

UNITED STATES DEPARTMENT OF JUSTICE

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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UNITED STATES DEPARTMENT OF JUSTICE

TUESDAY, APRIL 8, 2014

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Committee met, pursuant to call, at 10:04 a.m., in room 2141, Rayburn Office Building, the Honorable Bob Goodlatte (Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Sensenbrenner, Coble, Smith of Texas, Chabot, Bachus, Issa, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Marino, Gowdy, Labrador, Farenthold, Holding, Collins, DeSantis, Smith of Missouri, Conyers, Nadler, Scott, Lofgren, Jackson Lee, Cohen, Johnson, Pierluisi, Chu, Deutch, Richmond, DelBene, Garcia, Jeffries, and Cicilline.

Staff present: (Majority) Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff & Chief Counsel; Allison Halataei, Parliamentarian & General Counsel; Robert Parmiter, Counsel; Caroline Lynch, Counsel; Kelsey Deterding, Clerk; (Minority) Perry Apelbaum, Staff Director & Chief Counsel; Danielle Brown, Parliamentarian; and Aaron Hiller, Counsel.

Mr. GOODLATTE. Good morning. The Judiciary Committee will come to order, and without objection the Chair is authorized to declare recesses of the Committee at any time.

We welcome everyone to this morning's oversight hearing of the U.S. Department of Justice, and I will begin by recognizing myself for an opening statement. Welcome, Attorney General, to your seventh appearance before the House Judiciary Committee since your confirmation in 2009. We are happy to have you here with us today.

Over the last year, we have all witnessed an extraordinary level of executive overreach by the Obama Administration. Time after time, this President has pushed the limits on executive power beyond their constitutional boundaries. He has repeatedly declared that rather than faithfully executing the laws passed by the legislative branch, he will "refuse to take no for an answer," and that "Where Congress won't act, I will."

Under my leadership, the House Judiciary Committee has worked diligently to oppose these broad assertions of executive power and remind the Administration and the American people that our Constitution gives Congress the power to make the law and charges the President with its faithful execution.

Our work continues today because the Department of Justice has undertaken its own form of overreach in several instances. This is so despite the fact that legal opinions from the Justice Department under Presidents Carter, Reagan, George H.W. Bush, Clinton, and George W. Bush all agree that while the President does not have a duty to execute laws that he in good faith determines are unconstitutional, the President may not refuse to enforce an act of Congress for policy reasons.

Unfortunately, the Department of Justice under Attorney General Holder has done just that. For example, on October 19, 2009, Attorney General Holder announced that the Justice Department would stop enforcing the Federal marijuana ban against persons who comply with State medical marijuana laws. The Justice Department's decision not to enforce the Controlled Substances Act in States whose laws violate Federal law is not a valid exercise of prosecutorial discretion, but a formal Department-wide policy of selective non-enforcement of an act of Congress.

On August 12 of this year, the Attorney General directed all Federal prosecutors to decline to charge the drug quantity necessary to trigger a mandatory minimum sentence if a defendant meets certain criteria. The Attorney General's directive, along with contradicting an act of Congress, puts his own frontline drug prosecutors in the unenviable position of either defying their boss or violating their oath of candor to the court.

Additionally, this Justice Department has continued to play fast and loose with Federal taxpayer dollars. Every year since 1998, the Justice Department's Inspector General has compiled a list of the top management and performance challenges facing the Department, and every year since 1999, including this year, the issue of grant management has been included.

Rather than learn from its mistakes over that 15-year period and act to effectively administer its more than 200 grants, the Department has made a number of concerning changes to some of these programs over the last year. This includes limiting the universe of grant applicants only to prior grant recipients under a number of its Violence Against Women programs. This type of change smacks of cronyism, and it opens these programs up to potential corruption and malfeasance. It is also in direct conflict with Congress' intent when it created competitive grants, not to mention the Department's stated commitment to promoting new and innovative programs.

Secondly, I am concerned that this Administration has begun a profound change in how forensic science is studied and how standards are promulgated without congressional approval or oversight. The Justice Department has permitted the National Institute of Standards and Technology, or NIST, to establish brand new scientific area committees which will replace the longstanding scientific working groups in forensic science that have operated for years under the Department of Justice and are the backbone of forensic science. We have learned that these new NIST committees are rewriting forensic standards without input from established SWIG forensics experts contrary to congressional intent.

Third, last summer, the Department of Justice announced that it would break from its tradition of having all public safety officers

benefits program claims reviewed by the OJP General Counsel's Office before an official approval or denial was made. Instead, the Department has delegated this important task to a PSOB counsel, who reports to a political appointee. The PSOB counsel's determination regarding the legality of a claim can also be overridden by the political head of OJP, and the Department of Justice has reduced the evidence needed to establish a claim. These changes will allow payments to be paid that are not supported by the law, and they highlight the Department's continued recklessness regarding taxpayer dollars as well as the continued disregard for the limitations Congress places on how grant money should be spent.

All of this demonstrates a pattern on the part of the Obama Administration to ignore or rewrite the very legislation that places limits on executive branch authority for purely political purposes. The Justice Department has the responsibility to provide legal advice, including constitutional analysis, to the executive branch. I find it ironic that the Department has chosen on multiple occasions to act in contravention of the Constitution and congressionally enacted Federal law. I would be interested in hearing what, if any, legal guidance the Department, including its Office of Legal Counsel, has provided to the Administration on these executive overreaches.

Attorney General Holder, I look forward to hearing your answers on all of these important topics today as well as on other significant issues to the Justice Department and the country.

And it is now my pleasure to recognize the Ranking Member of the full Committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Chairman Goodlatte. Welcome, Attorney General Holder. In the vast jurisdiction of the Department of Justice, there are many topics worthy of discussion today. And I hope that you will get a chance to accommodate Chairman Goodlatte and the numerous criticisms and flaws and other things that he raised in his opening statement because we do want an honest appraisal of this. And I am sure that you are up to giving us one.

First topics worthy of discussion for me today is your commitment to enforcing voting rights for all Americans in the wake of the Shelby County decision. Voter discrimination of all kinds is alive and well in this country, and it ought to be our Committee's overwhelming priority to take up House Resolution 3899, the Voting Rights Amendment Act without delay.

Your work in sentencing reform is remarkable. In a country where nearly half of all Federal inmates are serving time for drug offenses, the harshest crimes should be reserved for violent offenders. As you stated before the Sentencing Commission last month, "Our focused reliance on incarceration is not financially sustainable. It comes with human and moral costs that are impossible to calculate."

We should note the Department's efforts to engage State and local agencies, juvenile justice systems, and community leaders to end the school to prison pipeline and ensure that every young person has the opportunity to reach his full potential regardless of the color of his or her skin. And we should celebrate the Department's commitment to marriage equality as more and more of this country

makes progress in which you have called one of the defining civil rights challenges of our time.

Mr. Attorney General, your leadership on these and other issues has been invaluable. Of course throughout your tenure you have been asked to do all this and more with fewer and fewer resources. If you can give us any guidance as to the effect of the draconian Ryan budget proposal on the Department of Justice, we would like to engage with you on that topic as well.

I would like to focus the balance of my time on the one overriding issue of our collective effort to roll back government surveillance of United States citizens. Much of our recent debate has focused on how to end the National Security Agency's bulk collection of telephone records under Section 215 of the USA Patriot Act. Ending that program and correcting the deeply troubling legal argument at its foundation are of paramount importance. But the President's proposal and the proposal advanced by some on the House Intelligence Committee deals only with Section 215. In other words, they focus on one program used to access one database collected under one legal authority.

To me, the problem is far more complicated than that narrow lens implies, and in his January 17 speech, President Obama committed to much more. First, the President instructed you, Mr. Attorney General, to institute reforms that placed additional restrictions on the government's ability to retain, search, and use in criminal cases the content of communications intercepted under Section 702 of the Foreign Intelligence Surveillance Act.

On March 28 in a letter sent to Senator Wyden, the Director of National Intelligence, James Clapper, confirmed that the government mines this data for information about United States persons. Section 702 implicates content, not metadata, under any other circumstance. The government would require individualized suspicion and probable cause to seize these communications. The FISA amendments were never intended to authorize back door surveillance of United States persons, and the Department of Justice should work with this Committee to correct any impression to the contrary.

The President asked the Attorney General to amend how we use national security letters so that gag orders will not be indefinite and will terminate within a fixed time. I view this modest amendment as a bare minimum change necessary to the NSA regime in light of what the public now knows about government surveillance. And yet, this Committee has received no indication that this reform is under way at the Department of Justice, and I hope, sir, that we will hear news of this development in your testimony or soon.

And finally, the President recognized that there is an inevitable bias within the intelligence community to collect more information about the world, not less. That bias is consistent with their mission to maintain national security, but national security, of course, is not the only value we hold dear. We must also be vigilant against government overreach and protect our constitutional rights to privacy and free association.

In the Congress, this Committee has always been the proper forum for a discussion about civil rights, especially in the national security context. In the executive branch, that role falls to the De-

partment of Justice, and specifically, Mr. Attorney General, to you. This country would be well served by your continued leadership on this issue.

In years past, the Department of Justice and the House Judiciary Committee have worked together to draft, pass, and implement the Foreign Intelligence Surveillance Act, the USA Patriot Act, and the FISA Amendments Act. We should renew that partnership without delay and move the USA Freedom Act through this Committee with all necessary speed.

I thank you, and I look forward to your testimony, Attorney General. And I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman, and without objection all other Members' opening statements will be made a part of the record.

We thank our only witness, the Attorney General, for joining us today. And, Attorney General, if you would please rise, we will begin by swearing you in.

[Witness sworn.]

Mr. GOODLATTE. Let the record reflect that the Attorney General responded in the affirmative. Thank you. And we will begin with our introduction.

On February 3, 2009, General Holder was sworn in as the 82nd Attorney General of the United States. General Holder has enjoyed a long career in both the public and private sectors. First joining the Department of Justice through the Attorney General's Honors Program in 1976, he became one of the Department's first attorneys to serve in the newly-formed Public Integrity Section. He went on to serve as a judge of the Superior Court of the District of Columbia and the U.S. Attorney for the District of Columbia.

In 1997, General Holder was named by President Clinton to be the Deputy Attorney General. Prior to becoming Attorney General, he was a litigation partner at Covington & Burling LLP here in Washington, D.C. General Holder, a native of New York City, is a graduate of Columbia University and Columbia Law School.

Attorney General Holder, we appreciate your presence today and look forward to your testimony.

TESTIMONY OF THE HONORABLE ERIC H. HOLDER, JR., ATTORNEY GENERAL, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

Attorney General HOLDER. Thank you, Mr. Chairman, Ranking Member Conyers, and also Members of the Committee. I am here today to speak on behalf of my hardworking colleagues in the Department offices around the world about our continued commitment to the cause of justice and the missions that we share, securing our Nation and protecting the American people. Now, this is and always will be our top priority, and over the past year the Department has done important work in this regard, strengthening our ability to safeguard America's national security, to disrupt potential terrorist plots, and to ensure that those who attempt to harm our Nation, its vital interests, or its people can be held accountable to the fullest extent of the law.

Last month, the Department achieved a major milestone when we secured the conviction of Sulaiman Abu Ghaith, the son-in-law

of Osama bin Laden and a senior member of Al-Qaeda, on terrorism-related charges. This verdict has proven that proceedings such as these can safely occur in the city I am proud to call my hometown as in other locations across our great Nation.

Now, we never doubted the ability of our Article 3 court system to administer justice swiftly in this case as it has in hundreds of other cases involving terrorist defendants. And it would be a good thing for this country finally to put to rest this political debate that has otherwise questioned the experience that we have had.

Last week, the Senate Intelligence Committee voted to declassify key portions of its report into past interrogations practices. Now, I agree that as much of the report as possible should be made public, of course allowing for redactions that are necessary to protect national security. So I was pleased that the Committee voted to send portions of the report forward for declassification. Having prohibited these practices upon taking office, the President believes that bringing this program into the light will help the American people understand what happened in the past and help guide us as we move forward so that no Administration contemplates such a program in the future.

Beyond our national security work, the Department will continue to build on the progress we have made in confronting a range of threats and challenges. The full resources of the Department and the FBI have been made available to help conduct a thorough investigation into last week's horrific mass shooting at Fort Hood. And going forward, my colleagues and I will do everything possible to achieve justice for our brave men and women in uniform, and prevent these far too common tragedies from happening again.

More than ever before, the Department's law enforcement work today must connect with new and emerging technology, including currencies such as bitcoin. Virtual currencies can pose challenges for law enforcement given the appeal that they have among those seeking to conceal illegal activity, and this potential must be closely considered. We are working with our financial regulatory partners to account for this emerging technology. Those who favor virtual currencies solely for their ability to help mask drug trafficking or other illicit conduct should think twice. The Department is committed to innovating alongside this new technology in order to ensure investigations are not impeded by any improvements in criminals' ability to move funds anonymously.

Now, as virtual currency systems develop, it will be imperative to law enforcement interests that those systems comply with applicable anti-money laundering statutes and Know Your Consumer controls.

Across the board, the Department's comprehensive efforts reflect our commitment to integrity and equal justice in every case and in every circumstance, and nowhere is this commitment stronger than in our work to strengthen America's Federal criminal justice system. Through the Smart on Crime initiative that I announced last August, my colleagues and I are taking action on a number of evidence-based reforms, including modifications to the Department's charging policies with regard to mandatory minimum sentences for certain non-violent, low level drug crimes.

Now, this common sense change will ensure that the toughest penalties are reserved for the most dangerous or violent drug traffickers, and I am pleased to note that Members of this Committee have shown tremendous leadership in the effort to codify this approach into law. I have been proud to join many of you in supporting the bipartisan Smarter Sentencing Act introduced by Representatives Scott and Labrador and co-sponsored by Ranking Member Conyers, which would give judges more discretion in determining appropriate sentences for people convicted of certain Federal drug crimes. And I pledge to keep working with leaders like you and like Senator Rand Paul and others to address the collateral consequences of certain convictions, including felony disenfranchisement policies that permanently deny formerly incarcerated people their right to vote.

Now, we will never be able to arrest and incarcerate our way to becoming a safer Nation. That is why we need to be both tough and smart in our fight against crime and the conditions and behaviors that breed crime. And this struggle must extend beyond our fight to combat gun, gang, and drug-fueled violence to include civil rights violations, and financial, and healthcare fraud crimes that harm people and endanger the livelihoods of hardworking Americans from coast to coast.

Last November, the Justice Department secured a major victory in this struggle when we obtained a \$13 billion settlement with JPMorgan Chase & Company, the largest settlement with a single entity in American history, to resolve Federal and State civil claims related to the company's mortgage securitization process. As part of our ongoing efforts to hold accountable those whose conduct contributed to the mortgage crisis, the Department also filed a lawsuit against the ratings firm S&P. And with the \$1.2 billion agreement we reached with Toyota last month, the largest criminal penalty ever imposed on an automotive company, we are making good on our determination to protect consumers and address fraud in all of its forms.

So moving forward, my colleagues and I will continue build upon these and other important efforts, and we will keep working alongside Members of Congress, including Ranking Member Conyers, Representative Sensenbrenner, and Representative Lewis, to address the void that has been left by last year's Supreme Court decision invalidating one of the Voting Rights Act's core provisions so that we can help protect that most basic right of American citizenship.

So I want to thank you once again for the chance to discuss these and other priorities with you today and for your continued support of the Justice Department's other critical efforts. I look forward to working closely with you to build upon these public safety and law enforcement accomplishments that my colleagues have made possible in recent years. Thank you very much.

[The prepared statement of Attorney General Holder follows:]



Department of Justice

STATEMENT OF

ERIC H. HOLDER, JR.
ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

ENTITLED

“OVERSIGHT OF THE U.S. DEPARTMENT OF JUSTICE”

PRESENTED

APRIL 8, 2014

**Statement of
Attorney General Eric H. Holder, Jr.
Before the Committee on the Judiciary
U.S. House of Representatives
April 8, 2014**

Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee: thank you for the opportunity to appear before you today to discuss the recent achievements of the U.S. Department of Justice; to join you in advancing our ongoing priorities; and to thank you, on behalf of my hardworking colleagues in Department offices around the world, for your continued commitment to the cause of justice and the missions we share: securing our nation and protecting the American people.

This is, and will always be, our top priority. And over the past year, the Department has done important work in this regard – strengthening our ability to safeguard America’s national security, to disrupt potential terrorist plots, and to ensure that those who attempt to harm our nation, its vital interests, or its people can be held accountable to the fullest extent of the law. Last month, the Department achieved a major milestone when we secured the conviction of Sulaiman Abu Ghayth, the son-in-law of Usama bin Laden and a senior member of al Qaeda, on terrorism-related charges.

This verdict has proven that proceedings such as these can safely occur in the city I am proud to call my hometown, as in other locations across our great nation. It was appropriate that this defendant, who publicly rejoiced over the attacks on the World Trade Center, faced trial in the shadow of where those buildings once stood. We never doubted the ability of our Article III court system to administer justice swiftly in this case, as it has in hundreds of other cases involving terrorism defendants – and this outcome vindicates the government’s approach to securing convictions of senior al Qaeda leaders. It would be a good thing for the country if this case has the result of putting that political debate to rest.

Beyond our national security work, the Department will continue to build on the progress we’ve made in confronting a range of other threats and challenges – from combating drug and human trafficking to preventing and addressing cyber-attacks; from upholding the civil rights to which *everyone* in this country is entitled, to leading the federal-government-wide implementation of the Supreme Court’s decision in *United States v. Windsor*.

These comprehensive efforts reflect our commitment to integrity and equal justice – in every case and circumstance. And nowhere is this commitment stronger than in our work to strengthen America’s federal criminal justice system. Through the Smart on Crime initiative I announced last August, my colleagues and I are taking action on a number of evidence-based reforms – including modifications to the Department’s charging policies with regard to mandatory minimum sentences for certain nonviolent, low-level drug crimes. This commonsense change will ensure that the toughest penalties are reserved for the most dangerous or violent drug traffickers. And I’m pleased to note that Members of this Committee have shown tremendous leadership in the effort to codify this approach into law.

I've been proud to join many of you in supporting the bipartisan Smarter Sentencing Act – introduced by Representatives Scott and Labrador and cosponsored by Ranking Member Conyers – which would give judges more discretion in determining appropriate sentences for people convicted of certain federal drug crimes. And I pledge to keep working with leaders like you – and like Senator Rand Paul and others – to address the collateral consequences of certain convictions, including felony disenfranchisement policies that permanently deny formerly incarcerated people their right to vote.

Under the Smart on Crime initiative, the Department is also directing resources to diversion programs – such as drug courts and community service initiatives – that can serve as alternatives to incarceration in some cases. We're supporting 17 states, led by governors and legislatures of both parties, in diverting resources *away* from prison construction and *toward* evidence-based initiatives that are proven to reduce recidivism while improving public safety. And we're increasing our focus on cutting-edge reentry programs that can better enable formerly incarcerated individuals to return to their communities as productive, law-abiding members of society.

We will never be able to simply arrest and incarcerate our way to becoming a safer nation. That's why we need to be both tough and smart in our fight against crime and the conditions and behaviors that breed it. And this struggle must extend beyond our fight to combat gun-, gang-, and drug-fueled violence – to include civil rights violations and financial and health care fraud crimes that harm people and endanger the livelihoods of hardworking Americans from coast to coast.

Last November, the Justice Department secured a major victory in this struggle when we obtained a \$13 billion settlement with JPMorgan Chase & Co. – the largest settlement with a single entity in American history – to resolve federal and state civil claims related to the company's mortgage securitization process. As part of our ongoing efforts to hold accountable those whose conduct contributed to the mortgage crisis, the Department also filed a lawsuit against the ratings firm S&P. And with the \$1.2 billion agreement we reached with Toyota just last month – the largest criminal penalty ever imposed on an automotive company – we're making good on our determination to protect consumers and address fraud in *all* its forms.

Moving forward, my colleagues and I will continue to build upon these and other important efforts. And we'll keep working alongside Members of Congress, including Ranking Member Conyers, Representative Sensenbrenner, and Representative Lewis, to address the void that has been left by last year's Supreme Court decision invalidating one of the Voting Rights Act's core provisions – so we can help protect that most basic right of American citizenship.

I thank you, once again, for the chance to discuss these and other priorities with you today – and for your continued support of the Justice Department's critical efforts. I look forward to working closely with you to build upon the public safety and law enforcement accomplishments my colleagues have made possible in recent years. And I would be happy to answer any questions you may have.

Mr. GOODLATTE. Thank you, General Holder. We will begin the questioning, and I will start with this. The Department of Justice is charged with providing legal advice to make sure the President and executive agencies operate within the bounds of the law and the Constitution. And, of course, it is not just the Justice Department. It involves advice regarding our Nation's healthcare laws, education laws, immigration laws, welfare laws. Doesn't the take care clause not require the President to enforce the law even if he does not like the law in question?

Attorney General HOLDER. Well, the President has a constitutional responsibility to enforce the laws. That is clear. The Justice Department has an equal responsibility to defend statutes that Congress passes unless the determination is made, and it happens very infrequently, within the Justice Department that there is no basis to defend a statute.

Such an event happened with regard to the Defense of Marriage Act and the ability that we had in a unique circumstance in the 2nd Circuit to make a determination that a heightened scrutiny standard should apply to the constitutional determination of that statute. And on that basis, we made the decision not to defend the statute. The decision was ultimately upheld by the Supreme Court.

Mr. GOODLATTE. I am concerned about some of the decisions and some of the directives that have been issued by you and others in the Department of Justice. Is it your view that there is any limit to the President's prosecutorial discretion?

Attorney General HOLDER. Well, I mean, the discretion must always be exercised in a responsible and constitutional way. There is a vast amount of discretion I think that a President has, and, more specifically, that an attorney general has, but that discretion has to be used in appropriate way so that you are acting consistent with the aims of the statute, but at the same time, making sure that you are acting in a way that is consistent with our values, consistent with the Constitution, and protecting the American people.

Mr. GOODLATTE. Could the President conceivably decide that with regard to a particular law that the discretion is to not enforce that law at all, even though the law is on the books?

Attorney General HOLDER. Well, I mean, "to not enforce at all," that is a categorical statement, and in a hypothetical circumstance, it is a difficult question to answer. The determination, as I was referring to before, not to defend the constitutionality of the Defense of Marriage Act might fall into the category that you have described, but it is one, as I said, that was very controversial at the time. We announced it, but ultimately it was upheld by the Supreme Court.

Mr. GOODLATTE. Currently under the modified Section 215 order with regard to foreign intelligence surveillance, the government is no longer determining whether there is reasonable articulable suspicion, or what is called RAS. That target pertains to foreign terrorism. Those determinations are now being made by the FISC, the Foreign Intelligence Surveillance Court. How is that structure being implemented under the modified order, and how is the FISA Court approving the queries of the data under the modified order?

Attorney General HOLDER. Well, I think that we are doing so pursuant to the orders of the President, which I think are entirely

reasonable. It does not have an impact on our ability to make very good use of that tool to go to the Court, present the case to be made using the reasonable articulable suspicion standard, the Court then authorizes the action that we seek. We now limit the action that we take to two hops as opposed to three hops, and I think that the way in which we are now proceeding is, again, consistent with the President's direction, but also is consistent with our obligation to keep the American people safe. It does not have a negative impact on our ability to make use of that tool.

Mr. GOODLATTE. And how is the Court, the FISA Court, approving those queries of the data under this modified order?

Attorney General HOLDER. Well, the Court is presented with a request, a statement by the Department that we feel that reasonable articulable suspicion has been met, and make a determination about whether they agree or disagree, and the order is then signed.

Mr. GOODLATTE. Moving to another subject, and that is this question about the application for grants. The Office on Violence Against Women, which is within the Department of Justice's purview, recently announced changes to its grant solicitation process for Fiscal Year 2014, which limits the universe of grant applicants prior to grant recipients for a number of the office's discretionary and competitive grant programs. Specifically, it is limiting six of those programs to only applicants who have been prior recipients.

This concerns me greatly, both from the standpoint of the appearance of favoritism and from the standpoint of not looking for new and innovative ways to combat violence against women. And I wonder if you would comment on why this policy has been permitted to take hold.

Attorney General HOLDER. I am sorry?

Mr. GOODLATTE. I was just giving you an opportunity to respond to that.

