enforcement, reinvigorating that enforcement, combating fraud and protecting consumers.

We are aggressively enforcing our antitrust laws by challenging anti-competitive mergers and exclusionary conduct, and by prosecuting price fixing and allocation schemes, that harm both consumers and workers. In FY 22, we are seeking additional resources to reinvigorate antitrust enforcement across the board.

We also stood up the COVID-19 Fraud Enforcement Task Force, to bring to justice those who defrauded the government of federal dollars meant for the most vulnerable among us. In sum, in seven months, the Justice Department has accomplished a lot of important work for the American people and there is much more to be done.

Thank you for the opportunity to testify today. I look forward to your questions.

JERROLD NADLER:

Thank you for your testimony. We will now proceed under the five-minute rule with questions, and I will recognize myself to begin for five minutes. Mr. Attorney General, in the 2013 decision, *Shelby County v. Holder*, the Supreme Court gutted Section 5 of the Voting Rights Act, rendering its preclearance provision inoperative.

As a direct result of this decision, the right to vote is come under a renewed and steady assault. And the states have spent the past eight years enacting a slew of barriers to voting the target or impact communities of color and other historically disenfranchised groups. Before this committee in August, Assistant Attorney General, Kristen Clarke testified that, quote, "Section 5 of the Voting Rights Act was truly the heart of the act and called it the department's most important tool for safeguarding voting rights in our country". Why is Section 5 preclearance so crucial to combating discrimination -- discriminatory voting practices?

MERRICK GARLAND:

Thank you, Mr. Chairman. Voting, the right to vote is a fundamental aspect of our democracy, in many ways it is the right from which all of the rights occur. The Voting Rights Act was a gem of American legislation as President Ronald Reagan said, and as all other presidents on both sides of the aisle have said.

A key part of that provision was Section 5, as you said, this was a preclearance provision, which required in specified states where there had been discriminatory practices, that provisions for changes in patterns or practices of voting should be submitted to the Department for preclearance to determine whether they violated the act.

There was another alternative if state did not like the result from the Justice Department, it could go to a court and get a resolution there. But the great idea of preclearance was to allow advance, review before these things went into effect, rather than require the Justice Department on a one-by-one basis after the fact, makes it extremely difficult to attack unlawful prescriptions on voting practices.

JERROLD NADLER:

Thank you. Attorney -- Assistant Attorney General Clarke testified that, Section 2 is known - is no substitute for the important swift preemptive review that was provided by way of Section 5 preclearance process. The full impact of the Supreme Court's recent decision in Brnovich vs DNC on Section 2 remains to be seen.

However, in the absence of an operation of Section 5 preclearance regime, what steps is the Justice Department taking to increase enforcement voting rights under Section 2?

MERRICK GARLAND:

So, Section 2 is a remaining tool, it's extraordinarily important and it does give us some impact. In order to better effectuate that provision, we have doubled the size of the voting rights section because it will take more people to evaluate state laws on a one-by-one basis, so we are going about doing that.

We have brought one case as, as you know, with respect to changes in Georgia, we are looking carefully at other states and we are looking carefully at the redistricting, which is occurring as we speak now as a result of the decennial census, we continue to do that. And vigorously make sure that Section 2 is appropriately enforced.

JERROLD NADLER:

And if you should find that the state's reapportionment, for example, was unconstitutional and you sued, it could take six or eight years for those suits to be resolved as we have seen. And that's one reason -- another reason for the necessity for Section 5 preclearance. My time is short, so I have only one last question for you. The country and the Congress is still reeling from the events of January 6th, and the select committee is diligently pursuing its investigation into the insurrection.

This week, Chairman Thompson and his colleagues voted to hold in contempt Steve Bannon, who failed to comply with the select committee subpoenas. And the measures -- and the measure will be taken up by the House later today. Unfortunately, the actions of individuals like Mr. Bannon are not new to us. Many committees, including this one, repeatedly face obstruction from the prior administration and the former president's loyal allies.

Congress, however, is not an enforcement body and looks to the department to handle criminal matters when appropriate. So, I ask you, Mr. Attorney General, regardless of

politics, will the department follow the facts in the law and expeditiously consider the referrals put forth by the select committee if and when they are approved by the full House?

MERRICK GARLAND:

Well, the department recognizes the important oversight role that this committee, the House of Representatives and the Senate, play with respect to the executive branch. I will say what a spokesperson for the US Attorney's Office in the District of Columbia said, I think yesterday or the day before, the House of Representatives votes for referral of the contempt charge.

The Department of Justice will do what it always does in such circumstances, will apply the facts in the law, and make a decision consistent with the principles of prosecution.

JERROLD NADLER:

Thank you very much.

JIM JORDAN:

The gentleman [Inaudible] Pull the mic a little closer, Mr. Attorney General.

MERRICK GARLAND:

Oh, I'm sorry.

JIM JORDAN:

Mr. Chabot [Inaudible]

MERRICK GARLAND:

Is that better?

JERROLD NADLER:

Mr. Chabot?

MERRICK GARLAND:

Sure, of course.

JIM JORDAN:

Mr. Chabot.

JERROLD NADLER:

Mr. Chabot.

STEVE CHABOT:

Thank you. Mr. Chairman, I'd start by asking unanimous consent that an op-ed that appeared in last week's Wall Street Journal by the author of the "Patriot Act," Mr. Sensenbrenner, former chairman of this committee, entitled The Patriot Act Wasn't Meant to Target Parents, be entered into the record.

JERROLD NADLER:

Without objection.

STEVE CHABOT:

Thank you. Mr. Attorney General, most of us had other jobs before we got here to Congress. For example, I practiced law for quite a few years. I was a county commissioner. I was a member of Cincinnati City Council, and before that, I was a schoolteacher in Cincinnati, in the inner-city. All the students in the school were African American, and I taught the seventh and eighth grade.

It was my experience that the kids who did the best were the ones who had parental involvement in their education. Does that make sense to you?

MERRICK GARLAND:

Yes, I think parental involvement is very important in education.

STEVE CHABOT:

Thank you. Now, with that in mind, having parents involved in their children's education, I have to say I find it deeply disturbing that the National School Board Association convinced the Biden administration to sic you and your Justice Department, the FBI, the full power of the federal law enforcement in this country on involved parents as if they were domestic terrorists.

One of the tools in your arsenal of weapons, of course, is the Patriot Act that I just mentioned. Not many current members of this committee were here when we passed the Patriot Act, but I was. And, Mr. Chairman, you were too. And I remember clearly that we were both concerned about potential abuse of this new law enforcement tool.

And that's why, for example, we insisted on sunset provisions on some aspects of the Patriot Act. But I can tell you, not in a million years did we dream that, one day, we'd see the Justice Department treat American parents as domestic terrorists. And in a primer on domestic terrorism issued last November by none other than the FBI, Mr. Attorney General -- the FBI explicitly stated that, "Under FBI policy and federal law, no investigative activity related to domestic terrorism may be initiated based on First Amendment activity." Now, parents speaking up at a school board meeting against the teaching of critical race theory or anything else that they want to talk about is clearly a First Amendment activity.

Now, of course, school board meetings can sometimes be highly emotional affairs. Parents do care about their kids' education, how they're being taught, what they're being taught. And these parents have every right to be heard, even if former Virginia governor, Terry McAuliffe, thinks otherwise. Now, no one has the right to be violent or threaten violence.

And if anyone does that, they can be dealt with by security or by local law enforcement. But we don't need the vast power of the federal government throwing its weight around. We don't need you, your Justice Department, or the FBI trampling on the rights of American parents who just want the best possible education for their children.

So, Mr. Attorney General, let me ask you this. According to the Sarasota Herald-Tribune, one example of a so-called terrorist incident was apparent, merely questioning whether school board members had earned their high school diplomas. Now, that might have been rude, but does that seem like an act of domestic terrorism that you or your Justice Department ought to be investigating?

MERRICK GARLAND:

Absolutely not. And I want to be clear, the Justice Department supports and defends the First Amendment right of parents to complain as vociferously as they wish about the education of their children, about the curriculum taught in the schools. That is not what the memorandum is about at all, nor does it use the words domestic terrorism or Patriot Act. Like you, I can't imagine any circumstance in which the Patriot Act would be used in the circumstances of parents complaining about their children, nor can I imagine a circumstance where they would be labeled as domestic terrorism.

STEVE CHABOT:

Thank you. I'm nearly out of time. So, let me just conclude with this. We ought to be encouraging parents to be actively involved in the education of their children. After all, if our children are to be competitive with the children of Japan and South Korea and India, and, yes, China for tomorrow's jobs, they better be getting a top-notch education in this country.

Let's support and welcome parental involvement, not use the vast powers of federal law enforcement to target parents as domestic terrorists. And I yield back.

JERROLD NADLER:

The gentleman, yields back. Once again, I would remind all members that guidance from the Office of Attending Physician states that face coverings are required for all meetings in an enclosed space, such as committee hearings, except when you're recognized to speak. And that means you, Jim and Marjorie and Matt, and a lot of other people I can't recognize because of distance, etc.

So, please, everyone, observe that rule. I now recognize Ms. Lofgren for five minutes.

ZOE LOFGREN:

Thank you, Mr. Chairman, and thank you, Mr. Attorney General, for being here this morning. At your confirmation hearing, you characterized what happened on January 6th as, "a heinous attack that sought to disrupt a cornerstone of our democracy." I agree with that. And in your written testimony today, you point out that the Intelligence Community has identified domestic violent extremists as the primary threat to our nation and further note that your department is committed to keeping our country safe by protecting our democratic institutions.

I would note that protecting our democratic institutions is not limited to the Department of Justice. The Congress also has that obligation to protect our democracy. To that end, we have a select committee that is reviewing the events leading up to January 6th and has a legislative mandate to devise legislative recommendations to prevent future acts of domestic extremist violence, to strengthen the resiliency of our nation's democratic institutions to propose laws that will keep us -- our democratic systems safer.

Now, with that background in mind, we are, as you are aware, seeking information to inform us to perform that role. Before you were AG, you were a judge. And I note that the -- in your judicial role, in 2004, there was a case *Judicial Watch v. the Department of Justice* where the court ruled, "Presidential communications privilege applies only to documents solicited and received by the president or his immediate White House advisers who have broad and significant responsibility for investigating and formulating the advice to be given to the president." I think you're familiar with that case.

Do you think that's still good law?

MERRICK GARLAND:

Yeah, I think the DC Circuit is a good source of law.

ZOE LOFGREN:

In the Supreme Court case, *Nixon v. Administrator of GSA* 1974. The *Judicial Watch* case actually relied on that precedent. That case said that the communications to advise the president would be only on official government matters. Do you think that's still good law?

MERRICK GARLAND:

I think the Supreme Court's opinion is still good law until it's reversed. Well, I see no sign that it's going to be reversed.

ZOE LOFGREN:

In the -- we were here in the Judiciary Committee pursuing testimony from Mr. McGahn. And the court wrote in the 2019 case, "To make the point as plain as possible, it is clear to this court for the reasons explained above that with respect to senior-level aides, absolute immunity from compelled congressional process simply does not exist." Do you think that's still good law?

MERRICK GARLAND:

I believe the McGahn case is still good law.

ZOE LOFGREN:

Recently, the Department of Justice informed a federal district court that, "Conspiring to prevent the lawful certification of the 2020 election and to injure members of Congress and inciting the riot at the Capitol would plainly fall outside the scope of employment of an officer or employee of the United States of America." Since your department filed that, I assume you agree with that.

MERRICK GARLAND:

Yes.

ZOE LOFGREN:

So, I just want to mention. I'm not going to ask you about what your department will do if the House of Representatives adopts a referral to your department. Because I take you at your word that you will follow the precedent, you will follow the law in the ordinary course of events. I would just note that your defense of the rule of law for the Department of Justice and your standing for the rule of law also means the rule of law for the Congress of the United States.

Article 1 has -- was the first article for a reason. We have a role to play in making sure that our democratic institutions are defended. I thank you for your service to our country and I look forward to your deliberations so that the Congress of the United States can play its rightful role in defending our institutions and adopting legislation that will strengthen our institutions and preserve and protect our Democratic Republic.

With that, Mr. Chairman, I yield back.

JERROLD NADLER:

The gentlelady yields back. Mr. Gohmert.

LOUIE GOHMERT:

Thank you, Mr. Chairman. And thank you, Judge Garland, for being here. You said a month ago you couldn't imagine a parent being labeled a domestic terrorist, but parents all over the country believe that's exactly what you labeled them by your memo indicating you were going to get involved in board meetings -- school board meetings because of the threat of domestic terrorism.

So, if you can't imagine a parent being labeled a domestic terrorist, I would encourage you to redo your memo so it's not so perceived as being so threatening to people concerned about their kids' education. But I want to take you to January 6. It's a very common topic here for people. Has any defendant involved in the January 6 events been charged with insurrection?

MERRICK GARLAND:

I don't believe so.

LOUIE GOHMERT:

Well, that is the word most used by Democrats here on Capitol Hill about January 6, but no one has been charged with it that we could find either. How many protesters on January 6 were charged with obstructing an official proceeding for four to six hours? Do you know?

MERRICK GARLAND:

I don't know the exact number. Obviously, there are 650 who were arrested, some for assaulting officers, some for obstructing proceedings, some for conspiring to obstruct proceedings. I can get you the numbers for each of the specific.

LOUIE GOHMERT:

Thank you. I'd be interested in getting that number. But regarding the man who broke the glass in the two doors there at the speaker's lobby when the two Capitol police who've been standing there moved to the side to allow them access, were any of those people who broke glass and did damage to those doors working for the FBI or other federal law enforcement entities?

MERRICK GARLAND:

This is an ongoing criminal investigation and I'm really not at liberty to discuss. There have been some filings of -- in the nature of discovery, which has been provided to the defendants. But other than that, I can't discuss this now.

LOUIE GOHMERT:

Well, we've seen some of those filings that talk about persons 1 through 20 something. Were those persons, one, designated by number? Were those people that were employed by the FBI or federal entities or were they confidential informants?

MERRICK GARLAND:

Again, I don't know those specifics but I do not believe that any of the people you're mentioning charged in the indictment were either one.

LOUIE GOHMERT:

Was a determination ever made as to who repeatedly struck Rosanne Boyland in the head with a rod before she died?

MERRICK GARLAND:

Again, I think this was a matter that was investigated by the US attorney's office and --

LOUIE GOHMERT:

Well, there's a witness on video saying that it was a DC metro policeman. I didn't know if you'd been able to confirm or deny that. Well, on June 22nd of 2016, Judge, most of the Democrat members of Congress took over the House floor. And for the first time in American history, members of Congress obstructed official proceedings, not for four to six hours but for virtually 26 hours.

Not just violating over a dozen House rules, but actually committing the felony that some of the January 6 people are charged with. That was during the Obama administration, nobody has been charged. And those kind of things where you let Democrat members of Congress off for the very thing that you're viciously going after.

People that were protesting on January 6 gives people the indication that there is a two-tiered justice system here in America. You know well, you've been a circuit court judge, you know well that confinement -- pretrial confinement is not ever to be used as punishment. Yet there are people -- and understand as a former tough law and order judge, I would sentence everyone regardless of their party who did violence or committed crimes on January 6 to appropriate sentences.

But for heaven's sake, they are being abused in the DC jail. Have you done any inspection over there of the DC jail since your department has some jurisdiction?

MERRICK GARLAND:

So, my understanding is Judge Lamberth, who I respect very much as --

LOUIE GOHMERT:

Yeah. He held the warden in contempt, but we haven't seen --

MERRICK GARLAND:

Well, he --

LOUIE GOHMERT:

Improvement.

MERRICK GARLAND:

He asked for a review and the Justice Department is conducting a review. The marshals did an inspection the other day, which was reported in the news. And the civil rights division is examining the circumstances. This is the District of Columbia jail. It's not the Bureau of Prisons, you understand.

JERROLD NADLER:

The time of the gentleman has expired. As I've explained to members on many occasions, I view the wearing of face masks as a safety issue, and therefore, is an important matter of order and decorum. Because I am responsible for preserving order and decorum in this committee, I am requiring members and staff attending this hearing to wear face masks.

I came to this decision after the Office of the Attending Physician releases guidance requiring masks in committee hearings some time ago. I note that some members are still not wearing masks. The requirement is that members where they must at all times when

they are not speaking. I will take members in compliance with this rule into consideration when they seek recognition.

I see Mr. Roy, for example. I now recognize Ms. Jackson Lee.

SHEILA JACKSON LEE:

Thank you, Mr. Chairman. General, let me thank you for your enormous work that the department is doing. I have a series of questions. Help me out in your answers so that I can secure responses. As you well know, the Senate Judiciary Committee did an outstanding report on how the former president and his allies pressured DOJ to overturn the 2020 election.

And in particular, they noted a series of dates in which they assess that the former president grossly abused the power of the presidency. He also arguably violated the criminal provisions of the Hatch Act, which prevents any person from commanding federal government employees to engage in political activity.

Will there be any reason that the DOJ would not further research or determine prospectively that the former president could be prosecuted under the Hatch Act?

MERRICK GARLAND:

Congressman, the Justice Department has a very longstanding policy of not commenting on potential investigations or actual or pending investigations. This is a foundational element of our rule of law and norms. It's to protect everyone no matter what their position, former president, current president, congresswoman, senator, or ordinary citizen. And I'm going to have to rest on that, that I can't comment on --

SHEILA JACKSON LEE:

Thank you. I take that there's no prohibition, but thank you so very much. The Justice Department investigated the Texas five secure juvenile facilities, finding sexual abuse. Can I

quickly get an answer? Working with the Justice Department, encouraging standardized conditions for these facilities since the facts were gross in terms of the abuse of those children, I think you're investigating Georgia as well, Mr. General?

MERRICK GARLAND:

So, we are investigating Texas and that was announced, and I believe the governor welcomed that investigation, and that's being done by a combination of the Civil Rights Division and all four US Attorney's Offices in Texas.

SHEILA JACKSON LEE:

Thank you, sir. With respect to compassionate release, which came about through the CARES Act, we found that in the BOP, 39 percent of American federal prisoners contracted COVID-19. Two thousand -- according to a New York Times article, 2,700 prisoners have died. There is a potential of the -- of compassionate release being eliminated and those out, but also, I found that it's not being utilized appropriately now.

The attorney -- inspector general said that BOP was not prepared with the issue -- was not prepared to deal with the issue of compassionate release on a granular level, and, of course, the director himself said prisons are not made for social distancing. My question is, will you monitor what is going on with compassionate release either in terms of people returning and or the utilization -- the fair utilization of compassionate release in the BOP under this issue of COVID?

MERRICK GARLAND:

Yes. Congresswoman, the answer is yes. Obviously, the pandemic was not something that the Bureau of Prisons was prepared for or, frankly, most American institutions were not prepared for. It created a lot of difficulties. It did lead to compassionate release leaving people in home confinement. I don't know the specifics that you're mentioning, but we are certainly reviewing carefully, how the bureau is responding now to this dangerous circumstance of COVID-19.

SHEILA JACKSON LEE:

Thank you, General. We found as it relates to the women in prison, 6,600 are serving huge sentences of life with parole, life without parole, virtual life, etc. Eighty six percent of women in jail have experienced sexual violence, 77 percent have experienced intimate partner violence. This has given that report as it relates to women of color.

Can we have a more vigorous trauma mental health protocol for women in prison --

MERRICK GARLAND:

So, I think --

SHEILA JACKSON LEE:

Federal.

MERRICK GARLAND:

Federal, yeah. So, I think an important part of the First Step Act requires us to be careful about those things, and we've asked for additional funding for that purpose. And the deputy attorney general is monitoring the way in which the Bureau of Prisons spends that money and establishes those programs.

SHEILA JACKSON LEE:

Thank you. Can I quickly ask, would VAWA, which has not been passed by the House, would that passage help you do even a more effective job dealing with violence against women like domestic violence, which is Domestic Violence Awareness Month this month, would it be -- help you be more effective in prosecuting moving forward?

MERRICK GARLAND:

Yes, it would. We have -- strongly supportive of reauthorization of the Violence Against Women Act.

SHEILA JACKSON LEE:

I'm going to make just a few statements. Gun violence in children has accelerated in a 19-year high in 2017. I would appreciate talking further about greater prosecution on gun trafficking and the proliferation of guns. Secondly, hate crimes has surged as well, and we want to hear about the resources that are being used for hate crimes.

And then, as you well know, that we have been the poster child in Texas for racial gerrymandering, and let me thank you for the work you've done in Section 2. Just want to make sure that this is on the radar screen of the Justice Department, dealing with that issue of redistricting. But my question finally is the Texas abortion law.

One of the worst components is the stalking of women --

JERROLD NADLER:

The gentlelady's time has expired.

SHEILA JACKSON LEE:

And so, I'm asking whether or not --

JERROLD NADLER:

The gentlelady's time has expired. Mr. Owens.

BURGESS OWENS:

Thank you, Mr. Chairman. Thank you, Attorney General Garland, for coming before our committee today. I'd like to take every opportunity that I have to share with our nation, the making of a great community. I grew up in one in the Deep South 1960s. Though in the depths of Jim Crow segregation, it was community that produced giant Americans like Clarence Thomas, Condoleezza Rice, Thomas Sowell, Walter Williams, and Colin Powell.

This was not by accident, it was not -- and it was also not rare. It was community of faith, family, free market, and education. Education was the very core of our success. I was raised in a home of teachers. My dad was a college professor for 40 years, my mom, a junior high school teacher. They were trusted to do what teachers have done throughout our history; to teach children how to read, write, and subtract, and to think critically.

Success in education was always based on parent -- parental involvement. It was both expected and welcomed. In my great state of Utah, this expectation of parents have not changed. We do not expect nor will we tolerate leftist teaching of our children behind our backs, the evil of CRT, how to hate our country and hate others based on skin color.

Some of the most recent actions that the Department of Justice have taken against parents are concerning, and I'd like to direct my questions around that topic. Similar questions have been asked and I do want to make sure I make it very clear that -- to some of my constituents, some of the concerns I have.

We can all agree that true threats and violence at school board meetings are inexcusable. Attorney General Garland, do you agree with the National School Board Association that parents who attend school board meetings and speak passionately against the inclusion of divisive programs like critical race theory should be characterized as domestic terrorists?

MERRICK GARLAND:

I do not believe that parents who testify, speak, argue with, complain about school boards and schools should be classified as domestic terrorists or any kind of criminals. Parents have been complaining about the education of their children and about school boards since there were such things as school boards and public education.

This is totally protected by the First Amendment. I take your point that true threats of violence are not protected by the First Amendment. Those are the things we're worried about here.

BURGESS OWENS:

OK. Can I --

MERRICK GARLAND:

And those are the only things we're worried about here.

BURGESS OWENS:

OK. Thank you so much for that. Is there legal precedent for the Department of Justice to investigate peaceful protests or parent -- parental involvement at public schools' meetings?

MERRICK GARLAND:

Just to say again, we are not investigating peaceful protest or parent involvement in school board meetings. There is no precedent for doing that, and we would never do that. We are only concerned about violence, threats of violence against school administrators, teachers, staff, people like your mother, a teacher.

That is what we're worried about.

BURGESS OWENS:

OK.

MERRICK GARLAND:

We are worried about that across the board.

BURGESS OWENS:

Thank you.

MERRICK GARLAND:

We're worried about threats against members of Congress. We're worried about threats against police.

BURGESS OWENS:

Thank you very much. Thank you much for that. I'm also a member of the Education and Labor Committee. On October 7, Republican members of this committee sent you a letter, you and Secretary Cardona, expressing your concern about disparaging remarks that the secretary had made against parents. In this letter, we request that you brief the Education and Labor Committee before taking action on your threats to parents' lawful expression of legitimate concerns.

Have you received that letter and do you plan on testifying before the House Education and Labor Committee?

MERRICK GARLAND:

I'm sorry, I don't recollect the letter, but I'll ask my staff to find out where it is.

BURGESS OWENS:

OK. Let me just say this as I wrap this up, and I do appreciate you being here, Attorney General. I watched a time -- I was aware of a time when our race lead our country and a man -- a potential [Ph] man matriculate from college, black men matriculate in college, and now have been aware of in 2017, studies that Education -- Department of Education that 75 percent of the black boys in the state of California cannot pass standard reading and writing tests.

That's a big shift. And the difference is in those days when I was growing up, parents were involved. There was an -- and it was a trust that we can send our kids to school and they'll be taught how to love our country, love each other, and love education. That has been changed drastically. And I think I'm going to applaud parents out there, get involved.

Now is the time. Do not trust any other adults, particularly our educational system, for the future of your kids. Get involved. Fight for your rights for your kids to be taught how to love our country, love education, and move forward. And I think we do that, we get back to the old school America where we can really appreciate the fact of who we are.

And the education system should be teaching us how to do that. I yield back my time.

JERROLD NADLER:

Gentleman yields back. Mr. Cohen.

STEVE COHEN:

Thank you, Mr. Chair. Welcome, General Garland. I feel it's a difficult position for me to question you because I have such respect for your acumen, your probity, and your rectitude, which is widely recognized. But the questions I must ask, the Senate Judiciary Committee had a report recently about the attempts of President Trump to get Department of Justice employees involved in the Stop the Steal campaign, trying to subvert the election.

Are any of those people that were involved in that still at the Justice Department?

MERRICK GARLAND:

You know, all the old-face names that I know about are -- were political appointees, all of whom are not at the department. I don't know the answer otherwise, but I don't believe so. But --

STEVE COHEN:

Thank you. I'd appreciate if you'd check into that if they were and they participated in this in any way that they should come to your attention and they should have certain sanctions, I believe. You have defended or sought to continue to defend President Trump in his defamation action brought by E. Jean Carroll.

He called her a liar. He accused her of conspiring with the Democratic Party and her allegation of rape. And for what it was worth, he said she wasn't his type, his type is, apparently, fairly expansive. And you're defending him. Do you think that the public sees that as a proper use of Department of Justice resources when it's been shown that we're short

on personnel for -- in the civil rights division and that we need that personnel and yet we're defending President Trump's defamation lawsuit by a woman who he has defamed?

MERRICK GARLAND:

Congressman, we are not defending the defamation made by the former president. As I've said, publicly several times, sometimes being the attorney general and sometimes being the judge means taking positions with respect to the law that are required by the law, but which you would not take as a private citizen.

In this circumstance, the Justice Department's briefing is not about whether this was defamation or wasn't defamation. It was solely on the question on the application of the Tort Claims Act and there is consistent precedent in the DC Circuit, which holds that even defamatory statements made during press conferences by public officials are within the scope of employment for that very narrow purpose and for that very narrow definition.

STEVE COHEN:

If I may, sir, and I appreciate that and I've read that, but this was an action he took as a private citizen. He is now again a private citizen and it was totally outside of anything to do with him being president. I hope you will look into it again because I think the public sees it as a mistake. The rule of law, you made clear, and I know you believe this as one of the major tenets of the Department of Justice, to uphold the rule of law.

Michael Cohen has a felony on his record, spent time in prison for paying, at the direction of President Trump, hush money to Stormy Daniels and another woman. I believe that it's pretty well known that President Trump was Individual 1 as described in the indictment. He couldn't be indicted because of the Department of Justice policy: you don't indict a sitting president.

He's no longer a sitting president. Do you believe that not looking into indicting Individual 1, equally, if not more guilty, than Michael Cohen does -- is not an abuse of equal protection under the law and an abrogation of the idea that the rule of law is principle?

MERRICK GARLAND:

So, Congressman, a very important element of the rule of law is the norm at the Justice Department that we don't comment on whether we're investigating, what's the status of investigations are until -- unless and until there's a public charge. That's important to protect everyone, whether it be a former president, an existing president, or a public official, or a private individual.

STEVE COHEN:

I will accept that, but I hope that you will look at it because I believe that he is equally, if not more guilty, and it does seem that people get favored treatment if he does not get -- if he's not prosecuted. Transparency is important as well. Amy Berman Jackson tried to release some records concerning Bill Barr's downplaying of Trump's obstruction in the Mueller investigation.

This committee was looking into the Emoluments Clause violations of the Trump Hotel and got an order to get -- see some records and yet the DOJ appealed. Do you believe that transparency -- those two situations are ones where transparency was not permitted to the American public, as well as the whole Mueller report which hasn't been redacted?

MERRICK GARLAND:

With respect to Judge Jackson's ruling, I respect Judge Jackson, she was a former colleague. I respect her very much. We just have a difference of opinion with respect to the Freedom of Information Act deliberative privilege exemption. And we believe that in that circumstance, the memorandum which was given to Attorney General Barr is protected by that so that all attorneys general can receive honest advice from their subordinates.

That matter is before the DC Circuit now. Everything I've just said is in our paper. So, I'm not saying anything outside the record and it will be resolved by the DC Circuit.

STEVE COHEN:

Thank you. I yield back the balance of my time. But I thank you.

JERROLD NADLER:

The gentleman's time has expired. Mr. Johnson of Louisiana.

MIKE JOHNSON:

Thank you. Mr. Attorney General, millions of Americans are deeply concerned today that instead of addressing the most pressing issues facing our country, we're watching the Biden-Garland Justice Department be weaponized, that you are using your authorities now to advance far-left policies and attack Republican-led state actions and erode constitutional norms.

The most recent case in point has been brought up this morning, your memorandum directing the FBI and other Department of Justice officials to get involved in local school board debates. It concerns us that it was issued just five days after the National School Board Association sent a letter to President Biden which referred to concerned parents as the equivalent of quote, "domestic terrorists and perpetrators of hate crimes" unquote.

Given the timing of all this, your memo appears to have been motivated by politics more than any pressing federal law enforcement need. This is concerning to us and it's worthy of investigation. It also concerns us that your actions may have been motivated by your family's financial stake in this issue. Published reports show that your son-in-law co-founded a company called Panorama Education.

We now know that that company publishes and sells critical race theory and so-called antiracism materials to schools across the country and it works with school districts nationwide to obtain and analyze data on students often without parental consent. On its website, the company brags that it surveyed more than 13 million students in the US. It's raised \$76 million from powerful investors including people like Mark Zuckerberg just since 2017. My first question is this, are you familiar with Title 5 of the Code of Federal

Regulations which addresses the rules of impartiality for executive branch employees and officials?

MERRICK GARLAND:

I am very familiar with it. And I want to be clear, once again, that there is nothing in this memorandum which has any effect on the kinds of curriculums that are taught or the ability of parents to complain about the kinds of --

MIKE JOHNSON:

I understand your position on the free speech of parent --

MERRICK GARLAND:

[Inaudible] position if it is the words of the memorandum.

MIKE JOHNSON:

Wait. Just a minute. The question is, the thing that has concerned many of those parents that are showing up at these school board meetings, the very basis of their objection and their vigorous debate, as you mentioned earlier, is the curricula. The very curricula that your son-in-law is selling. So, to millions of Americans, I mean my constituents, I was home all weekend and I got an earful about this.

They're very concerned about that. Subpart E of that federal regulation says an employee of the executive branch is discouraged from encouraging -- engaging in conduct that's likely to affect the financial interest of someone close to them. Your son-in-law, your daughter, clearly meets that definition. And so, the question is, did you follow that regulation?

Did you have the appropriate agency ethics official look into this? Did you seek guidance as the federal regulation requires?

MERRICK GARLAND:

This memorandum is aimed at violence and threats of violence. There's no --

MIKE JOHNSON:

I understand that, but did you -- excuse me, did you seek ethics counsel before you issued a letter that directly relates to the financial interest of your family, yes or no?

MERRICK GARLAND:

This memorandum does not relate to the financial interests of anyone. It's a -- it's against --

MIKE JOHNSON:

I take that as a no. I take that as a no.

MERRICK GARLAND:

Memorandum is against violence and threats of violence. I don't know --

MIKE JOHNSON:

Will you -- Mr. Attorney General, will you commit to having the appropriate ethics designee review the case and make the results public?

MERRICK GARLAND:

This memorandum is aimed at violence and threats of violence.

MIKE JOHNSON:

I understand you're talking point, you're not answering my question, Mr. Attorney General. With all due respect, will you submit to an ethics review of this matter? Yes or no?

MERRICK GARLAND:

There's no company in America or, hopefully, no law-abiding citizen in America who believes that threats of violence should not be prevented. There are no conflicts of interest

that anyone could have --

MIKE JOHNSON:

According to you. But, sir, with due respect, that's the purpose of the federal regulation. We need objective third parties to review our activities. You don't get to make that decision yourself. It doesn't matter. You're the top -- you're the chief law enforcement of this country. This raises questions in the minds of millions of Americans and your impartiality is being called into question.

Why would you not submit to a simple ethics review of that?

MERRICK GARLAND:

I am exquisitely aware of the ethics requirements.

MIKE JOHNSON:

But you're not following them.

MERRICK GARLAND:

I have followed them and lived with them for the last 25 years.

MIKE JOHNSON:

Did you seek an ethics review of this or not?

MERRICK GARLAND:

I'm going to say it again, there are no conflicts of interest involved when the Justice Department asked --

MIKE JOHNSON:

OK, according to you. I got that. I'm not trying to be disrespectful, but you are not respecting our rules, our constitutional norms, and the federal law that directly applies to your

activities. This is a great concern. This is why people are losing faith in our institutions. They're losing faith in this Department of Justice.

And you and I both know, as constitutional attorneys, that if the people lose their faith in our system of justice, if they lose their faith in the idea that justice is blind, that there're not two standards, that there's one standard of the law, and that every time [Inaudible]

JERROLD NADLER:

The time of the gentleman has expired. Would the attorney general like to respond to the innuendo?

MERRICK GARLAND:

No. All I can say is I completely agree that the rule of law and respect for it is essential and I will always do everything possible to uphold that and to avoid any kind of conflict of interest.

MIKE JOHNSON:

But you will not submit to an ethics report.

JERROLD NADLER:

Time of the gentleman has expired.

MIKE JOHNSON:

I would just put --

JERROLD NADLER:

Time of the gentleman has expired.

MIKE JOHNSON:

It wasn't innuendo. It was a question.

HANK JOHNSON:

Thank you.

MIKE JOHNSON:

It was a question.

HANK JOHNSON:

Thank you.

JERROLD NADLER:

The question is out of the time --

MIKE JOHNSON:

The editorial comments from the chair about other people's question is not appreciated by this side of the aisle.

JERROLD NADLER:

The chair -- may I ask the attorney general -- Mr. Johnson of Georgia.

HANK JOHNSON:

Thank you, Mr. Chairman, and thank you for being here General Garland. This summer, the House passed H.R. 4, the John R. Lewis Voting Rights Advancement Act, which would strengthen Sections 2 and 5 of the Voting Rights Act. And also this summer, the department announced that it was suing the state of Georgia under Section 2 of the Voting Rights Act. And I commend your department for working to protect the rights of all Americans to vote.

General Garland, Section 2 of the Voting Rights Act prohibits voting practices or procedures that discriminate on the basis of race, while Section 5 of the act mandates that changes to voting practices in certain covered jurisdictions be precleared by federal authorities. With

the Supreme Court having nullified Section 5, in effect, the preclearance requirement by ruling that the coverage formula was unconstitutional, does the department view Section 2 litigation alone as adequate to safeguard voting rights, or must Congress pass the John Lewis Voting Rights Advancement Act and reinstate Section 5 in order for voting rights to be adequately safeguarded?

MERRICK GARLAND:

The Justice Department supports that act. Section 2 is what we have. Section 5 is what we need.

HANK JOHNSON:

Knowing that the House has already passed H.R. 4, does the Justice Department support passage of the John Lewis Voting Rights Advancement Act in the United States Senate?

MERRICK GARLAND:

Yes, sir.

HANK JOHNSON:

Thank you. On September the 4th, 2021, DOJ announced an investigation into Georgia prison conditions. The New York Times reported that over 25 incarcerated persons died last year by confirmed or suspected homicide in Georgia prisons. And 18 homicides, as well as numerous stabbings and beatings have been reported this year.

What is the timeline for this investigation, and will you commit to briefing the committee and the Georgia delegation on the results of the inquiry?

MERRICK GARLAND:

We are doing that investigation. That's pursuant to statute, which authorizes the civil rights division to bring those kinds of cases. I can't tell you what the timeline is. These kinds of

things take a considerable amount of time, and I'm not sure what the legal requirements are with respect to briefings outside.

This is now in court. And so, I'm not sure what additional material can be provided outside of what we provide in court, but we'll look into it for you.

HANK JOHNSON:

Thank you. Much of what is known about conditions in Georgia prisons is derived from social media posts, including video footage posted during a prison riot last year. How are social media and the use of smuggled smartphones by inmates aiding DOJ in its civil rights investigation of Georgia's prisons?

MERRICK GARLAND:

Sorry, I don't know the answer to that question, but I'll see if I can ask at the civil rights division how they're using that material.

HANK JOHNSON:

All right, thank you. Mr. Attorney -- Mr. -- General Garland, the Sackler family has used every trick in the book to escape accountability for their role in the opioid epidemic, including abusing the bankruptcy system to secure civil immunity from their victims. And now, Johnson and Johnson has scrambled its organizational charts to put tens of thousands of legal claims into bankruptcy to avoid further liability for its cancer-causing talcum powder.

Do you believe culpable individuals and corporations should be allowed to use the shell gain to shield themselves from liability?

MERRICK GARLAND:

I don't know anything about the second example that you gave. As to the first, the Justice Department's bankruptcy trustee has weighed in to appeal the decision to immunize from personal liability. And I think that matter is now pending in court.

HANK JOHNSON:

Thank you. Lastly, I will note that there's been a lot of discussion by my friends on the other side of the aisle about local school boards. And I will point out the fact that there are reports that restrictions on the discussion of race and history in schools. These laws that are being put forward by Republican-led states are causing administrators to tell teachers that in addition to having an opposing view on slavery, now, they are saying that you've got to include an opposing view on the Holocaust if you have any books that are teaching about that, you've got to have an opposing view.

This is the danger that we --

JERROLD NADLER:

The gentleman's time has expired. Mr. Jordan.

JIM JORDAN:

Thank you, Mr. Chairman. March 25th, Joe Biden criticizes the Georgia election law. Three months later, the Department of Justice challenges it. September 1st, Joe Biden criticizes the new pro-life law in Texas. Eight days later, the Department of Justice challenges it. September 29th, the political organization asked President Biden to involve the FBI and local school board issues.

Five days later, the Department of Justice does just that. Mr. Attorney General, was it just a coincidence that your memo came five days after the National School Boards Association letter went to the president?

MERRICK GARLAND:

So, we are concerned about violence and threats of violence across the board against school officials, against --

JIM JORDAN:

Is there any connection, Mr. Attorney General, with the school board letter and then five days later, your memo to -- regarding school board issues?

MERRICK GARLAND:

Obviously, the letter, which was public and asked for assistance from the Justice Department was brought to our attention and it's a relevant factor and --

JIM JORDAN:

Who gave you the letter?

MERRICK GARLAND:

I'm sorry?

JIM JORDAN:

How did you become aware of the letter? Who gave it to you?

MERRICK GARLAND:

I write about the letter in the news. That's how I write about it.

JIM JORDAN:

With the White House told you to write the memo?

MERRICK GARLAND:

No one in the White House spoke to me about the memo at all, but I am sure I was -- at least, I certainly would believe that White House communicated its concerns about the letter to the Justice Department, and that is perfectly appropriate.

JIM JORDAN:

Oh, that was my next question. Did you or anyone at the Justice Department discussed the memo with White House personnel or with anyone at the White House before the memo was sent?

MERRICK GARLAND:

I did not. I don't know whether anyone discussed the memo. I am sure that the communication from the National Association of School Boards was discussed between the White House and the Justice Department, and that's perfectly appropriate just as --

JIM JORDAN:

With those individuals, who at the White House talked with you at the Justice Department?

MERRICK GARLAND:

I don't know. I don't know.

JIM JORDAN:

Did they talk to you, did someone call you?

MERRICK GARLAND:

I think I've answered. No one from the White House spoke to me. But the White House is perfectly appropriately concerned about violence just like they're concerned about violence in the streets, and they make a request to the Justice Department in that respect just like they're --

JIM JORDAN:

Did you or anyone at the Department of Justice communicate with the American Federation of Teachers, the National Education Association, the National School Boards Association prior to your memo?

MERRICK GARLAND:

I did not. I don't know. That's what --

JIM JORDAN:

You don't know if anyone else in the Justice Department did?

MERRICK GARLAND:

I don't know.

JIM JORDAN:

Do you know -- did you or anyone at the Justice Department communicate with those organizations, AFT, NEA, National School Boards Association prior to the letter? Did you help the National School Boards Association put together the letter?

MERRICK GARLAND:

Again, not. I have had no such conversations. I would be surprised if that happened, but I don't know.

JIM JORDAN:

Will FBI agents be attending local school board meetings?

MERRICK GARLAND:

No. FBI agents will not be attending local school board meetings. And there is nothing in this memo to suggest that. I want to, again, try to be clear, this memo is about violence and threats of violence, it's not --

JIM JORDAN:

Well, let me just point out, the same day you did the memo, the Justice Department sent out a press release. Monday, October 24, excuse me, on Monday, October 4th, 2021, the press release says "Justice Department addresses violent threats against school officials and teachers." Now, you said earlier to a question from one of my colleagues on the Republican side that parents aren't domestic terrorist.

We're not going to treat it that way. But let me just read from the third paragraph, "According to the attorney general's memorandum, the Justice Department will launch a series of additional efforts in the coming days designed to address the rising criminal conduct directed toward school personnel. Those efforts are extended -- expected to include a creation of a task force, consisting of representatives from the department's criminal division, civil rights division, Executive Office of US Attorneys, the FBI, the Community Relations Service, Office of Justice Programs, and the National Security Division." I find that interesting.

You said there's no way you're going to be treating parents as domestic terrorist, but you got the National Security Division in a press release regarding your memo that day.

MERRICK GARLAND:

My memo does not mention the National Security Division. It's addressed to the criminal division.

JIM JORDAN:

I didn't say it did, I said the press release accompanying your memo that day from the Department of Justice right here it is.

MERRICK GARLAND:

I want to be as clear as I can be, this is not --

JIM JORDAN:

It talks about the National Security Division being part of this effort.

MERRICK GARLAND:

I want to be clear as I can be, this is not about what happens inside school board meetings. It's only about threats of violence and violence aimed at school officials, school employees, and teachers.

JIM JORDAN:

Four sentences on your memo, the very first sentence you said, "In recent months there's been a disturbing spike in harassment, intimidation, threats of violence.

MERRICK GARLAND:

Yes.

JIM JORDAN:

When did you first review the data showing this so-called disturbing uptick?

MERRICK GARLAND:

So, I read the letter, and we have been seeing, over time, threats --

JIM JORDAN:

Whoa, whoa, whoa, whoa! I didn't ask -- so, you read the letter, that's your source?

MERRICK GARLAND:

So, let me be clear, this is not a prosecution or an investigation --

JIM JORDAN:

Is there some study, some effort, some investigation, someone did -- they said there's been a disturbing uptick? Or you just take the words of the National School Boards Association?

MERRICK GARLAND:

When the National School Boards Association, which represents thousands of school boards and school board members, says that there are these kind of threats, when we read in the newspapers reports of threats of violence, when that is in the context of threats of [Inaudible]

JIM JORDAN:

So, the source for this -- for the very first line in yours -- in your memo, the disturbing spike, was the National School Boards Association letter?

JERROLD NADLER:

The time of the gentleman has expired. Mr. Deutch?

TED DEUTCH:

Thank you, Mr. Chairman. Thank you, General Garland, for being here. What's so disturbing to me is a lack of concern about threats of violence. General Garland, let me give you some examples. In Brevard County, Florida, a school board member reported she was followed to her car, received messages from people saying, "We are coming for you" and "Beg for mercy." She was concerned that people were going behind her home and brandishing weapons.

She's not alone, Attorney General. In Texas, a parent tore a teacher's mask from her face. In California, a parent verbally assaulted a principal and physically attacked a teacher who intervened, sending him to the hospital. In Arizona, a school official was told, "You're going to get knifed." A fight broke out -- a fistfight broke out after a school board meeting in Missouri.

I appreciate, Attorney General Garland, your concern about threats to people who are doing their job, trying to help our kids get a good education. I'm grateful to you for that. My question is that -- as our governor in Florida claimed that your efforts are weaponizing the

DOJ, I'd like to know whether Governor DeSantis in the state of Florida has been cooperative in your effort to protect our schools.

MERRICK GARLAND:

I don't know the answer to the question that you're asking. We are trying to prevent violence and threats of violence. It's not only about schools. We have similar concerns with respect to election workers, with respect to hate crime, with respect to judges and police officers. This is a rising problem, in the United States, of threats of violence, and we are trying to prevent the violence from occurring.

TED DEUTCH:

Attorney General Garland, I appreciate it, and I am shocked and dismayed by the lack of concern by some of my colleagues on this committee. Last year, Attorney General Garland, as you pointed out, over 93,000 people died of overdose in America. Young people aged 15 to 24 saw a 48 percent increase. Earlier this year, I lost my nephew, Eli Weinstock, to an accidental overdose after he consumed a legal herbal supplement tainted with fentanyl.

Last month, in response to the surge of overdoses caused by fentanyl and fake pills, the DEA issued its first public safety alert in six years and has ramped up enforcement efforts, resulting in the seizure of over 11.3 million pills and over 810 arrests. In a Washington Post article entitled "With overdose deaths soaring, DEA warns about fentanyl-, meth-laced pills" from September 27th, and I ask unanimous consent to submit for the record, Mr. Chairman.

JERROLD NADLER:

Without objection.

TED DEUTCH:

In that article, it said that young people assume that a pill purchased online must be made in a reputable lab and must not be too dangerous. We are in the midst -- according to DEA

Administrator Milgram, we are in the midst of an overdose crisis, and the counterfeit pills are driving so much of it. Many of these counterfeit pills that alarm the DEA are being sold on social media sites, Snapchat, TikTok, Instagram, YouTube.

The -- Milgram said that the drug dealer isn't just standing on a street corner anymore, it's sitting in a pocket on your phone. Attorney General, what more should social media companies be doing to prevent young people from finding deadly drugs on their platform? And what more can you do about it?

MERRICK GARLAND:

With respect to the latter question, what we can do about it? The DEA has intensified focus on this problem of fentanyl crossing the border from Mexico, made from precursor -- which often come from the People's Republic of China. This is a very dangerous circumstance. The DEA -- much of the -- I think the article that you're referring to comes from a press conference that the DEA administrator gave.

A significant portion of these pills are lethal overdose with one pill. And this is an extraordinarily dangerous problem that we are putting our full attention to.

TED DEUTCH:

Attorney General Garland, I assure you that there is strong -- notwithstanding much of what else you'll hear today, strong bipartisan support in this Congress to combat the threats of fentanyl rising overdoses. Finally, yesterday, the person who shot and killed 17 people at Marjory Stoneman Douglas High School injured 17 more and traumatized my entire community pleaded guilty in a Broward County courtroom.

Many Parkland families strongly believe that gun companies must also be held responsible for the dangerous marketing of assault weapons. Unfortunately, the Protection of Lawful Commerce in Arms Act, known as PLCAA, has blocked countless victims and surviving family members from their day in court. The law provides broad immunity against civil -- and civil lawsuits unique to the gun industry.

Unfortunately, the Department of Justice has a long history of intervening in civil cases filed by gun violence survivors to defend this law. Question is whether you believe, Attorney General Garland, that repealing PLCAA to hold gun makers accountable for their products in the marketing of those products could improve gun safety in America.

MERRICK GARLAND:

So, the president has already stated his opposition to that statute, but our obligation in the Justice Department is to defend the constitutionality of statutes that we can reasonably argue are constitutional. That's the position that the Justice Department takes, whether we like the statute or not. We defend the constitutionality of Congress' work.

JERROLD NADLER:

The time of the gentleman has expired.

TED DEUTCH:

I support the passage of the John Lewis Voting Rights Act. I hope that you'll support the repeal of PLCAA.

JERROLD NADLER:

The time of the gentleman has expired. At this time, we will take a very short five-minute break. We return immediately after the committee stands in recess.

CHIP ROY:

Do you know where Broad Run High School is?

MERRICK GARLAND:

No sir.

CHIP ROY:

Do you know where Broad Run High School is? It's in Ashburn, Virginia in Loudoun County, Virginia. Do you know why I care? Because I'm a graduate to Loudon Valley High School, despite my family having Texas roots back to the 1850s, I grew up in Loudon, it was my home. And also, I care because on October 6th, a mere 15 days ago, inside Broad Run High School in Loudon County, Virginia, a young girl was sexually assaulted.

Attorney General, Garland, are you aware that because Loudoun County prosecutors confirmed that, the boy who assaulted this young girl in Broad Run High School, is the same boy who wore a skirt and went into a girls bathroom, sodomized and raped a 14 year old girl in a different Loudoun County, High School on May 28th. Are you aware of those facts?

The boy was -- are you aware of firmly? Are you --

MERRICK GARLAND:

[Inaudible]

CHIP ROY:

Are you aware further that the boy was arrested and charged for the first assault in July, but released from juvenile detention?

MERRICK GARLAND:

Sounds like a state case and I'm not familiar with it, I'm sorry.

CHIP ROY:

Do you agree with Loudoun parents, who said it is not OK to allow a child that has been charged with a rape to go back into a school in that public school system?

MERRICK GARLAND:

Again, I don't know any of the facts of this case, but the way you put it, it certainly sounds like I would agree with you. I don't know the facts of the case.

CHIP ROY:

Is the FBI or the Department of Justice investigating the Loudon School Board, for violating civil rights or under authority of say, the Violence Against Women Act?

MERRICK GARLAND:

I don't believe so, but I don't know the answer to that.

CHIP ROY:

I'd ask why not? Because on June 22nd at a school board meeting in Loudoun County, Virginia, the Superintendent Scott Ziegler, declared in front of the father of the girl who had been raped, that the predator transgender student or person simply does not exist. And that to his knowledge, we don't have any records of assaults occurring in our restrooms.

When this statement bothered the father of the girl, I'm a father of a daughter, I believe you are too, sir. The girl who had been raped sodomized in the bathroom of a high school by a dude wearing a skirt, that father reacted, now that father reacted by simply using a derogatory word. Would that statement have bothered you if your daughter had been raped if somebody said that it didn't occur?

MERRICK GARLAND:

Again, I don't know anything about the facts of this case, but derogatory words are not what my memorandum is about.

CHIP ROY:

Well, the victim's mother is heard on a cell phone video telling the crowd what happened. My child was raped at school, she sat behind her, the victim's father seen being arrested, bloodied. This man, this arrest of a 48-year-old plumber became the poster boy for the new

domestic terrorism, the Biden administration, the administration in which you serve has concocted to destroy anyone who gets in the way.

As the ranking member said, the National School Board Association wrote a letter to the president citing Smith's case, we all know this to be true. Attorney General, do you believe that a father attending a meeting exercising his First Amendment rights and yes, getting angry about whatever lies are being told, about his daughter being raped in the school he sent her to be educated in, that this is domestic terrorism.

Yes or no.

MERRICK GARLAND:

No, I do not think that parents getting angry at school boards, for whatever reason, constitute domestic terrorism. It's not even a close question.

CHIP ROY:

To be clear, even if there's a threat of violence, do you believe that it is domestic terrorism that, the FBI has the power to target American citizens and local disputes, because a father gets mad? And I'm not saying Mr. Smith did that, in fact, he didn't. I can tell you how I sure as hell would have reacted.

Mr. Smith should be given a medal, for his calm to be able to hold back his anger. Are you aware the Loudon County failed to report this sexual assault according to state law? And are you investigating this?

MERRICK GARLAND:

Again, I'm sorry, I don't know anything about this case.

CHIP ROY:

Are you aware that the Virginia General Assembly, run by Democrats, voted for a Democrat Governor Ralph Northam, signed a bill allowing schools to refrain from reporting instances

of sexual battery, stalking, violation of a protective order and violent threats occurring on school property? Is the FBI investigating how this may conflict with the Violence Against Women Act or conflict with your own domestic terrorism efforts?

MERRICK GARLAND:

I don't know anything about the Virginia legislation.

CHIP ROY:

Do you agree with the following statement, as a father or as a cabinet member, quote, "You don't want parents coming into every different school jurisdiction saying that this is what we -- should be taught here and that this is what should be taught here?"

MERRICK GARLAND:

Look, the Justice Department has no role, with respect to what curriculum is taught in the schools, this is a matter for local decision making and not for the Justice Department, and we are not in any way suggesting that we have any.

CHIP ROY:

I would note that that statement was by Democratic gubernatorial candidate in the Commonwealth of Virginia. I would note that there are a number of other issues of concern to the Virginia Department of Education, what's being taught there and the fact, the lack, and the total failure of Loudoun County of reporting all of these incidents that have occurred in Loudoun County Public Schools.

I've got eight seconds left. Attorney General Garland, I sent a letter along with my colleague, Thomas Massie, regarding the instance of January 6th on May 13th, and on July 15th and have not gotten a response from the Department Justice, can you commit to respond?

JERROLD NADLER:

Gentleman's time has expired. Ms. Bass.

KAREN BASS:

Thank you, Mr. Chair. Attorney General Garland, in 2014, 12-year-old Tamir Rice was tragically and fatally shot by a Cleveland police officer. Since then, we have learned that despite multiple requests from prosecutors in the Civil Rights Division to investigate the shooting, the case stalled without approval from DOJ officials who had political concerns about high-visibility police misconduct cases. Ultimately, department officials, essentially, ran the clock out on the statute of limitations for federal obstruction of justice charges.

That following December, a whistleblower exposed this information to light, and former AG Barr formally ended the department's inquiry into Tamir Rice's killing. This year, the family wrote a letter requesting that the department reopen the inquiry into Tamir's murder and to convene a grand jury. According to a department spokesperson, the letter has been received.

I wanted to know if you could tell us today if the department has reviewed the letter and if you know when the department will respond to this request to reopen the inquiry?

MERRICK GARLAND:

So, when the department receives a letter like that, it would go to the Civil Rights Division for examination. And in line with our general norm of not disclosing pending investigations, I don't know the answer to the question, but even if I did, I would not be able to --

KAREN BASS:

OK.

MERRICK GARLAND:

Give an explanation or [Inaudible]

KAREN BASS:

Sadly, just yesterday, the AP released a report investigating how police use of force on children. And I'd like to ask the chair request unanimous consent to submit for the record this article, "Tiny risk in cuffs: How police use force against children." Out of 3,000 cases analyzed where police used force --

JERROLD NADLER:

Without objection.

KAREN BASS:

Thank you. Against children under 16, more than 50 percent of them were African American children. This is despite the fact that only 15 percent of the US child population is African American. The American Psychological Association found that Black boys as young as 10 are more likely than their white counterparts to be perceived as guilty and face police violence.

Use of force against children can include physical restraint, handcuffs, tasers, dogs, and even firearms. In one particularly distressing case cited in the AP report, law enforcement officers attempted to handcuff a six-year-old girl but were unable to because her hands were too small. These encounters can be traumatizing and impact children's perceptions of police moving forward.

I wanted to know, to the best of your knowledge, are law enforcement officers trained on how to properly interact with children? There have been several reports of officers attempting to handcuff five, six, and seven-year-old children.

MERRICK GARLAND:

Well, I'm afraid I don't know the answer because the federal government almost never is involved in those kind of cases. However, we do have funding for use-of-force guidelines and that sort of thing. And we also have, under our Office of Juvenile Justice, funding for helping set up standards for such things.

KAREN BASS:

Thank you.

MERRICK GARLAND:

So, I don't know the specifics.

KAREN BASS:

OK, thank you very much. Last month you announced a new policy prohibiting the department's federal law enforcement components from using choke holds or carotid restraints. Thank you very much for that considering we weren't able to pass the law in the Senate, passed it twice here. I commend the department for taking these steps to reduce the potential for abuse of force by federal law enforcement.

That being said, we have seen other incidences such as in the tragic case of Elijah McClain, where methods of restraints have been used with horrifying results. What is the department's policy regarding the use of sedatives or other chemical restraints by the department's federal law enforcement components during an individual's arrest or detention?

Just to remind you of the department in Colorado administered -- required a paramedic to administer ketamine. It's my understanding that medication can only be prescribed by medical personnel, not by law enforcement. But I want to know if there is any policy around prohibiting chemical restraints.

MERRICK GARLAND:

So, I'm not familiar with that specifically. The deputy attorney general is doing a review of all of our use of force policies. That's where the carotid holds and the choke holds policies came out of. And I don't know about the question you're asking, but I'd be happy to have staff get back to you.

KAREN BASS:

Great. And, once again, I appreciate DOJ trying to step in where we weren't successful in the Senate in terms of the George Floyd Justice in Policing Act. And I wanted to know if you could expand on further action that the Department of Justice will be taking in lieu of us passing legislation.

MERRICK GARLAND:

Well, I mean, there are a lot of things that we're doing. We are -- we have begun, again, to look for -- at pattern or practice investigations of police departments for patterns of unconstitutional policing as provided by statute that Congress did pass and gave us the authority to do. We will, again, use consent decrees where they are appropriate.

We've issued memoranda with quite specific standards about when they are appropriate and when not. They may include monitors, may not, but, again, with new standards about when monitors are appropriate. So, I think that's, you know, one -- certainly one very significant area. I think one of the other members mentioned that we have the three of those proceedings, and we also have in Texas a proceeding about the youth jails and the youth prisons.

So, that follows up on your other question where we're doing those kind of investigations.

JERROLD NADLER:

Time of the gentlelady has expired. Mr. Tiffany.

TOM TIFFANY:

Thank you, Mr. Attorney General, for being here today. Right over here in this corner.

MERRICK GARLAND:

Oh.

TOM TIFFANY:

The --

MERRICK GARLAND:

No. Thank you. OK, sorry.

TOM TIFFANY:

The equal protection clause was incorporated into the Fifth Amendment to prevent the federal government from discriminating against Americans based on race. Do you agree that race is a suspect classification?

MERRICK GARLAND:

Yes, that's what the Supreme Court has held for since the late 1950s, early 1960s.

TOM TIFFANY:

Thank you very much for that. So, the so-called American Rescue Plan earmarked billions of dollars in United States Department of Agriculture debt relief based solely on race. Why are you and your department defending the American Rescue Plan that discriminates based on race?

MERRICK GARLAND:

So, I believe you're referring to a district court case in which that said issue. And so, I can't really say any more than is in the pleadings in that case. But this has to do with whether there are additional indicia in addition to race that are used in making these grants and whether there is sufficient evidence of historical practices --

TOM TIFFANY:

So --

MERRICK GARLAND:

To tie it to race.

TOM TIFFANY:

So, sir, it's very explicit in the bill that the Democrats wrote in this Congress and President Biden signed into law. They said, "This is based on race." I mean, doesn't this meet the standard of that is pure discrimination --

MERRICK GARLAND:

So, the question --

TOM TIFFANY:

That our country has tried to rid itself of?

MERRICK GARLAND:

I believe the question has to do with historical patterns of discrimination against black farmers, and I believe that the purpose of what's going on the district court now is examining the record to determine whether there is a sufficient record in that respect. [Inaudible]

TOM TIFFANY:

So, it sounds like you -- it sounds like you support the legislation then.

MERRICK GARLAND:

The question for us is the constitutionality of the legislation. That's the only question before us. And the -- as I've said with respect to another statute, the Justice Department defends the constitutionality of statutes that can be reasonably construed as constitutional. And we believe that statute can be. Yes.

TOM TIFFANY:

The chairman confines me to five minutes, so I'd like to move on. Recently you directed the FBI to coordinate with 14,000 school districts after the National School Boards Association asked you to protect schools from the imminent threat of parents. Along with friends, neighbors, and constituents, I've attended multiple school board meetings throughout my district here over the last year.

I have a child that's in public school yet, very concerned about some of the things that are going on. And, yes, some of those school board meetings get heated. Are we, my friends, neighbors, constituents -- are we domestic terrorists?

MERRICK GARLAND:

No.

TOM TIFFANY:

Are we criminals?

MERRICK GARLAND:

Again, I don't know the facts that you're talking about. But the only way you are criminals is if you commit acts in violation of the statutes, and that would mean threats of violence or actual violence. I'm sure you haven't done that, Congressman.

TOM TIFFANY:

Have states asked for help?

MERRICK GARLAND:

That's not --

TOM TIFFANY:

The school boards association did, but have states asked for help?

MERRICK GARLAND:

So, we have state and local partners for all of our matters. This is an assessment of whether there is a problem. And there are federal statutes involved, and there are state statutes involved. And we are trying to prevent violence and threats of violence against public officials across a broad spectrum of kinds of public officials.

TOM TIFFANY:

As a former town board member, I can tell you that we know how to deal with this. We call our sheriff's department. We can handle it. It's really not a problem. William Castleberry, vice president for Facebook, admitted that the company knowingly allows users to promote information on the platform, instructing people on how to break US immigration law.

He said, "We do allow people to share information about how to enter a country illegally or request information about how to be smuggled." Are there charges pending against Facebook?

MERRICK GARLAND:

Again, we can't, under the norms of the department, discuss whether there are pending investigations, actual investigations.

TOM TIFFANY:

Well, let me help. I understand your answer that you're going to give there. Let me help you along. Title 8 US Code 1324 makes it illegal for any person to knowingly encourage or induce an alien to come to enter or reside in the United States in violation of law or for individuals to aid or abet illegal entry. I would just say to you, you need to really take a look at Facebook and what they're doing to provide for greater illegal immigration that the Biden administration continues to foster also.

I mean, let's get down to what's happening here in the United States of America. Under the Biden administration, we have a two-tiered justice system. They do nothing about crime, there's more cash bail, and nothing is being done about it. You talked about increased crime. It is skyrocketing across the country, including in our biggest city, Milwaukee, Wisconsin.

JERROLD NADLER:

Time of the gentleman --

TOM TIFFANY:

That parents are silent. We have parents that are silent.

JERROLD NADLER:

Kindly yield. Gentleman has expired. Mr. Jeffries.

HAKEEM JEFFRIES:

Thank you, Mr. Chairman. Thank you, General Garland, for your leadership, service to the country, and your presence here today. Earlier this year, the House passed on a bipartisan basis by a vote of 414-11 the Effective Assistance of Counsel in the Digital Era Act, which would limit the ability of the Bureau of Prisons to monitor private communications, email communications between detainees and the BOP's custody and their attorneys.

Concluded in a bipartisan way that this practice, which has occurred on the Democratic administrations and Republican administrations, needs to be addressed. We're seeking technical assistance from the Department of Justice and the BOP. I sent a letter to you in that regard yesterday. I ask unanimous consent, Mr. Chairman, that it be entered into the record.

JERROLD NADLER:

Without objection.

HAKEEM JEFFRIES:

And I look forward to your response and to working with the Department of Justice on this issue. Voter fraud, if proven, is a serious crime that carries a five-year prison sentence. Is that right?

MERRICK GARLAND:

I'm not sure about the sentence But yes, if proven, it's a serious crime.

HAKEEM JEFFRIES:

And the Department of Justice is responsible for investigating and prosecuting voter fraud. Is that right?

MERRICK GARLAND:

Inspect the federal voting, yes.

HAKEEM JEFFRIES:

Now, your predecessor, Bill Barr, publicly acknowledged that the Department of Justice had uncovered zero evidence of widespread fraud in the 2020 election. Is that still accurate?

MERRICK GARLAND:

It's my recollection that that is what he concluded and I don't know of any evidence to the contrary.

HAKEEM JEFFRIES:

Right. There's no evidence that voter fraud impacted the outcome of the 2020 presidential election, true?

MERRICK GARLAND:

That's correct. That's correct.

HAKEEM JEFFRIES:

Is it fair to say that despite a global pandemic and record voter turnout as prior members of the Trump administration have acknowledged, the 2020 election was the most secure in American history?

MERRICK GARLAND:

That is the conclusion of the Justice Department and of the intelligence community and of the Department of Homeland Security, yes.

HAKEEM JEFFRIES:

And despite the fact that there's no evidence of so-called fraud this year, at least 19 states have enacted 33 laws, making it harder for everyday Americans to vote. And in the aftermath of the January 6 insurrection, instead of running toward democracy, there are people throughout this country, some have run away from democracy and they've unleashed an epidemic of voter suppression across the land.

So, let me just ask a few questions about some of the things that have occurred. How does banning churches and civic groups from giving food and water to voters, some of whom have been waiting in line for hours, prevent or address voter fraud?

MERRICK GARLAND:

So, Congressman, I don't want to talk too much about that because that is the subject of our lawsuit against the state of Georgia, but you have identified a segment of that statute that we have challenged as being unlawful.

HAKEEM JEFFRIES:

And does restricting the times that someone can cast their vote to business hours when many Americans are at work relate in any way, rationally, to protecting the integrity of our

elections?

MERRICK GARLAND:

So, let me just talk generally about this. So, I believe that every eligible voter should be able to vote and that there should be no restrictions on voters that make it more difficult for them to vote unless they're absolutely necessary. The Justice Department is limited in its ability to bring cases it must find discriminatory intent or effect.

So, those are the kind of cases that are covered by Section 2. But as a general matter, my view is that everyone should have the ability to vote as readily and easily as possible.

HAKHEEM JEFFRIES:

And you testified earlier today that, in fact, one of the founding reasons for the Department of Justice is to defend civil rights in the nation. In that particular context, I believe it was in the immediate aftermath of the Civil War with the rights of African Americans were under assault. We've come a long way, we still have a long way to go. We still see race-based assaults on civil rights taking place today.

And I would just urge the Department of Justice, as it has been doing under your leadership, to continue to do all that's --

UNKNOWN:

Please enter.

HAKHEEM JEFFRIES:

All that's possible to defend and protect the integrity of the right to vote. Let me just also comment that, you know, there are some who continue to lie about the election, they're lying about COVID, they're lying about the Department of Justice. Mr. Attorney General, you're a man of great integrity. And under your leadership, the Department of Justice is off to a good start.

We appreciate the work that you're doing. Keep it up on behalf of the American people and the Constitution. I yield back.

MERRICK GARLAND:

Thank you, Congressman.

JERROLD NADLER:

The gentleman yields back. There is a technical issue with the Zoom feed, so we will recess for less than five minutes to resolve this issue.

JERROLD NADLER:

The committee will come back to order. Mr. Bishop.

DAN BISHOP:

Thank you, Mr. Chairman. Mr. Attorney General, I'm right here. I was going to do another subject in my questioning, Mr. Attorney General, but I've been so concerned by the introduction about the October 4 memo that I'm going to follow up on that, if I might. The memo is a one-pager. You read it before it was issued, I assume.

MERRICK GARLAND:

I certainly did and I worked on it.

DAN BISHOP:

OK. Now in that memo, you issued a directive to the FBI. You directed the FBI to conduct meetings with leaders of all levels of government across the country, in every judicial district, to strategize against an alleged trend of "harassment, intimidation, and threats of violence." You didn't cite examples to distinguish legitimate First Amendment activity from criminal activity, nor certainly, examples of a nationwide scope or severity of such acts to

constitute a rise or spike in criminal activity, which you alleged in the memo, certainly not one that would warrant nationwide action by the FBI. Here, you've acknowledged that you relied in part on your knowledge of the National School Boards Association letter, which, by the way, characterized this activity nationwide as domestic terrorism and maybe some vague awareness of other news reports.

You've offered the justification here also that this was not the initiation and -- of an investigation as if that, frankly, I don't submit it, doesn't excuse the preeminent law enforcement official in the country issuing a memo of that sort. And other than a brief nod to the concept of First Amendment rights, you included no guidance in your memo, how the FBI should go about avoiding chilling, intimidating, but legitimate First Amendment activity.

You've even distanced yourself from the DOJ's press release on your memo today in its reference to the National Security Division. So, we come to this: You directed the FBI to act with speed; meetings in 30 days is what you said. You directed the FBI to have these meetings nationwide, coordinated by United States attorneys.

Three days later, I and 30-some-odd members of Congress asked for advance notice of these meetings, indications of what content would be shared there. We asked for that response within 10 days given the timeframe you set forth in your memo. More than half of that time has passed, no response. Are these meetings occurring?

MERRICK GARLAND:

So, let me just be clear one more -- again here. This memo is expressly directed against threats of violence and violence. The federal statutes that are relevant --

DAN BISHOP:

Yeah [Inaudible]

MERRICK GARLAND:

Prosecutors are well aware of where the First Amendment line is. This is addressed to prosecutors and members of law enforcement. They -- these are the kinds of statutes that we deal with every single day. They know the line.

DAN BISHOP:

Well, I'm not sure you deal with it in this way, Mr. Attorney General. Have you have -- are the meetings occurring? Do you know?

MERRICK GARLAND:

I don't know whether they're ongoing, but I expect and hope that they are going, yes, because I did ask that they take place.

DAN BISHOP:

So, you do not have any report or you have not pursued at all to know what the progress is of your directive to do this within 30 days --

MERRICK GARLAND:

They --

DAN BISHOP:

Have meetings in every judicial district across the country, you just don't know.

MERRICK GARLAND:

I doubt there have been meetings in every jurisdiction. I expect there have been some -- in some jurisdictions, and I hope so because that's the purpose of the meeting -- of the memo, to have meetings to discuss whether there's a problem, to discuss strategies, to discuss whether local law enforcement needs assistance or doesn't need assistance.

That's the purpose of these meetings.

DAN BISHOP:

Doesn't that make it worse, Mr. Attorney General --

MERRICK GARLAND:

Doesn't that make --

DAN BISHOP:

If you don't even know if these meetings that you directed urgently to occur are even occurring?

MERRICK GARLAND:

I --

DAN BISHOP:

What is left indeed of the memo, except the -- your use of federal law enforcement moral authority to stigmatize a widespread movement of First Amendment activity, at least a significant portion of which is directed as opposed to the ideology upon which your son-in-law makes his living? That is the problem and it is no answer, I would submit, Mr. Attorney General.

If you were on the bench, you would not accept an answer from counsel that simply repeated your opposition to threats of violence nationwide.

MERRICK GARLAND:

Well, the memorandum specifically --

DAN BISHOP:

I haven't finished my point or my question, sir.

MERRICK GARLAND:

Oh, I'm sorry. I thought you did and I apologize.

DAN BISHOP:

I just -- in fact, you would ask of counsel, an answer that responds to the point. Without having a raft or a significant volume of evidence, you have directed the FBI to act nationwide concerning a matter on which there's widespread First Amendment activity, there's a movement among school parents. That seems to me to be --

JERROLD NADLER:

The gentleman's time has expired.

DAN BISHOP:

My time has expired.

JERROLD NADLER:

Mr. Cicilline.

DAVID CICILLINE:

Thank you, Mr. Attorney General, for being here. And before I begin, I just want to take a moment to acknowledge the stark contrast between the current Justice Department and the Justice Department in the prior administration. During the Trump administration, we saw over and over, and over again, evidence of Mr. Trump's personal grudges dictating DOJ policy, particularly how the department was often weaponized to promote Mr. Trump's own corrupt interests and punish those who would speak against him.

We hear public officials often speak about how we must ensure justice is blind, but it's almost laughable to promise that to the American people if our own Justice Department is manipulated as it was during the Trump presidency. And so, I want to say thank you to you

because we now have an attorney general who will not let the department be reduced to a president's personal law firm or criminal defense team, but instead understands his solemn obligation to the American people and to the rule of law.

And though I have disagreed with some of the decisions you've made, I have never had any doubt about your integrity or impartiality. And so, I thank you for your service. My first question, Mr. Attorney General, is approximately -- actually, in 2020, about 6,000 firearms were sold to prohibited purchasers because of the Charleston loophole where the background check doesn't come back within 72 hours.

And I have a piece of legislation, the gun -- Unlawful Gun Buyer Alert that would require the NICS system to notify the local FBI office and the local law enforcement agency that someone who is prohibited from buying a gun because they're a convicted felon or some other disqualifying information, has actually got a gun.

That bill is pending in the House, but would it be possible for the Justice Department, for you to initiate the promulgation of a regulation that would require the NICS system to share information on prohibited purchasers so that we can, in fact, respond to people who illegally bought guns in the thousands each year?

MERRICK GARLAND:

I don't know whether we are able to do that or not, but we'll certainly look into it. We are certainly interested in closing all loopholes that would allow people who are prohibited from obtaining firearms from obtaining them.

DAVID CICILLINE:

Thank you, and I'll follow up with your staff. As you know, Mr. Attorney General, approximately a year ago, the Judiciary Committee released a 450-page report detailing the lack of competition plaguing the digital marketplace. This report was a culmination of a 16-month bipartisan investigation, and the report concluded that decades of flawed antitrust

jurisprudence had made it nearly impossible for antitrust enforcers and private parties to get courts to stop harmful mergers and anti-competitive conduct in the digital markets.

Courts have become fixated on market definition litigation even when there is direct evidence that a firm possesses market power and is engaging in anti-competitive conduct.

DAVID CICILLINE:

I know you cannot express support for specific pieces of legislation without a lengthy White House process. But my question is, do you believe Congress should update the antitrust laws to give enforcement authorities additional tools and courts additional guidance on how to ensure free and fair competition in the digital economy?

MERRICK GARLAND:

Yes, we're supportive of updating the antitrust laws. I can't speak specifically without looking at particular ones. I would say though that the antitrust laws do permit us to be quite aggressive with respect to some of the kinds of exclusionary policies and practices that you're talking about, mergers. And we have been quite aggressive since we came to office.

And I've also asked for, in the FY '22 budget, for additional personnel for the division so that we can aggressively police this area. I mean, one particular problem is there are huge new number of merger filings. And for us to possibly review the competitive or anticompetitive nature of those filings, we're going to need additional people and additional assistance.

DAVID CICILLINE:

Yes. And we are fighting very hard to be sure that you have additional resources to get this work done. In March, the Subcommittee on Antitrust heard testimony from Judge Diane Wood of the US Court of Appeals for the Seventh Circuit. Judge would explain that the Supreme Court's antitrust jurisprudence over the past four decades has contributed to underenforcement.

She told the subcommittee that legislative changes to the statutes may be appropriate, and I quote, "so that anticompetitive practices do not go unredressed because antitrust standards are overly onerous or the available remedies are either too weak or otherwise ineffective." Can you identify for us -- and if you can't do it today, if you can give it some thought.

Are there challenges the department faces in enforcing the antitrust laws currently? Are there particular types of categories of anticompetitive practices that are going unaddressed because of these challenges? And what additional tools or authorities does the department need to overcome these challenges and aggressively enforce antitrust law?

MERRICK GARLAND:

So, I'm not in a position to specify those now, but our staff will get back to you. I'll be happy to do that and have a --

DAVID CICILLINE:

Great. And then finally, Mr. Attorney General, I want to say I, as Congressman Deutch said, I'm grateful for all of your work to make sure that school board meetings and teachers and school staff are kept safe. And the notion that that is not an appropriate responsibility for the Department of Justice is curious to me. And finally, Mr. Gohmert made some reference to the peaceful seat in that we conducted with the legend John -- the late John Lewis to protest inaction on gun violence legislation and to equate that to the deadly insurrection, a violent bloody insurrection that results in the death of five people in an effort to undermine our democracy, I think was disgraceful.

And with that, I yield back.

JERROLD NADLER:

OK. The gentleman yields back. Mr. Buck.

KEN BUCK:

Thank you, Mr. Chairman. Mr. Attorney General, I'd like to direct your attention to the easel behind me. The first painting is a Claude Monet.

MERRICK GARLAND:

I'm sorry, I can't read any of the words.

KEN BUCK:

You don't need to.

MERRICK GARLAND:

OK.

KEN BUCK:

You just need to look at this great painting right here.

MERRICK GARLAND:

It's a very beautiful paint.

KEN BUCK:

It is beautiful and it is listed at Christie's for \$700,000. Now, Claude Monet was the founder of the Impressionist movement, something I didn't know until I researched it. The second painting is a Degas, another world-renowned artist. And this painting sold for \$500,000. The third painting, you may recognize his name, is a Hunter Biden.

MERRICK GARLAND:

I don't recognize the painting.

KEN BUCK:

The Hunter Biden painting sold for \$500,000 also. Now, you may think that's such an exclusive -- that when Hunter Biden is in such exclusive company, that he would have a background artistic training, for example. But you would be wrong if you thought that. And you might think that he had some sort of apprenticeship with a world-renowned artist, but you would be wrong again if you thought that.

Or perhaps that he has been selling his works for years. And again, unfortunately, you would be wrong. It turns out that in 2019, Hunter Biden couldn't find a gallery to list his art. And what happened in 2020 that changed all that, his dad became president of the United States. Now, a single piece of art from Hunter Biden sells for more than the average American home.

This art arrangement is so suspicious that the Obama administration ethics czar, Walter Shaub, tweeted on July 10th of this year, "Hunter Biden should cancel this art sale because he knows the prices are based on his dad's job. Shame on POTUS if he doesn't ask Hunter to stop." By the way, Mr. Attorney General, this was the same Hunter Biden who's being investigated by your department and the IRS for tax fraud.

Selling fakes or selling or having a fake skill set is nothing new to Hunter Biden. When his dad was vice president, Hunter Biden received \$50,000 a month from a Ukrainian oligarch to sit on a board of an energy company. What was Hunter Biden's background in energy? Nada, nothing, zilch. Soon after he received his dad -- soon after, he and his dad got off Air Force Two in China, Hunter Biden became a private equity guru and assisted with a Chinese private equity firm linked to the Chinese central bank.

You might ask what his background was with Pacific Rim Investments or the Chinese central bank, nothing. With his dubious track record and quandering minds, my question why any art gallery would want to sell Hunter Biden's art? Well, this particular art gallery had its COVID relief loan more than doubled by the Biden administration.

In a survey of more than 100 art galleries in New York's 10th Congressional District, this particular art gallery received by far the largest SBA disaster loan. And as an aside, Mr.

Attorney General, the member who represents the 10th Congressional District is none other than Chairman Nadler. Mr. Attorney General, who buys Hunter Biden's art?

Who benefits? What benefits do they receive from the Biden administration? The American people want to know. I have sent a letter to the Department of Justice before your tenure, asking them to appoint a special counsel to investigate Hunter Biden. I have today sent a letter to you and I am asking you now, will you appoint a special counsel to investigate Hunter Biden?

MERRICK GARLAND:

I'm not -- for the same reason that I'm not able to respond to questions about investigations of the former president or of anyone else, I'm not able to discuss any investigations pending or otherwise with respect to any citizen of the United States.

KEN BUCK:

Mr. Attorney General, I worked for the Department of Justice for 15 years. You are allowed to tell us whether you will appoint a special counsel. You may not tell us whether you are investigating or not investigating a particular matter, but you are allowed to tell us whether you will appoint a special counsel.

And that's my question.

MERRICK GARLAND:

Well, apparently, I just received a letter today from you and we'll be taking it under advisement. But I wasn't aware that you had sent me a letter.

KEN BUCK:

OK, I appreciate it. Mr. Chairman, I yield back, but I would like to first place into the record two articles, one from Vox, "Why Obama's former ethics czar is highly critical of Hunter Biden's lucrative art sales". And the second from the New York Post, "Art gallery repping Hunter Biden received \$500,000 federal COVID loan, records show."

JERROLD NADLER:

Without objection. The gentleman yields back?

KEN BUCK:

I yield back, yes.

JERROLD NADLER:

The gentleman yields back. Mr. Swalwell.

ERIC SWALWELL:

General Garland, you may not get these four hours back, but you may get some art history credit for today. You had a job before becoming a judge, which I think is the best job in the world. You were a prosecutor. And when you were a prosecutor for the department, I imagine there were times where witnesses who you had lawfully subpoenaed did not show up to court.

Do you recall that ever occurring?

MERRICK GARLAND:

Yes, sir.

ERIC SWALWELL:

And when that would occur, you would ask the judge to enforce a bench warrant and have them brought in?

MERRICK GARLAND:

Yes, but generally, that did not get that far, but yes, that's true.

ERIC SWALWELL:

That's one remedy you would have if someone does not show up.

MERRICK GARLAND:

It is.

ERIC SWALWELL:

And today, as we sit here in this room and dozens of courtrooms across America, your prosecutors have that right if a witness under a lawful subpoena does not come in to ask for a warrant for that witness's arrest.

MERRICK GARLAND:

Well, again, you're asking me about a particular case and what I can say is what the department has said about this on the record, which is if the House of Representative vote -- Representatives vote to refer a criminal contempt matter to the department, we will review it and act according to law and the facts as the principles of prosecution require.

ERIC SWALWELL:

And General Garland then you would agree that a subpoena lawfully issued by an Article II administrator is to be treated the same as a subpoena lawfully issued by Article I?

MERRICK GARLAND:

And I -- since we're really now talking about a very specific case, I don't want to get into the law.

ERIC SWALWELL:

I don't want to go into specific cases. I just want to say if a Congress at any time in history issues an Article I subpoena, do you agree that generally that should be treated the same as an Article II subpoena?

MERRICK GARLAND:

Well, there's different case law about both and we would be following the Supreme Court's case law on the subject in making our determinations.

ERIC SWALWELL:

General Garland, in 1973, an Office of Legal Counsel memo outlined the parameters for indicting a sitting president and said that you could not do that. Twenty-seven years later, that memo was updated to reaffirm that principle. Twenty-one years later, we have seen a former president test the bounds of presidential authority. And I'm wondering, would you commit to revisiting that principle, whether or not a president, while sitting, should be indicted?

MERRICK GARLAND:

Well, the Office of Legal Counsel memorandum, particularly when they've been reviewed and reaffirmed by attorneys general and assistant attorney general of different parties, it's extremely rare to reverse them. And we have the same kind of, you know, respect for our precedents as the courts do. And I think it's also would not normally be under consideration unless there was an actual issue arising, and I'm not aware of that issue arising now.

So, I don't want to make a commitment on this question.

ERIC SWALWELL:

I don't want to talk about any specific case but just, in general, should a former president's suspected crimes, once they're out of office, be investigated by the Department of Justice?

MERRICK GARLAND:

Again, without -- I don't want to make any discussion about any particular former president or anything else. The memorandum that you're talking about is limited to acts while the person was in office, and that's all I can say.

ERIC SWALWELL:

And should that decision be made only after an investigation takes place rather than deciding beforehand a general principle of we're not going to investigate a former president at all? Would you agree that if there are facts, those should be looked at?

MERRICK GARLAND:

Again, you're pushing me very close to a line that I do not intend to cross. We always look at the facts, and we always look at the law in any matter before making a determination.

ERIC SWALWELL:

General Garland, my colleague, Mr. Deutch, asked you about gun manufacturer liability. And I wanted to follow up and ask, does the recent Pennsylvania decision, which has been vacated and reargued, change your office's reasoning and thinking? And would you commit to re-examining DOJ's posture in such cases as the law changes in different states?

MERRICK GARLAND:

May I ask you to refresh my recollection as to the recent Pennsylvania decision about what you're speaking? I'm sorry.

ERIC SWALWELL:

Sure.

MERRICK GARLAND:

I have a lot of cases in my head, but that one doesn't come right up.

ERIC SWALWELL:

Last year, a Pennsylvania state appeals court held the Protecting of Lawful Commerce in Arms Act unconstitutional. And so, just asking, in light of that, would you commit to re-examining as new cases come in?

MERRICK GARLAND:

The Justice Department has taken the position in court that we're going to defend that statute as constitutional, and I don't see a ground for changing our mind. I expect that the considerations that the judges in Pennsylvania state court were brought to the attention of the Solicitor General's Office.

ERIC SWALWELL:

Thank you. And in the beginning, you referenced the January 6 prosecutions. And just on behalf of my law enforcement family and the law enforcement officers who work in this building, I want to thank you for continuing to pursue those investigations and arrests. I yield back.

JERROLD NADLER:

The gentleman yields back. Mr. Fitzgerald?

SCOTT FITZGERALD:

Attorney General, thank you.

MERRICK GARLAND:

Appreciate your waving at me.

SCOTT FITZGERALD:

Thank you for being here. Right. I think we all agree that no one should be above the law. And recent reports had former President Clinton, in California, he fell ill and was also reported that he had been there to raise money for the Clinton Foundation. In 2017, then-Attorney General Jeff Sessions launched a probe to scrutinize whether donors to the Clinton Foundation had been given special treatment by Hillary Clinton when Hillary Clinton was secretary of state.

This investigation wound down in January of 2020. In September of 2020, press reports indicated that Special Counsel Durham's team was seeking information on the FBI's handling of the Clinton Foundation investigation. During your confirmation hearing, if you remember, you were asked if you would actually ensure that the special counsel, Special Counsel Durham, would have sufficient staff and other resources to complete that investigation.

Now, obviously, you've had more than six months on the job. And can you commit to allowing the Special Counsel Durham's investigation to proceed and obviously free from any political influence?

MERRICK GARLAND:

Yeah. Let me just say, first, about the money, we're now in a new fiscal year, and, as everyone knows, Mr. Durham is continuing. So, I think you can readily assume that his budget has been approved. We don't normally make a statement about those things, but since he's still in action, the provisions of the regulation, which require approval of his budget for the next fiscal year, are public.

So, I think you can draw -- you would know if he weren't continuing to do his work.

SCOTT FITZGERALD:

I'll take that as a confirmation that the investigation is continuing into the Clinton Foundation, and I think that's important that we ultimately get to the bottom --

MERRICK GARLAND:

I don't want to say what it's about, that's up to Mr. Durham. I'm not determining what he's investigating.

SCOTT FITZGERALD:

Very good, very good. If I could move on. Another thing that came up during your confirmation hearing, you said that the DOJ would be under your "protection for the

purpose of preventing any kind of partisan or improper motive in making any kind of investigation or prosecution." And that's the end of your quote.

But, you know, I think there's many people that I interact with on a regular basis back in my congressional district that it appears that when you have tackled and targeted specific areas since your tenure began, it's been about election integrity measures, pro-life initiatives and, you know, what's been discussed many times here today, the silencing of parents that kind of are very upset about what's going on with some of the school boards.

So, it appears that you said one thing and made that commitment in your confirmation hearings, but at the same time, it seems that DOJ is specifically targeting many issues that I think I have described as conservative issues. I'm wondering if you could respond to that.

MERRICK GARLAND:

On the last point, I hope you can assure your constituents that we are not trying, the Justice Department is not trying, to chill there or whatever objections they want to make to school boards. Our only concern is violence and threats of violence. So, if you could make that clear to your constituents, perhaps that would help on that question.

On the other questions, some of these are policy differences that are natural between one administration and another, different views about what the law is. There will be people who -- from the Democratic Party who disagree with my determinations, and you've already heard some of those. And there will be people from the Republican Party who will disagree with my determinations about our filings and civil cases.

That comes with the territory, that's what happens to the attorney general. I'm doing my best to ensure that we make decisions on the facts and the law. And when I said I would protect our people from partisan influence with respect to investigations and prosecutions, I meant that, and I continue to do that regardless of, you know, which side of the aisle is criticizing me for it.

SCOTT FITZGERALD:

An earlier member said that he was very concerned about the previous administration weaponizing DOJ. And I would say I share the same concerns, and I would certainly hope that your department would maybe be much more sensitive to the appearance of many of these actions.

JERROLD NADLER:

The time of the gentleman has expired. Mr. Lieu?

SCOTT FITZGERALD:

I yield back.

JERROLD NADLER:

The gentleman yields back. Mr. Lieu?

TED LIEU:

Thank you, Chairman Nadler. Thank you, Attorney General Garland, for your outstanding public service. My wife is a school board member. She has been targeted with deeply disturbing death threats. The lack of concern by my Republican colleagues for the safety of teachers, school officials, and school board members is dangerous, disgusting, and utterly shameful.

Thank you, Attorney General Garland, for seeking to protect Americans from violence and threats of violence. I'd like to ask you some questions now about racial and ethnic profiling. In 2014 and 2015, Asian Americans, such as Sherry Chen, and Professor Xi, and others, were wrongfully arrested by the Department of Justice, charged with alleged spying for China.

And then, months later, all their charges were dropped but not after their lives were ruined and they incurred massive legal bills. As we looked at these cases, the only thing that's the same among all of them is that the defendants happened to look like me, they happen to be

Asian American. In response, then-Attorney General Loretta Lynch ordered implicit bias training for all her law enforcement agents and prosecutors at the Department of Justice.

My question to you is, will you commit to implementing implicit bias training at the Department of Justice?

MERRICK GARLAND:

So, I thank you for your comments. As you -- I know you know, I'm greatly attuned to this problem. That's why the very first memorandum I issued when it came to the Justice Department was to investigate hate crimes on a nationwide basis and particularly against the AAPI community. That's why we have made all of the changes required by the NO HATE Act, most of them before the act was even passed because we're already on that route.

MERRICK GARLAND:

There's no excuse for this kind of discrimination, and it's the obligation of the Justice Department to protect people. The --

TED LIEU:

Thank you. So, let me bring attention to a study that came out that shows that this problem is wider than we feared. It was conducted by a visiting scholar to the South Texas College of Law and the Committee of 100, a nonprofit, to analyze economic espionage cases brought by the Department between 1996 and 2020, and the findings are deeply disturbing.

This study showed that one in three Asian-Americans accused of espionage were falsely accused. It found that Asian defendants were punished twice as severely as non-Asian defendants, and it showed that the Department of Justice issued press releases much more frequently under these cases if the defendant happened to have an Asian name versus a Western name.

So, I'm going to ask you again, will you commit to implementing implicit bias training that then Attorney General Loretta Lynch had directed at the Department of Justice?

MERRICK GARLAND:

So, my understanding is that, that was required by the -- I think -- I can't remember the name, maybe the No FEAR Act. I can't remember the name. And the bar on doing such training was rescinded by the president in an executive order, I think, on the very first day of the new administration. And so, of course, we will go ahead with what was required by the statute, including implicit bias training, yes.

TED LIEU:

So, if you could look into that more, I appreciate it. So, thank you. I'd like to now talk about a case brought under the China Initiative that happened under your watch, the case of Professor Anming Hu, who was also wrongfully accused of spying for China. The evidence against him was so flimsy that a federal judge dismissed the case on a Rule 29 motion.

I'm a former prosecutor, I know that those motions are rarely, if ever, granted. The judge found that even viewing all the evidence in a light most favorable to the prosecution, no rational jury could conclude that the defendant violated the law. If we look at one of the darkest periods in our nation's history, over 100,000 Americans who happened to be of Japanese descent were interned because our government could not figure out the difference between the Imperial Army of Japan and Americans who happen to be of Japanese descent.

I'm asking the Department not to repeat that similar type of mistake, and I'm asking you if you would look into the China Initiative to make sure it's not putting undue pressure on the Department to wrongfully target people of Asian descent.

MERRICK GARLAND:

Internment of Japanese American, it's a terrible stain on American people and on the American government, and American history. I can assure you that kind of racist behavior will not be repeated. There is a new assistant attorney general for the National Security

Division who's pending confirmation. I am sure that when he is confirmed, which hopefully will be in the next few days, maybe in the next few weeks, we'll review all of the activities in the Department and his division, and make a determination of which cases to pursue and which ones not.

I can assure you that cases will not be pursued based on discrimination, but only on facts justifying them.

JERROLD NADLER:

The time of the gentleman has expired. Mr. Bentz.

TED LIEU:

Mr. Chairman, may I ask unanimous consent to enter three documents into the record?

JERROLD NADLER:

Without objection.

TED LIEU:

The first is a study I reference called Racial Disparities in Economic Espionage Act Prosecutions: A Window into the New Red Scare dated September 21, 2021. The second is an article entitled Professor Acquittal - Is China Initiative Out of Control? Dated September 25, 2021. And the final document is a letter from 177 Stanford faculty members outlining why the China Initiative is discriminatory and harms American competitiveness, dated September 8, 2021. Thank you.

JERROLD NADLER:

Without objection, the gentleman yields back. Mr. Bentz.

CLIFF BENTZ:

Thank you, Mr. Chair. Thank you, Mr. Attorney General, for being here today. Let me begin by saying I was disappointed with your memo regarding school boards and parents first, because I, like you, am a parent of two wonderful kids. I attended too many school board meetings to count. I attended many more as a eight-year member of school boards, really long years, I might add.

I can assure you that we welcome parents' involvement. I appreciated their attendance, I listened to their a?" I listened to them carefully. The fact that they took the time to be there after long days at work spoke volumes about how much they care for their kids. And now, no one condones violence, no one condemns threats of harm, no one condemns and condones intimidation.

But what has been repeatedly said today is that your memo is far too aggressive, far too loose in its language, far too likely to chill the very parental participation we on school boards so -- did so much to encourage. I would encourage a supplemental memo. Second, this goes to the assertion at the end of your memo that it is the department's steadfast commitment to protect all people in the United States from violence, threats of violence, and other forms of intimidation and harassment.

This goes to the prioritization of the activities of your department. And I would just suggest that we have a situation in Oregon that I think is going to be copied across the United States. It involves the illegal growing and production of marijuana and cannabis on an almost unbelievable industrial scale based in large and probably irreplaceable part, the miserable suffering of thousands, if not tens of thousands, of people coming across the border illegally, and then pressed into indentured servitude by cartels.

This is not me making this up. This is coming from any number of law enforcement agencies in Oregon. We will not go into the challenges on the border other than I wish we had a border. I simply want to say that the people that are coming across by the thousands are being put to work in situations that are immensely bad.

And the FBI, by the way, I've spoken with, but your department needs to be doing something about it at all the levels you can. And I am tempted that each time I go through

one of the horrible things that are happening to these people, refer back to the memo regarding the school board because it seems to me, there's been a mis-prioritization.

We are talking about thousands of people that are in these inhuman living conditions, and the size of the problem is almost unbelievable. The -- based on estimates from law enforcement in Jackson, Klamath, and Josephine Counties in Oregon, the amount being illegally raised and sold across the United States in just one of these counties exceeds 13.5 billion, in just one of my counties.

I have 36 counties. Thirteen-point-five billion dollars, Mr. Attorney General, on the backs of people, human beings brought over the border and probably forced into servitude to pay back the cartels for their immigration. The -- I want to mention that the creation of this situation is -- doesn't all just harm those folks brought across the border.

It harms the community. We've had people come in and tell us about going shopping down to local supermarket and seeing folks wearing big bulky coats. And under those coats, they can see AK-47s. They have had water masters approached -- the water master, the guy who's trying to take care of the water that's being stolen by these cartels, and they've come up to these -- to the water master and said, you know what, I'm invisible, you can't see me. You -- and I can kill you and no one will ever know.

That's a threat, that's intimidation. That's the kind of thing that is referred to in your member regarding -- memo regarding parents. I would just suggest there's a mis-prioritization. Mr. Chair, I would like to offer for the record, a letter from Josephine County commissioners to me, letter from Josephine County commissioners to the governor of state of Oregon, the order just issued a week or so ago from Jackson County declaring an emergency because of this situation, and finally, a -- photos of the living -- the squalid living conditions and a video of the valley showing thousands of hoop houses, some of which we are absolutely sure or many of which are illegal.

JERROLD NADLER:

Without objection.

CLIFF BENTZ:

With that, I'll --

JIM JORDAN:

Will the gentleman yield?

CLIFF BENTZ:

I'll yield.

JIM JORDAN:

I appreciate the gentleman from yielding. Mr. Attorney General, in your memo, you said that you are directing the Federal Bureau of Investigation to convene meetings with federal leader -- federal local leaders and state leaders within 30 days of the issuance of this memorandum in each federal judicial district, 94 federal judicial districts.

They got until November 3 to have these meetings. How many meetings have taken place?

MERRICK GARLAND:

I don't know the answer. I'm sure that there have been meetings, I'm -- but I am sure that they have not --

JIM JORDAN:

Any idea? Any idea how many meetings have taken place?

MERRICK GARLAND:

I don't know how many meetings, I am sure that there are not --

JIM JORDAN:

There was so much urgency that five days after, a political organization asked the president of the United States for FBI involvement. Five days later, you do a memo talking about the disturbing spike in harassment and violence, and then convening this open line of communication for reporting on parents, and you say, start meetings within 30 days, and you can't -- you come to the Judiciary Committee, you can't tell us what's going on?

MERRICK GARLAND:

We expect --

JERROLD NADLER:

Time of the gentleman has expired. Mr. Raskin.

JAMIE RASKIN:

Thank you, Mr. Chairman. Attorney General Garland, thank you for your service to the United States --

JIM JORDAN:

He doesn't even know.

JAMIE RASKIN:

Of America, which is a point of special pride for those of us who live in Maryland's 8th Congressional District. Right wing violence is now a lethal threat to American democracy. It came to the capital when QAnon followers, Three Percenters, Oath Keepers, Aryan Nations, militia men stormed the Capitol of the United States in the worst assault on the Capitol since the War of 1812, injuring more than 140 police officers, breaking their noses, breaking their necks, breaking their vertebrae, taking their fingers, causing traumatic brain injury, causing post-traumatic stress syndrome. And now, with all of the whitewashing by Donald Trump who lied and said that his mob was hugging and kissing the officers and by his cultlike followers, like Representative Clyde, who said that this was more akin to a tourist visit, this

permission for violence has given license to the darkest impulses in right-wing politics and given rise to conspiracy-theory-driven mob violence, not just at state capitals like we saw in Lansing, Michigan, which was a dress rehearsal for the January 6th attack, but also, it's in schools and in school boards across the country.

Here are some headlines from across the country that tell the story. School Boards Association reaches out to FBI for help as threats, violence hit meetings. Loudoun County board members have faced death threats. Prince William meetings have broken down with people screaming. There has been violence across the country.

Here's another one. A California teacher is hospitalized after he's allegedly attacked by a parent over face masks on the first day of school. Here's one. An angry parent allegedly ripped off a teacher's mask. It's not the only physical altercation over masks in schools. I'm limited by time here, but there are cases like this all across the country.

Now, I'd like to ask you this question, Mr. Garland, because you've been vilified, you've been castigated by members of this committee for your responsiveness to the National School Boards Association. That is members of school boards across the country who are reporting this dramatic uptick in violence against school board members, education administrators, other parents who have the temerity to go to a school board meeting wearing a mask.

Did you tell the school board association to reach out to you? Did you coach them to reach out to the FBI?

MERRICK GARLAND:

No. The letter signed by the NSBA president, Viola Garcia, and NSBA Executive Director and CEO Chip Slaven said, "America's public schools and its education leaders are under an immediate threat." Did you write those words or tell them to write those words? No.

JAMIE RASKIN:

OK. Did you violate any rule of ethics or any rule of law by responding to this clamor across the country to try to restore some calm and some peace to the schools of America?

MERRICK GARLAND:

No, I didn't. I followed my duty as I saw it.

JAMIE RASKIN:

I noticed that not a single member of this committee has cited a single sentence in your memo as violating anyone's rights. Not one. They have not cited a single sentence from your memo because your memo scrupulously follows the difference between conduct and speech. Would you care to reedify our colleagues about what the First Amendment protects and what it doesn't protect?

MERRICK GARLAND:

Well, the Supreme Court is quite clear that the First Amendment protects spirited, vigorous, argumentative, even vituperative speech, perfectly acceptable for people to complain about what their school boards are doing or what their teachers are doing in the most aggressive terms. What they're not allowed to do is threaten people with death or serious bodily injury, the so-called truth that -- true threats line of cases.

JAMIE RASKIN:

OK. Do you think that it is going to be important for us to confront violence against public institutions, whether it's the United States Congress as we count Electoral College votes, whether it's against state legislatures and governors who have been subject to assassination plots, or against school board members who, maybe, don't even get paid?

Why is it important, if you agree that it is, for us to defend public institutions, public leaders, and public process against violent intimidation, threats, and attacks?

MERRICK GARLAND:

I do think it's a --

UNKNOWN:

Mr. Chairman. Mr. Chairman, point of order. Mr. Raskin's words need to be taken down. He referred to one of our colleagues as being cultlike, and we don't allow personal attacks under the rules.

JAMIE RASKIN:

I'm sorry. Who did I refer to as cultlike?

UNKNOWN:

Andrew Clyde.

JAMIE RASKIN:

I said that Andrew Clyde was in a religious cult.

UNKNOWN:

Yeah.

JAMIE RASKIN:

Cultlike.

UNKNOWN:

Cultlike, that's a derogatory characterization. It's not allowed under the rules.

JAMIE RASKIN:

Well, I wait for direction from the chair, but if he objects to the idea [Inaudible]

JERROLD NADLER:

It's not time [Inaudible]

UNKNOWN:

We have regular order.

JERROLD NADLER:

I would urge everyone to avoid engaging in personalities. And the time of the gentleman has expired.

JAMIE RASKIN:

Thank you.

JERROLD NADLER:

Mr. McClintock.

UNKNOWN:

Seventeen [Inaudible] Mr. Chairman, can you rule on my point of order? It's Rule XVII Clause 4, standing rules of the House.

JERROLD NADLER:

Not a timely point of order.

UNKNOWN:

How can it not be timely? It was still -- Time -- you have to raise it at the time -- He did. I did raise it at the time.

JERROLD NADLER:

Mr. McClintock --

JAMIE RASKIN:

Look, if any events --

JERROLD NADLER:

Mister --

JAMIE RASKIN:

Look, I'm happy to resolve this right now.

JERROLD NADLER:

No, no, no, no, no.

JAMIE RASKIN:

These events was given [Inaudible]

JERROLD NADLER:

Mr. McClintock --

JAMIE RASKIN:

I'm very happy to withdraw the phrase cultlike is applied to Mr. Clyde of Georgia just so we can get on with our business.

JERROLD NADLER:

OK.

JAMIE RASKIN:

I'm very happy to withdraw that, and we can talk about it in another context. It's interesting that the people want [Inaudible]

JERROLD NADLER:

As I said, people should in --

JAMIE RASKIN:

Are interfering with my speech, but I'm quite fine with it, Mr. Chairman.

UNKNOWN:

We were just trying to follow the rules, Mr. Raskin. We're told that's important around here.

JAMIE RASKIN:

Yes. I'll make sure the [Inaudible]

JERROLD NADLER:

Mr. Raskin, you've said enough. We all have strong feelings. People should avoid engaging in personalities. Mr. McClintock.

TOM MCCLINTOCK:

Mr. General, I think the real concern of a lot of parents is they attend a school board meeting to exercise their First Amendment rights, a fight breaks out. And the next thing, you know, they're being tracked down by the FBI with a rap on the door, maybe a SWAT team in the morning because they simply happen to be there.

Of -- that is a serious form of intimidation. Whether it was intended or not, that's clearly the effect it's having. And I think you need to be sensitive with that. But I want to talk about the news we received yesterday that we've seen the highest number of arrests of people illegally crossing our border in the history of our country, 1.7 million arrests this year.

It is a federal crime to cross the border outside of a port of entry, is it not?

MERRICK GARLAND:

Yes, it's a misdemeanor. That's true.

TOM MCCLINTOCK:

Well, your job is to prosecute federal crimes. How many have you actually prosecuted of that 1.7 million?

MERRICK GARLAND:

So, the Justice Department doesn't make those arrests. Those are made by Homeland --

TOM MCCLINTOCK:

No, no. But the Justice Department's responsible for prosecuting them. How many are you prosecuting?

MERRICK GARLAND:

I don't know the answer to that, but they have to be refereed by the --

TOM MCCLINTOCK:

A lot of the -- Wait a second. You know exactly how many people you're prosecuting from the riot on January 6, but you can't even give me a ballpark guess of how many people --

MERRICK GARLAND:

I can't --

TOM MCCLINTOCK:

You're prosecuting of the 1.7 million who have illegally crossed our border, committing a federal crime in doing so?

MERRICK GARLAND:

I don't have that number on the top of my head, but I'd be happy to have our staff get back to you.

TOM MCCLINTOCK:

Do you think that the failure to prosecute illegal border crossings might have something to do with the fact that our borders now being overwhelmed by illegal immigrants who tell reporters they wouldn't have considered making that trip under the Donald Trump administration?

MERRICK GARLAND:

I think there are substantial number of issues driving migration towards the United States from the pandemic [Inaudible]

TOM MCCLINTOCK:

Well, if you ask migrants --

MERRICK GARLAND:

And the earthquakes --

TOM MCCLINTOCK:

If you ask the migrants, they'll tell you, specifically, what's driving it. They can do it now. They can get in. Gallup -- and not fear prosecution from you. You know, Gallup tells us, there are about 42 million people living just in Latin America and the Caribbean who intend to come to the United States if they can based upon their polling.

A lot of people come each year on temporary visas, but then they fail to leave when those visas expire, again, in violation of federal law. Do you believe that those who illegally overstay their visas should respect our laws and return to their home countries?

MERRICK GARLAND:

I think they should respect our laws. It's up to the Department of Homeland Security to make determinations about how we resolve these matters.

TOM MCCLINTOCK:

And yet the administration is proposing amnesty to most visa overstays who arrived before January of 2021, including those whose visas have yet to expire. So, what you're telling us and what you're doing are two very different things. Let me go on. It's unlawful for an employer to knowingly hire an illegal alien.

How many prosecutions you pursuing under this law?

MERRICK GARLAND:

Again, I don't know the number off the top of my head, but I'd be happy to have staff try to get back to you.

TOM MCCLINTOCK:

It shocks me, given the fact that this is now an historic high on illegal border crossings -- you're the chief law enforcement officer of our country. You come here before this committee, you devote not a word in your spoken remarks to this issue. You devote, out of a 10-page written statement, one paragraph simply saying we need to expedite the immigration proceedings for asylum claims.

TOM MCCLINTOCK:

I find that astonishing. Let me ask you this. Do you agree that an alien who's received proper notice of his or her immigration court hearing, who fails to appear at that hearing, absent exceptional circumstances, and is ordered removed in absentia should be removed from this country?

MERRICK GARLAND:

And I'm not really familiar at exactly the circumstance you're talking about. There are rules about removal, and there are rules that the department has already established.

TOM MCCLINTOCK:

When someone is ordered deported by a court --

MERRICK GARLAND:

I'm sorry.

TOM MCCLINTOCK:

If someone is someone is ordered deported --

MERRICK GARLAND:

Yeah.

TOM MCCLINTOCK:

By a court, should they be removed?

MERRICK GARLAND:

They're ordered deported by a court, then we have an obligation to follow the court's order.

TOM MCCLINTOCK:

And yet, the president on his opening day in office instructed Customs and -- Immigration and Customs Enforcement not to conduct such deportations.

MERRICK GARLAND:

I'm not familiar with the specific thing you're talking about. I'm sorry.

TOM MCCLINTOCK:

What circumstances would justify an independent prosecutor?

MERRICK GARLAND:

So, we've had some history with independent prosecutors, neither the Democrats nor the Republicans seem to like the result regardless of who is [Inaudible]

TOM MCCLINTOCK:

Oh, but -- well, let me -- there have been multiple reports that Hunter Biden made enormous sums of money, and he's admitted that's because of his family ties. Now, that by itself might not be a crime, but there have also now been multiple reports that emails and other communications from Hunter Biden have indicated that his finances were intermingled with those of his father's, including a text to his daughter complaining that half of his earnings were going to his father.

If that doesn't call for an independent investigation of the president, what would?

MERRICK GARLAND:

So, I'm not going to comment about this investigation, but as everyone knows, there is an investigation going on in Delaware by the US attorney who was appointed by the previous administration. And I can't comment on any further than that.

TOM MCCLINTOCK:

That's being done under the Justice Department, not independently. And the Justice Department answers to the president who's implicated in these emails.

JERROLD NADLER:

Time of the gentleman has expired. Ms. Jayapal.

PRAMILA JAYAPAL:

Thank you, Mr. Chairman. And Attorney General Garland, thank you very much for being here and for your commitment to protecting our democracy. I'd like to generally discuss the

prosecutions of the January 6 insurrectionists. The prosecutors handling these cases believe that jail time is the appropriate sentence for misdemeanor charges.

However, the first misdemeanor defendants to receive jail time were only sentenced last month, nine months after the worst assault on the United States Capitol since the War of 1812. I'm trying to understand what the process is for these prosecutions and why there are delays. Does DOJ headquarters have final approval on all plea agreements before they are offered to a defendant?

MERRICK GARLAND:

So, I don't want to discuss these investigations in that respect. I would say that the Justice Department and the US Attorney's Office working together have guidelines for the kinds of pleas that can be accepted so that there are not -- there's not -- I don't want to use the word discrimination in the racial sense, but that there's not unequal treatment between people who did the same thing.

We can't have every individual prosecutor following a different set of plea arguments. So, that's the extent to which that's being organized. This is a -- and the question you ask, which is why does it take so long? This is really not long at all. I've been in lots of criminal investigations that took way longer.

We've arrested 650 people already, and keep in mind that most of them were not investigated and arrested on the spot because the Capitol Police were overwhelmed. So, they were people who had to be found. And they had to be found by sometimes are looking at our own video data, sometimes from citizen sleuths around the country, identifying people.

Then they have to be brought back to Washington DC. Then discovery of terabytes of information has to be provided. And then all of this was occurring while there was a pandemic. And some of the grand juries were not fully operating, and some of the courtrooms were not fully operating. So, I'm extremely proud of the work that the prosecutors are doing in this case, and the agents are doing this case.

They're working 24/7 on this.

PRAMILA JAYAPAL:

Thank you, General Garland, that's helpful. I do want to talk about disparity actually of prosecutions. Federal judges have criticized the department's approach to letting many defendants stay at home or travel for vacation. One judge said, "There have to be consequences for participating in an attempted violent overthrow of the government beyond sitting at home." And yet, The Wall Street Journal reports that you've told DOJ officials that jailing rioters who weren't hard core extremists could further radicalize them.

General Garland, do you believe that such statements are appropriate to make as the person overseeing these prosecutions?

MERRICK GARLAND:

I don't know where that report comes from. My recollection of this is in a completely different context. That is I worry that there will be radicalization in the Bureau of Prisons when people are -- and this is the radicalization that has occurred with prison gangs, with white supremacist groups in prisons, and with a radical Middle Eastern groups in prisons.

And I was concerned that the Bureau of Prisons have a procedure for ensuring that that radicalization doesn't spread across prison populations. I think that was what I'm referring.

PRAMILA JAYAPAL:

General Garland, I don't know how you could further radicalize people who have attempted to overthrow the government. Let's just contrast the department's approach to the George Floyd protests. A participant at a George Floyd protest faced up to five years in felony charges for inciting a riot via social media.

In contrast, three white supremacists at the 2017 Charlottesville rally received prison sentences between two and three years for their violence, assault of protesters, and

conspiracy to riot. And despite a series of social media posts and videos on January 6, only one person was ever charged with a felony.

I understand all of the challenges that you are facing with what you've mentioned, and I do appreciate that, but I am concerned about the disparity of the way sentencing is occurring. Is it fair to say that the department does and should consider deterrence and the gravity of crimes when pursuing both sentencing and pretrial confinement or detention?

MERRICK GARLAND:

To answer that is yes. But the ultimate determination on both sentencing and pretrial detention is up to the judge and not to the department. There are some judges that are criticizing the kind of charges we're bringing being not harsh enough, but there are other judges who are criticizing the same charges as being too harsh.

As I mentioned before, this comes with the territory of being a prosecutor.

PRAMILA JAYAPAL:

I understand. General Garland, I just want to say that I think if we are to restore faith in the Department of Justice under your leadership and a new administration, we have to make sure that the disparity of sentencing that we have continued to see under the last administration and with this administration has to be addressed.

And I hope that you will do that, and I thank you for your efforts. I yield back, Mr. Chairman.

JERROLD NADLER:

Gentlelady yields back. Mr. Issa.

DARRELL ISSA:

Thank you, Mr. Chairman, General Garland. It's good to see you and it's good to have you before this committee. I appreciate you're giving us so much time. As you know, your reach

is global when it comes to overseas activities such as the bombing that occurred in Kabul. So, the killing of 26th August of 13 US troops falls under your jurisdiction, correct?

Or at least the FBI is investigating?

MERRICK GARLAND:

The FBI can participate. It's likely also DOD. But at some combination, yes.

DARRELL ISSA:

Well, the areas of concern media reports both in public and private statements indicate that the bomber was in fact an individual who had been released from the detention center there in Kabul. Can you confirm that?

MERRICK GARLAND:

I'm sorry, I don't know the answer to that. I don't know the answer to that.

DARRELL ISSA:

Can you respond for the record from -- I mean, obviously, the FBI does know it. It's leaked out enough that I think that it needs to be made official.

MERRICK GARLAND:

To the extent that it would be permissible and it's not classified information, then of course, we'll get back to you and I'll ask my staff to look into this.

DARRELL ISSA:

Well, the records of those who are incarcerated at the detention center were public, and certainly, somebody who has blown themselves to bits would enjoy very few residual privacy rights, I would assume?

MERRICK GARLAND:

I don't think it will be a question of privacy rights.

DARRELL ISSA:

OK, I just wanted to make sure we had that. The important point though in my view is that there are 4,999 or more other individuals who were released, who were free to roam the streets of Kabul on the very days that we were evacuating. I was in Qatar last week and it was reported to us in unclassified sessions that more than 20 percent of the individuals who boarded the aircraft in Doha for the United States, more than 20 percent who came into there, came in with no papers whatsoever.

No Afghan papers, no US papers, no other documentation, and that the documentation was produced based on oral testimony. They called it a paper passport based on the fact that of the 60,000 plus people that passed through Doha, Qatar, 20 percent of them or more did not have any paperwork work. Of the remaining ones, at least 40 percent had only documentation that it was produced in Afghanistan.

DARRELL ISSA:

How do we know how many -- we know some, undoubtedly, but how many in fact made the way to the United States of the 5,000-plus people who were incarcerated for being ISIS terrorists and the like? How do we know who they are, where they are, and how many of them in the United States?

And what are you doing to discover further?

MERRICK GARLAND:

Congressman, you've identified a very serious problem. There was a massive airlift of refugees out of Afghanistan at the very last moment and that required vetting at -- not only at Qatar, but also Ramstein and the other bases where people were moved to. And then when they're moved to the United States, the --

DARRELL ISSA:

I don't mean to interrupt you, but in the remaining time, if you could respond, for the record, about how many you know, how many you've apprehended, how many you're following, because once we know the tens of thousands of people left Afghanistan who had no evidence of a nexus to the United States and were transported to the United States and knowing that there were 5,000 terrorists that had been recently released, we do have an obligation to figure out what the steps that are being taken to find them and to incarcerate them.

And I recognize that there are a number of people in Kosovo who were identified. So, we would certainly include that. My last round of questioning really goes to the terrible attacks that occurred at Fort McCoy and other places. We have a significant number of Afghan/American-bound individuals who are currently committing crimes and who have committed crimes.

And so, I'd like to know one, to the best of your ability, how many cases you're following, not what the cases specifically are about, and what authorities you've been given or need to be given to deal with these individuals including revocation of their paroles, which of course is an executive prerogative but one that we would like to know.

Will individuals who have committed crimes have their paroles pulled? And if so, can they then be deported or at least begin the deportation process?

MERRICK GARLAND:

All right, we'll try to get back to you on what we are able to tell you on that questions of the crimes that you're talking about.

DARRELL ISSA:

And we're happy you accept it in an environment where it's not disclosed, but I really think that this committee has an obligation to have a good feel for the nature of the individuals,

the nature of the crimes, and how we're going to deal with them. This is an awful lot of people who are requesting special entry to the United States.

And as we know, many of them did not do anything for the United States, but simply were able to get on an aircraft in the rush at the end. Mr. Chairman, thank you for your excess time indulgence and I yield back.

JERROLD NADLER:

Gentleman yields back. Ms. Demings.

VAL DEMINGS:

Thank you so much, Mr. Chairman. Attorney General Garland, it is great to see you again. We were together last week as the nation recognized 701 law enforcement officers who died in the line of duty whose names will be added or were added to the wall. Here we are, just a few yards away from law enforcement officers who were beat down in this very sacred place, we've been asked to move on, but Attorney General Garland, some of us just cannot.

Not yet. In your opening statement, you said that the department's core values are upholding the rule of law, keeping our country safe, and protecting civil rights. As I sit here today as a member of the House of Representatives, I see my job and also the job of every member of the House on both sides of the aisle, Attorney General, is, guess what, to uphold the rule of law, keep our country safe, and protect civil rights.

As you know, I served as a law enforcement officer for almost three decades. It was an honor. And at all levels of government, whether local, state, or federal, law enforcement officers take an oath to uphold the Constitution, defend the Constitution against all enemies, foreign and domestic, enforce the laws of the land, and protect and serve their communities.

Or at least, that's what their responsibility is about. It is about keeping the American people safe. Effective policing though requires resources and investment. We cannot sit here as policymakers and demand better policing, better training without providing the resources to

achieve it. Attorney General Garland, I know, you know, I'm very familiar with the COPS grant program.

As you know, it provides resources and assistance to state and local enforcement for things such as community policing. The Byrne/JAG Grant provides several initiatives for state and local jurisdiction including technical assistance, training, personnel, equipment, supplies for law enforcement, prevention and education, crime victim and witness assistance, mental health, and related law enforcement assistance programs.

Attorney General Garland, if you would just take just a moment, I know you mentioned earlier that your commitment in terms of funding to this very important initiative. But if you would just take a moment to talk about the effectiveness of the DOJ grant programs and talk a little bit about the future of those resources.

MERRICK GARLAND:

I thank you for that opportunity. This is part of our commitment, both to keep the country safe; and therefore, to help state and local communities fight violence in their communities. And second, part of our obligation to uphold civil rights. And so, ensure that this be done with constitutional policing.

And also, with respect to our first priority, that is ensuring adherence to the rule of law. So, we have asked for, in the 2022 budget, more than \$1 billion in grants for state and local police organizations. That's \$537 million for cops hiring and \$513 million for Byrne/JAG. Each of those are an increase.

For COPS, it's an increase of \$300 million over the previous year. For Byrne/JAG, it's about \$30 million increase over the previous year. But there are other grant programs that we've asked for money as well. One of them is quite important, is \$100 million for new community violence intervention initiatives.

I met with community violence intervention experts in Chicago earlier in the summer. I was extremely impressed by the results that they have had in taking people who might otherwise end up with -- in crime and setting them on the straight path. That particular program was

actually a well-controlled study done by the University of Chicago and it showed that these things actually work quite well.

VAL DEMINGS:

Attorney General, if we could just switch gears for just a second.

MERRICK GARLAND:

Of course.

VAL DEMINGS:

I want to talk about election security and threats that have been going on against the election worker -- poll workers. And I know that there was a task force established in June of last year as a result of the rise in threats, including death threats. How does the task force plan to coordinate with local and state enforcement and prosecutors to pursue cases against those who seek to intimidate election workers?

MERRICK GARLAND:

So, like all of our antiviolenace initiatives from the violence initiatives we were just talking about, the project safe neighborhoods, to the memorandum that we've been discussing earlier today, all of our activity in this regard involves partnerships with and meetings with state and local law enforcement.

And with respect to election workers, we have, as part of our normal sets of meetings with respect to state and local law enforcement, we are meeting with them to identify threats to find out where federal tools would be helpful, to find out where assistance to state and locals would be effective. There is a FBI tip line for threats to election workers which are then funneled to the appropriate FBI office in the locality where the threats are occurring.

This is similar to our work with respect to threats against members of Congress, the threats against judges, the threats against prosecutors, threats against police officers. All of these things are done with tight coordination with state and local law enforcement.

VAL DEMINGS:

Attorney General Garland, thank you so much. I yield back.

JERROLD NADLER:

The time of the gentlelady has expired. I understand Mr. Roy has UC request.

CHIP ROY:

I do, Mr. Chairman. I ask unanimous consent to insert into the record the memorandum from the National School Boards Association to President Joe Biden, specifically noting in there that this is talking about domestic terrorism. And Footnote 13 directly references the incidents that occurred in Loudoun County, Virginia.

I'd like unanimous consent and turn that into the record.

JERROLD NADLER:

Without objection.

CHIP ROY:

And then, second item in sort of the record is the memorandum issued by the attorney general regarding what the Federal Bureau of Investigation is supposed to do with respect to targeting parents and school boards throughout the United States?

JERROLD NADLER:

Without objection. Mr. Biggs.

CHIP ROY:

Thank you, Mr. Chairman.

ANDY BIGGS:

Thank you, Mr. Chairman. Mr. Garland, Facebook has admitted in a letter to the Arizona attorney general that it, quote, "allows people to share information about how to enter a country illegally or request information about how to be smuggled" close quote. USC 1324 criminalizes aiding and abetting entering into the US by illegal aliens. Have you sent a letter or issued a memorandum, similar to the 10/4/21 memorandum, directing department resources to be dedicated to investigating the apparent violation of law, similar to the one? Have you done that?

MERRICK GARLAND:

I haven't seen the letter or information that you're talking about, but if it was sent to the department, I'll make sure that we look at it.

ANDY BIGGS:

It has been reported that Mark Zuckerberg also spent over \$400 million in a "carefully orchestrated attempt" to influence the 2020 election. Those efforts have been referred to as a "private takeover of government election operations". Have you sent a letter or issued a memorandum directing departmental resources be dedicated to investigate these claims?

MERRICK GARLAND:

I don't know what was done in 2020 in the previous administration of the Justice Department. I don't know --

ANDY BIGGS:

We're talking about the election of 2020. All of this has come out since then, and you've not -- so, you're totally unaware of that?

MERRICK GARLAND:

I don't know about that. I'm not aware of what you're talking about, I'm sorry.

ANDY BIGGS:

So, you have not sent a memo or you're not investigating that either. Last Sunday, more than 300 churches in Virginia aired a video featuring Vice President Harris advocating the election of Terry McAuliffe as governor of Virginia. This appears to violate Section 501(c)(3) of the IRS Code, as well as other election laws and seems to be an orchestrated effort by the VP and McAuliffe to violate the law.

Have you sent a letter or issued a memorandum directing departmental resources dedicated to investigating this apparent violation of law similar to the letter you issued, assuming the memorandum you issued on October 4th, targeting parents who exercise their First Amendment rights to local school boards?

MERRICK GARLAND:

No.

ANDY BIGGS:

On May 24th, 2021, under oath before a congressional committee, Dr. Anthony Fauci denied the National Institute of Health provided any funding for gain-of-function research, saying "that, categorically, was not done". Today, this very day, the NIH issued a statement contradicting that testimony, which suggests that Dr. Fauci may have committed perjury.

This is a criminal offense, and I'm left to wonder if you intend to look into that and send in the communications, such as a letter or a memo similar to the October 4th memo that you issued regarding parents going to school board meetings, to investigate Dr. Fauci's potential perjury.

MERRICK GARLAND:

Again, I'll refer to the long-standing departmental norm that we don't comment about investigations pending or unpending. The general point that you're making normally comes

with -- would come with a referral from the relevant committee, but other than that, I can't say anything.

ANDY BIGGS:

So, the point I'm -- the actual point I'm making is you chose as a response to a letter from the National School Boards Association and, as you said earlier today, newspaper accounts to issue a memorandum to organize task force and investigate and put a chill on parents' participation before school boards.

Now, you say, "Oh, I didn't mean to provide a chill," but that's exactly what any sentient being would have assumed would happen when you ask the federal government to begin looking into this. Of course, parents are going to be nervous now. Of course, people will step back. That's the purpose of my questioning.

So, when we get to these things like Zuckerberg, Facebook, Kamala Harris, we get to -- and Dr. Fauci's purported perjury, there's no indication you didn't hold back. You issued a press release. You see the distinction. How about this one? Since January 20 of 2021, Border Patrol has encountered more than 1.3 million aliens at the southwest border, trying to illegally enter the country.

You yourself, as you have acknowledged today, that that remains a crime. Have you sent a letter or issued a memorandum to US attorneys, directing prosecution of these cases?

MERRICK GARLAND:

No, and the reference of cases comes from the Department of Homeland Security, as I mentioned before.

ANDY BIGGS:

Look, you managed to issue a memorandum about parents showing up at school boards. Why can't you issue a memorandum regarding the million-plus people who illegally enter

the country and encouraging your US attorneys to prosecute those cases? They are there constantly.

JERROLD NADLER:

Time of the member -- the time of the gentleman has expired. Mr. Correa?

LOU CORREA:

Thank you very much, Mr. Chairman. Mr. Attorney General, welcome and thank you for your good work. I wanted to turn back to the issue of safety of elected officials, federal and local. You mentioned a couple of words a few minutes ago: true threats and serious bodily injury. And I would say that's within the context of, as what's said already, which is the First Amendment, and that all of us are public officials.

We chose to run for office, to be in elected office. Yet recently -- not recently, but throughout the years, we have been confronted with people in our faces serious bodily harm, us being threatened. A dozen years ago, that happened to me in California, called my local attorney general, State Attorney General Bill Lockyer, then.

Bill told me, he said, "Lou, never swing first, you will be criminally liable. I'll put you in jail myself, and you'll have tort issues as well." On January 7th, the day after the insurrection, I was at Dulles Airport surrounded by -- it's probably about 20 people in my face. I remembered Bill Lockyer's words.

I didn't want to swing first. Had people in my face surrounding me, the only thought was, better make sure this guy, if he does swing, doesn't connect. Otherwise, I'm going down. So, sir, what are we left with today? The nice corporal that responded to that incident accused me of starting the fight. Number two, I asked for an investigation, the nice people at the airport said no laws were broken, yet we talk about true threats, serious bodily injury.

At what point do we essentially -- at what point would you draw the line in terms of us protecting ourselves? And the sad thing about January 7 for me is it's nothing new, that

happens in my district for the last few years over and over again. Police officers show up, First Amendment, and we're left to essentially handle the situation many times on our own.

So, Mr. Attorney General, I'm trying to figure out some clear lines here. How do we, as elected officials, protect ourselves? Are we left to conceal weapons? What is it exactly that we need to do? You know, I'll take the heat. I'm an elected official, but where do you -- where does that First Amendment stop, and that serious bodily injury concept come into play?

Thank you.

MERRICK GARLAND:

Well, the courts have been quite clear that threats, that of an intent to commit an unlawful act of death or threat of serious bodily injury are not protected by the First Amendment. Anger, getting up in your face, those things are protected unless there are some local provisions, one way or the other.

LOU CORREA:

They are protected.

MERRICK GARLAND:

Yes, people can argue with you, people can say vile things to you, people can insult you. I'm sorry to say this, doesn't mean I like that idea, it doesn't mean that that's where we should be in a civil society, but the First Amendment protects vigorous argument. I -- with respect to self-protection, I'm going to have to leave that to the Capitol Police and their protective organization to give those -- that kind of advice to you.

If you think you have a threat, if you've received a threat of violence or threat of serious bodily injury, you should report it. Many other members of Congress have done that. We just arrested somebody in Alaska for threatening the two Alaskan senators. This happens --

LOU CORREA:

Attorney General, I only have 54 seconds left. And I guess what I'm looking for is some kind of a message from your office at the federal level that there are certain things that are tolerated under the First Amendment and some that are not, and those that, you know, cross that line will be prosecuted. And it also spills over to protection of poll workers at elections.

LOU CORREA:

I'm out of Orange County, California. We've had private poll workers threatening voters. We've had letters focused, threatening certain voters, keeping them from the polls. And, yes, you can come back in retrospect and prosecute, but you've already affected the outcome of an election. So, I'm hoping somehow to figure out a way to really send a clear message to these individuals that, you know, violations of our democracy, messing with our elections, is not going to be tolerated so they know that going into their actions. Thank you. With that I yield.

JERROLD NADLER:

The gentleman, yields back. Mr. Gaetz.

MATT GAETZ:

Thank you, Mr. Chairman. I'm very concerned about the influence of lobbyists in Washington DC. There's no prohibition against the Department of Justice hiring lobbyists to be prosecutors, is there?

MERRICK GARLAND:

You mean former lobbyists, I hope --

MATT GAETZ:

Yes, that's correct.

MERRICK GARLAND:

No, there is no prohibition.

MATT GAETZ:

And can you describe for us the specific vetting that the department does when professional influence peddlers are hired and given prosecuting authorities?

MERRICK GARLAND:

Well, the hiring of assistant US attorneys is a -- this is a career hire made in the different US attorney's offices, there's --

MATT GAETZ:

I mean, for the Washington, I mean, in Washington at DOJ. Are there any special procedures, that vet lobbying contracts or maybe who a lobbyist worked for before they're giving -- given prosecutorial authority?

MERRICK GARLAND:

So again, I'm not sure what kind of person you're speaking with. If you're talking about frontline prosecutors, there is a background check. Everybody, I'm sure here is familiar with the SF 86, has to be filled out, includes all the people that you worked for, the same is true and main justice.

MATT GAETZ:

But there's no special review for lobbyists as opposed to people who've been engineers or had any other career?

MERRICK GARLAND:

I don't know, but I don't believe there's a difference, but obviously lobbying makes --

MATT GAETZ:

Let's ask about political consultants, political consultants are people who get paid to ensure that a candidate wins or loses an election, that a political movement is successful or unsuccessful. Is there any prohibition against hiring political consultants as prosecutors at the department?

MERRICK GARLAND:

Again, I don't think that we're allowed to even look at people's politics. The question --

MATT GAETZ:

No, no, no, no. It's not their politics, it's the profession of being a political consultant. There's no special vetting for that --

MERRICK GARLAND:

I don't think that there's a specific prohibition. There is a requirement that once somebody becomes a prosecutor, just like when somebody becomes a judge that they get rid of whatever preconceptions they had before, and that they go forward under their new responsibilities and are subject to the ethics rules of their new ...

MATT GAETZ:

We would hope that would be the case, Mr. Attorney General. But I tend to think that if people are in the influence peddling game or their prosecutors, it can be kind of dangerous to mix those to be an influence peddler for hire one day, to be a prosecutor the next, maybe to rotate back and forth among those careers.

And it sounds like there's no special vetting for lobbyists or political consultants. Let me ask the question about partisan committee staff, we have partisan committee staff that you see here, their job is to ensure that one party or another preserves or, you know, captures the majority that legislative proposals are successful or not successful.

No prohibition against the department hiring partisan committee staff as prosecutors, is there?

MERRICK GARLAND:

As I understand it, every administration including the one preceding this one, has hired people who have been committee staff. I don't think there's a statutory limitation if the House of Representatives and the Senate think that partisan or I'm not --

MATT GAETZ:

That's how Preet Bharara got his job, he worked for Schumer and then he ended up in the Southern District. So, we have people who can be lobbyists and then prosecutors, we have people who can be political consultants and then prosecutors, we have people who can be partisan committee staff and then prosecutors.

The public integrity section has jurisdiction over election integrity, correct?

MERRICK GARLAND:

It has jurisdiction over election crimes, yes.

MATT GAETZ:

Yes. So, is there any prohibition against people who've been lobbyists, partisan committee staff or political consultants, actually going in and serving in the public integrity section? Or is that allowed?

MERRICK GARLAND:

Just say, again, the hiring and the public integrity section is a career hire made under the civil service. It's not me --

MATT GAETZ:

I'm worried about their prior career though, see what I think is that, if someone has been a political operative to then put them in charge of election crimes, it's kind of like having the fox guard the henhouse, don't you think?

MERRICK GARLAND:

So, if you think that that would be a perfect example of something the House should pass a statute barring people, from particular professions, from working in the Justice Department.

MATT GAETZ:

And would you support that legislation?

MERRICK GARLAND:

I'd have to look at what it is and I have to look at whether it in itself violates the First Amendment, but --

MATT GAETZ:

I appreciate --

MERRICK GARLAND:

I don't think there have ever been any restrictions like that before.

MATT GAETZ:

I appreciate your open mindedness and I hope that persists during your time in the department. Would you provide the committee, a list of lobbyists, former lobbyists or just former political consultants, who work in the public integrity section? So that we might inform on the legislation that you've suggested we might consider?

MERRICK GARLAND:

I don't intend to create a list of career officials and what their previous jobs were --

MATT GAETZ:

So, if there are people who are -- who literally were political operatives, who have prosecuting authority in the area that oversees elections, you won't give us the list?

MERRICK GARLAND:

I don't have any idea whether there is any such person.

JERROLD NADLER:

Time of the gentleman has expired. Ms. Scanlon.

MARY SCANLON:

Thank you, Mr. Chairman and thank you, Attorney General Garland for appearing here today in a timely manner and responding to our questions, as well as for your efforts to be responsive to the issues facing America today. Thank you. I want to address two primary areas in my limited time; attacks on elected officials and attacks on elections.

Several of my colleagues have pointed out the far right's lies about election integrity, have led to intimidation, and threats of violence and death being made against elected officials and their families. In Pennsylvania, we saw armed extremists come across state lines to try to disrupt the counting of votes in Philadelphia, and an election commissioner had to put his children in hiding after death threats were made against him and his family.

With the reopening of schools this fall, we've now seen similar criminal conduct being directed at teachers and school board members with the encouragement of far-right extremists, including some elected officials. I take this personally because I was a school board for 10 years, almost a decade until 2015, and during that time I had thousands of hours of conversations with involved parents and constituents in grocery stores, on baseball fields, and in courtrooms and school board meetings.

Sometimes the discussions were passionate, but everyone always respected the boundaries of protected speech, and those exchanges of opinions and information were always

conducted with the goal of exchanging information, reaching solutions for the community. We never, ever experienced any threats to the personal safety of board members, educators or their families and that has changed.

The personal and physical attacks that have been directed against school leaders in recent months, have crossed well over the line of protected free speech or parental involvement, and have become criminal conduct. And that's what we're talking about here. As you noted, parents have a right to be heard, and to complain and to argue, but parents and outside agitators, do not have the right to criminally harass, or threaten, or assault school leaders and their families.

We've heard some of the incidents that have occurred elsewhere around the country. In my district, police had to be called to several meetings after agitators disrupted the meetings, and elsewhere in Pennsylvania, a candidate for office urged community members at a public rally to -- and I quote, " Forget going into school boards with freaking data, you go into those school boards to remove them.

I'm going in with 20 strong men and I'm going to give them an option, they can leave or they can be removed". I mean that's not ordinary speech. I mean this is the type of conduct that has led school boards and school officials to request help from law enforcement. It's shocking, but perhaps not surprising that some of our colleagues have tried to frame these criminal acts as free speech by involved parents.

It appears to be part of a pattern by far-right politicians of fanning the flames of chaos, and turning a blind eye to domestic extremism and violence. The conduct that terrorizes educators now across the country is no more like that, of ordinary parents showing up at school board meetings, than the conduct of the violent mob that showed up at the Capitol on January 6, was that of ordinary tourists.

I think there's a profound distinction here and one that warrants the attention of law enforcement. Would you agree that allowing threats of violence and intimidation against elected officials to go unreported or unpunished, could not only lead to greater violence

against elected officials, but also contribute to an atmosphere that's harmful to free speech and the free exchange of ideas?

MERRICK GARLAND:

Yes, I do agree.

MARY SCANLON:

OK. Moving on to election, attacks on elections. For almost two years, the former president and his supporters have attacked and spread lies about election security in the Commonwealth of Pennsylvania. Almost a year after President Biden's victory, attacks on Pennsylvania elections occur today. Last month, Republican members of the PA legislature launched another attack on Pennsylvania voters.

They sent a subpoena to the Pennsylvania Department of State, demanding that the state turn over the 2020 voting records of every voter in the state, along with their driver's licenses and their Social Security numbers. So that information could be turned over to an unidentified private contractor. Pennsylvania voters of every party and independents were outraged about this invasion of privacy, and the possibility that sensitive personal information was being put at risk.

Can you address how this kind of sweeping intrusion into election and personal data, under the guise of an election audit, might violate federal election laws?

MERRICK GARLAND:

Yes, I can't -- let me just say on the previous point that you made and -- although, I'll give you a quick answer. A full answer is we have an election threats task force and we've had that for quite some time. I've met with the National Association of Election Administrators and the National Association of Secretaries of State for every state, and that's what prompted us to establish this task force.

And now, on the second question, I can't -- I don't want to discuss any particular circumstances. Certainly, not that one but there are provisions of the Voting Rights Act that require state elect -- election officials to keep control custody of voting records and voting equipment and materials relating to the last election, I think, for 18 months.

And similarly, there are provisions of the same statute, which prohibit intimidation of -- or acts leading to intimidation of voters, both of which are sort of the core of the federal government's concern with respect to post-election audits.

MARY GAY SCANLON:

Thank you.

MADELEINE DEAN:

Gentlelady's time has expired.

MARY GAY SCANLON:

I yield.

MADELEINE DEAN:

The gentlelady yields back. The chair now recognizes Mr. Steube from Florida for five minutes.

GREG STEUBE:

Thank you, Madam Chairman. Attorney General Garland, in your Senate confirmation hearing, you referred to the January 6 protest as the "most dangerous threat to democracy in your law enforcement and judicial career." In that same hearing, you even compared January 6 to the Oklahoma City bombing case you worked on where 168 people were killed.

In June 15th, a speech announcing a new enhanced domestic terrorism policy, you cited January 6 as a motivation for that new policy. You went on to describe January 6 as "an

assault on a mainstay of our democratic system." You have said that prosecuting extremist attacks on our democratic institution remains central to the mission of the Department of Justice.

So, suffice it to say, it's clear that you feel very strongly about using the full force of your position to prosecute those involved in the January 6 protests. What is not clear, however, is if you will use the same force against violent left-wing domestic terrorists. Just last week, on October 14th, a group of extremist, environmental, and indigenous protesters forced their way into the Department of Interior.

They fought with an injured security and police officers, sending some of those officers to the hospital. The extremists violently pushed their way into a restricted government building in an attempt to thwart the work of the Department of Interior. Police arrested at least 55 protesters on site but others got away.

Mr. Garland, do you believe that these environmental extremists who forced their way into the Department of Interior are also domestic terrorists?

MERRICK GARLAND:

So, with -- I'm not going to be able to reference that specific incident since this is the first I know about it. But I will say that the department does not care.

GREG STEUBE:

So, this is the first that you know about an incident where indigent protesters forced themselves into a federal government building right here in DC like you didn't hear about this at all?

MERRICK GARLAND:

This particular example, it doesn't mean the Justice Department doesn't know about it, but I personally haven't heard about it before what you're saying right now. But I want to be clear, we don't care whether the violence comes from the left or from the right or from the middle

or from up or from down. We will prosecute violations of the law according to the statutes and facts that we have.

This is a nonpartisan determination of how to do that.

GREG STEUBE:

I'll make it a little clearer for you. And we're all -- most of us are lawyers here, so we use evidence in court. So, you got two pictures here. One picture is from January 6th of individuals forcing themselves into the Capitol. This other picture is extremists forcing themselves into the Interior Department.

So, looking at these pictures, and I know you say you're not aware of this which blows my mind that you're not aware of violent extremists forcing their way into a department right here in Washington, DC into a federal building. But just with this evidence, with these two pictures that you see here of people forcing themselves into a federal building, would you call both of these acts domestic terrorism?

MERRICK GARLAND:

Look, I'm not going to comment about particular matters. This is a matter that --

GREG STEUBE:

I'm not asking you to comment on a particular --

MERRICK GARLAND:

You are -- you --

GREG STEUBE:

I'm asking you to comment on these two photos. You have two pictures of individuals forcing themselves into a government building right here in Washington, DC. And one, you very --

as I laid out, very welcomingly call them domestic terrorists but you're refusing to call groups like this who commit the same atrocities here in Washington, DC domestic terrorists.

MERRICK GARLAND:

One I know the facts of, the other I don't know the facts of.

GREG STEUBE:

Well, I'm telling -- I'm showing you pictures. Here's facts right here. If you want, we'll act like we're in a courtroom. Exhibit A, Exhibit B. January 6, the Department of Interior.

MERRICK GARLAND:

Well, as you know --

GREG STEUBE:

Based on these pictures of people --

MERRICK GARLAND:

One --

GREG STEUBE:

Forcing themselves into the --

MERRICK GARLAND:

One picture is not going to be a -- I'm not going to be able to resolve a legal determination based on one picture. In the January 6 case, we have terabytes of video, which disclosed exactly what happened there.

