



U.S. Department of Justice
Office of Information Policy
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July 25, 2024

Reed D. Rubinstein
America First Legal Foundation
600 14th Street NW, Fifth Floor
Washington, DC 20005
foia@aflegal.org

Re: FOIA-2022-00899
23-cv-00391 (DDC)
VRB:JMB:CEY

Dear Reed D. Rubinstein:

This is a first interim response to your Freedom of Information Act (FOIA) request dated and received in this Office on March 14, 2022, in which you requested records concerning Supreme Court Justice Clarence Thomas and his wife, Virginia Thomas.¹

Please be advised that initial searches have been conducted and records responsive to your request have been located. At this time, I have determined that 1,148 pages are appropriate for release in full without withholdings, and copies are enclosed. Please be advised that we have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

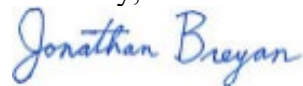
Finally, please note that certain pages within this release contain highlighting. This highlighting was present on these pages as located by OIP and was not made as part of our FOIA review process.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

¹ The parties have subsequently reached agreements regarding the scope of this request.

If you have any questions regarding this response, please contact Marcia Sowles of the Department's Civil Division, Federal Programs Branch at 202-514-4960.

Sincerely,



Jonathan Breyan
Senior Supervisory Attorney
for
Vanessa R. Brinkmann
Senior Counsel

Enclosures

From: White House Press Office
Subject: [EXTERNAL] Press Briefing by Press Secretary Jen Psaki and National Security Advisor Jake Sullivan
To: Goodlander, Margaret V. (OAG)
Sent: April 4, 2022 8:00 PM (UTC-04:00)



FOR IMMEDIATE RELEASE

April 4, 2022

Press Briefing by Press Secretary Jen Psaki and National Security Advisor Jake Sullivan

James S. Brady Press Briefing Room

3:06 P.M. EDT

MS. PSAKI: Hi, everyone. Okay. We have a return guest: Jake Sullivan, our National Security Advisor, who will give some brief remarks, take some questions. And then we will do a briefing from there.

With that, I'll turn it over to Jake.

MR. SULLIVAN: Hi, everyone. I hope you guys are doing well.

With apologies to Jen and to you, my remarks are not going to be so brief because I have a number of points I want to get through before opening it to questions.

First, you heard the President today condemn in powerful terms the atrocities committed by Russian forces retreating from Bucha and other towns in Ukraine. The images that we see are tragic, they're shocking, but unfortunately, they're not surprising.

We released information even before Russia's invasion showing that Russia would engage in acts of brutality against civilians, included it tar- -- including targeted killings of dissidents and others they deemed a threat to their occupation. And as the horrific images that have emerged from Bucha have shown, that's exactly what they have done.

We had already concluded that Russia committed war crimes in Ukraine, and the information from Bucha appears to show

further evidence of war crimes. And as the President said, we will work with the world to ensure there is full accountability for these crimes. We are also working intensively with our European allies on further sanctions to raise the pressure and raise the cost on Putin and on Russia.

Today, I'd like to take a step back and talk about where we are and where we think we are going.

Russia launched its invasion of Ukraine more than a month ago. When Russia started this war, its initial aims were to seize the capital of Kyiv, replace the Zelenskyy government, and take control of much -- if not all -- of Ukraine. Russia believed that it could accomplish these objectives swiftly and efficiently.

But Russia did not account for the strength of the Ukrainian military and the Ukrainian people, or the amount or effectiveness of military assistance provided by the United States and its allies and partners.

The Ukrainian people, backed resolutely by the United States and other nations, have held firm. Kyiv and other cities still stand.

The Ukrainian military has performed exceptionally well. And many Ukrainian civilians have joined local militias in addition to using nonviolent means to resist.

Vladimir Putin also believed that the West would not hold together in support of Ukraine. Russia was surprised that President Biden and the United States were so effective in rallying the world to prepare for and respond to the invasion.

And after President Biden reinforced and reinvigorated Western unity at a series of summits in Brussels just 11 days ago, the Russians have now realized that the West will not break.

At this juncture, we believe that Russia is revising its war aims. Russia is repositioning its forces to concentrate its offensive operations in eastern and parts of southern Ukraine, rather than target most of the territory. All indications are that Russia will seek to surround and overwhelm Ukrainian forces in eastern Ukraine.

We anticipate that Russian commanders are now executing their redeployment from northern Ukraine to the region around the Donbas in eastern Ukraine.

Russian forces are already well on their way of retreating from Kyiv to Belarus as Russia likely prepares to deploy dozens of additional battalion tactical groups, constituting tens of thousands of soldiers, to the frontline in Ukraine's east.