Attorney General HOLDER. Our grant making is really headed by our Office of Justice Programs, a woman whose name is Karol Mason, in whom I have total faith. What we have tried to do under her and her predecessor, Laurie Robinson, is to seek out from a variety of places grant proposals, support those proposals that we think are of potential benefit, and then actually do something that we do not think has necessarily been done before, use evidence-based means to determine the effectiveness of those programs, and on that basis make further determinations about funding.

I am not aware of any determinations that are made to exclude from grant making or grant seeking institutions that on any basis. We take into account those grant applications that are made, use neutral criteria to determine whether or not they should be supported, but then, as I said, look after what happens after the grant is made to see the actions that are taken, again, on an evidence-based basis decide whether or not the program should be supported or attempted to be replicated in other parts of the country.

Mr. GOODLATTE. Well, the information that I have is to the contrary. My time has expired, so if you will, I would like to pursue that matter with you after this hearing, and we will get you some specific questions and concerns we have. But I am concerned that new applicants are being excluded, and that current applicants are

being renewed not in a competitive environment, and that concerns me.

Attorney General HOLDER. Mr. Chairman, I will say that I do not think that is the practice. But to the extent that your concern is a legitimate one, that is something that I will look into and I will get back to you. That is not the way I understand that we are proceeding. But if I am wrong, we will get back to you and that practice will be corrected.

Mr. GOODLATTE. Thank you. The gentleman from Michigan, Mr. Conyers, is recognized for his questions.

Mr. CONYERS. Thank you very much. Thank you for your statement, Mr. Holder. It is important that we come together in the Judiciary Committee and work out some of these differences or misunderstandings as the case may be.

I would like to turn your attention to Section 215, the Foreign Intelligence Surveillance Act, FISA. And we are going to try to reach consensus on Section 215, and we will amend that statute to correct the mistaken argument that relevance means everything.

Some have suggested that Section 215 could be reformed without requiring an individualized judicial determination of relevance or reasonable articulable suspicion before the government may demand certain business records. Consensus on our Committee is that prior judicial review is necessary. How do you stand on that?

Attorney General HOLDER. Well, I think that the proposal that the President has made and in the interim steps that we have taken all are an indication of a basic fact that I think we have to understand. Section 215, as we know it, is proposed to be ended by this Administration. That is a simple fact. And what we would like to put in its place is a system where the information is stored in a different place. The information is acquired in a different way. The amount of information that is actually held by the government is substantially reduced.

I think the debate that we have had as a Nation has been a good one, and I think that the President's proposal that is supported unanimously by his national security team is a good step forward. We want to work with Congress to try to perfect the proposal. It is, as I said, only a proposal and can obviously be made better. So we want to work with Congress to ultimately come up with a statutory change so that we can get to this new Section 215.

Mr. CONYERS. Thank you. But let me see if you feel that we have to have this relevance before the government may demand certain business records under 215. On this Committee, there is a consensus that prior judicial review is necessary. Do you share that view?

Attorney General HOLDER. Well, by going to the FISC and specifying the reasonable articulable suspicion for acquiring the information, I think we are making a particularized request. It is something that is more predicate based than existed in the past, and I think that is a step. I think that, in fact, really deals with many of the concerns that have been expressed.

Mr. CONYERS. Thank you. On January 17, you and I were both present at the Department of Justice when President Obama made a series of commitments to reforming even more than 215, and asked that the Department of Justice institute reforms that place

additional restrictions on the government's ability to retain, search, and use criminal cases, communications between Americans and foreign citizens incidentally collected under Section 702. Have you or anyone in DoJ considered some of these reforms and if they are necessary?

Attorney General HOLDER. Yes. I mean, one of the things that I am charged with a responsibility of doing along with Director of National Intelligence Clapper is to look not only at 215, but the other tools that we have. Section 702 is one of them. We have begun the process that the President gave us in that regard. We are not finished with the work that we are doing. Our hope would be to come to Congress with a proposal and to work with Congress to make sure that 702, which is already subject to, extensive oversight by the FISC, the executive branch, Congress, but just to make sure that we have the necessary procedures in place so that we are ensuring that only non-U.S. persons outside the United States are targeted, to minimize the acquisition, retention, and dissemination of incidentally acquired information about U.S. persons.

But this a process that we are still engaged in, and I do not think we are yet in a position where we can come to Congress with a concrete proposal. Once we are at that point, as we are with Section 215, we will be coming back to Congress with that proposal.

Mr. CONYERS. Thank you. I have three other questions. I will send them to you, and we will keep in communication.

I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from Wisconsin, Mr. Sensenbrenner, for 5 minutes.

Mr. SENSENBRENNER. Thank you very much. Mr. Attorney General, thank you for coming here. I would like to ask you a series of questions about the perjury which I believe that the Director of National Intelligence, James Clapper, gave to the Senate.

The U.S. Attorneys Manual specifically permits exposure of information concerning ongoing investigations "in matters that have already received substantial publicity." Now, Director Clapper's perjury, in my opinion, has been covered extensively, and I have articles from The New Yorker, the Washington Post, Guardian, Salon, the Washington Times, and the Huffington Post.

In light of this, are you willing to discuss whether or not the Justice Department is investigating Director Clapper for his statements before the Senate?

Attorney General HOLDER. I think that we received a letter from you, Mr. Sensenbrenner. And I think, as we explained in our response to your letter, I am really not in a position to confirm whether the Department is investigating any particular matter. But we are reviewing the material that you and other Members of the Committee have provided to us, and I can assure you that we will take any action that is appropriate.

Mr. SENSENBRENNER. Well, the first letter I sent you was several months ago, and, yes, we have received a response to that. I sent you another letter last week clarifying this. So let me refresh your memory. Senator Wyden asked Director Clapper whether the NSA was collecting data about millions of Americans. Mr. Clapper said, "No, sir, not wittingly."

Now, Senator Wyden advised the Director the day before the hearing that he was going to ask this question. And after Director Clapper responded in the manner that he did, Senator Wyden gave him a chance to correct his testimony, which he refused to do. And then Mr. Clapper told the media that he gave the "least untruthful answer." I think that we all know that lying to Congress is a Federal offense, and the only way Congress and, for that matter, the courts can be able to do their job is to get truthful testimony and then apply the facts and apply the law.

Now, my understanding of the offense of perjury is that it was made under oath, which it was. It was knowingly false, which Director Clapper admitted, even after he was given a chance to change the testimony. And it is also material to a government investigation, which I would assume includes an investigation that is being made by Congress. Do you personally believe that Mr. Clapper's testimony fits this description?

Attorney General HOLDER. Well, as I indicated, we are not in a position to confirm whether the Department is investigating any particular matter. But as I said also, we will take into account in making any determinations that we make the material that you have submitted to us.

Mr. SENSENBRENNER. Is there any circumstance that you would prosecute a member of the Administration for lying under oath to Congress?

Attorney General HOLDER. Sure.

Mr. SENSENBRENNER. What would that be?

Attorney General HOLDER. If the person lied and the determination was made that all of the other legal requirements of the perjury statute were met.

Mr. SENSENBRENNER. Well, Director Clapper has admitted that he has lied, and I outlined the elements to convict someone of perjury. And I will remind you it is being made under oath, it was knowingly false, and it is material to a government investigation. Now, if you want to delay this or sweep this under the carpet, would it not be pointless for Congress to pass new laws limiting data collection if the Justice Department is at liberty and other officials are at liberty to lie about enforcing them?

Attorney General HOLDER. I am not sure I totally understand the question, but I can tell you this. We take our responsibility seriously to investigate allegations of perjury. There have been prosecutions brought by this Department over the years in that regard. With regard to this specific matter, it is something, as I said, that we are looking at the materials that have been presented to us, and action will be taken that is appropriate.

Mr. SENSENBRENNER. I seem to recall back 25 years ago during Iran-Contra there were prosecutions, and the only way Colonel North and the person who is superior ended up getting off is because Congress was a little too eager to provide them immunity. And there was immunized testimony that was used in the prosecution. Here there is no immunity that has been given at all, and I am interested in making sure that everybody knows that they have to tell the truth when they appear before Congress. And what more do you need besides an admission from General Clapper that he lied? "I gave the least untruthful answer." My time is up.

Mr. GOODLATTE. The Chair thanks the gentleman, and recognizes the gentleman from New York, Mr. Nadler, for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. First, let me state to the Attorney General that I share your commitment to trying suspected terrorists in our Article 3 courts, and I applaud and congratulate you and the Department for the successful prosecution of Osama bin Laden's son-in-law, Sulaiman Abu Ghaith, I think the pronouncement is. That conviction came 13 months after his arrest, and he now faces potential life in prison.

By contrast, Khalid Sheikh Muhammad and his four co-defendants have been in custody for more than a decade, and it remains uncertain when, if ever, the Military Commission System will finally be able to get around to a trial. I hope with the conviction of Abu Ghaith that we can stop wasting time and money on the so far unsuccessful Military Tribunal System and secure the convictions of the guilty terrorists in our Article 3 courts. And I want to thank you again for restating today your commitment to that system.

Now, following the failure of many savings and loan institutions in the late 1980's, special government task forces referred 1,100 cases to prosecutors resulting in more than 800 bank officials going to jail. By stark contrast, no senior executive at any large financial institution at the heart of the 2008 financial crisis has been charged or prosecuted.

Just last month, the DoJ Inspector General concluded that the FBI ranked financial crime as the lowest criminal threat in the aftermath of the 2008 financial crisis, did not use some of the additional funding that Congress provided to pursue mortgage fraud for this purpose, and that DoJ mistakenly inflated its results in mortgage fraud prosecutions by some 90 percent. That report is very troubling.

My question is, why did the DoJ or the FBI not devote the same kind of resources that were devoted to the savings and loan crisis in the 80's? What steps are you now taking to investigate whether money allocated by Congress to pursue mortgage fraud was misspent? And what other steps are you now taking in response to the IG's report? And finally, in light of this experience of the total failure to prosecute or even investigate high-ranking bank officials for the fraud that led to the 2008 crash, what steps are you taking to ensure that the full range of possible criminal charges would be investigated with regard to General Motors and its faulty ignition switches that reportedly have resulted in at least 13 deaths years after they knew about them?

Attorney General HOLDER. Well, with regard to the OIG report, I just take exception to a lot of the conclusions that are contained therein. If you look at the report itself, the number of mortgage fraud convictions nearly doubled from Fiscal Year 2009 to 2010, from 555 to 1,087, and then increased further in Fiscal Year 2011 to 1,118. And this, I think, reflects a really rapid mobilization on the part of the Department to combat mortgage fraud during this critical period.

If you look at, as I said, some of the results that we have had over the past year and a half or so, including that \$13 billion resolution with JPMorgan, that makes clear, I think, our determination

to hold people accountable. The national mortgage settlement resulted in \$20 billion in relief and assistance going to more than 600,000 families. And if you look at more generally our history of holding accountable institutions and individuals who were connected to this financial fraud, beginning in 2013 we have gotten guilty pleas from the following financial industry institutions: UBS, RBS, SAC Capital, Weigand. With respect to prosecutions of individuals, we have charged individuals from the following companies: JPMorgan, Goldman Sachs, Morgan Stanley, Credit Suites, UBS, RBL Bank, ICAP, Galleon, SAC Capital, Stanford Financial Group.

So the notion that somehow or other we have not been doing what we should have been doing with regard to the mortgage fraud problem, the financial industry in general, is a nice talking point. And I do not mean to say that is what you are saying, but it used by some as a talking point. It seems to be inconsistent with the facts.

Mr. NADLER. Well, thank you, but it is essentially what I am saying. I think going after a company which can pay a fine paid by the shareholders is not the same as prosecuting someone other than small fries, prosecuting the higher ups in these companies who okayed this. But let me get onto my next question.

The review group appointed by the President to review the Section 215 bulk collection of telephone metadata concluded, among other things, that a single legal standard should apply to NSLs and Section 215 because otherwise you simply switch from one to the other. Do you agree, and I hope you can brief us on this because I have one more question. Do you agree that we should follow this recommendation, that we should make these standards for NSLs as for 215?

Attorney General HOLDER. Well, I think that, you know, we have to understand the different nature of these. NSLs were a tool to obtain really narrowly defined types of records from a narrow set of institutions. By contrast, 215 will ask the government to obtain many tangible things. And because 215 has a much wider breadth of materials that can be obtained, the need for judicial supervision, I think, is more obvious.

NSLs, you get information that is used to build cases in the same way that you use grand jury subpoenas that frankly do not involve judicial supervision.

Mr. NADLER. So you do not agree? So you do not agree with the recommendation of the President's Review Commission?

Attorney General HOLDER. I have stated my position, yes.

Mr. NADLER. Okay. My last question is, the President when he campaigned back in 2008 said he was going to rein the use of the State secrets doctrine. And he has mildly done that by saying only higher ups in the Department can approve it, and they will use it more sparingly. But you still use the State secrets doctrine to object to a case as an answer to a complaint and completely stop a case from being heard. And this means that people cannot get their cases into court, that rights cannot be vindicated, that the judicial system cannot even consider many allegations.

A 9th Circuit panel said that the problem with this was that the executive cannot be its own judge, and under this system, the executive is its own judge. I would observe that this insulates the exec-

utive from any accountability for its actions because it classifies some of its own actions, and then blocks any judicial review by incantation of the magic word “State secret.”

Do you think that it is proper or wise in a democracy to trust the executive branch with such absolutely unreviewable power over our liberties in such a way that rights can be violated and no one can get into court to challenge those rights.

Mr. GOODLATTE. The time of the gentleman has expired. The Attorney General will be permitted to answer the question.

Attorney General HOLDER. Well, we have really fundamentally changed the whole invocation of the State’s secret privilege. I put in place a series of measures so that a determination can only be made after review by a high-level committee and ultimately by sign off by the Deputy Attorney General and by myself, understanding that we were never to use the State secrets privilege to hide things that were embarrassing or to hide government misconduct. There is a reality we have to also face, though, that there are certain cases that bring into or potentially bring into the public realm things that would harm the national security.

I would also note that I am not sure what opinion you are referring to, but in another opinion, a 9th Circuit judge or a district court judge in the 9th Circuit noted very approvingly of the changes that we had made in the Justice Department with regard to how we deal with the whole question of the invocation of the State secrets privilege. And I am actually proud of the work that we have done. I think that we justify every time that we have used it, and it has been used extremely sparingly by this Administration.

Mr. GOODLATTE. The Chair recognizes the gentleman from North Carolina, Mr. Coble, for 5 minutes.

Mr. COBLE. Thank you, Mr. Chairman. General, good to you have you back on the Hill. In August of 2013, the Justice Department announced it would not challenge recently-passed State laws legalizing the production, trafficking, possession, and recreational use of marijuana. Subsequently, DoJ issued guidance to banks regarding the proceeds of illegal marijuana trafficking.

In issuing the guidance, you said that “there is a public safety component to this because the dispensaries have lots of cash.” General, what is the only public safety issue that the dispensaries have an excessive amount of cash? Well, let me continue that. Is there also not a public safety issue involving the trafficking, distribution of a substance that is still illegal under Federal law?

Attorney General HOLDER. Well, the notion that somehow we have retreated from our enforcement of the Controlled Substances Act with regard to marijuana is not accurate. What we have done is to clarify in a, I guess, pronouncement that the Deputy Attorney General set out eight factors that we take into consideration before we use our limited resources with regard to marijuana and enforcement of the marijuana laws. That is not inconsistent with, I think, the way in which the Justice Department was acting before.

Low level possessors of marijuana were never Federal cases in any case. The things that we are talking about now involve trafficking in marijuana that goes to minors, drug driving, where violence is involved, where cartels are involved, so that we remain

committed to enforcement of the marijuana laws when it involves those eight factors.

Mr. COBLE. In the responses to the questions for the record from our last hearing, which we received last week, which is actually 11 months after you last appeared here, you stated that "Congress has determined that marijuana is a dangerous drug, and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. It is the responsibility of the Department of Justice to enforce the Controlled Substances Act in all States."

General, given your apparent commitment to enforcing Federal law, why is the Department now encouraging banks to help dispensaries launder money? Now, this may be subject to interpretation, but I think even though transactions may well have been legal in the two States with which we are familiar, it can still—well, strike that. Let me say it in a different way. Given the Federal exposure, that could well amount to money laundering, could it not?

Attorney General HOLDER. I am sorry. I did not hear the end of your statement.

Mr. COBLE. Pardon?

Attorney General HOLDER. I just did not hear the end of your question.

Mr. COBLE. I said admittedly they could well be subject to interpretation, but Federal involvement in these proceeds, which were legally exchanged at the time of purchase. Could that not amount to money laundering?

Attorney General HOLDER. We decided in the statement that we issued was to deal with what I described was, and I think you quoted in my letter, a public safety concern where as a result of the changes made in Washington and in Colorado you have institutions that would have large amounts of cash on hand. And so, we wanted to come up with ways in which that cash would not necessarily be in one place subject to robbery, whatever, violence, and would be allowed to be placed into banks. And that is why those rules were changed.

Ultimately, it is for the individual banks to make determinations about whether or not they want to accept those deposits given the eight factors that we have set out in our overall marijuana enforcement policy.

Mr. COBLE. Well, many people, General, in response to Colorado and Washington seemed to make it clear these are legal transactions. Well, they are legal transactions at the State level, but they continue to be illegal activity, in my opinion, at the Federal level. Do you concur with that?

Attorney General HOLDER. Well, again, there are a lot of things that are technically violative of the Federal law. We do not prosecute every violation of Federal law. We do not have the capacity to do that. And so, what we try to do is make determinations about how we use our limited resources. Those eight factors set out the things that from our perspective are most important about our marijuana enforcement efforts.

I think that we will still be good stewards of the Controlled Substances Act. We will prevent marijuana from getting into the hands

of minors. We will prevent violence in the trafficking and sale of marijuana, prevent the cartels from profiting. Those are the factors. Those are the things that I think are worthy of Federal consideration.

Mr. COBLE. Thank you, General. Chairman, I see my red light has illuminated. I yield back my time.

Mr. GOODLATTE. The Chair recognizes the gentlewoman from California, Ms. Lofgren, for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman, and thank you, Mr. Attorney General, for being here today. I want to follow up on some of the questions that have already been posed relative to surveillance. We have had a lot of conversation in the country about phone records, but I want to talk about Section 215 and 214, for that matter.

Is it your view that other data held by third parties, for example, financial records, or emails, or records of what an individual searches for on the internet, that are held by third parties is in the same legal posture—I am not suggesting it is being done—but as a legal matter is in the same posture as phone records?

Attorney General HOLDER. Well, do you mean to compare it to the bulk telephony program that existed?

Ms. LOFGREN. Yes. I mean, the government's view is that it is constitutional to collect bulk phone records because they are business records. There are other records that are held by third parties, for example—emails, searches of the internet, financial records—that are, I believe, covered under 215. I am just trying to probe whether that is your understanding as well.

Attorney General HOLDER. Well, under the way in which we are trying to reform 215, the notion is that a request has to be supported by reasonable, articulable suspicion.

Ms. LOFGREN. But you are not answering my question. My question is, are these other records in the same legal posture as the phone records? I mean, it is either yes or no.

Attorney General HOLDER. I am not sure I am understanding your question. I mean, obviously they are governed by the same law, so—

Ms. LOFGREN. Okay. So then you have answered my question. Thank you. I want to talk about Section 702. Mr. Clapper sent a letter to Ron Wyden on March 28 indicating that there have been queries of U.S. persons of communications that he says were lawfully acquired under Section 702.

Now, in taking a look at what the FISA Court said just a few years ago, in 2011 they observed that the NSA acquires more than 250 million internet communications each year pursuant to Section 702. That was in 2011. I want to probe how it could be that we would collect this data looking at foreign persons on a 51 percent basis of confidence that the person is abroad, and then feel free to query for U.S. persons. How does that comply with the Fourth Amendment in your judgment?

Attorney General HOLDER. Well, I certainly think that everything that has been done is consistent with the Fourth Amendment, but that really only goes part of the way. The President has said, you know, just because we can do certain things does not necessarily mean that we should do them. Now, we have looked at

215. We proposed modifications, as I have indicated. We are looking at Section 702, and I think we are going to have modifications that we are going to propose there as well.

Ms. LOFGREN. Let me ask you in terms of whether you think we have legal or constitutional limits in receiving information on American citizens in the United States that have been collected or obtained from our allies, for example, Britain, or Canada, or Australia's security forces. Is there any prohibition constitutionally in our receiving information from allied agencies?

Attorney General HOLDER. I am not sure there is a constitutional prohibition, but we do have good relationships with our allies. We share information with them when that is appropriate.

Ms. LOFGREN. Let me ask you in terms of other public data, we are in a situation in this country and really in the world where there is a digital record made of us wherever we go. I mean, you walk down the street, every ATM machine has a camera. Every 7-Eleven has a camera. What is the Department's view in terms of the need for a judicial review to obtain those digital records and to data mine them for information about American citizens?

Attorney General HOLDER. I think the Department has different standards depending on the nature of the information that is sought, the privacy implications that are at play or that are a part of the determination. We try to do things in a way that are consistent with our obligations obviously under the Fourth Amendment, but go beyond that so that we do not turn ourselves into a state that we do not want to ultimately be. And so, there are different—

Ms. LOFGREN. But the question is, does the Department feel that you have to get a warrant or not to obtain and data mine such information?

Attorney General HOLDER. When you say "data mine," that is a very broad thing. I mean, it depends really on the nature of that which we seek. I mean, if you go back, you know, when I was a young prosecutor and you wanted to get mail covers, for instance, you know. There are a whole variety of things that you can do with and without the courts, and that is still the case.

Ms. LOFGREN. Well, I see my time has expired, Mr. Chairman. I am going to follow up, if I may, with you, Mr. Attorney General, with some specific questions that I hope I can get answers to. And I thank you very much.

Mr. GOODLATTE. And we hope the Attorney General will respond to those questions. And the Chair now recognizes the gentleman from Ohio, Mr. Chabot, for 5 minutes.

Mr. CHABOT. Thank you very much, Mr. Chairman. Thank you, Mr. Attorney General. On July 25, 2013, 15 Members of this Committee wrote you to inquire whether the Department of Justice was consulted regarding the constitutionality of the Administration's decision to delay the employer mandate, and if so, what the Department's position was regarding its constitutionality. This Committee still has not received a satisfactory response.

Now, you stated publicly on the record to Senator Mike Lee of Utah at a Senate Judiciary Committee hearing held on January 29, 2014, about 2 months ago, that the Justice Department had indeed provided such a legal analysis. Now, at that same hearing, you

speculated publicly regarding what you recalled was contained in that legal analysis. Since you have previously speculated publicly on these issues, and since you have had time since that meeting back on January 29, 2014, the Senate hearing, to refresh your memory regarding the specific nature of that legal analysis, could you now please describe the specific nature of that legal analysis on the Affordable Care Act?

Attorney General HOLDER. Well, I would say this. Chairman Goodlatte sent me a letter that I had a chance to review that contained within it my colloquy with Senator Lee. I believe it was Senator Lee. It seemed to me that that was a conversation that was more general than the one that you have discussed. But in any case, the Department generally does not disclose the content of confidential legal advice to the President or other government decision makers. The Department of Treasury has previously explained to Congress what the legal basis was for the decision to delay the enforcement of the employer mandate, and I think that I would refer you to that document.

Mr. CHABOT. So when 15 Members of this Committee send you a request based on the legal analysis of something as significant as that, do you not think we deserve a response?

Attorney General HOLDER. I apologize if there has not been a response to that inquiry, but I think, yes, that is certainly worthy of a response. Certainly it would contain what I just told you.

Mr. CHABOT. All right. Thank you. Let me move on then. The President made the unilateral decision to delay the Affordable Care Act's employer mandate for 1 year despite clear statutory language instructing that the penalties associated with the mandate shall apply—and this is a quote—“shall apply 2 months beginning after December 31, 2013.” Now, when Congress puts effective dates in laws, do we need to further state that the effect cannot be waived or modified by the executive branch, or is the President required to follow the law and also follow the dates that are set by Congress?

Attorney General HOLDER. Well, the President has the duty obviously to follow the law.

Mr. CHABOT. Would that not include the dates that are contained in the law? There was not anything, I do not think, confusing about them or contradictory about them. It says a specific date. Does the President not have to follow that law?