GREG STEUBE:

Speaker Pelosi, mindly, still hasn't released to the American public to view all that video that has been captured here in Washington and in the Capitol complex. But that's the problem that everyday Americans are facing right now is they see these type of comments that you've made about January 6, yet you're completely -- and you're not answering my question now and you're saying, "Well, that's an ongoing investigation and I don't know about it." But clearly, based on the pictures, clearly what has occurred, factually what's been widely reported in all sorts of different American outlets that these individuals forced themselves into a building here in the Department of Interior.

And you're refusing right here today before the American people to say, "Yes, that's the same type of activity that I'm going to bring the full force of the Department of Justice to come against." Regardless of the ideology, which you have said in the past but you're refusing to do that today. And that's the problem with the challenges that your -- that this administration, your department is facing as every everyday Americans who are seeing this on TV. And now, you have the opportunity to set the record straight and say both of those actions, regardless of ideology, are against federal law and will be prosecuted with the full faith and credit of the Department of Justice.

And you're refusing to do that, and that's the challenge that everyday Americans are having right now is because they're seeing what you guys are doing to the people on January 6 to the point where even a judge is saying --

MADELEINE DEAN:

Gentleman's time has expired.

GREG STEUBE:

That there's -- can -- the speaker before me had 30 extra seconds. I ask the same deference that you gave to the previous speaker. That -- you have even judges, who recently even held the Department of Corrections in contempt related to the way that the January 6 suspects have been treated, and you're refusing to even comment on the very acts that have just occurred here.

And that's what is horribly wrong --

MADELEINE DEAN:

Gentleman's time has expired.

GREG STEUBE:

And it is happening in our country that the American people are --

MADELEINE DEAN:

Gentleman's time has expired.

GREG STEUBE:

Seeing your refusal to answer those questions.

MADELEINE DEAN:

Mr. Attorney General, members, votes have been called on the House floor. So, the committee will stand in recess until immediately after the conclusion of those votes.

JERROLD NADLER:

Reconvene. And I remind people, if they're not wearing masks, they will not be recognized.  
Mr. Neguse.

JOE NEGUSE:

Thank you, Mr. Chairman. Good afternoon, Attorney General. Thank you for being here and thank you for your leadership at the Department of Justice. I also want to thank my colleague, Representative Bass. I know she engaged in a line of questioning earlier about the tragic death of Elijah McClain in my home state of Colorado.

I was heartened to hear that the department is engaged in a review of its use of force policies. We've introduced a bill to ban the use of ketamine in custodial settings. That bill has earned the support of Chairman Nadler and the Subcommittee Chairwoman, Sheila Jackson Lee, which I'm both grateful and certainly we will welcome the opportunity to work with your department on that particular legislation in honor of Elijah's memory.

On March 22nd of this year, as you know, my community at Boulder, Colorado experienced a horrific tragedy as a gunman killed 10 people at our local grocery store using an AR-15 style pistol, which fired rifle rounds with a modified arm brace. The AR pistol brace attachment used by the gunman allowed the shooter to fire an easily concealable pistol with rifle-like accuracy and firepower.

In the immediate aftermath of this tragedy, as you know, I sent a letter to the president and to the Department of Justice along with 100 of my colleagues requesting the administration use its authority to regulate concealable assault-style firearms that fire rifle rounds. And as I mentioned to you when we last met at the White House in April, I was very pleased with the administration's announcement that DOJ would be issuing a proposed rule within 60 days to tighten regulations on pistol-stabilizing braces as I requested in my letter.

And so, I want to thank the department and wonder if you might be able to opine as to the status of the rule of where you are in the rulemaking process.

MERRICK GARLAND:

Well, I believe that we're still in the rulemaking process. I can't remember whether the comment period has closed or not. But, you know, as part of the Administrative Procedure Act, as you know, we have to go through a rulemaking procedure and that's what's going on here to prevent these -- the pistols from being used as short-barreled rifles which are prohibited.

JOE NEGUSE:

Right. Well, again, I appreciate the department taking that proposed rule seriously. We certainly look forward to the results of that rulemaking process as do my constituents in Boulder, who are still very much grieving the loss of so many in our community. Two other subjects I want to address in my limited time.

First, around grand jury material. Now, I know -- Attorney General Garland, I think you'd agree with me. So, current law allows for grand jury material known as Rule 6(e) material to be released publicly after 30 years. That's current law, is that right?

MERRICK GARLAND:

Actually, I'm embarrassed to say this but I don't think that's correct. We have made a recommendation to the federal rules committee that it be released. I think 30 years is the time, but the rules committee has not yet decided whether that would be the case. But that is, I think, 30 years was the number that we recommended.

JOE NEGUSE:

So, we think that's the subject that I was sort of wanting to dig in on. My understanding is that current law provides for 30 years. The Trump administration -- in 2020, a senior Trump administration official or a lawyer rather, DOJ proposed the time period be extended to 50 years. And my understanding is the Department of Justice has continued that request and made that request for the time period to be extended to 50 years.

As you can imagine, there are a lot of concerns, many of which I hold and many of my colleagues hold around judicial secrecy and the extension of the time period to 50 years would seem a bit much. You know, if were that to be adopted, many of the materials released post-Watergate would still be secret today.

So, I would certainly --

MERRICK GARLAND:

[Inaudible] So, we have sent another letter post the -- letter that you are speaking about to the rules committee. There's no reason why we can't share it. It's not a private letter or anything. And it went back I think even a shorter period than the holder letter originally was. So, we'll -- I'll ask my staff to get that for you.

JOE NEGUSE:

Well, that's terrific to hear. So, thank you, Attorney General. Thank you to the department for making that change. And I think that that is going to allay many of the concerns that folks had, certainly mine. So, I appreciate the Department of Justice doing that. Finally, last question, National Substance Abuse Prevention is this month.

I know my colleague from Florida, Representative Deutch, asked you a couple of questions with respect to the opioid epidemic that is pervasive across our country, including in my state in Colorado where, on average, two Coloradans are dying a day from opioid overdoses. The department has worked with us on a bill that we introduced, the Preventing Youth Substance Abuse Act and I want to thank DOJ for their partnership in that regard.

And just wanted to give you an opportunity, before the hearing concludes here this afternoon, to add anything else further you'd like to add with respect to your answer to Representative Deutch about the department's work to address this epidemic. And I think there's bipartisan interest in the Congress in partnering with your department to ensure that those solutions are applied broadly across the country, including in my state of Colorado.

MERRICK GARLAND:

So, this is a terrible epidemic. I, you know, went to the US attorney's offices all across California, also in Tucson to find out what's happening with respect to the importation of this fentanyl. It is, I would say, our most -- number one concern now because these pills are something like four out of 10 pills you're -- it's like playing Russian roulette.

If you take one of those, you die. And the kids who are taking those have no idea that that's what's happening. Sometimes, they think there's something else that they're buying rather

than those. These are, you know, they use precursors coming from the People's Republic of China, coming into Mexico, then they are pressed into pill form in Mexico and then transmitted across the border.

The CBP is doing an extremely good job of checking the trucks and checking the cars for this material. But it is an overwhelming problem run by the cartels. And the DEA is working extremely hard on this matter. When I was in Mexico City, I raised -- with respect to the high-level security talks that we recently had with their security ministers -- secretaries, I raised precisely this issue.

JERROLD NADLER:

Gentleman's time is expired. Ms. Spartz.

VICTORIA SPARTZ:

Thank you, Mr. Chairman. Mr. Attorney General, as someone who was born in the Soviet Union, I am disturbed, very disturbed by the use of the Department of Justice as a political tool and its power as a police state to suppress lawful public discourse. The FBI started to resemble old KGB with secret warrantless surveillance, wiretapping, and intimidation of citizens.

VICTORIA SPARTZ:

School board, that is the latest example. It's interesting that during the Soviet era, the United States criticized use of the domestic terrorism concept in the USSR as a tool to suppress free speech and political dissent. In your recent statement opposing the Texas anti-abortion law, you said, it is the foremost responsibility of the Department of Justice to defend the Constitution.

Do you plan to defend the Second Amendment rights which are explicitly protected by our Constitution as vigorously as you do abortion rights? Please, yes or no.

MERRICK GARLAND:

Yes.

VICTORIA SPARTZ:

Do you believe recent inspector general FISA report citing widespread and material noncompliance by the FBI with proper due process for surveillance of US citizens is a violation of the Fourth Amendment?

MERRICK GARLAND:

I think it's a violation of the FISA Act by itself without even having to get to the Constitution, and we take this extraordinarily seriously. That's why we have an inspector general, that's why our National Security Division reviews what the FBI does with respect to FISA. And I know that the FBI director takes this very seriously as well, and they have made major fixes to their practices so this won't occur again, and this is constantly being audited and reviewed by our National Security Division.

I take this very seriously and I agree, we have to be extremely careful about surveillance of American citizens, only as appropriate under the statute.

VICTORIA SPARTZ:

Potential Fourth and Fifth Amendment could be violated, and if you have --

MERRICK GARLAND:

Of course.

VICTORIA SPARTZ:

Material and widespread, as the report says. In your June 15 remarks on domestic terrorism, you said that nearly every day, you get a briefing from the FBI director and his team. How often do you discuss FISA relations in your briefings?

MERRICK GARLAND:

I'm sorry, I didn't hear the --

VICTORIA SPARTZ:

How often do you discuss these FISA violations when you get your nearly daily briefings with the FBI?

MERRICK GARLAND:

So, there's a quarterly review by that -- the intelligence community, and the National Security Division submits to the intelligence committees with respect to FISA reviews. And I always review those. I meet with the National Security Division relatively routinely to discuss how that's going. So, it's not every morning, but this review of violations of FISA and our efforts to make sure that it doesn't happen again is pretty frequent.

VICTORIA SPARTZ:

Mmm hmm. So, it seems like we still get material and widespread -- every report will have material, not -- or nonmaterial and widespread violation. But talking about another topic, I went to the borders three times and recently visit airbase in Qatar and Camp Atterbury in Indiana, housing Afghanistan evacuees.

And based on what I've seen, I have some questions and significant national security concerns. Former Border Patrol chief, Rodney Scott, recently said that the open border poses a real terror threat. Do you agree with the Border Patrol chief or Secretary Mayorkas who recently said that the border is no less secure than before?

MERRICK GARLAND:

Look, I -- if you're asking about terrorism traveling across the border, I'm concerned about that across all of our borders. This has been a continuing concern --

VICTORIA SPARTZ:

But do you agree with the, you know, Border Patrol chief that what's happening right now is make us less secure and have a real, you know, increased terror threat?

MERRICK GARLAND:

I believe that the combination of the intelligence community and the FBI are working very hard to make sure that people crossing the border do not constitute a terrorist threat. But we have to always be worried about the possibility, and we are ever vigilant on that subject.

VICTORIA SPARTZ:

Can you reassure the American people that you will be able to protect our country from a terrorist attack that may result from this lawlessness at the border or the Afghanistan debacle?

MERRICK GARLAND:

I can assure the American people that the FBI is working every day to the best -- do the best they possibly can to protect the American people from terrorism from whatever direction it comes, whether it comes from Afghanistan or any other direction.

VICTORIA SPARTZ:

But do you have any specific actions and plans that you're doing in light of what's happening right now in the border? Do you have a specific strategy that you're working directly with an -

-

MERRICK GARLAND:

[Inaudible] the FBI --

VICTORIA SPARTZ:

Considering the current situation?

MERRICK GARLAND:

I'm sorry, I didn't mean to talk on.

VICTORIA SPARTZ:

Yeah, considering the current situation on the border, do you take any specific actions at the border?

MERRICK GARLAND:

Well, with respect to the first part of your question about Afghanistan, the FBI is participating, along with Homeland Security, in vetting the refugees who have landed in various locations, Qatar, Kosovo, Ramstein Air Base, and then in bases in the United States. So, they're doing everything they can to that -- for those purposes.

With respect to crossing of the border, this is a combination of the intelligence community, outside of our intelligence community, getting information about who might be trying to cross the --

VICTORIA SPARTZ:

So, you can reassure American people --

JERROLD NADLER:

Gentleman -- gentlelady's time --

VICTORIA SPARTZ:

In [Inaudible] yes?

JERROLD NADLER:

Gentlelady's time has expired. Ms. McBath.

VICTORIA SPARTZ:

I yield back.

LUCY MCBATH:

Thank you so much, Mr. Chairman. And, Attorney General Garland, there are many others in this room outside of myself that want to thank you so much for such a long career of public service. And as you may know, I lost my son, Jordan, almost nine years ago now. He was simply sitting in a car with three of his friends, playing loud music, when a stranger complained about the volume of their music, called them gang -- called the boys, gangbangers and thugs, and he took my son's life.

And I'm very pleased that the president has committed to preventing gun violence and that he's tasked you with the role of being supportive in gun violence prevention in America. Extreme risk protection orders, also known as red flag orders, allow courts to temporarily remove firearms for -- from those who pose imminent danger to themselves or risk of harming others.

In April 7, 2021, an announcement of initial actions to curb gun violence, the Biden White House encouraged Congress to pass a national red flag law. How would the national red flag law work with other federal protections to prevent gun violence?

MERRICK GARLAND:

So, we're in favor of a national red flag law. What we're doing now is making model red flag laws for the states, and these models provide that guns can be taken away for a person -- from a person in distress, normally from a mental crisis of some kind, when requested by someone close to them or if there's already a court violation of some kind.

But it provides due process protections for those people to ensure that it's not -- they haven't been inappropriately taken. That's -- you know, the risk here is that people in distress can commit violent acts, and when they have easy access to a firearm, the risk is that, that violent act ends in a death.

So, I think the red flag laws are very important in that respect.

LUCY MCBATH:

Thank you, as do I. Attorney General Garland, we lost 49 people, including many young people, at the mass shooting at Pulse nightclub in Orlando, Florida. And the shooter was previously the subject of a 10-month FBI investigation. And during this investigation, the FBI interviewed the shooter's wife, who later said that he strangled her, he raped her, beat her, and even while she was pregnant, he threatened to kill her.

Fifty three percent of mass shootings involve a shooter killing an intimate partner or family member among other victims. And even among those mass shooters who do not kill an intimate partner, as in the Pulse shooting, there's often a history of domestic violence. Since the Pulse shooting, has the Department updated its Domestic Investigations and Operations Guide or US Attorneys' Manual to ensure that it is examining whether a person has a history of domestic violence?

MERRICK GARLAND:

So, I don't know the exact answer into the past. I know that right now, the deputy attorney general is doing a review with respect to the way in which the Department treats victims, including victims in a circumstance that you talked about, and creates warning systems for those sorts of things. So, I don't -- I can't give you any fuller information than that, but I can ask my staff to get back to you.

LUCY MCBATH:

Thank you very much. If you do so, we appreciate it.

MERRICK GARLAND:

Of course.

LUCY MCBATH:

Also, can you assure me that you will take action to make sure that we are not missing any opportunities to save American lives?

MERRICK GARLAND:

Well, that's our -- this is our No. 1 goal.

LUCY MCBATH:

Thank you. And on May 7, I'm going to switch gears a little bit, May 7, 2021, you signed a proposed ATF rule to ensure the proper marking, recordkeeping, and traceability of all firearms manufactured, imported, acquired, and disposed by federal firearms licenses -- licensees by clarifying the definition of firearm and gunsmith among all other small changes.

How will this new definition help reduce the sale of ghost guns and increase background checks prior to their purchases?

MERRICK GARLAND:

So, ghost guns, which are ready -- sometimes ready build shoot -- they're called -- they're kits that you can buy in pieces and put them together. Right now, there's some lack of clarity or dispute about whether serial numbers have to be on them, and then whether you need a license -- I'm sorry, whether a check has to be made in order to determine whether the person is a prohibited purchaser.

MERRICK GARLAND:

This rule of law will require that serial numbers be put on the pieces and that a federally licensed firearms dealer has to do the background check. This does two things, one, it'll enable us to trace these guns; and second, it will make sure that people who are prohibited because they are a felon or whatever other reason shouldn't -- won't be able to get the gun.

I've been in -- both in Chicago and New York and been quite stunned to learn the high percentage of guns at murder scenes. That a high percentage, much higher than I would have expected were ghost guns. I had not realized how significant the problem is, but the police on the street are reporting that ghost guns are becoming more and more of a problem.

So, I'm hopeful that this regulation will give us some chance to beat that back.

LUCY MCBATH:

Thank you. [Inaudible]

JERROLD NADLER:

The time of the gentlelady has expired. Ms. Fischbach.

MICHELLE FISCHBACH:

Thank you, Mr. Chair. Attorney General Garland, in a press release announcing the investigation -- and I'll just preface, I'm from Minnesota, so you may guess where some of the questions are going. But in a press release announcing the investigation, you said that the DOJ's investigation into the Minneapolis Police Department will examine the use of excessive force by the police, including during those protests.

Will you also be investigating the origins of the deadly and destructive riots that ravaged large parts of Minneapolis?

MERRICK GARLAND:

So, I think these are two separate kinds of investigations. The one of the police department has one under the statute that authorizes us to do pattern or practice of unconstitutional policing done by the Civil Rights Division that was welcomed, I understand, by the chief and by the mayor. And that's a one side -- a separate one.

The investigations of the riots are undertaken by the US Attorney's Office as well as by the state's attorney. I think it's called states attorney and maybe it's the county -- state's attorney

in Minneapolis, I guess. And those are two separate sets of an investigation.

MICHELLE FISCHBACH:

So, you will not be. So, your department, DOJ, will not be investigating that?

MERRICK GARLAND:

US Attorney's Office to the extent there were federal crimes has been investigating those crimes. I don't know, I have no idea where the --

MICHELLE FISCHBACH:

DOJ will not be investigating?

MERRICK GARLAND:

At main justice, I don't believe so.

MICHELLE FISCHBACH:

OK. But during the riots following the George Floyd -- the death of George Floyd, dozens of people were injured, countless small businesses, churches were damaged, a police station was burnt down. A post office was burnt down, looted, and damaged all over. And thousands of people had to flee Minneapolis to avoid the violence.

Is the Department of Justice investigating these riots as an act of domestic terrorism at all?

MERRICK GARLAND:

So, now, I think if I'm understanding correctly, we're talking about 2020 at the --

MICHELLE FISCHBACH:

After the death of George Floyd.

MERRICK GARLAND:

Yes. And that investigation, I think -- you know, that was ordered by the previous attorney general. And I don't know whether they're -- whether that is concluded. I believe -- I don't know whether there are any ongoing investigations anymore from that investigation except for the charges that were made at the time.

And those cases are being followed obviously.

MICHELLE FISCHBACH:

Well, and Attorney General Garland, maybe you could get back to me in particular or the committee on the status of those and what is happening with that.

MERRICK GARLAND:

I'd be happy to have my staff get back to yours.

MICHELLE FISCHBACH:

Appreciate that. And I wanted to focus a little bit on the Third Police Precinct that was burnt down and still has not been rebuilt. Police officers don't even know if they're going to have a job in a few weeks given the resolution that's in front of the body. They have a resolution and you're probably not familiar with it, but they don't even know if they're going to have a job because they may be defunding the police in Minneapolis.

You know, the city is down over 200 officers since pre-COVID. If you talk to police officers, they're demoralized, they're struggling. They don't feel supported at all. They're having a very hard time. And you're the one initiating investigation of the Minneapolis Police Department. Considering all of the scrutiny that they are under, how do you propose Minneapolis can keep up police officer morale now that their under investigation and criticism, all of the criticism they're taking as well?

MERRICK GARLAND:

Well, let me say first on the defund police issue, the department does not support defunding police, nor does the president. So, we've asked for more than \$1 billion, a major increase in funds for local police departments.

MICHELLE FISCHBACH:

And sir, I didn't imply you did. I just wanted you to understand the context of the question because it's in front of the Minneapolis residents right now.

MERRICK GARLAND:

I do. I do. With respect to the pattern or practice investigation, there were a large number of serious incidents that were well reflected in the press and I think there was general agreement that there were problems. This does not mean that every police officer, quite the contrary. This means that, and I believe is, and from talking to many police officers, that they believe that it's important that there be accountability and that officers who break the law are held accountable so that the community retains its trust in the good police officers who do not break the law.

And those are by -- you know, the very large majority. They need that trust in order to have the cooperation of the community and that's the only way they can be safe and that's the only way the community can be safe. So, I think police officers should look at these investigations in a positive way and we are trying to present them in a positive way.

MICHELLE FISCHBACH:

And Attorney General, I think that the problem is, is that they're being -- it's piling on. It is continuing to pile on in particular in Minneapolis with these police officers who are there. They have -- many of them have grown up there. They are doing their job --

JERROLD NADLER:

The time of the gentlelady has expired. Mr. Stanton.

MICHELLE FISCHBACH:

Thank you. I yield back.

GREG STANTON:

Mr. Attorney General, I want to discuss with you missing and murdered indigenous women and girls. It's a national shame that when native women are murdered or when they disappear, their cases do not receive the resources or the investigations they deserve. And their loved ones are left without answers. President Biden made significant and specific commitments to travel communities to support MMIWG investigations.

But I am not convinced that those commitments have been kept particularly by the Department of Justice. Mr. Attorney General, I read your very brief statement on May 5th marking Missing and Murdered Indigenous Persons Awareness Day. But I'm not aware of you speaking publicly about this issue since you were confirmed to lead the department.

It does not appear that you have used your platform to help make this a top priority nor has DOJ really moved the needle on this issue since your confirmation. As attorney general, you serve on the Operation Lady Justice Task Force, but that was a task force created under the last attorney general, not you.

Do you agree that our tribal communities deserve more from the nation's top law enforcement official?

MERRICK GARLAND:

OK. I think this is a terrible tragedy. This circumstance, almost inexplicable tragedy. If I haven't spoken on it yet, I assume I will be because, under the president's executive order, I'll be cochairing a commission along with the secretary of the interior. I have been to the US attorney's offices in Oklahoma which have significant tribal responsibilities and we have spoken about those matters.

But you shouldn't mistake lack of public statements to be a lack of concern or passion about this issue.

GREG STANTON:

There are 574 federally recognized tribes in the United States. Of those, 326 have reservations and more than 1 million Native Americans live on or near reservations. That's not counting the many who live in urban areas, yet there are fewer than 200 special agents and victim specialists in the FBI's Indian Country program.

Do you believe the FBI's Indian country program is sufficiently staffed?

MERRICK GARLAND:

Well, I think the FBI could always use additional resources. I have to look into that specific question, which I haven't evaluated whether there are sufficient staff.

GREG STANTON:

In light of the facts I just laid out, will you commit today to adding staff to the Indian country program?

MERRICK GARLAND:

Well, I'm very interested in -- you know, our normal approach on this is cooperation with tribal officers and cooperation with the sovereign tribes, so that we are in sync on this rather than the federal government invading tribal prerogatives. But I do think that we need to look at this more closely and this is one of the things I'll be speaking with the interior secretary about.

GREG STANTON:

As you know, there's great frustration by many of our tribal leaders that when they asked for additional federal support to investigate these cases, they feel like they don't receive that

support. Our nation knows the tragic story of Gabby Petito because of the tremendous media coverage and law enforcement involvement her case garnered.

All of us grieve for Gabby's family and friends, while at the same time I wish that every missing person's case earn the same level of media attention. The FBI committed significant resources to that case, which I appreciate. But, Mr. Attorney General, when a native woman goes missing, or any woman of color for that matter, they don't get the same level of attention from the Department of Justice and FBI. What would you say to their families to explain why?

MERRICK GARLAND:

I don't think there's any excuse for not giving equal treatment to native and indigenous missing persons. And I don't believe there's any effort to not do that. I know that both the FBI and the Marshals Service are involved in this, along with their partners, their tribal partners.

MERRICK GARLAND:

And I'm not sure what else I can say about that.

GREG STANTON:

Just two weeks ago, the chairman of the Blackfeet Nation in Montana sent you a letter about the case of Ashley Loring Heavyrunner, a 20-year-old woman who went missing under suspicious circumstances three years ago. Her family and the tribal community are incredibly frustrated at the federal government's response to the case.

And in his letter to you, he asked why the federal government continues to make Ashley's family, "suffer and feel like Ashley's life doesn't matter." That breaks my heart, sir, because I can see why so many Native American families feel like their missing or murdered loved ones do not matter to the federal government.

We have a unique trust responsibility to our tribal nations, and rarely, if ever, has our federal government delivered. This is an opportunity to finally deliver. It offers you the opportunity to deliver. So, let's not fail our native communities again. So, what I hope and expect from President Biden and yourself, Mr. Attorney General, is more than lip service or empty statements on this issue --

JERROLD NADLER:

The gentleman's time --

GREG STANTON:

More than sharing task-force recommendations that will be left to sit on a shelf and look forward to your words in the near future. Thank you, Mr. Attorney General.

JERROLD NADLER:

Gentleman yields back. Mr. Massie.

THOMAS MASSIE:

Thank you, Mr. Chairman. Mr. Attorney General, you announced that the DOJ would use its authority and resources along with the FBI to police speech at school board meetings. In your opinion, what limitations does the 10th Amendment bring to your effort to police those school board meetings and the speech there in?

MERRICK GARLAND:

Well, let me be clear. We have no intention of policing school board meetings, nor does any memorandum from me suggest that we would do that. The memorandum that you're referring to is about threats of violence and violence. And that's all it's about. We greatly respect the First Amendment right of parents to appear before school boards and challenge and argue against provisions that the school boards are doing.

This memorandum has absolutely nothing to do with that.

THOMAS MASSIE:

So, you believe the sheriffs and the local police should police the school board meetings and investigate the threats of violence?

MERRICK GARLAND:

Yes, I -- obviously, the first step is for state and local authorities to do that. This memorandum is about cooperating with state and local authorities. Now, there are some federal statutes that cover threats and intimidation, and harassment. And we have the obligation to enforce those.

THOMAS MASSIE:

OK.

MERRICK GARLAND:

But those do not -- those don't apply within a school board meeting.

THOMAS MASSIE:

Need to move on. Thank you. I was hoping that you would articulate the 10th Amendment or some argument that comes from that because I'm concerned that the announcement was an effort to basically, you know, freeze the speech or to suppress the speech of school board members. But I need to move on, and I want to ask you about something.

There's a concern that there were agents of the government or assets of the government present on January 5th and January 6th during the protests. And I've got some pictures that I want to show you if my staff could bring those to you. [Begin videotape]

UNKNOWN:

[Inaudible] I'm probably going to go to jail for it. [Inaudible] We need to go into the Capitol. Into the Capitol. What?

MERRICK GARLAND:

I'm afraid I can't see that at all.

THOMAS MASSIE:

It depicts --

UNKNOWN:

Peacefully. [Inaudible] Hey, hey, hey. Peacefully. OK, folks, [Inaudible] as soon as the president starts speaking, we go to the Capitol. The Capitol's this direction. [End videotape]

JERROLD NADLER:

Is that approved video? [Begin videotape]

UNKNOWN:

We are going to the Capitol. [Inaudible] It's that direction. [End videotape]

THOMAS MASSIE:

All right. You have those images there, and they're captioned. They were from January 5th and January 6th. As far as we can determine, the individual who was saying he'll probably go to jail, he'll probably be arrested, but he wants every -- that they need to go into the Capitol the next day, is then, the next day, directing people to the Capitol.

And as far as we can find, this individual has not been charged with anything. You said this is one of the most sweeping investigations in the history. Have you seen that video or those frames from that video?

MERRICK GARLAND:

So, as I said at the outset, one of the norms of the Justice Department is to not comment on impending investigations and, particularly, not to comment about particular scenes or

particular individuals. This is [Inaudible]

THOMAS MASSIE:

OK. Without -- I was hoping, today, to give you an opportunity to put to rest the concerns that people have that there were federal agents or assets of the federal government present on January 5th and January 6th. Can you tell us, without talking about particular incidents or particular videos, how many agents or assets of the federal government were present on January 6, whether they agitated to go into the Capitol and if any of them did?

MERRICK GARLAND:

So, I'm not going to violate this norm of the rule of law. I'm not going to comment on an investigation that's ongoing.

THOMAS MASSIE:

Let me ask you about the vaccine mandate at the DOJ. Is it true that people -- employees of the DOJ can apply for religious exemption?

MERRICK GARLAND:

The mandate, as I understand it, is a mandate which allows exceptions provided by law. Religious Freedom Restoration Act is a provision of law.

THOMAS MASSIE:

So, the religious exemption has a basis in the Constitution. And so, that's required to be constitutional. Can you tell me if anybody's been granted a religious exemption?

MERRICK GARLAND:

I don't know.

THOMAS MASSIE:

So, I believe that it's fraud. In fact, fraud to tell people that you're going to preserve their constitutional religious accommodations by telling they can apply for an exemption and then not allowing any of those exemptions. And I'm sad to see that you can't tell us that anybody has been granted an exemption

JERROLD NADLER:

The gentleman's time has expired. Ms. Dean.

MADELEINE DEAN:

Thank you, Mr. Chairman. Welcome, Attorney General Garland. Thank you for your service to our country. I'd like to try to get to three important areas. Number one, let me follow up on some of the questions we've had around guns, in particular ghost guns. They are often obtained without a background check, and most ghost guns are untraceable.

These weapons are incredibly attractive to criminals, increasingly common, and should concern us all. This March, Pennsylvania investigators uncovered a trafficking ring suspected of frequenting gun shows to sell ghost guns, spreading them in my district and across our commonwealth. Access to ghost guns impacts regular Americans, like Heather Sue Campbell and Matthew Bowersox of Snyder County, Pennsylvania, who were shot and killed last year by Heather's ex-husband, the subject of a protection order.

He took her life with a ghost gun, a homemade P80 Polymer 9mm pistol. Could you continue to talk about how the proliferation of ghost gun hinders the ability of law enforcement, and what is DOJ's strategy to protect us from ghost guns? This is in follow-up to my colleague, Representative McBath.

MERRICK GARLAND:

Yes. So, we are finding more and more ghost guns at violent crime scenes. I don't remember the statistics exactly, but I believe, in both New York and in Chicago, I was told that at least 20 percent of the crime scenes, particularly the violent crime and murder scenes, we're finding, that they were done by both ghost guns.

Ghost guns have two problems. One of which is they're untraceable because they don't have serial numbers. And second, they are not subject or, at least I should say, there's been some dispute about whether they're subject to requiring background checks. That's the reason that we initiated a rule-making to require that the parts of the gun, which are sold as kits in parts, are stamped with serial numbers by the manufacturer.

And that when they are sold, they must have serial numbers on them as a kit, and they must run the background checks that you're talking about.

MADELEINE DEAN:

I thank you for that rule-making, and I hope that we, here in the Legislature, will do more to protect us and our safety from the proliferation. On the issue of opioids, as you pointed out, last year was, particularly, deadly. The total number of people who died of overdose was 93,331 people. And you know that our state, Pennsylvania, is particularly upset with DOJ sweetheart deal that was made last year with the Sacklers.

What can I say -- what can you say to victims of addiction, to the families who have lost people by the flooding of the market by the Sackler family and letting them, really, literally the rich and powerful, get away with it?

MERRICK GARLAND:

I don't think I'm able to talk about that case because it's in litigation. The only thing I will point out is the Justice Department opposed the release of liability -- personal liability of the family in that matter on behalf -- being brought by our bankruptcy trustee and is on appeal right now, I believe.

MADELEINE DEAN:

I thank you for that, and I hope that justice will be done for these families. And finally, on a third matter, asylum. Asylum is a human right.

MADELEINE DEAN:

I am horrified by the inhumanity we have seen and the ongoing use of a Trump-era Title 42 authority to expel migrants, all of which is done with no due process. Unstable government, political prosecution, violence a?" we know what people have suffered and what they are fleeing. You are now at the helm of DOJ. Will you continue the use of Title 42 authority even after CDC has repeatedly stated, there was no evidence that the use of Title 42 would slow the spread of COVID?

MERRICK GARLAND:

Well, the use of the authority comes from the CDC itself. They're the ones who issue the orders with respect to Title 42, and this is a challenge also in the courts. We believe that the CDC has a basis because of the concern about spread of COVID, which is what the grounds are. How long that will last is a determination CDC will make with respect to the pandemic and what the threats are with respect to the pandemic.

This doesn't have anything to do with, you know, my view or the government's view about the importance of asylum. It goes only to the CDC whose authority under Title 42 to issue this kind of order.

MADELEINE DEAN:

But it is my understanding, and maybe we could all look at it more closely, that CDC says there is no evidence that the use of Title 42 will slow the spread of, and the worry about, the spread of COVID from those seeking asylum. I hope we can look into that and stop the use of Title 42. Again, I yield back.

JERROLD NADLER:

The gentlelady's time has expired. Ms. Escobar?

VERONICA ESCOBAR:

Thank you, Mr. Chairman. Just a quick note. Earlier, a colleague asked that Mr. Raskin take down his words when referring to another colleague as being a member of a cult. I think if folks would just admit that President Biden won the 2020 election and would stop pushing the big lie, they wouldn't have to worry about being accused of being in a cult.

Attorney General Garland, I represent Congressional District 16 in El Paso, Texas. And we're coming into this hearing fresh off the heels of a gravely unjust redistricting session in the Texas state legislature where Republicans engaged in deliberate, shameless, extreme partisan gerrymandering. Texas gained two new House seats, fueled by the growth in our Latino population.

But instead of drawing maps reflecting that growth, Republicans chose not to add Latino majority districts and, according to a lawsuit filed by the Mexican American Legal Defense Fund, drew maps that diluted the voting rights of Latinos. This process was opaque and nontransparent perhaps because Texas Republicans hired a political operative known to have Republican members of Congress sign nondisclosure agreements.

I ask unanimous consent to enter into the record an article from The Texas Tribune entitled "Texas appears to be paying a secretive Republican political operative \$120,000 annually to work behind the scenes on redistricting".

JERROLD NADLER:

Without objection.

VERONICA ESCOBAR:

[Inaudible] Thank you so much. My own district was impacted in a process I have described as being akin to looting. And, unfortunately, Texas isn't the only state where this is happening. Mr. Garland, what steps is the Justice Department taking to ensure that redistricting plans do not violate the Voting Rights Act and discriminate against racial, ethnic, and language minority voters?

MERRICK GARLAND:

So, we announced before any of the redistricting plans began, because we knew that the decennial census would be leading to redistricting plans, that the Voting Section of the Civil Rights Division will be reviewing all of these plans. That's why we doubled the size of the Voting Section because the burden of this work is large, and there's a lot of it because of the census.

So, the Justice Department's Civil Rights Division will be examining these plans and will act accordingly as the facts and the law provide.

VERONICA ESCOBAR:

Thank you, Mr. Garland. In addition to the extreme partisan gerrymandering that is going on, states like mine have passed voter suppression legislation, all of it rooted in Donald Trump's big lie about the 2020 election. In light of these numerous state laws that passed that restrict access to the ballot box, how at risk are minority voters from being disenfranchised in elections over the coming years?

And what will the department do to confront those risks?

MERRICK GARLAND:

So, Justice Department has authority under the Voting Rights Act to prevent changes in practices and procedures with respect to voting that are discriminatory in the ways that you described. The Supreme Court in Shelby County case eliminated one tool we had, which was the Section 5 preclearance provision.

So, what we have now is Section 2, which allows us to make these determinations on a case-by-case basis with respect to discriminatory intent and discriminatory effect. That -- the Voting Rights Section is reviewing the changes that are made as they are being made and after they are being made. We have filed one lawsuit already in that respect, and the investigations are continuing.

I can't talk about any particular state though.

VERONICA ESCOBAR:

Thank you. And in my very limited time -- women in Texas are under attack. Our freedom to reproductive rights and our rights to an abortion are under attack, and this has been furthered by the Supreme Court and their recent -- the consequences of their shadow docket. In your opinion, what are some of the practical consequences of the court's decision denying stay in the case, the Texas case, via the process and formally known as the shadow docket?

You've got about 20 seconds, I'm so sorry.

MERRICK GARLAND:

All right. Well, most of what I'm about to say is reflected in the briefs that we just filed with the Supreme Court the other day, asking them to take this case. What we're particularly concerned about is the inability of anybody to challenge what is a clear violation of the Supreme Court's precedent with respect to the right to abortion because of the way that the law is structured.

And we can't have a system in which constitutional rights evade judicial review, whether it's about abortion or any other right. And I think I'll leave it with my -- our briefs which were just filed and which explicate what I just said in greater detail and, I'm sure, with greater style.

JERROLD NADLER:

The gentlelady --

VERONICA ESCOBAR:

Thank you so much, Mr. Chairman. I yield back.

JERROLD NADLER:

The gentlelady yields back. Mr. Jones?

MONDAIRE JONES:

Thank you, Mr. Chairman. I wish that rather than trying to redefine the words domestic terrorism, my Republican colleagues would simply instruct their supporters to stop engaging in it. Mr. Attorney General, thank you for your testimony today. As an alumnus of the Office of Legal Policy at Main Justice, I know about the hard work that you, your leadership team, and your line attorneys have been engaging in. And as an American citizen, I'm deeply appreciative of that.

MERRICK GARLAND:

Thank you.

MONDAIRE JONES:

You won't be surprised, given the work that I've been doing this year, that I want to speak with you about protecting the fundamental right of Americans to vote, which is clearly under assault. You underscored in your remarks to the Civil Rights Division in June that the right to vote is the cornerstone of our democracy, and you have said much the same today.

I don't need to tell you that states have launched the most severe assault on the right to vote in this country since Jim Crow. It is an onslaught that has hit voters of color, seniors, young people, and voters with disabilities the hardest. President Biden, for his part, has warned that we are facing "the greatest test of our democracy since the Civil War". As you said in your remarks to the Civil Rights Division, so far, this year, at least 14 states have passed new laws that make it harder to vote.

Well, according to the Brennan Center for Justice, that total has since risen to 19. Mr. Attorney General, let me start with a simple question to you. Which of those 19 states has the Justice Department sued for unlawful or unconstitutional voter suppression?

MERRICK GARLAND:

Well, this is on the public record. We sued Georgia.

MONDAIRE JONES:

Only one out of 19. In your June address, you emphasized that a meaningful right to vote requires meaningful enforcement. Yet even as we face a historic level of voter suppression and even as we confront grave threats to the integrity of vote counts, the Justice Department has not challenged the vast majority of these laws in court.

Would you say that bringing one case against state voter suppression is meaningful enforcement?

MERRICK GARLAND:

I think we have to prevent discriminatory violations of the Voting Rights Act wherever they occur and in as many states as they occur. But these investigations under Section 2 are very record-intensive and very labor-intensive. And voting rights -- the Voting Section of the Civil Rights Division is extremely devoted to making those kind of analyses, but we have to do each case one by one because of the elimination of Section 5. And that is what the Civil Rights Division, under our new assistant attorney general, Kristen Clarke, is doing.

I have great confidence in her and in the division.

MONDAIRE JONES:

I have great confidence in Kristen Clarke and yourself as well.

MONDAIRE JONES:

You mentioned that Section 5 has been hampered. Of course, it's been hampered in that *Shelby v. Holder* decision in 2013. You also mentioned earlier today that you were supportive of the John Lewis Voting Rights Act and I appreciate that. I think it is part of the

democracy saving legislation that the Senate must pass. Are you familiar with the Freedom to Vote Act, the revised version of the For the People Act that was --

MERRICK GARLAND:

I know what it is and I know some provisions, but I -- to be honest, I don't know every provision.

MONDAIRE JONES:

OK. Well, I would submit that we need to pass that in the Senate as well given the democracy saving provisions that are contained therein. It is long past time for the Senate to pass both of these pieces of legislation, and as we learned yesterday, unfortunately, the filibuster, a Senate rule that entrenched Jim Crow for decades, is the last obstacle in the way.

I am convinced, as you have said and written before, and reiterated in your testimony today, that the Justice Department needs new tools to fully protect our democracy. And as we learned yesterday, the filibuster, a rule crucial to entrenching Jim Crow, is the last obstacle. If presented with a choice between reforming the filibuster and protecting the right to vote -- or protecting the filibuster and allowing voter suppression to continue, which would you choose, Mr. Attorney General?

MERRICK GARLAND:

Look, I think the right to vote is absolutely essential and it is, as I've said repeatedly and as you quoted, a cornerstone of democracy. The question of the House rules are a question for the House. I'm very mindful of the separation of powers that this is a judgment for the members of the House to determine and not for the executive branch.

MONDAIRE JONES:

And, of course, the filibuster is a Senate rule. Mr. Attorney --

MERRICK GARLAND:

I'm sorry, I'm sorry, the Senate.

MONDAIRE JONES:

It's fine. I understood.

MERRICK GARLAND:

My bad.

MONDAIRE JONES:

Mr. Attorney General, as an alumnus of the Justice Department and as an American, I'm grateful for your work. But if we do not reform the filibuster and act now to protect the right to vote, the same white nationalists who incite violent insurrections at the Capitol, and lie about the efficacy of masks and vaccines are going to disenfranchise their way back into power.

Please take that message back to the president of the United States when you have a conversation with him hopefully about the filibuster and what he can do to help us here, and to protect American democracy, which is in grave peril.

JERROLD NADLER:

The gentleman's time has expired. I recognize Mr. Roy for the purpose of a UC request.

CHIP ROY:

I appreciate that, Mr. Chairman. I have a document from an organization, Parents Defending Education, in which they had sought a FOIA request from the National School Board Association. And we've got the email exchanges from that, that I would like to insert into the record in which the interim director discusses on an email on September 29, the talks over the last several weeks with White House staff "explaining" the coordination with the White House.

So, I'd like to insert that in record.

JERROLD NADLER:

No objection. Ms. Ross.

CHIP ROY:

Thank you, Mr. Chairman.

JERROLD NADLER:

Ms. Ross is recognized.

DEBORAH ROSS:

Thank you, Mr. Chairman. And, Attorney General Garland, thank you so much for being with us today. I also want to thank you for mentioning the work of the Department of Justice with respect to the Colonial Pipeline in your opening remarks. And I want to begin with a few questions about cybersecurity. As you know, ransomware attacks are a significant concern throughout the country, but particularly in my district in North Carolina.

In May, the Colonial Pipeline attack left nearly three-quarters of Raleigh, North Carolina gas stations simply without fuel. And as you also know, the Colonial Pipeline paid a ransom demanded by the hackers in order to unlock their systems and resume operations. While the DOJ has recently launched Ransomware and Digital Extortion Task Force, was eventually able to recoup some of the money paid by Colonial Pipeline, victims are often left to negotiate with attackers to recover the systems without any federal help.

And so, I'd like for you to share why DOJ chose to be more aggressive in the Colonial Pipeline situation, and what are the factors that leads -- lead -- would lead DOJ to get involved directly in a ransomware case?

MERRICK GARLAND:

Well, I don't want to go too far out on a limb on this, but I think DOJ would like to be involved in every ransomware case if we have the resources. The problem is generally, not all victims of ransomware tell us. Not all victims tell us before they make ransom payments. If victims would tell us before, we would have a good opportunity possibly to be able to recover.

We would have some opportunity to be able to help between the FBI and the computer section of the Justice Department, and the computer section at H -- at the Department of Homeland Security. We are willing and able to deal with victims of ransomware, including doing negotiations if necessary. So, I think this is really more of a question of getting cooperation from the victims who -- and I mean no respect to -- disrespect to the victims, but they're not always willing to tell us in advance.

And I think it would be very helpful if we were told in advance.

DEBORAH ROSS:

And would it also be helpful if you had reporting on what victims had paid in ransomware --

MERRICK GARLAND:

Yes.

DEBORAH ROSS:

In a larger registry? I've introduced legislation. There's a companion Senate legislation on this.

MERRICK GARLAND:

Like more information we can find out about who's demanding the ransoms, what victims are paying, how they're paying, what kind of wallets they're paying them into, what kind of cyber or crypto wallets they're being asked to pay them into, all of those things help us understand the ecosystem. So, the more information we have, the better.

DEBORAH ROSS:

Thank you for those responses. I'm going to switch to the ERA in women's rights. And today marks the 50th anniversary of the Equal Rights Amendment and its passage in the House of Representatives. Since the bill passed the House in 1971, 38 states have ratified the ERA, meeting the constitutional requirement necessary to certify and publish the ERA as the 28th Amendment to the Constitution.

But under the Trump administration, the DOJ's Office of Legal Counsel issued an opinion blocking the archivist of the United States from certifying the amendment even if Congress extends the deadline. As you know, women continue to face obstacles to their equality in pay, in child care, in the criminal justice system.

And scholars at the ERA Project at Columbia Law School have released a new analysis arguing that the memo should be withdrawn because it rests on erroneous interpretations of legal precedent and directly contradicts previous IOLC [Ph] opinions. Attorney General Garland, it's common practice for the DOJ to review prior legal opinions and withdraw those that are not legally sound.

Will you commit today to closely examine the OLC memo, and if you agree with these legal scholars that it is flawed, rescind this memo so that general -- gender equality can be enshrined in the Constitution?

MERRICK GARLAND:

Well, I will certainly -- I think the first step is to find out what OLC is doing in this respect. Sometimes they review previous opinions and often, they do not out of respect for their own precedents. I don't know what the status is with respect to this one. I certainly understand the argument, and I'll see if I can find out what OLC is doing in this respect.

DEBORAH ROSS:

Thank you very much, and I yield back.

JERROLD NADLER:

The gentlelady yields back. Ms. Bush.

CORI BUSH:

St. Louis and I thank you, Attorney General Garland, for being here with us today. Thank you for sitting through all of this. Since your confirmation in March of 2021, at least 128 black people have been killed by law enforcement officers in the US. That's one black person killed by law enforcement every two days, and that is an undercount.

Police killings in America have been undercounted by more than half over the past four decades. Attorney General Garland, as the people's attorney, do you think that law enforcement officials are above the law?

MERRICK GARLAND:

No one is above the law.

CORI BUSH:

I completely agree, and let's see how well that's going. Are you aware that Black and brown people are disproportionately stopped, searched, and arrested by police often for minor infractions?

MERRICK GARLAND:

I've certainly read that and I'm not surprised to learn it.

CORI BUSH:

Thank you. Are you aware that according to the FBI, white nationalists have infiltrated ranking file police departments?

MERRICK GARLAND:

I'm not sure I know the specific reference that you said about the FBI. I know that there are problems in some police departments with respect to domestic violent extremists being in the rank, and I know that many police departments are trying to make sure that that's not the case. But I'm not sure I know the reference that you're talking about.

CORI BUSH:

OK. I would like to seek unanimous consent to enter this report into -- from the Brennan Center 2020 report detailing white supremacy in police forces.

JERROLD NADLER:

Without objection.

CORI BUSH:

Thank you.

CORI BUSH:

Are you aware that from the statistics we do have, we know that black people are killed by police at three times the rate of white people?

MERRICK GARLAND:

Again, I don't know the actual statistic, but I'm more -- I wouldn't be surprised if that were the case and I'm happy to accept, you know, your representation.

CORI BUSH:

Thank you. Again, I'll -- I ask unanimous consent to introduce a Harvard School of Public Health report on fatal police encounters into the record.

JERROLD NADLER:

Without objection.

CORI BUSH:

Thank you. In light of these realities, do you believe that systemic racism exists in law enforcement agencies?

MERRICK GARLAND:

So, I think racism exists in a number of areas of our society. And the purpose, for example, of these pattern or practice investigations that we do, is to make sure that there is not a pattern or practice of unconstitutional policing.

CORI BUSH:

Mmm hmm.

MERRICK GARLAND:

That's the job of the Civil Rights Division to look at these matters, to take into account complaints in this area, and investigate them.

CORI BUSH:

Yes. The department requested \$1 billion in federal funding for law enforcement agencies in fiscal year 2022, an increase from last year. We are rewarding police departments rather than holding them accountable for racist practices. The department has a powerful tool at its disposal. Title VI of the Civil Rights Act mandates that recipients of federal funds do not discriminate.

And it makes clear that if they do, they are ineligible for federal funding. I am happy to see that the department is undergoing a 90-day review of Title VI. Given the structural racism in law enforcement agencies that you have acknowledged, will you commit today to withholding funds to law enforcement agencies that discriminate in violation of Title VI?

MERRICK GARLAND:

So, as you correctly point out, our associate attorney general and deputy attorney general are doing a review of Title VI and how it should be applied to our grants. I want to be clear, we are funding local police departments, but we are also making grants for the purpose of supporting constitutional policing, better community policing, better programs to ensure that there isn't discrimination.

I think that there are many, many, many good-hearted and nondiscriminatory police officers. We have to support them and root out the ones who violate the law. That's our job.

CORI BUSH:

Absolutely. And for me, if you know that your colleague is not doing something right, if you know your colleague is racist or has racist practices and you don't speak up, that means that you're not a good police officer as well. I mean, I don't believe in good and bad. I believe that there are officers and there are people who are below the standard.

I ask because St. Louis leads the nation in police killings per capita. It is a region where Michael Brown Jr. was killed in plain sight and there was zero accountability for his murder. It is where our movement in defense of Black lives began. Racialized violence is a policy choice. We can choose to subsidize it or we can choose to stop it. And so, for St. Louis, the choice is clear.

We must stop it. We must save lives. The Title VI review puts us on a path toward accountability. We need only to enforce it. Thank you and I yield back.

JERROLD NADLER:

The gentlelady yields back.

UNKNOWN:

Mr. Chairman.

JERROLD NADLER:

I recognize Mr. Massie for the purpose of a unanimous consent request.

THOMAS MASSIE:

Mr. Chairman, I ask unanimous consent to submit to the record two letters drafted and written and sent by Chip Roy and I to Attorney General Merrick Garland for which we have not received a response, one dated July 15 and one dated May 13.

JERROLD NADLER:

Without objection.

THOMAS MASSIE:

Then I have another unanimous consent request to submit for the record the frames from the video that were displayed in my testimony.

JERROLD NADLER:

Without objection. Ms. Jackson Lee has a UC request [Inaudible]

SHEILA JACKSON LEE:

Mr. Chairman, thank you very much. I ask unanimous consent to put into the record document produced by The Sentencing Project, "In the Extreme: Women Serve Life Without Parole and Death Sentences in the United States." I ask unanimous consent to submit into the record the Senate Judiciary Committee reports subverting justice.

I ask unanimous consent.

JERROLD NADLER:

Without objection.

SHEILA JACKSON LEE:

And also to place into the record legislation I introduced, "Preventing Vigilante Stalking that Stops Women's Access to Healthcare and Abortion Rights Act of 2021" regarding the stalking done by the Abortion Bill of Texas. I ask unanimous consent.

JERROLD NADLER:

Without objection.

SHEILA JACKSON LEE:

Thank you, Mr. Chairman.

JERROLD NADLER:

This concludes today's hearing. We thank the attorney general for participating. Without objection, all members will have five legislative days to submit additional written questions for the witness or additional materials for the record. Without objection, the hearing is adjourned.

#### **List of Panel Members and Witnesses**

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WITNESSES:

DEPARTMENT OF JUSTICE ATTORNEY GENERAL MERRICK B. GARLAND

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# House Appropriations Committee, Commerce, Justice, Science, and Related Agencies Subcommittee hearing Fiscal...sked FINAL

April 29, 2022 10:38AM ET

TRANSCRIPT

April 28, 2022

COMMITTEE HEARING

REP. MATT CARTWRIGHT, D-PA.

HOUSE APPROPRIATIONS COMMITTEE, COMMERCE, JUSTICE, SCIENCE, AND  
RELATED AGENCIES SUBCOMMITTEE HEARING FISCAL YEAR 2023 BUDGET  
REQUEST FOR THE DEPARTMENT OF JUSTICE

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HOUSE APPROPRIATIONS COMMITTEE, COMMERCE, JUSTICE, SCIENCE, AND  
RELATED AGENCIES SUBCOMMITTEE HEARING FISCAL YEAR 2023 BUDGET  
REQUEST FOR THE DEPARTMENT OF JUSTICE

APRIL 28, 2022

SPEAKERS:

REP. MATT CARTWRIGHT, D-PA., CHAIRMAN

REP. GRACE MENG, D-N.Y.

REP. BRENDA L. LAWRENCE, D-MICH.

REP. CHARLIE CRIST, D-FLA.

REP. ED CASE, D-HAWAII

REP. C.A. DUTCH RUPPERSBERGER, D-MD.

REP. DAVID TRONE, D-MD.

REP. ROSA DELAURO, D-CONN., EX OFFICIO

REP. ROBERT B. ADERHOLT, R-ALA., RANKING MEMBER

REP. STEVEN M. PALAZZO, R-MISS.

REP. BEN CLINE, R-VA.

REP. MIKE GARCIA, R-CALIF.

REP. KAY GRANGER, R-TEXAS, EX OFFICIO

WITNESSES:

MERRICK B. GARLAND, ATTORNEY GENERAL OF THE UNITED STATES

CARTWRIGHT: Let us gavel in and begin. As this hearing is fully virtually we must address a few housekeeping matters. For today's meeting the Chair or staff designated by the Chair may mute participant's microphones when they are not under recognition for the purposes of eliminating inadvertent background noise.

Members are responsible for muting and unmuting themselves. If I notice when you are recognized that you have not unmuted yourselves I may ask the staff to send you a request to unmute yourself. Please then accept that request so that you are no longer muted.

I remind all members and witnesses that the five minute clock still applies. If there is a technology issue we will move to the next member until that issue is resolved and you will retain the balance of your time.

You will notice a clock on your screen, and make sure you're in gallery view, the clock will show how much time is remaining. At one minute remaining the clock will turn to yellow and at 30 seconds remaining I will gently tap the gavel to remind members their time is almost up. And when your time has expired the clock will turn red and I will begin to recognize the next member.

In terms of speaking order we will begin with the Chair and Ranking Member then members present at the time the hearing is called to order will be recognized in order of seniority. And finally members not present at the time when the hearing is called to order will be recognized.

Finally, House rules require me to remind you that we have set up an email address to which members can send anything they wish to submit in writing at any of our hearings or mark-ups. That email address has been provided in advance to your staff.

And the subcommittee will now come to order.

Good afternoon. Welcome to the first hearing of the year for the subcommittee on commerce, justice and science and related agencies. I am pleased to welcome our Attorney General Merrick Garland back to speak to us on the fiscal year 2023 budget request for the Department of Justice.

Attorney General Garland, it has been a very busy year for you since our last meeting and we look forward to discussing the major priorities for the Department of Justice. As we noted last year the Justice Departments missions are far reaching. The department helps administer the law and support the Constitution, protect national security, human rights, preserve civil liberties, support free and fare elections, and safeguard our commerce and our economy.

The Department of Justice administers a massive complex detention and correction enterprise, it adjudicates immigration benefits and oversees a broad and sophisticated criminal, investigative and prosecutorial system.

In addition to its traditional and ongoing missions, justice is taking on new work to support our national response to the Russian invasion of Ukraine with the help of new funding Congress provided in last month's Ukraine supplemental.

DOJ is carrying out its largest and unprecedented investigation and prosecution effort into the January sixth insurrection and related events. And while DOJ is adjusting to the arc of the COVID-19 pandemic it must also ensure that billions in essential pandemic assistance funding are not lost to fraud.

Now the department's task is to ensure that a Constitution rooted in 18th Century enlightenment can safely negotiate 21st Century headwinds. Now we hope this committee can help ensure that you are equipped with a 21st Century toolkit to navigate those winds.

To carry out the department's broad missions you budget seeks \$38.7 billion in discretionary funding. About 11.3 percent above the fiscal year 2022 enacted level. Now your budget proposes significant funding to strengthen the response to a concerning national epidemic in opioid overdoses and a surging gun violence.

It also seeks resources to address a concerning and historic threat from violent extremists particularly white supremacists. We hope to discuss these both in greater detail.

As the bureau of prisons begins to come out of the pandemic we expect to learn how it is improving its staffing, reducing overcrowding and implementing the First Step Act reforms using the substantial investments provided by Congress.

We also want to hear how the Department would utilize the significant increases that are sought for the office on violence against women, juvenile justice programs and efforts to strengthen community policing.

This administration has proposed a \$595 million or 78 percent increase for the executive office for immigration review to address significant immigration processing backlogs and we expect to learn more about how the Department can help make our immigration system work in the face of an unprecedented work load.

Now you have taken -- you have taken steps to identify corruption and capture Russian kleptocrats (ph) or at least their ill-gotten wealth. We're going to -- we're going to want to learn more today about the progress in that effort.

We also look to hear more about the proposed initiatives to bolster anti-trust enforcement, support environmental justice and defend intellectual property rights to protect American industry and jobs.

Attorney General Garland, you have a big job. It is only getting bigger. Now we look forward to your testimony and at this time I want to turn to my distinguished ranking member, Mr. Robert Aderholt for his statement. Mr. Aderholt.

ADERHOLT: Thank you, Mr. Chairman. And welcome Attorney General, it is -- we welcome you to the commerce justice science subcommittee today to testify regarding the Department of Justice FY '23 budget request. Of course your budget request has a total of roughly 38 billion and discretionary resources for the Department of Justice, which is an increase of over 2.5 billion over FY '22 enacted level (ph).

But for reasons that are not really clear, your budget proposes an additional \$30 billion. And for those who are listening that is with a B, billion, in new mandatory spending. The budget submission includes no explanation of how Congress is expected to fulfill this request.

What this request signals is that while American families all across the United States are making hard choices, they're seeing their buying power diminish with each passing day, the administration is doubling down on spending policies that have helped bring about the worse inflation that this nation has seen really in 40 years.

And while tax payers are stretching to make every dollar they retain -- they retain count, the budget boast about including \$600 million in support -- to support free immigration lawyers for thousands of illegal persons who are crossing the border to illegally enter our country each and every day.

Even more outrageous is the fact that \$450 million is mandatory spending. Speaking of immigration, Attorney General Garland. I have many questions about the cost of the immigration policies you have helped craft.

In particular a new asylum rule that abdicates the role of immigration courts funded but this subcommittee and admonishes the value and integrity of immigration judges. As it trades integrity for expediency (ph) and puts the politics really ahead of border security.

This rule, an interim final rule announced in March, turns our immigration system literally on its head. It shifts the burden of filing illegals' application for asylum to the U.S. government. It redirects unauthorized aliens from a path to remove proceedings to non-adversarial hearings in which asylum can be granted expeditiously.

And it creates the strongest magnet yet for illegal immigration and expedited paths to work -- to a work authorization. The new procedures that are set are -- that are set for go into effect May 31st. And it is set to collide with the administrations repeal of Title 42 procedures.

Yet, ironically we will no doubt here today that the Justice Department is committed to countering the surge of violent crime that our nation is experiencing and that it wants to combat the human and trafficking operations of violent cartels.

This committee and the American people have a right to hear whether a request for federal law enforcement resources in this budget reflects the surge in migration and crime that is expect to result from major policy changes that this administration is poised to unleash.

In addition, I've got some questions that I will go over today about DOJ's baffling decision to terminate the China initiative. FBI Director Christopher Wray has repeatedly sounded the alarm about the threats that the United States face from China.

And he is correct on that. The biggest threat we face as a country from a counter intelligent perspective is the Chinese communist party. And according to Director Wray, they have stolen more of Americans personal and corporate data than every nation combined.

Anything that makes an industry tick, they have targeted. And we know -- or I'm sorry, we need to know why this administration rather than working to counter false political charge that the program was targeting to Chinese people are people of Chinese ancestry, simply terminated this essential national security program.

In your prepared testimony you state that the Department place is a high priority on countering nefarious activities from hostile nation states like China, like Russia, Iran and North Korea. And with all due respect, Russia, Iran and North Korea are nefarious actors but we know they -- we know the difference. China presents an existential and generational threat.

Finally, I'm concerned about the excessive level of federal spending by this administration. Inflation is at the highest level since 1981 and yet the president's budget proposes increases in both taxes and spending, which will likely grow inflation even higher than we're seeing today.

Inflation is a tax on everyone. President Biden continues to blame inflation on everything, except a failed economic agenda. I would argue that this budget proves the administration has not learned from its mistakes.

Our nation's staggering debt, along with increasing national -- increasing interest rates will diminish future generations economic opportunities and it will hinder the federal government's ability to address the security needs of the country.

Never the less, I believe that there will be opportunities to find some agreement on measures to reduce violent crime. Also to fight the scourge of addiction and to protect the vulnerable from those who would seek to abuse or exploit them.

In closing, I do appreciate the hard work of you, Mr. Attorney General and your staff at the Department of Justice that help keep Americans safe. I standby to work with you and ensure that the programs you administer are not only effective, but they're as efficient as possible, but also that they support the rule of law.

And I look forward to working with Chairman Cartwright who has been a great partner on this Subcommittee in support of funding for many important missions of the Department of Justice as this year's appropriation process moves forward. And again, I do appreciate your willingness to be before this Subcommittee today, and I yield back.

Thank you.

CARTWRIGHT: Thank you, Mr. Aderholt.

At this time, Mr. Attorney General, you are recognized for your opening remarks. Please try to keep your statement to five minutes. And as always, be assured that your full written statement will be included in the record.

You are recognized.

GARLAND: Good afternoon, Chairman Cartwright, Ranking Member Aderholt, and distinguished members of this Subcommittee. Thank you for the opportunity to appear before you today. Before I address the details of our fiscal year 2023 request, I would like to say a word about the president's supplemental budget request with respect to Ukraine.

The Justice Department is currently putting all available resources to use to hold accountable individuals whose criminal actions are enabling Russia's unjust war against Ukraine. In March we launched the KleptoCapture Taskforce, since then the taskforce has been hard at work with our international partners who enforce sanctions violations, dismantle Russian criminal networks, and freeze, seize and forfeit (ph) (inaudible) assets.

The proposals the president announced today will give the Justice Department critical resources and tools to continue and strengthen this work. Among other things they would enable us to transfer the proceeds of forfeited Russian assets directly to Ukraine to remedy the harms of Russia's aggression. They would close loopholes in our sanctions and forfeiture law, and they would allow us to help the people of Ukraine in their most dire hour.

We have all seen the heartbreaking images coming out of Ukraine, and we have all read the accounts of Russia's legality (ph). We urge Congress to quickly consider this request, the Justice Department stands ready to provide the Committee with additional details and assistance as you consider the administration's supplemental request.

With that, I'll turn to the primary subject of today's hearing, the Justice Department's FY '23 budget request. Over the 413 days that I have served as attorney general, three co-equal priorities have guided the work of the Justice Department.

Keeping our country safe, protecting civil rights, and upholding the rule of law. These priorities reflect the Justice Department's mission and our mission is reflected in the president's FY '23 budget request.

Our first request and our first funding priority is keeping our country safe from all threats foreign and domestic, whether from hostile nation states, terrorists, or common criminals. As our country's chief law enforcement officer I'm committed to supporting members of law enforcement at all levels of government as I (ph) work to protect our country, while also safeguarding civil liberties and ensuring our accountability to the American people.

To these ends, the president's FY '23 budget requests more than \$20.2 billion to support the work of DOJ's law enforcement components and U.S. attorneys offices as they carry out their complex mission sets.

These resources will strengthen the Justice Department's efforts to reduce violent crime and gun violence, to counter the multitude of serious and evolving threats to our country from terrorists, cyber criminals, and hostile nation states, to combat the violent drug trafficking networks that are fueling our nation's overdose epidemic, and to protect our nation's democratic institutions including the one we - that you are sitting in today from violent attack.

In FY '23 alone the president's budget also requests more than \$8 billion in grants for states and localities nationwide to fund the police, including by funding more police officers for the beat, and by implementing community based strategies to prevent crime and gun violence.

The president's FY '23 budget also prioritizes the protection of civil rights. We are seeking a 32 percent increase in funding for the civil rights division as well as additional resources for our U.S. attorneys, the FBI, the Community Relations Service and our Office for Access to Justice.

Our civil rights work remains vital to safeguarding voting rights, prosecuting hate crimes, ensuring Constitutional policing, and addressing unlawful discrimination. Another area of departmental focus is safeguarding economic security, fairness, and opportunity.

This is reflected in our request for resources to protect the American people from intellectual property crimes, to reinvigorate our antitrust enforcement and consumer protection, to combat corporate crime, bring to justice those who seek to profit unlawfully from the COVID-19 pandemic.

In particular, department requests a total of \$273 million, an increase of 41.6 percent for the antitrust division to carry out its critical mission of promoting competition in the American economy, and protecting workers, consumers, and businesses alike.

Finally, we are requesting \$11.7 billion to ensure the just administration of our nation's immigration courts and federal correctional assistance (ph). This includes \$1.35 billion for the Executive Office for Immigration Review to reduce the immigration court backlog by hiring more than 1,200 new staff, including approximately 200 immigration judge teams over the FY '22 enacted (ph) level.

Our request for \$8.18 billion for the Bureau of Prisons will help ensure the health, safety and wellbeing for the more than 150,000 individuals in federal custody. This request would allow BOP to hire 1,300 new correctional officers and first-step (ph) staff, and would be used to support rehabilitative programming and improve conditions for confinement.

I respectfully ask for your support for our budget requests as the Justice Department works uphold the rule of law, keep our country safe, and protect everyone's civil rights.

Thank you.

CARTWRIGHT: Thank you for that statement, Attorney General Garland.

We're going to begin the question period now. Each of us will have five minutes per round. And I'm going to begin by recognizing myself for five minutes for questions.

I want to start with what's news today, you mentioned in your opening statement about the establishment of Task Force Klepto Capture. Klepto, of course, is a \$50 word that refers to stealing, is that correct?

GARLAND: By persons affiliated with nation state autocrats. Yes, that's fair to say.

CARTWRIGHT: So Task Force Klepto Capture is to enforce measures to target oligarchs and other criminal allies whose resources have helped enable Russia to amass corrupt wealth and support its military aggression. We just now received the administration's new Ukraine supplemental request, and - and that's the news.

In that request, \$67 million is proposed to be provided to the Department of Justice under its general administration account to support that task force specifically in its efforts to seize high-value assets from sanctioned individuals and use the proceeds and assets seized to remediate harm caused in Ukraine by the Russian invasion.

Now the first and most important question I have is \$67 million. Attorney General Garland, is that enough to do the job?

GARLAND: I always like to get that question from an appropriations subcommittee. Look, you did give us \$59.4 million in the first supplemental, which we put to use for Klepto Capture Task Force and also for our concerns about cyber attack. This \$67 million is more funding.

We would obviously appreciate your support for it because of all our security and our (ph) current operations, but we do anticipate that is the - our task force anticipates at least 30 complex investigations over time. So we would, of course, welcome any additional resources that would be able to put them to good use.

CARTWRIGHT: Well, specifically, asset forfeiture, it is an expensive undertaking, and there are asset forfeiture efforts going on right now. How much are you spending on the beefed up asset forfeiture efforts now and what kinds of expenses would - would this new request support?

GARLAND: This - this request would support our asset forfeiture abilities. So when you seize (inaudible), you have to - I think you're alluding to, we do have to maintain the assets until we're able to forfeit them. So some part of this money would allow us to maintain the assets so we're able to sell them, pay back the money for maintenance and then send the balance to Ukraine.

CARTWRIGHT: Mr. Attorney General, do you require - under the law, do you require additional authority to make proceeds available to fund Ukraine assistance rather than have those funds tied up in the asset forfeiture fund?

GARLAND: Yes, we do, and that's one of the statutory - one of the proposals in the administrations supplemental. Right now, the asset forfeiture fund does not easily allow us to transfer money to that purpose, but this would allow us to do that.

CARTWRIGHT: Okay. But I - we'll be in touch with you about that. Now in the - and I want to broaden the discussion just a little bit. In the past decade, there have been spectacular successes by whistleblowers and investigative reporters such as those in the international consortium of investigative journalists, the Panama papers, the Paradise papers, Pandora papers.

It's no secret that Russian oligarchs represent only a small subset of the kinds of global corruption we're talking about that could be of interest to law enforcement. Does this Klepto Capture Task Force offer a new model for addressing those kinds of investigations that could uncover broader criminal enterprises engaged in things like money laundering, trafficking, and even national security threats?

GARLAND: Yes, I think it can. I want to be clear that our initial focus now has to be on the Russian oligarchs and the sanctions against them. But the kind of task force we've established, which cuts across all departments of the United States government, treasury, homeland security, various inspector general's and our own prosecutors, is putting together the kind of to uncover these shell companies that you're referring to.

And the more experience we have in this area, the easier it will be to apply the model to this kind of behavior across the board.

CARTWRIGHT: I'm glad to hear you say that and I look forward to working with you on that as well. At this time, I - I will yield to the Ranking Member, Mr. Aderholt, for five minutes of questions.

ADERHOLT: Thank you, Mr. Chairman. My first question, I want to ask about a situation that - that occurred in early April. There were photos of five deceased babies that were allegedly from the Washington surgical clinic in here in Washington D.C. and it captured national headlines.

It appeared that these fully formed babies had died in abortions. The pictures reveal the brutality of abortion, and especially late-term abortions. And I'm very concerned about the allegation that at least one baby may have died in a partial-birth abortion in violation of federal law.

To my knowledge, these babies have received no official autopsy to determine whether a violation of the Partial-Birth Abortion Ban Act of 2003, or the Born Alive Infants Protection Act of 2002 had occurred. The facts are troubling to the extent that I think it at least warrants an investigation. And since what is alleged is a violation of federal law, that places the matter under the jurisdiction of the U.S. Department of Justice.

What my question would be, would you - will you commit to dedicating appropriate personnel to the - from the Department of Justice and the FBI to investigate whether any of these babies died in violation of a federal law?

GARLAND: So my understanding is there is an investigation ongoing, led initially by the Metropolitan Police Department. Of course, the three (inaudible) and D.C. are organized, that would include assistant attorneys (ph) who are part of the Justice Department. I can't really say anymore now because there's a pending investigation on it, but I believe that investigation has been announced publicly.

ADERHOLT: Have you - have you been able to view any of the photos of the evidence?

GARLAND: I really don't want to - since there's a pending investigation, I really don't think it's appropriate for me to discuss the way in which the investigations proceeding.

ADERHOLT: Are - well, are you committed to enforcing 18 USC 1531, which is the Partial-Birth Abortion Ban, which is settled law and is upheld by the Supreme Court, to...

GARLAND: The department is committed to enforcing all federal laws.

ADERHOLT: OK, thank you. Well thanks and we'll - we look forward to following up and as that investigation continues. As I noted in my opening statement the China initiative was a policy that was created under President Trump in 2018. And it was in response to the existential threat posed by the Chinese government and those acting on the behalf of the Chinese government.

These efforts were always focused on the action of the Chinese Communist Party and their agents. Never on the Chinese people or individuals of Chinese descent.

My question would be, Attorney General, Director Wray frequently mentions that the bureau is opening new cases to counter Chinese intelligence operations every 12 hours. How does this workload compare to threats that emanating from Russia, North Korea and Iran?

GARLAND: It's just a little hard quantify. I think all four of those countries represents significant threats to the United States but they're along different threat vectors. I think what Director Wray recently said on CBS "60 Minutes", all of which I agree with, is that the Chinese government, the communist party, poses an enormous threat to our intellectual property, to our cyber systems with respect to counterintelligence, and with respect to the national interest in those ways.

No one looking at Ukraine right now can doubt that the Russian government also poses an enormous threat to the United States. We are bracing for a potential cyber attack from Russia. We've had numerous criminal cyber attacks which we have associated with criminal actors operating within Russia. No one operates in Russia without at least some support or looking away by the government there.

We face a counterintelligence threat from Russia as well. So that's enormously significant. Everyone on this committee is aware of the Iranian threat and their support for terrorist organizations which we have to be very concerned about as well. And of course North Korea is a threat in a number of areas. One of which is again cyber and cyber threat.

So I think all four of these countries that you mentioned all represent substantial threats to the nation security. And we are focused on combatting every one of them.

ADERHOLT: Thank you. And of course - but obviously what we're seeing from China is much - is very disconcerting. So thank you, Mr. Chairman, and I yield back.

CARTWRIGHT: Thank you, Mr. Aderholt. At this time the Chair recognizes the overall chair of house appropriations, Congresswoman Rosa DeLauro.

DELAURO: Thank you very, very much, Mr. Chairman and Ranking Member. And Mr. Attorney General, it is wonderful to see you and I thank you for your testimony today.

As you know far too many families and communities across the nation face really very heartbreaking tragedies and needless loss of life which is caused by this epidemic of gun violence and the lack of gun safety and safeguards. So I want to say a thank you to you for the focus you brought to the issue as well as the priorities that are outlined in this year's request including \$1 billion for DOJ's gun violence prevention efforts.

This is a personal issue for me and the district that I represent. In 2018 Ethan Song, a 15-year old teenager from Guilford, Connecticut had his life cut short after being shot with an unsecured gun. Ethan's story is tragic but sadly has become a common reality for too many families.

I have legislation and if legislation is passed in the Connecticut State legislature, Ethan's Law - it's called Ethan's Law, it's supported by more than 200 of my House colleagues and it is to set federal standards for safe gun storage. I hoping that the House will soon take it up and pass it which is much needed legislation.

But while we pursue this congressional action the efforts taken by your administration in the meantime are critically important. Can you explain your current work, how the resources including in this request will help curb the epidemic of gun violence, protect children and communities across the nation and (inaudible) the Congress at the moment how does this Ethan's Law, this kind of legislation fit into the administration's agenda?

GARLAND: Well we are asking for \$20.2 billion, which is a 8.2 percent increase for our law enforcement and U.S. attorney's offices to fight violent crime and gun violence. This includes an increase in 757 assistance U.S. attorneys to put federal statutory penalties on gun violence and to investigate, to run the kinds of task forces of state, federal and local law enforcement necessary to move effectively do this.

We've asked for an - for a \$605 million increase for the FBI to fight a number of areas which includes \$20.6 million for violent crime and \$6.2 million for expanded NICS background checks.

We have in our request \$173 billion which is a \$201 million increase for ATF to expand the number of agents so that we can expand our gun trafficking strike forces. Last year we introduced five gun trafficking task forces to interdict the pipeline of guns that go north and south on the east and the west coast and through the center of the country focused on Chicago. This would allow us to expand those. It would also improve the national tracing center and the (inaudible) center that ATF fronts.

And then we've asked for quite a lot of money, additional \$5.48 billion for grants to state and local communities and law enforcement to prevent gun violence and enforce those laws.

DELAURO: In the context of what you were just talking about of grants, et cetera. What Ethan's Law essential says is that individuals have to secure their guns. They can secure it with ammunition but the weapon has to be secured. It is a public health issue. This is not - we're not trying to take anyone's guns away from them. We're not - it is very simply store the weapon and the ammunition in a safe place.

And so that it's not accessible to kids, as we're seeing an increased number of kids who are dying accidentally. And just the concept of this, as I say, it's passed the state legislature in Connecticut bipartisan support, overwhelming bipartisan support. So, again, it is about gun storage.

Does that fit in to your agenda with regard to the gun safety safeguards and the billion dollars in the gun violence prevention effort? Is this something that would fit in - into your structure?

GARLAND: Great. I - so I - I have to consult our experts as to whether the existing grant programs cover that. It - they may, I just don't know. As you no - no doubt know, we did have model red flag laws that we put out and - with help with respect to grants for state legislatures that were interested in that.

The - it might be this similar program but I don't know but I will ask our technical staff to speak with your staff.

DELAURO: OK, I - I much appreciate it, I much appreciate the initiative on - on gun violence prevention. And it is a - it is overwhelming - and as I say, the initiative that I'm speaking about is purely and simply a public health issue. It doesn't remove anyone's guns, it doesn't - not - the - the restriction is to make it safe, get it into a safe storage place.

So thank you very, very much. And Mr. Chairman and Ranking Member, thank you for - for the opportunity to speak at the hearing today. Appreciate it. Thank you. I yield back.

CARTWRIGHT: Thank you, Chair DeLauro. At this time, the Chair recognizes Representative Ben Cline for five minutes of questions.

CLINE: Thank you, Mr. Chairman. I want to thank the Attorney General for joining us today. General Garland, over the last two years, the CDC has exercised enormous power, including power to shut down the cruise ship industry, stop landlords from evicting tenants who have not paid their rent, require that persons using public transportation wear masks.

Since the Justice Department has decided to appeal the case, in support of the administration's authority to implement these mask mandates, I'd like to understand your basis for the belief that the CDC was acting within the scope of its authority.

Given that the authority of the Public Health Services Act, which is allegedly the basis for the government mask mandates, has generally been limited to quarantining infected individuals and prohibiting the import or sale of animals known to transmit diseases, is it the administration's interpretation that mandatory masking is a form of sanitation, and how so?

GARLAND: So as you correctly note, Congressman, this is a matter in litigation. That - that precise wording that you mentioned, "sanitation," is one of the issues in that litigation. I just want to be clear what the Justice Department's role here is. It's the CDC that makes the public policy and public health determinations. And our only role is to determine whether it has statutory authority.

And we have taken that position now for quite some time, that it has a statutory authority for the masking, with respect to interstate transportation, and the analysis is - is laid out in the briefs that we've filed in numerous courts on this subject.

CLINE: Well, not only did the judge rule that the CDC went beyond its - its authority, they also found that they violated the APA in the process of implementing this mask mandate. As you know, back in February of 2021, when they published the mask mandate without allowing public participation through notice and comment procedures, as the basis for dispensing with the ordinary APA requirements, the CDC said that it would be impracticable and contrary to the public's health to delay the mandate to seek public comment.

So I - I - I think that we have several problems with the mandate that was put in place. Do you know, General Garland, excluding the last two years, when this authority that they're claiming was last enforced and what the purpose of it was?

GARLAND: So I don't know the history. I imagine it was discussed in the litigation. Of course, this is the first major pandemic the country has suffered since the flu epidemic at the beginning of the 20th century. But I could get back to you on - on what the history has been with some of my staff, if you'd like.

CLINE: Well, it's - it's been rare. In fact, from the decision - I'm - I'm just looking at Page 29 - the provision has rarely been invoked and never before to justify a mandate that travelers on every form of commercialized travel wear masks.

And per - perhaps the most notable use of the statute so far, excluding the last two years, of course, was a decision to ban small turtles due to a risk of salmonella back in 1975. So I think what we're seeing here is a - a broad misinterpretation of the statute and a misapplication, not to mention the failure to follow the APA in the process. So I would hope that the Justice Department would reconsider that decision.

Let me move on to another subject. American citizens and - and legal immigrants are, in civil cases, not entitled to free legal representation, correct?

GARLAND: Yes, as a general matter, that's right, although many states have different rules in that respect, but that is correct.

CLINE: The - the federal - from a federal perspective, not in family court, not in tax court, not in bankruptcy proceedings, correct?

GARLAND: That's correct - that's correct.

CLINE: And as you would probably agree, legal representation can be expensive. An American can lose their children or their life savings or become homeless without the government paying for their attorneys. But it's my understanding, in your budget request, you are requesting \$600 million a year to pay for attorneys for unauthorized aliens. Is that correct?

GARLAND: So the Legal Services Corporation, with funding for Congress, does also provide money for the states for all the kinds of things that you're talking about - small claims court, tax court, bankruptcy court, landlord-tenant court. We do have a tradition of trying to provide money for legal services for the poor.

(CROSS-TALK)

CARTWRIGHT: ... line of questioning in the next round. At this time ...

CLINE: Oh, sorry, Mr. Chairman. I yield back.

CARTWRIGHT: Chair recognizes Representative Grace Meng for five minutes of questions.

MENG: Thank you, Mr. Chairman. Mr. Attorney General, thank you for being here. I am grateful that the Fiscal Year '23 budget request includes \$3.2 billion in discretionary resources for state and local grants, in addition to funds to support law enforcement, crime prevention, and community violence intervention.

As you know, I helped secure \$5 million in the Fiscal Year '22 omnibus for a new grant program to go to community-based organizations and civil rights groups who are providing services to victims of hate crimes. These organizations are working at the local level to prevent and counter the proliferation of hate crimes and bias incidents.

Over the past few years of the pandemic, the critical work of local organizations in helping prevent hate crimes and assist those left in their wake have been proven repeatedly in my district. I'm concerned that we are not engaging community organizations and local efforts in the administration of these larger grant programs to prevent violence and crime. Are there ways that we can ensure that community-based organizations have equitable access to the discretionary grants that Department of Justice administers? And where are areas that it can improve collaboration with community-based organizations?

GARLAND: Yes. Thank you. And thank you for the legislation which we are very much supportive of. So we are asking for \$20 million in (INAUDIBLE) Justice Program grants which would go to state and local law enforcement but also to community organizations for the investigation and prosecution and for community engagement and outreach, which I take it are some of the things that you are talking about. For example, providing a state (ph) hotlines for hate crimes and hate instances (ph). And this general concept is included in the money that we're requesting for grants.

MENG: Thank you. And if there are any ways that our office can be helpful in reaching out to even more community-based organizations, please let me know.

The other question I have is about an issue that I've been working on for many years. It's the issue of period poverty, or a lack of access to affordable menstrual products. An opinion piece published in The Washington Post last month highlighted some horrifying stories of incarcerated women being forced to trade favors with the guards in exchange for menstrual products, and stories of prison staff withholding products as a form of intimidation or punishment in state and local facilities. Not only are these reports damning, it is completely unacceptable that such practices occur in our carceral system. No one should face abuse in order to access a basic necessity. I know the Special Litigation Section of your department has investigated a few facilities for violating the civil rights of incarcerated women under the Civil Rights of Institutionalized Persons Act. Are there additional resources needed to support the work of the Special Litigation Section or the Division on Civil Rights action sure that we are protecting their civil rights?

GARLAND: I'd like to talk separately about the federal side of this with respect to Bureau of Prisons, and then with respect to the state and local side. On the federal side there is a statute which requires provision of free female hygiene products. And BoP endeavors to do that. There are site visits to ensure that that is occurring. On the side -- the other side that you began to talk about in the second half of your question about the Institutionalized Persons Act, that is a object of focus of the Civil Rights Division, and so the 32.4 percent increase in funds that we've requested for the Civil Rights Division will enable resources to go across the board to the division, including in the area that you're talking about.

MENG: OK. Thank you. I yield back.

CARTWRIGHT: At this time, the chair recognizes Mr. Garcia from California for five minutes of questions.

GARCIA: Thank you, Mr. Chairman.

And thank you, Attorney General Garland, for your service to our beautiful nation. I was looking forward to having some detailed questions regarding this budget and the nuances of it and where we're going as an appropriator. That's what I would like spend my time on. I'll put those through formal correspondence because frankly something you said in your written testimony, in your opening statement really kind of disturbed me and I want to talk about that a little bit.

But I want to -- I want to start first by just reading the mission statement that's on your DOJ website. It says that -- that you are to enforce the law and defend the interest of the United States according to the law to ensure public safety against threats foreign and domestic, to provide federal leadership in preventing and controlling crime, to seek justice for those guilty of unlawful behavior.

What disturbed me in your opening statement, in your written testimony, there's a line in here where you said that I am pleased with the progress that the Department has made since I appeared before you last June.

And I can't wrap my brain around why you would be pleased with what's gone in the last call it year or two, 18 months. In the last year we've seen crime fights like we've never seen before; 54 percent increase in shoplifting, 43 percent increase in police officers shot around this country in the line of duty, 59 percent increase in officers killed since 2021.

Eighty percent of Americans report that they are concerned about the crime and violence. Homicides nationally increased by 5 percent in 2021 when compared to 2020. That number is 44 percent compared to 2019.

Gun assaults jumped 8 percent, 12 cities nationwide broke annual homicide records in 2021 and car thefts rose by 14 percent. I don't know what is pleasing about that progress. In addition to the crime rates we're seeing record inflation approaching 9 percent now and a budget increase of any 6 percent, which is effectively defunding our law enforcement agencies and the grants we give them.

You dissolved a couple of months ago and explicitly this China initiative that allows the U.S. government through the DOJ to prosecute China's espionage cyber security threats as well as their IP theft. They are currently stealing roughly \$400 billion to \$600 billion of IP from the United States and it's aggregate in terms of economic impact to our businesses.

Yet the DOJ dissolve the China initiative. I don't understand what's -- what's please about that. We have an executive branch and a president who is effectively opening our southern borders, looking to revoke Title 42, has already revoked in principle the remaining Mexico policies that were instated in this last administration and -- and this is literally leading to the deaths of Americans nationwide with this national fentanyl problem and this record breaking rate of deaths as a result of the fentanyl coming across our southern border.

This last week we saw Texas National Guardsmen Bishop Evans killed while trying to save an illegal immigrant who was smuggling drugs into our country. I don't know why you're pleased about this progress.

I want you to explain that if you can but I also just don't understand, this all inexplicable and inexcusable to me, what -- what is, in your opinion, if this is good progress, what is the biggest threat to the United States right now?

GARLAND: Look, the enormous increase in violent crime, which began in 2020, before we came into office is enormously concerning to me and that is why as soon as I did come into office we developed a major strategy to fight violent crime, which focuses very heavily on our joint task forces with state and locals who are responsible at the first level for every kind of violent crime you described.

That is the reason that we have asked each year for more money, for grants, for state and local law enforcement to fight that violent crime. And with our assistance at the federal level.

So we're asking for \$8.2 billion in grants for the police to be able to do that and we're asking for \$20.2 billion for our own federal law enforcement on that regard. That's what I'm pleased about. The way in which we are reorganizing ourselves to fight this terrible violent crime spec (ph).

I also -- it is not correct that we've dissolved our attacks -- our response to China. Quite the opposite. We have stepped them up. We're asking for more money for counter intelligence and cyber defense but we are worried not only about China but about Russia and about its immediate threat to us and about North Korea and about Iran.

All of the things that you are concerned about about China I remain concerned about. Nothing in our program reflects a diminution in that.

GARCIA: I'm out of time, Mr. Chairman. I'll yield back.

CARTWRIGHT: Thank you, Mr. Garcia. And at this time the chair recognizes Congressman Case of Hawaii for five minutes of questions.

CASE: Thank you, Mr. Chair. Mr. Attorney General, thank you. I -- I wanted to follow-up on your -- your notation that your budget includes reinvigorating anti-trust enforcement.

As you know this issue is top of my committee in Congress. My observation is there's a heck of a lot of different perspectives on it ranging from we don't have a problem to we have a severe problem with both our laws and with enforcement.

And I guess I wanted to explore your views on that because frankly I'm kind of sort of through (ph) myself but you have asked in your -- in your budget for a huge increase in anti-trust enforcement, 41.6 percent.

I mean I guess first of all, I don't see any other part of your budget which asks for an increase of that scope. I mean is that -- is that generally correct? Is this one of the largest percentage increases anywhere in your budget?

GARLAND: I'd have to look over the whole budget to tell you that but this clearly is a large increase and I'll be happy to explain why. Over the last four or even more years the antitrust division has been depleted. We actually, I think, have fewer lawyers in anti-trust division than we had in the 1970s.

On the other hand we're facing enormously increased number of mega mergers, each one of which takes enormously sophisticated and complicated analysis, require skill lawyers but also requires IT at a level that we've never had before.

So \$38.5 million of the request is for IT so that we can come into the 21st Century in our ability to analyze these mergers. And \$27.4 million, which is an increase of 112 attorneys or anti-trust enforcement.

I'll tell you when I came in I was shocked to learn that the only way we were able to cover the investigations that we were doing was by hiring two year lawyers, two years at a time. I can tell you that the companies we are investigating and going to trial against are not hiring two year lawyers. They are hiring the best of the best from Wall Street and we need to have lawyers who can match that and we need to have as many lawyers as we can. So it looks like a large increase but it's from a very small base.

CASE: And I -- and I -- you know I'm just reading your testimony here, not only are you down lawyers but it says here in your testimony that you have nearly 400 fewer staff today than 1979. I mean that's kind of shocking to me.

And -- and frankly I don't think you can -- you know if it's a time spent of 1979 to present, I don't think you can get into what administration did what. It seems to have been a systematic depletion of anti-trust. And I guess my obvious question there is why -- why was that.

I mean, presumably, companies were getting larger I think it's -- I think it's fair to say that we have seen more mergers at an accelerating rate. We've seen much more complicated companies, we've seen much more complicated mergers.

And it would seem to me that if we were realistic about our anti-trust law enforcement we would have kept up with that and then -- and yet we seem to have gone in exactly the wrong direction on it. I mean, why -- why is that?

And I guess a corollary to that is it would seem to me that companies are pretty actively taking advantage of the fact that Justice is forced to be highly selective in terms of the anti-trust enforcement that it chooses just because of the lack of resources.

GARLAND: Well, I -- I think you make a very fair point. Which is this really is not one administration versus another. This is a number of reduction in staff going all the way back to the 70s. I think it's a lack of priority of anti-trust, a lack of understanding about the way in which anti-trust helps our economy.

The way in which it helps businesses to compete, not get foreclosed by their enormously large competitors. The way in which it helps labor achieve wage increases without them being a grievance against those. The way in which it helps consumers accomplish (inaudible) ordinary life at reasonable competitive prices.

I think what we've seen now recently, of course, is with the big tech companies and with the way in which the technology companies in many ways change what we see about anti-trust. With network effects, with the two-sided platforms, these are all issues which we're only recently coming into focus. And I think bipartisan focus. And I think it's...

CASE: Can I just ask for a quick -- sorry. Just -- and just on -- on that subject since my time is running out. To make the point, I mean, you're not just talking about the addition of lawyers, you're also talking about the addition of highly sophisticated forensic accounting of systems that can actually get inside of companies. And frankly, also, you know, match the company's resources in court, correct? So this not just about more lawyers.

GARLAND: No, I -- you're exactly right. And particularly economists. So you're exactly right on all -- on that respect.

CASE: OK, thank you very much, I yield back.

CARTWRIGHT: Thank you, Mr. Case. At this time the chair recognizes Mr. Crist of Florida for five minutes to question. And you are muted, Mr. Crist. We are going to move on to Mr. Ruppertsberger of Maryland while Mr. Crist works out his technological issue. Mr. Ruppertsberger, you are recognized for five minutes of questions.

RUPPERSBERGER: Thank you. Mr. Attorney General, first, I respect your career, I know you have a very difficult job to do. And this clearly an area where we as members of Congress need to work in a bipartisan way to deal with most of the issues that you've talked about.

I'm going to go local. We -- from the Baltimore region, I was a former -- I -- homegrown Baltimore, my family has. I was a former prosecutor. And one of the things you started out with today was that it's so important when we have high crime areas that we need teamwork.

And that teamwork it seems to me works a lot, it worked when I was a prosecutor. Federal, state, and local working together. The -- the task force seemed to work together. So that's where my questioning today, we have another round, I hope to get into cybersecurity.

This past week the Department of Justice released their five-year review of the Baltimore consent decree which said Baltimore had made significant achievements. I appreciate that but I've heard from residents throughout the Baltimore area, my constituents have said they haven't seen any of the reforms called for in the consent decree.

Can you talk a little bit about the next steps? Like how the independent monitoring works, and possible recommendations that might come out of it? Now, what can the department do to help with the cost of compliance with a consent decree?

Baltimore has a lot going for it but affording the cost of complying with a consent decree and fielding a better-trained community listen approach police is costly, it is very costly. And I'd appreciate your thoughts on DOJ helping with the cost of compliance or alternate ways to help (inaudible).

GARLAND: Civil Rights Division is pleased with the progress so far with respect to the Baltimore consent decree. But as your -- your constituents are pointing out we still have a considerable ways to go. In the announcement, I believe the Civil Rights Division identified a number of the areas that the independent monitor is continuing to work on.

I don't have those in my head specifically with respect to Baltimore but I can make sure our staff gets back to yours out of respect to that. But this is a continuing set of improvements and we're hopeful that the -- that that will continue. With respect to the money for these kind of things step aside from Baltimore for just one moment.

We've announced a series of different kinds of grant programs to help police departments with reform. These range from everything from technical assistance to assistance out of respect to crises through our collaborative -- intensive Collaborative Reform Initiative. Which -- all of which provide money.

And to the new layout -- laboratory that the associate attorney general just announced in California and I believe the Baltimore Police chief was there as well. With respect to money available for making the improvements that are generally required under these decrees. So I can't give you a specific Baltimore -- that is a Baltimore-specific answer.

But again, on this one, I could have our office of justice program staff get in touch with your office.

RUPPERSBERGER: So that'd be great. And a lot of the issues -- I'm muted? Yeah. A lot of the issues too are not yours but a major part of the crime has to be. And I think you talk about social issues at schools and young children and, you know, the conspiracies that are going on, on a regular basis.

That's in your field. So we'll work with you, I think the -- we're moving ahead, and I think this concept works of federal, state, and local working together. Thank you.

CARTWRIGHT: Thank you, Mr. Ruppertsberger. And at this time the chair is going to attempt to recognize Mr. Crist of Florida again if you can get unmuted this time.

CRIST: Mr. Chairman.

CARTWRIGHT: You're recognized for five minutes, Mr. Crist.

CRIST: Sorry about that I thought I was coming later in the agenda but I appreciate the opportunity to be with you, now my colleague from Pennsylvania.

Mr. Attorney General, it's great to be with you. Can you hear me OK? I can't hear him.

GARLAND: You can't hear me?

CRIST: Now -- I can now, OK, great. Well, again, thank you so much for being with us today, really appreciate it. I really wanted to ask you about the former President and whether or not the Department of Justice has had an opportunity yet to look into his role in the insurrection and what his role was? If there's any criminal implication to it? If you've started to look into it? And if you could share that with the committee I think the committee and the country would be grateful.

GARLAND: So the Justice Department has a long standard - standing and I think very appropriate policy of not commenting on the existence or progress of investigations other than what we say in court. At least in general, other than what we say in court and through various filings and procedures that we make. And I'm afraid that that has to continue to be my answer whenever I'm asked that question.

CRIST: And why is that the policy?

GARLAND: Well -

CRIST: (Inaudible) respectfully.

GARLAND: Well that - that is a very appropriate question and it derives from two different things. One the one hand it respects the civil liberties and civil rights of Americans who may be under investigation to prevent publicity about investigations before filings are made. It prevents trial by publicity.

And second, it protects our investigations. Our investigations often depend on us being developed - being able to develop evidence and facts as we go along without potential witnesses learning where we are or what we are doing.

This - I do not mean this in reference to any particular investigation, this is our standard. This has been our standard as long as I have been involved in the criminal justice field and I have been involved in that field for an extraordinarily long time. Having been a prosecutor, having joined the Justice Department in 1979 and having been a prosecutor throughout the '80's.

CRIST: Yes, sir. And thank you for your service. I'll add at that juncture as well. Having been attorney general of Florida, myself, we would conduct investigations and would sometimes be able to share it with the public and sometimes not be able to. So I certainly respect your answer, sir, of course.

But I just think that the country obviously is probably pretty curious about the question I posed to you. And, again, I want to emphasize I mean no disrespect to you, sir, at all or anybody.

But I just think that what happened that day and what the public at large does know through journalists and other media outlets about a lot of phone calls, a lot of text messages with the former Chief of Staff Meadows, I believe it was. Have really raised the level of concern about a sitting President potentially having participated and it certainly looks like that's what happened given the speech that he gave before they rushed up Capitol Hill on January the sixth.

And to what degree and what level of concern should Americans have about a sitting President potentially being involved in something that came so close to taking down our democracy. I mean to sort of mount a coup, if you will, from the White House is pretty strange stuff. I think we all can agree to that. But if you can't comment on it because of the policy you stated, I certainly understand it. And I have all the respect in the world for you, sir. I think you're doing a great job as our attorney general. I would only encourage you to pursue what you believe is justice. And in regard to the topic I am addressing, I'm sure you will. You probably -- you may already have. But I want to thank you again for being before the committee. And we want to provide to you, as I'm sure the chairman does, my great colleague from Pennsylvania, the resources you need to do whatever you need to search for the truth, to find the truth, and to bring justice to bear on those who deserve it. And thank you again for being here.

And I yield back, Mr. Chairman.

CARTWRIGHT: Thank you, Mr. Crist.

At this time, the chair recognizes Congresswoman Brenda Lawrence of Michigan for five minutes of questions.

LAWRENCE: Thank you, Mr. Chair.

In the 2020 presidential election, my hometown of Detroit and the state of Michigan as a whole was subject to outlandish claims of voter fraud that were unsurprisingly all proven to be false. As a result, dozens of so-called voter rights bills have been introduced in our state legislature seeking to suppress the right to vote of many of my constituents. Unfortunately, several states across the country has also followed that thread even when there is case after case showing that there was no voter fraud, saying that they needed to protect the vote, and we still don't know what they're protecting it against, resulting in the department filing lawsuits to protect the right to vote.

Attorney General, I'm -- my colleagues and I in the Congressional Black Caucus recently sent you a letter urging the Department of Justice to do whatever is necessary to ensure that every American has their right to vote and have their vote counted, regardless of where they live. How will the president's budget empower you to do that?

GARLAND: I think the right to vote is a fundamental pillar of American democracy. Every qualified American should be able to vote and we should do everything we possibly can to ensure that that right can be exercised. The Civil Rights Division of the Justice Department is the unit as possible since the late '50s for ensuring the right to vote. We have asked for a 32 -- more than 32 percent increase in the Civil Rights Division. I personally from the very start committed to doubling the size of the Voting Rights Section, partly because we had lost the ability under Section 5 to pre-clear potentially discriminatory changes involving practices and procedures. We have doubled the Voting Rights Section, but we now need more money for the Civil Rights Division to do that. The specific request for the Civil Rights Division will increase the number of lawyers in the division and analysts in the division and a particularly including in the Voting Rights Section.

LAWRENCE: Thank you. I am co-chair -- I mean, I'm the founder and co-chair of the Black Jewish Relations Caucus in Congress. I'm very active in addressing and trying to find ways to protect Americans from hate crimes.

Last -- last year our caucus requested a briefing from the department and FBI on the latest finding of hate crime statistics. Like many of my colleagues, I'm extremely concerned about the alarming rate of increase in hate crimes.

How will the department leverage relationships with other federal, state, and local non-government agencies to address and combat the rise in hate crimes? And what steps can be taken to encourage enhanced relationships between the local and federal government as we continue our fight to protect Americans?

GARLAND: Well, on the federal side just for a moment before I get to the state side. We are asking for more money, of course, for the Civil Rights Division, and for the FBI's Civil Rights Unit to pursue these crimes. The FBI has elevated hate crimes and -- into the -- and civil rights violations into the top band of concern.

Again, one of the very first things that I did when I came to the Justice Department because we -- I saw the rise in hate crimes was to review what the department was doing. And then launch a crime initiative, which coincided with the passage of a hate crime in that year -- that summer.

I appointed the head of the Criminal Section of the Civil Rights Division to be the coordinator in charge of the criminal investigations. And a woman in the associates office to the department's overall coordinator with respect to hate crimes. Now, on the particular topic, you asked about, which is where in which we can engage state and local law enforcement and communities.

We've -- in the budget request we've asked for \$20 million in OJP grants, which an increase of \$8.1 million in additional resources. This money would among other things go to state, local law enforcement, and community organizations for investigation and prosecution.

We do need more outreach to the community, and one of the problems with respect to hate crimes is sometimes people are afraid or otherwise unwilling to report a hate crime. So we have to improve our reporting. One way to do that is instate hotlines and some of this money could be used in that way.

LAWRENCE: Thank you so much. And we really need to pay attention to that and reporting is an issue. I yield back my time.

CARTWRIGHT: Thank you, Representative Lawrence. At this time the chair recognizes Representative Trone of Maryland and it is the chair's intention to adjourn for the one vote. To recess for the one vote. We've been called to make one vote on the House floor. But we'll recess after Mr. Trone's five minutes and then return in approximately 20 minutes. Mr. Trone, you are recognized.

TRONE: Great. Thank you, Attorney General Garland, for joining us today. And Chair Cartwright, Ranking Member Aderholt holding this hearing. One of my top priorities in Congress ensure returning citizens have a job, have a job is the key when they're released from prison. The data is clear, best way we cut recidivism is a job.

So to that end, Mr. Attorney General, I believe the Bureau of Prisons is too understaffed and under-resourced to fully implement the First Step Act. We've spent a lot of time on this, and this is clearly the case. We hear stories after stories of case managers and support staff doing double duty as correctional officers.

Tremendous burnt-out staff, inmates without vital services. So we believe BOP needs strong leadership from the top. The job is currently open. You have the opportunity to find a new director and turn this ship around.

So if you could elaborate on the status right now of the leadership -- future leadership of BOP and how we can effectively then get that individual to move forward with the First Step Act?

GARLAND: Yes. So I don't want to go too far in detailing our -- our personnel work. But the -- the program for applying for the head of the Bureau of Prisons has closed. So we have all the applicants, they are under intense review right now. I'm very hopeful that we'll be able to announce the new director in the relatively near future.

On the staffing question, I have to say I completely agree with you. And that's why our FY '23 budget request seeks 13,000 new staff, 700 new corrections officers, and 600 for the First Step Act program that you were talking about.

I'm also in complete agreement with you that an important part of fighting recidivism and easing re-entry is getting people a job. Both our department and Department of Labor are asking for money, particularly \$100 million for a joint Department of Justice/Department of Labor Workforce Initiative.

To have the Department of Labor help us in getting people jobs and getting them lined up before they leave custody. So I think all the things you said I agree with.

TRONE: Excellent. In my company and private business, we've hired over 500 returning citizens and we get a double-digit better number on retention rate. So these folks will take a second chance and succeed. And the jobs is what we have to stress with the new director of the BOP.

Only 50 percent of the individual and federal custody for completing or in -- their enrolled in programming the DOG -- DOJ has determined reduced the likelihood of recidivism.

What steps can we take to get DOP's funding again on programs that DOJ has said will reduce recidivism but only -- less than 50 percent are participating in those programs that you've outlined?

GARLAND: So we -- I'm not sure whether that number is still accurate. We issued a report under the First Step Act within the last month which details the significant increases in the number of these evidence-based recidivism programs.

Which are now available because of the work we've been doing over the past year to make those programs available. I don't recall what the current participation rate is but it is reflected in that report that was available.

We are working very hard on improving those numbers, and the First Step Act money that we're asking for will assist us in that. As will the increase in First Step Act staff for the Bureau of Prisons.

TRONE: Another point that would be great if we could have the BOP as directed by The First Step Act to help inmates obtain a valid government ID prior to release. It's been the primary barriers of returning citizens from assessing -- accessing employment, housing, public benefits. We frequently hear from employers that even BOP officials, that this program is not running at the capacity which it should be running. We'd appreciate it if you could take your staff and take a look and figure how we get to 100 percent of our folks that are returning citizens have that government ID when they head out into the workplace.

GARLAND: I would be happy to do that. We have instituted this program by working with Immigration and Customs Enforcement, Government Publishing Office, Transportation Security Administration, DHS to develop a federal ID for inmates who are unable to obtain a state-issued ID. And we drafted an inter-agency agreement between the Bureau of Prisons and the marshals that includes language allowing prisoners to maintain personal identification upon transport, and therefore their state IDs upon their transfer to a facility so they don't have to start all over again after they've reentered.

But I think your point that we need to increase the percentage who are able to get that identification is fundamental to be able to operate in our society nowadays.

TRONE: Thank you, Mr. Attorney General, very much. And please keep an eye on automatic expungement laws, any dollars we can get to expunge automatically, the states are not keeping up with this. That would help folks get employment.

I yield back, Mr. Chairman, thank you.

CARTWRIGHT: Thank you, Mr. Trone.

And, ladies and gentlemen, we will recess for 20 minutes to take the vote on the floor and return at 4:24 pm. See you then.

(RECESS)

CARTWRIGHT: And we are gavelled in and reconvene.

Now, Attorney General Garland, I want to pick up on the subject that Congressman Trone was just talking to you about, and that -- that is the Bureau of Prisons. The F.Y. '22 enacted appropriation for the BOP included \$195 million above the president's budget request to help maintain staffing levels, improve officer-inmate ratios and reduce reliance on the augmentation, which is a fancy word for fudging the numbers. And -- and I think that's so important. I have federal prisons in my district, and -- and I'm concerned about whether -- whether this is enough, what we're doing on a couple of scores.

First, it's -- it's -- it's very difficult to -- to hire people to be prison guards right now, to be correctional officers. There -- there are other opportunities to -- to go to work outside of the -- the realm of -- of -- of incarceration work. But even within the job of being a correctional officer, the -- the -- there are other opportunities. For example, in northeastern Pennsylvania, we've seen correctional officers get wooed away by state prison systems that pay better, or even county jails. So I -- I -- I'm concerned about whether current salaries are competitive. I mean, we -- I've heard, particularly from the USP Canaan management and staff that it's very difficult to hire people. Billboards are not working. Job fairs are not working. People are going other places to get better pay. I want to hear your thoughts on that.

And the other score is that there still is overcrowding. BOP's inmate population has fallen to 156,000 from its 2013 peak of almost 220,000, but over -- that's overall. In -- in particular categories, overcrowding persists, such as in medium- and high-security facilities, and that's according to BOP's request. The question is will BOP be able to reduce this overcrowding in F.Y. '23 with the funding requested to ensure the safety of both staff and inmates? Because that's what we're talking about, keeping both the correctional officers and the inmates safe by making sure there's enough staffing. Go ahead, Attorney General.

GARLAND: Well, you're right. We're in a competitive marketplace. I want to say one thing about the augmentation, which I'm sorry, I can't agree that it means fudging the numbers. What -- what -- what it mean -- and I'm sure that it might mean it that way. It means using a staffer, not officially correctional officers for some correctional officer tasks. They are supposed to be trained to be able to pick up on those tasks. But look, we would rather that not be the case. If we ever have more correctional officers, we are...

So in the first six months of F.Y. '22, the documented augmentation hours decreased by 15.1 percent compared to F.Y. '20 and to F.Y. '21, so we are definitely making considerable progress in that regard. It's not as good as it should be. Since January 1st, we've hired 300 new staff, including 236 correctional officers, and as you know, we're asking for Appropriations to add 1,300 new staff, 700 correctional officers and 600 FSA, First Step Act staff. The more officers we have, the better the safety issue that you're concerned about. We'll be able to be protected.

Now, we are offering recruit -- official recruitment incentives in order to get people in, because you're right, it is hard to compete. We're also seeking for the OPM direct higher authority, which would allow us to streamline hiring at six BOP locations.

So I think we are not -- you and I are not in any disagreement on this question. That's why we're seeking more people, why we're seeking more streamlining and efficiency in the hiring, more assistance from OPM to let us do direct hires and more incentive pay.

CARTWRIGHT: Well, I thank you for that.

And at this time, I -- I recognize our ranking member, Mr. Aderholt, for five minutes of additional questions.

ADERHOLT: Thank you, Mr. Chairman, and again, good to be back and to have you again here, Attorney General.

And let me just start out with a question that was an issue a few months ago that we've not heard quite as much in the news lately. But late last year, Congress and President Biden became aware that the Justice Department was negotiating settlements with certain illegals who were separated from their families when they entered the United States illegally. At this time, is the Department of Justice contemplating, are they at this point negotiating any compensation for these aliens who have entered the United States unlawfully?

GARLAND: Well, we are engaged in extensive litigation right now from migrants who were subjected to the family separation program, which came under bipartisan attack, but we're in litigation with them and I'm -- I'm -- we are not able to discuss, you know, further since the matter is under litigation.

ADERHOLT: OK. All right, well, if you could keep us posted on that, because that is an issue that I think many members of Congress are -- are very interested in, so what you can disclose to that to members would be -- would be very helpful.

We know that current immigration court caseload stands at well over -- and correct me if I'm wrong, but well over 1.5 million cases. But there's recent statistics that have shown that less than 17 percent of these cases originated as credible fear referrals. So in light of that, of those statistics, anyway, it's hard to see how eliminating future asylum casework will have a significant impact on the flow of pending cases, and I think this one -- leads one to wonder if reducing the caseload is a mere pretext for a -- a political decision. My question is, what other justification is there for giving up the department's authority to adjudicate these particular cases?

GARLAND: So I -- I -- I don't know about the number you heard -- you are speaking of. It -- unless -- unless what you're talking about is a relatively low percentage of people who claim asylum ultimately get in, and that -- that plainly is correct, but those have typically gone through the immigration court system.

The -- the reason for the asylum officer rule is to streamline the process to make sure that the officers who know the most about asylums, which is the DHS officers involved in asylum, make the first two determinations of whether there's credible fear and -- and -- and then whether they're able to prove persecution necessary to achieve asylum. We don't give -- I'm not sure -- we don't give up adjudication. Somebody who loses can appear in a streamlined process to the immigration judges. If we -- if this were reduced, you know, how long it takes for determinations of asylum and the ultimate removal from the current over four years, we're hoping to -- to be around six months.

So that's the -- the purpose of that. It's a combination of putting the first asylum issues in the asylum officers, and then a streamlined record for decision by the I.J.s. This is part of a -- a series of -- of moves that the Executive Office of Immigration Reform have taken in order to speed up the process to reduce that backlog that you -- that you mentioned.

ADERHOLT: Wouldn't -- wouldn't you agree, though, that it diminishes the value and integrity of the role of the -- of your immigration judges and the immigration court system?

GARLAND: No, no, quite the opposite. I think it gives us a chance to have immigration judges focus on the most difficult cases and though -- you know, we -- we want to bring that -- they are operating under a backlog that is almost, you know, as a former judge and the idea of having that many cases on my docket would make me quite miserable as a judge, so I -- I don't think in any way this would reduce (ph) the importance and integrity of immigration judges.

ADERHOLT: But don't you think it's important for the record to be developed?

GARLAND: Oh, I see. Yes, well, the record is developed. So the way in which the record is developed is the migrant gets to put in whatever the migrant wants at the administrative judge level -- I'm sorry, at the administrative officer level. Then if there's an appeal to make to the immigration judges, if there's additional information or new information, that can be put into the record by both the Department of Homeland Security, which are the prosecutors in these cases, or the migrant. So it doesn't eliminate it, but it streamlines it, and it streamlines the amount of time they would have to build that record.

ADERHOLT: All right. All right. Thank you.

My time is up. Thank you, Mr. Chairman.

CARTWRIGHT: Thank you, Mr. Aderholt.

At this time, the chair recognizes Representative Meng for five minutes.

MENG: Thank you, Mr. Chairman. I wanted to ask about gun trafficking. Last April, the president called for the release of a new gun trafficking report, which is welcome news because the public and policymakers have largely been in the dark when it comes to the source of illegal guns and the trafficking channels used to supply them. ATF used to provide cities with data and analysis on the source of illegal guns, releasing 50 reports that helped shed light on interventions to stop the illegal flow of guns. Do you know, or can you provide an update on when the report will be released, whether we will be seeing concrete data and analysis on where these guns, illegal guns are coming from, and a commitment to work with cities like my home city of New York to provide city-specific analysis?

GARLAND: Well, you're quite right. It's been a very long time since ATF has produced this kind of report. That's why we determined last year that ATF would get back in the business producing these reports. I believe that they're organized this into sort of three volumes of report in order to get to the first volume (ph) as soon as possible. So my understanding is they're using May as a target date, sometime in May to produce the first volume of the gun trafficking report, and the next one by the end of the year, and I'm not sure when the third one will be.

MENG: And then if I could also ask, community gun violence is a public health crisis that disproportionately impacts our black communities, reflecting our nation's racial inequities and underinvestment in communities of color. The pandemic has also had a pronounced impact on gun violence in the U.S. as homicides increased to record levels. This kind of violence undermines community confidence and safety, depresses economic recovery and restricts community development and opportunity. President Biden's proposed budget includes \$500 million in support for community violence intervention programs, \$250 million of which would be dedicated to CVI work at the DOJ. Can you talk about the importance of community-based violence intervention programs in reducing gun violence and building resilience in our communities, and why it's important for both the CDC and the Department of Justice to be involved in this effort?

GARLAND: Yes, I'd be happy to talk about that. I personally visited community violence interrupters (sic) in Chicago and in New York City, and the extremely successful program in Chicago. The head of that, (inaudible), is going to be in our Office of Justice programs. Sometimes that's a good thing to get somebody who's really successful in the community, and you bring them to Washington. But he's assured us that he has good replacements.

These programs have been quite successful. The one in New York was also very successful, almost totally eliminating gun violence for a year or two after they immediately started. You know, these are basically, they bring in people who are -- who have been previously incarcerated and been involved in gangs and have wanted to go straight and wanted to persuade members in the communities to do that with wrap-around services to help people stay in the community, stay away from the gangs and the crews and -- and stay away from violence; visiting hospitals so that they come across victims who might turn around and retaliate, and persuade them not to do so.

University of Chicago actually did a study of the Chicago Community Violence Interruptors (sic) and found in a -- in a -- an -- an amazing statistical random study between those had the benefit of assistance and those who didn't a material reduction in violence, particularly gun violence.

So we're -- we believe these are effective programs. They have to be done -- you know, the question is, can we bring them to scale? But we can spread them across the country, and it's one more way in which we're trying to fight the scourge of violent crime in our communities.

MENG: Yeah, and I -- I -- I want to thank you publicly, Mr. Attorney General, for coming to New York City after two of our honorable police officers were killed, and just for visiting important programs like the one you mentioned, and also, your team working so closely with us to address ways to decrease and eliminate discrimination and violence against Asian-Americans, as well.

Thank you. I yield back.

CARTWRIGHT: Thank you, Representative Meng.

At this time, the chair recognizes Representative Steven Palazzo for five minutes of questions.

PALAZZO: Thank you, Mr. Chairman and ranking member for holding this hearing. Mr. Attorney General, thank you for joining us today.

With the possible impending cancellation of Title 42, the border is at a breaking point and we need to do everything we can to stop the flow of crossings. President Trump completed more than 400 miles of a wall along the southern border before he left office. This current administration halted the construction, costing taxpayers \$72 million. Barriers are an absolute necessity, and part of a comprehensive solution to the crisis at our southern border, along with additional personnel and using the technology that we have in our tools.

The Justice Department's efforts are also crucial to addressing the southern border. Illegal immigrants who have crossed the southwest border are then released and manage to fly around the country while they await a trial, appearing at a future date. Has your department done any work or investigation regarding these illegal immigrants connecting back to the cartels that ushered them across the border? Let me clarify: There's a lot of concern and speculation that the relationship doesn't end once the immigrant crosses the border; that they get into America, and the cartel they paid to get them here then continues to use them as a mule or a spy to get dangerous drugs into our country.

GARLAND: So one of the first things I did last year was establish what we call Task Force Alta -- Alpha, which is a task force of the border state U.S. attorney's offices, the Criminal Division of the Justice Department and our criminal law enforcement and state and local taskforces in those offices to work on the problem of human smuggling that -- that you're talking about. At the same time, we set up offices in the Northern Triangle, where some of that human smuggling is originating, to go all -- to go after these human smuggling net -- networks and human trafficking networks. Their DEA is, you know, one of our requests before you right now, is for \$414.9 million for the DEA's counter-drug efforts at the border, which includes intelligence and enforcement against the cartels.

As you know, (inaudible) did a press conference just within the last week on -- regarding our successful extradition of former president of Honduras to face charges for organizing a -- turning parts of his government into a narco state and enabling drug smugglers to move in -- up through the United States, and he's going to be going to trial in the Southern District of New York.

PALAZZO: Thank you. Was your agency provided any additional funding or support when Biden halted construction of the border wall and opened our border to incite a flood of immigrants?

GARLAND: Well, we -- we have been asking for, in each fiscal year, money for our law enforcement at the border. And this year, we're asking for \$2.1 billion, a total of 6,231 positions for our -- this is just for the Justice Department, not for Homeland Security -- at the border. You know, I want to, obviously, be clear here that the principle agency responsible for border protection, CBP, is part of the Department of Homeland Security, so most of the requests for increased resources would be coming from that committee, not ours. But we have DEA, the marshals, the U.S. attorney's offices, ATF, FBI, our Organized Crime and Drug Enforcement Task Forces, our Criminal Division and our -- and detention facilities for the marshals and BOP. Those are the areas that we're asking for money from this subcommittee for.

PALAZZO: And lastly, in previous years we have seen the DOJ shape its efforts by political party. What are you going to do to ensure that the Department of Justice, which is the Department of Justice for all, not for one party, stays unbiased and nonpartisan?

GARLAND: That is my mission for the Justice Department since the day I came. That's the only reason I agreed to step down from life tenure to be able to ensure that the Justice Department is separate and independent from politics with respect to its criminal investigations and civil law enforcement investigations. That -- that is my job. I talk about that every place I go and among the U.S. attorneys. They get it, and this is part of the DNA at the Justice Department, and I -- and I think that's the way we will continue our prosecutions and investigations.

PALAZZO: Well, General -- General Garland, thank you for your service, and please pass on to your -- your law enforcement officers and others that they do honorable work, and that we appreciate them, you know, not just keeping us safe at home, but also identifying threats to our homeland, so thank you. And with that, Mr. Chairman, I yield back.

CARTWRIGHT: Thank you, Mr. -- Mr. Palazzo, and the chair compliments you on your excellent headset, Mr. Palazzo.

At this time, the chair...

PALAZZO: Sir -- sir, I'm low-tech over here. I apologize.

(LAUGHTER)

We'll have that fixed before the next hearing. Thank you.

(LAUGHTER)

CARTWRIGHT: The chair recognizes Mr. Case for five minutes.

CASE: Thank you, Chair.

Mr. Attorney General, I asked you earlier whether your antitrust enforcement increase was one of the largest in the budget. And you rightly said there may be others. And I have found one that -- that I wanted to ask you about. And that's that you are proposing an increase in your funding the community-oriented police standards program by 118 percent above F.Y. 2022 enacted to expand the COPS Hiring Program, and you noting here in your testimony that that is for the purpose of supporting the hiring of police and sworn law enforcement personnel nationwide and the implementation of community-based strategies to combat violent crime.

And so I -- I assume that that is a response to the -- the chronic and growing staff shortages in our police departments across the country, as -- and -- and this is the federal government's response to -- to assisting local law enforcement in -- in essentially trying to -- trying to return to a more full complement of law enforcement officers?

GARLAND: So it's -- it's a part of our overall response that I was describing to Congressman Garcia, to the scourge of violent crime and the rise of violent crime. So we have a two-part response. One is our own federal law enforcement. And we've asked for significant increases in our own law enforcement to fight violent crime. But we also believe that our involvement with the state and local communities is our best way of preventing and bringing down violent crime.

And so the COPS Hiring, which goes directly to fund police departments, is a very important aspect of that. And you're right, that's a very large increase. But to be clear, it's not the only additional money that we're asking to fund state and local police. We've also asked for an increase for our Byrne JAG Grants...

CASE: Right.

GARLAND: ... and other things for our Project Safe Neighborhoods, which is, you know, our standard core of the way in which we work with U.S. attorneys, federal law enforcement, state law enforcement and communities. There are grants in the Office for Violence Against Women, which will support law enforcement as well. And then we also have money in health and wellness grants and public safety benefit programs for police officers, to help them do their jobs under the incredibly difficult circumstances they face.

CASE: Right. But the COPS program is focusing on that, in particular, because that's what you proposed to increase by 118 percent. I mean, that -- just correct me if I'm wrong. That's not so much about hiring additional federal law enforcement; that's about assisting state and local governments with their own hiring and retention issues?

GARLAND: Exactly. It's not actually about federal at all. This is money that goes directly to states and localities for their police departments and to assist in their hiring for community-oriented police. You're exactly right.

CASE: OK, thank you. Let me -- let me just switch to your -- your proposals to increase, rather, your Office of -- I'm sorry -- your Environment and Natural Resources Division, where you propose an 18 percent increase to focus on climate change and environmental justice.

And I -- I guess this just prompts the question, where -- where does DOJ actually -- where do you touch the climate -- why do you touch the climate change debate?

I mean, I can see it if what you're doing is prosecuting on -- on existing environmental laws for violations that are related to climate change. But where -- is there some other place that you are actually engaging from a -- from a climate change perspective?

GARLAND: Well, I think the principal engagement is the one you just said. Of course we coordinate with EPA, because the cases come from EPA. But there's, again, two sides to this. On the one hand, we are responsible for defending the EPA administration's climate -- anti-climate change programs. So whenever there's a lawsuit about an EPA regulation which is oriented toward reducing climate change gases, that -- that's -- we are the lawyers for the EPA.

(CROSSTALK)

CASE: And has -- excuse me, sir. Have those lawsuits increased in volume and complexity, that -- that you really do see a need to, kind of, beef up your -- your defense capabilities?

GARLAND: Yeah, so, you know, as I said, I've been -- I was a judge for 25 years. And in the part of the judiciary that reviews those specific kinds of lawsuits -- and these come with each new -- each new administration. Each new administration promulgates new regulations. They come under attack. And there's a big increase then in the number of lawsuits.

So we have quite a -- we have a number already pending. There are EPA regulations pending. And we certainly expect those to happen.

And then there's permanent enforcement side that you mentioned before, violations of Clear Air Act, Clean Water Act, et cetera, that are related to climate change.

CASE: OK. Thank you very much. I yield back.

CARTWRIGHT: Thank you, Mr. Case.

And the chair recognizes Mr. Garcia for five minutes.

GARCIA: Thank you, Mr. Chairman.

And, again, Attorney General Garland, thank you for your time and your patience with us in the votes.

I just want to touch base. We're having a hard time in L.A. County right now. And we talked about the rising crime rates nationally. But in California, specifically in L.A., we're seeing homicides up 12 percent, property crimes up 4 percent, violent crimes up, shootings up 9 percent.

I -- do -- I try to make a point of talking to law enforcement agencies and -- and officers as much as I can, usually, you know, six to a dozen a week, within my district. Do you get a chance to talk to the -- the lower-level officers within local law enforcement agencies much, or do you not get that opportunity?

GARLAND: I do. And since you and I last spoke at our last hearing, I've visited every U.S. Attorney district in California, including Los Angeles. And every time I...

GARCIA: Awesome (ph), fantastic.

GARLAND: Every time I go, I insist not just talking to U.S. attorneys but to talk to -- and not just FBI DEA marshals and ATF but to all the local police departments and sheriff departments. Because that...

(CROSSTALK)

GARCIA: Thank you for -- thank you for doing that. I think that's very important, obviously, to get the pulse on the ground. In L.A., specifically we're dealing with what is -- what is looking like almost irreparable damage from this Defund the Police movements, the sheriffs, LAPD, were in fact defunded to the tune of \$100 million or so. Much of that has not come back. The Board of Supervisors has put in place hiring freezes.

And we're seeing now our sheriffs specifically hitting about 80 hours of overtime a month, in addition to their -- their regular op tempo, driving them into the ground. If you've been talking to them, you would have heard the, for sure, the issues they have with early retirements.

I know, Chairman Cartwright, you mentioned frustration with hiring and how hard it's been to bring people into law enforcement, and the prisons. I don't think it's cosmic. I don't think it's a mystery. We've -- we've mistreated law enforcement over the last couple of years and we've disincentivized them to stay on the force. We've disincentivized new recruits to come on to the force. And now we have massive retention and recruitment challenges being realized in these major cities.

I think this is the source of the crime problems that we referenced. We need to reverse this cultural trend of -- of defunding the police, and instead, defend the police and back our blue, while holding the bad apples accountable, obviously, and we need to -- to -- to double down on that.

In L.A. County, we also have this problem with our D.A., this guy named Gascon. He's behaving like the -- the Penguin from Gotham City almost in -- in Batman movies. He's almost enabling the bad guys to get away. He's -- he's -- he's choosing not to prosecute. He's choosing not to imply -- apply enhancements. And so I would encourage you to look at what that -- that's what -- what's going on in L.A., that -- he needs to be reprimanded, and -- and any -- anything within your control to help us within that realm.

But I do want to touch on this overtime problem. We -- we had an issue with illegal marijuana grows being led by the cartels with indentured servants, people who were smuggled across the border manning these illegal marijuana fields in my district. You were very intimate with that. I want to thank you, first of all, actually. We had a -- a -- a -- three levels of government cooperative engagement to help us eradicate as much as we can in L.A. County, this illegal marijuana operation.

One of the challenges we ran into, though, is at the federal level there's a stipulation that says local law enforcement can't charge more than \$19,000 a year of overtime to the federal grant buckets of money, right? And -- and I think you're familiar with this. We -- we did ask DOJ specifically through the Organized Crime Drug Enforcement Task Force Office for relief on that, because what we have in L.A., besides a lot of folks hitting this overtime, is massive inflation. We're losing folks.

So what was happening is these sheriffs would hit this \$19,000 -- \$19,000-a-year cap of overtime, and then they would be rotated out of the Marijuana Eradication Team. We would lose that subject matter expertise, and someone who had learned a lesson, valuable lessons over the last year because they simply hit this artificial cap. It -- it is an artificial, kind of a -- a capricious cap being applied by the federal government.

We asked for relief. Long story short is a year later, we get a response from -- from OCDETF, the task force I was talking about, and they basically said, "Sorry, we can't do it." They -- they literally said, "A standard national officer state and local overtime cap is operationally and managerially optimal," meaning this is too hard. I -- I -- I implore you, sir, please help us remove this artificial cap. In L.A., \$19,000 a year doesn't do anything. We're short on cops. We're -- we're -- we're not short on crime. We have really major and serious problems with rising violent crime rates. We need to enable our -- our officers.

Do -- I -- you don't support defund the police, right?

GARLAND: If you take a look at our budget, you can be absolutely sure that we don't support defund the police. We're asking for \$8.2 billion in grants that we can give to the police, particularly (inaudible)...

GARCIA: Granted. That -- that -- that's music to my ears, Attorney General. I don't -- we don't -- I'm over time, but I -- I -- I just ask for all the assistance you can with -- with helping us with this cap nationwide. Major cities like New York and L.A., \$19,000 is -- is woefully anemic, compared what we have as needs right now, given our -- our short-staffing problems.

And I yield back, Mr. Chairman.

CARTWRIGHT: Thank you, Mr. Garcia.

At this time, the chair recognizes Mr. Ruppertsberger for five minutes of questions.

(UNKNOWN): (inaudible).

RUPPERSBERGER: Attorney General Garland, my next subject matter that I want -- want to discuss is cybersecurity. We know cybersecurity is a very serious issue, and it gets worse -- worse every day. We have a lot of good people in good positions. I think that work -- I think teamwork's really important here, Chris Inglis, as an example, but I -- who I work with at NSA. We -- we have to -- I just met the -- the new person today, the secretary of CISA. But what the question is, is just last week on "60 Minutes", both DOJ and CISA explained to the country about the imminent cyber threats posed by Russia against supporters like Ukraine. Putin, in my opinion, is weak, unstable and profoundly upset about how his invasion is progressing, to now, Putin has unleashed his cyber capabilities on any country that opposes his efforts in Ukraine.

We know Russia has been probing on critical infrastructure systems that could do real harm and damage to the U.S., but it seems like Russia is no longer just looking to shut down a power plant or shut down communications. Cyber experts are now concerned that Russia is actively looking at ways at hurting people, and that includes hurting Americans.

You recently announced some successes against Russia intelligence operations that could have created a botnet army that could have done real damage. DOJ often talks about shutting the door on the -- shutting the door on bad actors. Now, Mr. Attorney General, we were then able to disable the GRU's military intelligence agency control over those devices before the botnet could be weaponized.

Two -- two questions: DOJ has a thousand-person-strong Cyber Division. What more can Congress do to help you fight cyber attacks that are getting more supplicated, that attack any vulnerabilities? How do we stack up person-to-person against Russia or China's -- Chinese state actors? And number two, can you talk about DOJ's evolving cyber strategy? I know previously, it was an emphasis at naming and shaming, but has the strategy changed?

GARLAND: Well, I'll start with the last -- last part, and then I'll -- I'll move to the first.

So the -- what we succeeded in doing against the GRU -- that's the Russian military intelligence unit -- was to sever the connection between their command-and-control network and the thousands of hardware botnet apps (ph) that they had implanted the botnet control in. So they had used a similar arrangement of command and control over hardware devices to attack Ukraine. We don't know what this one was aimed at, but it could easily have been aimed at the United States, and we success -- succeeded in doing this. We did this by getting court-authorized search warrants to seize the command-and-control nodes.

So this is where we're -- we're -- we are well-past name and shame now, although that remains a -- a part of the toolkit, but that's one good example. Another good example is the ability we've had to -- to steal back the money that ransomware actors have stolen and put in crypto wallets. We did that with respect to the REvil ransomware last -- last year. So we have an array of different weapons we now have. Of course, in coordination with our intelligence community partners.

With respect to what we can do about this and what -- what Congress can do about this, well, give us some -- give us money. We've asked for more than \$1.2 billion across DOJ to address cybersecurity and cyber crime. That includes an increase of \$15.3 million for the U.S. attorney's offices to pursue malicious cyber actors and train cyber prosecutors, an increase in \$88.3 million for the FBI for cyber threat response and cybersecurity, an increase in the \$115 million for our own cybersecurity across the Justice Department. And then in the first Ukraine supplemental that you -- that -- that you did provide for us, we got \$59.4 million in supplemental funding and we used a significant chunk of that to stand up the FBI's 24/7 cyber ops unit against Russia.

So all of these are examples of things that you can do, but I think your overall concern is exactly right. Several months ago, right after the Ukraine invasion began, I addressed a group of members of Congress -- members of Congress, I think mostly of the House, and warned about the increasing risk and threats of cyber attack by Russia. I think what you're referring to from the CISA and FBI discussion on "60 Minutes" is only made further true what I had warned about originally. So we need to do -- do everything we possibly can in this respect.

RUPPERSBERGER: One of our biggest threats, security threats -- when you're in -- in law enforcement or in jobs that protect our country, national security, it's so important that we work together, and I think a lot of this partisan politics is totally out of control. It hurts our country, and we -- really, in this area, we have to focus on the job. And I know you -- you believe that. You were a former judge. You know how important that is. But we have to work as a team, and if I have anything to do with it, I'm going to oversee anything I can when I feel that -- that there's any politics other than finding the facts and bringing justice and protecting our country and allies in this regard. So I have confidence you're the right person to lead us here, and just keep us involved as much as you can, especially in the area of cybersecurity because it's going to keep growing, as we know, and we have to be on top of it.

GARLAND: Thank you, sir.

CARTWRIGHT: Thank you, Mr. Ruppertsberger, and -- and I know the rest of us on this subcommittee feel very strongly in the way you do on that -- that subject.

In the absence of Representatives Lawrence turning her camera back on, we are going to conclude this hearing.

Attorney General Garland, thank you for taking your time to -- to appear at this hearing and to answer our questions, and thank you for your service to our nation in the Department of Justice. We stand ready, willing and able to work with you to make sure you have the resources you need to make sure justice is -- is enforced in the United States of America.

With that, I thank our ranking member, Mr. Aderholt, and I here -- hereby declare this hearing adjourned.

END

Apr 29, 2022 10:38 ET .EOF

# Senate Appropriations Committee hearing on Domestic Violent Extremism in America, sked FINAL

May 12, 2021 2:46PM ET

TRANSCRIPT

May 12, 2021

COMMITTEE HEARING

SEN. PATRICK J. LEAHY, D-VT.

SENATE APPROPRIATIONS COMMITTEE HEARING ON DOMESTIC VIOLENT  
EXTREMISM IN AMERICA

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SENATE APPROPRIATIONS COMMITTEE HEARING ON DOMESTIC VIOLENT  
EXTREMISM IN AMERICA

MAY 12, 2021

SPEAKERS:

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SEN. PATTY MURRAY, D-WASH.

SEN. DIANNE FEINSTEIN, D-CALIF.

SEN. RICHARD J. DURBIN, D-ILL.

SEN. JACK REED, D-R.I.

SEN. JON TESTER, D-MONT.

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SEN. JEFF MERKLEY, D-ORE.

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SEN. MARTIN HEINRICH, D-N.M.

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SEN. MARCO RUBIO, R-FLA.

SEN. JOHN KENNEDY, R-LA.

SEN. CINDY HYDE-SMITH, R-MISS.

SEN. MIKE BRAUN, R-IND.

SEN. BILL HAGERTY, R-TENN.

WITNESSES:

MERRICK GARLAND, U.S. ATTORNEY GENERAL

ALEJANDRO MAYORKAS, SECRETARY OF HOMELAND SECURITY

LEAHY: Well, good morning. Good morning, everybody. I appreciate being here, all of you.

I was just -- this is somewhat an unusual way to meet, and I would mention this to our two distinguished witnesses. It's a little bit more difficult to keep the distances we want, but I think it was important for the Appropriations Committee to have this meeting.

The January 6th images, all of us remember that. The insurrectionists flying Confederate flags, destroying the U.S. Capitol are stark reminders that domestic violent extremism in America is hardly a new threat. The nation's history has been marred by the violent, deadly acts of extremists pushing a range of hateful white supremacist ideologies. From the Ku Klux Klan to Timothy McVeigh, we've witnessed and we've suffered through as a people extremists killing innocent people in the name of usually morally- -- always morally-bankrupt causes.

The violence on January 6th was simply the latest chapter in this long history of domestic extremism in America. Attacks and plots by domestic extremists are at historic highs, the majority of them being planned by those in the far right espousing white supremacist and related ideologies. In 2020 alone, white nationalists and like-minded extremists conducted 66 percent of terrorist plots and attacks in the United States.

It appears we're facing a class of criminals who feel more emboldened than ever, and in asking (ph) why we can't ignore a simple fact. Over the last four years, extremists who were once relegated to the fringes of our society, uniformly condemned by our nation's leaders, both parties, suddenly felt they had support at the highest level of the United States government, and indeed, in the Oval Office. We had a president who, instead of simply condemning the violence in Charlottesville, where a woman was killed during a white nationalist rally, he said to a nation, "There are very fine people on both sides." When asked to denounce white supremacy during an election debate, instead of doing so without equivocation, he told right-wing Proud Boys, "Stand back and stand by." He urged a crowd to fight like hell moments before they did just that, storming the U.S. Capitol.

LEAHY: Well, you can't strike a match near gas and then act surprised when it catches fire. We need moral clarity and leadership in these troubled times. I'm hopeful that this administration, the two witnesses before us, can bring that to the difficult task before them.

I believe it is critical for us to confront domestic violent extremism in all forms -- in all forms. As the chairman of the Senate Appropriations Committee I'm firmly committed to doing just that.

But let's not ignore the plain fact, as repeatedly asserted by the Department of Homeland Security and FBI Director Ray and others, that white supremacist extremists are the most persistent and lethal threat in the homeland.

Now, violent extremism in any form is wrong, but (inaudible) false equivalence before -- between this form of violent extremism and others only detracts in our shared goal, focusing our resources on the greatest threat we face as Americans.

So we have to confront this threat to American way. That means protecting the constitutional rights and civil liberties that define our way of life.

In the wake of September 11th, we let our deep wounds occasional blind us to the rights and liberties we sacrifice in the name of security. I steadfastly defended those liberties and rights then, even when it was highly unpopular to do so. I won't hesitate to do so again now. If we secure our nation at the expense of our precious liberties, then we can hardly claim victory at all.

We expect to receive the president's budget by the end of May. It's my understanding the president will seek significant resources to address the threat of domestic extremism. So let us come together, not as Republicans or Democrats but as Americans, to confront this threat to our society.

I'm under no illusions that we're going to eliminate the threat of domestic violent extremism overnight. I am hopeful that if we work together, again, both parties, we could force it into retreat. And I think we should be able to do what we have done in the past: show the world that America is capable of confronting its greatest challenges while living up to its highest ideals.

I'm joined by the vice chairman of the committee, Senator Shelby. And I'll yield to you.

SHELBY: Thank you, Mr. Chairman, for calling this -- today's hearing.

I also want to welcome our -- the distinguished witnesses to the committee.

Mr. Chairman, the rule of law, the very foundation upon which America was built, is paramount to our future as Americans and the future of our democracy. Selective enforcement of our nation's laws erodes that foundation.

Today we have before the committee two of our nation's top law enforcement officials, the two individuals most directly responsible for faithfully and fairly upholding the rule of law, the attorney general and the secretary.

You both know, as we do, that our country cannot afford to pick and choose the laws we enforce, and yet we watch that happen every day.

Domestic violent extremists threaten the rule of law, but so too does burning -- turning a blind eye to the flood of illegal -- illegal immigration at our southern border. I'll address each of these issues in turn from this perspective.

SHELBY: First, violent extremism is a very serious topic. Unfortunately, many of my Democratic colleagues have sought to make it about politics and race. They would have the American people believe that all domestic violent extremists are far-right-wing white supremacists and that all Republicans are complicit in their actions. Of course, both are false.

I believe the overwhelming majority of Americans who watched the events of January the 6th with shock and horror. I also believe that just as many watched the endless string of riots in cities across America last summer with the same emotions.

They saw Antifa thugs beat and intimidate innocent people. They saw violent anarchists burn police cars and precincts and attack law enforcement officers. They also saw far-left extremists hijack Seattle and destroy the livelihoods of so many small business owners there as -- yes, and they saw Black Lives Matter activists trash cities and loot businesses from coast to coast, night after night.

None of these actions is -- none of these actions is excusable, not those of January the 6th and not those of last summer. They're all wrong. They all violate the rule of law.

Yet, in the face of this utter contempt for the rule of law, so many have chosen to stand idly excusing while -- excusing one while condemning another. Such rationalization of inappropriate and even illegal behavior, I think, is dangerous. And I think the American people see right through it.

Moreover, it's dangerous for our leaders and law enforcement to focus on one threat to our nation while ignoring the other. Such behavior raises questions as to whether justice is still blind and whether the rule of law still has meaning and force in America.

Let me be clear, this isn't about taking up for one side or the other or about advocating for the enforcement of one law over another. I believe the vast majority of the American people believe in the rule of law and they see it under attack. I also believe that they want to see anyone who transgresses it to be held to account, regardless of race, political dogma, or other motivation.

FBI Director Christopher Wray recently testified before the Senate Judiciary Committee. And he said, "We at the FBI don't tend to think of violent extremism in terms of right/left, that's not a spectrum that we look at."

I wonder if that will be clear to those who watch today's hearing? I hope so.

I hope we hear from each of our witnesses about their efforts to combat domestic violent extremism, no matter where it falls on the political spectrum. I also hope that we will hear that there is a uniform approach to enforcing all the laws that are on the books -- that includes our immigration laws.

Illegal immigration has long plagued this country. It undermines American sovereignty and makes a mockery of our immigration laws. The failure to secure our border has for decades followed -- allowed the cartels, the drug smugglers, and human traffickers to continue to their practices largely unabated.

The Trump administration made a strong commitment to border security and achieved significant gains in restoring the rule of law along the southern border. Yet, President Biden, in one of his first actions in office, halted construction of the border wall that was ongoing and announced plans to unwind the immigration policies put in place by our previous administration.

SHELBY: Sections of border wall literally lay on the ground next to gaping holes in the existing holes in the existing barrier system. Gates in the wall that need repair remain wide open and require Border Patrol officers to stand guard when they're -- while they're needed in other hotspots along the border. Essential technologies such as sensors and cameras embedded in the border wall system have not been activated, all of this while record numbers of individuals pour across the southern border.

The impact of these actions is not theoretical or abstract. Our border officials and facilities are overwhelmed. Tens of thousands -- yes, tens of thousands of migrant children are in U.S. custody as we speak.

This administration has restored catch-and-release, setting thousands of illegal crossers free in cities and towns across America without consequence for breaking the law. And inexplicably amid the ongoing crisis, the Justice Department recently rescinded restrictions on federal funding for sanctuary cities which themselves embody contempt for the rule of law. This action can have other effect -- can have no other effect than further fueling the crisis by enticing those who seek to come here illegally. More parents in desperate circumstances in Central American countries will pay human smugglers to drop their children off in the border -- at the border because the prospect and promise of sanctuary just got brighter.

The ultimate source of laws in America, the Constitution, provides Congress with the power of the purse. Congress, over the past two years, has provided billions of dollars to the Department of Homeland Security for further construction of a border wall system, which includes functional gates and essential technology. Yet, this administration has blatantly ignored the will of the people to secure the border, as expressed in duly-enacted laws.

