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ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951
<http://www.house.gov/judiciary>

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June 27, 2012

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 Department of Justice" on Thursday, June 7, 2012 at 9:30 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 to Kelsey Deterding at kelsey.deterding@mail.house.gov or 2138 Rayburn House Office Building, Washington, DC, 20515 by August 8, 2012. If you have any further questions or concerns, please contact Holt Lackey, Chief Oversight and Investigations Counsel, at holt.lackey@mail.house.gov or at 202-225-3951.

Thank you again for your participation in the hearing.

Sincerely,



Lamar Smith
Chairman

United States House of Representatives

Committee on the Judiciary

Questions for the Record

Questions from Representative Lamar Smith

I have learned through several channels of reports that certain recipients of grants from the Department of Health and Human Services (“HHS”) and the Centers for Disease Control (“CDC”) have used those federal funds to advocate for new or reformed legislation in state and local legislatures, councils, and departments.

I understand that on March 16, 2012, a group named “Cause of Action” submitted to the Department of Justice a letter detailing instances of this conduct and requesting an investigation.¹ A recent letter from Senator Collins to Secretary of Health and Human Services Kathleen Sebelius also describes similar activity.²

The conduct detailed in both the Cause of Action letter and the letter from Senator Collins appears to contravene the Anti-Lobbying Act, codified at 18 U.S.C. § 1913—which the Justice Department is responsible for enforcing—and which prohibits the use of appropriated funds, “directly or indirectly . . . to influence in any manner” any state or local official to take any action for or against legislation.

Moreover, as I noted in the Committee’s report of April 30, 2012, detailing the Obama Administration’s consistent disregard of the rule of law, “the Justice Department . . . has repeatedly put its partisan agenda ahead of its Constitutional duties [to enforce the law].”³ The conduct reported here appears to be one more example of the Administration’s campaign to enforce its own policy goals regardless of federal prohibitions to the contrary: HHS and the CDC are allowing federal funds to be used unlawfully to impose the administration’s policy wish list on states and localities.

Please provide written responses to the following questions:

1. Does the Anti-Lobbying Act prohibit the expenditure of federal grant funds to persuade state and local governments to adopt or modify laws and regulations?

¹See <http://causeofaction.org/about/>.

²See Letter from Sen. Susan Collins to Hon. Kathleen Sebelius, Secretary of the Dep’t of Health and Human Services (May 1, 2012), *available at* <http://www.collins.senate.gov/public/index.cfm/press-releases?ID=5eb56ba5-4c87-4e41-942d-8d16575f0d05>.

³See U.S. House of Representatives, Committee on the Judiciary, *The Obama Administration’s Disregard of the Constitution and the Rule of Law* (April 30, 2012), *available at* http://judiciary.house.gov/issues/issues_Reports.html.

2. Are you aware of the conduct of HHS and CDC grantees described by Cause of Action and by Senator Collins in their respective letters? If so, is the Justice Department investigating that conduct?
3. How did you learn of the reported conduct by HHS and CDC grantees? Have you ordered, or do you plan to order, an investigation of the reported HHS and CDC grantee conduct?
4. In 2002, Congress amended the Anti-Lobbying Act to ban all expenditures of federal funds to lobby or urge state and local governments to change their law. What has the Justice Department done to implement and enforce these amendments? Has the Justice Department given any guidance to federal agencies, and specifically HHS or CDC, regarding the prohibitions and scope of the 2002 amendments?

Questions from Representative Elton Gallegly

Please provide:

1. The number of arrests, prosecutions, and convictions for Medicare and Medicaid fraud cases, the amount of taxpayer money stolen in those cases and the amount recovered for the taxpayer.
2. The number of arrests, prosecutions, and convictions for specific Medicare and Medicaid fraud enforcement actions taking place in California, in southern California, and specifically in Los Angeles and Glendale.
3. The number of worksite enforcement prosecutions for each of the last four years, and the number of prosecutions of illegal workers who have used fraudulent documents.