Attorney General HOLDER. Well, it would depend on the statute. It would depend on the statutory interpretation.

Mr. CHABOT. Okay. Well, the statute we are talking about was the Affordable Care Act or Obamacare, as some people refer to it. So that is the one we are talking about. It is not some hypothetical law. That is the law.

Attorney General HOLDER. Yes, and as I indicated, the Treasury Department had looked at it and determined that there was a legal basis for the—

Mr. CHABOT. Well, you are his legal advisor, and I am asking you should he not follow the law when it says specific dates. And my question was, or if that is not the way the President going to operate, are we going to have to put in there what I stated, that the effective date cannot be waived or modified by the executive

branch, meaning the President. Do we have to put that language in there from now on, or should that not be assumed that the President does not have to change it if we do not put that language in there?

Attorney General HOLDER. Far be it from me to tell you how to do your jobs. I can only talk about the statutes that actually exist and the ones that come into either the Department or other branches of the executive—

Mr. CHABOT. All right. Thank you. I am almost out of town, so let me give you one quick one. As Attorney General, you are charged with faithfully executing the law. In remarks to the States attorneys general in February, you exhorted them to be suspicious of State laws that define marriage as the union of one man and one woman. Why when you are the top law enforcement official in the country would you tell your counterparts in the 50 States not to defend laws constitutionally passed by those States, regardless of whether you agree with that policy or not?

Attorney General HOLDER. Well, with all due respect, Congressman, I think you have gotten some really bad information. I did not say that people needed to be suspicious of particular laws.

Mr. CHABOT. Well, I am paraphrasing what you said, but I think—

Attorney General HOLDER. Well, that is not a great paraphrase.

Mr. CHABOT. Okay. Well—

Attorney General HOLDER. What I said—

Mr. CHABOT. We will go back and look at the language.

Attorney General HOLDER. That is fine. I mean, what I was said that decisions to not defend statutes cannot be based on politics or policy. There have to be—

Mr. CHABOT. You guys would never do that—

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

Attorney General HOLDER. Well, I mean—

Mr. GOODLATTE. The Attorney General can finish his answer.

Attorney General HOLDER. I was going to say that there have to be bases in law, constitutional concerns. The example I used, I remember, in conversations with—I cannot exactly remember who—in 1953, the Congress passed a law that said that separate but equal was appropriate. And if I had been asked—

Mr. CHABOT. There was a Fugitive Slave Law at one time—

Mr. GOODLATTE. The time of the gentleman has expired. The Chair recognizes the gentlewoman from Texas, Ms. Jackson Lee, for 5 minutes.

Attorney General HOLDER. I would not have defended that one either.

Ms. JACKSON LEE. Let me thank the General for your presence and your service and just the number of vast changes that are for the good that we have been able to experience. A number of my colleagues have asked about the NSA, and I am going to either write a letter on that or ask the question if I get enough time. And I ask unanimous consent to introduce this letter into the record, Mr. Chairman, that I sent to Mr. Holder in January of 2014.

Mr. GOODLATTE. Without objection, it will be made a part of the record.

[The information referred to follows:]

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 TERRORISM, BIOTERRORISM, AND TRADE

DEMOCRATIC CAUCUS

January 23, 2014

The Honorable Eric H. Holder
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 Washington, D.C. 20530-0001

Dear Attorney General Holder:

As the Congresswoman for the 18th Congressional District of Texas, I am writing to request the Department of Justice to conduct an investigation and take appropriate action in connection with the investigation into the death of Alfred Wright, a 28-year old African American male from Jasper, Texas, whose body was found 19 days after he was first reported missing in a location that had allegedly been searched more than 17 days before by local law enforcement officials.

Despite credible and overwhelming evidence to the contrary, local law enforcement officials ruled the death of Mr. Young as "accidental" and ceased their investigation. Equally troubling is the fact that one of the last persons to see Alfred Wright alive is a Sabine County law enforcement officer and who, according to the Wright family, has yet to be questioned fully by investigators.

As discussed below, this case appears to bear the indicia of a suspicious crime in which an African American male is yet again the victim of an act of lethal violence. And it is unfortunate, and may even be coincidental, that the death of Alfred Wright occurred in an area of southeast Texas with a documented history of racial violence against African Americans, the most notorious instance of which is the grisly 1998 murder of James Byrd, Jr. in Jasper, Texas.

The facts that have come to my attention regarding this tragic case are compelling and can be briefly recounted.

1. Alfred Wright, who was raised in Jasper, Texas, graduated from Jasper High School in 2003 and attended the University of Mary Hardin-Baylor on a football scholarship before transferring to the University of Tennessee from which he graduated magna cum laude with a baccalaureate degree in physical therapy. Some time after graduation, Alfred Wright and his wife Lauren, along with their two sons, moved back to his home town of Jasper, Texas, to serve his community as a physical therapist.
2. On November 7, 2013, Alfred Wright's truck overheated and broke down at the CL&M liquor store on Highway 87, which is about 4 miles south of the rural southeast Texas town of Hemphill, where Alfred Wright worked as a home healthcare physical therapist. He was last seen alive at this location talking on his cell phone by the store clerk who was outside the store on her break and by Sabine County Deputy Sheriff David West who said he had gotten off of his shift and stopped by the liquor store to pick up a six-pack of beer.
3. After being reported missing by family members of Alfred Wright, Sabine County law enforcement officials organized a search of the surrounding area in which Alfred Wright was last seen. The search, however, was inexplicably discontinued after three days even though it had uncovered several articles of Alfred Wright's clothing found approximately 100 meters from where he was last seen.
4. On November 10, 2013, Sabine County Sheriff Thomas Maddox announced that he was calling off the search for Alfred Wright because he had concluded there were no signs of foul play and had learned there was a legal proceeding against Alfred Wright pending in Memphis, Tennessee, implying that Alfred Wright had gone into hiding to avoid the legal proceeding. This implication is refuted by the Wright family and by the attorney Alfred Wright had retained to represent him in the Tennessee legal proceeding who has stated publicly that Alfred Wright had no reason to go into hiding because he had always proclaimed his innocence of the charges involved in the Tennessee legal proceeding, had rejected plea bargains, and was looking forward to vindicating himself in court.
5. On November 25, 2013, the body of Alfred Wright was discovered by a family-led search party, just 25 yards from where Alfred Wright had last been seen. According to the Wright family, the condition of Alfred Wright's unclothed body when it was found, with the exception of his slit throat, missing ear, and two missing teeth, was pristine and was inconsistent with the condition of a body that had been exposed for 18 days to the elements and scavenging birds and animals.
6. The Sabine County Sheriff's department did not take statements from the members of the search party who found Alfred's body. Nor did any other law enforcement agency according to the Wright family.
7. On December 4, 2013, a preliminary autopsy was conducted by a forensic medical management service firm in Beaumont, Texas, which ruled out homicide as the cause of death. The official autopsy report issued January 7, 2014, states the time of death as November 25, 2013, which is 18 days after Alfred Wright was reported missing.

8. On or about December 13, 2013, an independent autopsy was conducted at the request of the Wright family by a forensic specialist from Houston, Texas, who concluded that her findings "are definitely suspicious for homicidal violence." However, the examiner characterized her findings as "preliminary," and submitted a request for photographs from the first autopsy in order to confirm her initial findings. According to the Wright family, despite their requests, those photographs have not been provided to date.

Based on the facts above, I am requesting the Department of Justice to investigate the circumstances surrounding this tragedy and to take appropriate action in protecting the civil rights of all Americans and ensuring that all persons receive equal justice under law. We are all better off when the facts are discovered, the truth is discerned and the family and the community are at peace.

If you have any questions or need additional information, please contact Glenn Rushing, my Chief of Staff, at (202) 225-3816, or by email at Glenn.Rushing@mail.house.gov.

Thank you for your consideration.

Very Truly Yours,



Sheila Jackson Lee
Member of Congress

Ms. JACKSON LEE. If you would, General Holder, unfortunately Jasper, Texas has had another incident. Jasper, Texas, the home of the late James Byrd, Jr., who was violently murdered in 1998. Another young man by the name of Alfred Wright, a 28-year-old African-American honors graduate from the University of Memphis, whose body was found 19 days after first reported missing, and the community had allegedly been searching for 17 days. His body was somewhat mutilated, but certainly did not look like it had been in the wild, if you will, for 17 or 19 days. He stopped his truck. It was overheated. He was in front of a store, and all of a sudden he went missing.

We have, as I understand it, a Justice Department investigation, but there has been no word whatsoever. There has been a lot of chatter, a lot of upsetness by the family members, a lot of emotion. And so, my question is, how speedily can we move that investigation? And I would also encourage, even though I understand we cannot taint an investigation, but I would appreciate if there would be some dialogue. I do not believe that dialogue with those who represent those individuals is a violation of the investigation. Mr. General?

Attorney General HOLDER. Yes, we will certainly take into account the letter that you have indicated, the letter that you have talked about. I was just checking to make sure with my memory, but the U.S. Attorney is actually looking at this matter. I am not in a position to discuss this further at this time, but I have been told that the U.S. Attorney has been in touch with the family. But it is something that we are taking seriously.

Ms. JACKSON LEE. And I appreciate it. And if I could get a briefing through DoJ here in Washington, that is, General—I understand the specifics cannot be discussed—it would be very helpful.

Attorney General HOLDER. Okay. We will share what we can appropriately.

Ms. JACKSON LEE. Thank you. Let me move quickly to another letter that I sent on October 15, 2013. I ask unanimous consent to introduce this into the record, Mr. Chairman. This letter involves a shooting in Bellaire, Texas. And unfortunately, a young man, a family owned a home, and he was confronted by police on his own steps and shot on his own steps under the allegation that he had stolen a car. He happened to live in a majority neighborhood, meaning a neighborhood that did not look like him.

The unfortunate part about it is that it ended his very promising baseball career. The problem is that a response came back that there was not going to be an investigation probably because incidences are not reported frequently out of Bellaire, Texas. There was a suggestion of practice and pattern. I would like the Justice Department to get back with me on how that could be pursued because the fact that you have one incident means that it is a community that does not report police abuses, and you have a situation that has not been addressed. This is Mr. Toller, and this case was sent to you.

Attorney General HOLDER. Okay.

Ms. JACKSON LEE. Thank you. I ask unanimous consent to put this in the record, Mr. Chairman.

Mr. GOODLATTE. Without objection, it will be made a part of the record.

[The information referred to follows:]

Congress of the United States
Washington, DC 20515

October 15, 2013

The Honorable Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

The Honorable Jocelyn Samuels
Acting Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Attorney General Holder and Assistant Attorney General Samuels:

We are writing to commend the criminal justice reforms announced by the Attorney General in his address to the American Bar Association on August 12, 2013. **We are also writing to request the Department of Justice to conduct an investigation and take appropriate action in connection with the miscarriage of justice that occurred in Bellaire, Texas, involving the acquittal of a white Bellaire Police Department officer who shot and seriously injured a young unarmed African American male, who had committed no crime, in the driveway of his home in front of his mother and father.**

As discussed below, this case appears to be another strong and clear case of racial profiling in which an African American male is yet again the victim of gun violence at the hands of a law enforcement officer who assumed him guilty and dangerous because of his race.

The undisputed facts are compelling and can be briefly recounted.

Early in the morning of December 31, 2008, Robbie Tolan, a 23 year old minor league baseball player and the son of the famed major league center fielder Bobby Tolan, and his cousin, Anthony Cooper, were returning from a fast food restaurant to the home owned by his parents where they both lived. The Tolan home was located in Bellaire, an affluent and predominately white city located about twelve miles southwest of Houston. The City of Bellaire Police Department has a difficult and checkered history of respecting the constitutional and civil rights of racial minorities.

On their way home the vehicle driven by Robbie Tolan, which was owned by and registered to his parents, was spotted by Officer John Edwards, who was patrolling the neighborhood, and ran the license plate of the car they were driving. Officer Edwards

claimed that the license number came back to a car that had been reported stolen. According to Officer Edwards, he then called for back-up.

By this time the vehicle driven by Tolan, having arrived at its destination, was parked in the driveway of the Tolan home; then Tolan and Cooper exited the vehicle and were about to enter their home. At this time, Officer Edwards drew his weapon and confronted Tolan and Cooper in front of their house, ordering them to the ground. The resulting commotion caused Tolan's parents to come outside where they protested the treatment of their son and nephew and tried to explain to the officers that they owned the allegedly stolen car and lived at the house.

About this time, Bellaire Police Department Sgt. Jeffrey Cotton, a ten year veteran of the department, arrived on the scene. According to reports, within 32 seconds of his arrival at the scene, Sgt. Cotton shot Robbie Tolan in the chest. The bullet pierced his lung and lodged in his liver. It also ended Robbie Tolan's once promising prospects of becoming a major league baseball player.


Sgt. Cotton claimed that in the 32 seconds he was on the scene he observed Robbie Tolan reaching for what he thought was a gun in his waistband. In fact, Robbie Tolan was unarmed, as was his cousin, Anthony Cooper, as were his parents.


A Harris County grand jury indicted Sgt. Cotton on a charge of first degree aggravated assault by a public servant but he was found not guilty by a petit jury after trial in May 2010. A subsequently filed civil lawsuit was dismissed by **U.S. District Court Judge Melinda Harmon** on April 2, 2012. **Judge Harmon** granted summary judgment for Sgt. Cooper on the ground that he acted reasonably in shooting Robbie Tolan within less than a minute of arriving on the scene, concluding that he acted out of reasonable fear of his life and thus enjoyed qualified immunity from being sued for shooting Robbie Tolan in the chest while he lay on the ground.

We and our constituents simply refuse to believe that 50 years after the assassination of Medgar Evers, a young man who has committed no crime and is where he has every right to be, at home; and then can be gunned down in the driveway of his home with impunity by a police officer and left wholly without any legal remedy. **Again, we request the Department of Justice to investigate the circumstances surrounding this tragic miscarriage of justice and take appropriate action to vindicate the federal interest in protecting the civil rights of all Americans and ensuring that all persons receive equal justice under law.**

If you have any questions or need additional information, please contact us through Glenn Rushing, Congresswoman Jackson Lee's Chief of Staff, at (202) 225-3816, or by email at Glenn.Rushing@mail.house.gov.

Thank you for your consideration.

Very Truly Yours,

Sheila Jackson Lee
MEMBER OF CONGRESS


Al Green
MEMBER OF CONGRESS

Ms. JACKSON LEE. Another letter that I am going to pursue questioning on, and thank you very much. February 5, three Members of this Committee sent a letter to major leaders of civil rights organizations to comment on the clemency process that is now being put in place. Mr. General, could you emphasize how important this process is based upon the change in law that this Committee had on the crack cocaine, and how is it being implemented with the Federal Bureau of Prisons? How successful do you think it is? How much more work do we need to reach these individuals who are doing it?

And let me ask this follow-up question so that I will not be left out. I am going to send you a letter regarding the investigation of the high speed trading and just to understand what the basis of the law is on that. But the other question I want answered besides the clemency is, there is a proposed merger between Comcast and Time Warner. You have been vigorous before on antitrust issues. I want to know how vigorous you are going to be in this very massive and impactful potential merger.

On the clemency, please, Mr. Attorney General. Again, thank you for your work.

Attorney General HOLDER. The clemency matter or clemency process that you talked about is something that is of concern to us. We have required in our budget the ability to hire seven new people for our Pardon Attorneys' Office that would include four attorneys so that we can process these matters at a greater rate. We have also begun an initiative to identify additional clemency candidates who are similarly situated to the ones that the President granted clemency to, the eight or so, I believe, a few months or so ago.

There are people who do not have ties to gangs or cartels. They are not threats to public safety. They have sentences that I think that we would all generally agree are excessive in nature and where clemency is something that should be considered. The Deputy Attorney General gave a speech in New York where he sought the help of the private bar in addition to the resources that we have sought so that we could try to make this clemency process a better and more fulsome one.

Mr. GOODLATTE. The time of the gentlewoman has expired.

Ms. JACKSON LEE. Mr. Chairman. Mr. Chairman, could he just take 10 seconds on Time Warner, please? I ask unanimous consent.

Mr. GOODLATTE. The time of the gentlewoman has expired. The Attorney General may answer that question in writing.

It is now the opportunity of the gentleman from Alabama, Mr. Bachus, to be recognized for 5 minutes.

Mr. BACHUS. Thank you, Attorney General. I hope you are feeling better.

Attorney General HOLDER. I am getting there.

Mr. BACHUS. Good. Good. When you appeared here last May, I asked you about the Associated Press case. You were not able to supply any details because you said you had recused yourself early on. I asked you if there was the date of that or whether it was a formal process, and you said there was no record of it. And I at that time indicated to you, and I think you probably agreed with me, that there should be a need when you recuse yourself from a

case to have a formal written entry. Have you all adopted such a policy?

Attorney General HOLDER. Well, I guess I am not sure that we have formally done so, but in my own mind I thought that to the extent that I recuse myself in other matters, I would do so and put a writing together of some sort that would indicate what the basis was for that recusal.

Mr. BACHUS. I know you just indicated it was a conflict of interest or the appearance of a conflict of interest. But do you not believe that because of that and other cases that it is essential that there actually be a formal process where you submit or whether there is something in writing with a date and time on it?

Attorney General HOLDER. Yes. I think you raised it during the hearing last year. And I said then, I think it is a good idea. My only concern was I—

Mr. BACHUS. Well, I mean, as opposed to a good idea. Why does the Justice Department not adopt a formal process and do that, you know, particularly in that you are required by law to sign off on any subpoena involving the media? So I just think particularly in a matter like that that there ought to be a formal recusal. I am just going to again renew my request that you do that, inform us if and when you do it.

Attorney General HOLDER. Okay. That is fine.

Mr. BACHUS. You know, since that time, I became aware in a press conference about that same time you said the Associated Press case was one of the worst leaks you have seen throughout your career. Do you still believe that?

Attorney General HOLDER. Yes.

Mr. BACHUS. It is my understanding from everything we have seen now that the information they published on Monday was going to be the subject of an announcement by the White House early Tuesday morning, and this was something that happened a year or two before in Yemen. I am just wondering why a day's delay with something that the White House was going to announce the next day, why would it have been so serious to secretly subpoena from Verizon all of the records. Am I wrong? Was the White House not going to reveal this information the very next day?

Attorney General HOLDER. Well, I hope we are talking about the same leak. But what I was discussing was something that had a negative impact on our ability to—I cannot talk about this maybe too much—but to get—

Mr. BACHUS. Well, that case is closed, is it not, the AP case?

Attorney General HOLDER. Yes, but we still have to talk about methods—

Mr. BACHUS. Well, if it is closed—

Attorney General HOLDER [continuing]. That were potentially—

Mr. BACHUS. Well, am I wrong that the White House was going to disclose the information disclosed in the article the very next day, and they had asked the AP to delay it one more day?

Attorney General HOLDER. But that is only after the fact the leak had existed. Had there been no leak, there would—

Mr. BACHUS. I do not think there has been any public—okay. All right. Well, but what I am saying is the White House was going to reveal that information the very next day.

Attorney General HOLDER. As I remember it, the plan was not to reveal it on any day, but for the fact that the leak had already occurred.

Mr. BACHUS. All right. You know, one time I also asked you, and I think it was informally, whether or not there were any other media outlets during that period of time or since that time—well, let us just say during that period of time—that were targeted by the Justice Department other than the Rosen case and the AP case. And you said you were not sure. Were there others?

Attorney General HOLDER. Do I—

Mr. BACHUS. Were there other media outlets which were targeted?

Attorney General HOLDER. Other media—

Mr. BACHUS. We know of the Rosen case. We know of the AP case. Were there other examples where media outlets were secretly targeted?

Attorney General HOLDER. Oh, I see what you mean. I would not agree that any media outlets were targeted. What happened in at least a couple of those cases was determinations were made to try to get information. We went through a process after that firestorm. I met—

Mr. BACHUS. I know about that in July, but what I am asking you, were any other media targeted by secret request to Verizon or others to look at their information other than the Associated Press and the Rosen case, which we know of because that was revealed. Are there any others?

Attorney General HOLDER. As I said, the processes that we had in place to the extent that we thought or I made the determination that changes need to be made have, in fact, been made. We had a good series of meetings with media—

Mr. BACHUS. Well, did you have any—

Mr. GOODLATTE. The time of the gentleman has expired. The Chair recognizes the gentleman from Virginia, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. Thank you, Mr. Attorney General, for being with us today. I had a question about torture, and just simply we have heard that torture worked in certain situations. Do you get retroactive immunity if it worked for conducting illegal torture?

Attorney General HOLDER. Do you get retroactive immunity if you do what?

Mr. SCOTT. If it worked. You got good information. What is the legal significance of getting good information if it worked?

Attorney General HOLDER. I am not sure I understand the question.

Mr. SCOTT. Well, some people say it worked; therefore, what otherwise would have been illegal torture was okay. Is it okay if it worked?

Attorney General HOLDER. If somebody had engaged in practices—torture—that violated Federal law, the fact that it worked would not be a bar to potential criminal liability.

Mr. SCOTT. Thank you. If you call it “enhanced interrogation,” does that make it okay?

Attorney General HOLDER. No. Slapping a label on something does not change things.

Mr. SCOTT. Thank you. I want to switch subjects to mandatory minimums. You mentioned legislation that is pending. What can the executive branch do to alleviate the egregious harm inflicted by an unjust mandatory minimum?

Attorney General HOLDER. Well, what I have tried to do through our Smart on Crime initiative is to make sure that our people in the field, our assistant U.S. attorneys, are using their discretion in appropriate ways only to bring cases that ought to be in the Federal system, only to charge mandatory minimum sentences where they are appropriate given the nature of the conduct of the defendant who is before a particular assistant U.S. attorney. And I have great faith in the men and women of the Department to make those determinations in an appropriate way.

Mr. SCOTT. Are you recommending that the executive branch use the power of pardon to deal with some of these cases, too?

Attorney General HOLDER. Yes. As I replied to somebody else previously, we think that the clemency process—the President agrees with this—that the clemency process has to be a part of this overall look at our criminal justice system.

Mr. SCOTT. Thank you. The Youth Promise Act, I think you are familiar with it, which requires localities to come together, first of all, to assess how much they are spending on incarceration and other things that would be prevented with a good, comprehensive, evidence-based, locally-tailored program, and as money is being saved, to reinvest the money to keep the programs going. Has the Department of Justice taken a position on the Youth Promise Act?

Attorney General HOLDER. I believe we are supportive of it, yes? We are supportive of the Youth Promise Act.

Mr. SCOTT. Thank you. And on voting rights, we are all disappointed by the Shelby decision, and we are trying to fix it. What can we do to cover jurisdictions where there is not a formal finding of prior finding of recent discrimination? Is there any way that we can cover jurisdictions without that finding?

Attorney General HOLDER. Well, I think what we shared with the Members of this Committee and other Members of Congress was a regulatory framework in which over a set period of time, a number of violations could make the particular State or jurisdiction subject to Justice Department review if there was a desire to change a voting procedure. And I think that would respond to the Supreme Court’s concern expressed in the Shelby case.

Mr. SCOTT. Could we have someone be required to have a process pre-cleared if it is a suspect change if there is no prior finding of discrimination?

Attorney General HOLDER. Well, beyond what we had proposed, there are other parts of the Voting Rights Act that allow the Department to look at individualized actions that a particular State or jurisdiction might take. Those are cases that are not easily proven.

Mr. SCOTT. But in terms of pre-clearance, is there any way that you can stick them with pre-clearance if you do not connect that with prior findings of discrimination under the Shelby case?

Attorney General HOLDER. I think it would be difficult. And I think what we tried to come up with was a process by which the gambit of the Voting Rights Act would be spread beyond those States that had been covered before, and would focus on a requisite number of violations over a set period of time that would move over the years so they would not become old in nature.

Mr. SCOTT. And what can be done to improve the injunctive process?

Mr. GOODLATTE. The time of the gentleman has expired. The Attorney General can answer briefly the gentleman's question.

Attorney General HOLDER. The question was——

Mr. SCOTT. Maybe if you could do it for the record, if you could comment on how we can improve the process of injunction so that localities do not have to suffer irreparable harm. If you could respond to that for the record, I would appreciate it.

Attorney General HOLDER. Okay.