I believe that the rule of law must be restored for the good of this country. It must govern whether we're -- are talking about domestic violent -- violent extremism or illegal immigration. It cannot come down in full force on one group of bad actors, while giving a pass to others, and officials tasked with enforcing it cannot pick and choose which laws they will follow based on political considerations. If those things happen, the rule of law will lose its meaning and its force in America, and we as a nation will be in serious, serious trouble.

I hope that our witnesses today, two of our top law enforcement officials in this country, will make a serious and credible effort to restore the American people's faith in the rule of law, and I look forward, Mr. Chairman, to the question-and-answer period. Thank you for the hearing.

LEAHY: I thank you very much.

And before I introduce the witnesses, this is a -- this hearing is a hybrid hearing. We have some members attending virtually and some in person. I thank the two witnesses for being here in person. We'll have five-minute question rounds when we get to the questions. Members will be called upon in order of their seniority in the full committee. If they're not available at the time they're called upon, we'll go to the next person in seniority, and then if they rejoin the committee later, we'll try to put them back in order.

I would ask senators to mute themselves when not speaking. For those joining virtually, I'd ask you not log out of the meeting before asking your questions, and if you need to step away, just turn off your cameras.

But I'm -- am glad to see the two witnesses are here, and I know you've had to juggle your schedule to make it possible.

I'm glad to have the attorney general with us today. I've known him for years; followed his career ever since he led the prosecution of Timothy McVeigh after the bombing of the Murrah Federal Building in Oklahoma City 26 years ago. The attorney general brings with him a heightened understanding of the threat domestic violent extremism brings to our nation just from the deaths of people who -- the deaths that resulted from that.

And I wanted to welcome Secretary Mayorkas to the panel. We've known each other for a long time, and we look forward to hearing from you, Mr. Secretary, about the work the Department of Homeland Security is doing on this important issue, and we'll take your opening statement. I did note for the committee, I raised a question with -- before you came in. Secretary Mayorkas, I am concerned about the number of attacks, cyber attacks, most recently (ph) on the oil pipeline, and I think we are going to want to have a briefing for members at some point. What are we -- what are we doing to increase security in these companies? And to what extent there to be (ph) a responsibility in the companies if hundreds of millions of dollars are being stolen, and they take it as a way of doing business, and just pass the cost on to the consumers when they fail to put in the kind of security, cybersecurity, that they should have in the first place?

But let -- I will yield now for the opening statements. Attorney -- Attorney General Garland, would you please start? And then Secretary Mayorkas.

GARLAND: Good morning, Chairman Leahy, Vice Chairman Shelby and distinguished members of the committee. Thank you for the opportunity to testify on behalf of the Department of Justice, and it's nice to see you here, Secretary Mayorkas.

Combating domestic violent extremism and domestic terrorism has long been a core part of the Justice Department's mission. Immediately upon its founding more than 150 years ago, the department pursued white supremacists who had sought to deny newly-freed slaves their rights under the Constitution, including the right to vote. Members of the first incarnation of the Ku Klux Klan attacked and murdered black people, assassinated black political leaders, drove black farmers off their land and burned their houses and their churches. The department poured its resources into combating the Klan, successfully prosecuting hundreds of Klansmen.

Twenty-six years ago, in 1995, the perpetrators of the bombing of the Oklahoma City federal building sought to spark a revolution that would topple the federal government. One hundred and sixty eight people died, including 19 children. Hundreds of others were seriously injured. The efforts to successfully prosecute the perpetrators, which I supervised, required unprecedented interagency cooperation at all levels of government and a major commitment of the department's resources and personnel.

GARLAND: Unfortunately, the horror of domestic violent extremism is still with us. Indeed, the FBI assessed that 2019 was the deadliest year for violent domestic extremism since 1995. In March of this year, the intelligence community, in a report drafted by DHS, the FBI and the National Counterterrorism Center under the auspices of the director of national intelligence assessed that domestic violent extremists post a elevated threat in 2021.

And in the FBI's view, the top domestic violent extremist threat we face comes from racially or ethnically motivated violent extremists specifically those who advocate for the superiority of the white race. Many communities have experienced this horror over the past several years. In El Paso, 23 people, most of whom are Latino were gunned down while shopping at a Walmart.

In Pittsburgh, 11 Jewish worshipers were shot and killed at their synagogue. In Charleston, a white supremacist shot and killed nine black men and women for praying at their church. And many acts of hate-fueled violence don't make the national news but they still terrorize entire communities.

The FBI has also highlighted a recent increase in attacks perpetrated by those that categorizes as anti-government or anti-authority violent extremists. The Unabomber, whom I investigated and prosecuted in the mid-1990s is by some measures the most high-profile example of the latter. As with the Ku Klux Klan, Oklahoma City, and Unabomber investigations the Justice Department is once again engaged in a complex nationwide resource-intensive investigation.

The investigation of the heinous attack on the U.S. Capitol on January 6th. In just under 130 days, the Justice Department has made more than 430 arrests. The prosecution efforts, which are being led by the United States Attorney's office for the District of Columbia remain ongoing. In all of our efforts to combat domestic violent extremism and domestic terrorism, the Justice Department is guided by our commitment to protecting civil liberties.

In our country espousing an extremist ideology is not a crime. Nor is expressing hateful views or associating with hateful groups. But when someone tries to promote or impose an ideology through acts of violence those acts can be the most dangerous crimes we confront as a society.

Regardless of the motivating ideology, we will use every appropriate tool at our disposal to deter and disrupt such criminal acts and to bring their perpetrators to justice. My written statement for the record describes those efforts in detail. In the past year, the Justice Department has shifted significant resources to focus on this area.

The president's discretionary budget request for FY 2022 seeks over \$100 million in additional funds to address the rising threat of domestic violent extremism and domestic terrorism. It includes additional funding for the FBI, the U.S. Attorney's offices, the Marshal Services, and other components.

The department is equally committed to fighting violence and terrorism that is directed or inspired by foreign actors but I recognize that is not the topic of today's hearing. As to both, we will pursue justice in a manner that honors the civil liberties guaranteed by the Constitution and laws of the United States.

Thank you for inviting me to testify at this important hearing. And thank you for your support in ensuring that we have the resources necessary to carry out this vital mission.

LEAHY: Thank you very much, Mr. Attorney General. And Secretary Mayorkas, glad to have you here, please go ahead, sir.

MAYORKAS: Good morning, Chairman Leahy, Vice Chairman Shelby, and distinguished members of the committee. I am honored to appear before you today. Attorney General Garland...

Everyday the Department of Homeland Security's more than 240,000 dedicated public servants work tirelessly to keep our communities safe and secure. Today I will highlight the work our department is undertaking to combat the most significant and immediate terrorism related threat to our homeland which is the threat posed by domestic violent extremism.

The terrorism related threats we face as a nation have significantly evolved since the department's creation in the wake of the September 11th terrorist attacks. The threat landscape is now more complex, more dynamic and more diversified. Today racially or ethnically motivated violent extremists are the most likely to conduct mass casualty attacks against civilians. And anti-government or anti-authority violent extremists specifically militia violent extremists are the most likely to target law enforcement, government personnel and government facilities.

The threats posed by domestic violent extremism are often fueled by false narratives, conspiracy theories and extremist rhetoric spread throughout social media and other online platforms.

Further, domestic violent extremists who act alone continue to pose significant detection and disruption challenges because of their capacity for independent radicalization to violence, their ability to mobilize discreetly and their access to weapons.

As a result the department is redoubling its efforts to detect and disrupt all forms of foreign and domestic terrorism and targeted violence while safeguarding privacy protections, civil rights, and civil liberties. The department is taking a new approach to addressing domestic violent extremism both internally and externally.

In January, DHS released a national terrorism advisory system or NTAS bulletin highlighting the threat posed by domestic violent extremists. It was the first NTAS issued in over a year and also the first solely focused on a domestic threat.

In addition, this year I designated for the first time domestic violent extremism as a national priority area within the department's Homeland Security grant program. This means that state and urban areas across the nation will spend at least \$77 million to prevent, prepare for, protect against, and respond to acts of domestic violent extremism. The department is currently expanding its analytic focus to more comprehensively review how extremists exploit and leverage social media and other online platforms and how online activities are linked to real world violence.

We are also enhancing our ability to analyze, produce and disseminate products that address the full range of terrorism and targeted violence. We recently established a dedicated domestic terrorism branch within our Office of Intelligence and Analysis to ensure the department develops the expertise necessary to combat this threat using sound, timely, intelligence.

One of the department's most important missions is to provide actionable intelligence to the broadest audience at the lowest classification level possible. As a result, DHS is working closely with its partners to augment its intelligence and information capabilities to inform public safety and security planning efforts across the country.

In the coming months the department will increase training options and other support to help identify individuals at risk of radicalization. Among my top priorities is to ensure that our personnel can perform their critical missions, that they feel safe and secure at work and that the fabric of our department is not penetrated by hate or violent extremism.

In light of this commitment, I announced last month an internal review to address potential threats related to domestic violent extremism within DHS and ensure we are not compromised in our ability to protect our country.

As I have said before, the Department of Homeland Security is fundamentally a department of partnerships. Our success depends on the strength of these partnerships as we can not accomplish our mission alone. DHS will remain focused on strengthening its partnerships across every level of government, the private sector and the diverse communities we serve to enhance together our collective prevention capabilities nationwide.

We recently established a new center for prevention programs and partnerships or CP3 to improve the department's ability to combat terrorism and targeted violence by leveraging behavioral threat assessment and management tools capable of identifying early risk factors that can lead to violence in communities across the country.

Individuals who may be radicalizing or have radicalized to violence typically exhibit behaviors that are recognizable to many but are best understood by those closest to them, such as friends, family and classmates. CP3 will help build local prevention frameworks to provide communities with the tools they need to combat terrorism and targeted violence consistent with privacy protections, civil rights and civil liberties and our laws.

Further, the department will continue working closely with its partners to build greater public awareness of and resilience to disinformation.

Thank you, again, for the opportunity to appear before you today and for your continued support of our department. I look forward to working closely with this committee and with other members of Congress on our shared priorities. And I look forward to answering your questions. Thank you.

LEAHY: Thank you. Thank you and I'm going to try to stay on schedule because I know we have votes coming up.

And Secretary Mayorkas, you talked about this internal review you have to detect and respond to domestic violent extremism within - within the Department of Homeland Security. That sends chills down my spine that we have to even be doing that. Will you commit to making the results of that review available to Congress and the American public?

MAYORKAS: Mr. Chairman, I certainly will. It is vitally important that our department reflects the nation that we seek to achieve, protect, and spend (ph) - keep secure.

LEAHY: Thank you. Attorney General Garland, I mentioned earlier you were the lead prosecutor in the Oklahoma City bombing case. And in some ways I feel like that was yesterday but I'm sure even more so to you. You had a pretty unique perspective into our country's efforts to counter domestic violent extremism.

When you commemorated the 26th anniversary of the Oklahoma City bombing last month, you noted that quote "the terror we faced then is still with us". It appears to me that the threat has evolved in part because of violent extremist groups. So my question to Attorney General, how would the Justice Department adapt its approach of combating domestic violent extremism to address how the threat has evolved over the past few years?

GARLAND: Thank you, Mr. Chairman. And that is an excellent question. That's what we have been working on for several months and which - what something that the department has been working on over the years. That threat has changed, a lot of different factors have made it change but of course the most significant has been the ability to communicate over the internet at high speed and to be able to communicate in secret through encrypted and other channels.

In the days of Oklahoma City, the co-conspirators had to meet together and it took a considerable amount of time. In addition, the degree of lethality -- lethal weaponry available now is substantially higher than. Then it took 2,000 pounds of ammonium nitrate to bring down that building, it would take considerably less modern explosives to do the same. So that threat is considerably, with respect to its risk of lethality, higher than it ever was.

We are using all the lessons that were learned over the past decades, including in five -- of those involved in fighting foreign terrorists in the United States. We have much more robust intelligence situation than we had then, we have much more a joint sharing of information between state and local agencies and the Federal government to the FBI has joint task forces across the country of about 100 or so covering every field office and many more.

U.S. attorneys' offices likewise have joint antiterrorism taskforces that work with state and local law enforcement, sharing information all the time. And we're giving out considerable amounts of grants to help the state, and local and territorial, tribal, law enforcement to up their game and recognizing these kinds of threats as well.

LEAHY: Well, I'm going to give you a question that you can then answer if you want for the record, and think seriously on this. What more do your Departments need from Congress and in particular this Committee, to root out violent extremism so we're not faced with this discussion again 26 years from now? And I hope you would be very specific in answering that question because -- tell it to us directly because I wonder if we - we hear so much about domestic violent extremism and all its manifestation.

I think its safe to say that you and your Departments are committed to combating extremism in whatever form exists. We have to start with some common facts, in October of last year the Department of Homeland Security concluded that white supremacist extremists remain the most persistent and lethal threat in the homeland. That was what the Department of Homeland Security said during the last administration.

So, let me ask first, Secretary Mayorkas, is it still your assessment that white supremacist extremists are the most lethal threat we face in the homeland today?

MAYORKAS: Mr. Chairman, I do believe that the intelligence reflects the fact that, indeed, that is the case. And I very much appreciate your question with respect to the resources that -- resources we could utilize to enhance our efforts to combat domestic violent extremism. And three lines of work come immediately to mind.

Of course, as I mentioned earlier, we have created a branch to focus exclusively on this particular threat stream and that branch can use additional resources so that we have the analytic capabilities to best assess the threat and provide information to our state, local, tribal, and territorial partners to equip and empower them to address it in their communities.

LEAHY: Do you do agree with your predecessors that white supremacist extremists remain the most persistently lethal threat in the homeland?

MAYORKAS: I -- I do believe they -- they do at this time, Mr. Chairman.

LEAHY: And Attorney General Garland, do you agree?

GARLAND: I do and that's the most recent assessment of the FBI.

LEAHY: Thank you. I have further questions which I'll submit for the record here and I thank you both for being here. I yield to the Vice Chairman.

SHELBY: Thank you, thank you, Mr. Chairman. It's my understanding that the latest operational statistics provided by DHS that this -- this year in the Rio Grande Valley sector alone, more than 19,000 persons are apprehended by the border patrol, were released into the -- into the interior of the country without a court date to adjudicate their illegal entry.

Even under the Obama administration's catch and release policy, illegal crossers were given a notice to appear before a judge. My question to both of you is this, what is the plan for the -- these 19,000 illegal immigrants and how are you planning to track them once they have been let into the country? And are you -- are you in essence conceding that these people will be allowed to stay in the country indefinitely? In other words, what's going on here? Mr. Attorney General, let's start with you.

GARLAND: Well, the specific program you are talking I'm going to have to defer to the Secretary of DHS. I know that the Secretary is trying to prioritize his enforcement efforts. Resources are limited and the most important thing is to remove those who are a danger to national security and a danger to the public safety. I understand those to be his enforcement priorities.

SHELBY: OK. Mr. Attorney General, Federal law defines domestic terrorism as a violation of the criminal laws of the U.S. or any state, that appears intended to intimidate or coerce. As I said in my opening statement, that was the case with the events of January the 6th, and the individuals who committed those acts should be punished to the fullest extent of the law, I believe that.

At the same time, sir, I am trying to understand the difference between those acts and the ones perpetuated last summer where groups like antifa and others that rioted, vandalized, and frankly terrorized cities like Portland, Minneapolis, and Washington D.C., all in an effort to deliver as they say a message.

My question is this, Sir what is the actual difference between these acts besides the groups carrying them out and if there is not one, how can you assure this committee and the American people that the Department of Justice under your leadership is pursuing all who commit such acts with equal vigor? In other words, you are not selectively prosecuting but you are going after all lawbreakers.

GARLAND: Senator, as I said in my opening statement and as you said in your statement, that the role of the Justice Department is to prosecute -- to investigate and prosecute violations of the criminal law, regardless of ideology. Your quotation from Director Ray is one I would join myself, that we do not care what ideology is, violations of law are pursued and are prosecuted.

I think it is fair to say that in my career as a judge and in law enforcement, I have not seen a more dangerous threat to democracy than the invasion of the Capitol. This was an attempt by some -- and I want to be very careful to not ascribe it to all, because every case is judicially decided -- but there was an attempt to interfere with the fundamental passing -- element of our democracy, the peaceful transfer of power. And if there has to be a hierarchy of things that we prioritize, this would be the one we prioritize because it is the most dangerous threat to our democracy. But that does not mean that we don't focus on other threats and that we don't focus on other crimes. We do, and we don't care about the ideology behind them.

SHELBY: Is rioting and pilfering and all of this in our cities, where it breaks the law, is that subject to prosecution?

GARLAND: Of course. Anything that breaks the law...

SHELBY: Just like any other breaking (ph)...

GARLAND: Anything that breaks the law is -- is subject to prosecution. It may not be subject to federal prosecution. There has to be a federal crime involved. But if it breaks the law, of course, it's subject to prosecution.

SHELBY: But a lot of it could be subject to federal prosecution. (inaudible)...

GARLAND: It could, yes, absolutely, it could, and the Justice Department looks for where there are violations of federal crimes.

SHELBY: Mr. Secretary, in the past five years, Congress has directly provided the Department of Homeland Security with billions of dollars for the construction of a border wall, and we know where it is today. I think it's affront to this committee and to a lot of us to -- for Congress -- and to Congress' power of the purse, but worse, it makes the work of our dedicated Border Patrol agents more difficult and more dangerous on what's been going on there. I think these agents must stand constant guard by incomplete sections of the border wall, which now serves as funnels for illegal immigrants, human trafficking and drug smuggling. You know, I think the dynamics there are straining the resources of our Border Patrol under your leadership.

Mr. Secretary, what is your plan, if you have one, to relieve Border Patrol agents from guarding gaps that remain in the wall due to this administration's refusal -- refusal to finish construction that was near completion and abruptly halted in January? And are you planning to turn on the gates' incomplete section of the border wall that's finished so your agents can safely patrol the other areas of responsibility? In other words, what's going on there?

MAYORKAS: Vice Chairman Shelby, we are dedicated to securing our border. That is one of our most significant priorities, and we have a multifaceted approach to that critical mission.

Let me say, if I can, for just one moment, you mentioned traffickers and human smuggling organizations. We are very focused on combating their efforts to cause damage in our country, and in fact, just over the past few weeks, we launched operational -- Operation Sentinel to increase our resources and -- and dedication of efforts to combat human smugglers and traffickers in every way possible.

The border is most secure when we take a multifaceted approach, where we not only rely exclusively on the physical barrier, but we have physical barriers, the use of technology and a focus on innovation to make sure that we're harnessing the most recent technological innovations to secure our border and, of course, the brave men and women of the United States Border Patrol. It's that multi-faceted approach that delivers the greatest security to our border.

LEAHY: Thank you. And -- and we'll turn to Senator Durbin...

(UNKNOWN): (inaudible)...

LEAHY: ... who is also the chair of the Senate Judiciary Committee, and is deeply involved in these issues.

DURBIN: Thanks, Mr. Chairman.

Attorney General, you've identified the dilemma of democracy, where we state unequivocally you can believe you -- what you care to believe. That's your right in this country, this free country. But when you take action in pursuance of your beliefs, then we have to take a critical eye toward that action to determine whether or not it has broken the law and endangers the rights of others.

During the January 6th insurrection, New York Police Department Officer Thomas Webster has been charged with assaulting a D.C. Metropolitan Police Department officer during the attack. Body camera footage shows Webster attacking the Metropolitan Police Department officer with the metal flagpole, tackling him and trying to rip off his face shield and gas mask. This raises -- raises a question which is painful to consider, but we have to consider it, and that is whether or not in the ranks of law enforcement, either at the federal level or state and local level, there are those who would use their political beliefs in a -- in a manner which are inconsistent -- which is inconsistent with your earlier statement. What are your thoughts about how we can deal with this?

GARLAND: Well, you -- you put your finger on the most difficult problem we have, which is balancing First Amendment, free association and free speech rights with protection of our communities against criminal acts.

Within the Justice Department itself, we are beginning our own review of our procedures. Over the last couple of weeks, we've been discussing how to go about this. The deputy attorney general has met with the heads of all of our law enforcement agencies to determine how we can carefully vet our own employees, again, always being mindful of First Amendment and free associational rights, but at the same time, being careful that we don't have people in our ranks who would commit criminal acts or who are not able to carry on their duties. So that's one set of things, looking within ourselves.

And the second are we have, with respect to our joint terrorism task forces, we have a vetting procedure like we have for our own agents with respect to careful backgrounds. But with respect to law enforcement of the local and state level, this would require using some of our grant money for the purpose of incentivizing anti-domestic violent extremists, training of people so that law enforcement is aware of what to look for and of how to go about the kind -- kind of training necessary to make sure that people who are involved in it are excluded from the ranks.

DURBIN: Thank you.

Secretary Mayorkas, Senator Shelby raised a question earlier about 19,000 people who were caught and released by your agency at the southern border, and I -- I want to give you a chance to respond to that. And would you also comment on the chart that says there are thousands of migrant children in U.S. custody so that the record can be clear as to whether that is accurate?

MAYORKAS: Thank you, Senator Durbin. As I mentioned earlier, our priorities to secure the border in a time of pandemic, we are employing the Department of Health and Human Services specifically the Center for Disease Control's Title 42 authority to expel families and single adults.

We made a decision because the president and this administration is dedicated not only to a safe and orderly immigration system, but one that is humane as well, to not expel children. Families who are not able to be expelled are placed in immigration proceedings, pursuant to the law.

DURBIN: Does that mean they have a court date?

MAYORKAS: That is indeed the case, they do have a court date. And if they are not able -- we are not able to identify a court date at the time that they are apprehended in a Customs and Border Protection facility, a Border Patrol station, they are issued a notice to appear at an Immigration and Customs Enforcement facility.

With respect to the photograph that I have trouble seeing, but I do -- I can discern what it is, we have focused our efforts on ensuring that children are moved as quickly as possible from a Border Patrol station to the shelter and care of the Department of Health and Human Services. I have repeatedly stated that a Border Patrol station is no place for a child.

We have made dramatic improvement in the movement of those unaccompanied children to the Department of Health and Human Services. We've reduced the time in Border Patrol custody from a height of 133 hours on average, on March 28th, to an average below 30 hours as I sit here and testify today.

And those facilities are far better than a Border Patrol station, and we are likewise reducing the time that a child spends in an HHS facility so that we can unite that child with a parent, legal guardian or family relative, qualified sponsor here in the United States.

DURBIN: But you do not forcibly remove children from their families, do you?

MAYORKAS: We absolutely do not...

(CROSSTALK)

DURBIN: And...

MAYORKAS: ... continue the cruel and -- and extraordinarily inhumane policy of the past.

DURBIN: And you do make every effort to establish a reunification possibility?

MAYORKAS: We are dedicated to that. We are very proud of the fact that we united -- we reunited four families last week, and I want to acknowledge that that is only the beginning, Senator.

DURBIN: Thank you.

LEAHY: Thank you very much.

Senator Collins?

COLLINS: Thank you, Mr. Chairman.

Mr. Attorney General, welcome. I commend you and the Department of Justice for seeking to identify and prosecute those responsible for the terrible riots and attack on our Capitol on January 6th.

As the chairman mentioned, starting last summer, our country also experienced attacks threatening other significant government institutions such as a court house, police stations. That occurred at (ph) Minneapolis and what we in Maine call "the other Portland."

You have made very clear that the ideological outlook of the individual committing these alleged crimes is not important to the Department of Justice, but what resources has the department dedicated to identifying and prosecuting the individuals responsible for the violent acts last summer that were aimed at institutions like courthouses and police stations?

GARLAND: Thank you, Senator, for the question. As you might expect, I know more about the resources we're putting into January 6th because most of those resources have been put in on my watch, during the time I've been here. I wasn't the attorney general, nor in the Department of Justice in the summer so I'm not completely familiar with the resources that were put in during that period.

But the U.S. attorney's offices in both -- in the other Portland and in Minneapolis are continuing to work those cases, as are -- as is the FBI field offices in both of those cases. And I have not heard any suggestion that insufficient resources are available for those continuing prosecutions.

COLLINS: If you could get back to me with more specifics on that, I'd really appreciate it.

GARLAND: I'll ask my staff to contact yours, thank you.

COLLINS: Thank you.

Secretary Mayorkas, first of all, let me say that I very much appreciate the work of the Department of Homeland Security and I personally learned a lot from a recent trip, my second to the border, to Texas, where I went with Border Patrol agents on a midnight tour of the Rio Grande. And across the river, we could see the bright lights of the Mexican cartels, and hear them taunting the border agents as they were controlling completely the flow of migrants across the river.

I know that you visited the Donna (ph) facility in Texas last week. When I was there, the conditions were dire. This looks great, compared to what I saw. What I saw were children in pens, on floors, with no spaces between them, with just mylar blankets. And those conditions were truly dire.

We are, however, despite the improvements that you're working hard to make, we're seeing decades-high numbers of encounters at the border. And I asked the Border Patrol agents, and also the migrants through a translator, why the migrants were coming now.

And they pointed to changes in policies that have been made by the Biden administration, particularly with regard to the Migrant Protection Protocols. And one woman, very young woman with a young child, told me that she was here to escape the violence, and because President Biden told her to come.

You have said that we will build the legal processes for migrants to come to the U.S. when they are qualified to do so, under the laws that Congress passed, and that is exactly right. So how can we now reform or amend our practices and our laws to end the various incentives that spur this type -- this flood of illegal migration, which has led to very vulnerable people being exploited by smugglers, human traffickers, the cartels. What should we do now?

MAYORKAS: Senator, thank you very much. I have a three part answer but before I provide that three part answer, let me say two important things if I may. First of all, I want to articulate my extraordinary pride in working alongside and supporting the men and women of the United States border patrol. They truly -- their efforts are heroic.

Secondly, the Donna facility I have visited twice, once in March and once last week and the change in the conditions there is extraordinary and that is because of the men and women of the border patrol as well as the men and women throughout the Department of Homeland Security who have dedicated their resources and talents to the effort.

It's really a three part solution. It is investing in the countries of origin; Guatemala, Honduras, and El Salvador and tackling the root causes that cause the irregular migration, that cause loving parents to actually send their children alone and sometimes in the hands of human smugglers to traverse Mexico to reach our southern border.

Secondly, it's to construct lawful pathways so that individuals such as those loving parents don't feel they have to rely on those irregular and dangerous pathways but a safe and orderly process when they qualify under United States law for them to travel here safely.

And third, Senator, is immigration reform. There is unanimity that our current immigration system is broken. We have bills pending before Congress and it is time for that reform to be enacted.

LEAHY: Thank you.

COLLINS: Thank you.

LEAHY: Thank you. I agree with that last comment. We -- several members here are also members of the Judiciary Committee and a few years ago we spent months putting together a comprehensive immigration bill. It passed the U.S. Senate in bipartisan at 65 -- 63 votes, with Republicans and Democrats for it.

The then Speaker of the -- of the House, even though there were votes needed that would have passed it, refused to bring it up because it would have violated a rule that he considered sacred, the Dennis Hastert rule. (Inaudible) different now that former Speaker Hastert went to prison. Senator Reed.

REED: Thank you, Mr. Chairman. Attorney General, welcome. Mr. Secretary, welcome. You have described information -- misinformation rather and disinformation as fueling a great deal of this violent extremist activity.

In your view, would a commission to provide information literacy, tools that people can use to make sound judgments about what they're seeing on social media and this would apply to all communities that there's a particular concern with veterans and service members? Would such a commission be useful? Mr. General for -- please.

GARLAND: I think all forms of civil civics education that help provide education about misinformation that can lead to radicalization or misinformation in general would be helpful.

REED: Thank you. Mr. Secretary?

MAYORKAS: Senator Reed, I would welcome the opportunity to learn the specifics we're eager to have additional resources and additional vehicles to address misinformation and disinformation.

I should say that our department is partnering with the Department of Education to develop a program in the K-12 arena and so to amplify that effort we would welcome the opportunity to study the commission of which you speak.

REED: Thank you, Secretary. Mr. Secretary, we have also seen increasing evidence that Russia is using this type of misinformation and disinformation to support and amplify a message of violence that we saw in Charlottesville, in the killing of George Floyd designed to disunite this country, in flame racial tensions and to undermine in many respects our democracy.

In a recent joint assessment indicates that they're using the January 6 assault on the Capitol in such a manner to amplify narratives further into their policy, which is to disrupt and disunite and to, you know, indeed destroy if they could our democracy. So are you concerned about this Nexus between Russia and these domestic terrorist?

MAYORKAS: Very much so, Senator. We are intensely focused on the information with respect to Russia's effort to sow discord and disunity in our country and of course we are bringing an all of government effort to respond to that.

And I would welcome the opportunity to brief you in a more appropriate form to address the information we have in that regard.

REED: In this form, can you give an indication of what you think the best way might be to do that?

MAYORKAS: Senator, some of the actions that have taken certainly are public. We have imposed sanctions. We have attributed to Russia publicly the actions that we have learned they have committed. Those are two examples that I certainly can speak of in a public form.

REED: Thank you. One of the -- my impressions from being on the Armed Services Committee is that there is a disconnect between our defense related intelligence services, the CYBERCOM, NAS, CI, et cetera. Many because of constitutional issues or the inability of these agencies to operate in the United States.

Has left a seam in which is being exploited and are we making efforts to close that seam constitutionally?

MAYORKAS: Senator, you are correct in addressing the fact that some authorities are domestic in nature, others are not. The issue of seams, of course, is a long standing one. We are very, very focused on closing any seams that remain or any residual of past issues. We're very, very focused on it and developing resources to address that.

REED: Well, Mr. Secretary and Mr. Attorney General, if there are legislative initiatives that are required to close these seams or to disrupt the flow of disinformation, please forward those to not just this committee but the other committees of jurisdiction and interest and thank you all for your service, gentlemen.

GARLAND: Thank you.

(UNKNOWN): Senator Shelby -- Senator Leahy, he's back now. I'm sorry.

MURKOWSKI: Thank you, Mr. Chairman. Mr. Attorney General and Mr. Secretary, welcome and thank you for all you do. Attorney General Garland, I would like to ask a question regarding the ongoing investigations following the events of January 6th. A couple of weeks ago, the FBI executed a search warrant on a couple living in Homer, Alaska, related to the investigation surrounding the events of January 6th. The search warrant was unsealed just last week. We had an opportunity to take a look at it. We now understand that the wife was -- or has been identified as a person that the FBI believes may have been connected to the laptop of Speaker Pelosi based on a picture and at least two tips.

The couple in Homer adamantly assert that this is a case of mistaken identity. Certainly a lot of back and forth going on as to whether or not that is the case. But understanding that this investigation is ongoing, how are the Department of Justice and Homeland Security working with the FBI and others to ensure that while we have a thorough investigation that is ongoing that it respects the constitutional rights of all Alaskans in this case, but all Americans?

But part of this is just to ensure that public trust in law enforcement is maintained during the course of this investigation. There is a lot of discussion about how long is it going to take until this investigation is concluded. You have a small town in a state with a small population, and there is a lot of discussion about the merits of this going forward. So if you can address that, please.

GARLAND: OK. I think this is a central question for all of law enforcement to always be careful to balance -- balance isn't even the right word. The right word is to pursue law enforcement objectives consistent with the statutes of the United States and the Constitution.

This is exactly what we endeavored to do in Oklahoma City, facing enormous number of deaths and injuries, but we took care at each step to make sure that the law was followed. We are doing the same with respect to the January 6th investigation. The U.S. Attorney's Office in the District of Columbia is the lead force on the prosecution side, and the FBI on the law enforcement side. Both are subject to ongoing supervision by the National Security Division in the Justice Department, by the deputy attorney general, and myself.

So we take your point completely. I can't talk, as you obviously recognize, about a particular case, but we look carefully and we will revise our perceptions as new facts arise. I can't tell you how long this will take. This is only at this point around 130 -- I guess 145 days or so. It's relatively short in the lifetime of an investigation, particularly one that has required such a large number of separate investigations in different places as far-flung as Alaska. And a huge amount of data to be examined in video that has been made available.

So this investigation is not over. And we will pursue each lead until we're confident that we have reached the end.

MURKOWSKI: Thank you for that.

Mr. Secretary, a lot of focus this week in the news about the shutdown of the Colonial Pipeline due to the series of cyberattacks. When you think about what we are discussing here in this committee right now, you've got the issues of immigration, you've got violent extremism, and certainly cyber in the news today, how is DHS balancing all of these very significant but clearly competing priorities? And if you can quickly describe how DHS is working with the Department of Energy and the Federal Energy Regulatory Commission to help the industry counter these attacks to ensure that our critical energy infrastructure is secure?

MAYORKAS: Senator, thank you very much. Intensely proud of the men and women of the Department of Homeland Security in addressing the urgent threats that we face across the homeland security enterprise. You correctly note cybersecurity is one of those urgent threats. And just last week, I spoke to the Chamber of Commerce and thousands of people across the country, representatives of small businesses, about ransomware, the very type of attack that Colonial Pipeline has experienced, and that has galvanized correctly our attention. More than \$350 million in losses that are attributable to ransomware just this year, an over a 300 percent increase over the last year.

We have the capability to address and the dedication to address border security, cybersecurity threats, the security of our homeland in all dimensions. We are working at the direction of the president in an all-of-government way to address the cybersecurity threat that Colonial Pipeline suffered and that other businesses and institutions across our country are vulnerable to.

We are looking at the Jones Act and the need to exercise our waiver authority to ensure that fuel carried by vessels can actually reach the impacted areas. We're working very closely with the Department of Transportation, the Department of Energy, the Environmental Protection Agency, all across the government, including the Department of Defense and its logistics agency to bring all of the resources and capabilities to bear to ensure the well-being of the American people and those impacted in the regions within Colonial Pipeline's jurisdiction.

LEAHY: Thank you, Senator Murkowski.

We will take a five-minute break now, and (INAUDIBLE), a couple items have come up. We'll take a five-minute break and then come back.

(RECESS)

LEAHY: The -- who's next?

(UNKNOWN): (OFF-MIKE)

LEAHY: Shaheen, where is she?

(UNKNOWN): (OFF-MIKE)

LEAHY: Senator Shaheen is not here so we'll go to Senator Coons.

COONS: Excuse me. Thank you, Mr. Chairman. Thank you to our two distinguished witnesses. You are the right leaders for this difficult moment and I am grateful for your service and for the agency's which you lead.

Two weeks ago, Senator Sasse and I held a hearing of the subcommittee on privacy and technology where we focused on the role that social media platforms algorithms play. In amplifying this information and extremist content.

Secretary Mayorkas, you noted in your testimony that you're increasing your department's efforts to assess how domestic extremists are leveraging social media and other online platforms. Can you tell us more about those efforts?

MAYORKAS: Thank you very much, Senator. The challenge really is number one the anonymity with which people are able to navigate through social media and really exploit the medium for improper and unlawful purposes and two the speed with which they can do so. And so what we are doing is dedicating analysts to understanding the narratives that are being communicated on the social media platforms and identifying linkages between those narratives and indicators of intention to commit violent acts.

Right now we are doing that through the human resource, not let leveraging algorithms but we are of course planning different methodologies as we proceed in this endeavor.

COONS: Attorney General Garland, you and other leaders, in fact Chris Wray at the FBI has also spoken about self radicalization. And I assume that what that really means is folks who are largely sitting at home and consuming hours and hours of extremist content through YouTube and Facebook and other social media platforms. Would you agree that if platforms have algorithms that are actually designed to hold the attention of viewers and to engage them by delivering more and more extremist content to people who start going down these so called rabbit holes.

Then they -- perhaps then intentionally are fueling some of this problem and we should take some actions to help address that challenge?

GARLAND: Well I agree with Secretary Mayorkas that what's happening on our social media platforms certainly can lead to self radicalization. The precise mechanism, I'm no expert on and I wouldn't want to pretend to be, by self radicalization does -- we've seen it most dangerously with respect to those who are influenced by Jihadist websites, who watch those websites over and over again and become persuaded and then self radicalize.

And this accelerates very quickly. Somebody can go from a circumstance where no one around thinks that they are likely to be a violent extremist to one who then acts out. But -- and I think that this is the way in modern society people get this information is through the internet.

COONS: And I noticed an increase in budgetary requests in both of your departments to fund grant programs that build state and local capacity and to increase funding for U.S. Attorneys offices. Will any of that go towards further research on this exact point? And will any of that go to help focus on what the mental health issues are that might make people more vulnerable to recruitment or radicalization? And what the local initiatives might be that could help tamp down or deter radicalization?

MAYORKAS: If I may -

COONS: Secretary Mayorkas.

MAYORKAS: -- take that, Senator Coons. A few efforts, if I may, number one we help resource centers of excellence to conduct research in precisely the area that you have identified. We have grant programs to equip and enable local communities to conduct research and also to develop programs that are in fact focused on mental health issues and -- and a holistic approach to the challenge that we face.

That is precisely one of the reasons why we actually changed an office's name to become the Center for Prevention Programs and Partnerships. It's about prevention first and foremost, which does include mental health efforts and partnership. Working with our state, local, tribal territorial partners to equip them in the communities, to develop these programs, to develop educational efforts, as well as response and resilience programs.

COONS: Thank you, anything you wanted to add?

GARLAND: Yes, and the same for us. So the National Institute of Justice did a study on -- on -- on just this topic, understanding domestic radicalization and terrorism which came out last year, which I mentioned in my written statements. They have for \$4 million in our budget request for them to continue and to do further analysis of root causes of radicalization.

COONS: Well, thank you. Thank you. Thank you both for your testimony. Thank you, Mr. Chairman.

LEAHY: Thank you, Senator Kennedy.

KENNEDY: Thank you, Mr. Chairman. Mr. Secretary, I've read that the police officers have encounters every year with about 60 million Americans and in 10 million of those encounters the person who has an encounter with the cop is arrested. And in 2 million of those encounters, the police officer either has to use force or threaten to use force.

Now, every case is different and needs to be investigated when violence is -- or when force is used or threatened to be used. We had a very unfortunate event happen, as you know, in Columbus, Ohio last month. A police officer who happens to be white shot a young woman who happened to be an African-American as she, at least according to the video, was about to stab another young woman who happened to be African -- African-American.

All we had at the time was this video we had nothing else, nothing else. And I think its still being investigated. Put this up on the (inaudible) We had an NBA, a National Basketball Association athlete, immediately after this happened put out an Instagram post identifying the police officer, here's his face and this is what the NBA player said, you're next. Do you think that contributes to domestic violence in America?

MAYORKAS: Senator, I cannot comment on a particular case that is under investigation and or can I comment on a case when I don't know all of the facts and I hope you do understand that. I served 12 years as a Federal prosecutor.

KENNEDY: Yes sir.

MAYORKAS: And I understand...

KENNEDY: Well, let me put it another way...

MAYORKAS: If you would frame it more generally perhaps I...

KENNEDY: Sure. Would you have sent out on Instagram like this?

MAYORKAS: Senator, I think you know the answer to that question and...

KENNEDY: No? Is the answer no?

MAYORKAS: That is correct, and I'd like to if I can amplify something very important that my colleague the Attorney General articulated. We are...

KENNEDY: Okay, before you do, if you could before you do. My time is so limited and I want to ask the General a question because I am going to run out of time and then if it's okay, Mr. Secretary, I'll come back to you.

MAYORKAS: I'd welcome that.

KENNEDY: Thank you, sir. General, I appreciate all your efforts. I think it's fair to say that Chicago has become, unfortunately, the world's largest outdoor shooting range. What - what's -- what's the Department of Justice doing to help remedy this problem in -- in Chicago?

GARLAND: Well, violent crime has been a priority of the Justice Department since I first entered the Department -- since I was last in the Department. That may have been the first time the Department actually created an anti-violent crime initiative which is now, over the years, had different names. We are going to put a large amount of money into grants with respect to violent crime, gang violence, BJ, Bureau of Justice assistance grants. We spent \$8.6 billion in FY '21 on violent crime, both in -- on prevention...

KENNEDY: But what about Chicago?

GARLAND: On the specifics of Chicago, I'm -- I don't know but we will provide the resources that the city needs to assist it in its efforts against violent crime. I don't know specifically, although I having been born and raised in Chicago, I'm at least as concerned as you are about violent crime in that city.

KENNEDY: So you're giving them money?

GARLAND: We're giving them money and we have law enforcement. We have a United States attorney's office. We have the FBI, we have the DEA, we have the ATF, we have the U.S. marshals, all our focus in many -- on many different areas, but one of which violent crime and in particular gang violence.

KENNEDY: OK. Let me get back to the Secretary. I think he had something he...

MAYORKAS: Oh, thank you so much for the opportunity.

KENNEDY: Yes, sir.

MAYORKAS: We take great pride in the fact that as a Department, we have statutorily created office of -- offices of privacy and civil rights and civil liberties. And it is a very, very important constitutionally -- as a matter of constitutional law that we both protect and safeguard individuals right of speech and right of assembly.

Yet, we address with all our law enforcement capabilities, those who really predicate acts of violence on false narratives and dangerous ideologies. And its the acts of violence that we are focused upon but I wanted to draw up a clear line, which is not always easy to draw, but were very focused on it because it speaks to the principles and values that guide everything that we do.

KENNEDY: Thank you, Mr. Chairman.

LEAHY: Thank you very much, and Senator Murphy.

MURPHY: Thank you, Mr. Chairman. Good to see you both, Secretary Mayorkas, we look forward to seeing you before the Subcommittee later this year to talk about the Department's budget request. I thank you both for your service to protect the country.

I have two questions, three if I have time. The first is with respect to comments that you both made regarding the access that domestic extremist groups have to weapons and bomb making materials. I would note that the incredibly disturbing story of the 13 individuals in Michigan who were very far along in a plot to kidnap and try for treason the governor of Michigan, had in their possession upwards of 70 firearms, an arsenal that included many AR-15 style rifles, ghost guns, guns that are designed by their nature to be untraceable, and 2,000 rounds of ammunition.

I'll direct this to you, Attorney General Garland, because you are undergoing right now a review about the ways in which we can make sure that firearms are traceable for law enforcement purposes. You volunteered this in your testimony, as I think Secretary Mayorkas did. What are your concerns regarding the ability of these groups to arm themselves with significant weaponry and weaponry that increasingly is very difficult, if not impossible, to trace?

GARLAND: So I appreciate your picking up on the point that I was making. I think the increased availability of extraordinarily lethal weaponry is what makes domestic violence extremism and domestic terrorism such a serious priority for the Justice Department and DHS, and of concern to the country.

We are putting a significant amount of money into our investigations of domestic violent extremist terrorist groups. We have a budget request of \$1.6 billion for ATF, for the work that it does on this, and another request for 401 million for state and local grants.

On the specific question, you asked about traceability. We have just issued a notice of proposed rule-making with respect to ghost guns, which, as you point out, do not have serial numbers, but equally important, they -- because they are sold as kits, are not necessarily -- it's not necessarily clear that they were subject to background checks when they were sold.

So under the rule, they would both be subject to background checks and the manufacturers would be required to put serial numbers on them. And a licensed firearms dealer who comes into possession of one without a serial number would be required to put one on it.

MURPHY: I will remind the committee on this general topic that right now individuals that are on what we would commonly refer to as the terrorist watch list are able to buy weapons in gun stores today. They are not automatically added to the list of those that are prohibited to purchase weapons. It is inconceivable to me that at least on that topic, we cannot find common ground.

Turning to the question of the border, Secretary Mayorkas, Senator Shelby raised the question of border security at a hearing about domestic violent -- domestic extremism, and I wanted to sort of ask you to give an assessment of the risk of terrorists entering this country through the southern border. It's important to remember that undocumented immigrants in this country have a lower arrest rate than U.S. citizens. And from what I can understand, there is fairly scant evidence that international extremist groups are using the Southwest border as a mechanism to bring their members into the country.

What evidence do we have that the southwest border is being used by international extremist groups or domestic extremist groups to try to bring individuals into this country to do harm to American citizens?

MAYORKAS: Senator, we don't have any evidence that suggests that the threat on the border with respect to foreign terrorists is any greater today than it was last year, the year prior, or the years over the past decade.

The fact of the matter is that we are vigilant in guarding against foreign terrorism -- terrorist influences through all avenues, not just, of course, our land borders, but air and maritime. That is what we do, and fortunately, we have extraordinary capabilities to address it.

MURPHY: Great. Thank you very much.

Thank you, Mr. Chairman.

LEAHY: Thank you.

And by earlier agreement, Senator Braun.

BRAUN: Thank you, Mr. Chairman.

So in listening to the tone and direction of the conversation today, that idea of hierarchy, priority between domestic terrorism and threats from afar, to me it is easy to get into a false equivalency there. I'm going to use my reason for discussion of the visit I made down to the border a little over a month ago. And I think also it's kind of tricky when you generalize on something like January 6th which all of us acknowledge as being a horrific occurrence here in the Capitol.

I want to cite a couple of things that really stood out when I was there, and this would be kind of the rule of numbers being something that we should be most concerned about. One hundred and fifty thousand illegal crossings in March. Just saw it on the tube today, 178,000 in April, 14,000 of whom would have been unaccompanied minors. When I was down there, that was the part that looked most tragic from a humanity point of view.

But the thing that caught me more than anything, and it sticks in my mind like it was yesterday. We get down to the border at the Rio Grande, and of course nothing was happening as we arrived, and then the heckling that floated across the river from smugglers and coyotes. I asked what were they saying: We're going to keep doing it regardless of what you try to do to stop it.

Now, that might be an idle threat, other than I think it has arrived now to close to 1.5 to a \$2 billion business where you've got a logistics enterprise in the country. And I think the tragic thing is so much of it is about people trying to escape a life that forces them on that journey.

Here's the point that stuck in my mind, and this wasn't in the RGV, it was in the Del Rio District. And this is the Border Patrol telling me everything I'm telling you, that 54 different nationalities crossed the border in the three months prior to our visit.

Now, questions of do we have more threat of terrorists from afar that come across? I don't even think it makes sense domestic folks or people on domestic terrorism crossing the border. I guess I wouldn't rule that out. But just by that volume, it would seem to me that we need to be more worried about what could happen again based upon 9/11 than maybe something that happened here on January 6th. Horrific, but it might have been more to do with lack of security and having a place that was easy to breach. I'm not saying that that was the reason, and that we shouldn't look at all angles.

I just wonder, because I also heard you say, and my question is going to be for you, Secretary Mayorkas, multifaceted. I agree with we need to do something. I heard you say earlier about addressing the smugglers, the coyotes, the operation that is benefiting from it. But here is what the Border Patrol told us as well. The two most effective things by far, this is the Border Patrol, would have been the wall in high traffic places. Now that has gaps in it and maybe just out of politics we're refusing to complete it to make it easy for them. They said that was number one. Number two was a stay in Mexico policy because at least we don't have what we've got now.

And at the Donna facility that I witnessed, it was worse that it had ever been. And now we spread that out among other locations, maybe to take that kind of bad look away. Two questions. It was working; we were at a 45 year low. Will you try to complete the border wall even if you don't do anymore where you've got gaps in it, gates not working?

And will you try to reinstitute the stay in Mexico policy at least until we get this thing down to a manageable level? And that's not trying to spread out all the people that come across the border currently; 150, 178; it's at 200,000 in May. Just would love to know what you're intending to do.

MAYORKAS: Senator, thank you. There's a lot packed in there so I'm going to -- I'm going to try to be concise. We are indeed focused on smugglers and traffickers. As I mentioned earlier, that has been a many years problem.

We do in fact take a multifaceted approach to securing our border. I remember my conversation with Senator McCain about the fact that we need to use physical borders, technology, and personnel. The border is very dynamic, it is changing and when we speak of physical barriers, the ability to be mobile is critically important.

I think there's something very important to articulate in response to your point about the foreign threats and the domestic threats. The foreign threats persist. It's not as though they have disappeared. But the threat landscape is always evolving.

We have collectively the attorney general, and I and our partners across the federal government enterprise have our eye on the foreign threat as well as the domestic threat. We don't take our eye off one and focus on the other.

LEAHY: Thank you.

MAYORKAS: We -- we are reviewing the gaps, the -- the gates and seeing what is the best response to achieve our security while upholding our values and principles as a country.

BRAUN: What about the stay in Mexico policy, just very quickly because I know we're out of time.

MAYORKAS: That is not something that we as an administration have continued.

BRAUN: Thank you.

LEAHY: And thank you. I'm sorry. We're going to have votes soon. Senator Shaheen, you are next.

SHAHEEN: Thank you very much, Mr. Chairman. And thank you to both of you for being here today and for your testimony. I want to go back to the extremist -- domestic extremist versus national organizations.

And one of the concerns that I have, which I'm sure you share is the one that Senator Reed referenced about the connections between some of our domestic violent extremist organizations and international terrorist groups.

There's been reportings of Americans involved with those right wing extremist groups in the U.S. communicating online and sometimes traveling overseas for training with other extremist groups and not just in Russia.

Although, we know of at least one leader of the base who is -- has resettled to Saint Petersburg, Russia. So can you talk about the extent to which you're seeing an increase or if you are seeing an increase in those connections and what we're doing to try and address that? For either of you.

GARLAND: Yes, Senator. Well, you are right to be concerned. I can't give a sense of the magnitude of the problem but I do think that we have to worry about interactions between domestic violent extremist, particularly racially motivated and ethnically motivated ones where there are similar groups, particularly in Europe with similar -- ideological vents, sharing information.

And we have the benefit in that respect of being able to coordinate with our national intelligence partners with -- and director of national intelligence is very ceased with this problem. The seam that was talked about before, in one of the other questions is not -- is one that we have worked very hard to eliminate where there is a foreign aspect of the risk and our intelligence agency partners who's eyes are abroad, are being very cooperative in that respect.

But we are looking at this problem and it is very much on our mind.

MAYORKAS: If I could add one point, Senator, if I may. The attorney general and I participated in a multination ministerial and of course the issue of violent extremism was upper most in our minds and it's something that we share with our partners and are working very closely together with them to address.

SHAHEEN: One of the potential sources, this is not specifically on domestic terrorism but one of the potential sources of international terrorist activity are the detainee camps that have resulted from the crisis in Syria and Iraq with ISIS and there are now tens of thousands of people in those detainee camps that are really serving as incubator for further terrorist activity.

I, along with my colleagues on the Armed Services Committee, put in language in I believe two years ago to create an ISIS -- or a detainee coordinator to work with not only our government but other governments that were the home of some of those detainees who have been in custody as the result of act -- the military activities in Syria and Iraq.

And no one has yet been appointed to that position. I don't know if either of you were aware that that had even passed and exists. But it seems to me that that would be an opportunity for us as we're thinking about future terrorist act -- international terrorist activities to begin to have a way to address what's happening in those detainee camps and to try and get those -- some of those foreign detainees repatriated into the countries where they came from.

MAYORKAS: Senator, that's something certainly we'll commit to looking into. I'm not an expert in that area. I will say in the area where I am expert in the refugee camps with individuals who have fled persecution by reason of their membership and particular social groups.

We are aware of influences potentially in those camps and of course we modify our screening and vetting of those individuals accordingly and that's based on the expertise and qualifications of our refugee officers.

But I will look at the issue of the detainee coordinator and follow-up. We look forward to following-up with you.

SHAHEEN: Thank you. I appreciate that. I just have one final question and that is I'm a little troubled by the suggestion of some of that hearing that this is a question of should we focus on the southern border and illegal immigration or should we focus on domestic violent extremism and I'm sure you both would agree that we've got to do both. And that none of us want to see more illegal immigration anymore than we want to see domestic terrorists increase.

But, Secretary Mayorkas, do you think that statements made by public officials claiming that the 2020 Presidential Election was stolen or the result of fraud increased the threat of violence by domestic extremists? Have we seen that as we're pursuing -- also for the Attorney General, as we're pursuing the cases against those people involved on January 6? Has that been something that we've heard from the defendants?

MAYORKAS: Senator, first, yes we can do both. We can secure our border and we can effectively combat the rise of the domestic violent extremism and I want to make sure that we draw a clear line between those two. Even though we can address both, those are two very different challenges.

Senator, the false narratives -- the spread of false narratives are used to fuel extremist ideologies and we are focused on that connection between extremist ideologies and the threat or intention to commit acts of violence.

SHAHEEN: And is there any evidence that elected officials statements have contributed to that?

MAYORKAS: We do see in the narrative that we have studied the fact that false narratives attributed to public officials gain traction in social media.

SHAHEEN: Thank you. Thank you, Mr. Chairman.

LEAHY: Senator Hoeven.

HOEVEN: Thank you, Mr. Chairman. I was recently down at the border with fellow Senators, actually Senator Shaheen and I toured the border together a number of years back when we chaired and were ranking member on DHS Appropriations subcommittee. So I've been down there before previously as well.

When I talked to the border patrol agents they tell me they need barriers, technology and people to address the situation. Do you agree with that?

MAYORKAS: I do, Senator. And it's something I've spoken of in this hearing.

HOEVEN: So then what about continuing completion of the wall particularly where it's already been contracted for construction? That's something they said they want and need to control the border.

MAYORKAS: Senator, not all physical barriers are the same. And one of the things that we've learned in our multi year study of the border is the fact that the challenges at the border are quite dynamic. Not only because of variables in topography but variables month to month and sometimes year to year with respect to the movement of people and the methodologies they employee.

HOEVEN: Would you agree with me, when you talk to your border patrol agents they tell you they need barriers, physical barriers, technology and people? They, right now, the situation where there are almost 180,000 migrants coming across the border illegally just in the month of April, that'd be almost two million annualized, almost 18,000 unaccompanied minors.

They're saying they don't have time to do their job securing the border because they need the three things I just mentioned; barriers, technology, and people. Do you agree with the professionals down there that say they need those things? Or disagree with them? And are you getting them those things?

MAYORKAS: Senator, if I can just complete the thought that I was about to complete, if I may. That I remember when I was the Deputy Secretary and we were analyzing the utility and effectiveness of fixed towers. And then we say, you know what, we can actually move more effectively from fixed towers to mobile towers because of the dynamism of which I spoke a minute ago.

And I have spoken with the Border Patrol; I've been down to the border multiple times and on each visit spoken with the men and women who secure our border. And one will discern different approaches and different opinions with respect to the challenges at the border. And it is ultimately my responsibility to pursue those instruments and tools that I consider most effective in the service of American people.

HOEVEN: I appreciate that Mr. Secretary. I only have five minute for questions so I'm trying to get my questions in. So towers are (ph) technology, I asked you about a barrier. And the Border Patrol says they need all three and so, yes, whether you have mobile or fixed tower that's technology. I'm asking you barriers, technology and people. And on the people question, if you don't change the protocols, the third safe country and remain in Mexico, how are you going - you're people down there are overwhelmed - they're overwhelmed these professionals.

How are they going to be able to do their job so that they can handle what's going on at the southern border? I live on the northern border, people from the northern border are at about half the normal staffing level because they're going down to help on the southern border. What are you doing to get on top of the flow so that we can not only manage our southern border? But I'm also asking for your help on the northern border to get our people back and get staffed at the level on the northern border.

MAYORKAS: Senator, we are vigilant in securing all of the borders and all of the avenues. We have a - we have a three part - we have a three part plan or I should say three pillars to our plan. One is to address the route causes and to deter individuals from seeking the dangerous and perilous journey by addressing the reasons why they feel forced to flee the countries in which they live and in which they want to raise their children.

We are also building legal pathways so that there are avenues of relief under the laws that the United States Congress has passed and they don't feel compelled by dent (ph) of the tragic circumstances in their countries of origin to take the perilous journey.

And lastly, is our dedication and commitment and our prioritization of achieving immigration reform because we are all in agreement, regardless of party, that the current immigration system is fundamentally broken.

HOEVEN: But your metric based on what you're doing right now is that in April almost 180,000 migrants crossed illegally and it doesn't seem to be slowing down, it seems to be increasing. So, again, back to doing what the professionals are asking for, I ask you that question. I didn't get an answer in terms of specifics. I guess it's also now affecting the northern border. Are you willing to help us with the issues on the northern border? That's simple yes or no?

MAYORKAS: Senator, the answer is yes and the Department of Homeland Security's obligations is to secure all of our borders. And the challenge of migration is not specific -

HOEVEN: Would you say that's happening now? Based on what's going on at the border, do you feel that that's a secure border?

MAYORKAS: I do. Yes, Senator, I do. And let me just say that the challenge of migration is not a new phenomenon in 2021. We experienced tremendous surge in migration in 2019, in 2016, in 2014 and many year prior.

HOEVEN: How does it compare to last year with the policies that were in place last year?

MAYORKAS: Senator, the surge in migration is greater this year thus far than we observed and experienced in 2020.

HOEVEN: Thank you.

MAYORKAS: And 2020 was than -

HOEVEN: And are you willing to make changes -

MAYORKAS: -- what it was in 2019.

HOEVEN: -- to your current policy to address that?

MAYORKAS: Senator, yes, I am.

HOEVEN: OK.

MAYORKAS: And I will - I will -

HOEVEN: Thank you, Mr. Secretary. Secretary Garland -

LEAHY: I tried - I tried to be flexible but the vote has started and Senator's over his time. We have one more Senator. If they could be heard, then the witnesses will be able to go.

(CROSSTALK)

HOEVEN: I'll submit my other questions for the record. Thank you.

LEAHY: And I would urge that his questions as submitted be answered.

HOEVEN: Thank you.

LEAHY: Thank you.

Senator Van Hollen.

VAN HOLLEN: Thank you, Mr. Chairman.

And thank both of you for your service and for your testimony today. Both of you referenced in your testimony the March intelligence community report on "Domestic Violent Extremism Poses Heightened Threat," and both of you in your departments had input into that report.

The very first finding in the executive summary of that report includes the following statement. "Newer sociopolitical developments such as narratives of fraud in the recent general election and the emboldening impact of the violent breach of the U.S. Capitol will almost certainly spur some domestic violent extremists to try to engage in violence this year."

Mr. Attorney General, do you agree with that finding?

GARLAND: I do. That's a finding of all three of the entities that wrote the report and of the intelligence community as a whole.

VAN HOLLEN: And, Mr. Secretary, do you concur?

MAYORKAS: I do as well, Senator.

VAN HOLLEN: Well, Senator Shaheen raised this issue, and I really don't think we can just gloss over it. It's not just a question of a lie about the elections, it's not only a question of deception. That's bad enough. As this intelligence community report points out, it can have lethal consequences. In fact, they predict that it will almost certainly spur some domestic violent extremists.

Gentlemen, yesterday on the floor of the House, Congresswoman Liz Cheney said the following, and I'm quoting: "Today we face a threat America has never seen before. A former president who provoked a violent attack on this Capitol in an effort to steal the election has resumed his aggressive effort to convince Americans that the election was stolen from him. He risks inciting further violence."

Do you agree with that statement, which is consistent with the finding in the intelligence community report?

MAYORKAS: Senator, let me say this. That false narratives create a lack of confidence in our democratic institutions and sometimes worse. And those false narratives can lead people who are predisposed to violence to commit acts of violence against our institutions. And tragically, we saw that on January 6th.

VAN HOLLEN: Thank you.

Mr. Attorney General, you're doing the investigations into what happened here at the Capitol on January 6th. And isn't it a fact that many of the people that you've talked to and are pursuing have said they were inspired to commit the violence because of President Trump's claims that the election was stolen, isn't that a fact?

GARLAND: Because this is an ongoing investigation, the department's longstanding principle is to not talk about what we have learned in the investigation other than through the filings that we make in the court. We have in each of the cases of arrest and also search warrants reproduced some elements of what people have told us. And I think that's the place to look. But I don't think it's an appropriate thing for me as supervising those prosecutions to make any comments outside of court record.

VAN HOLLEN: Well, much of this is in the public domain, I'm not asking you for the internal findings of your investigation at this point in time. I understood the response to Senator Shaheen's question and certainly this intelligence committee report indicates that those kind of false narratives have dangerous consequences. Is that not true?

MAYORKAS: Most certainly, and it's something that we're very focused on addressing. False narratives, as I mentioned, create strands of dialogue that we see propagated on social media, and then we see those strands picked up on. And we are detecting connectivity between those strands and an intention to commit violent acts, and that is what we are focused on.

VAN HOLLEN: Mr. Attorney General.

GARLAND: Yes, so if you put it at that level of generality rather than specific questions about people being investigated in a particular circumstance, it is right, as the intelligence community has reported. That particularly those who end up committing acts of domestic violence get ideas from the internet and from statements. And where there are false narratives and false statements, those are the kind of things that can, depending upon the person in the end who acts out, lead to violence.

VAN HOLLEN: Look, I disagree with Congresswoman Liz Cheney on a lot of things, but I think everybody needs to stand with her regardless of political party when she stands up to talk about the truth. And what she is saying in her full remarks is -- squares fully with the finding from this intelligence community report that both your departments participated in.

And the report doesn't -- it's not ambiguous here. It says these kind of false narratives will almost certainly spur domestic violent extremists to try to engage in violence this year.

So, Mr. Chairman, I would just encourage all of our colleagues to recognize that words matter. I mean, people have a First Amendment right, and they can say what they want, but they should also recognize the very dangerous consequences of the false narratives that continue to be peddled around this place, and coming from the former president. Thank you.

LEAHY: Thank you.

And I thank all the witnesses that were here today, and our committee members who are here. We'll keep the hearing record open for a week. If senators have written questions to submit, please do so by 5:00 p.m. next Wednesday, May 19th.

We have two more full committee hearings scheduled in the coming months. The next will be on May 25th on global leadership and the State Department budget with Secretary of State Antony Blinken. The other full committee will be in mid-June with Defense Secretary Austin and Chairman of the Joint Chiefs Milley.

As I said, I'd gavel the whole, but as a courtesy to Senator Hagerty, who just came in, the vote has started and we will limit it to the five minutes.

Senator Hagerty.

HAGERTY: Thank you, Chairman Leahy, I appreciate that.

Secretary Mayorkas, welcome. I just checked your department's web site this morning, and according to the data on your web site, 92 percent of the people that -- of the illegal aliens that ICE has deported have been convicted or charged with crimes here, 92 percent. Yet, the ICE deportations under your administration have plummeted dramatically. Now, we know the surge is occurring at the border. We know many more people are arriving here illegally. Yet the deportations have gone down. That means that we have more criminals being deposited into our nation every day.

I want to talk with you about the resources that we've committed to this problem and how law-abiding Americans can feel more comfortable knowing that this increase in criminal elements is occurring in their communities. It's occurring in my state of Tennessee.

Isn't it correct that you're choosing not to deport these people, that ICE is not deporting these people and increasing the risk to American citizens?

MAYORKAS: Senator, that is actually not correct. And if I may, I served for 12 years as a federal prosecutor, and some of those years I was privileged to have our current attorney general in the Department of Justice headquarters here in Washington, D.C. The criminal justice system is based on qualitative outcomes, not quantitative. And we are focused on the greatest threats to public safety because we do not have limited resources, and so our focus is on three priorities: national security, public safety, and border security.

And we're delivering consequences, as well we should, to most effectively serve those priorities. It's qualitative, not quantitative.

HAGERTY: From a quantitative perspective, what we have seen is a massive drop in deportations. Last year, between 10,000 and 20,000 deportations per month. Under your administration, that number has dropped to 3,250 per month. You have got 2,500 agents -- 2,500 ICE agents, they're down to deporting one criminal per month, versus five per month last year?

MAYORKAS: Senator, let me...

HAGERTY: Did the number of criminals drop that much?

MAYORKAS: I didn't mean to interrupt. Senator, let me put this in context, because there is one data point we shouldn't take off the table and neglect to consider, which is the fact that for a good deal of the year thus far and certainly with respect to the fiscal year, our agents, our brave men and women on the front lines, were addressing the COVID-19 pandemic, and for period of that time, they were not fully deployed for reasons that we can all agree upon.

And so we have to remember to consider that and the constraints on our facilities and our resources in a time of extraordinary pandemic.

But be that as it may, the fundamental point is key, that it's qualitative. And I would rather as an individual supervising law enforcement and as a former assistant United States attorney prosecuting crimes, I would rather dedicate resources to an individual who poses the greatest public safety threat. And the apprehension and removal of which may take a greater amount of time and a greater amount of resources than someone who has been here for 25 years who has not committed an offense and yet can swallow up resources that we can best otherwise use.

HAGERTY: I'm talking about people that have committed crimes and have been charged with crimes. Last year during the pandemic -- you mentioned the pandemic as an excuse. Last year even during the pandemic, we were deporting 6,000 per month. Now those numbers have dropped to less than half of that.

MAYORKAS: Senator, we have -- if I may, we have defined our public safety, national security, and border security threats to most effectively address them and combat them so that our consequence regime is brought to bear on the greatest threats that we confront.

HAGERTY: Sir, we see a dramatic decrease in the number of criminals being deported as a result. Secretary, isn't it true that you have received more funding from this committee on a bipartisan basis for your criminal alien program, more funding than you had last year?

MAYORKAS: I believe that is correct.

HAGERTY: That is correct. Isn't it true that you've got more funding for fugitive operations than you had last year?

MAYORKAS: That is correct as well, Senator.

HAGERTY: And isn't it true that you've got capacity to house between 18,000 and 20,000 deportation prospects that's going unused right now?

MAYORKAS: That is correct as well.

HAGERTY: How is it, then, that with more resources you're accomplishing such fewer number of deportations? How is it that the results could have plummeted so much with more money from this Appropriations Committee.

MAYORKAS: Senator, if I may repeat an answer I provided, which is our focus is on quality, not quantity. And sometimes achieving qualitative results can consume considerable resources.

HAGERTY: Well, I think going beyond ax murderers to people that have committed other grave crimes should be your focus as well. You should utilize this capacity and utilize the funds that we have provided more effectively.

Thank you, sir.

LEAHY: The senator from Tennessee who is not here for all of the hearing, but we reopened the hearing to enable him to have his five minutes, and he will be able to submit questions.

I thank -- on behalf of myself and Senator Shelby, thank the witnesses, thank you for this hearing, and we stand adjourned.

END

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# Senate Appropriations Committee, Commerce, Justice, Science, and Related Agencies Subcommittee hearing A Review of...sked

April 26, 2022 4:13PM ET

TRANSCRIPT

April 26, 2022

COMMITTEE HEARING

SEN. JEANNE SHAHEEN, D-N.H.

SENATE APPROPRIATIONS COMMITTEE, COMMERCE, JUSTICE, SCIENCE, AND  
RELATED AGENCIES SUBCOMMITTEE HEARING A REVIEW OF THE PRESIDENT'S  
FISCAL YEAR 2023 FUNDING REQUEST FOR THE U.S. DEPARTMENT OF JUSTICE

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SENATE APPROPRIATIONS COMMITTEE, COMMERCE, JUSTICE, SCIENCE,  
AND RELATED AGENCIES SUBCOMMITTEE HEARING A REVIEW OF THE  
PRESIDENT'S FISCAL YEAR 2023 FUNDING REQUEST FOR THE U.S.  
DEPARTMENT OF JUSTICE

APRIL 26, 2022

SPEAKERS:

SEN. JEANNE SHAHEEN, D-N.H., CHAIR  
SEN. PATRICK J. LEAHY, D-VT.  
SEN. DIANNE FEINSTEIN, D-CALIF.  
SEN. JACK REED, D-R.I.  
SEN. CHRIS COONS, D-DEL.  
SEN. BRIAN SCHATZ, D-HAWAII  
SEN. JOE MANCHIN III, D-W.VA.  
SEN. CHRIS VAN HOLLEN, D-MD.  
SEN. JEFF MERKLEY, D-ORE.  
SEN. JERRY MORAN, R-KAN., RANKING MEMBER  
SEN. LISA MURKOWSKI, R-ALASKA  
SEN. SUSAN COLLINS, R-MAINE  
SEN. LINDSEY GRAHAM, R-S.C.  
SEN. JOHN BOOZMAN, R-ARK.  
SEN. SHELLEY MOORE CAPITO, R-W.VA.  
SEN. JOHN KENNEDY, R-LA.  
SEN. MIKE BRAUN, R-IND.  
SEN. BILL HAGERTY, R-TENN.  
SEN. RICHARD C. SHELBY, R-ALA., EX OFFICIO

WITNESSES:

MERRICK B. GARLAND, U.S. ATTORNEY GENERAL

SHAHEEN: This hearing will come to order when I remember to turn on my mike. And we will take questioners -- just for everybody's information, we will take questioners in order of appearance, rather than by seniority today, which I know will make all of you who arrived early very happy.

And we are delighted to -- I am delighted to call to order the Subcommittee on Commerce, Justice, Science and Related Agencies, and welcome the attorney general, Merrick Garland, who is today's witness for the hearing to review the president's Fiscal Year 2023 Funding Request.

It's very good to see you again, and I'm sure, as you know, we will have lots of senators coming in and out as the first real hearing day back after a two-week break. There's a lot going on, so I hope you will be patient.

This year, the president's Fiscal Year 2023 Budget Request for the Department of Justice is \$39 billion. That's an 11 percent increase compared to the fiscal year 2022 enacted level for the department. This budget provides a renewed focus in critically-important areas like protecting civil rights, including a request for increased resources for the Civil Rights Division and Community Relations Service to provide for more attorneys and mediators, as well as supporting grant programs that address hate crime prevention. Funding increases are also requested for agencies and programs that strengthen national security, including additional resources to investigate domestic terrorism, combat foreign threats and prevent gun violence. It was also good to see the department's request for increased funding for many grant programs, including nearly double the resources for the Office on Violence Against Women Programs.

Funding requested for newer programs, including those in the Office of Juvenile Justice and Delinquency Prevention, seem to be much needed in order to help youth and families, especially after this pandemic. I hope we (ph) receive an allocation that allows us to fund long-standing, as well as newer programs at as high a level as possible.

Increased grant funding also means increased support for our police departments. This budget request does include that, particularly for community-oriented policing services, or COPS. But I would like to note that this subcommittee has included strong funding for law enforcement grants over the past several years, and I think that is a commitment of this committee.

One area that Senator Moran and I have worked closely on is to ensure that Byrne JAG funding receives steady increases annually. For my state of New Hampshire, the majority of Byrne JAG funding supports our state's Drug Task Force, which works to keep illegal narcotics, including fentanyl, out of our communities, and as we know, that epidemic of opioid misuse has dramatically increased during the pandemic.

We've also worked together on a bipartisan basis to increase funding for programs that improve relations and strengthen trust between police and the communities they serve. Last year, we provided a total of \$201 million for these programs. This also includes overhauling the COPS development program to have dedicated funding for mobile crisis teams, police department accreditation and officer training. I'm pleased to see that the department seems to also like the way we restructured this COPS program and repackaged it as the Just Policing Program in your budget request this year.

Now, before I close, I want to thank the 120,000 career employees of the Department of Justice, including law enforcement personnel and attorneys for their work to keep Americans safe. I know it's been a challenging year, with our country facing unprecedented threats from those that are newer and rapidly-changing like cybercrime, and those that are sadly familiar like terrorism. Your employees are meeting these challenges while continuing to work through a global pandemic, and we all very much appreciate their work.

I also want to thank all of those at the department who investigated and prosecuted the ISIS Beate terrorists, the ISIS terrorists known as the Beatles, including El Shafee Elsheikh, who murdered four Americans, James Foley, Kayla Mueller, Steven Sotloff and Peter Kassig. The hard work of the U.S. Attorney's Office for the Eastern District of Virginia recently resulted in a guilty verdict for Elsheikh, and I think that not only sends a message to terrorists around the world that those who commit heinous crimes against Americans are going to be prosecuted, but it provides some level of closure and justice for the families of those murdered.

So Mr. Attorney General, I look forward to our discussion today.

And with that, I'd like to recognize our subcommittee vice chair, my colleague, Senator Moran.

MORAN: Senator Shaheen, thank you for convening this hearing. Before turning to the subject matter of the hearing, I want to express my sincere appreciation for your stewardship of our F.Y. 2022 appropriations process, and thank my colleagues who are members of this subcommittee. This subcommittee held seven hearings, including a broadband hearing in January that I believe was one of the best we've had in our tenure.

SHAHEEN: Absolutely.

MORAN: We produced a strong bipartisan bill in the Senate even with complicated dynamics that were outside of our control, and in conference, despite a very tough allocation, Senator Leahy, a very tough allocation, we secured a final bill that makes critical investments in scientific research, law enforcement, space exploration, economic development and U.S. competitiveness. It is a bill this subcommittee can be proud of. Senator Shaheen, thank you for your leadership. I am excited to continue to work with you and my colleagues as we kick off the 2023 appropriations process.

General Garland, welcome to this hearing. This budget that is being presented supports DOJ grant programs under the newly-reauthorized Violence Against Women Act, which I was a proud -- which I was proud to cosponsor, and for programs that support local police and sheriff's departments. I want to highlight these programs as a critical tool to address the shocking increase in violent crime, including a 30 percent surge in U.S. murder rate, the largest single-year increase in 50. Unfortunately, violent crime continues to lack the attention it requires. It is absolutely critical the Department of Justice support state and local law enforcement both through grant programs and through joint law-enforcement operations. The budget includes an increase for F.Y. '22-enacted -- to in -- to F.Y. '22-enacted levels for DOJ. However, rhetoric and behavior from the administration too often send a different signal. If law-enforcement officers are not respected or shown respect from our leaders, they will not be respected within the community.

We've also seen an appalling increase in attack on police officers. It is no surprise that the departments' police officers -- police departments and sheriff's offices are short-staffed and having issues recruiting new police officers. The budget request would undermine the Board of Prison -- Board of Prison -- excuse me -- the Bureau of Prisons' ability to maintain suitable modern facilities that are capable of delivering educational, vocational and fellowship programming. In addition, request proposes new unauthorized grant programs intended to inhibit America's exercise of their Second Amendment rights. A budget request is ultimately a proposed allocation of scarce resources, and it's disappointing that these messaging programs were prioritized over the budget's critical missions in fully addressing this surge in violent crime.

The budget request is a first step in the appropriations process, and I look forward to working with you, Attorney General, with Senator Shaheen as we craft the F.Y. 2023 appropriations bill. Thank you.

SHAHEEN: Thank you, Senator Moran.

And I realize that the chair of the Appropriations Committee, Senator Leahy, is here, and I forgot to ask if you would like to offer some opening remarks.

LEAHY: No, I just appreciate you and Senator Moran holding this. I -- I'm delighted that the attorney general is here. I'm delighted the country has the attorney general. I'll leave it to everybody else.

SHAHEEN: Thank you, Senator Leahy.

I will now turn it over to you, Attorney General Garland.

GARLAND: Is this working? Yeah.

Good morning.

(UNKNOWN): Can you hold it closer?

GARLAND: Yeah. Better?

(UNKNOWN): (inaudible).

GARLAND: OK. Good morning, Chairwoman Shaheen, Ranking Member Moran and distinguished members of the subcommittee. Thank you for the opportunity to appear before you today.

Over the past 411 days that I have been attorney general, three coequal priorities have guided the work of the Justice Department: keeping our country safe, protecting civil rights and upholding the rule of law. These priorities reflect the Justice Department's mission, and our mission is reflected in the president's F.Y. '23 Budget.

Our first funding priority is keeping our country safe from all threats, foreign and domestic, whether from hostile nation-states, terrorists or common criminals. As our country's chief law enforcement officer, I am committed to supporting members of law enforcement at all levels of government as they work to protect our country while also safeguarding civil liberties and ensuring our own accountability to the American people.

To these ends, the president's F.Y. '23 Budget requests more than \$20.2 billion to support the work of the Justice Department's law-enforcement components and U.S. Attorneys Offices nationwide as they carry out their complex mission sets. These resources will strengthen the Justice Department's efforts to reduce violent crime and gun violence, to counter the multitude of serious and evolving threats to our country from terrorists, cyber criminals and hostile nation-states, to combat the violent drug trafficking networks that are fueling our nation's overdose epidemic and to protect our nation's democratic institutions, including the one we sit in today, from violent attack.

In addition, the president has proposed a total of more than \$30 billion in new investments over the next decade to support law enforcement by funding the police, preventing crime and accelerating criminal justice reform. In F.Y. '23 alone, the president's budget requests more than \$8 billion in grants for states and localities nationwide to fund the police, including by putting more police officers on the beat and to implement community-based strategies to prevent crime and gun violence.

The president's F.Y. '23 budget also prioritizes the protection of civil rights. We are seeking a 32 percent increase in funding for the Civil Rights Division, as well as additional resources for our U.S. attorneys, the FBI, the Community Relations Service and our Office for Access to Justice. Our civil rights work remains vital to safeguarding voting rights, prosecuting hate crimes, ensuring constitutional policing and addressing unlawful discrimination.

Another area of environmental focus is safeguarding economic security, fairness, and opportunity. This is reflected in our request for resources to protect the American people from intellectual property crimes, to reinvigorate anti-trust enforcement and consumer protection, to combat corporate crime, and to bring to justice those who seek to profit unlawfully from the COVID 19 pandemic.

In particular, the department requests a total of \$273 million, an increase of 41.6 percent for the anti-trust division to carry out its critical mission of promoting competition in the American economy and protecting workers, consumers, and businesses alike. Finally, we are requesting \$11.7 billion to ensure the Just Administration of our nation's immigration courts and Federal Correctional systems.

This includes \$1.35 billion for the Executive Office for Immigration Review, which I'll be referring to as EOIR, to reduce the immigration court backlog by hiring more than 1,200 new staff, including approximately 200 immigration judge teams over the FY 22 enacted level. A request for \$8.18 billion for the Bureau of Prisons will help ensure the health safety and wellbeing of more than 150,000 individuals in federal custody, as well as the officers who protect them.

This request would allow BoP to hire 1,300 new correctional officers and first step act staff and would be used to support rehabilitative programming and improve conditions of confinement. I respectfully ask for your support for our budget as our justice department works, to uphold the rule of law, to keep our country safe, and to protect civil rights for all.

Thank you for the opportunity to speak with you today.

SHAHEEN: Thank you very much. For those people who came in a little later, let me just point out we will have a five-minute questioning period. And people will be called on an order of arrival rather than seniority because we are no longer doing any virtual hearing in this committee. So, I will begin. Last month you announced the establishment of Task Force KleptoCapture, which was described as an interagency effort dedicated to enforcing sanctions, export restrictions, and economic countermeasures against Russia.

As I understand this includes targeting the crimes committed by Russian officials, oligarchies, and others who aid or conceal unlawful conduct. I know that the country is watching very closely what's happening in the war. The unprovoked war of Russia against Ukraine. And that one huge element in that is being able to reduce the amount of funding for that war that Russia has.

So, can you talk a little bit about where you are, in terms of the interagency effort and the kind of cooperation you're getting internationally?

GARLAND: Yes. And I second what you said about what we're all seeing on the news almost every day. The credibly graphic videos of the horrible atrocities that are going on in Ukraine, it's not just the war, it's the way in which the war is being prosecuted by the Russian government. With the pictures of dead bodies of civilians in the streets, some bound with their hands behind their backs, intentional bombing of civilian residential apartment, of a theater and Mariupol.

All of those pictures are just horrific and are the kinds of things anybody growing up in the 20th century never expect to see in the 21st, again, a land war in Europe. So, every part of this government is doing its part. The Justice Department's role right now is to investigate and prosecute sanctions violations. So, we have, as you said, the KleptoCapture Task Force its purpose is to go after the assets that the Treasury Department has sanctioned.

As well as to go after assets that have been laundered - against the money laundering statutes for criminal behavior by the Russian oligarchs. So, in addition, we are participating in the Treasury Department's REPO Task Force, which is the international task force where I have met with unfortunately virtually the Home Secretary's Attorneys General and Treasury Secretaries of the participating countries.

The international cooperation has been superb, really superb and heartwarming for law enforcement officers who will often have to twist arms and beg for extraditions and other sorts of cooperation abroad. There is no resistance at all now.

SHAHEEN: Can you talk about how the department is going to be dealing with the proceeds from any recovered assets?

GARLAND: Yes, so the money would go into the Asset Forfeiture Fund. First thing we have to do is freeze the assets. Second thing is we have to get a forfeiture. Third is has to go in an Asset Forfeiture Fund. The government - we would support legislation that would allow some of that money to go directly to Ukraine. That's not the current circumstance with respect to the fund. But the current circumstances like all forfeited assets that go into the Asset Forfeiture Fund.

SHAHEEN: Well, thank you, we will take that under advisement, in the committee. Let me also just editorialize a minute and say I hope that these efforts will allow for future follow up, that will take a look at how corrupt money is being laundered in the West. And produce a real effort to shut that down, not just in Russia, but wherever it's occurring.

One of the issues that you and I discussed on the phone in advance of this hearing was my concern about how long it's taking to get some of the nominees approved for U.S. Attorney, for Marshals. And I understand that there are two problems. One has been the challenge of getting the background checks done on those nominees.

And I guess I would be interested in hearing whether there are more resources that need to be put toward that. We need to take a look at that process and see if there are changes that need to be made. And then of course, the other challenge is here in the Senate with individuals who are holding up those nominees.

So can you speak first to what happens when we have U.S. Attorney's - in New Hampshire, our U.S. Attorney nominee, it's been over a year almost, I think over a year now that she has been forwarded to the White House and is on hold. Can you just speak to the challenge with addressing crime around the country when we have U.S. Attorneys who are taking that long to get approved?

GARLAND: The United States Attorney's as well as United States Marshals, are the tip of the spear of our effort to fight violent crime. They are the ones who convene the task forces in every one of the 94 U.S. Attorney's Office districts.

The task forces are combinations of all of our federal law enforcement, before law enforcement agencies of the Justice Department as well as the law enforcement agencies, Department of Homeland Security and other federal agencies, combined with state local, territorial, and tribal law enforcement. These cooperative task forces then also cooperate with the local communities.

And that is the way in which - the best attack on violent crime is possible to look at what's needed in the local area, to identify the primary drivers that is particularly the repeat shooters, to get them off the streets, and to get them in jail. And to organize those things, we need confirm the United States Attorney's.

The work of the acting's is excellent. But as everyone knows, in order to establish policies and programs in any office, it's important to have a permanent head. So I couldn't urge more strongly for the Senate to approve as swiftly as possible. The U.S. Attorney nominees and the Marshals nominees.

SHAHEEN: Well, thank you very much. Is it fair to say that the holdup in - when people are holding these individuals up for other purposes, that that has a negative impact on our ability to fight crime?

GARLAND: I don't want to get into the inner workings of the Senate. But what I will say is that anytime we're not getting confirmed, law enforcement officers it does have a negative effect on our ability to fight violent crime, cybercrime, all the responsibilities that the United States Attorney's and Marshals have.

SHAHEEN: Well, thank you. I won't quote you with that. I will say it myself.

Senator Moran.

MORAN: General Garland, thank you. You're aware and we've talked about, even yet this morning the tremendous increase in levels of violent crime. The murder rate has surged 30 percent in 2020. It's the largest increase in over 50 years in any single year. But overall violent crime which includes assaults, robberies, and rapes increased by five percent.

Joint Operations between federal law enforcement and local and state law enforcement seem to be successful. We've had Operation Legend and Operation Triple Beam in our state. Director Wray joined me in Kansas earlier this year. We met with our local state law enforcement officials. During that conversation, the Chief Karl Oakman of the Kansas City - Kansas Police Department expressed his desire, first of all, how valuable those joint operations were and his desire to see more of them.

And of course, that's not unique to the Kansas City region of our state. What - to what extent are joint law enforcement operations a part of the DOJ's plan to combat violent crimes?

GARLAND: Well, they are the center of our strategy. In May of 2021, after I'd been in office, just a couple of months, I saw the same statistics that you're referring to now about the rise in violent crime, the startling rise in 2020, which continued into 2021. And so, I launched our first violent crime strategy for the department that really includes three pillars, all of which are the ones you're talking about.

Which Joint Task Forces among federal law enforcement, Joint Task Forces between federal and the state and local law enforcement, and involvement of the community. Because it's essential that the community let us know where the bad guys are and who the bad guys are. So, it is the core of what we do.

So, the money that we're asking for comes in, I would say two buckets here. We're asking for more than \$20 billion, that's an increase of 8.2 percent for our federal law enforcement in the Justice Department, all of whom participate in these task forces. So that includes the U.S. Attorney's offices, the FBI, the ATF, the DEA, U.S. Marshal services.

Then we're asking for \$8.2 billion, which is an increase in 5.48 billion for grants for state and local law enforcement, for the Sheriff's you're talking about, for the police, you mentioned in your opening as well. This includes money for cops hiring, for the Byrne JAG Grant., that the Chair a spoke of which are used for these task forces, for OBW grants, some of which are also used for investigative task forces.

That's the way we are able to create these Joint Task Forces. And so that's why I completely agree with your assessment.

MORAN: General, thank you. You mentioned the U.S. Marshals. I too would mention the U.S. Marshal Services Regional Fugitive Task Force as another valuable combination of local and federal law services. Let me turn to the 2021 the DOJ Office of the Inspector General released a report that revealed multiple agents at the FBI had mishandled the investigation into former USA Gymnastics physician, Larry Nasser, and subsequently lied about their misconduct.

I want to take this moment in your presence to again raise my strong concerns with the fact that it seems these agents have not been held fully accountable for what you describe as an institutional failure. I understand that DOJ is reviewing its earlier decision. This is an issue that Senator Blumenthal and I pursued in the Commerce Committee.

But you are reviewing the decision not to criminally charge these agents. Could you provide me a status update as to where this issue lies?

GARLAND: Yes, so you are right. This is a horrible institutional failure. It's almost unspeakable - it is unspeakable. What happened to those gymnasts and also unspeakable the way in which the investigation have failed to proceed. We have created institutional changes in that regard to make sure it doesn't happen again. The FBI has revised its procedures.

And the Deputy Attorney General has issued memorandum to the field so that whenever a U.S. Attorney's Office or federal law enforcement decides not to follow up that they immediately advise state and local law enforcement so that they can continue. Your description of - so the question of the investigation.

So, the FBI is internal disciplinary work is still in progress. The question of reopening the earlier declination is in the hands of the Assistant Attorney General for the Criminal Division, Kenneth Polite, who is continuing to review the matter.

MORAN: Does that mean that the FBI made a report to the - to that official who is now reviewing that report?

GARLAND: I think it is the referral came from the Inspector General's reports. So, it's the report that you're aware of that was given to the criminal division to review the earlier decision to decline.

MORAN: Thank you.

SHAHEEN: Thank you, Senator Moran. Senator Leahy.

LEAHY: Thank you Chair. Attorney General, as I mentioned earlier, I'm glad you're here this morning. Our time is short, so I'll get right to the questions. I'd like to start with the VOCA Fix Act, VOCA Aid signed into law last year. And we passed this, excuse me, we passed this legislation given a much-needed steady stream of deposits into the Crime Victims Fund. You know, that helps crime victims all over the country.

A major piece of legislation requires funds collected under deferred and non-prosecution agreements to be deposited in the Crime Victims Fund. Now, I understand that there was a sizable deposit in the first month of implementation, but the question has been deferred and non-prosecution agreements have actually been quite low. Across October, November, for example, the actual total is positive, and the Crime Victims Fund was around a million dollars.

What accounts for such staggering (ph) low deposits from what it used to be? Is the Department concerned that this may end up with a zero balance in the Crime Victims Fund?

GARLAND: So, this is going to be a complicated answer. I'm going to do the best I can. I may have to refer to Assistant Attorney General Loftus, who knows the details of the numbers far better than I. But I'll see if I can walk you through where we are here. The VOCA Fix, which we greatly supported, and are greatly appreciative, allowed the money to include the deferred prosecution agreements, which were not available before.

The Deputy Attorney General sent a memorandum to all United States Attorney's offices, and to the FBI, and law enforcement to ensure that the money that comes from deferred prosecution agreements is tagged for the Victims of Crime Fund. So, we are making those changes.

LEAHY: Is it making it clear that that's a priority?

GARLAND: Yes, that the money there must be put in and it's a priority to make sure that that happens. You are right that in September, my figure is \$254 million was deposited, which was the largest monthly deposit in the last four fiscal years. That was immediately after the VOCA Fix came into effect. In FY 22, the numbers I have the first six months are \$409 million in the fund.

You know, these are cyclical, they go up and down. It depends on whether there was a deferred prosecution agreement, whether there were forfeitures, and other seizures during that time. So, I don't think we have enough information yet to know what...

LEAHY: I only ask that the Department make it clear that it is a priority, that it goes there. And because of time, let me mention another thing. The - there's been a lot of bipartisan support in the Violence Against Women Reauthorization Act. But what we determined to do - we've put it into this committee. The Appropriations Committee, put it as part of the FY 22 Omnibus Appropriations Package because we're concerned in the normal course of events, it might not have gotten up for a vote.

But the President's FY 23 budget doesn't account for some of the new programs that were included the Violence Against Women Act. Many of us have worked across the aisle to prove that act, enlarge it. I know that when I was Chair of Judiciary, we added Native Americans, the LGBTQ Community, sexual exploitation of minors.

So, is the department going to support the new programs enacted by VAWA? And will you make sure that your budget shows that?

GARLAND: The answer is yes. I'm not sure which programs - I'd like to have our staffs talk about them, didn't make it in.

LEAHY: I will because it's we want - we came together to get VAWA through the way we did. But I also want to make sure that we have the funding and that you have what you need there. And lastly, and I'll just submit this for the record because I see my time is up. You recently issued Freedom of Information Act guidelines.

I'm concerned about, and I'm pleased with that, but I'm concerned about the enforcement of it. So, I will also submit a letter for record on that I appreciate your answer, Attorney General.

GARLAND: Thank you.

SHAHEEN: Thank you, Senator Leahy.

Senator Collins.

COLLINS: Thank you, Madam Chairman. Welcome, Mr. Attorney General. The administration has taken conflicting positions on whether or not the COVID pandemic constitutes a public health emergency. Could you please explain to the subcommittee, how the department can justify arguing in court that the pandemic has subsided enough to warrant the termination of Title 42?

Which will worsen the problem of tens of thousands of unvaccinated migrants illegally entering the country. While, at the same time, arguing in a separate case, that the public health consequences are dire enough to warrant compelled mask usage by Americans on public transportation.

GARLAND: Yes, thank you, Senator. It's just something I think important to - for me to explain the role of the Justice Department. Which is not to make judgments about the public health, and really not to make judgments about policy in either the two areas that you're raising. But rather to make determinations of whether the programs and requests of the agencies that are responsible for those are lawful.

So, with respect to the mask mandate on the planes, I think this is quite transparent. The CDC announced its assessment that this was a program that was continued to be necessary in the confines of airplanes and public transportation. The only question for us is that a lawful and they asked us to appeal, Assistant (ph) General concluded was lawful, and so we have appealed.

With respect to Title 42, it's the same analysis from our side from the Justice Department's side. The only question here is the CDC's program. If the - and the CDC is announcement and its assessments and we defend that program, as long as it's lawful. We don't make the public health determinations that you're speaking of.

COLLINS: And I understand that I think that the CDC has put the Justice Department in an untenable position of arguing one position in one case and a completely conflicting position in another case. But I understand that (inaudible) public health determination. Let me switch to another consequence of the uncontrolled southern border in the year between September 2020 and September 2021, more than 104,000 Americans died from drug overdoses.

In Maine, we set a horrific new record. 636 people died from drug overdose and that was a 23 percent increase from the previous year. In 2021, the Maine Drug Enforcement Agency seized more than 10,000 grams of fentanyl, that's a 67 percent increase from the previous year. Just three months into this year, agents tell me that they have already seized half of last year's total.

Law enforcement officials in Maine and elsewhere tell me that these drugs are largely entering the United States through the southern border. Where resources that could be targeting drug interdiction are instead being diverted to help with the influx of migrants illegally crossing the border.

Do you agree that the government's inability to secure the southern border has led to more drugs coming into our country?

GARLAND: Look, I - the opioid epidemic and particularly, the influx of fentanyl is just horrifying and extraordinarily sad for the large numbers of Americans who are becoming addicted and who have become addicted. We - the job of the Justice Department is to fight the large-scale drug trafficking organizations that are bringing this money, these drugs into the country. And that's the reason we have asked for large increases for all of our anti-drug programs.

The DEA has asked for \$102 million increase, which is for a total of \$3.1 billion dollars to fight the very issues that you're speaking of. The U.S. Marshal Service has asked for a billion dollars for drug trafficking, fugitive capture. The U.S. Attorney's Offices \$106 million, the FBI \$161 million, the criminal division \$446.9 million, including regional Opioid Task Forces and the COPS grants. The money that we're giving includes the money for the Anti-heroin and Anti-meth Task Forces.

So, we are doing - we are asking for all the money we can get. And we are not stopping here. As you now know, I announced the indictment and extradition of the former President of Honduras to the United States to face justice, for organizing drug trafficking coming out of the Northern Triangle. We will be persistent in that effort.

COLLINS: Thank you.

MORAN: Senator Manchin.

MANCHIN: Thank you, Mr. Chairman. Thank you, Honorable Merrick Garland. I want to thank you for your continued supportive of public service. If it's been wonderful, we appreciate your position very much. Sir, on voting rights, I've always believed that healthy democracy depends on a voting system that is accessible, free, fair and secure.

While history is going to tell us that we've come a long way in ensuring all individuals regardless of their race, sex, or political affiliation, have the ability to cast a vote. We can all agree that we still have a lot of work to do. I'm particularly concerned about the recent opinions, and rulings that seemed to undercut decades of established legal precedent under the Voting Rights Act.

Specifically, in February, a federal district court in Arkansas ruled that only the U.S. Attorney General has standing to enforce Section Two of the Voting Rights Act. The court found that it would be inappropriate to imply a private right of action to enforce Section Two of the Voting Rights Act.

So, your opinion on that, sir, was that interpretation or you agree, disagree? And what impact of any could this ruling have on voting rights were adopted - if this was adopted across the country?

GARLAND: Yes, very good question, Senator. On the first question, and normally I don't sort of opine. On in this case, I've already opined, so I don't think it hurts me to do that. We have filed across the country in a number of these cases, we believe there is a private right of action to enforce the Voting Rights Act.

It has always been assumed that that was the case since the Act was passed in the mid-60s. And no one has ever questioned it, I think until this year. For the second point, the consequences of the Justice Department being the only ones who can bring voting rights cases, I'm going to be blunt, you're going to have to give us a lot more money.

If the Justice Department has to bring every single case to enforce voting rights. We're going to have to...

MANCHIN: You know the argument about that, sir, I'm sorry to interrupt you. But the argument about that you hear the pros and cons on that. They're saying well, it'd be too much litigation. You know, and if you had everybody being able to declare that they've been infringed upon. And we don't see that going any further than that.

We're having all these discussions in our committees, but we're trying to get a clarity on that. But this seemed like to me that the person has that right. But it hasn't been exercised if it's been frivolous. I haven't seen it go any further. So, I don't know how it's been a strain on the court system.

GARLAND: So, I haven't done an analysis of the court system. But this has been the rule that we've had all the way since the mid-60s. I've never heard any complaints that it is taxing the court system in any...

MANCHIN: We haven't either.

GARLAND: ...way.

MANCHIN: Sir, if I could switch a little bit on that, that's very helpful. We're working on that. On the price gouging. We hear a lot about price gouging right now. And we saw that with a - when we first had COVID, brought to our attention, horrible epidemic back in May of 2020 - in March of 2020. We saw that within N90, N95 masks, Clorox wipes, toilet paper at the beginning of the pandemic.

And now we're seeing it again, this time with fuel prices, and food prices and things of that sort. Should there be a criminal price gouging statute?

GARLAND: Well, this is a matter of huge debate and anti-trust and economics. I'd like to hold off on that, but our staff would be happy to work with...

MANCHIN: Right now, what constitutes view all basically taking an under your surveillance, if you will, acceptable prices for scarce products? What constitutes acceptable price for scarce...

GARLAND: Well...

MANCHIN: ...market demands, things of this sort, global pricing?

GARLAND: So, for us the questions are unlawful agreements to fix prices, and exclusionary behavior by monopolists and near monopolists. So, if we're in the in either of those circumstances, if it excludes competition, this falls under the anti-trust laws and likewise, agreements on prices between competitors.

MANCHIN: And I want to follow up also on Senator Collins concerning on the opioid epidemic. Myself and Senator Capito, in the state of West Virginia, we've been number one, as far as getting slammed with this. Can you speak to the status of DOJ's current efforts to curtail the opioid crisis?

Including the Appalachian Regional Prescription Opioid or what we call the ARPO Strike Force?

GARLAND: Yes. So, I think that's it. I hope you agree. I think that's a very effective Taskforce. That money is included in our requests for funds. I think - I'm not sure whether that's the one that comes under the Office of Justice Programs or under the Criminal Division.

But those task forces, both meth and heroin, ones that Senator Collins was concerned about the last time we spoke and the opioid one that you're talking about.

MANCHIN: We need your support for that sir.

GARLAND: We support, and we support expanding those. And if we get the money requested in the budget...

MANCHIN: Quickly, I want to follow up with I introduced the DEA enforcement and authority act that would amend the immediate suspension order, standard of review from a substantial likelihood of an immediate threat standard to a probable cause standard. That's again, order standard review from a substantial likelihood of an immediate threat to a probable cause standard.

So, what additional authorities you believe DOJ or FBI need in order to effectively stop the flow of prescription opiates and other illegal drugs because the substantial likelihood is pretty darn broad and probable cause we know exactly what their intent are.

GARLAND: So, I haven't been directly involved in the question. The standard here, our Consumer Protection Branch does the work on...

MANCHIN: If you could look, we have that piece of legislation. I think all of us have been - more states have been ravaged by this horrible addiction that we have, and drugs continue to flow, it might give us a better chance to fight this opioid onslaught or drug onslaught. But if you could look into the language, if you all could support unless the DEA is the enforcement and authority act...

MORAN: Senator Manchin, thank you.

GARLAND: I'd be happy to do that, Senator.

MORAN: Senator Kennedy.

KENNEDY: Thank you, Mr. Chairman. Thank you, General for being here. Could you pull that mic closer to you?

GARLAND: Sorry. Is that better?

KENNEDY: Yes. General, I think the Justice Department is losing. I think you're losing on crime. I think you're losing on drugs. I think you're losing on immigration. I think you're losing on Chinese espionage. Let me start with crime. What percentage of cops in America do you think are bad cops?

GARLAND: Very small percentage.

KENNEDY: Like how small?

GARLAND: I don't know. I don't have a number. I think the...

KENNEDY: Well (inaudible) country's chief - one of the country's chief law enforcement officers says it's less than 10 percent.

GARLAND: Yes, I'm - let me just be clear, we believe that most police officers follow the Constitution in their practices, most police departments do. And all police officers, I believe, want to work in police departments that follow constitutional policing requirements.

KENNEDY: Is it less than five percent?

GARLAND: I don't have the numbers. I think it probably is. But I - again, I don't have any numbers for you.

KENNEDY: OK. Do you say most cops are racist?

GARLAND: No, I do not.

KENNEDY: What percentage of cops, do you think in your judgment - I know you can't give me an exact figure of do you think a racist?

GARLAND: Sorry, I'm not resisting, because I have a number that I can't give you. I just really don't have any way of making that valuation.

KENNEDY: What's your gut telling you? Less than five percent?

GARLAND: One thing I've learned is to not give answers from my gut.

KENNEDY: Right. Well, you think it's less than five percent?

GARLAND: I don't know the answer. I'm sorry I don't.

KENNEDY: You don't know?

GARLAND: I don't know, no.

KENNEDY: OK. Why doesn't the Justice Department support stop, question, and frisk?

GARLAND: I'm not sure what's what - you mean, stop and frisk. Is that what you mean?

KENNEDY: Some call it stop and frisk, same (inaudible).

GARLAND: I don't know that the Justice Department has a position. This is a state and local role normally. Look...

KENNEDY: Do you think it works?

GARLAND: I'm sorry.

KENNEDY: Do you think stop, question, and frisk works?

GARLAND: I think in some circumstances, it can work. But of course, it can be abused.

KENNEDY: Right.

GARLAND: Yes.

KENNEDY: What but why doesn't the Justice Department aggressively encourage law enforcement officials to use that technique? It's been declared constitutional, as you know.

GARLAND: Yes. The Supreme Court has affirmed the constitutionality of stop and frisk. That's in the Terry case. That's exactly right, but we don't do it that - the federal government doesn't do patrolling. This is work for patrolling.

KENNEDY: I know you don't. But you're one of the country's chief law enforcement officials, maybe the chief and what you say matters. But what can - well suppose - here's what I'm asking. Let's take Chicago, where you have a - we haven't made any inroads in stopping the killing. I mean, Chicago is now the world's largest outdoor shooting range. We know that a lot of the shootings come from gangs. Why wouldn't you want to call the police chief and the mayor of Chicago and say, look, you know who these gang members are. When you have reasonable suspicion on Terry v. Ohio, an objective standard, more than just a hunch. Why don't you aggressively stop, question and frisk these gang members? You get guns off the street.

You'll get drugs off the street. And you'll get a lot of gang members off the street. And you'll stop people killing each other. Why won't you do that?

GARLAND: The best way for the federal government to stop violent crime is to work at each local level and determine and let the local - the state and locals determine what the best use of their own resources is.

KENNEDY: (Inaudible) interrupting you. But I'm trying to get some answers.

GARLAND: I'm sorry.

KENNEDY: Why won't you do that? Just tell me why you won't do that?

GARLAND: Because...

KENNEDY: Your opinion matters.

GARLAND: Because there is no one solution fits all that the federal government can suggest to state and local law enforcement. We believe state and local law enforcement knows best as to what to do there. We provide...

KENNEDY: It's not working.

GARLAND: We provide our technical expertise. We put lots of resources into a Joint Task Forces. We...

KENNEDY: Well General - I know - I've got to shut this down. I've only got 15 seconds. Is that why you're asking in the middle of a raging inflation for seven percent more money? \$2.63 billion to provide technical increase or technical advice?

I mean, we're going backwards here on crime, General. You're the state or the country's chief law enforcement officer. And you won't even answer my question about how you feel about stop, question, and frisk.

GARLAND: I think it...

KENNEDY: You won't...

GARLAND: I think it's a resource allocation issue for each local police department. I believe that the Justice Department does the best by putting the money that we're asking for is increase in law enforcement. That can be assisting at the state and local...

KENNEDY: But General is that we're supposed to tell the mothers those kids getting killed in Chicago? You don't understand it's a resource application issue.

GARLAND: No, what you're supposed to tell the mothers in Chicago and what I told them when I was there was the Justice Department was there to provide all the resources that this subcommittee will give us to stop violent crime.

KENNEDY: But yet you...

GARLAND: The more resources you give us...

KENNEDY: ...won't require (ph) to stop, question, and frisk.

GARLAND: That is a question for the state and the local. I'm sorry, for the state and local law enforcement.

KENNEDY: I didn't go over as much as Manchin did Madam Chairman.

MORAN: That's not the standard by which we judge behavior.

KENNEDY: Thank you, General.

GARLAND: You're welcome.

MORAN: Now, Senator Van Hollen.

VAN HOLLEN: Thank you, Senator Moran. And welcome Mr. Attorney General.

GARLAND: Thank you.

VAN HOLLEN: I want to start with some thanks to you and President Biden and your team at the Justice Department for implementing something that many of us have pushed for a long time. Which is a final rule with respect to ghost guns. These are, of course, are our weapons, you can buy them over the internet in pieces, quickly assemble them, and they shoot and kill people just like a regular firearm. But one major difference, they do not have serial numbers, which is why they're becoming more of a weapon of choice by criminals in my state of Maryland, places like Baltimore city, and around the country. So, I want to applaud you for moving forward on that effort. And also applaud the President for nominating a Director of ATF Steven Dettelbach. Good candidate, I hope the Senate will confirm that nomination expeditiously.

The ATF has gone headless, for way too long, as you know, and we need a strong ATF to crack down on illegal gun trafficking, among other issues. As you know Congress is brought back congressionally directed spending so that we can try to target resources where our communities say they're needed the most. And Senator Cardin and I worked with this committee to channel important resources to address the really serious, violent crime problem in Baltimore City.

And there's no one solution. But we provided a series of resources for community-based crime and violence prevention programs, community policing. So, my question to you Mr. General, Baltimore City's waiting on those funds. How quickly can we get them? Can you give us your commitment that you can get those out the door quickly?

GARLAND: If you give us the money, we can get them out the door quickly. You know, an important part of our ability to fight violent crime in Baltimore and other locations where it is a very serious problem is having more Assistant U.S. Attorneys to prosecute these cases. Federal government has stronger...

VAN HOLLEN: So, Mr. Attorney General, just one clarification here. So, I'm talking about this in this question monies we've already have appropriated. These are monies that we've provided, they're in the custody of either the Department of Justice or Treasury and we just...

GARLAND: I see.

VAN HOLLEN: ...like to get the money out the door.

GARLAND: We will do - as far as I know that our priority is to get the money out the door doesn't do us any good to keep it in main justice, I assure you.

VAN HOLLEN: Yes.

GARLAND: So, if...

VAN HOLLEN: Well, we'd like to, we'd like to encourage your team to get it out. Because it is a serious situation there. Now to the broader issue you're raising with respect to resources for the U.S. Attorney in Maryland, for ATF in Maryland, for U.S. Marshal Service in Maryland. We have seen some increases over the last couple of years. And I want to thank you and your Deputy Attorney General, Monaco, who's had a series of phone calls with Senator Cardin and myself.

But can you - we do need more resources. I mean, we have a very serious problem in Baltimore City. And we do have good cooperation between the federal government, state and local jurisdictions. But can you talk about specifically how resources you're requesting here can strengthen our ability to get more resources to Baltimore City?

GARLAND: Yes, so through no fault of this subcommittee, we did not get the amount of money for the United States Attorney's that was in the budget requests. And that was in the marks of the subcommittee as a consequence of the Omnibus. We received \$120 million less than the FY 22 requests.

So, for that reason, we're asking for increases for the U.S. Attorney's Offices to allow us to hire 157 more Assistant U.S. attorneys. Obviously, the more Assistant U.S. Attorneys we have, the easier it is to allocate them around the country to the places that are in need. The same is true with respect to ATF, we're asking for an increase of 122 agents.

Again, the more that we have, the more we're able to expand the locations in which we can put people.

VAN HOLLEN: Thank you, General. I look forward to supporting that that budget request for the reasons you've laid out. I hope the committee will as well. My final - just have a statement here, Mr. Attorney General. The Congress on a bipartisan basis, has recognized that the FBI needs a new consolidated headquarters that meets its security requirements.

And before the previous administration, three sites had been located. And in the last bill passed by the Congress Appropriations Bill, we directed the General Services Administration to select one of those three earlier identified sites for the new fully consolidated FBI headquarters. So as the Chief Law Enforcement Officer, we expect you to work with us to make sure that the law is followed.

And I'm confident that you will do that. Thank you. Thank you, Madam Chair.

SHAHEEN: Thank you, Senator Van Hollen. Senator Hagerty.

HAGERTY: Thank you, Senator Shaheen. And thank you, Ranking Member Moran for holding this hearing. Thank you, Attorney General for being back with us today. I want to touch on something that's a great concern to my constituents. And I think, frankly, to the competence of many people in our system that you control through the Department of Justice.

And that's the matter of the Hunter Biden investigation. It received a great deal of press, but I want to ask you a bit about how the communications have worked within your department with the White House on this. First, have you been briefed on Hunter Biden investigation matter yourself, General Garland?

GARLAND: So, they Hunter Biden investigation, as I said, even in my own nomination confirmation hearing is being run by and supervised by the United States Attorney for the District of Delaware.

HAGERTY: I'm aware of that. But he reports to you?

GARLAND: He is supervising the investigation. And I'm you know, I'm not at liberty to talk about the internal Justice Department deliberations. But he is in charge of that investigation. There will not be interference of any political or improper kind.

HAGERTY: And are any senior officials in your department being briefed or?

GARLAND: Again, he is the supervisor of this investigation. And you know, the normal processes of the department occur, but he is the supervisor of this investigation.

HAGERTY: Well, if you won't be able to say whether there have been communications there, I'd like for you to tell me or answer this question, if you would. Would you think it would be appropriate for the President the United States to call you into the Oval Office and tell you that his son didn't break the law regarding this matter?

GARLAND: Absolutely not. And President has not done that. And the President is committed not to interfere not only in that investigation, but any other kind of...

HAGERTY: So, I agree with you. But...

GARLAND: ...investigation.

HAGERTY: ...I do wonder this then, why the President is resorting to TV and having his surrogates go on TV to say just that message. Earlier this month, White House Chief of Staff Ron Klain stated on national television that quote, "the President is confident that his son didn't break the law." And the White House Communications Director said that President Biden maintains his position that his son did nothing. That was unethical, this was on national television.

The President's already told his subordinates clearly these are people that he can fire will that he and his family did nothing wrong. How can the American people be confident that his administration is conducting a serious investigation?

GARLAND: Because we put the investigation in the hands of a Trump appointee from the previous administration, who is the previous administration, who's the United States Attorney for the District of Delaware. And because you have me as the Attorney General, who is committed to the independence of the Justice Department, from any influence from the White House and criminal matters.

HAGERTY: Well, I think the observation here is terribly critical, because there's an obvious conflict of interest here because of those who are investigating the Biden family and their enterprise can be fired by the head of the family who's being investigated.

That Joe Biden can fire the Attorney General in Delaware and he can have an impact on all of your staffing. And I want to ask you this, under what circumstances do you consider or how do you evaluate whether you would appoint a special counsel?

GARLAND: I think this is a fact and law question in each case determining and depending upon how cases go forward on a question of whether the Justice Department with its normal processes should continue. I want to be clear. Those special counsels are also employees of the Justice Department. We don't have an independent counsel statute anymore.

Both the Democrats and the Republicans experimented with this, and I think probably in the end, neither side liked it. And that's why we ended up with the law not being reauthorized. But in any event, the Special Counsel is also an employee of the Justice Department.

HAGERTY: Have you had any consideration about whether to do this?

GARLAND: Again, I think our internal deliberations have to stay within that department.

HAGERTY: Again, I'll just restate that, that there's an obvious conflict here that raises concerns amongst my constituents. I'd like to turn to some public evidence, though there are emails and photographs that show the President Biden while he was Vice President, met several of Hunter Biden's business associates. Including a Burisma executive, that's the energy company that paid Hunter Biden a million dollars per year to sit on his board, and the Russian billionaire who paid Hunter's firm 3.5 million around the same time.

All of this is while President Biden was running portions of the United States foreign policy, including Ukraine. There is evidence that Hunter Biden paid for Joe Biden's living expenses while he was Vice President. A Hunter Biden email from 2010, entitled J. R. B. bills, Joe R. Biden does discuss paying for the upkeep of Joe Biden's large state front, slick (ph) front home.

There's another 2010 email from a Biden confidant to Hunter Biden saying, quote, your dad just called me he could use some positive news about his future earnings potential. To me this suggests that Joe Biden's \$231,000 salary is taxpayer funded salary and lifestyle as Vice President United States weren't enough to support his lifestyle.

That same confidant of - and also Hunter Biden's business partner made nine visits to the White House between 2009 and 2013 and met with Joe Biden in the West Wing while Joe Biden was Vice President. And we have a text message from Hunter Biden to his daughter stating that don't worry, unlike pop, meaning Joe Biden, I won't make you give me half your salary.

So, it seems President Biden was serving as Vice President and running U.S. foreign policy at the same time that his son Hunter Biden was breaking in money from shady foreign business deals. And this was money that was being diverted to benefit Vice President Biden. So General Garland, do you have any reason to dispute the evidence that indicates the President Biden was involved with and using money from Hunter Biden's business deals?

GARLAND: Senator, following the long-standing rule of the Justice Department, we don't discuss investigations or evidence that maybe - may or may not be relevant to investigations. That's a matter for the United States Attorney's office that's investigating the case.

HAGERTY: Well, there's (inaudible). Thank you.

SHAHEEN: Attorney General Garland has requested a break at 11:15. So what we're going to try and do is to get Senator Schatz and Senator Capito in, and then we will break. Have a 10-minute break and then we will take up the rest of the questions.

Senator Schatz.

SCHATZ: Thank you very much. Chair Shaheen and Vice Chair Moran. Attorney General thank you for being here. I have - I'm going to try to get through five questions. So, if I can have quick answers, that'd be great. What if any...

MORE

SHAHEEN: Senator Schatz.

SCHATZ: Thank you very much, Chair Shaheen and Vice Chair Moran.

Attorney General, thank you for being here. I have -- I'm going to try and get through five questions, so if I can have quick answers, that'd be great.

What, if any or the DOJ has plans to reinstate federal prosecutorial distress -- discretion for non-interference in states, territories and tribes where marijuana is legal.

GARLAND: So, as I understand our role with respect there, it's really the same as it is with respect to states, because about marijuana prosecutors.

SCHATZ: Yes.

GARLAND: Right? And I think, you know, I laid this out actually also in my confirmation hearing and my view hasn't really changed since then. And that is that the Justice Department has almost never prosecuted use of marijuana. And it's not going to be, it's not -- that's not an efficient use of the resources given the opioid, and methamphetamine epidemic that we have.

SCHATZ: That's good enough for me. Let's move on.

GARLAND: OK.

SCHATZ: I want to talk a little bit about PREA Oversight. There've been a number of recent sexual abuse cases that FCI Dublin and other federal prisons across the country. What's the Department going to do to address these PREA violations?

GARLAND: Yeah. So this is, you know, another really terrible set of events. We have prosecuted a number of the individuals responsible now at Dublin for this. We have put into place a new warden at Dublin, I think within the last three weeks. The Deputy Attorney General has set up a task force to investigate and determine what the procedural failures here were and how these kind of failures can be prevented in the future. And the matter has been referred to the Inspector General for an internal investigation.

SCHATZ: Thank you.

Will the DOJ at least consider, I don't want you to commit to it now, but consider supporting the reestablishment of an inner agency law enforcement equipment working group to oversee and provide recommendations for federal programs that include the transfer or sales of controlled equipment to law enforcement? We know this issue comes up periodically. This is a space where this can be done intelligently. I think we've seen the various (inaudible) 1033 and other programs where equipment is transferred to local departments, and it can be very useful or it can be overkill. And the point of a working group like this is to sort of sucks out what Departments need and what seems to be overarching, local police forces.

GARLAND: I appreciate your I'm not asking for a commitment, but of course, any consideration of that issue requires inter-agency discussion because some of the equipment you're talking about is Defense Department equipment. So, certainly we'll be happy to consider that.

SCHATZ: This is Hawaiian specific question. We don't have a halfway house in Hawaii since October of 2019. So, does the Department have an interim or emergency set of measures to ensure that Hawaii has halfway house eligible individuals still have access to service?

GARLAND: Yeah. So as you note Senator, I think we have discussed before we've had a Bureau of Prisons has had problems expanding the residential reentry center in Hawaii for a number of reasons, not the least of which is to providers are very scarce. BOP understand has made progress on a day reporting center, a contract and hopes to make an award within the next few months.

SCHATZ: Great. Final question. Easy one, what is your position on clemency for Leonard Peltier?

GARLAND: Do this is a matter that goes into applications, go to the pardon attorney. Pardon attorney makes recommendations through the Deputy Attorney General to the President. And so I'm not going to comment on that now.

SCHATZ: Can you comment on where we are in the process?

GARLAND: I don't -- I assume, but don't know that an application has been made. I actually don't even know whether -- I mean, I've read about this in the press, so I don't know anything more about it than what I've read in the press.

SCHATZ: And it doesn't cross your desk?

GARLAND: Certainly not as an initial or even secondary matter of this goes to the pardon attorney and then the deputy attorney. I'm not saying I wouldn't be involved, but it certainly has not crossed my desk.

SCHATZ: Thank you very much.

SHAHEEN: Thank you, Senator Schatz. Senator Capito.

CAPITO: Thank you, Madam Chair and Ranking Member. And thank you, Mr. Attorney General, for being with us today.

I'm not going to ask you a question on this. I just wanted to begin with expressing my deep concern about the flow of fentanyl into the country from the Southern border. Senator Manchin mentioned West Virginia is at the tip of the spear as you know. Senator Collins brought this up as a big issue. We've had meetings over the last two weeks being at home and fentanyl is the killer. I mean, it is what's coming up through the Southern border.

So I would impress upon you how absolutely critical is it is. That the situation that the -- at the Southern border has got to get better. I understand the demand side is what's driving this in a lot of ways, but if we can cut the supply, I think we can cut a lot of tragedy out of a lot of people's lives. And I know you understand that as well.

Let me ask you a question. According to over the pandemic, we've seen a significant increase in first-time gun owners with almost 60 percent increase in African-American gun owners, 50 percent increase in Hispanic gun owners, 43 percent in Asian-American gun owners. I guess I would ask you if you have a perception as to why this is, but the reason I'm asking the question and I'm interested in, and of course I want to see our Second Amendment rights protected, but also the NICS system, which runs the background checks goes through West Virginia, as you know.

So, do you have a in any kind of perception as to why gun ownership is up among different groups. And during the pandemic, I know it's been bigger in all groups. What would you attribute that to? And what kind of strain is this having on our NICS system?

GARLAND: So I don't know the answer. I'm sorry to the first question. This is the kind of analysis I -- you know, I can't make up. And I can't even guess that, I don't know what the causes are.

The second question I can answer, you know, the more gun sales and more difficult it is for the NICS system, but that's the job of the NICS system. So that's why we're asking for an increase in \$6.2 million for the NICS system in the President's budget hearing to take into account the increase in the number of sales.

CAPITO: Right. And, and they can certainly use it. And we know we want accurate records, we want good records. And I mean, they're working 24/7 as you know.

Recently FBI director, Christopher Wray stated during an interview that there is a 59 percent increase in police officer killings, that his officers being killed at a rate of almost one every five days. This is alarming to. We had one of these incidences in our hometown. It's occurring at ambushes and attacks. You're asking for more money in \$30 billion in mandatory spending for law enforcement help. What are you looking at in this area to, for -- to protect? I know hiring is an issue, but protecting our force and this is very concerning to me.

GARLAND: Well, it's extraordinarily concerning to me and to all of the 120,000 members of the Justice Department, most of whom are involved in law enforcement. So, these are our brothers and sisters who are sometimes being targeted directly, sometimes being killed in the line of duty and sometimes the consequences of suicide. So, we have a overall task force involving investigating threats, which includes in particular threats against law enforcement and (inaudible) ...

CAPITO: Are you saying the threats go up?

GARLAND: Yes, extraordinarily so. And you're right about the, I think what, I don't know the number that Director Wray cited, but it sounds exactly right to me. The number is extremely worth worrying.

CAPITO: Well, I'd like to see the focus of some of this new funding go into this precise issue. The suicide issue obviously is something that's deeply troubling as well. I think a lot of it is the lack of respect for law enforcement in certain areas of the country, around the country. We're having trouble hiring in. We tried to do leg -- we tried to do reform, couldn't get it across the finish line to try to help our local law enforcement recruit, train, you know, do bias training and all kinds of things that we see are, are issues within, within our police department. But I'm very, very concerned about this.

Let me ask you another question. I noticed in your statement that you're going to create a division to combat climate crisis. The reason I'm asking -- I'm interested in this is I'm on the EPW Committee. I'm the ranking member there. There is a lot of enforcement at EPA and other places on environmental justice. You're going to create a new office for environmental justice. I mean, are these directors coming from the White House? Why now? And why with all of the other efforts that are going on throughout all the different cabinet positions in the government, is this something that you are putting a high priority on right now?

GARLAND: So I think you, you rightly noted it's not a division, it's an office within our already existing environment division. The reason is that there is responsibilities both in the environment division and in the civil rights division. And so, a coordination of -- on the, particularly on the environmental justice issue requires coordination between, so ...

CAPITO: Is that not being handled in other areas, like for instance, in the EPA enforcement in their environmental justice office?

GARLAND: Well, I'll be honest I don't know about their environmental justice office. But we have a civil rights division, which does prosecutions for civil rights violations. We have the environment division, which does the affirmative cases, and we wanted to have some coordination between the two. That's the reason for having this off.

CAPITO: Well I think I've mentioned about three things I would put in front of this and thank you so much.

GARLAND: OK.

SHAHEEN: Thank you, Senator Capito. We will now take a break. We will reconvene at 11:30.

GARLAND: Thank you.

SHAHEEN: Thank you.

(UNKNOWN): Thank you.

(RECESS)

SHAHEEN: Senator Murkowski is next. We think she's out in the hall. So that's.

(UNKNOWN): (Inaudible).

SHAHEEN: This hearing we'll come back to order and I will call on Senator Murkowski, who is next.

MURKOWSKI: Thank you. Madam Chairman.

Mr. Attorney General, Welcome. Before I begin asking my questions, I wanted to note that when Senator Leahy was asking you about the VOCA Fix, know that that's something that we are monitoring very, very, very carefully. We worked hard to make sure that we had \$5 million for the victims service organizations in Alaska to help. That was a real panic cry that we heard from the state. And I am concerned that Senator Leahy has emphasized making this a priority.

But I want to make sure that we're not in a situation where we're, we're looking again, realizing we're not measuring up here. There's a gap. So if there is any kind of alternative funding line items to ensure that our victims organizations are able to receive this, I certainly hope that that the Department is looking at that. And he also raised an issue with regards to some of the new grant programs in VAWA that for reasons known or unknown have not been reflected in the President's budget. And you indicated, you know, you weren't sure what those might be. Some of the ones that we have looked at are those grant programs, the new grant programs focused on expanding access to saints as well as to medical forensic examinations.

So my hope is that this was just a matter of timing, not a, a deliberate choice to overlook those very important, certainly in rural states like Alaska. So we just underscore that when we, when Senator Leahy raises these issues, I am right there with him.

So to the issue of VAWA and as you know, this was something that I've been working on for a long period of time and was very pleased that we were able to advance this, get it signed into law, contained within the VAWA Reauthorization is the end the tribal title. We have the Alaska Public Safety Empowerment pilot. What we're really trying to do here is to be able to, to provide a level of, of justice in areas in my state, where they simply have none. We want to get to these remote, rural villages, not necessarily those on the road systems. What we want to do is empower supplement, basically the work that the state is doing with regards to public safety. We're not creating Indian country, we're not taking jurisdiction away from the state. But as you know, the attorney general in consultation with the secretary of interior is directed to establish a process to designate those Indian tribes that can participate in the pilot.

So the question to you this morning is what do you anticipate in terms of the Department of Justice plan to begin this process? How do you see this, this moving forward? We also direct the creation of a Alaska Tribal Public Safety Advisory Committee, not later than a year. So I'm just asking this morning, if you can share how the President's budget will support the Alaska Public Safety Empowerment pilot, as well as the Public Safety Advisory Committee.

GARLAND: Yeah. So I'm very grateful for everything that you did with respect to getting a VAWA Reauthorized. Of course, the Justice Department has been full on and supported this all along. So, we are in lock step on this. We support the pilot program. We think it's an important ability of authority to bring these prosecutors and investigate these matters. We can't just leave undone.

So, I'm very eager to get the pilot going to get the villages decided likewise with the commission. So, I don't see any reason why we won't be able to be on time on our marks for this.

MURKOWSKI: Well, now that we would like to be working with you to understand what those timelines are to help with the expectations of folks back home.

Last question for you relates to the Bureau of Prisons. Currently, Alaska does not have any federal facilities to house our federal inmate population within the state. We have seen considerable growth over the years, the number of federal inmates has grown from just a few hundred to over a thousand. And what happens then is many of these individuals are sent to serve their sentences at facilities outside the state. Sometimes 2 to 5,000 miles away from their homes.

I have I sent you a letter sent it back in March of this year, asking that you consider a feasibility study working with the Bureau of Prisons to conduct a new feasibility study. It hasn't been done for a period of time. It was apparently about two decades ago. A lot has changed in Alaska since then. But I would ask that you look at this, we have not heard a response back. So if you can take a look at this and again, try to work with us on a new feasibility study, but also willing to work with bureau of prisons to obtain additional halfway house bed space in Alaska. Currently we have only 39 beds for the entire state of Alaska, all of them are located in Anchorage.

So if you could perhaps follow up with me on those two asks, it would be greatly appreciated.

GARLAND: Oh, we're happy to have our team speak to yours or the two of us speak directly. I would be very happy to.

MURKOWSKI: Very good. Thank you. Thank you, (inaudible).

SHAHEEN: Senator Murkowski. Senator Braun.

BRAUN: Thank you, Madam Chair.

As I was going to another committee hearing and I just talked to Madam Chair, we got three of them at the same time today. It seems like we could organize ourselves a little better. I was listening to your conversation with Senator Hagerty. And I did not hear the end result. And I'm assuming he probably asked, do we need a special prosecutor to look into the Hunter Biden, you know, affair. Do you think we need to? And I would then have one follow-up question to that? So do we need a special prosecutor to look into that?

GARLAND: So as you know, the investigation is being run and supervised by the United States attorney in Delaware, who was an appointee of the previous administration and continues on as the United States attorney. The question of whether to have a special counsel as one that it's an internal decision making in the department. So I don't want to make any judgments one way or the other. But I'm quite comfortable with the United States attorney for that district continuing in the role that he's playing.

BRAUN: So a follow-up question that would be. Of course, Special Prosecutor, Prosecutor Counsel Mueller, you know, was assigned in that hole Steele dossier issue, which now has been debunked. If you had been in that capacity, then do you think a Special Counsel was needed there as well?

GARLAND: It's hard to put myself back into, into that circumstances. And then of course there would be a different -- for me to be in that position there would have been a different precedent. So ...

BRAUN: Yeah.

GARLAND: ... I've -- I'm not sure I can answer that hypothetically.

BRAUN: Well, it's obvious that that would be a question that many would wonder about in terms of what that standard is, what that -- it seems like it would be the same from one administration to the next.

Got a question that really is probably more pertinent than the sense that what's happening on our Southern border is confusing in the sense that the administration says we don't have enough resources done things from the beginning that is I was down there with 17 other senators roughly a year ago. And to give you the description of the immensity, it had gone from record low illegal crossings, and I'm one that believes we need to secure the border and then roll our sleeves up and fix all the issues associated with it. We were had risen from, I think, 40,000 to 70,000. This last month, it was 212,000. And like 60 some thousand got away.

I mean, it is exploded beyond anybody's imagination. I think self-induced, and then there are conflicting statements that part of it's due to not having enough resources. Are we resourced at the border properly? And that would be how we address any illegal crossings that seems to be delegated to lower levels of authority. Isn't that confusing and in light of the issue in terms of where it's at, do we need to do something differently and does your office need to be outspoken about trying to fix it?

GARLAND: So, I want to be careful about explaining what our, our role is because we do need more resources. I think most of the resources you're referring to our Department of Homeland Security resources. So, I'll leave that firm or that secretary to express what they need. But we have asked for \$1.35 billion for our immigration courts, \$1 billion of which is to reduce the immigration court backlog. So the things that our job is to run the immigration courts after we get referrals from DHS. So, we have already onboarded everyone we can as immigration judges, we asked in fiscal year '22 for a hundred more, again, no fault of this committee, because he gave us the right mark. But as a consequence of the omnibus, that was not funded.

So we're asking for 200 new in immigration judge teams, a total of 1,200 new staff for that purpose. That's the -- we've also asked for money for a virtual court initiatives so that we can run these court proceedings more efficiently and more effectively and from whatever area. If we get the additional immigration judges, we will move them to the border we're already going to be moving them to the border as it is.

BRAUN: And can you describe what your request is compared to what it was in prior years? What magnitude the difference?

GARLAND: So, yeah, it's an additional 1,200 staff for ...

BRAUN: In addition to how much before?

GARLAND: So, it'll bring us to a total of 834 IJs, the staff includes all their clerks, et cetera. So with 200 more, we'll get to 834. So 834 minus 200, but 634 is what we have here.

BRAUN: And just with the arithmetic, I put out there earlier the problem has quadrupled ...

GARLAND: Yes.

BRAUN: ... or quintupled. So, it would beg the question, are we putting enough resources to it or is it kind of lip service because we know it's become a big issue. I would advise maybe that might not be adequate given the magnitude of the current problem, that's still predicted to go up even by 50 percent more.

GARLAND: So that's a fair question Senator, of course, we didn't get what we asked for the last time. So, we're trying to be realistic about what we can ask for, but resources are not the only thing we're doing. We've also adopted a new asylum officer rule with DHS so that asylum decisions are made by the asylum officers, not by IJs, so the -- IJ is immigration judges, so they won't have to do that.

And then if there are denials, there'll be a streamlined process which should reduce the amount of time from current four years to six months. We also have a dedicated dockets in order to be able to better distribute the work, some work among our IJ. So it's a combination of things. We want more resources and we're trying to streamline the whole process and put more of the work.

BRAUN: I don't think ...

SHAHEEN: Thank you, Senator Braun.

BRAUN: OK. Thank you.

GARLAND: (Inaudible).

SHAHEEN: I know that Senator Moran and I both have a second round of questions that we would like to do. It's not clear that anyone else is interested. I don't know, Senator Braun if you also have another round, but mine are relatively brief. So I will go ahead.

You were discussing with Senator Capito the horrific issue of police being targeted and also suicides. As I'm sure you're aware, there's no comprehensive national data collection regarding police suicides. So in FYI 2020, we directed the Bureau of Justice Statistics to maintain a dataset and report on police suicides for federal state and local law enforcement. Unfortunately BJS has not moved forward on collecting this. We provided stronger directives as well as \$3 million for that data collection effort and the FYI 2021 bill, but still nothing.

So, were you aware of the delays with this project? And what we can we do to try and collect this data? Because it's, as you know, it's really critical to figuring out how do we -- how we respond. We need to have information. So we can think about what we can do to address what is becoming more and more of a challenge nationwide.

GARLAND: Well, I am aware. I understand that BJS will be submitting its report within the next couple of months. I'm not sure exactly. How many months is it?

(OFF-MIC)

GARLAND: In about eight weeks I'll have an update for you on this, on where they are on this.

SHAHEEN: Good. Well, I look forward to getting that and we've had sadly, we've had some high profile suicides in New Hampshire. And I also look forward to working with the department on what we can do to address the challenge of suicide within our law enforcement agencies.

So thank you. I'm pleased to hear that we should expect something soon.

Unfortunately I missed a couple of the discussions around what's happening with fentanyl because I had to step out, but I know that on Thursday, the administration released their national drug control strategy. Like so many states, New Hampshire is one that has had way too many overdose deaths because of fentanyl. And I wondered if you could give us a little insight into how resources are being shifted within the department to respond to that strategy. And how that might impact small states like New Hampshire, which are struggling with this challenge.

GARLAND: Yeah. So of course there -- we have been involved in the development of the strategy. And then most simple form, there's two sides to this. There's the enforcement against the drug trafficking organizations. And there's the health challenges for those who are addicted to try to get them off of the addiction to take care of them.

So, on the drug trafficking side, you know, we're asking for \$9.8 billion across DOJ to counter drug trafficking, the principal agency for us, of course is the DEA for 3.1 billion, with 100 -- which is \$102 million increase for counter drugs. Fentanyl is at the very top of the list of the -- of the -- of the concerns. When I was at the border, I saw the same problems that everybody else's reporting of these are very tiny pills. And as the DEA administrator makes clear, one pill can kill. And the odds, you know, it's like playing Russian roulette because some of these pills are overdose pills. So, that's -- that's an extraordinary part of what we're doing.

We've asked for money for marshals and for the U.S. Attorney's and for the FBI. The FBI is particularly targeting fentanyl and opioid trafficking on the Dark Web. And as we announced within the last two weeks, we took down the largest Dark Web drug marketplace to prevent the way in which some people are getting it, which is online at this point. So, there's a number of different things here. Criminal Division has money in the budget for the regional opium task -- opium strike forces. And then there are cops' grants under the COPS program for anti-heroin and anti-meth task forces.

So, that's on the -- on the enforcement side; on the overdose addiction side, we've asked for \$418 million for the Comprehensive Addiction and Recovery, the CARA Act grants. We've asked for \$190 million for the COSSAP program that's comprehensive opioid stimulant and substance abuse grants, and another 75 million for mental health and substance use grants, money for drug courts, 95 million for veteran's treatment courts, and for our Consumer Protection Branch, which tries to stop those who are oversubscribing and improperly over dispensing opioids. So, it's, you know, it's a two-pillar issue here for us. I can't think of anything more important or anything more tragic than what the fentanyl is doing to the American people.

SHAHEEN: Well, thank you. I certainly agree with that and hope that as the strategy is rolled out that considerable thought will be given to rural parts of the country and small states like New Hampshire, which may appear positively on lots of scales with respect to income level and resources, but in fact, have been very hard hit and really need help. Thank you very much.

Senator Moran?

MORAN: Chairwoman, thank you.

General, thank you for your presence today. Just a couple more questions, perhaps a follow-up to a couple of my colleagues' questions. But first of all, I'd like to start with Title 42 and your conversation with Senator Braun. I think your answer to him was more prospectively what might transpire and the need for additional resources in the future. I would like to highlight or focus on this year, the -- your budget request that's in front of us now. I know there's some uncertainty with a federal judge in New Orleans and a decision.

But it seems to me that, in my view, this is a pretty reckless decision. But the -- because the estimates are about 14,000 migrants could begin crossing the border per day after Title 42 ends on May the 23rd. That has to have enormous resource consequences for the federal government. I think Homeland Security is already talking about additional running out of money and needing additional dollars. ICE and border patrol, it's estimated, could be out of funds by July of this year.

What about the impact on DOJ components? Marshals, immigration courts, U.S. Attorney's Offices? Have you prepared any estimates? Has the department prepared estimates as to what the increasing expenditures may be this year, unaccounted for in your budget request?

GARLAND: I don't know that we have. I don't think we have those numbers now. But we can -- I think our staff can work with yours. There's no question that there will be an increase in U.S. Attorney resources needed along the southern border. We've hired, with respect to the IJs, as I was telling Senator Braun, we've hired all the way up under the current appropriation.

So, without more, we won't be able to increase the numbers. We are doing everything we can to streamline the system and to move people, the IJs, to the borders to assist there. But look, we're always happy for more money. And I'll be happy to have our staff speak with the subcommittee staff about that.

MORAN: Well, general, I mean, the crux of my conversations with you in -- earlier in today's hearing generally revolved around violent crime. And my view is that the -- the consequence of what the administration is determined to do with Section 42 can't be compensated for by removing resources going to fight violent crime. The border and violent crime are clearly related, significantly related. But you -- you -- and I remember visiting the border, and what stood out to me is that when we were housing the juveniles on the border, 40 percent of the Border Patrol agents were then in the housing business, not in the Border Patrol business. And I think there's an analogy there of something the Department of Justice must avoid, which is to take resources away from something that is a crisis already to address the crisis that is going to occur with the removal of 42. Does that make sense?

GARLAND: Yes, and I assure you we don't want to remove the money that we need to fight violent crime, to put it anywhere else.

MORAN: Has the department either volunteered or -- or been tasked with providing DOJ personnel to support DHS during this crisis?

GARLAND: I don't know what the...

MORAN: U.S. marshals.

GARLAND: Yeah. Well, yes. But to be clear, we don't do border patrolling none of our law enforcement is able to do -- is trained for that or anything else. The Bureau of Prisons is going to make buses available and for -- for the transfers at the border patrol needs assistance for and the Marshal Service is going to be providing additional deputy U.S. marshals to assist CBP at the border. But I don't want to overstate how much that is because our ability to make those contributions is not large.

MORAN: Thank you. Senator Shaheen visited with you about drugs in particular rural and -- and small states. You and I had a conversation probably as -- as you were being confirmed about rural law enforcement departments. And I asked you, and you agreed, and I think you've pursued making certain that rural agencies, small agencies, in particular, have a fair shot at getting the federal resources. Anything that you can do to update or anything that you would request of me to make that more less onerous some and more likely?

GARLAND: I think we -- we have been doing that we've made it easier to make -- for small law enforcement agencies, particularly the rural ones that you're speaking of, to make the applications for the grants. I will tell you that on my recent trip to U.S. Attorney's Offices to talk to law -- joint law enforcement task forces in Colorado and Louisiana, in particular, met with rural sheriffs and, you know, I wanted to make sure that these task forces were not only focused on the cities but were focused on helping the rural sheriffs as well. And in both of those circumstances, at least, we got considerable affirmation that that is working well, that, you know, this is the -- the rural law enforcement provides the boots on the ground who know that people in the community and the federal law enforcement, DEA, FBI, ATF, marshals are able to provide the technology and the skills sets necessary to, you know, find people who cross the border from one jurisdiction into another, and to bring them back. So, this is anecdotal. But my anecdotal work suggests very good cooperation in these joint task forces.

MORAN: Thank you. My -- my time is more than expired. I just would mention one other thing. And -- and perhaps there could be a follow-up by you or your staff. I'm surprised that the DOJ's only -- is only requesting -- your budget request is only an additional \$68.6 million to investigate and prosecute cybercrime, including 52 million at the FBI and 15 million at the U.S. Attorney's Office. The magnitude of the problem is -- can't -- I can't imagine can be addressed with that -- with that minimal or modest amount...

GARLAND: Oh. Maybe my numbers aren't -- look a little different than yours.

MORAN: All right.

GARLAND: Mine show up more than \$1.2 billion to address cybersecurity and cybercrime across the country. The increases are 15 million for 50 more U.S. attorneys to bring these cases for another \$88 million for additional 75 FBI personnel to bring these cases. And then for our own cybersecurity for the Justice Department and all the law enforcement agencies, 115 million. So, I'm not sure why the numbers are...

MORAN: No, I may have -- I may have misspoken or certainly, at minimum, was confusing. Those are the increases, not the total amount of over enacted levels.

GARLAND: No, we did get more money in -- in the -- in the recent supplemental because of Ukraine, I can promise you, we expect to ask for more money. And part of the money we're going to ask for is cyber defense. Because we're -- we're quite worried obviously about that other money, and there will be for -- I'm trying to decide whether to call it KleptoCapture or just our sanctions task force, but it's the KleptoCapture Task Force. So, we'll be asking for additional money. But you -- you did give us more money in the supplemental on this as well.

MORAN: General, thank you. Thank you for joining us. And I did agree with Senator Shaheen to -- to help her work together with her to see that we get the U.S. Attorney process back under a fashion in which we get some confirmations to conclude.

GARLAND: That would be great. Thank you.

SHAHEEN: Thank you, Senator Moran, on both counts.

Senator Graham?

GRAHAM: Thank you. Good morning. So, on -- on the Russia front, we had lunch. And I really appreciate what you and your team are doing. There's a lot on your plate. You know you wanted money in the supplemental. Is there any additional authority you need from Congress to be more aggressive in terms of going after the oligarchs and kleptocracy? Do you need any legal changes?

GARLAND: So, I thank you for asking about that. We have been very carefully examining that question. And I expect that there will be requests for legislative changes. These could go particularly in the way in which we do the forfeitures to make it easier for us to do the forfeitures. I think I mentioned earlier, also the possibility of taking money out of the forfeiture fund that we collect this way and sending it to Ukraine. So, there -- the answer is yes. And we are hard at work on it. And I expect very soon, within days, probably, that the administration will be able to represent some requests.

GRAHAM: Well, good. Mr. Attorney General, I think there would be a receptive audience to give you more money if that's what it needs to go after the people who have profited from destroying the Russian economy.

Along that line, there's articles in the paper about family members that have been used by Putin to -- to sort of launder money and talk of a girlfriend in Sweden. Do you know anything about an effort to bring sanctions against her?

GARLAND: The first answer is no, and the second answer, I guess, is if I did know, I wouldn't be able to...

GRAHAM: OK, fair enough.

GARLAND: This is a Treasury Department issue...

GRAHAM: Yeah, I just -- right. I just -- I would encourage you to put everything on the table.

When it comes to Afghanistan, have you been briefed recently about the possibility of terrorism emanating from Afghanistan into the United States? Is that threat level going up or down? Or do you know?

GARLAND: We are -- the details of, and I have to defer to a classified briefing.