Questions from Representative J. Randy Forbes

1. I know you have filed actions against Arizona, South Carolina, Utah and Alabama – all Republican Governors. Would you give us a list of any similar actions, of a similar profile, you have filed against any states with Democratic Governors?
2. Please provide a list of any and all meetings with the White House and members of the campaign about any of the messaging that took place regarding the cases mentioned above, as well as the decisions to not take action against states with Democratic Governors?

Questions from Representative Steve King

USDA Discrimination Settlements

1. How much money has been distributed from the *Pigford I* and *Pigford II* settlements?
 - a. How many plaintiffs have received a settlement?
 - b. Which lawyers and law firms received compensation from the *Pigford* settlement funds?
 - c. How many attorneys were involved in the settlement?
 - d. How were the fees calculated and distributed?
2. How many claimants who were denied relief in *Pigford I* took part in *Pigford II*? How many of those claimants were awarded a settlement?
3. Were all of the named plaintiffs in the original *Pigford* suit successful? Did they all eventually receive a settlement from the United States government?
4. What is the status of the required GAO audits regarding the claims process?
5. How many outstanding claims exist?
 - a. How many have applied?
 - b. How many have been paid?
6. What is the geographic breakdown of *Pigford* claimants?
7. Were you aware of the number of black farmers and black farms in America when you announced the *Pigford II* settlement on February 18, 2010?
8. Please provide, in a searchable format, the names of all claimants, the dates of their applications, their addresses, and the dates and outcomes of their applications.
9. What number of *Pigford I* and *Pigford II* claimants were denied a settlement?
10. Please produce a report describing how the Department of Justice's Judgment Fund operates. What is the size of the Judgment Fund? How much is annually paid from the Judgment Fund?
11. What is the current dollar amount of cash distributions to claimants in the *Pigford II* settlement?

12. What is the total dollar amount of loan forgiveness of claimants in the *Pigford II* settlement?
13. What entity processes the settlements for *Pigford I* and *Pigford II*? What entity receives the claimant's application? Who reviews the application? What entity distributes cash settlements? What is the oversight process of this entity?
14. Is the DOJ aware of any (new or old) allegations of fraud regarding the disbursement of funds relating from the *Pigford*, *Garcia*, *Love*, and *Keepseagle* settlements? Please describe them.
15. Has the DOJ undertaken any investigations into alleged fraud in these settlements or does it plan to do so in the future?

Iowa SAVE denials

The Secretary of State of my home state, Iowa, along with other states has requested the use of the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) program as an aid in determining the eligibility of voters. According to DHS's Privacy Impact Assessment for SAVE, IIRIRA provides "for customer agencies to use SAVE for any legal purpose such as background investigations and voter registration."

DHS has responded to the Iowa Secretary of State's office that "SAVE personnel have contacted the Office of the Iowa Secretary of State on April 17, 2012, to better understand Iowa's intended use (e.g., verification of existing voters or registering voters) and determine if it is able to comply with all SAVE procedures, including providing the numeric identifiers found on each voter's immigration-related documents and copies of those documents, if requested. Once we receive more information from Iowa, we will be in a position to respond to the request." Despite providing the information requested by DHS, the State of Iowa has yet to hear back from DHS.

In a letter dated May 10, Colorado was denied use of the SAVE system by DHS saying that "While this additional information (alien registration numbers for registered voters) may facilitate the use of SAVE for this verification purpose, we must further assess serious legal and operational issues before we can make a determination on your request."

Additionally, DHS has stated in its letter to Iowa that USCIS needs to ensure that verifying the citizenship status of current and future voters using the SAVE Program does not conflict with the Voting Rights Act. As such, USCIS has sought guidance from the Department of Justice Voting Rights Section on this issue and we are now waiting on the Department's response.

1. Has the Department provided USCIS with an opinion as to whether verifying the citizenship status of current and future voters using the SAVE Program conflicts with the Voting Rights Act?
2. If not, when can it be expected? It is imperative that it is provided in a reasonable time (at least 120 days) before the election.