Mr. GOODLATTE. The Chair thanks the gentleman, and the Attorney General——

Attorney General HOLDER. Mr. Chairman, I am having a hard time sometimes hearing some of the questions. I am not sure if maybe the mikes are not on or something.

Mr. GOODLATTE. We will check that. And in the meantime the Chair recognizes the gentleman from California, Mr. Issa, for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman. Mr. Attorney General, can you hear me okay?

Attorney General HOLDER. I can always hear you. [Laughter.]

Mr. ISSA. Thank you, Mr. Attorney General. Mr. Attorney General, I think you would agree that the importance and sanctity of the Inspector General Act is one that is important to all of government. Would you agree?

Attorney General HOLDER. The sanctity?

Mr. ISSA. The sanctity, the independence of the Inspectors General Act——

Attorney General HOLDER. Oh, okay. Sure.

Mr. ISSA [continuing]. Is clearly an intent of Congress as signed into law, and you would agree with that.

Attorney General HOLDER. Yes. To have a good inspector general, you need some degree of independence.

Mr. ISSA. And Michael Horowitz, your inspector general, you would agree that, in fact, he is a good inspector general?

Attorney General HOLDER. Yes, he is a very good inspector general. I have known Mike for a good number of years.

Mr. ISSA. Well, last week Mike said at the Senate Appropriation Subcommittee that essentially, I will paraphrase, he has been interfered with. He has had to go specifically to you or your deputy to get permission to have access to records, and that has taken time, although he has ultimately gotten it. Can you tell me why you would require your inspector general to go through a process to get specific access to materials on his investigations and the delays that come with it?

Attorney General HOLDER. Well, first, I think it is important to note that, as he acknowledged, that the IG has gotten all the documents they believe were necessary—

Mr. ISSA. He said in time in the two particular cases which he felt were helpful to you that you approved it, but is it not a form of soft intimidation by any stretch of the imagination to force an independent individual who is supposed to have unfettered access to these documents in their investigations, which could even include an investigation of high-ranking individuals working for you? To have to ask for that by definition requires him to disclose and to essentially beg for permission to have access to documents. Is that not correct?

Attorney General HOLDER. Yes. This is not a policy choice that has been made by me or any other attorney general. There are legal restrictions as to what the Department can do with certain sensitive information that is unique to the Justice Department, such as wiretap information, or grand jury information that require the Attorney General or perhaps the Deputy Attorney General to grant the inspector general access to that information. It is a legal restriction.

Mr. ISSA. But you can grant him broad access just as you grant certain individuals broad access. It is not something where he needs to apply or needs to go through a process, is it?

Attorney General HOLDER. I am not sure exactly what the process is, but I do not think it is anything that has had a negative impact on any investigation that he has tried to conduct.

Mr. ISSA. Well, it has had a negative impact. It has caused delays. Ultimately he was granted in the two examples where he went through the process, but, well, I think it speaks for itself that this is not the treatment that IGs normally find, and it is one that is inconsistent with the act.

I would like to next go to Director B. Todd Jones' testimony last week before my other Committee in which, although he admitted that under Department of Justice observation that the ATF had used mentally disabled persons with some consistency around the country in their investigations, often having to train them, for example, on what a machine gun was, and then send them out to buy the machine gun after they taught them what it was, and then arrested them for buying it. He said that, in fact, his agents were not able to tell that somebody had an IQ of 50, and as a result it really was not something that was a target. It just happened.

First of all, have you looked into this pattern by ATF of using mentally disabled individuals in their investigations?

Attorney General HOLDER. Yes, I am familiar with that, and what I guess you are referring to are these storefront operations.

Mr. ISSA. Correct.

Attorney General HOLDER. I am greatly troubled by them. The head of ATF has asked the inspector to look at these. There are no longer any storefront operations that are in existence. And the conduct that you talk about, from my perspective, is very troubling.

Mr. ISSA. I appreciate that. Would it be possible to have the Civil Rights Division be the one that leads looking at the question of the use of the mentally disabled?

Attorney General HOLDER. Well, I am sure the IG will look at it and make determinations, and then they typically will make recommendations—

Mr. ISSA. And I appreciate the IG's independence in this matter. Lastly, the investigation into the IRS' targeting of conservative groups, my understanding is it is being done in the Civil Rights Division. Is that correct?

Attorney General HOLDER. It is being what?

Mr. ISSA. It is being done under the Civil Rights Division.

Attorney General HOLDER. No, it is being done by the Civil Rights Division, the Criminal Division, the FBI, and the Inspector General of the Treasury Department.

Mr. ISSA. Why would it not be appropriate to be done under Public Integrity, which is an organization you once were very involved in, that, in fact, is sort of considered to be one of the premiere? And why would they not have the lead?

Attorney General HOLDER. Well, the Public Integrity Section is involved.

Mr. ISSA. And would it appropriate for them to have the lead since ultimately the actions of Lois Lerner and others clearly go to the question of public integrity?

Attorney General HOLDER. I mean, it is hard to say who precisely has the lead. I mean, as I have been briefed on this, the person that—

Mr. ISSA. Well, you have never told us who is doing it, so it is kind of hard for us to know who has the lead, too.

Attorney General HOLDER. Well, no. As I said, Criminal, Civil Rights, FBI, Treasury IG. As I look at the investigation and think of who is in the lead, I think of the Criminal Division as having the primary responsibility. And I talk to the Assistant Attorney General of the Criminal Division, but the people who are doing the work on the ground for the Criminal Division are the people from the Public Integrity Section.

Mr. ISSA. And do you have access to 6103 information in order to further your investigation?

Attorney General HOLDER. Tax information?

Mr. ISSA. As necessary. Have you been granted as necessary to tax information that would allow you to know the individuals that were targeted and so on?

Attorney General HOLDER. Well, I am not sure I have had that degree of granularity, but I have access to tax information pursuant to the investigations that we conduct.

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

Mr. ISSA. Thank you.

Mr. GOODLATTE. The Chair recognizes the gentleman from Tennessee, Mr. Cohen, for 5 minutes.

Mr. COHEN. Thank you, sir, and, General Holder, I have great regard for you, but I have got some questions. We will do a lightning round if you do not mind because I have got a lot of issues, as you well now.

First of all, is all politics is local. Shelby County, Tennessee, Memphis, has an election coming up. Early voting starts April 16, a primary election and then a general election in August. We have had a whole list of problems with the Election Commission. We

have written you over the last couple of weeks, Pastor Kenneth Whalum in Memphis and myself. And we will have a letter, which my staff member will give to one of your staff members.

We would just like to have your assurance that you will look into having monitors because there have been elections thrown out because they let people vote that should not have been allowed to vote in certain elections. And people have been refused the right to vote and all kinds of problems. Can you assure us that you will look into having monitors in Shelby County to see that the elections are done fairly?

Attorney General HOLDER. We will look at that. In fact, I think we received a letter from you last week regarding an upcoming election in Shelby County, and we are reviewing that information. But we will look at anything else that you provide to us.

Mr. COHEN. Thank you. Well, Pastor Whalum had called up, and he has been speaking to an individual in your office, and he had not gotten the letter. And it has been 2 weeks, and going through the legislative liaison sometimes take time. But thank you.

Going to policy, as you well know, I am very concerned about our drug policy in our country and the way it affects minorities and the way it takes away people's liberties by incarcerating them. I appreciate what you have done, and some of the statements you have made have been most forward moving, and I have appreciated them. But you recently talked about changing marijuana from Schedule 1 and said you would work with Congress, and Congress should take the lead.

Let me suggest to you that it is my understanding under Title 21 that you have the authority to initiate a request to the Secretary of Health and Human Services to do a study to look into marijuana and Schedule 1, and that you could then change it. In my humble opinion, and I think the majority of the people in this country, there is no way that marijuana should be Schedule 1 because it is not in the same class as heroin and LSD as it is in the Code, which breeds contempt for our laws.

And there is certainly a medical basis. Dr. Sanjay Gupta has shown this in his broadcasting that people have voted in in 20 States for multiple sclerosis, for children with epilepsy and seizures, so it has medical benefit. And to be Schedule 1 it says it has no medical benefit. Well, that is just fallacious. And the fact that it says that there is a high susceptibility or likelihood of abuse, it is nothing like heroin. That is absurd.

So I would like to ask you, why will you not act, as the President suggested, and I predict Congress will not act in this area because Congress is generally like tortoises. Until it is really clear, they are not going to put their head out there. But the Administration has acted on the Immigration Act and the Environment Policy Act, and wages, and minimum wages, et cetera. Why will the Administration not act with the pen and the phone to help people out with taking this out of Schedule 1 so it can be studied because we are all in favor of research?

Attorney General HOLDER. Well, I think that we actually have acted in a responsible way in how we have made the determination, how we are going to use our limited resources. The policies that I have announced as part of the Smart on Crime initiative, the

directions that I have given to people in the field I think reflect a sensitivity to, again, the resource restraints that we have, the division between Federal and local law enforcement responsibilities. And I think that we have acted appropriately.

Mr. COHEN. And those areas you certainly have, but on Schedule 1 all you have to do is to ask the Secretary to make a scientific and medical evaluation, and after that then you can go further and make a determination on whether it should be Schedule 1. Schedule 1 says you cannot do any research on it. Why will you not ask the Secretary under Title 21, Chapter 13, to initiate that program to get marijuana out of Schedule 1? It is obviously not Schedule 1.

Attorney General HOLDER. Well, what is obvious to one is perhaps not to another. I think, as I said, that given the responsibilities that I have—

Mr. COHEN. Well, let me ask you this. The Secretary would make that study to determine it. Why not initiate the opportunity for the Secretary to make the study and base it on science? And until you do that, it is not going to happen.

Attorney General HOLDER. Well, as I said, within the world in which I have primary responsibility, I think we have acted in a way that is appropriate.

Mr. COHEN. In those areas you have. "The Attorney General shall before initiating proceedings under Subsection A to remove a drug or other substance entirely, shall request from the Secretary a scientific and medical evaluation." That is all you have to do is request it. That does not take away from your limited resources.

Attorney General HOLDER. Well, as I said, I am satisfied with what we have done.

Mr. COHEN. Commutations. You know I am interested in those issues as well. Have you looked at having a group of commutations to people who were convicted under crack, under the old determination of 100 to one instead of the 18 to one because of the fairness in sentencing law, and having all of those people in a group commutation be put forward?

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

Mr. COHEN. Can he answer the question?

Mr. GOODLATTE. The Attorney General will be permitted to answer the question.

Attorney General HOLDER. Well, I do not think that we would be looking for group commutation. We would be looking for individuals who would be deserving of clemency or commutations given the nature of their conduct, their lack of ties to violence or to drug dealing gangs or cartels. We have begun an initiative to identify additional clemency recipients. This is something that I know is important to the President, and we are trying to come up with ways in which we can make individualized determinations about who should receive clemency.

Mr. COHEN. Thank you.

Mr. GOODLATTE. The Chair recognizes the gentleman from Virginia, Mr. Forbes, for 5 minutes.

Mr. FORBES. Thank you, Mr. Chairman. And, Mr. Attorney General, thank you for taking time to be with us today. I think it comes as no surprise that a great many members of this body, I think, a great many individuals across the country believe and are

very concerned about the overreach they perceive coming from your office, the IRS, and the White House. And we had perhaps a suggestion today that the House Budget may in some way curtail that. If, in fact, that is the case, then many of us who were going to vote for that budget will now not just vote for it, but embrace it wholeheartedly because we get so frustrated in not being able to get answers and to control some of that overreach.

One of the areas is what you have been just talking about, the clemency situation and pardons. And I know your Deputy Attorney General, Mr. Cole, on January 30th actually solicited petitions for pardon and for clemency in the speech that he gave to the New York State Bar Association. And he referenced the fact of overcrowding in our prisons. He also then mentioned that some of these individuals are truly dangerous people who threaten the safety of our communities and need to be taken off the streets for a long time.

But I guess my first question is, can you give me any precedent of previous Attorneys General's Offices who have solicited petitions for pardons or clemency limited to a particular category of crime? In other words, he did not mention individuals who might have been convicted of white-collar crime, or campaign finance laws, or a host of other areas that have been overcriminalized, who also do the overcrowding that we are very concerned with, but have a much lower recidivism rate.

Attorney General HOLDER. Well, we have a Pardon Attorney's Office that deals with a whole range of Federal crimes for which people have been convicted and then seek relief.

Mr. FORBES. I understand that, but the concern for us is he actively was soliciting. He was actually asking the Bar Association to bring forward those petitions, but he only talked about drug offenses. He did not mention any of those others. And my question is, is there any precedent that you know of that any other Administration has ever solicited petitions for clemency or pardon limited to one particular category of crime?

Attorney General HOLDER. I think what the Deputy Attorney General was responding to, and which I support—I am not putting it on him; I support this—is that we are dealing with a particular problem, and that is I think the pendulum swung a little too far in the 80's. I mean, I was the U.S. attorney here in Washington, D.C. when this was the murder capital of the country. And we went, I think, a little too far with regard to some of the sentences—

Mr. FORBES. Can I ask you about that then, if I can, because one of the things he goes on to list is this. He says, "We're looking for petitions for individuals who had," and these are his quotes, "non-violent, low-level drug offenders who were not leaders or had significant ties to gangs or cartels, without an extensive criminal history, who face life or near life sentences."

And my question to you is, give me an example of someone who would fall in that category, because as I am sure you know, under 183553(f), that category would not have been subjected to mandatory minimums anyway. And that was put into law in 1984, and prior to that time anybody convicted would be subject to parole. So give me an example of someone who would have been a nonviolent,

low-level drug offender, not a leader or involved in organized gangs or cartels, no extensive criminal history who would have been facing a life or near life sentence.

Attorney General HOLDER. A drug mule who would bring drugs from New York and got stopped at the bus terminal here in Washington, D.C. with a whole bunch of drugs in a bag could get charged not only with the possession of those drugs, which would have resulted in a huge sentence, but could have been charged with as being part of a conspiracy with all of the drugs that were involved with that conspiracy. And although that person did not engage in a violent crime and was nothing more than a drug mule, could have gotten a life sentence.

Mr. FORBES. Well, he could have, but he would not have had a mandatory life sentence, would he? And my final thing, Mr. Attorney—

Attorney General HOLDER. Well, all right, if you get 60 or 70 years, that is not technically a life sentence—

Mr. FORBES. Well, Mr. Attorney General, my time is about to expire.

Attorney General HOLDER. That, in effect, is a life sentence.

Mr. FORBES. But here is my question.

Attorney General HOLDER. Which is why it is a life sentence or near life sentence.

Mr. FORBES. Is it not true the prosecutor, the jury, and the judge who were actually handling that case would have had a much better opportunity to determine that sentence than somebody in your office 5 years down the road?

Attorney General HOLDER. Well, except that the jury and the judge's hands were tied at that time by the sentencing guidelines or by mandatory minimums that were tied to the amounts that were involved as opposed to the conduct that a particular person engaged in. And that is the wrong that we are trying to redress.

Mr. FORBES. Well, I think if you look again and give me some examples—I know my time is about to expire—that would not have complied under 183553(f), which would have gotten them out of those mandatory sentences. And with that, Mr. Chairman, I yield back.

Mr. BACHUS [presiding]. I thank the gentleman from Virginia. At this time we recognize Mr. Johnson, the gentleman from Georgia.

Mr. JOHNSON. Thank you, Mr. Chairman. General Holder, good to see you today, sir. The U.S. has the highest incarceration rate in the world, and \$27.4 billion is your budget request for the Department of Justice for 2015. And \$8.4 billion of that \$27.4 billion is for Federal prisons and detention facilities, is it not?

Attorney General HOLDER. I believe that is correct. I do not know.

Mr. JOHNSON. So about a third of your budget is to incarcerate people at the highest rate in the world, not just the civilized world, but in the world. That is disturbing. And of the people who are incarcerated, about 40 percent of them are African-Americans, is that a fact? Would you disagree with that?

Attorney General HOLDER. I think that number is about right. I do not have the precise number.

Mr. JOHNSON. And about 20 percent are Hispanics.

Attorney General HOLDER. I believe that that is also correct.

Mr. JOHNSON. Yes. But now, has that line item in the budget, that \$8.4 billion for Federal prisons, has it been increasing or decreasing?

Attorney General HOLDER. It has been increasing. You are correct that about a third of our budget now goes to our Bureau of Prisons, and given the state of our system, that is deservedly so. We have to support the people who work in those facilities. But as we spend more money as it has increased over the years, it means that we have less money to hire agents, prosecutors, or to provide grant money to our State and local partners. There is a finite amount of money that we have, and the more and more that goes to our Federal Bureau of Prisons, the less we have to do all the other things that people want the Justice Department to do.

Mr. JOHNSON. And as it goes to the Federal Bureau of Prisons, what percentage of those funds go to private for-profit detention facilities?

Attorney General HOLDER. I do not know the number of that, but we can get you a percentage.

Mr. JOHNSON. Approximately, would it be about a third or a fourth, half?

Attorney General HOLDER. I simply do not know. I will have to get you that information. I do not know.

Mr. JOHNSON. I think that is pretty important. Do the private for-profit facilities house Federal detainees and inmates at a higher cost than the Federal Government can do it or at a lower cost in general?

Attorney General HOLDER. Again, I am not just familiar with what our relationship is in terms of numbers or the funding stream that goes to any private facilities that we might use. I just do not know the answer to that.

Mr. JOHNSON. Well, let me ask you this. Your agency is responsible for investigating and prosecuting not just blue collar criminals, but white-collar criminals as well. But with the white-collar criminals, corporate theft, let us take, for instance, those corporations that have a much greater ability to fight back because they have resources. Has the fact that your Agency's budget been trimmed over the past 3, 4, 5 years, this trimming of your budget or cutting of it actually, has it affected your ability to go after these corporate criminals?

Attorney General HOLDER. I would say to date, no. But I will tell you that if sequestration were to reappear in 2015, '16, whenever it might show up again, the capacity of the Justice Department to do that which the American people expects us to do from a range of things, from national security, to white-collar enforcement, to violent crime enforcement would be negative impacted. We have to at all cost—at all cost—avoid the mistake that was sequestration.

Mr. BACHUS. I thank the gentleman from Georgia. And at this time we will hear from the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. Attorney General, thanks for your testimony. I appreciate you coming here. I recall a previous exchange in a previous hearing between us, and I believe I asked the question to the effect of your priorities, are they directed

by the President into your office or are you an independent department. And I believe your response was generally I am independent. I do not take direct direction from the President, and it is your job to provide equal justice under the law. That would be generally the response that I recall. And I note you are nodding your head in relative agreement.

Attorney General HOLDER. I have been here too long. You guys can quote too many things that I have said previously, but, yes. [Laughter.]

I think that is right. That is right.

Mr. KING. Well, and I want to make sure I represent it accurately. I think that is an appropriate response.

Attorney General HOLDER. That is fine. That is fine.

Mr. KING. And so, I would like to just go through a list of some of the things that pop into my head that I am thinking about here. One of them is relatively new. It has been back in the news fairly recently, and that is the Senator Ted Stevens issue. And I understand that that prosecution took place before you took office, but it has been reported as recently as March that an FBI agent was severely disciplined, and that discipline was imposed for improper actions in the investigation and prosecution of Senator Ted Stevens.

Now, I think it is clear that it is very likely he lost his Senate seat over that investigation, over that conviction, and then subsequently was killed in a plane crash. That is one piece about the discipline within the FBI that I would like to hear about.

Second is, the overreach by allegedly Carmen Ortiz in the case of Aaron Swartz, who committed suicide. The third one would be we have seen as the knockout game has been reported at least in the news to be primarily Black on White crime. I do not know of any prosecutions there except for the Federal investigation and the prosecution of Conrad Barrett, who was the anomaly as far as I am reading the news, as a White on Black crime of the knockout game.

Next, Dinesh D'Souza allegedly transferred \$20,000 that showed up in a U.S. Senate campaign targeted for this investigation. I would presume there are thousands in America who are likely engaged in similar acts are unprosecuted. Governor Bob McDonnell for the charges brought against him. Now five former U.S. attorneys general have come out in Virginia and said they think this is overreach and outside the definition of the law. And then I am thinking about Governor Chris Christie, who, when the situation known as Bridgegate came up, within a week there were Federal investigators investigating the Hurricane Sandy issue.

Now, those are just things that I put down here while I am sitting here listening to the testimony. Here is the other side. Black Panthers' prosecution is cancelled about the time you took office. Tom Perez, the Assistant General Attorney at the time, now Secretary of Labor, sat just nearly where you are and said he had provided the lowest penalty allowable under law. We know that was not true. It was the smallest de minimus penalty provided under law.

You have heard Jim Sensenbrenner bring up the James Clapper issue in his testimony, the conflicting testimony under oath. I am thinking of another governor, Governor John Corzine, a billion dol-

lars missing in Global Crossing. I do not know of a prosecution there that is taking place. Lois Lerner, I think she would be a candidate.

Then I am thinking of entire classes of people that have been exempted by this Administration down to the point of I understand this is immigration enforcement. However, 99.92 percent of those who have been removed are not removed because they are unlawfully present. Only .08 percent are for that narrow little reason because classes of people have been created by this Administration exempted from the law, at least in fact.

And then marijuana companies exempted from enforcement of the law as well as essentially a suspension of the Federal enforcement of marijuana laws. We have talked about DOMA. I take us to voter fraud and the Texas issue where Texas says I want a voter ID. They get labeled as a poll tax and a racist plot.

My question really is, have you prosecuted anyone in this Administration? Have you impaneled a grand jury, have you investigated anyone in this Administration, because it looks to me that those folks that are on the other side of the aisle are getting extra scrutiny, and those on your side on your aisle are getting no scrutiny.

Attorney General HOLDER. First, I am not going to comment on any cases that are pending. I will simply say that we have followed the facts and the law in making our prosecutive determinations and making our investigatory decisions. This is an Administration, this is a Justice Department that I have run, and I am proud of. The men and women who are the career employees in the Department for lesser periods of time make their decisions based only on the facts in the law and conduct themselves in the way that is in the best traditions of this Department.

And I will put my record up against any other attorney general, any other Justice Department. And any hint that we have engaged in anything that is partisan or inappropriate in nature, I totally 1,000 percent reject.

Mr. KING. But you have not really responded to the question of whether you have investigated or—

Mr. BACHUS. I thank the gentleman.

Mr. KING [continuing]. Or indicted a member of the Administration.

Mr. BACHUS. Mr. King—

Mr. KING. That would be an unresponsive response I would assert.

Mr. BACHUS. Time has expired. Thank you. At this time, I would recognize the at large Member from Puerto Rico, Mr. Pierluisi, for 5 minutes.

Mr. PIERLUISI. Thank you, Mr. Chairman. It is good to see you again, General. I have two questions. I would like to ask them both, and then give you an opportunity to respond.

The first issue is DoJ's response to drug-related violence in Puerto Rico. The Consolidated Appropriations Act approved in January requires ONDCP to coordinate the preparation and publication of a Caribbean border counter narcotics strategy with a focus on Puerto Rico and the USVI. The strategy will outline the steps that the Federal Government is taking and recommend additional steps it should take to reduce the supply of drugs entering Puerto Rico

and the USVI, and to lower violence associated with the drug trade in the two territories.

Now, a strategy is essential, but it is not enough. The strategy must be implemented with the right resources and personnel. I have made no secret of the fact that I think DoJ's response to the crisis in Puerto Rico has not been sufficiently robust. Unlike DHS, DoJ has been reluctant to surge personnel to Puerto Rico. At the same time, DoJ does deserve credit for executing an MOU with the Puerto Rico Department of Justice so that certain crimes that would otherwise be tried in State court are tried in Federal court instead, often using State prosecutors deputized by DoJ for that purpose.

So my first question is, are you satisfied DoJ has the appropriate level of personnel from the DEA, FBI, ATF, and the U.S. Attorney's Office in Puerto Rico to combat trafficking and violent crime in light of the severity of the problem there?

The second issue I am raising involves again the Consolidated Appropriations Act because it includes a provision which I fought long and hard to secure that provides funding to the Puerto Rico Elections Commission to conduct the first federally sponsored plebiscite in Puerto Rico's history. This language is a response to a 2012 plebiscite in which a majority of voters said they do not want Puerto Rico to remain a territory, and more voters expressed a desire for statehood than any other option.