GRAHAM: OK, all right. That's fair.

GARLAND: But I think it is fair to say that we are constantly concerned about the risk that ISIS-K will try to mount something in the United States, likewise, continuing with respect to al Qaeda. But the FBI is putting all its enormous amount of resources into preventing that as our as -- as is the intelligence community outside the United States.

GRAHAM: OK, well, let's stay in touch on that.

Sort of back to the border. This idea of taking Title 42 out of the toolbox in terms of a way to deal with illegal immigrant crossings. Do you believe that if Title 42 is repealed, there would be a surge at the border?

GARLAND: I think it's important for me to explain our role in this, and the Justice Department's only role is when the CDC makes its assessment as it did and asks us to appeal for us to determine whether that would be lawful. And the department concluded that CDC's...

GRAHAM: But you -- but you're in charge -- I'm sorry, go ahead, finish your thought.

GARLAND: Yeah. And so, that was so. I think, to answer the other part of your question, I think all intelligence suggests that there will be a large increase in the borders. Yes.

GRAHAM: Now, when it comes to drugs...

GARLAND: Migrants, yeah.

GRAHAM: Right. When it comes to drugs coming into the United States from the southern border in the last year, has that problem gotten better or worse?

GARLAND: I don't know what the numbers are. I mean, it is obviously the case that the transportation of fentanyl particularly has increased. Fentanyl is much easier -- it's much more compact, much smaller, and goes a longer way than the smugglers, particularly in the trucks, have developed ways to hide it even from our X rays. So, the problem of fentanyl crossing the border has definitely increased in a way that makes all of us very worried.

GRAHAM: OK. So, when it comes to your role in all this, if Title 42 is repealed and we get a surge, there's an increase in fentanyl coming across the border. And the leading cause of death for Americans from 18 to 45, they tell me, is fentanyl overdose. Do you think this budget and the game plan for the Biden administration is of -- will be effective against this increase?

GARLAND: I think that the budget we've asked for drug trafficking and drug interdiction, which is \$9.8 billion, is -- is a huge amount and enormous allocation of America's resources in this respect. But again, our job is different than the Department of Homeland Security's...

GRAHAM: No, I gotcha.

GARLAND: ... can't speak to their resources.

GRAHAM: ... and I'll try to wrap up here. But drug interdictions are dramatically less than they were in FY 2021. We had 913,000. That's how much drugs were -- were interdicted now we're at 340,000. It seems to be that interdiction is going down. So, my basic question is, do you consider the border in a state of crisis?

GARLAND: I think, as you rightly pointed out, there's going to be a lot of -- the intelligence suggests there'll be a lot of people and a lot more people migrating from the border.

GRAHAM: Well, the reason I mentioned that, as I believe it is, I believe that the amount of drugs coming across are unprecedented. The amount of people coming across the border illegally is unprecedented. Seems to be every trend line is getting worse. And to be honest with you, Mr. Attorney General, I think we need to go all-in, all-hands-on-deck of controlling our border. And do you believe that what we have in place through this budget and the system as a whole that we can expect to turn this around?

GARLAND: I think that the money -- with respect to the Justice Department, which is the only thing I can speak to, I think that if you give us the increased resources that we're asking for, we can do our job.

GRAHAM: OK. So, six months from now, we'll -- we'll see. Thank you.

SHAHEEN: Thank you, Senator Graham.

If there are no further questions this afternoon, senators can submit additional questions for the official hearing record. We request the department's responses within 30 days of receiving those. And the subcommittee stands in recess until Tuesday, May 3, when we will hold a hearing on the budget requests of NASA and the National Science Foundation. Thank you very much, Mr. Attorney General, and to all of your staff.

GARLAND: And thank you.

END

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# Senate Appropriations Committee, Commerce, Justice, Science, and Related Agencies Subcommittee hearing A Rev.,sked FINAL

June 10, 2021 9:16AM ET

TRANSCRIPT

June 09, 2021

COMMITTEE HEARING

SEN. JEANNE SHAHEEN, D-N.H.

SENATE APPROPRIATIONS COMMITTEE, COMMERCE, JUSTICE, SCIENCE, AND  
RELATED AGENCIES SUBCOMMITTEE HEARING A REVIEW OF THE PRESIDENT'S  
FISCAL YEAR 2022 FUNDING REQUEST FOR THE U.S. DEPARTMENT OF JUSTICE

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SENATE APPROPRIATIONS COMMITTEE, COMMERCE, JUSTICE, SCIENCE,  
AND RELATED AGENCIES SUBCOMMITTEE HEARING A REVIEW OF THE  
PRESIDENT'S FISCAL YEAR 2022 FUNDING REQUEST FOR THE U.S.  
DEPARTMENT OF JUSTICE

JUNE 9, 2021

SPEAKERS:

SEN. JEANNE SHAHEEN, D-N.H., CHAIR  
SEN. PATRICK J. LEAHY, D-VT.  
SEN. DIANNE FEINSTEIN, D-CALIF.  
SEN. JACK REED, D-R.I.  
SEN. CHRIS COONS, D-DEL.  
SEN. BRIAN SCHATZ, D-HAWAII  
SEN. JOE MANCHIN III, D-W.VA.  
SEN. CHRIS VAN HOLLEN, D-MD.  
SEN. JEFF MERKLEY, D-ORE.  
SEN. JERRY MORAN, R-KAN., RANKING MEMBER  
SEN. LISA MURKOWSKI, R-ALASKA  
SEN. SUSAN COLLINS, R-MAINE  
SEN. LINDSEY GRAHAM, R-S.C.  
SEN. JOHN BOOZMAN, R-ARK.  
SEN. SHELLEY MOORE CAPITO, R-W.VA.  
SEN. JOHN KENNEDY, R-LA.  
SEN. MIKE BRAUN, R-IND.  
SEN. BILL HAGERTY, R-TENN.  
SEN. RICHARD C. SHELBY, R-ALA., EX OFFICIO

WITNESSES:

MERRICK GARLAND, U.S. ATTORNEY GENERAL

SHAHEEN: Come to order.

Good afternoon, Mr. Attorney General, we're delighted to have you back. And I want to begin by congratulating you and the department on the recovery of much of the ransomware from the attack on the Colonial Pipeline. That was excellent work. And I know everybody in the country really appreciates it. And hopefully it sends a message to those groups out there that would continue to hack our industries and our government.

The complex and often difficult work of the department is vast. It ranges from national security investigations to operating a national prison system, management of billions in grants to state and local entities. And this year the president's fiscal year 2022 budget request for the Department of Justice is \$36 billion, which is nearly a 7 percent increase compared to fiscal year 2021, as enacted.

This budget provides a renewed focus in critically important areas like the request for increased funding at the Civil Rights Division and community relations services to provide for more attorneys and mediators. It also requests more funding and grant programs that will greatly assist our communities.

I was particularly pleased personally to see nearly double the resources for the Office on Violence Against Women and appreciate the steady support for grant programs that address substance abuse. While I was pleased to see healthy increases nearly across the board for the departments, agencies and programs, I did have some concerns, and I appreciated your -- our conversation yesterday, Mr. Attorney General. And I shared some of these with you.

The COVID-19 pandemic has affected everyone, but this has also been a dangerous time for those who have been locked at home with their abusers, away from their jobs, friends and family, schools, and other outside assistance like child services visits. Survivors experienced increased levels of violence, including the increased threat of lethality.

Agencies providing support to domestic violence, sexual assault, and child abuse victims had to quickly pivot to online or telephonic only services as we halted in person meetings. As pandemic restrictions are being lifted, it's expected that there will be even more of a demand for services like counseling and housing, and the Crime Victims Fund is often the primary source of Federal funding for thousands of victim service providers across the nation, including programs serving victims of domestic violence, sexual assault, child abuse and human trafficking.

But due to decreasing receipts in the fund this funding stream which provides critical services to survivors, is really in jeopardy. And while I appreciate the increases proposed in your budget request for discretionary grant programs, \$1 billion for the Office on Violence Against Women grants in particular, this budget also proposes a release of nearly \$2.7 billion from the fund without recognizing the reality of the dramatic drop in receipts to the fund. I'm hoping to hear your thoughts on the department's rationale for the spending level and the plan for bolstering the fund in the future.

This budget request proposes modest increases to the Department's law enforcement components with one exception, again, something we talked about, the Bureau of Prisons. I understand that there's a drop in the inmate population, but there's still a need for both specialized staffing like counselors and special education teachers to meet the needs of the First Step Act, as well as the unique medical needs of an aging prison population. The Department also needs to keep safety in mind. This Committee has continually requested that the Bureau of Prisons work toward curtailing the reliance of augmentation and over time. And we need reassurance that this request will allow continued hiring of corrections officers.

Senator Moran and I both have Federal prisons in our states and we hear very directly concerns from the corrections officers and employees there about staffing. In closing, I want to let the 115,000 career employees at the Department of Justice, including law enforcement personnel and attorneys, know how much their work to keep Americans safe from crime and terrorism is appreciated, especially during this last year through the COVID pandemic and here in the capital in response to the attack on January 6th.

In particular, I appreciate the ongoing investigations by the FBI into this event, and the peer counseling services that the Marshall service provided for the capital police. Mr. Attorney General, I look forward to your testimony and to the discussion today. I'm sure you will have a lot of interest from the members of this sub-Committee. And with that, I will turn over to my ranking member Senator Moran.

MORAN: Thank you very much, Senator Shaheen, thank you for convening this hearing. This continuous our practice of having the Attorney General before our sub-Committee and I appreciate General Garland accepting our invitation and I thank you for your outreach to me and my team since you became the General. Welcome the CGS subcommittee. I am pleased to hear and discuss with you today the President's budget request and the activities of the Department of Justice. Over the past few years I've had the opportunity to meet many special agents, correctional officers, intelligence analysts and attorneys that make up those hundred and 115,000 employees that Senator Shaheen referenced. I am impressed by the professionalism, their integrity, their commitment to the Department's mission and to our nation. The Department of Justice is requesting 35.3 billion in fiscal year 2022, this is an increase of 1.9 billion, or a 5.6% increase above fiscal year 2021 connected levels. The overwhelming bulk of this increase is dedicated to DOJ grant programs. While DOJ law enforcement agencies, the FBI, the DEA, the U.S. marshals service and ATF will only receive a 2% increase overall in a year in which the administration allowed agencies to request expansive budgets, the increase at the Drug Enforcement Agency is barely enough to cover inflation. I request -- the request will do nothing to reverse the 13% decline in the number special agent since 2010. The DEA is on the front lines against sophisticated and ruthless drug traffickers and cartels and the methamphetamine opioid crisis continues to wreak havoc and terrible damage on communities in Kansas and across the country, untroubled by the lack of attention given the DEA in this budget request.

Similarly the Department requests an increase of only \$40 million to bolster the FBI's cyber capabilities, this is less than one half of 1% of the FBI's budget. As recently observed by Chris Krebs, the former -- formally the government's top cybersecurity watchdog, we are in the midst of a ransomware pandemic, one that threatens our food supply, and one that ends that threatens our energy infrastructure. I question whether the Department is sufficiently investing in efforts to address these threats.

Finally, undisturbed by the proposals to dramatically expand the department's authority to regulate the ownership of firearms by law-abiding citizens, the administration's proposed repealing numerous provisions that were enacted in previous CGS bills that past with overwhelming bipartisan votes. In the context of other recent actions by the White House and the ATF, it is difficult to see these proposals as anything but a broad assault on the American's second right amendments, excuse me, American's secondment rights.

I'll say that sentence more clearly, in the context of other recent actions by the White House and the ATF, it is difficult to see these proposals as anything but a broad assault on American's second amendment rights. With that said, there are many areas of this budget request in which I believe we find agreement. I am pleased to see the Department has endorsed the new grant programs dedicated to improving police community relations that Senator Shaheen and I worked together to create last year.

These programs include support for de-escalation training, training on responding to individuals facing mental health crisis and support for local agencies to assist secure accreditation. Attorney General Garland, I look forward to working with you and with Senator Shaheen and my colleagues on the sub-Committee as we work to craft the fiscal year 2022 appropriations for the Department of Justice. And again I thank you for your presence.

SHAHEEN: Thank you very much, Senator Moran. I will now turn it over to you, Mr. Attorney General, for your opening statement. And I don't think your mic is on.

GARLAND: Good afternoon, Chairwoman Shaheen, Ranking Member Moran and distinguished members of the sub-Committee. Thank you for the opportunity appear before you on behalf of the Department of Justice to discuss the president's budget for FY 2022. Exactly 90 days ago, I took the oath of office as Attorney General.

On that day I spoke to all the Justice Department employees and I told them that all of us, "are united by our commitment to protecting our country as our oath says from all enemies foreign and domestic, and by our commitment to enforcing our countries laws and to ensuring the civil rights and civil liberties of our people."

These commitments reflect the Justice Department's mission, and the Department's mission is reflected in our FY 2022 budget request. Our two top funding priorities are as follows. The first is keeping our country and our communities safe. This priority has three main elements. The first element is countering foreign and domestic terrorism. The Justice Department remains acutely aware of the threat posed by foreign terrorist organizations. This requires that we never take our eyes off the risk of another devastating attack on our country. At the same time, the United States has seen a troubling rise in domestic violence extremists.

As the country's lead law enforcement agency, the Department of Justice is devoted to a broad scale approach to countering the threat of both foreign and domestic terrorists. The FY 2022 budget request includes \$9.4 billion - I'm sorry, I skipped a page. Our budget request includes more than \$1.5 billion for our foreign and domestic counterterrorism efforts, an increase of more than 12 percent above the FY 2021 inactive level.

Keeping our country and community safe also requires countering cyber threats from foreign and domestic actors whether nation states, terrorist, or criminals. Something that each of the other two of you have already mentioned in your openings. The budget's request for \$1.1 billion, would be the largest increase in cyber resources for the Justice Department in more than a decade.

Finally, keeping our country and community safe requires protecting them from the recent increase in major violent crimes, and gun violence. The Department's recently announced violent crime reduction strategy harnesses all our relevant departmental components to that end.

The FY 2022 budget request includes \$9.4 billion, an increase of nearly 9 percent to support the Justice Department's law enforcement resources and grant programs. This includes law enforcement efforts to fight violent crime, and grants that fund community violence intervention programs, improve background checks, and red-flag laws.

The Department's other top priority is reflecting - is protecting civil rights and civil liberties. The president's FY 2022 budget requests more than \$300 million for the Department's civil rights efforts. This includes the largest investment in a decade to reinvigorate the Justice Department's civil rights components, and the largest ever increase in our civil rights division totally more than 15 percent.

Our request reflects the reality that almost 65 years after its creation, the division's work remains vital to protecting the American dream by safeguarding voting rights, prosecuting hate crimes, and addressing unlawful discrimination.

This additional support for our civil rights work would also allow us to reestablish the office for access to justice, and would provide a much needed lifeline for our community relations service which helps local communities mediate conflicts peacefully. The budget request also provides new funding for the environment and natural resources division to advance environmental justice and to tackle climate change.

Promoting public trust between communities and law enforcement is critical both to making our community safe, and to ensuring the protection of civil rights. Our budget request for \$1.3 billion, an increase of \$379.8 million would provide grants to support reforms necessary for promoting that trust.

The FY 2022 budget also provides funding for other extraordinarily important grant programs. It proposes an investment of \$1 billion to support violence against women programs at DOJ, nearly twice the FY 2021 level.

It proposes to almost double the programs that provide training and technical assistance for state, local, tribal, and territorial law enforcement and responding to hate and bias motivated crimes. And we are also focused on reducing the immigration court backlog.

A 21 percent budget increase to the Executive Office for Immigration Review will help us onboard 100 new immigration judges to reduce the nearly 1.3 million cases that were pending before the immigration courts when we took office.

I ask for your support for our budget, as the Justice Department continues its commitment to adhering to the rule of law, to keeping our country and communities safe, and to protecting civil rights and civil liberties. Thank you.

SHAHEEN: Thank you very much. We will have five minute rounds for questions, and we will take senators in order of arrival. So I will begin, followed by Ranking Member.

As I said in my opening statement, Attorney General, I'm very concerned about what happens to the level of support in the crime victims fund. Senator Leahy and I sent you a letter in March on this issue, after your confirmation as Attorney General, and I know we're both - as is the Committee, very interested in the steps that the Department has taken to address the level of funding in the crime victims fund, and how you see that moving forward?

GARLAND: So I appreciate both the letter and the questions that you and I were able to discuss yesterday. I have a personal commitment to that fund. That's the fund that provided the money for Oklahoma City victims, so I know full well how important it is to everyone whose a victim of this kind of crime - or of any crime.

So, I have looked into it and I have been given - (inaudible) to understand (ph) that given the receipts we expect to bring in this year and through FY '22, at the end of 2022 we should have about \$400 million balance that is, we do not expect the fund to run out and we expect to have a balance.

Now, I also agree with you, we ought to build up that fund further. So we are going to be looking in the Department of Justice into ways to do that. I understand there are some legislation pending, possibly adding additional crimes that would feed into the fund.

And of course we'll look into also other issues that you raised about taking certain kinds of pleas and taking certain kinds of delayed pleas that might not result in restitution. The most important thing in these matters (ph) is for there to be sufficient restitution for the victims.

SHAHEEN: And as the result of the pandemic, have there been more requests for assistance from the fund over this last year? Do you know the answer to that?

GARLAND: I don't know the answer. All I do know is that we expect that the receipts that we have already to be sufficient to provide the \$400 million, but I don't know the answer -that's a very good question.

SHAHEEN: Perhaps you could find that out and share that with the Committee, that would be interesting to know.

GARLAND: Absolutely, my staff will get back to yours.

SHAHEEN: The other question we discussed in our phone conversation was the request for the Bureau of Prisons, and as you know, the practice known as augmentation is something that this Committee has been concerned about for a while. It's certainly something I hear about from prison employees in New Hampshire. And so, can you tell us what the Department is doing to address and curtain augmentation?

GARLAND: Yes. I'll have to admit that that was a word I had never heard of before I became Attorney General ...

SHAHEEN: Yeah, me either.

GARLAND: - OK. Fair enough. So, I have looked at this and I am of course concerned about this. It's protection of both the staff and the inmates require that we have the right number of - of staff in - in the Bureau of Prisons. So what I understand is that we are currently at 95 percent of authorized positions filled.

So there will always be a percentage because of attrition, etc, but they have made dramatic increases in the number of hires to the - to the point that BOP hired 900 net new staff, accounting for attrition, since last May and - since the previous May, and 281 net new hires in this past month alone.

It will likely always be the case what we - that we won't get up to the full numbers, but the idea with augmentation is that people who switch into guard work or protective work are - have already been framed in that. We're not going to be sending people who are without the training.

We also expect, of course, that with the number of inmates reduced, that we will have less of a problem of the kind that you describe.

SHAHEEN: I certainly hope so. And can you - I know that vaccinations have been a concern in - with some of the employees and corrections officers in our prison in New Hampshire. Do you have any idea if that's been an issue in other prisons around the country?

GARLAND: Yes, so it certainly was a - an issue everywhere around the country, not only in prisons but within community as a whole.

SHAHEEN: Right.

GARLAND: And I've looked into that as well. So with respect to inmates, 95 percent have been offered vaccines. Now unfortunately, as with the community as a whole, not everyone accepts, but as of - as of right now, at least 52 percent have received at least one vaccine dose.

With respect to the Bureau Prison staff, 100 percent have been offered vaccines, 51 percent are fully vaccinated, and another 661 have received, in addition to that, have received their first vaccine dose. So we're in the right direction here, but there is the same problem that there is in the community at large, some resistance to this, which frankly I do not understand.

I rushed out to get my vaccine as soon it was - as it was available. But right now, we have enough vaccines for everybody who is willing to take it.

SHAHEEN: And is - is there any consideration around trying to better engage with staff, and I assume inmates but particularly staff, around why this is important and the difference that it can make for them?

GARLAND: Absolutely. Education on - on this issue, as - as with the CDC's general effort to educate the general population, is ongoing and we don't want this to be a problem, obviously, for the protection of our staff and for our inmates. And so we're going to do everything we can to induce people, incentivize people, to take the vaccines.

SHAHEEN: Thank you very much. Senator Moran?

MORAN: Thank you, Senator Shaheen. General, shortly after the president's inauguration, the president issued an executive order on the renewal of DOJ contracts with privately operated criminal detention facilities. I believe that applying this executive order to the U.S. Marshals Service is a serious mistake.

Unlike the Bureau of Prisons, which I assume the administration really was directing their attention to, I'm not sure of that of course, the Marshals don't own any of their own facilities. They exclusively contract with the board - the Bureau of Prisons, state and local prisons, and jails and private facilities.

Closing private facilities will inevitably require federal prisoners to be housed at facilities further from courthouses at which their cases are being considered. There are ethical and constitutional concerns with moving prisoner's potentially far distances from their families and legal counsel.

However, we are now also learning that this policy will cost hundreds of millions of dollars for U.S. taxpayers. The department's budget request estimates the implementation of the executive order will cost the U.S. Marshals Service \$75 million in additional transportation housing cost and that - and that is just for fiscal year 2020.

So my question, general, is has the department consulted with the White House about those costs, and what I think is unintended consequences of applying the executive order to the U.S. Marshals Service?

GARLAND: Well, thank you. Thank you for that - your question. There is a principle involved here, leaving aside the specifics of the issue you're raising with the Marshals, the administration's policy, and I believe to be the correct policy, is that the prison is government work, is a government function.

And it is contravened sometimes the due process clause to be keeping people in - in privately owned areas, which are not responsive to all of the requirements of federal law and which are not as easy for us to supervise as they would be if they were federal employees.

Now that said, you put your finger on the - on the correct distinction, which is its relatively easy for us to have done this with respect to the Bureau of Prisons because there was already Bureau of Prison space with respect to marshals. As you point out, this was contracted space. So we have a plan of phasing the Marshals part of this in over a somewhat longer period.

The money is to move them from private space to state or local government space so that we still are satisfying our concern that this be a government function. You're right about the amount, but this is the amount necessary to transfer the people from one to the other. I don't think this will be a problem in the longer run.

I also completely agree with you that it's important to have the particularly detention areas near where somebody lives. It's important from the point of view of family connections and continuing connections to the community, and it's also important from the point of view of having appropriate legal representation and - and lawyers - defense lawyers not having to travel so far that they're unable to do that. So your concerns are my concerns.

MORAN: I appreciate hearing - I appreciate hearing that, and I would ask if you could share with me the outline of the plan for moving forward as it regard - in regard to the Marshals.

GARLAND: All right. My staff will get back to yours. Yes sir.

MORAN: Thank - thank you, sir. The tragic death of Judge Esther Salas last July impressed on me and others the extraordinary threats that our federal judges face. Last year, I worked to provide additional funding to the U.S. Marshals Service for judicial security operations. The department's budget this year, it's a - for fiscal year 2022 includes a program increase of \$33.4 million to further enhance martial judicial security programs.

I would expect you to be very knowledgeable of the circumstances that judge's face in regard to their security, and I expect you to have a well informed perspective on this. General Garland, what can you tell us, the committee, about the proposed program increases and the need for additional investment in federal judge security?

GARLAND: Well, you - you have pointed your finger at the right person. I was on the judicial security committee for many years when I was a judge, and I was also chair of the executive committee, which oversees the other committee's including the security committee. So I delved very deeply into this problem with respect to judicial security, and - and it is a big problem and is a dangerous problem. And as we have a rise in domestic violent extremism, it is a serious threat.

We are -- this amount of money, we believe will enable us to upgrade the home security systems and to provide Marshals intelligence for better tracking threats against judges. And you can be assured I take this one also quite personally.

MORAN: Well, thank you for that. Thank you for recognizing the importance of security. From my perspective, it's certainly security for the judges and their families but it's also a threat against our -- our system of government. Judges need to be safe and secure and the threats need to be addressed seriously, both protection and -- and ultimate prosecution of perpetrators.

GARLAND: This is exactly right. You can't have a democracy with due process of law if judges are afraid to make the decisions they...

(CROSSTALK)

MORAN: I almost said democracy, general. But every time I start to say democracy, I remember a republic and it confuses me as to how I'm supposed to phrase these questions, So thank you for saying that we live in a democracy.

GARLAND: A republic is a representative democracy, I think that's -- that's what Hamilton meant.

MORAN: Thank you for the clarification. My time is expired. I would indicate to you -- both to the chairman and to you, general, that I also am the ranking member of the Senate Committee on Veterans' Affairs. It's meeting this afternoon. You'll see me here intermittently. It's not my lack of interest in what you have to say. Thank you.

SHAHEEN: Thank you very much, Senator Moran. I should have announced at the beginning that the witness has requested a brief recess about 3:15 p.m., so we will take a short recess at 3:15 p.m. at the -- his request.

And when I said we were going to take people in order of arrival, I lied. I'm actually going to take the chairman of the committee next, Senator Leahy, as is our custom. Senator?

LEAHY: Thank you and I -- I -- I appreciate that. And as you recall, I did the same thing before I was chairman, but with others. We -- it's good to -- good to see you, attorney general.

And I agree, Senator Moran, that we want to have security for our courts and -- and judicial personnel. Just as I hope that we will finally get all the answers of what happened on January 6th so we'll have security of our -- really the symbol of our democracy, the U.S. Capitol -- the thousands of people who -- the thousands of people who -- who work here, the men and women, and the tourists and everybody else. And I hope that we'll finally get the answers to everything behind that.

Now, attorney general, in the past few weeks your department has endured some highly controversial positions taken by the former president's Justice Department. Many have expressed concerns about that.

For example, the Trump DOJ removed from the state court, the federal court a -- a defamation charge involving an assault allegation against Donald Trump by a woman. They released a DOLC memo on obstruction of justice conclusions adjoined (ph). How is this coming about? Are these criticisms valid? Or what do you say about them?

GARLAND: Senator, I'm -- I'm grateful for you asking me the question. And I know all -- I know about the criticisms.

The job of the Justice Department in making decisions of law is not to back any administration, previous or present; our job is to represent the American people. And our job in doing so is to ensure adherence to the rule of law, which is a fundamental requirement of a democracy, or a republic, or a representative democracy.

And the essence of the rule of law is what I said when I accepted the nomination for attorney general. It is that like cases be treated alike, that they're not be one rule for Democrats and another for Republicans. That there not be one rule for friends and another for foes. Now, is not always easy to apply that rule.

Sometimes it means that we have to make a decision about the law that we would never have made and that we strongly disagree with as a matter of policy. But in every case, the job of the Justice Department is to make the best judgment it can as to what the law requires.

Now, matters of policy, of course, are completely different and that explains why we have reversed this -- policies of the previous administration many times over the last three months and why we have initiated our own policies that are distinctly different from those of the previous administration.

But this is an important issue, the distinction between law and policy. And it's at the center of ensuring adherence to the rule of law, for which the Justice Department stands.

LEAHY: Well, and as you know, you and I have had discussions on other matters, I have been first to say that there may be areas where we agree or disagree with you but follow the law. And, which is basically what I said to every attorney general, republican or democratic administrations since I was here.

I'm worried about the -- another area. Our right to vote is under assault in dozens of states, I can't believe some of the -- thinking back in the old Jim Crow era to see some of the bills come up and trying to find a path reintroduce and enact the bipartisan John Lewis Voting Rights Advancement Act.

I want to restore the department's preclearance powers but that could take time. In the meantime, you now have Kristin Houck (ph), the helm of the civil rights division. What's the Justice Department doing today to combat voter suppression schemes across the country?

GARLAND: Well, as I said with respect to our budget request, we're asking for a considerable expansion in the number of -- in the amount of money for the civil rights division and -- which will allow us to hire more attorneys.

But on the specific question, we are reviewing, as you would expect, allegations that come in with respect to voting. Voting is a fundamental element of our democracy. In fact, without it -- without the right to vote none of the other rights follow.

And it was the founding purpose of the Justice Department during reconstruction to ensure the right to vote of newly freed African Americans who were under militant attack to prevent them from voting.

And the Voting Rights Act in the '60s reaffirmed that -- that concern and that is very much present on our mind now.

LEAHY: Thank you. And I think you could expect that Senator Shaheen and I will continue on the crime victims fund to -- to work with you. You should also feel free if things come up and it does not appear that the funds are coming the way you thought let the two of us know.

GARLAND: We will, thank you.

LEAHY: Thank you.

SHAHEEN: Thank you, Senator Leahy.

Senator Capito.

CAPITO: Thank you, Madam Chair. And thank you Mr. Attorney General for being with us today. I'm -- I'm the ranking member on the Senate Appropriations Committee for Homeland Security and I've followed closely CISA's work to respond to and mitigate cyber breaches and the ransomware attacks.

FBI Director Wray recently compared current ransomware threat to the threats of 9/11 and in -- and there is some debate from both Congress and the White House as to whether or not to ban outright -- to ban private companies from paying ransoms when they become victims of cyberattacks.

As you know this is an issue that we not just face here in the United States but globally. So, I asked the same question yesterday wondering from the secretary of state and I'd like to hear your perspective.

Are you working with our allies diplomatically to try, you know, in -- in your -- as chief law enforcement officer in other countries to try to figure out how we A) stop this, B) prevent it from happening again, and where you see this going in the next -- near future?

GARLAND: I'll start with the bottom question, which is not a happy answer.

CAPITO: Yes.

GARLAND: Which is this is getting worse and worse and we have to do everything we possibly can here. This is a very, very serious threat, you know, we saw what can happen with respect to a pipeline, and with respect to a food processing company.

You can imagine what could happen if we had multiple attacks at the same time on more -- even more fundamental infrastructure. So, I'm very worried about it and that -- and so is the administration, and that's why we've asked for such a large increase in our cyber budget.

That's also why the administration has stood up a full process on this question in the National Security Council and that's why the Justice Department has stood up its own cybersecurity task force and particularly focusing on ransomware. And as you acknowledged, we've already had on pretty significant success, on significant success is not really going to be enough.

This has to be a constant, you know, just a constant focus and in each future year, it's going to require more money. We think we have the right amount of money now but fair warning we're going to be coming back for more money after this. On the other question, specific question you asked about diplomatic, yes.

So, one advantage or one advantage of a sad situation of the pandemic is that I'm able to meet with attorneys general and home secretaries without having to travel to many different countries.

And in my first few weeks, that is what I did and I met with our -- our four closest allies and I also met with the EU, each of the UE members. And I also communicated by telephone separately with a number of our allies on this exact -- on this question among others. So, this is top of mind, I assure you.

CAPITO: Well, we certainly want to be extremely supportive of you and your efforts of -- of the Homeland Security as well and the Department of State because I think what you've told us is what we all feel, that we are very, very concerned about this. I'm going to switch topics here.

Since the passage of the Fix NICS Act, which I was a proud co-sponsor of, we've seen continuous increases in the number of background checks run through the NICS system.

In fact, this year we've seen record-breaking numbers of checks run with some months reaching over four million, those background checks are done in Senator Manchin and mine, our home state of West Virginia and we're very proud of the effort that -- that we're -- we're doing there and in a way, we're contributing.

What steps will your department take to support the NICS system and ensure that we are enforcing background check laws that are already on the books and what are the funding needs to -- from time to time we've really upped the funding here is that -- some -- I was going to look through your thing to see if there was something about that in your -- in your budget request, and I would invite you to visit the facility in West Virginia. It's quite something to see.

GARLAND: Just trying to get the number for the NICS system. So, first of all, you're absolutely right. This is essential to the fight against violent crime and against gun violence. We have to keep guns away from people who are legally not permitted to have guns, which is the purpose of this system. And also, of course, it helps us to -- when a bad event occurs, to find if somebody has violated the law in obtaining a gun.

So, included in the anti-gun violence programs are state and local grants of 421 million, including NICS, which is an increase in 62 percent. So your concern about this is the same as our concern.

CAPITO: Thank you.

GARLAND: We couldn't be more in-line.

CAPITO: Thank you so much.

Madam Chair?

SHAHEEN: Thank you, Senator Capito.

Senator Manchin, we're going to do West Virginia all at the same time.

MANCHIN: All the way. All the way. Thank you. Thank you, Madam Chairman.

And thank you, Attorney General, for your service. Intelligence reports prior to January 6th riot warned Capitol Police that supporters of President Trump were actively promoting violence and targeting Congress itself. The Department of Homeland Security specifically notified Capitol Police that they had identified a map of the Capitol's tunnel system in online messages between "Stop the Steal" supporters, and the FBI field office in Norfolk also warned the Capitol Police.

But, however, the Capitol Police inspector general also found a lack of consensus among key officials about whether these reports indicated specific known threats. As you both know, it's impossible to prepare to respond unless -- without much reliable information as possible.

So my question would be, in your position so far, do you feel both your departments have been sufficiently receiving and relaying threat information with each of the other federal departments? We seem to have a disconnect, and sometimes that's very costly, as we've seen. And then a follow-up would be, how do we increase the coordination within the federal government to respond more quickly?

GARLAND: Well, as you can imagine, since I think I was nominated on January 7th, that January 6th is very sharply engraved on my mind. I think the Department of Homeland Security and the Department of Justice, which are the two principal departments for this purpose, are very well lashed up now. We have joint task forces along this whole area. And the National Security Council has engaged both of us in the involvement -- in the assessment of the domestic violent extremist threat. So, you know, there will always be problems, but I'm reasonably confident that we won't have a problem like that again. Now, with respect to the Capitol Police and our relationship with them, to be honest, I'm not -- I don't know enough to know about that. This has certainly raised that issue. And I will go back again and speak with the FBI director on exactly how that has been done. But I think there's no excuse at this point for that kind of clear connection not to be made.

MANCHIN: Do you know how many people have been arrested to date?

GARLAND: Do I know how many?

MANCHIN: Do you all have a figure on that?

GARLAND: Like off the top of my head, within some margin of error, it's about 456, something like that.

MANCHIN: And how -- do you...

GARLAND: There will be many -- there will be more. I don't want -- I was about to say many...

MANCHIN: Sure.

GARLAND: ... I don't want to say that. You know, we have a very good method of finding the additional people who were inside the Capitol, and I would call it crowdsourcing, thanks to the omnipresent videos that everybody took, and even private citizens have posted.

(CROSSTALK)

MANCHIN: How many prosecutions have we had so far?

GARLAND: We've charged 400 people.

MANCHIN: Charged 400 people. Has anyone been sentenced?

(CROSSTALK)

GARLAND: I don't think anybody has been sentenced. I think there has been one or two pleas so far. And the other ones are all pending.

MANCHIN: On March 29th, 2020, Coronavirus Aid, Relief, and Economic Security, or the CARES Act, was signed into law, provided \$2 trillion economic relief to help Americans cope with the economic impact. Among other things, the CARES Act originally authorized up to 349 billion in forgivable loans to small businesses for job retention, certain other expenses through PPP, Payroll Protection Program. While the PPP loans helped millions of struggling businesses to stay afloat during the pandemic, it also provided a unique opportunity for creative fraudsters to take advantage of federal government's generous terms.

So I would go down quickly to say I think you know where I'm going with this, and if you can explain to me how we are doing on that, because I've -- some of the numbers I have seen has been unbelievable, 250 million in taxpayer subsidized loans, funds, given to potentially ineligible recipients. Then we had -- according to a report, there were 1.9 million in pending SBA transactions made to accounts outside the United States. Another 3,000 suspicious transactions worth \$73 million that were flagged by financial institutions.

Can you give me an update of where we are on that?

GARLAND: Yes. So this is a circumstance that I saw even coming in, even before the reports. It seemed obvious that my last go-round in the Justice Department had to do with health care fraud being one of the top issues. And we stood up a task force which was very good at integrating information from all the relevant inspectors general and from the agencies, together with our law enforcement and our prosecutors, that time we didn't have big data to make these evaluations, now we do, and so we have stood up, and I've issued a memorandum on standing up a COVID fraud task force, which has been stood up.

It involves all of the relevant inspector generals from the different agencies cooperating with each other. It involves all of our relevant law enforcement agencies on both the federal side -- components on both the federal side and the civil side, and our U.S. attorney's offices. And in our request there's a \$41.3 million request for new funding for the U.S. Attorney Office for the Criminal Division and for the Civil Division for -- specifically for COVID fraud.

So I would say, and maybe this is a bad metaphor, but this is a target-rich environment.

MANCHIN: Yes.

GARLAND: There is a lot of that fraud that happened in the past that we're going to go after. You've already probably seen our reports of major take-downs, with respect. And we're hoping that this will be a deterrent of future fraud.

MANCHIN: The money that -- just to finish up real quick, the money that you all receive, retract back for the United States, does that go to the Treasury or does it go back into the circulation so we can get it to the people that need it the most?

GARLAND: That's a -- my question is, I guess following up with Senator Shaheen's question, does that go into the crime victims fund, might be a good way to ask that question.

Do we know the answer?

MANCHIN: Can -- maybe you can -- that's OK, if you don't have it, you can just...

GARLAND: We'll look into that. But...

MANCHIN: Please do.

GARLAND: But the bottom line is before it even goes into that fund, the first thing is restitution. And restitution to the specific companies or individuals who were defrauded, if it's a private fraud.

MANCHIN: Right.

GARLAND: Yes.

MANCHIN: Right. Thank you, sir.

GARLAND: Yes.

SHAHEEN: Thank you, Senator Manchin.

And, Mr. Attorney General, we're having a little trouble hearing you. Maybe you could pull the mike closer.

GARLAND: Closer?

SHAHEEN: You have to really speak directly into the mike.

GARLAND: Oh, I'm sorry. Do you want me to start all over?

(LAUGHTER)

SHAHEEN: Maybe not. All right. Thank you.

Senator Collins.

COLLINS: Thank you, Madame Chairman. Welcome Mr. Attorney General. The website ProPublica has indicated that it has "obtained a vast trove of IRS data on the tax returns of thousands of the nation's wealthiest people." The publication it is not disclosing how it obtained the data, so we do not know whether the source for these materials was outside of the Federal government or within the Federal government.

But we can be certain of one thing, these highly confidential personal documents were obtained illegally. Any taxpayer should be guaranteed that their privacy will be protected when they provide information and file their returns with the IRS. As saw during Watergate, there is an incredible danger to private citizens and the credibility of the Federal government if information is used for political or other purposes.

Anything short of the highest degree of privacy protection for taxpayer's information could cause them to be far less willing to provide the information that is required by the IRS for full compliance. Does the Department of Justice have any information about the origin of this breach, and what steps is the Department taking to investigate, identify and apprehend those responsible?

GARLAND: Senator, I take this as seriously as you do. I very well remember what President Nixon did in the Watergate period, the creation of enemies lists and the punishment of people who were reviewing our tax returns. This is an extremely serious matter, people are entitled obviously to the great -- privacy with respect to their tax returns. To be honest I know nothing more than the about this than what I read in the ProPublica piece which I also read and was astonished.

What I did read in that piece was at the IR - Director at the IRS was on it and he said that their inspectors were working on it and I am sure that that means it will be referred to the Justice Department and when I - this was on my list of things to raise after I finish preparing for this hearing and I promise you will be at the top of my list.

COLLINS: Thank you. I am glad to hear that. The second issue that I want to raise with you are reports that I am hearing from police departments all over the country that they are having great difficulties in retaining and recruiting police officers. And in every single case where I have talked to police officers and police chiefs, they say that it is due to the fact that there's been this vilification of law enforcement rather than trying to strengthen and improve practices of police departments and that the ill-conceived "Defund the Police" movement has also led to significant problems.

And this isn't just in our largest cities, we're seeing difficulties with recruitment and retention in rural Maine. For example, Van Buren Maine, a small community in northern Maine, has completely disbanded its police department because they cannot hire officers.

The town of Fort Kent, Maine; which has about 4,000 people and last year responded to 5,000 different calls. It can't get enough officers and is considering disbanding its -- its department as well. And at the same time in large cities, not fortunately in Maine, we're seeing an increase in crime, a substantial increase.

Do you personally believe that efforts to vilify rather than improve our police departments, including the defund the police movement have contributed to these recruitment and retention problems?

GARLAND: Senator, no one could look at the Justice Department budget that we put in front of you and think that the Justice Department supports defunding the police. We've asked for -- with respect to our grant programs, \$651 million for the cops program, which is a \$265 million increase.

This includes \$537 million specifically for cops hiring, which is a \$300 million increase. Likewise for the Byrne Jag Grants we've asked for \$513.5 million, which is a \$29.5 million increase.

So no, as President Biden has made absolutely clear, we are not asking to defund the police. A lot of what we are doing in addition to supporting hiring is trying to support trust building between communities and police departments.

Not to vilify anyone but as I said in previous testimony, for police to do their work well and safely, they need to have the trust of the community and the community needs to have trust in the police department that their civil rights will be protected.

This includes accountability for police officers who violate a constitution rights but it does not have anything to do with vilifying whole departments or anything like that. The Justice Department has responsibility under the statutes provided by congress to pursue investigations where we believe constitutional rights have been violated and we have announced I think to those.

And we also have responsibility to do pattern on practice investigations to determine whether there are police departments that have a pattern or practice of unconstitutional behavior. But that is a completely different question then -- then where we are that you're asking about.

And I want to make clear that these are two -- you can hold both of these in your hands at the same time and not be inconsistent with each other.

COLLINS: But let me be very clear. I was not suggesting --

GARLAND: I know you weren't.

COLLINS: -- that the administration or the president or you were part of this effort but the fact is it exists and I know your efforts are to improve policing and I'm a strong supporter of the cops program.

In fact, I worked on it with the president years ago and the Byrne Justice Department grants. But I was trying to get your personal opinion whether this effort, which you're not a part of is contributing to the recruitment and the retention problems that are being experienced all over the country.

GARLAND: Yes, I have to say to answer that question requires data that I just don't have. It requires data that I just don't have -- it requires all kinds of survey data and I -- and I you know, anecdotally I've heard some things like you're saying but I really don't have any data that I can confidently give you an answer to.

SHAHEEN: Thank you, Senator Collins. Before we go to Senator Reed, Senator Moran has -- would like to make a correction for the record.

MORAN: Yes, I think -- thank you, Chairman. I think in my question to -- to the attorney general, I indicated the death of Judge Esther Salas rather than the death of her son.

GARLAND: Yes.

MORAN: And if I did that I want to make clear that -- I would like the record to reflect that has occurred and have that stated in the factual basis.

SHAHEEN: Thank you very much, Senator. We will make sure that that correction is made. Senator Reed.

REED: Thank you, Madam Chairman. And thank you, Attorney General, for not only being here but for your service. Recently we've observed an alarming increase of incidents on air craft -- regulated commercial air craft regulated by the FAA.

In fact, 2,500 reports this year, about 20 times the average number. Some of them involving very violent attacks on flight attendants and also indications that TSA agents are also being subject to abuse, to insult and to worse. Can you discuss what DOJ's involvement may be in these cases?

Are you prioritizing what incidents should be taken directly into the federal attorney for prosecution or are you allowing some to remain with the FAA.

GARLAND: This is a good question as to which I don't know a complete answer. So assaults on these -- I read the same about the assaults on those planes. They are extraordinarily dangerous even if not intended to bring the plane down. You can imagine the kind of pandemonium on planes that we've seen in some videos that people have taken that can cause an incredible dangerous accident.

So I -- we take them extremely seriously. The states have authority over these matters. To be honest, I'm not sure whether it's the state they fly over or the state they end on. It's the conflicts of law question, which I think I may have skipped that course in law school but there is clearly a state authority here.

And I think most of these cases end up that way. But it is also a federal crime to commit an assault like that on an interstate commerce of the kind that we're talking about.

I will go back and look more carefully to see what -- whether TSA or FAA has referred and what they referred to -- referred us to here. But these strike me not as things for the FAA. These are not administrative matters, these are criminal matters.

REED: Thank you. You indicated quite accurately that are major threats, a domestic violent extremist, a home grown violent extremist and international extremist and they're all using to coordinate social media encrypted transmissions, what tools and authorities or resources you need to combat these terrorist groups and their use of social media and other forms of encryption coordination?

GARLAND: Well, that's a very -- also a very hard question. I think you're very good at asking me very hard questions. The problem is severe because people talking on social media can incite people up to a radicalization. This is what we all -- we fear and we've seen this in the -- in the foreign terrorist circumstance where people are watching jihadist websites that -- that eventually move them and much more swiftly than ever before from mere involvement and interest to radicalization to action. We expect that the same is likely to occur with respect to domestic violent extremism, although likely of different websites, but - but maybe not even.

And this is a matter of serious concern. So where there is a threat of violence, where we have a predication, a reasonable articulation, the Bureau can go in and look at what's happening and find out what it can find out. And, of course, as this escalates, the Bureau has other mechanisms of doing the same.

The reason I say it's a hard question is what I'm sure you know, we - it's the First Amendment, and the question is what do we do earlier stages of this where there isn't yet violence, there's the kind of talk that maybe could lead to it, and this is a very hard problem. And I know that the judiciary committee and this committee have asked us to think about what more tools we might need and we are thinking about that.

And certainly our experience on the January 6 investigation will help us make those decisions, but in every case we have to worry about the First Amendment issue on the other side and not making it difficult for people to say things, even hateful things, because even that kind of speech is protected.

REED: I guess a suggestion, you don't have to comment, is there might be an opportunity for Information Literacy Commission that could design programs for people to become more aware of the disinformation rather than what they believe is true information, and that could be an effective way to counter some of these problems. But thank you very much, general.

GARLAND: I appreciate that suggestion.

SHAHEEN: Thank you, Senator Reed. Senator Boozman.

BOOZMAN: Thank you, Madam Chair, and thank you so much for being here. We do appreciate your - your work. The - I've got - I'm like Senator Moran, I've got to run in a second and go to Veterans Affairs, but I did want to follow-up on Senator Collins question in regard to, you know, the seriousness of the breach at the IRS.

We've had other breaches there in the past. The - you know, it could've been somebody there, it could've been a hack, we don't know what's happened at all. They're talking about significantly lowering the threshold, the reporting threshold, \$10,000 significantly lower than that.

Based on the fact that we have had problems in the past regarding hacking issues - other issues, and then two, the pipeline issue, the packing plant issue, does it seem like a good idea to centralize that much information in an agency?

Right now, spread out, you know, if - if you have an interest or the IRS has an interest they can contact the local bike, but to pour through so much data and then be responsible for that data and - and be able to secure that, that is a huge job for the federal government, and one that we don't do a very good job of. So could you comment on that?

GARLAND: Yes. Just particularly on - to respond on the suspicious transaction reports, I - I believe, and I will come back if I'm wrong about this, I think we have a recent prosecution of somebody who leaked the information with respect to - to that matter, so it gives you an idea of how seriously we take this.

Now on the bigger question, look, this is the conundrum that the digital age has brought us to. We can distribute information and keep it in - on paper, and - and that's the perfect solution to hacking if I'm - if there's never a connection with the Internet.

But it also means we can't use the information in a way that's useful for tracking terrorist behavior, for tracking child - child exploitation, for tracking espionage, for tracking bribery, and that's why we have the special transaction reports so that it makes it easier for us, maybe even possible for us to do that.

And I know that - I - I think I saw that the Treasury Department is suggesting something like that for crypto currency, which may also be essential as an ability to continue this particularly since we saw with the ransomware circumstance. That's what - the way in which it's being paid. So - and my view would be we need to strengthen our cyber security, maybe keep systems separate, but the idea of distributing them in a way that we can't access them in some central way, that means it would be very difficult for us to make it the kind of use that - that you want us, you know, to put to this very important information.

So it's a hot - it's a - the committee here is filled with hot, hard questions. This is a really hard question, and it puts two different principles, which are dear to us, in conflict sometimes.

BOOZMAN: Right, well thank you very much. Thank you, Madam Chair.

SHAHEEN: Thank you, Senator Boozman. Senator Feinstein.

FEINSTEIN: Thank you, Madam Chairman. I am very interested in hate crimes, and there has been a very sharp increase in violence committed against Asian Americans since the pandemic began. One database included over two - 2,800 reports of anti-Asian discrimination in the last nine months of 2020.

And the Center for the Study of Hate and Extremism at California State University San Bernardino found that Asian hate crimes increased by approximately 150 percent last year. So the question is what is the department doing to address these hate crimes against Asian Americans, and how can we help support your efforts?

GARLAND: Well, I appreciate the question. One of the very first acts I took after becoming Attorney General -- I'm sorry, after becoming Attorney General was to ask for a third -- direct a 30 day review of this problem with respect to Asian Americans and Pacific Islanders, and that -- that report has come back to me, and we have announced the establishment of a -- of a hate crime task force.

As that report was coming back, the Congress passed the Hate Crimes Act -- the two hate crimes act which were -- were combined, which had a number of requests for the department to do. We have accomplished all of the things that Congress asked us to do.

And -- and we put out an announcement, we have established a hate crime -- hate crimes coordinator in the Associate Attorney General's office, it'll be the Deputy Associate Attorney General, whose job will be to coordinate civil and criminal side law enforcement in this area because most of the hate crime law enforcement comes from the civil rights division, which is on our -- under the -- under the supervision of the associate Attorney General.

We have established in the civil rights division the chief of the -- of the criminal civil rights section as the, I would say, expeditors, the best word. This was a requirement of the Hate Crimes Act to make sure that the U.S. Attorney's Offices are, and the department as a whole, are expediting a response to hate crimes.

We are establishing -- we have established a language service in the department, because this is obviously a very important part of that. And we have in this particular, in this request for hate crimes response trading grants at \$9 million, which is an increase of \$4 million over F.Y. '22.

So we take this very seriously. And you are absolutely right.

FEINSTEIN: Good.

GARLAND: It is a serious increase in hate crimes across the board.

FEINSTEIN: Good. As you probably know, the Center for the Study of Hate and Extremists that California State University, San Bernardino found that Asian hate crimes have increased by 150 percent in this country, and I believe we can't tolerate this. So whatever we can do to be helpful to you, I would be most happy to participate in.

Let me move to the next question. Justice introduced model legislation for extreme risk laws. The model is very similar to legislation that I've introduced, which is called the Extreme Risk Protection Order Act, which would give grants to states to help them create and implement extreme risk laws.

I think these are really important tools that empower family members and law enforcement to ask courts to keep guns out of the hands of dangerous people found to be dangerous. We have 19 states and the District of Columbia that have extreme risk laws now on the books.

Can you explain why the department, I agree with this, believes extreme risk laws can help reduce gun violence? And what would you tell us today about the need to pass legislation on this issue?

GARLAND: Right, so this actually, we just did this, what you're referring to I think was just maybe four days ago or three days ago, I signed a memorandum in connection with the other rulemaking with respect to stabilizing our braces, the beginning of this week.

These are model extreme risk laws the states can adopt. We have in this budget \$40 million of grants, which can be used by states for this purpose. The idea is, as you eloquently put it, is to make sure that people who are an extreme risk either to themselves or to their loved ones have the guns taken away temporarily, while the matters adjudicated. And if a judge concludes, that is a risk to keep the gun away for some specific amount of time, as specified in the state statutes.

There are, you know, as we sadly know, gun deaths that can occur when people in extremists mental issues for themselves or personal crises, put the gun on themselves, or put the gun on somebody else. And we want to alleviate that cause of a terrible tragedy by a vote protecting the gun owners due process rights, but protecting the potential community victims from the risk of death.

FEINSTEIN: Well, thank you very much. I'm very concerned about this. I come from a big state and it's many different people. I've seen a database included over 2,800 reports of anti-Asian discrimination in the last nine months of 2020.

So I would hope that your Department of Justice would be particularly sensitive right now about anti-Asian hate crimes. Because I think the increase of 150% has been quite dramatic.

GARLAND: I quite agree with you. And that's why I've spoken to a number of Pacific Islanders and Asian American groups already.

FEINSTEIN: Good. And if there's anything we can do to be helpful, very, my time's up. Yes.

SHAHEEN: Thank you very much, Senator Feinstein. We will take Senator Coons then we'll take a brief break, because we think we have a couple of members on their way back, Senator Coons.

COONS: Great, thank you, Chairwoman Shaheen. Thank you, Attorney General Garland for joining us again and for your regular engagement with the Senate.

In Delaware, the Newcastle County Police Department and the Christiana Care Health System have jointly set up a behavioral health unit that pairs mental health professionals with local law enforcement to respond to individuals going through a mental health crisis.

And I've heard from elected officials, community advocates, and law enforcement leaders across the country, they would welcome these kind of co-responder models that allow for a more appropriately trained and equipped response to individuals going through mental health crisis.

Can you speak to the value of these models, the impact they have in benefiting communities and improving the police Community Relations and what sorts of investments you see making in providing better access to these kinds of models going forward?

GARLAND: You're exactly right. Sometimes we have crises that arise because the wrong people are responding. Police officers often are not equipped, in terms of their experience, and even their equipment to deal with a person who's having a problem is really not a criminal or violence problem. But a question of instability.

And these can get out of hand and police officers would like to have the assistance of mental health professionals in the co-responder, a circumstance that you're talking about. And this is better for the community and in the end for the person in crisis. So we couldn't agree more.

Our funding includes a request for grants \$40 million, which is a \$5 million increase for mental health collaborations, and \$10 million, which is a \$2.5 million increase for training to improve police base responses to people with mental illness.

COONS: Do you think that's a sufficient investment given the scope of the need, has there been a thorough assessment of how many different communities and how many different public health serving agencies and law enforcement agencies might benefit from this kind of model?

GARLAND: OK, so I think this, like, you know, many others have these kind of innovative interventions are works in progress, and we have to evaluate them to see how they work. We want an evidence based approach that that does work. And so this is, I think, a sufficient amount for us to get seriously involved in this. And then next year, maybe I'll come back and ask for more money.

COONS: My hometown of Wilmington, Delaware, and many other cities, both large and small across the country has seen a significant rise in violent crime in recent years. I note the proposal of \$100 million for a new Community Violence Intervention initiative. We have a group Violence Intervention program to try and interrupt violence before it accelerates in Wilmington.

I'm wondering if you can describe it any more detail how you intend to implement this program, and what sort of coordination it might include with other federal agencies.

GARLAND: Yeah, so this is a new program. And it has several possible approaches. I think that the also justice programs will have to figure out exactly what the best way, what kind of incentives to give and for what kind of programs to give grants to.

It's everything from proven violence interrupters, people who have been out on the street trying to get gangs to conciliator to put down their guns to a hospital based intervention, where the interrupters go because of somebody who has been shot and is in the hospital and try to conciliate and persuade them not to take vengeance and persuade their relatives not to take vengeance.

So there are a series of these different methods of interruption. And many I've been very successful. So, you know, as with all of our programs, we're going to try and give grants to those that have been shown successful, and then to use those as examples to hold out for the -- for others to fulfill and when they meet those requirements to get the grants as well.

COONS: Thank you. I look forward to following up with you. And with the Office of Justice Programs around these initiatives as well as initiatives to expand access to body worn cameras in state and local law enforcement. I was encouraged to see the announcement should mandate federal law enforcement to wear body worn cameras and I was encouraged to see a significant increase in the request for the victims of child abuse act programming and a new task force to combat trafficking and corruption in the northern triangle in Mexico and look forward to working with you on all these different aspects of your budget proposal. Thank you.

GARLAND: We appreciate it.

COONS: Thank you,

SHAHEEN: Thank you, Senator Coons. As I announced we will have a 10-minute break. But if I could just ask Senator Murkowski has requested a clarification on an earlier question before we break because she's not able to say, so Senator Murkowski.

MURKOWSKI: Madam Chairman, thank you and Mr. Attorney General, thank you for the work that you are doing and your responses today. When Senator Shaheen had led her questioning with regards to the VOCA funds, and a concern that we are seeing additional demand on those funds. Certainly in Alaska, we are -- the increase to two calls to the sexual assault hotlines have increased by 52 percent. Since the beginning of the pandemic shelters are experiencing overwhelming amounts of strain. And the 30 some odd organizations that we have in our state are facing this 35 percent cut to their VOCA funds, which is absolutely frightening. Frightening everybody.

But as we look at the President's budget with a 2.65 billion cap for the funds, in '19, F.Y. '19, Congress put the VOCA cap at 3.5 billion. We've talked, we understand the structural issues relating to the deposit fund, we're going to -- we're trying to address this through legislation. That's absolutely what has to happen. But in any case, what we have is this decreasing cap is going to impact the effect on the ground for victim services, if not for this year, then absolutely for next year.

So you have you have said to the chairman, that there was a \$400 million surplus that you anticipate at the end of the year. The way I understand...

GARLAND: At the end of '22.

MURKOWSKI: At the end of '22.

GARLAND: Yeah.

MURKOWSKI: Excuse me, yes, at the end of '22. But if I understand what we have coming into the fund versus the outlays that will result in decreases, if again, not necessarily this year, next year, the next fiscal year.

So I just want to make sure that we're not operating under the assumption that, in fact, we're going to be OK in this next fiscal year, because right now, I think all the victims services in my state, and I think Senator Shaheen and yours are just desperately afraid of these cuts that are coming.

And so I want to understand whether or not we are -- whether there is any flexibility with additional funding that could be used to supplement so we don't have this hit again, at a really difficult time for so many that are providing these important and vital services to victims of domestic violence, sexual assault and the like.

GARLAND: I completely agree that the bigger this fund the better, because serve, in many ways and on ending demand and appropriately so. What -- Just to clarify what I said about the money, as of April, we've collected sufficient receipts to cover all the way through F.Y. '22, F.Y. '21, and '22, we expect to end this fiscal year with \$3 billion, which will cover the \$2.6 billion requests. That's where my \$400 million net at the end of that time comes from.

Obviously, we would like to have a higher amount at the end, by the way we are now that would require taking less money out of the fund, which is the opposite of what you want.

MURKOWSKI: Right, that's not where we want to go.

GARLAND: Right.

MURKOWSKI: Yeah.

GARLAND: Right. So I think I'm not an expert budget here. But it seems to me that the -- what we need is to be able to put more money into this fun, which means expanding -- the main expanding the kind of primes that flow into it. But also, you know, that the prosecutors in the Justice Department need to take more attention to getting restitution that goes into this fund, and not to be satisfied with other kinds of, you know, please, for example. So I don't -- that's hard to say that as an across the board a question. But that's the best I can do at this point.

MURKOWSKI: I think we're all trying to get to the same place...

GARLAND: Yeah.

MURKOWSKI: ... which is we don't want to see these significant cuts to our victims services.

GARLAND: Right.

MURKOWSKI: We've got to address legislatively I think the construct of the VOCA funds will work on that. But...

GARLAND: Let me ask my team to work with you.

MURKOWSKI: I would I would approach. Thank you.

GARLAND: I think this is very important.

MURKOWSKI: Thank you very much. Appreciate your attention and thank you for letting me jump in before the break.

SHAHEEN: Thank you, Senator Murkowski. As we promised the witness will now take a 10 minute break.

GARLAND: Thank you.

SHAHEEN: I will now call the CGIS hearing back to order and call on Senator Graham.

GRAHAM: Thank you very much Madam Chairman. Can you hear me?

GARLAND: I can. Thank you.

GRAHAM: Welcome Mr. Attorney General. I think Senator Coons was mentioning some ideas about having some resources outside of traditional policing to deal with mental health issues, then y'all have a discussion about that I think.

GARLAND: Yes.

GRAHAM: Count me in, I'd like to help in that regard.

GARLAND: Thank you.

GRAHAM: So last year, the Senate Judiciary Committee, I was the chairman, reported a bill out of the committee 13 denied that waive sovereign immunity allowing Americans to sue China. In federal court, you have to prove causation and all the normal rules have to be followed for damage done by the Coronavirus. You support that idea?

GARLAND: I have to say, I'm not familiar with the bill. I'm sorry.

GRAHAM: I will send it to you.

GARLAND: OK.

GRAHAM: I would urge you to get that with me sooner rather than later. Do you agree with me if in fact, this was a lab leak? The source of the virus came out of a Chinese lab because of negligence. China should pay somebody?

GARLAND: I really don't -- I don't know enough about this. And though I know that the government is beginning to evaluate that, reevaluating...

GRAHAM: I'm just giving you hypothetical. If the Chinese government...

GARLAND: Yes.

GRAHAM: ... lied about the origins of the Coronavirus. And it in fact came from a lab leak in Wuhan which they denied. Do you agree that they should be held accountable and compensate the world in some fashion for the damage they've done?

GARLAND: I think this is a diplomatic issue and an issue for the State Department and the executive branch...

GRAHAM: But you don't say legal?

GARLAND: I think the way you put it, which you asked whether they should compensate the world in some manner, I think that...

GRAHAM: OK.

GARLAND: ... it doesn't fit.

GRAHAM: That can be diplomatic. But what we allow victims of 9/11 to sue Saudi Arabia and other countries...

GARLAND: Yes.

GRAHAM: ... for their part, any part they may have played in 9/11.

GARLAND: Yeah.

GRAHAM: Do you think that model should be allowed for China?

GARLAND: Again, I think this is a policy question for the diplomats. I'm just the poor lawyer.

GRAHAM: OK. All right. So do you believe there's a crime wave in the United States regarding violent crime?

GARLAND: I think there's a serious significant rise in violent -- major violent crime beginning last year. Yes, I do.

GRAHAM: Thank you, that shortened up these questions. You're dead right. Atlanta's 59 percent increase in homicides, Chicago, 56, Houston, 42, Portland, 800 percent, LA County 127 percent, Atlanta 63 percent. The numbers are pretty staggering.

What do you think is caused then?

GARLAND: I know better having lived through several crime waves, as both of us have and both of us know that figuring out exactly what's caused a particularly a...

GRAHAM: Is it a high or...

GARLAND: Crime once...

GRAHAM: Is it possible that some of the rhetoric about defunding the police and actually reducing police capability has created some of the problems?

GARLAND: Just don't know. There are a lot of factors here. Of course, the biggest one being the pandemic. And I just don't know at this point how to decide...

GRAHAM: So do you think the pandemics more of a root cause than declaring war on the police?

GARLAND: No, sir, I don't know. I honestly don't know.

GRAHAM: Do you think that's a possibility that we have gone too far and reducing police capability? Is that a possibility?

GARLAND: I think I gave the answer to Senator Collins and I keep the same one, which I think it is. This justice department, this administration does not believe in defunding the police.

GRAHAM: OK.

GARLAND: We believe in supporting the police. We also believe that community policing is very important and developing trust between the community and the police department...

GRAHAM: Yeah.

GARLAND: ... is essential to stop violent crime. And we also think that includes holding police accountable...

GRAHAM: Yes.

GARLAND: ... who violate...

GRAHAM: I agree with all that.

GARLAND: I know you do. I know.

GRAHAM: We want to work with you on police reform. But I guess it's pretty obvious to me that there's been a push back to this defunding the police, it hasn't worked, that the effort to marginalize police forces has gone too far. And I think we're seeing the results of that if we don't change our rhetoric in some parts, countries don't get worse.

Let's talk a little bit about immigration.

In the end of 2020, we had an historic 45-year low of illegal crossings into this country. Now we have historic highs of illegal crossings in this country. What do you think happened in the last six months?

GARLAND: Well, once again, you're asking me a question that I'm no expert on.

GRAHAM: OK.

GARLAND: But there was a pandemic. And that makes a difference in this area. I'm not willing to describe the difference to the pandemic. I don't know the answer, right. There are a lot of factors going on here.

GRAHAM: How many asylum claim that laws do we have?

GARLAND: We have 1.5 million backlogs in the immigration courts as of the day I took off.

GRAHAM: Would you agree with me that the asylum system in this country is completely broken?

GARLAND: I would agree that the immigration system as a whole is broken.

GRAHAM: I'm talking about asylum in general.

GARLAND: I don't know where -- we're evaluating how we deal with asylum now.

GRAHAM: Well, how can you have a system where you have 1.5 million backlog in cases, you now have a catch and release program regarding asylum. It seems to me that is beyond broken. Do you agree that we should revisit ourselves and policies?

GARLAND: I think we need to get the backlog down that the backlog is from the preceding years, not from the new administration, I totally agree we need to get the backlog down, we need to streamline our processes.

GRAHAM: I don't mean to belabor the point, but the backlogs, not the only problem, you're going to have a million and a half more if you don't change catch and release. Thank you very much.

SHAHEEN: Thank you, Senator Graham. I have -- I would like to do a second round. And I know Senator Moran is interested in that as well.

It's recently been disclosed that the previous administration's Justice Department sees phone records of reporters with the New York Times and The Washington Post, and the phone and e-mail logs for CNN reporter.

This is particularly salient for me having just returned from Ukraine and Georgia where I met with reporters from Radio Free Europe and Radio Liberty, who talks about the challenges they are facing in Belarus and Russia, because of efforts to threaten reporters so that they won't do their jobs and actually provide information to the public.

So, I understand that the department is no longer going to see journalist records when conducting leak investigations. And I would just ask, do you commit to ensuring freedom of the press? And can you tell us what policies are in place or you expect to be in place to ensure that there are no additional efforts to seize phone and e-mail records of journalists unless they're involved in legitimate criminal concern?

GARLAND: So this is a very important issue. The President has made clear his view about the First Amendment and it coincides with mine, it's vital to the functioning of our democracy. And that extends to the need for journalists to be able to go about their work disclosing wrongdoing, an error in the government. That's part of how you get faith in a democracy is by having that level of transparency.

What you were talking about, these were decisions that were made under a set of policies that have lasted. I don't -- I'm not quite casting blame. What I want to be clear is these were under a set of policies that have existed for decades that continue continuously with each new administration ratcheted up greater protections.

But going forward, we have adopted a policy, which is the most protective of journalists ability to do their jobs in history. And it is, as you describe, that we will not use a compulsory process in leak investigations to require reporters to provide information about their sources, when they're doing their job as reporters, that is going to be our policy.

I'm meeting with people within the department. It's been reported that I'll be meeting with people outside the department. So I'll leave that aside for right now, in order to figure out but that is the basic policy, and that will be the issued in some kind of memorandum obviously from me.

You have a good point, which is in developing this policy. We have to distinguish between reporters doing their jobs and reporters committing crimes unrelated to the leaking, unrelated to the leaking. So there are some definitional questions, but I think they are quite resolvable, and that's going to be our tasks over the next few weeks.

SHAHEEN: Well, thank you very much. I want to follow up on Senator Graham's questions about the backlog in our immigration courts. And I have a question first about that, which is more clarification, because I was surprised there wasn't a budget request for the legal orientation program. As you know, this is a program that provides basic legal information and explanations of court proceedings, to those who are going through immigration courts.

Can you tell me if the department plans to continue this program and what the funding level will be?

GARLAND: Yeah. Included in our request for the Executive Office of Immigration review, \$22.5 million would continue to support that offices legal orientation program, which LLPS which I take is what you're referring to. And in addition, we've requested 15 million. There'll be \$15 million for new pilot provide access to legal representation for immigrant children.

So you'll have our commitment that we're going to be continuing this process up to the -- obviously up to the amount of money that -- that's provided by the Congress.

SHAHEEN: Well, thank you very much having worked with Senator Moran several years ago, when there was an effort within the Department of Justice to eliminate that program. I think it's very important that it continue.

Given that the immigration courts are not independent, like the federal court system, there are a lot of organizations like the Federal Bar Association who have argued that they should become Article I courts. Do you support leaving them the way they are? Or would you advocate to make them a separate system?

GARLAND: There's an issue that I haven't thought about respectability for the way in which to structure (ph) this. I do think that the court should be as independent as possible. I understand that was the reason in the Homeland Security Act, that they were taken away from INS, Immigration Naturalization Service, which went to Homeland Security. And the courts were left with the Justice Department. At one point, they were all together at the Justice Department. And that was an effort for security, for independence.

And I believe that immigration judges should be left alone to do their work. And they are, of course subject to review.

The question of whether they should be Article I courts and completely independent is really a question for the Congress. I would be happy to think more about this, but obviously, that would create even more independence. And so I just leave it at that issue of congressional policy.

SHAHEEN: Well, as you and Senator Graham, in your back and forth, it's very clear that we have backlog...

GARLAND: Yes.

SHAHEEN: ... and our immigration courts, and even though Congress has provided more money in the last few years, at least since I've been on the Appropriations Committee, we still have seen that backlog grow, not diminish.

So I'm not sure what the answer is. But I do wonder if we need a fundamentally different approach. We also need immigration reform, as you pointed out. So thank you very much. Senator Moran.

GARLAND: As long as we're making corrections I've been advised that kept saying that 1.5 million case backlog is actually 1.3 million.

SHAHEEN: Yes. That's the number I have to. Thank you for that clarification. Senator Moran.

MORAN: Attorney General, you're very good at making me feel comfortable.

GARLAND: Well, I'll give you another correction. I think as soon as I said, Hamilton, I think it was probably Madison, but I will check the Federalist paper that I was thinking about to get back to you on that.

SHAHEEN: That's OK. Nobody's going to know the answer to that.

GARLAND: Unfortunately, I will. I feel bad about this. I should know the answer to that.

MORAN: General, just a couple more questions, and I think Senator Shaheen and I will conclude this hearing. I was on the border. This is perhaps a bit of an immigration issue, but more drugs, crime, cartels issue. So I was in McAllen, Texas, not too many weeks ago, to see the nature of what's going on at the border, including the detention of juveniles and listening to border patrol agents.

But I also met with law enforcement officials, federal law enforcement officials to talk about the aspect of our borders and their necessity of them being secure for purposes of avoiding crime, criminal activities, drug trafficking, narcotics, sexual abuse.

And I just am really concerned about the Mexican cartels. I think they are probably our greatest drug trafficking threat. They continue to supply most of the cocaine, methamphetamines, heroin, fentanyl. I'm particularly concerned by the flood of methamphetamines. We have -- the Senate spends lots of time on a variety of drugs. And I sometimes think methamphetamines is overlooked as we moved on to others, other drugs, but 74 percent of all the drug seizures in Kansas are methamphetamine.

And my question is, can you describe the threat that you see posed by Mexican cartels in particular, the cross border trafficking of drugs? But I also would expand that question to see if you have any comments, we can provide any knowledge about the terrorism aspect or the Espionage aspect of crossing the borders related to the cartels.

My understanding is the Chinese come to the United States, really every opportunity to steal our secrets to ingrain themselves into our economy, our science, our universities. Is there a knowledge about court cartels in relationship with Chinese who come to infiltrate and steal our secrets and work at NASA and SpaceX and universities. Are you aware of that?

GARLAND: So I'm not aware in any way mean to suggest it's not true. I just don't have any information. I think this is the kind of thing we'll have to get staffed, possibly from the FBI to come back to you. The connection that I do know about is that precursor chemicals coming from China are shipped to Mexico and then made into the narcotics that have been shipped into the United States. So there is that connection, and I think that's pretty well known. But this -- the question you're asking, I just don't know the answer.

MORAN: Perhaps my question which was overly wordy, but is really a statement about the need for the Department of Justice, federal law enforcement in all arenas to increase the efforts at the border to diminish the role that the cartels Mexican cartels play in the United States.

I think this -- they are extraordinarily dangerous. They have lethal weaponry, sometimes exceeds what the Mexican military has, as we've seen in some of the shootouts in Mexico.

Have you had -- I can't remember, I think you talked about visiting with Attorney Generals from other countries...

GARLAND: With Mexico.

MORAN: Does that include Mexico? Yes, yes. And a sense of cooperation.

GARLAND: Yes. He agreed on the need for cooperation. We have a very good talk. Yes.

MORAN: OK. My second, I think final question Madam Chair, is before your confirmation, you and I spoke a few days before, we spoke about the need to ensure that small and rural law enforcement agencies have a fair shot at DOJ grants.

GARLAND: Right.

MORAN: And in Kansas, a smaller, I just want to highlight this for you. In Kansas, a smaller rural department, they only have a handful, two or three or four sworn officers, they don't have the resources to hire a professional grant writer. They can't simply take 1/5 of their force off the beat without putting public safety at risk. I would continue to believe it's essential that the department consider ways to ensure that small and rural law enforcement agencies have access to the funding opportunities that the Department of Justice provides.

And so General Garland, I expect you would answer this question yes. But will you commit to making it a priority within the Office of Justice Programs, and the cop's office to promote access for small rural agencies?

GARLAND: Yes. And as I -- as I told you in our conversation, it's obvious to me the problem, you point out, you have five officers, you don't have anybody who runs the grant making department or the grant application department. We also have the same problem with respect to small community organizations that don't have the ability to do funding. And I think some of the funds we have available now for OJP is to make it more easily -- easy access to applications online. And it seems to me obvious that we should be able to transfer that kind of ability for police departments as well, if that's not already in train, but I will look into it for you.

MORAN: Thank you. I think when we met on that day, I asked you if you would agree to come to Kansas, and you said yes, but if I say yes to you, I have to say yes to every other senator who asked me. So when no one is listening, I'm going to ask you again.

GARLAND: That's fair. The Assistant Attorney General for the Office of the Justice Management division pointed out that money, I was thinking of \$7 million for rural law enforcement for this purpose.

MORAN: Yes, sir. Thank you very much.

GARLAND: Yes.

SHAHEEN: Thank you, Senator Moran. Senator Van Hollen.

VAN HOLLEN: Thank you, Madam Chairman, Ranking Member Moran and Mr. Attorney General, great to see you.

First of all, I support many of the provisions in your budget and appreciate its overall framework. I especially want to mention the Community Violence Intervention initiative. I look forward to working with you and the department as you implement that.

As you know, there are some programs that have been more successful than others. And I think you would agree we want to focus on best practices. And I'd like to share with you in the department, some that have been successful, involving more, if you would agree to that.

GARLAND: Absolutely.

VAN HOLLEN: You've also talked about some funding to help state and local jurisdictions that want to move forward with red flag...

GARLAND: Yeah.

VAN HOLLEN: ... a provisions or gun licensing laws permit to purchase. John's Hopkins University has studied this area carefully, especially with respect to permit to purchase requirements. And I hope you will consider putting out a model proposal for local jurisdictions that are interested for permit to purchase, as I think you're suggesting you're going to do for the red flag laws, is that something that you would consider doing?

GARLAND: Definitely we did put out the red flag laws just this week or earlier this week. But that's definitely something to consider. And I hadn't thought about in terms of a model permit to purchase...

VAN HOLLEN: In fact, I've introduced legislation here. We'd love to work with you to see if that's something writing.

GARLAND: Thank you.

VAN HOLLEN: A good model going forward.

GARLAND: Yeah.

VAN HOLLEN: You've probably seen some of the recent stories regarding accountability in federal law enforcement officers. And a little over a year ago, I wrote to the FBI regarding implementation of the use of force database.

The Washington Post reported that in 2019, only 27 percent of law enforcement agencies contributed information through that process covering about 41 percent of officers. You know, in my discussions with law enforcement, they all agree that more transparency and more accountability is good for everybody.

And I'm assuming you agree with that premise?

GARLAND: Yes.

VAN HOLLEN: So, we did recently see that, while we encourage local jurisdictions to provide this information, and it is voluntary, that not all federal law enforcement agencies provide this information. I hope you would agree that we should lead by example. And I would just like to get your commitment here today that all federal law enforcement agencies that come under yours -- your jurisdiction will report this data.

GARLAND: I didn't know we weren't reporting. So I'll -- this follows the same problem with respect to body worn cameras, when I first got in and learned that we were not wearing them. I asked why not. And I directed our Deputy Attorney General to resolve that issue. And very prompt, and this week, they -- we did resolve that issue.

So let me put that to her as well. And this will require a meeting of the various law enforcement agencies. And we'll get on that.

VAN HOLLEN: I appreciate that. And it may not -- it may also include federal law enforcement agencies under the jurisdiction of other departments. But as the attorney general, if you could just agree that you'll reach out to your other agents...

GARLAND: You want to authorize me as a demand.

VAN HOLLEN: I would like to deputize you to do that.

GARLAND: (Inaudible) that would be great.

VAN HOLLEN: But I do think I, you know, I think many of us clearly wrongly assume that since the federal government was asking state and worried restrictions that we already were doing within the federal government. So I think -- I think it's really important we do. You mentioned the body cameras, let's make sure we do it with the data as well.

The other thing I do want to mention we're having ongoing discussions between the House and Senate Democrats and Republicans about the George Floyd Justice and Policing Act, but one of the things that I think is we see on a bipartisan basis, is there are many times when somebody calls 911, where a law enforcement response is neither justified or appropriate.

Many cases, as you begin to look at 911 calls involve mental health situations, where there's no crime involved, substance use situations and, you know, I know you've proposed better training for police in terms of behavioral health, that's fine.

But a number of us have proposed creating alternative responses...

GARLAND: Yeah.

VAN HOLLEN: ... to those many, many cases that involve mental health situations and allow law enforcement therefore, to focus on those situations where, you know, a poor use of force, you know, maybe require.

Could you work with us to create those alternative response mechanisms?

GARLAND: Yes, the answer is yes. I completely agree with you that alternative response mechanisms can decrease the risk of a violent confrontation, when none is necessary and lead to death. We do have \$40 million in this budget for the purpose of mental health collaborations and another 10 million for training a police based response to people with mental illness. So we have a basis for grants for this kind of program.

VAN HOLLEN: I appreciate that. Congresswoman Karen Bass and I have introduced legislation last, last Congress, we're going to reintroduce it shortly. So we look forward to working with you. Thank you. Thank you, Ms. Chairperson.

SHAHEEN: Thank you, Senator Van Hollen. We'll go to Senator Braun, next. I'm sorry, Senator Hagerty, he beat you here.

HAGERTY: I'll stay long enough, don't worry.

BRAUN: Thank you, Madam Chair. Mr. Attorney General, over the past three months, I think the FBI has done a diligent job and pursuing those that breach the capital, including to the extensive, I think, visiting their homes, tracking phone records and all of that.

Curious, we had that incident occur. That was horrific with anybody. But what has been done in a similar light, where you look at Antifa, BLM activists that were, you know, active in so many places across the country. This past summer has that same diligence and effort been applied there? And I think when you add up the number of individuals involved, it would be a lot. I'm just curious to see what your approach is there. And what your thinking is there.

GARLAND: OK, I think that's a perfectly fair question. The events that you're talking about all took place long before I was at the Justice Department, so I was not there for the purpose of organizing the response, supervising the response, figuring out how many people should be involved in the response.

As far as I understand the in terms of the arrests and investigations, they're largely completed. And long before I got before I got here.

The January 6 event occurred the day I think before my nomination is and as you can imagine, it's burned on my mind. And I promised that I would focus on that. And I have. And so I can account for my behavior. But with respect to the way we organized the January 6 response, I am sure that the Justice Department last summer was equally diligent with respect to the response to the civil unrest. At that time, I'm advised that we've spent \$48 million on FBI, (inaudible) and ATF during that period, not counting the January 6 expenditure.

BRAUN: In other words, related to their riots and so forth across the country.

GARLAND: I'm going to describe it as civil unrest because...

BRAUN: OK.

GARLAND: ... it has a legal connotation, but yeah.

BRAUN: And then how many arrests were made?

GARLAND: I don't I don't know the answer.

BRAUN: If you could...

GARLAND: Absolutely.

BRAUN: ... sent back to our office. I think many would want to make sure that...

GARLAND: Of course.

BRAUN: ... fair response, in both endeavors.

GARLAND: Not a problem. We get back to you.

BRAUN: I'm ranking member on the ledge branch subcommittee where we've got to figure out resources that we're going to devote to securing the Capitol, making sure that Capitol Police are getting the resources they need.

On the building itself, we spoke to the Architect of the Capitol, that said they were close to \$30 million in damages done. That seems like a lot because especially in relation to something that came out of the Justice Department in an article of the Washington Post, that tab did at 1.5 million. Are you aware of that?

GARLAND: I saw that number. I was also surprised. I don't know what they were calculating that as the basis of. I guess this has something to do with what the rest of the tuition for individuals might be. But I don't know. I don't have any reason to doubt the other than the larger number that that you mentioned.

BRAUN: Those are two very...

GARLAND: SAR. SAR.

BRAUN: ... divergent figure.

GARLAND: And I will when I get back to the office, see if we can figure out what...

BRAUN: OK. I appreciate...

GARLAND: ... the difference is.

BRAUN: ... finding out what your official version is, and then we'll compare it to that.

GARLAND: Very good.

BRAUN: The declassified intelligence report on the domestic violence extremism released by the department -- DNI in March identified abortion related violent extremists as a principal threat. To me, this seemed like kind of a wild attack on the pro-life community did not list groups like BLM and Antifa, who have had a clear recent record of violent acts.

So can you explain what that was about? Why there would have been focused on that? And has there been a rash of incidents related to it?

GARLAND: So I'm going to refresh my recollection about the report. It wasn't, you know, what the report described as the leading threats or racially motivated and ethically motivated -- ethnically motivated violent extremists. That was and particularly white supremacists. That was the number one threat.

I think that the anti-abortion is a, you know, an area. I don't have any, to be honest, I don't know what the, you know, where that fits in the threat matrix as to how high it is at this point. I -- It's not my understanding that is one of the ones that was listed at the high end of threat but we can get back to you on the web...

BRAUN: If you would, please. And I think the point being that if it seems like there's a disproportionate interest, or emphasis on one category and not the other, it's going to raise some eyebrows and then also bring into the question of is that effort being applied fairly across?

GARLAND: Yes. And so in addition to the category of racially or ethnically motivated, violent extremists. There is a separate category of anti-government or anti-authority violent extremists and this would be where some of the anarchist that you were just talking about would fall into that bucket. And that's another an area of focus of the FBI.

BRAUN: Thank you.

SHAHEEN: Thank you, Senator Braun. Senator Hagerty.

HAGERTY: Chair Shaheen, thank you, and it's like Ranking Member Moran has left but General Garland, I appreciate you're staying for a little bit longer.

GARLAND: Of course.

HAGERTY: And thanks for being here to testify today. I'd like to follow up on just a bit of your discourse with Senator Moran for a moment. I would like to follow up on something that you discuss with Senator Shaheen.

But with respect to Senator Moran in your conversation about working with your counterparts, the Attorney General's in Mexico, I was last month with the foreign minister of Mexico, I went there to examine the situation on the ground. He was very clear as well that they would like to cooperate with us on law enforcement, sharing technology, they need help, interdicting the fentanyl and fentanyl precursors that are coming in from China. They have real problems there. And I applaud any efforts you might undertake to work with their law enforcement to help them and in particular, in border security. We went through that as well. And I think our technology and our capabilities could be helpful there.

I'd like to turn to a different subject, though. And that was that gets back to the backlog that you're experiencing and perhaps need for a new approach. And, as attorney general, your Executive Office for Immigration Review is charged with adjudicating claims for asylum. Human smugglers in Central America and Mexico, known as Coyotes, are using our country's generous asylum laws as advertisements to draw people end to a very dangerous journey, a journey that often results in them losing their lives or becoming victims of crime.

So this end, a recent Los Angeles Times report states that quote, Mexican coyotes deposit migrants at the Rio Grande and instruct them to give themselves up to U.S. border patrol agents to claim asylum. This is what the Coyotes are marketing. Go across the border, claim asylum. That is the secret password to get in asylum, fear, that seems to be the key to enter our country.

General Garland, do you agree that human smugglers are taking advantage of our asylum system?

GARLAND: I think there's no doubt that human smugglers and human traffickers are taking advantage of the people who they are smuggling. That's the reason we have just stood up a new task force, anti-human smuggling and anti-human trafficking, it will involve all the main agencies of, we call it, Task Force Alpha, we've just announced this week includes cooperation with Homeland Security.

We're also putting people into the northern triangle countries where the smuggling originates, to try to interdict it there. We're also introducing anti-corruption units to assist those countries in ending the corruption that often leads to people...

HAGERTY: Yup.

GARLAND: ... going to these smuggling entities.

HAGERTY: And no doubt the coyotes are taking advantage of the...

GARLAND: Yeah.

HAGERTY: ... people, of the people there. But are they taking advantage of our system, our generous system of asylum?

GARLAND: I don't, there are a lot of motivations for people coming out of the Northern triangle, some of which we can fix and some of which we can't, and which we're trying very hard to fix.

You know, we have an obligation under our law, and under international law, to provide refuge under the categories that the Congress has set forth for us. And people are entitled to process to seek asylum under what Congress has authorized and required.

HAGERTY: Well, the problems with our asylum laws that you're acknowledging, I think are clear. I applaud your acknowledging that because we do need to address that. And I look forward to working to do that.

But let's come back to the messaging that the counties are using to attract people into this dangerous process.

Just this week, in Guatemala, Vice President Harris, sent a message to those that were perhaps contemplating coming to our country illegally do not come. Is that a message that you can deliver, Attorney General, sitting right there a message to these people do not come to our country?

GARLAND: Look, I think that Vice President Harris has been very deeply involved in the kind of law enforcement and other requirements that we're looking to set up. She was instrumental in moving us to establish this task -- joint task force to de incentivize and to reduce traffic from the northern triangle countries, down through Mexico in into the United States.

So there are a lot of different messaging kinds of issues involve. And some of them involve getting at the root causes of why people are leaving, in those countries.

HAGERTY: Well, messaging is one of these root causes. And I think it would be incredibly important to hear from our top law enforcement officer in America that these people should not come.

GARLAND: I don't want people to make the very difficult and dangerous trip with coyotes that you're talking about. There's no doubt about that. That this leads to human tragedy.

HAGERTY: Well, if these people in our country illegally, are you willing to say that they will be deported?

GARLAND: So the question of asylum is one that our law permits them to make claims of asylum and to have an opportunity to show whether they have the grounds for it or not. If they're not entitled to asylum, then they're deported.

I want to be clear, that element is for the Department of Homeland Security was not for the Justice Department. What we do is adjudicate these asylum claims.

HAGERTY: Well, I'll come back and say this, according to the date on the Justice Department website, 90 percent plus the people that come here under the claim of asylum are found to be invalid claims. And in that circumstance, would you willing say, the person comes here goes through the asylum process, and is found that their claim is invalid, and they should be removed, that they will be deported.

GARLAND: The Department of Homeland Security is responsible for that issue. They have -- because of the large numbers that you're talking about, they, I understand have a series of priorities. First and most important, deportation of people who are at risk for national security to the United States and for public safety.

I think, and lastly, they're trying to deport recent arrivals in order to send the message that you're talking about that people not come.

HAGERTY: I was with you and Secretary Mayorkas when we went through this prioritization before.

GARLAND: Yeah.

HAGERTY: I'm shocked at what he said, because the number of people coming across our border illegally is massively increased, yet the number of deportations has gone way down. So I'm not buying that argument.

What I would love to hear you say is our nation's top law enforcement official in a way that would instruct the Department of Homeland Security is that it is illegal to cross the border in this country that if somebody is found to have failed in their claim for asylum, which 90 percent of the people do, that they will be deported. That's the message that people in these countries need to hear not that well, don't come. But if you do, there's nothing going to happen to you.

GARLAND: The misdemeanors across the border without the appropriate documentation. That's correct. And the question of rights to apply for asylum is also correct. That's an element of our law. The determination of how to deport and what priorities that's up to the Department of Homeland Security. And I don't think it useful for me to get into their business with respect to their -- any more than I would expect them to get into our business with respect our law enforcement probably.

HAGERTY: Well, I would hope for a clear determination that when someone is found to be applying for asylum here in an invalid fashion, that they should leave this country and that they will be deported. The fact you're not able to say that clearly today and send that message to the Department of Homeland Security is shocking.

GARLAND: It's been adjudicated to not be entitled to asylum than they should be deported. Yes.

HAGERTY: I appreciate you're saying that. I applaud that. Because that's the message that needs to be conveyed right now.

GARLAND: I'm sorry. Maybe I didn't understand the question. But of course, once they've been adjudicated, then of course, they should leave the border.

HAGERTY: I think we need...

SHAHEEN: Thank you, Senator Hagerty.

HAGERTY: Thank you, Chair.

SHAHEEN: Your time is expired. If there are any further questions for the record, senators have until June 16th to submit those and we would request that the department respond within 30 days. Thank you very much, Attorney General Garland, for appearing today and for your willingness to take all of our questions.

GARLAND: Of course.

SHAHEEN: Let me also announce that we will stand in recess until Tuesday, June 15th, when we will hold a hearing on NASA's budget request.

END

Jun 10, 2021 09:16 ET .EOF

# Senate Judiciary Committee hearing on the Nomination of Merrick Garland to be Attorney General of the United...,sked FINAL

February 23, 2021 9:04AM ET

TRANSCRIPT

February 22, 2021

COMMITTEE HEARING

SEN. RICHARD J. DURBIN, D-ILL.

SENATE JUDICIARY COMMITTEE HEARING ON THE NOMINATION OF MERRICK  
GARLAND TO BE ATTORNEY GENERAL OF THE UNITED STATES, DAY 1

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SENATE JUDICIARY COMMITTEE HEARING ON THE NOMINATION OF MERRICK  
GARLAND TO BE ATTORNEY GENERAL OF THE UNITED STATES, DAY 1

FEBRUARY 22, 2021

SPEAKERS:

SEN. RICHARD J. DURBIN, D-ILL., CHAIR

SEN. DIANNE FEINSTEIN, D-CALIF.

SEN. PATRICK J. LEAHY, D-VT.

SEN. SHELDON WHITEHOUSE, D-R.I.  
SEN. AMY KLOBUCHAR, D-MINN.  
SEN. CHRIS COONS, D-DEL.  
SEN. RICHARD BLUMENTHAL, D-CONN.  
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SEN. CORY BOOKER, D-N.J.  
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SEN. JOSH HAWLEY, R-MO.  
SEN. MARSHA BLACKBURN, R-TENN.  
SEN. TOM COTTON, R-ARK.

WITNESSES:

MERRICK B. GARLAND, NOMINATED TO BE ATTORNEY GENERAL

SEN. TAMMY DUCKWORTH, D-ILL.

SEN. CHRIS VAN HOLLEN, D-MD.

DURBIN: This hearing will come to order.

Today, the Senate Judiciary Committee will hold a hearing on the nomination of Judge Merrick Garland to be the 86th attorney general of the United States.

Judge Garland, I want to welcome you and your family. I want to welcome you back to the Senate Judiciary Committee. I know this return trip has been a long time in planning, and you're here finally.

This will be the Judiciary Committee's first hearing of the 117th Congress. Before I turn to my opening remarks, I'd like to just take a few minutes to make some acknowledgments.

I want to welcome my friend, Senator Chuck Grassley, as the committee's ranking member. When I first came on the Senate Judiciary Committee 24 years ago I was the ranking member on a subcommittee with you, and we dealt with the issue of bankruptcy.

Now, Illinois and Iowa sit next to each other and so do Durbin and Grassley. We have our differences, but Senator Grassley and I have worked together on important legislation over the years, most recently, on criminal justice and sentencing reform. I look forward to continuing that work in this Congress.

I want to recognize the outgoing chair and ranking member, Senator Lindsey Graham, who will join us remotely this morning, and Senator Dianne Feinstein.

Senator Graham, as is true of Senator Grassley, while we don't always agree, has always been a welcome partner on many issues, including one of the most challenging issues, immigration.

DURBIN: Senator Feinstein, I want to commend for leading the committee Democrats with grace and resolve over the past four years. I know she will continue to be an important voice on this committee on a host of issues, including in her new capacity as the chair of the Human Rights and Law Subcommittee, which I was to proud chair in past Congresses.

I also welcome our new committee members who will either be here in person -- I see one in person and one, probably, remote: Senators Padilla and Ossoff on the Democratic side, Senator Cotton on the Republican side. I look forward to working with each of you.

There are some historic firsts in the Judiciary Committee this year. Senator Padilla, our new Senator from California, will be chairing the Subcommittee on Immigration, Citizenship, Border, Safety. I am honored that he's the first Latino senator to chair that subcommittee, and we look forward to his leadership.

Senator Cory Booker of New Jersey will chair the Subcommittee on Criminal Justice and Counterterrorism. He's the first black senator to chair a judiciary subcommittee, and we could not imagine a better choice at the helm of this particular subcommittee.

To all of our other members who are returning to serve on the committee, welcome back. I want to thank all the committee members for agreeing to hold this committee hearing and vote on Judge Garland's nomination.

It is a great honor to serve on this committee. The Senate established the Judiciary Committee by resolution on December 10th, 1816, making it among the very first standing committees of the Senate. This committee has seen many consequential debates and approved many important nominations and landmark legislation. In the committee's history, there has only been one prior Illinois senator to serve as chair, Judge Garland: Lyman Trumbull, who led the committee from 1861 to 1872, and during his term of service was a Democrat, a Republican, a radical Republican and a Democratic again. He was the most bipartisan senator you can imagine.

His tenure was also distinguished by passage of historic legislation: the 13th, 14th and 15th Amendments to the Constitution, the Freedmen's Bureau Acts of 1865 and 1866, the Civil Rights Act of 1866. The last of these was introduced by Trumbull, and ultimately became the nation's first civil rights law.

As chair, Trumbull saw a nation torn apart by original sin -- slavery -- and widespread violence and injustice that continued even after the 13th Amendment's passage, as African-Americans throughout the nation faced racism. Our nation is still dealing with the consequences of these injustices. People of color face systemic racism, and we are still working to rid this nation of the horrific legacy of slavery and Jim Crow.

This committee can make a difference. We have the jurisdiction and the opportunity to do it through legislation, oversight and nominations, including this nomination of Merrick Garland to serve as our nation's next attorney general. There have been few moments in history where the role of attorney general and the occupant of that post have mattered more.

Judge Garland, should you be confirmed -- and I have every confidence you will be -- you will oversee a Justice Department at an existential moment. After four tumultuous years of intrigue, controversy and brute political force, the future of the department is clearly in the hands of the next attorney general.

Under Attorney General Sessions and his successor, Bill Barr, the Justice Department literally became an arm of the White House, committed to advancing the interest of President Trump, his family and his political allies. It came as little surprise then that the U.S. Department of Justice became the Trump Department of Justice.

DURBIN: General Barr (ph) stated clearly that he believed the attorney general was the president's lawyer, not the nation's, and what were the results? Too many in the department's senior roles cast aside the rule of law, Trump appointees in the apartment (sic) sidelined career public servants, from line attorneys to FBI agents, limited their roles, disregarded their nonpartisan input, override -- overriding their professional judgment and falsely accusing them of being members of the deep state.

And the department pursued policies of almost unimaginable proportions, from separating thousands -- thousands of innocent migrant children from their parents to banning innocent Muslims from traveling to our shores, from defending, and even ordering violent crackdowns on peaceful protesters to parroting baseless lies about voter fraud in the lead-up to the 2020 election. The misdeeds of the Trump Justice Department brought this nation to the brink. In fact, as we learned after President Biden's inauguration, a senior official in the Trump Justice Department, Jeffrey Clark, plotted with President Trump for one final stab at the results of the 2020 election. They were thwarted at the last minute by Justice Department attorneys who threatened to resign en masse rather than join their effort.

So Judge Garland, it's no overstatement to say that your nomination is one of the most critical in department history. When I reflect on it, I am reminded of two previous attorneys general, one a Democrat, the other a Republican: Robert Kennedy, Edward Levi.

Kennedy, entered office at a time of political turmoil. Although the nation had started down the path towards civil rights, Attorney General Kennedy recognized that equal rights and equal justice under law were still an aspiration for too many people of color in the United States. In June, 1863 (sic), several years into his tenure as A.G., Kennedy testified before the House Judiciary Committee. He said, "The demonstrations of the past few months have only served to point up what thinking Americans have known for years: that this country can no longer abide the moral outrage of racial discrimination." He continued, "If we fail to act promptly and wisely at this crucial point in our history, the ugly forces of disorder and violence will surely rise and multiply throughout the land, and grave doubts will be thrown on the very premise of American democracy."

The moral outrage of racial discrimination remains with us today, as do the forces of disorder and violence, and tragically, the -- the Justice Department in the previous administration fanned the flames of discrimination. But a restored Justice Department, a department under new leadership can, and I -- I believe will meet the moment. There are great challenges ahead. The right to vote is under constant assault by those who wish to suppress the voices of communities of color. We have a criminal justice system still in urgent need of reform, and too many Americans, whether because of race, national origin, disability, sexual orientation or gender identity, face inequality in their daily lives. It is time for the Department of Justice to confront these realities that, unfortunately, continue to threaten, as Robert Kennedy said, the very premise of American democracy.

Judge Garland, when I think of what you face in restoring integrity and independence to the Justice Department, I also think another -- of another one of your predecessors and fellow Chicagoan, Edward Levi, who likewise assumed time -- the office at a time of turmoil. Levi had, of course, been president of the University of Chicago before his nomination to serve as attorney general for President Ford, and when he came before this committee for his confirmation in 1975, he was asked about removing the Justice Department from the ambit of part -- partisan politics. This is what he said: "I do not believe that the administration of justice should be a partisan matter in any sense, but I do not think the cases should be brought to reward people or to punish them for partisan reasons." He continues, "I think it would be a bad thing for the country to believe that the administration of justice was not evenhanded because it was in some ways tilted by partisan politics."

Why was this question asked? Why was Levi's response so important? Just two years earlier, President Nixon had attempted to use the Justice Department as his personal law firm, ordering Elliot Richardson to fire Archibald Cox, the special prosecutor overseeing Watergate. Richardson rightly refused to fire Cox, as did his deputy, William Ruckelshaus, and so each of them were fired in what became known as the Saturday Night Massacre. Richardson and Ruckelshaus refused to act in a way contrary to the rule of law. They refused to put partisan politics and the personal interests of President Nixon above fidelity to the Constitution and the principle of equal justice for all, even those who occupy the White House.

In the wake of Nixon's action, the Justice Department faced a reckoning. With the department's legacy still tarnished, the public confidence shaken, President Gerald Ford turned to Levi to restore honor, integrity and independence.

Well, Judge Garland, the nation now looks to you to do the same. The public's faith in the Department of Justice has been shaken, the result of department leadership consumed with advancing personal and political interest. In fact, had it not been for several Justice Department attorneys I mentioned earlier threatening to resign this January, President Trump might have gone even further than he did to overturn the election results, and that raises critical questions this committee and you must reckon with.

Judge Garland we're confident we can rebuild the department's once-hallowed halls, that you can restore the faith the American people and the rule of law and deliver equal justice.

I want to close by returning to the attempt to overturn the 2020 presidential election. You probably noticed when you came to Capitol Hill how it's changed. You lived most of your life, and I've lived a large part of mine, coming to this Capitol Hill to visit, to work, really, to honor the traditions of these buildings. We now have established a perimeter around this building. It stretches for blocks in every direction, and a 10-foot-high fence that walls off this Capitol building from the rest of America. At the top of the fence, barbed wire; inside the fence, we have not only our loyal police force, but men and women of the National Guard from all over the United States, thousands of them, still standing guard over this building. What a commentary on the current state of America that we face today.

But it's needed. We were here on January 6th. We lived through it. We were lucky. For most of us, we were not in direct contact with the mob. Others were, and sadly, paid a heavy price for it. For months, President Trump spread falsehoods about the election and fraudulent voting, and before a single vote had been cast, he claimed that he could only lose as a result of fraud.

Far too many Americans gave credence to these unproven dangerous claims. We know the result. We saw the attempt to subvert democracy culminating in the events of January 6th, when this armed mob stormed Capitol, sought to disrupt the counting of Electoral College votes, violently targeted Congress, our colleagues in the House, our families, even the vice president, staff, ultimately causing the senseless deaths of Capitol Police Officer Brian Sicknick and Howard Liebengood and D.C. Police Officer Jeffrey Smith.

DURBIN: When you are confirmed, Judge Garland, you, along with the rest of the nation will continue to grapple with the January 6th attacks, but you'll be in a unique position with a unique responsibility. As the nation's chief law enforcement officer, you'll be tasked with the solemn duty to responsibly investigate the events of that day, to prosecute all of the individuals responsible and to prevent future attacks driven by hate, inflammatory words and bizarre conspiracy theories. You know what it's like. You've been there before. You've seen domestic terrorism. You led the investigation and prosecution of the Olympic -- of the Oklahoma City bombing, and in doing so, made the nation safer and brought some measure of peace and healing to the victims and their families. I'm confident that given this prior experience, you're up to the task the department now faces in the wake of January 6th. In fact, I can think of few people better-suited to do it.

I look forward to hearing your testimony, but at this point, I will turn to my colleague, Senator Grassley.

GRASSLEY: Thank you, Senator Durbin.

Welcome to Judge Garland. Glad that you've been honored with this appointment to be attorney general of the United States.

Welcome the public at large, most of them very remote, not the large crowds we normally have when we have an attorney general nominee before this committee. I have a longer statement that I'll put in the record, and I've still got plenty to say even this morning.

I, of course, congratulate Senator Durbin on his new role as chairman. He has already referred to he and I getting acquainted on the administrative Oversight Subcommittee and working on what now is badly-needed law, when agriculture's in bad shape, by passing Chapter 12 agricultural bankruptcy legislation, and I look forward to working with you in the future here.

And I also want to express my admiration for Senator Feinstein, the previous Democrat leader of this committee. She and I have worked closely together during the years that I chaired and she was ranking member, and I thank you for your leadership.

I'd also like to say a word about Judge Garland. This is, of course, Judge Garland's first time appearing before this committee since ascending to the federal bench. I had something to do with that. After the death of Justice Scalia, my Republican colleagues and I decided not to hold a hearing on his nomination -- in other words, meaning Judge Garland's nomination to the Supreme Court, having been nominated by President Obama. As you recall, it was election year with a divided Congress. The position I took was consistent with previously-public -- publicly-expressed positions by other senators, Democratic senators, previous to that.

So yes, it's true that I didn't give Judge Garland a hearing. I also didn't mischaracterize his record. I didn't attack his character. I didn't go through his high school yearbook. I didn't make his wife leave the hearing in tears. I took a position on hearings, and I stuck to it, and that's it. I admired Judge Garland's public service. Just because I disagreed with anyone being nominated didn't mean that I had to be disagreeable to that nominee. Unfortunately, that's not always the way it works in this town that has great clinical division.

Judge Garland is here, and we're here to talk about his nomination to be attorney general.

And I extend a warm welcome you, Judge Garland, and to your family and friends that are probably very honored because of your nomination. This, of course, is a worthy capstone on a storied career that you have had.

Judge Garland is a good pick to lead the Department of Justice. He has decades of experience as one of the most respected appellate judges in the country, and before that, being a great prosecutor. When the domestic terrorist Timothy McVeigh -- McVeigh was executed for his crimes, we had Merrick Garland to thank for that successful prosecution.

No one doubts that Judge Garland is qualified for this job, but of course, attorney general is more than just qualifications. The top law enforcement officer of the United States must be committed to enforcing the rule of law. As our former colleague and former Attorney General John Ashcroft likes to say, the Department of Justice is the only cabinet agency whose name is an ideal. It's not the Department of Law Enforcement, but the Department of Justice.

Justice is equality under the law. There is one law for all Americans, regardless of race, color, creed or connection. Is Judge Garland up to that task? I think he is. But today, our goal is to ask him questions to find out.

The Department of Justice has taken important steps to live up to these ideals expressed by Attorney General Ashcroft, and -- and I think they've done well in that direction, particularly over the last four years. The department has undertaken many successful initiatives to reduce violent crime in all communities. It has sought to maintain the rule of law by reforming consent decrees, guidance documents and sue-and-settle abuse. It has protected our civil liberties, in particular, defending our religious liberties, and pursuing elder justice. I hope that the Department of Justice continues these initiatives under you, Judge Garland.

What I don't want is a return to the Obama years. I don't want an attorney general who bragged about being a "wing man", and those are his words, to the President. That was Eric Holder, notoriously describing himself. I don't want a Justice Department that abuses the FISA process to spy on American citizens. I don't want consent decrees that federalize law enforcement and cause murder rates to soar. I don't want a return to catch-and-release on the border. I could come up with many other examples.

Unfortunately, a lot of what we've seen so far from the Justice Department is discouraging. They have whip-lashed, inducing changes to litigation positions. They're going through rescinding excellent rule-of-law memorandums right out of the gate. President Biden is even reportedly firing nearly every Senate-confirmed U.S. attorney, regardless of what investigations they're supervising. That is troubling.

GRASSLEY: That is why I am especially concerned about the Durham investigation. Starting January, 2017, I began an investigation how the Justice Department and the FBI handled Crossfire Hurricane, its investigation into the Trump campaign and administration. Simply said, Crossfire Hurricane is a textbook example of what shouldn't happen during investigations. What the Obama administration did to the Trump campaign, transition and administration can't ever happen again.

If confirmed, you will have oversight of special counsel terms, review of Crossfire Hurricane. When Bill Barr appeared before the committee for his nomination hearing, he said, quote, "It's vitally important that the special counsel be allowed to complete his investigation." Of course, he was referring to then-Special Counsel Mueller's investigation.

Today you will need to be clear about what your position will be with regard to Special Counsel Durham. We should expect the same level of commitment from you to protect Durham as we expected from Barr to protect Mueller.

So, Judge Garland, I just want to say that I like you, I respect you, and I think you are a good pick for this job. But I have a lot of questions about how about how you are going to run the Department of Justice.

Thank you, Mr. Chairman.

DURBIN: Thank you, Senator Grassley.

At this time we'll have the formal introduction of Judge Garland. Two of our colleagues will be doing that. Because of your state of relative residence, Senator Chris Van Hollen of Maryland will be first. And because of your roots, Senator Tammy Duckworth, my colleague of Illinois, will be second. Both are joining us by Webex. There will be a record statement made by Senator Cardin placed in the record.

Senator Van Hollen?

VAN HOLLEN: Thank you, Mr. Chairman. Let me thank you and Ranking Member Grassley and all of our colleagues on the Senate Judiciary Committee for being here today.

And I am really grateful for the opportunity to introduce the president's nominee for attorney general, Judge Merrick Garland, who is not only a fellow Marylander, but somebody who I have known personally for many years. And I know that President Biden has picked a nominee with impeccable credentials and unimpeachable character.

His experience stretches from the halls of the Justice Department to the chambers of the U.S. Court of Appeals for the District of Columbia Circuit. And he embodies the decency, the impartiality, and the commitment to justice that our nation deserves as the Attorney General of the United States.

I am confident that if confirmed Judge Garland will serve admirably and faithfully as the next attorney general. And I am proud to present him to you and the committee, on behalf of myself but also Senator Cardin who, as you mentioned, Mr. Chairman, is fully in support of his nomination but could not join us because of the scheduling conflict.

The nation already knows Merrick Garland because of his Supreme Court nomination and as the former judge of the U.S. Court of Appeals for the District of Columbia Circuit, where he earned a reputation as one of our nation's finest and fairest jurists.

But his tenure on the D.C. Circuit was just the most recent achievement in a life dedicated to serving the rule of law. After settling at law school, Judge Garland clerked for the Second Circuit Court of Appeals and then for the Supreme Court. He then rose through the ranks of a prominent law firm before jumping back into public service feet first as a federal prosecutor in the U.S. attorney's office during the administration of President George Herbert Walker Bush, and then later served as the principal associate deputy attorney general at the Department of Justice.

As a senior DOJ official, Judge Garland was tasked with overseeing the case of the Oklahoma City bombing, one of the deadliest domestic terrorist attacks in American history. It left 168 Americans dead and hundreds more injured. Merrick Garland brought a steady hand to an operation that involved massive amounts of evidence, pressure from the public, and a large team with diverse skills and backgrounds.

With fidelity to the law and meticulous attention to detail and unrelenting focus, Merrick Garland helped bring the bomber, Timothy McVeigh, to justice. He has called this case the most important thing he has done in his life.

Mr. Chairman, Ranking Member and committee members, we are going to need this experience as we once again confront the rise of domestic terrorism, particularly in the wake of the horrific events of January 6th. And the next attorney general must not only take on the rise of white supremacists and radical militia groups, but also ensure that justice is rendered equally and fairly by promoting and ensuring racial equity, rooting out discrimination in our criminal justice system, addressing police reform, and ensuring that we don't see a concerted effort to limit people's, citizen's right to vote in the United States of America.

As Justice Garland has himself stated, ensuring the rule of law and making real the promise of equal justice under the law are the great principles upon which the Department of Justice was founded and for which it must always stand. Judge Garland has spent his career doing both. And I have no doubt he will honor that tradition as Attorney General.

While his professional experiences have prepared him for this job, it's his character that makes him right for this moment. Should he be confirmed, Judge Garland will be charged with restoring credibility and independence to the Department of Justice, making it clear that the department is not the political instrument of the White House.

I know Merrick Garland is up to the task. The lengthy list of testimonials speaking to his fairness and sound judgment span the political spectrum. He is respected by lawmakers, scholars, and lawyers of every legal persuasion and political philosophy.

And on a personal note, I can attest to the fact that his brilliance is matched by his kindness. His many achievements have never gone to his head. He has always stayed humble and treated everyone with respect.

Mr. Chairman, Ranking Member, members of the committee, it's for these reasons and many more that I am honored to present to you the president's nominee to serve as the next attorney general of the United States, Judge Merrick Garland. Thank you.

DURBIN: Thank you, Senator Van Hollen.

And now I'm calling my colleague and friend from Illinois, Senator Tammy Duckworth.

DUCKWORTH: Hi. Thank you, Mr. Chairman. Thank you so much for this opportunity to introduce President Biden's nominee to serve as the next attorney general of the United States.

We in Illinois also claim Merrick Garland as a son of our state. He possesses the brilliance and the resilience, experience and the intellect, the expertise (inaudible) necessary to serve effectively as our next attorney general.

I am especially honored to be here today because I have full confidence in his capability to lead the Department of Justice in an independent and impartial manner. And he will defend the civil and constitutional rights of all Americans no matter what they look like, who they love, how they pray, or their disability status.

DUCKWORTH: Judge Garland hails from our home state of Illinois, Mr. Chairman. His father ran a small business out of his home and his mother directed volunteer services at the Council for Jewish Elderly in Chicago.

After graduating as valedictorian at Niles West High School in Skokie, he won scholarships for both college and law school. He then graduated from Harvard University in 1974 and Harvard Law School in 1977. His breadth of experience stems in part from his time in private practice and judicial clerkships. He clerked for Judge Henry Friendly of the Second Circuit and Justice William Brennan on the United States Supreme Court.

However, his commitment to public service is perhaps even more clearly demonstrated by his successful tenure at the Department of Justice and his current seat on the United States Court of Appeals for the District of -- of the Columbia Circuit.

In 1979, Judge Garland joined the DOJ as a special assistant and then after a brief stint in (inaudible) legal practice, left the department as the principal associate deputy attorney general in 1997. During his tenure, which spans both Republican and Democratic administrations, he led multiple high-profile investigations working on a number of issues, including criminal, civil, antitrust, appellate, espionage and national security measures. He gained valuable experience as a prosecutor by trying and supervising numerous prosecutions and appeals. Notably, he played a key role in the prosecution of the Oklahoma City bombers, as has been previously noted.

Following his career at the DOJ, the United States Senate confirmed his nomination for a lifetime appointment to serve on the D.C. Circuit. Judge Garland authored hundreds of opinions that address disability rights, criminal justice and voting rights, among other issues, issues that affect Americans of every mile and every corner of this country.

As a judge, he joined a unanimous panel decision that upheld a Department of Labor regulation requiring contractors to comply with the Rehabilitation Act of 1973. This decision upheld regulations that sought to protect employment opportunities for individuals living with a disability -- with a disability like myself. It is this legacy of public service that gives me confidence that if confirmed to be our nation's chief law enforcement officer, Judge Garland will not only modernize and strengthen enforcement of the Americans With Disabilities Act, but will restore and take -- and lift morale throughout the DOJ.

Judge Garland is ready to defend the constitutional and civil rights that our nation so deeply values, and I know he will make all of us Illinoisians proud as our country's next attorney general. Thank you.

DURBIN: Thank you, Senator Duckworth.

Judge Garland, will you please stand to be sworn? Do you affirm that the testimony you are about to give before the committee will be the truth, the whole truth and nothing but the truth, so help you God?

GARLAND: (OFF-MIKE)

DURBIN: Thank you.

Before I turn to my questions -- oh, I think there's another element in the program here: your testimony. Let me turn to Judge Garland.

GARLAND: Thank you, Mr. Chairman, Mr. Ranking Member and members of the Judiciary Committee. I am honored to appear before you today as the president's nominee to be the attorney general.

I would like first to take this opportunity to introduce you to my wife, Lynn, my daughters, Jesse and Becky, and my son-in-law Zan (ph). I am grateful to them and to my entire extended family that is watching today on CSPAN, every day of my life.

The president nominates the attorney general to be the lawyer not for any individual, but for the people of the United States. July, 2020 marked the 150th anniversary of the founding of the Department of Justice, making this a fitting time to remember the mission of the attorney general and of the department. It is a fitting time to reaffirm that the rule -- role of the attorney general is to serve the rule of law and to ensure equal justice under law. And it is a fitting time to recognize the more than 115,000 career employees of the department and its law enforcement agencies, and their commitment to serve the cause of justice and protect the safety of our communities.

If I am confirmed as attorney general, it will be the culmination of a career I have dedicated to ensuring that the laws of our country are fairly and faithfully enforced and the rights of all Americans are protected.

Before I became a judge almost 24 years ago, a significant portion of my professional life was spent at the Justice Department, as a special assistant to Ben Civiletti, the last of the trio of post-Watergate attorneys general, as a line assistant U.S. attorney, as a supervisor in the Criminal Division and finally, as a senior official in the department. Many of the policies that the Justice Department developed during those years are the foundation for reaffirming the norms that will ensure that the department adheres to the rule of law.

These are policies that protect the independence of the department from partisan influence in law enforcement, that strictly regulate communications with the White House, that establish guidelines for FBI domestic operations and foreign intelligence collection, that ensure respectful treatment of the press, that read the Freedom of Information Act generously, that respect the professionalism of DOJ employees, and that set out the principles of federal prosecution to guide the exercise of prosecutorial discretion.

In conversations that I have had with many of you before this hearing, you have asked why I would agree to leave a lifetime appointment as a judge. I have told you that I love being a judge, but I have also told you that this is an important moment for me to step forward because of my deep respect for the Department of Justice and for its critical role of ensuring the rule of law.

Celebrating DOJ's 150th year reminds us of the origins of the department, which was founded during Reconstruction in the aftermath of the Civil War to secure the civil rights that were promised in the 13th, 14th and 15th Amendments. The first attorney general appointed by President Grant to head the new department led it in a concerted battle to protect black voting rights from the violence of white extremists, successfully prosecuting hundreds of cases against white supremacist members of the Ku Klux Klan.

Almost a century later, the Civil Rights Act of 1957 created the department's Civil Rights Division with a mission to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society.

GARLAND: That mission on the website of the department's Civil Rights Division remains urgent, because we do not yet have equal justice. Communities of color and other minorities still face discrimination in housing, in education, in employment and in the criminal justice system, and they bear the brunt of the harm caused by pandemic, pollution and climate change.

150 years after the department's founding, battling extremist attacks on our democratic institutions also remains central to the department's mission. From 1995 to 1997, I supervised the prosecution of the perpetrators of the bombing of the Oklahoma City Federal Building, who sought to spark a revolution that would topple the federal government.

If confirmed, I will supervise the persecution of white supremacists and others who stormed the Capitol on January 6th, a heinous attack that sought to disrupt a cornerstone of our democracy -- the peaceful transfer of power to a newly elected government.

And that critical work is but a part of the broad scope of the department's responsibilities. Justice Department protects Americans from environmental degradation and the abuse of market power, from fraud and corruption, from violent crime and cyber crime, from drug trafficking and child exploitation, and it must do all of this with -- without ever taking its eye off of the risk of another devastating attack by foreign terrorists.

The Attorney General takes an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic. I am mindful of the tremendous responsibility that comes with this role. As Attorney General, later Supreme Court Justice Robert Jackson famously said, quote "the prosecutor has more control over life, liberty and reputation than any other person in America. While prosecutors at their best are one of the most beneficent forces in our society, when they act from malice or other base mode -- motives, they are one of the worst."

Jackson then went on to say "the citizens' safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes and who approaches the task with humility."

That was the prosecutor I tried to be during my prior service in the Department of Justice. That is the spirit I tried to bring to my tenure as a federal judge. And if confirmed, I promise to do my best to live up to that ideal as Attorney General. Thank you.

DURBIN: Thank you, Judge Garland. Before I turn to my questions, I want to add a few mechanics for the hearing. Senators will have eight minutes in the first round of questions, followed by a five minute second round, and I ask members to do their best to stay within their allotted time.

We will take a break every once in a while for 10 minutes. I am hoping the first will be sometime near 11:00. At about 12:15 or 12:30, we will break for lunch for 30 minutes. I beg you to stick with that schedule as you can and be back in time so that we can keep the hearing moving along.

So let me, at this point, turn to questions. You were sent to Oklahoma City, 1995. What happened there was the deadliest act of homegrown domestic terrorism in modern American history. 168 people had been killed, including 19 children. Hundreds were injured. You were supervising the prosecution of Timothy McVeigh and Terry Nichols, who were accused of being complicit and leading in that destruction.

Now if you are confirmed as Attorney General, which I believe you will be, you will face what is known as the biggest, most complex investigation in Justice Department history, and that is the investigation around the events of January 6th. 230 have been arrested so far, some 500 are under investigation. We know that the death of at least one police officer is one of the major elements in this investigation. I'd like to ask you to reflect on two things -- what's going on in America? Was Oklahoma City just a one off, unrelated to what happened here? Can you measure, based on what you've learned so far, what kind of forces are at work to divide and destroy the American dream?

Secondly, when it comes to this prosecution, are there elements that we should consider in terms of law enforcement, to deal with this rising threat to the American democracy?

GARLAND: Thank you, Senator, thank you very much for the opportunity to address the committee today. I'm grateful for this opportunity. I don't think that this is necessarily a one off. FBI Director Wray has indicated that the threat of domestic terrorism and particularly of white supremacist extremists is his number one concern in this area. This is coupled with an enormous rise in hate crimes over the past few years.

There is a line from Oklahoma City and there's another line from Oklahoma City, all the way back to the experiences that I mentioned in my opening with respect to the battles of the original Justice Department against the Ku Klux Klan.

We must do everything in the power of the Justice Department to prevent this kind of interference with the policies of American democratic institutions, and I plan, if you confirm me for Attorney General, to do everything in my power to ensure that we are protected.

DURBIN: Judge Garland, it -- it goes without saying but we ought to make it a record -- we abhor violence, whether it comes from the right or left, whatever its source. It has no place in responsible constitutional dialogue in America.

Currently, though, we are faced with elements that weren't there 25 years ago in Oklahoma City -- a proliferation of weapons. Secondly, social media and the Internet, which serves as a gathering place for many of these domestic terrorists.

What are your thoughts about how we should deal with those elements from a law enforcement viewpoint?

GARLAND: Well, Mr. Chairman, I certainly agree that we are facing a more dangerous period than we faced in Oklahoma City at -- at -- at that time. From what I have seen -- and I know inside information about how the department is developing its work -- it looks like an extremely aggressive and perfectly appropriate beginning to an investigation, all across the country, in the same way our original Oklahoma City investigation was, but many times more.

I don't yet know what additional resources would be required by the department. I can assure you that this will be my first priority and my first briefing when I return to the department, if I am confirmed.

DURBIN: Judge Garland, several years ago I went to an immigration court hearing in downtown Chicago. It was in a high-rise Loop building. I met the immigration court judge. She'd been on the job almost 20 years and seemed like a very conscientious and fair person. She asked me to stay for the docket call, particularly for the first clients on the docket.

The first clients on the docket were a 4-year-old girl named Marta (ph). When the judge asked that all of the people in the court room be seated, she had to be helped into the chair; it was too tall for her to get into. She was handed a stuffed animal to hold during the hearing. At the same table was a young boy with the unlikely name Hamilton, who was given a little Matchbox car, which he played with on top of the table. He was 6 years old.

They were the victims of the zero tolerance policy. We remember it well. Thousands of children were forcibly removed from their parents, separated and many times lost in the bureaucracy.

Some have incorrectly stated that that administration policy by the Trump administration was just a continuation of Obama era policy. That isn't true. The Obama administration did not have policies that resulted in the mass separation of parents and children. When on rare occasions separations occurred, this was due to suspicion of trafficking or fraud, not because of an intentional cruel policy to separate children.

The Justice Department's inspector general conducted an investigation of the zero tolerance policy and noted that the Justice Department was, quote, "the driving force," close quote, in that policy.

There is still a lot that we do not know about that policy and the accountability for the officials who were responsible for it. So let me ask you this: This committee is going to hold oversight hearings to get to the bottom of it. Will you commit to cooperate with those investigations?

GARLAND: Senator, I think the oversight responsibility of this committee is -- is one of its very most important things. It's a duty posed by the Constitution and I greatly respect it.

I think that the policy was shameful. I can't imagine anything worse than tearing parents from their children. And we will provide all the cooperation that we possibly can.

DURBIN: I thank you for that.

When it comes to congressional oversight, this committee has a role in restoring independence and integrity to the Justice Department through oversight hearings. It has a longstanding tradition of holding annual Justice Department oversight hearings, but sadly it's been three years since the attorney general has been called before this committee.

I pledge that as chairman I will hold annual DOJ oversight hearings where members from both sides of the aisle can ask important questions of you in that capacity. I don't want to go into detail but ask you, obviously, would you agree to cooperate in that commitment to oversight hearing?

GARLAND: Of course. If I am confirmed, I will certainly cooperate.

DURBIN: And when request are made for information by members of the committee, I hope that I can also have your commitment to cooperation in providing timely answers.

GARLAND: Yes, Mr. Chairman. We will be as responsive as we possibly can. As I said, I have great respect for and belief in the oversight role of this committee.

DURBIN: Thank you.

Senator Grassley?

GRASSLEY: Yes. Since you're a currently sitting judge, you're bound by the code of conduct of U.S. judges. Nevertheless, I hope that we can get frank answers from you on your views. And when we talked last on the phone you told me you would get guidance from the administrative office on what you can or can't say. I assume that you sought that guidance. If so, what did they advise you?

GARLAND: Yes, Senator Grassley, I did. And they advised me just as you and I thought that they would.

Canon 3 bars me from committing on any pending or impending case that is in any court, but I am free to talk about policy with you.

GRASSLEY: OK.

I'm going to go to the Durham investigation. At Barr's hearing he stated the following in regard to Mueller's investigation, quote: "It's virtually important that the special counsel be allowed to complete his investigation."

Also at that same hearing, Senator Feinstein asked, quote: "Will you commit to providing Mr. Mueller with the resources, funds and time needed to complete his investigation?" end of quote. Attorney General Barr answered Senator Feinstein with a -- one word, "Yes."

With respect to Special Counsel Durham's investigation, I expect that he will be allowed to complete his investigation. If confirmed, will you commit to providing Special Counsel Durham with the staff, resources, funds and time needed to thoroughly complete the investigation?

GARLAND: Senator, I -- I don't have any information about the investigation as I sit here today and the very -- and another one of the very first things I'm going to have to do is speak with Mr. Durham, figure out how his investigation is going.

I understand that he has been permitted to remain in his position. And sitting here today, I have no reason to think that that was not the correct decision.

GRASSLEY: OK.

And I suppose that would be an answer, that he would only be removed for cause then? Would that be your position?

GARLAND: Well, Senator, I -- I really do have to have an opportunity to talk with him. I've not had that opportunity.

As I said, I don't have any reason from what I know now, which is really very little, to make any determination on that ground. But I don't have any reason to think that he should not remain in place.

GRASSLEY: OK.

If confirmed would you commit to publicly releasing Special Counsel Durham's report just like Mueller report was made public?

GARLAND: So, Senator, I'm -- I am a great believer in transparency. I would, though, have to talk with Mr. Durham and -- and understand the nature of what he's been doing and the nature of the report.

But I am (inaudible) very much committed to transparency and to explaining Justice Department decision-making.

GRASSLEY: At this point I'm not going to take exception to the answers you gave me about Durham because I think you're an honorable person. They're not quite as explicit as I hoped they would be, like we got from Barr for the Mueller investigation. But I -- I think you've come close to satisfying me, but maybe not entirely.

We're in the midst of a poly-drug crisis. In addition to opioids, methamphetamine and cocaine, fentanyl and fentanyl analogs are plaguing our country. Increasingly sophisticated drug trafficking organizations, both domestic and internationally, try to skirt the law by changing their molecular structure.

So the Center for Disease Control has found that drug overdose deaths rose to their highest level ever measured during the pandemic, with the overall jump in deaths being driven most substantially by drugs like fentanyl.

GRASSLEY: We must stop this fentanyl substance from entering our neighborhoods and killing thousands of Americans. So my question is, as you lead the Justice Department, having oversight over the Drug Enforcement Administration within that department, and they will be addressing the spread of fentanyl analogs and related substances by pushing for continued class-wide prohibition of fentanyl.

So I didn't quite make my question clear. Would you lead the Justice Department in pushing for continued class-wide prohibition of fentanyl analogues?

GARLAND: Senator, I'm familiar with this problem. One of my roles as the chief judge of the D.C. circuit was to serve on the Pretrial Services Committee for the -- committee for the Pretrial Services Agency for the district, and we were constantly advised of the fact that the formula was being slightly changed constantly. And this was a problem both for detection, as well as for the problem of enforcement.

To be honest, I'm no chemist. This is one of the reasons I ended up being a lawyer instead of a doctor. But I -- I would need to look at what would be proposed, but I do understand the scope of this problem and I'm in favor of doing something either by scheduling or legislation if I'm confirmed, that would address the problem that you're talking about, which is an enormous problem for enforcement.

GRASSLEY: Yeah. I want to go to the death penalty because we have some people already prosecuted, where the death penalty has been advocated or sought, and one of those is the people that were involved in Boston Marathon.

So the -- the question, the Justice Department, again under the Obama administration, sought and received an appropriate death -- sentence of death. That sentence is currently being appealed. Will you commit to defending these sentences on appeal?

GARLAND: Well, Senator, this -- now we're rubbing up against exactly the problem that you asked me about in the beginning. These are pending cases, and as a sitting judge, the canons bar me from making comment on pending cases.

GRASSLEY: My last question will have to deal with the investigation that's under way by some of us in Congress about Hunter Biden. Have you discussed the case with the president or anyone else? And I don't expect you to discuss your private conversation with the president, but members of this committee always asked judges or other people, what's your -- did you discuss with the president, for instance, your -- your position on abortion? So have you discussed this Hunter Biden case with the president or anyone else?

GARLAND: I have not. The president made abundantly clear in every public statement before and after my nomination that the decisions about investigations and prosecutions will be left to the Justice Department. That was the reason that I was willing to take on this job, and so the answer to your question is no.

GRASSLEY: OK. Thank you.

DURBIN: Thanks, Senator Grassley.

Senator Leahy would be next, but he is outside of the jurisdiction of Zoom at the moment.

(LAUGHTER)

I guess that's appropriate, and so Senator Feinstein will be recognized.

FEINSTEIN: Thank you very much, Mr. Chairman.

And welcome. Throughout your career, you have been praised by people on both sides of the aisle. When you were nominated to the Supreme Court, President Obama said you were, quote, "someone who would bring a spirit of decency, modesty, integrity, even-handedness and excellence," end quote. Similarly, Senator Orrin Hatch called you, quote, "a fine man" who would be a, quote, "moderate choice for the court."

Even Carrie Severino of the conservative Judicial Crisis Network once called you, quote, "the best scenario we could hope for to bring the tension (ph) and the politics in the city down a notch."

At a time when America feels more polarized than ever before, this sort of bipartisanship is truly rare. So I ask this question: Can all Americans, regardless of their political affiliation, count on you to faithfully and fairly enforce our laws?

GARLAND: Yes, Senator, that is my personality, that is everything I've done in my career, and that is my vision for the Justice Department, to dispense the law fairly and impartially without respect to persons, and without respect to political parties.

FEINSTEIN: Thank you for that statement.

On January 6th, a group of white supremacists launched a terrorist attack on our Capitol in an attempt to overturn the results of a democratic election. Their attempt failed, and resulted in at least five fatalities including a Capitol Police officer. It also led federal prosecutors to file over 180 charges and initiate 25 domestic terrorism cases.

So this is not the first time the Justice Department has been forced to investigate and prosecute white supremacists for an act of terrorism. You received high praise for investigating and supervising the prosecution of the Oklahoma City Bombing perpetrators in 1995.

So here's the question: What steps will you take to ensure that the perpetrators of the attack on our Capitol are brought to justice?

GARLAND: Senator, I think this was the most heinous attack on the democratic processes that I've ever seen, and one that I never expected to see in my lifetime.

One of the very first things I will do is get a briefing on the progress of this investigation. I intend to give the career prosecutors who are working on this matter 24/7 all of the resources they could possibly require to do this.

And at the same time, I intend to make sure that we look more broadly, to look at where this is coming from, what other groups there might be that could raise the same problem in the future, and that we protect the American people. And I know that FBI director has made the same commitment.

FEINSTEIN: Thank you for that answer.

Over the last four years, the independence of the attorney general has been repeatedly attacked. For example, President Trump once told The New York Times, quote, "I have the absolute right to do what I want to do with the Justice Department," end quote.

Do you believe that in fact the president does have the absolute right to do what he wants with the Justice Department?

GARLAND: The president is constrained by the Constitution, as are all government officials. The issue here for us are the set of norms and standards to which this president, President Biden, has agreed that he will not interfere with the Justice Department with respect to its prosecutions and investigations. Those decisions will be made by the department itself and by -- led by the attorney general. And that they will be without respect to partisanship, without respect to the power of the perpetrator or the lack of power, without respect to the influence of the perpetrator or the lack of influence, in all of those respects the department will be independent.

The department is a part of the executive branch. And for that reason on policy matters, we follow the lead of the president of the administration as long as it is consistent with the law. And the role of the department is to advise the president and the administration and the other agencies about what is consistent with the law. That is our obligation and we will do so, objectively, based only on our reading of the law.

FEINSTEIN: Well, thank you for that. I think you have laid it out clearly and directly and it's very much appreciated.

If the president's interest and the public's interest are in conflict, which interest does the attorney general represent?

GARLAND: The attorney general represents the public interest, particularly and specifically as defined by the Constitution and the statues of the United States.

FEINSTEIN: Do you believe that the president has the authority to order the attorney general to open or close an investigation or a prosecution?

GARLAND: This is a hard question of constitutional law, but I do not expect it to be a question for me. As I just said to you, the president has promised that those decisions will only be made by the attorney general. And that is what I plan to do. I do not plan to be interfered with by anyone. I expect the Justice Department will make its own decisions in this regard.

FEINSTEIN: Well, thank you. I'm going to cease at this time. But I just want to say that I think you have had a remarkable career. You have done very special things and always in a very reasonable, sober, penetrating way. So I just want to say thank you for that.

GARLAND: I'm grateful, Senator. Thank you for that.

FEINSTEIN: Thank you, Mr. Chairman.

DURBIN: Thank you, Senator Feinstein.

We hope that Senator Graham, who is next up, is ready? Senator Graham?

GRAHAM: Can you hear me?

DURBIN: We can hear you. You have eight minutes.

GRAHAM: Great. Yes, sir. Congratulations to you.

And, Judge Garland, congratulations on your appointment. I think you are a very good pick for this job. So I'm going to try to go through as much information as I can.

Do you promise to defend the Portland Courthouse against anarchists, the federal court building in Portland?

GARLAND: Any attack on a federal building or damage to a federal building violates federal statutes and those who do it will be prosecuted.

GRAHAM: OK. When it comes to the people who attacked the Capitol on January the 6th, will you let the committee know if you need more resources?

GARLAND: Yes, absolutely, Senator. As I said -- I really do think one of my first jobs is to consult with the prosecutors and the agents who are investigating that manner and see what resources they need. And I'm eager to have an invitation...

(CROSSTALK)

GARLAND: I'm eager to have an invitation from the Senate to ask for more resources.

GRAHAM: Thank you. I think all of us want to prosecute every single person that deserves to be prosecuted. So, whatever you need, I'm sure you will get from this committee.

GARLAND: Thank you, Senator.

GRAHAM: Have you read the Horowitz Report?

GARLAND: Senator, in our conversations, you asked me to read it. It's some 400 pages long and I asked you for permission to read only the also very long executive summary.

GRAHAM: That's good.

GARLAND: And I have done that.

GRAHAM: So what is your general take?

GARLAND: Well, my general take is that there were certainly serious problems with respect to FISA applications, particularly for Mr. Page. And in the subsequent report to the way in which FISA applications are documented. The inspector general had a substantial number of recommendations for how this could be fixed and how it must be fixed. I understand that he submitted those to the FBI director. And I understand the FBI director agreed totally, and either has made those changes or is in the course of making them.

I intend, if I am confirmed, to speak more deeply and directly with Mr. Horowitz, the inspector general, about this, and with Director Wray and make sure that these and any other things that are necessary will be done. I am always concerned and have always been concerned that we be very careful about FISA. It is a tool that is very useful and important for investigations involving foreign agents.

GRAHAM: That's good to hear.

So, Clinesmith, are you familiar with the fact that a lawyer for the FBI has been prosecuted, pled guilty to altering information to the FISA court?

GARLAND: I did read about that, yes, Senator.

GRAHAM: What would happen to somebody under your charge that did that? How would you feel about that behavior?

GARLAND: Well, somebody who makes a false statement to the FBI or the inspector general during an investigation has violated 18 USC 1001, and I prosecute those myself.

GRAHAM: Do you believe the Durham investigation is a legitimate investigation?

GARLAND: Senator, I don't know anything really about the investigation.

GRAHAM: You've read the Horowitz Report, do you think somebody should look at what happened?

GARLAND: Well, I do think somebody should look at what happened with respect to those FISAs, absolutely. And I believe the inspector general has done that.

GRAHAM: Based on what -- your review of the Horowitz Report, do you think Jim Comey was a good FBI director?

GARLAND: Senator, I really don't want to get into analyzing any of the previous directors and...

GRAHAM: Well, you have been very critical and appropriately so at times. I just find it pretty stunning that you can't say, in my view, that he was a terrible FBI director. But have you ever been to the border? Have you ever been to the U.S.-Mexican border?

GARLAND: No, sir, I haven't.

GRAHAM: So I would like you to go, because I just got back, because I learned that drug cartels are using our solemn laws against us. They will collect people to sort of rush the border. And once they are apprehended, they will claim asylum. And most of these claims, 90 percent, are rejected. And that will take resources away from securing the border and detecting drugs and protecting the nation against terrorism. This is a behavior by the cartels. Will you look into that practice of using asylum claims by drug cartels to weaken border security?

GARLAND: Well, I have not known about this and I will certainly look into this problem. I think the drug cartels are a major menace to our society. And the poison that they put into our streets is damaging communities of every kind. If they have a particular...

(CROSSTALK)

GRAHAM: Well, I would ask you to visit the border, I think you will find patriots there and when they make mistakes, they need to be held accountable. But that's one of the toughest jobs in the country. This is...

GARLAND: Senator -- Senator, I apologize for speaking over you just now. But there is a little bit of a lag...

GRAHAM: I'm sorry.

GARLAND: It's not your fault, it's a lag in the technology, I think.

GRAHAM: OK. Well, I did take my -- I have a southern accent, so I...

GARLAND: It's not the accent. I'm familiar with Southern accents.

GRAHAM: OK, it must be the Internet. This is the 20th anniversary of 9/11. Are you concerned that Al Qaida and ISIS types are going to try to hit us again?

GARLAND: I am very concerned that foreign terrorist organizations will try to hit us again, yes. I -- I don't know enough at this point about the capabilities of those two but it really doesn't matter which foreign terrorist that -- that -- that -- the terrible thing is the attack.

And as I said in my opening statement, with all the other things that the Justice Department has to do, it must always keep its eye on the ball with respect to a foreign terrorist attack. I -- I -- I was sitting in -- in my office -- arriving at my office as the first planes -- first plane hit the Trade Center and I was sitting in my office, I could see smoke rising over the Pentagon. I can assure you that this is top of mind for me.

GRAHAM: Well, one of the reasons I am very inclined to support you is I believe what you just said is true. I think you have a very deep understanding of the -- the threats America faces. And to my colleagues on the committee, Al Qaida has been diminished, ISIS' footprint has been greatly diminished but they're out there and they're trying to -- they will, this year, sometime -- I hope I'm wrong -- let us know they're still there. So it's great to hear the -- the potential future Attorney General understanding that our nation is very much still under threat.

So when it comes to interacting with the committee, we're going to be talking about Section 230 reform. What's your impression of Section 230 liability protection for big tech and is it time to revisit that topic?

GARLAND: Senator, I -- I have to be the first to -- to confess when I have relatively limited information about a subject. I have had one case on Section 230, as a very straightforward application of the law, so of course I know what it is. I also know that many members of this committee have ideas for how it should be amended and I -- I would have to have an opportunity, if I'm confirmed, to talk with you about that and to understand all the conflicting concerns and the -- and the complexities of -- of how to alter, if it's to be altered.

The devil in these sort of things is always in the details and you -- you, on the committee, know more about this than I do and I look forward, if I'm confirmed, of having the chance to talk about it with you.

GRAHAM: Thank you. Congratulations on your nomination. Thank you, Mr. Chairman.

GARLAND: Thank you, Senator.

DURBIN: Thank you -- thank you, Senator Graham. Senator Whitehouse?

WHITEHOUSE: Thank you, Chairman. And welcome, Judge Garland.

GARLAND: Thank you, Senator.

WHITEHOUSE: People who have been prosecutors understand that it's not the legislature's business to meddle around in a prosecution. At the same time, we have oversight responsibilities. In your view, is it appropriate for Congress to ask the DOJ "give an honest look at investigative matters"?

GARLAND: Senator, I -- I know of your own long experience as a prosecutor, including some of it which overlapped with mine, and I'm deeply respectful of it and appreciative of it. When you ask it that way, it -- it is -- of course, it's always possible for any -- anyone to ask about matters like this.

The department has to be very careful with respect to the Congress, in the same way it has to be respectful -- careful with respect to the White House, that no investigations get started just for partisan - - and I'm not, in any way, suggesting that's what you were asking.

WHITEHOUSE: Nope, I agree with you.

GARLAND: We have to be careful about this.

WHITEHOUSE: And after the fact, once the investigation is closed or concluded, is it appropriate, in the exercise of our oversight, to assure that, in fact, an honest look was taken?

GARLAND: Yes, of course, it is. There are obviously limitations on the department's ability to speak. They include everything from grand jury...

(CROSSTALK)

WHITEHOUSE: Understood. Understood.

With respect to January 6th, I'd like to make sure that you are willing to look upstream from the actual occupants who assaulted the building, in the same way that in a drug case, you would look upstream from the street dealers to try to find the kingpins, and that you will not rule out investigation of funders, organizers, ringleaders or aiders and abettors who were not present in the Capitol on January 6th? Fair question?

GARLAND: Fair question, and again, your law enforcement experience is the same as mine. Investigations -- you know, I began as a line Assistant U.S. Attorney, on -- as a supervisor. You know, we begin with the people on the ground and we work our way up to those who are involved and further involved and we will pursue these leads wherever they take us.

WHITEHOUSE: Thank you.

GARLAND: That's the job of a prosecution.

WHITEHOUSE: As Chairman Durbin mentioned, there have been widely reported problems within the department in the last four years -- the -- Judge Gleeson's brief for Judge Sullivan is one pretty stunning reproach of the department, judicial decisions out of the D.C. District Court and the Southern District -- District Court have been pretty damning, and press reports, too many to mention, have raised concerns about problems within the department during that period.

How do you plan to assess the damage that the department sustained so that you can go forward with a clear understanding of what needs repair?

GARLAND: Well, Senator, I -- I -- I am a strong believer in the -- following the processes of the department. That -- that was my experience in the -- all of my experiences at the department, regardless of whatever level I served.

The traditional process is for issues to be raised before either the Inspector General or the Office of Professional Responsibility, in the areas that you're -- that you're talking about, that they conduct investigations and they certainly seem to -- extremely capable of conducting thorough investigations. They then make recommendations.

And that would be the normal procedures in the department and I would suspect, if I'm confirmed, that those would be the kind of procedures I'd want to follow.