Internet Gambling

1. How does the Department explain its reversal of its decades long interpretation of the Wire Act? Seeing as the Wire Act is not the only provision making internet gambling illegal, couldn't that reversal be seen as in direct defiance of those laws?

GPS Tracking

In early June, 2012, the DOJ told Ninth U.S. Circuit Court of Appeals that it still has the right to place Global Positioning System tracking devices on cars without obtaining a search warrant—despite a January Supreme Court ruling that the warrantless installation of such a device violated the Constitution.

A Department spokesperson said “that a warrant is not needed for a GPS search, as the Court...did not resolve that question,” but said that the department has “advised agents and prosecutors going forward to take the most prudent steps and obtain a warrant for new or ongoing investigations” in most cases.

1. How many GPS tracking devices or other tracking devices did the DOJ/FBI have at the time of the Supreme Court's decision in *United States v. Jones* ?
2. How many of those had to be subsequently turned off?
3. How did the DOJ and the FBI recover those devices that were turned off?
4. How has the Bureau and the DOJ advised agents to deal with tracking devices going forward?
5. Why did the Department of Justice not testify during the recent May 17th hearing of H.R. 2168 (the Geolocation Privacy and Surveillance Act)? Further, with June 12th rapidly approaching, has the Department of Justice prepared its answers to Senator Franken's questions regarding the use of GPS technology and the Department's possible evasion of the *Jones* decision?

Questions from Representative Louie Gohmert

1. Attorney General Holder, please clarify your testimony before this Committee on June 7, 2012 about former Attorney General Michael Mukasey being briefed during his tenure about operations permitting guns to walk into Mexico.

At that hearing, you responded to me stating “[a]nd that is in stark contrast to what happened to my predecessor Attorney General Mukasey when he was briefed about the transmission of guns to Mexico and, as far as I can tell, did far less than what I did.”

Five days later in a Senate Judiciary Committee hearing, you gave a similar response to Senator Cornyn regarding Attorney General Mukasey being briefed on a gunwalking operation called Wide Receiver.

However, in a June 18, 2012 letter responding to Senate Judiciary Committee Ranking Member Charles Grassley, Acting Assistant Attorney General Judith Appelbaum retracted your statement to the Senate Judiciary Committee claiming that former Attorney General Mukasey was briefed on Wide Receiver. Please review the definition of “inadvertent” and explain how comments made in two different locations five days apart could be inadvertent rather than false. Further, have you apologized to former Attorney General Mukasey? Additionally, did your “inadvertent” comments about former Attorney General Mukasey result from the “political dimensions” that you said were part of your role as Attorney General?

Questions from Representative Ted Poe

1. Are you familiar with the Pew study⁴ showing that there are almost 2 million ineligible voters on the rolls in this country including roughly 1.8 million dead people?
2. Considering that many of our elections are determined by a few hundred or a few thousand votes, this is obviously very significant. If our current Voter identification systems across the country are this flawed, how else can we ensure the validity of our elections without Voter ID? Clearly the current systems are not working.
3. Can you tell us today that you are 100% confident that voting fraud has not – or could not – sway the decision of a US election?
4. Are you familiar with the Florida Secretary of State's discovery of 53,000 dead voters⁵ on the rolls when he started using the Social Security Death Index for list matching?
5. Section 8 of the National Voter Registration Act gives you power to bring cases against states to ensure dead and ineligible voters are not on the rolls. How many Section 8 cases has your voting section brought since you became Attorney General?
6. Why have you not brought more cases considering that independent analysis finds that as many as 1.8 million dead voters could be on our voting rolls? How can you explain this lack of action on the part of the Department of Justice?

Fast and Furious

1. In December of last year I asked you if there was any effort currently underway by the ATF or any other agency to locate and account for the weapons that were sold during operation fast and furious in the Houston area. What should I tell my constituents who are concerned about the prospect of these weapons falling into criminal hands?
2. Is the Department of Justice currently investigating any of those involved in Fast and Furious for crimes? Has anybody been fired?
3. Do you still stand by your contention you have made in the past that no senior DOJ officials knew about Fast and Furious?
4. Has any progress been made since the last time you came before the committee in locating any of the hundreds of missing weapons?
5. Do you think it is proper to have people who were involved in Fast and Furious who have demonstrated such recklessness and poor judgment still working at the ATF? Some in managerial positions?