As you confirmed to Mr. Serrano at a hearing last week, the law requires DoJ to ensure that voter education materials and the ballot prepared by the Elections Commission in Puerto Rico are compatible with U.S. law and policy. The law also states that the purpose of the plebiscite is to resolve Puerto Rico's status once and for all.

I have introduced legislation that proposes to structure the federally sponsored plebiscite as a straightforward vote on the admission of Puerto Rico as a state as was done in Alaska and Hawaii. This structure is eminently fair. Those who support statehood can vote yes and those who oppose it for any reason can vote no. My bill has 130 co-sponsors and a Senate companion bill has been introduced. As I see it, structuring the plebiscite as a vote on Puerto Rico's admission as a state is consistent with U.S. law because statehood is a constitutionally valid status that would resolve Puerto Rico's political future. Do you agree?

Attorney General HOLDER. Well, with regard to the question of resources, I think that, you know, given the flows that we see of drugs through the Caribbean, through the Virgin Islands, through Puerto Rico, the levels of violence that we see in Puerto Rico, there is clearly a need for additional resources. We are a resource strained institution, we simply are. And we have tried to the best we could.

I was in Puerto Rico in July of 2013 and announced a consent decree with the police department there. I met with the governor to try to talk about ways in which we might be of greater assistance, and we are trying to do what we can. But unfortunately, we have to be creative. I wish I had more resources, and if we did those would be places where I think we could make great use of those additional resources.

When it comes to the voting initiative, as I indicated, I guess, to Congressman Serrano, the role of the Department is really limited to reviewing, I guess, those documents and determining whether the documents put out by the State Election Commission of Puerto Rico are compatible with the Constitution, the laws, and policies of the United States. There is a \$2.5, I guess, million carve-out Byrne JAG grant for this objective, but we are not really engaged in the, I would say, the guts of the effort as much as just to oversee to make sure that the materials are appropriate that are handed out.

Mr. PIERLUISI. Can I quickly say, but would you not agree that if the vote involves an up or down vote on statehood, that you would have to say that that is consistent with U.S. law? There is nothing wrong with that in terms of U.S. law and policy?

Mr. BACHUS. I will give the Attorney General—

Attorney General HOLDER. If that were an issue that were presented to us, I mean, that is one that obviously we would seek to answer. But the task that we have been given is really to just make sure that these materials are consistent with our constitutional laws and policies. That is the only involvement, I think, that we have, at least at this point.

Mr. PIERLUISI. And would that—

Mr. BACHUS. I thank the gentleman from Puerto Rico. And at this time I will recognize the gentleman from Arizona, Mr. Franks, for 5 minutes.

Mr. FRANKS. Well, thank you, Mr. Chairman. And, General Holder, thank you for being here. General Holder, you have risen in law enforcement to the very pinnacle of that profession, and those of us here on this panel have spent a lot of our lives in search and in the cause of the right laws and respect for the rule of law. And I would hope that there would be, in light of that, on both our parts, a strong consensus and a common respect for this thing called the rule of law. And yet earlier, Steve Chabot, Congressman Chabot, mentioned that the Affordable Care Act's employer mandate was delayed by this Administration for a year despite statutory language instructing that penalties associated with the mandate "shall apply"—I am going to say it very clearly—"shall apply 2 months beginning after December 31, 2013."

Now, your testimony was that the Treasury Department had come up with some legal interpretation that that did not apply. And I do not know whether that is dumbfounding or just heart-breaking. I mean, I really do not. If we cannot read that language clearly, then I think we are in trouble. So my next question to you may be superfluous. It may be a hopeful and hopeless exercise here.

But my question is the Religious Freedom Act, Religious Freedom Restoration Act, declares that the Federal Government may not substantially burden a person's exercise of religion unless it had a "compelling reason" to do so. Now, you and I know what those words mean. So my question is, are the Federal agencies like yours or Federal agencies in general bound by statutory requirements put in place by Congress, like the Religious Freedom Restoration Act requirements I just described? Are they bound by those requirements put in place by Congress when they promulgate regulations?

Attorney General HOLDER. Sure. I mean, if there are statutory mandates from Congress, those are the kinds of things that have to be used when we are proposing rules, regulations, things of that nature.

Mr. FRANKS. All right. Then my next question is, did HHS consider the Religious Freedom Restoration Act and comply with it when it promulgated the HHS mandate which requires many religious employers to arrange and pay for employee health insurance that covers abortion-inducing drugs, contraceptives, and sterilization? Did they comply with that statute?

Attorney General HOLDER. Well, I think the way in which the act was put together is consistent with the act, the way in which the religious organizations could express their concerns and the options that they had. I mean, this is something that is actually the subject matter of an ongoing case, and I do not want to get too much into it. But I think that the policy that the Administration has taken is consistent with the act that you referenced.

Mr. FRANKS. I do not know. I mean, it sounds like we are on two different planets if that is the case. But let me ask you then, did the Department of Justice, including you or the Office of Legal Counsel, before any of the cases came about—I am not asking you to touch on any existing litigation—but before any of this occurred, did you provide any legal opinions, written or oral, regarding the religious employer exception to the HHS mandate?

Attorney General HOLDER. Well, I had said previously the Department generally does not disclose the—

Mr. FRANKS. But before all of that. I am trying to get ahead of that because we wrote you a letter like this, and the response we got back, we could not have been able to tie the two together it was that unresponsive.

Attorney General HOLDER. I am sorry, “the response did not?” I did not hear you. You said—

Mr. FRANKS. We wrote you a letter and your response was a total non-response, much like this. I mean, I am saying before the litigation ever occurred, did you ever come up—it is not a hard one, Mr. Attorney General.

Attorney General HOLDER. It is not a hard answer. The Department does not generally disclose the content of confidential legal advice to the President or other governmental decision makers. It is something that not only this Department does, but other Departments of Justice. It is a policy we have always followed.

Mr. FRANKS. Well, I am not countering that policy, but asking you if you had done anything prior to that that were legal opinions regarding the religious employer exception before any case was filed. I mean, I do not think you are going to answer the question. But could you provide any copies of any opinions addressing the application of Religious Freedom Restoration Act to the Federal Government, including any opinions by the Office of Legal Counsel, that address the need or a lack thereof for the religious employer exception? Do you have anything like that you could provide to us that would not be related to any litigation, but that would give us some idea of what your opinion of this statute is?

Attorney General HOLDER. Well, as I indicated, it is not our practice to disclose the content of the legal advice that we give. To the

extent that there are legal questions, you could ask HHS what was the basis for their legal determination to promulgate a regulation that is of concern to you.

Mr. BACHUS. I thank the gentleman—

Mr. FRANKS. Unfortunately religious—thank you, Mr. Chairman.

Mr. BACHUS. I thank the gentleman from Arizona. At this time, I will recognize the gentlelady from California, Mrs. Chu, for 5 minutes.

Ms. CHU. Thank you, Mr. Chair. Mr. Holder, the DoJ's existing guidance on racial profiling issued in 2003 outlines provisions to ban some forms of profiling. However, the guidance does not apply to profiling based on religion and national origin. This is problematic because profiling based on religion or nationality is significantly increasing.

Now, it is my understanding that DoJ has been engaged in a review of its guidance throughout the past few years. In April 2012, over 70 members of the House and Senate sent you a letter about this issue. When you testified before this Committee last year, you indicated that DoJ was nearing the end of the review, but still we have yet to see the updated guidance. What is the status of the review, and how will you address the issue of racial profiling based on religion and national origin?

Attorney General HOLDER. Well, that review has, in fact, been underway for, as you say, an extended period of time. Well, I will say just maybe a little too long, but I think we are near the end of that process. We have made a great deal of progress, and my hope would be that we be able to complete the review in the relatively near future, and that we will be in a position to share with Members of Congress and the American people the result of that review. This is something that will happen on my watch.

Ms. CHU. Do you have a time? Exactly when will this happen?

Attorney General HOLDER. I am not sure that I can say exactly when, but I can say that we are far closer to the end now than we were before. I mean, this has been a painstaking process, but I am hopeful that we will be at an end relatively soon.

Ms. CHU. As you know, many people are anticipating it, so we look forward to this. I understand that the racial profiling guidance includes a broad exception for counterterrorism investigation and national security. Yet there have been reported instances where the FBI has targeted mosques or profiled Muslims for little reason other than their faith. This occurred in San Francisco under the so-called Mosque Outreach Program in which the FBI collected information on the religious views and practices of Muslims in northern California and shared their surveillance with other government agencies, but without any apparent evidence of wrongdoing to target it.

So of course it would be a great step forward if the DoJ guidance on racial profiling were amended to include a ban on discrimination on the basis of religion or national origin. But I am concerned about the national security exception eroding any such protections. Will the revisions under discussion include any changes to the national security exemption, and how will the DoJ ensure that the rights of innocent Americans are protected?

Attorney General HOLDER. Well, I mean, I will say that it will be for others to decide whether the changes are appropriate, go far enough, do not go far enough. But the national security exception has been the focus of the effort that has been underway, as I said, for this extremely long period of time. And once announced, that will be the primary topic that will be discussed with regard to what the Justice Department has responsibility for.

Ms. CHU. Okay. Well, switching gears, I would like to ask about the DoJ's Executive Office of Immigration Review. Mr. Holder, since so many non-citizens in immigration courts do not have attorneys and lack a basic understanding of the immigration court processes, what steps are the Executive Office of Immigration Review proposing to give non-citizens better access to information so they can move through court proceedings more expeditiously without sacrificing due process?

Attorney General HOLDER. We are trying to make our EOR system better. We have a backlog of about 358,000 cases. It is a 56 percent increase from 2009. Our budget request asks for additional immigration judge teams so that we can get this backlog down to a better level. We are also trying to come up with ways in which make sure that people who find themselves in the system have adequate representation, doing a variety of things in that regard. We are trying to deal with the problem of unaccompanied minors. There are a whole range of cases, a whole range of issues, that we are trying to deal with.

We are trying to be, again, as creative as we can, though we simply need at some level, we just need more money to put in place these teams to reduce the backlog, to otherwise find ways in which we can come up with this program to deal with people who have mental health issues, to deal with unaccompanied minors, and then deal with the other problem of people who appear and do not have either counsel or do not have adequate counsel. These are all issues that are problematic.

And I point out again the need for a comprehensive immigration reform package that would deal with a whole variety of other things, but would help us a great deal with regard to what the Justice Department component is of the problem.

Ms. CHU. Thank you. I yield back.

Mr. GOODLATTE [presiding]. The Chair thanks the gentlewoman, and recognizes the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman. General Holder, back April 27, 2011, at my request, the Chairman of this Committee, Lamar Smith, sent a letter to the Justice Department asking for the documents in the Holy Land Foundation that had been used to prosecute them. And since then we have had an ongoing back and forth, most recently in a letter June 13, 2013, asking for the documents. And I was fairly specific to make it clear that I got the documents that the Department of Justice handed over to people convicted of supporting terrorism.

They are terrorists. We have given them the documents, the Justice Department has, and my information is that they have now been put on disk and sent to Illinois. So we know they are easily provided, just not to Members of Congress. But in the response

after 7 months approximately from my letter in June, I am told, well, here is a link that will have nearly 500 publicly available exhibits that were admitted into evidence, and then was also told to check the public access to court electronic records.

Attorney General, I have read in the 5th Circuit opinion about 9,600 summaries of transcripts of conversations that the Justice Department had that were made available to attorneys for the terrorists. I still do not understand why your Department can provide documents to terrorists' lawyers, to four out of eight of the terrorists, and not provide them to Members of Congress.

All I am asking again is could we please get the documents that have been put on disks of the 9,600 summaries of transcripts and the documents that are produced to the terrorists and not some link, but documents that you made available or your Department made available to the terrorists. I renew my request.

Attorney General HOLDER. Well, I think what we promised to do is to provide you and your staff with—

Mr. GOHMERT. Sir, I have read you what your Department promised, and it is inadequate. And I realize that contempt is not a big deal to our Attorney General, but it is important that we have proper oversight.

Attorney General HOLDER. You do not go there, buddy. You do not want to go there, okay?

Mr. GOHMERT. I do not want to go there?

Attorney General HOLDER. No.

Mr. GOHMERT. About the contempt?

Attorney General HOLDER. You should not assume that is not a big deal to me. I think that it was inappropriate. I think it was unjust. But never think that that was not a big deal to me. Do not ever think that.

Mr. GOHMERT. Well, I am just looking for evidence, and normally we are known by our fruits. And there been no indications that it was a big deal because your Department has still not been forthcoming in producing the documents that were the subject of the contempt.

Attorney General HOLDER. You never wanted the documents.

Mr. GOHMERT. But let me move on. There have been other questions asked about—

Attorney General HOLDER [continuing]. With regard to contempt. The documents that we were prepared to make available then we are prepared to make available now that would have obviated the whole need. This was all about the gun lobby and a desire to have—

Mr. GOHMERT. Sir, we have been trying to get to the bottom of Fast and Furious where—

Attorney General HOLDER. That is what it is all about.

Mr. GOHMERT [continuing]. People died, where at least a couple hundred Mexicans died, and we cannot get the information to get to the bottom of that. So I do not need lectures from you about contempt—

Attorney General HOLDER. And I do not need lectures from you either.

Mr. GOHMERT [continuing]. Because it is very difficult to deal with asking questions. As a former judge, I never have asked ques-

tions of someone who has been held in contempt. We waited until the contempt was purged and then we asked questions.

Let me ask you, do you think someone who believes marriage is between a man and a woman violates the civil rights of a same sex couple?

Attorney General HOLDER. Somebody's personal belief?

Mr. GOHMERT. Yes.

Attorney General HOLDER. No.

Mr. GOHMERT. How about if they have a business and they believe that?

Attorney General HOLDER. If they have a business? If a business has a—

Mr. GOHMERT. If it is a private business and the owners of the private business believe marriage is between a man and a woman, are they violating a same sex couple's civil rights, in your opinion?

Attorney General HOLDER. Well, that obviously a matter that is under consideration by the courts, and we have taken a position on that. I would not want to get into something that is, as I said, a pending matter.

Mr. GOHMERT. Well, it is your opinion that matters on whether you tell attorneys general how to act in the States or how you approach businesses or individuals that have this biblical view that the President had when he was a senator in 2008. So I thought it was rather important. Well, let me ask you—

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

Mr. GOHMERT. Unfortunately.

Mr. GOODLATTE. The Chair recognizes the gentleman—

Attorney General HOLDER. Good luck with your asparagus.

Mr. GOODLATTE. The Chair recognizes the gentleman from Florida, Mr. Deutch for 5 minutes.

Mr. DEUTCH. Thank you, Mr. Chairman. And, Mr. Attorney General, thank you for being here. Under your leadership, General Holder, the DoJ has reached historic settlements with major banks and institutions. There is the \$13 billion settlement with JPMorgan for its packaging and reselling of toxic mortgages leading up to the financial crisis. There was the \$25 billion agreement with the Nation's five largest mortgage servicers for widespread foreclosure abuses. There was another \$2 billion settlement with JPMorgan for its role as chief banker in Bernie Madoff's multi-million Ponzi scheme, and a \$1.9 billion deferred prosecution agreement with HSBC Bank for laundering money for Mexican drug cartels and conducting transactions with Cuba, Iran, Libya, and Burma.

But I want to return to something that Mr. Nadler brought up earlier, and I would like to also return, I gather as has been a theme this morning, to another hearing that was held before this Committee, in this case 3 years ago when we first learned that the DoJ was launching a billion dollar lawsuit against Deutsche Bank and Mortgage IT for repeatedly defrauding taxpayers when seeking insurance for bad mortgages. As you know, that billion dollar suit was eventually solved in a \$200 million settlement.

And we had an exchange that although it is awkward, I just feel it is necessary to walk through. I had asked whether the Department would pursue criminal charges that could result in jail time

for the heads of these larger banks and services, and you responded that “If there are individuals who have taken actions that would warrant individual liability, that is something that we would pursue.”

So I pointed out that under Sarbanes-Oxley, the statute provided for knowingly make false claims, one would be subject to fines of a million dollars, imprisonment of up to 10 years. If the claims were willful, the violations were willful, fines of \$5 million and jail time of up to 20 years. And I asked if that would be the basis for potential claims, to which you responded, “There are other statutes that we could bring, some as old and tried and true as wire fraud and mail fraud. There are a whole variety of tools that we have, including those that you have mentioned, and we will try to make use of all of those as we continue these investigations.”

I then asked that given the vast array of potential claims that could be brought that would bring the potential of criminal violations, when would we expect to see the cases filed, to which you said, “All I can tell you is we are looking seriously. We are going to pursue them aggressively, and as soon as we can make a determination and share that with the American people, we will. The possibility that those cases could be brought is certainly the case. We are in the process of looking them, and it is possible that criminal prosecutions will result.”

It is now 2014, and not a single high-level executive with these financial institutions have faced criminal prosecutions. In fact, many of the settlements that DoJ has reached with these companies have absolved the individuals of ever answering to criminal charges.

Now, the settlements that I referred to focused on actions by individuals at firms whose actions nearly brought down the United States economy. They are not minor infractions. They did not happen by accident. And it is difficult to believe that this illegal activity happened without the knowledge of any executive at any of these financial institutions. Indeed, it is difficult for many Americans to have full faith in our criminal justice system when none of the principals, none of the decision makers of these companies have been prosecuted, have been taken to court, have been tried before a jury.

And I would just quote one more quote from Judge Jed Rakoff, Senior U.S. District Court judge, who said, “Companies do not commit crimes. Only their agents do. And while a company might get the benefit of some such crimes, prosecuting the company would inevitably punish directly or indirectly the many employees and shareholders who were totally innocent. Moreover, under the law of most U.S. jurisdictions, a company cannot be criminally liable unless at least one managerial agent has committed the crime in question. So why not prosecute the agent who actually committed the crime?”

We have seen many large settlements, General Holder, some to resolve the claims of illegal actions. But as Judge Rakoff points out, companies do not commit crimes, only their agents do. And to date, we have not seen any criminal convictions of executives in those companies. And I will ask what I asked 3 years ago. Is the Department pursuing or going to pursue criminal claims against the peo-

ple at these companies that committed the crimes that were the basis of the large settlements that were reached, the crimes that many Americans—many Americans—are still recovering from today?

Attorney General HOLDER. Well, it is still the position of the Justice Department that there is no institution that is too big to prosecute, no person who is too important to prosecute. As I indicated in a previous answer, there have been individuals prosecuted from JPMorgan, Goldman Sachs, Morgan Stanley Credit Suites, UBS, RBL Bank, ICAP, Galleon, SAC, Stanford Financial Group, all cases that have been brought against not those companies, but against individuals.

The \$13 billion agreement that we worked out with JPMorgan Chase has a carve-out that allows us to pursue criminal charges against individuals. And so, when we have capacity to make cases, we will make them.

Mr. DEUTCH. General Holder, but in all of those cases that you listed, I appreciate those claims against individuals. But to date, none of the executives, none of the decision makers at any of these companies have been held accountable.

Mr. COLLINS [presiding]. The gentleman's time has expired. The Chair now recognizes the gentleman from Ohio, Mr. Jordan.

Mr. JORDAN. I thank the gentleman. Mr. Holder, I sent you in the last several months six letters to you and agencies in the Justice Department, specifically ATF and FBI, asking for answers to basic questions—and I would stress “basic questions”—about your criminal investigation into the IRS targeting of conservative groups, conduct that you called outrageous and unacceptable last May, and the investigation that you launched last May.

And we have had countless legal experts tell us that giving answers to these questions, not what witnesses may have said, not what they convey, not to questions you ask, just basic information, that countless legal experts tell us this is more than appropriate to get this kind of general, basic information.

So I just want to ask you just four quick questions. Bill Taylor, the attorney for Ms. Lerner, it has been reported in the press that he indicated she actually sat down with an interview at the Justice Department or with the Justice Department. So I just want to know a few things. When did you interview Lois Lerner, where did the interview take place, who was the personnel who conducted the interview at the Justice Department, and at any time during the interview did she exercise her Fifth Amendment rights and refuse to answer questions?

Attorney General HOLDER. Because this is an ongoing matter, I am not going to answer those questions.

Mr. JORDAN. You cannot even answer—well, let me ask you this. Did you interview Lois Lerner?

Attorney General HOLDER. As I said, this is an ongoing matter, and I am not going to comment on an ongoing matter.

Mr. JORDAN. So her attorney has reported that you did. You will not confirm that that, in fact, took place?

Attorney General HOLDER. As I said, I am going to talk about an ongoing investigation. The Justice Department is not in the habit of talking about who was interviewed—

Mr. JORDAN. But this is part that always frustrates me. I am not asking you to tell me what she said. I am just saying did you talk to her. Just give me the date. Did you do it last May when you started the investigation? Did you interview her in June? Did you interview her in July? Did you interview this January? When did you do it?

Attorney General HOLDER. Well, as I said, this is an ongoing matter that the Justice Department is actively pursuing, and as such, it would be inappropriate to comment on what it is that we are doing.

Mr. JORDAN. How is telling this Committee and, more importantly, the American people, the date you interviewed Ms. Lerner, if, in fact, you did that, and where that took place—at her house, at the Justice Department, someplace you met? How is that going to compromise an investigation?

Attorney General HOLDER. You do not understand the nature of what it is that we are doing. You cannot because you are not a part of the investigation.

Mr. JORDAN. Well, what some of us have made a big issue about is the fact Barbara Bosserman, who we have interviewed, have told us that she is the lead investigator. You were willing to tell Senator Cruz when he questioned you about that fact. You were willing to tell him she is not the lead investigator. So you were willing to give some specific information about the process and who is conducting and who is doing what, so it seems to me you opened the door to some of these basic questions when you said she is not the lead investigator on this investigation. So I am asking you just basic things, too, like did, in fact, you talk to Lois Lerner, or if it is not Barbara Bosserman who is the lead investigator, who is?

Attorney General HOLDER. You seem to think a door has been opened. I do not think any door has been opened at all, and I think the answers that I have given are consistent with what I have—

Mr. JORDAN. Let me ask you about one other thing then. Did someone from the Justice Department leak to the Wall Street Journal that no criminal charges will be filed in the IRS investigation case?

Attorney General HOLDER. I have no idea who told that to the Wall Street Journal.

Mr. JORDAN. This is from a January 13, 2014 report in the Wall Street Journal. “The Federal Bureau of Investigation does not plan to file criminal charges over the IRS heightened scrutiny of conservative groups, law enforcement official said.” Do you know who said that?

Attorney General HOLDER. No.

Mr. JORDAN. Have you investigated who leaked that information to the Wall Street Journal?

Attorney General HOLDER. Not to date.

Mr. JORDAN. You have not? A year ago in front of the Senate Judiciary Committee, you said this, “We have tried more leak cases, brought more leak cases during the course of this Administration than any other Administration.” So leaks are pretty important to the Justice Department, and you have not investigated the leak to the Wall Street Journal that no one is going to be prosecuted in the IRS targeting scandal?

Attorney General HOLDER. If you look at all the leaks that occur—

Mr. JORDAN. No, I am asking about this leak. Have you investigated this leak?

Attorney General HOLDER. Can I answer the question?

Mr. JORDAN. I am asking you a specific question. You said earlier you have not investigated it. I am asking you just to confirm you have not investigated the leak to the Wall Street Journal that no one is going to be prosecuted in the targeting of conservative groups case with the IRS.

Attorney General HOLDER. As I said, if you look at all the leaks that happen in Washington, D.C. in connection with a whole variety of cases—

Mr. JORDAN. Mr. Attorney General, with all due respect, have you investigated that leak?

Attorney General HOLDER [continuing]. We have looked at—I answered the question. We have looked at a number of cases. The cases that we have focused on in terms of leaks have generally been the ones that have dealt with national security. When I talked about the bringing of more cases, those were national security cases. When it comes to the disclosure of investigative matters, that is something that is reprehensible—

Mr. JORDAN. Are you saying this is not important?

Attorney General HOLDER [continuing]. But it is not necessarily something that we investigate in every instance.

Mr. JORDAN. Just for the record, just for the Committee, just for the American people, can you answer one more time, have you investigated the leak to the Wall Street Journal that no one is going to be prosecuted in the IRS investigation?

Attorney General HOLDER. Well, especially when you deal with—

Mr. JORDAN. It is a yes or no.