We assess Russia will focus on defeating the Ukrainian forces in the broader Luhansk and Donetsk provinces, which encompasses significantly more territory than Russian proxies already controlled before the new invasion began in late February.

Russia could then use any tactical successes it achieves to propagate a narrative of progress and mask or un- -- or try to discount or downplay prior military failures.

In order to protect any territory it seizes in the east, we expect that Russia could potentially extend its force proje- -- projection and presence even deeper into Ukraine, beyond Luhansk and Donetsk provinces. At least that is their intention and their plan.

In the south, we also expect that Russian military forces will do what they can to try to hold the city of Kherson, to enable their control of the waterflow to Crimea, and try to block Mykolaiv so that Ukrainian forces cannot proceed to retake Kherson.

In the north, Russia will likely keep pressure on Kharkiv.

During this renewed ground offensive in eastern Ukraine, Mas- -- Moscow will likely continue to launch air and missile strikes across the rest of the country to cause military and economic damage -- and, frankly, to cause terror, including against cities like Kyiv, Odesa, Kharkiv, and Lviv.

Russia's goal, in the end, is to weaken Ukraine as much as possible.

Russia still has forces available to outnumber Ukraine's, and Russia is now concentrating its military power on fewer lines of attack.

But this does not mean that Russia will succeed in the east. So far, Russia's military has struggled to achieve its war aims, while Ukraine's military has done an extraordinary and courageous job demonstrating its will to fight and putting its considerable capabilities to use.

The next stage of this conflict may very well be protracted. We should be under no illusions that Russia will adjust its tactics, which have included and will likely continue to include wanton and brazen attacks on civilian targets.

And while Moscow may be interested now in using military pressure to find a political settlement, if this offensive in the east proves to gain some traction, Russia could regenerate forces for additional goals, including trying to gain control of yet more territory within Ukraine.

Now, as the images from Bucha so powerfully reinforce, now is not the time for complacency. The Ukrainians are defending their homeland courageously, and the United States will continue to back them with military assistance, humanitarian aid, and economic support.

We know that military assistance is having a critical impact on this conflict. Ukrainians are effectively defending themselves with U.S.-produced air defense systems and anti-tank systems, such as Stingers and Javelins, as well as radar systems that give the Ukrainians early warning and target data, and multiple other types of arms and munitions.

The administration is working around the clock to fulfill Ukraine's main security assistance requests -- delivering weapons from U.S. stocks where they are available and facilitating the delivery of weapons by Allies where Allied systems better suit Ukraine's needs. This is happening at what the Pentagon has described as an "unprecedented pace."

Last Friday, we announced an additional \$300 million in security assistance, bringing the U.S. commitment to \$1.65 billion in weapons and ammunition since Russia's invasion and \$2.3 billion since the beginning of the administration.

The latest package includes laser-guided rocket systems, Puma unmanned aerial systems, armored High-Mobility Multipurpose Wheeled Vehicles, and more.

Material is arriving every day, including today, from the United States and our Allies and partners. And we will have further announcements of additional military assistance in the coming days.

We are working with the Ukrainians, as I said, to identify solutions to their priority requests. In some cases, that means sourcing systems from other countries because the U.S. either doesn't have the system or doesn't have a version that could effectively be integrated into the fight. Sorts of systems like this include longer-range anti-aircraft systems, artillery systems, and coastal defense systems.

So, let's take coastal defense systems as an example. President Biden went to Brussels to talk to key Allies 11 days ago about how to get coastal defense systems to Ukraine, because there is not, at the moment, a good U.S. option.

Last week, the UK announced at the close of its donor conference that coastal defense systems would be provided to the Ukrainians. It is a good example how, working with Allies and partners, we are successfully responding to Ukraine's requests.

We expect additional new capabilities to be delivered in the near future. We can't always advertise what is being delivered out of deference to our Allies and partners or for operational sensitivities, but we are moving with speed and efficiency to deliver.

Let me close with this: Even as Russia acknowledges the failure of its initial plans and shifts its goals, three elements of this war remain constant.

First, Russia will continue to use its military to try to conquer and occupy sovereign Ukrainian territory.

Second, the Ukrainian military and people will continue to effectively and bravely defend their homeland.

And third, the United States will stand by them for as long as it takes.

Russia has tried to subjugate the whole of Ukraine, and it has failed. Now it will attempt to bring parts of the country under its rule. It may succeed in taking some territory through sheer force and brutality.

But no matter what happens over the coming weeks, it is clear that Russia will never be welcomed by the Ukrainian people. Instead, its gains will be temporary, as the brave Ukrainian people resist Russian occupation and carry on their fight for an independent, sovereign nation that they so richly deserve.