⁴ See <http://www.pewstates.org/research/reports/inaccurate-costly-and-inefficient-85899378437>.

⁵ See <http://www.foxnews.com/politics/2012/05/17/florida-voter-rolls-suspected-having-roughly-53k-dead-2600-ineligible/>.

6. Are any of these individuals in positions where decisions they make could put lives jeopardy? Has anybody been fired or punished in any way since you last came before the committee?

Questions from Representative Mark Amodei

State Criminal Alien Assistance Program (SCAAP) Questions:

I, along with Chairman Smith and several of my other House colleagues, sent a letter to your attention on June 13, 2012, regarding changes you have recently made to the SCAAP reimbursement policy for localities housing “unknown” criminal aliens in their jails.

1. What possessed the Department to, in May 2012, unilaterally change the terms under which SCAAP reimbursement is provided to local law enforcement? Did you not think that you needed to confer with Congress, the body that authorizes and appropriates the funds for this program, before doing so?
2. When can we expect you to rescind this reimbursement policy change? If you refuse to do so, what is your statutory/legal basis for refusal?
3. Why do you believe it is appropriate to find cost-savings for the Department on the backs of local communities by refusing to reimburse them for criminal, illegal aliens you and the Department of Homeland Security have failed to track and to remove? How could you achieve savings in other areas of the Department instead, allowing SCAAP funds to be disbursed as Congress intended and authorized?
4. Do you recognize that local communities may have to release these criminals, who have repeatedly shown no respect for the rule of law, if they cannot find a way to pay for them to stay in their jails? Do you think this is appropriate? What solution would you propose to avoid this outcome?

Tribal Law Enforcement Questions:

As you may know, this Committee just reauthorized the Violence Against Women Act. Domestic violence, rape, and sexual assault on tribal lands are epidemic. Members of tribes in my district have expressed frustration that federal investigators and prosecutors are not, in their opinion, doing enough to pursue these and other violent crimes on tribal lands. FBI Director Mueller mentioned in his testimony before the Committee earlier this year that the FBI is aggressively investigating such crimes, particularly sexual assault and child sexual assault.

1. Could you tell me about the initiatives (both investigative and prosecutorial) you have launched to combat various kinds of violent crime on tribal lands and the successes you have had to date? Are there any specific steps you’re taking to deal with the problem of domestic violence on tribal land involving non-Indian-on-Indian violence? What is the standard protocol and timeline for handling those kinds of cases?
2. When you have declined to pursue or to prosecute criminal cases on tribal lands, is there a trend in your reason(s) for doing so? If so, what is that trend(s)?

3. How many prosecutors have you assigned to handle tribal criminal prosecutions? How many law enforcement agents have you assigned to handle tribal criminal investigations? What additional resources do you need?
4. How does the referral process work between tribes and federal law enforcement? Can this process be strengthened, in your opinion? If so, how?
5. What is being done to enforce the Indian Arts and Crafts Act of 2010, to provide trademark protection to Indian artwork against counterfeiters?

Department Conference Policy:

In April 2008, the Department of Justice's Financial Management Division issued a policy requiring special approval for all requests to hold "a predominately internal event in a non-federal facility" at, among other places, locations "known for gambling," "considered a tourist attraction or common vacation location," or "any resort facility or resort location."⁶ Reno, Nevada and Lake Tahoe, Nevada were both specifically listed as examples of locations requiring special approval.

It is my understanding that the Department has continued this policy in the current Administration.

I have been informed that because of this policy, some well-respected judicial training institutions, including the National Judicial College and the National Council for Juvenile and Family Court Judges, both located in Reno, Nevada, have had difficulty obtaining approval to host essential training events in their own backyard. This policy leads to needless extra cost to the taxpayer and to these institutions, as they must scramble to secure, to travel to, and to host an event at a remote location not on the Department's list.