Attorney General HOLDER. No, no, I am not going to answer that way. Especially when you deal with information that has no basis in fact. What would be the basis if somebody is providing information about a determination that has not been made?

Mr. JORDAN. If I could real quickly, Mr. Chairman.

Mr. COLLINS. The gentleman's time has expired. The gentleman from Louisiana, Mr. Richmond, is recognized.

Mr. RICHMOND. Thank you, Mr. Chairman. First, let me thank you, Attorney General Holder and Secretary Duncan for your support of the school discipline initiative, which I think is going to do wonders in communities across the country and curb our school to prison pipeline.

Let me start with something that is not necessarily under your entire tenure, but it overlaps. And there was an article that detailed more than 650 cases of misconduct in the last 12 years in the U.S. Attorney's Office with Federal prosecutors and so forth, which highlights the fact that OPR falls under you. And if you remember our issues in Louisiana, more specifically, Eastern District with our U.S. attorney stepping down, the first assistant, the second assistant.

We have asked for the report to be made public. It has not been made public. And my question becomes your stance on the Senate

bill, which would put it under the Inspector General in an independent area outside the Office of the Attorney General, which we plan to file a corresponding bill. So could you give me your feedback on that?

Attorney General HOLDER. I am not supportive of any action that would put under the Inspector General that which now is the responsibility of the Office of Professional Responsibility. OPR has had, I think, a long and distinguished history of looking at these matters, recommending where appropriate punishment that has been carried out. They have a unique expertise. There are specific matters that I think only an OPR can handle. I have great respect for the Inspector General's Office, but I do not think that the merger of those functions would be in the best interest of the Justice Department.

Mr. RICHMOND. Well, could I ask a question then? Why would we not make the OPR reports and the findings of misconduct automatically public when they conclude investigations and so forth? So that would be my general question.

Attorney General HOLDER. Yes, and we are prohibited from doing so by a number of things, but chiefly by the Privacy Act. We do not have the ability because of the strictures of the Privacy Act to make available or to make public some of the findings we have done. We have tried to be more transparent over the years in producing summaries of the reports that we have made available. We sometimes share the reports with Congress and then Congress has the capacity to do with the report what it will in a way that we in the executive branch do not.

Mr. RICHMOND. So if we request a report, we can get it?

Attorney General HOLDER. I believe that that is generally true. A Committee Chair has to make the request.

Mr. RICHMOND. Okay. What about the findings of prosecutorial misconduct or any prosecutorial infractions that are reported to the State Bar Associations, but not reported publicly? Can those be made public?

Attorney General HOLDER. I am not sure how individual bars work or what we do with regard to referrals to the bars. I will have to look into that.

Mr. RICHMOND. And let me just say, I am a lawyer, but prosecutorial misconduct and things like that I think should be public. And part of my concern today is that the Department of Justice can leak and say whatever it wants when it wants. And let us just look at the mayor's race in D.C., I am not commenting on anybody's guilt or innocence, but to have your name tied into a Federal investigation 3 weeks before your election, and to say that it leads toward you I think affects the electoral process.

And if our assistant U.S. attorneys can do things like that, then I think they have to be held to the same standard when they become the subject of an investigation, disciplinary action, and so forth. I think we are on a very slippery slope when we start leaking information right before election time because we are influencing the election process.

Attorney General HOLDER. Well, what happened in Washington was not a leak. It was a formal filing in public court about where

a case was, a plea that involved a particular person who was involved with that person. And I understand your concern—

Mr. RICHMOND. But we do those under seal. We do a lot of things under seal for a specific period of time.

Attorney General HOLDER. I understand your concern and the criticism that has been leveled at that decision. But if you look at it in reverse, if the Justice Department had put something under seal and waited until the election was over and then revealed the information, we would have been charged potentially with withholding information that would have been relevant for voters to have.

And so, what we do is simply bring the cases when they are ready to go. And sometimes it is awkward, but it is the best way in which to do these things, irrespective of what the political fallout is going to be.

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

Mr. RICHMOND. Thank you, Mr. Chairman, and I would yield back.

Mr. COLLINS. The gentleman from Texas, Mr. Poe, is recognized.

Mr. POE. Thank the Chairman. Attorney General, I sent you a couple of questions that I will ask you again about. It has to do with the trafficking statute in the United States that not only prosecutes interstate, but international traffickers that come into the United States.

Specific question, how many consumers/buyers have been prosecuted by your office under 18 U.S.C. 1591, the trafficking statute? Just the buyer, the consumer, the child abuser, whatever you want to call them.

Attorney General HOLDER. Yes. We have, I think, statistics that deal with prosecutions under 1591, but I do not think that we break them down in the way that you have requested. I think that we have an issue there with regard to our ability to give you a precise number with regard to the specific category of people that you have talked about. So I am not sure. As I said, I think we can give you a general number about 1591, but I am not sure that we can break it down into component parts.

Mr. POE. I understand. Can you give me a number then of total folks that have been prosecuted under that statute, whether the trafficker or whether the buyer? Do you have that number?

Attorney General HOLDER. I do not have that number in front of me, but I will pledge to get that number to you in due time. We will do that quickly. We will do that quickly.

Mr. POE. All right. Thank you. I want to move over to the issue of the NSA data collection. If I understand the law correctly, NSA does their thing, and they may refer a case to the Justice Department for prosecution. And they basically give you the evidence to prosecute. Is that a fair statement of how that works with the NSA?

Attorney General HOLDER. I am sorry?

Mr. POE. The NSA does the investigation in a case, terrorist case, for example, but if they want it prosecuted they send it to your office and you prosecute the case. Is that correct?

Attorney General HOLDER. NSA does not really do much in the way of investigating. I mean—

Mr. POE. The evidence that they obtain.

Attorney General HOLDER. Yes. We would do the investigating, but we would——

Mr. POE. You would investigate, but you would get information——

Attorney General HOLDER. Yes, we get information from a variety of places, including the NSA.

Mr. POE. All right. On February the 4th, Deputy Attorney General James Cole was here, and we talked about the massive collection of NSA information on Americans. And I asked him the question how many people have been prosecuted by the Justice Department to be attributed to the NSA bulk data collection program. And he said maybe one person. That was his testimony, and I have it here. Would you agree or disagree with his statement that only one person has been prosecuted based upon that massive amount of information that has been collected or not?

Attorney General HOLDER. I do not know the precise number, but it is a small number. It is a small number.

Mr. POE. So it could be just one.

Attorney General HOLDER. It could be. I just do not know.

Mr. POE. A small amount——

Attorney General HOLDER. It is a small number.

Mr. POE. Small amount of individuals. Moving over to another issue regarding privacy, emails. Current law, as I understand it, if a person has an email, that email if it gets over 6 months old, is stored in the cloud, then the Justice Department does not need a warrant to go in and retrieve that email. Is that correct or incorrect?

Attorney General HOLDER. Yes, but that is not a policy I think that we should continue.

Mr. POE. All right. I am just asking. The Justice Department does not need a warrant to obtain that email.

Attorney General HOLDER. Yes, I think that is true, but what we have said is that policy, there needs to be a change made so that warrants would be appropriate regardless of the amount of time that has passed.

Mr. POE. I agree with you on that that a warrant should be imposed or required. Law enforcement goes into a person's private email account no matter how old it is, but you get a warrant from the Justice Department.

Attorney General HOLDER. Right.

Mr. POE. Do you agree with that philosophy?

Attorney General HOLDER. It should not be a function of time.

Mr. POE. And we have legislation, bipartisan, pending on that issue.

Attorney General HOLDER. Right.

Mr. POE. The last question I want to ask you has to do with the concept of domestic use of drones by law enforcement on targeted surveillance. Right now my understanding is the FAA makes the rules and regulations about who gets a drone, who can use it for what purposes. Would you think it would be better that Congress intervene and employ legislation safeguarding the Fourth Amendment, right of privacy basically, on citizens, or do you suggest as

the Attorney General that the FAA still control who gets a drone or not?

Attorney General HOLDER. Well, actually, I mean, within the Department the only component in the Department that uses these vehicles at this point is the FBI. The ATF is in the process of working through to see if they want to make use of them. The Inspector General has recommended that we come up with some Department-wide policies about how these vehicles are used, and I think that would be an appropriate thing to do. And we are in the process of trying to work through what rules and regulations would handle the use of these kinds of vehicles.

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

Mr. POE. Thank you.

Mr. COLLINS. The gentleman from New York, Mr. Jeffries, is now recognized.

Mr. JEFFRIES. Thank you, Mr. Chair, and thank you, Mr. General, for your appearance here today. Earlier today during this hearing in an exchange with my one of my colleagues related to concern about the Affordable Care Act, you were characterized as the President's legal advisor. Do you recall that characterization?

Attorney General HOLDER. I think so, yes.

Mr. JEFFRIES. I think it is an erroneous characterization. Now, let me ask you a question about that. Are you familiar with the title of White House counsel, Mr. General?

Attorney General HOLDER. I have heard that.

Mr. JEFFRIES. And would you agree that the White House counsel is actually the President's legal advisor in the constitutional system that we have created in America?

Attorney General HOLDER. You have to understand as questions get fired at you, you cannot push back with regard to everything that is contained in a question. But you are right, I am not the President's legal advisor. I am the Attorney General of the United States, and there is a fundamental difference. The White House counsel is, in fact, the President's legal advisor.

Mr. JEFFRIES. Thank you, Mr. General. Now, the characterization was also brought up earlier today suggestive of the fact that under your leadership, the Department of Justice has somehow engaged in prosecutorial decisions based on race and/or party affiliation. Do you recall that suggestion?

Attorney General HOLDER. Yes.

Mr. JEFFRIES. Now, my distinguished colleague from New Orleans recently asked the question of the matter in Washington, D.C. related to a mayoral candidate, who, in fact, lost the election after perhaps being linked to Justice Department activity. Was that current mayor a Democrat, Mr. General?

Attorney General HOLDER. Yes.

Mr. JEFFRIES. And he is a Black Democrat, is that correct?

Attorney General HOLDER. Yes.

Mr. JEFFRIES. Now, I also believe that the mayor of Charlotte was recently indicted, is that correct, by the Department of Justice?

Attorney General HOLDER. That is correct.

Mr. JEFFRIES. And was he a Democratic mayor, Mr. General?

Attorney General HOLDER. I believe he is.

Mr. JEFFRIES. Okay. And he is African-American as well, is that correct?

Attorney General HOLDER. He is.

Mr. JEFFRIES. So I think that the suggestions related to your Department of Justice, and there are a myriad of examples, but I have got limited time, are really irresponsible, reckless, and not evidence-based. And I think this Committee would be well served by staying within the four corners of the actual facts that are before us.

I have got limited time, so I want to deal with the gun violence issues. It is one that affects the district that I represent in Brooklyn. I think we have a gun violence problem. In fact, in America 5 percent of the world's population, 50 percent of the world's guns, more than 14,000 American who died as a result of gun violence since the tragedy in Newtown, Connecticut.

Now, we have got a legislative track which unfortunately has been barren of activity, and then there is an administrative executive track. The President in January of 2013 announced a series of initiatives, some of which he charged the Justice Department with engaging in, and I want to just explore where we are at in terms of that activity.

It is my understanding the President directed the Attorney General to review the categories of individuals prohibited from having a gun to make sure that dangerous individuals are not possessing weapons that can do harm, is that right?

Attorney General HOLDER. That is correct.

Mr. JEFFRIES. Now, this is a real concern for the communities that I represent. We have tough gun control laws in New York State. A lot of the guns come from the neighboring State of Pennsylvania. Chicago famously has a lot of gun violence problems. A lot of their guns come from the neighboring State of Indiana. South Central Los Angeles has got some gun violence problems. A lot of their guns come from the neighboring State of Arizona. That is why the Justice Department engagement is so significant.

Where do things stand in terms of that review that the President charged the Department of Justice with in January of 2013?

Attorney General HOLDER. I do not remember the exact number. I think there were 17 or 21 things that came out of the review that the President asked us to review. And I think that we have now completed all of the things that the President asked us to do, which I think was as far as we could go using only the executive power that we have.

There is still a need, I think, for legislation to deal with the common sense measures that would help deal with the gun violence problem in this country. We have tried to do what we could with regard to enhanced background checks, but there is still the need to close, for instance, the gun show loophole, to deal with the problem of assault weapons, to deal also with the problem of these large clips. These are things that, again, are overwhelmingly supported by the American people, make sense, and would keep the American people safe.

Mr. JEFFRIES. Mr. General, I agree that there is an absolute need for congressional action. But let me also say that in the interim I think it is important, and I would like to be able to work closely

with the Department of Justice, the ATF, to deal with some of the underground problems that we have in America today short of legislative action because the children that I represent, some of whom are dying on the streets of Brooklyn, are from illegal guns from other parts of the country, cannot afford for us to wait for congressional action.

And with that, I yield back.

Mr. COLLINS. The gentleman from New York yields back. The gentleman from Utah, Mr. Chaffetz, is now recognized.

Mr. CHAFFETZ. Mr. Attorney General, thank you for being here. It is an honor to be able to question you. The last time I had a chance to question you was May 15 in 2013. I was asking you about General Petraeus and his time as the CIA director. I followed up with a letter on March 3, 2014. I have communicated with your legislative staff through our staff.

My question for you regarding—again, this is about General Petraeus' time as director of the CIA—my understanding is that the FBI did go to General Petraeus' home. They took documents and other items. There is some feedback that perhaps the FBI is a bit frustrated that there has not been a prosecution moving forward. Can you give the status of what is happening, and is there any friction with the FBI in what to do with this case?

Attorney General HOLDER. All I can say is that this is an ongoing investigation. I am really not in a position to say much more about it than that. I will say, I have been briefed on this matter, and I did not detect any friction in what is an ongoing matter.

Mr. CHAFFETZ. You know, we are talking about 2 years later, and this is still hanging over his head. Is that fair? Is that really fair to have somebody who has been touted as one of America's greats having this hang over his head for 2 years? When do you anticipate closing this out?

Attorney General HOLDER. That is a very legitimate question. I sat with General Petraeus in the Situation Room when he was the head of the CIA. He was a great colleague. I think he is a true patriot.

Mr. CHAFFETZ. I have got to get to some more specific questions. I think that is the concern, too, is that this has been hanging over his head, and it just does not seem fair to have this hang over his head for so long. When did this happen when they went to his home and extracted these documents?

Attorney General HOLDER. As I said, I cannot comment about an ongoing investigation.

Mr. CHAFFETZ. Last time I asked you, you said that you first found out about this in the summer of 2012. Was that accurate? You were going to get back to me. I have not heard back from you.

Attorney General HOLDER. Both the question when you posed it was a long time ago, and when I actually was first aware of this is kind of a long time at this point. It was some time certainly in 2012, but exactly when I do not know.

Mr. CHAFFETZ. There seem to be a number of mandatory reporting statutes that were not complied with. That is one of the concerns. As Senator Feinstein said, "A decision was made somewhere not to brief us, which is atypical. This is certainly an operationally

sensitive matter, but we were not briefed. I do not know who made that decision.” This was quoted on the NBC news.

Attorney General HOLDER. Well—

Mr. CHAFFETZ. I mean, why not inform the Congress? Why not do the necessary requirements under the law, the National Security Act of 1947?

Attorney General HOLDER. Without commenting on the investigation itself, but with regard to our decision or determination about how we would interact outside of the Justice Department. We did not think on the basis of the allegations that we were looking at that there was any basis or any concern that we had about our national security on the basis of—

Mr. CHAFFETZ. There is a news report that in the spring of 2012 General Petraeus’ schedule was compromised, and that his security detail was informed of that. Is that true?

Attorney General HOLDER. Again, I do not want to go into an ongoing investigation.

Mr. CHAFFETZ. When is this going to be complete?

Attorney General HOLDER. It is a matter that is ongoing that we are working diligently to resolve.

Mr. CHAFFETZ. Do you have any idea when the President was told?

Attorney General HOLDER. I do not remember right now.

Mr. CHAFFETZ. Do you remember when Mr. Morrell was told, his deputy?

Attorney General HOLDER. I do not remember that as well.

Mr. CHAFFETZ. Mr. Brennan? Do you know when Mr. Brennan was informed?

Attorney General HOLDER. I do not remember. I am not sure—

Mr. CHAFFETZ. Mr. Attorney General, I have got the greatest respect for you. I appreciate personally the time you have taken with me. I asked questions in the Committee about a year ago. I sent you a follow-up letter. I work with the legislative staff. We come before a hearing again, and it appears as if you took no time to go back and ask for these very basic things. We are dealing with not the head of the Department of Fish and Wildlife. We are talking about the CIA director, somebody who is revered in this country. And here we are 2 years later. It seems suspicious that it continues to linger without any sort of relief.

And I think the Congress’ understanding of how you deal with the mandatory requirements to inform the Congress is something that is concerning Senator Feinstein. It concerns me. I think it is fair to say it concerns the Intelligence Committee. And that is what we would like some help understanding over the course—

Attorney General HOLDER. Well, I think we complied with the reporting requirements that you referenced and that, I guess, Senator Feinstein had referenced also. I can also tell you that the matter has, again, not talking about the specifics, but the fact of it. The matter has been handled in a diligent way, and sometimes these matters, they just unfortunately take time.

Mr. CHAFFETZ. In the CRS, as I yield back, says “It seems that once the FBI investigation turned to possible hacking involving Petraeus’ private email account, the purpose of the investigation was likely to discover where the compromise of intelligence may

have occurred, in which case it would seem then to fit the definition of intelligence activity under the NSA.” I would just point to this CRS report, Mr. Chairman, of November 15 of 2012. I yield back.

Mr. COLLINS. The gentleman’s time has expired. The gentleman from Rhode Island, Mr. Cicilline, is recognized.

Mr. CICILLINE. Thank you, Mr. Chairman, and I thank the Attorney General for being here today. I want to just make two quick points before I get to my question. One is I associate myself with the remarks of Congressman Deutch on the urgent necessity of prosecuting the executives of these financial institutions that are responsible for harm that was caused to millions of Americans and many Rhode Islanders. And appreciate and applaud the work you have done to hold institutions accountable, but urge you to continue and to help us to restore the public’s confidence in our judicial system by prosecuting the decision makers, as Congressman Deutch has suggested in his questions.

And second, just to quickly follow up on Mr. Nadler’s national security letter question we wrote to you on February 19, and I look forward to a written response. But just to urge you again to look at this issue because if you look at the history between NSL letters and 215 and the kind of the shift in use of them, the unanimous recommendation of the President’s commission was, and I quote, “That all statutes authorizing the use of national security letters should be amended to require the use of the same oversight, minimization retention, and dissemination standards that currently govern the use of Section 215 orders.” And I would just urge you reconsider your position on that. I think there is a reason to harmonize those and to protect the privacy interests of the American people.

But what I would like to focus on in terms of my question is the issue of gun violence and the ways that the Justice Department might think about supporting State and local efforts to combat this serious problem in our country. Unfortunately there seems to be a concerted strategy of obstruction here in Congress about doing anything to address the issue of firearm related violence, and that is despite the gun violence claimed the lives of more than 360,000 in the United States between 1999 and 2010, including more than 35,000 children and teenagers according to the National Center for Injury Prevention and Control.

But a lot of States and municipalities and local stakeholders are working to address this complicated problem, and I would like to ask you about whether the Department of Justice has made an effort to study the effectiveness of two particular strategies for addressing this issue. One is the product of State practices and another is more locally focused.

The State practice is some States have enacted laws that require mental health professionals to report certain individuals in identifying information about individuals who are seriously mentally ill or found to pose a danger to themselves or others to a firearms prohibition database, New York and Connecticut being two of them. Obviously, I would be interested to know whether or not you have looked at these and whether these are effective strategies, particularly California who has had it for a couple of decades.

And the second is related really to a local kind of innovation by, and I will give one example in my home State that I know you know about. You visited Providence in 2011, and I know you had the opportunity to meet with the street workers at the Institute for the Study and Practice of Nonviolence and with my senator, Senator Whitehouse. And this is an organization that works very closely with the police department using former gang members to help combat violence and to help de-escalate situations. They have been heroic in their work in terms of preventing violence, but they are, like many organizations, struggling for funding.

And so, is the Justice Department figuring out ways to both identify best practices like the street workers at the institute in Providence that are effective, and then figuring out how we can support them with funding streams because they spend so much time on the brink because they just do not have the resources, and they are doing really good work that is combatting gun violence and other kinds of violence. I would just love to hear your thoughts on both of those issues.

Attorney General HOLDER. Well, you have raised two very good points. We have recently proposed a regulation that seeks to clarify who, due to mental health reasons, is prohibited under Federal law from receiving, possessing, shipping, or transporting a firearm. Now, this regulation is open for public comment, I guess, until the beginning of this month. And it deals with the whole question of what is an adjudicated or a mental defective or committed to a mental institution.

And so, what we have tried to do is put it out for comment and see what we get back. And expansion potentially of who under the mental health disqualifier would be prohibited from possessing a firearm. So that regulation is out there. Public comments will come in. Those comments obviously will be looked at before we propose a final rule.

With regard to the Street Program, for lack of a better term, that you described, those are the kinds of things that we are trying to identify through our Office of Justice Programs, things that are unconventional, that are creative, that sometimes raise people's eyebrows about who is involved in these kinds of effort, but ultimately that are potentially successful. And we try to use an evidence-based approach.

We do not go into it with any pre-conceived notions. I am familiar, at least a little bit, with what you are describing in Rhode Island. It is consistent with what we have seen in other States as well where you get former gang members who have fully turned around. And if they can be used in a positive way and have a positive impact on those who might otherwise duplicate the mistakes that they made, those are the kinds of programs that we want to support.

Again, it is why our budget request, I think, is so important. We need the funds and the capacity to fund and support these innovative, creative efforts not all of which are going to be successful and not all of which we will continue to support. But at least we want to try to give people who are trying to do innovative, appropriate, creative things at least a first chance.

Mr. COLLINS. The gentleman's time has expired. The gentleman from South Carolina, Mr. Gowdy, is recognized.

Mr. GOWDY. Thank you, Mr. Chairman. General Holder, I appreciate the fact that you cannot comment on pending investigations. I do. So I would not ask you that. I wish the President would also follow your advice because when he said there is not a smidgen of corruption on national television talking about an ongoing investigation, not only did he undermine people's confidence in the efficacy of that investigation, in my judgment, he undermined your Department, because you cannot comment on it. I think he should have taken a pass and said the exact same thing that you said when Jimmy Jordan just asked you the question.

I also want to thank you because I think you are coming to Charleston on Friday to see our U.S. Attorney and the work that the women and men of our U.S. Attorney's Office are doing in Charleston. The U.S. Attorney in South Carolina is a wonderful friend of mine. We met on opposite sides of a death penalty case, which is a strange place for a friendship to begin. And he is an avowed progressive, and I am a conservative from the upstate of South Carolina. But we are wonderful friends I think, in part, because we hold out this hope that the law will trump politics, that it is the greatest equalizing force in our country, and it is the greatest unifying force in our country.

So I want to thank you for going to Charleston, and I want to ask you some questions about rule of law and prosecutorial discretion. If a bill becomes law and there is no question with respect to its constitutionality, does the Chief Executive have to enforce that law?

Attorney General HOLDER. Have to enforce it?

Mr. GOWDY. Yes.

Attorney General HOLDER. The President has the constitutional responsibility to enforce the laws. The executive branch has the responsibility of enforcing the laws.

Mr. GOWDY. Right. So you agree with me that if a bill passes and is signed into law, and there is no allegation of a lack of constitutionality, the chief executive has to enforce that law.

Attorney General HOLDER. We are talking about a hypothetical situation here now, and given the hypothetical that you have espoused, I would think there would obviously be a responsibility to enforce the law.

Mr. GOWDY. Do you agree that there is a difference between enforcing the law and following the law?

Attorney General HOLDER. I am not sure I quite understand that question.

Mr. GOWDY. Well, here is the distinction I would make. Your Department is asked to enforce certain statutes, Title 18 statutes. You have prosecutorial discretion. You can decide that with these facts, we cannot get a conviction. But if Congress were to impose upon you a duty, in other words, to make a report to us by a certain date, then you would have to follow that law. You are not enforcing it, you are following it.

So the case law has made a distinction between enforcing the law where prosecutorial discretion comes into play and following the law prosecutorial discretion is not a defense. So if we were to ask

you to do something, you would have to follow the law and you could not cite prosecutorial discretion as a reason not to follow the law.