And with that, I'd be happy to take your questions.

Yeah.

Q Jake, can I ask you about the President's call for a war crimes trial for Vladimir Putin? What are the mechanics of how the President sees that playing out? Would it be at the International Criminal Court or at some other tribunal?

MR. SULLIVAN: So, we have to consult with our allies and partners on what makes most sense as a mechanism moving forward. Obviously, the ICC is one venue where war crimes have been tried in the past, but there have been other examples in other conflicts of other mechanisms being set up.

So, there is work to be done to work out the specifics of that. And between now and then, every day, what we are focused on is continuing to apply pressure to the Russian economy and provide weapons to the Ukrainian people to be able to defend themselves.

Q Other --

MR. SULLIVAN: Yeah.

Q Sorry, forgive me. Other forums for this might include something that the U.N. General -- the U.N. Security Council might adopt. Is that what you're suggesting -- that you would go to the Security Council?

MR. SULLIVAN: Well, obviously, with Russia as a permanent member of the U.N. Security Council, it would be difficult to imagine that they would not attempt to exercise their veto to block something.

But there have been creative solutions to the question of accountability in the past, and I'm not going to prejudge what solution would be applied here or what forum or venue would be applied here.

What I will say is what the President said this morning: There has to be accountability for these war crimes. That accountability has to be felt at every level of the Russian system, and the United States will work with the international community to ensure that accountability is applied at the appropriate time.

Yes.

Q The President was careful to say he does not see this as genocide. Many Ukrainians believe that it is because their nation, their people are being attacked. Where is the line, in your view? And how have you counseled the President between “genocide” and “war crimes”?

MR. SULLIVAN: So this is something we, of course, continue to monitor every day. Based on what we have seen so far, we have seen atrocities, we have seen war crimes. We have not yet seen a level of systematic deprivation of life of the Ukrainian people to rise to the level of genocide. But, again, that's something we will continue to monitor.

There is not a mechanical formula for this. There is a process that we have run just recently at the State Department to ultimately determine that the killing -- the mass killing of Rohingya in Burma constituted genocide. That was a lengthy process based on an amassing of evidence over a considerable -- a considerable period of time and involving, frankly, mass death, the mass incarceration of a significant portion of the Rohingya population.

And we will look to a series of indicators along those lines to ultimately make a determination in Ukraine. But as the President said today, we have not arrived at that conclusion yet.

Yes.

Q Thanks. I just have three quick questions. When you say the next stage will be “protracted,” do you mean years? I mean, Russia has been in Crimea and Donbas since 2014. What -- what's “protracted”?

MR. SULLIVAN: So we can't predict, but I would just say that, so far, this conflict has lasted a little more than five weeks. And yet, in that time, we've seen an enormous amount of killing and death and, also, an enormous amount of bravery and success on the part of the Ukrainian forces.

What I'm saying when I say “protracted” is that it may not be just a matter of a few more weeks before all is said and done. That first, quote, unquote, “phase” of the conflict, of -- the Russians put it, was measured in weeks.

This next phase could be measured in months or longer.

Q In the beginning, the consensus seemed to be: Russia was unstoppable; we just had to make the price as high as possible for them.

Then the new thinking is: Maybe Ukraine can actually win. Do you agree with that? And what would winning look like?

MR. SULLIVAN: So we believe that our job is to support the Ukrainians. They will set the military objectives. They will set the objectives at the bargaining table. And I am quite certain they are going to set those objectives at success, and we are going to give them every tool we can to help them achieve that success.

But we are not going to define the outcome of this for the Ukrainians. That is up for them to define and us to support them in. That's what we're going to do. And we do have confidence in the bravery, skill, and capacity of the Ukrainian armed forces and the resilience of the Ukrainian people.

Q I just have one -- one quick thing on chemical weapons. The President and other allies have promised consequences without saying what they would be. The last time Russia used chemical weapons, there were sanctions but not very stiff ones. Are you ready to define consequences?

MR. SULLIVAN: So I'm going to say the same thing I've said from this podium that the President has said from a podium down the hall in this same building, which is that Russia will pay a severe price. We have communicated to them directly.

We have coordinated with our allies and partners. And I'm not going to go further in terms of the specifics here today.

Q Jake, two questions.

MR. SULLIVAN: Yeah.

Q The administration initially did not call this "war crimes," and eventually, though, they did after they -- what they saw on the ground. Do you think that's going to be the case with calling it a genocide?

MR. SULLIVAN: Well, so, first, it's not just that we sit around and debate terms and then, ultimately, decide to apply a term based against static circumstances. We watch as things unfold. We gather evidence. We continue to develop facts. And as we gathered evidence and as we got the facts together, we ultimately came to the conclusion that war crimes were committed.