1. Could you confirm that this special approval policy for certain conference locations is still in effect in your Department? If so, has it been reformed in any way?
2. If this policy is still in effect, would you consider making an exception to the policy for those institutions that are headquartered in special-approval locations and that desire to hold essential meetings or conferences in their home city?

⁶ See U.S. DEPARTMENT OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, AUDIT DIVISION, AUDIT OF DEPARTMENT OF JUSTICE CONFERENCE PLANNING AND FOOD AND BEVERAGE COSTS, AUDIT REPORT 11-43, at App. III, pg. 87 (Sept. 2011, revised Oct. 2011), <http://www.justice.gov/oig/reports/plus/al143.pdf>.

Questions from Representative Robert C. “Bobby” Scott

Faith Based Initiative Questions:

First I’d like to thank you for your responses to my questions for the record submitted after your last appearance before this Committee on December 8, 2011. We just received those responses earlier this month.

With regard to my questions about the Faith-Based Initiative, I want to thank the Department for finally admitting in no uncertain terms that notwithstanding federal statute explicitly prohibiting discrimination based on religion, this Administration does in fact permit discrimination based on religion with federal funds. So once again, now in the 21st century, an employer using government money can tell a job applicant – the most qualified job applicant – we don’t hire your kind, even for a job paid for with taxpayer dollars.

On that note, I do have some follow up questions and clarifications about the process by which this discrimination is permitted.

1. The response the Department provided to explain the self-certification process seems very different from the “case-by-case” process as explained by Joshua DuBois, Special Assistant to the President and Executive Director of the White House Office of Faith-based and Neighborhood Partnerships. He said, “On the hiring issue, . . . [w]e will work with the White House counsel and with the Department of Justice, the attorney general, to fully explore that individual case and make a recommendation to the president. At the end of the day, he will determine what he thinks the best path forward is.”⁷ Mr. DuBois has explained that this process was put in place because “[t]he President has said that he wants to fully understand the legal and policy intricacies of this issue before making decisions. In the case of co-religious hiring . . . , he wants to fully examine the issues on a case-by-case basis before moving forward.”⁸
 - a. Have you heard of the process Mr. DuBois describes?
 - b. Are you or other components of the Department involved in the specific review that Mr. DuBois describes?
 - c. If the President wants to fully examine issues and fully understand the legal and policy intricacies, is the self-certification process employed by the Department robust enough?
2. The response by the Department refers to an OJP policy that allows for case-by-case review. I believe that policy is laid out in a document dated October 2007. That document states that “exemptions should be granted” if the religious organization applying for funds certifies the

⁷ See <http://www.pewforum.org/Social-Welfare/Government-Partnerships-With-Faith-Based-Organizations-Looking-Back-Moving-Forward.aspx> .

⁸ See http://www.usaid.gov/our_work/global_partnerships/fbci/dubois_092209.html .

three statements set forth in the document, “unless the funding entity has good reason to question the certification.”

- a. Is such an exemption granted only for the duration of the funding agreement with the Department? Or is the exemption standing, so that if a faith-based organization is granted an exemption once it could apply for other grants without submitting a new certification?
 - b. I read this process as a self-certifying process and the funding agency can only deny a request to discriminate if it “has good reason to question the certification.” Is that your understanding of the policy or is there an actual review?
 - c. If there is an actual review, who receives the certification and makes a determination? And on what basis is the certification reviewed and the determination made? In other words, what are the standards applied to such a review, as separate and distinct from the standards or statements of certification?
 - d. If there is no such review, then why does the Administration claim a case-by-case review process? If there is no such review, then can't anyone claim the exemption with no review and no repercussions?
 - e. Please clarify whether the eight faith-based organizations that submitted certificates to OJP in FY2008 were *granted* exemptions? Was there a review before the exemptions were granted?
 - f. Have any requests for exemptions been received since FY2009? If so, please provide details about whether the exemptions were granted and any review or process completed by the Department pertaining to those requests for exemptions.
3. Regarding the legal authority to discriminate and its requirements and limitations:
- a. What notice are job applicants required to be given that anti-discrimination laws do not apply for a particular job opening?
 - b. If it is not illegal to discriminate, what if any recourse and remedy does a victim of discrimination have?
 - c. Does an entity need “certification” to discriminate? What authority does the Department have to require certification as a condition to discriminate? Why is certification necessary? Under current law, a faith based organizations using its own money may discriminate and may use its status as a faith based organization as a defense in court.