WHITEHOUSE: Well, I would submit to you, you may want to take it on more systematically than that, but we can leave that for a later day. On this committee, and particularly on this side of this committee, we have experienced more or less a four-year stonewall of information from the Department of Justice and from the FBI. From 2017 to 2020, we had 25 DOJ and FBI witnesses who failed to answer some or all of the questions for the record that senators asked them. Twenty-one answered none of the questions of the record from either side.

I have sent, during the course of those years, 28 different letters on various subjects that went completely unanswered. It got so bad that Chairman Graham brought the deputy attorney general up to meet with him and me to go through the list and try to figure out why the hell we weren't getting answers, and where the policy came from, the de facto policy of refusing to answer questions of senators.

I think we need to understand what happened during that period, why these questions weren't being answered. The base question, the point of entry is, why were these questions not being answered? Upon whose instructions were these questions not being answered? Why? What was behind? What was the motive for refusing to answer these questions? Once we've cleared that up, then I think we've got to go through the backlog of questions that the department refused to answer. As you know, sometimes Congress asks questions that are touchy for a department. Somebody may have misbehaved. There may be wrongful conduct that has taken place. And I hope you will agree that covering up misconduct is never an acceptable reason for refusing to answer questions of Congress.

GARLAND: Well, I certainly agree that covering up anything is never an appropriate reason for not answering a question of -- of Congress. There will be no policy, de facto or otherwise, if I am confirmed that would direct the department to not be responsive to this committee and to its members. I -- I want the -- the department I lead to be as responsible -- responsive as possible, and at the very least, to explain why, if it can't answer a question or can't answer a letter, why it can't do so.

WHITEHOUSE: Correct.

GARLAND: That's the minimum you're entitled to.

WHITEHOUSE: Correct. And I don't want this just going forward; I want to be able to go back and get answers to those backlogged questions that were wrongfully refused. Would you help us make sure that that happens?

GARLAND: Yes, Senator. As we talked in our -- in our conversation before, I'm -- would definitely direct that the previous answer -- questions be answered. I -- I only ask you and the other members of the committee as a matter resource and priority allocation, to give us, the department, some sense of the priorities -- which ones still need to be answered, and...

WHITEHOUSE: Correct.

GARLAND: ... perhaps even in what order.

WHITEHOUSE: We will do that.

And last, I have just a few seconds left, so I'll just flag two things. I think that the Office of Legal Counsel has taken a lot of hits, from the torture memos, to the warrantless wiretap memos, to the Southern District decision, to the D.C. court decision, to its extremely self-serving and self-propagating view of presidential investigations. This is a part of the department that I think is in real trouble.

Another role of the department's is the policing and the intermediation of executive privilege for an administration, and I think that is an area that has been in complete collapse, and I look forward -- with my time now expired -- to working with you to figure out what to do about OLC and what to do about the intermediative (ph) role of the Department of Justice when executive privilege is asserted.

GARLAND: Thank you, Senator. I look forward to speaking with you.

DURBIN: Senator Cornyn?

CORNYN: Welcome, Judge. I enjoyed our conversation the other day. Thank you for that.

GARLAND: As did I. Thank you.

CORNYN: Thank you for that.

As I told you, my sole criterion for voting for your confirmation is your pledge to make sure that politics does not affect your job as attorney general, and I believe you told me that you could make that commitment. Is that a commitment you can make here publicly today?

GARLAND: Yeah -- yes, absolutely. I would not have taken this job if I thought that politics would have any influence over prosecutions and investigations.

I do -- I do want to, just to be clear about -- to -- to clarify, so as -- as to not disappoint you, with respect to policies of the -- of the administration, which I assume are driven by politics, although as a judge, I -- I wouldn't know for sure -- I -- it is our obligation to advance the policies of the department as long as they are consistent with the law, and our evaluation of the law has to be based only on the law, and not politics.

CORNYN: Thank you for that clarification. I think being attorney general has got to be the toughest job in the United States government, because you serve at the pleasure of the president, but you also have, as you appropriately point out, a obligation to equal justice and impartial enforcement of the law. If you were asked to do something that you considered to be in violation of the law or unethical, would you resign?

GARLAND: Well, the first thing I would do is to tell the president, or whoever else was asking me to do that, that it was unlawful. I do not expect this to happen with this president, who has made it completely clear publicly and in private that he will not do that. But of course, if I am asked to do something and an alternative is not accepted, I would resign, yes.

CORNYN: OK. Judge Garland, I think one of the biggest problems that the administration of justice has had here in the United States for the last -- particularly, the last couple presidencies, has been the perception that there is a double standard: one that applies to, maybe, one political party or people with -- of wealth, and another one that applies to the opposing political party or people who don't have the resources in order to defend themselves against the awesome investigative and prosecutorial powers of the Department of Justice.

Of course, you're acquainted with the -- with the phrase about the Supreme Court, equal justice under the law. Do you agree with me that a double standard -- a perception of a double standard of justice can be a cancer that will eat away at public confidence in the administration of justice and that commitment to equal justice?

GARLAND: Absolutely, Senator. As I said to many people, I think probably including yourself, Ed Levi is my model for the attorney general. His role was to be sure that justice was meted out fairly and impartially, without any special favors for anyone. This is the definition, in my view, of the rule of law: that the powerful and the powerless, one party and another party, one community in the United States and another community in the United States, all are treated equally in the administration of justice.

CORNYN: The chairman's recitation of things that he perceives as being inappropriate at the Department of Justice ended with the Trump -- started and ended with the Trump administration. But let me take you back a little further into the Biden-Obama administration.

You're familiar with the press conference of James Comey, the FBI director, had in July of 2016...

GARLAND: I'm...

CORNYN: ... when he discussed the investigation of Hillary Clinton for inappropriate use of her e-mail server?

GARLAND: I remember it, Senator, yes.

CORNYN: According the Justice Department norms and procedures and rules that you're well acquainted with as a result of your experience, is that an appropriate step for an FBI director to take, to talk about derogatory information in a case that they say no reasonable prosecutor would pursue?

GARLAND: Senator, I don't think it's useful for me to comment on specific matters involving specific former officials, but I have no problem at all telling you that the Justice Department's policies make clear that derogatory comments about subjects, targets, even people who have been indicted -- except for what's in the indictment -- are not appropriate.

And if I am confirmed, I will zealously attempt to re-inculcate that spirit. When I was in -- when I was speaking to the press after each court hearing in Oklahoma City, I was assiduous in making sure that I did not say anything about the defendants who had just been before the court, and who had done -- now I know -- we know, after conviction, horrible things, that I would not say anything other than what the charges had been brought against them, what the judge reported. I believe that is an important part of a federal prosecution.

CORNYN: I know you don't want to comment on Mr. Comey's actions, but what you just described strikes me as -- as diametrically opposed to what he actually did.

Senator Graham asked you if you'd read the Horowitz Report on the investigation of Crossfire Hurricane. I understand that your time has been limited up to this point, but do you -- would you pledge to read all 404 pages of that report if you're confirmed?

GARLAND: I will, Senator. It may take me some time, but I have a head start by reading the executive summary, so I think I should be able to get through it.

CORNYN: Well, I think it's really important...

GARLAND: OK.

CORNYN: ... that you do so. Because of the abuse, not only of the FISA process, where an FBI lawyer lied to the FISA court in order to get a warrant to spy on a -- on an American citizen, but the abuse of counterintelligence investigation, a counterintelligence investigation against a presidential candidate and (ph) in the run-up to the election.

Are you familiar with the Steele dossier?

GARLAND: Only what I read in the newspapers, and I have to admit that I've read only conflicting reports about it in the papers.

CORNYN: Well, it's -- it's been revealed that the sources for the Steele dossier, which was used in part in order to get FISA warrants, that the subsources could well be -- could well be Russian intelligence officers using that in order to get -- as part of a Russian active measures campaign. Are you familiar with the practice of the Soviet Union, and now the Russian Federation, to use active measures as part of their intelligence service attacks against the United States?

GARLAND: So not from my experience either as a judge or as a prosecutor, but again, from reading media reports, I know what the words mean and I have a general idea of what you're speaking about, yes.

CORNYN: Judge Garland, my time's about up. But I think we talked about the role of the Judiciary Committee in authorizing the tools, like Section 702 of the Foreign Intelligence Surveillance Act, and the importance of preserving public confidence that those tools will be appropriately used, and there will be appropriate oversight both at the Department of Justice and the FBI as well as the Judiciary Committee and the Intelligence Committees.

Do you agree with me that abuse of those authorities jeopardizes the availability of those tools in a way that is detrimental potentially to the security of the United States?

GARLAND: Absolutely, Senator. My entire career as a Justice Department official was aimed at ensuring that we used FISA only as appropriate under the law as it existed at the time. It's not only that I'm worried about losing a tool that's essential, it's also that I'm worried about transgressing the constitutional rights of Americans. Both of those are important.

And I have to say, probably the latter is way more important, in my view. We have to be careful about respecting American citizens' constitutional rights.

CORNYN: Thank you, Judge.

DURBIN: Thanks, Senator Cornyn.

Senator Klobuchar?

KLOBUCHAR: Thank you very much, Mr. Chairman. Congratulations on your new job.

And congratulations to you, Judge Garland, on your nomination.

GARLAND: Thank you.

KLOBUCHAR: I was -- I listened with much happiness in your opening remarks, when you talked about being a lawyer for the people, that you want to serve the law and not factional (ph) purposes, and that you used the important adjective "humble." I think we could need (ph) a little bit more of that in this town, so I appreciate that.

And I was also glad that you mentioned, when President Biden nominated you attorney general, Edward Levy, who taught an iconic first-year law class at the University of Chicago that I took, and like Edward Levy, who took office after Watergate, you will take on the Department of Justice at a critical time, and will have the great task of restoring its ideals of independence and fidelity to the Constitution, and to the law.

What is the number-one thing you want to do to boost morale in the Department of Justice on day one?

GARLAND: Well, on day one, I'm -- hopefully, if I'm confirmed, I will take an oath in which I say all the things that you just said. I want to make clear to the career prosecutors, the career lawyers, the career employees, the career agents at the Department that my job is to protect them from partisan or other improper motives.

I then hope to have an opportunity, over the next few months, to visit with as many members of the Justice Department as possible. In a pandemic, unfortunately, this will have to be over Zoom. I had -- I would much prefer to be able to go down to the Great Hall or (ph) the cafeteria and mingle with folks and let them hear what's in my heart about this, but I'm afraid that technology is the only way I'm going to be able to do it now.

KLOBUCHAR: OK. Very good.

One of the things that troubled me along these lines was the pardon process that was -- President Trump undertook. And one study found that 88 percent of the pardons that he granted had some sort of personal or political connection to the former president. What do you think we need to do to restore integrity to the pardon process?

Obviously it's important, power of the president, what do you think you can do from the attorney general's position?

GARLAND: Senator, you're right, this is a power granted by the Constitution to the president. I think the role of the Justice Department, through its pardon attorney, is to provide a careful individualized examination of the people who are asking to be pardoned. The office has a set of very detailed regulations, which describe when people are appropriate for pardons and when they are not. It provides an important screen that not only yields who maybe should be pardoned, but also protects the president from improper influence.

KLOBUCHAR: OK. Just a few things I want to ask quickly, because I want to also get to anti-trust.

You talked to Senator Graham about resources for domestic terrorism and that you want to take a look. Do you think you will need additional authorities or you want to look at that when you get in there?

I'm going to be chairing a hearing tomorrow with the rules committee on what happened at the Capitol and what we need to do to improve security. Obviously part of it is prosecuting the perpetrators.

GARLAND: Yes. Well, I thank you for that question. The Department is probably always looking for new tools but the first thing we have to do before we look for new tools is figure out whether the tools we have are sufficient and that will be part of this briefing that I -- that I want to have to determine whether the law, which are quite capable and which we're capable of the charges against McVeigh and Nichols and many other terrorist over the years, whether they are sufficient.

And then I'd be interested in speaking with you and other members of the committee about what other additions might be made. But I first got to know whether anything more is necessary.

KLOBUCHAR: Very good. Will you commit to reinstating Attorney General Holder's 2015 guidelines requiring the AG to sign off on subpoena's to journalist. Something I care a lot about as the daughter of journalist.

GARLAND: Yes, so the guidelines came out originally when I was working for Ben Civiletti and I had the great pleasure of working on them. These are things -- this is something that I'm deeply committed to. They have improved, I would say, over the years as -- as more concerns have -- have arisen.

But I would expect to re-up the -- to re-up those guidelines. I don't believe that they have been rescinded in anyway though. I believe they're still there.

KLOBUCHAR: No, but there was -- I couldn't really get a straight answer from Attorney General Sessions or Barr. So we can talk about this more --

GARLAND: Well, I hope that's a straight answer for you.

KLOBUCHAR: I --I know you support reforms to police practices, that's correct.

GARLAND: Yes.

KLOBUCHAR: OK, very good. We obviously have a major bill on that. Conviction integrity units, something that I think is very important. You support federal grants for that?

GARLAND: Yes. Look, I think that convicting someone who did not commit the crime is one of the most -- it's a risk, of course, of all kinds of law enforcement. But if we can -- can determine that we've made a mistake, we need very much to correct it. And I think that grants for the purpose of supporting conviction integrity units in district attorney -- states attorney's offices across the country is -- is a very good idea.

KLOBUCHAR: We share an interest in anti-trust law. I know that you used to teach that to law students and you've handled some cases as judge -- as chair of the competition policy and anti-trust subcommittee, we're going to be doing a lot in this area, along with my colleague Senator Lee.

Two-thirds of U.S. industries have become more concentrated between 97 and 2012. The pandemic has actually made things even harder on small businesses. I think that we need more resources. The FTC and the anti-trust division of DOJ are literally shadows of what they were when the break-up of AT&T occurred.

And we can't expect the agencies to do what we need to do to take on the biggest companies the world has ever known on the text side in addition to other ones with band-aids. In fact, Senator Grassley and I have a bill to greatly increase the funding to those divisions and agency. Would you support that?

GARLAND: Well, I appreciate you recognizing that my first love in law school turned -- was in fact anti-trust and I studied under one of the most famous scholars and was his research assistant, Phil Arita. And as a practice (ph) I worked with Bob Pitofsky, another one of the greatest scholars and the former head -- chair of the Federal Trade Commission.

And I did practice anti-trust law, including trying anti-trust cases. I always want to be in a position of saying thank you, yes when you ask whether we want more resources. My expectation is that is what I would say.

But I -- until I'm a -- and if and until I'm confirmed, I really can't evaluate what resources we might need but I'm happy to work with you.

KLOBUCHAR: Will you commit to vigorously enforcing the anti-trust laws?

GARLAND: Absolutely.

KLOBUCHAR: I believe that we need some changes to those laws to aid you in doing that. And I hope you'll be open to those. I have a bill called the competition anti-trust law enforcement reform act that I hope you'll look at changing some of the standards for mergers and for exclusionary conduct.

I also think that if anything has illustrated the need to look back at the consolidation in some of the industries it would be the law suits filed by the DOJ and the FTC example, Facebook's acquisitions of Instagram and WhatsApp. I suggest you look at Mark Zuckerberg's email where he talked about purchasing nascent competitors.

And I think the answer to that has got to come from the Justice Department, the answer -- the reply to the email that this kind of exclusionary conduct is not the way capitalism works in America and we've always had a balance.

We've had a balance through Republican presidents and Democratic presidents to say that we believe in the capitalist system and we have to make sure we keep rejuvenating it by allowing smaller competitors to emerge.

That's not happening right now in many areas and I just need your commitment that you'll take this area of the law very seriously.

GARLAND: I take it very seriously and have throughout my entire career. The Supreme Court has repeatedly referred to the anti-trust lawyer as the charter of American economic liberty and I deeply believe that.

KLOBUCHAR: Thank you very much, Judge Garland.

GARLAND: Thank you.

DURBIN: Thanks, Senator Klobuchar. This is the first test of the new regime. We are going to take a break now for 10 minutes and resume at 11:20 for the much anticipated questioning of Senator Lee.

GARLAND: Thank you, Mr. Chairman.

(RECESS)

DURBIN: Senator Lee?

LEE: Thank you very much, Mr. Chairman, and thank you, Judge Garland, for being here today. I appreciated also your kind words about former Attorney General Ed Levi. I've been a lifelong admirer of his. He truly is an attorney general in the grand tradition of that office and he's someone who my family has known, one way or another, for -- for a long time.

My late father worked for him as -- while he was running the Civil Division during Ed Levi's time as attorney general. I had close personal and professional interactions with both his son, David Levi, a former judge and later law school dean, and -- and with Ed Levi's grandson, David's son, Will, who served with me as my chief counsel, worked on this committee for several years and -- and later served as Chief of Staff to Attorney General Barr. So a big fan of that family and I'm glad that he's someone that you look up to.

I want to talk about a few issues today. Let's talk first for a moment about the Second Amendment and the right to bear arms -- and this is going back 15 years or so -- but in -- in a case called *Parker v. District of Columbia*, a -- a case that later became known as -- as -- as *District of Columbia v. Heller*, as I recall, you voted for rehearing en banc with respect to an opinion striking down that -- that same ban on handguns within the District of Columbia. And of course later, in the same proceedings of the same case, the Supreme Court struck down the ban.

Can you tell us why you voted the way that you did and why you voted to give D.C. another chance to defend its ban on handguns in that case?

GARLAND: Yes, Senator. As I know you know, be -- cause you were a law clerk yourself, you know that rehearing en banc is a vote to hear a case, it's not a vote on the merits of the case, and in my case, it's -- in -- for myself, it's never a vote on the merits, it's a vote to -- to rehear the case.

The panel decision was the first time I think ever a court of appeals had held the individual right to keep and bear arms, which you are exactly right, the Supreme Court did uphold in the end. Every court of appeals had decided to the contrary and the issue and the issue was plainly one that would require looking at a -- a deep historical record as to the meaning of the Second Amendment and as to the way it had been applied.

I thought this was an extremely important issue, important enough, since it was the very first time that we should hear it en banc. I was not the only judge and other judges, including a judge appointed by the -- by a president of a different party, also voted and for the same reason, so that we would have an opportunity to hear the case.

LEE: Thank you, I appreciate that. Let's talk a little bit about the meaning of the Second Amendment. How do you view it and -- and do you agree with Justice Thomas' analysis, in his dissent in the *Rogers* case, that the Second Amendment right to bear arms certainly includes the -- the -- the right to carry operable firearms in public for self defense?

GARLAND: So my view is -- is totally controlled by the Heller opinion. And in that case, Justice Scalia held that there was an individual right to keep and bear arms for self defense. In the subsequent McDonald case, the court said that was a fundamental right, which applied to the states, as well.

It is a right, as Justice Scalia said in the opinion, like all rights, that it's subject to some limitations. The court has not given us much more to work with at this point and I'm -- and I do think, as I said with my respect to vote en banc, this is a matter that requires careful historical examination, which I have never done, and I certainly can't, you know, do sitting here for you.

So I don't have an opinion on that question.

LEE: OK. You've been in a -- in a judicial role for the last 20, going on 25 years.

GARLAND: Yes, sir.

LEE: You'll be in a -- in a different role, if confirmed to this position, one in which you'll have a significant impact on policy. So let's talk about policy as it relates to the Second Amendment briefly. Do you support universal background checks?

GARLAND: Well, I -- I -- I do think that it's very important that we be careful that people who are entitled to have guns are -- are -- get the background check that allows them to have them and that those who are not entitled and who are -- we are -- we are concerned about, because they're threats, because of felon -- they're felons or for whatever reason barred by the law, that we have -- that there is an opportunity to determine that they not be given a gun.

LEE: Do you -- do you support banning specific types of guns?

GARLAND: I'm sorry -- I'm sorry?

LEE: Do you support banning -- a banning of -- of certain types of firearms?

GARLAND: Well, as I'm -- I'm sure you know, the president is a strong supporter of gun control and has been an advocate all of his life -- his professional life on this question. The role of the Justice Department is to advance the policy program of the administration, as long as it is consistent with the law.

And as I said so far, we have a little indication from the Supreme Court as to -- to what this means but we don't have a -- a -- a complete indication. And where there is room under the law for the president's policies to be pursued, then I -- I -- I think the president is entitled to pursue them.

LEE: What about policies that would support holding firearms manufacturers liable for damage caused by people using firearms they produced to commit a -- a crime?

GARLAND: I don't have a -- I -- I -- I believe that the -- the president may have a position on this question. I have not thought myself deeply about this. I don't think it raises a Second Amendment issue itself, the question of a liability protection, but I have not addressed this in -- in any way and I'd need to think about this considerably more.

LEE: The -- the other questions I raised potentially implicate the Second Amendment. That one raises other policy concerns...

(CROSSTALK)

LEE: Let's talk about FISA briefly. Senator Leahy and I have offered an amendment to reform the FISA process by strengthening amici curiae provisions that are already in there in existing law, that have been put in there by -- among other provisions -- the USA Freedom Act, Senator Leahy and I got passed through Congress and signed into law by President Obama in 2015.

And -- and our amendments would also require the government to disclose relevant exculpatory evidence both to the FISA Court and to the amici. This is an amendment that ended up passing the Senate last year by a bipartisan super-majority of 77 to 19. Do you support reforms to FISA like those I just described in the Lee-Leahy Amendment?

GARLAND: So I think FISA is an extremely important tool for the Justice Department and the intelligence community in general to protect the country from foreign agents and foreign terrorists. On the other hand, it is extremely important that everything we do with respect to FISA -- and -- and I have felt this way my entire professional life also -- that we do so in accordance with the law and with respect for the constitutional rights of citizens.

I -- I don't know very much specifically about your two proposals. I -- I do know the current rules with respect to amicus -- and I have had the opportunity to discuss those with judges on the Foreign Intelligence Surveillance Court, and every -- everyone seems quite happy with the way that process is going. I don't know what more might be needed. I would have to study that.

LEE: Mr. Chairman, I see my time's expired. I've got one very brief follow-up. Can I just finish that -- that question?

DURBIN: (inaudible).

LEE: Thank you. On -- on this topic of questions related to FISA, I also wanted to ask you, do you think that the federal government ought to be able to collect American citizens' web browsing or Internet search history without a search warrant supported by probable cause?

GARLAND: I know this is a big issue. I don't -- you know, my experience with FISA come -- comes from a slightly different era. I had a lot of experience, but it was a very different era, and I follow this a little bit. I have -- obviously haven't had any cases on it myself. I'd have to look at it. I'm -- you know, I -- I believe in judicial review, and I -- and I'm a strong supporter of, and respectful of judicial review of -- of orders, but I don't know what the practicalities of going for a probable cause warrant in those circumstances would be, if -- if there would be an emergency, et cetera, and I'd -- I'd -- I'd be eager to engage with you and the other members of the committee who are concerned about this so that I can understand this problem more fully.

LEE: Thank you very much, Mr. Chairman.

DURBIN: Senator Coons?

COONS: Thank you, Chairman Durbin, Ranking Member Grassley.

Judge Garland, welcome.

GARLAND: Thank you.

COONS: Congratulations on your nomination, and please convey my thanks to Lynn, to Jake, to Becky (ph), to your family for supporting what has been a decades-long career at the bench and bar, as someone dedicated to public service, to law enforcement and to upholding the balance between justice and liberty. I cannot think of a more urgent task before us than restoring the people's faith in our institutions and in the rule of law. And your opening statement, which in part, was dedicated to clarifying your view that the attorney general represents the public interest, and your enthusiasm for ensuring that the 115,000 career employees of the Department of Justice are appropriately sheltered from partisan or political influence is very encouraging to me, after what I think were some harrowing moments in the last few years.

As I'm sure you know, there are quite a few admirers of yours who work here in this committee, some former clerks of yours who work closely with me, and many who've reassured me not just of your professional skill and great insights, but also of your personal decency, kindness and thoughtfulness.

I was struck in reading through your background that you've spent 20 years quietly as a tutor at an elementary school here in the District of Columbia, something I think not enough elected or appointed officials on either the bench or in Congress do. So thank you for your willingness to continue your service.

I'm from a small town in Delaware which, like many other cities in America, was torn apart by concerns about racial justice and inequality; a city that has also struggled with long-standing challenges with gun violence and with insecurity and instability in our community. Our mayor, Mike Purzycki, our governor, John Carney, are doing a great job and working hard to try and address this. And striking the right balance between protecting our citizens from gun violence, but also developing an environment where law enforcement is more transparent and accountable is going to be one of the core challenges which you and the Department of Justice will be involved in, in partnership with state and local law enforcement and with other elected officials.

In Wilmington and Dover, Delaware, we're rolling out body-worn cameras for law enforcement officers. Our governor is committed to having that available for all of our law enforcement officers by 2025, but it's very expensive. It's something law enforcement has embraced. It's something that advocates have embraced.

I am an appropriator for the Department of Justice, as well as a member of this committee. Is that something you could agree to, to be an advocate for the funding and deployment of body-worn cameras to ensure both accountability and improve trust between law enforcement and local communities?

GARLAND: Well, Senator, I'm, again, always happy to accept more resources for the Department of Justice. I don't know what that might take away from in other areas of the department. But I -- I personally think that body cams are a very important tool to protect -- both to protect officers and to protect the citizens. And you know, just as everyone -- you -- well, you are all on the inside. I was on the outside, watching what happened on January 6th, and the -- the fact that we were able to see exactly what was happening to the officers and the way in which they were carrying about their duties, in -- in -- in the best way they could is only possible to be captured because of the body cameras.

COONS: Well, I...

GARLAND: I think it's an important tool for accountability. Yes, I do.

COONS: Thank you, Your Honor. If -- if you might, I do think it's important that we increase investment in a variety of programs. I've long worked for the Victims of Child Abuse Act. COVID-19 has demonstrated a tragic rise in child abuse, and this is a critical tool that allows state and local law enforcement to effectively address child abuse. The Bulletproof Vest Partnership Program, which has helped save 3,000 officers' lives, these and other grant programs are things I look forward to working with you on.

There's also much-needed legislation that will move us forward in terms of criminal justice reform and protecting communities from violence. Senator Cornyn and I hope to soon reintroduce the NICS Denial Notification Act, which just ensures that state and local law enforcement gets notified when a person prohibited lies and tries; they attempt to purchase a gun. That's something that's been discussed in previous congresses on this committee. We haven't made progress on it. I think we should.

Senator Wicker and I are soon going to introduce -- reintroduce the bipartisan Driving for Opportunity Act, which incentivizes states to stop suspending drivers licenses simply for unpaid fines and fees. It's a cold, counterproductive way to take away people's ability to get to work and ensures people are trapped in modern-day debt prisons. It's something that has strong support from law enforcement and civil rights groups, and I'd just be interested in whether you'll work with us here in Congress to move bipartisan bills like these two.

GARLAND: I'm extremely interested, if I'm confirmed, in working with the members of Congress, and particularly on bipartisan legislation. I don't know specifically about those, but each of them has the ring of something that is very important and quite reasonable.

COONS: Well, enactable, reasonable, moving the ball forward are the sorts of things I hope we get to work on. I'll be serving as the chair of the Subcommittee on Privacy Technology and the Law in this Congress, and look forward to working with Senator Sasse, who will serve as ranking member.

One of the core things we'll be looking at is how online misinformation is contributing to domestic terrorism, to division here. You've discussed your own experience with domestic terrorism cases and your plan to prioritize this issue. It's something the FBI director has said is one of our most pressing threats. Do you think the DOJ has a role to play in examining the role of misinformation and incitement online to contributing to violence and that the DOJ has a role in working to help us develop reasonable solutions to this challenge?

GARLAND: Well, again, Senator, I think that every opportunity the Justice Department has to work with the members of the Senate to think about how to solve problems and how to craft legislation is one that we should take. I don't have in mind particular legislation in this area. I do think that an important part of the investigation of violent extremist groups is following their activities online and getting an idea about what kind of information -- misinformation is being put out being put out.

I look forward to talking more about this with you.

COONS: Well, there's increasing regulatory schemes both in Europe and in California and other states being considered and I look forward to working with you in striking that appropriate balance between protecting data privacy, protecting individual liberty, but also protecting the competitiveness of the United States, and globally making sure that were pushing back on digital authoritarianism.

Last, I'm glad to see the department is prosecuting, I think there is 235 charges brought so far, against rioters who invaded the Capitol and attacked our democracy on January 6th. I've supported calls for a 9/11-style independent commission to investigate the bigger picture of what caused this and what we might learn from it.

Do you think an independent commission of that style would help complement the department's work and help the American people better understand the root causes of that riot, that incident, and then better help us both protect the Capitol and those of us who serve here but more importantly to protect the underpinnings of our democracy?

GARLAND: Will, Senator, I do think the 9/11 Commission was very useful and very helpful in understanding what happened then. And of course the Congress has full authority to conduct this kind of oversight investigation or to set up an independent commission. The only thing that I would ask, if I were confirmed, is that care be taken that it not -- that commission's investigation not interfere with our ability to prosecute individuals and entities that caused the Capitol -- the storming of the Capitol.

And as you well know, this is a very sensitive issue about, you know, disclosing operations which are still in progress, disclosing our sources and methods, and allowing people to testify in a way that makes it impossible to prosecute them.

So with those caveats, I certainly could not object to anything that Congress would want to do in this regard.

COONS: Understood. Thank you, Judge. I am encouraged by the broad bipartisan support you've already garnered from this committee and publicly, and look forward to supporting your confirmation.

GARLAND: Thank you very much, Senator, I appreciate it.

COONS: Thank you, Senator Coons.

Senator Cruz.

CRUZ: Thank you, Mr. Chairman.

Judge Garland, welcome.

GARLAND: Thank you, Senator.

CRUZ: Congratulations on your nomination.

GARLAND: Thank you.

CRUZ: In two-plus decades on the court, you have built a reputation for integrity and for setting aside partisan interests and following the law. The job to which you have been appointed is a very different job. And as I look back over the eight years of the Obama-Biden Justice Department, in my view, the most problematic aspect of that tenure was that the Department of Justice was politicized and weaponized in a way that was directly contrary to over a century of tradition of the Department of Justice of being apolitical and not a partisan tool to target your opponents.

So it is very much my hope, if you are confirmed as attorney general, that you will bring that reputation for integrity to the Department of Justice and demonstrate a willingness to stand up for what will be inevitable political pressure to once again politicize the Department of Justice and use it as a tool to attack the political opponents of the current administration.

Eric Holder, before he was nominated as attorney general, had likewise built a reputation as being relatively non-partisan and a prosecutor with integrity. And unfortunately his tenure as attorney general did enormous damage to that reputation.

As was previously discussed, Eric Holder described his role as attorney general as being the wingman for President Obama. Am I right in assuming you do not view your role as attorney general as being Joe Biden's wingman?

GARLAND: Senator, I -- as I said, I don't want to comment on any individual's conduct, any of my predecessors or FBI director's conduct in any way. But I can assure you I do not regard myself as anything other than the lawyer for the people of the United States. And I am not the president's lawyer, I am the United States's lawyer. And I will do everything in my power, which I believe is considerable, to fend off any effort by anyone to make prosecutions or investigations partisan or political in any way.

My job is to protect the Department of Justice and its employees in going about their job and doing the right thing, according to the facts and the law.

CRUZ: Under the Obama administration the IRS targeted the political opponents of the president. It targeted conservatives for their speech. It targeted pro-Israel groups. It targeted tea party groups. It targeted individuals perceived to be on the opposite political side as the administration. Will you commit as attorney general that you will not allow the Department of Justice to be used to target those who are perceived as political opponents because they are political opponents?

GARLAND: Absolutely, I will not.

CRUZ: Also under the Obama administration, Operation Choke Point was used to pressure lawful organizations, lawful institutions, institutions, for example, that sell firearms to constrain their lawful activity and to use regulatory authority to abuse and force them to comply with the administration's stated policies.

Do you believe it's appropriate for the administration to use regulatory pressure to force lawful behavior to stop?

GARLAND: Senator, I'm not aware of the specific that you're giving, and I expect you don't expect that I would have been aware of it. But of course I do not believe, as a general matter, that regulations should be used to stop people from doing what they're lawfully entitled to do, unless the regulation is pursuant to a statute, obviously, in which Congress is given authority to change the rules.

CRUZ: As you also know, Attorney General Eric Holder was held in contempt of Congress, criminal contempt of Congress. That was a bipartisan vote, 18 Democrats voted to hold Attorney General Holder in contempt. They did so because he refused to produce documents to Congress for Congress' investigation of the Fast and Furious scandal, a major scandal that resulted in the death of two federal law enforcement officers.

You've previously committed to senators on this panel that under your leadership, the Department of Justice will comply to the extent possible with requests from this committee, and I want to, in the course of this question, associate myself with Senator Whitehouse's comments and questions.

He and I disagree on a great many issues, but on this particular issue we are emphatically in agreement that senators from this committee should get answers, should get candid answers, should get substantive answers, should get real answers from the Department of Justice regardless of the party of the senator asking that question, that that is a level of oversight that the American people have a right to expect. Do you agree with that?

GARLAND: I do think that this is a level of oversight the American people have a right to expect. I want the department, if I'm confirmed, to be responsive -- to the extent it's possible with respect to the Justice Department's appropriate equities -- to be responsive to the requests for information.

CRUZ: So you've had -- previously you said you've read the executive summary of the Horowitz Report. What was your reaction to the Horowitz Report?

GARLAND: Well, I thought, as Mr. Horowitz explained -- and I don't -- I believe Director Wray agreed, there were problems with respect to the applications for several FISAs, that those were not -- they were not consistent with the internal regulations of the department, and that that -- those problems had to be corrected.

And I think deeply that we have to be careful about how we use FISA, and that's the reason we have pretty strict regulations internally, in policies. We need to find out why they aren't followed, and to be sure that they are followed. I understand that was the purpose of his report, and his recommendations to Director Wray.

CRUZ: So you describe the report as saying there were problems, that's a fairly anodyne way of characterizing it given the multiple material misstatements the Horowitz Report details, including Mr. Clinesmith's fabrication of evidence and lying to a court -- which he's now pleaded guilty to.

I think that was yet another example of the deep politicization of the Department of Justice, culminating in a meeting with the acting attorney general, President Obama, Vice President Biden in the Oval Office, concerning the targeting of their political opponent.

Will you commit to this committee that, under your leadership, the Department of Justice will not target the political opponents of this administration, that there will be real scrutiny? What that report outlines, among other things, is weaponizing oppo research from the Hillary Clinton campaign and launching a criminal investigation based on that.

Will you commit that that conduct will not be acceptable under any Department of Justice you're leading?

GARLAND: So absolutely, Senator. But without trying to comment specifically on that matter, it's totally inappropriate for the department to target any individual because of their politics or their position in a campaign.

The only basis for targeting has to be evidence of -- of the risk of foreign intelligence problem or of a criminal problem. That that is a nonpartisan issue. That is a question of objective facts and law, and it can never be an effort to help one party or another party. In investigations and prosecutions, there is no party. The department is an independent, nonpartisan actor. And that's my job, to ensure that that's the case.

CRUZ: Thank you.

DURBIN: Thanks, Senator Cruz.

We now understand that Senator Leahy is in Zoom range. Senator Leahy, do you read me?

LEAHY: (inaudible). Can you hear me?

DURBIN: I hear the voice.

LEAHY: I assume there's a picture coming in here somewhere.

DURBIN: Is there a way to turn up the volume so we can hear Senator Leahy? There he is.

LEAHY: I'll move (inaudible) around just a little bit.

DURBIN: All right, if you'll...

LEAHY: OK.

DURBIN: Take it away, Senator.

LEAHY: Thank you very much. First off, Mr. Chairman, I'm glad you're having these hearings.

And, Judge, it's great to see you seated there. I -- I wish, five years ago, we would have seen (ph) you seated there for your Supreme Court nomination, but I'm glad you're here today...

(CROSSTALK)

GARLAND: Thank you, Senator.

LEAHY: ... the nomination comes at probably the most vulnerable moment in the 51 -- or not -- 151-year history of the department. And you've got to restore the integrity and the respect of the department. No small job, but I can't think of anybody more qualified to do that.

I know that a number of people stated their support of you. One person I know and respect greatly, former FBI Director Judge Freeh and I know he sent a letter.

And, Mr. Chairman, if you don't mind, could we have that letter go in the record if you haven't already put it there?

DURBIN: Without objection.

LEAHY: Thank you.

We're going -- a lot of the things have already been covered, and of course I -- you and I have talked before. Your experience in the Oklahoma City Bombing is -- anybody who's been a prosecutor knows what a job you did there, and I do appreciate that.

We have other things that we have to deal with. The Voting Rights Act, the John Lewis Voting Rights Act, enforcement, we've seen that there's been a scourge of voter suppression. Which would be wrong, I don't care who's being suppressed.

Unless the Justice Department gets its tools (ph) back under the Voting Rights Act, I'm afraid that the right to vote is always going to be at risk, especially if minorities (ph) (inaudible) underserved (ph) communities.

Do you agree that legislation like the John Lewis Voting Rights Advancement Act is urgently needed?

GARLAND: So, Senator, I don't know the specifics of the act, although I certainly knew John Lewis well and I was a great admirer, I think that with respect to voting, even in this last election, where a larger percentage of Americans voted than ever before, there was still a huge percentage that did not -- at least a third did not -- did not vote.

I think it's important that every American have the opportunity to vote. Voting is the central facet -- the fulcrum of our democracy. So anything that can -- any -- any legislation that -- that will encourage more voting, I strongly support.

Specifically, you are averring to the Supreme Court's decision in the Shelby County case, which said that the coverage formula for pre-clearance couldn't be used as unconstitutional because of the -- the then state of the congressional record, but the court indicated that a different and stronger record might support pre-clearance.

And I would be in favor of -- of -- if I'm confirmed, of working with the committee and the Senate and the House to try and develop that record that would allow that important tool to be used. The department still does have other tools -- it has Section 2, which remains in force, as the Supreme Court clearly said in Shelby County, and it prevents interference with voting practices and procedures, the -- you know, that interfere with minorities' ability to vote, and it is something that the department has always looked to as an important tool.

There are plenty of other tools to increase the ability of Americans to vote, which I would support...

LEAHY: Thank you -- thank you and I know Senator Lee has already -- has already arranged this but please -- please know that Senator Lee and I will both be talking to you about privacy matters. This is not a privacy issue, it's a -- an issue of concern, and we'll do that.

Let me ask you another hearing (ph) -- was an issue of concern to me. In the Bush administration -- the last Bush administration, they put a moratorium on death penalties, but -- in -- in federal cases. They gave solid reasons for that, and that moratorium has lasted -- or did last from 2003, during the Bush administration, and then suddenly, in the last six months, the Justice Department, under the last president, rushed to execute more people -- this is what's stunning -- in six months than had been executed in the past 60 years. That's a matter -- many of us feel that was nothing short of being a -- a killing spree.

And what worries me -- we all know the death penalty is used disproportionately against minorities and the poor. As a prosecutor, I prosecuted many murder cases. I always opposed the death penalty, and Vermont has gotten rid of theirs. I'd -- I'd much rather have somebody serve their time for years in a prison cell, thinking of what they -- they did wrong.

Now, I'm joining Senator Durbin and Senator Booker in reintroducing the Federal Death Penalty Act, which would end the federal death penalty -- penalty. So I'd ask you this -- would you go back to what President Bush did and reinstate the federal moratorium, which was lifted just in the last few months by the last administration, and reinstate it while Senator Durbin, Senator Booker, myself and others are -- work on the legislation, eliminating the death penalty?

GARLAND: Well, as you know, Senator, President Biden is an opponent of the death penalty. I have to say that over those almost 20 years in which the federal death penalty had been paused, I -- I have had a great pause about the -- about -- about the death penalty.

I am very concerned about the large number of exonerations that have occurred through DNA evidence, and otherwise not only in death penalty convictions but also in other convictions. I -- I think a terrible thing occurs when somebody is convicted of a crime that they did not commit and the most terrible thing happens if someone is executed for a crime they did not commit.

It's also the case that during this pause, we've seen fewer and fewer death penalty applications anywhere in the country, not only in the federal government but among the states. And as a consequence, I'm concerned about the increasing almost randomness or arbitrariness of its application when you have so few number of cases.

And finally and very importantly is the other matter that you raised, which is its disparate impact. The data is clear that it has an enormously disparate impact on black Americans and members of communities of color, and exonerations also that -- something like half of the exonerations had to do with black men.

So all of this has given me pause and I expect that the President will be given direction in this area, and if so, I'm -- I expect it not at all unlikely that -- that we will return to the previous policy.

LEAHY: Thank you and I -- I think my time's expired, just about it, but I would add -- also add, as Chairman of the Appropriations Committee, I'm going to be talking to you about the Department of Justice and the grants they had (ph) on Violence Against Women Act, BOCA (ph) grants, other such things.

Those have -- the money (ph) has had bipartisan support. Again, we've got to make sure they -- they are done. Frankly, our -- I am very happy you are here. Well, you see, I have (ph) -- I have a feeling we're going to have a lot of conversations in the next few years.

GARLAND: Well, I -- I hope that's the case, Senator. I'm -- I'd be happy to have conversations even if I'm not confirmed but I certainly prefer them if I am confirmed.

LEAHY: You're -- you're going to be confirmed. I'll -- I'll bet my farm in Vermont on that.

GARLAND: Never ask anybody to bet that, Senator.

(LAUGHTER)

DURBIN: Thank -- thank you, Senator Leahy. Senator Sasse?

SASSE: Thank you, Chairman. Congratulations, Judge, on your nomination and thank you for the time you've spent in this process with those of us who were wanting to grill you in private before we were here today in public.

You're in the process of moving from Article 3 to Article 2. Were you -- were you confirmed to the bench in '96, '97?

GARLAND: '97.

SASSE: OK. In the 23 years, 24 years since you left an executive role, obviously, the -- the Article 2 branch has grown in power, and Article 1 seems to be shriveling in lots of ways. Do you have a theory of why Articles 2 and 3 are gaining more power in American life, and Article 1, seemingly, is weaker?

GARLAND: That -- that is, I would say, a cosmic question of our civic life. I -- I don't really have an answer to that. Obviously, each branch has enormous powers authorized by the Constitution, and it may be, if -- if this is the case, that the Congress has just not asserted it -- itself as it should, with respect to protecting its authorities. I don't have, to be honest, it's -- I'm not enough of a -- a political scientist to know exactly how this balance has changed. I -- I'm sure, from the point of view of the Congress, it -- its -- its role has diminished, but you know, sometimes I'm sure the other branches feel the same way.

SASSE: Right. Well, I -- I think it's a -- a mix of overreach by Article 2 and underreach by Article 1, so I'm not asking the question in a way to put you on the defensive, as if everything that's wrong is chiefly outside the Congress, because I think we're probably chiefly to blame. But you're going to become the most powerful law enforcement officer in the nation, and obviously, you'll have lots of prosecutorial discretion. But could you help us understand what the line is between prosecutorial discretion, which is understandable in any complex organization, and executive unilateralism, which I hope we can agree at least at the definitional level is a massive constitutional problem? What's the line?

GARLAND: Yeah. So it's not the most easy line to -- to -- to outline. The Supreme Court's (inaudible) case is the best overall description. It's -- for the entire history of the country prosecutors have -- and government agencies have -- have had discretion to make decisions about how they allocate their resources in terms of enforcement priorities, both criminal and civil. And the -- these -- this is either generally in non-reviewable or deferentially-reviewable in the courts; that the opposite side of the line is that the executive branch can't simply decide we're not going to enforce this law at all. Now, where a particular piece of conduct falls between those two is -- is -- it's a difficult thing to -- to say, except in an individual case.

SASSE: Well, I mean, obviously, in our tribal politics it's easy for each party, when they're out of power, to say that the Article 2 branch is overreaching. But when you're in power, it turns out those mostly look like discretion. How -- how do you think, not just the Supreme Court line of cases, but at the level of -- of you being the boss of the AAG for OLC, for instance...

GARLAND: Yeah, yeah.

SASSE: ... how will you just determine what actions are beyond the pale?

GARLAND: Yeah. Well, I do think that when the department makes determinations based on resources, on its views about which are the most important matters that it should -- should go forward with when it thinks that state and local governments are in a better position to handle those matters, any of those kind of factors are all perfectly appropriate for deciding to -- to exercise prosecutorial discretion. But your disagreement with a law passed by Congress or a -- a decision that a department will simply not enforce regardless of resources or other things would be impermissible. But again, I think it -- no matter how hard I try, I can't put this in the perfect words, and I'm sure maybe we'll disagree in the future if I -- if I do get this position, but it will be out of a good-faith effort on my part to be sure that the executive is only doing what it's supposed to do.

SASSE: I -- I want to move on to another topic, but one -- one more finer point on it: Is congressional inaction a legitimate basis for Article 2 to decide it just must act because it wishes policy were different, and legislation doesn't move, therefore, you have a pen and a phone? Can you just act because Congress didn't?

GARLAND: Also you're asking really tough questions of our basic constitutional structure. Doing so simply out of upset that Congress hasn't done what you want -- obviously, not OK. But the formulation that Justice Jackson, who I quoted in my opening, famously gave in the Youngstown Steel case, the president does have authorities. When he acts consonant with Congress he's at his highest power. When Congress has not acted at all, he's left with only his own power, which is clearly available under the Constitution, depending on the circumstance that we're talking about. And when he acts in contravention of Congress, he has only the authorities the Constitution gives him, minus the -- the authorities that the Congress has. And this is what Jackson famously referred to as the lowest ebb of the executive's authority.

So inaction is in the middle. You can't do this just because Congress didn't act, but you can -- the president can act if it's within his authority and he believes it's something in the public interest.

SASSE: Thanks. I want to switch gears a little bit. I was encouraged earlier when you said that the department's purposes are to make sure -- include among them, to include -- to be sure that both the powerful and the powerless are treated -- treated equally.

I want to talk about one case where that obviously hasn't happened, and that's the case of Jeffrey Epstein and his many, many victims of domestic and international sex trafficking. Obviously, he evaded justice for years, and when the department did ultimately partner with local authorities, it allowed charges to be brought that didn't befit the seriousness of his crimes. Infuriatingly, he was allowed to die by apparent suicide in federal custody, despite the fact that everybody knew he was a suicide risk, and many people would benefit from that outcome. And then most recently, his estate has failed to pony up to make right on all of their obligations to compensate his victims.

What do you think went wrong with the department's handling of the Epstein case?

GARLAND: Senator, so my position as a judge, I'm -- and also, my previous position as a prosecutor, I'm -- always been extremely careful not to comment about something without knowing the facts. The facts I know about the Epstein matter are the ones I've read in the -- in the media, and that I've seen on television. So I don't think -- I'm just not in the position...

SASSE: We -- we can agree that those are disgustingly embarrassing...

GARLAND: Absolutely, and -- and...

SASSE: ... about how weak the department's pursuit of this evil man was.

GARLAND: Absolutely. But you asked me the "why" question, and I -- I can't answer the -- the "why" question. But on the values question, I can answer. This is just horrendous, and he obviously should have been vigorously prosecuted substantively earlier. But I -- I don't know the "why."

SASSE: And -- and he has co-conspirators who are still being held and pursued, and as you and I discussed in private, I hope that we will make sure that the department prioritizes resources for this. Scores and scores of the women he victimized are just in their 30s now, but they've had so much of their lives stolen from them. And obviously, sex trafficking is a scourge of our time, and I really would hope that the department continues to do an after-action review on why we've under invested there. I've got more questions on the department's China initiative but my time is expired so I'll follow up with that separately. Thank you, sir.

GARLAND: Looking forward to it, thank you.

DURBIN: Senator Blumenthal.

BLUMENTHAL: Thanks, Mr. Chairman. I want to welcome you to the committee, your honor. And welcome your family as well. A very supportive and accomplished family and say that among the qualities that you bring to this job, obviously your brilliance, your services, judge, are tremendously important.

But I think the lesson today is that character counts in restoring the integrity and incredibility of the leadership of the Department of Justice. I think that the character that you've demonstrated throughout your career are going to be most important.

Your resilience as well as your brilliance you've been tested by adversity and kind of values that you exemplified beginning when I think both of us served as persecutors in the Department Justice and first met.

So I look forward to your inspiring more young attorneys to join the ranks of law enforcement and celebrate the accomplishments of those 115,000 professionals who everyday help keep us safe.

I welcome your commitment to combating violent extremism. I've supported and I'm introducing a 9/11 commission bill. But want to turn to an area of violence that you raised, which is hate crimes. The growing incidence of hate crimes, especially against now certain groups, Asian Americans, I think is extraordinary alarming.

I've introduced a measure called the No Hate Act. Jabara-Heyer NO HATE Act would reform the penalties but also increase reporting. As you know, many of these crimes are under reported. I'd like your commitment that you will support such a measure and enforcement of the existing penalties against hate crimes.

GARLAND: Well, couldn't have any opposition from me in that matter, Senator. Hate crimes tear at the fabric of our society make our citizens worried about walking down the street and exercising even their most normal rights. And -- and the role of the Civil Rights Division is to prosecute those cases vigorously. And I can assure you that it will if I'm confirmed.

BLUMENTHAL: Thank you. On gun violence you've been asked a few questions by Senator Lee, three years ago (inaudible) Parkland occurred -- Parkland, Sandy Hook, other places like Las Vegas have become shot hand for massacres that are true tragedies and also preventable by common sense staff such as President Biden has supported.

And I have helped to lead in the Congress universal background checks, save storage measures, Ethan's Law, closing the Charleston loophole and of course emergency risk protection orders, Senator Graham and I have worked together on a measure that I'm hoping we will reintroduce.

One of your predecessors, William Barr, said about emergency risk protection orders quote, "this is the single most import thing I think we can do in gun control areas to stop these massacres from happening in the first place," end quote.

William Barr and I didn't agree on a lot but I think I'm of the opinion that it is an important step to take. Would you support these kinds of common sense steps?

GARLAND: Yes, I don't know the specifics of all them. Certainly with respect to emergency risk orders, when somebody is acting out in a way that suggests that they're going to use violence against another human being, we have to be very careful that they don't get a weapon in their hands. I don't know the specifics of how the legislation would do that but I do think that, yes.

BLUMENTHAL: Well, I welcome your support to that extent for --

GARLAND: I don't mean to be non supportive but unless I know the specifics, it's very hard for me to make a commitment.

BLUMENTHAL: I -- I understand. And you're doing an excellent job of navigating your way through the request for specific commitments. And by the way, I understand sometimes a non answer is the right way for you to go in this position.

GARLAND: Thank you, Senator.

BLUMENTHAL: Let me say also I hope you'll consider executive orders. I understand that President Biden may have some under consideration. For example; closing the Charleston loop hole, redefining the nature of a firearm to prevent ghost guns from populating the world, and other steps. And I hope you will consider using the existing authority through ATF and other agencies to take such action.

I want to ask you about two areas that are of importance, I think, although they may not have reached a lot of public visibility. As you may be aware, the survivors of the 9/11 tragedy have filed a law suit pursuant to the Justice Against Sponsors of Terror Act, JASTA.

Senator Cornyn and I were strong advocates of JASTA. They have asked for information from the FBI in connection with that lawsuit. They've been denied that information under the state's secrets privilege. In my view there is no justification for failing to provide that information.

I hope that you will consider taking prompt action to release it. I know that you can't necessarily address it now. But I wrote to the Department of Justice last week, not to yourself, but to your predecessor, and I hope that you will take that letter as a matter of priority.

GARLAND: Well now, if -- if I'm lucky enough to be confirmed, I will certainly get the letter and I will give it my attention, yes, I will.

BLUMENTHAL: And similarly the Department of Justice Inspector General reportedly opened an investigation in September 2018 of the FBI's potential mishandling of the investigation into Larry Nassar's sexual abuse, I'm sure you recall. And his prosecution there was an inspector general report that goes into the FBI's possible delay and malfeasants.

That report is finished we're told. I hope that it will be published promptly in the interest of the transparency value that you outlined so well.

GARLAND: Well, I will definitely consult with the inspector general and I do believe in making those reports public to the extent, you know, permissible within the law. Yeah.

BLUMENTHAL: Thank you. And finally, you may be aware that a number of my former colleagues, attorneys general, had taken action against Exxon and other oil companies to hold them accountable for misleading and defrauding the public about climate change for decades.

Nothing could be so important as the United States Department of Justice similarly taking action against gas and oil companies for lying to the American public about the devastating effects of these products on climate change.

I hope you will consider taking action in that regard.

GARLAND: I guess from the way you began, it feels like there's probably pending litigation on this matter all -- already, so it -- it's -- it's something I really should not be commenting on.

BLUMENTHAL: Thank you very much, Judge.

GARLAND: Thank you, Senator.

DURBIN: Thank you, Senator Blumenthal. Senator Hawley?

HAWLEY: Thank you, Mr. Chairman. Judge Garland, thank you for being here, congratulations on your nomination.

GARLAND: Thank you, Senator.

HAWLEY: Since June of last year, the city of St. Louis, in my home state of Missouri, the homicide rate is at its highest level since 1970. 11 police officers have been shot, including former police officer David Dorn, who was murdered in cold blood during rioting in the city this past summer. In Chicago, homicides are up 50 percent. In New York, 40 percent. In LA, 30 percent.

Clearly, our criminal justice system is under renewed and fairly extreme strain. Can you tell me, if you are confirmed as Attorney General, what's the first thing you'll do to confront this growing crisis?

GARLAND: I'm sorry, to the end, you asked me what I would do or will I?

HAWLEY: What will you do? I assume you'll do something and what -- what will you do?

GARLAND: So look, I am obviously -- I've read the statistics myself and I know that there is an upswing in violent crime. I'm very concerned about it. When I -- when I was an assistant U.S. Attorney, the number of murders in the District -- I -- I joined at a time when the number of murders in the District of Columbia were more than twice the number of murders that they are now. I spent much of my early career on this problem of violent crime, searching for the best possible ways to suppress it -- going after violent repeaters being one of the best ways -- going after violent gangs that supported violent action being another important way, putting resources in the places where they're necessary.

Again, sitting here and -- and therefore only having been an observer of -- of -- of this from the outside, I don't know what information the department has now but I -- I'm -- I was a strong supporter and -- and -- and one of the developers of the Violent Crime Initiative during the time when I was in the Justice Department, and it may well be time for another one. I know that the administration of Attorney General Barr looked at this very closely, as well.

So I'd have to look at, you know, what's -- what's going on in the department right now and what more needs to be done but I share your concern.

HAWLEY: Very good, thank you for that. In the midst of this -- of this mounting crime wave, there has been increasing calls by some activists, including members of the United States Congress, to defund the police. I have to tell you, I think this sends exactly the wrong message to law enforcement who feel very much overburdened, underpaid, under siege, and also sends the wrong message to folks who are suffering from this violent crime wave, especially working class communities.

Tell me what your position is on defunding the police. Do you support this movement? Will you support it as Attorney General?

GARLAND: Well, as -- as you know -- dot -- know, President Biden has said he does not support defunding the police and neither do I. You know, we saw how -- how difficult the lives of police officers were in the body cam videos we saw when they were defending the Capitol.

I do believe -- and -- and -- and President Biden believes in -- in giving resources to police departments to help them reform and gain the trust of their communities. I do believe, and I believe he does, as well, that we do need to put resources into alternative ways of -- of confronting some actors, particularly those who are mentally ill and those who are suicidal, so -- so that police officers don't have to do a job that they're not trained for and that, from what I understand, they do not want to do.

And so those resources need to go to mental health professionals and other health professionals -- and other professionals in the community so that the police can do the job that they've trained for and -- and so that confrontations, if possible, do not lead to deaths and violence.

HAWLEY: Let me ask you about assaults on federal property in places other than Washington, D.C. -- Portland, for instance, Seattle. Do you regard assaults on federal courthouses or other federal property as acts of domestic extremism, domestic terrorism?

GARLAND: Well, Senator, I -- I'm -- my own definition of just -- about the same as the statutory definition, is the use of violence or threats of violence in an attempt to disrupt democratic processes. So an attack on a -- a -- a courthouse while in operation, trying to prevent judges from actually deciding cases, that plainly is domestic extremism, domestic terrorism. An attack simply on government property at night or any other kind of circumstances is a clear crime and a serious one and should be punished.

I don't mean -- I don't know enough of the -- about the facts of the example you're talking about but that's where I -- I draw the line. One is -- one is -- both are criminal but one is a -- a core attack on our democratic institutions.

HAWLEY: Let me ask you about something of an -- a -- some progressive groups have recently been saying with regard to you. The Progressive Change Campaign Committee, which is a left wing activist group that does fund-raising for Democrat Party causes, is circulating a petition addressed to you that states, and I quote now, "Trump and his criminal network of associates must be investigated and prosecuted for law breaking," end quote.

This, of course, against the backdrop, Judge, of groups who are keeping lists of people who worked at the White House, including lists of interns who worked at the White House, trying to prevent them from getting jobs, trying to prevent them from working, whether it's in politics or government or anywhere else.

Again, we have seen Senator Cruz, I know, asked you about political targeting. I have to say I'm -- I'm very concerned about the specter of political targeting because it's happened before. It happened in the Obama-Biden administration, it happened -- it culminated in the lies told to the FISA Court during the last administration, with the FBI and sadly the Department of Justice signed off on submissions to the FISA Court, which as you know were falsified -- actively falsified, leading to an unprecedented and historic rebuke from that court.

My question is given -- given these -- this pressure campaign already being mounted toward you, this -- this petition that is quoted as addressed to you personally, if you are confirmed, will you resist the calls and efforts by political groups to politicize the Department of Justice, to use political targeting? Will you adhere to the statute right down the middle and enforce the law fairly and equally?

GARLAND: Senator, I've been a judge now for almost 24 years. People on one side or the other of every single case I -- think I've done the wrong thing in that case because both sides can't win.

I have grown pretty immune to any kind of pressure other than the pressure to do what I think is the right thing given the facts and the law. That is what I intend to do as the attorney general. I don't care who pressures me in whatever direction.

The department, under -- if I am confirmed, will be under my protection for the purpose of preventing any kind of partisan or other improper motive in making any kind of investigation or prosecution. That's my vow, that's the only reason I'm willing to do this job.

HAWLEY: Do you agree that what the Department of Justice and the FBI did in misleading -- deliberately misleading a FISA court, submitting false information to a FISA court, submitting falsified information and evidence to a FISA court, drawing the rebuke of that court, do you agree that that was an egregious violation of public trust?

GARLAND: I think a false statement to a court is a -- is a terrible thing. It is in many (ph) -- I was going to say obstruction of justice, and it may well be, but that's a very specific concern.

I can tell you how angry judges get when they learn that somebody who's made an application to them has not told them the complete truth, or has spun the truth in any way. And you hear those statements by judges all the time, and appropriately so.

HAWLEY: Very good. Well, I (ph) thank you Judge. And I hope, if you are confirmed, that you will indeed be that guardian to make sure that the rule of law is fairly enforced, equally, and that it is not used for political purposes.

Mr. Chairman, my -- my time counter isn't working. Am I -- is my time expired?

DURBIN: Yes.

HAWLEY: It is? OK, all right.

Thank you very much, Judge.

Thank you, Mr. Chairman.

DURBIN: Senator Hirono, are you within Zoom range?

HIRONO: Yes.

DURBIN: Take it...

(CROSSTALK)

HIRONO: Yes, thank you (ph). Thank you, Mr. Chairman.

Welcome, Judge Garland. It's nice to see you again.

GARLAND: Thank you.

HIRONO: I want to start with two preliminary questions that I ask -- I ask any nominee who comes before any of the committees on which I sit. And these two questions are: Since you became a legal adult, have you ever made unwanted requests for sexual favors or committed any verbal or physical harassment or assault of a sexual nature?

GARLAND: No.

HIRONO: Have you ever faced discipline or entered into a settlement related to this kind of conduct?

GARLAND: No.

HIRONO: Judge Garland, considering that we just had a president who did not think the rule of law applied to him, I'm gratified to hear that so many of my Republican colleagues are asking you whether you, as attorney general, will follow the rule of law. And of course, you will.

I want to get to consent decrees, because I don't think that you've been asked about consent decrees yet. And (ph) the Justice Department Civil Rights Division has described consent decrees as -- I quote -- "most effective in (ph) ensuring accountability, transparency, and flexibility for accomplishing complex institutional reforms," end quote.

So despite their effectiveness, however, the Trump administration was openly hostile to consent decrees. In November 2018, Attorney General Jeff Sessions issued a memo that drastically curtailed their use in bringing police departments into compliance with the Constitution.

The result was that the Trump administration did not enter into a single new consent decree with any law enforcement agency suspected of systemic abuse of constitutional rights, and they also actively undermined existing consent decrees. All this while excessive force by police in Minneapolis, Louisville, Kenosha and other cities led to one of the biggest social justice movements this country has ever seen.

What is your view, Judge Garland, of the role of pattern or (ph) practice investigations and consent decrees in addressing civil rights abuses by police?

GARLAND: Look, I -- thank you for this question, Senator. I think police accountability is essential element of the ability of a police department to have credibility with the community. And without credibility and trust, a police department cannot do its job of ensuring the safety of the community.

Police officers who violate the Constitution must be held accountable, and police officers who follow the Constitution want police officers who do not to be held accountable for just that reason, because it leads to a taint on all police officers, which would be unfair.

Congress have given the Justice Department the authority and the responsibility to investigate patterns or practices of law enforcement entities' conduct that violate the Constitution and laws of the United States, that's the statutory responsibility at the Justice Department. And so it is an important tool the department has for ensuring accountability.

The statute further provides that if the department finds this pattern or practice of unconstitutional conduct, that it can seek equitable remedies from the court. And one of the kinds of equitable remedies, which has proven effective in the past, are consent decrees. So where they are necessary to assure accountability, it's very important that we use that tool.

That is not the only tool available to the Justice Department. We can use grantmaking to provide funds for police departments to reform themselves, to make themselves more accountable. We can provide technical assistance, we can provide incentives. All of these are a set of tools, and the Justice Department has been given these tools by the Congress and it should use all of them.

HIRONO: So you emphasized accountability of these departments (ph), and the Justice Department said that consent decrees -- which, by the way, are not just one-sided, they are entered into, as I understand it, after much dialogue and discussion with the affected (ph) police department. So they are definitely a tool.

By (ph) your answer, I -- I hope that you plan to re-engage the Justice Department in enforcing and abiding by the existing consent decrees, because I noted that the previous administration had undermined the existing consent decrees.

GARLAND: Well, I think if there is an existing consent decree, then we are certainly going to require adherence to it, yes.

HIRONO: You've been asked a number of questions about the -- in my view, the active voter suppression laws that are being enacted, particularly of course after the Shelby County decision that gutted one of the major provisions of the Voting Rights Act, leaving Section Two (ph), that still gives the Attorney General's Office some tools to go after those states that are contemplating legislation that in effect will result in voter suppression.

Are you aware of any evidence of widespread voter fraud in the 2020 presidential election or, for that matter, any other election?

GARLAND: No, Senator. All I know, of course, is what -- what I've been able to glean from the public reports of government agencies. The Department of Homeland security in the previous administration public described the last election as the most secure in American history.

Some 60 or more courts rejected claims of fraud in the election, some on legal grounds but many after providing an opportunity for the submission of evidence and rejected the evidence that was submitted is insufficient.

And Attorney General Barr authorized the U.S. attorney's to investigate voter fraud after the election and before certification and at the conclusion he announced that the department had not found evidence sufficiently material of widespread voter fraud to have had an effect on the election.

HIRONO: Thank you, Judge Garland. I am running out of time. I just wanted to reiterate that I heard you -- your earlier response that you would work with Congress to determine whether pre-clearance provision should be reenacted.

There's just one more thing that I wanted to note and that is your acknowledgment that hate crimes against the AAPI community, is definitely rising. And that you do everything that you can to make sure that there is enforcement of the laws against these kinds of crimes.

And I just noted that just a few weeks ago an 85-year-old man died after he was abruptly attacked while out on a morning walk in San Francisco and in Oakland a Chinatown -- in Oakland's Chinatown neighborhood, a man violently shoved and injured a 91-year-old man, a 60 year old man and a 55-year-old woman and each of these cases the victims were AAPI community members.

Thank you. I do have additional questions but I'll wait for a round two. Thank you.

GARLAND: Thank you, Senator.

DURBIN: Thanks, Senator Hirono. Senator Cotton.

COTTON: Judge, welcome.

GARLAND: Thank you, sir.

COTTON: I wanted to turn to Senator Grassley's questions about the Durham investigation. Senator Grassley asked you if you would commit specifically to insure that John Durham had the staff, the resources, and the time that he need to complete that investigation. You said you didn't have the info yet; that you needed to speak to him but you had no reason to think that him staying on was not the correct decision.

GARLAND: Yes, sir.

COTTON: Why can't you commit specifically to saying that he will have the time, staff, and resources he needs to complete his investigation?

GARLAND: Well, again, it's because I'm sitting here and I don't have any information about what he needs and his resources and how -- and the allocation of resources. But my -- everything I know sitting here suggest that he should, of course, have those resources.

COTTON: Judge, two years ago Bill Barr made that exact commitment about the Mueller Special Counsel. He did not have that information; he had not consulted with the Department. He was in the same posture you are. He simply said yes. Why can't you say yes, today, the way Bill Barr did two years ago?

GARLAND: Again, my view about every investigation and every decision I make is I have to know the facts before I can make those kinds of decisions. I don't know what went into his consideration but for myself I have to be there and learn what's going on before I can make a decision.

But as I said, I have no reason to doubt that the decision to keep him in place and the continuing of his investigation was in anyway wrong.

COTTON: Was it wrong for Bill Barr to make that commitment two years ago?

GARLAND: As I said, Senator, I'm not going to be making judgments about my predecessors. I don't think there's any purpose in that for myself. I want you to judge me on my own record and what I do going forward.

COTTON: Was it wrong for Democratic Senators on this committee to repeatedly demand that Bill Barr make that commitment two years ago?

GARLAND: I think my answer would be the same.

COTTON: OK. Let's turn to the death penalty. You said that you've developed great pause over it and you said that Joe Biden has expressed his opposition to the death penalty. Did Joe Biden or anyone from his administration transition or campaign ask you not to pursue capital punishment in cases against murders or terrorists?

GARLAND: No.

COTTON: Thank you. Judge, you spoke at the outset as did perhaps several other senators about your outstanding work in the 1995 Oklahoma City bombing case in which you were part of team that helped to bring the justice of white supremacist mass murder Timothy McVeigh, he was sentenced to death.

That death penalty has been carried out. Do you regret the fact that Timothy McVeigh received the death penalty and has been executed?

GARLAND: Look, I supported the (ph) -- as I said in my original Senate hearing, when I became a judge originally I supported the death penalty at that time for Mr. McVeigh in that individual case and don't have any regret. But I have developed concerns about the death penalty and the 20 some years since then.

And I -- and I -- and the sources of my concern are issues of exonerations of people who have been convicted of sort of arbitrariness and randomness of its application because of how seldom it's applied and because of its desperate impact on black Americans and members of other communities of color.

Those are the things that give me pause. And those are things that have given me pause over the last -- you know as I thought about it over the last 20 years.

COTTON: Judge, you were confirmed as attorney general and there was another case like Timothy McVeigh's where a white supremacist bombed a federal court house, killing 168 Americans, including 19 children and your (inaudible) sought your attorney your approval for the death penalty, would you give him that approval?

GARLAND: So I think it depends on what the development of the policy is. If the president asks or if we develop a policy about moratorium, then it would apply across the board. There's no point in having a policy if you make individual discretionary decisions. So if that -- if that's the policy then that would be the policy.

COTTON: Judge, you said in your opening statement and in addition to several questions from Senators that you would strictly regulate communications between the White House, that there'd be no partisan influence. So is this a case in which there would be influence from the White House and individual cases the U.S. attorney was seeking the death penalty against the white supremacist domestic terrorist?

GARLAND: I understand the question. I'm sorry. Maybe I didn't understand before. What -- what I'm trying to say here is if there was a policy decision made by the president -- announced by the president, he certainly has the authority to direct -- and nothing in appropriate about it, it's when his authority to acquire an across the board moratorium.

This not what I was talking about. It was not a decision by the president in an particular case or the direction of how any particular case should go forward but of a moratorium, which we reply as a policy across the board. The Supreme Court has held that the death penalty is Constitutional but it is not required. And that's within the discretion of the president.

COTTON: Before we move on from the Oklahoma City case, let me just commend you again for your work on it and say that I believe Timothy McVeigh deserved the death penalty.

GARLAND: Thank you, sir.

COTTON: Another case involves Dylann Roof, a white supremacist from South Carolina who went into an African American Church and killed nine African Americans in a racially motivated terrorist attack.

The Obama Department of Justice sought the death penalty against him and received it. Do you believe that was a mistake?

GARLAND: I'm sorry --

COTTON: Do you believe it was a mistake to seek the death penalty against Dylann Roof for murdering nine African Americans as they worshipped in church?

GARLAND: I know I'm not supposed to be asking you the questions but I have a feeling that this is still a pending matter. And if it is I can't talk about a particular -- particular case.

COTTON: In that -- in that case let me ask you the hypothetical idea about --

GARLAND: I apologize for asking you, because I know --

COTTON: Let's -- let's --

GARLAND: -- that's not my right.

COTTON: -- let's suppose that another white supremacist walks into another African-American church and murders African-Americans worshipping Christ, in cold blood. The U.S. Attorney seeks the death penalty against that white supremacist. Would you approve it?

GARLAND: Again, I -- Senator, I think it does depend on what policy is adopted going forward. I would not oppose a policy of the president, because is within his authority to put a moratorium of the death penalty in all cases. And instead, to seek mandatory life without the possibility of parole. Without any consideration of the facts of any particular case.

COTTON: Some on the left are calling for President Biden to grant a cross-the-board commutation to all federal death row inmates to reduce their sentence to life in prison. Would you recommend to President Biden they make such a cross-the-board commutation?

GARLAND: So, this is one of the ones that I would have to think about. And which I have not thought about. I'd have to consult with the administration on such across-the-board policy. I haven't thought about that.

COTTON: Thank you. I want to turn to racial equity. Do you agree that core concept of judge of American law is that the government can't discriminate against a citizen on the basis of their right?

GARLAND: Absolutely. Equal justice under the law, written right there on the steps of the impediment (ph) above the Supreme Court.

COTTON: And not only is it unlawful, it's morally wrong as well?

GARLAND: Yes. I think discrimination is morally wrong, absolutely.

COTTON: And you're aware that President Biden has signed an executive order stating this his administration will affirmatively advance racial equity, not racial equality but racial equity?

GARLAND: Yes, and I read the opening of that executive order, which defines equity as the fair and impartial treatment of every person without regard to their status. And including individuals who are in - - who have -- in underserved communities where they were not accorded that before. But, I don't see any distinction between -- in that regard. That's the definition that was included in that executive order that you're talking about.

COTTON: So, to you racial equity and racial equality are the same thing?

GARLAND: I don't -- you know -- this is a word that is defined in the executive order as I -- as I've just said it. So, I don't know what else -- I can't give you anymore than they in which the executive order defined the term that it was using.

COTTON: Thanks judge.

DURBIN: Senator Booker.

BOOKER: Thank you Mr. Chairman. Judge Garland it's really good to see you sitting before the Judiciary Committee of the United States Senate.

GARLAND: Thank you Senator.

BOOKER: I'm really grateful. The -- if you don't mind me starting a little bit with philosophy. There's The Micah Mandate, which I'm not sure by your expression you know, but it's -- you've heard it before. It's do justice, love mercy.

GARLAND: That mandate I do know. Yes.

BOOKER: Yes. And walk -- and walk humbly. It seems like a pretty good mandate for life.

GARLAND: Yes.

BOOKER: and this idea of justice to me is fundamental to the ideals of the nation founded with a lot of injustice at the time. But, the brilliance of the imperfect geniuses of our founders who aspired to create a society that John Lewis and others would have called a more beloved community.

And one of my -- an activist I've read a lot, a theologian, said what does love -- what does love look like in public? It looks like justice. And you have to me perhaps one of the more important positions on the planet earth for trying to create a more just society. And the issues of race, and I was really grateful that you -- your opening remarks talked about your agency actually coming about to deal with issues of justice in our nation.

I want to talk to you about white supremacist violence, which has been mentioned a lot, but before I get there I'm actually concerned with something that I consider pernicious and very difficult to root out, which is the realities of implicit racial bias that lead to larger systemic racism.

Now, I've been kind of sunded (ph) that the issue of systemic racism has become something argued over, but if I can just walk you through for a second, does our justice system treat people equally in this country at some (ph) point?

GARLAND: Sadly, and it's plain to me that is not -- that it does not --

BOOKER; And I'm going to stop you there. I mean Brian (inaudible) says we have a criminal justice system that treats you better if you're rich and guilty than if you're poor and innocent because one's finances make a difference often with what kind of justice one gets. Is that correct?

GARLAND: Senator, it's no question that there is disparate treatment in our justice system. Mass incarceration is a very good example of this problem. You know, we're incarcerating 25 percent -- almost 25 percent of the world's population and we have something like 5 percent of the world's population. I don't think that is because Americans are worse. But what underlies --

BOOKER: Well, what --

GARLAND: -- that is the disparate treatments of blacks and the communities of color.

BOOKER: Well, let's drill down on that for a second.

GARLAND: Yes.

BOOKER: So, one of the big things driving arrests in our country, stunningly to me even that its still the case, is marijuana arrests. We had in 2019 more marijuana arrests for possession than all violent crime arrests combined.

Now, what -- when you break out that data in disaggregate along racial lines it is shocking than an African-American has no difference in usage or selling than someone whose White in America, but their likelihood of being arrested for doing things that two of the last four presidents admitted to doing, is three to four times higher than somebody White. Is that evidence that within the system there is implicit racial bias? Yes or no, sir?

GARLAND: Well, it's definitely evidence of a disparate treatment in the system, which I think does arise out of implicit bias. Unconscious bias, maybe. Sometimes conscious bias.

BOOKER: And I think that's the fair point. Unconscious or conscious none the less it results in the system. And I've had great conversations with people on both sides of the aisle, heads of think tanks all speak to this as abhorrent to American ideals that we still have a system that's so disparately treats people at every point the stationhouse adjustment, which I know you know what that is, which I've seen happen as a mayor, that people get called for or arrested for possession of marijuana and the police make that decision like just leave and your parents come or whatever, and it's dismissed or whatever (ph). We see from stationhouse adjustments to charging to bail to sentencing, every objective analysis has shown that race right now in our country is still playing a specific influence in the justice that someone gets. You're aware of all of this? Yes?

GARLAND: I am and this is a particular part of the reason why at this moment I think I wanted to be the Attorney General.

BOOKER: Right, and to the point --

GARLAND: I want to do the best I can to stop --

BOOKER: Well, I want to get to that. To the point that a lot of my folks are making, you just made, it does not mean that the people who are engaged in this are racist overtly. It means that they have implicit racial bias that often leads them to make different decisions about different people. That's correct?

GARLAND: Yes, it also -- you know the for example -- the marijuana example is the perfect example that you've given here. Here's a non-violent crime that -- of expected usage that does not require us to incarcerate people. And then we're incarcerating at different rates -- that's significantly different rates compare -- of different communities and that is wrong and it's the kind of problem that will then follow a person for the rest of their lives. It will make it impossible to get a job. It will lead to a downward economic spiral for their family.

BOOKER: Right. And so to that point and now to your point I cut you off on before, now I would like to give you a chance to answer to that. Here you are in an agency that was formed to deal with the kind of systemic racism that was going on at that time. When you have disparate use of the law where you see African Americans being churned into the criminal justice system, where it is concentrated in certain communities and not in others, where it has, the American Bar Association says, 40,000 collateral consequences on the lives of those African Americans, where they cant get loans from banks, they can't get jobs, they cant get certain business licenses, where it is so dramatic that their estimates that it costs literally to African Americans in the persistence of a wealth gap in our country, where black families have one-tenth the wealth of white families. if you just look at the impact of the law and the disparate impact on just marijuana, it's estimated to have cost African American communities in this country billions of dollars more.

My question to you now is, assuming this position where you are called upon for that Micah Mandate, what are you going to do about this outrageous injustice that persists and infects our society with such a toll on Black and brown communities?

GARLAND: Right. So there are many things that the Justice Department has to do in this regard. And I completely agree that disparate results with respect to wealth accumulation, discrimination in employment, discrimination in housing, discrimination in health care availability, all of which we all see now in the consequences of a pandemic which affects communities of color enormously more with respect to infection rates, with respect to hospitalization, and ultimately to death.

So one set of things we can do is the mass incarceration example that I began with. We can focus our attention on violent crimes and other crimes that put great danger in our society, and not allocate our resources to something like marijuana possession. We can look at our charging policies and go -- and stop charging the highest possible offense with the highest possible sentence.

BOOKER: I was taught in law school never to interrupt a judge of your -- forgive me.

(LAUGHTER)

I would like to end with this question and then my time is up. You have talked to me a lot about your thoughts about this and I've been really inspired. But it gets back to me to your conviction on this issue and your determination to go down -- in a time when our nation needs this, to go down as one of the great leaders when it comes to dealing with the daily, unconscionable injustices faced by some Americans and not others at the hands of law enforcement.

And I think that one thing you said to me privately particularly motivated me to believe you when you talk about your aspirations. And I'm wondering if you could just conclude by talking -- telling -- answering the question about your motivation and maybe some of your own family history in confronting hate and discrimination in American history.

GARLAND: Yes, Senator. So I come from a family where my grandparents fled anti-Semitism and persecution. The country took us in and protected us. And I feel an obligation to the country to pay back. And this is the highest, best use of my own set of skills to pay back. And so I want very much to be the kind of attorney general that you are saying I could become. I will do my best to try and be that kind of attorney general.

BOOKER: I believe your heart and I'm grateful that you are living that Micah Mandate.

DURBIN: Thank you, Senator Booker.

I'm going to make a motion to introduce into the record letters of support for Judge Garland's nomination. There are 25 different categories of letters to support. I am struck immediately by the diversity of support that you have, 150 former attorneys general and top Department of Justice officials, Alberto Gonzales, Michael Mukasey, Eric Holder, Loretta Lynch, the list goes on and on. Dozens of former federal judges, former state attorneys general.

For you to have both the National Sheriffs' Association, the Fraternal Order of Police, and the Leadership Conference on Civil and Human Rights is an amazing political achievement. And the list goes on, advocates for crime victims and survivors, former FBI Director Louis Freeh, Senator Lee mentioned the Levi (ph) children and Green (ph) children, they both have written letters of support for you.

I want to take a moment in light of your closing statement from this round to tell you that your work and your life has been recognized across the board. This array of letters of support speaks to fairness and honesty in the way that you have dealt with your legal profession and your public service.

So without objection, I will introduce these letters of support for your nomination into the record.

And now we are going to take a lunch break. And I am going to declare, because I have the power to do that now, that we will return at 1:40. And the first person up will be from the sovereign state of Louisiana, John Kennedy. And we will all actually anxiously await his contribution.

So let's stand in recess.

(RECESS)

(RECESS)

DURBIN: Hearing will resume. Senator Kennedy of Louisiana.

KENNEDY: Thank you, Mr. Chairman. Good afternoon, Judge.

GARLAND: Nice to see you, Senator.

KENNEDY: Good to see you, sir. I want to follow up a little bit on something that Senator Booker talked about. What to you is justice?

GARLAND: Everybody treated equally regardless of their position in society, powerful, powerless, rich, poor, Republican, Democrat, black, white, equal treatment, equal justice under the law.

KENNEDY: I want to go a little further, press you a little bit on that. Is it justice if you have an unjust law that supplied equally (ph)?

GARLAND: The - no. The unjust law is itself the lack of justice.

KENNEDY: Let's narrow it down to punishment in justice. If I suggested to you that justice in the concept of punishment is when someone gets what he deserves would you agree or disagree with that?

GARLAND: Well I suppose it depends on what gets what he deserves mean, but yes. I think justice requires individualized determination of the kind of crime you did, the kind - and mitigating circumstances, yes.

KENNEDY: Well let me put it another way. If - is a person who commits a crime a sinner in the moral sense or a sick person?

GARLAND: This is, again, probably beyond my competence. I think with justice comes mercy. And so, I think we have to take in the consideration all different kinds of things. I also think that the kind of crime that we're talking about is relevant to the question of what kind of person it is. So I'm not sure exactly what you're asking me. I'm not trying to be evasive. I just don't know exactly what you're asking me.

KENNEDY: OK. Let me shift gears here.

GARLAND: Yes.

KENNEDY: Were you Chief Judge when the coronavirus hit us?

GARLAND: Unfortunately for my successor my term ran out just before coronavirus hit us.

KENNEDY: Well if you had been Chief Judge...

GARLAND: Yes.

KENNEDY: ... would you have adopted a rule that said if one of our employees in the court gets coronavirus and goes to the hospital and is treated and is released and wants to come back to work at the court, it would be discriminatory to ask them to take a coronavirus test.

GARLAND: No.

KENNEDY: OK. Isn't that what happened with a lot of our nursing homes throughout the country?

GARLAND: You know, I honestly don't know what happened with the nursing homes. I don't know what they were doing with respect to - I'm sorry. I'm not - again, I'm not trying to be evasive. I really don't know the facts here. I mean, I think in the - in the example you gave me there's nothing discriminatory about asking people who might be infected from a public health point of view to be sure they don't infect other people. And if a determination's made their not infected, of course that's the end of it.

Equal treatment doesn't mean we don't take into consideration the possibilities of different degrees of health in a particular circumstance, and I don't - I honestly don't know what happened with the nursing home. I know it was terrible that many people got...

KENNEDY: Yes.

GARLAND: ... COVID in the - in the nursing homes and it was a major vector of the spread of the infection, but I don't know why that was expect that there are people cooped up in one place and it's easy to spread that way.

KENNEDY: All right, I think science tells us that keeping our schools closed has a disproportionate impact on poor people and children from poor families and on families including but not limited to children of color. At what point do you think our refusal of some of our leadership in our schools to reopen becomes a civil rights violation?

GARLAND: So Senator, I completely agree with your description of the consequences of the school closing. I tutor two children in a neighborhood of Washington, D.C. where most of the people - students in the school are people of color and I've been able to tutor them by Zoom every week. But they have -- and they are taking classes by Zoom and it's much more difficult, obviously, for them, although they've done terrifically. Not because of me, but they have, than it would be with people with other resources.

KENNEDY: I'm sorry.

GARLAND: You know, I don't -- that's all right. I don't -- you know, I think that public officials have to weigh very serious competing concerns with respect to how to deal with COVID, there's just no doubt about it.

On the one hand we have to be very worried about setting kids back in their schooling and on the other hand we have to be very worried about now spreading the disease in a way that kills them or more importantly, not more likely their parents or their grandparents, and I --

KENNEDY: Judge --

GARLAND: -- don't want to be that person that makes who makes that judgment.

KENNEDY: I understand. I get it. Sorry to interrupt. I hate --

GARLAND: No, no. I'm sorry I interrupted you.

KENNEDY: I just wanted -- just have limited time. You have written in one of your opinions, I'm going to read, I know you haven't memorized all of your opinions. You said the Constitution quote, "Does not contemplate that the District" -- District of Columbia -- "may serve as a state for purposes of the apportionment of Congressional representatives. That textual evidence is supported by historical evidence concerning the general understanding at the time of the District's creation." Is that still your considered opinion?

GARLAND: Yes. And I would say that is the case -- and one of my earliest cases which taught me what it means to be a judge. Which is to do something the opposite of what you would do if you had public policy concern (ph). I think that citizens of the District of Columbia should be able to vote, but I didn't think that the Constitution gave me authority on my own to give it to them. And that made me sad, but it reaffirmed my role as a judge.

KENNEDY: OK. In my last 20 second I'm going to ask you if you agree with this statement. Allowing, and I'm not suggesting the answer one way or the other, I just want to know what you believe. Allowing biological males to compete in an all-female sport deprives women of the opportunity to participate fully and fairly in sports and is fundamentally unfair to female athletes.

GARLAND: This is a difficult societal question that you're asking here. I know what underlies it --

KENNEDY: I know, but you're going to be Attorney General.

GARLAND: Well, but I may not be the one who has to make policy decisions like that, but it's not that I'm adverse to it. Look, I think every human being should be treated with dignity and respect. And that's an overriding sense of my own character, but an overriding sense of what the law requires.

This -- the particular question of how Title IX applies in schools is one, in light of the Bostick (ph) case, which I know you're very familiar with, is something that I would have to look at when I have a chance to do that. I have not had a chance to consider these kinds of issues in my career so far. But I agree that this is a difficult question.

KENNEDY: Thank you Judge.

DURBIN: For his first question as a member of the Senate Judiciary Committee, Senator Alex Padilla.

PADILLA: Thank you Chairman. Thank you Mr. Chairman. Judge Garland and to your family, thank you for your many, many years of public service and should you should be fortunate to be confirmed in this next chapter.

I spent a little bit more than 20 years in public service myself in different capacities including the prior six years, prior to my appointment to the Senate, as California's Secretary of State and Chief Elections Officer. My mission in that role was to increase voter participation and ensure free and fair elections.

As the country has become more diverse, not just states like California and New York but throughout the nation, it's no coincidence that we have seen a resurgence of white supremacy and violent extremism. And history's clear. Voter suppression is rooted in white supremacy. This is true now and has been true ever since reconstruction and the establishment of the Department of Justice just as this committee has acknowledged at its outset.

It should not be lost on any of us that after the 2013 Shelby v. Holder decision by the Supreme Court we've seen a wave of legislation in states across the nation which have the effect of making it harder for eligible citizens to register to vote, to stay registered to vote, or to simply cast their ballot.

I know Senator Leahy touched on the subject of voting rights in his questioning for you (ph) today, but I want to acknowledge that despite the success of the 2020 election, which has been deemed secure, new voter suppression laws are being introduced right now across the country under the false pretext of preventing voter fraud.

Now we all saw how former President Trump's years of lies about voter fraud. The big lie (ph) radicalized many of his supporters and led not just to physical threats against elections officials, elections offices, polling places and even voters, but they ultimately led to the violent insurrection here in the nation's Capitol.

I know you touched on this in your opening remarks, but can you expand on how you will combat the white supremacy that threatens the safety and fairness of our elections specifically?

GARLAND: Well that's a lot of questions all in one, which is...

PADILLA: It's complicated.

GARLAND: It's a complicated problem, right. So I strongly believe in voting and in increasing every possible opportunity for voting, which of course Congress can do even on its own. The Elections Clause in the Constitution permits the Congress to set time, place, and manner and to alter state regulations in that respect. And default, the state decides but Congress can act that way. So that is one thing that Congress could do as a matter of legislation.

As I said, I think I'd like to work with the Congress on improving the record with respect to Section IV so that we can use the toll of Section V. We do have the authority of a Section II. It does require - it changes the burden of proof and it requires to attack one-by-one changes in election laws, but it does give us the opportunity to bring cases both where there was intention to discriminate but also where there's a overall disparate impact with respect to discrimination.

So we have a number of tools available to us, and the voting rights section of the civil rights division was established for the purpose of pursuing those cases, and we would do so.

PADILLA: Thank you. That's - I want to dig a little bit deeper on this because you're absolutely right. We need to, in my opinion, to restore the full strength of the Federal Voting Rights Act. There's a lot that can and should be done not just in terms of elections administration with respect to voting rights but the protection of voters themselves. You know, people should be able to vote free of harassment, intimidation, obstacles, et cetera. And part of what works against that is rooted in white supremacy this big lie.

We all sat through the impeachment trial, and the results notwithstanding (ph) can't help but be moved by the evidence presented by the House Managers. Again, how President Trump's big lie about voter fraud radicalized so many of his supporters.

Now, I was struck by a February 19 opinion piece in The Washington Post by Jim Sciutto about the parallels between the Capitol insurrectionists and foreign terrorist organizations that I respectfully ask to be inserted into the record, Mr. Chairman.

In it, Jim Sciutto writes, and I'll quote, "domestic radicalism has deep parallels to jihadist terrorism. Both movements are driven by alienation from the political system and a resulting breakdown in social norms. For some groups and individuals, this breakdown leads to violence they see as justified to achieve political ends," end quote.

Now, as we all know, the definition of terrorism is the unlawful use of violence and intimidation in pursuit of political ends. President Trump's political end was clear, stopping the certification of the 2020 election at the Capitol on January 6. One could argue that right-wing groups like the Proud Boys and the Oath Keepers have acted like terrorists felts (ph) communicating with one another, training together, and preparing of the moment they are activated for their mission.

Indeed, President Trump instructed the Proud Boys on national television to stand back and stand by, and then he summoned them to the Capitol on January 6 as Congress was meeting to certify the election.

What happened on January 6 was not a property crime. It was not a vandalism - it was not vandalism in reference to a question you were asked earlier. Judge Garland, as we sit here in the United States Capitol surrounded by National Guard troops and barbed wire, how will you bring the full resources of the Justice Department to bear on white supremacists organizations that pose an ongoing threat to not just our safety and not just the safety of this Capitol Building but to our fundamental democracy for which it stands?

GARLAND: I couldn't agree more that extremist groups and particularly white supremacists groups do post a fundamental threat to our democracy, and they have posed that threat throughout our history and as I recounted that was the reason that the Justice Department was originally established to fight the first incarnation of the Ku Klux Klan.

The best that I can do is, as I said, my first priority would be to have a briefing on where we are, if I'm confirmed, with the investigations, which from the outside appear quite vigorous and nationwide and to find out what additional resources we need, but that is just a focus on what happened in the Capitol.

We also have to have a focus on what is happening all over the country and on where this could spread and where this came from, and that required - it does require a lot of resources. I am very pleased to have read that the Director of the FBI believes that this kind of extremism is the most dangerous threat to the country and that that's where he's putting FBI resources. That is where I would put Justice Department resources and we need very much to make it -- make sure that that's the case.

I do want to be careful that we also always worry about the foreign threat because it is always with us and the fact that nothing has happened recently doesn't mean it could not happen tomorrow.

So from whichever direction, inside, outside, right, left; doesn't matter. And attack on our -- our institutions of democracy and of our ability to go forward with our daily lives in safety has to be stopped and that we need it all government wide but also a Justice Department wide obligation.

PADILLA: Thank you, Judge. Thank you, Mr. Chair.

DURBIN: Thanks, Senator. Senator Tillis would be next but he is not in Zoom right range for that possibility. And so Senator Blackburn, if she can connect with us is next up.

BLACKBURN: Yes, sir. I am connected, Mr. Chairman. Thank you so much. And Judge Garland, I want to say thank you to you for your willingness to serve and for your career in public service. And I will tell you as I've talked to Tennesseans about this; they care a lot about law, order, timeliness, and the Justice Department.

And after the Christmas day bombing, you and I discussed this in the bombing that took place in Nashville. They really are interested in the principles and the convictions of our nation's top law enforcement official.

And my hope is and I think the expectation is that you will assure the American people that you are going to apply the law fairly and equitably because in this country, as we know, no one is above the law.

Now I know you've been asked about the Durham investigation and I will tell you that this is important to Tennesseans and making certain that that investigation is going to be completed and that you are going to work to be certain that it is not impeded and is completed and that you're committed to seeing this through to completion.

GARLAND: Well, thank you, Senator. I appreciate it. And I appreciate the opportunity we had to discuss these matters earlier as well. As I said with respect to the Durham investigation, I don't know anything about it other than what has appeared in the media.

The investigation has been discrete with -- as appropriate with respect to expressions of -- of its status. I understand that Mr. Durham has been permitted to remain in his position and I know of nothing that would give me any doubt that that was the correct decision.

BLACKBURN: And I appreciate that and likewise we had discussed the investigation into Hunter Biden's business dealings. And we want to make certain that you commit to allowing Delaware U.S. attorney David Weiss to complete that investigation and bring that evidence forward.

GARLAND: And similarly with Mr. Durham, I don't know anything about that investigation other than what I've read in the media. And again, that -- that investigation has been proceeding discreetly and not publicly as all investigations should.

I understand that the Delaware U.S. attorney was permitted to stay on as U.S. attorney. And I again, have absolutely no reason to doubt that that was their correct decision.

BLACKBURN: And let's talk a little bit about China because we discussed some of that for the record and our last DNI has stated that China is our greatest threat. So I would like to hear from you do you agree that the Chinese Communist Party is an enemy of the American people.

Well, I don't have the same familiarity with the intelligence information that the director of the -- of national intelligence has. So in terms of comparing say the threat from China and the threat from Russia, I'm just not competent to make that -- that comparison and I have learned in my professional career not to make judgments on which I am not competent.

But I -- certain from what Director said, there's no doubt that China is a threat with respect to hacking of our computers, hacking of our infrastructure, theft of our intellectual property. All of these are very difficult problems and we have to defend against.

BLACKBURN: Well, we do. And I know that Lindsey Graham asked you about Section 230 and some of the issues that are there. We all are very concerned about the issues that surround China whether it is the Chinese Communist Party and their -- the way they threaten our democracy and our economic leadership around the globe.

And we're also concerned about the Chinese military links into our American Universities through things like the Confucius Institute sent (ph). For instance, recently there was a situation at Harvard with a cancer researcher and he was caught trying to smuggle 21 vials of biological material out of the U.S. and get it to China.

And I would hope that you agree that this threat put American intellectual property and technology at risk. And I would hope that you would assure the American people that you're going to put the full force of the Department of Justice to -- forward to investigate and to prosecute every one of these spies that are working on U.S. soil.

GARLAND: Well, Senator, I'm not familiar with that circumstance so I can't comment on it specifically but I can assure that the Justice Department's National Security Division was -- created in part for the purpose of ferreting out espionage by foreign agents and that is also the role of the FBI and the two working together.

And if foreign agents are caught stealing American intellectual property, American trade secrets, American materials; that they will be prosecuted. Yes, of course.

BLACKBURN: Thank you. We're about a year into this pandemic and technology has allowed for us to do work like we in the Senate are doing with WebEx. I think we all found that it gives a lot of flexibility.

But as we are spending more time online. We hear from people about holding big tech accountable. As I've said, you have discussed section, 2:30 earlier.

And we are hearing more about anti-trust lawsuits. Of course you all have the current suit against Google and I will hope that you are going to allow that lawsuit to continue.

GARLAND: Yes, I don't -- again, I don't want to talk about a particular law suit but I don't see, you know, every matter. I have to ask for a briefing on. But much of that lawsuit is public.

And again, given what I've read, I don't see any reason why that investigation -- the decision to institute that investigation would be changed. But I only know what I've read with respect to the descriptions of the public filings.

BLACKBURN: Let me ask you one more question and I'm going to have a series of questions come to you as QFRs. The -- President Biden has talked about reinstating the Obama administration practice of paying settlement money from winning lawsuits to third party interest groups like Laraza (ph), the National Community Reinvestment Coalition, and the Urban League.

And it's just, you know, I -- I find it really interesting that they would choose to have that money go to these outside groups instead of to victims or to the U.S. Treasury. So do you plan on reinstating that policy and how would you justify reinstating that policy?

GARLAND: I -- I don't have any plan one way or the other. I know you raised that policy when we were talking before and I understand your concern about it. Obviously damages recovery should first go to help victims.

I don't know very much at all about the policy and it would be something I would have to consider if I'm confirmed. I have to hear the arguments on both sides of why the policy obviously started and also why it was rescinded.

BLACKBURN: Thank you so much. I appreciate your time, Mr. Chairman. Thank you.

DURBIN: Thanks, Senator Blackburn. Senator Ossoff, welcome to the committee. Your turn to question.

OSSOFF: Thank you, Mr. Chairman. And Judge Garland, congratulations on your nomination. Thanks for the time that we spent by video conference discussing some of the issues. Thank you also for sharing your family's immigrant story with the committee. It mirrors my -- my great grandparents came here fleeing anti-Semitism in 1911 and 1913 from Eastern Europe.

And I'm sure that your ancestors hardly would have imagined ---

GARLAND: (Inaudible).

OSSOFF: I'm sure that your ancestors could hardly have imagined that you'd now be sitting before this committee pending conformation for this position.

Judge, I want to ask you about equal justice. Black Americans continue to endure profiling, harassment, brutality, discrimination in policing and prosecution, in sentencing and in incarceration.

How can you use the immense power of the office of the Attorney General to make real America's promise of equal justice for all and can you please be specific about the tools that you'll have at your disposal.

GARLAND: Yes. So this is a substantial part of why I wanted to be the attorney general because I am deeply aware of the moment that the country is in. When Senator Durbin was reading that the statement of Robert Kennedy, it hit me that we are in similar moment to the moment he was in.

So there are a lot of things that the Department can do. One of the -- one of those things has to do with the problem of mass incarceration. The over incarceration of American citizens and of its disproportionate effect on black Americans and communities of color and other minorities, there are different ways in which we can try -- that is proportionate in the sense of both the population but also given the data we have on the fact that crimes are not committed by these -- these crimes are not committed in any greater number than in others.

And that similar crimes are not charged in the same way. So we have to figure out ways to deal with this. So one important way, I think, is to focus on the crimes that really matter that attract our -- to bring our charging and our resting on violent crime and others that deeply effect our society and not have such a -- an over emphasis on -- on marijuana possession, for example, which has disproportionately affected communities of color.

And then damaged them for after the original arrest because of the inability to take to get jobs. We have to look at our charging policies again and go back to the policy that I helped Janet Reno draft during her period and that Eric Holder drafted while he was the attorney general of not feeling that we must charge every offense to the maximum.

That we don't have to seek the highest possible offense with the highest possible sentence that we should give discretion to our prosecutors to make the offense and the charge fit the crime and be proportional to the damage that it does to our society but we should look at our -- our -- we should also look closely and be more sympathetic towards retrospective reductions in sentences, which the First Step Act has given us some opportunity, although not enough to reduce sentences to a fair amount.

And legislatively we should look at equalizing, for example, the -- what's known as the crack powder ratio, which has had an enormously disproportionate impact on communities of color but which evidence shows is not related to the dangerousness of the -- of the two drugs.

And we should do as -- as President Biden has suggested, seek the elimination of mandatory minimum so that we once again give authority to district judges, trial judges to make determinations based on all of the sentencing factors that judges normally apply and that don't take away from them the ability to do justice in individual cases. All that will make a big difference in the things that you're talking about.

OSSOFF: Thank you, Judge Garland. Let's discuss accountability for local agencies.

The Civil Rights Division has the authority to launch pattern or practice investigations targeting systemic violations of constitutional rights or violations of federal statutes governing law enforcement.

Tomorrow will be the first anniversary of the murder of Ahmaud Arbery in Glynn County, Georgia who was shot to death in broad daylight in the street on camera. But local authorities chose to look the other way. And were it not for the activism of Georgia's NAACP, there likely would not have been any prosecution in that case.

How can Congress equip DOJ's Civil Rights Division to launch more and more effective pattern or practice investigations without asking you to comment on the details of the Arbery case?

And how else can the Department of Justice use its authority to ensure that where local agencies violate constitutional rights or fail to uphold the guarantee of equal protection, there's accountability.

GARLAND: Well, I appreciate your not asking to talk about a pending case, what I will say is that like many, many Americans, I was shocked by what I saw in videos of Black Americans being killed over this last summer. That's -- I do think, created a moment in the national life that brought attention from people who had not seen what Black Americans and other members of communities of color had known for decades, but it did bring everything to the fore and created a moment in which we have an opportunity to make dramatic changes and really bring forth equal justice under law which is our commitment of the Justice Department.

So the Civil Rights Division is the place where we focus these operations. You're exactly right that pattern and practice -- best pattern or practice investigations are the core of our ability to bring actions here that these lead to all different kinds of remedies, sometimes consent decrees, as a potential remedy.

We also get -- can criminally prosecute violations of constitutional rights and we can also provide a funding for police departments to reform themselves, I do believe that officers who follow the law and the Constitution want that accountability, they want officers who do not to become accountable because if that doesn't happen, their law enforcement agency is tainted, they lose credibility in the community and without the community's trust, they can't bring safety.

So we have this number of tools, whether we need additional tools in this particular area, I don't know. Obviously, the resources are necessary -- I can be like a broken record in every one of these areas for us to do our job...

OSSOFF: And Judge Garland, with my time...

GARLAND: I'm sorry.

OSSOFF: Will you commit to working with my Office and with this Committee to determine what additional authorities the department may need and what resources you may require in order to be able to bring more and more effective pattern or practice investigations where appropriate?

GARLAND: Absolutely, Senator, I'm sorry to have gone...

OSSOFF: No problem. Thank you, Judge Garland. Mr. Chairman, I yield back.

DURBIN: Thank you, Judge.

And thank you, Senator Ossoff.

And so only in the Senate would we characterize a five minute round of questioning as a lightning round.

(LAUGHTER)

And that's what were to shift to at this moment and those senators who wish to ask the second question will have five minutes to do so and I'm going to kick it off if I can. I want to address an issue which doesn't come up very often in this type of hearing but should and that is the state of America's federal prisons.

We talk a lot about justice and of the law, sentencing, enforcement, we know the outcome many, many cases is that a person is incarcerated for sometimes a very lengthy period of time. How long a period of time is and how that person is treated in prison should be our concern as well, it's a reflection of our values as a nation just as many other things are.

So the first thing I would say is that made a serious mistake along with many others including the current president and supporting a bill more than 25 years ago which established a standard for sentencing crack cocaine 100 to one compared to powder cocaine.

The net result of it was a failure policy, it did not reduce addiction, it did not raise the price of crack cocaine, just the opposite occurred, we ended up arresting thousands of Americans and sentencing to lengthy sentences primarily African-Americans.

And so I introduced a bill several years ago, the Fair Sentencing Act which was signed into law by President Obama and then I worked with Senator Grassley, Senator Lee who is here today as well as Senator Booker and others to pass the First Step Act.

The idea was to reconcile some of the injustice in our sentencing under that earlier law, President Trump, much to our surprise signed it into law and even spoke positively about it at the State of the Union. Unfortunately, it has not been implemented and the provisions in there to prepare people for release from prison as well as to reduce sentences have not been effectively enforced.

So point number one, I hope you put that on your agenda because I'll be back in touch with you to ask.

A second point, the United States has five percent of the population of the world and 20 percent of the COVID infections and deaths. It's a terrible commentary on our failure to deal with this public health crisis. But to make matters even worse, the infection rate in federal prison populations is four times what it is in the surrounding community and more than 230 federal prisoners have died. We need to have a sensible and humane response to compassionate release in this time of pandemic.

Senator Grassley and I have introduced legislation along those lines and I'm going to ask you to look at that carefully as well. And the third is the last item that I will bring up for your response was an article written several years ago in the New Yorker Magazine, I think I may have mentioned this to you, by Dr. Atul Gawande who is a surgeon in the Boston Metropolitan area, a prolific writer and a very insightful man. And he wrote an article about the impact of solitary confinement on the human mind and went further to talk about how people in a perilous situation can be reduced to an inhuman level just by isolation 23 hours a day sitting in the cell by yourself, it just has that impact.

And I looked into it to see what was happening at the federal level. I'm happy to report to you that things are marginally better, but only marginally.

I think that isolation is cruel and unusual and has to be used in some circumstances for an extremely dangerous inmate, but unfortunately is used in too many circumstances now. Many states are way ahead of the federal prison system in looking at this issue.

I only have a minute left and it's all yours to react.

GARLAND: These are all easy because I already thought about all them and in each case, I think I will be looking at each one of these problems. The First Step Act both with respect to our that if I'm -- obviously if I'm confirmed that the First Step Act with respect to the reentry education that's required so that people don't become recidivist, they are able to go into societies, the First Step Act with respect to the coverage of the act as of for retroactive reduction in sentences. I also, over the years, maybe like you I've learned more and more about the crack powder distinction and how by reading the sentencing commission reports about how there seems to be little if any support for making that.

So I'm now of the view that there is no reason so I'm very interested in reforming that area. I have read but don't know a lot about the solitary confinement issue, but I can't imagine the -- I obviously required in some circumstances to protect people from other people but it's not any kind of regular measure for incarceration. So all three of these areas are ones that I was already planning to look at and I can assure you that I will.

DURBIN: Thanks, Judge.

I see Senator Lee is here and I'm going to recognize him next in the lightning round.

LEE: Thank you, Mr. Chairman.

Judge Garland, consistent with the idea of his being a lightning round, I'm going to start with some questions that can be yes or no if they require more than that, you can say yes with this or that minor caveat but I would prefer a yes or a no if you can provide one of these.

Do you believe that individuals who advocate for the rights of unborn human beings are rendered unfit for public office by virtue of having engaged in such advocacy?

GARLAND: No.

LEE: Do you believe that efforts to purge voter rolls of individuals who have either died or have left the state in question or to require voter identification are racially discriminatory and an assault on voting rights?

GARLAND: This one is when I can't answer yes or no because you're asking about the motivations of individuals, some of whom may have discriminatory and purpose and some of whom have no discriminatory purpose.

LEE: OK, I think that answers my question there because it I guess what I'm asking is does an individual without knowing more than that, is there anything about those comments or support for those positions that in it of themselves would make that person a racist or an assault on voting rights?

GARLAND: Again there's nothing about the comment itself but when you know there's such a thing as circumstantial evidence obviously and if there's enormously disparate impact of things that somebody continues to propose, no it's not unreasonable to draw conclusions from that but the mere fact of the statement, no.

LEE: Do you believe that Republicans in the United States and by Republicans, I mean as a whole are determined to quote "leave our communities to the mercy of people and institutions driven by hate, bigotry, and fear of any threat to the status quo" close quote.

GARLAND: I don't make generalizations about members of political parties, I would never do that.

LEE: I appreciate that and wouldn't expect otherwise, the reason I raise these ones is that these are questions that have been drawn from comments made by Vanita Gupta who has been nominated to be the Associate Attorney General has advocated for each of these positions.

GARLAND: Well, Senator, I know Vanita Gupta now quite well. I didn't know her before but since the nomination, I have gotten a chance to talk with her and speak with her, I have to tell you I regard her as a person of great integrity and a person who is dedicated to the mission of the department and particularly equal justice under law.

So I don't know...

LEE: I understand, I'm not asking you to weigh in on her -- on her as a person, I'm just talking about the comments, let's move on.

Would an individual's past statements, statements in the past as an adult declaring that one racial group is superior to another, would statements like that be relevant to an evaluation of whether such a person should be put in charge of running the Department of Justice's Civil Rights Division?

GARLAND: So, Senator, I've read the last few days these allegations about Kristen Clarke who I also have gotten to know, who I also trust, who I believe is a person of integrity whose views about the Civil Rights Division I have discussed with her and they are in line with my own. I have every reason to want her. She is an experienced former line prosecutor of hate crimes and we need somebody like that to be running the...

LEE: I'm asking about the statement, I'm not asking about her as a person, I'm asking about the statement, would -- in the abstract, would someone who has made that comment, would that comment itself be relevant to the question whether that person having made that statement should be put in charge of running the Civil Rights Division?

GARLAND: All I can tell you is I've had many conversations with her about her views about that, about the Civil Rights Division, about what kind of the matter she would investigate...

LEE: What about anti-Semitic, would those be relevant to someone wanting to...

GARLAND: You know my views about anti-Semitism, no one needs to question those...

LEE: I'm not questioning your views.

GARLAND: I know you are not but I also want you to know I'm a pretty good judge of what an anti-Semite is and I do not believe that she is an anti-Semite and I do not believe she is discriminatory in any sense.

LEE: OK, tell me this, Judge, you are a man of integrity and one who honors and respects the laws, what assurances can you give us as one who has been nominated to serve as the Attorney General of the United States, but you if confirmed as Attorney General of the United States, what assurances can you give Americans who were Republican or pro-life or religious people who were members of certain minority groups, you know, in short, half or more than half of the country telling them that the U.S. Department of Justice if you're confirmed will protect them if the Department of Justice leaders have condoned radical positions like those ones -- those that I have described.

GARLAND: Look, I'll say again I don't believe that either Vanita or Kristen condoned those positions, but and -- and I have complete faith in them, but we are a leadership team along with Lisa Monaco that will run the department and every -- the final decision is mine, the buck stops with me as Harry Truman said and I will assure the people that you're talking about, I have ever -- I am a strong believer in religious liberty and there will not be any discrimination under my watch.

LEE: Thank you.

DURBIN: I might remind the committee that the statements -- I might remind the committee that the statements that are being alleged can all be asked of the actual witness, the committee is going to have a hearing on these individuals and it would only be fair to take question to them as opposed to asking for reaction from someone who did not make that statement.

Senator Klobuchar?

KLOBUCHAR: Thank you very much Mr. Chairman and I appreciated, Judge, your full-throated defense not only of religious liberty, which I know is important to Senator Lee, but also your team and the people that you want to work with going forward.

And while the Chairman is correct, we can ask questions of those nominees I think it's important to hear from you with their hearings coming up of your beliefs about how they can do the job so I appreciate that. I know both of them and have a lot of respect for them.

GARLAND: Thank you, Senator, they have skills that I do not have, they have experiences that I do not have. Likewise, Lisa Monaco has experiences in the intelligence world that I do not have. No human being can have all of the skills necessary to run the Justice Department and I need this leadership team if I'm going to be successful if you confirm me.

KLOBUCHAR: Very good. Well, thank you very much.

And one thing that we didn't touch on when I asked my first-round of questions was the Violence Against Women Act, and I'm to be working with Senator Feinstein and others on that -- this committee finally get that done. I don't know if you follow this, but we've had a delay in getting that reauthorized, it's intended to be a bipartisan bill in the past and I have several provisions in the bill including one on to fix a loophole that exists involving -- it's called the boyfriend loophole, but it's not as positive as that sounds about owning getting guns after people have committed serious crimes.

But the second piece is a bill called the Abby Honold Act which is a rape victim in Minnesota who worked with us and Senator Cornyn is my co-sponsor of the bill to be able to do a better job at law enforcement to investigate sexual assault crimes. But just in general, do you want to talk about your views on the Violence Against Women Act in the justice department rolling training and the like across the country?

GARLAND: Yes, so as I know you know, the Violence Against Women Act was pressed by Senator Joe Biden many years ago and he has a deep commitment to its continued reauthorization as do I.

I was in the Justice Department when we set up the first office of violence against women for the purpose of coordinating departmental programs in this area. I know this requires resources both of the examples that you give -- again I don't know the specifics but from the description, I can hardly imagine a serious disagreement. We have to do -- provide the resources necessary to help rape victims obviously and I don't see any reason why somebody who commits a violent crime against a person but isn't married or have an intimate relationship should be treated any differently than one who does.

So I think I'm all in the violence against women re-upping the statute...

KLOBUCHAR: Very good.

GARLAND: ...authorization, I guess.

KLOBUCHAR: Thank you. Another thing that I've been very focused on part because my dad struggled with alcoholism most of his life and he got through that thanks to treatment and recovery is to get that same kind of opportunity to people in the criminal justice system, and drug courts, our big presence in Minnesota as this treatment, we are home of Hazelden Betty Ford as well as many other fine treatment centers.

And we worked really hard here and led some of the efforts on diversion with federal courts with drug court and of course there's much use of them on the state courts, can you talk about your views on that?

GARLAND: No, I think that the courts and diversion are an excellent idea of -- for people who have addiction and need to be treated I think, now the opioid crisis has struck large parts of America, many Americans now understand that sometimes it is just not a question of willpower to turn the stuff down that this -- these kind of drugs that take control of your lives and you just can't do anything about it.

And treating people in those circumstances in the criminal justice system is abuse of them but also it's a terrible misallocation of resources. So the drug courts are able to get people into addiction programs are god sent and I'm in favor of them.

KLOBUCHAR: And thank you for also mentioning opioids which has been such a scourge, we lost Prince in Minnesota because of opioids but we lost a lot of other people that people may not know their names and a lot of kids to opioids and actually, Senator Whitehouse and I along with Senator Portman, Senator Graham has been involved in this and many others, Grassley have been leading the way for a while before people were even identifying this as an issue and our commitment to the treatment side of it which you've already made just now but also to the prosecution of synthetic production and distribution, synthetic opioids continues to this day.

Could you comment briefly, I think maybe Senator Graham asked you about this but if you could...

GARLAND: Yes, he did and of course, I think that's right, the people who are putting the poison in the communities are the ones we should be focusing on and I think that's what the DEA is well known for doing and I like to put as much effort into this as we possibly can.

KLOBUCHAR: OK, I see the chairman is looking at me in a polite Midwestern way to tell me that my time has expired. So, thank you.

GARLAND: I'm familiar with the polite Midwestern way.

(LAUGHTER)

DURBIN: Senator Kennedy, your diligence has been rewarded, you have five minutes.

KENNEDY: Thank you, Mr. Chairman. Judge I'm really curious about your thinking on this and I don't my questions to be interpreted as suggestive or inconsistent with your thinking, but you and I are about the same age, I think.

GARLAND: I think so, that is right, Senator.

KENNEDY: What is when you refer to systemic racism, what is that?

GARLAND: I think -- I think it is plain to me that there is discrimination and widespread disparate treatment of communities of color and other ethnic minorities in this country.

They have a disproportionately lower employment, disproportionately lower homeownership rates, disproportionately lower ability to accumulate wealth...

KENNEDY: Can I stop you because this five minutes goes so fast?

GARLAND: I'm sorry.

KENNEDY: So you're basically saying there's a there's a disparate impact?

GARLAND: There is disparate impact which in some cases is the consequence of historical patterns, sometimes is a consequence of unconscious bias in some kind conscious...

KENNEDY: When you were at the Department of Justice...

GARLAND: Yes.

KENNEDY: Was the Department of Justice then systemically racist?

GARLAND: I think each -- we look for a pattern or practice in each institution, when you talk about a specific institution you look for patterns and practices...

KENNEDY: But how do you know what you know, in other words, you say an institution is systemically racist...

GARLAND: I didn't say any particular institution...

KENNEDY: I know, I'm not saying you did. I'm saying if you say an institution is systemically racist, how do you know what you know, do you measure it by disparate impact controlling for other factors?

GARLAND: Well, the various...

KENNEDY: Or you just look at the numbers and say the system must be racist.

GARLAND: Well, now you asked me a slightly different question which I think I have a slightly different answer for.

KENNEDY: OK.

GARLAND: So the authority the justice department has to investigate institutions is to look for patterns or practices of unconstitutional conduct, and if we find a pattern or practice of unconstitutional conduct, I would describe it as institutional racism within that institution that may not be the best perfect definition but that's what I would think of...

KENNEDY: So it was just a product of the numbers.

GARLAND: Well if there is a pattern and a practice, it is not just the question of individual numbers, what we're looking for here under those investigations are patterns, why is it that I know a series of similar events are occurring like that. Looking into any individual's heart is not something we could do.

KENNEDY: Who bears the burden of proving that? The institution or does the...

GARLAND: No, as in all matters of law, the burden is on the government -- the investigator to prove first by investigation, then before a court.

KENNEDY: Is there any other way to measure institutional racism other than the numbers, the disparate impact?

GARLAND: Well, yes, I mean you can look at it large numbers of individual cases in which discriminatory conduct is actually found, intentional discriminatory conduct, then it is not just a question of numbers, but if an institution has a very large number of incidents of unconstitutional conduct, the entity is responsible in the same way a corporation is responsible for the behavior of its individual the same ways...

KENNEDY: What is the difference though between people who are racist to an institution that's racist.

GARLAND: Now, we do have a cosmic question but I think institutions are made up of...

KENNEDY: Yes, but this is important.

GARLAND: I know, I'm totally with you, I'm -- I totally agree with that. Corporations are nothing other than the collection of their individuals and the same is true for a public entity which is in a certain way, a corporation.

KENNEDY: I got to get one more in, I'm sorry, I got 24 seconds.

GARLAND: I'm sorry you asked a very hard question...

KENNEDY: Well, we can talk about this later but I'm going to ask you about this concept of implicit bias.

GARLAND: Yes.

KENNEDY: Does that mean I'm a racist no matter what I do or what I think I'm a racist but I don't know I'm a racist?

GARLAND: Well that label racist is not one that I would apply like that, implicit bias just means that every human being has biases that's part of what it means to be human being, and the point of the examining our implicit biases is to bring our conscious mind up to our unconscious mind and to know when we're behaving in a stereotyped way. Everybody has stereotypes, it is not possible go through life without working through stereotypes and implicit biases are the ones that we don't recognize our behavior.

That doesn't make you racist...

KENNEDY: Who judges that? Doesn't the person judging me have his own implicit bias, how do I know his implicit bias isn't worse than my implicit bias?

GARLAND: I agree but I'm not judging you Senator and I don't know who...

KENNEDY: I'm not asking you.

GARLAND: Who would be judging...

KENNEDY: Somebody if you say you have implicit bias, that's a pejorative statement. I'm not saying you're being mean, you're not a mean guy that's obvious, you're a nice guy. If you say somebody has implicit bias, somebody's got to make that subjective judgment and the person making that subjective judgment has implicit bias if it's part of being a human, then how do you know who wins?

GARLAND: Fair enough, but if we say that all people have implicit bias, it's not -- you shouldn't take it is pejorative, this is just an element of the human condition so you shouldn't take that as pejorative. Implicit bias is just a descriptor of the way people's mind -- everyone's mind works.

KENNEDY: How about if you say that America has racist in it just like everybody else, is that -- just like everywhere else, does that make America systemically racist?

GARLAND: I think -- I don't want to waste your time because I think this is what I said before what I mean by systemic racism is the patterns of discrimination and disparate treatment across the country, it doesn't mean that any particular individual is a racist.

KENNEDY: Judge, I'm in big trouble, I have gone way over.

DURBIN: I'm developing a bias. Thank you for the exchange...

GARLAND: A pleasure talking with you, Senator.

Appreciate it.

KENNEDY: Same good, you'd be a good Attorney General.

DURBIN: All right, so I'd like to let the committee know that Senator Hirono will be the next up and then we are going to take a break and return to five-minute rounds.

Senator Hirono, are you tuned in?

HIRONO: Yes, I am. Thank you, Mr. Chairman.

I would like to ask what I think is a very straightforward question. Over the past couple of years, the Justice Department has initiated a number of efforts related to missing and murdered indigenous people and went including U.S. attorney led pilot projects in Alaska and Oklahoma to implement tailored tribal community response plans.

To what extent do you plan to continue to focus on these and other regional engagement efforts that could help the missing and murdered indigenous people crisis?

GARLAND: Well, I certainly do intend to continue those. Again one last time I was in the justice department, the office of tribal justice was established and believe from looking at the org chart that is still there, this is an important aspect, we have a responsibility to indigenous peoples of both statutory and otherwise to protect and many of our problems in this country are regional and we must focus our resources on problems that are regional. Not every problem is a national one and our regional problems have to be addressed directly with respect to the problems caused in those regions.

HIRONO: Thank you, Judge Garland, because this is -- I think this is an under -- possibly under reported and definitely, we don't pay enough attention to what is happening to murdered and missing indigenous women -- well, I think we need to put a lot more emphasis on the (inaudible) there.

And the past four years have seen a reawakening of right wing extremism. Last year, FBI Director Wray testified that the greatest domestic terrorist threat in the United States is White extremist groups and of course, last month, we had the insurrection at the U.S. capitol led by white supremacists and right wing extremists.

Late last month, the New York Times reported that President Trump, with the help of his Attorney General Barr diverted law enforcement resources from combating the serious threat posed by right wing extremist groups, will you reprioritize Justice Department resources to address White supremacist and other right wing extremists?

GARLAND: Yes, Senator, if anything was necessary to refocus our attention on certain -- White supremacists, that that -- attack on the capital and I expect to put all departmental resources necessary to combat this problem into this area to make sure both our agents and our prosecutors have the numbers and the resources to accomplish that mission.

HIRONO: Thank you. My next question has to do with the immigration courts, we discussed immigration and the courts when we were able to meet a few weeks ago and it is worth highlighting that under the Trump administration, the backlog of cases pending in the immigration courts has exploded to almost 1.3 million cases. That is an amazing number, in some jurisdictions, the wait to hear a case is four years and there are cases that have been pending for more than five years, and this not only affects families trying to reunite but students trying to study or train in the U.S., victims of crime who are working with law enforcement and members of our military trying to adjust status.

1.3 million backlog, how will you address this backlog and increase the efficiency of the immigration courts?

GARLAND: This is an extraordinarily serious problem, looking from my pampered perch as an appellate judge who has a limited number of cases and weeks and weeks to study those and then weeks and weeks to write those, I can't imagine how judges can operate under the conditions that you describe and that I have heard even from other judges exist.

When I get into the department if I'm confirmed I will certainly look into what can be done about this, I suppose this must mean an increase in the number of our resources and judges, it must mean some ability to give to the judges to prioritize their cases even in our own appellate courts we have developed ways in which we handle some cases a more swiftly and some cases take longer, some cases are summarily resolved, some require full opinions, some way of evaluating this is required but I can't give you any specific examining -- idea with respect to court administration which I know something about but not enormous about until I have a chance to get into the department if confirmed and understand what the cause of this huge backlog in the number of cases is.

HIRONO: There is (inaudible) and I think the really important thing is an acknowledgement that this kind of serious backlog has got to be addressed and reached because lives are at stake here.

Thank you, Mr. Chairman.

DURBIN: Thank you, Senator Hirono.

We are going to a break now and come back five minutes after 3.

(RECESS)

DURBIN: The Committee resumes.

And I'm going to turn to the Ranking Member, Senator Grassley. Five minutes. Go.

GRASSLEY: Thank you. Judge Garland, when I talked to you on the phone, I said I was going to give you a binder. I'm not going to ask you to come up and give it and I'm not going to take it down to you but I'll have my staff give it to you of letters going back to the last two years of the Trump Administration that haven't been answered by the Department and also maybe just a very few letters of the recent administration.

So I hope that you will do what you can get those answers, so six months from now, I don't blame you, it's the fact that the Trump people didn't answer it.

GARLAND: I would like to keep the blame on the -- my predecessor, yes, senator.

GRASSLEY: Thank you.

And thank I'm going to say something about your answering questions for us and this goes back now that I'm ranking member, I want give you a quote that I said to Senator Sessions when he was sitting where you are, and if Senator Feinstein contacts you, do not use this excuse as so many people use that if you are not a chairman of a committee, you do not have to answer the questions. I want her questions answered just like you would answer mine.

So I hope that whether I'm Ranking Member or Chairman of the committee you will help me get answers to the questions and I hope Senator Durbin will do the same thing.

GARLAND: I will not use any excuse to not answer your questions, Senator.

GRASSLEY: Thank you. And then the other thing is just I don't want to dwell on Durham, but several people have asked you and you've given the same answer and I understand why you give that answer, but would it be impossible for you to have some sort of a briefing on Durham between now and the time you get our written answers back so you could give us a more definitive answer?

GARLAND: So I don't think it's appropriate, I mean I assume among other things that the Durham investigation...

GRASSLEY: I will accept your answer...

GARLAND: OK.

GRASSLEY: You don't need to go any further.

GARLAND: Yes.

GRASSLEY: OK. Then let's go to a subject of domestic terrorism. And that obviously in a democracy, we need to be able to disagree with each other without violence. Political extremism, the willingness to use violence to advocate one's political views on either side is a threat to our democracy. The capital attack shows us that very directly.

I think you've answered this question and so just a very short answer, I think you've assured all of us that the justice department has all the necessary resources to investigate and prosecute all cases connected to the attack on the United States capital.

GARLAND: I can't yet say we have all the resources, but what I said was I would look into the question of whether we -- I just don't know, but we certainly have -- we certainly have authorities to look into it whether we have the money and the person power, I just don't know yet.

GRASSLEY: OK, and likewise in the previous year, there been numerous attacks not only on other institutions of government like the White House and the federal courthouse in Portland but on hundreds if not thousands of police officers were injured as well as on fellow citizens and their businesses, particularly small businesses, the Justice Department opened over 300 domestic terrorism cases due to that violence and started an anti-government extremism task force.

So I hope you could commit absolutely as you did for the capital rioters that you will see those investigations of the 2020 riots and continuing Antifa riots in the pacific northwest through to the very end.

GARLAND: The justice department, I think Director Wray said it exactly right which is we investigate violence, we don't care about ideology, there are investigations going on like those and of course, they're going to continue.

GRASSLEY: OK. And then taken off a little bit what you referred to what the FBI said, former Attorney General Barr noted that the FBI, while it had robust programs for White supremacist -- supremacism, and militia extremism lacked a similar infrastructure for anarchist extremism cases. Former acting Department of Homeland Security Secretary Wolf stated that this may have contributed to law enforcement being blindsided by the civil unrest that became -- that began in 2020, so I hope that I can get you to say that you would be willing to review your anarchist extremism program for weaknesses and fixing those weaknesses based upon what Barr said that the FBI said that they had better programs to go after white supremacy than they did other anarchist extremism.

GARLAND: You know, I think we need to go after violence from whatever direction, left, right, up, down, doesn't make any difference, we need to go after and -- go after that. I think what Director Wray had said was the -- what he was most concerned about was the rise of White supremacist extremism as an element of domestic terrorism, but it doesn't matter what direction it comes from, it doesn't matter what ideology is, we have to investigate it.

GRASSLEY: I guess my time is up.

I'm going to have a lot of questions for you. I'm going to have a lot of questions to answer in writing.

GARLAND: Fair enough.

DURBIN: So I'm , I want to try to give an indication of the sequence, Dick Blumenthal is going to be next, and then on the Republican side, I think it's going to be John Cornyn, then either it would be Senator Ossoff or Senator Booker, they can arm wrestle until I have to make that decision. And then Senator Cotton, believe you were the next arrival. This has become kind of a little difficult to predict and sequence, I want to make sure you see it coming.

GARLAND: I would never want a rookie Senator go-between Cotton and Cornyn, so I would...

(LAUGHTER)

DURBIN: Senator Blumenthal.

BLUMENTHAL: Thanks, Mr. Chairman.

I want to pursue a couple of the questions that I was asking when we ran out of time just to say that on the issue of climate change, President Biden, as a candidate committed to hold accountable the oil and gas industry for any lies or fraud they have committed in denying the effects of climate change, and I hope you'll take that into consideration in determining what the Department of Justice will do in those kinds of cases pursuing any kind of pollution or climate change or lies in connection with the oil and gas industry.

And just had kind of ask a threshold question, do you have any doubt that human beings are a cause of climate change?

GARLAND: No, no doubt at all.

BLUMENTHAL: Thank you. You may...

GARLAND: That wasn't a trick question, I guess.

BLUMENTHAL: It wasn't a trick question, I ask it because the last major nominee before this committee back in September, it was a Supreme Court nomination seem to have some trouble with that question but I'm glad you don't.

Let me move to this -- the issue of racial discrimination which has been pursued and I really welcome your very sincere and passionate commitment to ending racism and racial injustice, we're in the midst of a racial justice movement right now. One of the areas that most concerns me is holding accountable public officials when they violate individual rights and liberties.

As you know, section 242 makes it a federal crime to willfully deprive a person of their constitutional rights while acting under color of law, but prosecutors have to show that that public official had specific intent to deprive constitutional rights which as you also know is a pretty high bar.

I believe and I have advocated that we in effect, lower the state of mind requirement section 242 from willfully to knowingly or with reckless disregard because this stringent mens rea requirement makes section 242 prosecutions rare or impossible.

And so I hope you agree that we need to adopt measures that will enable criminal accountability where all the elements of the crime are committed and the mens rea intent requirement can in effect, fit the crime.

GARLAND: Well, what I can agree is that I will consult with the career lawyers in the Civil Rights Division who are the ones who would be bringing these cases and who have brought them the past. I honestly just don't know. I know everyone says that it is -- they are very difficult to make, on the other hand, in the Clinton administration we did successfully make quite a number of those cases, so what I'd like to know from talking to them what kinds of changes might be necessary in the statute and what the consequences of changing the mens rea requirement would be.

BLUMENTHAL: Thank you. I'd also like to ask you about section 230. I proposed various measures, one of them actually adopted into law and signed by the president that imposed accountability on the big tech platforms for certain kinds of really horrific material, human trafficking, under SESTA and Senator Graham and I have led an effort, it's called the EARN IT Act to hold accountable the tech companies for spreading child sexual abuse material.

I think reform of section 230 is long overdue, I lead these kinds of targeted and indeed bipartisan efforts to revise section 230 to hold big tech accountable and I hope that you will, the Congress in those kinds of targeted deliberate efforts to reform section 230 which no longer fits the world that currently it applies to.

GARLAND: So, I don't know that much about 230 except for the case I mentioned that I worked on myself which was a pretty direct application of the of the provision. I know that a number of members including I you spoke to me about this and in our meetings and I know people have different views about how it should be altered.

I really would have to study that but I'm very eager to study that, there is no doubt the Internet has changed from when 230 was originally adopted. So I would be eager and interested in studying it and speaking with the members about it.

BLUMENTHAL: Great. Thank you very much.

DURBIN: Thanks, Senator Blumenthal.

Senator Cornyn.

CORNYN: Judge, are you familiar with Title 42 which is a public health measure which restricts traffic to cross the international border as a public health measure to mitigate the spread of COVID 19, are you familiar with that?

GARLAND: I don't know the statute specifically, I know that there must be the provision to do that but I don't know the statute, no.

CORNYN: Well, one of the things I hear from the Border Patrol and Customs and Border Protection is they are fearful that when the current Title 42 restrictions on cross-border traffic were lifted, there will be no plan in its place and certainly no transition to get back to normal cross-border trade traffic and visit, and this is a huge issue that I brace with the with the Director Mayorkas and others as well and I just want to make sure that's on your radar screen.

But I also want to take up what to Senator Hirono was talking about the 1.2, 1.3 million asylum cases that are backlogged.

There's no way that the United States government is ever going to clear that backlog, but I want to suggest to you that that was -- that is part of a conscious strategy by the cartels who make a lot of money moving people across the border into the United States along with drugs, whether it's human trafficking, whether it's as I said drugs, whether it's just a migrants who are trying to flee poor economic circumstances and dangerous conditions in their home country.

But if the Biden administration is not been enforced a current laws with regard to immigration and many people suggest including the nominee for health and human services that we ought to give free health care to people who are not legally in the country, all of this is going to be a huge incentive for more and more people to immigrate illegally into the United States.

And obviously, the Department of Justice has a very important role to play there but I'll I want to suggest this is not an accident this is not a coincidence, this is part of a conscious strategy by the cartels who are enriched by each and every person each and every load drugs it comes across the border.

And I hope that you will commit to working with me and all the other members of Congress to try to address this humanitarian and public health crisis in addition to the other aspects of immigration. Will you agree to do that?

GARLAND: Certainly, I will commit to working with members of Congress to address the public health crisis. To say I wasn't aware that the cartels were doing this, but this does seem like something that the Justice Department needs to focus on.

CORNYN: Well, at different -- different times it's referred to as transnational criminal organizations cartels. Basically, it's people who are engaged in criminal enterprises for money. That's -- that's why they do it. They care nothing about the people that they leave some to die en route to the United States. All they care about is money. So I appreciate your willingness to work with me and others about that.

China and Russia, to a lesser extent, have perfected cyber espionage on the United States for many reasons but, in part, to steal our intellectual property. The billions of dollars that Congress appropriates for development of the next-generation stealth fighter to nuclear modernization, you name it, if the Russians and the Chinese can get it without making those investments then the years' long delay necessary to -- to -- to roll them out, they have a tremendous advantage in terms of competing with us economically and also militarily.

Eighty percent of the -- all economic espionage cases brought by the Department of Justice involved the communist -- Communist China. And there are at least some nexus to China in about 60 percent of all trade theft cases. I've told people that Director Wray, who's a pretty stoic individual, gets possibly intimidated when he begins to talk about the role that China is playing in its rivalry with United States, both from an economic standpoint. And if you look at the South China Sea and some of its aggressive and boisterous actions there with the potential for military conflict at some future, this is our number one -- number one challenge, I believe, today as we speak here.

Do you -- do you share my concerns about China's role as a rival in the world, what they're doing in terms of stealing intellectual property, what that means to us economically and from a national and security perspective?

GARLAND: Well, Senator, I don't have any inside information with respect to what intelligence agencies know, but I've read quite a lot about this. And I'm -- it seems quite clear to me that -- that the Chinese are involved in hacking and stealing our intellectual property.

We're in an age where individual espionage prosecutions don't -- don't quite cut it given the Internet and how so much can be stolen in -- in -- in just a single hack. So this has to be in all of government of response to this problem. There has to be a forward look as to what's happening to us. There has to be a defensive look. I know that that's the purpose of Cyber Command. That's certainly something that the DNI is very concerned about and then, of course, the FBI with respect to enforcement. But this is a dangerous problem for all the reasons you said, and it requires a whole-of-government response.

CORNYN: Thank you.

DURBIN: Thanks, Senator Cornyn.

Based on who is present and apparently interested, the -- Senator Booker, Senator Cotton, Senator Ossoff, Senator Hawley, those are the ones I see.

So, Senator Booker?

BOOKER: Thank you very much, Mr. Chairman, and thanks for the grace of Senator Ossoff for allowing me to go before him.

I'd love to just jump in real quick if I may, and a lot have been to talk about your incredible work with the Oklahoma City bombing, but I'm also aware that you have a long record of working on domestic terrorism in pretty significant ways in the mid 1990's in a response to a wave of bombings and arson attacks against black churches in the south and other houses of worship. The Clinton administration formed a national task force where you and your leadership, along with others, helped to make this Justice Department priority resulting in several hundred investigations and arrests. And I -- I just really appreciate the totality of your record on fighting domestic terrorism.

I do just -- really quickly just wonder just in terms of proportionality, since that time until now, we've seen just this rise of right-wing terrorist attacks in our country. In fact, since 9/11 the majority of domestic terrorist attacks have been right-wing extremist groups. The majority of those have been white supremacist groups.

And I'm just hoping -- and again you're not in the position -- God willing you will be -- but just the proportionality of the resources we are directing towards trying to stop the scourge of domestic terrorism. Is this something that you will look at in terms of the degree of the resources of the agency?

GARLAND: Yeah. As I said, I think the first thing I should do as part of the -- my briefings on the Capitol bombing, our briefings with Director Wray as to where he sees biggest threat and whether the resources of the Bureau and of the Department are allocated towards the biggest threat and the most dangerous and direct threat. We do have to be careful across the board. We -- we can never, you know, let somebody sneak around the end because we're not focusing, but we also have to allocate our resources towards the biggest threat.

BOOKER: Great. And I like to shift back to marijuana. Earlier conversation we were talking about the systemic racism there that has -- I've watched tons of friends in elite colleges not worrying at all about being arrested for marijuana while the inner city black American community I live into, it's a much different -- much different set of laws applying to them.

But I actually want to get to the -- the good news, I think, in the United States of America is that red states, blue states, America, general, if you want to call those states that way, our American states are moving towards more and more legalization, medical marijuana, loosening up of laws, decriminalization. It's an amazing thing, but the federal government is out of step with that, right, as of now. And I hope to work in a bipartisan way to see if we can advance the federal government maybe to delist the legislation, think of some restorative justice elements. Just today New Jersey signed its first major effort at legalization and restorative justice.

But one thing that was done by the Obama administration was putting forward a -- the Cole Memorandum as I'm sure you're aware, but Attorney General Jeff Sessions rescinded the Cole Memorandum, which gave guidance to U.S. attorneys that the federal marijuana prohibition should not be enforced in states that have legalized marijuana in some form. And so do you think that the guidance in the Cole Memorandum to deprioritize marijuana enforcement should be reinstated? That is should the Justice Department respect states' decisions on marijuana policy?

GARLAND: So I don't have every element of the Cole Memorandum in mind, but I do -- do remember it and I have read it. This is a question of the prioritization of our -- our resources and pastoral discretion. It does not seem to me a useful use of limited resources that we have to be pursuing prosecutions in states that have legalized and -- and that are regulating the use of marijuana, either medically or otherwise. I don't think that's a useful use.

I do think we need to be sure that there are no end runs around the state laws that criminal enterprises are doing, so that kind of enforcement should be continued. But I -- I don't think it's -- it's a good use of our resources where states have already authorized. That only confuses people obviously within the state.

BOOKER: So real quickly, the violence against black trans Americans is unconscionable with many murders every single year. The bullying and violence against a lot of trans children, about a -- a third of LGBTQ American children report missing school because of fear -- fear of violence and intimidation. Is this something that you will make a priority to protect all children from violence and discrimination, particularly in this case transgender children and -- transgender children? And would you also commit to taking seriously the targeting of a -- a transgender adult, specifically with the trend we're seeing with the alarming numbers of murders of -- of black transgender.

GARLAND: These are hate crimes, and it's the job of the Justice Department to stop this, to find them, to enforce and to penalize. And that's what the section of the Special Litigation unit in the Civil Rights Division is intended to do.

There is the Shepard-Byrd Act, which was particularly aimed at this. And I -- I think it's -- I'm not sure whether it needs broadening, but it's clear to me that this kind of hate -- hateful activity has stopped. And yes, we need to put resources into it.

BOOKER: Thank you for your time. I look forward to both of your confirmation, and I'm going to stop here because I do not want to make Tom Cotton mad at me.

(LAUGHTER)

DURBIN: So the remaining Senators for five minutes each -- Senators Cotton, Ossoff, Hawley and now Senator Whitehouse is going to make a return.

Senator Cotton?

COTTON: Judge, I want to return where we stopped this morning, the question of racial equality, specifically race discrimination in higher education. Last year the Department of Justice sued Yale University for discriminating its students on the basis of race. Based on Yale's own data, if you look at one of its top academic categories when you control for academic achievement, the admission rates by racial category were as follows: Asian-Americans 6 percent, white applicants 8 percent, Hispanics 21 percent, African-Americans 49 percent. Do you think that evidence suggests discrimination based on race in Yale's admissions process?

GARLAND: So again I'm -- my best recollection is that between my nomination and now that the department has made a decision about that...

COTTON: The case was voluntarily dismissed on February 3rd. It's no longer a pending case.

GARLAND: So -- so my recollection is correct.

So these kind of cases, obviously, depend on application of the Supreme Court's opinion in the Grutter case and the Fisher case. And they require a lot of factual development and examination of the facts. These cases do not only depend on the -- on disparate statistics, but -- and all the factors the Supreme Court instructed the lower courts and the government as to what kinds of affirmative action in higher education are permissible and which ones aren't. So I can't -- I honestly can't draw any conclusions without knowing the facts of the case.

COTTON: Some of that Supreme Court case law about racial discrimination in higher education says that race can only be used as a plus factor. It can't be decisive in practice. It can't be a defining feature. It can't be the predominant factor when Asian-American kids are eight times less likely to be admitted in the same band of academic achievement. You don't think that at least suggests a facial case of racial discrimination (inaudible)...

GARLAND: Well, I think that's -- that's a question that you look at for the underlying effects. No, I -- you are -- I think I don't remember exactly the words the Supreme Court opinions, but they seem pretty much exactly, you know, what -- what -- what you just said. You can't have a rigid quota. You can't have a fixed -- this was the consequence of -- of the Gratz case, which was the companion case to Grutter. Grutter was the University of Michigan Law School. Gratz was University of Michigan as a university.

With respect to Grutter, the Court said it was a holistic approach and was permissible. With respect to Gratz, it said it was a fixed ratio or a fixed number and not permissible. But those are things you find out by discovery in the case and examination of what the actual practices of -- of the university were. And I have no idea what they were.

COTTON: Judge, did anyone in the Biden administration consult with you about the decision to drop the lawsuit...

GARLAND: No.

COTTON: ... (inaudible) Yale University?

GARLAND: No, I have -- I have assiduously kept out of those. It's not my -- it's not appropriate for me to be examining anything like that unless you confirm me.

COTTON: Will the Department of Justice, under your leadership, pursue cases of obvious racial discrimination in higher education?

GARLAND: Well, if you put it that way the answer is, of course, yes. Obviously...