Attorney General HOLDER. Well, I would agree, but I would disagree to this extent. If Congress passed a statute that said the Justice Department was obligated to bring every case under Title 18, Section 1951, every public corruption case under a particular statute, I think that would violate the separation of powers.

Mr. GOWDY. I agree. I agree, because that would thwart prosecutorial discretion. But if Congress were to tell you you have to make a report or you have to do something by X date and impose a duty on the executive branch itself, prosecutorial discretion is not going to get you out of that, or else prosecutorial discretion consumes all of the law. If you have the ability to both not enforce and not follow law, then we have no law.

Attorney General HOLDER. Well, no. If Congress were to impose upon us a reporting requirement, I would agree with that. I mean, to say, all right, you know, tell us how many cases you have brought under this statute by December 31 of whatever year, something like that.

Mr. GOWDY. You have to follow it.

Attorney General HOLDER. I think we have the obligation to fulfill that reporting requirement.

Mr. GOWDY. Right. I want to ask you this. You issued a memo directing in certain circumstances that your AUSAs and USAs not inform the grand jury and, therefore, not inform the jury, and, therefore, not inform the judge about drug amounts.

Attorney General HOLDER. About drug?

Mr. GOWDY. Drug amounts in Title 21 cases.

Attorney General HOLDER. I am sorry, drug?

Mr. GOWDY. Amounts.

Attorney General HOLDER. Drug amounts. I am sorry. Go ahead.

Mr. GOWDY. Right. It is a memo. "In cases involving Title 21 mandatory minimum sentences based on drug type, prosecutors should decline to charge the quantity necessary to trigger mandatory minimum." General Holder, we already have a safety valve. Congress has already passed a law that if you meet these requirements, the mandatory minimum is not applicable. So why would you eschew what Congress has done and trump it with a memo? I am really honestly trying to understand how you can respect the law and disrespect a statute that Congress has already passed.

Attorney General HOLDER. Well, the view that we had based on a review that I ordered back in January of 2013, I guess, was that we have to do something about the prison population that we have. We also have to come up with a system that is both more effective, more efficient, and keeps the American people safe.

And what I ultimately have tried to do is to push discretion in the hands of the men and women who serve as assistant U.S. attorneys to look at the defendant who is in front of them and make an appropriate determination based on the conduct of that person what an appropriate sentence is.

Mr. GOWDY. Mr. Chairman, I know I am out of time. Could I ask unanimous consent for 30 seconds just to follow up? Just 30 seconds?

Mr. COLLINS. Without objection.

Attorney General HOLDER. That is fine.

Mr. GOWDY. Thank you. Attorney General, I would just ask you under this general heading of respect for the rule of law that you would come to like-minded Members of the Judiciary Committee and say we need to expand the safety valve because we have a law that does what your memo purports to do. And if we ever get to the place in this society where a memo is on equal footing with the law, I think we are in trouble. So I would encourage you to come to Rand Paul and Raul Labrador and others who are like minded and fix the statute, not the memo. And with that, I would yield back.

Attorney General HOLDER. As indicated in my opening statement, Congressman Labrador's approach, Senator Paul's approach, Senator Durbin, Senator Lee, these are all the kinds of things that we want to work with Congress about. I think there are ways where ultimately the best of all possible fixes is to work between the executive branch and the legislative branch. That is something that we are desirous of doing.

But I do think that the policy pronouncements that I have made in recent months are consistent with the law, and also are consistent with good law enforcement. But I—

Mr. COLLINS. Go ahead. You can continue.

Attorney General HOLDER. I was just going to say at the end of the day, I think the best thing would be for the two branches to get together and come up with a common approach.

Mr. COLLINS. The gentleman's time has expired. The gentleman from Idaho, Mr. Labrador, is recognized.

Mr. LABRADOR. Thank you, Mr. Chairman. And, Mr. Holder, thank you for being here today. And I actually want to follow up a little bit on what my good friend, Trey Gowdy, was saying. As you know, you and I have had many disagreements over our history, and I hope you know now that I am from Idaho. And one area where we agree is on the Smarter Sentencing Act, which is have introduced in the House with my colleague on the Committee, Congressman Bobby Scott.

I am very pleased that you are supportive of this legislation. I also understand that the President is supportive of this legislation. However, the concern that I have, you know, my job as a Member of Congress is to try to get my like-minded friends to agree with me on certain pieces of legislation even if it is outside of the scope of what they usually think about. And this something that I think you would agree Republicans have not always agreed with Democrats on, and it is something that I have been working for the last year or so trying to get Republicans on board.

But you make actually my job much more difficult when you unilaterally, as you have, you write memos, and you try to do the same thing through memos that we are trying to accomplish through this legislation. When you say you are not seeking mandatory minimum sentences for nonviolent drug crimes, you are working around Congress instead of with Congress.

So I am extending to you my hand right now to work with you to help pass the Smarter Sentencing Act. But could you please help me try to pass the Smarter Sentencing Act by not going around the

law, and by trying not to work through executive action only, but actually working with Congress. Could you do that for me, because it is making my job much more difficult.

Attorney General HOLDER. Well, we certainly want to work with you, as I indicated to Congressman Gowdy. I think the policy pronouncements that I made and, frankly, the raising of this issue in that speech I gave in August of, I guess, what, 2013, I guess, at the ABA in San Francisco is what really in many ways generated the conversation that we are now having.

Again, I am talking about pushing discretion to assistant U.S. attorneys to make determinations about what is an appropriate sentence, what is an appropriate charging decision subject to supervisory control for a defendant that is front of them as opposed to a previous policy that existed that required every assistant U.S. attorney to charge the most serious offense that could be proven, almost regardless of what other factors were in existence. I have got more faith in the men and women who serve in this Department of Justice to make the right decisions.

Mr. LABRADOR. But you are telling them not to charge certain crimes. I am not sure that you are exhibiting faith. You are actually telling them do not charge certain crimes, and if they do not follow your orders, I think it is going to be something—I have never been an assistant U.S. attorney like my good friend, Trey Gowdy, but I am not sure that that is something that somebody would do.

Now, let us talk about a different issue. We have heard a lot recently about the President's record of deportations. And my friends on the other side continue to say that these are record deportations, that we have not as many deportations in the history of the United States. But my understanding is that the majority of what the Administration is counting as deportations are from the border and not from the interior. Is that correct?

Attorney General HOLDER. I am just not aware. I do not know that.

Mr. LABRADOR. And when I look at the number of orders of removals in the DoJ's Fiscal Year 2012 statistical yearbook, I see that they actually have dropped 30 percent since 2009, and are down by 42 percent since 2005. How do you explain the Administration's claim that we have record deportations, but your own statistical yearbook says that they have dropped and continue to drop in 2013?

Attorney General HOLDER. Well, you know, I do not have the statistics in front of me, but I know that the President has been, I think, unfairly labeled the deporter in chief. I think he is—

Mr. LABRADOR. Well, I agree with you. I think he has been unfairly labeled because we are playing tricks with the numbers. You are counting people who were stopped at the border that in the past were not being counted as deportations. And I think it has been a trick of my friends on the other side to try to claim that there has been a record number of deportations, but I believe actually the evidence does not bear that out.

Attorney General HOLDER. Well, when I said "unfairly," I only meant to say that this somehow betrays an inconsistency in what the President has proposed with regard to his comprehensive immi-

gration plan, and his sensitivity to the needs of the immigrant community, and what he has done with regard to these deportations. I do not think that there is necessarily a tension between them, and that is why I think that the label that has sometimes been placed on him is an unfair one.

Mr. LABRADOR. Okay. Thank you. I yield back my time.

Mr. GOODLATTE [presiding]. The Chair thanks the gentleman, and recognizes the gentleman from Texas, Mr. Farenthold.

Mr. FARENTHOLD. Thank you very much, Mr. Chairman. You know, I understand that this Committee has a constitutional duty of oversight over the Department of Justice, and that is why we have Mr. Holder here today. But I do not think that I can be a part of eroding the constitutional balance of power favoring the executive over the legislative.

You know, I do not think Mr. Holder should be here. He is in contempt of this body. I have called for his resignation. I have sponsored articles of impeachment. And this week I am going to be introducing legislation that would prevent Federal employees who are held in contempt of Congress or fail to fully comply with congressional subpoenas not be paid their taxpayer-funded salary. And I am going to try to get that enclosed with the appropriations bills that will be going through.

I am committed to maintaining the constitutional balance of power and the authority that this legislative branch has. And I just do not think it is appropriate that Mr. Holder be here. If an American citizen had not complied with one of the Justice Department subpoenas, they would be in jail, not sitting here in front of us testifying. But I realize there are questions to be asked, and I yield the remainder of my time to Mr. Gowdy.

Mr. GOWDY. I thank the gentleman from Texas. General Holder, I want to go back to our mandatory minimum. If this were methamphetamine instead of Altoids, and I am going to trust that it is Altoids because it is Marino's. If that were methamphetamine, Congress passed a statute that that amount would get you a mandatory minimum 5 years. But Congress also passed a statute that if you had a de minimus criminal history, were not an organizer, did not use a weapon that the mandatory minimum would not apply. Now, that is after the fact. That is after the trial. That is after you have been in front of a judge to change your plea. Your memo tells the AUSAs not to cite the drug amount. I mean, they cannot.

Attorney General HOLDER. No, it does not say that. The memo says that, you know, you take into consideration the totality of the circumstances in making a charging determination. It does not mean that if you, Trey Gowdy, you know, with your hypothetical here, you are a bad guy, you are a drug dealer, then you have got, I do not know, 15 ounces or whatever of Altoid/methamphetamine that you cannot be hit with a maximum sentence, you cannot be hit with a mandatory minimum. That in the discretion is an appropriate determination. If on the other hand—

Mr. GOWDY. But why not just exercise your prosecutorial discretion and not prosecute the case period? If you do not want low level drug dealers in Federal prison, you have absolute unfettered authority to tell your AUSAs do not pursue the case because in drug

cases all 50 States have drug laws. And if you do not prosecute it, the State DA will.

Attorney General HOLDER. That is the first part of the memo that I sent out to the field, which was to make determinations about what truly is a Federal case, you know, when you bring it to the first—

Mr. GOWDY. All right. Well, all I am going to ask you to do is think about that you are going to see men and women in Charleston on Friday that if a judge asked them a question, they have no choice but to answer that question honestly. Whatever the question the judge asks—

Attorney General HOLDER. Sure.

Mr. GOWDY [continuing]. You either answer it honestly or you are going to jail.

Attorney General HOLDER. Right.

Mr. GOWDY. What if a grand juror asked the question how much drugs are involved? The grand jury is about to draft the indictment. They are about the true billet. They want to know. And it is more than 50 grams, which triggers a mandatory minimum 10 years. Are we not putting your AUSAs in the position of not being honest with the grand jury?

Attorney General HOLDER. No, not at all.

Mr. GOWDY. How not?

Attorney General HOLDER. You can tell the grand jury that the amount is, let us say, above 50 grams. However, the charging document that we have does not specify an amount, and this is the reason we are not specifying the amount that is contained in the document that we are asking you to approve. You are being totally truthful with the 23 members of the grand jury.

Mr. GOWDY. One other point. In our safety valve, it is required that the defendant cooperate with government. In your memo it is not required that the defendant cooperate with the government to get out from under a mandatory minimum. You would agree with me that cooperation with the government is very important when you are working narcotics cases. So why did you not require that?

Attorney General HOLDER. That is one of the factors that is to be taken into consideration in making those kinds of determinations. The memo that I sent out did not say do not do this in a kind of, you know—

Mr. GOWDY. It said "Prosecutors should decline to charge the quantity necessary to trigger a mandatory minimum if the defendant meets the following criteria." I can tell you, if I got that memo from you and the defendant met that criteria but did not meet all the criteria from Congress, I am going to go with the guy who signs my paycheck. And there is a conflict between the two. That is my point is your memo is trumping a congressional statute.

Attorney General HOLDER. Well, I mean, we always have discretion. And would you say that—

Mr. GOWDY. But you do not have discretion on whether to follow the law or not. That is my point.

Attorney General HOLDER. Well, no, I would disagree in the sense that taking into account resource constraints, it is incumbent upon those of us in the executive branch to make the maximum use of the resources that Congress gives to us. That necessarily we are

always making choices about the kinds of cases that we bring, how we deal with the cases that we bring.

Mr. GOWDY. But you are already expending the resources of the prosecution or you and I would not be having the question. This is all about sentencing. I have no qualms if you say I am going to decline prosecution. You have an unfettered right to do that. What I am saying is you do not have the right to say in mandatory minimum cases do not tell the grand jury what the drug amount is. I just think you are putting your AUSAs in a tough position, but as is always the case, I could be wrong. And I am definitely out of time.

Mr. FARENTHOLD. I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman, and recognizes the gentleman from North Carolina, Mr. Holding, for 5 minutes.

Mr. HOLDING. General Holder, thank you for being here. A quick follow-up on a previous question. In the investigation of the IRS, there is a person who is leading that investigation, a first chair, if you will. I mean, there has to be. That is how you would run an investigation. Is that prosecutor a member of the Public Integrity Section or is it a member of the Civil Rights Division?

Attorney General HOLDER. I would say it is a joint investigation being done by Civil Rights as well as by Public Integrity.

Mr. HOLDING. Well, I wish you would tell us who is in the first chair, but you will not. At the same time that you issued the memo regarding charging the drug weights, part of that memo had to do with compassionate release and expanding the criteria for eligibility for compassionate release because historically it has been incredibly difficult to get compassionate release.

And some of the new criteria are circumstances in which there has been a death or incapacitation of a family member or a caregiver of the inmate's child, or circumstances in which the spouse or registered partner of the inmate has become incapacitated. I think those are pretty broad exceptions of eligibility criteria. How many people do you estimate to be eligible for compassionate release that are currently in the Federal system?

Attorney General HOLDER. I do not know. You know, we have, and I believe these numbers are correct, over 100 people in the Federal system now who are over the age of 80. I think 30 something over the age of 85. Those would be, I think—

Mr. HOLDING. These criteria that I am looking at are pretty broad. A lot of inmates have children. A lot of inmates have spouses or partners. And, you know, this would apply to them. It has to be a pretty broad number. Have you put into place any methods to track these people after they are released under compassionate release?

Attorney General HOLDER. I mean, these are the kinds of things that we will put in place to make sure that the determinations that we are making appropriate ones, I mean, because I think it is only the responsible thing to do if you are going to try these new policies to see what is the impact of them. And to the extent that we are releasing people who then engage in other crimes—

Mr. HOLDING. And you put in the memo that, you know, you will consult with the U.S. Attorney's Offices on these cases about com-

passionate release, but the authority to grant with them is with the director of the Bureau of Prisons. So, you know, there is any judicial restraint that could be on these compassionate releases, or is it just an order by the director of the Bureau of Prisons?

Attorney General HOLDER. I believe the way it goes is that it is by statute the Bureau of Prisons through the U.S. Attorney's Office has to petition the court for the release.

Mr. HOLDING. Right. Well, to switch gears here before I run out of time, I am concerned about the illegal distribution of tobacco products, counterfeit cigarettes, illegally gotten cigarettes that are put into the system, counterfeit tax stamps.

And, you know, we all know here that cigarette smuggling is often a funding source for terrorism or organized crime. We also know that ATF is charged with the investigation of tobacco-related crimes. It is the "T in "ATF." People forget about that. You know, I appreciate that they are focused on firearms, but I would like to know and maybe you could have some staff brief my staff on what DoJ and ATF are doing to crack down on tobacco smuggling crimes, and what resources you have got placed into this, and what recommendations you have for additional resources that you would need to properly engage in the enforcement of this.

Attorney General HOLDER. We can certainly do that. I think the point you make is one that people would find a little hard to believe, but you know being that you are a former U.S. attorney that, in fact, there at least have been a couple of instances where there was a tobacco terrorism connection. We know that. And so, but we will have our staffs interact.

Mr. HOLDING. All right. And before I forget, I will ask for a follow-up on the compassionate release and any studies you have got of people who are in the system, numbers that might be eligible, and whatever system you have for tracking these people as they are released into the system under these new criteria and further illegal conduct that they might engage in.

Attorney General HOLDER. That is fine.

Mr. HOLDING. Thank you. Mr. Chairman, I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman, and recognizes the gentleman from Georgia, Mr. Collins, for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman. I mean, this is my second one with you in coming here, Mr. Attorney General, and I appreciate you coming. And it is always interesting to know what I have seen in my short time, but also looking at history. And I think one of the things that comes across today is just very much of a lack of trust in who is prosecuted, who is not prosecuted. We have heard that comment going on.

I just happened to be in another Committee this morning, saw this article. Just pulled it out of a 2009 paper that said "Obama open to prosecuting Bush officials over abuse." This is sort of what started the whole look, and I think there is even going to be a day of reckoning for these past few years, and that has tainted everything that has come forward. When you see, as my friend from Iowa has talked about, the prosecution cases not prosecuted, other things.

And it gets into an issue here in which the gentleman from South Carolina brought it up, the gentleman from Idaho has

brought it up, and it is the fact of how we can work together. There is a process to this, Mr. Attorney General, and that is working together even through difficulties and even when we do not agree and there are problems. Even to the point of we cannot in this Committee today seem to understand that you are an advisor to the President, and that was mentioned by Mr. Chabot, and then it was sort of mockingly mentioned by my friend from New York.

But even on your own budget request for the Office of Legal Counsel, it says "the mission of OLC is to assist the Attorney General in his function as legal advisor to the President and all of the executive branch agencies." If this not your role and this is not their role, then I think we have found some money for you to put into ideas so we will defund this program and put this money into other places.

So are you saying, again, to this Committee that you are not a legal advisor to the President on a lot of different issues?

Attorney General HOLDER. Sure I am, but not the way in which it was used in that question. The question was posed as if I were the person kind of almost pulling the strings for the President. Of course I am an advisor to the President, and of course I have a particular area of responsibility with regard to that advice.

But in terms of, you know, the person who on a day-to-day basis is advising the President, that is the White House counsel as opposed to the Attorney General because there is a wall. There is an independence that exists between the Justice Department and the White House.

Mr. COLLINS. I am very familiar with that wall. I think just in the conversations going on, that it needs to be understood, and I think it goes back to this, you know, issue of oversight and discussion.

I want to turn your attention to ATF. We just talked about it from the gentleman from North Carolina and tobacco, which is a concern. But I have a bigger concern over just what seems to be a lack of oversight from your office and overall when ATF was going through multiple interim directors. There is now a full-time appointed and confirmed director of ATF.

But in Atlanta, I want to go back to an issue of the storefront. We have been over Fast and Furious. We are not going to talk about that. I want to go back to the storefront issue in Atlanta. This was at a time in which the current administrator was not in charge and there were interims going on, but you were ultimately in charge of ATF, correct?

Attorney General HOLDER. Yes.

Mr. COLLINS. So you have oversight. Does it not concern you, and I think it concerns many on this, that there seems to be, especially from Fast and Furious to this storefront operation, why there seemed to be no concerted oversight from your office, especially when there was not a permanent director. Can you help me understand why they seemingly were able to operate very rogue programs?

I come from a law enforcement background. My father was in law enforcement. And the actions of one represents all, and they should not, and I agree with you there. But why was this going on? And I have asked specific questions, which they are supposed to

meet with me next week, but I still have not gotten the answers. Why was this program from your perspective not better managed?

Attorney General HOLDER. Well, I think it was just poor management, poor decision making. But I also think, you know, that Congress bears some of the responsibility here by not approving a person, a Senate confirmed person, to run ATF. That makes a fundamental difference.

Mr. COLLINS. So hold on just 1 second. I have a question there. So you are saying that if we do not confirm somebody or that—

Attorney General HOLDER. I am not saying—

Mr. COLLINS [continuing]. By the Senate. By the way, the Senate side would confirm, not us.

Attorney General HOLDER. Oh, I am not blaming you all.

Mr. COLLINS. That you put somebody in an interim role that they cannot make good decisions, that they use handicapped personnel to recruit folks? They take police weapons. They do not inform the local police that they have the weapons? In fact, Atlanta and Fulton County are still searching. The ATF has not acknowledged that they have the guns?

Attorney General HOLDER. No, that is not what I am saying. I am saying that that is a factor in why you saw, I think, some of the things happen in ATF. If you look at the leadership that Todd Jones has been able to bring to that organization as the Senate-confirmed head of that organization, there is a certain gravitas that he has that people who preceded him simply did not have.

Mr. COLLINS. I had a great time talking to him.

Attorney General HOLDER. It is only a factor. It is only a factor.

Mr. COLLINS. I had a great time talking with him last week. Now I am talking with you because during the time he was not there, these were going on. And to me, that is one of the things that has overridden these hearings a lot is just a simple lack of administrative trust on what is going on on the oversight, especially in ATF, but in other areas where it is viewed, and especially when we cannot seem to work together on getting stuff done.

Instead, as you worded it just a moment ago, it was discretion to, as we were talking about, the drug instance. Discretion does not mean you cannot follow the law. Discretion is always there, and I think that is the concern that I have here, and it is the concern that just pops up whether it is ATF, whether it started back years ago. There is just a basic lack of trust when you look at prosecutions, when you look at the issues going on, and we cannot seem to get answers that are not just basically blown off.

And I do not understand that from your perspective, especially with an agency like ATF that has already had problems why the leader would not have taken a better hands on role there. Can you explain that one to me?

Attorney General HOLDER. Well, we have provided documents. We have provided evidence.

Mr. COLLINS. But did it concern you? Not the documents. I want to know from you, Mr. Attorney General.

Attorney General HOLDER. Sure it concerns me. The notion that you would use mentally unstable people, you would tattoo them, that you would do ridiculous things like that, is absurd, and people will held be accountable.

Mr. COLLINS. How were they held accountable?

Attorney General HOLDER. It is crazy.

Mr. COLLINS. How were they held accountable?

Attorney General HOLDER. Well, the investigation—

Mr. COLLINS. What did you do to hold these people accountable?

Attorney General HOLDER [continuing]. Is being run by the Inspector General. Once those findings are made and people are identified, they will be held be accountable, in the same way that happened with regard to other things that ATF was involved in.

Mr. COLLINS. These are several years old, and so it is hard—

Mr. CONYERS. Mr. Chairman, can we have regular order?

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

Mr. COLLINS. My time has expired. Mr. Attorney General, thank you for your questions. My time has expired.

Mr. GOODLATTE. The Chair recognizes the gentleman from Florida, Mr. DeSantis, for 5 minutes.

Mr. DESANTIS. Thank you, Mr. Chairman. Thanks for coming, Attorney General Holder. I want to follow up. You have been asked by Senator Lee about the Obamacare employer mandate delay, and then today by Congressman Chabot, and you cited the IRS analysis. So I have that if we can provide that for you.

It is actually very simple. It is just one sentence, and it basically says that “The Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulation as may necessary by reason of any alteration in law in relation to Internal Revenue.” Again, that is 7805-alpha.

So how would that trump an obligatory statutory mandate, because in the Affordable Care Act it says that “This mandate shall take effect.” It does not say “discretionary.” This is providing authority to implement statutes and to prescribe rules for that effect. But how would this be used to trump that deadline, because the deadline has essentially been suspended twice. In the second suspension, there was additional gloss added. Now instead of a 50-employee, now we have this 50- to 100-employee, and there are different rules being prescribed. So what would you cite within that regulation that would give the executive branch the authority to suspend the statute?

Attorney General HOLDER. Well, as I indicated, the Treasury Department came up with the analysis and the basis for the delay. It seems to me that it is not a question of trumping. It seems to me that it is consistent with the act, and the action taken by the Administration in that regard was appropriate.

Mr. DESANTIS. So let me ask you another issue. In November we had this issue with Obamacare. Plans were being cancelled. It was obviously politically difficult for the President’s party in particular. And the way that provision worked, there is a grandfather provision, so as soon as the ACA was passed, you could potentially have been covered if you had existing coverage. But any new coverage that anyone got after that March 2010 date, the grandfather clause just did not apply.

So this was causing a lot of problems in the marketplace, so the President came out to the podium in the White House press room, and he said this: “Already people who have plans that pre-date the Affordable Care Act can keep those plans if they have not

changed.” That was already in the law. That is what is called a grandfather clause that was included in the law.