Why is the process different when a faith based organization is discriminating using federal taxpayer dollars?

Questions about the Pardon Process

1. Thank you for your responses we received on June 5, to questions for the record concerning the December *Washington Post* article about potential bias in recommendations to the President about pardon applications. The story found that white applicants were four times as likely as applicants of color to receive presidential pardons. You assured us that you were undertaking a statistical study and making changes such as instituting an office diversity policy, Spanish language materials and a frequently asked questions section for the website. "These changes," you wrote, "reflect the Department's commitment to the integrity of the executive clemency process, and to the equal and fair evaluation of all applicants." The December *Washington Post*/ProPublica series recounted disturbing evidence that appears to point to racial disparity in the granting of pardons. How will the measures you outlined in your June 5 response address this problem?
2. You mentioned in your responses that the *Washington Post*/ProPublica accounts alleging racial bias in pardon grants did not control for, among other things, expressions of remorse and candor. The grant outcome suggests that whites may be four times as remorseful and candid as people of color. Will your statistical study be controlling for and/or examining how expressions of remorse and candor correlated with race?
3. You mentioned that first among the things the OPA looks for in a clemency candidate is the severity of the sentence. Sentences are often excessive and unduly severe. Given this shared concern, I wonder whether you were struck, as I was, by the fact that of the thousands of applications for commutation made between 2001 and 2009, only 6 received positive recommendations from the Pardon Attorney. Even given a totality of the circumstances approach, are you concerned about the paucity of positive recommendations during the latter period continuing up to now and, if so, how would you propose to increase the number of favorable recommendations?
4. A story published by the *Washington Post* in collaboration with the investigative journalism organization, ProPublica on May 13, 2012 contained allegations that the Pardon Attorney misled the President of the United States about support for a clemency petitioner, Clarence Aaron. Specifically, the account stated that the Pardon Attorney so misrepresented the support for Mr. Aaron that Kenneth Lee, the attorney responsible for handling the case at the White House Counsel office, said that the Pardon Attorney had "presented the views of [U.S. Attorney Deborah] Rhodes and [the sentencing judge, Charles] Butler "in the least favorable light to the applicant." The article states, "[h]ad he read the statements at the time, Lee said, he would have urged Bush to commute Aaron's sentence."

- a. In light of your stated commitment to a fair evaluation and an office that operates with integrity, what steps are you taking, or plan to take, to investigate the allegations about the Office of the Pardon Attorney's handling of this case and its recommendation to the President?
- b. In light of the allegations that the President was misled by the Pardon Attorney as to the support for Clarence Aaron's commutation, what steps do you plan to take to investigate denials in what might be other deserving applications for commutation that have received negative recommendations from the Pardon Attorney?
- c. Given that the President of the United States is the institutional client of the Pardon Attorney and given that an attorney has a professional obligation to be forthcoming and truthful in dealings with a client, will you direct an inquiry into the Pardon Attorney's actions by the Office of Professional Responsibility in addition to any other investigative actions?

Questions from Representative Jerrold Nadler and Representative Steve Cohen

In response to a question asked of you regarding the investigation and prosecution of persons by the Department of Justice (DOJ) for actions relating to medical marijuana, you said that DOJ limits its “enforcement efforts to those individuals [or] organizations that are acting out of conformity with State laws, or, in the case of instances in Colorado, where distribution centers were placed within close proximity to schools.”