COTTON: I think this presents an obvious case of discrimination against Asian-Americans. I -- I suspect some Asian-American parents and their kids are a little disappointed in those answers, Judge. I want to turn to the...

GARLAND: I just want to say I'm only giving the answer what the Supreme Court said the law was. I can't do any better than that.

COTTON: Eight -- eight times less likely to be admitted?

GARLAND: All I -- my answer was you have to look at the facts in...

COTTON: OK. I want to turn to another very important topic, which is the rising rates of violent crime in the country. According to FBI's crime statistics, only 45 percent of violent crimes in this country result in an arrest. Would it be better or worse if 100 percent of violent crimes in this country resulted in arrest and prosecution instead of just 45 percent?

GARLAND: It would be better if -- if you gave -- if -- if the Congress gave the Department enough money to arrest every single person. I -- I assume you're talking both about state crimes and -- and federal crime.

COTTON: That's -- yes, the Department of Justice FBI crime statistics, only 45 percent.

GARLAND: So those -- almost all are a large percentage, you're talking about local crimes, so yes.

COTTON: Do -- do you think -- do you think the Department...

GARLAND: Better to...

COTTON: Do you think the Department today solves too many crimes or prosecutes too many criminals?

GARLAND: The Justice Department? Yes, I think it -- it may bring charges in areas which are not a good allocation of its resources. But I don't think it has sufficient resources to -- and probably never will to pursue every crime. That seems impossible.

COTTON: One final point, Judge. I just want to get on the record. We spoke about this last week in our telephone call about the importance of state and local law enforcement to work together in a collaborative and cooperative -- or fashion with the Department of Justice, both as local U.S. attorneys and the law enforcement agencies to oversee. I was glad to know that your growth in those partnerships are vital to reduce crime and keep our community safe. I just wanted to have -- give you a chance to put that on the record and that's...

GARLAND: Yes, absolutely. You know, my experience in Oklahoma City was close cooperation with the D.A.'s office, the local police there with the governor and with the state police. I think these joint task forces are an exceedingly good idea. They are force multiplier, so I'm -- I'm completely on board with this. Yes, Sir.

COTTON: Thank you, Judge.

DURBIN: Senator Ossoff?

OSSOFF: Thank you, Mr. Chairman.

Hi again, Judge Garland. I want to return to the question of the Department's authorities and mission to defend voting rights and note that Sunday would have been Congressman John Lewis' 81st birthday. And as you know, he committed his life and indeed nearly lost his life in the struggle for voting rights.

But as we speak, Georgia's state legislature is considering legislation that would make it harder for Georgians to vote. For example, to end Sunday early voting, which is used heavily by black and working class voters to cut the window during which voters can participate by absentee ballot, which would make it harder for seniors to vote. And I'm not asking you to comment on these specific bills, but what I'm hoping you can provide is an assurance that the Department of Justice will diligently and fully enforce constitutional and statutory guarantees of the rights to vote.

GARLAND: I give you my complete assurance. Yes, Senator.

OSSOFF: Thank you so much. I'd also like to discuss with you resources available for public defender's offices around the country. And a visit to a municipal court in any major American city will reveal that a steady stream of low-income defendants lacking the resources to hire their own attorneys are often represented by overworked and under-resourced public defenders, which contributes to class and race bias in the justice system and, in my view, is an affront to the constitutional guarantee of due process, as well as of equal protection.

So will you work with my office and this Committee to determine whether grant programs, which may already exist at the Department to support local public defender's offices or which may need to be created can be considered in legislation that this Committee and the Senate may consider.

GARLAND: Yeah, I -- I will, Senator. There is no equal justice in the United States unless everybody has equal access to justice. My own experience, our federal public defenders office is terrific. It needs resources, the federal public defenders across the country. I've tried my best when I was in a administrative position to provide as, you know, many resources as possible, the same for our lawyers who volunteer under the Criminal Justice Act. The difference between having an excellent lawyer and not can make all the difference in the world. And I -- I think we should give all the resources that we can.

And with respect to the local courts and local public defenders have the beat the grant programs but, of course, to -- to the extent Congress is willing, I'm strongly in favor.

OSSOFF: Well, I appreciate that answer. And I -- I'd look forward to working with you, I hope, and the Chairman and Ranking Member on those grant programs. And -- and finally, I want to return to the discussion that we had earlier about pattern or practice investigations.

And I just want to urge you that if you are confirmed and as you take this office and there will be so many demands on your time and your attention and important missions for the Department to fight violent crime and to defend our national security that you personally exercise leadership within the Department to ensure that the Civil Rights Division's mission is elevated and emphasized and that you come to this Committee to seek and secure any resources that you need to make that real.

And just to illustrate why I believe that's so important, the South Fulton Jail in my home state of Georgia has been known to the public for years that have appalling conditions for incarcerated people. And actually in the last month a federal court ordered changes to practices within the jail, but it was after years of litigation. The U.S. attorney's office did file a brief in the case, but the litigation was brought by independent nonprofit plaintiffs years it took for changes to be ordered by a federal court. I'm going to read you a quote from the plaintiff's brief to illustrate the conditions in this jail. And I want to warn the public viewing this on television that the material is graphic.

Quote, "The cells were covered in bodily fluids, rust and mold. In these conditions, the inmates deteriorated, leaving them incoherent, screaming unintelligibly, laying catatonic, banging their heads against walls and repeatedly attempting suicide. This refers to the solitary confinement of women with severe psychiatric disorders in the South Fulton Jail in Georgia, and these conditions are not unique to this facility."

So I want to urge you and ask you one more time please respectfully, Judge Garland, your commitment to elevate this mission within the Department and to work to secure the human rights of incarcerated people and the American public with all of the power you'll have in this position.

GARLAND: Well, you have my commitment that Civil Rights Division has responsibilities and some authorities in these areas. And -- and so it's quite capable of pursuing these kinds of cases.

I took to heart what Chairman -- the Chairman said with respect to the role that Robert Kennedy played when he was the Attorney General. And I regard my responsibilities with respect to the Civil Rights Division as -- at the top of my major priorities list. So you have my commitment to do everything I can in this area.

OSSOFF: Thank you. And just with the Chairman's indulgence, Judge, will you commit to reviewing any materials that are sent to you by Congress or by entities such as the NAACP or the Southern Center for Human Rights' work pertains to conditions of incarceration?

GARLAND: So -- so that I have some time to be able to read everything that I -- I need to read, if it's all right with you, I'll commit to being sure that the head of the Civil Rights Division and the Associate Attorney General, Ms. Clarke and Ms. Gupta who are directly responsible do that and then brief me about it. I -- I will to the extent possible. I read them myself and I've already committed to -- to reading a 400-page document, and there are only so many hours in my day.

OSSOFF: Understand. The Department's condition is what I'm looking for, so thank you so much.

Thank you, Mr. Chairman.

DURBIN: Senator Hawley?

HAWLEY: Thank you, Mr. Chairman.

Judge Garland, I'd like to talk a bit more about the law enforcement challenges at the border, which I know a number of other members have brought up with you. Just a -- a fundamental question, do you believe that illegal entry at America's borders should remain a crime?

GARLAND: Well, I haven't thought about that question. I just haven't thought about that question. I -- I think, you know, the -- the president has made clear that we are a country of -- with the borders and with a concern about national security. I don't know of a proposal to decriminalize, but still make it unlawful to enter. I just don't know the answer to that question. I haven't thought about it.

HAWLEY: Will you continue to prosecute on unlawful border crossings?

GARLAND: Well, this is again a -- a question of allocation of resources. We will -- the Department will prevent unlawful crossing. I don't know -- I -- you know, I -- I have to admit I just don't -- know exactly what the conditions are and how this is done. I think if -- I don't know what the current program even is with respect to this. So I -- I -- I assume that the answer would be yes, but I don't -- I don't know what issues around surrounding it are.

HAWLEY: Let me ask you about the guidelines on asylum eligibility they issued as part of the Executive Office of Immigration Review. The -- your -- your predecessors have issued quite a number of guidelines about asylum eligibility. Several Senators -- Senator Hirono, I think Senator Cornyn talked about the very significant backlog that we have currently in asylum cases. Will you continue to use -- keep enforce the current guidelines on asylum eligibility or do you anticipate changing them?

GARLAND: Again, given my current professional occupation, I -- I've had no experience whatsoever with the guidelines, so I can't give you a direct answer to that question. Asylum is part of American law, and the -- the Justice Department and the State Department have an obligation to -- to apply that law. I don't know what the guidelines are that you're talking about. I don't know even about the restrictions of the guidelines that you're talking about.

HAWLEY: Will you -- if confronted, I'm sure that you'll be reviewing this and considering these questions. Will you...

GARLAND: Well, I'm...

HAWLEY: ... pledge to keep us fully posted as you do so?

GARLAND: Yeah, if there was a change in the government policy if I'm confirmed, of -- of course, there will be a public change because you can't apply those kind of guidelines without making them public.

HAWLEY: Let me turn to the subject of antitrust. I heard your answer to Senator Blackburn about the ongoing Google antitrust prosecution. I believe your answer was you did not anticipate any changes in that ongoing prosecution that the case would go forward. Did I hear you correctly? Is that right?

GARLAND: I don't want to talk about a pending case because it is, after all, a pending case, just what a judge can't talk about. But as -- as true with most of our investigations, I will -- you know, when I get in if I'm confirmed I will examine them, but I don't have any reason to think that I would stop that kind of investigation.

HAWLEY: Recent news -- recently news outlets -- various news outlets have reported that Susan Davis (ph) is being considered to lead the DOJ Antitrust Division. Susan Davis (ph), of course, has defended Facebook from federal antitrust laws. Facebook has been another target of antitrust scrutiny. Do you think it's appropriate to have someone who is a defender of these massive corporations leading the Antitrust Division?

GARLAND: Let me say a number of things in response to this.

First of all, the department has recusal rules, which prevents somebody who had a role from taking a role in a case like that.

Susan Davis (ph) is a fantastic lawyer, a woman of the enormous integrity. And I have every confidence (inaudible) in that division that she would proceed as completely appropriate. But it turns out that the press reports are completely incorrect. So we can have...

HAWLEY: She's not under consideration?

GARLAND: No, not that I -- not that I know of, no.

HAWLEY: Oh -- and is -- and is not going to be to the best of your knowledge. I assume it will be your decision.

GARLAND: I don't -- I don't -- look, I -- I don't think either she or I have aspirations for her to be in the Antitrust Division, so I'm not exactly sure where this came from, but she is a woman of remarkable ability who has helped me in my previous role. And I am -- I would be very eager to rely on her good judgment and -- and her -- and a woman of strong ethical judgments. So if she were in a position -- any position anywhere in the Department, she would know when to recuse or not. But this particular issue, I -- I -- she's not -- as far as I know, she's not going to be in the Antitrust Division not because she wanted to be or I wanted her to be in there and because somebody said she could.

HAWLEY: Good. Well, I -- I think that that's news, I think, and -- and welcome news. And I just want to register my own point of view here, which is I think that -- in that recusal or not, the message it would send, the Google case is perhaps the most significant antitrust case the Department has undertaken since Microsoft easily, maybe more significant than that because Google, frankly, is significantly more powerful than Microsoft was.

The message it would send to have a -- a lawyer defending these massive companies...

GARLAND: Well, I don't -- I don't...

HAWLEY: ... in the event of (inaudible)...

GARLAND: ... know who is sending this message or why this message was being sent, but there is no -- I don't have any intention of this, but I am confident that had -- had this been, this will not be a problem.

You know, unfortunately or fortunately, a lot of the best antitrust lawyers in the country have some involvement one way or another in some part of -- of high technology, and we can't exclude every single good lawyer from being able to be in that division. But that's not an issue, nothing you need to be concerned about.

HAWLEY: Thank you, thank you, Judge.

Thank you, Mr. Chairman.

DURBIN: Senator Cruz?

CRUZ: Thank you, Mr. Chairman.

Judge Garland, I want to go back to the topic of protecting the Department of Justice from political influence and being weaponized politically.

A number of Senate Democrats at this hearing have used the opportunity to cast aspersions to the job Bill Barr did as Attorney General. I -- I think those aspersions are false. I think he showed enormous courage in fighting to defend the rule of law. But Bill Barr, when explicitly asked about whether he would terminate Robert Mueller at his confirmation hearing, the same situation you find yourself, he said he would not terminate him absent, quote, "good cause." Are you willing to meet the same standard of integrity that Bill Barr demonstrated? And will you make that same commitment to this Committee that you will not terminate Mr. Durham absent good cause?

GARLAND: I've said the committee and (inaudible) what is is that I need to get information about this investigation, which I do not have here. I understand that decision has been made to keep him in place, and I have absolutely no reason to doubt that that was the right decision and that he should be kept in place. But I can't go any further without learning the facts of the investigation and what the status is.

CRUZ: So, Judge -- Judge Garland, with -- with all due respect and I recognize you've been a judge for 23, 24 years. Judicial nominees sit in that chair and -- and declined answer just about every question senators posed them as saying, "Well, as a judge I can't commit how I would rule on -- on any given case." And that's appropriate.

You're not nominated to be a judge in this position. You were nominated to an executive position. And you're a constitutional scholar. You understand fully well the difference between Attorney General versus An Article III judge.

Bill Barr didn't know the details of the Mueller investigation at the time, but he knew that Bob Mueller was investigating President Trump that it was highly politically sensitive. And so to show his integrity and commitment to being nonpartisan, he said he wouldn't terminate Mueller absent good cause. You have the opportunity to do the same thing.

The investigation into Durham is highly political. It potentially implicates Joe Biden and Barack Obama. And I -- I just want to be clear. You're refusing to give that same commitment. You -- you want to keep the options open to -- to terminate the -- the investigation.

GARLAND: Look, I'm not refusing to give that commitment because I am a judge. I'm telling you what I think an Attorney General ought to do, which is to look at the facts before making a decision. I'm also telling you that I will never make a decision in the Department based on politics or on partisanship. So whatever decision I were to make, it would not be based on that.

And all I can ask you to do is trust me based on a record of my 24 years as a judge, my entire career before that as a prosecutor, and my life before that. That's -- that's my record of integrity, and that's what you have before you.

CRUZ: So a similar line of questions that you were asked concern the Google antitrust investigation. And -- and Google -- big tech, as a whole, contributed over \$15 million to the Joe Biden campaign. They're enormously important Democratic donors.

There will be enormous political pressure to abandon that case against Google. Can you give this Committee assurances that you can stand up to that political pressure just because democratic fund raisers want to -- want to be lenient on Google that the Department of Justice will not give into that pressure?

GARLAND: So, Senator Cruz, I'm old enough to remember when there was a political effort to end the case in the -- antitrust case in the Justice Department against ITT, which gives you an idea of how old this is, that there is no IT&T anymore, International Telephone & Telegraph Company.

This -- if I'm not wrong, this was one of the paragraphs in the indictment -- the proposed indictment of impeachment of President Nixon, I think, but it was around the same time. And it had to do with the partisan effort to influence the Justice Department in that Antitrust Division. I grew up knowing that this is not something that is permissible for the Justice Department to do.

And my whole life has been in looking at Ed Levi and Watergate -- post Watergate attorneys general who stood up to that kind of stuff. And I can assure you that there will -- I don't care what kind of donor talks to me about what -- of if anything. I don't expect to talk to any donors.

I have no conflicts. I don't own any Google stock, and I will do whatever is the right thing. And I don't own any stock or I won't once -- if I'm...

CRUZ: Let me ask two very quick question...

GARLAND: Yeah.

CRUZ: ... because my time is expiring.

GARLAND: Yeah.

CRUZ: Number one, you voted to rehear the Heller case or actually the Parker case on Bach.

GARLAND: I did.

CRUZ: I argued the Parker case of the D.C. circuit. Has Attorney General with the Department of Justice argued for the Supreme Court to overturn Heller versus District of Columbia?

GARLAND: Look, I -- the Department, you know, makes all kinds of judgments like that. I -- I can't promise, but I can -- I find it hard to believe that the Department could think that there was any possibility of overturning the Heller case.

CRUZ: OK. And then final one, with the Chairman's indulgence because I'm at the end of my time...

DURBIN: Yeah.

CRUZ: ... nine senators wrote a letter to Chairman Durbin asking this Committee to investigate Governor Andrew Cuomo's policies concerning COVID and sending COVID-positive individuals into nursing homes. A senior aide of his admitted to a cover-up to hide information from the Department of Justice. You've committed to a number of investigations here at this hearing today. Will you commit to investigating the extent to which the government of New York broke laws or covered up their policies concerning COVID-positive patients in nursing homes?

GARLAND: With all -- all of these investigations, the Justice Department is open to evidence of fraud, false statements, violations of the law. They normally begin in the appropriate way in the U.S. -- relevant U.S. attorney's office. And that is a way that something like this, without commenting on this in particular, because I don't know the facts...

CRUZ: But in this instance the acting U.S...

GARLAND: That's the way it should go.

CRUZ: ... attorney is the mother-in-law of the senior official in the Cuomo administration that admitted to the cover-up. Will you at least commit to not having the -- the investigation done by a person with a conflict of interest?

GARLAND: Of course. I -- I -- I don't know any of the facts, but I can guarantee you that somebody with a conflict of interest will not be the person running an investigation of any kind.

CRUZ: Thank you.

DURBIN: Since it has appeared, reappeared and then appeared again, this question about the Durham special counsel, for the record, the president of the United States in the White House when they reported their policy on the future of U.S. attorneys made two exceptions if I remember correctly. One was for the Delaware U.S. attorney and the second one was, in this situation, with Durham. The administration has clearly committed publicly to allowing Durham to complete his investigation. I don't know there are any additional comments are needed beyond that though you've been asked many, many times that question.

In terms of Secretary or Attorney General Barr, we do remember that he wrote an unsolicited memo questioning the legitimacy of the Mueller investigation before he was under active consideration for the Office of the Attorney General. I don't know why the other side keeps returning to this, but I think your position is consistent with the White House position. And is what we would expect of any Attorney General when it comes to making the assessment after they learn the facts.

Senator Whitehouse?

WHITEHOUSE: Thank you, Chairman. And -- and maybe the -- am I the final questioner? It could be, so I may be all that stands between you and relief from these proceedings, Your Honor.

(LAUGHTER)

I would summarize our earlier conversation as you are telling us that when we ask you questions or the Department or the FBI questions, we're entitled to an answer. And if the answer is no, we can't tell you that, we're entitled to an explanation as to why you think that. Is that correct?

GARLAND: Yes, that's right, Senator.

WHITEHOUSE: Good. I touched on the problem of executive privilege because the Department of Justice has a role. It's kind of an arbiter for the whole administration of executive privilege determinations. We -- we have documents sent in here blank that had the phrase "constitutional privilege" stamped on them. No articulation of what constitutional privilege it was.

We have had witnesses claim to assert executive privilege, but the administration never backed them up by actually asserting the privilege, so there was never actually a test of the proposition. But our Chairman wouldn't force an answer, so we were stuck. And I -- I urge you to -- maybe we should even have a hearing on it -- think through what executive privilege ought to look like, what the process for declaring it ought to look like, and try to get that cleared up so that in this committee we're no longer being treated the way we were in the last administration.

You -- you mentioned that false statements were a way that cases kind of traditionally came in, went to the U.S. attorney first, worked their way up. There's one sort of strange anomaly, which is false statements to the IRS.

The administration before this one took the view that a false statement to the IRS was something that they wouldn't look at unless it have been referred by the IRS. So I get the policy of not getting into criminal investigations of tax law without the IRS saying, "Hey, we'd like you to prosecute this. We are the tax law experts and we really -- we have some equities here and whether want you or don't want you to proceed criminally in this matter." I get that.

When it's a plain vanilla false statement, I did that as U.S. attorney. You did those cases. Anybody who served in -- as a U.S. attorney has done those cases. I'd urge you to reconsider a policy of deferring to the IRS before proceeding on a simple false statement case. Obviously, it'll be fact-specific, but I -- I flag that for you.

And the last point I'd like to make is -- is that it seems to me -- and I'll ask you to agree or disagree with this statement. It seems to me that failing to proceed -- failing to proceed where an investigation or a prosecution is warranted and doing so on political grounds is just as bad as proceeding with an investigation or prosecution on political grounds. Would you agree that that's a...

GARLAND: Yes.

WHITEHOUSE: ... correct proposition?

GARLAND: Of course, absolutely.

WHITEHOUSE: Last of all, we all need something to believe in, I think. People who worked in the Department very much believe in the Department of Justice. They believe in the merits, and the norms, and the values, and the traditions of their service and of the Department. People across this country need to believe, and there was a lot that happened in the last administration to cause doubt about whether the Department of Justice met that standard. They were worthy of the public's trust and belief.

Let me ask you as your closing comments to respond to how you view the importance of the public's trust and belief in the Department of Justice and your commitment, the salvaging, if necessary, restoring as needed and upholding those ideals.

GARLAND: Yeah. Look, I -- I -- I couldn't agree with you more. It's not just that the Department has to do justice, it -- that it has to appear to do justice and let the people of the United States has to believe that it does justice. Otherwise, people lose their faith in the rule of law. They take the law into their own hands. They become cynical about law enforcement, about -- about public servants.

I would like for the time that I'm in the Justice Department to turn down the volume on the -- on the way in which people view the Department that the Justice Department not be the center of a partisan disagreement that, you know, we return to the days when the Department does its law enforcement and -- and criminal justice policy, and that this is viewed in a bipartisan way, which for a long time in the history of the Department that's the way it was.

I know that these are divisive times. I'm -- I'm -- I'm not naive, but I would like to do everything I can to have people believe that that's what we're doing. People will disagree. People on -- on the left side, the right side, the Democratic side, the Republican side will disagree with things that I do. And -- and that has happened as a judge.

The only thing I can hope is that people will understand that I am doing -- I am doing what I do because I believe it's the right thing and not out of some improper motive. That's the best I can ask. And if you confirm me and if at the end of my time people still believe that, I -- I will consider that a singular accomplishment.

WHITEHOUSE: Godspeed to you, Sir.

DURBIN: Judge Garland, I'm going to say a few words about what the Committee is going to do tomorrow in pursuit of your nomination and then a few closing comments. Tomorrow, the second day of the hearing begins at 10 a.m. We'll hear from the panel of outside witnesses.

Reminder that questions for record from the senators on the Committee must be submitted by 5 p.m. on Wednesday, February 24th. I hope people will show good faith and common sense in the number of questions that they submit because you have been open now for two full rounds to ask whatever people have had on their minds.

Let me say a few words in closing. My appreciation of your background is a little different than some. I know one of your earliest inspirations was a man named Abner Mikva who proceeded to serve with distinction all three levels of government in the federal branch, as well as his initial service in the Illinois House of Representatives.

One of his closest friends and allies and colleagues over the years was a man named Paul Simon who picked me up and dusted me off a few times when I lost elections and said, "You'll get them next time." He was right. I eventually did, but took a while.

I knew Abner Mikva personally and through his relationship with my mentor Paul Simon. They represented the very best in public service -- integrity, honesty, hard work, all of the above, time and again. We are lucky to be heirs of that legacy, and I think that this inspired both of us in our different pursuits of public service.

When President-elect Biden told me that you were under consideration for this job, I thought instantly this is the right person. At this moment in the history, this is the right person to put in as Attorney General. The Department of Justice needs to have its morale restored. It needs to have its reputation restored. It needs leadership that is honest, and we can respect from every corner of this country. You are that person. Your testimony today is evidence of that.

I want to thank your family, in particular. I don't know that they have -- you mentioned, but it is well worth repeating. Lynn, thank you for being here. Rebecca and her husband Alexander, that would be Becky and Xan.

And Jessica, Jessie, thank you for being here today in support of an extraordinary person who is ready to serve again and is being called by the president to be there at a moment of history when he's needed the most.

This president has put faith in you, Judge Garland. We will do the same. Thank you again. I look forward to your swift confirmation.

And with that, the hearing stands adjourned until 10 tomorrow.

END

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# Senate Judiciary Committee hearing on the Nomination of Merrick Garland to be Attorney General of the United...,sked FINAL

February 23, 2021 5:34PM ET

TRANSCRIPT

February 23, 2021

COMMITTEE HEARING

SEN. RICHARD J. DURBIN, D-ILL.

SENATE JUDICIARY COMMITTEE HEARING ON THE NOMINATION OF MERRICK GARLAND TO BE ATTORNEY GENERAL OF THE UNITED STATES, DAY 2

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SENATE JUDICIARY COMMITTEE HEARING ON THE NOMINATION OF MERRICK GARLAND TO BE ATTORNEY GENERAL OF THE UNITED STATES, DAY 2

FEBRUARY 23, 2021

SPEAKERS:

SEN. RICHARD J. DURBIN, D-ILL., CHAIR

SEN. DIANNE FEINSTEIN, D-CALIF.

SEN. PATRICK J. LEAHY, D-VT.

SEN. SHELDON WHITEHOUSE, D-R.I.

SEN. AMY KLOBUCHAR, D-MINN.

SEN. CHRIS COONS, D-DEL.

SEN. RICHARD BLUMENTHAL, D-CONN.

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SEN. CORY BOOKER, D-N.J.

SEN. JON OSSOFF, D-GA.

SEN. ALEX PADILLA, D-CALIF.

SEN. CHARLES E. GRASSLEY, R-IOWA, RANKING MEMBER

SEN. LINDSEY GRAHAM, R-S.C.

SEN. JOHN CORNYN, R-TEXAS

SEN. MIKE LEE, R-UTAH

SEN. TED CRUZ, R-TEXAS

SEN. THOM TILLIS, R-N.C.

SEN. BEN SASSE, R-NEB.

SEN. JOHN KENNEDY, R-LA.

SEN. JOSH HAWLEY, R-MO.

SEN. MARSHA BLACKBURN, R-TENN.

SEN. TOM COTTON, R-ARK.

WITNESSES:

MERRICK B. GARLAND, NOMINATED TO BE ATTORNEY GENERAL OF THE  
UNITED STATES

MR. WADE HENDERSON, INTERIM PRESIDENT AND CEO, THE LEADERSHIP  
CONFERENCE ON CIVIL AND HUMAN RIGHTS, WASHINGTON, D.C.

MR. JOSH BLACKMAN, PROFESSOR OF LAW, SOUTH TEXAS COLLEGE OF  
LAW, HOUSTON, TEXAS

MS. ANDREA TUCKER, PARENT OF STUDENTS AT J.O. WILSON ELEMENTARY  
SCHOOL, WASHINGTON, D.C.

THE HONORABLE KEN STARR, JUDGE (RETIRED), WACO, TEXAS

MS. DONNA BUCELLA, FORMER DIRECTOR, EXECUTIVE OFFICE FOR UNITED

STATES ATTORNEYS (EOUSA) AND FORMER U.S. ATTORNEY FOR THE

MIDDLE DISTRICT OF FLORIDA, IRVING, TEXAS

DURBIN: The committee will come to order.

Yesterday, senators from both sides of the aisle asked Judge Merrick Garland about his ability to rebuild the -- the independence of the Justice Department and restore its integrity so the American people know that the nation's top law enforcement officer is working for them. I believe the judge made it clear that he's the right person to lead the Justice Department at this moment in history. He will ensure that the department meets the critical challenges facing America.

Throughout his career at the Justice Department and as judge on the D.C. Circuit, Judge Garland has demonstrated that he has the experience, judgment, independence and dedication to public service necessary to excel as attorney general. I'm sure today's testimony will further illustrate the judge's qualifications.

Today, we welcome five witness -- five witnesses who are supporting Judge Garland's nomination to be the 86th attorney general. Each will offer a different perspective on Judge Garland and the experience and talent he would bring to that role. I'll introduce the majority witnesses, then I'll turn to Ranking Member Grassley to introduce the minority witnesses.

Our first witness in the majority is Wade Henderson. He was the CEO -- is the CEO of the Leadership Conference on Civil and Human Rights; served in that position from 1996 to 2017; currently, back serving as their interim president. The conference consists of more than 220 national organizations working to ensure equality under the law. Mr. Henderson can speak to many issues facing the Justice Department, such as the right to vote and reform of the criminal justice system.

Andrea Tucker is a special witness, and I thank her for joining us today. She is a native of Washington, D.C. and the mother of three children who are in the D.C. public school system. Judge Garland tutors her twins, who are now in the sixth grade. Ms. Tucker can speak to and give to a valuable -- give us a valuable insight into the judge's character and his dedication to the community.

Donna Bucella has held many public service roles across the federal government, from the U.S. Army Judge Advocate General Corps to several positions in the Department of Justice. She worked closely with Judge Garland when he led the investigation of the Oklahoma City bombing, and she is going to share that experience with us.

Ranking Member Grassley, would you like to introduce your other two witnesses?

GRASSLEY: Yes, I would.

Ken Starr is an attorney, academic and public service, and also appears on a lot of television as an -- for interviews and explanations on legal matters. He earned his undergraduate degree from George Washington University, Master's degree from Brown University and law degree from Duke. After law school, Judge Starr clerked on Fifth Circuit for Judge David Dyer and then with Chief Justice Warren Burger, Supreme Court. Judge Starr spent some years in private practice before serving as counselor to Attorney General William French Smith during the first term of the Reagan administration. In 1983, Judge Starr was appointed by Reagan to serve as a judge on the U.S. Court of Appeals for the D.C. Circuit.

GRASSLEY: Judge Starr left the bench to serve as solicitor general under President George H.W. Bush, and then served as independent counsel investigating President Clinton during Whitewater. After his service as independent counsel, Judge Starr returned to private practice as an appellate lawyer and law professor. Judge Starr also served as dean of Pepperdine School of Law and president chancellor, Baylor University. He has argued 36 cases before the Supreme Court, authored more than two dozen publications and received numerous awards for his public service. We welcome Judge Starr.

The next person is Josh Blackman, professor at -- and -- and professor of law, South Texas College of Law in Houston. Professor Blackman received his undergraduate degree in Penn State University before receiving his J.D., George Mason University School of Law. Both degrees were magna cum laude. Professor Blackman clerked for Judge Kim Gibson, Western District, Pennsylvania, and then Judge Danny Boggs of the Sixth Circuit. During his career in academia, Professor Blackman has proven to be a prolific author and an expert in constitutional law, health care, the Supreme Court and many other subjects. He has also testified three times before the House Judiciary Committee. I believe that this is the first time testifying before the Senate.

We welcome both Judge -- Judge Starr and Professor Blackman.

DURBIN: Thank you, Senator Grassley.

Because our witnesses are appearing via video, I'll lay out the procedure we'll follow. The mechanics are the witnesses will be sworn in, then they each have five minutes to provide an opening statement, and then they will be open for questions. The first round of questions, each senator will have five minutes to ask.

So I'd like to start by asking the members -- or witnesses today to raise their right hand and to please -- do you affirm that the testimony you are about to give before the committee will be the truth, the whole truth and nothing but the truth, so help you God?

Let -- let the record reflect that the chair heard "I do," which is an indication of good results from the oath being given.

We're going to start with Mr. Henderson to proceed with your five-minute opening statement. Please proceed.

HENDERSON: Good morning. Good morning, Chairman Durbin, Ranking Member Grassley and members of the committee.

I'm Wade Henderson, interim president and CEO of the Leadership Conference on Civil and Human Rights, a national coalition of over 220 civil rights, human rights and social justice organizations dedicated to building an America as good as its ideals. Thank you for inviting me to join today's hearing to support Judge Merrick Garland's nomination as attorney general of the United States.

Now, when President Biden nominated Judge Garland, he rightly instructed him, and I quote, "You are not the president's or the vice president's lawyer. Your loyalty is not to me. It is to the law, to the Constitution, to the people of this nation," unquote. Indeed, the attorney general must be seen by every member of the public from every community as a fair arbiter of our legal system whose sole duty is to serve the national interest.

HENDERSON: Unfortunately, our two most recent attorneys general failed to live up to this high standard. From their unconscionable validation of President Trump's subversions of voting rights and our democracy, to their inhumane separation of families at the border, to their abuses of our justice system. Attorneys General Sessions and Barr all too often served as loyalists, rather than independent law enforcement officials. And in the process, deeply tarnished the reputation of the Department of Justice.

Nowhere has the damage been more apparent than in efforts to undermine civil and human rights. And my witness statement lists many of the harmful, anti-civil-rights actions taken by President Trump's Justice Department.

America is in dire need of a course correction at DOJ. The nation needs an attorney general with a demonstrated commitment to integrity, independence and the enforcement of civil rights. And DOJ must embrace our nation's tremendous diversity, while protecting the rights of individuals and communities that have borne the burdens of systemic discrimination in all its forms.

Judge Garland, who is widely regarded as one of the top legal minds in the nation, embodies these principles.

I first became familiar with him as a nominee to the U.S. Supreme Court in 2016. As then-president of the Leadership Conference, I had the responsibility of reviewing Judge Garland's record, and I became deeply familiar with his views. I presented those findings in various public forums, including on C-SPAN's "Washington Journal."

I believe now what I believed then: Judge Garland is a jurist with a first-rate legal mind and great personal integrity. And he has consistently written and joined opinions that have upheld civil and human rights.

Several of our member groups and allies reached similar conclusions. Frankly, he should right now be on the U.S. Supreme Court.

That said however, President Biden's selection of him for this position is an inspired choice. He, along with the Leadership Conference's own Vanita Gupta, our Board Member Kristen Clark, and attorney Lisa Monaco, are the right team for this trying moment.

If the issue is restoring the integrity and independence of DOJ -- and it is -- then Judge Garland is particularly well chosen. If the issue is restoring the mission of the institution, including its commitment to addressing civil rights enforcement and attacking racial inequality -- and it is -- then Judge Garland's own words speak best when he recounted so movingly yesterday how the DOJ first forged its identity fighting against the Ku Klux Klan and working to bring meaning to the 13th, 14th and 15th Amendments of the Constitution.

For these reasons we support Merrick Garland to be the nation's next attorney general fully and without reservation.

I should be clear, however, that this support does not come without expectations for prompt and meaningful action on civil and human rights. My witness statement outlines several priorities that DOJ should quickly address; among them suspending the use of the federal death penalty, rooting out/addressing white supremacy and hate violence, and helping to secure the right to vote for all Americans.

HENDERSON: The need for robust federal civil rights enforcement is as important as it has ever been. The nation needs a Justice Department that will do everything in its power to provide equal justice to all.

We need an attorney general who knows the Justice Department well and who will reinstate DOJ's historic commitment to integrity, independence, and vigorous civil rights enforcement. Merrick Garland would be such an attorney general, and is, therefore, a fitting choice to lead the Justice Department at this crucial moment. We urge the Senate to confirm him.

And thank you, and I would be happy to answer any questions.

Thank you.

DURBIN: Thank you, Mr. Henderson.

Professor Blackman.

BLACKMAN: Thank you. Chairman Durbin, Ranking Member Grassley, thank you for inviting me to testify. My name is Josh Blackman, and I'm a constitutional law professor at the South Texas College of Law Houston. I support the confirmation of Judge Garland, he should be swiftly confirmed. In my brief time today, I'll discuss three current DOJ policies that I hope Attorney General Garland will maintain.

First, DOJ lawyers should not give legal heft (ph) to so-called rulemaking by guidance. Second, Attorney General Garland should carefully scrutinize consent decrees. Especially those reached through so-called sue and settle. Third, DOJ should not resume the settlement practice of giving third-party payments to non-parties. That money should be returned to the Treasury.

These three issues may seem fairly low profile but each practice will have a huge impact on the separation of powers. And these issues should be important to people on both sides of the aisle. I hope that Attorney General Garland will retain current DOJ policy with respect to these three issues.

First, the Department of Justice should not enforce rulemaking by guidance. In the past, federal agencies avoided the formal rulemaking process and instead issued various guidance documents. For example, substantive changes to the law were made through "dear colleague" letters, frequently asked questions via online bulletins, what I called government by blog post.

These guidance documents are not supposed to have the force of law. However, courts grant our deference to the sub-regulatory dark matter. In 2018, Associate Attorney General Rachel Brand instructed DOJ lawyers to not treat violations of guidance documents as violations of the law and President Trump signed executive orders 13891 and 13892 which ordered other agencies to adopt the principles from the brand memo.

Unfortunately, President Biden rescinded those executive orders on his first day in office. At present the brand memo is still codified in DOJ regulations, I hope that Attorney General Garland will maintain the brand memo. Second, Attorney General Garland should carefully scrutinize consent decrees.

These agreements include intricate requirements that DOJ could never impose through regulation or litigation. And these consent decrees can exist in perpetuity. During this time federal judges and court monitors can oversee state and local governments. Such agreements raise distinct federalism concerns.

Indeed many disagreements arise from practices known as sue and settle. Organizations and local governments would sue a like-minded agency knowing there was no adversity and reach favorable settlements. Fortunately, Attorney General Sessions took actions to restrict those consent decrees.

The Justice Department imposed restrictions on consent decrees, including limits on duration, sunset provisions, and means for termination. Critically, under Attorney General Sessions' guidelines, a consent decree could not be used to achieve a policy goal that could not be obtained through litigation. I hope Attorney General Garland will maintain this policy.

Third, the Department of Justice should return any excess settlement funds to the United States Treasury rather than make third-party payments to progressive groups. These payments have been criticized as settlement slush funds. The federal government has allowed billions, billions not millions, billions of dollars to be given to third-party non-profit organizations.

These special interest groups were not parties in the litigation and were not victims of misconduct. Indeed, Senator Grassley has observed that the Justice Department directed funds at organizations that Congress had defunded. In this way, the Executive Branch bypassed the Constitution's appropriations process.

In 2017, Attorney General Sessions prohibited the inclusion of -arty payments in settlements. Any excess funds from settlements will be -- would be restored to the United States Treasury. Attorney General Garland should maintain this policy.

Thank you for your time and I'll be happy to answer any questions.

DURBIN: Thanks, Professor.

Ms. Tucker, the floor is yours.

TUCKER: Good morning. First I would like to say good morning to Chair Durbin, Ranking Member Grassley, all of the members of the Judiciary Committee, and my fellow witnesses. Thank you so much for having me here today. My name is Andrea Tucker, I am a native Washingtonian and the proud mother of three scholars in D.C. public schools.

I am honored to be here today and am thankful for the opportunity to come and speak on behalf of Judge Garland. I met Judge Garland roughly five-years ago when he came to my children's school to meet with one of the fifth-graders he was tutoring at the time. Unbeknownst to me a few months later my then second grader would have the honor of becoming Judge Garland's next pupil.

This was something that my child's teacher thought he could benefit from, specifically to help bring him out of his shell and to help with his reading comprehension. Judge Garland normally tutors his student until they graduate elementary school and the fifth grade and then he starts with another child in second grade.

So, over the last four years, Judge Garland has had weekly tutoring sessions with my son. At the end of every school year, Judge Garland has had always invited all of the children of the tutoring program, which he started, to the D.C. Circuit Court of Appeals for a tour, to see the courtroom, meet the U.S. marshals, and the marshals dogs.

I would get a feel for what it was that Judge Garland does for a living. Judge Garland also has a pizza party for them where they exchange gifts, and other educational materials so students can continue their learning over the summer.

One year when my son was struggling with multiplication, Judge Garland gave him some flashcards to practice with over the summer so Judge Garland could quiz him when they returned the following school year. Of course, the past year was a bit different due to the pandemic.

Judge Garland didn't miss a beat, he quickly pivoted from tutoring in person at the school once in-person tutoring was no longer a (ph) option, and contacted the school's tutoring coordinator to get my contact information, and he offered to virtually tutor my son.

On top of that, he knew that my son had a twin sister in the same class so he also offered to tutor my daughter. The judge felt like all students could benefit from tutoring, and extra support, not just the ones that are struggling and behind. What parent would turn that down, especially during a time like this?

TUCKER: So, in the end, Judge Garland coordinated with my kids' school to get all the appropriate work packets and tutor both of my children once a week on Zoom, carefully guiding them through virtual learning and their school work. All the extra help was much appreciated.

The fact that he still wanted to tutor during a pandemic and give so much of his time to both my children was amazing. This shows his dedication to our actually (ph) community and love for children.

One thing that made Judge Garland such a special tutor was he always began each session with asking how my children were doing, and what fun and interesting things they did since they last met getting to know them, and engaging them on a personal level.

He made tutoring fun, interactive, and effective or in the words of my daughter, I quote, "he made tutoring, and math more fun and understandable for me," unquote. I mentioned earlier that when a student graduates fifth grade, Judge Garland usually begins with another student but as my children approached their fifth-grade graduation, they asked Judge Garland if he didn't mind staying with them for the upcoming school year if they were online.

He quickly agreed, my children are now in sixth-grade and I can see them working with Judge Garland paying off in their grades. When you confirm Judge Garland, and I believe you should confirm him quickly, he is eagerly looking forward to getting back to his students to continue tutoring them even as he settles into a new challenging role.

This speaks to the character of the man who will serve as Attorney General. He is a man who actually does what he says he will, not one who just pays lip service to help in our communities. Character, commitment, and dedication, someone who will -- do what they say they will do, that is what you're getting in Judge Garland.

Thank you.

DURBIN: Thanks, Ms. Tucker. Appreciate that.

Judge Starr.

STARR: Well, thank you, Mr. Chairman, and Ranking Member Grassley, and members of the committee. I'm so honored to testify before the committee today.

Since 1789 and General Washington's nomination of Virginia Governor Edmund Randolph to serve as our nation's very first Attorney General, few nominees to the office have come before the committee, before the Senate with Judge Garland's extraordinary array of credentials.

We just heard one, by the way, from Ms. Tucker, and that's his generosity of spirit. I'd like to focus very briefly on leadership and the universal respect that the judge garnered during his years as chief judge of the D.C. Circuit. He's not only viewed as he is as a superb jurist but he was a superb leader of the court.

A leader who listened carefully to his colleagues, and who treated all persons in the court family with dignity, and respect. But history teaches is that the role he will soon be occupying if confirmed, is extraordinarily difficult. My late boss, Attorney General William French Smith, during the Reagan administration, compared the job to that of the captain of a hypothetical javelin team that elected to receive. It's a hard job and controversy at times quite bitter goes with that territory.

Consider the example of Attorney General Janet Reno during the Clinton administration; she was vehemently criticized, I think unfairly, for her decisions to appoint several independent councils during President Clinton's first term.

And yet as she made crystal clear, the law that was then in effect required nothing less, and her determination to do the right thing was mirrored by the outstanding FBI Director at the time, Judge Louis Freeh. This bedrock requirement of doing the right thing of integrity has been spoken about frequently during the course of these hearings.

And frequently the references made to the independence of the Justice Department but as Judge Garland full well understands, and our constitutional architecture executive powers vested in the president of the United States. So, how can as theoretical matter any attorney general be truly independent while serving at the pleasure of the president?

Indeed there were attempts made in the immediate wake of Watergate to reconstitute the department as an independent agency, a very bad idea, and constitutionally suspicious. The answer to this conundrum is independence with accountability lying in the very qualities that Judge Garland has shown through his long and distinguished tenure.

And that is independence of judgment, and that is the attorney general must be allowed to make the pivotally important decisions unimpeded, especially with respect to the most sensitive work of the department, that of the criminal laws. And at times the resulting decision may draw the ire of White House personnel, perhaps even of the president himself as history teaches.

But his commitment to integrity and professionalism is a total way of looking at the job. I think it was reflected in the work of Judge Griffin Bell, and his contribution during his tenure as attorney general. In Judge Bell's vast judicial experience, like that now Judge Garland, made itself manifest in the way in which he conducted the office so honorably and his aptly entitled memoir, *Taking Care of The Law That's the Job*.

Very briefly, the second broad area likely to be rife with controversy in the coming months is that of protecting religious freedom. Over the past decade, a number of voices have been raised drawing into question long-settled principles of America's very first freedom guaranteed by the majestic opening words of the First Amendment, Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Here again, I think Judge Garland's distinguished judicial service points to optimism about the Justice Department's protecting religious liberty. His body of jurisprudence reflects stability and predictability is huge values in the law and as those of us who have long supported the Religious Freedom Restoration Act are optimistic.

After all, the Religious Freedom Restoration Act, called RFRA, is the leading federal civil rights law that protects all Americans in the exercise of religious liberty. It also embodies the constitutional perspective and jurisprudence of Justice William Brennan, for whom Judge Garland served as a law clerk.

This is in short settle law and it's crucially important that the Department of Justice not support any legislative or executive actions that would dilute the vital protections that RFRA provides to Americans of all faiths. I thank the Chairman, and I look forward to your questions.

DURBIN: Thank you very much, Judge Starr.

Ms. Bucella?

BUCELLA: Chairman Durbin, Ranking Member Grassley, distinguished members of the committee, thank you for allowing me this opportunity to testify today's hearing.

I've had the privilege of knowing Judge Garland since 1993. We worked together at Justice from 1993 to 1997. At that time, I was the principal deputy director of the Executive Office for United States Attorneys -- the organization that oversaw the 94 U.S. Attorneys' Offices. Judge Garland and I had constant contact over those years, and I witnessed Judge Garland make sound and factually based decisions every day.

I have been honored to serve our country in various roles, some of which include: assistant United States Attorney for the Southern District of Florida, the director and the principal deputy director of the Executive Office for United States Attorneys, United States Attorney for the Middle District of Florida, the director of the Terrorist Screening Center. One of my most life-changing experiences happened while working with Judge Garland in Oklahoma City after one of the most horrific domestic terrorist acts was committed on U.S. soil.

On April 19, 1995, 168 people were senselessly murdered in Oklahoma City. That day, Attorney General Reno asked me to go to Oklahoma City. I went to offer assistance to the U.S. Attorney's Office and found that the entire downtown was a crime scene.

Within 24 hours, Merrick arrived and immediately began leading the investigation. I had the opportunity to see Merrick deal calmly and purposefully with this horrific event. Initially, we worked out of the command center in the Southwestern Bell Telephone Building. Downtown Oklahoma City was still in chaos; the streets were closed except to law enforcement and first responders.

The structures around the Alfred P. Murrah Federal Building and the Daily Register were smoldering. Cars in the parking lot were crushed from the force of the explosion. Rescue workers and their dogs walked through the rubble searching for survivors. Later, rescue dogs were substituted for cadaver dogs and many first responders were desperate to find the remains of co-workers, family, friends, loved ones, law enforcement. Many federal agencies had offices in the Murrah Building. And behind the building was the Daily Register where many victims were catastrophically impacted.

On the other side of the Murrah Building was the Federal Courthouse where Federal Judges worked; large shards of glass were embedded in office chairs, furniture and the walls. How could this have happened in America's heartland?

Merrick and I walked downtown around and through the Murrah Building. As we walked by the daycare center attached to the Murrah Building, an empty silence overcame us; neither of us said anything to each other about our shock and grief -- not until about twenty years later.

We then went upstairs to one of the floors in the building. We saw a desk, a chair. There was a jacket on a chair, a can of Coke, papers still on the desk, but less than five feet away from where we were standing there was nothing but open space.

Without exchanging words, we knew that we had to find the perpetrators of this unimaginable terrorist act. I knew Merrick, who would be leading the investigation, would ensure that justice would be done. It would be carried out objectively and fairly. Emotions were not part of his decision-making process.

Merrick is unwavering in doing what is right and he has always demonstrated outstanding judgment. I worked with him weeks and months after the bombing and in Denver where the trial was conducted. I saw the countless hours he devoted to make sure there were no corners cut and that justice was done. Under his leadership, he required the investigation be coordinated through the Western District of Oklahoma, with involvement from at least eight different jurisdictions around the United States. It required tremendous coordination effort which he led.

As is his nature, Judge Garland was committed to making sure the investigation was conducted the right way. Why? Because we owed the victims, the people of Oklahoma and the people of the United States a thorough and fair investigation that comported with the rule of law; Merrick would accept nothing less.

He relentlessly followed the law throughout this complex investigation. He was meticulous in requiring subpoenas were issued, there were complete records of how evidence was obtained. He made sure applications for wiretaps, search warrants and other investigative tools were reviewed and approved by each federal district where the evidence was sought, as well as by the FBI and the Department of Justice.

Merrick worked closely with federal, state, local officials, agents and first responders. He made sure all voices were heard and there were many voices. Merrick is a collaborator and a consensus builder. He is always willing to tackle the difficult issues head on.

While many in law enforcement had their own opinions of how the investigation should have been conducted, Merrick welcomed and listened to diverse opinions. His sense of collegiality, fairness, and objectivity earned the respect of even those who may not have disagreed -- agreed with his decisions.

His commitment to victims' rights was strong and enduring. Judge Garland dedicated most of his professional life to public service which includes his two decades on the bench. He's brilliant, thoughtful, kind, empathetic, compassionate and down to earth. He is a serious person and does not shy away from making the hard decisions. He is a man of integrity, honesty and fairness.

I can attest to all of this because I know him, I was there with him in Oklahoma City and I have worked with him in good times and in bad. He has committed his life to our country. He is extraordinarily well qualified to be our attorney general.

Thank you for allowing me the privilege to share my thoughts regarding the qualifications of Judge Garland. And I welcome any questions.

DURBIN: Thanks, Ms. Bucella.

Now, we'll ask a few questions and I'll start. Let me start with Ms. Tucker, if she would be kind enough to answer a basic question that I am asking not just as a senator but as a father and grandfather.

I'm trying to visualize the relationship between Judge Garland and your children, particularly since I have found in my experience that many of my kids and grandkids are very skeptical of my wisdom until they reach a certain stage in life. How have your children taken to Judge Garland in a personal way?

TUCKER: Well, my son has had the last four years before the pandemic to get to know Judge Garland, since he came to the school every week to tutor him. So he had a familiarity with Judge Garland. And my daughter always saw him getting tutored by Judge Garland and she got a little jealous.

(LAUGHTER)

So she also wanted to get tutored with him. But they just seemed to love Judge Garland. And like I said, he always asks how they're doing to get to know them on a personal level. So it's just easy for them.

DURBIN: Do they ever talk about the fact that he has another life beyond being a good tutor, as a judge, maybe, considered for the Supreme Court, now being considered for attorney general. Do your - are your kids aware of that?

TUCKER: Yes, they are. And we had several conversations in regards to that. And we also watched when Judge Garland was nominated by President Biden on TV. And they were just so excited. They were jumping up and down. It was like, that's my tutor. That's Judge Garland.

(LAUGHTER)

So they know he's famous. I don't think they know the severity of it because they're still 11. But they know he's somebody.

DURBIN: Thank you, Ms. Tucker, for joining us today.

Wade Henderson, I have a basic question for you. When we looked at the Reconstruction period, Jim Crow, there've been some great books written. I always recommend Carol Anderson's "White Rage" and "One Man (sic), No Vote." But it seems to be that the first thing -- the first vulnerability of the recently freed African Americans was the right to vote. And that was the first -- one of the first things that was attacked during Jim Crow.

It still continues to this day. Voter suppression really focuses primarily on people of color, after all is said and done. Any comments on your life experience with this issue?

HENDERSON: Senator Durbin, thank you for your question. It couldn't be more pertinent to the issues of the day. When the Justice Department was -- these -- the division was formed in 1870, as I mentioned before, one of its first tasks was to challenge the Ku Klux Klan for the violence that they perpetrated against newly freed, formerly enslaved people. That was almost -- that was 150 years ago.

Congress enacted the Ku Klux Klan Act of 1871 to address that violence. Ironically, today -- the same issues that affected newly freed African Americans at that time affect us and other communities of color today, literally 150 years after the enactment of the Ku Klux Klan statute.

Recently, Congressman Bennie Thompson, chair of the Homeland Security Committee and the NAACP, filed a federal lawsuit charging a conspiracy between former President Trump, attorney Rudolph Giuliani, the Proud Boys and the Oath Keepers to prevent Congress from certifying the election of this past year. And it was the Ku Klux Klan Act of 1871 that was the basis for this challenge.

So as the great author William Faulkner once said, "The past is never dead. It's not even past." The issues that motivated the challenge to African Americans 150 years ago remain a challenge to American democracy today. We are a nation at war with itself and we need a Department of Justice that is committed to lowering the temperature and enforcing the laws as they exist today, with the understanding that every American citizen deserves the right to cast a vote when appropriate and that that right will be protected by the Department of Justice.

Judge Garland is the perfect individual to carry out that responsibility. And in times like these, it is so important that an individual of his integrity and stature be chosen to represent the Department of Justice. Thank you.

DURBIN: Thanks, Mr. Henderson.

Senator Grassley has told me that he has to go to a Finance meeting.

GRASSLEY: (OFF-MIKE) No, if you've got more questions...

DURBIN: No, I'm going to defer my questioning so that you can take the time for yours.

GRASSLEY: ... then I'll -- then I'll go on to (ph) the next committee meeting.

Judge Starr, you left the bench to go to the Department of Justice as solicitor general. So what sort of advice would you have to Judge Garland that leaves the same court to go to be attorney general?

STARR: He will be blessed with a very fine group of professionals throughout the Department overwhelmingly. But I must say, this independence of judgment and taking a careful look, presuming, as we say in administrative law, regularity -- the presumption of regularity. But sometimes the Department gets it profoundly wrong and the attorney general is where, in effect, the buck stops.

So, I have one very quick example, as I say in my written statement, during the Obama administration, the Justice Department took what I believe was an extraordinarily ill-conceived position with respect to religious liberty trenching on values of the autonomy of religious institutions, specifically church schools.

And the position taken by the solicitor general, very able lawyers, was unanimously rejected by the Supreme Court, not five to four, not six to three, nine to nothing. Justice Ruth Ginsberg joining, Justice Sotomayor joining, and a huge rebuke to the Justice Department. Where had the Justice Department gone wrong?

They'd gone wrong first at the EOC had took the position that religious liberty did not really count on the scales beyond simply associational (ph) liberty more generally, the Rotary Club, or the NAACP. The important organizations and they enjoy associational freedoms but the Hosanna-Tabor of Evangelical School was a religious institution, and that, of course, triggered First Amendment values, very specifically those first 16 words.

So, there are times when even with respect to the office that I was privileged to hold, the solicitor general, that on issues of fundamental importance to our constitutional order, the attorney general should be willing to focus on it and to step in and say, with all due respect, Solicitor General, and you're very able team, I think you've got this one wrong.

GRASSLEY: OK. I have another question for you but because time might run out I'll -- I have an important question for Professor Blackman.

Historically the solicitor's -- historically the solicitor general's office has been seen as representing the permanent interest of the government, not political interest of any single presidential administration.

Paul Clement in that position, quote said, "it has been the long-term position of the Justice Department to defend the constitutionality of statutes whenever reasonable arguments can be made," end of quote. So far we have seen the Biden administration change its litigation position on a number of high-profile cases and I would expect that might continue.

So, two questions to you, I'm going to ask them both at the same time, Professor. If a case is being litigated, what's the standard for whether the -- to change a position? And is a simple political disagreement enough? And how does the Supreme Court view an administration change in its litigation position?

BLACKMAN: Well, thank you, Senator Grassley, it's a pleasure to be here.

In the past, the Supreme Court's been very critical of changes in position. During the Obama administration, Chief Justice Roberts in particular went after some of the lawyers and the government's (ph) saying why did you change your position?

And the answer is always the same, upon further reflection we -- we have a new position and upon further reflection is really code for upon further election rather than simple change in position. I would hope that if General Garland is in the office and decides to switch position for the court he gets a reason why.

It can't just be we have a new president that that's reason and stated but maybe there's some judgment about the law. But I suspect at some point the court will get annoyed that all these positions keep flipping on a fairly regular basis.

GRASSLEY: OK. I'm going to go back to Judge Starr. I believe you're familiar with the Justice Department's recent practice of dismissing false claims at cases brought by whistleblowers.

The Justice Department argues that it has unfettered discretion to dismiss any claim brought by a whistleblower. If legislation is needed in this area, I'm in the process of trying to clarify Congress' intent, which oftentimes DOJ or the Supreme Court gets wrong and we have to correct it. And I've had a lot of help from Senator Leahy in regard to that.

Based on your reading on the False Claims Act, what would be your advice as appropriate interpretation of the government's dismissal authority?

STARR: Yes, thank you, Senator Grassley. And I think that the government has taken, frankly, an unconstitutional position. It is seeking to arrogate complete authority, what it calls unfettered discretion, to dismiss a qui tam relator suit seeking redress against possible fraud against the government.

And I think fundamental constitutional principles suggest that the interpretation of the law that has been given -- including by my former court and Judge Garland's current court, the D.C. Circuit -- is just profoundly wrong in our system of checks and balances.

There is a key interest in the part of qui tam lawsuits, and that is of the qui tam relator, the whistleblower. And those merit much more protection than is involved in the opportunity. As one judge put it, the hearing, before the dismissal of the lawsuit is ordered by district judge, is to give the qui tam relator and her counsel an opportunity to persuade the government not to do that.

This, I think, diminishes the judicial role, calls the Article III power into fundamental question and arrogates authority that I don't believe -- and I hope that you and Senator Leahy likewise believe the Congress never intended in those magnificent amendments in the 1980s -- that you helped so instrumentally as really the architect of those amendments -- Congress never intended to give the authority of that sort to the Justice Department's Civil Division and ultimately the attorney general.

DURBIN: Thanks, Senator Grassley. And I realize that you have to go to another committee hearing. With the permission of the senator from Connecticut, the senator from Texas has a time issue, would you -- be all right if I recognize him first?

BLUMENTHAL: (OFF-MIKE)

DURBIN: All right. Senator Cornyn?

CORNYN: I'll be happy to return the favor at some future date.

Thank you, Mr. Chairman.

Judge Starr, you've -- during your distinguished career, you've had a lot of different hats that you've worn. One, of course, was as independent counsel, which was the predecessor to the -- now the special counsel provisions that -- under which Robert Mueller and now Mr. Durham have been -- have been appointed.

I understand why Judge Garland was reluctant to talk about the Durham investigation and what he would or would not commit to, but I would like to get the benefit of your insight and experience on what kind of advice would you give Judge Garland and what kind of advice would you give us in terms of allowing the special counsel to complete their job as assigned without -- without -- without the Congress interfering?

STARR: Well, the questions yesterday, Senator Cornyn, pointed to the key issue. Will Attorney General Garland, once confirmed, support fully, completely, at a practical and moral level as well as a legal level, the ongoing special counsel investigation under the regulations promulgated by Attorney General Janet Reno in 1999? Those are very strong and solid regulations in -- in my judgment.

There is a guarantee of practical independence subject to the overall supervision of the attorney general. So just as the attorney general is well advised not to be interfering with the orderly conduct of an investigation by the United States Attorney's Office and the like, so too -- and all the more so -- in light of the sensitivity of a special counsel investigation.

That's where it seems to me it is very wise and prudent for Judge Garland as attorney general to show the kind of respect and restraint that he has demonstrated throughout his judicial career. He should preserve, protect and defend that investigation and provide the assurances to Mr. Durham that that protection will proceed so long as there is not good cause for his removal, which of course would be a very daunting standard to meet.

CORNYN: And that's the same advice you'd give any attorney general, I suspect.

STARR: Yes, indeed, because it's the law. I think sometimes people on the outside do not realize that a regulation has the force of law. And I think those regulations which have been in effect for lo these many years have stood the test of time over these decades during both Republican and Democratic administrations. So I would say, as Judge Garland is accustomed to doing as a judge, stay the course. I would give that advice to any attorney general.

CORNYN: Thank you very much.

Professor Blackman, recently President Biden announced that he wanted the Department of Justice to review its policy on allowing it to divert some of the money from settlement agreements to third parties who were not even parties to the lawsuit. The goals of the settlement agreement between the Department and the private parties, say a bank or a business, are to compensate victims, as you know; redress harm; and deter unlawful conduct.

So it strikes me as a little odd and highly problematic that we would let the Department of Justice pick and choose their favorite charities or political causes, even, perhaps at the expense of making the victim whole, which of course is the whole -- the goal compensating the victim. Would you give us the benefits of your thoughts on changing this policy, so allowing the sharing of the proceeds of a -- of a settlement or a jury verdict with non-parties to the litigation?

BLACKMAN: Thank -- thank you, Senator.

Attorney General Sessions adopted a policy that that was quite salutary. It prohibited these so-called third-party settlements where the government would pick and choose which charities would receive millions and hundreds of millions of dollars. Senator Grassley, who stepped out, was a key hawk (ph) on this issue.

In the Bank of America settlement, I think hundreds of millions of dollars were directed to various charities that had no connections to the actual offense. I think there's even a constitutional problem with these settlements. If there's any excess money, it should go to the U.S. Treasury. Congress then could choose to fund or not fund these settlements. Some of the charities that were selected for these settlement funds were actually defunded by Congress. So these are end run -- end runs around the appropriations process.

BLACKMAN: It's disappointing that the Biden administration is revisiting this policy and suspect that it will be abandoned. I can only hope that Judge Garland will perhaps be more judicious in giving these vast amounts of money to groups who were in no way affected by the litigation.

CORNYN: Thank you very much.

DURBIN: Thanks, Senator Cornyn.

Senator Blumenthal.

BLUMENTHAL: Thanks, Mr. Chairman. Thank you all for being here today. And I would say judging by your testimony but more important by Judge Garland's testimony yesterday and his reception in this committee that he should be approved by an overwhelming bipartisan majority.

He demonstrated a fierce independence, and a strong sense of the integrity, and credibility that needs to be restored at the Department of Justice. Illustrated I think most tellingly by his saying again, and again that he will involve the professionals, the career prosecutors, the investigators in decisions, and that those decisions will be based on fact, not politics.

That he will insulate the Department of Justice from political interference and defend its independence. But equally important, his commitment to correcting racial injustice, and overcoming inequities, and systematic racism that have plagued policing in this country, and our justice system, and almost every area of our society.

I'd like to ask you, Mr. Henderson, if you were advising Judge Garland, what would you recommend to him that he adopt in the way of policies to address these kinds of inequities and issues?

HENDERSON: It's a very good question, Senator Blumenthal.

I would begin first by suggesting at least with regard to the issue of policing in our country that the leadership conference supports a meaningful police reform.

Quite frankly, we can't understand how anyone who witnessed the torture, and death of George Floyd or the results of a wrongly delivered no-knock warrant in the case of Breonna Taylor resulting in her death or the death of a victim like Eric Garner who suffered from an illegally applied chokehold that ended up killing him. How any of those incidents could be ignored by someone arguing the need for a police reform.

As a matter of fact, two days ago, the office of the Chicago Inspector General issued a scathing report about the practices of the Chicago Police Department in the aftermath of the George Floyd-related demonstrations in Chicago.

And the report found that many police officers made an effort to avoid accountability by obscuring their badge numbers or their names and so the issues related to their conduct could not be adjudicated.

Now, this comes on the heels of an effort by the previous administration to end consent decrees that had sought reform of the Chicago Police Department. So, clearly, there is evidence and record of the need for accountability.

As a matter of fact, in today's Washington Post, there is an article about police units from Japan, and Canada, and Finland reviewing an -- an instance where a Seattle resident was killed by police even though the resident was clearly mentally incapacitated.

And the three police departments that were viewed from these other countries say -- said look we deal with these issues very differently, and it really underscored the importance of reform.

So, we hope that Judge Garland will look at these issues and understand their importance, we are supporting the George Floyd Justice and Policing Act which may be coming up soon for a vote in the House of Representatives, and hopefully will be presented to the Senate for action.

We think that's one step where the department can make a contribution to the kind of meaningful reform we support. And that's just one example, Senator, of what we would recommend on the front-end.

BLUMENTHAL: I'm -- I'm a strong supporter and co-sponsor of the Justice in Policing Act and I think that one of the key elements of the policing reform ought to be changing the mens rea requirement under Section 242.

I had a -- an exchange with Judge Garland yesterday and I was very pleased that he's receptive to lowering the threshold standard so that more accountability can be imposed for violations of constitutional rights by public officials generally, not just by police.

And, of course, like you, I am committed to eliminating racial injustice, not just in policing but in housing where redlining continues to exist, in education where the quality of a child's education often depends on their zip code, and workplace discrimination where jobs still are denied, and promotions denied based on racial injustice, and, of course, in health care where there are dramatic disparities illustrated by what has been happening in the pandemic, and its impact disproportionately on black and brown communities.

So, I thank you for your commitment, and I'm very pleased that Judge Garland has emphasized the priority of eliminating racism, and racial injustice along with his fight against violent extremism and white supremacy in our society. Thank you very much, Mr. Henderson.

Thanks, Mr. Chairman.

DURBIN: Thank you, Senator.

Senator Lee.

LEE: Thank you, Mr. Chairman, thanks to our witnesses participating with us today.

Judge Starr, I'd like to start with you if that's OK. Would you agree that removing Special Counsel Durham for anything other than cause would flatly, and inexcusably contradict the administration's claims that the Biden Justice Department will be free from political pressure?

STARR: Yes, it would take the form as it were of a Saturday night massacre, we all recall that or know it from history. I recall it every so vividly as most members will, which is the president of the United States acting imprudently, and resulting in an act of conscience by the then Attorney General of the United States Elliot Richardson who said, I cannot in conscience fire the special prosecutors, as Archibald Cox was known, it would, in fact, create a firestorm absent the most compelling circumstances.

And I have great confidence in Judge Garland given his record of integrity, and his independence of judgment that were there to come such a suggestion from anyone, I'm not suggesting that the president of the United States would do this, but anyone as a senior leader in the administration suggesting this kind of action without even the most compelling circumstances would be a grievous mistake.

LEE: Thank you, Judge Starr. Professor Blackman, let's go to you for a second. Is there a point at which what's known as prosecutorial discretion simply becomes executive fiat? And if so, at what point does that run afoul of the Constitution?

BLACKMAN: Absolutely. The president has a duty to take care that the laws are faithfully executed, and that means something. Congress gives the executive some latitude, some discretion, but the president can't simply decline to enforce law he dislikes, and I think we've seen this pattern all too often. I think some of the executive actions on immigration amount to an abdication of law. I think the -- even in the first 100 days, the -- the Biden administration tried to say, "No more deportations for 100 days." I don't think he has that much discretion. We've seen, perhaps, a complete moratorium on the death penalty. That can go beyond the bounds of discretion.

I think Congress should perhaps do more to legislate to make clear what those rules are. But it's -- I'm troubled by the failure to faithfully execute the law. It's something that I think we're seeing increasingly.

LEE: So you mentioned prosecutorial discretion being invoked as a doctrine in the context of immigration. I assume you may be referring there, among other things, to DACA. It reminds me of a -- of a piece that you wrote with my friend, Ilya Shapiro, about a year and a half ago in which you -- you said that if federal law, in fact, supported DACA, then the important -- then -- then certain key important provisions of the INA would themselves run afoul of the nondelegation doctrine. Can you explain what you mean there?

BLACKMAN: Of course, and I'm thankful my -- my colleague at Cato, - Ilya Shapiro, gets a shout-out. Congress has created a very elaborate scheme of -- of -- of granting discretion to the Department of Homeland Security. For example, you can let the secretary set priorities. That's a fairly nebulous provision: You can set priorities. The Obama administration, and perhaps, on the Trump -- the -- the Biden administration, said these nebulous provisions about granting discretion to set priorities let them basically create this elaborate program by granting lawful presence to over a million people, and granting work authorization.

If you can read the INA that broadly, then the entire INA is perhaps unconstitutional, right? You should not be able to read it. The Supreme Court punted on this issue. Chief Justice Roberts, that's what he often does when he declines to decide important questions, and they -- and they just didn't decide it. But eventually, the courts will have to decide the DACA litigation, and this is something that Attorney General Garland will be litigating now, defending the policy for the -- the new administration.

LEE: So in other words, you've got concerns with the notion that the president of the United States could just tell the Department of Justice in advance to not comply with this specific provision of the -- of the INA. That would concern you.

BLACKMAN: Oh, very much so, yes.

LEE: Section 241 of the INA, of course, provides that, quote, "When an alien is ordered removed, the attorney general shall remove the alien from the United States within a period of 90 days," closed quote. On what planet and what universe would it then be appropriate to convert the word "shall" into "may not", or "may decide not to"?

BLACKMAN: That's exactly right, Senator. Generally, the word "shall" means must. That's the way we read the word "shall" in the law. And Congress has created a very elaborate scheme by which the attorney general can cancel removal. There are very specific rules. But the moratorium enacted on day number one was across the board. If every deportation shall stop, a federal judge down in Texas, in Corpus Christi declared that policy unlawful. As far as I'm aware, that's not been appealed up. That's still in district court. I think we'll see more of these sorts of efforts to try to just not enforce parts of the law that are unpopular.

Yesterday, Senator Sasse made a point that over time, Article 2, the executive has grown. Article 1, the Congress has sort of shrunk. I -- I would hope it reverses, and Congress asserts itself more over immigration and -- and -- and puts some teeth into the limits on the president's powers.

LEE: Thank you, Mr. Chairman. I see my time's expired.

And I'd note here that this is a part of a consistent pattern that's been under the leadership of Republican and Democratic Congresses and White Houses combined over the last 80 years, in which we've taken power away from the American people in two steps. First, we've taken nonfederal power and brought it to Washington, within Washington. We've taken that power or any power that we might have previously had and handed it over to the executive branch. We can't do this anymore. We've got to reclaim our role, under Article 1, as the lawmaking branch. Thank you.

DURBIN: Thank you, senator from Utah. Islamic and prospective like the Senator from Utah. We can reserve for another hearing the question of prosecutorial discretion, because there are not enough resources to prosecute every suspected criminal. And there are decisions being made every single day by agencies as to which are the more important prosecutions to pursue.

Senator Coons?

COONS: Thank you. Thank you, Chairman Durbin, and thank you to the witnesses. I appreciate this opportunity to consider Judge Garland's nomination for attorney general from the perspective of those who have worked with him, supported him, come to know him both as an individual and as a professional.

Ms. Bucella, if I might, you worked with him around the prosecution following the Oklahoma City bombing. You've praised Judge Garland's leadership as someone who made everyone feel heard. I'd be interested if you'd briefly explain what stuck out to you about his leadership during that demanding prosecution of what was at that point, the most pressing and challenging recent example of domestic violent extremism.

BUCELLA: Thank you very much, Senator Coons. Judge Garland is a very thoughtful person, and you need to remember that at that time there were all these competing agencies. We had federal, state and local law enforcement. We had the D.A.'s Office. Everyone wanted to run the case. Merrick was incredibly patient, and very, very -- a great listener, and he took into account everybody's ideas. And this was something that was unimaginable, and you can only believe that the people of Oklahoma wanted to take care of business in Oklahoma. But because it was domestic terrorism, because while the act occurred in Oklahoma City, it impacted so many other jurisdictions. McVeigh was in a number of different locations. His family was in different locations. Terry Nichols had family and co-conspirators in different locations, and it really, really took a combined effort.

And so it wasn't, you know, Merrick's way or the highway; it was really -- I would remember sitting down in the command center and listening to people strenuously and vigorously argue their opinion about how they wanted the -- the case to be prosecuted. And -- and ultimately, while everything isn't perfect, everybody doesn't get exactly the way they wanted it, at the end of the day, it was a solid prosecution, and he actually had everyone have their say in it.

COONS: Thank you. I think a critical role for the attorney general is to help coordinate -- federal, state and local law enforcement to coordinate across different agencies, different interests, different regions. It's encouraging to hear about what I have heard about his experience as a judge -- that he is able to craft consensus opinions from judges of widely-varying views, but to hear about his experience as a prosecutor is encouraging as well. Miss Tucker, I'm a father of twins. If you could tell me something about your experience with Judge Garland tutoring your twins. I thought he really showed his humanity in his answers yesterday, but if you could speak briefly to how he's influenced your children and your family and what that tells you about his values, I'd appreciate that. TUCKER: Thank you so much, thank you for your question. I would say as Miss Bucella previously stated; Judge Garland is so patient and he's so kind and he's just so down-to-earth and he gravitates towards kids and he just sucks them in and they just want to do that and they want to be interested in what it is that he's teaching them, he just makes it interesting so where they are able to gravitate it and I've seen since he started tutoring my son in the second grade, that his reading and his comprehension has tremendously grown and he's an Honor Roll student now so I appreciate the time that he invested in him because you know he always encourages him to be like you can do it, come on, let's try to figure this out.

It takes a special person and a patient person in order to be able to want to teach kids; I think all these teachers out here because it takes a lot to be a teacher and a tutor because he seems to know everything that they're learning in the school and he can explain it a lot better than I could, so I just appreciate what he's learned from it and they're just so excited about learning.

COONS: Thank you, Miss Tucker and thank you for joining our hearing today. Mr. Henderson, it's great to see you again. Wade, you've noted that addressing America's longstanding racial inequalities, but dealing with racial justice will be central to many of the issues on the Justice Department's docket for the coming years, whether it's voting rights, criminal justice, environmental justice, many others. Can you just speak to the importance, the urgency of confirming the other senior nominees who will help guide the Department of Justice alongside Judge Garland should he be confirmed, Vanita Gupta to be Associate Attorney General and Kristen Clarke to lead the Civil Rights Division? How will they be critical to his leadership? And how will the Attorney General play a key role in shaping the department's work on these issues with their vital support and partnership?

HENDERSON: Senator Coons, thank you for your question. When President Biden announced the selection of Judge Garland to be his next Attorney General, he introduced three other attorneys to fill out a quartet of department leadership that would be responsible for the enforcement of a number of issues but our great concern was for Civil Rights enforcement of the department, returning to its original mission from 1870.

We were so pleased that the president announced the selection of Vanita Gupta to be the Associate Attorney General, the number three position in the department and as you know, she comes from the Leadership Conference on Civil and Human Rights as our president, but before that had established herself as one of the great Civil Rights lawyers in this country and of her generation and her history of involvement as Deputy General Counsel with the ACLU and groundbreaking attorney with the NAACP Legal Defense and Educational Fund lets us know that the president is deeply committed to exercising oversight on the Civil Rights Division in the most important way and Vanita's selection confirms that.

The choice of Kristen Clarke could not be better. Kristen currently serves as the president of the Lawyers Committee for Civil Rights Under Law; that esteemed organization established in 1963 by President Kennedy to address the great injustices that were occurring primarily in the South directed at African Americans, making an effort to prevent them from exercising their constitutional rights. Kristen has been an outstanding Civil Rights lawsuit; her tenure with the state government in New York handling Civil Rights issues and her current work with the Lawyers Committee has distinguished her among her peers as really one of the great attorneys of her generation.

The two of them taken together will bring an incredible strength to the department that should not be ignored and at this time a big controversy for the country, having both Kristen Clarke and Vanita Gupta as part of the quartet of leadership under the guidance of Merrick Garland, along with Lisa Monaco as the Deputy Attorney General, makes for in our view one of the strongest teams that the department has ever fielded.

Judge Garland's commitment to including his supporters, his staffers as part of the decision-making of his department gives us great confidence that this department will use all of the resources available to it to ensure that the constitutional rights of all are greatly protected. So thank you so much and we hope that the Senate will move expeditiously to confirm Vanita and Kristen Clarke as soon as possible.

COONS: And thank you, Wade, thank you for that input. Mr. Henderson, I agree with you, this is a very strong leadership team and I look forward to working with you in this committee for their swift confirmation. Thank you, Mr. Chairman.

CHAIRMAN DURBIN: Thanks, Senator Coons. We understand Senator Booker is available from a remote location.

SENATOR CORY BOOKER: I am and you made it sound more glamorous than it actually is, but thank you very much, Chairman. I'd like to go back to Wade Henderson, who I notice has a great haircut these days.

(LAUGHTER)

BOOKER: (Inaudible) -- really appreciate you finally joining (inaudible) in the world of Bald-Dom (ph), sir. But you know just focusing on the Civil Rights Act of '57 that created the Justice Department's Civil Rights Division and gave the Attorney General new authorities to protect civil rights and ensure equal protection for all Americans and I know you've dedicated so much of your life to that work, protecting Civil Rights, advancing equality.

But in the decades since then we've seen unfortunately that the Attorney General and their department can decide not to really stand and try to create a nation that's really of liberty and justice for all. You take the Trump administration; we saw a real abandonment of the focus on voting rights, for instance, the Trump administration's Justice Department all but ignored the Voting Rights Act of 1965 with the exception of one school district settlement just last year, that didn't file a single voting rights act case for over the last four years.

And so, Mr. Henderson, what do you think the Department of Justice's priority should be in terms of restoring Civil Rights and what gives you confidence that Merrick Garland is the right person for the challenges that we see today in terms of equality of access to the polls and voting rights in general?

HENDERSON: Thank you for that question, because I think it is central to the challenge facing our nation today. I mentioned earlier in response to another question that America at this point remains a country (INAUDIBLE) with itself, outside of the fact that the issues which were central to the controversies of the 2020 election cycle could well have come directly from the challenges facing our nation in the aftermath of the Civil War.

The fact that the 15th Amendment to the Constitution, which guaranteed the right to vote to African American men, regrettably, not to women at that time, became the central issue that this country faced regarding the 2020 election cycle and whether Americans who, indeed, are citizens of this country, eligible to vote, could have their votes respected and protected and heard.

The Department of Justice has a traditional responsibility, as Merrick Garland noted yesterday, formed for the purpose of defending the Reconstruction era statutes, are making sure that the 13th, 14th and 15th amendments to the Constitution have real meaning. And yet the past administration did much, in fact everything in its power to subvert the enforcement of those laws and did so in a way that greatly damaged, greatly damaged the interests of the American people and the reputation of the Department of Justice.

We are quite confident that the team that President Biden has put together, with Merrick Garland at the helm, bringing his vast knowledge of the law, is a superb (INAUDIBLE) as an attorney and someone who knows the department well, will invest all of his authority in helping, as he said, to address this central issue in the most direct and important way.

He has put together a team of individuals, as noted, particularly with Vanita Gupta and Kristen Clarke, that gives us tremendous assurance that these skillful attorneys, knowing and understanding the department's role in helping to achieve equal justice under law for all, will be able to carry out that responsibility in the best way practical.

And I am very confident in the attorney general's willingness to open his door to hear concerns of organizations, a vast array of whom will have access to him, the entirety of the country truthfully. He will evaluate those requests and carry them out in a way that fully, fully implements the commitment of President Biden to assuring that there is a justice for all in our country.

And this is the time to do it. So I hope that the attorney general will focus, as he has pointed out, addressing issues of hate violence and white supremacy in our country. I hope, like Secretary Austin at the Pentagon, he will make an effort to investigate hate violence in law enforcement in this country. We saw in the unfortunate events of January 6th, and we saw, I have to say too, many police officers sacrificing themselves for the interest of American democracy and they need to be lifted up for that, particularly the three individuals who lost their lives on that day, Officer Sicknick and his two colleagues who committed suicide.

We know the hardship that police officers face and we sympathetic to that. But at the same time we also know that deeply embedded in that crowd were members of law enforcement who were in fact sympathetic to and supporting the insurrectionist efforts that were under way at the time. And I hope that the attorney general will pursue those issues in a meaningful way and help to ensure that that kind of activity does not go forth in the future.

Thank you.

BOOKER: Sir, thank you. My time has expired. I'm grateful for that. I am also grateful for the work that you have done in finding bipartisan accord on issues, so urgent in criminal justice reform. It's just great to see you. Thank you for taking the time. And you and Michael Jordan have done more for bald Black men in America...

(LAUGHTER)

BOOKER: Out there making us look good. Thank you.

DURBIN: Thank you, Senator.

Senator Tillis?

TILLIS: Thank you, Chairman Durbin. I'm going to be brief.

I came here, I was in North Carolina yesterday and participated in the hearing via Webex. Unfortunately, with the time I had to go to the airport and I was going to ask some riveting questions about intellectual property, trademarks, and the things that brings everybody to this committee every day. But I have submitted those as questions for the record.

I wanted to be here in person to say that I thought he did an extraordinary job in the hearing yesterday. I have no questions for the witnesses. I listened to their opening statements and I fully intend to support his confirmation.

Thank you, Mr. Chair.

DURBIN: Thank you, Senator.

Senator Whitehouse.

WHITEHOUSE: Thank you, Chairman.

I just wanted to stop in. We have a hearing in Finance on the deputy treasury secretary. So I'm sorry I've not been here through the day. But I wanted to welcome Donna Bucella, who is one of our witnesses. Donna was the head of the Executive Office for United States Attorneys when I was the U.S. attorney in Rhode Island. So she had to keep an eye on not only me but another 92 U.S. attorneys around the country. And I want to wish her well.

I would like to ask her thoughts on the question that I raised with the -- Judge Garland yesterday, which was how the department should respond to what I consider to be pretty grave damage done to its norms and its practices and its values and its reputation during the Trump years.

And the attorney general suggested that working through the inspector general and working through the Office of Professional Responsibility, which oversees attorney conduct as essentially members of the bar, might be enough to take on the problem.

I think that the problem is worse than that. It is more systemic than that. And some means of trying to understand what went wrong so that you can write it. If you had a ship that you were sailing and the ship had a fire on board, the first thing you would do after you put out the fire is commission a damage assessment so you'd know what the capabilities were of the vessel and what needed to be repaired and what was the most urgent thing to repair and all of that.

So if I might ask Ms. Bucella for her thoughts, having been one of the administrative leaders of the department in the past, on this question of what might be options for the attorney general, if he is confirmed, to consider if he finds out that the problems over there are actually worse than just what the inspector general and OPR can handle. Ms. Bucella.

BUCELLA: Thank you, Senator Whitehouse. Good to see you again.

WHITEHOUSE: I was one of your least difficult and problematic U.S. attorneys, correct?

BUCELLA: Of course you were.

(LAUGHTER)

BUCELLA: As you know, Senator Whitehouse, trying to find out all of the information, it resides in many places. I believe that Justice Garland -- Judge Garland would be best at trying to commission some sort of a working group, using his U.S. attorneys because, as you know, as the chief law enforcement officer in the 94 different districts, each of the U.S. attorneys have accessibility to federal, state, and local law enforcement. They also have an opportunity hear on the ground what's going on in their communities.

So perhaps having an Attorney General Advisory Committee Subcommittee to also address this, to be able to provide input and information and recommendations for resolution or recommendations for where we go next. I think that there are so many dedicated men and women out there in the DoJ law enforcement community as well as the state and locals, and I do think that they have some incredible insight to really help Judge Garland when he becomes the attorney general to figure out how to right the ship.

WHITEHOUSE: Yes, I would agree with you, Ms. Bucella, that there is something that binds most graduates of the department together: a sense of shared values, a sense of shared commitment, a sense of appreciation at the experience of having been allowed to work in such a remarkable place. And I think that does provide a pool of resources and of goodwill and of experience that any attorney general can draw on.

And one of the things that we have noticed, particularly when things were blowing up in the Bush administration over at the Department of Justice, was that that population of -- the alumni of the department came together in a very bipartisan fashion to try to provide helpful remedies to the problems, particularly of Attorney General Gonzales.

So thank you for saying that. I think that that is an important community and potentially a bipartisan community as well to provide good advice that won't trigger partisan reactions.

Thank you so much, Mr. Chairman.

DURBIN: Thank you very much, Senator Whitehouse.

I want to personally thank the witnesses who have appeared today. They have certainly added to the record and our insight into the -- not only the nominee but the issues that he will face if he is successful in this confirmation quest. And I hope that he will be. I'm heartened by Senator Tillis's volunteered comments. I hope they are an indication of strong bipartisan support for a nominee who certainly deserves it.

I want to say for those who are watching this hearing, a lot of work goes into it. The senators, of course, do their job, but there are a lot of hard-working and dedicated staff who back them up and make them look glorious every single day.

I want to thank, first of all, the Majority Nomination Staff who spent countless hours preparing materials for me and the other Democratic members: Chief Nominations Counsel Phil Brest, Counsel Sarah Bauer, Gabe Kader, and Joe Charlet, Nominations Clerk Maggie Hopkins and Research Assistant Anna Shepard.

I'd also like to thank the following staff for their work behind the scenes and the Logistics Department to help this hearing go smoothly: Chief Clerk Heather Vachon, Deputy Chief Clerk Michelle Heller, Assistant Clerk Bentley Olson, Michael Perkins, Katya Kazmin, Audrey Huynh, Brian Palmer, and Chesney Mallory.

Let me also give a nod, and I'm sure that Senator Grassley joins in this as well, to thank the minority staff for their work and cooperation: Chief Minority Nominations Counsel Mike Fragoso, Senior Counsel Lawrence Mailer (ph), and the rest of the minority nominations team.

So let me say at this point that we are concluding this hearing, and as a reminder, written questions for Judge Garland are due 5 pm tomorrow, February 24th. As agreed upon by both sides, we will proceed to committee mark-up vote on Judge Garland's nomination on Monday, March 1st.

I thank all my colleagues but especially Senator Grassley. As I said at the outset, have had a long-term friendship which I'm careful to protect as much as possible. He is a good man and an honorable person. And I have enjoyed working with him over the years.

And with that good news, the hearing stands adjourned.

END

Feb 23, 2021 17:34 ET .EOF

# Senate Judiciary Committee hearing Oversight of the Department of Justice, sked FINAL

October 28, 2021 9:26AM ET

TRANSCRIPT

October 27, 2021

COMMITTEE HEARING

SEN. RICHARD J. DURBIN, D-ILL.

SENATE JUDICIARY COMMITTEE HEARING OVERSIGHT OF THE DEPARTMENT OF  
JUSTICE

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SENATE JUDICIARY COMMITTEE HEARING OVERSIGHT OF THE DEPARTMENT  
OF JUSTICE

OCTOBER 27, 2021

SPEAKERS:

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SEN. PATRICK J. LEAHY, D-VT.

SEN. SHELDON WHITEHOUSE, D-R.I.

SEN. AMY KLOBUCHAR, D-MINN.

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SEN. JOSH HAWLEY, R-MO.

SEN. MARSHA BLACKBURN, R-TENN.

SEN. TOM COTTON, R-ARK.

WITNESSES:

MERRICK B. GARLAND, U.S. ATTORNEY GENERAL

DURBIN: Good morning. This hearing will come to order.

We've had three oversight hearings this year in the Senate Judiciary Committee, including the committee's first FBI oversight since 2019, and next month, the first Department of Homeland Security oversight hearing since January, 2018.

Today, we're holding the first Department of Justice oversight hearing since October 18th, 2017. That was the only time during the four-year Trump administration this committee held an agency-wide Department of Justice oversight hearing. Annual oversight hearings were the norm under the Obama administration. I'm pleased to restore this tradition. I thank Attorney General Garland for appearing today.

You were confirmed by the Senate in March on a bipartisan basis, and took the helm of the Justice Department at a precarious moment. Under Attorney General Barr and his predecessors, the department often played the role of President Trump's personal law firm. Time and again, Trump appointees overrode the professional judgment of the department's nonpartisan career attorneys to advance the president's agenda.

Their efforts took a dark and dangerous turn in the waning months of the Trump term, when DOJ political appointees aided President Trump's big-lie efforts to challenge the integrity of our election. First, Attorney General Barr cast aside decades-old policy designed to prevent the department from impacting elections. He directed U.S. attorneys and the FBI to investigate the election fraud claims of, nonetheless, Rudy Giuliani, after these claims had been summarily discredited and disproven by countless state election officials. And Barr repeatedly, publicly and baselessly claimed that mail voting would be rampant to fraud, a charge he himself rejected when the votes were actually counted.

After he lost the 2020 election, President Trump found another Justice Department ally in Jeffrey Clark, a mid-level political appointee who became the president's big-lie lawyer. Clark pushed the Department of Justice leaders to overturn the election, and when they refused, he plotted with President Trump to replace them. Trump and Clark brought the department to the brink, and were thwarted only after the threat of mass resignations across the Department of Justice. I commend those Department of Justice attorneys, many of whom were Trump appointees, who at that critical moment in history resisted President Trump and his plot to attack our democracy.

The events this committee described in a recent Subverting Justice report were among the most brazen examples of President Trump attempting to bend the Department of Justice to his will and his agenda, but they were the natural culmination of four years attack -- four years of attacks on the Department of Justice.

There is straight line from these events to the violent insurrection in the Capitol building on January 6th. When Trump and his allies could not prevail in court and lost case after case after case, claiming voter fraud, they took their big lie to the Justice Department, and when they didn't prevail there, they dispatched an angry mob to storm the Capitol to stop us from counting the electoral votes.

I commend the many agents and prosecutors who are -- were working day in and day out to bring these violent insurrectionists to justice. I hope the department will be just as steadfast in pursuit of those who encouraged and incited the attack and those who would prevent the American people and their representatives from uncovering the truth. I am sorry that the Republican Senate leader refused to join the bipartisan commission that was proposed to investigate the January 6th insurrection attack. I look forward to hearing from the Attorney General this morning about the work that is underway to combat the growing threat of domestic violent extremism.

The department cooperated with our committee's investigation into the Jeffrey Clark scheme, and it deserves credit for doing so. Over the course of several months, the department provided documents, authorized testimony and resolved executive privilege issues, enable us -- enabling us to uncover -- on a bipartisan basis, I might add -- just how close we came to a full-blown constitutional crisis.

Attorney General Garland, when you appeared before us in February, you acknowledged, and I quote, "great respect for belief in the oversight role of the committee", and you committed your department to, quote, "be as responsible as" -- I -- pardon me -- "as responsive as we possibly can to comply with information requests." I commend you for the steps you've taken, but I believe I speak for all of my colleagues in saying there is still room for improvement when it comes to department responses, and the department must deliver on its mission to ensure fair and impartial justice.

Let me give you an example. In the closing days of the Trump administration, the department's Office of Legal Counsel issued a memo wrongly (ph) declaring, in my estimation, that federal inmates released to home confinement under the bipartisan CARES Act must return to the Federal Bureau of Prisons' custody following the COVID-19 emergency. In fact, the CARES Act includes no such requirement. These nonviolent inmates are already home, and are overwhelmingly reintegrating into community with success. On April 23rd, I sent you a letter, joined by Senator Booker, urging you to rescind this memo. Six months later -- six months later, we still have not received a response.

Another example: In November of 2020, the Trump administration published a rule discouraging inmates from completing programs under the First Step Act to reduces -- to reduce their chances of reoffending. This was a major measure that was undertaken, the FIRST STEP Act, by combining a prison reform measure that was cosponsored by Senator Cornyn and Senator Whitehouse with a sentencing measure cosponsored by Senator Grassley and myself, and signed into law by the president.

DURBIN: Now, Senator Grassley and I sent you a letter on May 5th, urging the department to reject the proposed rule and instead enact a rule consistent with the goal of the FIRST STEP Act of reducing recidivism. It's been five months -- in fact, more than five months, we still haven't received a response.

The FIRST STEP Act allowed the Bureau of Prisons to grant compassionate release in extraordinary and compelling circumstances, such as a once-in-a-century global pandemic.

Under the Trump administration -- listen to these numbers -- the Bureau of Prisons denied all but 36 -- 36 of 31,000 -- 31,000 compassionate release petitions filed during the pandemic. In the first six months of the Biden administration, the Bureau of Prisons approved just nine compassionate release requests.

This is extraordinary. When the infection rate in the Bureau of Prisons was six to seven times the national infection rate, and the death rate equally appalling, when compassionate release requests were received, 31,000 of them, only 36 were allowed.

Meanwhile, the pandemic has been devastating in our Bureau of Prison facilities. Two hundred and sixty-five inmates have died, including six within the last few weeks.

The death of a 42-year-old man in August came after the Department of Justice denied his compassionate release request. Republicans and Democrats worked together to pass the FIRST STEP Act to make our justice system fairer and our communities safer. These reforms are only as good as their implementation.

Attorney General Merrick Garland, as you come before this committee, the right to vote and to have the votes of every American counted is under attack like no time in decades.

This year alone, state legislators have introduced more than 425 bills making it more difficult for Americans to vote, particularly people of color. Nineteen states have enacted 33 of these laws. Some of these laws set new limits on voting by mail, others cut hours for polling locations, all of them -- all of them are designed to achieve the same outcome: make it more difficult to vote.

At the same time, big lie proponents are pushing new laws to give partisan state legislators the ability to overturn election results they don't agree with. They are ousting local election officials who faithfully apply the law and oversaw an election that Trump's own Department of Homeland Security called the most secure in American history.

And their efforts coincide with an unprecedented increase in violent threats toward state and local election officials. I'd like to add at this point, about these violent threats, it is rife across America.

Those of us who are airline passengers know what the flight attendants are facing, with thousands of confrontations -- even violent confrontations -- over wearing masks on an aircraft. I've sent a letter to you, joined by others, saying this has to be taken seriously. These assaults in the name -- so-called name of liberty are unacceptable.

And your October 4th memo, relative to schools and school board officials and their own peril at this point, I think should be mentioned. I have heard statements from members of this committee which I think are really inconsistent with reality.

Those who think the insurrectionist mob of January 6th was merely a group of tourists visiting the Capitol ignore the pillaging, the deaths and the serious injuries to over 100 law enforcement officials. And those who argue that school board meetings across America are not more dangerous and more violent than in the past are ignoring reality.

I went on it (ph) and just typed in this morning "school board violence" on one of the search engines. Page after page is coming up.

In my state of Illinois, Mendon, Illinois is a small rural town in Adams County, the western part of our state that I have represented for almost 40 years. It is a quiet, solid community. And yet, they had their own instance at a school board meeting where an individual had to be arrested because he had threatened violence against the school board members over masks in schools, for example.

That story is repeated over and over again. The state of Minnesota -- Senator Klobuchar knows this story well -- the state of Idaho, we are seeing violence at these school board meetings at an unprecedented number.

I don't believe -- I think you made it clear that -- and you don't believe that we should infringe on free speech. But free speech does not involve threats and violence, period. And we ought to join with local law enforcement officials to protect the school board members who are being intimidated in this way.

I want to close by mentioning an issue I said to you personally. I am honored to represent the city which you grew up in and which I now visit with great frequency, obviously, and that's the city of Chicago. The gun violence situation there is intolerable, intolerable.

And we're not the only city in America, by any means, that's facing this. We need to have your assurance that there is a concerted, determined effort to deal with gun violence at the federal level, coordinating our effort with the state and local officials. With that in mind, I hope we can reach some agreement to do so very quickly.

And let me hand it off now to the ranking member, Senator Grassley.

GRASSLEY: Thank you, Chairman Durbin.

This committee has a constitutional obligation to ensure that the department complies with the laws that we write and execute those laws according to our intent.

In the performance of our constitutional duty, we write letters seeking answers and records from the department and its component agencies to better understand what they're doing. Likewise, the entire executive branch, not just DOJ, has an obligation to respond to congressional oversight requests.

Today, I can say with confidence that under General Garland's leadership, the department has failed across the board to comply with this committee's Republican oversight requests.

And I appreciate very much Chairman Durbin pointing out a letter that he and I wrote. Five months, haven't received an answer. If my name being on that letter has any reason it hasn't been responded to, I'll take my name off of that letter.

In contrast, governor -- or General Garland, you've provided Democrat colleagues with thousands of pages of materials.

Moreover, President Biden has politicized and inserted himself into the department policymaking, not only direct -- notably directing the end of compulsory process for reporter records and criminal leak investigations. And most recently, inserting himself when he said the department should prosecute anyone who defies compulsory process from the January 6th Committee.

At your confirmation hearing, I read to you what I told Senator Sessions at his confirmation hearing for being attorney general -- this, quote, "If Senator Feinstein," who then was ranking member -- "If Senator Feinstein contacts you, do not use this excuse, as so many people use, that if you are not a chair of a committee you do not have to answer the questions. I want her questions answered just like you would answer my questions," end of quote, that I gave to Senator Sessions.

GRASSLEY: So you said to me at your hearing, quote, "I will not use any excuse to not answer your questions, Senator," end of quote. You have failed to satisfy that statement.

Example: I've asked the department for records relating to Hunter Biden's October 2018 firearm incident, where his gun ended up in a trashcan near a school. Now, that's a firearm incident. Your ATF used the federal Freedom of Information Act to refuse producing those records, when that law doesn't even apply to the Congress.

I've also asked for information relating to Chinese nationals linked to the Communist Chinese regime that are connected to the Biden family. One individual, Patrick Ho, was not just linked to Chinese regime; He was apparently connected to that country's intelligence service. Hunter Biden reportedly represented him for \$1 million. Now, even though the department already made public in court filings that DOJ possesses FISA information relating to Patrick Ho, in response, you stated, quote, "Unfortunately, under the circumstances described in your letter, we are not in a position to confirm the existence of the information that is sought, if it exists in the department's possession." Well, let me emphasize: Well, you already made it public in a court filing. So you're telling me you can't even confirm its existence.

Now, with respect to the criminal investigation of Hunter Biden, Senator Johnson and I wrote to you twice this year regarding a person named Nicholas McQuaid. Mr. McQuaid was employed at a law firm until January 20th, 2021, when he was hired to be then-acting assistant attorney general for the department's Criminal Division. Before he was hired, he worked with Christopher Clark, who Hunter Biden reportedly hired to work on his federal criminal case a month before President Biden's inauguration.

Now, the department hasn't disputed any of these facts. However, you refuse to confirm whether Mr. McQuaid recused from the Hunter Biden case. That seems to be a pretty simple thing to say one way or the other. The son of the president of the United States is under criminal investigation for financial matters. A senior attorney under your command has apparent conflicts with that matter. Your refusal to answer just threshold questions cast a very public cloud over the entire investigation, a cloud that you should easily do away with if you just were just a little bit transparent.

When I placed holds on your nominees for the department's failure to comply with Republican oversight requests, I said, "Either you run the Department of Justice, or the department runs you." Right now, it looks like the Department of Justice is running you.

Since your confirmation, in less than a year the department has moved as far left as it can go. You've politicized the department in ways it shouldn't be.

Case in point: Your infamous school board memo. You publicly issued this memo merely five days after the National School Board Association wrote a letter to President Biden. Now incredibly, they asked the department to use the antiterrorist PATRIOT Act against parents speaking their minds to local school officials. The School Board Association has since apologized for that letter, but not before the department relied on their letter to mobilize federal law enforcement in state and local matters.

Meanwhile, actual violent crime is on the rise in the country. Your memo treats parents speaking freely to be worthy of the department's heady (ph) investigative and prosecutorial hand. You've created a task force -- now, a task force that includes the department's Criminal Division and National Security Division to potentially weaponize against parents.

Your memo also creates a special training and guidance for local school boards and school administrators to recognize threats against them. According to your memo, these threats including -- include an undefined category of, quote/unquote, "other forms of intimidation and harassment". So now, the last thing the Justice Department and FBI need is a very vague memo to unleash their power, especially when they've shown zero interest in holding their own accountable -- I don't -- when you don't hold your own accountable.

Let's not forget about Obama-Biden administration FISA abuse during Crossfire Hurricane, abuses that the department and the FBI for years denied even to be possible, and then you allowed a disgraced former FBI official off the hook, paying him hundreds of thousands of dollars in taxpayers' money, when the inspector general determined that he lied to investigators seven times -- yes, seven times over the course of three different occasions. Or the FBI's and the department's total failure to protect hundreds of kids from abuse by Larry Nasser, and then covered up. When we had a bipartisan hearing to learn about those courageous survivors, your deputy attorney general didn't even show up.

So getting back to the National School Board Association matter, these parents are trying to protect their children. They're worried about divisive and harmful curricula based upon Critical Race Theory. They're speaking their minds about mask mandates. This is the very core of constitutionally protected speech, and free speech is deadly to the tyranny of government and is the lifeblood of our constitutional republic. To say your policies are outside of the mainstream would be an understatement. Mothers and fathers have a vested interest in how schools educate their children. They are not, as the Biden Justice Department apparently believes them to be, national security threats.

What is a national security threat is things like MS-13. What is a national security threat is like our open southern borders. What is a national security threat is the federal government's failing to adequately vet individuals from Afghanistan.

GRASSLEY: I suggest that you quickly change your course, because you're losing credibility with the American people and with this senator in particular.

Thank you.

DURBIN: Thanks, Senator Grassley.

We now turn to the attorney general for his testimony.

First, welcome Honorable Merrick Garland to testify before the Senate Judiciary Committee.

For the information of the members, the mechanics of such, after I swear in Attorney General Garland he will make his opening statement, then we'll go to a round of questions. Each senator will have seven minutes. I'm going to try to hold folks close to that number so everybody can be accommodated. If there is a request, we may have a second round of questions of three minutes per senator.

Attorney General Garland, would you please stand to be sworn in?

Do you swear or affirm the testimony you're about to give before the committee will be the truth, the whole truth, and nothing but the truth so help you God?

GARLAND: I do.

DURBIN: Thank you.

Let the record reflect that the Attorney General answered in the affirmative.

Now please proceed with your opening statement.

GARLAND: Good morning, Chairman Durbin, Ranking Member Grassley and distinguished members of this committee. Thank you for the opportunity to appear before you today.

In my address to all Justice Department employees on my first day in office, I spoke about three coequal priorities that should guide the department's work: upholding the rule of law, keeping our country safe, and protecting civil rights.

The first core priority, upholding the rule of law, is rooted in the recognition that to succeed and retain the trust of the American people the Justice Department must adhere to the norms that have been part of its DNA since Edward Levi's tenure as the first post-Watergate attorney general. Those norms, of independence from improper influence, of the principled exercise of discretion, and of treating like cases alike, are what define who we are as public servants.

Over the last seven months that I have served as attorney general, the department has reaffirmed and, where appropriate, updated and strengthened its policies that are foundational for these norms.

For example, we strengthened our policy governing communications between the Justice Department and the White House. That policy is designed to protect the department's criminal and civil law enforcement decisions and its legal judgments from partisan or other inappropriate influences.

We also issued a new policy to better protect the freedom and independence of the press by restricting the use of compulsory process to obtain information from or records of members of the news media.

The second core priority is keeping our country safe from all threats, foreign and domestic, while also protecting our civil liberties. We are strengthening our 200 joint terrorism task forces, the central (ph) hub for international and domestic counterterrorism cooperation across all levels of government nationwide. For F.Y. '22, we are seeking more than \$1.5 billion, a 12 percent increase, for our counterterrorism work.

We are also taking aggressive steps to counter cyber threats, whether from nation-states, terrorists or common criminals. In April, we launched both a comprehensive cyber review and a ransomware and digital extortion task force. In June, we seized a \$2.3 million ransom payment made in bitcoin to the group that targeted Colonial Pipeline.

Keeping our country safe also requires reducing violent crime and gun violence.

GARLAND: In May, we announced a comprehensive violent crime strategy which deploys all of our relevant departmental components to those ends. We also launched five cross-jurisdictional strike forces to disrupt illegal gun trafficking in key corridors across the country. And to support local police departments and help them build trust with the communities they serve, our F.Y. '22 budget requests over \$1 billion for grants.

We are likewise committed to keeping our country safe from violent drug trafficking networks that are, among other things, fueling the opioid overdose epidemic. Opioids, including illicit fentanyl, caused nearly 70,000 fatal overdoses in 2020. We will continue to use all of our resources to save lives.

Finally, keeping our country safe requires protecting its democratic institutions, including the one we sit in today, from violent attack. As this committee is well aware, the department is currently engaged in one of the most sweeping investigations in its history, in connection with the January 6th attack on the Capitol.

The department's third priority is protecting civil rights. This was a founding purpose when the department was established in 1870. Today, the Civil Rights Division's work remains vital to safeguarding voting rights, prosecuting hate crimes, ensuring constitutional policing and stopping unlawful discrimination.

This year, we've doubled the size of the Civil Rights Division's Voting Section and our F.Y. '22 Budget seeks the largest ever increase for the division, totaling more than 15 percent. We have appointed department-wide coordinators for our hate crimes work, we have stepped up our support for the Community Relations Service. We are also revitalizing and expanding our work to ensure equal access to justice.

In addition to these core priorities, another important area of department focus is ensuring economic opportunity and fairness by reinvigorating antitrust enforcement, combating fraud and protecting consumers. We are aggressively enforcing the antitrust laws by challenging anti-competitive mergers and exclusionary practices. In F.Y. '22, we are seeking a substantial increase in funds for the division. We likewise stood up a COVID-19 Fraud Enforcement Task Force to bring to justice those who defraud the government of federal dollars meant for the most vulnerable among us.

In sum, in seven months, the Justice Department has accomplished a lot of important work for the American people, and there is much more to be done. Thank you for the opportunity to testify this morning. I look forward to your questions.

DURBIN: Thank you, Mr. Attorney General. Hardly a day goes by in the city of Chicago that someone isn't killed with a firearm. The cases are heartbreaking -- little boys and girls coming and standing on their porches and going to school.

And on August 7th, the Chicago Police Officer Ella French and her partner, Officer Carlos Yanez, were conducting a routine traffic stop in the city. A person in the car opened fire. Officer French, aged 29, was murdered, and Officer Yanez was severely wounded.

I never saw such an outpouring of emotions in the city. I went down to Rita High School on the south side, near Beverly, where they had the memorial service. There were hundreds, if not thousands of women and men in uniform and just ordinary citizens standing, waiting for their turn to pay tribute to Ella French for what she had done for her city.

Two days later, we found out from the U.S. Attorney's Office that the gun used to murder her was obtained from Indiana through a straw purchase. That's when a person who can't -- who can clear a background check buys a gun at a federally-licensed gun dealer and gives it to someone who cannot clear it.

What are we going to do about this? What is going to be done at the federal level to show that we're taking this seriously? Ours isn't the only city that is facing this challenge and we've got to act, and act soon.

GARLAND: Mr. Chairman, I am as concerned as you are and as I'm sure all members of this committee are about the rise of violent crime all across the country. I was in Chicago, as you know, at almost the exact time that the officer that you speak of was killed. I have gone to meet with the families of a ATF agent who was killed on duty and I have stood on the Mall of the candlelight vigil for many other police officers who were killed in the line of duty.

The Justice Department is doing everything possible, with respect to violent crime. In May of this year, I launched a Violent Crime Initiative, which brings together all of our law enforcement, on the federal level, to meet with, coordinate with, cooperate with state, local, tribal, territorial law enforcement to fight this issue.

Our federal agencies, DEA, ATF, Marshals and the FBI, are all deeply involved in this. Our programs, Project Safe Neighborhoods, continue in all of these ways and we are looking for large amounts of money to provide in grants to police departments.

Specifically, with respect to the gun trafficking that you're speaking about, as you know, Chicago is one of the task force cities that we've announced for purposes of tracing this gun trafficking problem and we are doing so and finding the straw purchasers and arresting them, as well.

I could not agree more that this is a serious, serious problem that needs the attention of the entire country's law enforcement, and the Justice Department is very much involved in the fight.

DURBIN: I'm going to be meeting with those federal law enforcement agencies to talk about the strike force and what they're doing, how they're cooperating with state and local law enforcement. I hope to do it maybe even this week, on a private basis, and then to see what more I can do. I think we all have a responsibility when it comes to this issue.

Let me ask you about the home confinement issue. We all know, under the CARES Act, there was an allowance for that possibility and we know that, since March of last year, more than 33,000 inmates have been released to home confinement, including those released under the CARES Act's expanded authority. Less than one percent of those inmates have been returned to BOP facilities for any rules violation.

Do you agree that recalling the thousands of individuals who've successfully transitioned back into society would be contrary to the purpose of home confinement, which is to allow an individual, quote "a reasonable opportunity to adjust to and prepare for re-entry of that prisoner in a community"?

GARLAND: Senator, I very much agree that the home confinement program has proven successful, that it both relieved the pressure on the prisons, with respect to COVID-19 pandemic, but also gave people an opportunity to adjust themselves to their communities. And you are right, that we have seen very few violations of the conditions.

So I'm very strongly in favor of being able to continue this program.

DURBIN: Well, I'm hoping that we can get a definitive reversal of the OLC opinion that was dropped on the desk as President Trump left office and make it very clear what will happen if and when, and I pray that soon, the COVID-19 emergency is lifted.

I'd like to move to another topic which has already been addressed by myself and Senator Grassley. I really invite the members of this committee -- if you don't believe me, type "school board violence" into your computer and take a look at what's happening. It's happening all across the country.

DURBIN: In my state, as I mentioned, a 30-year-old man arrested and charged with battery, disorderly conduct after striking a school board member at a meeting.

California: Father yelling profanities at an elementary school principal. His daughter calmed him down. He later returned to confront the principal and struck a teacher in the face who attempted to intervene.

Ohio: A school board member sent a threatening letter saying, "We're coming after you." And after the board member posted the letter on Facebook, the president of the Board of Education for a nearby district reported his board had received similar threats.

Pennsylvania: Person posted threats on social media which required the police to station outside each of that district school. Local law enforcement is investigating the person who made the threats and will maintain a police presence at schools and school board meetings for the foreseeable future.

In Texas, a parent physically assaulting a teacher, ripping off her mask.

And it goes on and on and on. These are not routine people incensed or angry. These are people who are acting out their feelings in a violent manner over and over again; the same people we see on airplanes and other places, same people some of whom we saw here on January 6th.

So when you responded as quickly as you did to that school board request, did you have second thoughts after they sent a follow-up letter saying they didn't agree with their original premise in their first letter?

GARLAND: Senator, I think all of us have seen these reports of violence and threats of violence. That is what the Justice Department is concerned about.

It's not only in the context of violence and threats of violence against school board members, school personnel, teachers, staff. It's an arising tide of threats of violence against judges, against prosecutors, against secretaries of state, against election administrators, against doctors, against protesters, against news reporters.

That's the reason that we responded as quickly as we did when we got a -- a letter indicating that there were threats of violence and violence with respect to school officials and school staff. That's the reason -- that's what we are concerned about. That's part of our core responsibility.

The letter that we -- that was subsequently sent, does not change the association's concern about violence or threats of violence. It -- it alters some of the language in the letter; language in the letter that we did not rely on and is not contained in my own memorandum.

The only thing the Justice Department is concerned about is violence and threats of violence.

DURBIN: Senator Grassley?

GRASSLEY: Yeah. Before I ask my question, I'd like permission to introduce in the hearing record a letter from the Iowa Association of School Boards disagreeing with the National School Boards Association request for intervention from federal agencies and law enforcement and other concerns that they have.

DURBIN: Without objection.

GRASSLEY: Yeah.

General Garland, regarding your October 4th school board memo, last week you said the memo was for law enforcement audience despite it being on your public website as a press release.

As a result of your memo, local school officials and parents may not speak up in these meetings out of fear the federal government will do something to them. So that's a poisonous, chilling effect.

Apparently that letter wasn't actually supported by organization but was sent by two unauthorized staff, so last week the organization disavowed it. Since you and the White House based your memo on this delegitimized letter, I assume you're going to revoke your extremely divisive memo that you said was instigated because of that letter. That's a question.

GARLAND: Senator, the memo which you referred to is one page. It responds to concerns about violence, threats of violence, other criminal conduct. That's all it's about, and all it asks is for federal law enforcement to consult with, meet with local law enforcement to assess the circumstances, to strategize about what may or may not be necessary, to provide federal assistance if it is necessary.

GRASSLEY: Presumably, you wrote the memo because of the letter. The letter is disavowed now, so you're going to keep your memo going anyway, right? Is that what you're telling me?

GARLAND: Senator, I have the letter from NSBA that you're referring to. It apologizes for language in the letter, but it continues its concern about the safety of school officials and school staff. The language in the letter that they disavow is language -- was never included in my memo, and never would have been. I did not adopt every concern that they had in their letter. I adopted only the concern about violence and threats of violence, and that hasn't changed.

GRASSLEY: Who in the Justice Department was responsible for drafting your polarizing October 4th memo?

GARLAND: I signed memo and I worked on the memo. (inaudible)...

GRASSLEY: The press release accompanying your memo mentions that the National Security Division will get involved in school board investigations. Is the Justice Department National Security Division really necessary for keeping local school boards safe? If parents aren't domestic terrorists and if the PATRIOT Act isn't being used, why is the National Security Division involved at all? This kind of looks like something that would come out of some communist country expansive definition of national security.

GARLAND: The memo is only about violence and threats of violence. It makes absolutely clear in the -- in the first paragraph that spirited debate about policy matters is protected under our Constitution. That includes debate by parents criticizing school boards. That is welcome. The Justice Department protects that kind of debate. The only thing we're concerned about, Senator, is violence and threats of violence against school officials, school teachers, school staff, just like we're concerned about those kind of threats against senators, members of Congress, election officials. In all of those circumstances, we are trying to prevent the violence that sometimes occurs after threats.

GRASSLEY: Your memo stated that the Justice Department is opening dedicated lines of communication for threat reporting assessment and response. Why is the department -- what is the department doing with tips it receives on this dedicated line? And what are you doing with those parents who have been reported?

GARLAND: The -- the -- the FBI gets complaints, concerns from people around the country for all different kinds of threats and violence. That's what this is about: a place where people who feel that they've been threatened with violence can report that. These are then assessed, and they are only pursued if consistent with the First Amendment, we have a true threat that violates federal statutes or that needs to be referred to a state or local government -- federal agents -- a local law enforcement agency for their assistance.

GRASSLEY: On the other hand, are there criminal investigations being opened for instances where school officials are trying to assess private data of parents with opposing views on Critical Race Theory?

GARLAND: I don't know about that, but it -- it -- the Justice Department certainly does not believe that anybody's personal information should be accessed in that way. If there's a federal offense involved or a state or local offense involved, then, of course, those should be reported.

GRASSLEY: The nonpartisan Justice Department inspector general established that Andrew McCabe lied under oath to FBI investigators. He lied under oath to the Justice Department inspector general. It should also be noted that McCain (sic) leaked government information to the media, and then called the New York and Washington FBI field offices and blamed them for the very leaks that he caused. Under your leadership, instead of punishing him, the department reinstated his retirement, expunged his records as part of the settlement. He will reportedly receive \$200,000 of retirement back pay, and his attorney will reportedly receive \$500,000 in legal fees. So it seems to me that that's beyond incredible.

So General Garland, did you authorize the McCain (sic) settlement? And if you -- if not, who did?

GARLAND: Senator, the McCabe settlement was the recommendation of the career lawyers litigating that case based on their prospects of success in the case. The case did not involve the -- the issues about the lying; it involved a claim that he was not given amount of time necessary to respond to -- to allegations and -- that the litigators concluded that they needed to settle the case because of the likelihood of loss on the merits of that claim. The inspector general's report still stands. There is no -- we have not questioned in any way the inspector general's findings. The reference with respect to false statements was made to the Justice Department in the previous administration, and declined in the previous administration. The only issue here was an assessment of litigation merits.

GRASSLEY: Short follow-up: Do you agree with the taxpayer -- since you didn't, somebody else authorized it -- do you agree with the taxpayer picking up a multimillion-dollar bill for someone that lied under oath to government officials?

GARLAND: I think the assessment made by the litigators was that the bill to the taxpayers would be higher if we didn't resolve the matter as it was resolved.

GRASSLEY: Thank you, Mr. Chairman.

DURBIN: Senator Leahy?

LEAHY: Thank you, Mr. Chairman.

Attorney General Garland, good to see you, and thank you for being here, and I'm sure the members of the committee are eager to discuss with you what the Justice Department is doing, what could be done better.

I'll just say this: After four tumultuous years in which the former president viewed the Justice Department as his personal law firm, I'm pleased the department is again living up to the most fundamental principle in our American justice system, that no one, nobody is above the law. That's really what I learned about the Justice Department when I was in law school, that the experience I'd had with it for years as a prosecutor and as a litigator. So I was dismayed, seeing what was happening in the past four years, that I thank you, Attorney General, for bringing the department back from the brink. There's still a lot to be done, but I think the -- Americans should take comfort that the rule of law is again being enforced.

Now, it's hard to overstate how urgently we must act to protect Americans' constitutional right to vote, and there is reason for alarm. Many states are rapidly moving to restrict access to the ballot for tens of thousands of Americans from all walks of life.

LEAHY: In the wake of the Shelby County-initiated (inaudible) decision, the problem is tools to stem this tide of voter suppression -- this voter suppression have been greatly diminished.

I know you're doing whatever you can to defend the right to vote. How does congressional inaction in response to these Supreme Court decisions limit the ability of the department to protect Americans' constitutional right to vote?

GARLAND: Thank you for that question, Senator. The right to vote is a central pillar of our democracy. And as I've said many times, it's the central pillar that allows all other rights to proceed from it.

The Justice Department was established in part to protect the rights of -- of -- guaranteed under the 13th, 14th, and 15th Amendment to vote. The Voting Rights Act gave us further authorities in that respect.

We are doing, as you say, everything we can. We have doubled the size of the voting rights section. We've brought a Section 2 case.

But there are limitations on our authority that the Supreme Court has imposed, one of which is the elimination of Section 5 of the Voting Rights Act, which provided an opportunity to do pre-clearance reviews so that we did not have to review each matter on a one-by-one basis.

And in the recent (ph) -- there's been (ph) with Shelby County, as you pointed out, and recently in the Brnovich case, a narrowing of what we regarded as the meaning of Section 2 and our authorities under Section 2. Both of those could be fixed by thy Congress. And if they were, it would give us considerably greater opportunity and ability to ensure the sacred right to vote.

LEAHY: And didn't the Supreme Court make it very clear that we could fix that if the -- if the Congress wanted to?

GARLAND: That's correct. In the opinions, they indicated these were matters that could be fixed by the Congress.

LEAHY: And I hope we will because I think it's very important that all Americans be protected in their right to vote. We -- I know in my own state of Vermont we take that very seriously.

Now, we have the bipartisan VOCA fixed to -- to stay in the Crime Victims Fund Act of 2021. It's been signed into law. A major piece of this legislation requires funds collected under deferred and non-prosecution agreements be deposited into the Crime Victims Fund, which had been projected to reach a 10-year low.

Since this bill has become law, have any funds from deferred or non-prosecution agreements been deposited into the Crime Victims Fund? And if not, why not?

GARLAND: Senator, the VOCA fix was something we sought, and we're grateful for your support for and for your introduction of. We acted immediately after it was passed. And something like -- north of \$200 million has already been deposited in the fund thanks to that act. We now project that the funds should be liquid all the way through the end of 2022.

LEAHY: Thank you. And we can review it after that because I think you and I would both agree we want to have long-term sustainability in this fund.

GARLAND: Absolutely.

LEAHY: So let's work together on that.

LEAHY: Now, there's been some discussion here and elsewhere about the Larry Nassar investigation. And the chairman had these very impressive gymnasts who testified before us. It was heart-wrenching listening to them. And they talked about how they were seeking accountability, I could not help think how brave they were to testify.

Now, the Justice Department initially declined to bring charges against the disgraced FBI agents involved in the investigation. I was concerned and I -- I said at the time that I'd seen many people prosecuted for lying to FBI agents. Here you had two FBI agents who lied to FBI agents. One was fired, the other resigned. No prosecutions.

Is the department now reviewing that decision not to prosecute? And do you have any update in regard to that review?

GARLAND: Senator, I think heart-wrenching is -- is not even strong enough as a description of what happened to those gymnasts and to the testimony they gave.

I believe Deputy Attorney General Monaco said at her hearing that we are reviewing this matter. New evidence has come to light and that is cause for a review of the matters that you discussing.

LEAHY: Well, I hope you will, because, as I said, I've seen so many prosecutions of somebody for lying to an FBI agent, and I understand that. But when an FBI agent lies to an FBI agent they should also face the same as anybody else does.

Thank you very much, Mr. Chairman.

DURBIN: Thank you, Senator Leahy.

GRASSLEY: Mr. Chairman, could I put something in the record from 17 state attorney generals expressing their disagreement with the department's October 4th memorandum and ask that that memorandum be withdrawn?

DURBIN: Without objection.

Senator Graham?

GRAHAM: Thank you, Mr. Chairman.

Mr. Attorney General, are you aware of the caravan of about 3,000 people approaching the state of Texas?

GARLAND: I have read about it in the news media, yes.

I didn't know -- I think its south of Mexico City is what I read.

GRAHAM: Yes, they're...

GARLAND: Is that what you're talking about?

GRAHAM: ... apparently headed toward Texas. So what would you tell these people?

GARLAND: That -- I would tell them not to come. But the job of the Justice Department has to do with -- with prosecution and with the use -- the way in which the asylum and removal claims are adjudicated.

GRAHAM: All right.

GARLAND: The principle...

GRAHAM: So you would tell them not to come?

GARLAND: The -- it depends on why they are coming.

GRAHAM: Well, if they're coming to make asylum claims, what would you tell them?

GARLAND: Well, the Department of Homeland Security is the agency that's responsible for border control.

GRAHAM: Right. I get that, but you're the attorney general of the United States. Do you think our asylum laws are being abused?

GARLAND: The asylum laws are statutes passed by the Congress.

GRAHAM: Yeah. Do you think they're being abused?

GARLAND: I think this is a -- that question is one that has to be evaluated on a one-by-one basis in each...

GRAHAM: Have you talked to the -- when's the last time you'd been to the border?

GARLAND: I think a week ago, maybe 10 days ago.

GRAHAM: Did they tell you anything about asylum claims being made by people that are mostly economic claims, not -- not asylum claims? Did they mention that to you?

GARLAND: I think it's fair -- I don't recall exactly. I think it's...

GRAHAM: You don't recall being told by the Border Patrol that they're overwhelmed, they can't hold the line much anymore, that we've had 1.7 million people apprehended, and the big magnet, the pull factor is the way -- the catch-and-release program around asylum? That didn't stick out to you?

GARLAND: That was not a discussion that I had when I was at the border.

GRAHAM: Who did you talk to?

GARLAND: I was at the border at Nogales. Spoke to a Border Patrol...

GRAHAM: Yeah, I was there about six months ago. But they never mentioned to you the pull factors of illegal immigration?

GARLAND: This was a -- a review of what they were doing at the border with respect to...

GRAHAM: Well, it's a simple question. They never mentioned to you that they've got a problem with being overrun by asylum seekers?

GARLAND: I know from reading the news media that -- that Border Patrol agents feel that way. So...

GRAHAM: Well, I mean, it's not about reading the paper, you were there talking to them.

GARLAND: Well, I don't recall that -- I don't want to...

GRAHAM: OK.

GARLAND: ... tell you about a conversation that I'm not sure happened.

GRAHAM: Yeah, I'm just stunned that that didn't -- that you can't recall that.

So let's talk about Afghanistan. The secretary -- undersecretary for defense policy, Mr. Kahl, said, "While ISIS-K poses more of a short-term, external threat, Al-Qaida could regain the ability to launch attacks outside of Afghanistan within a year or two." Do you agree with that?

GARLAND: I -- I -- I agree that Al-Qaida has always presented and continues to present a persistent threat to the United States homeland.

GRAHAM: Well, no, the question is: What's changed? You say "always." Has any recent event changed the likelihood of an attack?

GARLAND: I don't know...

GRAHAM: You don't know that we withdrew from Afghanistan?

GARLAND: I know we withdrew. I don't know whether the withdraw will increase the risk from Al-Qaida or not. I do know...

GRAHAM: So you're the attorney general of the United States. Secretary Wray testified openly, twice, that due to the lack of ability to have eyes and ears on the ground and the unreliability of the Taliban, that an attack on the United States within six months to a year is far more likely after our withdrawal. You're not aware that he said that?

GARLAND: The job of the Justice Department and the job of the FBI is to protect against those kind of attacks in the homeland.

GRAHAM: Does it make sense that that would be a dynamic of our withdrawal? Do you trust the Taliban to -- to police Al-Qaida and ISIS on our behalf?

GARLAND: I do not trust the Taliban.

GRAHAM: Matter of fact, they've openly told us they will not work with us regarding contained the Al-Qaida, ISIS threat. Are you aware of that?

GARLAND: I think there have been inconsistent statements, but I don't...

GRAHAM: No. No. They just literally said that.

GARLAND: I think there have been inconsistent statements, but their statements are not anything that we can rely on. (inaudible)

GRAHAM: Well, when they tell you to your face, "We're not going to help you," do you think they're kidding? Do you think they really will help us but they're just telling us to our face that they won't?

GARLAND: Sir, I think ISIS-K, Al-Qaida, associated forces are and continue to be...

GRAHAM: We're talking about the Taliban. The Taliban has told the United States they will not work with our counterterrorism forces when it comes to Al-Qaida or ISIS. What response should we have regarding the Taliban when they say that?

GARLAND: Well, I think we have a number of different tools available.

GRAHAM: Like what?

GARLAND: We have economic sanctions. We -- they need money from the United States for humanitarian and other reasons. This is a...

GRAHAM: So the leverage over the Taliban is whether or not we'll give them money?

GARLAND: Senator, the job of the Justice Department is protecting using the FBI and the National Security (inaudible).

GRAHAM: The National Security Division is part of our counterterrorism operation, right?

GARLAND: It is one...

GRAHAM: Has anybody from the National Security Division briefed you about the increased likelihood of attack emanating from Afghanistan after our withdrawal?

GARLAND: Every day I'm briefed by the FBI...

GRAHAM: No, my question is specific: Has anybody briefed you about the increased likelihood of an attack emanating from Afghanistan by ISIS or Al-Qaida because of our complete withdrawal?

GARLAND: We are worried about the risk of attack by...

GRAHAM: I -- I -- I know -- it's one thing to be worried. Has anybody told you the likelihood of an attack is greater because of our withdrawal or not?

GARLAND: There are different views about the degrees of likelihood. That doesn't change our posture. We just...

(CROSSTALK)

GARLAND: ... protective...

GRAHAM: It doesn't change your posture if you go from a possibility of being attacked to a six months to a year time window of being attacked?

GARLAND: We have asked for substantial additional funds for our counter-terrorism operations, in light...

GRAHAM: Is that in light of the withdrawal from Afghanistan?

GARLAND: It's in light of a lot of changing circumstances in the world, with respect...

GRAHAM: Well, let me just put a fine point on this. Secretary Reyes told the world that ISIS and Al-Qaida in Afghanistan present a threat to our homeland. The Taliban has told us they're not going to help us when it comes to policing these groups. The Department of Defense has said we're a six months to a year away from a possible attack by ISIS and Al-Qaida. And just seems to me there's not a sense of urgency about this.

GARLAND: There is a sense of urgency. This...

GRAHAM: What have you done specifically -- and I'll end with this -- specifically, what have you done since our withdrawal in Afghanistan to deal with this new -- new threat?

GARLAND: We have strengthened and increased the efforts of our joint terrorism task forces. I have met with them...

GRAHAM: Literally, what have you done?

GARLAND: I'm telling you...

GRAHAM: Just put it in writing. Just write down what you've done.

GARLAND: I -- I'll be happy to -- to have our staff assess what...

GRAHAM: Thank you.

GARLAND: ... told to, in -- in return (ph).

DURBIN: Thank you, Senator Graham. Senator Whitehouse?

WHITEHOUSE: Thank you, Chairman. Welcome, Attorney General Garland. Two topics. The first is executive privilege.

We've been through a rather bleak period with regard to executive privilege. I think you would call it the "anything goes period," in which any assertion of executive privilege, no matter how fanciful or preposterous, was essentially allowed to stand, in very significant departure from the law that has been out there for years regarding executive privilege.

And at the same time that the substance of executive privilege was being expanded beyond recognition, the procedure for evaluating executive procedure determinations was completely ignored. And this is a procedure that was established by President Reagan's White House.

So we now have a situation in which there is very substantial destruction and disarray in the area of executive privilege determinations. And as you know, under the Reagan Memo, the Department of Justice had a role kind of as an arbiter to be the honest broker between whatever executive agency was objecting and whatever congressional committee was pursuing information. That role completely fell apart in the last administration and it needs to be rebuilt in some predictable fashion.

The role of the courts has become highly problematic because delay is very often dispositive in these matters and the courts are now a haven for delay, with respect to executive privilege determinations. So I think we need to look at that, as well.

Senator Kennedy and I had a hearing on this executive privilege problem in our Courts Subcommittee. The Department of Justice was not represented at that hearing but I would like to ask you to detail somebody from the Department of Justice to talk to Senator Kennedy and me about this executive privilege problem and work with us on trying to figure out a solution.

Making the role of the Department of Justice more clear and transparent and perhaps embodying it in rule or regulation or law and trying to figure out how to accelerate, at the courts, a way to get quicker decisions, because otherwise, as I said, delay is just dispositive and we lose, not because we're wrong but because we're delayed.

Would you have somebody be our point of contact on that, please? When I say "detailed," I don't mean "onto our payroll," you know, I just mean as a point of contact.

GARLAND: Yes, absolutely, of course.

WHITEHOUSE: Great, thank you.

Next, I've been pursuing the question of the department's investigation into January 6th since pretty early days, starting with a letter in January 8th that asked about the resources that were being deployed into this investigation and whether a task force -- prosecution task force was being set up and so forth. And then another letter February 24th, with -- regarding to -- with regard to domestic extremist violence groups' potential role.

We've learned a little bit more now and we've learned that there was a lot of money sloshing around in the background, behind the January 6th rally and behind the raid, the riot in the Capitol. For instance, we know that the Bradley Foundation, which is a big funder, gave money to Turning Point USA and to Public Interest Legal Foundation.

And it gets even more interesting, cause Turning Point USA has a twin called Turning Point Action, a 501(c)(3)/501(c)(4) combo, which also got money from the Judicial Crisis Network to support the so-called Italygate -- the debunked Italygate theory. At the same time, the Public Interest Legal Foundation had as its director Mr. Eastman (ph), who was cranking out his fanciful memo for President Trump, how to overturn the election.

The Judicial Crisis Network is the same thing, from a corporate standpoint, as something called the Honest Elections Project, which was bringing a -- a fanciful case in Pennsylvania regarding election fraud. And the Judicial Crisis Network was also funding RAGA, the Rhode Island -- the Republican Attorney Generals Association, which was making robocalls to get people to come to the riot.

Now, I don't know what's going on behind all of that but I am hoping that the due diligence of the FBI is being deployed, not just to the characters who trespassed in the Capitol that day and who engaged in violent acts but that you're taking the look you would properly take at any case involving players behind the scenes, funders of the enterprise and so forth, in this matter, as well. And there has been no decision to say "we're limiting this case just to the people in the building that day, we're not going to take a serious look at anybody behind it."

GARLAND: Senator, I'm very limited as to what I can say...

WHITEHOUSE: I understand that.

GARLAND: ... we have a criminal investigation going forward.

WHITEHOUSE: Please tell me it has not been constrained only to people in the Capitol.

GARLAND: The investigation is being conducted by the prosecutors in the U.S. Attorney's Office and by the FBI Field Office. We have not constrained them in any way.

WHITEHOUSE: Great. And the old doctrine of "follow the money," which is a well-established principle of prosecution, is...

GARLAND: It's fair to say...

WHITEHOUSE: ... alive and well?

GARLAND: It's fair to say that all investigative techniques of which you are familiar, and some maybe that you're not that familiar with because they postdate your time, are all being pursued in this matter.

WHITEHOUSE: Thank you.

Thank you, Chairman.

LEAHY: Thank you very much.

Senator Cornyn, thank you.

CORNYN: Good morning, Mr. Attorney General.

On September the 29th, 2021, as you know, the National School Board Association wrote a letter to the president asking him to address the disruptions, confrontations that we've seen at local school boards across the -- across the country; parents expressing their concerns about not only the curriculum, but also just generally the education of their children in the public schools.

Would you agree that parents have a fundamental right to be involved in their -- in their children's education?

GARLAND: Absolutely. It's the job of parents to be involved, and this is the role the First Amendment to protect their ability to be involved.

That's why my memo begins by saying that we respect the right to a spirited debate about curriculum, about school policies, about anything like that.

CORNYN: So it's not just -- it's not just a good idea, it's actually protected by the Constitution of the United States. Would you agree?

GARLAND: Absolutely.

CORNYN: On October the 4th, a few days later -- less than a week later, after the National School Board Association wrote this letter, the Justice Department issued the memo that's already been discussed. Why did this rise to the level of a federal concern, as opposed to being addressed at the local and state level?

GARLAND: So, this arises out of repeated reports of violence and threats of violence, not only with respect to school boards and school officials and teachers, but, as I mentioned earlier, also with respect secretaries of state and election administrators, judges, prosecutors, senators, members of Congress.

The Justice Department has two roles here. We assist state and local law enforcement in all ways, and we enforce federal laws which prohibit threats of violence in -- by telephone, by e-mail...

CORNYN: Well, you as a longtime federal judge with the distinguished legal career, you understand that not every crime, assuming it is a crime, is a federal crime. Correct?

GARLAND: Absolutely.

CORNYN: And some of these things unless there is some nexus to interstate commerce or to the federal government, they're largely within the purview of the state and local law enforcement authorities. Correct?

GARLAND: I think you put that correctly. We have authority with respect to the mail, with respect to the Internet, with respect to...

CORNYN: Right. Well, I'm not -- well, let me give you an example. If somebody says to the school board member if you do that I'm going to meet you outside and punch you in the nose, is that a federal offense or is...

GARLAND: That's not a federal offense.

CORNYN: I agree. I agree, and...

GARLAND: There's nothing in this memo suggesting that it is.

CORNYN: And why in the world would you cite the National Security Division in this memo as being one of the appropriate entities of the Department of Justice to investigate and perhaps prosecute these offenses?

GARLAND: So my memo itself doesn't mention the National Security Division. It is mentioned in another memo that was released by the department. The National Security Division, like all the other law enforcement components, cooperates with and is involved in discussions about how to go forward on different kinds of matters.

They were involved, for example, in the election threats. They were involved in the threats against judges and prosecutors. They were involved in the hate crimes threats cases.

CORNYN: Well, what...

GARLAND: It's just a natural part of our internal analysis.

CORNYN: Let me ask you, or did you see the National School Board Association letter to President Biden before you issued your memorandum on the October 4?

GARLAND: Yes, I did, and that I was part of the reason their expression at the beginning of that memorandum of...

CORNYN: I may raise -- they raised some of the concerns that you voiced here today. Correct?

GARLAND: They raised some of them. They raised others that I don't agree with and were not included in my memo.

CORNYN: Well, you're aware that on October 22 to the National School Board Association apologized for its letter. You're aware of that. Aren't you, sir?

GARLAND: I am, but...

CORNYN: And it said -- that went on to say we regret and apologize for the letter. There was no justification for some of the language in the letter. They acknowledged that the voices of parents should be and must continue to be heard, and when it comes to decisions about their children's education, health and safety.

You did not apologize for your memorandum of October 4 even though the National School Board Association did. Why didn't you rescind that memorandum and apologize for your -- for the memorandum?

GARLAND: The core responsibility of the Justice Department, as I said in my opening, is protecting Americans from violence and threats of violence.

CORNYN: But you just said not every act of violence is a federal crime. Correct?

GARLAND: Right, and not every bit of street crime and the kind of violence that we have been talking about earlier today is also a federal crime, but we assist state and locals to help them in their investigations of these kind of matters. Every single day in nonfederal matters we are partners with our state and local partners.

CORNYN: Well, Mr. Attorney General, you've acknowledged that parents have a right -- a constitutional right to be heard on the education of their children in public schools. Can you imagine the sort of intimidation, the sort of the bullying impact that a memorandum from the Department of Justice would have and how that would chill the willingness of parents to exercise their rights under threat of federal prosecution? Did you consider the chilling impact your memorandum would have on parents exercising their constitutional rights?

GARLAND: The only thing this memorandum is about is violence and threats of violence, and it opens with a statement...

CORNYN: But my question is did you consider the chilling effect this would have on parents' constitutional rights?

GARLAND: To say that the Justice Department is against violence and threats of violence...

CORNYN: Did you consider the chilling effect your memorandum might have on parents exercising their constitutional rights? I think you can answer that yes or no.

GARLAND: What I considered what I wanted to memorandum to assure people that we recognize the rights of spirited debate and...

CORNYN: Mr. Attorney General, you are a very intelligent and accomplished lawyer and judge. You can answer the question. Did you consider...

GARLAND: I did not -- I do not...

CORNYN: ... the chilling effect that this sort of threat of federal prosecution would have on parents' exercise their constitutional rights to be involved in their children's education?

GARLAND: I don't believe it's reasonable to read this memorandum as chilling anyone's rights. It's about threats of violence and it expressly recognizes the constitutional right to make arguments about your children's education.

LEAHY: As senators are going back and forth for votes during this time, I'm going to have to try to keep to the...

CORNYN: Let the record reflect the attorney general refused to answer the question.

LEAHY: And let the -- let the record reflect that the senator from Texas was allowed to go over his allotted time.

Senator Klobuchar?

KLOBUCHAR: Thank you very much.

Just had to confirm something, Mr. Attorney General, can you confirm to this committee, as you did earlier before the House Judiciary Committee, that the purpose of the memo that you were just discussing with Senator Cornyn is to have meetings to discuss whether there's a problem, to discuss strategies, to discuss whether law -- local law enforcement needs assistance or doesn't need assistance? Is that the purpose of it?

GARLAND: Yes. I thank you for making that point, Senator. That's -- I say that in the memo, that the -- that -- that the purpose of the meeting -- of the memo is to convene meetings with federal, state and local tribal leaders and to facilitate discussions of strategies for addressing threats, to assess the question and to open lines of communication about those threats.

KLOBUCHAR: Thank you.

I want to move to some other threats, and that is a hearing that actually, Senator Blunt and I had yesterday. It was a bipartisan hearing. We both called witnesses. It was before the Rules Committee, and it was with both Republican and Democratic election officials, the attorney general of Arizona, a Republican local official, and Philadelphia, and they told stories that horrified senators on both sides of the aisle. The Philadelphia election official, a commissioner, local election official had been sent letters basically saying that they were going to kill him and his three kids, naming the kids, as well as putting his house and his address out there. Katie Hobbs, the attorney general of Arizona, received a voicemail saying, "I am a hunter, and I think you should be hunted. You will never be safe in Arizona again."

Could you talk about what's going on with threats against election workers? And by the way, we had -- the Republican secretary of state from Kentucky talked about the fact that it has been difficult. They are losing in many jurisdictions across the country. They don't have enough election workers because people are afraid. And we don't have to discuss at length where these threats are coming from. I just want to have election officials. I want to have a functioning democracy. Can you provide an update on the Election Threats Task Force and see -- talk about the kind threats we're seeing to election officials?

GARLAND: Yes -- yes, Senator. Very much like the circumstances with respect to the school boards, when the National School Board Association wrote us a letter advising of threats of violence and violence.

Earlier this year, we received communications from the National Association of Secretaries of State and the National Association of Election Administrators raising concerns about threats of violence and violence in -- in that area. And that -- that -- soon thereafter, I met -- virtually, unfortunately, because the pandemic -- with a large number of election administrators and secretary of states (sic) where they recounted these -- the kind of threats that you're talking about, and that led us to establish a task force which again, coordinated efforts between the federal law enforcement agencies, U.S. attorneys offices and state and local law enforcement across the country. It is the case that many of those kind of threats can be handled by state and local law enforcement and should be, where they're capable of doing that. But the federal government has an important role, as you say, in protecting our democracy and protecting its threats against public officials. And so there -- that is an ongoing task force evaluating threats in that particular area.

KLOBUCHAR: Thank you. Thank you.

To another area: Chair of the Competition Policy and Antitrust Subcommittee; I've urged the Justice Department to make antitrust enforcement the top priority. We recently had a nominations hearing for Jonathan Kanter. That seems to be moving ahead, and I support the division's enforcement efforts, including, I know they're preparing for 18 trials, which is the most in decades.

And could you talk about the antitrust budget? Senator Grassley and I have passed a bill with the support of the members of this committee to add some additional resources to the Antitrust Divisions. Lee and I have held numerous very informative hearings about various issues related to antitrust. Could you talk about what's happening there?

GARLAND: Yes. The Justice Department is very much committed. As I said, it's a key focus of our attention, antitrust enforcement because it's essential for consumer well-being and for the well-being of our citizens. We have aggressively moved in this area. We've already stopped a merger of two of the top three largest international insurance brokers. We have, as you say, continued -- we are in the middle of trials, criminal trials with respect to price-fixing and market allocation. We have the ongoing matter involving exclusionary conduct in the Google case. We are looking. We have investigations and attention in many areas from healthcare, to -- to agriculture, to allocations within labor markets.