Today we are going to extend that principle both to people whose plans have changed since the law took effect and to people who bought plans since the law took effect. So if the grandfather clause is limited to plans that pre-date the implementation of Obamacare, where would the executive branch get the authority to extend the coverage of the statute to plans that were not covered by the law?

Attorney General HOLDER. Well, again, I do not know exactly what the basis is for that action. I am confident that the determinations that were made within the Administration are consistent with the law. I think we all need to pull back a little bit here. Pull back a bit. We have got 7.1 million who have signed up, people who have healthcare now who did not have it before.

Mr. DESANTIS. It does not excuse whether you are doing it. With all due respect, you can do good things or bad things—

Attorney General HOLDER. No, can I finish—

Mr. DESANTIS. But I think you are trying to—

Attorney General HOLDER. I have given you a chance to ask a question.

Mr. DESANTIS. I know, but my time is limited, sir. I understand what you are going to say.

Attorney General HOLDER. Well, let us go past 5 minutes then. How about that? And let us pull back a little back and see that people who did not have healthcare before now have it. People who did not have great healthcare before now have it. People who had pre-existing conditions are now covered. Younger people, like my kids who are unemployed, can stay on my healthcare plan, that there are going to be, you know, 7.1 million people signed up. There are substantially greater numbers of people in those other categories that I have mentioned. And let us look at that. Look at the totality of that before you start to pick at these things, which are not insubstantial. They are legitimate questions—

Mr. DESANTIS. But, Mr. Attorney General, the rule of law ultimately—we have a constitutional system. That is one of the things that makes our country unique from others is that you have separation of powers. This whole architecture was designed ultimately—

Attorney General HOLDER. And you tried to repeal it 50 times, and that is part of the constitutional system—

Mr. DESANTIS [continuing]. To protect individual freedom. And so, to say that, oh, well, people are now staying on their parents’ plans, that has nothing to do with the executive action that was taken in this instance, and we are trying to determine whether the President has gone beyond in this case by rewriting provisions of the statute. And basically you have simply referred to other analysis, but most of us on this Committee find that analysis has been wanting, and we do not think that it has been good.

Final thing, this Dinesh D’Souza prosecution, I know you are not going to comment on the ongoing investigation, but it was a straw donation reimbursement scheme is the allegation. The FBI did say that this was uncovered during a routine review of FEC filings. And so, my question to you is, to put aside this case, how would it even be possible if all you are doing is reviewing the FEC filings

to know that some of those donations have been reimbursed? Would you not need to actually have targeted one of those donors and done additional investigation? It just seems to me by simply reviewing the FEC filings that is not going to be sufficient.

Attorney General HOLDER. Well, I am not going to comment, as you said, on the ongoing investigation, but I can certainly tell you that information comes to the FBI, to the Justice Department in a variety of ways. And on the basis of the receipt of that information, determinations are made about what cases are going to be investigated, what cases are ultimately going to be prosecuted.

Mr. DESANTIS. But that is not really—

Mr. GOODLATTE. The time of the gentleman has expired. The Chair recognizes the gentleman from Missouri, Mr. Smith, for 5 minutes.

Mr. SMITH OF MISSOURI. Thank you, Mr. Chairman. Attorney General, a pleasure to have you here. Does Federal law prohibit the sale or possession of marijuana?

Attorney General HOLDER. Technically, yes.

Mr. SMITH OF MISSOURI. Technically. Is it not under the Controlled Substance Act of 1970 where it defines that as a Schedule 1 drug? So that is a fact, right? Correct?

Attorney General HOLDER. Yes.

Mr. SMITH OF MISSOURI. Okay. And whenever State law conflicts with Federal law, does Federal law take precedence?

Attorney General HOLDER. That is generally true. It is not always true.

Mr. SMITH OF MISSOURI. Would it be true in the case of the Controlled Substance Act of 1970?

Attorney General HOLDER. That is an interesting question. If a State, for instance, decided to decriminalize possession of a particular substance, there is at least an argument that can be made that the Federal Government could bring a supremacy clause suit against the State. But there is an argument that could be made that a State cannot be forced to criminalize something. So it is actually an interesting question.

Mr. SMITH OF MISSOURI. Is it, would you say, similar to the Arizona immigration case?

Attorney General HOLDER. No. There I think it is clear that the responsibility for the enforcement of immigration law is something that is clearly Federal in nature. There is not a dual responsibility as there is with regard to certain criminal laws.

Mr. SMITH OF MISSOURI. I thought it was interesting in that Arizona case that Justice Kennedy, who wrote the majority opinion, said "States may not pursue policies that undermine Federal law." And the Controlled Substance Act is a Federal law, and the State of Colorado is undermining that Federal law, correct?

Attorney General HOLDER. No. I mean, what we have said that we are looking at the way in which the law is being enforced or how we are going to enforce the law in Colorado and in Washington as well. We are going to apply those eight factors that we have put together, and we are going to use our limited resources to go after people who engage in the trafficking use of marijuana that has an impact on those eight factors.

Mr. SMITH OF MISSOURI. So if my fellow former colleagues in the State house and State Senate would say the State of Missouri does not want to participate in the Affordable Care Act, could or would you all sue the State of Missouri?

Attorney General HOLDER. Well, certain States have made that determination by not expanding Medicaid.

Mr. SMITH OF MISSOURI. So my constituents, if they do not sign up, they will not be penalized in their IRS forms?

Attorney General HOLDER. No, that is not the way the statute is written.

Mr. SMITH OF MISSOURI. Okay. Well, we know what the statute says in the Controlled Substance Act of 1970, and it says marijuana sale or possession is a violation of Federal law. I always visit my schools back home. I talk to the kids. And I always try to bring home the theme of being a responsible citizen to society and to obey the laws of the land. And one of the laws of the land, which is Federal law, from 1970, 10 years before I was ever born, that says that marijuana, the sale or possession, is a violation of Federal law. What do you say to those kids when you are in the classrooms and they ask why you choose to enforce certain laws and some laws you do not enforce?

Attorney General HOLDER. Well, first I would say that with regard to our eight enforcement priorities, the very first one, the thing that will bring about Federal involvement, Federal concerns, Federal action, is number one, preventing the distribution of marijuana to minors. We have limited resources. I do not think you are meaning to suggest that the Federal Government should prosecute every possessory marijuana case that exists in the United States, which technically, I suppose, we would have the ability to do. That is not what you are proposing, right?

Mr. SMITH OF MISSOURI. You know, the law of the land is the Controlled Substance Act of 1970 that says all marijuana, it is a violation of even one marijuana cigarette. That is what the law says, correct?

Attorney General HOLDER. So you are saying that we should prosecute every one of those cases—

Mr. SMITH OF MISSOURI. I am asking you. You are the Attorney General of the United States.

Attorney General HOLDER. And I am asking you a question, I think, legitimately in return to the question that you posed to me.

Mr. SMITH OF MISSOURI. I am asking why you fail to enforce the laws of the land, Attorney General.

Attorney General HOLDER. Your premise is wrong. We are enforcing the laws of the land. We are enforcing the laws—

Mr. SMITH OF MISSOURI. Does the law of the land say that under 1970 that the sale or possession of marijuana is illegal?

Attorney General HOLDER. We are enforcing the law consistent with the—

Mr. SMITH OF MISSOURI. And do States in the United States allow the sale of marijuana?

Attorney General HOLDER. We are enforcing the law consistent with those eight enforcement priorities. And again, the question I have for you which you have not answered is would you have us

prosecute every marijuana possession case that exists in the United States of America?

Mr. SMITH OF MISSOURI. Attorney General, when you actually answer my—

Attorney General HOLDER. Would you have us do that?

Mr. SMITH OF MISSOURI [continuing]. Colleagues' question, I would be more than happy to answer yours.

Attorney General HOLDER. I will take that as a no.

Mr. GOODLATTE. Thank you. The time of the gentleman has expired. The Chair recognizes the gentleman from Pennsylvania, Mr. Marino, for 5 minutes.

Mr. MARINO. Thank you. General, I want to talk to you about two issues. These are important to my district. One is the OC spray, the pepper spray, for Federal prisons, number one. And number two is going to be the DEA and prescription drug issues. So I think you may recall that we have had a couple of discussions on the pepper spray.

In August of 2012, the Bureau implemented a pilot evaluation of the pepper spray at seven high security institutions. In February of 2013 after 6 months' review period, data indicated that OC spray significantly reduced incident containment times. As a result of these findings, the pilot program was expanded, I believe, to include all high security prisons in the Federal system detention centers and jails.

In my district, the 10th District of Pennsylvania, we have the highest number of Federal prison workers of any district that I know of in the country. I hear from prison guards about their concerns for their safety. These concerns have only risen since the tragic death of Eric Williams—you and I were at his funeral—who was working in the Canaan Penitentiary and was brutally attacked by an attack. And since this horrific event, I have been asking for higher safety security measures for our guards as well as more staffing.

You were to give us a comprehensive report on the results of the spray. But you know something? Giving the results of the report really is not that critical to me. My question is, why have we not put the pepper spray into effect throughout the Federal system for not only those officers, but also individuals that work there?

Attorney General HOLDER. Congressman, if I could get back to you on that because we are all thinking that, in fact, as a result of that trial, the program has, in fact, been rolled out. But if that is not the case, I want to be able to respond to you in a way that is accurate.

Mr. MARINO. Let me help you out there. I think it has been rolled out for the official guards who are responsible and have supervision over the inmates. Where it has not been rolled out, and you can correct me if I am wrong later, is, for example, there was a supervisor in a kitchen in one of the prisons. He is not really a "prison guard."

Attorney General HOLDER. I see what you mean.

Mr. MARINO. But he was attacked, brutally attacked. And he was one person supervising about 20 people in that kitchen. So why would he or she in counseling and in any other situations, because

they have all been trained. You have made sure that they have all been trained on this. I think they should all have it.

Attorney General HOLDER. I see.

Mr. MARINO. And I would appreciate it if you would really kick that into gear as soon as possible.

Attorney General HOLDER. All right. I understand what you are saying. All right. We will look at that. We have, I think, a new and different relationship with the union and with, I think, the people they represent, but that is something that I think is worthy of examination. I understand what you are saying.

Mr. MARINO. Thank you. Believe me, I have the utmost respect for the Justice Department. That was the pinnacle of my career when I was there. I am going to switch over to prescription drugs now and DEA. You underscored the Department's commitment to fighting the rampant abuse of prescription drugs and heroin. You know the epidemic that that has caused, and I commend you for that effort.

But I was troubled by some language that you chose, noting the Department's enforcement initiatives. At least I inferred you seem to equate legitimate supply chain businesses to illicit narcotics cartels. I found that disappointing. This mindset, it is extremely dangerous to legitimate business. As a matter of fact, how am I reading this, and this is why I introduced a bill, H.R. 4069, Ensuring Patient Access and Effective Drug Enforcement Act of 2014. My legislation would encourage more collaboration—the operative term “more collaboration”—between DoJ and legitimate companies trying to work with you to prevent prescription drug abuse.

My understanding is the DEA now is going to the drug companies and saying you should have realized that the amount of drugs that you were sending out to this particular individual, you should have made the determination that that individual was abusing drugs. And then these legitimate businesses are being held responsible for that and fined and perhaps put out of business.

So I am asking if the people of DoJ in this area and DEA talk with these companies, sit down and put together guidelines, because they have told me they have asked DoJ, DEA, well, what are the guidelines. Can you give us some ideas, because when I was a prosecutor both at the State and Federal level, shipping companies and even pharmaceuticals brought information to our attention saying, hey, we think there may be an issue here going to this particular address. You might want to look into it. So I am asking you to set guidelines up for these companies so they can work very closely with you so we can, if not eliminate, significantly curtail the abuse of prescription drugs. Could you do that?

Attorney General HOLDER. Sure. And I certainly did not mean to imply, and I do not think I said in the remarks I made, for instance, referring to that tape that was made, that companies who are legitimately producing these very useful products, they cannot be held responsible for the distribution chain down the road where doctors, people steal, you know, doing a whole variety of things. I do not want to cast that wide a net.

And to the extent that there are concerns by people and industry, I would more than welcome a conversation. Perhaps you could facilitate—

Mr. MARINO. I would love to.

Attorney General HOLDER [continuing]. To have that conversation because the reality is we cannot, and this is the thing that concerns me, that there are people who have legitimate needs for these kinds of prescriptions, these kinds of substances that relieve pain. And we cannot in our desire, our legitimate desire and one that I am pushing, to stop opioid use, which potentially leads to heroin involvement. We cannot lose sight of the fact that there are good people, sick people, good companies who employ good people who are trying to do the right thing.

Mr. MARINO. I see my time has expired, but if you find yourself not having something to do one some evening, which you probably never do, I would love to discuss the issues concerning mental health and the criminal justice.

Attorney General HOLDER. Okay.

Mr. MARINO. Thank you, sir. I yield back.

Attorney General HOLDER. Thank you.

Mr. GOODLATTE. The Chair thanks the gentleman. And, General Holder, he is the 34th Member to ask questions of you. So we thank you very much for joining us today and answering a lot of questions from a lot of Members of this Committee.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

And, General Holder, we hope that you will answer those questions in writing in a reasonable period of time.

This hearing is adjourned.

Attorney General HOLDER. Thank you, Mr. Chairman.

[Whereupon, at 1:47 p.m., the Committee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

Questions for the Record submitted to the Honorable Eric H. Holder, Jr., Attorney General, United States Department of Justice, Washington, DC*

BOB GOODLATTE, Virginia
CHAIRMAN

1. JAMES SLIMM (Virginia), JR., Wisconsin
HOWARD COBLE, North Carolina
LAWRIE GREGG, Texas
STEVE CHABOT, Ohio
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TOM MARINO, Pennsylvania
TROY SOWY, South Carolina
PAUL B. LARSON, Virginia
BLAKE FARRINGTON, Texas
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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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May 28, 2014

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DAVID COLEMAN, Washington

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
Washington, D.C. 20530


Dear Attorney General Holder,

The Judiciary Committee held a hearing on "Oversight of the United States Department of Justice" on Tuesday, April 8, 2014 at 10:00 a.m. in room 2141 of the Rayburn House Office Building. Thank you for your testimony.

Questions for the record have been submitted to the Committee within five legislative days of the hearing. The questions addressed to you are attached. We will appreciate a full and complete response as they will be included in the official hearing record.

Please submit your written answers by Wednesday, July 9, 2014 to Kelsey Deterding at kelsey.deterding@mail.house.gov or 2138 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact or at 202-225-3951.

Thank you again for your participation in the hearing.

Sincerely,

Bob Goodlatte
Chairman

Enclosure

*The Committee had not received a response to these questions at the time this hearing record was finalized and submitted for printing on July 15, 2014.

The Honorable Eric H. Holder, Jr.
 May 28, 2014
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QUESTIONS FOR THE RECORD FROM REPRESENTATIVE CONYERS:

1. On January 17, 2014, President Obama delivered a speech on signals intelligence reform at the U.S. Department of Justice. In his remarks, the President acknowledged that “the same technological advances that allow U.S. signals intelligence agencies to pinpoint an al Qaeda cell in Yemen or an email between two terrorists in the Sahel, also mean that many routine communications around the world are within our reach.” These expanding capabilities place “fewer and fewer technical constraints on what we *can* do. That places a special obligation on us to ask tough questions about what we *should* do.”

President Obama then listed a series of executive actions and proposed legislative reforms to the government’s signals intelligence capabilities. At our April 8 hearing, Attorney General Holder testified to two statutory authorities that may be subject to those reforms: Section 215 of the USA PATRIOT Act, and Section 702 of the Foreign Intelligence Surveillance Act.

In his January 17 remarks, the President also committed to more transparency in the government’s use of national security letters. He directed the Attorney General to amend the rules for the gag orders that accompany NSLs, “so that this secrecy will not be indefinite.” I view this change as the bare minimum reform necessary to the NSL statute. What reforms will you institute? When will they be in place?

2. In those remarks, the President observed that there is “an inevitable bias not only within the intelligence community, but among all of us who are responsible for national security, to collect more information about the world, not less.” That observation is astute. Too often since the attacks of September 11, 2001, the civilian leadership of this government has deferred to an intelligence community that is rightly preoccupied with national security—but not always equipped for a robust debate about our civil liberties.

Will you commit to working with the House Judiciary Committee to correct that bias? Will you help us chart a course for surveillance reform that better accommodates our right to privacy?

3. On March 26, 2014, a federal jury convicted Sulaiman Abu Ghaith of conspiring to kill Americans and providing material support to terrorists. Abu Ghaith is Osama bin Laden’s son-in-law and the most senior al Qaeda operative to have been tried in civilian court yet. He was convicted just 13 months after his arrest.

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By comparison, so-called "9/11 mastermind" Khalid Shiekh Mohammed and his four co-defendants have been in U.S. custody for a decade, and their military commission in Guantanamo has struggled for years to proceed just through the pretrial phase.

Does the Department's victory in the Southern District of New York put to rest the argument that our civilian law enforcement system is somehow not equipped to convict terrorists and keep us safe?

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QUESTIONS FOR THE RECORD FROM REPRESENTATIVE STEVE KING:

On February 27, 2014, the White House, Office of the Press Secretary, released a Presidential Memorandum entitled "Creating and Expanding Ladders of Opportunity for Boys and Young Men of Color." That Presidential Memorandum states "I am establishing the My Brother's Keeper initiative, an interagency effort to improve measurably the expected educational and life outcomes for and address the persistent opportunity gaps faced by boys and young men of color. The initiative will help us determine the public and private efforts that are working and how to expand upon them, how the Federal Government's own policies and programs can better support these efforts, and how to better involve State and local officials, the private sector, and the philanthropic community." The Attorney General is listed as one of the members of the My Brother's Keeper Task Force.

First, why does this initiative not include boys and young men of all racial and ethnic groups? Second, and focusing on a specific example, could one result of the initiative on two brothers in the same home (with the same white or Asian mother, but one with a black or Latino father and the other with a white or Asian father) be that one brother would be treated differently under the initiative than the other brother? Or would both such brothers be allowed to participate in programs created under the initiative?

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QUESTIONS FOR THE RECORD FROM REPRESENTATIVE ROBERT C. "BOBBY" SCOTT:

1. The Holder memo sets out the Department's new policies regarding when to charge mandatory minimums in drug cases. There are reports that some line AUSAs and districts are choosing to disregard the memo. What will the Department do to enforce that its new policies are being implemented uniformly?
2. There are reports that certain line AUSAs and districts charging multiple 18 U.S.C. 924(c), which result in 5-, 7-, 10-, and 3-year mandatory minimum sentences that must consecutively to any other sentence and, often, with each other. This leads to lengthy mandatory minimums that judges do not have the discretion to circumvent in appropriate cases and exacerbates existing problems associated with mandatory minimums and prison overcrowding. Does the Department intend to issue a memo instructing that that only one such charge should be brought against a defendant?
3. There are reports that certain line AUSAs and districts threatening to file 21 U.S.C. 851 enhancement notices in order to coerce defendants to plead guilty. This punishes defendants for exercising their constitutional right to go to trial. It also exponentially increases the mandatory minimums associated with the crimes. Some AUSAs do not use them at all, while others appears to use them vindictively to punish defendants who do not accept their plea offers. Does the Department intend to issue a memo instructing that that this severe enhancement is meant only for use in exceptional circumstances?
4. What is the present policy of the Department of Justice in prosecuting adults who have sex with children? Is there a difference in prosecution between those who pay for the sex and those who do not and is it the policy of DOJ that paying for the sex reduces the seriousness of the crime? For example, the FBI's Innocence Lost Initiative focused on rescuing victims of sex trafficking and prosecuting the traffickers, but not on prosecuting the purchasers.
5. Attorney General Holder has stated that the Department of Justice was investigating whether high frequency trading violates insider trading laws. In addition to the criminal investigation, are you coordinating with the Securities Exchange Commission and the Consumer Financial Protection Bureau to prospectively prohibit such acts in the future?

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QUESTIONS FOR THE RECORD FROM REPRESENTATIVE ZOE LOFGREN:

Bulk Collection under Section 215

1. There have been reports that the President's legislation will limit only the bulk collection of telephone metadata. To your knowledge, is the President's legislation confined to just changing the bulk collection of telephone metadata?
2. It has also been reported that the President's proposal might require telephone companies to collect or store more information than they currently do. For instance, it is unclear whether telephone companies have to keep call records made on unlimited, flat-rate calling plans for 18 months. Are there additional burdens on telecom companies, storage requirements or otherwise, that this proposal may impose?

Section 702

1. In a March 28 letter to Senator Ron Wyden, Director Clapper stated that, using section 702 authority, intelligence agencies had queried US Citizen data it collected incidentally.
 - a) Doesn't the Constitution require probable cause before allowing these kinds of searches on US Citizens? And if not
 - b) What legal standard must be met before querying incidentally collected information on US citizens? Is there a judicial review before such queries?
2. Section 702 allows intelligence agencies to collect the communications of "non-U.S. persons" reasonably believed to be *outside* the United States, even if they are in communication with a US citizen located within the United States.

It has been reported that an intelligence agency merely needs to be 51% certain that any given side of a communication was by a non-US person located outside the US to allow it to collect the communication. For all intents and purposes, this is statistically a coin-flip.

In light of the probable cause requirements under the Electronic Communications Privacy Act before seizing a communication is allowed and the protections offered by the Fourth Amendment, is it the opinion of the DOJ that this metaphorical coin-flip is adequate protection of a US citizen's privacy who may be in contact with a foreign entity?

3. Given that US service providers have servers located all over the world, doesn't this potentially make every communication between a user and a service provider collectable under 702 without a warrant?

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4. If it were so inclined, are there any legal limitations that would prevent the collection of all web communications between a US citizen and a foreign service provider by an intelligence agency using section 702 authority?

Receiving Data from Foreign Intelligence Agencies

1. In the DOJ's opinion, are there any legal or Constitutional limitations on when or how US intelligence agencies can receive data on US citizens from foreign agencies?
 - a) What legal standard must our intelligence agencies meet before being allowed to either request, or receive unsolicited information on US citizens from foreign intelligence agencies?

Defining a "Search"

1. In the opinion of the DOJ, does passively or incidentally collecting and storing communications in a government database constitute a "search" of those communications, or would the DOJ not consider it a search until the database is queried for those messages?

Collection of Public Data

1. What is the DOJ's opinion on the legality of the collection, long-term storage, or analysis of publicly available information?
 - a) If so inclined, could the US Government legally collect and store indefinitely every bit of information that an individual shares with the public for later data analysis?
 - b) Are there any limitations on the government's collection or use of information that individuals share with the public?
2. What is the DOJ's opinion on the legality of using drones for the surveillance of people or property without a warrant or court order?

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QUESTIONS FOR THE RECORD FROM REPRESENTATIVE STEVE COHEN:

According to the Boston Herald the Administrator of the Drug Enforcement Administration, Michele Leonhart, speaking to the winter meeting of the Major Counties Sheriffs' Association, "slammed" President Obama's statement to David Remnick in the January 27th issue of the New Yorker that marijuana is not more dangerous than alcohol, a fact that's been well documented. And she recently testified before a House subcommittee that she and the DEA are "fighting back against" the acceptance of regulation of marijuana. She also said that the idea "just makes [the DEA] fight harder."

1. Given the public statements that both you and President Obama have made about reducing the criminalization of marijuana and your Department's decision to respect state laws concerning marijuana, isn't this rank insubordination?
2. Have you given any consideration to replacing her with someone more aligned with the Administration's policies and priorities?

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QUESTIONS FOR THE RECORD FROM REPRESENTATIVE TED DEUTCH:

During the April 8, 2014 oversight hearing of the US Department of Justice in the House Judiciary Committee, you responded to my question and informed the Committee that since 2013 the Department of Justice has secured guilty pleas from employees at JP Morgan, Goldman Sachs, Morgan Stanley, Credit Suisse, UBS, Robobank, ICAP, Galleon Group, SAC Capital, and Stanford Financial. Please provide for each of the guilty pleas obtained from these employees:

- o The caption of those cases;
- o The crimes for which the convictions were sought and obtained;
- o The outcome of the case, including the criminal penalties and/or civil penalties obtained; and
- o Which of these guilty pleas involved a Wall Street firm or bank CEO, CFO, senior manager, board member, president, or other executive position.