1. For each enforcement action DOJ has taken against persons or entities engaged in cultivating or selling medical marijuana in any jurisdiction in which medical marijuana is legal during your service as Attorney General, please provide information about the case, including the specific federal, state and/or local laws, regulations, and/or policies that allegedly were being violated. Please explain why in each enforcement action DOJ acted in the place of or instead of the applicable state and/or local law enforcement entity.
2. Besides the instances you mentioned in your answer in Colorado, have any DOJ personnel cited any federal law or section of the federal code, such as 21 U.S.C. 860 (known as the *Drug-Free School Zones Act*) as a reason in communications with any persons or entities engaged in cultivating or selling medical marijuana in any jurisdiction in which medical marijuana is legal during your service as Attorney General that the business should or must close or otherwise cease doing business? If the answer is yes, please detail each instance. How do such actions comport with your statement that enforcement actions only have occurred when persons or entities were acting out of conformity with state law? Why does DOJ believe 21 U.S.C. 860 is relevant to the authority of a medical marijuana business to operate when that provision only provides for enhanced penalties for violations of federal drug laws occurring too close to schools or other places children are likely to be?
3. With respect to actions you mentioned in your answer in Colorado, taking enforcement actions against medical marijuana entities allegedly too close in proximity to schools, why in each action did DOJ decide to enforce federal law when Colorado and the relevant localities, which had legalized medical marijuana, had chosen to allow these entities to operate legally?
4. For each future enforcement action by DOJ against persons or entities engaged in cultivating or selling medical marijuana in any jurisdiction in which medical marijuana is legal during your service as Attorney General, will you commit to making it clear to the public and Members of Congress both which specific federal, state and/or local laws, regulations and/or policies are allegedly being violated and why DOJ took action in the place of or instead of the applicable state and/or local law enforcement entity? Why or why not?

Questions from Representative Jerrold Nadler

1. You issued a memo on September 23, 2009 setting forth policies and procedures governing the executive branch's invocation of the state secrets privilege (the "state secrets memo"). That policy requires your personal approval for the Department to defend assertion of the privilege in litigation.
 - a. In how many cases (since September 2009) have you approved invocation of the privilege?
 - b. Where you have approved the privilege, have you ever referred allegations of wrongdoing raised in the case to an Inspector General of any agency or department for investigation (as is contemplated by the policy)?
 - (i) If so, how many cases?
 - (ii) What have been the results of those IG referrals and have you shared those with Congress? Will you share them with this Committee?
 - (iii) Where you have not referred it to an Inspector General, what evidence have you required to conclude that the allegations of wrongdoing are not credible?
 - c. In how many cases/instances have you disapproved of invocation of the privilege?
2. The state secrets memo indicates that the Department will provide "periodic reports" to "appropriate oversight committees" with respect to all cases in which the privilege is invoked.
 - a. How many periodic reports have been filed and with which committees?
 - b. Please provide copies of all such reports to the House Judiciary Committee. To the extent you object to doing so, please provide the basis for that objecting, including an explanation of why these reports, which involve the invocation of an evidentiary privilege in Article III courts, do not fall within the Judiciary Committee's oversight jurisdiction.
3. You do not indicate in the state secrets memo whether this Administration will agree to judicial review of the basis for invoking the privilege. The prior Administration took the position that information could not even be disclosed in camera to an Article III judge, thus ensuring that there was no judicial review of whether the privilege had been properly invoked.
 - a. What is your position as to judicial review of the information that the government seeks to withhold in two key respects:

- (i) Can a judge review the allegedly privileged information?
 - (ii) Can a judge disagree with the executive branch's decision as to whether the privilege is properly invoked?
- 4. We have made several requests to you to allow us to review the Office of Legal Counsel memo that reportedly provides the legal justification for the lethal targeting of U.S. citizens who are terror suspects. Your Department has sought dismissal of cases seeking judicial review of lethal targeting by arguing, among other things, that the appropriate check on executive branch conduct here is the Congress and that information is being shared with Congress to make that check a meaningful one. Yet we have yet to get any response to our requests.
 - a. Will you commit to providing the memo?
 - b. Will you also commit to briefing interested Committee members?