KLOBUCHAR: Could -- could I just ask you -- we had talked about the criminal cases. Could -- given the Antitrust Agency's authority to seek substantial civil fines for Sherman Act violations help enforcers deter anticompetitive conduct?

GARLAND: I -- I'm sorry. I -- I...

KLOBUCHAR: Civil, could civil fines, would that be helpful?

GARLAND: Yes.

KLOBUCHAR: OK.

GARLAND: Having the ability to -- to -- to seek civil fines as well would be helpful. Of course, if we succeed in the criminal case, the follow-on civil cases become quite easy, as I know from my own antitrust practice. But we are down in the number of -- of -- of attorneys in the Antitrust Division considerably, and we need an expansion. That's why we've asked for a nine percent increase, a total increase of \$201 million in our F.Y. '22 budget.

KLOBUCHAR: OK.

GARLAND: The number of mergers has skyrocketed, and the number of people we have in the division evaluating that -- those mergers has decreased, and we need help in that regard.

KLOBUCHAR: Thank you, and I really appreciate the bipartisan work we've done in this committee on that front.

A last question: In July, the department announced that it was adopting a new policy that restricts the use of compulsivary (ph) process to obtain information from members of the news media acting within the scope of news-gathering activities, an issue we discussed, you and I discussed at your confirmation hearing. As a part of that announcement, you asked the deputy attorney general to undertake a review process to further explain, develop and codify the policy. Can you provide an update on the steps the deputy attorney general has taken to ensure that the new policy is implemented?

GARLAND: Yes, so issuing a memo is good, and it controls the Justice Department now. The next step, though, is to have a regulation which will give us some greater permanence, and the next step after that would be legislation, which the Justice Department supports on -- what the attorney -- deputy attorney general now -- is doing now is trying to formulate the general outlines of a -- my memorandum into a regulation which can replace the current pretty detailed regulations that we have. That's what she's involved in right now.

KLOBUCHAR: Excellent, thank you very much.

DURBIN: Mr. Attorney General we had promised you a five-minute break at 11:30. We can either take it right now or I can have Senator Lee and Coons ask. Up to you.

GARLAND: I'm happy to go ahead with Senator Lee and Coons.

DURBIN: Let's proceed, Senator Lee.

LEE: Thank you, Mr. Chairman. Thank you, Attorney General Garland, for being here. Mr. Attorney General I have been concerned in recent weeks by some steps that have been taken by the Biden Administration. Steps that I fear represent a significant amount of overreach. Seven weeks ago you had President Biden giving a speech in which promised to enlist the assistance of corporate America, all of corporate America, with more than 99 employees in firing people who don't get vaccinated.

Now I'm vaccinated, I've encouraged everyone close to me to get vaccinated. But I don't think it's the role of the federal government to do that. He's threatening to cripple employers by imposing absolutely punishing fines on them. And they're now doing his dirty work even before this act of overreach has been reduced to an order that could be litigated. Litigation that I believe would -- and to say -- the same way Youngstown Sheet & Tube versus Sawyer ended.

And now about a month after that we had your October 4th memorandum in which you direct the Department of Justice and the FBI to intervene in what, as far as I can tell, is a state and local issue. That is a series issues involving how parents advocate for their children with their local school boards.

And I also believe that doing that and doing that through the Department of Justice, doing it in the way that you did it directing the assistance -- enlisting the help of all 94 U.S. Attorneys, therefore every satellite office of the Department of Justice nationwide. And do it in a way that I think has a natural tendency to chill free speech in this area.

I question seriously the role of the federal government in protecting people at local school board meetings from their neighbors. It is after all, most of the time, state law not federal that's at play when there is criminal activity. Federal crimes are a -- are a subset of crimes generally.

So you've referenced several times today that your letter covered only violence and threats of violence. And yet the very opening line of your memo says, "In recent months there's been a disturbing spike in harassment, intimidation and threats of violence against school administrators, school board members, teachers and staff who participate in the vital work of running our nation's public schools."

You refer to this over and over again. And that's a -- it's a pretty broad statement. I believe this has a tendency to chill free speech; free speech that is exercised at the state and local level typically by neighbors, by parents to local school boards.

In hindsight, would you agree that a natural consequence of your memo could be chilling free speech, protected speech by parents protesting local school board policies?

GARLAND: Senator, the memo is aimed only at violence and threats and violence. It states on its face that vigorous debate is protected. That is what this is about and that is all this is about.

LEE: What about harassment and intimidation? Are those federal crimes?

GARLAND: They are federal crimes.

LEE: What -- are -- are you referring to like witness tampering intimidation under 18 USC 1512? Or what...

GARLAND: Fourteen -- 18 USC 2261A, which makes it a crime, attempt to injure, harass, or intimidate. Placing a person in reasonable fear of serious bodily injury through communications over the Internet. Likewise 47 USC 22 -- 223A making telephone calls with intention to harass.

Now, I want to be clear though that those only are within, I take your point, those are only within what is permitted by the First Amendment. And there -- the Supreme Court has been clear about that too.

In the Virginia versus Black case the court explained when intimidation is not protected by the Constitution and that is when it is made with the intent of placing the victim in fear of bodily harm or death. So, that's what we're concerned about here.

LEE: Well, and one of the things that concerns me is, you know, we've got 17 attorney's general led by Attorney General Todd Rokita in Nevada (sic) and joined by a total of 17 attorney's general including Sean Reyes, the fantastic attorney general of the state of Utah.

They've weighed in and they've said that there -- there is not a barrage of accusations, there's no unusual flood of accusations of threats of violence against school board members. Nothing unusual, nothing that they can't handle at the state and local level.

Normally things like this against state and local officials involving state and local government entities like school boards are not federal. Now, in response to a series of questions before the House Judiciary Committee, including some questions asked by Congressman Jim Jordan from Ohio, you were asked your factual predicate for your October 4th memorandum and for your conclusions in this regard.

You answered before that committee that your factual predicate for that was the October 22nd memorandum from the National School Board Association. The National School Board Association has -- has been mentioned has since withdrawn that memo. And yet you said that was the factual predicate.

Given that that was the factual predicate, and that it's its memo saying that there was no justification for some of the language that they used in that letter will you rescind your memo?

GARLAND: Senator, I -- best of my recollection I said that the impetus for the letter from my memorandum was that letter and also reports of this kind of activity.

LEE: What reports?

GARLAND: I said, again, that at the time that they were news reports that had been published. And I think that some of the other senators here have described some of those news reports and we've certainly seen subsequently more news reports and more statements by board members of threats to kill them.

LEE: Congressman Chip Roy of Texas said -- he raised in that same hearing the issue of a 14-year-old girl in a school bathroom being sexually assaulted in Loudon County and you indicated in response to that that you weren't aware of that.

And in the six days before you testified before the House Judiciary Committee, have you become familiar with the publicly reported details of that kid?

GARLAND: Yes, I have read about the case, yes.

LEE: If you were unfamiliar with this opposed to instances of threats of violence and intimidation that the National School board Association cited in the letter then how did you determine the intervention by the FBI and the DOJ was necessary? That that was the right approach?

GARLAND: So, the right -- approach in the letter is to meet with local law enforcement, that's what we've asked for is to meet, to assess the situation, to see what their needs are, to strategize, and to open lines of communication. Now, I'm hopeful that many areas of local law enforcement will be well able to handle this on their own.

But this is what the Justice Department does every day. They consult with our local and state partners and see whether assistance is necessary. And, of course, we -- we continue to have our own federal responsibilities with respect to communications by the Internet and on social media, telephone, through the -- through the -- through the mail.

But I'm hopeful that we will not be needed in this area, that our state and local partners will be able to handle these threats.

LEE: My -- my times expired. I just want to state for the record as I close that my staff and I went through every news source raised by the National School Board Association, there was no explicit death threat.

And I choose here to reiterate my concern that not every -- not every outburst or expression of concern by neighbors among neighbors at a local school board meeting warrants a federal investigation.

Certainly doesn't warrant the involvement of 94 U.S. attorneys in a way that threatens, intimidates, intends inevitably to chill First Amendment activity. Thank you, Mr. Chairman.

DURBIN: Thank you, Senator Lee. Senator Coons.

GRASSLEY: Mr. Chairman, one more...

COONS: Well, thank...

DURBIN: Just one second.

GRASSLEY: ...one more -- one more request for introduction of a letter from another attorney general on rescinding the memorandum. This one from Ohio Attorney General Yost.

DURBIN: Without objection. Senator Coons.

COONS: Thank you, Chairman Durbin, Ranking Member Grassley. Thank you, Attorney General Garland. As you well know oversight of the executive branch is an important part of the duties of this body. And so, I just want to commend the Chair and Ranking for prioritizing this, and you for your time here.

While at times challenging this process is key to fulfilling our constitutional responsibilities and we know that we have substantial work to do to restore confidence in our democratic institutions. And I think your engagement here today is a key part of that, so thank you for your diligent and thorough answers to the questions that are being presented today.

Let me just start with a question about some characterizations that are being made here and in other settings about the trajectory of the Biden administration in terms of responding to violent crimes. Some are asserting that the Department of Justice is focused on defunding the police or hamstringing or undermining law enforcement.

As an appropriator, my impression instead is that the president requested an additional 388 million for the COPS Hiring Program, an increase of 200 million over the previous year. The CJS Approps that was just posted includes \$100 million for new community violence intervention programs.

And the Biden administration ensured that over 350 billion previously available grants under the CARES Act could be used to hire more law enforcement personnel at the state and local level, even beyond pre-pandemic levels. Could you just speak briefly to how these different programs and initiatives are, in fact, designed to prevent violent crime?

Designed to support our state and local partners and how these investments could work to assist, support, and protect law enforcement in conducting the -- their -- their obligations and duties in our communities in an appropriate way?

GARLAND: Yes, Senator, I would just add one more pile of requests there, which was for over \$500 million for the Byrne JAG grants, which also go directly to state and local law enforcement.

So, yes, look, we are very concerned about violent crime. This is an area which is primarily the, again, primarily the responsibility of state and local law enforcement, but nonetheless has bipartisan support, has had this since the 1990s, for federal government involvement to help prevent.

We are -- as a consequence, we have historically, since then, and -- accelerating and now (ph) lashed up with our state and local partners and task forces and -- and joint organizations in every city, in every community in the United States to help our local law enforcement protect their communities against violence.

We also have federal, obviously, laws, which help us in this regard, and these include money that we've requested for DEA, for ATF, for the FBI, for the Marshals Service, all increases to allow us to support these circumstances.

COONS: And as we've discussed before, my hometown is one where I was responsible for local law enforcement -- I -- when I was an elected county official. We appreciate these additional investments and the partnership with federal law enforcement and think it's an important part of our work to combat violent crime all over this country.

I want to turn to immigration. You've been asked by a number of my colleagues about it. There seem to be some who think that anything we do to help migrants will necessarily make the border less secure, more chaotic, but I -- I disagree. I think it is possible for us to reduce multi-year court backlogs, improve access to counsel, improve the humanitarian aspects of handling migrants and build a system that is orderly, consistent with rule of law, more humane and more fair.

I'd love to understand how we in Congress can help you, through legislation as well as through funding, to reduce immigration court backlogs, improve access to counsel, improve the process, and also contribute to securing our southern border. Do you have thoughts you care to share briefly or would you be willing to share those with us in writing?

GARLAND: Well, I'll be happy to have the department get back to you in writing but I -- I will say we have requested additional funds so that we can put an additional 600 personnel, including 100 immigration judges, into our Executive Office of Immigration Review so that we can do the kind of acceleration that you're talking about. We've made a number of internal changes, with respect to the way cases are handled, in order to accelerate that.

But we do need more money in that respect and -- and I've made that plea already to the Appropriations Committee. But would be happy to get back to you in more detail on...

COONS: And -- and -- and just superficially, is it your understanding that when applicants for asylum have access to counsel or to legal counseling, the odds that they return for their final disposition and the odds that they will have a fair and appropriate process go up?

GARLAND: Well, I certainly think the odds that they have a fair and appropriate process would go up. I -- I -- it seems quite logical that the odds of them returning for their proceedings would go up, because they would know they would have that opportunity. I don't know any of the statistics about that though.

COONS: Understood. On intellectual property, as you know, long concern of mine. I just briefly wanted to mention, back in December of 2019, DOJ Antitrust issued a statement jointly with NIST and the Department of Commerce and the U.S. Patent and Trademark Office, recognizing that when a patent involved in voluntary standard-setting efforts -- these are typically global efforts around critical communications technologies and others -- that all legal remedies should be available when a patent's infringed, and that policy ensures competition, incentivizes participation in standard-setting activities and plays a vital role in bringing the benefits of innovation to Americans. It's also critical for our global competition with China and other countries.

I'm hearing DOJ has imminent plans to abandon that position or reverse it and replace it with one that does not embrace the availability of all remedies. Given that there are nominees in process likely now, for both AAG for Antitrust and now for Patent and Trademark Office, would you commit to waiting until there are Senate-confirmed leaders in these positions before a change in policy?

GARLAND: I would love to have Senate-confirmed leadership in the Antitrust Division and everything you can do to make that go swifter would be greatly appreciated. I -- I don't -- I have to say, this is a bit outside the area of my own expertise, but nothing -- I assume any such thing would have to come through me before it would be announced. Nothing like that has come to my office yet.

COONS: Well, I -- I'd welcome the opportunity to stay in communication with it. My -- my last quick question relates to the Office for Access to Justice, which has, in the past, under a previous administration, been a leader in debtors' prisons and the criminalization of poverty.

Tomorrow, this committee will hold a vote on the Driving for Opportunity Act, a bipartisan bill I'm leading with Senator Wicker and a number of members of this committee, and it will make progress in terms of ways in which a decades-old practice of stripping people of their driver's licenses for unpaid court-related fees or fines, which advances the criminalization of poverty, will be reversed.

Could you say just a moment about the plans for the Office of Access to Justice and your view about the importance of continued progress in criminal justice reform?

GARLAND: Yes, Senator. Equal justice under law is inscribed in the pediment above the Supreme Court and is a (ph) core principle of -- of American democracy, but you can't have equal justice under law if you don't have access to justice.

And for much of my career as a judge and even before that, even before being in the Justice Department, and -- and in -- in addition, even as a lawyer in private practice, I've been concerned about getting access to attorneys so that lawyers -- so that people who need help with their individual circumstances can have assistance.

The president issued an executive order on this. We have -- and there is a report -- I'm not positive whether it's public but I -- I believe it is -- with respect to reinvigorating the roundtable, whose job it is to address this question of -- which I believe I'm a co-chair.

We are -- I asked for a review within the department and we have determined that we should stand up, once again, an independent, within the department, Office of Access to Justice. We have enough money to do that in the very short term but our -- not to talk too much about requests for money -- but our F.Y. '22 budget request does ask for a significant appropriations so that we can stand up a staff and get that office going.

COONS: Great. Thank you, Mr. Attorney General.

Thank you, Mr. Chair.

DURBIN: Thank you, Senator Coons.

The committee is going to stand in recess for five minutes. When we return, Senator Cotton is up, if he is here. If not, Senator Kennedy.

(RECESS)

DURBIN: Senate Judiciary Committee will resume.

Senator Cotton is recognized.

COTTON: Judge Garland, on May 11th, Tony Fauci testified that his agency, quote, "has not ever and does not now fund gain-of-function research in the Wuhan Institute of Virology." Last week his agency admitted that they had in fact funded gain-of-research (ph) in the Wuhan Institute of Virology. Are you investigating Tony Fauci for lying to Congress?

GARLAND: There's a long-time rule in the Justice Department not to discuss pending investigations, potential investigations.

COTTON: OK. That's fine. That's fine. Do you believe Tony Fauci was truthful when he said his agency had never funded gain-of-function research?

GARLAND: This is outside of my scope of...

(CROSSTALK)

COTTON: OK. Let's turn to your outrageous directive siccing the feds on parents at school boards across America. When you crafted that October 4th memo, did you consult with senior leadership at the FBI?

GARLAND: My understanding was that the memo or the idea of the memo had been discussed with the FBI before it...

(CROSSTALK)

COTTON: Did anyone at the FBI express any doubt or disagreement or hesitation with your decision to issue that memo?

GARLAND: No one expressed that to me.

COTTON: No one?

GARLAND: To me, no one expressed that to me, no.

COTTON: Because a lot of them that contacted us and they said they did, Judge.

GARLAND: I'm sorry?

COTTON: A lot of FBI officials have contacted my office and said that they oppose this decision.

GARLAND: Well, I doubt any of them spoke to me about it because I didn't speak to -- no one...

COTTON: All right.

(CROSSTALK)

COTTON: All right. Judge, you've repeatedly, you've repeatedly dissembled this morning about that directive. For instance, about the National Security Division, Chuck Grassley asked you a very simple question, why you would sic the National Security Division of the Department of Justice on parents. John Cornyn asked you the same thing. You said it wasn't in your October 4th memorandum, it was in another office's memorandum. It wasn't another office's memorandum, Judge, it was in a press release from your office. Right here in front of me, October 4th, 2021, for immediate release. You were going to create a task force that includes the National Security Division. What on earth does the National Security Division have to do with parents expressing who are disagreements at school boards?

GARLAND: Nothing in this memorandum or any memorandum is about parents expressing disagreements with their school boards. The memorandum makes clear that parents are entitled and protected by the First Amendment to have vigorous debates. We don't -- the Justice Department is not interested in that question at all. It is...

(CROSSTALK)

COTTON: OK. So even in that case, what is the National Security Division, Judge, the National -- these are people that are supposed to be chasing jihadists and Chinese spies. What does the National Security Division have to do with parents at school boards?

GARLAND: This is not, again, about parents at school boards. It's about threats of violence.

COTTON: OK. Let me turn to that, because you've said that phrase repeatedly throughout the morning. Threats -- violence and threats of violence. Violence and threats of violence. We've heard it a dozen times this morning. As Senator Lee pointed out, the very first line in your October 4th memorandum refers to harassment and intimidation. Why do you continue to dissemble in front of -- of this committee that you are only talking about violence and threats of violence when your memo says harassment and intimidation?

GARLAND: Senator, I said in my testimony that it involved other kinds of criminal conduct. And the -- and I explained to Senator Lee that the statutory definitions of those terms and the constitutional definitions of those terms involve threats of violence.

COTTON: OK. Let's look at one of those statutes you cited, Section 223.

GARLAND: Yes.

COTTON: That statute covers the use of not just telephones but telecommunications devices to "annoy," to annoy someone. So are you going to sic your U.S. attorneys and the FBI on a parents group if they post on Facebook something that annoys a school board member, Judge?

GARLAND: The answer to that is no. And the provision that I was particularly drawing to his attention was 2261A, which was to engage in...

COTTON: I wasn't talking about 2261A. I know you mentioned that. You also mentioned 223. That's what I mentioned.

GARLAND: Yes. But the only kinds...

COTTON: OK. Judge, you also told -- you also told Senator Klobuchar that this memorandum was about meetings and coordination.

GARLAND: Yeah.

COTTON: Meetings and coordination.

GARLAND: Yeah.

COTTON: What I have in my hand right here that I'll submit to the record, a letter from one your U.S. attorneys to all of the county attorneys, to the attorney general, to all sheriffs, to the School Board Association of this state in which he talks about federal investigation and prosecution. It's not about meetings. It's not about coordination; It's about federal investigation and prosecution.

GARLAND: I...

COTTON: Did -- did you direct your U.S. attorneys to issue such a letter?

GARLAND: I did not. I have not seen that letter. My memo...

COTTON: It's got three pages. It's got three pages...

GARLAND: Well, my memo -- my memo...

COTTON: ... and a spreadsheet...

GARLAND: ... my memo...

COTTON: ... about all the federal crimes that a -- that a parent could be charged with, to include the ones you cited. Did -- did...

GARLAND: My -- my memorandum...

COTTON: Did main Justice make this spreadsheet, Judge?

GARLAND: I don't have any idea.

COTTON: Did...

GARLAND: My memorandum speaks specifically about setting up meetings -- and I'll just read it again -- convene meetings...

COTTON: Judge, we've -- we've all read your memorandum. We've also...

GARLAND: Well, then you know what it's...

COTTON: ... heard you dissemble about your memorandum. I have -- I have, and the record now shows one of your U.S. attorneys sending out a letter about federal prosecution and investigation, and lists in detail the federal statutes for which you could be prosecuted.

Judge, you talked a lot about intimidation and harassment. Have you issued a memorandum like your October 4th memorandum about the Black Lives Matters riots from last summer?

GARLAND: You're talking about the -- the summer of 2020, in the summer of 2020, the...

COTTON: A lot of crimes committed. People haven't been (inaudible) yet.

GARLAND: And there are a lot of prosecutions, and they were under the previous administration.

COTTON: OK, Judge, what about this?

GARLAND: A lot of (inaudible)...

COTTON: It -- it is no doubt you're -- you -- you're -- even though parents at school boards aren't within federal jurisdiction, there's no doubt that federal officials are. You keep saying "senators". Have you started an investigation into the harassment of Senator Kyrsten Sinema in a bathroom, in a bathroom, because she won't go along with the Democratic Party's big tax-and-spend agenda? That is a sitting United States senator being harassed in a bathroom.

GARLAND: I don't know whether the senator has referred the matter to the Justice Department or not.

COTTON: You've cited, as the basis for that directive, the National School Board Association's letter of September 29th. Was that directive being prepared before September 29th, before the School Board Association letter was issued?

GARLAND: I don't believe so. Certainly, I didn't have any idea if (inaudible)...

COTTON: So it was only prepared at -- OK, I think that answers the question.

GARLAND: I already answered that. It was before...

COTTON: So you -- you keep citing the school board letter and news reports, news reports.

GARLAND: That's right.

COTTON: One of the news reports cited in that letter, which you presumably mean, is from Loudoun County, Virginia.

GARLAND: No, that's not...

COTTON: So...

GARLAND: That is not the -- what I was talking about. I was talking about...

COTTON: Well, you keep citing news reports...

GARLAND: (inaudible)...

COTTON: ... and that's the most prominent news report that anyone in America has seen. That refers to Scott Smith, whose 15-year-old daughter was raped. She was raped in a bathroom by a boy wearing girls' clothes, and the Loudoun County School Board covered it up because it would have interfered with their transgender policy during Pride Month. And that man, Scott Smith, because he went to a school board and tried to defend his daughter's rights, was condemned internationally. Do you apologize to Scott Smith and his 15-year-old daughter, Judge?

GARLAND: Senator, anyone whose child was raped, as -- as a -- most horrific crime I can imagine, and is certainly entitled and protected by the First Amendment to protest to their school board about that.

COTTON: But he was cited by the School Board Association...

GARLAND: I'm trying to (inaudible)...

COTTON: ... as a domestic terrorist, which we now know, that letter and those reports were the basis for your...

GARLAND: No, no, Senator.

COTTON: This -- this is...

GARLAND: That's wrong.

COTTON: ... shame -- Judge, this is shameful.

GARLAND: That's...

COTTON: This -- here -- this testimony, your directive, your performance is shameful.

GARLAND: OK. That's not...

COTTON: Thank -- thank God you were not on the Supreme Court.

GARLAND: That...

COTTON: You should resign in disgrace, Judge.

DURBIN: General Garland, do you want to complete your answer on...

GARLAND: OK, I wasn't sure there was a question there, but let me be clear: The -- the news reports I'm talking about were not the news reports in that letter. They were other news reports that everybody here has heard about, subsequent reports that everybody has heard about.

We are -- there is nothing in this memorandum -- and I wish if senators were concerned about this they would quote my words. This memorandum is not about parents being able to object in their school boards. They are protected by the First Amendment. As long as there are no threats of violence, they are completely protected. So parents can object to their school boards about curriculum, about the treatment of their children, about school policies -- all of that is 100 percent protected by the First Amendment, and there is nothing in this memorandum contrary to that. We are only trying to prevent violence against school officials.

Thank you.

COTTON: (OFF-MIKE) I'm done.

DURBIN: Senator Hirono?

HIRONO: Thank you, Mr. Chairman. I'd like to insert into the record the Washington Post article by Salvador Rizzo that is entitled, "The False GOP Claim that the Depart -- Justice Department is Spying on Parents at School Board Meetings." I'd like to insert this article into the record.

DURBIN: Without objection.

HIRONO: It's good to see you, Mr. Attorney General.

GARLAND: Thank you, Senator.

HIRONO: I will quote from the first sentence of your memo: "In recent months, there has been a disturbing spike in harassment, intimidation and threat of violence against school administrators, board members, teachers and staff who participate in the vital work of running our nation's public schools." This is a fact. We have all seen the news coverage of people actually threatening to hurt school board members for going about their jobs. That is a fact.

So when I listen to my Republican colleagues going on about the -- the intent of this memo, I'm again reminded of, they often take the position to not believe what we -- that we should all not believe what we see with our own eyes. It's like characterizing the January 6th insurrection as just a bunch of tourists visiting the Capitol. Give me a break.

We now see a Supreme Court weaponized to support the position of the most conservative causes. We see a rush to the Supreme Court on cases involving abortion rights, gun rights, LGBTQ rights, voting rights, union rights. Thank you, Mr. Attorney General, for making the protection of our civil rights one of the department's core priorities.

I want to turn to the need to combat hate crimes. It's been about five months since President Biden signed the COVID-19 Hate Crimes Act into law, and I sent a letter to you last month requesting an update on the department's implementation of the act and its efforts to reduce hate crimes and hate incidents, yet another thing that we have all seen with our own eyes, the rise in hate crimes during this period of the pandemic. Mr. Attorney General, would you briefly describe the actions that you and the department have taken thus far to implement the COVID-19 Hate Crimes Act?

GARLAND: Thank you, Senator.

Even before the act, I had issued a memorandum within the department to assess how we were dealing with hate crimes and to better organize the manner in which we were doing that. And then we're grateful that the Congress passed the COVID-19 Hate Crimes Act. Since then, I issued an -- a -- a subsequent memorandum based on what the associate attorney general and the deputy attorney general had provided in terms of the department's progress under that act, and I believe we have now implemented everything that was required of us in the act.

GARLAND: But that, of course, doesn't mean we've solved hate in America, but we have done the things that the statute has asked us to do. We have -- I've appointed a coordinator for all hate crimes matters. I've appoint -- I've -- I've appointed an expediter in the Civil Rights Division's Criminal Section to expedite our investigations, we've established a task force of federal law enforcement and U.S. Attorneys' Offices, meeting with state and local law enforcement, to coordinate, to explain, to develop strategies with respect to hate crimes, we've had trainings for state and local, territorial and tribal law enforcement to help them recognize these circumstances, we've asked -- we've established a language coordinator facilitator so that our -- our memorandum and press releases in these regards can be translated appropriately, and we've asked for a -- considerable additional funds in our appropriations so that we may give more money to state and locals, tribal and territorial law enforcement to assist in these matters.

HIRONO: I appreciate the -- the efforts you have -- you have taken and I -- I -- I think that this will result in, of course, some factual information about the -- the -- the extent of hate crimes and incidents in our country so that we can better prevent and prosecute (ph) as appropriate.

You've been asked before -- I think in -- in the House hearing -- about the China Initiative. If we end the China Initiative, will we no longer go after economic espionage and IP theft by China?

GARLAND: There are -- there are two issues here that we always have to keep upper-most in our mind. One is that the -- the People's Republic of China is a serious threat to our intellectual property. There is -- they represent a serious threat with respect to espionage, they represent a serious respect with respect to cyber incursions and ransomware in the United States, and -- and we need to protect the country against this, and -- and we will and we are -- are bringing cases in that regard.

The other thing that always has to be a -- a -- remembered is that we never investigate or prosecute based on ethnic identity, on what country a person is from or came from or their family.

HIRONO: Thank you. I'm sorry, were you...

GARLAND: That's all right.

HIRONO: ... were you done?

GARLAND: Yeah.

HIRONO: The reason I ask about the China Initiative is that under the previous administration, which instituted this so-called initiative, that there appears to have been racial profiling, which basically ruined the lives of a number of Chinese people.

And I want to give an example -- the Justice Department -- previous administration -- dragged Dr. Anming Hu, a professor at the University of Tennessee, through a two-year espionage investigation, causing him to lose his job.

At the end of the investigation, DOJ lacked any evidence of espionage and instead charged Dr. Hu with wire fraud and false statements for apparently failing to disclose his association with a Chinese university on a NASA grant application.

His trial ended in a mistrial, after which a juror said she was, quote "pretty horrified by the lack of evidence," end quote. When DOJ sought a new trial, the District Court granted Dr. Hu's motion for an acquittal, finding no harm to NASA and no evidence that Dr. Hu knew NASA's funding restriction applied to Chinese universities.

So I would say from your answer that regardless of whether we have something called the Chinese Initiative, you have no intention of not paying attention to espionage and other bad acts by China. So I say we should get rid of this -- this -- what -- this initiative that results in racial profiling.

Thank you, Mr. Chairman.

DURBIN: Senator Kennedy?

KENNEDY: Good morning, General.

GARLAND: Good morning, Senator.

KENNEDY: General, I'm looking at this letter from one of your U.S. Attorneys from October of this year, where you wrote to the Montana Attorney General, all the county attorneys and all of the sheriffs in his jurisdiction, suggesting ways that parents could be prosecuted, that school board mayor -- or for -- for appearing at school board meetings in accordance with your directive.

And one of the suggestions made by your U.S. Attorney is "parents can be prosecuted for repeated telephone calls," not threatening anyone, just on the theory that repeated telephone calls could be harassment. Really?

GARLAND: Senator, I haven't seen that memorandum. I've -- I've tried to express as clearly as I can here...

KENNEDY: I -- I -- I heard you, General, but this is one of your U.S. Attorneys.

GARLAND: Again, I haven't seen...

KENNEDY: (inaudible) General, you're just (inaudible) let me tell you what I'm talking about. With respect to the National School Boards Association letter, you're just a vessel, aren't you?

GARLAND: Well, I'm not sure what you mean by that, but I signed this memorandum, I worked on this memorandum, and this memorandum is my memorandum.

KENNEDY: Well, let me -- let me tell you what I mean. We -- we know...

GARLAND: ... school board.

KENNEDY: ... that the National School Board Association was upset because parents were coming to school board meetings to object to the teaching of critical race theory. We know that in drafting the letter, the National School Board Association collaborated with the White House. For several weeks, they worked on it together. And we know the National School Board Association wants the White House and the -- the association who were (ph) happy with the letter -- the National School Board Association sent the letter to the White House and the White House promptly called you and said "sic the FBI on parents at school board hearings."

And that's what I mean, that -- that -- that -- the -- the -- the White House is the prophet here, you're just the vessel. Isn't that correct?

GARLAND: Senator, I did not speak with anyone from the White House as -- while I worked on this memorandum. This memorandum reflects my views, that we need to protect public officials from violence and threats of violence while at the same time protecting parents' ability to object to policies...

KENNEDY: I -- I get that, I -- I heard your testimony. Were -- were you worried that you would be fired if you didn't issue the memorandum?

GARLAND: Senator, I'm not -- I -- I -- I decided on this memorandum on my own. I don't care -- I -- I said from the very beginning I've taken this job to protect the Department of Justice, to make independent determinations with respect to prosecutions and investigations, and I will do that.

KENNEDY: OK. Let -- let -- let -- sorry to interrupt, General, but I don't have much time.

Now when you -- when you got the letter that -- from the White House that prompted your memorandum to give the FBI new duties and making sure our parents aren't dangerous domestic terrorists, you didn't investigate before you issued your memorandum the incidences cited in the letter. Did you?

GARLAND: Look I took the -- a statement by the National Association, which represents thousands of school board members, when they said that they were facing violence and threats of violence, and when I saw on the news media reports...

KENNEDY: Yes, but you didn't investigate the incidents in the letter. Did you?

GARLAND: No, this is the first step. This is an assessment step that comes before investigations. The purpose...

KENNEDY: Right. Before you issued your memo you didn't investigate the incidents.

GARLAND: The memo is intended to begin assessments. It is intended...

KENNEDY: And, in fact, most of the incidents in the letter did not involve threats of violence. Did they?

GARLAND: I think that's correct. Most of them did not, and they would not be covered by either federal or state law. I agree with that, and they would be protected by the First Amendment, but threats of violence are not covered by the First Amendment...

KENNEDY: Can we agree that we have thousands -- tens of thousands, maybe hundreds of thousands of kids growing up today who are more likely to commit a crime than -- and go to jail than own a home and get married?

GARLAND: I don't -- I don't know about the comparative statistics. I do know there are too many people who are committing crime.

KENNEDY: And one of the reasons for that is lack of parental involvement. Isn't it?

GARLAND: I think parental involvement is essential. I think it's the key both to bringing up good kids.

KENNEDY: So why do you want to issue a memorandum, listing incidents that you did investigate...

GARLAND: My...

KENNEDY: ... that anybody who has any fair-minded knowledge of the world knows is going to have a chilling effect on parental involvement with respect to what their kids are learning at school?

GARLAND: I just want to be clear, again, Senator. My memorandum did not list any of those incidents.

KENNEDY: Come on, General. We both know this had a chilling effect. You don't think there are parents out there in the real world that said, "Oh my God, maybe we shouldn't go to the school board meeting. There'll be FBI agents there"?

GARLAND: My...

KENNEDY: We live in a -- this isn't la-la land.

GARLAND: I tried to make clear -- as clear as I could and now I have subsequently made clear in every public statement on the matter...

KENNEDY: Your actions made it clear, General. Let me ask you one last question. When men follow a United States Senator, who happens to be a female, into a women's room harass her about her beliefs, why is that just part of the process as President Biden says? But when a parent goes to a school board meeting to protest that her child is being taught that babies can be white supremacists is subject to FBI prosecution?

GARLAND: the description that you just gave, that parent is not subject to FBI investigation. There's nothing in this memorandum that suggests this. We protect United States senators against threats of violence...

KENNEDY: You did a good job with Senator Sinema.

GARLAND: Within the last month we have indicted somebody who made threats of violence against both Alaska U.S. senators. Recently, we just issued -- we just indicted somebody else who made threats...

KENNEDY: Can I ask one more, Mr. Chair?

HIRONO: Can you wrap up please, Senator Kennedy?

KENNEDY: I'm sorry?

HIRONO: Could you wrap up? I am chairing this...

KENNEDY: Oh. Yes, ma'am. I will out. I'm just going to ask one last one. What led you to conclude before you issued your memorandum siccing the FBI on parents that law enforcement at the state local level couldn't handle it?

GARLAND: Let me be clear, Senator, we did not sic the FBI on parents. That's not what this memorandum is about, nor did we conclude that local law enforcement is unable to deal with the problem. The purpose of this memorandum is for our federal law enforcement to engage with state and local and determine whether they need assistance.

KENNEDY: And you don't think this had any chilling effect whatsoever on parents out there?

GARLAND: The memorandum expressly says at the beginning that it is aimed at violence and threats of violence and expressly says that robust public debate about school policies are protected.

KENNEDY: Right, right. Well I like you, General, a lot, but...

HIRONO: Thank you...

KENNEDY: ... on this issue you've turned into someone you said you wouldn't be.

HIRONO: I recognize Senator Booker. Please proceed.

BOOKER: General, I want to start with an area of bipartisan support. It seems to be what we're getting towards. Today's 35th anniversary of the Antidrug Abuse Act, which established vastly different sentences for crack and powder cocaine. We are seeing a wonderful convergence in Congress, most recently in the House of Representatives, where you had this wide bipartisan vote. I'm not sure if there's been a bigger bipartisan vote this year where 149 Republicans voted along with almost all the Democratic Caucus to up to address this disparity.

The effect of that law was 100 to 1, the work of, again, bipartisan senators here negotiate -- led by Senator Durbin negotiated the Fair Sentencing Act, which was a change of that disparity from 101 to 18 to 1.

Senator Durbin and I now have introduced something called the EQUAL Act, which has already been passed by the House. We've got Republicans and Democrats on board. Tillis, Leahy, Paul, Graham as well as of my colleague, Senator Ossoff, on my side of the aisle.

The President Biden publicly supported the bill and, again, I just think this should be an area that is obvious accord, but I really want to know your opinion. Do you agree that it's time to end the sentencing disparity between crack and powder cocaine, especially given the disparate impact it has on people of color? And if you believe that, why do you believe that?

GARLAND: Yes, I do believe that, and the Justice Department supports that bill. It supports equal treatment of the crack and powder cocaine. The Sentencing Commission has over the last decade, maybe more than that, produced a series of reports which undercut what was supposed to be the scientific basis for the distinction between the two. And it's made quite clear that there is no warrant basis for distinguishing between the two.

So once that is undercut there can be no grounds for that. On the other hand -- on the other side not only are there no grounds for it. It clearly does have a disparate impact on communities of color, also clearly recognized by the Sentencing Commission statistics.

You have that kind of circumstances. There's no justification for this and we should end this.

BOOKER: I appreciate that.

One last just clarification. While there is a lot of unanimous support for this on both sides of the aisle -- a lot of support for it on both sides of the aisle, there are some people that -- that worry about it somehow affecting crime or crime rates. Could you discuss your opinion of that perspective?

GARLAND: Well, I think powder cocaine is as dangerous with respect to crime rates as crack cocaine, both of which have now been unfortunately overtaken by fentanyl and -- and the opioids. But both of those are bad problems from the perspective (ph) of crime, but equalizing penalties for crack and powder should have no difference with respect to our ability to fight violent crime or to cut crime (ph)...

(CROSSTALK)

BOOKER: Could I -- thank -- thank you, sir. I appreciate that, you saying it for the record. Can I revisit what Senator Durbin brought up at the top? And this is a letter that he and I sent you regarding the -- the people that are currently on home confinement.

In the last days of the Trump administration on January 15, 2021, the Justice Department's Office of Legal Counsel issued a memo arguing that the BOP must re-incarcerate everyone on the CARES Act home confinement at the end of the covered emergency period if they do not otherwise qualify for home confinement.

Now, these are folks that were pretty extremely scrutinized beforehand. They've been returned to their communities. They have been re-engaging with family, with children. They have -- are folks that are not showing any criminal activity or any problems.

Senator Durbin and I really believe and we were urging the Department of Justice to rescind this Trump-era memo which incorrectly concludes that people who have been released to home confinement and who have abided by the conditions of their relief -- release (ph), must be torn away from those families and go back to BOP custody.

And so, I just really would love to know where you stand on this issue. To me, it's -- it's an issue of justice. It's an issue of restorative justice. It's an issue of compassion and understanding the collateral consequences of ripping people back and putting them in prisons unnecessarily, not to mention the cost to taxpayers. Clearly I have my opinion, but I'd like to hear yours.

GARLAND: Look, I -- I -- I agree with you. It would be a terrible policy to return these people to prison after they have shown that they are able to live in home confinement without violations.

And as a consequence, we are reviewing the OLC memorandum that you spoke about. We are also reviewing all of the (ph) other authorities that Congress may have given us to permit us to keep people on home confinement. And as you know, we are also -- and the president is reviewing the extent of his clemency authority in that respect.

BOOKER: How -- how long should we expect that review before you make a determination?

GARLAND: Well, I can't say exactly, but we...

(CROSSTALK)

BOOKER: Am -- are we talking six months or -- or less than six months?

GARLAND: I'm not -- I'm not exactly sure how long that will take. It may require rulemaking and -- and so that may take more time.

But we can be sure that it will be accomplished before the end of the CARES Act provision, which extends until the end of the pandemic. And so we are not in a circumstance where anybody will be returned before we have completed that review and implemented any changes we need to make.

BOOKER: OK. And then in regards to just compassionate release in general, will the Department of Justice consider filing motions for individuals on home confinement who reside in judicial districts like the 11th Circuit, where courts have interpreted compassionate release statutes to cover medical, age, and family circumstances grounds?

Obviously, there is still a pandemic and we know that putting people into environments greatly increases their chances. I'm concerned about restrictions on compassionate release in places like the 11th Circuit.

GARLAND: So this is something I haven't thought about, senator. We -- I guess the Bureau of Prisons, which is the agency that -- that decides those questions, has to have a uniform policy across the country. I hadn't thought of the possibility of making distinctions based on which circuit. Because you're quite correct, the different circuits have different views about the scope of compassionate release. I'll take that back for consideration, if it's all right with you.

BOOKER: All right. I have some concerns about FIRST STEP Act implementation, which I'll ask in writing to you. I want to be respectful of my colleague, my friend, the senator from the great state of Oklahoma.

SASSE: Ouch.

BOOKER: I'm sorry, sir, I -- forgive me, Omaha.

SASSE: Omaha's not a state, brother.

BOOKER: I'm sorry. Where are you from, sir?

SASSE: We used to be able to beat Stanford in football and we will return.

Chairwoman?

HIRONO: (OFF-MIKE)

SASSE: Thank you. Sorry, Cory's not as funny as -- as I thought he would be there.

Attorney General, I know you're tired of talking about the memo...

GARLAND: I'm not.

SASSE: ... but -- did you say you're not?

GARLAND: I'm -- I'm happy to answer any questions you have, sir.

SASSE: I think most of us and most of the American people are just sort of flabbergasted if your answer is you have no regrets about this memo. Is that what you're telling us? You think this was wise?

GARLAND: Senator, the obligation of the Justice Department is to protect the American people against violence, including threats of violence, and that particularly includes public officials.

I think that is still a concern for the department. This memo doesn't do anything more than ask our -- our law enforcement to consult with state and local law enforcement to determine whether they need assistance in this regard and whether there are any federal jurisdictional issues involved. But it (ph)...

SASSE: General...

GARLAND: ... recognizes the right...

(CROSSTALK)

SASSE: ... you -- you and I both know that it is political hackery that brought that topic to your desk, not reality. I am strongly against all violence against everyone in public life and all threats of violence. You've not at any point here given us any data that show why this would, in any way, be a federal priority at this time.

The chairman -- not here right now, but Chairman Durbin has repeatedly talked about how this morning he googled it and is pretty convinced there must be lots of threats. Can you help us understand why so many states are disconnecting their organizations from the National Association of School Boards?

You -- you are aware that the National Association of School Boards has recanted of the memo, correct? You know they've rejected their own letter to you, are you aware of that?

GARLAND: I read their letter. Their letter doesn't recant their concerns about safety. It recants some of the language in their letter...

(CROSSTALK)

SASSE: We're all for safety.

GARLAND: ... I -- which I did not adopt. The language that they have recanted, I never adopted and never would adopt.

SASSE: Why did the Ohio School Boards Association sever their relationship with the National School Boards Association?

GARLAND: I don't know and...

(CROSSTALK)

SASSE: Why did the Missouri School Boards' Association sever their relationship with the National School Boards Association? Why did the Pennsylvania School Boards Association sever their relationship with the National School Boards Association? Because this was political hackery, the kind of stuff you told us when you were seeking confirmation that you would be against.

And you had the audacity to begin your opening statement today by telling us one of your big three priorities was to make sure communications between the White House and the Justice Department were not politicized. The last three administrations in a row have politicized the Department of Justice, the three including you now.

You told us one of your priorities in running DOJ was to reject these kinds of politicization we saw in the Trump DOJ and in the Obama DOJ. You told us that was one of your priorities.

You wrote a memo here that came from political staffers who've been rejected by organization, coordinating with the White House to try to exaggerate a threat so that they could make sure parents felt intimidated.

SASSE: You've told us -- I wouldn't use the exact language Senator Kennedy used about -- that you were a vessel, but one of two things is true here. Either you were just a vessel of political comm (ph) staffers at the White House or you, yourself, are in favor of politicizing the DOJ.

You told one of my colleagues a minute ago that you've not read the memo from the U.S. Attorney from Montana. I'll read it to you, if you want, or I'll bring it to you and you can read it. This is one of your direct reports. It's an insane letter.

The U.S. Attorney from Montana takes as (ph) predicate for why he's doing what he's doing, your memo, and on October 14th, he sends a list of all of the counterterrorism statutes that should be considered to be used against parents who are upset about things that might be happening at their school boards.

Maybe there's lots of specific evidence of violence being threatened against school board members in Montana but he -- his memo -- or his response to your memo includes a letter where he says that "anonymous telecommunications harassment, repeated telephone calls, or repeated harassing communications should be things that are potentially brought up as the basis for federal charges against parents."

Do you agree with this letter of October 14th?

GARLAND: Senator, I'm going to say again this is aimed at violence and threats of violence, and I don't care whether they come from the left or from the right or from up or from down, I don't care if they're in favor of curriculum or against a -- particular kinds of the curriculum. We can imagine this -- all these kind of -- these arguments against school boards coming from either the left or the right. It doesn't matter.

Arguments against school boards are protected by the First Amendment. Threats are not protected by the First Amendment. And we -- I -- we've got -- we received a letter from the National Association of School Boards. No reason to believe...

SASSE: No, you didn't receive an anonymous letter. White House political staff co-wrote it with this organization, which is why the organization has rejected it. You know these facts now to be true and yet you still won't disavow your memo. Why?

You didn't receive some objective, neutral letter because all these people were being threatened, you are the -- you are responding to a political campaign to politicize the Department of Justice. How big is the threat that American parents pose right now?

When you -- you lead a big organization, you have 100,000 plus employees. You have a lot of violence to go after. Are parents at school boards one of the top three concerns you face right now?

GARLAND: This memorandum is not about parents at school boards. It doesn't matter whether they're parents or anyone else. It has to do with threats against public school teachers, public officials -- school officials. It is not political...

SASSE: I'm against all those threats. I want to know what the data is.

GARLAND: Well, I don't need data in order to assess...

SASSE: To respond to a political staffer's campaign out of the White House?

GARLAND: The purpose of this memorandum is to get our law enforcement to assess the extent of the problem, and if there is no problem, if states and local law enforcement are capable of handling the problem, then there is no need for our involvement. If -- this memo does not say to begin prosecuting anybody, it says to make assessments. That's what we do in the Justice Department. It has nothing to do with politics.

SASSE: Will you report back to this committee with what you find about these threats? Because what you just said, I completely agree with -- we are against violence against public officials, you and I agree. We are against threats of violence against public officials, you and I agree. We are for local police powers investigating local crimes, and there are definitely yokels and idiots that make threats against lots of people in public life. I don't minimize it, you shouldn't minimize it. You're not minimizing it.

But we both believe -- and in your heart of hearts, I'm pretty sure you believe -- that local law enforcement is more than able to handle some one idiot or 12 idiots at school board meetings. But you made it a federal issue and I don't have any idea why and at no point today have you offered us a shred of data.

So my question is will you pledge you will report back to this committee with the results of your investigation about how big a threat the American parent class is to school boards in the country?

GARLAND: I -- I will be happy to get a report back to you but it -- this is not about the American parent class...

SASSE: I know, it's about the politicization of DOJ, and you decided to submit as a vessel, and you know better.

GARLAND: I'm sorry, but I don't agree with that, Senator.

HIRONO: (OFF-MIKE)

BLUMENTHAL: Thank you, Senator Hirono.

Welcome to our committee, Mr. Attorney General, and let me just begin by thanking you and your team for the sense of integrity and transparency that you brought to the Department of Justice after a time when the rule of law in the greatest law enforcement agency in the history of the world was gravely threatened by a lack of that dedication and commitment. I think it's very important, what you have done. Even though we may have differences of opinion, we may disagree, but nobody can doubt your commitment to the rule of law.

I want to ask you about a matter, I know you're familiar with it -- last month, the committee held a hearing on the FBI's mishandling of the Nassar investigation -- Larry Nassar, who was convicted of the most heinous kind of abuse with respect to young athletes and gymnasts particularly.

Four brave women shared their stories with us, they showed up to tell those stories, in spite of the very grave obstacles. The Inspector General concluded that two FBI agents made false statements during their investigation into Nassar and to the IG himself -- the Inspector General. During an investigation, the FBI agents lied. He referred those cases to the Department of Justice.

What I'd like to ask is that the Department of Justice now, in effect, show up by providing an explanation of whatever its decision is with respect to the prosecution of those agents. The Deputy Attorney General announced that the Criminal Division was conducting a new review, as you know, and that new information has come to light. While we wait for that review to be completed, what I am seeking from you is a commitment that you will explain the decision, when it's made. I recognize, as a former prosecutor, that declinations typically are not explained.

But the Justice Manual itself says that in criminal civil rights cases, quote "it is often the practice to send case-closing notification letters in cases closed with indictment or prosecution" because cases, quote "often spark intense public interest, even when they're not prosecuted," and that such letters are, quote "particularly encouraged in cases of police misconduct and other cases involving law enforcement officers, subjects," end quote.

In this case, we have exactly that situation and I'm asking for a commitment that you will provide an explanation for your decision.

GARLAND: Well, Senator, this -- this is a hard problem for us. The part of the manual that you're talking about is about violations of the Civil Rights Act and -- and what we're talking about here are false statements. Needless to say, if the results of this review is prosecution, that will become public.

On the question of how much or whether -- and how much we can say if all we do is decline, I'm -- I'm just going to have to take that back for consideration. I -- I take your point and I will think about it very carefully, as well the Criminal Division.

BLUMENTHAL: I understand you're not ruling it out but I'm going to continue to press for an explanation. I think the gymnasts deserve it, so does the American public. And I hope that you will make a decision to provide a full and complete explanation because I think the credibility of the decision will largely depend on it.

And let me just say in my view we need to do more than focus on the FBI agents that the inspector general referred for prosecution because this failure was and institutional failure. Institutional to the FBI, to USA Gymnastics and the entire Olympic system.

It was an institutional breakdown. And to date there's been no accountability for anyone in power. To that end I am announcing that in the Commerce Subcommittee that I chair, the Subcommittee on Consumer Protection, we're going to continue the work that Senator Moran and I began years ago.

We literally began years ago with the investigation and the Olympics reform legislation. We're going to engage in further oversight of the United States Olympic and Paralympics Committee, the national governing bodies and SafeSport to insure their purported commitment to safety is not an empty promise.

The gymnast have asked us, they deserve us -- they deserve it and we're going to fulfill that obligation. But in my view the Department of Justice has to do more as well, given the FBI's gross mishandling of the Nassar investigation.

I believe a new review of all of the information related to Nassar and the USOPC more broadly is wanted here because there are other examples of potential misconduct that deserve a fresh look.

For instance, Senator Moran and I referred the former CEO of the USOPC to the Department of Justice for potentially perjuring himself before our subcommittee in 2018. We don't know what, if anything, the Department did with that referral. We've heard virtually nothing.

In addition, the former U.S. attorney for the Southern District of Indiana, whose office was involved in the Nassar investigation is now representing one of the disgraced FBI agents. He's representing one of the FBI agents referred for prosecution. I don't know whether that's a violation of ethical rules or some other kinds of Department of Justice policies but it raises significant questions and the Department should have an interest in them.

So I hope that we can expect more from you by way of explanation and I hope that we can count on you for an -- a new review of the information related to the Nassar investigation, USA Gymnastics and USOPC to determine whether there are additional cases where prosecution is necessary to hold wrong doers accountable.

GARLAND: The institutional failure that you speak of is quite apparent. I -- I thought that the testimony by the gymnast was, as I said, heart retching. And they were courageous. The FBI director has adopted all of the recommendations of the inspector general and is putting them into affect.

And in addition, we have adopted new regulations, new authorities in the Department to be clear that if the FBI is investigating a case of assault on a child and determines that it no longer -- that it doesn't have jurisdiction, it immediate inform the relevant state or local prosecutors and law enforcement.

This is what didn't happen in the Nassar circumstance, and insure that that is done so that the state and local will be able to continue, likewise with respect to transfers from one FBI office to another -- another failure under those -- in that case, that those be monitors to insure that those transfers occurred. We take this extremely seriously.

What happened is just awful. And you have the commitment of the Justice Department and of the FBI director and of the FBI to make these kinds of institutional changes to insure that this doesn't happen again.

BLUMENTHAL: I appreciate those points but as you well know because of your own long and impressive record as a prosecutor, there's nothing like accountability individuals being held accountable to send a message, particularly deterrent message to an institution.

Thank you, Madam Chair.

DURBIN: Thank you, Senator Blumenthal.

And I have a list from the Republican side and this is the order they've given me, correct me if I'm wrong; Tillis, Blackburn, Hawley, and Cruz. We have two Democratic Senators who have not asked at this point. We'll wait to see if they arrive. Senator Tillis. Senator Tillis, I don't know if your mic's on.

TILLIS: Better?

DURBIN: Better.

TILLIS: You may regret it. But Mr. Attorney General, thank you for being here. You know in response to the memo, I know you've repeatedly said this is not about parents. Fifteen years ago I was PTA president at my daughter's high school. I participated in a lot of school board meetings and I still watch it on public access back in Mecklenburg County when I'm home.

The -- the basis for your memo was substantially the letter that you all received. Is that correct?

GARLAND: That was an important part of it, yes, Senator.

TILLIS: Do you -- do you think there was an empirical -- I -- I've seen some of the widely reported situations in some school board meetings but is there really any empirical basis for -- I've seen a lot of rocket school board meetings. I've participated in them.

Is there really any empirical basis? Did the DOJ do any real work outside of the public reporting to say that there's a disturbing trend that required they kind of what we consider to be overreach on part -- on behalf of the DOJ?

GARLAND: So as I've explained, what we looked at was the letter from an organization that represents thousands of school board members and school boards and public reports of threats of violence and even since then I have further read quite expressed threats of violence being reported...

TILLIS: What it -- Mr. Attorney General, I want to try and keep in time in deference with my...

GARLAND: Yes, I'm sorry.

TILLIS: ... my colleagues behind me.

TILLIS: But I -- I do -- I know that you've said it's not about the parents. But when the DOJ releases the memo, and I think even more importantly the press statement, I think that it does have the -- a chilling effect on parents being willing to go and express their concerns with the direction the school boards going. When all of a sudden you think that your words and this list of crimes that the department sent, I guess, to at least the state of Montana, others; it could have a chilling effect on people who legitimately have a concern they want to express it, but now they may think that they come crosswise with the FBI.

So I do believe that it will a chilling effect on people whose right they have to go in express their concerns like a Loudoun County; a ridiculous overreach.

I think that it will have the effect because the full force of the FBI is now something a parent has to think about before they go before a school board meeting to express their concerns and they get frustrated. Like I said they've raucous for decades and it will be raucous for decades to come.

So I do -- I really do believe that you should seriously consider rescinding, revising a statement out there that concerns me for the parents that I want to show to school board members and have the schools boards held accountable.

The other thing that we should talk about are the numerous examples of school board members getting caught saying audacious things. Because (ph) one thing you've seen over the past year, think about some of the provocative statements that they said. They thought they were behind closed doors but they were on the Internet basically ridiculing parents and pretending like they ball control over their children's education and their future.

We have got to get more parents engaged. And I think that the effect of DOJ action is the exact opposite of that. But most of my colleagues have covered my concerns and I agree with those that are expressed on my side of the aisle.

In response to Senator Graham on immigration, you said that you did go visit the border. It sounds like you were down there mainly from the perspective of your role in the DOJ. I understand the Homeland Security is primarily responsible but I would encourage you to go back down there. And maybe we could share with you our itinerary to talk about why I do believe it should be a great concern to the DOJ.

We have got almost 1.5 million asylum cases on the docket now. And it takes years to complete them. And about 80 percent them are adjudicated as not having a valid -- a valid claim. So doesn't that data lead you to suggest that the asylum system is being abused? I mean just -- that's data from the DOJ.

GARLAND: So Senator, I don't know for sure about the data. But the purpose of the -- of asylum adjudication is to adjudicate asylum.

TILLIS: Well and I understand that. But -

GARLAND: That allows them to make these -- this is a statutory question...

TILLIS: I'm not an attorney.

GARLAND: ... not the Justice Department.

TILLIS: I'm not an attorney, you're an accomplished judge. So I'm looking at this just from a practical standpoint. When the data says that over -- almost two million have crossed the border illegally since January and it is 80 percent likely that they're not going to have a valid asylum claim. How any reasonable person couldn't look at that and say something is being abused here. It's a gateway to get into this country, drift into the shadows and virtually never leave the country.

But here's the one that I'm most concerned with and why I think a briefing with the same people that we met with at the border. Many of the people on this committee were there when I was. Hundreds of got-aways a day getting across the border. And got-aways are not ones that the -- that want to be processed through asylum, they want to evade to detection, they want to drift in.

How on Earth can we assume that there's anything but a maligned purpose for them trying to evade detection? Otherwise you just get into the system, you're going to be here for years, you're going to abuse the asylum system. They're skirting it to the tune of a couple of hundred a night. And this has been going on for months.

TILLIS: So now we have thousands of people who came into this country. When the cartel set a pick (ph), they send about 50 people over to engage the Border Patrol so that they can send another couple of hundred into our society. They are drug traffickers, they are human traffickers, they are gun smugglers, they are gang members and they're coming by the thousands every month. That is a DOJ problem. That is a crime in our community's problem. And it's actually making the Hispanic, the majority of which are coming over are Hispanic, those communities less safe.

I would really encourage you to go back to the border and look at it from the perspective of your role as attorney general and the hundreds and the thousands of illegals who are coming across our border every day, many of them drifting in and evading detection and making our communities less safe.

I do have a number, I've got an intellectual property, a number of implementation issues that I'm going to submit for the record, but Mr. Garland we have a problem at the border and the DOJ has to engage and recognize a part of that problem you're going to have to fix. We got to stop the \$13 million a day that the cartels are getting for human trafficking, that's a documented number.

We've got to stop the tons of fentanyl and drugs that are poisoning Americans because we have an out of control border situation. This is a law enforcement issue. I understand it's an immigration issue, but we have to get you I think read up the same way that we were the last time we were at the border.

I would really encourage you to go back down there again, talk with the people on the ground and understand why this is going to make your job more difficult and it's already making America much less safe.

Thank you Mr. Chair.

SCHIFF: Senator Padilla.

PADILLA: Thank you Mr. Chair. Let me begin with a comment before I get to a few issues and a few questions, particularly in light of recent comments from some of my colleagues about immigration, migration, what is, what isn't happening. And I want to start by recognizing Senator Coon's remarks earlier who asked you about what you're doing to address the backlog in immigration ports, right?

What are the best, most, smart approaches to tackling unlawful migration is to improve the effectiveness, the efficiency of lawful migration. It's not just investing in immigration courts, but access to council. And I just want to add that these are issues that my office hears about on a very regular basis.

And so I was heartened that you'll be asking for additional resources to address those issues. This is certainly an area where money is needed to improve the processing of immigration cases while ensuring the due process.

Now to my questions. First, a response that I and several of my colleagues have been waiting on since April 15, when I and seven other members of Congress sent you a letter concerning the Department's funding and oversight of predictive policing tools, which are deployed by law enforcement throughout the country.

As we highlighted in that letter and I'm happy to provide an additional copy to you, we're concerned that the Department of Justice may be devoting precious taxpayer resources to ineffective tools and encouraging local law enforcement to also devote resources to unproven strategies.

We're still, those tools may be perpetuating a vicious cycle of discriminatory policing against historically marginalized groups. Because we have not yet received a response we do not know, for example, what if any conditions there are by the Department of Justice on the agencies and departments who deploy predictive policing tools with the aid of federal funds.

I find this unacceptable. So Attorney General Garland it's been over six months since our letter was sent to the Department of Justice and we have yet to receive an official response. Can you explain the delay in when we can expect a response?

GARLAND: I can't explain the delay. I don't know what the reason is. But I will immediately take this back and be sure that the Office of Legislative Affairs responds to your letter.

PADILLA: OK, we'll get you another copy of that letter before we leave here today. Next issue, as most I believe we should all agree we need an open and competitive economy that also works for workers.

We talk a lot about entrepreneurs and capitalism, consumer protection, but we need an economy that also works for workers and this demands the Department of Justice attention to combat artificially suppressed compensation, employer collusion and increasing inequality.

For example, non-compete clauses or no-poach agreements limit the ability of many workers to out our economy to switch to better paying opportunities or start their own businesses in a number of sectors.

Anti-trust protection for labor organizing does not yet explicitly extend to gig economy workers who are classified as independent contractors by their employers. And corporate consolidation can limit the pool of companies in a labor market competing to attract and retain workers.

Attorney General Garland, what is the Department of Justice doing to ensure that there's competition in our labor markets? And is this yet another area where the department needs additional resources to fulfill the mission laid out by President Biden?

GARLAND: Thank you for the question. The Justice Department's Anti-Trust Division agrees. I don't know if you can hear either. Agrees that competition in the labor markets is as much a part of the anti-trust laws as competition and product markets or consumer markets.

We have a number of investigations involved in those areas that you're talking about. We have a criminal case all public on the no-poaching issue. We have brought cases and investigations regarding allocations of labor markets. So, I think I can fairly say we agree with you that this an area of concern and it's an area of Anti-Trust Division focus.

The Anti-Trust Division does need more money and more lawyers and economists and investigators. It was down substantially, at one of the lowest headcounts in quite a number of years. We very much need to build that back. And that's why our FY'22 appropriations request asks for a substantial increase in money for the Anti-Trust Division.

PADILLA: Wonderful. I look forward to supporting those requests for additional resources. And finally, in the time remaining yet another topic, earlier this month this committee released a report detailing former President Trump's scheme to pressure the Department of Justice and overturn the will of the people who voted for now President Joe Biden so that he could serve again as president. The report outlined behavior that follows a pattern and a practice of intimidation, coercion and outright bullying by the former president's administration.

If we don't hold these bad actors accountable we face the possibility of eroding public trust in our institutions. Americans are looking for accountability and they're looking to you, Attorney General, as the leader of your agency to administer justice.

My question is this. Are you willing to recommit yourself to pursuing every possible avenue and every possible lead for holding those accountable who have used public office to undermine and demean our democracy?

GARLAND: So as a general matter, the answer, of course, is yes. I don't want to talk about specific investigations, except to point out what has already been stated publicly on the record, which is a component of the Justice Department, although an independent one.

The inspector general is examining the matters that you're -- about which you are speaking. And I have full confidence that he will advise me and the department of what he finds, and we will then take appropriate action.

PADILLA: Thank you, and just in closing I would hope that that would include review and consideration of allegations documented in a recent Rolling Stone article where participation in the lead up to January 6 and on January 6 is not limited to just White House officials but actual members of Congress as well. Thank you. Thank you, Mr. Chair.

DURBIN: Thank you. We're going to recognize Senator Blackburn and then take a five-minute break. Return, and then we have Senator Ossoff, Senator Hawley, Senator Cruz. And I'd just say to the two or three members who said they might be interested in a three-minute round, please be here. You have to be physically present because this has been a long day for all of us who've stayed here most the time, particularly for the Attorney General.

So Senator Blackburn and then a five-minute break.

BLACKBURN: Thank you, Mr. Chairman. And General Garland, thank you for being with us today. I have to tell you that is with much disappointment that I have watched the DOJ be so politicized and the way things have been carried out when you look at the memo to parents, you've heard a lot about that today and it's because we're hearing a lot about that.

And I just have to ask you knowing that you really help to bring to justice those that caused the Oklahoma City bombing would you really honestly put parents in the same category as a Terry Nichols or Timothy McVeigh?

GARLAND: My God, absolutely not.

BLACKBURN: Then why would you ever release a memo? I mean, did you write that memo? Did staff write that memo? What would have led you to do this? It is so over the top?

GARLAND: Senator, there's nothing in the memo that in any way draws any comparison anything like that. This memo is about violence and threats of violence. It's not...

BLACKBURN: Sir, I have to tell you that that may be your opinion and, you know, many times perception is reality and reading that memo myself, Tennesseans reading that memo, what they found in that memo, what they heard you say was if you show you up and you question these school boards you will be deemed a domestic terrorist. You could be investigated by the FBI.

I mean, the FBI has a lot of other things that they should be focusing on, and the FBI should be there looking at issues like China. Now the Knoxville FBI has been very concerned about China. So why -- give me a little update. What's the status of the China initiative at DOJ?

GARLAND: So Senator, The scope of Senator we are -- we regard People's Republic of China as an extraordinarily serious and aggressive threat to our intellectual property, to our universities, who are...

BLACKBURN: OK, that's - you're stonewalling me on that. We all they're an aggressive threat.

GARLAND: We continue to investigate...

BLACKBURN: OK.

GARLAND: ... PRC efforts to...

BLACKBURN: Do you see them as an adversary?

GARLAND: I see them as adversarial with respect to our ransom ware, with respect to hacking our...

BLACKBURN: OK.

GARLAND: ... with respect to counterintelligence, respect to counterespionage, and all those ways...

BLACKBURN: Well we know that over the last several months -- the last nine months several espionage prosecutions of researchers have been dropped or charges have been dismissed, including those of a U.T. professor at U.T. Knoxville and, of course, the Huawei case is there.

So this is in spite of the fact that Director Wray recently testified that the FBI opens a new Chinese espionage investigation every 12 hours. So are there apparent failures of the initiative? Is it a lack of leadership or is it a compromised position with the administration? Is it incompetence?

GARLAND: Every case is evaluated on its own with respect to the law and the facts. We continue to open cases involving the People's Republic of China daily as the -- as the director said. We will not in any way let up our concerns about...

BLACKBURN: OK.

GARLAND: ... Chinese...

BLACKBURN: All right. I want to move on. Glad to know you're not going to go soft on China because this administration is going soft on China. On your directive going back to the School Board Association and the directive that you sent out, the NSBA has apologized. Are you planning to apologize to the parents of this country? Moms and dads?

GARLAND: There is nothing in this memorandum that any parent should be concerned about.

BLACKBURN: There's a lot that parents should be concerned about it. Let me ask you about the Durham investigation because 44 senators joined me in a letter that we sent to you in August and we still have not received a written response from you on the status of the Durham investigation. So will you provide for me a written status report of the Durham investigation?

GARLAND: So the particular aim I think of the letter asked about the budget, and as I said at the House committee, Mr. Durham is continuing. And the only way he could...

BLACKBURN: We asked for a status update.

GARLAND: Well I...

BLACKBURN: And we also asked that the report be made public -- available to the public on the completion of this work. Will that be made public?

GARLAND: So on both of those questions, his budget has been approved as already announced...

BLACKBURN: OK.

GARLAND: And with respect to the report I would like as much as possible to be made public. I have to be concerned about Privacy act concerns and classification, but other than that, the commitment is to provide a public report. Yes.

BLACKBURN: Can you guarantee this committee and that as Special Counsel Durham has free reign to proceed wherever his investigation takes him without any political or otherwise undue influence or interference?

GARLAND: There'll be no political or otherwise undue interference...

BLACKBURN: OK, Susan Hennessey...

GARLAND: ... with Mr. Durham's investigation.

BLACKBURN: She -- Susan Hennessey was recently hired to work in your national security division. This is a troubling hire because of her political bias. She has made several comments that show she is incapable of working impartially on sensitive matters within the National Security Division, particularly on the Durham investigation. For example, December 1st, 2020, Ms. Hennessey stated, and I am quoting: "Durham has made abundantly clear that in a year-and-a-half he hasn't come up with anything. I guess this kind of partisan silliness has become characteristic of Barr's legacy, but unclear to me why Durham would want to go along with it," end quote.

So how can the American people be certain that she is going to be fair and impartial when she is on the record making those statements? So has she retracted that statement? And do you intend to ask her to retract that statement?

GARLAND: I have to confess, I don't think I've even ever met Ms. Hennessey, and she has nothing whatsoever to do with...

(CROSSTALK)

BLACKBURN: Well, you might want to look at her. She is there in your National Security Division. And she is very much opposed to this.

I want to thank you for your time. I am going to send a couple of questions to you for more complete answers. But I associate myself with the comments by my colleagues that the border issues have turned every town into a border town, and every state into a border state. The amount of drugs, the amount of trafficking that is flowing in here, talking to local law enforcement, the way they're looking at the cartels. Mr. Attorney General, there is a lot that needs to be done to secure this country, and the parents of the kiddos in our school, they are not the problem. There are other problems that need your attention.

DURBIN: Thank you, Senator Blackburn. The committee will stand in recess for five minutes.

(RECESS)

DURBIN: The committee will resume.

Senator Hawley?

HAWLEY: Mr. Chairman, did you call on me or Senator Ossoff?

DURBIN: Oh, I'm sorry. I'm...

HAWLEY: I'm happy to go, but...

DURBIN: I didn't see Senator Ossoff. I apologize. Senator Ossoff, then Senator Hawley.

OSSOFF: Thank you, Senator Hawley. Thank you, Mr. Chairman.

Attorney General, nice to see you. Thanks for joining us.

Last week, the Senate passed legislation that I introduced alongside Chair Durbin and Ranking Member Grassley, the Prison Camera Reform Act, to reduce violence and civil rights abuses in BOP facilities by overhauling the security camera system that I.G. Horowitz has found is outdated, unreliable, as well as the means of preserving and recording the footage from those systems. Do you agree that these reforms are necessary? And should this bill become law, will you commit to prioritizing the implementation of the requirements it imposes upon the BOP?

GARLAND: Yes and yes.

OSSOFF: Thank you, Attorney General.

Like to discuss with you staffing issues at the Bureau of Prisons. Earlier this year, the GAO, which, as you know, is a nonpartisan, independent watchdog, concluded that BOP lacks a reliable method for assessing the scope of staffing issues, or the impact on incarcerated populations and staff of staffing issues at BOP facilities. Do you agree the inability to reliably measure this problem impedes BOP's ability to address gaps, for example, shortages of medical staff, shortages of personnel who will help implement the FIRST STEP Act and anti-recidivism programs, as well as makes it more difficult for Congress to respond? And will you commit to working with my office to help identify where there's gaps in planning or budgeting or personnel management or the authorities that BOP has?

GARLAND: Yes, Senator, I -- I met with the comptroller general about this, about the -- various of his reports, and this one in particular, and I agree this is a serious problem at the Bureau of Prisons. The deputy attorney general has been working on this problem all -- for quite some time now, as she -- as she has of repeat meetings with the Bureau of Prisons to go over this issue with respect to staffing and assessment. And I'd be happy to have somebody on our staff meet with your staff.

OSSOFF: Thank you, Attorney General. The inspector general has determined that BOP lacks a clear and consistent policy for the use of solitary confinement in BOP facilities. Has BOP, to your knowledge, issued such a policy?

GARLAND: I don't know the answer to that.

OSSOFF: OK. Will you work with my office to determine whether they have and what may need to be done to ensure that they do?

GARLAND: Of course.

OSSOFF: Thank you. Attorney General, question about commercial data and its use in DOJ investigations. In 2018, the Supreme Court issued its *Carpenter versus United States* decision that government agents must obtain a warrant before collecting cellphone data that show the location of a device over a seven-day period. Of course, this data is widely available for many U.S. persons on commercial markets through data brokers and other technology companies. To your knowledge, do any federal agencies currently purchase data, or any DOJ components currently purchase data or contract for services that provide device location data from commercial vendors? Is this data used in investigations or prosecutions?

GARLAND: Well, I don't -- I don't believe that we purchase location data, but I'll be happy to look into that and -- and get back to that -- back to you on that, as well.

OSSOFF: I'd be grateful, because I think there are serious Fourth Amendment concerns there.

Would like to discuss the FISA process with you. In its report last month, the Office of the Inspector General noted that DOJ and FBI still had work to do to implement the I.G.'s recommendations to strengthen the review process for FISA applications to ensure they contain accurate information, and while this has unfortunately become a partisan issue over the last few years, it's fundamentally an issue of privacy, due process and the integrity of the Foreign Intelligence Surveillance Court and the applications it receives. The I.G.'s report notes that the FBI has not significantly changed the process by which a supervisor such as the assistant attorney general for the National Security Division reviews and documents the factual assertions made in FISA applications. And I discussed this issue with Matt Olsen when he was before the committee for his confirmation. So what steps is the DOJ taking to make substantive changes to the FISA review process and comport with the I.G.'s recommendations?

GARLAND: So I completely agree that this should not be a partisan issue. FISA, on the one hand, is extraordinarily important tool for our ability to protect the country against foreign enemies, and on the other hand, it's a tool that has to be dealt with -- with the most extreme care because we have to protect American citizens from unwarranted surveillance, nonjudicial surveillance.

I take the inspector general's report extraordinarily seriously. I believe the one you're talking about, though, refers back to events from 2020 and 2019. But regardless, we take this very seriously, and the FBI director does, as well. The National Security Division of the department reviews what the FBI is doing with respect to FISAs routinely, audits and analyzes them to be sure that they are following the -- the correct rules, and we intend to continue that kind of intensive review to ensure that -- of our internal regulations and the requirements of FISC are maintained. Thank you.

OSSOFF: Thank you, Attorney General, and I believe there is, within the last couple of months, some additional recommendations or concerns expressed by the I.G. about the implementation of changes pursuant to his prior conclusion, so...

GARLAND: So this must be the Woods -- I think this is the Woods files that you're talking about, and -- and again, quite...

OSSOFF: That's correct.

GARLAND: I -- I -- I quite agree that this has to be done better, that, as I think he said, it's a work in progress and there is certainly a -- considerably more room for improvement, and we are focused on making those improvements.

OSSOFF: OK, well, please know that there's bipartisan concern about -- about seeing those improvements implemented.

GARLAND: As there should be.

OSSOFF: A final question for you about press freedom. Mr. Attorney General, you issued a memo in July prohibiting the department from using subpoenas, court orders or warrants to obtain information on the confidential sources of reporters. And this new policy, as you defined it, offers broad protections for members of the news media, but does not qualify or define with specificity who qualifies as members of the news media. Is there a specific interpretation of that phrase that's been issued in internal department guidance?

GARLAND: So the answer to that is no. We have discussed this with representatives of the news media continuously and as part of our review for purposes of turning this memorandum into a regulation. We are continuing to discuss this. As you can imagine, it's very difficult to make that -- that kind of definition.

OSSOFF: But very important to get it right.

GARLAND: I -- I -- I'd completely agree.

OSSOFF: And I think my staff will likely ask yours for a briefing on the progress of your deliberations, and perhaps will weigh in.

Thank you for your service, Attorney General, and for your responses, and I yield back.

DURBIN: Thanks, Senator Ossoff.

Senator Hawley?

HAWLEY: Thank you very much, Mr. Chairman.

Attorney General Garland, on October 4th, you issued an unprecedented memo that involved the Department of Justice and the FBI in local school districts, local school boards. Nothing like it in our country's history. It was based, you've testified, on this letter from the National School Board Association that we now know the White House was involved in writing. They've retracted the letter. They've apologized for the letter. They say they regret the letter. But you won't retract the memo and said earlier that you have no regrets. And you've defended yourself repeatedly today before this committee by saying, well, you're focused on violence.

But now, of course, we have seen the memo from your own Justice Department advising state and local and other prosecutors about all of the different federal causes of action that they can bring against parents that are not about violence. They're about harassment and intimidation. I'm looking here at this memo. It identifies no fewer than 13 possible federal crimes involving harassment and intimidation, including making annoying phone calls. Do you think a parent who makes a phone call to a school board member that she has elected, that that school board member deems annoying, should be prosecuted, General Garland?

GARLAND: No, I don't. And the Supreme Court has made quite clear that the word "intimidation" with respect to the constitutional protection is one that directs a threat to a person with the intent of placing the victim in fear of bodily harm or death. Prosecutors who investigate these cases know the Supreme Court. This is a very famous...

(CROSSTALK)

HAWLEY: Ah.

GARLAND: ... case...

(CROSSTALK)

HAWLEY: But -- prosecutors do, but parents don't, General Garland. Do you think that a parent who looks at the 13 different federal crimes that your Justice Department has identified, they might be subject to and prosecuted for, like making annoying phone calls, do you think they're going to feel that they're welcome to speak up at a school board meeting?

How about this one? They could be prosecuted for using the internet, I guess that would be Facebook, in a way that might cause emotional distress to a victim. Is that a crime of violence?

GARLAND: Senator, I haven't seen the memo that you're talking about...

HAWLEY: Why haven't you?

GARLAND: ... and I don't -- and even from the description, it doesn't sound like it was addressed to parents. But if...

(CROSSTALK)

HAWLEY: No, it wasn't addressed to parents. It was addressed to prosecutors. That's the problem. Why haven't you seen the memo?

GARLAND: I don't know why I haven't. I don't look at every -- I do not get every memo that every U.S. attorney sends out. But if you're...

HAWLEY: Wait a minute, wait a minute, I just want to be sure I understand this. This is a memorandum that collects 13 different federal crimes parents could be charged with. It has "United States Department of Justice" on the top of it. And you're telling me you haven't seen it?

GARLAND: Who is the memo from, Senator?

HAWLEY: The United States Department of Justice, United States Attorney for the District of Montana.

GARLAND: I have not seen a memo from the District of Montana, I...

HAWLEY: Not high enough priority for you?

GARLAND: That's not the question. I don't...

(CROSSTALK)

HAWLEY: It is the question. Answer my question. Is it not a high enough priority for you when you're threatening parents with 13 different federal crimes? These aren't crimes of violence. You've testified today you're focused on violence. That's not what your U.S. attorneys -- they work for you, that's not what they're saying. You haven't seen it because it's not a high enough priority or what?

GARLAND: Not a question of priorities, no one has sent me that memo so I haven't seen it. I...

HAWLEY: What do you mean, no one has sent you the memo? You run the United States Department of Justice, do you not?

GARLAND: There are 115,000 employees at the Department of Justice.

HAWLEY: Indeed, and you are in charge of every one of them. And this...

GARLAND: I do not...

HAWLEY: ... was a sufficiently important case that you issued a memo. You, over your signature, issued a memo involving the FBI and the Department of Justice in local school boards, local school districts. Your U.S. attorneys are now threatening prosecution with 13 different crimes, but it's not a high enough priority for you? It got lost in the mix?

GARLAND: Once again, I have never seen that memo. It...

(CROSSTALK)

HAWLEY: That's what concerns me, General Garland.

GARLAND: Well, it wasn't sent to me. I hope you will assure your constituents that what we are concerned about here is violence and threats of violence.

HAWLEY: That only leads me to conclude...

GARLAND: That's the best...

(CROSSTALK)

HAWLEY: General Garland, all I can conclude from this is either that you're not in control of your own department or that, more likely what I think to be the case, is that you knew full well that this is exactly the kind of thing that would happen. When you issued your memo, when you involved the Department of Justice and all of its resources, and the FBI and all of its resources, and the local school boards and local school districts, you knew that federal prosecutors would start collecting crimes that they could use against parents. You knew they would advise state and local officials that these are all of the ways parents might be prosecuted. You knew that that was the likely outcome.

And that's exactly what has happened. And we're talking about parents like Scott Smith, who is behind me, over my shoulder. This is a father from Loudoun County, Virginia. Here he is at a school board meeting. He was forcibly restrained. He was assaulted. He was arrested. Why? Because he went to an elected school board meeting. He's a voter, by the way. He went to an elected school board meeting to raise the fact that his daughter was assaulted, sexually assaulted in a girls restroom by a boy. This is what happened to him.

Now you testified last week before the House that you didn't know anything about this case. I find that extraordinary because the letter you put so much weight on, the letter that has now been retracted, it cites this case. It cites Mr. Scott's (ph) case directly. There is a news article cited in the letter. It's discussed in the letter. But you testified you just couldn't remember it. Maybe this will refresh your memory. Do you think people like Scott Smith, do you think parents who show up to complain about their children being assaulted ought to be treated like this man right here?

GARLAND: Parents who show up to complain about school boards are protected by the First Amendment.

HAWLEY: Do you think that they ought to be prosecuted in the different ways that your U.S. attorneys are identifying?

GARLAND: If what they're doing is complaining about what the school board is doing, policies, curriculum, anything else that they want to, as long as they're not committing threats of violence, then they should not be prosecuted and they can't be.

HAWLEY: Let me ask you about this. Several of my Democrat (ph) colleagues have today, just today in this hearing, multiple times, have compared parents who show up at school board meetings, like Mr. Smith here, have compared them to criminal rioters. Do you think that's right? Do you think that a parent who shows up at a school board meeting who has a complaint, who wants to voice that complaint, and maybe she doesn't use exactly the right grammar, you think they're akin to criminal rioters, do you agree with that?

GARLAND: I do not. And I do not remember any senator here making that comparison.

HAWLEY: Oh really? These people are just like the folks who came here on January 6th in the riot at the Capitol?

GARLAND: I don't think they were referring to the picture that you're showing there.

HAWLEY: Well, I certainly would hope not. But they were referring to parents who go to school board meetings. Mr. Smith is a parent who went to a school board meeting. I'll leave it at this, General Garland, you have weaponized the FBI and the Department of Justice. Your U.S. attorneys are now collecting and cataloging all of the ways that they might prosecute parents like Mr. Smith because they want to be involved in their children's education, and they want to have a say in their elected officials. It's wrong. It is unprecedented, to my knowledge, in the history of this country, and I call on you to resign.

Thank you, Mr. Chairman.

DURBIN: Senator Cruz.

CRUZ: Thank you, Mr. Chairman.

For eight years under Barack Obama, the Department of Justice was politicized and weaponized. When you came before this committee in your confirmation hearing, you promised things would be different. I asked you specifically, quote: "Will you commit to this committee that under your leadership, the Department of Justice will not target the political opponents of this administration?" Here was your answer, quote: "Absolutely. It's totally inappropriate for the department to target any individual because of their politics or their position in a campaign."

That was your promise just a few month ago. I am sorry to say you have broken that promise. There is a difference between law and politics, and General Garland, you know the difference between law and politics.

Law is based on facts. It is impartial. It is not used as a tool of political retribution. This memo was not law. This memo was politics.

On Wednesday, September 29, the National School Board Association wrote a letter to the president asking the president to use the Department of Justice to target parents that were upset at critical race theory, that were upset at mask mandates in schools, to target them as domestic terrorists.

On the face of the letter, the letter was in repeated consultation with the White House, in explicit political consultation with the White House. That was on Wednesday, September 29.

Five days later on Monday, so right after the weekend, boom. You pop out a memo giving them exactly what they want. By the way, I understand that. In politics that happens all the time. An important special-interest wants something, sir yes sir. We're going to listen to them.

Let me ask you something, General Garland. In the letter which you told the House of Representatives was the basis for this abusive memo targeting parents how many incidents are cited in that memo?

GARLAND: I have to look back through the mom. I can't count them (ph).

CRUZ: OK, you don't know. How many them are violent?

GARLAND: Again, the general report...

CRUZ: How many that were violent? Do you know?

GARLAND: I don't know.

CRUZ: You don't know. There's a reason you don't know because you didn't care and nobody in your office cared to find out. I did a quick count just sitting here during this hearing. I counted 20 incidents cited. Of the 20, 15 on their face are nonviolent. They involve things like insults. They involve a Nazi salute. That's one of the examples.

My God, a parent did a Nazi salute of the school board because he thought of the policies were oppressive. General Garland is doing a Nazi salute at an elected official, is that protected by the First Amendment?

GARLAND: Yes, it is.

CRUZ: OK. 15 of the 20 on the face of it are not violent. They're not threats of violence. They're parents who are unhappy. Yet miraculously when you write a memo the opening line of your memo in recent months there has been a disturbing spike in harassment and intimidation and threats of violence. You know what? You didn't look and nobody on your on your staff looked. Did you even look up to 20 instances?

GARLAND: As I have testified decision to make, send the memo is for an assessment of the...

CRUZ: Did you look up about 20 instances?

GARLAND: I did not read...

CRUZ: Did anyone on your staff look them up?

GARLAND: I don't know the answer, but it's not part of the memo.

CRUZ: But of course you don't, and General, there is a reason. Look you started your career as a law clerk to Justice Brennan. You've had many law clerks during the year during your time as a judge. I was a clerk to Chief Justice Rehnquist. I'll tell you what. If I drafted an opinion for the Chief Justice and walked in and it said there's a disturbing pattern of violence. Well, Ted, how do you know that? Well I got an amicus brief here who claims it.

You would fire a law clerk who did that. You're the Attorney General of the United States. This was not a tweet you sent. This is a memo to the Federal Bureau of Investigations saying go investigate parents as domestic terrorists.

GARLAND: That is not what the memo says at all. It does not say...

CRUZ: Is it what the letter says?

GARLAND: That's not what...

CRUZ: Is it what the letter says?

GARLAND: I don't care what the letter says. What I care...

CRUZ: You don't care? You said it was the basis of your memo. You testified under oath before the House of Representatives the letter was the basis of your memo. Now you don't care about the letter?

GARLAND: The letter and public reports of violence and threats of violence. My memo says nothing about domestic terrorism, says nothing about parents committing any such things. My memo is an attempt to get an assessment of whether there is a problem out there that the federal government needs to...

CRUZ: The letter on its face says the actions of the apparent could be the equivalent to a form of domestic terrorism...

GARLAND: And that is wrong, and that...

CRUZ: ... and asks the president to use the Patriot Act in regards to domestic terrorism...

GARLAND: And you'll...

CRUZ: ... directed at parents.

GARLAND: And you'll...

CRUZ: This was the basis of your memo.

GARLAND: My memo...

CRUZ: The Department of Justice, when you're directing the FBI to engage in law enforcement you're not behaving a political operative because a political ally of the president says, hey, go attack these parents because we don't like what they're saying. Department of Justice, you did no independent research on what was happening. Did you?

GARLAND: The memo has nothing to do with parts...

CRUZ: Did you do independent research?

GARLAND: The memo has...

CRUZ: Did you do independent research?

GARLAND: The memo has nothing to do with policy and politics.

CRUZ: OK, you're not answering that question. You've testified you know nothing about the violent sexual assault that happened Loudon County even though it is one of the bases in this letter.

GARLAND: I've read about it since then.

CRUZ: OK, you told the House last week you knew nothing about it.

GARLAND: I did not know at the time. No.

CRUZ: OK. This week the court concluded that a 14-year-old girl was violently raped by a boy wearing a skirt in the girl's restroom. The school district covered it up, released the boy, sent him to another school where he violently raped another girl.

The father, who Mr. Hawley just showed you, was the father of the first girl. He was understandably -- do you understand why a parent would be upset when your daughter is raped at school? The school board covers it up and then lies to you and claims there have been no assaults. We have no incidences of assaults in our bathroom? And that was a flat out lie as the court concluded this week. Do you understand why the parent would be upset?

GARLAND: Absolutely and is and expressions of upset are completely protected by the First Amendment.

CRUZ: Except you just call him a domestic terrorist.

GARLAND: I never called him that. That's not correct.

CRUZ: This letter calls him a domestic terrorist. You based a direction to the FBI, an official direction from the Attorney General on this letter. And I'll tell you what. The NSBA is so embarrassed of this letter they've apologized for it and retracted it, but you apparently have the same willingness to apologize and retract what you did.

Let me ask you something else. A big part of this letter is that there upset about parents not wanting critical race theory taught. Your son-in-law makes a very substantial sum of money from a company involved in the teaching of critical race theory. Did you seek and receive a decision from an ethics advisor at the Department of Justice before you carried out an action that would have a predictable financial benefit to your son-in-law?

GARLAND: This memorandum is aimed at violence and threats of violence.

CRUZ: I just asked a question. Did you seek an ethics opinion?

GARLAND: It has no predictable...

CRUZ: Did you seek an ethics opinion?

GARLAND: It has no...

CRUZ: Did you seek an ethics opinion? Judge, you know how to ask questions and answer them. Did you seek an ethics opinion?

GARLAND: You asked me whether I sought an ethics opinion about something that would have a predictable effect on something. This has no predictable effect in the way that you are talking about.

CRUZ: So if critical race theory is taught in more schools does your son-in-law make more money?

GARLAND: This memo has nothing...

CRUZ: If critical race theory is taught in more schools does your son-in-law make more money? Yes or no?

GARLAND: This memorandum has nothing to do with critical race theory or any other...

CRUZ: Will you answer if you sought an ethics opinion?

GARLAND: ... kind of curriculum...

CRUZ: Will you answer if you sought an ethics opinion?

GARLAND: I am answering the best I can.

CRUZ: Yes or no, did you seek an ethics opinion?

GARLAND: This memorandum has nothing...

CRUZ: Did you seek an ethics opinion?

GARLAND: This memorandum has nothing to do with critical race theory.

CRUZ: General, are you refusing to answer if you sought an ethics opinion?

GARLAND: I am telling you that there's no possible conflict of interest (ph).

CRUZ: So you're saying no. Just answer it directly. You know how to answer a question directly. Did you seek an ethics opinion?

GARLAND: I'm telling you that if I fought there was any reason to believe there was a conflict of interest, I would do that. But I cannot imagine a conflict of interest...

CRUZ: Why do you refuse to answer the question? Why won't you just say no?

GARLAND: I'm sorry.

CRUZ: You're not going to answer the question?

GARLAND: I'm sorry, say -- ask the question again.

CRUZ: Did you seek an ethics opinion?

GARLAND: I'm saying again, I would seek an ethics opinion in...

CRUZ: So, no is the answer, correct?

GARLAND: ... where I thought there was a conflict...

DURBIN: Senator, your time is up.

CRUZ: Let the record reflect the Attorney General refuses to answer whether he sought an ethics opinion. And apparently, ethics are not of terribly high priority in the Biden Justice Department.

GARLAND: I don't think that's a fair reflection of what I said.

CRUZ: Then answer the question.

DURBIN: Senator, you've gone way beyond any other Senators' time. I think you ought to be at least respect for other Senators at this point.

CRUZ: Mr. Chairman, do you know the answer whether he sought an ethics opinion?

DURBIN: I think you have exchanged that so many times. We know where we stand.

Now, we have a request for three-minute rounds, and I have one from Senator Hirono, and Senator Lee, and Senator Booker. I'm sorry -- and first, of course, Ranking Member Grassley.

We're going to stick to three minutes. It's been four hours since the Attorney General has been in that chair with a couple breaks, and I think we should try to wrap up if we can.

GRASSLEY: A request to put something in the record, a Wall Street Journal editorial titled "About the Domestic Terrorists Parents." The article notes that the October 4th DOJ memo should be formally rescinded.

DURBIN: Without objection.

GRASSLEY: General, after a great deal of pressure from victims in Congress, I know that you're taking another look at the Department's disgusting decision not to prosecute employees for lying to government officials in the Nassar investigation. Do you anticipate that the Department will similarly expunge the records of these employees just like McCabe or could -- or continue to give them out -- get out of jail free cards as you've done so far?

GARLAND: As I said, Senator, we are reviewing the decisions with respect to the false -- alleged false statements. That review is being done by the Criminal Division.

GRASSLEY: OK. Beginning in the summer of 2020, American cities began to see appalling and unprecedented spike in violent crime, murders, and gang violence. As liberal politicians operated under the rallying cry of "defund the police," this movement translated into over 1,200 deaths in 2020 alone. In the summer of 2020, then Attorney General Barr instituted Operation Legend as a way to combat the rising spike in violent crime.

By any measure, this surge in federal agents was a resounding success by December of 2020 over 6,000 arrests that have been made. Over 2,600 firearms have been taken off of our streets and approximately 467 people have been arrested for homicide. Given the clear success of Operation Legend, why is the department seemingly directing its efforts toward school board meetings, but not towards real threats or real acts of violence that happen every day in American citizens? So, a simple question, does Operation Legend still exist?

GARLAND: My understanding was Operation Legend was directed at the violence over the summer of 2020. We have addressed another surge of federal prosecutorial and law enforcement efforts.

This last summer, we have stepped up the amount of money we're giving to state and locals, and we have increased our joint task forces together. I've visited federal and state law enforcement in New York, and in Chicago, and in Los Angeles, and in San Francisco all aimed at violent crime in those areas. And we've asked for a considerable additional money, about \$1 billion in grants to fund the state and local police in F.Y. '22. So, I think that's -- I -- I hope that answers your question.

GRASSLEY: OK. Only four packers -- JBS, Tysons, Cargill and National Beef -- control more than 80 percent of the cattle market. These companies hold a tremendous amount of market power. The Justice Department issued civil investigative demands in May 2020, but we've yet to learn anything from this investigation. Could you provide an update and can you commit to expediting this investigation so that our cattle producers know whether there are any antitrust violations?

GARLAND: So, I can't discuss specific investigations. We have long-standing policies against that, but I can tell you that the antitrust division is aggressively concerned with competition in the market that you described.

We are also in frequent consultation with the Agriculture Department with -- with regard to the stockyards and -- and Packers and Stockyards Act. We regard this as an area where we have to be very much concerned about exclusionary behavior and anti-competitive behavior.

GRASSLEY: Thank you.

DURBIN: Thanks, Senator Grassley.

Senator Hirono? Senator, I think your mic is not turned on.

HIRONO: One thing I have to say as we listen to, I don't know, going on hour three is that the Republicans, once they focus on something, they just stick with it. It is amazing to me that there's all this mischaracterizing of the Attorney General's memo, as well as a letter from the acting, you know, U.S. attorney of Montana. And his letter is also totally mischaracterized as to what the focus of the Attorney General's letter is. So, I would like to submit for the record the Acting Attorney -- U.S. Attorney of Montana's letter.

DURBIN: Without objection.

HIRONO: So, as I said, it's pretty -- it's kind of amazing, but not unusual that my Republican colleagues will continue to focus on -- on something that the Attorney General has to continue to testify for the last three hours or whatever it is that his letter has been mischaracterized. And they will focus on that until the nth degree.

At the same time, you know, what is a real problem is the fact that we have 530 voter suppression bills that have been introduced in 47 states, the vast majority by Republican legislatures. And people's votes are literally being stolen through these voter suppression actions. And do we hear word one about the fact that this is happening all across our country that voter suppression and stealing of votes is happening? Does a single Republican even care about that? No. So let's take that (ph) again. That they talk about all of these in the memos are totally mischaracterizing and yet, what is actually happening in voter suppression, not a peep.

So, I want to ask you, Mr. Attorney General, Shelby County pretty much got -- got the Voting Rights Act, and then followed by Brnovich -- Brnovich wherein the majority opinion suddenly comes up with all these guide posts that they know that the Justice Department now has to prove in order to protect our right to vote. So, can you just tell us what the impact of the Supreme Court's Shelby County and Brnovich decisions have been on the Justice Department's ability to protect our right to vote? And is there something we can do? Are there tools that we can provide through congressional action that will enable you to protect our right to vote?

GARLAND: Yes, Senator. The right to voter is a fundamental pillar of American democracy. The Voting Rights Act is one of the greatest statutes that was ever passed. It enabled the Justice Department to protect people's right to vote and to protect against discrimination based on race and ethnicity with respect to patterns or practices, with respect to voting.

In Shelby County, this Supreme Court took out the most important tool we have, which was Section 5, which allowed pre-clearance by the Justice Department or alternatively, allow the state to go to federal court to get a clearance. And -- and that left us with a circumstance of having to examine each case one by one with the burden on the Justice Department. So, one thing that the Congress could do is put Section 5 back in place as the Supreme Court indicated could be done with the appropriate legislative record.

Second, Brnovich interpreted Section 2...

HIRONO: Yeah.

GARLAND: ... a statutory section in a way that the Justice Department disagrees with us. We made clear in our papers. I'm not saying anything we didn't say in our -- in our Supreme Court argument. They narrowed it in a way that we think was not consistent with congressional intent and which makes our ability to challenge discriminatory changes in voting much more difficult.

Congress could again fix that by bringing back Section 2 to what Congress intend -- originally intended and making that clear and statutory language. Both of those changes would be enormously important from the point of the Justice Department's success in protecting the right to vote.

DURBIN: Thank you, Senator.

HIRONO: Well -- I'm sorry.

DURBIN: Thank you, Senator.

HIRONO: Mr. Chairman, it's clear that we will have to do those things that the Attorney General recommends, to protect people's right to vote without a single Republican going in that direction. That's how pathetic it all is. Thank you.

DURBIN: Thank you, Senator.

Senator Lee?

LEE: Thank you, Mr. Chairman

Attorney General Garland, I find it deeply concerning that you still haven't said a single example of a true threat of violence. And if I'm understanding this correctly, and I've been here for most of his hearing. I've had to step out to vote a couple of times. But I think you seem to admit you didn't do any independent research outside of receiving the September 29th National School Board Association letter.

Now, one of the things I find that perplexing and quite troubling, this came in -- if you sent on September 29th, I believe that was a Wednesday. Following Monday, just days later, just barely over a weekend, you responded with your memo, relying on the NSBA memo.

Now, I submit -- as a member of the Judiciary Committee with oversight responsibility over your Department, I submit request for information all the time. It takes time, I understand that. Sometimes it takes months to get a response back. I'm always grateful when I do get a response back, especially when it's a response that contains meaningful information. I understand that people are busy and they've got a lot of stuff to comply with.

But if -- if one association can send one letter without any independent research on your part, and within days -- barely over a weekend -- get not just a response, but an action memo signed by the Attorney General of the United States, I think that's weird. I think that makes me really uncomfortable, especially when the National School Board Association, as I understand it, or those associated with it had publicly stated that they've been coordinating with officials at the White House on this for weeks. It doesn't feel right, it doesn't seem right to me.

Now, last week, two of our counterparts on -- our House counterpart Judiciary Committee asked you a little bit about the number of people entering the United States illegally. About 1.3 million have entered the United States illegally this year. That's a lot. That's a lot of people. Of those 1.3 million, I'm quite confident, based on my own past experience as a federal prosecutor, I'm quite confident that some non-insignificant portion of those will have previously been deported. And as, you know, under 8 USC Section 1326, that is a felony federal offense -- illegal reentry after previous deportation.

Since they've asked you about that, have you had a chance to identify how many prosecutions have been brought for illegal reentry this year? And I -- I -- I'd be curious about that. I had to also be curious as to whether there's anything analogous to your October 4th memo, everything calling out concerns that you've got over illegal reentry.

GARLAND: So on -- on -- on -- on that question, the 1.3 million arrests, I think, made by CBP, they are referred. They are -- CBP make -- the Customs and Border Patrol makes a decision about whether put those people into removal proceedings or to refer them to the Justice Department for prosecution.

We have, this year, charged thousands of cases -- thousands of case -- criminal cases with respect to violations of the immigration laws, with respect to crossing of borders. I don't have the exact number. We can get you that exact number, but the number is in the thousands.

LEE: My time's expired. I -- I expressed the concern because when the Department becomes focused on things, they're not part of its business, namely, harassing, threatening, intimidating moms and dads in America on chilling their ability to express their concerns to their neighbors, their friends, and those who represent them on a school board. You sometimes lose focus on the things that only the federal government can do, like controlling our border from the dangerous effects of illegal immigration, generally, and illegal reentry, in particular. Thank you.

DURBIN: I take that Senator Cruz and Cotton are seeking three-minute rounds. Is that correct? All right. And Senator Booker as well. Senator Booker?

BOOKER: The October 4th memo reads, "In recent months, there's been a disturbing spike in harassment, intimidation and threats of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our nation's public schools." Is that true?

GARLAND: Yes, Sir.

BOOKER: I mean, it is true.

GARLAND: It is true. I'm...

BOOKER: I -- I have a list of -- of very disturbing incidents. In Texas, a parent physically assaulted a teacher August 18, 2021. In Pennsylvania, a person posted threats in social media, which required police to station outside of a school district, law enforcement investigating the person. I could keep going. Ohio, a school board member with threatening letter that began with, "We are coming from you." Domestic terrorism in the United States or has it been more from overseas, radical terrorists since 9/11, or more from homegrown terrorists, most of them being right-wing extremists? Which has been greater since 9/11?

GARLAND: I -- I want to be careful about that. The -- the -- the threats that we face with respect to terrorism -- and -- and none of those descriptions have to do with terrorism -- but the -- the threats that we face in United States come both from foreign terrorists and...

BOOKER: A church in South Carolina, a synagogue in -- in Pennsylvania, a school, Parkland; a school, Newtown, has there been threats and violence against schools in the United States of America?

GARLAND: There have been, yeah.

BOOKER: Coming from what types of groups?

GARLAND: They come from domestic groups.

BOOKER: From domestic groups?

GARLAND: Yes.

BOOKER: Has there been a long -- pages-long list of what my staff could grab been threats and violence against school officials in the United States of America in the last year?

GARLAND: I -- I haven't -- obviously haven't seen the list, but it accords with my recollections, but...

BOOKER: Well, let me accord your recollection with a letter that I -- I've heard so much about, that I pulled it to read it. You say literally, threats -- excuse me, spirited debate about policy matters is protected under the constitution.

I'm quoting one of my colleagues today. Does that sound like harassing and intimidating moms and dads? You affirmed at the top of your letter that spirited debate is allowed. Well, spirited debate about policy matters is protected under the constitution, that that protection does not extend to threats and to violence that we have been watching on our TV screens.

Intimidating people, threatening to hurt them, taking physical action. But you know what? You did not call for the DOJ and the FBI to monitor school board meetings, did you?

GARLAND: No, I did not.

BOOKER: You did not call for anyone to evoke the Patriot Act, did you?

GARLAND: No, I did not.

BOOKER: Sir, what you call is for the DOJ to convene meetings to discuss strategies for addressing those threats.

GARLAND: That's correct.

BOOKER: Is that intimidating moms and dads going to school board meetings?

GARLAND: I can't see how that could be interpreted.

BOOKER: Sir, I know something about law enforcement intimidation. It stems from growing up as a black man in America. I know what it feels like to be pulled over, to be accused of stealing things, to every time I drive over the George Washington bridge as a -- as a teenager, to know I had to put extra time because I was being pulled over by law enforcement.

If someone's to read the actual letter, you are literally saying, as the leader of the highest law enforcement office in the land that you protect spirited debate, that you think though given the climate of school violence in America, I've met with victims from Parkland.

Mr. President, I'm sorry. I have watched Republican after Republican go over time, and you're -- I know you're gently banging that gavel, but I've watched all today. My colleagues violate what you said at the beginning was a strict time limit. And I would ask you to afford me two more minutes.

DURBIN: Is there objection? No objection.

BOOKER: Have you met with Parkland survivors?

GARLAND: I met with survivors at the White House.

BOOKER: Yes or no?

GARLAND: I believe there -- I think (inaudible)...

BOOKER: You've met with survivors of school violence.

GARLAND: (Inaudible)...

BOOKER: Have you -- have you...

GARLAND: I met with the Parkland families.

BOOKER: Yes. Do you have a responsibility in a climate of threats and violence taking place at schools? Do you have a responsibility to convene strategy meetings to try to make sure we do not have eruptions of violence in the country? Is that a responsibility of the federal government?

GARLAND: Yes, our job is to protect Americans.

BOOKER: Did you specifically say anything in this election -- in this letter that can be seen as harassing moms and dads and parents or did you explicitly say that the constitution protects spirited debate?

GARLAND: I specifically said the constitution protects spirited debate, and I don't believe there's anything this -- in this letter that could be read to intimidate mothers and fathers.

BOOKER: And I'm not talking about the outrage machines that seemed to fuel our politics on both sides. I'm talking about the -- the actual letter here, Sir, that you wrote. You're a good-hearted person. Is there anything in this letter that could specifically lead a good-hearted parent who is against mask mandates, who somehow believes that the teaching of racial discrimination is repugnant to them? Is there anything in this letter that would prevent them from going and speaking to it, and yelling and being upset, and letting their elected officials know what they really believe? Is there anything in the actual print of this letter that could be seen to -- that lead to that type of intimidation?

GARLAND: No, Senator, all those things are protected by the constitution.

BOOKER: Will you say that one more time?

GARLAND: All those things are protected by the constitution.

BOOKER: I -- I hope that you will do your law enforcement work. There's too much violence in this country. There's been too many domestic terrorist attacks. I don't want to have the next hearing here be about some incident. I hope that you continue to convene your strategy sessions, to protect parents and children, and school officials from any kind of a heinous violence that we have seen way too much of in this country, and that we all bear a responsibility for stopping.

Thank you, Mr. Chairman, for the allowance of the extra time.

DURBIN: Thank you, Senator.

Senator Cruz?

CRUZ: We talked just a minute ago about the difference between law and politics. We heard some impassioned political speeches, but also a question that just was asked by my friend from New Jersey, is there anything in this memo to tell a parent that they're being targeted for harassment and intimidation? I would note that the letter from the school board cited 20 instances, 15 of which were nonviolent. The letter from the school board described them as domestic terrorism.

Within days, the Department of Justice snapped to the commands of special interest and issued a memo, a directive to the Department of Justice and a directive to the FBI. This is again where law matters. The opening sentence describes a disturbing spike in harassment, intimidation, and threats of violence.

Now, you spent a long time as a judge when you have three things listed. Am I correct that anyone interpreting that, reading it, would conclude that harassment and intimidation or something different than threats of violence given that you listed each of the three out separately? Is that consistent with the canons of construction?

GARLAND: The memorandum is addressed to professional prosecutor...

CRUZ: I asked you a question, not who it was addressed to.

DURBIN: Senator, at least let him respond.

CRUZ: No, not when he answers a non sequitur.

DURBIN: He may respond...

CRUZ: If he wants to answer the -- OK, you're taking my time now. This is not coming out of my time.

DURBIN: Listen...

CRUZ: When I ask a question, give me an answer.

DURBIN: ... we've given you more time than any other senator.

CRUZ: Mr. Chairman...

DURBIN: Now, listen...

CRUZ: ... when I ask a question...

DURBIN: ... all I'm asking is allow him to respond.

CRUZ: ... Mr. Chairman, when I ask a question, he can answer the question, but he's proceeding to ask a total non sequitur. I asked about the canons of construction on the board...

DURBIN: Please let him respond.

CRUZ: I'll ask the question again. The opening line of the memo specifies harassment, intimidation, and threats of violence. Is it correct, under the ordinary canons of construction, that a legal reader would understand that harassment and intimidation means something different from threats of violence? Is that correct?

GARLAND: A legal reader would know *Virginia v. Black*, the Supreme Court definition of intimidation, and a legal reader would know 18 USC 2261A, the definition of harassment.

CRUZ: And would a parent...

GARLAND: This was not addressed to parents.

CRUZ: But you know parents read it. You're the Attorney General of the United States. You said you can't think of anything harassing. You directed the G-Men, the FBI to go after parents -- all right, let's move on to a different topic.

We've sadly seen that you are willing to use the enforcement power of the Department of Justice to target those who have political views different than you even if it's a mom at a PTA meeting. Let's try the other side. Are you willing to enforce the law fairly against people who are political allies of the President?

At a Senate hearing in May, Dr. Fauci said, quote, "The NIH has not ever and does not now fund gain of function research in the Wuhan Institute of Virology." That was under oath, under testimony.

On October 20th, the NIH Principal Deputy Director, in writing, directly contradicted it. Those two statements cannot be true. As you know, Section 1001 of Title 18 makes it -- makes it a federal crime to knowingly make false statements to Congress. Is the Department of Justice investigating Dr. Fauci for lying to Congress? And will you appoint a special prosecutor to do so?

GARLAND: I'm going to say again, the memorandum that I issued is not partisan in anyway. It has nothing to do with what I agree with or I don't agree with. I don't care whether the threats of violence come from the left or the right.

CRUZ: Could you answer the question I asked?

GARLAND: I would (inaudible) the second question. We don't comment on criminal investigations or other investigations.

CRUZ: Well -- well, amazingly, when it's the political enemies of the administration, you comment loudly in a memo. Let me ask one other question.

GARLAND: You're not asking -- you weren't...

CRUZ: That President Biden recently said in a national town hall that police officers who declined to get vaccinated should be fired. Do you agree with President Biden on that?

GARLAND: I -- I think all police -- look, I -- I stood on the stage at the -- at the mall where the 700 and some police officer died this year were commemorated. And you (inaudible)...

CRUZ: Let me try again. Do you agree with the President? It's a yes or no. You've asked questions as a judge. You know how to get a yes or no. Do you agree with the President, yes or no?

GARLAND: A large percentage of the law officers who died this year died from COVID-19.

CRUZ: Do you agree with President Biden that police officers who declined to get vaccinated should be fired, yes or no?

GARLAND: And if they had been vaccinated, they wouldn't have died.

CRUZ: So is that a yes? You do agree with the President.

GARLAND: I want police officers...

CRUZ: In Chicago, a third of the police officers did not file their vaccination status. Do you think Chicago should fire -- fire a third of its police officers when murder rates and crime rates are skyrocketing?

GARLAND: This is a determination that the city of Chicago will have to make.

CRUZ: So do you agree with the President? The President said yes. Do you agree with him? You are the chief law enforcement officer of the United States. Do you agree with Joe Biden saying fire police officers despite skyrocketing crime rates?

GARLAND: That is the question that is one of state law there and will have to be decided by the state.

CRUZ: You have no view on whether we should fire cops?

DURBIN: Senator, your time has expired.

CRUZ: Well, you used two minutes though.

DURBIN: No, I certainly did not.

Senator Blumenthal?

BLUMENTHAL: Thank you, Mr. Chairman, and thank you again for being here, Mr. Attorney General. I am going to shift topics to an issue that I know you're familiar with the 9/11 families and the State Secrets Privilege.

And I want to just say that I was encouraged and pleased when President Biden issued an executive order requiring the Department of Justice to complete a review of documents sought by those 9/11 survivors. As you well know, they are in court now taking advantage of JASTA, the overwhelmingly approved measure that gives our federal courts jurisdiction over their claims for the harm they suffered when their loved ones were killed during the 9/11 attack. And I was glad to see that the FBI has released at least one document on the 20th anniversary of the 9/11 deaths.

I still am focused on the State Secrets Privilege, the invocation of it in past years, before this administration, the overuse of it. In fact, the Trump Justice Department failed to provide any meaningful justification for withholding these documents from the 9/11 families. And I think we see now that there was no justification. So, I know the Department's review was ongoing and that you will continue to disclose, I hope, as much information as possible, as swiftly as possible.

Just to address the Department's use of the privilege more broadly, the memo requires the Department of Justice to provide periodic reports to Congress identifying the cases where that privilege is invoked and explaining the basis for invoking it. I sent a letter earlier this month to you about this reporting requirement because this Committee has received only two reports in 2011 and 2015. And in the six years since the Department of Justice has failed to provide such reports.

Just to come to the point, I am respectfully asking for a commitment that you will provide these periodic reports to Congress and review the Department's policies with respect to its invoking the State Secrets Privilege so as to comply with the 2009 memo. I may have gone too quickly over the various actions of the Department, but I'm referring to the 2009 memo, which requires those periodic reports.

So, in the eight seconds that I have left and...

GARLAND: Yes, the answer to both questions is yes. We are currently reviewing that memo and, if anything, we -- we will strengthen it. And we do intend to make periodic reports. And it is not a periodic report to have not made a response since 2015, I assure you. So, we -- we intend to do that, yes.

BLUMENTHAL: Thank you very much.

DURBIN: Thanks, Senator Blumenthal.

Senator Cotton?

COTTON: Judge, I want to return to our exchange this morning. As I've reflected on it, you made a shocking admission. You issued this memo direct or seeking the Feds on parents of school boards on Monday, October 4th. You acknowledged that there was no effort in the Department of Justice, no initiative to draft this memo or create these task forces before Wednesday, September 29th when the National School Board Association issued that letter. Is that correct?

GARLAND: I don't know. All I know is that the first time I started working on this was after receiving the letter. That's all I...

COTTON: So, from your standpoint, there was -- you are not aware of any effort in the Department of Justice before that letter was sent on September 29th?

GARLAND: I think it's fair to say, as you're suggesting, that this letter and what are the other public notices of violence against school board members and teachers are what form the basis for this memo.

COTTON: This memo...

GARLAND: Yes.

COTTON: ... this memo was dated October 4th with your signature on it.

GARLAND: Yes.

COTTON: Did you sign it on October 4th?

GARLAND: I did.

COTTON: So, four intervening days, two of which were weekend days.

GARLAND: Yes.

COTTON: I'd say that that's a land speed record for the federal government.

GARLAND: When -- when we get...

COTTON: Senator Grassley pointed out that you have not responded to letters of his that have been outstanding for months. How is it the Department of Justice was able to move so rapidly on a single letter from a special interest group that has now repudiated that letter, said it regrets sending a letter and apologized to its members for sending the letter? How did the Department move so fast on this matter?

GARLAND: When a -- when an organization that represents thousands of school board members...

COTTON: I would say they purport to represent thousands because state school boards across the country have been repudiating them and trying to withdraw their membership. That's why the National School Board Association withdrew its own letter. Who brought this to your attention?

GARLAND: May I answer the question?

COTTON: I'm asking you the question now. Who brought this to your attention?

GARLAND: You -- you asked me a question, may I answer the question? The question is why speed. The answer is when we get reports of violence and threats of violence, we need to act very swiftly. I would have hated to have gotten this letter and then acts of violence occurred in the interim before we were able to act.

COTTON: OK, OK, Judge. There were...

GARLAND: The only act here is assessing the circumstances. That's all there is here, and we can't wait until somebody dies. That's why we did this.

COTTON: Judge, you keep citing -- OK, well, you keep citing media reports. There were 24 incidents in that letter. As you've heard today, almost all of them were nonviolent. They weren't called threats of violence.

GARLAND: Those are not the media reports I was referring to.

COTTON: You said earlier it was news reports, OK. What other reports that you saw about potential violence at school boards were you basing this memo?

GARLAND: I don't recall them specifically, but I have now again seen since that time people saying that they're repeating what they have said before.

COTTON: That's -- but that's all post talk.

GARLAND: They were threatened...

COTTON: It's all after the fact. It doesn't matter -- it doesn't go to your mind -- your frame of mind on October 4th. Who brought this to you? Who brought this memo to you and asked you to sign it?

GARLAND: I got -- nobody brought the memo to me and asked me to sign it.

COTTON: Well, someone had to bring it to your attention, "Hey, Judge, we're about to stick the Feds on parents."

GARLAND: I'm sorry, no one said, "We're about to stick the Feds on parents."

COTTON: Someone brought this...

GARLAND: That's not an accurate description.

COTTON: ... was this -- was this an initiative of Lisa Monaco?

GARLAND: This memorandum was -- went through the normal processes within the Department, and I worked on it myself and -- and signed it.

COTTON: Someone is the proponent. Someone was a proponent. You -- I bet you didn't write the first draft of this. Where did it come from? Did it come from Lisa Monaco?

GARLAND: I did make this draft, but I did work on this memorandum, and it represents my views and it represents...

COTTON: Did it...

GARLAND: ... my reading of the materials...

COTTON: ... did it come from Vanita Gupta's office?

GARLAND: I'm not going to discuss...

COTTON: Is this Matt Klapper's initiative?

GARLAND: ... I'm not going to discuss the internal workings of the Justice Department here. This memorandum respects my -- reflects my view, and I stand behind it...

COTTON: Or...

GARLAND: ... and I continue to stand (inaudible).

COTTON: Are you -- are you aware of the -- are you aware of conversations between members of your Department of Justice and the White House leading up to that letter on the school board association?

GARLAND: I am sure there were -- there were no conversations with me. I'm sure there were conversations. It's perfectly appropriate when the White House receives a letter calling for law enforcement response across the board, not with respect to a specific case for the -- for the White House to have conversations with the Justice Department.

COTTON: Are -- are you aware of conversations between your Department of Justice officials, and White House officials, and the members of the school board association all cooperating together, which is why you are able to move in four days, Judge, four days, two of which were weekends?

GARLAND: As I said, I am sure there were conversations with the White House. I have no idea whether there were conversations with the school board associations.

COTTON: Well, I bet we're going to find out there weren't. It doesn't happen now, it'll happen in 15 months when the Republicans are in-charge here.

GARLAND: Well, there's nothing wrong with there being such conversations. Let me be clear again, this is not a request to investigate any particular person or prosecute any particular person.

In the same way, you asked me to worry about violence in the streets. It's perfectly appropriate for the White House to urge me to worry about violence in the streets. Same way, they're perfectly appropriate for the White House or any other organization to urge me to worry about election threats. There's nothing that I know -- knew about this organization to suggest that it is any way partisan. It's a National School Board Association. I certainly never, in my mind, viewed that as a partisan organization.

COTTON: And that they repudiated their letter, why won't you just say you made a mistake?

GARLAND: Because they did...

COTTON: Why would you say you made a mistake and you relied on bad information?

GARLAND: Because they didn't repudiate the letter, they repudiated language in the letter, which I did not adopt and don't agree with. But their concerns are about safety in the schools and -- and about violence, and this is a core concern of the Justice Department. That's why.

DURBIN: Thank you. Senator Blackburn has asked for three minutes, and I will conclude with my own three minutes after that. Senator Blackburn?

BLACKBURN: Thank you, Mr. Chairman.

Attorney General Garland, you just told me that you don't think you ever met Susan Hennessey. Did you hire Susan Hennessey?

GARLAND: Look, I -- I have sign-off authority for everybody I -- I suppose in the Justice Department.

BLACKBURN: I have -- no, no, have you...

GARLAND: But the -- but -- but...

BLACKBURN: OK.

GARLAND: ... that's the best I can answer with respect to that. But...

BLACKBURN: Oh, OK.

GARLAND: ... the question you were worried about, Senator, and I understand had to do with Durham. And as I explained, she has nothing to do with the Durham investigation.

BLACKBURN: OK. Were you unaware of her comments before you hired her?

GARLAND: Again, that...

BLACKBURN: You don't know? OK.

GARLAND: I hire 115,000 people in -- in the Justice Department. I don't know...

BLACKBURN: I am fully aware of -- of that. And it's amazing to us if those 115,000 people can't investigate things like crime on the border, can't investigate crime on the streets. And, you know, the -- I'm going to return to this memo of October 4th.

The memorandum cites for harassment, intimidation, and threats of violence. And what I'd like to know is who chose that language -- harassment, intimidation, and threats of violence? You've said this reflected your views, but it's become apparent that you did not write this memo your -- yourself.

And so, I -- I would like to know who came up with that language. Was that yours or was that submitted language?

GARLAND: So, I -- I -- I don't know whether -- let me put it this way. This is language that law enforcement officers are very well understand. It is contained in the federal statute and in the Supreme Court opinion.

BLACKBURN: OK. Well, in the House Judiciary Committee last week, you said you were concerned to only about true threats.

GARLAND: Yes.

BLACKBURN: So, are you going to revise your memorandum to make it clear that you -- this applies only to true threats of violence instead of classifying parents in this country with domestic terrorists such as Timothy McVeigh and Terry Nichols?

The other thing I would like to know, you said to me earlier that your memo was based on the NSBA letter and the news reports. So, you've said there was not a lot of independent research done by you and your staff. So, if you would please submit to us for the record the news reports that you're referencing so that we will be able to have that as a frame of reference. And also, we would love to know who actually did write that memo and how they came up with the idea of calling parents a domestic terrorist.

One other thing I've got for you. Do you agree with the Supreme Court that the Second Amendment is a civil right? And if so, what is your Civil Rights Division doing to ensure it is being protected?

GARLAND: So just to back up on some of the questions, the memo doesn't say anything about domestic terrorism or calling parents domestic terrorists. I do agree the Second Amendment is part of the Bill of Rights and -- and -- and is, therefore, a civil right, that the Civil Rights Division has some generalized authorities, but it also has specific statutory authorities. I don't know whether there is a specific statutory authority with respect to the Second Amendment that has been given by Congress to the Civil Rights Division. I'm not aware one. There may be, but I'm -- I'm not aware of it.

BLACKBURN: OK. So, we can depend on you and your Department of Justice to stand in support of the Second Amendment. Is that what you're saying, to defend it?

GARLAND: Yes, of course.

BLACKBURN: OK, thank you.

GARLAND: The Second Amendment is part of the Bill of Rights.

BLACKBURN: It's what we would like to know. And I look forward to the other submissions in writing. Thank you, Mr. Chairman.

DURBIN: Thank you, Senator.

Mr. Attorney General, thank you for your patience. You have been sitting in that chair with a couple breaks for 4.5 hours. Many of these colleagues of mine have had ample opportunity to ask questions and -- and come back and ask for more, sometimes the same questions.

I would just like to make this observation. I understand completely why you issued that memo. I wish my colleagues would reflect for a single moment as to why that memo is important not just for school board members, but to send a message across America that there's a line we're going to draw when it comes to political expression. When you say words, when you wave your arms, that's all protected. But when you threaten someone with violence or engage in acts of violence, that is never going to be protected and shouldn't be.

It isn't that long ago that Gabby Giffords, one of our colleagues in the House was gunned down in Arizona. Her husband is now serving as our colleague in the United States Senate. I don't know the political bent of the person who shot her. It's basically irrelevant, but we should never (inaudible) that as adequate or proper political expression.

Steve Scalise, the Republican Congressman from Louisiana, was gunned down on a baseball practice field by someone from my state, who I believe was identified with the left in politics. It doesn't make any difference. It was an outrage that that good man has suffered as much as he has because of it.

And now we have the story in Great Britain David Amess who goes to a town meeting and is stabbed to death in his constituency in England. For goodness sakes, can't we, even if we disagree on issues to a great degree, agree with the premise that anyone who engages in violence or threats of violence have stepped over the line whether they come from the right or the left. I think that's what you were trying to say in your memo about the school boards. And like you, I have never heard the school board association identified as a great strong special interest group. I haven't seen that in the years I've been in Congress, and there are many great strong special interest groups.

I would just say to you thank you for doing that. It was the right thing to do. It has been mischaracterized and distorted not only today, but since then, but I think we can prove by our actions that we are not trying to stifle free speech, but only saying to people we're going to draw a line.

I was -- I find it fascinating that at least one of the people who was criticizing you today and -- and talking about the situation on January 6th was actually cheering the demonstrators on January 6th, and there's ample evidence of that. I -- I would -- I would think we've got to draw a line that accepts in this civilized society we're going to be respectful of one another even if we disagree politically.

I thank you for your testimony. Would you like to have a closing comment?

GARLAND: No, thank you, Senator. I appreciate your remarks though. Thank you.

DURBIN: Thank you very much.

The Committee stands adjourned.

END

Oct 28, 2021 09:26 ET .EOF

# Senate Judiciary Committee hearing Oversight of the Department of Justice, sked FINAL

March 1, 2023 6:04PM ET

TRANSCRIPT

March 01, 2023

COMMITTEE HEARING

SEN. RICHARD J. DURBIN, D-ILL.

SENATE JUDICIARY COMMITTEE HEARING OVERSIGHT OF THE DEPARTMENT OF JUSTICE

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SENATE JUDICIARY COMMITTEE HEARING OVERSIGHT OF THE DEPARTMENT OF JUSTICE

MARCH 1, 2023

SPEAKERS:

SEN. RICHARD J. DURBIN, D-ILL., CHAIR

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SEN. SHELDON WHITEHOUSE, D-R.I.

SEN. AMY KLOBUCHAR, D-MINN.

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SEN. JOHN KENNEDY, R-LA.  
SEN. JOSH HAWLEY, R-MO.  
SEN. MARSHA BLACKBURN, R-TENN.  
SEN. TOM COTTON, R-ARK.

WITNESSES:

ATTORNEY GENERAL MERRICK B. GARLAND

DURBIN: This meeting of the Senate Judiciary Committee will come to order.

Today marks the Senate Judiciary committee's first oversight hearing of the 118th Congress. Last Congress, we held more than a dozen oversight hearings and honored the committee's historic constitutional responsibility to provide oversight to the agencies or government. It is this responsibility under Article One of the Constitution that serves as a check and balance on the executive branch. Whether the president happens to be Republican or Democrat.

Attorney General Garland welcome. This is the third time you've appeared before this committee. You have many pressing responsibilities, I should say as Attorney General, you have many pressing responsibilities, and I appreciate your taking the time to be here today. There's so many subjects under your jurisdiction worthy of close examination, which I'll turn to a few in a moment.

But we shouldn't take for granted that we now have an apart -- Department of Justice with a renewed dedication. When you were sworn into office two years ago, the department was embroiled in scandal. You committed to restoring its independence. And I believe you've kept your word. I expect that we'll hear accusations today from some of my Republican colleagues to the contrary, such as weaponization of the Justice Department. The reality is you've recommitted the department to serving the American people and not the personal interests of any one political figure. You've taken the appropriate steps to ensure that investigations are not overshadowed by politics. You have not interfered with the investigation of the president's son by the U.S. Attorney for the District of Delaware, a holdover who was appointed by President Trump. You have not interfered with the special counsel investigation initiated by Attorney General Barr into the origin of the FBI investigation of the Trump campaign ties to Russia. And most recently, you've appointed two special counsels to investigate any potential mishandling of classified documents in the possession of former President Trump or President Biden.

Unfortunately, too many of my colleagues have turned a blind eye to the actual weaponization of the Justice Report during previous administrations. Take one example, President Trump and his allies attempted to coopt the department and to overturning the results of the 2020 election, a relentless campaign that this committee exhaustively documented in Subverting Justice, a 394-page report. But your actions in the last two years should reassure the American people that the Justice Department should not and does not operate as the servant of any president. The Justice Department has important constitutional responsibilities. It must protect the civil rights of the vulnerable, it must respond to threats to our nation, both domestic and international. It must hold accountable those who violate the laws passed by Congress.

We have discussed before, and I will certainly hear again today some issues of critical importance to the American people. More than 6800, 6800 Americans have died from gunfire in the first two months of this year. There have been at least 94 mass shootings, more than one every single day this year in America. I look forward to hearing how the department is using new tools that Congress approved and the bipartisan Safer Communities Act to quell this violence. In March 2021, FBI Director Wray testified under oath before this committee that the threat of domestic terrorism is metastasizing throughout this country. I look forward to hearing your response to that extremist threat.

We'll discuss the importance of full implementation of the bipartisan First Step Act, which is showing meaningful progress in responsibly reducing recidivism and making our criminal justice fairer, system fairer. And we'll discuss the importance of preserving America's civil rights and protecting them from attacks on their bodily autonomy, especially after the Supreme Court's Dobbs decision. The sunset of Section 702 of the Foreign Intelligence Surveillance Act this year provides an opportunity to implement much needed reforms to keep America both safe and free. And the department must continue to hold steadfast to the principles of equity and access despite resistance from those who are threatened by an even playing field. As more citizens face greater impediments to exercising their constitutional right to vote and there's an increase in incidence of hate violence, the department must defend America's bedrock values.

At this point, I turn to my colleague and the ranking member on the Senate Judiciary Committee, Senator Graham.

GRAHAM: Thank you, Mr. Chairman. Welcome, Mr. Attorney General, appreciate you coming to the committee. And thank you, Mr. Chairman, for having the hearing.

So, here's sort of the other side of the story. When you asked Americans are on the right track as a nation, about 70 percent of them say no. Now why? I think there's a feeling in this country that we're losing control of our streets, that crime is increasing, and the world is a very dangerous people, and people don't feel safe anymore. You talk about the number of deaths from gun violence, certainly something we should be concerned about. But let me tell you something we all should -- should be concerned about. Rebecca Kiessling, a mother testified yesterday who lost two sons to fentanyl overdose. They -- they were buying, I think, a Percocet pill. And it was laced with fentanyl, and they died from taking one bill -- pill. Both of them. She said, as I quote, "This is a war, act like it. Do something." So, 106,000 people died from drug overdoses 70,000 from fentanyl last year, and it's getting worse. The leading cause of death for Americans aged 18 to 45 is death by fentanyl poisoning. What are we doing? What is that something? So, I hope we will recommit ourselves, Mr. Chairman at this hearing to do something, to act like we're at war because we are. Foreign terrorist organization designation for the Taliban. That's a good thing. Other groups. How about making drug cartels in Mexico and other places, foreign terrorist organizations under U.S. law so we can go deeper and prosecute those who help these people poison America? So, the bottom line, we're adrift as a nation. We're not taking the crime problem as seriously as we should, the world is on fire. We say that Putin is engaged in crimes against humanity, I agree with that statement, but we're not giving jets to the Ukrainians to defend themselves against the crime. So, we got to up our game. And I hope by this hearing, and we will have a recommitment to convince the American people that we're going to keep you safe, that we're going to have policies to deal with the poisoning of America from fentanyl, that we're going to hold Mexico and other countries accountable, that most of this stuff comes from China, and enough is enough. We're going after those are killing our kids from fentanyl.

Gitmo, this administration let two detainees out of Gitmo. There's 30-something left. The recidivism rate is about 25 percent, 30 percent, 40 percent, depending on who you ask. Now's not the time, after Afghanistan to be letting people who have been in jail for 20 years because they're so dangerous out of jail. And I hope this administration will not end to Gitmo because the worst thing we could do right now is let people go, who have been involved in terrorist activities who are still danger, who are enemy combatants under international law because of passage of time. So, Mr. Chairman, we all want to work with you on this side. But there is no strategy that I can discern about how to deal with the poisoning of Americans due to fentanyl. Most Americans are worried about the rise in crime. And we need to reassure them, we get it that we're going to do better, that schedule one designation for fentanyl expires at the end of the year. Mr. Chairman, I know you don't want that to happen. Senator Cotton has been ahead of this before any of us. So, if you put arsenic in a pill, knowing somebody's gonna take it, why aren't you charged with -- you would be charged for murder. If you lace a pill with fentanyl, which is probably more lethal than arsenic, why aren't you charged with murder? We're gonna have to deter those who are killing young people in America, we're gonna have to put countries on notice that you're with us or you're against us when it comes to this scourge of fentanyl. We're gonna have to control our border, we're gonna have to come up with a rational immigration policy, we're gonna have to change our asylum laws. Because everybody in the world believes that they get one foot in America, they never leave.

On many fronts, law and order has broken down here at home and the world is in chaos. China is watching what we do in Ukraine. And the question for all of us, are we doing enough to combat the threats that we're all living with? And I would say we're woefully inadequate in dealing with the threats that exist against America at home and abroad. And maybe this committee in a bipartisan fashion can do something about it. Thank you.

DURBIN: Thank you, Senator Graham.

Let me lay out the mechanics of today's hearing. After I swear in the attorney general who will have five minutes to provide an opening statement, we have his written statement for the record. There will be a first round of questions and each senator will have seven minutes. Please try to remain within your allotted time. Following the first round of questions, if there's an interest in the second round, senators will have an additional three minutes each.

I will ask the attorney general to please stand and raise his right hand. Do you affirm that the testimony you're about to give before this committee will be the truth, the whole truth and nothing but the truth, so help you God. Record reflects that the Attorney General answered in the affirmative. And now you're invited to proceed with your opening statement.

GARLAND: Got it. Thank you. Appreciate it. Good morning, Chair Durbin, Ranking Member Graham, and distinguished members of this committee. Every day, the 115,000 employees of the justice department worked tirelessly to fulfill our mission to uphold the rule of law, to keep our country safe, and to protect civil rights. Every day, our FBI, ATF and DEA agents and our deputy U.S. Marshals put their lives on the line to disrupt threats and respond to crises. Every day, department employees counter complex threats to our national security. They fiercely protect the civil rights of our citizens, they pursue accountability for environmental harms, they prosecute crimes that victimize workers, consumers and taxpayers, and they defend our country's democratic institutions. And every day in everything they do, the employees of the Justice Department adhere to and uphold the rule of law. That is the foundation of our system of government. Thank you for an opportunity to discuss our work.

First, upholding the rule of law. When I began my tenure as Attorney General, I said it would be my mission to reaffirm the norms that have guided the Justice Department for nearly 50 years. I do -- did so because those norms matter now more than ever to our democracy. The health of our democracy requires that the Justice Department treat like cases alike, and that we apply the law in a way that respects the Constitution. It requires that as much as possible, we speak through our work and our filings in court, so that we do not jeopardize the viability of our investigations and the civil liberties of our citizens. And the survival of our democracy requires that we stand firmly against attempts to undermine the rule of law, both at home and abroad. I am proud of the work that the department has done on each of these fronts. We are strengthening the norms to protect the department's independence and integrity. We are securing convictions for a wide range of criminal conduct related to the January 6 attack on the Capitol. We are disrupting, investigating, and prosecuting violence and threats of violence, targeting those who serve the public, and we are working closer than ever with our Ukrainian partners in defense of democracy, justice, and the rule of law. We will continue to do so for as long as it takes.

Second, keeping our country safe. The Justice Department is using every resource at our disposal to keep our country safe. We are working to counter, disrupt, and prosecute threats posed by nation states, terrorist groups, radicalized individuals, and cyber criminals. And together with our partners across the country, we are continuing to combat the rise in violent crime that began in 2020. All 94 of our U.S. Attorney's offices are working alongside their state and local partners to pursue district specific violent crime reduction strategies. The department's grant making components are providing financial assistance to local law enforcement agencies. At the same time, they are supporting community led violence intervention efforts, and our law enforcement components are working with state, local, tribal and territorial counterparts to apprehend the most dangerous fugitives and seize illegal drugs and illegal guns. For example, last year, DEA and its partners seized enough fentanyl laced pills and powder to kill every single American. We are also aggressively prosecuting the crimes that inflict economic harm on the American people. We are prioritizing the prosecution of schemes that impact older Americans and vulnerable populations, as well as schemes involving pandemic and procurement fraud. In our corporate criminal enforcement, we are prioritizing and secure -- and securing individual accountability. And we are vigorously enforcing our antitrust laws. Our enforcement actions have already resulted in the blocking or abandonment of mergers that would have stifled competition and harmed consumers.

Third, protecting civil rights. Protecting civil rights was a founding purpose of the Justice Department, and it remains an urgent priority. The department's storied Civil Rights Division has been at the forefront of efforts to protect the right to vote, ensure constitutional policing, and enforce federal statutes prohibiting discrimination in all of its forms. But now, protecting civil rights is also the responsibility of every Justice Department employee every single day. We are working across components to combat hate crimes and improve hate crimes reporting. In the wake of the Supreme Court's decision to overturn Roe and Casey the department has pulled together to protect -- protect reproductive freedom under federal law. And the department recognize that communities of color indigenous communities and low-income communities often bear the brunt of harm caused by environmental crime, pollution, and climate change. So, we are prioritizing cases that will have the greatest impact on the communities most burdened by those harms.

I am proud of the work of the department's employees, the work they have done to uphold the rule of law to keep our country safe and protect civil rights. The department's career workforce has demonstrated extraordinary resilience after years of unprecedented challenge. They have conducted themselves with the utmost integrity without regard to any partisan or other inappropriate influences, and they have done their work with a singular commitment to the public we all serve. The employees of the Justice Department are dedicated, skilled, and patriotic public servants. It is my honor to represent them here today. Thank you for the opportunity to testify. I look forward to your questions.

DURBIN: Thanks, Attorney General, you grew up in Lincolnwood, Illinois, if I'm not mistaken, at least part of your life.

GARLAND: That's true.

DURBIN: It's not far from Highland Park, is it?

GARLAND: That's also true.

DURBIN: And we know what happened last Fourth of July when the people of Highland Park gathered for a Fourth of July parade. A gunman went on the roof of a business downtown and fired off 83 rounds into the crowd in 60 seconds. Even the armed good guys, the policemen who are there trying to protect the public had trouble locating that person and certainly, sadly could not have the time to respond to what he had done until it was finished. When he was finished, there was an eight-year-old Cooper Roberts who will be paralyzed for life. There was a young man two-year-old Aiden McCarthy, who was became an orphan because both of his parents were killed. Seven total lives were lost, 50 people were injured. It is hard for me to imagine that some disciple of originalism believes that our Second Amendment envisioned what happened in Highland Park, to think that there is a weapon out there, a military style weapon, and the rounds and clips that are available to fire off multiple rounds into innocent crowds, just to me makes little or no sense when you read the basic language of the Second Amendment.

And so, Congress did something, and I want to credit Senator Cornyn for being a participant in this effort, a leader in this effort with Senator Murphy of Connecticut, to try to pass a bill to make it better. The bipartisan Safer Communities Act addressed issues of straw purchasing, which we've discussed before the terrible death of Ella French, a Chicago policeman, because of the straw purchase made in the state of Indiana, and this situation, with the shootings of innocent individuals in Highland Park. I'd like to ask you what have you seen if anything has changed for the better since we passed our law?

GARLAND: I think it's a very important law and I'm grateful to the members who sponsored it and to the overall Congress that passed it. It's done several things for us. First of all, it has, as you said, established a standalone crime for straw purchasing and a standalone crime for trafficking in illegal weapons. We have already --

DURBIN: And are these being prosecuted?

GARLAND: Yes, and both cases, we have already brought trafficking cases, I think we've already had two gun trafficking cases and several straw purchasing cases as a consequence of this law. In addition -- in addition, the law have provided for enhanced background checks for people under 21. And we have largely completed the process of making those possible, so that juvenile records that disclose prohibited conduct or -- and make somebody a prohibited possessor would now be identified. That's another thing we've done, that a statute also provided funds under the Burden (ph) program and additional programs for violence intervention and for helping states deal with red flag laws, so that people who have been subjected to a court order barring them from obtaining a gun, we would be able to get those kinds of systems provided and we've already given out grants and both of those areas.

DURBIN: Senator Graham basically challenged me, and I accept the challenge to show as much concern about the gun deaths, show as much concern about fentanyl deaths in this country. And I want to do that. He noted, I believe, correct me if I'm wrong, but the number one cause of death people 18 to 45 is drug overdose. I don't know if it's fentanyl, specifically, but a drug overdose. And I know that in reality. But the number one cause of death to children under the age of 18 is gun violence in America too. We can do both. We must do both.

So, let's address the fentanyl issue for a minute. We had a hearing in this committee two or three weeks ago, which talked about the social media platforms and what they are peddling to Americans, particularly to our children across America. There were mothers sitting near where you're sitting today who brought color photographs of children, their children, who died as a result of their trafficking of information on social media. And there's little or no responsibility accepted by these platforms. Section 230 absolves them from civil liability when they broadcast things which harm children, whether it's bullying or harassment or something as basic as this choke challenge, which unfortunately claims the lives of children as well.

I think there was a general consensus on this committee, which is saying something that we need to do something about social media platforms, and I coincidentally had a meeting just a day or two later with Ann Wiggum [sic]. From the Drug Enforcement Agency. She described for me the sale on the internet and social media platforms of phony drugs, as Senator Graham made the reference to a person who thought they were buying Percocet and bought fentanyl and died as a result of it. I asked her how common this was, she said very common. And they have, the sellers even have valet services where they will physically deliver boxes of these phony drugs to people at their homes on their porches.

This is out of hand. Do you believe that we need to do more to regulate and control the use of social media platforms that are currently exploiting families and children across America?

GARLAND: Senator, I agree with both you and Senator Graham with respect to how horrible this situation is. I have personally met with the families of children and teenagers and young adults and even the elderly who have taken these pills, often thinking that they're taking Adderall or oxycodone, or Percocet, a prescription drug, but when in fact it is filled with fentanyl. And as the DEA administrator's testimony demonstrated, 6 out of 10 of those pills are a fatal dose. The cartels that are creating these pills, and that are distributing them within the United States are the most horrid individuals, you can imagine. And, unfortunately, they are doing it on social media advertising as if they are prescription pills. So, the DEA has a program of going out to the social media companies and urging them to advise DEA when they see this, and advising --

DURBIN: Ms. Wiggum told me that when they approached the social media and asked for the algorithms so that they can get to the root cause of this death and destruction, the social media platforms plead Section 230 and refuse. What do we do?

GARLAND: Well, I think we do have to do something to force them to provide information to search their own platform for sales of illegal drugs. This is a --

DURBIN: I tell you; I mean, I don't want to put words in your mouth, but I think Section 230 has become a suicide pact. We have basically said to these companies, you are absolved from liability, make money, and they're at it in overtime, and deaths result from it. And we have a responsibility. I think the committee really spoke to it, we may see it differently, but on a bipartisan basis. And I've spoken to Senator Graham, and I want to make sure that when we agree, it also is publicized. We both feel very strongly that this committee needs to be a venue to take on this issue; I hope we have your support and the support of the President when we do that.

GARLAND: You certainly have our support with respect to find a better way to get the social media companies, whether it's civil or criminal, to take their -- these kinds of things off their platforms, to search for them, to not use algorithms that recommend them. I totally agree with that, senator.

DURBIN: Thank you.

Senator Graham.

GRAHAM: Thank you. Again, welcome Attorney General.

I'm gonna do something maybe a bit different. I'm gonna try to find a consensus where we can see how far we go. Do you agree that the Wagner organization associated with Russia should be a foreign terrorist organization under U.S. law?

GARLAND: I think they are an organization that's committing war crimes, an organization that's damaging the United States. I think they've already been designated as a trans -- as a criminal --

GRAHAM: Criminal -- yeah --

GARLAND: Yeah, TCO. I'm trying to get that.

GRAHAM: I want to go up a notch. Are you OK with that?

GARLAND: I understand. Now, this is a -- the way in which determinations are made for with respect to terrorist organizations come through the State Department. They have to make determinations of what the consequences for countries that are -- that have them in them.

GRAHAM: Do you object to me trying to make them a foreign terrorist organization?

GARLAND: I think -- I don't object. I think, though, that I would defer in the end to the statement department on this.

GRAHAM: I got you. Yeah. Well, I bet we'll all come together on that one.

Fentanyl -- fentanyl deaths are more than gun and accident deaths combined in United States. Did you know that?

GARLAND: Yes, sir.

GRAHAM: I mean, this is -- how would you describe the fentanyl problem in America?

GARLAND: It's a horrible epidemic. But it's an epidemic that's been unleashed on purpose by the Sinaloa and the new generation of Jalisco cartels.

GRAHAM: OK, let's just stop and absorb that for a moment. It's a horrible epidemic. It kills more people than car wrecks and gun violence combined. And the question is, what are we going to do about it? Under current law, fentanyl loses its schedule one status by the end of the year. You oppose that, I assume?

GARLAND: I certainly do. Fentanyl, all fentanyl related drugs should be scheduled permanently.

GRAHAM: Do you support mandatory minimums for people dealing in fentanyl?

GARLAND: I think we already have mandatory minimums for people --

GRAHAM: Do you think that should be increased?

GARLAND: I think we have more than enough ability now to attack this problem.

GRAHAM: What -- would you agree with me, whatever we have is not working?

GARLAND: Well, I --

GRAHAM: Whatever we're doing is not working?

GARLAND: I agree with that because of the number of deaths that you pointed out --

GRAHAM: So, just keep an open mind that what we got in the books is not working. If somebody gave a pill to another person with arsenic or ricin, could they be charged for murder because that will kill you?

GARLAND: Absolutely.

GRAHAM: OK, if somebody gave a candy shaped pill full of fentanyl, could they be charged for murder?

GARLAND: Well, they can be charged with drug trafficking leading to death. I don't know. I don't think the statute says murder. But it does say specifically aims at that. We have brought prosecutions I know having discussed this with the U.S. Attorney in Colorado and U.S. Attorney in the Southern District of New York.

GRAHAM: So, Senator Cotton's got a proposal to dramatically increase the penalties associated with fentanyl. I'd like to work with you and the Chairman, if we could, to find a bipartisan solution to this problem, to create deterrence that doesn't exist. Mexican drug cartels, should they be designated foreign terrorist organizations under U.S. law?

GARLAND: Yeah, I think it's the same answer I gave before. They are ready designated in any number of ways and sanctioned by the Treasury --

GRAHAM: Would you oppose some of us trying to make them foreign terrorist organizations?

GARLAND: I wouldn't oppose it. But again, I want to point out their diplomatic concerns. We need the assistance of Mexico in this and designating --

GRAHAM: Is Mexico helping us effectively with our fentanyl?

GARLAND: They are helping us, but they could do much more. There's no question about that.

GRAHAM: Well, if this is helping, I would hate to see what not helping looks like. So, the bottom line for me is they're not helping, and we need to up our game when it comes to fentanyl.

Gitmo, you familiar with how -- with the Gitmo prison?

GARLAND: I haven't been there if that's what you're asking.

GRAHAM: No. But you know that we have foreign terrorist housed there?

GARLAND: I certainly do.

GRAHAM: Do you agree with me that under the law of war, an enemy combatant properly designated can be held to the end of hostilities?

GARLAND: Yes, that's a law both of the circuit I stood and was on before, and the Supreme Court.

GRAHAM: Right. So, do you agree with me that ISIS and Al Qaeda is still at war with us?

GARLAND: Yes, I do.

GRAHAM: So, you agree that anybody associated with these organizations could be held indefinitely, if they present a risk to the American people?

GARLAND: I think they could. I think that the termination of whether they present a risk and how they should be dealt with is a determination to be made by the Defense Department and the Defense Department is making --

GRAHAM: But legally they can be held as long as they're at risk, and that could be for the rest of their lives. Correct?

GARLAND: I think that's right. It obviously depends on the facts of determination.

GRAHAM: I totally agree. Do you believe Russia is committing crimes against humanity?

GARLAND: I do.

GRAHAM: OK, that's a pretty bold statement. Should we create an international court to support charges of crime of aggression? Do you support that idea?

GARLAND: So, the United States supports what is now being developed in The Hague, sponsored by Eurojust looking into the possibility of creating that court. There are concerns that we have to take into account with respect to how that might deal with our own service members and other circumstances, we have to be sure that the appropriate guardrails are up, but we support any number of different ways in which war crimes, crimes against humanity and the potential for crimes against aggression are investigated.

GRAHAM: I'd like to work with you in that regard. I think there's something we could do.

GARLAND: I would be happy too.

GRAHAM: When it comes to federal prisons are you aware there are 1200 prisoners are requesting to be sent from a male prison to a female prison?

GARLAND: I'm not, no.

GRAHAM: OK. What is our policy when it comes to allowing a male prisoner to be transitioned into a female prison?

GARLAND: I think if you're generally asking the question of how trans people are dealt with in the Bureau of Prisons, my understanding is that these are determinations about where they're placed, or where people are placed in general, have to do with individualized determinations regarding the security of that individual and the management of the prison. These are done on a case-by-case basis, that's my understanding.

GRAHAM: Are you aware of any policy guidelines that they use to make that determination?

GARLAND: I think there is a policy guideline along the lines that I just said that they are --

GRAHAM: I would like for the Bureau of Prisons to send it to us? Are you concerned that if a biological male was sent to a female prison, that could be a risk to female prisoners?

GARLAND: I think every person in prison has to be dealt with -- with dignity and respect. That determinations of the safety questions you're talking about have to be made on an individualized basis and not categorically.

GRAHAM: Finally, let's end where we started -- fentanyl. If this drug is killing more Americans than car wrecks and gun violence combined, do you believe that the policies we have today in effect are working?

GARLAND: I've been involved in the problem of drug crime and drug trafficking for more than 40 years, including --

GRAHAM: That -- that's not my question. It's not how long have you been involved, are they working?

GARLAND: They are not stopping fentanyl from killing Americans, if that's the question you're asking.

GRAHAM: You say they're woefully inadequate to the task.

GARLAND: We aren't putting all the resources that Congress provides to us into doing this. The DEA is doing -- we are starting at the precursor level and precursors are sent from China to Mexico. We are then working on attacking the labs.

GRAHAM: My time is up. Mr. Attorney, they are not working. And we're going to help you if you'll work with us to give you more tools. I hope you will meet us in the middle. Thank you.

GARLAND: Happy to have more tools, Senator.

DURBIN: Before recognizing another colleague, I want to apologize in my reference to the DEA administrator. Her name is Anne Milgram and I mispronounced it. So, I want to, for the record, clarify that.

Senator Whitehouse.

WHITEHOUSE: Thanks, Chairman, and thank you, Attorney General for being here. I appreciate it. Good to see you.

Methane is probably the one of the most dangerous greenhouse gases, we see plumes of it miles long floating across the United States. It takes multiple levels of enforcement, federal, state, local and private, to address these massive leaks. What can you tell me you are doing to ensure that there is that coordinated, multi-jurisdictional enforcement operation in place?

GARLAND: You're exactly right. And we now have the benefit of overhead commercial satellites, which are able to actually see methane with respect to the infrared spectrum. So, we have -- we are in the process of establishing a working group between our environment, Natural Resources Division and the Justice Department, the EPA, the Interior Department, and affected U.S. Attorney's offices across the country to make use of the tools, the scientific tools we have, and also some of the funding that was provided in the bipartisan Infrastructure Act.

WHITEHOUSE: That is good news. And I hope that that effort will include advisory participation from state law enforcement, from local law enforcement, and from private litigant experts in this space.

GARLAND: All of our work in the law enforcement field involves partnering with state and local law enforcement. Always happy to have the expertise provided, but our law enforcement working groups are confined to law enforcement as a general matter.

WHITEHOUSE: I just got a document from an insurance publication that says, I'm just reading here, at least 1375 climate change related lawsuits have already been brought in the United States. These include suits filed by local municipalities and by states, Rhode Island is one of them, as well as shareholder suits. Given all of that government litigation taking place in this space, I would ask you, is there anyone looking at federal DOJ involvement in that area, in the Department of Justice? And if so, who is that person?

GARLAND: So, I really don't, as a general matter, want to describe our internal decision-making processes. And these I can assure you that the environmental and Natural Resources Division has taken a very close look at this question. But beyond that, I really can't say.

WHITEHOUSE: OK. Well, you may recall that the last time the Department of Justice took a really close look at this question, they got the standard of decision wrong, apply to criminal standard or view to civil litigation. So, I hope that the seriousness of the look that's been taken, what I would like to call an honest look, is actually in fact taking place, because the record from before your time is not very convincing.

GARLAND: I agree with you, Senator, that the criminal standard beyond a reasonable doubt is not appropriate for fraud cases, correct.

WHITEHOUSE: And --

GARLAND: I'm sorry. For civil fraud cases.

WHITEHOUSE: Civil fraud cases, correct. Criminal cases. Congress right now is on the wrong side of a bunch of OLC opinions that relate to executive privilege. And there are some specific ones that relate to so-called absolute immunity, that are on the books at OLC, that have been specifically rejected, in quite forceful language by actual Article III judges. And yet, those OLC opinions are still on the books. They're still available to other agencies who are making determinations about whether to block congressional oversight based on those OLC opinions. I would like to ask you -- let me go back a step. OLC says that they don't ordinarily review opinions of their own, even after they've been discredited by Article III judges, unless they've been asked, and you're one of the people who can ask them. So, I'm asking you, when you ask them to review the OLC opinions that are now publicly on the books of the Department of Justice, that have been discredited by specific findings of Article III judges, they relate to absolute immunity.

GARLAND: So, my understanding of the long-standing process at OLC is not to reevaluate old opinions unless they are now relevant for -- for current controversy.

WHITEHOUSE: That's the problem.

GARLAND: And I also believe that their process is that if a court of ultimate jurisdiction determines that they are wrong, then they will evaluate it. My understanding of the case --

WHITEHOUSE: So, Ketanji Brown Jackson was one of the authors of one of the opinions that said the OLC opinions were wrong. She's a pretty credible Judge, I think she's now sitting on the United States Supreme Court. And those OLC opinions hang out there for review by other executive agencies, even if there's no direct ask to the department that would trigger that OLC review. It's sort of like executive branch jurisprudence that sits on its own, independent from Article III jurisprudence. And somehow, we've got to figure out how to connect those two things. Because at the moment, you have OLC opinions that appear to be flat out wrong by the determinations made by those whose job it is to say what the law is, the Article III judges, and there's no effort to ask them in that fairly unique circumstance to go back and -- and fix it.

GARLAND: So, I again, I think all the circumstances you're talking about are about individual judges, sometimes a single judge on a Court of Appeals, sometimes judge speaking in dicta, but no decision. If there were a decision of the United States Supreme Court that was inconsistent or of a court of appeals, I believe OLC would reevaluate. Otherwise, there are lots of judges who criticize OLC opinions and the Justice Department, and as a former judge that's perfectly appropriate for Article III judges to do. But we have to allocate our resources to cases where -- which are active cases, and that's what OLC does.

WHITEHOUSE: Well, I will continue to pursue this because I think it is wrong for OLC to insist on developing its own jurisprudence that is separate from an independent from what Article III judges decide. And if the only way you can change an OLC opinion, which is controlling on the entire executive branch, is to get the Supreme Court to overturn it, then you've created a really lasting obstacle to the proper separation of powers in our constitution. So, to be continued, Attorney General. Thank you for being here today.

GARLAND: Thank you.

DURBIN: Thank you, Senator Whitehouse.

Senator Grassley.

GRASSLEY: At last year's FBI oversight hearing, Wray committed to protecting whistleblowers that have approached my office about wrongdoing at the department and the FBI. Do you commit to me, this committee, and the Senate as a whole that any retaliatory conduct against whistleblowers will be disciplined?

GARLAND: I do, Senator, and you know well more than any other member of this committee, that I've been a staunch supporter of whistleblowers and of the False Claims Act, during the entire period of my role as a judge as well.

GRASSLEY: I'm going to set up a hypothetical fact pattern for you and ask you to tell me how you would handle it. The Justice Department and FBI receive information from over a dozen sources. That's the first one. Second, those sources provide similar information about potential criminal conduct relating to a single individual. And third, that information was shared with the Department and FBI over a period of years. According to department policy and procedures, what steps would the department take to determine the truth and accuracy of the information provided by those sources?

GARLAND: I'm sorry, these are whistleblowers. So, their internal sources, is that what you're saying? I'm not sure.

GRASSLEY: Doesn't matter where it comes from, just the fact that I want to know you got that information. How would you go about handling it?

GARLAND: Yeah. So, reports of wrongdoing are normally reported to whatever the appropriate department component is, it might be U.S. Attorney's Offices in the district in which it illegitimately took place. It might be to the directly to FBI components and to FBI task forces. In cases involving whistleblowers, of course, there are specific provisions for making complaints to the Inspector General's office or the Office of Professional Responsibility, or the inspections division of the FBI.

GRASSLEY: Recent lawfully protected whistleblower disclosures to my office indicate that the Justice Department and the FBI had at one time over a dozen sources that provided potentially criminal information relating to Hunter Biden. The alleged volume and similarity of the information would demand that the Justice Department investigate the truth and accuracy of the information. According to -- what -- accordingly, what steps has the Justice Department taken to determine the truth and accuracy of information provided? Congress and the American people, I think, have a right to know.

GARLAND: So, as the committee well knows from my confirmation hearing, I promise to leave -- I promised to leave the matter of Hunter Biden in the hands of the U.S. Attorney for the District of Delaware, who was appointed in the previous administration. So, any information like that should have gone or should have gone to that U.S. Attorney's offices and the FBI squad that's working with him. I have pledged not to interfere with that investigation. And I have carried through on my pledge.

GRASSLEY: In April 2022, you testified to Senator Haggerty, that the Hunter Biden investigation was insulated from political interference because it was assigned to as you just now told me to the Delaware Attorney's Office, however, that could be misleading because without spatial console authority, he could need permission of another U.S. Attorney in certain circumstances to bring charges outside the district of Delaware. I'd like clarification from you with respect to these concerns.

GARLAND: The U.S. Attorney in Delaware has been advised that he has full authority to make those kinds of referrals that you're talking about or to bring cases in other jurisdictions if he feels it's necessary. And I will assure you that if he does, he will be able to do that.

GRASSLEY: Does Delaware U.S. Attorney lack independent charging authority over certain criminal allegations against the president's son outside of the district of Delaware?

GARLAND: He would have to bring -- if it's in another district, he would have to bring the case in another district. But as I said, I have promised to ensure that he's able to carry out his investigation and that he be able to run it. And if he needs to bring it in another jurisdiction, he will have full authority to do that.

GRASSLEY: If you provided the Delaware U.S. attorney with special console authority, isn't it true that he would need permission of another U.S. attorney to bring charges?

GARLAND: It's a kind of a complicated question. If under the regulations that kind of act, he would have to bring to me under -- to the Attorney General, under the regulations, those kind of charging decisions would have to be brought, I would then have to, you know, authorize it and permit it to be brought in another jurisdiction. And that is exactly what I promised to do here already, that if he needs to do bring a case in another jurisdiction, he will have my full authority to do that.

GRASSLEY: Has the Delaware U.S. Attorney sought permission from permission of another U.S. Attorney's Office, such as in the District of Columbia or in California to bring charges? If so, was it denied?

GARLAND: So, I don't know the answer to that. I do -- and I don't want to get into the internal elements of decision making by the U.S. attorney, but he has been advised that he is not to be denied anything that he needs. And if that were to happen, it should ascend through the department's ranks, and I have not heard anything from that office to suggest that they are not able to do everything that the U.S. attorney wants to do.

GRASSLEY: Well, let me give you my view. If Weiss, the U.S. attorney there in Delaware, must seek permission from a Biden appointed U.S. attorney to bring charges, then the Hunter Biden Criminal Investigation isn't insulated from political interference as you've publicly proclaimed, if the Justice Department received information that foreign persons had evidence of improper or unlawful financial payment paid to elected officials or other politically exposed persons, and those payments may have influenced policy decisions, would that pose a national security concern and demand a full investigation? And when Wray was here, he seemed to answer that question in that it was a national security concern. I want your opinion.

GARLAND: In the way that you're -- if I -- if I follow the question exactly right, if it's an agent of a foreign government asking someone and paying someone to do things to support that foreign government in secret, yes, I definitely think that would be a national security problem.

GRASSLEY: OK. My last question is to whistleblowers have confidentially asserted that the DOJ's Public Integrity Unit -- I think I'm going to leave that question for another round. Thank you, Mr. Chairman.

GARLAND: Thank you, Senator.

DURBIN: Thanks, Senator Grassley.

Senator Klobuchar.

KLOBUCHAR: Thank you very much, Attorney General Garland, for being here. I know a major goal of yours was working to build morale in the department, filling a number of the jobs. And I want to personally thank you for the work of the U.S. Attorney's Office in Minnesota and our U.S. Attorney Andy Luger, who I know you know. And he actually at his swearing in announced a major strategy to address violent crime that directed federal law enforcement to prioritize cases including carjackings, we've had a rash of those cases in Minnesota and the trafficking of firearms. Under his leadership, every federal prosecutor, as you are aware, and your leadership in the office will now take on violent crime cases. Can you talk about how the department's approach to focusing on violent crime is centered on partnerships with local agencies and what you're doing?

GARLAND: Yeah, I want to begin by saying that we well recognize that there is a terrible problem of violent crime, very first. And the reason violent crime is important to the federal government is because it -- it makes it impossible for people to go about their ordinary lives and carry out their civic responsibilities and their family responsibilities without fear. So, the department is very seized with this problem. And one of the very first things I did after becoming Attorney General, this was, I think, in May, is to establish an anti-violent crime strategy, which involves the kinds of partnerships that you're talking about, and -- and the kind of individual district by district determination that U.S. Attorney Luger has made in his own district as to what is most necessary in this district to fight violent crime. Our plan involves three sets of partnerships. One is among all federal law enforcement, FBI, DEA, Marshals, ATF, and Homeland Security, and other agencies so that there is no turf fighting, that we all work together in joint task forces, that those partnerships at the second level be expanded to state and local law enforcement, police, and sheriffs. There are not enough federal law enforcement in the world to deal with the problem of violent crime, this is largely a state and local issue and problem, and we are -- they are our force multipliers and we are their resource and expertise multipliers. So, in every jurisdiction, the U.S. attorney is responsible for creating a task force of federal and state.

And then finally, with our has to be relationships with the community. As a former violent crime prosecutor, myself, I know we don't get witnesses to testify in violent crime cases, unless the community trusts us. The community doesn't trust us if we don't, if law enforcement doesn't engage with them, show that we're being honest and transparent about our work. And -- and through our funding mechanisms provide grants for violence interruption and violence intervention.

KLOBUCHAR: OK, thank you.

GARLAND: And that's in a nutshell is a violent crime program.

KLOBUCHAR: Thank you for that thorough answer. I'm gonna just now do a bit of a Rapid Round follow up on some of these. You mentioned law enforcement. You noted in your testimony that the COPS Office has dedicated 224 million to help law enforcement. Senator Murkowski and I have long championed the cops hiring program through the COPS Reauthorization Act. I assume you continue to support that and continue to support the work that needs to be done to address police officer recruitment and retention issues?

GARLAND: Yeah, absolutely. In the previous fiscal year, we think we had \$100 million to distribute, which we did for cops hiring, for recruitment and retention. In the next fiscal year, we expect over \$200 million for the same purpose. We know how difficult police departments are, how much difficulty they're having with respect to recruitment and retention. And we are trying to do everything we can both in terms of grants and in terms of expertise to help.

KLOBUCHAR: OK, very good. Minnesota currently a backlog of around 3800 DNA cases awaiting testing. Senator Cornyn and I are working together on the Debbie Smith Act. And would that help law enforcement have a tool they need this just actually these numbers just came out yesterday? So, it's very timely.

GARLAND: No, absolutely. I think that that needs to be re upped. And we are very strongly supportive of providing more funds to state and locals for DNA rape kits and things -- forensic analysis of the like.

KLOBUCHAR: OK, I want to leave two minutes for antitrust, so, just one quick other follow-up. Senator Campos and I asked what steps the department has taken to stop the trafficking of fentanyl on the dark web. I know some of my colleagues have asked about fentanyl. Any update you want to give on that, or you could give it in writing afterward.

GARLAND: Well, I'll give you more detail in writing. As you know, we had a major takedown of two different dark web websites, which were trafficking and fentanyl. And we are continuing to investigate using our cyber tools to take those websites down and to arrest the operators.

KLOBUCHAR: OK, thank you. Senator Grassley and I worked together on passing, as you know, the changes to the merger fees. It was kind of a lot of drama at the end of the year. And we're very pleased that that went through, and it had I think 88 senators supporting an amendment at the end of the year on the budget. And I assume you're going to use those resources in a good way as they start coming in. And but I really wanted to focus on some of the legal changes we'd like to see, Senator Lee and I were pleased the venue bill passed that he led. And I know we also have a bill on the marketing side on Google. We're going to be having a hearing coming up on that topic. And I know the department recently announced a new antitrust case against Google for its blocking of competition in digital advertising. But could you talk a little bit about beyond that, what you think legal changes, law changes would be helpful as we seeing a changing internet economy and on the privacy kids side with Senator Durbin asked about, we haven't seen any changes to our laws, but also on the antitrust side, on the marketing, on the self-preferencing of their products, whether it's Amazon or Apple? We haven't seen changes. And Senator Blackburn and Senator Blumenthal have worked together on the App Store bill, talk about what you'd like to see to give you the tools to better combat the issues that we're seeing.

GARLAND: So, first, gratitude for the merger fees increases, it gives us the opportunity to staff up and be able to have enough lawyers and economists to oppose private sector, which is way more than we do. And we still have fewer antitrust employees than we had in the '70s the last time I was in the Justice Department. With respect to --

KLOBUCHAR: That you have the biggest companies the world has ever seen to try to deal with.

GARLAND: Yeah --

KLOBUCHAR: OK.

GARLAND: -- exactly. On the legislation side, we have supported I think it's called the online choice, American Innovation and Online -- line Choice Act.

KLOBUCHAR: Good.

GARLAND: Did I get it right?

KLOBUCHAR: Yeah.

GARLAND: Thank you. And the Open Apps Act, I think that's close to the correct title, has -- we've had testimony by Assistant Attorney General Kanter with respect to the Open Apps Act. We are always interested in working with Congress to modernize the antitrust laws to take account of the kind of network effects that two sided platforms that we now have in our high technology companies.

KLOBUCHAR: Well, thank you. And of course, you join a number of Republicans as well as the NFIB. It's made this a huge priority in terms of passing these bills. Thank you.

DURBIN: Attorney General, of course, Senator Klobuchar has a recommendation for your reading pleasure on the subject of anti-trust. Senator --

GARLAND: I -- as Senator Klobuchar would say, channeling Taylor Swift, I know that all too well.

KLOBUCHAR: Thank you for bringing up the Ticketmaster hearing that Senator Lee and I conduct. I'm sure we will have follow-up in writing or maybe Senator Lee could ask a question about that. Thank you.

GARLAND: I can't match all of Senator Lee's quips on this one. But I'm pretty familiar with Taylor Swift, so I'll do my best.

DURBIN: Now you've got it started.

Senator Cornyn.

CORNYN: Attorney General Garland, you of course served in the judiciary for many years. And before you became Attorney General, let me just ask do you prefer to be called General Garland or Judge Garland?

GARLAND: The senators of this committee can call me anything that they want.

CORNYN: Well with, we will, with, all appropriate respect.

GARLAND: I appreciate that part.

CORNYN: Are you familiar with the strategy of the transnational criminal organizations that are flooding migrants across the border, overwhelming border patrol and other law enforcement authorities so that then the drug traffickers can move illicit drugs across the border? Are you familiar with that, I would call a business model?

GARLAND: I am and I set up, specifically directed to the establishment of a task force on, anti-smuggling and anti-human trafficking for just the reason you said, it involves our civil rights division, our criminal division, and, the U.S. attorney's offices all across -- along the border, as well as our, offices in the, northern triangle countries -- countries, and, Mexico.

CORNYN: I think you and I had this conversation earlier. Maybe it's your confirmation hearing, but I think, the Attorney General has the toughest job in, in government, I believe, because you have to wear two hats. You are the chief law enforcement officer of the country, and you are also a political appointee and a member of President Biden's cabinet. But I think you also told us at the hearing, your confirmation hearing, you repeatedly said that the executive branch cannot simply decide based on policy disagreements, that it will not enforce the law. Is that still your position?

GARLAND: Yes, it is. Senator.

CORNYN: On, September the 11th, 2001, we lost about 3,000 Americans, to a terrorist attack. We declared a war on terror. The Congress issued an authorization for the use of military force. If you took the, size of an average 737 or a passenger jet today, holes between 145 and 185, passengers, if you were to rack up all of the deaths that we've seen as a result of drugs coming across the southwestern border as a result of this successful business model that the cartels have employed, you would be talking about the equivalent of a passenger jet per day crashing, killing everyone on board.

I have been just, astonished at the lack of sense of urgency, to deal with this issue. It seems we become so desensitized to it that that sense of urgency is simply gone. But I will tell you that it's directly related to the open border policies of the Biden administration where people continue to come across the border, turn themselves into a broken asylum system, or simply get away from law enforcement because they're overwhelming the border patrol's capacity. This is intentional as you acknowledge, it's a business model of the cartels and they are getting rich and students like those parents who I met with, last week in Johnson High School in Hayes County, Texas, right outside of Austin, are losing their sons and daughters to fentanyl overdoses because of exactly this successful business model by the cartels.

I want to ask you a little bit about the prosecution policies of the Garland -- Attorney General's Department of Justice. Sort of the bedrock standard for prosecuting crimes has historically been that the prosecutor should pursue the most serious, readily provable offense. And that that's been the bedrock of policy for over decades. We know that, Eric Holder, when he was Attorney General changed that standard.

And specifically, what I want to ask you is about two different memos that you've, is issued to prosecutors with regard to mandatory minimum sentencing. And specifically in the charging memo, one of the charging memos, you said, the proliferation of provisions carrying mandatory minimum sentences has often caused unwarranted, unwarranted disproportionality in sentencing and disproportionately severe sentences.

Now, just to be clear, mandatory minimum sentences are statutory. Correct? In other words, they're passed by Congress and signed into law by the President.

GARLAND: Yes, that's right.

CORNYN: And here you, you suggest that prosecutors should not enforce or charge with, charge defendants with a crime which carries a mandatory minimum under certain circumstances, correct?

GARLAND: I did not, it's not exactly -- if I can just have a moment to explain. I'm very familiar ...

CORNYN: No, well, if you just answer the question. So, the memo says specifically, I'll just read it to you, it said, for this reason, charges that subjected defendant to a mandatory minimum sentence should ordinarily be reserved for instances in which the remaining charges, would not sufficiently reflect the seriousness of the defendant's criminal conduct, danger to the community, harmed the victims, or other considerations, outlined above.

So basically, your charging memorandum says that prosecutors can exercise their discretion to charge less than the most serious offense, because you don't like the mandatory minimum senators that Congress has passed. Correct?

GARLAND: No, Senator, this is a question of allocating our resources and focusing them on violent crime. Later on ...

CORNYN: I thought you said, I thought you said that, your job was to enforce the law with regard to, without regard to policy differences.

GARLAND: It's not a question of policy differences. It's a question of the resources we have ...

CORNYN: You don't have enough money. You don't have enough ...

GARLAND: We don't have enough people, we don't have enough money. We don't have enough jails. We don't have enough, judges.

CORNYN: Well, you've irrigated to yourself the decision to make policy by saying that in spite of the fact that there are mandatory minimum sentences for many of these drug crimes, which are now causing untold death and destruction across America, you're telling prosecutors don't charge if they involve a mandatory minimum sentence.

GARLAND: With respect Senator, the memorandum makes clear that that general analysis doesn't apply in violent crime, doesn't apply in drug trafficking, doesn't apply in cases in which there's injuries.

CORNYN: So, your cherry picking which cases that you will charge with a mandatory minimum sentence and not applying them uniformly and charging the most serious crime that can be proven at trial?

GARLAND: Apply it to every single crime. We will not be able to focus our resources on violent crime and significant drug trafficking on the cartels, on the people who are killing people with fentanyl. So, the purpose here is to focus the attention of our prosecutors and agents on the things that are damaging the American people in the largest possible respect. That's what the, what this policy says.

CORNYN: At 108,000 roughly Americans who died as a result of drug overdoses last year, 71,000 roughly of fentanyl overdoses. Do you consider your current policies successful?

GARLAND: We -- as I said, and answer to another question, we have a huge epidemic of fentanyl problem, created by intentional acts by the cartels. We are doing everything we can within our resources to fight that. We have our DEA working, to prevent transfer of precursors into Mexico to capture the labs, to extradite the cartel leaders, to arrest them in the United States. We are focusing on fentanyl with enormous urgency. I have personally twice traveled to Mexico to try to get greater cooperation from the Mexicans on exactly the problem you're talking about. I have separately talked twice in person with the Mexican Attorney General for exactly the problem that you're talking about, that we are focusing on this with enormous urgency. This is a priority of the Justice Department, but this is a whole of government problem. The border is a responsibility of the Department of Homeland Security, we do what we can do with in respect to the jurisdictions that we have.

DURBIN: Thank you, Senator Cornyn. Senator Blumenthal.

BLUMENTHAL: Thanks, Mr. Chairman. Let me begin by thanking you, Mr. Attorney General and all of the very dedicated professionals, all of the employees of the Department of Justice for the great work that they do day in and day out. A lot of it underappreciated. I say that as an alumnus of the Department of Justice of former United States Attorney, but, the work that you and your team have done to restore the confidence and trust at the American public in our Department of Justice, I think is one of your enduring contributions.

Let me begin with areas where I think we have a high level of bipartisan agreement. First of all, on the Wagner Group, Senator Graham and I are the principal sponsors along with Senator Whitehouse of a measure to declare the Wagner Group a foreign terrorist organization. You would agree that assuming that the State Department goes along with us, that it is worthwhile doing.

GARLAND: Look, Mr. Prigozhin who runs this thing is, in my view, a war criminal. And, maybe that's inappropriate for me to say with, as a judge before getting all the evidence. But I think we have more than sufficient evidence at this point for me to feel that way. And, I believe that that group, which is responsible, for the attacks on the Ukrainians in Donbass including, by bringing in prisoners, from Russian, prison camps, as (inaudible), it's just un it's unfathomable what they are doing and everything we can do to stop them we should do.

BLUMENTHAL: Senator Whitehouse and Graham and I, have been working on aiding Ukrainian prosecutors in bringing to justice those war criminals, not only Prigozhin, but others who tied the hands of women and children behind their backs, shot them, buried them in mass grave, which I have visited among my three trips to Ukraine. Can you commit to the Department of Justice will support the Ukrainian prosecutor who is hard at work right now in trying to bring to justice those war criminals?

GARLAND: And not only will commit, I commit, but I'll tell you I've done that. I've met twice in person with the pro -- current prosecutor, General Prosecutor Kostin I met in Ukraine with the previous, Prosecutor General. We have established a war crimes, task force in the Justice Department to assist our forensic agents are on the ground now in Ukraine to assist, to teach, to assist in the development of the forensics necessary to do those. I have met with, Eurojust, and to -- and Europol to work on the, help them, develop the kind of infrastructure necessary to prosecute these cases. You have our whole hearted support in your efforts here.

BLUMENTHAL: Thank you. Next week Senator Hawley and I are going to have a hearing on Section 230 reform, the first of a number of hearings that I hope will lead to legislation. I hope it will be bipartisan legislation. The Solicitor General in her argument on Gonzalez, I think made a number of important points on differentiating third party content from platform design. In other words, Section 230 could cover content that users post, but when YouTube or others design their products in specific ways that cause harm, or take steps to amplify or change content that goes beyond the intent and the statutory language of Section 230.

One example of the ways that I think we can achieve steps towards Section 230 reform in other is the EARN IT Act, which Senator Graham and I have sponsored, and we will introduce it again this year. I recognize that these are general principles. I hope the Department of Justice will support this effort. I hope that, you will as well support efforts to take action against monopolistic endeavors like Ticketmaster. I understand that you commented briefly on it. Can you confirm that Ticketmaster is under investigation now?

GARLAND: Yeah. So, the department doesn't confirm or deny the existence of these kinds of investigations until they reach an overt stage as, as you know from your time as a U.S. attorney. But, as I am told, Senator Klobuchar, we know, quote, all too well, close quote, the importance of competition in this industry, as in all other industries. And so, you can be confident that in all of our work, we approach it with an understanding, that highly concentrated industries are a problem for competition.

BLUMENTHAL: In that concentrated, concentrated situation where power, it's concentrated and you have violation of consent decrees twice. Wouldn't it be appropriate for the Department of Justice to investigate?

GARLAND: I'm, as I say, I really, I'm happy to talk in hypothetical that in a case where someone violates the consent decree, of course it would be appropriate to investigate, but I just don't want to talk about individual, investigations and whether they're ongoing.

BLUMENTHAL: Let me ask you the American public right now is hearing about investigations involving, COVID, sources of COVID in China. Conclusions with low confidence, high degree of confidence. Can you, as an official in charge of intelligence and interpretations of intelligence, explain to the American people what it means for there to be low confidence or higher confidence when there are conclusions about, for example, the sources of COVID whether it came from natural sources in China or from a lab leak, what does that designation mean?

GARLAND: I would have to say it to, to my knowledge. I mean, these are, are labels that are applied, by the intelligence community. So, it's a -- while I read, read the results, I'm, I'm not sure, I can exactly define it, but I believe it is just as you would think, that if asked to make a, decision and say, yes or no, you say yes or no, depending on the degree of confidence that you have, that your yes or no answer is correct. So low confidence means you think the answer is yes, but you don't have high, you know, you have low confidence in it. Medium is medium.

You might answer, we don't know at all. But that's not what, that's not what you're asking about.

BLUMENTHAL: So, it's more than a hunch or a guess, but not quite.

GARLAND: Yeah.

BLUMENTHAL: Something to take to the bank.

GARLAND: Yeah. So, there's a, a lot of, criminal law, from terror -- ranging from terry (ph) stops to probable cause to convictions. There, I don't think there is any law in the intelligence community that defines those specifically.

BLUMENTHAL: You, you wouldn't sanction a search or an arrest based on low confidence?

GARLAND: No. A search and arrest require probable cause. That's all I can say.

DURBIN: Thank you, Senator Blumenthal.

BLUMENTHAL: Thank you.

DURBIN: After Senator Lee asks, we're going to take a brief, intermission. Senator Lee.

LEE: Thank you, Attorney General Garland. I want to echo briefly, what Senator Klobuchar described, I hope you'll look at our letter and investigate thoroughly those issues.

As you know, I've long respected you and I've long respected your department. I have become concerned, recently that notwithstanding the great men and women who serve and have served for generations in the Department of Justice, there are some things that lead me to wonder whether some actions are being politicized within the department. One example of this relates to 18 USC Section 1507. Ever since the leak of the Dobbs opinion and then the issuance of the Dobbs opinion by the Supreme Court last summer, we've had protesters who have been showing up the homes of Supreme Court justices, carrying signs, picketing shouting. It's very clear that they're trying to influence in one way or another. Those serving on the United States Supreme Court tried to influence jurisprudence. And yet not one person, to my knowledge, has been prosecuted for such things under 18 USC Section 1507.

About two weeks ago, this committee invited, some officials from the Department of Justice to brief, committee staff on protests at the justice's homes, and asked about any arrests that have been made or might be made, for people engaged in that behavior. The briefers came to the briefing and informed staff that they hadn't read Section 1507, I assume you've read it, of course. Just wondering why, the department would schedule such a briefing, on a statute, without having read it and especially, why not -- no actions have been brought under section 1507 for these actions. I've got a lot to cover. Can you answer that (inaudible) ...

GARLAND: I'll try to answer all the, all these questions ...

(CROSSTALK)

LEE: But no, just, just tell me, am I right in concluding that you haven't brought any charges under 1507.

GARLAND: So, I don't know the answer to that. We have -- the thing that mattered, and as soon as the Dobbs draft leaked, I ordered the, marshals to do something that the United States Marshals had never in history done before, which was protect the justice's homes, residents, and lives 24/7. No Attorney General had ever ordered that before, and no Justice Department had ever done that before. We ...

LEE: Which is terrific. That's fantastic.

GARLAND: So, I'm getting the why, to the why. So, we sent more than 70 U.S. Marshals for this purpose. Those marshals' priority is protection of the lives of the justices in their families. They are onsite. But their priority job is protection. That is why when someone did come to assault Justice Kavanaugh, he had to walk, go away from where they were because there were two marshals in front of the house, and eventually he self-reported himself. The marshals have been advised, and they know the marshals on the ground, they have full authority to arrest people under any federal statute, including that federal statute. But they have to make the determination on the ground whether they can do that in a manner that is safe and, and able to protect their main mission.

Now, they're also state and local, entities which have similar authorities, and which I understand the Supreme Court Marshal has asked them to do this as well, I don't know whether they have done any of those things.

LEE: OK. Thank you. I'd love to follow up with you more on that later. It is concerning to me when you show up at the home of a public official, you're sending the message of implicit violence, you're sending the message. We know where you sleep, we know where you and your family are most vulnerable, and it's very concerning to me.

I assume you're aware of the, overly aggressive arrest and prosecution of Mark Houck, who's a pro-life, activist and father of seven, in Philadelphia. Based on the fact that he had pushed a protestor, a protestor who, or a Planned Parenthood escort, rather as, as he was, demonstrating outside of, an area or in the Philadelphia region. He pushed this person after this person got in the face of his 12-year-old son and was yelling vile, insulting, demeaning, implicitly threatening things, denigrating his father, denigrating his faith. And yelling vile, sexually suggestive things to his 12-year-old son. So, he shoved him.

And then before they knew it, Mr. Houck was facing FACE Act prosecutions, a highly militarized group of, DOJ law enforcement showed up to enforce a warrant. They showed up at, about 7:00 a.m. on a Friday morning. And, as his, his house's wife put it, the SWAT team of about 25 came to my house with about 15 vehicles and started pounding on the door, and then had about five guns pointed at my husband, myself, and basically my kids. This concerns me. You know, Mr. Houck ended up facing these charges, and not surprisingly, the jury acquitted him of that. And I was just wondering how -- it doesn't seem justifiable to me to have that overwhelming show of force for conduct like that.

In the meantime, in 2022 and for the first couple of months of 2023, DOJ has announced charges against 34 individuals for blocking access to or vandalizing abortion clinics. And there, there have been over 81 per reported attacks on pregnancy centers, 130 attacks on Catholic churches since the leak of the Dobbs decision, and only two individuals have been charged. So how do you explain this disparity, by reference to anything other than politicization of what's happening there.

GARLAND: The FACE Act applies equally to efforts to damage, blockade clinics, whether, pregnant, resource -- whether they're pregnancy resource center, or whether they're an abortion center. It applies equally in both cases, and we apply the law equally. I will say you are quite right, there are many more prosecutions with respect, to the blocking of the abortion centers, but that is generally because they are, those actions are taken in, with photography at the time, during the daylight. And, seeing the person who did it is, quite easy.

Those who are attacking the pregnancy resources centers, which is hoard thing to do, are doing this at night, in the dark. We have put full resources on this. We have asked rewards out for this. The Justice Department and the FBI have made, outreach to Catholic and other organizations, to ask for their help in identifying the people who are doing this. We will prosecute every case against a pregnancy resource center that we can make. But these people who are doing this are clever and are doing it in secret. And, I'm convinced that the FBI is trying to, find them, with urgency.

LEE: OK. See, my times expired. Mr. Chairman, I'd like to submit for the record, copy of a letter sent by Representative Andy Biggs from Arizona regarding the case involving Philip Esformes, an individual who was granted clemency by the prior administration and who's now apparently being prosecuted. I hope to discuss this in a subsequent round.

DURBIN: Without objection, it'll be entered in the record.

We're going to recess for five minutes. Committee stands and recess.

Resume. Senator Padilla.

PADILLA: Thank you, Mr. Chair. Attorney General, as we've discussed on, prior occasions, we know that hate crimes in many United States, cities are at their highest level since the FBI began collecting data in the 1990s. Los Angeles alone has, seen almost 700, or saw almost 700 hate crimes in the year 2022. Its highest total ever. Hate crimes are also known to be widely under reported. So, the real numbers are very likely to be, much higher.

Now, hate crimes based on anti-Semitism in particular are rising at alarming rates. According to the Center for the Study of Hate and Extremism at California State University, San Bernardino, Los Angeles faced 80 anti-Semitic hate crimes from January to October of last year, a nearly 10 percent increase over the previous year. And this past month, federal prosecutors charged a 28-year-old man with hate crimes after he fired at two Jewish men as they walked home from their synagogue in Los Angeles.

So, my question is this, do we have adequate resources being devoted to hate crime, investigation, and prosecution? And are there any, solutions that you believe we should be considering to help us help you do this job?

GARLAND: Well, I'm grateful for the question and obviously if anybody ever wants to give me more resources in any area of the Justice Department's responsibility, I'm happy to take them. We have been focused, like a laser on hate crime since I first came into the department. I think my memorandum to the department, to develop a anti-hate crime task force was one of the very first memorandums I issued.

As we were making our developments in that respect, the Anti-Hate Crime Act was passed by the Congress, providing us with additional funding, which was very helpful. I've established a hate crimes coordinator, in the department and each of our U.S. attorney's offices, this is on the case, looking into these matters. And the, FBI has elevated, hate crimes and civil rights violations, into their highest band of, threats.

So, I would say we are examining this, with the highest degree of urgency that's possible, and we are putting the, our resources of our department, into stopping these heinous acts.

PADILLA: OK. Well, appreciate that. And in addition to resources, if there's specific, policy changes, or initiatives that you'd like for us to consider, please bring them forward.

GARLAND: My staff would be happy to work with yours. If you have ideas in this regard, I think we're pretty -- right now, I feel like we have the, statutes and, techniques, required. But, there's always room for improvement in everything, and we would be happy to work with you in that regard.

PADILLA: Now, second area I wanted to, raise is, the issue of labor, exploitation of children and a particular migrant children. Hoping you caught a recent New York Times, report of their investigation, which, put a spotlight in the vast use of migrant child labor across states and across industries. I was particularly alarmed to learn that some of these children are working full adult shifts in food processing facilities, in factories after school. Children are being placed in occupationally dangerous situations where they're putting their lives at risk and given a little break from grueling work. And many of these children were formally under the care of the Department of Health and Human Services as unaccompanied minors, but have not received adequate follow-up services once released to the care of a sponsor. And ask, consent to enter this article into the record.

DURBIN: Without objection.

PADILLA: Now, the Biden administration on Monday did announce that it will direct agencies to crack down on the use of child labor, and as part of the new initiative, it's a Department of Labor who will investigate and enforce penalties on these unscrupulous employers and make criminal referrals as needed. Now the Department of Labor is also going to lead an inter-agency task force to combat child labor exploitation.

So, my question is, will the Department of Justice be coordinating with the Department of Labor on criminal referrals, and possibly join this inter-agency task force?

GARLAND: We, of course, I read the same article that you're talking about. I was horrified, by the reporting. Our criminal division and our civil rights division are reaching out, to the Labor Department and HHS to try to be of assistance as much as possible. There's, only a limited number of, criminal statutes that would apply.

I would point out we do have a, forced labor, task force, which, has been very active in general, and it includes problems with respect to children, obviously. And I met with them, the other, you trust yesterday, and they have assured me that they would be reaching out as well.

PADILLA: OK. I look forward to, following up on that.

But I also can't help but to acknowledge some of the dynamics that lead to these situations. All right. We know that, from the private sector, we've heard that there is a need to address the demand for workers. There's a workforce shortage in America today across a number of industries and sectors. There's a reported 11 million unfilled jobs, many of which have historically been filled by immigrants, you know, permanent, temporary, but we've seen migration numbers drop in recent years. So, with no migrants to fill these jobs in 20 -- since 2018, the U.S. Department of Labor has seen a 69 percent increase in children being employed unlawfully by companies.

So, it seems like employers, particularly unscrupulous employers, they're going to find their workers somewhere. And if they're not finding them through traditional lawful means children become the victims. Further disturbed by proposals I see from Republican legislators in states, including Iowa, Ohio, Arkansas, and others, where they're proposing to loosen child labor laws. That's not the solution here. Proposing 14 and 15-year-olds work in meat coolers, industrial freezers, and other environments. This cannot be the answer to our nation's labor problems. So, I absolutely look forward to following up with you on this, crackdown of, unlawful child labor in the United States.

My time is up, but I'll have, some further follow up questions in the second round. I hope. Thank you.

Thank you, Mr. Chair.

DURBIN: Thank you, Senator Padilla. We're on a roll call. I tell just to alert the members and Senator Cruz is next.

CRUZ: Thank you, Mr. Chairman. General, welcome.

GARLAND: Thank you.

CRUZ: As you know, as I observed at your confirmation hearing, you had built a long record on the Federal Court of Appeals and a reputation of being relatively nonpartisan. And so, I had hopes that your tenure as Attorney General would continue that record.

I have to say, I'm deeply disappointed in what the last two years have shown. In my judgment, the Department of Justice has been politicized to the greatest extent I've ever seen in this country. And it is done a discredit to the Department of Justice, to the FBI, and to the administration of law in this country.

Let me start with a simple question, General Garland, is it a federal crime to protest outside of a judge's home with the intent of influencing that judge as to a pending case?

GARLAND: The answer to that is yes, but I also want to at least respond to your characterization of the department ...

CRUZ: Sure.

GARLAND: ... which I vigorously disagree with. I believe the men and women of the department pursue their work every single day in a non-partisan and an appropriate crime (ph).

CRUZ: General Garland, there are thousands of men and women who do that. And I'll tell you, I hear from prosecutors at the Department of Justice, I hear from agents at the FBI who are angry that it is treated as the enforcement arm for the DNC instead of upholding the law in a fair and evenhanded manner. So, you are right. There are thousands of men and women that are, that are doing the job, but it is the political leadership that you are responsible for.

So, you just said, yes, it's a crime to protest at the home of a judge. Same goes for jurors, by the way, with the intent of in influencing a case. But in the wake of the leak of the Dobbs decision, when rioters descended of the homes of six Supreme Court justices' night after night after night, you did nothing. The Department did nothing. When extremist groups like Ruth Sent Us and Jane's Revenge, openly organized campaigns of harassment at the homes of justices, you sat on your hands. When these same groups posted online information about where the justices worship. Or their home addresses or where their kids went to school, you again sat on your hands and did nothing.

Your failure to act, to protect the safety of the justices and their families was an obvious product of political bias. You agree with Roe versus Wade. You disagree with the Dobbs decision and the Department of Justice under this president was perfectly happy to refuse to enforce the law and allow threats of violence. And as you know, those threats finally materialized with Nicholas Roske, a 26-year-old man from California who traveled across the country, was arrested outside the home of Justice Kavanaugh, armed with a handgun, a knife, and burglary tools. And he said he came there to kill Justice Kavanaugh because he was enraged by the leaked opinion.

Now, of course, you're prosecuting. That individual for attempted murder. But did you bring even a single case to enforce this law or did the Department of Justice decide this law doesn't apply if it's harassing justices for an opinion we don't like?

GARLAND: When the Dobbs draft was leaked, I did something no Attorney General in the history of the department had ever done before. For the first time in history, I ordered United States Marshals 24/7 to defend every residence of every justice ...

CRUZ: But Garland is a judge you're familiar with asking counsel and answer a question?

GARLAND: I am answering ...

CRUZ: As the Department of Justice enforced this statute, have you brought a single case against any of these protestors threatening the judge -- justices under 18 USC Section 1507? Have you brought even one?

GARLAND: Senator, you asked me whether I sat on my hands and quite of the opposite, I sent 70 United States Marshals ...

CRUZ: Let me try again.

GARLAND: ... to defend and ...

CRUZ: Have you -- has the Department of Justice brought even a single case under this statute? So yes, no question. It's not a give a speech on the other things you did.

GARLAND: The job of the United States Marshals is to defend the lives of the ...

CRUZ: So, the answer is, no?

GARLAND: It's to defend the lives of the justices, and that's our number one priority...

CRUZ: Are you unwilling to say no? The answer is no. You know, it's, no, I know, it's no. Everyone in this, in this hearing room knows it's no, you're not willing to answer a question. Have you brought a case under this statute? Yes, or no?

GARLAND: As far as I know, we haven't. And what we have done is defended to the lies of the justices with the 70 U.S. Marshals.

CRUZ: So how do you decide, how do you decide which criminal statutes the DOJ enforces and which one it doesn't?

GARLAND: The United States Marshals know that they have full ...

CRUZ: I recognize you want give a separate speech.

GARLAND: No, I don't want ...

CRUZ: How do you decide which statutes you enforce and which ones you don't?

GARLAND: But Marshals on scene make that determination in light of the priority of defense ...

CRUZ: The marshals do not make a determination over whether to prosecute you, the Attorney General will make a determination and you spent 20 years as a judge and you're perfectly content with justices being afraid for their children's lives, and you did nothing to prosecute.

Let's shift to another area.

GARLAND: That is, can I answer the question?

CRUZ: No, you cannot. You refused to answer the question.

GARLAND: I am answering your question. The Attorney General ...

CRUZ: How did you choose ...

GARLAND: ... does not decide whether to arrest.

CRUZ: How did you choose not to, not to enforce this statute?

GARLAND: The Marshals on scene ...

CRUZ: Marshals don't make that decision.

GARLAND: They do make the decision of whether to make an arrest.

CRUZ: Prosecute someone no they don't.

GARLAND: If they make a, if they make an arrest ...

CRUZ: Marshals do not have prosecution.

GARLAND: If they make an arrest, then it goes to the Marshals.

CRUZ: All right, let's change topics, because our time is limited. We've also seen across the country violent attacks this pregnancy centers. By similar left wing terrorist groups, including one graffiti of a fire bomb building said Jane was here. There have been attacks all over the country and yet the Department of Justice has not brought these violent criminals to justice. You contrast that. If you're a violent criminal and you attack a crisis pregnancy center, that is not a priority in the Biden Department of Justice. Contrast that to Mark Houck, who's a pro-life activist. He's a sidewalk counselor, and he had an altercation with someone who allegedly interfered with his son's personal space and threatened his son, and he pushed him.

Now, in an ordinary world, pushing someone would be maybe a simple misdemeanor assault, but not under the Biden Department of Justice. If you're a pro-life activist, what can you expect? Well, in this instance, according to Mr. Houck's wife, two dozen agents clad in body armor and ballistic helmets and shields, and a battering ram showed up at his house pointing rifles at his family. Why do you send two dozen agents in body armor to arrest a sidewalk counselor who happens to be prone life, but you don't devote resources to count -- to prosecute people who are violently fire bombing crisis pregnancies?

GARLAND: It is a priority of the department to prosecute and investigate and find the people who are doing those fire bombings. They are doing it at night and then secret. So, and we have found two -- we have found one group which we did prosecute.

CRUZ: You found one. How many have there been, how many attacks ...

GARLAND: There have been a lot. And if you have any information specifically as to who those people are (inaudible) ...

CRUZ: May I ask you something, did you ...

GARLAND: (Inaudible).

CRUZ: ... personally authorized 20 agents go into Mr. Houck's house? And he offered to turn himself in through counsel. But you didn't want that. The Department of Justice wanted to make a show of it. Did you personally authorize it and do you want to apologize to Mr. -- Mrs. Houck and her seven children for being terrorized?

GARLAND: The decisions about how to do that are made at the level of the FBI agents on scene.

CRUZ: And did you know about it?

GARLAND: I did not know about it until, the way you're describing it, and my understanding is the FBI disagrees with that description.

CRUZ: Was it a mistake?

DURBIN: Senator's time has expired. I'm going to allow the witness to respond to any of the questions that were asked.

CRUZ: Was it a mistake?

DURBIN: I'm going to chair the committee Senator, I'm sorry you're not. I'm going ...

CRUZ: You said you'd allow him to respond. I've repeated the question I asked, which is, was it a mistake to send 20 agents to arrest him at the (inaudible)?

DURBIN: You had your time, and more ...

CRUZ: You just said, you're going to allow him to respond. You just said, I'm going to allow him to respond to the question. So, I repeated the question, was it a mistake you asked? That was the pending question.

DURBIN: (Inaudible) I'll ask the questions. I ...

CRUZ: That's the question I had already asked.

DURBIN: Well ...

CRUZ: You just said you'd let him respond.

DURBIN: I'm going to let him respond right now. Please don't interrupt him. Thank you.

GARLAND: The decisions about how to do tactical arrests are made by the f FBI agents in the field. The FBI has, publicly stated that it disagrees with the description you gave of what happened in that example. I don't -- that's the best I can answer.

DURBIN: At this point, we're going to go to Senator Ossoff.

OSSOFF: Thank you, Mr. Chairman. Attorney General, good morning.

Last year with Senator Grassley, I introduced and passed into law bipartisan legislation that requires DOJ and the Bureau of Prisons to strengthen and upgrade security systems at BOP facilities across the country. This includes the, closed circuit camera systems, public address systems, intercom systems. Through extensive investigation of failures at the BOP, we've identified the inadequacies of these security systems as opposing a threat not just to inmates and staff, but to the broader community. This implicates public safety.

And indeed, we found that at U.S. Penitentiary, Atlanta failures of systems like this one allowed widespread criminal conduct within the facility escapes from the facility putting the entire southeast region at risk. And that's in the words of the BOPs own internal investigators. Our bill is now law and the department has a deadline upcoming next month to present a plan to congress. Four upgrades to strengthen these security systems at federal prisons.

So, my first question for you, Attorney General, is whether the department is on track to meet that deadline.

GARLAND: Senator, first, I want to say we're grateful for the work you and your committee did on this matter, and I know that you've met with the director of the Bureau of Prisons who is, adopting the recommendations that you've made. I believe we are on track, to satisfy the requirements of the statute, but I'd be very happy to be sure that, she or our staff meet with your staff, to ensure that your expectations are being met.

OSSOFF: Well, thank you Attorney General and, I have worked diligently to develop, the kind of trusting relationship with the new director. She has a task ahead of her to reform a bureaucracy that's been mismanaged with significant human costs as a result, long predating your tenure. And, I want to, suggest that, it's a necessary condition of demonstrating that the department's taking this seriously, that this deadline be met and that we move forward expeditiously to strengthen these security systems.

Remaining on the, on the subject of conditions in prisons. The Department announced in September of 2021 that it was conducting a, civil investigation, a pattern of practice investigation in conditions of confinement in Georgia's state prisons. So that was about 18 months ago. And the abysmal conditions in Georgia's state prisons, which as in the case of federal facilities threaten public safety in the surrounding communities and are a major public safety hazard. Those failures of management, in my view in Georgia's state prison system are appalling, they're life threatening and have, I believe, resulted in loss of life and the undermined community safety.

So, I want to ensure that the department remains committed to seeing that investigation through and, bringing results that can be made public and result in change.

GARLAND: So, the Civil Rights Division is, charged with, these, pattern of practice investigations. They're very committed, to ensuring that the conditions are changed, that you're talking about. These pattern of practice investigations normally do end in a public report, to the state agency involved and to the public at large. I don't know the specifics of how the, this, the, this investigation is going, but I can assure you the Civil Rights Division, is fully behind this investigation.

OSSOFF: But the investigation is ongoing, it's proceeding, and it's going to get a result. Yes?

GARLAND: Yes.

OSSOFF: Thank you. An additional investigation I'd led last year, concerned the department's implementation of the Death and Custody Reporting Act. And one of the disturbing findings, was that reporting under this statute known as DCRA, had undercounted by, at least almost a thousand deaths. The deaths in state and local custody. And in our engagements with the department, it came to my attention, and, I was dismayed that the department is not making DCRA data available to the public. I'm going to ask unanimous consent, Mr. Chairman that this report from the Leadership Conference, and POGO titled, A Matter of Life and Death, the Importance of the Death and Custody Reporting Act be entered into the record.

DURBIN: Without objection.

OSSOFF: And I want to ask you, Attorney General, whether the department will commit to making DCRA data available to the public.

GARLAND: Yeah. So, first on, on the first part of your question, we're obviously having trouble getting full reporting. This has to be voluntary on the part of the states. I believe the statute did give us some appropriations, which we're able to use as incentives from more reporting. We're very charged with the importance of doing that.

I have to say, I don't, I'm not familiar with the specifics of DCRA. If it provides for public reporting of the numbers we have, then we should be providing it. I don't know whether it does or not. I just, I'm not familiar with at that level.

OSSOFF: You've got a lot on your plate, Attorney General, I recognize that, this is a serious concern for me and for the Senate. And, I did not after those investigations come away with the impression that there was sufficient attention at a high level, being committed to ensuring that this is being fixed. So, will you commit to getting up to speed and, taking this, matter personally into your portfolio?

GARLAND: Yeah, I will. You now have high level attention if you didn't have it before.

OSSOFF: Well, I think -- good. I think we should have gotten that based upon the result of investigation last year. I appreciate that commitment today. This needs to be fixed. Folks are dying in prisons and jails. The public needs to know who's dying, where they're dying. You at the department need to know who's dying, where they're dying in order for you, for example, to bring the kinds of civil rights enforcement that you're pursuing in Georgia.

Let's talk about, domestic violence for a moment. The Crime Victims fund, as you know, is a critical resource for, the funding of domestic violence shelters, child advocacy centers, and other nonprofits. And, you know, I'm hearing consistently from providers of, victim services in Georgia, that awards from this fund are still much lower than previous years, due to some issues with VOCA reauthorization.

Will you work with my office and commit a member of your team to meet with my staff to make sure that we're identifying every opportunity to increase the resources for victims and survivors of domestic violence in Georgia and across the country, and that we are expediting the provision of those resources because lives are literally on the line in my state and nationwide?

GARLAND: Yes, I, I will. The VOCA Fix was very helpful in allowing us to put, a deferred prosecution, delayed prosecution, non-prosecution agreements into the VOCA Fix. We do, by the way, believe that, we're on track, to be fiscally responsible all the way through 2024.

OSSOFF: Thank you. And with my colleague's indulgence, one final question for you. Senator Grassley and I have introduced legislation, again, this Congress that passed the Senate. Last Congress, we need to get it through the Senate and the House, this Congress to strengthen federal protections against the sexual abuse of children and to crack down on predators who use, online services to target children, for trafficking, for the production of child sex abuse material and other heinous crimes. We need to make sure that the law keeps up with technology. And we're seeing in Georgia and across the country, children are targeted routinely and exploited online. Will you commit --

DURBIN: Senator, keep it brief because Senator Hawley and others are waiting.

OSSOFF: Thank you, Mr. Chairman.

Will you commit to ensuring that this remains a top priority for the Department of Justice?

GARLAND: Yes, I will.

OSSOFF: Thank you, Attorney General.

DURBIN: Senator Hawley.

HAWLEY: Thank you, Mr. Chairman.

Attorney General Garland, let me just ask you, does your department have a problem with anti-Catholic bias?

GARLAND: Our department is -- protects all religions and all ideologies. It does not have any bias against any religion of any kind.

HAWLEY: Well, you could have surprised me because given the resources that you are expending, and the apparently intelligence assets that you are deploying against Catholics, it appears and other people have faith while simultaneously turning a blind eye while people were executed gang style on the streets of our cities, including in my home state. Your answer, frankly, surprises me.

Let's talk about the Mark Houck case. For example, you've been asked about this already today and frankly, your answers really astound me. This is a case where a Catholic pro-life demonstrator father was accused of disorderly conduct in front of an abortion center. The local prosecutor, the Philadelphia District Attorney, who is a Democrat, a liberal, very progressive declined to prosecute. There was a private suit that got dismissed.

And then after all of that, your Justice Department sent between 20 and 30 armed agents in the early morning hours to the Houck's private residence to arrest this guy after he had offered to turn himself in voluntarily. Here's the photo. Once again, you can see the long guns you can see the ballistic shields, you can see that they're wearing bulletproof vests.

Why did the Justice Department do this? Why did you send 20 to 30 SWAT-style agents in a SWAT-style team to this guy's house when everybody else had declined to prosecute and he'd offered to turn himself in?

GARLAND: Determinations of how to make arrests under arrest warrants are made based by the tactical operators in the district. They are not --

HAWLEY: But you certainly looked into it by this point, right? You know the answer, surely.

GARLAND: They -- all I know is what the FBI has said which was that they made decisions on the ground as to what was safest and easiest.

HAWLEY: So, you --

GARLAND: I do not agree with your description of what happened on the scene.

HAWLEY: You don't agree with my description. I'm pointing out what the photo is. There are agents here who have long guns and ballistic shields. Let's take a look at the hardened criminals that your Justice Department sent these armed agents to go terrorize on that morning. Here they are. Here they are at mass. Here's the seven children with Mr. Houck and his wife.

In this early morning, they were all home. Mrs. Houck has said repeatedly the children were screaming they feared for their lives. You got these agents demanding that he come out they've got the gun, she said pointing at the house and at them. He has offered to turn himself in and this is who you go to terrorize. What's really interesting to me is this seems to directly contradict your own memorandum about the use of force at the Justice Department.

You say officers may use only the force that is objectively reasonable to effectively control an incident. Are you telling me that in your opinion as Attorney General, it was objectively necessary to use 20 or 30 SWAT-style agents with long guns and ballistic shields for these people?

GARLAND: What I'm saying is that decisions about how to go about this were made on the ground by FBI agents.

HAWLEY: So, you're saying you don't know.

GARLAND: I'm saying what I just said --

HAWLEY: Which is that you're abdicating responsibility?

GARLAND: I'm not abdicating responsibility --

HAWLEY: Then give me the answer. Do you think in your opinion, you are the Attorney General of the United States, you are in charge of the Justice Department, and yes, sir, you are responsible.

GARLAND: Yes.

HAWLEY: So, give me an answer.

GARLAND: The FBI does not agree with your --

HAWLEY: I'm not asking about the FBI. You are the Attorney General, give me your answer. Do you think that it was objectively reasonable, and they followed your guidelines in sending 20 to 30 armed agents to terrorize these people, yes, or no?

GARLAND: The facts I have, which are those presented by the FBI are not consistent with your description.

HAWLEY: So, you think it was reasonable?

GARLAND: I'm saying the facts are not as you describe.

HAWLEY: What? That the children weren't there? That there wasn't -- that there weren't long guns there? That there weren't agents? What wasn't -- what -- what do you dispute? What's the factual premise you dispute specifically?

GARLAND: The FBI said they don't agree with your description of --

HAWLEY: Be specific. They don't agree with what?

GARLAND: Of how many agents or the agents who are there and what their roles were. They don't agree.

HAWLEY: Do you know the jury in this case acquitted Mr. Houck? I'm sure you're aware. Do you know how long it took them?

GARLAND: I am aware and we respect the decision of the jury.

HAWLEY: Do you know how long it took them?

GARLAND: I don't know.

HAWLEY: One hour. One hour. Philadelphia District Attorney declined to prosecute. Private suit's dismissed. You used an unbelievable show of force with guns that I just note, liberals usually decry. We're supposed to hate long guns and assault-style weapons, you're happy to deploy them against Catholics and innocent children, happy to, and then you hauled them into court and a jury acquitted him in one hour. I just suggest to you that that is a disgraceful performance by your Justice Department and a disgraceful use of resources.

I noticed a pattern though. The FBI field office in Richmond, on the 23rd of January of this year, issued a memorandum in which they advocated for and I quote, "the exploration of new avenues for tripwire and source development against traditionalist Catholics," it's there in plain language, "including those who favor the Latin mass." Attorney General, are you cultivating sources and spies in Latin mass parishes and other Catholic parishes around the country?

GARLAND: No, the Justice Department does not do that. It does not do investigations based on religion. I saw the document you said.

HAWLEY: What did you do about it?

GARLAND: It's appalling. It's appalling. I'm in complete agreement with you. I understand that the FBI has withdrawn it and it's now looking into how this could ever have happened.

HAWLEY: How did it happen?

GARLAND: That's what they're looking into. But I'm totally in agreement with you that document is appalling.

HAWLEY: I'll tell you how it happened. The -- this memorandum, which is supposed to be intelligent, cites extensively the Southern Poverty Law Center, which goes on to identify all of these different Catholics as being part of hate groups. Is this how the FBI under your direction and leadership is -- is this how they do their intelligence work? They look at left wing advocacy groups to target Catholics. Is this what's going on it? I mean, clearly it is how is this happening?

GARLAND: The FBI is not targeting Catholics. And as I've said, this is an inappropriate memorandum and it doesn't reflect the methods that the FBI is supposed to be using, should not be relying on any single organization without doing its own work.

HAWLEY: Let me just ask you, as my time expires here, a very direct question. How many informants do you have in Catholic churches across America?

GARLAND: I don't know. And I don't believe we have any informants aimed at Catholic churches. We have a rule against investigations based on First Amendment activity and Catholic churches are obviously, First Amendment.

HAWLEY: Well --

GARLAND: But I don't know the specific answer to your question.

HAWLEY: You don't know the specifics of anything it seems but apparently, on your watch, this Justice Department is targeting Catholics, targeting people of faith specifically for their faith views. And Mr. Attorney General, I'll just say to you, it's a disgrace.

DURBIN: Senator Coons.

COONS: Thank you, Chairman Durbin.

Thank you, Attorney General Garland for your leadership of the department and for testifying here today. I appreciate all you're doing to restore to your order -- excuse me, to restore to your office, its critical role in our constitutional order.

Violent crime is a concern many members of both parties have raised today in this oversight hearing. I just want to share with you that my hometown of Wilmington Delaware, which had had a long-standing challenge with violent crime and in particular murders, saw significant decreases over the last few years.

Murders were down 58 percent in the past year to a 15-year low, shootings were down 30 percent robberies were down 20 percent, and in meeting with the mayor and Chief of Police recently, when I spoke with him, they credited federal and local law enforcement partnerships, including in particular, group violence intervention strategies as being central to their successful efforts.

Congress and the Biden administration have together given \$200 million to fund these programs for the first time. Why do you think investments in things like violent intervention strategies have been so effective?

GARLAND: Yes, so I appreciate your asking that.

I was just in St. Louis, and East St. Louis to look into that, the way in which these violence intervention strategies have been effected. They are part of our whole of department approach to violent crime, which involves both law enforcement and support for state and local law enforcement, and grants to state and local law enforcement, but also grants to communities to prevent the violence in the first place.

There are many kinds of these community violence interruption programs and intervention programs. They generally rely on having credible messengers of people who the community trusts for any number of variety of reasons, who go into the community tried to explain to the community that the police are on their side, that they need to be witnesses, be supportive, and to develop trust between law enforcement and communities. That's the bottom line of all this.

COON: That's certainly what we've seen in Wilmington. And frankly, our chief of police just went to St. Louis to be their new chief of police and I wish him well.

I co-lead the law enforcement caucus with Senator Cornyn of Texas. One of the things we've recently been talking about is the Next Denial Notification Act, which Senator Cornyn and I led last year, the President signed into law. It requires federal law enforcement to notify state and local authorities when someone fails a background check when they lie and tried to buy a gun. It's been in place since September, we've already seen 44,000 denial notifications go to local law enforcement.

Can you just speak briefly, to the value of this information for local law enforcement to prevent dangerous individuals from being able to acquire weapons?

GARLAND: Right. Well, this particular example is really the knob here. Somebody who is not lawfully allowed to get a gun, who goes to try to get one anyway, I'd say there's a higher probability that person wants to do something nefarious with that gun. And now, thanks to this legislation, the state local police will know about that. And we'll be able to investigate to determine what it was that person was about to do with an unlawful weapon.

COONS: It's something that the sheriff's and the local chiefs and Delaware have been very excited about. And I look forward to working with you to make sure that it's fully and promptly implemented.

I'm chairing the Intellectual Property Subcommittee of this Committee and this Congress. And as you know, I'm very concerned about the threat of foreign nations to our innovation and our intellectual property. I think it's important that our response to this is coordinated across the whole government. So, I was glad to learn about your collaboration with the Department of Commerce in particular on the disruptive technology, Strike Force.

Could you just speak to your strategy jointly with the Secretary of Commerce, for protecting American innovation in coordination with other agents?

GARLAND: All right, well, that particular task force is very focused on new technologies, AI, for example, very advanced microchips, which could be very dangerous, obviously, in the hands of an adversary, which are being exported, and are evading export controls. So, what we're working with the part of the Commerce Department, which enforces export controls, and on our side on the National Security Division, to identify these kinds of transfers, and to prevent them from happening.

A very good example is what's happened on the battlefield and Ukraine. We're getting some of the Quadra copters and other kinds of drones. And even some of the missiles that are landing in Ukraine turned out to have parts that came from American manufacturers and we have to find out how they were able to evade our export controls.

COONS: Thank you. I look forward to working with -- with you on that, and to strengthening our protections for copyright violation, patent trademark, trade secret violation.

I've led with Senator Wicker now, for some time a bipartisan bill to address the counterproductive practice of debt-based driver's license suspensions. The county police department I had the opportunity to supervise commented on a number of occasions in the decade I was in county government that being essentially a collections agency for the courts, was the least constructive use of their time to have traffic stops, really just based on an outstanding request for a warrant or request for police action based on a failure to pay certain fines and fees.

Last year, Delaware took steps to repeal the suspension of driver's licenses, and became a national leader on access to the justice for the poor. And I appreciate this administration's work to restore the Office of Access to Justice, which previously under President Obama had issued a best practices letter on such fines and fees, and how they impact those who simply cannot afford to pay low level fines. Can you speak to your priorities for this office, the Office of Access to Justice, and the opportunity it has to help lead on fines and fees, whether by convening relevant stakeholders, or reissuing a best practices letter?

GARLAND: Well, I'll start with the fines and fees. I think the additional and maybe the most pernicious aspect of taking away someone's license is then they can't be employed. They can't go to their job where they would make the money necessary to repay the fines and fees. So, I know that's an underlying basis of your concern, and of the concern for the statutes.

The Office for Access to Justice has been recreated. I've appointed a director. One of the things that the Office does is a serve as organizing unit for the legal aid roundtable, which has been reinvigorated across the government for assistance for providing pro bono work and legal assistance for the poor, who are otherwise unable to really do the most basic legal tasks because they just can't afford it. It's also the center of the Justice Department's own pro bono efforts.

Justice Department employees every day provide pro bono legal services to help veterans fill out the necessary forms, to help people with their wills, to help service members with respect to their debts and various other things. And that's another organizing section of this office.

COONS: Well, thank you, Mr. Attorney General.

I look forward to working with you and with that office. We were just one vote shy of getting this bill into law at the end of last year. I look forward to partnering with you on finding ways to reduce these driver's license suspensions and debt and fee issues.

Thank you, Mr. Chairman.

DURBIN: Thanks, Senator Coons.

Senator Cotton.

COTTON: Mr. Attorney General, I want to explore the dangerous crisis at our southern border and your role in causing that crisis. Asylum traditionally, is reserved for people who face things like religious persecution, persecution for their political beliefs, or violence because of their race or ethnicity. In June of 2021, you change the department's asylum rules so that could apply to individuals with significant gang violence in their home country. Is that 2021 interpretation still in place?

GARLAND: It is. it reinstates a previous interpretation that the department had of the same asylum rules. Yes.

COTTON: Okay. Do you know the most recent murder rate in Honduras?

GARLAND: I'm sure it's enormously high.

COTTON: It's 36 per 100,000 people. What about Colombia?

GARLAND: I don't know.

COTTON: 23 per 100,000. Guatemala?

GARLAND: Again, I don't know. But I believe it's quite high.

COTTON: 17 per 100,000. What about Mexico right across our southern border?

GARLAND: I also think is very high.

COTTON: 28 per 100,000. So, I have to say since you rewrote the rules of asylum based on the perceived degree of violence in these countries, well, I'm surprised you didn't know those, but let's look a little bit closer to home. Do you know the murder rate in New Orleans last year?

GARLAND: I don't. But I want to be clear. This wasn't based on violence. This is based on threats specifically to individuals on gangs where the country was unable to protect the person. That's what it was about. It wasn't about violence.

COTTON: Okay, well, you're partly responsible for protecting Americans. So, let's say Honduras says government can protect its own people except for 36 out of every 100,000 for murders. Guatemala, 17, out of every 100,000. The murder rate in New Orleans last year was 70 for every 100,000. What about St. Louis?

GARLAND: Again, very high.

COTTON: 68 per 100,000. What about Baltimore?

GARLAND: Also, very high?

COTTON: 58 per 100,000. Should American citizens in places like New Orleans and Baltimore and St. Louis begin to seek asylum in countries like Honduras and Guatemala under your asylum principles?

GARLAND: Again, I'm saying that the principle here is protection of specific individuals who are being threatened by the gang and where the local country is unwilling or unable to protect them.

COTTON: So, -- so is the United States government and the city governments of St. Louis and Baltimore and New Orleans, unwilling or unable to protect its own citizens?

GARLAND: I don't believe -- I don't believe they're unwilling. They're doing everything that they can and we're supporting them in every way they can. The examples that you're talking about are ones where they are unwilling to protect from gangs.

COTTON: So, Mr. Attorney General, one of the reasons we have a crisis at our border where we have illegal aliens running to our border patrol, not away from our border patrol, is this interpretation of asylum, that anyone anywhere who lives in a dangerous or poor country can come here and seek asylum as opposed to seeking it, as is traditionally the case for things like persecution on religious belief or political practice.

But let's move on. Let's move on, Mr. Attorney General. I want to come back --

GARLAND: Okay, that's not a standard, I want to be clear.

COTTON: I want to come back to a question that Senator Cornyn started your unprecedented memo in December of 2020 to direct your prosecutors not to pursue the most serious, readily provable offense. I have gotten numerous, numerous contacts in my office from your prosecutors who are shocked that you have overturned this decades' long bipartisan standard. You said this was about allocating resources. What -- what resources are you talking about?

GARLAND: No prosecutor -- no prosecutor was directed to not to bring a case again. In fact, --

COTTON: Your memo specifically says if they feel that it's not warranted, or only if the other offenses are not sufficient, they should not pursue what has been the standard for decades, generations of U.S. attorneys and their assistants.

GARLAND: I'm well aware of the standard because I helped write the standard originally --

COTTON: Because it was a court administration standard --

GARLAND: That's right.

COTTON: -- not specifically known for being tough on crime.

GARLAND: And -- well, it was the first time the principles of prosecution were reduced to a book which explained what they were. It was included in it. Every Assistant U.S. Attorney is able to use their discretion to bring these kinds of cases, no one's being directed to not do anything.

COTTON: You specifically said that they should not pursue the most serious readily provable offenses in cases where mandatory minimums are present, because it's not warranted. You specifically said that.

GARLAND: But I said --

COTTON: What does -- what does mandatory mean?

GARLAND: I'm trying to say that --

COTTON: Does it mean that prosecutors get a choice not to pursue it? Did you write the law in that way?

GARLAND: The memorandum said that -- that -- that cases of violent crime, which is specifically what you're asking me, are ones where, in fact, is most likely that they should be bringing the highest and isn't mandatory minimum.

COTTON: Is it your assertion here that drug trafficking is not a violent crime?

GARLAND: No --

COTTON: -- the entire foundation and edifice of violence?

GARLAND: Yes. And it includes an exception in the same memorandum we're talking about for significant drug trafficking, as well as for violent crimes. That's right.

COTTON: Let's get your specific answer. I wrote it down here. I was so surprised by it. You said to Senator Cornyn, this is about allocating resources.

GARLAND: Yes.

COTTON: What resources are we allocating? If one of your assistant U.S. Attorneys has some criminal lowlife who could be charged with trial offenses, but they don't charge the two most serious readily provable offenses because of your memorandum, they're still charged with 10 offenses. They have to go to Grand Jury; they have to go to trial. They have to have a pre-sentencing report. They have to have a sentencing hearing.

How's that conserving resources that you don't charge them with the most serious readily provable offenses that would lock these low lives up for the longest time possible?

GARLAND: Lowlives that you're worried about and I've expressed worried about the drug large drug traffickers, the violent criminals, they are to be charged to the max.

COTTON: I ask again, what resources were you talking about? You said to Senator Cornyn, specifically, it was about allocating resources, what resources?

GARLAND: These include our investigators and how much we have to investigate in order to establish requirements for mandatory minimums, the prosecutors have to prove those cases, the judges have to try those cases, and the jails that have to hold those cases -- those individuals for longer terms.

COTTON: Well, if jails are -- I don't see how jails could be a problem. You only have 158,000 prisoners now; 10 years ago, it was 219,000. Do you need more prisons?

GARLAND: Well, I think that --

COTTON: (Inaudible) is an appropriator. I bet he could get you more prisons.

GARLAND: Well, I think that many of the senators have complained that the jails are too -- too filled, that they're overcrowded, that we're not able to provide the level of protection and security for guards and for prisoners that we would like, but that is not what this is about. Again, I want to be clear, the memorandum was crystal clear that the are to charge the most serious provable offense in exam cases involving violent crime and drug trafficking.

COTTON: Okay, let's turn to another example of you overriding Congress's will. Congress has repeatedly decided to impose stiffer penalties for crack cocaine and powder cocaine, done originally at the request of members of the Congressional Black Caucus voted for by -- by senators like Senator Durbin, the chairman of this Committee. 10 years ago, they made change to that. They specifically kept the ratio higher, and they didn't make it retroactive.

Now you have directed your prosecutors when they are dealing with crack cocaine to charge it as if it was powder cocaine, something that this Congress has repeatedly refused to do, which we refused to do as recently as December when Senator Booker tried it on the floor and I blocked it. How do you explain overriding Congress's decision on this distinction between crack and powder cocaine to suit your own policy preferences?

GARLAND: The longstanding rule is that the Department of Justice uses its discretion in which charges to bring regardless of which ones are available, which ones are to bring. Every bit of evidence we have is that there's no difference between powder and crack. Governor Hutchinson testified to --

COTTON: Those are legislative -- those are -- those are legislative decisions. Those are not prosecutorial decisions. If this Congress wants to do and maybe it will one day and maybe I'll be outvoted. But those are legislative decisions. Those are not prosecutorial decisions.

You said at your confirmation hearing that you had to follow the law as it was written that the executive branch could not rewrite the law. What you are doing is rewriting the law. There's not a single prosecutor out on the front lines making one decision, you are directing every federal prosecutor to override the law that has been written by Congress.

GARLAND: We're using our discretion as to which charges to bring in which circumstances which ones are appropriate. That's what we're doing. That's a longstanding history of prosecutorial discretion in the United States.

DURBIN: Senator Hirono.

HIRONO: Thank you, Mr. Chairman.

Mr. Attorney General Aloha.

GARLAND: Aloha.

HIRONO: As I have sat listening to some of the questions, the phrase badgering the witness comes to mind. But I commend you for the calm way that you have comported yourself at this hearing.

You have been accused of selective prosecution around the abortion issues. I want to note that since 1977, anti-choice extremists have been responsible for 11 murders, 26 attempted murders, 42 bombings, 194 arsons, and thousands of other criminal incidents by anti-choice extremists. And of course, we should prosecute all violence and threats of violence by those on both sides of the abortion issue. But isn't it the case that our prosecutorial focus should be on the most violent acts, Attorney General?

GARLAND: We prosecute without respect to ideology. But we do focus on the most violent acts the most dangerous actors, the cases that are most likely to lead to danger to Americans. But we don't care what the ideology of the person who is threatening that act or who is taking that act. We will prosecute regardless.

HIRONO: That is what I would expect of any Attorney General who observes the rule of law and -- and who abides by it, regardless of whatever they -- they -- the religion and all of that. So, that's -- that is what I expect from the Attorney General.

In the wake of the Supreme Court's, in my view, disastrous ruling in Dobbs, because that really has led to fear and chaos all across the country, and abortion is now a crime in over a dozen states, but it is not a federal crime. What affirmative steps is the department taking to ensure that states are not infringing women's constitutional right to travel across state lines, for whatever purpose?

GARLAND: We do not see anything in the Dobbs case to suggest in any way that states can interfere with travel between states. In fact, at least one of the justices made clear that that was not within the scope of jobs. And so we are looking closely, I'm not familiar with any state that has tried to criminalize interstate travel. But if there were, we would make the appropriate filings.

We have supported the Veterans Department and Department of Defense in their policy decisions to support people to travel out of state to receive the necessary reproductive care.

HIRONO: Well, Mr. Attorney General, there are people who are trying to make it ever harder for persons who get pregnant in this country to be able to access abortion services and other reproductive services. And, in fact, we are awaiting a decision by a federal judge in Texas, whether or not he should impose a national injunction on the use of mifepristone, which is the -- the drug that is most often used for early-stage abortion, and is also a drug that is -- that is used to treat miscarriages in the early stages.

So, you have a federal judge that is about to impose a -- this kind of an injunction it would affect every state in the country, including all those states like Hawaii, which was among the first to decriminalize abortion. So, I would say that they efforts do not stop there. So, whatever you can do to make sure that women in this country know that they can travel to -- to other states to get whatever services that they seek.

The department awards billions of dollars in grants to state, local, and tribal law enforcement each year. The department also operates joint task forces, and provides access to forensic and surveillance resources. This sort of collaboration can be good when put to good use fighting criminals who prey on our communities. But these resources could also be used against women seeking reproductive care.

How -- I have just sent a letter to the President expressing my concerns about the use of these federal -- federal funds by local law enforcement to basically hunt down women who are seeking abortion. So, how is the department working to ensure that states and local partners do not use federal resources to enforce state laws restricting women's access to reproductive care?

GARLAND: On your first question, just to be clear, we have filed in support of the FDA in the mifepristone lawsuit that you're talking about, and we are hopeful that the result will not be the one that you're concerned -- that -- that you've described.

HIRONO: I was just shopping to make sure that is this particular Texas judge who would get this case.

GARLAND: We have filed the appropriate briefs in that.

HIRONO: Thank you.

GARLAND: On the second question, I personally haven't looked into it. I don't know the answer to that. So, if we could have some people in the department get back to your staff on that, I'd be happy to do that.

HIRONO: Thank you very much, with a perspective that these kinds of federal resources should not be used by states to go after women who are seeking reproductive services. I hope that is the perspective that you bring to the issue.

I want to get to the issue of domestic terrorism and white supremacy. Last fall, our colleagues on the Homeland Security and Government Affairs Committee released a report on the federal response to domestic terrorism. In it they noted that I quote, "National security agents now identified domestic terrorism as the most persistent and lethal terrorist threat to the homeland," end quote. They also explained that, quote, "This increase in domestic terror attacks have been predominantly perpetuated by white supremacists, and antigovernment extremists, individuals and groups," end quote.

This fits with a recent Department of Homeland Security assessment that the country, quote "remains in a heightened threat environment" end quote, and that some of the potential targets include, quote, "faith-based institutions, the LGBTQ community, schools, and racial and religious minorities." Do you agree that white supremacist terrorists pose a significant threat to our country, and especially to racial and religious minorities and the LGBTQ plus community?

GARLAND: Yes, as the FBI reported in -- in that report, you're talking about, racially motivated violent extremists, as a group are the most dangerous of the domestic violent extremist groups and within that the white supremacist are the most dangerous and most least lethal. Yes.

HIRONO: So, what -- what more can the department do to combat -- to combat this rise and these kinds of domestic terrorist activity?

GARLAND: We've allocated a significant amount of resources for this purpose. Our -- the National Security Division has stood up a domestic violent -- violent extremist unit to further track and trying to interdict these actions. The FBI is treating this with enormous seriousness of purpose. And we are going to do everything we can to deter and prosecute.

HIRONO: Thank you.

Mr. Chairman, I think my time is up. Thank you.

DURBIN: Thank you, Senator Hirono.

Senator Kennedy.

KENNEDY: Thank you, Mr. Chairman.

Thank you, General for being here. Good afternoon.

GARLAND: Good afternoon.

KENNEDY: I read this somewhere. I don't remember who said it, but I wrote it, but I remember. It was once observed that a parent who stopped loving their children, if a parent stops loving their children, the children will not stop loving the parent. The children will stop loving themselves. I know we can agree that we should encourage parents to be involved in their kids' lives.

GARLAND: Absolutely.

KENNEDY: And I'm sure we can agree that we should encourage parents to make their kids do their homework.

GARLAND: Yes, although there's sometimes some resistance.

KENNEDY: Right. Right. And to make sure they get sleep at night so they can be ready for school.

GARLAND: Yes.

KENNEDY: Here's what I'm -- I've always been confused about. Did you understand the chilling effect that it would have to parents when you issued your directive, when you directed your criminal divisions, and your counter terrorism divisions to -- to investigate parents, who are angry at school boards and administrators during COVID?

GARLAND: Senator, if you've just give me a moment to put full context, I did not do that. I did not issue any memorandum directing the investigation of parents who are concerned about their children. Quite to the contrary, the memorandum that you're talking about, says at the very beginning of the memorandum that vigorous public debate is protected by the First Amendment. And the kind of concerns that you're talking about are as expressed by parents are, of course completely protected. The memorandum was aimed at violence and threats of violence against a whole host of school personnel. It was not aimed at parents making complaints to their school board. And it came in the context of a whole series of other kinds of violent threats and violence against other public officials.

KENNEDY: Well, let's walk through this. Your directive to your criminal division and your counter and terrorism division came in a response to a letter from the National School Boards Association, did it not?

GARLAND: In part to the letter, and in part to news reports of violence and acts of violence.

KENNEDY: And the National School Board Association said these parents ought to be investigated on the Patriot Act as potential domestic terrorists.

GARLAND: And you'll notice senator that I said nothing --

KENNEDY: That's what the letter said.

GARLAND: There was a reference to that in the letter, something I disagree with.

KENNEDY: And your employees helped them write the letter, didn't they?

GARLAND: I don't know anything to suggest that that's true. I don't --

KENNEDY: I think it is true.

And the White House helped him write that letter, didn't they?

GARLAND: I don't -- I don't know. I have no knowledge about that. But certainly, I don't know anything about my employees helping write that letter.

KENNEDY: And so, you get this letter from the National School Board Association asking you to investigate parents, that your employees helped write and the White House helped write, and you issue a directive to your criminal division and to your counter intelligence or counterterrorism division to start investigating parents who are angry. What did you think was going to happen?

GARLAND: Say again, Senator, that nothing in my memorandum says to investigate parents who are angry quite the opposite. It says that the First Amendment protects that kind of vigorous debate. The only thing we wanted was for an assessment to be made out in the field about whether federal assistance was needed to prevent violence and threats of violence.

KENNEDY: Well one of your field offices -- that's not the way your -- your department implemented your directive. One of your field offices actually opened an investigation, they set up a website and a hotline to report parents. And I state --

GARLAND: I don't think -- we didn't set up a specific hotline about this. This was a reference to --

KENNEDY: A state Democratic Party official contacted you who said that some Republicans were inciting violence by expressing public displeasure with school districts vaccine mandates, and one of your field offices opened an investigation, which is a permanent part of their record.

GARLAND: Senator, I don't know anything about this specific thing that you're talking about. They used to say -- they used to say in high school, this is going to be on your permanent record. I don't believe there is any such thing with respect to this --

KENNEDY: Oh, I think there is with the FBI, General, and you and I both know there is.

There was a lady and in a mom in Michigan. She has a special needs kid. And the kid was doing pretty well. And she got upset with her local school board over its closures and -- and virtual learning policies and she went to the meeting. And she made an intemperate comment. She -- she -- she accused me of being a bunch of Nazis. Why would the FBI open an investigation of her?

GARLAND: Again, I don't know anything about the specifics of the case. But accusing people of being Nazis, while I find bad, is certainly not criminal. It's totally protected by the First Amendment. And I've said that over and over again, this is not the first time we've discussed this.

KENNEDY: That's your department did.

GARLAND: Well, I -- this is about the third time I've been asked about the same memorandum. And each time I've said and I hope that the senators would go ahead and advise their constituents in the same way that this is not what we do. We are not in any way trying to interfere with parents making complaints about the education of their children.

KENNEDY: But don't you understand, General, and I believe you but don't you understand that this looks like you are just giving in to the teachers' unions and politicizing the disagreement, the honest disagreements? I mean, we only -- as a result of some of our school board policies. We only experienced the largest learning loss for our kids in modern history. Don't you think parents had a right to be upset?

GARLAND: Absolutely.

KENNEDY: Instead of -- what is a -- I mean, you implemented -- what's a threat tag?

GARLAND: I didn't implement the threat tag. What you're talking about there is a part of internal FBI operations. As far as I --

KENNEDY: Yes, you directed your folks though to open threat tags on these parents and investigate them.

GARLAND: Yes, I did not direct that. My understanding from testimony by the FBI is that when somebody makes a complaint, and it involves -- if somebody gives a tip that a school official is being threatened, then there's, in order to look at trends, they mark it as a -- as a tip involving a school official. They make the same set of threat tags with respect to a complaint that suggests somebody is making a threat against a Supreme Court justice. These aren't complaints. These are tips that of violence or threats of violence.

KENNEDY: A threat tag on a parent for being concerned at a school board meeting?

GARLAND: It's not on the parent, it's not on whoever. It's on -- to indicate that a threat was made against or at least alleged that a threat was made against a school board member, or a school official, or a teacher or a school. Some of these turned out to be bomb threats.

UNIDENTIFIED SPEAKER: Senator -- Senator Kennedy, we're going to have a second round of questioning. On behalf of --

KENNEDY: I understand.

UNIDENTIFIED SPEAKER: -- Chairman Durbin who has going to vote, I'm going to call on --

KENNEDY: You're blaming it on Durbin. I understand. I apologize.

UNIDENTIFIED SPEAKER: I take full responsibility.

KENNEDY: Thank you, General.

BOOKER: Thank you, Senator Kennedy, for the grace.

And thank you very much for being here.

I just want to confirm because I've heard some misstatements. Fentanyl is permanently scheduled -- scheduled at Schedule 2, correct?

GARLAND: Yes, the discussion is about fentanyl analogs.

BOOKER: So, let's go to fentanyl analogs. Fentanyl analogs are scheduled now at Scheduled 1. They are not expiring this year. Fentanyl analogs are scheduled to the expiration date for which is at the end of 2024, correct?

GARLAND: It might be the fiscal year. I'm not sure exactly --

BOOKER: But it's not 2023. It's at the end of the year 2024, fiscal or not.

GARLAND: I'm not exactly sure of the time. I know that there's short time on this and we believe it should be reupped.

BOOKER: Okay. I want to jump into the executive order from President Biden on policing. It took really important steps to ensure that federal law enforcement agencies are engaging the best practices to make themselves and the public safer. Some of these policies the department has adopted and is making great progress on including limitations on chokeholds, guidelines for no-knock warrants, which is a extraordinarily dangerous for police officers themselves, and a cleaner standard for the use of deadly force.

Even the Trump EO included the need for us to have a database that is, I guess, called an accountability database to serve as a repository for officer misconduct records within the next eight months, which is now this past January. Trump's executive order, which was issued in June of 2020, also directed the Attorney General to create such a database to collect this information. What's the status now on that?

GARLAND: Yes, there's a working group run by the Deputy Attorney General to stand this up. As you can imagine their difficulties with respect to getting reporting and also difficulties with respect to defining what a determination has been made. Like we are seized with this and we are working full speed ahead to get this done.

BOOKER: I'm grateful and hopefully, we can continue to communicate on that. It's -- it's invaluable.

And the EO directed you to encourage state and local agencies to contribute to the database. How's that going?

GARLAND: Yes, we are -- we have made outreach to all the major law enforcement organizations who support this proposition. We are making outreach to state and local law enforcement. We are making progress. I can't really say more than that at this point, not because I don't want to say but because I don't know.

BOOKER: Okay.

The Biden administration, in cooperation with the Congress, acting in a bipartisan manner, has put significant amounts of money into the cops grant program. In fact, I think under the last Congress, it was one of the higher -- highest rating -- highest amounts of money given to programs that help local police departments. Really proud that President Biden did that. I'm just curious what processes are in place to ensure that the funds are being used for intended purposes. Does the department audit those grants?

GARLAND: Yes. Whenever a government agency gives out grants, there's always a risk. And so, we have pretty tight -- very tight auditing and review processes for these grants.

BOOKER: And do you have the resources you need to adequately audit the grants in your estimation? Or is that something that might -- Congress might act to give you the more resources?

GARLAND: I'm going to say again, to you, and I've said before, whenever anybody wants to offer me more resources, I'm happy to have them. But I think we're -- we're capable of doing what the Congress wanted us to do with the resources we have right now.

BOOKER: I appreciate that wise response.

In December 2021, you said the department would exercise its discretion to ensure that people released on home confinement under their CARES Act would not unnecessarily return to prison. My experience, I've been visiting prisons since I was a law student. And I usually go in and ask wardens, who are often tough men and women who really are about the protection of their officers, the community at large, and I always ask, are there people here that are a waste of taxpayer money. And they will often tell me stories about elderly folks, infirmed, folks.

But here now we had a pandemic, as you know, and there was a release program with really high standards to meet for anyone being released. And I appreciate your comments on this matter in the past. I just want to ask, can you confirm that the department will not revoke individuals released under the CARES Act for minor violations?

We always know there's so called status violations where somebody might cross a county line or do something that is a technical violation, which is often minor, they're not a threat to public safety. Can you confirm again, that the depart will not revoke individuals that are released under the CARES Act for these so-called status violations once the public health emergency expires?

GARLAND: Yes. So, just to give the full context, the CARES Act allowed us to put people in home confinement, who we ordinarily would not have been able to do because of the length of time remaining on their sentence. A question was raised, whether that -- whether those people would have to go back after the expiration, which is now going to be in May, I believe. The Office of Legal Counsel, interpreting the statute found that they would not have to go back, that all that was necessary was the Attorney General put them into home confinement.

When I say the Attorney General, I mean, the Justice Department in the Bureau of Prisons, and that they could remain subject to what the normal rules are on having to go back. So, if somebody commits the kind of violations that would normally require somebody to go back to prison from home confinement, those would apply but no special rules to people who came under the CARES Act.

And let me also say, in support of what you said, there has now been enough time to have statistical data on recidivism, as found that the people out on the CARES Act, the number of serious crimes committed is extremely tiny and not of concern.

BOOKER: All right.

On July 16th, my last question, my penultimate question, on July 16th, 2022, you said that the Justice Department is examining marijuana policy and we'll be addressing the issue in the days ahead. And then October of 2022, President Biden urged an expeditious review of the schedule of cannabis and directed individuals federally incarcerated for cannabis possession be expunged. What is the current state of the review of cannabis at the Justice Department? And when can we expect policy changes on this important issue?

GARLAND: I think everything that you said is correct. The president commuted sentences. And this is still working its way through the system to get the final certificates of commutation, but that is accomplished. The HHS is working on the question of scientific analysis of marijuana. And within the department, we are still working on a marijuana policy for the department.

I have to say that the crack powder thing came first in my list of things that had to be done first, but that was accomplished, as you already know. And I think that it's fair to expect what I said at my confirmation hearing with respect to marijuana and policy that will be very close to what was done in the cold memoranda, Deputy Attorney General Cole and the mobile administration. But we're not -- we're not quite done with that yet.

BOOKER: Well, I'm very eager to get to hear more about that. And I'm hoping that you can give that review that complicated policies as more and more states red and blue are moving. It'd be good to hear that as quickly as possible.

And I just would like you to respond for the record. There's some scurrilous statements out there that you're dissatisfied with your Chief of Staff and would like to -- him to be replaced by his eldest son. So, if you could respond on the record for me, at some point about that.

GARLAND: The only bad mark in his resume is that he worked for you once, sir.

BOOKER: Thank you, sir.

DURBIN: Senator Blackburn.

BLACKBURN: Thank you, Mr. Chairman.

And Mr. Attorney General, thank you for your time today.

Listening to the questions and the answers and your responses. What is coming clear to me, as I listen to this is basically in your DOJ, the Biden DOJ, there are two tiers of justice. There are one for people with conservative values, for parents, for people of faith, and then there is another tier of justice that applies to the Washington, liberal elites, political elites. And what I want to do is dig down a little bit on how you and the department have applied this discretionary form of -- of justice.

It's something that concerns Tennesseans and when I'm across the state, we have 95 counties, a visit each of them every year. And Mr. Attorney General that comes up quite a bit. Much of it has come up in relation to the Dobbs decision. And the attacks and the violence there has increased from groups on the far left, it has not increased from prolife groups. And since the Dobbs (inaudible) there have been 70 prolife pregnancy centers that were targeted.

Only two of these activists have been indicted. There are 25 individuals that have been indicted under the FACE Act in just five months. So, you see the disparity there. I appreciate you said that most of these attacks are carried out at night, and that the protests take place during the day. So, you say it's easier to identify and go after people that are carrying out a peaceful protest during the day rather than a firebombing at night. Is that correct?

GARLAND: If I -- if I could just say I wish you would assure your constituents and all the counties that the Justice Department does not treat people in the way that is described. We treat -- we treat like cases alike. We do not have one view for --

BLACKBURN: Okay, then let's talk about a specific case in Tennessee, the Hope Clinic? Are you familiar with that?

GARLAND: I'm not familiar with the specific --

BLACKBURN: Okay, the Hope Clinic for women is a pregnancy resource center in Nashville. And currently you have gone out of your way to prosecute 11 individuals in Tennessee under the FACE Act? And are you aware that this clinic was the subject of an attempted firebombing with a Molotov cocktail?

GARLAND: So, we are very concerned about these kinds of fire bombings, and I agree with you, they're happening around the United States. The FBI has put its resources into this. We are investigating in every way. We've offered rewards for anyone who has information --

BLACKBURN: Then let's talk about how these groups get classified. When we talked about the way parents of children were treated, and because they were concerned over what was being taught in schools, Senator Kennedy just went through that with you, you applied domestic terrorism as a term in couching that activity.

Now, under federal law, which you have cited, this is how you term domestic terrorism, and I'm quoting, "Activities that involve x dangerous to human life that are a violation of the criminal laws of the United States, or of any state." So, under that definition, would you agree that firebombing a crisis pregnancy center constitutes an act of domestic terrorism?

GARLAND: I would say yes, but I want to again, disagree with your earlier characterizations. There was no memorandum about parents complaining to their school boards, and there was --

BLACKBURN: Talking about bombing -- firebombing pregnancy crisis centers --

GARLAND: I understand and there was no reference in that memo to use a domestic terrorism bombing.

[CROSSTALK]

BLACKBURN: Okay, then let's talk about the far left group James Revenge, because they claimed responsibility for that. They went so far as to spray paint their name on the wall. So, do you intend to prosecute that?

GARLAND: We intend if we find them to do. There is a --

BLACKBURN: Oh, so you can't find them.

GARLAND: If you have information about those groups, we would be happy to --

BLACKBURN: But that is -- that is your job.

GARLAND: That's right. And we are putting heavy resources into this. We have formed a group that --

BLACKBURN: But they are a domestic terrorist organization.

GARLAND: I would say it depends on depends on --

BLACKBURN: James Revenge --

GARLAND: -- it depends on the people --

BLACKBURN: -- who took -- who took credit for this, spray painted their name on the wall.

Well, let me -- let me ask you a couple of questions before my time runs out. We've talked a little bit today about the targeting at the justices' homes. Have you released any type of memorandum that explicitly condemns the acts of intimidation outside of the Supreme Court justices' homes?

GARLAND: I have directly instructed the Marshal Service to send over 70 United States Marshals to prevent acts of violence and threats of violence outside those --

BLACKBURN: Memo.

GARLAND: I don't need to do a memo because I spoke directly to the marshals about this topic.

BLACKBURN: All right. Have you watched any of the footage of the protesters outside the justices' homes?

GARLAND: Unless I caught it on the news, I haven't specifically watched it.

BLACKBURN: Are you investigating any of those individuals you said you investigate protesters because they do their activity in the light of day, and most of the fire bombings and things take place at night. But I would think the FBI knows how to investigate crimes --

GARLAND: As I explained, our principal responsibility here is to protect the lives of the justices. We've put United States --

BLACKBURN: But you haven't watched any of that footage.

GARLAND: The United States Marshals are on scene watching what happens on scene.

BLACKBURN: Any of those individuals that were protesting at the justices' homes were there for any reason other than to try to intimidate the justices?

GARLAND: The Marshals' job is to protect the lives of the justices, and they will arrest people who they think are threatening the lives of the justices. That's their job.

BLACKBURN: Thank you, Mr. Attorney General.

I have to say, people in Tennessee talk a lot about their frustration. They want to trust the DOJ. They want to be able to trust their government. They are very concerned about what appears to be by actions to tears of justice. And this is something that they do not see as equal treatment under the law.

Thank you, Mr. Chairman.

DURBIN: Thank you, Senator Blackburn.

Senator Welch.

WELCH: Thank you very much, Mr. Chairman.

Mr. Attorney General, I appreciate the work you've been doing on election infrastructure and security.

We have our town meeting in Vermont next week, we're pretty proud of that. You raise your hand and decide publicly how you're gonna vote or you can do it privately.

And I just wanted to ask you about the Department of Justice. You have taken important steps to protect election workers and the right to vote in that includes by establishing the Election Threats Task Force. Let me ask you, what steps did the department take in 2022 election to defend our democracy in the election workforce? And are there any lessons learned that can help us going forward?

GARLAND: So, we have as you note established and election threats of work -- task force aimed at investigating threats against state and local election workers. The FBI has been tracking those kinds of threats that come in on their tip line. And in making those investigations, there have been a number of prosecutions and convictions regarding those threats. I'm not sure if that fully answers the question, but that's what we're doing.

WELCH: That's good.

There's -- from here -- time to time there's threats to local election officials that might happen in one state, and then it might be another. What things can you do to be helpful in responding to specific threats against election workers?

GARLAND: So, obviously, the first line of defense are the state and local law enforcement. What we bring to this is a particular both resources and legal tools that can be used to track the use of the Internet to make those threats, emails to make those threats, text messages, telephone calls to make those threats. And that's a lot of what we do is to help the state and locals identify the source of those threats, and then to go out, knock on doors and investigate whether violence was actually contemplated.

WELCH: You have the resources that you believe you need in order to make certain that our elections are safe and sound?

GARLAND: I think we have the resources that we need to -- to investigate these threats to the people who are really the foundation of our democracy volunteers who are running our elections. That's the way we do things in the United States. And, of course, state and local elected officials are also being threatened, but so also are the volunteers who are election judges, put the ballots in the boxes, et cetera.

WELCH: Right. Thank you.

The other area I wanted to talk to you about was, broadly speaking, antitrust, but specifically how it's impacting our healthcare system. My view is that one of the big challenges we have with affordable and accessible healthcare is the cost, and there's a number of factors that are driving up the cost, and I think that includes some anti-competitive activities.

For example, hospital consolidation. It's a big issue. When you go to the hospital, you get one of those bills, you just can't believe it. If you get out healthy, when you get the bill, you're going to be sick. And consolidation of physician practice groups, big tech and private equity, private equity companies bought up all of these human resource companies when we had the need for these visiting nurses and just exploded the rates, and it pulverized the budgets of our small hospitals in rural America.

And just last month, the Wall Street Journal reported that CVS would purchase primary care provider Oak Street Health, broadening CVS' market domination as a parent entity in a pharmacy benefit manager. Now, I know you can't speak specifically about any particular case, but there's a consolidation trend and market power trend that I think is escalating these prices to the detriment of the taxpayer, to employers who are working hard to provide employer sponsored health care, and obviously to individuals.

In the past year, the DOJ has taken steps to update its antitrust guidance and has heard from patients and providers and advocates about how to bolster antitrust enforcement. I want to just give you an opportunity to tell us your view on this and the role you see the antitrust division of the Department of Justice making certain that we have competitive pricing, or trying to get some semblance of competitive pricing?

GARLAND: I appreciate the question. We have tried, since I've been Attorney General, to reinvigorate the antitrust division to more urgently evaluate mergers and to bring cases against exclusionary behavior by dominant firms. Thanks to the Hart Scott Rodino merger filings fees legislation that was passed, we now have more money that we can use to build up again the resources of the department.

As I mentioned earlier, I was stunned to learn when I came to the department that there were fewer lawyers and economists in the antitrust division than there were when I first entered the Justice Department in 1979. You can imagine-

WELCH: That's amazing.

GARLAND: That's amazing, and particularly when you think of how big the companies are now. So, we're doing two things in the merger field, of course, on the very large mergers, which are subject to Hart Scott Rodino, we are doing a very careful scrub and making determinations of whether we should challenge it.

But I think what you're talking about is also quite important. Which are smaller markets but are still what economists call relevant markets. Where are the prices affected regardless of whether it's a nationwide roll up, if it's a roll up of health care providers in one entity, and really the only place that people who need healthcare locally can provide it.

So, we have brought and will continue to examine those kinds of cases as well. The bottom-line theory about antitrust is if there are multiple players in the market, they will compete with each other, and we will get the best pricing marginal cost being the price where it meets the supply curve. But that's not the case where you have dominant firms, where there's only a few places to go. And in those situations, price will almost always be above the competitive price.

WELCH: Thank you very much, Mr. Attorney General, and thank you for your service on the bench before. And, Mr. Chairman, I yield back. Thank you.

GARLAND: Thank you, Senator.

DURBIN: Thank you, Senator Welch. You're the first to do that. Senator Tillis.

TILLIS: I was actually going to thank Senator Welch for that. I think, Mr. Chair, we probably had to have four-minute rounds, so we have a reasonable chance of them getting done in seven minutes.

General Garland, I guess I'm your ticket to lunch. I just got a couple of questions to ask you. In your opening statement, I'm sorry I had to come in and out, I wanted to spend most of my time in the hearing. You have 115,000 people working in the DOJ, and I think most of them are great people, purpose, service driven, and I thank them for their work. But we're not all angels. We probably have some that need to be held accountable.

And you made a comment about returning to some of the norms that maybe have drifted over time or focus on them. Can you briefly describe to me a couple of those where you see positive trending?

GARLAND: Yeah, I think the most important is the principle that we treat like cases alike, that we don't have one rule for Democrats or Republicans, rich, poor, powerful, powerless, based on ethnicity. Another important norm is that we decide our criminal investigations and affirmative, civil law enforcement investigations without any interference from the White House or, frankly, from the Congress. That these decisions are made on the merits, without any policy or political interference.

TILLIS: I think one thing that would be helpful for you, I'm a data driven person. I think one of the things that would be helpful for you is to try, to the extent that you can, to measure some of those so that you come back equipped with data to maybe refute some of the misconceptions about your priorities. I want to talk briefly about my favorite subject when I get on law enforcement. Have you seen the 3.12 March? All right, this is a subpage.

GARLAND: March 12?

TILLIS: I'll shoot you a link. This is a subpage that's been out there for a while. It's actually a sub page from ActBlue, which is the largest aggregation engine for many of my colleagues on the other side of the aisle for hard dollar contributions to their campaigns, which I don't begrudge if we have an equivalent platform. What's notable about this is this is still on the website. They're trying to raise \$1.312 million. They've already received contributions. They keep it on the website.

And let me just tell you what the run is about. They say, why 3.12 miles? Because 3.12 equals ACAB, and ACAB equals all cops are bastards. This is out there. I know that the vast majority of my Democratic colleagues did not embrace that. Some of them may. But I think it's time to remove this website and remove this crap that they're trying to talk about law enforcement. In 2020 and 2021, I introduced a bill called Protect and Serve, and it was specifically focused on increasing penalties for law enforcement officers who were assaulted or murdered.

Not getting into any sort of policy recommendations, but it seems to me at a time when we're having dramatic reductions in people willing to go into the academies, where we're seeing mayors get elected out of office because of community safety and maybe a little bit too much soft on law enforcement, and when we demonize law enforcement, we are really hurting ourselves. I know the FBI is doing relatively well with recruiting, but we're not doing well in local and state agencies.

So, can you see with respect to the implementation, we've talked about increasing penalties in other places. Can you talk to me about the merits or concerns you would have if we're successful with getting Protect and Serve past this Congress?

GARLAND: Every day I meet with our own law enforcement agencies. Multiple times a year, I meet with the national leaders of state and local law enforcement, police chiefs, sheriffs. And multiple times during the year, I travel all around the country to our U.S. Attorney's offices, where I meet with the state and local law enforcement agencies. They are the ones who are on the front lines every day.

TILLIS: They're getting killed.

GARLAND: And, I should have added, I've been to many memorials. I've been to all the memorials that happen every year. I've stood and sat at the bedside of federal law enforcement agents who've been shot. I've been to a memorial for a federal law enforcement agent who was killed. I'm well aware of the risks that they run to protect us. We are extremely supportive of law enforcement.

TILLIS: What I'd like you to do, I'm sorry to interrupt you. It's not my style, but what I'd like to do is really get some feedback. We are going to file the bill again. We do have interest from the Democratic side. I'm always interested in policy that makes it easier to implement. So, we would like to get a commitment to take a look at this and give us advice on things that could improve it or potential unintended consequences. I don't see any, but I would like to get that-

GARLAND: Absolutely. We will be happy to do that. I do want to say I agree with your problems about recruitment and retention. That's why we gave out \$100 million under the cops grant just for that purpose. And we're going to do another 200 million this coming year.

TILLIS: Now I want to talk a little bit about, I'm going to submit some questions for the record on various topics and look forward to your response. But, in my remaining time, I want to talk about the implementation of the Bipartisan Safer Communities Act, or what I think your department, and I like the term, calls biscuit [ph]. I had a discussion with ATF earlier this week, and it has been described as a once in a generation bill. That bill went from the initial meeting that I attended to the time that we were voting on the Senate floor in 30 days. That required a lot of hands-on involvement by the Senate members on both sides of the aisle. That brought that about.

What's very important to me, unless we want another generation to pass before we're able to make reasonable progress, is the implementation of this bill. I'm curious. I'm not going to get into specifics because I think I'd rather do it justice by just submitting them to questions for the record. I want to know about states that have applied for and been provided the extreme risk protection orders. It's very clear that we wanted minimal standards for due process. We don't want to reward states, and incidentally, they're red states and blue states that I don't think have adequate due process protections for the person who may be denied their Second Amendment rights.

So, we want to go through the grant streams, the approvals that have occurred at that time, and whether or not it satisfies the letter or the spirit and the Congressional record that I'm very familiar with. That was last June that we got it done. I also want to compliment NICS with their implementation of the enhanced background checks. We need to make sure that they're following again the letter and the spirit of the law with respect to the length of time and having a proceed presumption if we don't have meaningful information in the first three days, and then the final proceed order in the next ten days. Trudy and the folks out at NICS have done a great job, and we found some really good outcomes from that that we need to share better with the public.

The last thing I want to leave you, I'm over time, I can't believe it, Mr. Chair. Last thing I want to leave you with is I would like to get a breakdown of the 17 cases under the straw purchases and trafficking language in the bill, and I'm particularly interested, I heard at least one alluded to gang organization that it was brought up on.

We need to say that that bill, I think, is going to age well. It's why I supported it, why I'd be willing to pursue other ones as long as I can go back to the people that I worked with to vote for the bill and say that the spirit and the contours of that legislation has been implemented faithfully. Thank you.

GARLAND: I'll be happy to do that. I'll have our staff talk directly with yours to be sure we're answering exactly the questions you're asking.

TILLIS: Thank you.

DURBIN: Thanks, Senator Tillis. We're going to take a ten-minute recess, and if there is to be a second round, and that depends on the presence of members when we return, and they will be recognized in the order that they appear here. I know Senator Cornyn has got an early bird rule, but let's take a ten-minute recess and come back.

No order. As I mentioned at the outset, there's a second round of three minutes, which will be strictly enforced. You'll hear the gavel at three minutes. I'm going to wait and save my questions to the very last. And so, I begin this round of questions, the second round of questioning, Senator Whitehouse.

WHITEHOUSE: Thank you, Chairman. And thank you again, Attorney General. I'm going to go to a topic that was addressed earlier by Senator Blumenthal and Senator Graham, and that is the question of the freezing, seizing and forfeiture of Russian oligarch and Kleptocrat assets.

One of the problems that we are running into is that for the highly valuable assets that can be seized from the Russian oligarchs, like massive yachts or Faberge eggs or other works of very expensive art, the value is well above \$500,000. And right now, we have an administrative forfeiture procedure that applies for assets that are valued only up to \$500,000. Above that, you have to go through a different procedure.

The nutshell way that I think about this is that the simpler administrative forfeiture procedure allows the government to proceed in rem against the asset, and people have to show up if they have a claim to the asset. It's a little bit like what the Department of Justice did with botnets. They had a proceeding in rem against the botnet, and anyone who laid claim to that botnet and asserted a right not to have it taken down, they were welcome to show up in court and present themselves. They probably would have gone off in handcuffs, but they certainly had that right.

With respect to the assets above \$500,000 that are associated with the Russian oligarchs, who are associated with the really criminal war that Putin has launched into Ukraine, we would like to see the law changed. Senator Graham supports this. Senator Blumenthal and I support this. We have legislation to support this. And I just wanted to take my moment here with you to make sure that you and I, the Marshal Service, your forfeiture offices are all properly aligned so that we can move quickly to get this changed.

At the moment, having to identify the owner of an asset, which is often hidden in Russian nesting doll layers of faraway bank accounts, shell corporations, Cyprus holding companies, really puts a major crimp in our ability to proceed fairly. And I don't think there's any national interest or public interest in having Russian oligarchs who have supported this war treated better than American citizens simply because their assets are more valuable.

So, would you please tell your team to greenlight working with us to get this bill passed quickly out of this committee and into legislation on the floor?

GARLAND: As you can imagine, I'm wholeheartedly in favor of the team working with you on this. As you know, we recently, thanks to the work of the Congress, were able, I was able to certify for transfer to Ukraine the money that was seized from one oligarch malofia [ph].

And most recently, our task force, Klepto Capture, succeeded in forfeiting \$75 million from Viktor Vekselberg. They have done an enormous amount of work to find nesting within nesting within nesting of shell corporations that it would be easier if that weren't required. So, we'd be happy to work with your team on this.

WHITEHOUSE: Thank you very much. Thank you, Chairman.

DURBIN: Thank you, Senator Whitehouse. Senator Grassley.

GRASSLEY: Thank you, Mr. Chairman. Thank you for General Garland for being here. My first question is a follow up to a line of questioning you had with Senator Cotton. You told this committee that, quote, the executive branch cannot simply decide based on policy disagreements that it will not enforce the law at all, end of quote.

Then you released a December 16, '22 memo instructing prosecutors to disregard the law that establishes sentencing differences between cocaine and cocaine base. Your decision not to enforce the law ended congressional discussions at that particular point for compromise. If DOJ claims that it will ignore the law by declining to prosecute a law that grew out of a bipartisan compromise forged in this committee, it's hard to see how members can trust the Department about following any further bipartisan deals.

So, I'm going to ask you, would you withdraw your memo so that a meaningful legislative discussion can resume? And if you don't have an agreement with me, why wouldn't you do that?

GARLAND: Senator, I want to be clear. We're not in any case saying that we won't enforce the law. And all the examples that we're talking about here, people are being prosecuted for violation of the Controlled Substances Act. It's only a question of what sentence we will seek, and this has been a matter of prosecutorial discretion. We do not in any way limit the judge. We have to honestly tell the judge what the drug was and what the amounts was.

But this goes to the question of what we will charge and seek, but we are charging these people with violations of the Controlled Substances Act.

GRASSLEY: On another point, the Department of Justice charged Nicolas Maduro with narco terrorism and drug trafficking offenses, and the Office of Foreign Assets Control sanctioned him. Since then, the Biden administration has released \$3 billion in foreign Venezuelan assets and authorized Chevron to drill.

Does the Department of Justice still consider Nicolas Maduro a fugitive of U.S. justice? And if so, do you commit to diligently pursue his arrest?

GARLAND: To be honest, Senator, I really don't have any information. I know who Maduro is, obviously, and I know that he was charged. I don't know what his current status. I'll be happy to look into that for you, though.

GRASSLEY: Will you answer in writing?

GARLAND: Of course. Of course.

GRASSLEY: This will have to be my last question. I have strong concerns about competition problems in different areas of the economy. Example, I've conducted oversight and drafted legislation to address abuses in pharmaceutical, agriculture and high-tech industries. Can you tell us what the antitrust priorities are for the Justice Department under your leadership? And are your resources following that priority?

GARLAND: Yeah, so our priority are both to prevent increased concentration in industries that are already concentrated. Agriculture is a very good example. Pharmaceutical is another very good example. And therefore, to closely look at mergers, and thank and to investigate them, and our other priority, and closely related, is exclusionary conduct by dominant firms. And we are doing quite a bit of that kind of work as referenced by some of the cases we've filed.

We're also looking at criminal violations of the price fixing statute and others with respect to resources. This is an area where we can always use more resources. We are faced on the opposite side with companies with virtually unlimited resources. I express gratitude for the Senate and the House for the Hart Scott Rodino fees bill, merger fees bill, which has given us more money to even up the playing field a little bit.

DURBIN: Senator Blumenthal.

BLUMENTHAL: Thanks, Mr. Chairman. Thank you again, Mr. Attorney General. I want to thank you for the support of comments you've made about the Open Apps Market Act. As you know, I'm hoping that the Department of Justice will support us because right now we have a duopoly in the mobile apps stores, Apple, Google. And this measure would stop those two companies from exacting rents and boxing out competitors. I'm hoping that the Department of Justice will support this measure.

GARLAND: As I said, Senator, Assistant Attorney General Kanter has already testified in support of the bill. So, we hope to be able to get the administration on board as well. But he has already, and that represents my views as well.

BLUMENTHAL: Thank you. I want to talk about the Foreign Intelligence Surveillance Act.

GARLAND: Yeah.

BLUMENTHAL: Specifically, Section 702. Not exactly the topic of major inquiry here, but enormously important. And without going into any classified information, that provision I believe was instrumental in preventing major catastrophic aggression against our nation and also helping our allies, like the Ukrainians, with intelligence that was extremely critical to pushing back the Russians and knowing what they needed to know on the battlefield. Could you comment on the importance of reauthorizing Section 702?

GARLAND: Yes, Senator, this is a statute that we didn't have the last time I was at the Justice Department, so I really didn't know what to expect when I came in this time. I will tell you that every morning I have a all threats briefing with the FBI, with an intelligence community briefer, with our National Security Division. An enormously large percentage of the threats information that we're receiving comes from 702 collection.

All the examples that you're talking about, Ukraine, threats by foreign terrorist organizations, threats coming in from adversaries from China, from North Korea, from Iran, from Russia. A lot of what we do in the area of cyber, and particularly in ransomware investigations, of finding out who is behind the ransomware investigation, and sometimes of obtaining the keys, comes from information that is at least part fed by Section 702.

We would be intentionally blinding ourselves to extraordinary danger, in my view, and this is not a view that I jumped on. I've always held this is something I've learned as I've been at the department.

BLUMENTHAL: And blinding our allies as well. Thank you.

GARLAND: Oh, yeah. And our allies as well. Yes.

DURBIN: Senator Cornyn.

CORNYN: General Garland, I'm sure you will agree with me that the independence of the federal judiciary is one of the crown jewels of our form of government. And historically, federal judges have had a hard time defending themselves against attacks of various kinds. And I just want to raise with you my concerns that we're seeing not only attacks like those from former staffers of this committee who happen to now be on the outside in special interest groups saying that now when reporters cover the story of cases being decided by judge, they ought to cite the partisan affiliation of that judge.

And saying that it's important to say, for example, it's not just Chief Justice Roberts, or say that he's a Republican, not a conservative leaning justice. This is happening in the press. It's happening on social media. As you've already discussed with some of my colleagues, this has led to political protests at the justice's homes and even a threatened assassination of a member of the Supreme Court of the United States.

But, unfortunately, it's not just limited to -- to the outside partisan rabble-rousers. It includes speeches made by United States senators on the floor of the Senate.

Mister Chairman, I'd ask unanimous consent that a copy of this speech dated February 16th be made part of the record.

DURBIN: (inaudible) without objection.

CORNYN: This is a -- this is a speech by a United States senator trying to discredit a judge. Happens to be in Texas, Matthew Kacsmaryk that Senator Cruz and I recommended and who was appointed and now serves with lifetime tenure as a federal judge. Calling him a lifelong right-wing activist, a partisan ideologue, and anti-abortion zealot. And he goes further to say that "regardless of how Judge Kacsmaryk may decide this particular case that it will inevitably be affirmed by the activist Fifth Circuit Court of Appeals and then surely rubber-stamped by the United States Supreme Court."

I find this sort of rhetoric, particularly by a United States senator, to be appalling. And I wonder if you will join me in condemning that sort of attack on the independence of the federal judiciary.

GARLAND: When I first got on the judiciary, I and several of my colleagues pounded our heads against the wall trying to get the reporters to stop -- this is 20 -- more than 25 years ago, to stop reporting the name of the president who appointed us and or the party. Unfortunately, this is -- this is -- this is a battle that has not been won and -- and I don't think, obviously, given the authority the First Amendment, it's importance, is one that we're not going to be able to win. I -- I come from a kinder and gentler era and a kinder and gentler court, even in terms of the way the members of the court treat themselves. I -- I...

CORNYN: General Garland, you are chief...

(CROSSTALK)

GARLAND: I don't know what else to say.

CORNYN: ... enforcement officer of the United States.

GARLAND: Yes.

CORNYN: Will you condemn it?

GARLAND: I am against divisive rhetoric of all kinds. But I do not have authority in this manner, as you know, the Speech and Debate Clause...

CORNYN: You have moral authority.

GARLAND: My moral authority is against divisiveness from all sides and all quarters, and from all arguments to be made on the merits. That's -- that's...

DURBIN: Senator...

GARLAND: That is my moral authority.

DURBIN: Senator Lee.

LEE: That's the concern that I've got, is that you don't seem to condemn the divisiveness if it's on the left. I want to go back briefly to the text of Section 1507. Section 1507 is pretty darn clear. I -- I personally don't see how anyone could protest outside the home of a Supreme Court justice, especially while engaging an issue advocacy related to a case that they've taken or are currently hearing. It doesn't violate 18 USC Section 1507. So the fact that you've put U.S. Marshal Service in charge of protecting their homes, great. The fact that not a single arrest has been made, not a single set of charges have been made is very disconcerting. As is the fact that even if the marshals don't choose to make an arrest there, which is stunning to me that they haven't, but even if they hadn't, there is video footage. You can identify folks. You've proven your ability to do that. And the fact that you're not bringing that is deeply disturbing -- disturbing to me.

As -- as it was when on the day at the Hobbs decision, the Department of Justice took what I believe was a pretty unprecedented step of issuing a scathing statement, not just saying we disagree or we're disappointed with the outcome, but making arguments that I believe called into question the legitimacy of the court. I have never seen the Department of Justice do that.

It is cause for additional concern when I see people like Philip Esformes, having received clemency, is now having to face the prospect of being prosecuted again after having received clemency by a prior president.

Add all of this up with the fact that by the end of this year, we're going to see the expiration of Section 702 of the Foreign Intelligence Surveillance Act. The department's already asking and chomping at the bit to be asking us to simply reauthorize that. Notwithstanding the fact that there are all kinds of examples of how this has been politicized, how Section 702 has been misused.

A current standard for a warrantless backdoor search of the content of communications of Americans -- American persons is reasonably likely to return evidence of a crime. But the ODNI's recently declassified semi -- semiannual report released on December 22nd -- 21st in 2022, reports all kinds of non-compliant searches. These are just the ones we know about. Just the ones that the ODNI report was able to identify involving U.S. persons including the -- the search as a prospect of FBI employees, members of a political party, individuals recommended to participate in the FBI Citizens Academy, journalists, and even a congressman.

The politicization of the department is a problem. And you can tell your department not a chance in hell we're going to be reauthorizing that thing without some major, major reforms. Your department is not trusted because it has been politicized. I know you are a good person. You have the ability to rein it in. I ask that you do so promptly.

DURBIN: Thank you, Senator Lee.

Senator Cruz.

CRUZ: Thank you, Mr. Chairman.

General Garland, the Department of Justice should enforce the law regardless of politics. I do not believe that has been what is happening in the last two years. Among other things, I believe you very much want to indict Donald J. Trump. Toward that end, the Department of Justice has leaked that DoJ is investigating and intends to indict Hunter Biden. The purpose of those leaks, I believe, was to set the predicate for an indictment of Trump. To say, look how even-handed we are. We're indicting a Biden, we're indicting a Trump. Those leaks are not law or enforcing the law. They are politics. Did -- did you know about the leaks about the Hunter Biden investigation?

GARLAND: I -- I don't know about the leak that you're talking about. And I'm not -- leaks are in violation of our -- our regulations and our requirements. So the answer is...

CRUZ: But the leaks are consistently on one side of the aisle, advancing one political agenda. As you know, the FBI raided Donald Trump's Mar-a-Lago home. And subsequent to that raid, there have been multiple leaks about what was discovered there, including a photograph of documents that were discovered there. Did -- did you know about the leaks from that raid?

GARLAND: The photograph -- the photograph was a filing in court in response to a motion filed by Mr. Trump. It was not a leak.

CRUZ: So -- so you are testifying there haven't been leaks about the -- the Trump raid and investigation?

GARLAND: I'm -- I'm responding to the point about the photo.

CRUZ: Do you know about the leaks that have occurred concerning the Trump...

GARLAND: I've read the leaks. They are inappropriate. We also don't know where they come from. Witnesses on the...

CRUZ: Well, what's interesting is when the shoe was on the other foot, I believe your intention -- and I believe it's a political intention -- to indict President Trump became infinitely harder when classified documents were discovered repeatedly at President Biden's multiple residences.

Court in the (ph) public record, those were first discovered on November 2nd, six days before the prior election. Department of Justice was notified on November 4th, and yet miraculously, there was no leak about the classified documents at President Biden's home.

When it politically benefitted the effort to go after and charge Donald Trump, DOJ leaked. When it potentially harmed the Democrat President, DOJ did not leak. Does that strike you as -- as at all a double -- double standard?

GARLAND: Leaks under all circumstances are inappropriate and they are not directed by anyone in the Justice Department.

CRUZ: Well, let me say in particular on Hunter Biden I very much hope that an investigation of Hunter Biden is focused not just on his own personal substance abuse issues but on connections to his father and potential corruption. That is the matter of public concern and why people are concerned. And it was striking that the leak that came out from DOJ suggested this is just going after some poor -- poor person struggling with drugs instead of looking at the very real evidence of corruption.

Will you commit that the investigation will actually examine the public corruption aspect and not simply scapegoat Hunter Biden as an individual?

GARLAND: I can't comment about the investigation, other than to say that all of the matters involving Mr. -- Hunter Biden are in the purview of the U.S. Attorney in Delaware. He's not restricted in his investigation in any way.

CRUZ: Well, you don't comment here but then you leak at the same time.

DURBIN: Senator Hawley?

HAWLEY: Thank you, Mr. Chairman. Attorney General Garland, you said in our last exchange that it's your practice to defer to FBI agents in the field when it comes to investigations, apprehensions of subjects. I was interested, given your answer, to read in this morning's Washington Post that the FBI is saying that you overruled them when it came to raiding ex-President Trump's personal residence.

Washington Post reports this morning, showdown before the raid (ph), that senior FBI officials who would be in charge of leading the search resisted doing so as too combative and proposed and said to seek Trump's permission to search his property. These field agents wanted to shutter the criminal investigation altogether in early June, the Post reports, but they were overruled by main DOJ.

So I guess in light of your earlier testimony just this morning, my question is how often do you overrule FBI field agents for political purposes?

GARLAND: I have skimmed that article. It is not -- that's not an accurate reflection of what the article says and I'm not able to comment on the investigation. My comment earlier was about tactics on -- on the ground in particular cases.

HAWLEY: Wait -- wait -- wait, you said it's not -- I'm -- I'm reading to you from the article, quote, "senior FBI officials who would be in charge of leading the search resisted the plan as too combative and proposed instead to seek Trump's permission to seek his property, according to four people who spoke on condition of anonymity, to describe a sensitive investigation," end quote.

GARLAND: Again, I have to say I'm not able to describe the investigation. I will say, as a general matter and at -- at a high level of -- of -- of generality, that in my experience -- long experience as a prosecutor, there is often a robust discussion, and in the end -- and it's encouraged among investigators and prosecutors ...

HAWLEY: Attorney General, my time is very ...

GARLAND: ... made.

HAWLEY: My -- yes, and you made the decision.

GARLAND: I did -- that's ...

HAWLEY: Right? You said you did ...

GARLAND: No, I'm sorry. What I said was I approved the decision ...

HAWLEY: So you didn't make the decision to raid?

GARLAND: I approved the decision to seek a search warrant after probable cause was ...

HAWLEY: Overruling the FBI agents who did not want to do so. Did you talk about this at (ph) the White House beforehand?

GARLAND: The memorandum does not -- that Washington Post article does not say what you're saying, I'm sorry, and I'm not able to describe this in any further detail.

HAWLEY: ... I think -- I think, given that, Mr. Chairman, I'll just ask that this entire article be entered into the record.

DURBIN: Without objection.

HAWLEY: And we can read for ourselves. I invite people to go and look. It says exactly that FBI field agents did not want to conduct the raid and they were overruled by DOJ.

So it doesn't seem to me, Attorney General, that the FBI has a lot of confidence in you because what they're doing clearly is trying to distance themselves from your decisions. They're out there leaking left, right and center, and saying "it wasn't us. We didn't want to do it. He made us do it." What's that say about their confidence in your leadership?

GARLAND: You know, the previous Senator said that they're leaking all in favor of the left, now you're saying they're leaking all in favor of the right.

HAWLEY: I'm asking you my question. Answer my question based on this evidence. Don't dissemble, Attorney General.

DURBIN: Time is expired.

HAWLEY: Answer my question.

DURBIN: Time is expired. Senator Cotton?

COTTON: Mr. Attorney General, I want to return to the illegal protests outside of Supreme Court Justices' homes last summer. It -- it's plainly unlawful to protest outside of a judge's home to influence the outcome of a pending case. You testified earlier that as far as you know, no charges have been brought against those protesters but you never really explained why. Why have no charges been brought against those protesters?

GARLAND: The decision about making -- on making arrests is left to the Marshals on scene. They're principled ...

COTTON: Marshals are -- Marshals are law enforcement officials, they're not prosecutors. I did not say "arrests," I said "charges."

GARLAND: There can't be ...

COTTON: These people were not criminal masterminds.

(CROSS-TALK)

... posted videos of themselves on their social media accounts. They advertised the protests in advance. It is possible to arrest someone for an offense after the offense has occurred, has it not?

GARLAND: It is, and we're ...

COTTON: Why did you not send anyone to arrest those protesters in the days after the protests?

GARLAND: We're allocating our resources towards protecting the lives of the Justices and their -- and -- and their families. Decisions have to be made on the ground as to what is the best way to protect those lives ...

COTTON: Mr. Attorney General, do you -- do you not think that it would perhaps provide a deterrent effect if you arrested some of these criminal protesters and charged them and threw them in federal prison?

GARLAND: We are trying to protect the lives of the Justices, that is our principal priority, and I'm leaving it to the Marshals Service to make determinations on the ground. They have to make determinations about what they see on the ground.

COTTON: Look, consider the efforts your department has put in to tracking down everyone who was even on the Capitol grounds on January 6th, 2021. You've dedicated million of man hours to study videotape, to do forensic analysis of computers and devices, to go knock and conduct interviews. You -- you can't allocate just a few agents to look at people's social media accounts and say "they were present outside of a Justice's home, we're going to go arrest them and charge them?" It's a black letter violation of the law.

GARLAND: Our priority is violence and threats of violence and protection of the lives of the Justices, and that's what we're doing.

COTTON: Again, these are not criminal masterminds. They posted pictures and videos of themselves protesting. You could probably go arrest one today from a cold start. Why can't you do that?

GARLAND: I'm saying again our purpose is to protect the lives and safety of the Justices. That's how we're allocating resources.

COTTON: You sent the FBI, as several senators pointed out, to do a early morning raid on Mark Houck's home in front of his children for the grave crime of singing hymns and saying prayers outside of a abortion clinic, charges of which he was acquitted by a jury of his peers within an hour. You can't send the FBI to track down anybody who was protesting outside the home of a Supreme Court Justice?

GARLAND: And I want to be clear -- our purpose here is to protect the lives and safety of the Justices. That's why we're doing that.

COTTON: The answer is that you are sympathetic to the protesters, that you didn't like the decision the Justices were about to issue. I think we all know what we -- you would do if a bunch of conservative protesters were outside the home of a Democratic-appointed Justice to the Supreme Court.

GARLAND: No one has ever been arrested under that statute, under those circumstances.

COTTON: ... you will not send a single agent to conduct a single arrest and charge them on something that they have zero defense for is because you're sympathetic to left wing protesters.

BLACKBURN: Thank you, Mr. Chairman. And Mr. Attorney General, I want to go back to what we discussed earlier with the two tiers of justice. And the answers you've given us, you're very subjective in how you approach decisions, you don't seem to be rules-based in how you make these decisions. As a matter of fact, you come across as being very political in the decisions that you make, and politicizing your work is something that really offends most Tennesseans.

But I want to ask you about this two tiers of justice, particularly in the way you've responded to congressional oversight investigations. The House Judiciary Committee recently requested that you turn over documents relating to the Special Counsel investigation of President Biden's mishandling of classified documents but your DOJ so far has stonewalled the House request, claiming you can't turn over documents on an open matter.

Now, let's compare that with your decision, obviously very subjective, to fully cooperate with document requests from the House January 6th Committee. Your FBI had no problem at all turning over documents and information to that committee, even though they related to an open investigation.

Do you see this comparison here? Do you appreciate this? This is a prime example of two tiers of justice, your two tiers system, who you're going to cooperate with and who you are not. So why have you cooperated with the document requests that were made from Democratic-led committees but you have refused Chairman Jordan and you have refused the House Judiciary Committee when they are requesting documents that pertain to President Biden's mishandling of classified documents?

GARLAND: So we greatly respect the oversight responsibilities of the committees of the Congress, and at the same time, we have to protect our ongoing investigations. I do not believe we turned over information to the January 6th Committee about ongoing investigations ...

BLACKBURN: ... responses, you give one set of responses for Republicans, another for Democrats. You have one tier of justice for people that are conservatives and another for those that are on the left. You told me earlier that you didn't know who Jane's Revenge is. They are all over Twitter. I'm going to do you a favor -- I am going to send you a letter with a whole lot of Twitter and different feeds to help you in that investigation for the Hope Clinic.

DURBIN: Thank you, Senator Blackburn. Senator Graham has told me he's on the way, so I'm going to take my three minutes now. Run the clock please.

First, there was a reference made earlier to the drug war, the war on drugs legislation of about 25 or 30 years ago. As a member of the House, I voted for it. It was an overreaction to crack cocaine, a nominally new narcotic that scared us to death. It was cheap, it was addictive, it was lethal and -- and heavily damaging, and we did what most people do in reaction to such a phenomena, we raised the penalty to an unimaginable height. The sentencing penalty went from one to one to 100 to one.

The net result is exactly the opposite of what we had hoped for. The price of the drug on the street went down, the usage went up, and we filled federal prisons primarily with African American prisoners. It backfired on us.

I don't want to make that same mistake again when it comes to fentanyl. It's a deadly, dangerous situation, and I hope that just the initial reaction of getting tough and sentencing and mandatory minimums is -- is not a sum and substance of all that we do.

The second point I'd like to make is it is interesting to try to step back and follow what you've faced today, in terms of the resources of the government protecting elected officials. When it comes to Supreme Court Justices, we hear from the other side you just didn't do enough, you've got to do more, and it -- I can understand that sentiment, but when it comes to school board members, the fact that you would send out a memo suggesting that they may be in danger at a school board meeting has been translated into some invidious diminution of the freedom of speech in this country.

I think you have to make a decision on a daily basis as Attorney General where we're -- you're going to apply the resources of the government. I hope that you share, and I believe you do, the bottom line that violence is unacceptable from either side politically at any circumstance. And I think if we use that standard and -- and -- and use it objectively, that it's going to be a -- a -- an effective standard for the future.

The last point I'll make to you here should be said again, it was said at the outset -- you have authorized Special Counsel to investigate the classified materials both at President Biden's home as well as former President Trump's home. Special Counsels have some independence by their designation. Could you explain why you did that?

GARLAND: That -- yeah, I -- I -- to the extent I've already publicly explained why I -- we appointed a Special Counsel in those two cases, with respect to President Trump, he had announced that he was candidate for President, and President Biden had indicated that he would be a candidate.

I thought that's an extraordinary circumstance and well fitting within the regulations, to provide a level of independence and accountability that fit within the purpose of the Special Counsel regulations.

DURBIN: Thank you. I think I've just used my three minutes, so I'm going to try to set an example. Senator Graham, take it away.

GRAHAM: Number one, you deserve a -- a Purple Heart for being here all day.

GARLAND: Thank you.

GRAHAM: So really, I've enjoyed working with you and your team regarding Ukraine oligarch seizures and I want to compliment you. Y'all have done a really good job of going after oligarchs and hopefully we seize (ph) some of their assets and send it to the Ukrainian people.

And I want to help -- work with you as much as we can, create some international tribunal to let Putin and his cronies know you're going to pay a price here. There's no forgiving and forgetting in this war. You picked a fight, you picked the wrong fight, and they need to pay a price. Do you agree with that?

GARLAND: I do.

GRAHAM: OK. Now, some areas of disagreement. There are four states -- Arkansas, Mississippi, South Dakota, and Utah, and more are coming -- that have enacted legislation that regulates certain medical and surgical inventions on minor children, 21, 18, whatever the state is, regarding transgender surgeries and puberty blocking medical procedures.

You -- your office wrote a letter March 31st, 2022 to states suggesting that if a state passed a law saying -- you know, banning medical procedures to transition minor children, that they may be running a file -- the state may be running a file, the equal protection or due process clause of the 14th Amendment. Is that your position?

GARLAND: So the -- the department believes that all people in the United States are entitled to be treated with dignity and respect, that the situation that you're talking about has to be evaluated by doctors, by families, by individuals, and they have to make those determinations ...

GRAHAM: But -- but states have passed laws, OK? We -- we have 50 states here. They have passed laws and more are coming prohibiting this procedure cause the state in question believes that allowing transition medical procedures on a minor is a life-altering event and it should be not -- shouldn't be done until you're older so you really better appreciate what you're doing.

States have taken that view and I think more of them will take that view. Is it the position of the Department of Justice that such laws are unconstitutional?

GARLAND: The position is that a -- a -- a -- categorical, across the board prohibitions on certain kinds of -- of surgeries and not others have to be evaluated on a case-by-case basis, and the Civil Rights Division will do that with respect to each of the laws that you are talking about when the time comes.

GRAHAM: OK. So the bottom line is the four laws in question, have you looked at the -- the laws in Arkansas, Mississippi, South Dakota, and Utah?

GARLAND: I -- I haven't. I don't know whether ...

GRAHAM: Well, do me a favor and just look at them and get back to me and -- and -- and answer my question, are they constitutional in the eyes of the Department of Justice? Thank you. I did it, three minutes.

(LAUGHTER)

DURBIN: I appreciate the Attorney General appearing before the committee, and the -- the record of the hearing will remain open for a week. Questions for the record may be submitted by senators before 5 pm on Wednesday, March 8th. Attorney General Garland, please provide these answers on a timely basis.

With that, the hearing is adjourned.

END

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