And, in fact, I would say, on this front, President Biden was a leader. He went out and said Putin is a war criminal. And many of you raised your eyebrows at that; many people out in the public raised their eyebrows at that. And now you see the scenes coming out of Bucha today.

And so, he's not going to hesitate to call a spade a spade, to call it like he sees it, and neither is the U.S. government.

So as the facts develop, could we see ourselves reaching a different conclusion on that question? Of course we could. But it's going to be based on evidence and facts as we gather it along the way.

Q And two more quick ones for you. On the sanctions that the President was talking about today, should we expect those this week, or what's the timing?

MR. SULLIVAN: You can expect further sanctions announcements this week. And we are coordinating with our allies and partners on what the exact parameters of that will be. But, yes, this week, we will have additional economic pressure elements to announce.

Q And my last question, quickly. You keep using the word "retreat" instead of "reposition." How much is that in part due to the spring conditions, the muddy conditions that are on the ground in Ukraine?

MR. SULLIVAN: The reason I use the phrase "retreat" is just kind of quite simple common sense. It's not some fancy technical military term. It's a term that all of us understand, which is, if you run pell-mell for an objective and you get stopped, and then you start to get beaten back, and then you withdraw, you pull out -- that's what I would call a retreat.

That's what happened to the Russians in Kyiv: They attacked Kyiv. They failed. They started to get beaten backwards by the Russian -- by the Ukrainian military. And they ultimately retreated back across the border into Belarus.

Now, with those forces, as I said in my opening comments, they are not intending to stand pat. They are going to reposition those forces to go after a different objective -- a scaled-down objective, but nonetheless a dangerous and disturbing objective, which is to conquer an occupied territory in eastern Ukraine.

And now it's our job to help the Ukrainian people have the tools they need to be able to stymie that objective. That is what we're intent on doing at this time.

Q Jake, I know you're not willing to call it a genocide, but does the U.S. government have information that you can -- that you can use to independently corroborate Ukraine's allegations about atrocities in Bucha?

MR. SULLIVAN: So we have -- obviously got access to a lot of the information that you all have. We also have information that the Ukrainians have provided us directly. And we will also work with fact finders -- independent fact finders as we go

forward to get to a level of documentation that allows us to help build very strong dossiers of evidence for war crimes prosecutions. And that is what we intend to do.

Now, on the question of the genocide determination: Obviously, we will continue on a daily basis to have consultations with the Ukrainians to reach determinations. And if at some point we reach the judgment that there, in fact, has been a level of atrocity, a level of killing, a level of intentional activity that rises to meet our definition of genocide, we'll call it for what it is.

We have never hesitated to call out the Russians for what they have done in Ukraine, and we will not start now.

Q And sorry -- sorry, one quick question on France, Jake. They are -- they have suggested that, you know, a hefty EU-wide tariff should be imposed, as opposed to a blanket ban on Russian energy imports into the EU. Does the U.S. support that? And will that be part of what you're planning to do next in terms of sanctions?

MR. SULLIVAN: We are having conversations, as I stand here at this podium, with senior officials in the main European capitals, as well as in Brussels, on the full range of sanctions options, including sanctions options or pressure options that relate to energy.

I'm not going to negotiate that out at this podium. We want to make sure that we're able to pull together a consensus along with the rest of the European Union.

Q Jake, the Kremlin is denying the images out of Bucha, saying that they don't show any kind of apparent execution. What is the U.S. doing to try and expose Russia's actions to its own citizens? I mean, what can we do to sort of fight this information war?

MR. SULLIVAN: Well, first, I would note that the Kremlin is working overtime to close down the information space inside of Russia, which is not exactly the action of a strong and confident government that feels really good about the story that it would be telling if it were allowing independent news sources to come in.

Second, we are, of course, supporting, through a variety of means, the provision of information about these atrocities and about the entire effort by the Russians to unjustly and unlawfully invade a sovereign neighboring country not just to the Russian people, but to people everywhere. We will continue to do that.

Q And just to be clear: Is it your sense that the atrocities that we're seeing in Bucha are based on orders coming from Putin or his senior military officials? Or is there a chance here that this is sort of Russian forces acting on their own? And is there even a distinction?

MR. SULLIVAN: I don't want to get into the specific intelligence related to Bucha at this point. But what I will say, as I said at the outset, is that even before the invasion happened, we shared information with the public, with the press, including from this podium, that Russia was intending as a matter of policy -- not as a matter of one guy in a unit in a suburb of Kyiv, but as a matter of policy in this war -- to kill dissidents, to kill those who caused problems for the occupation, and to impose a reign of terror across occupied territories within Ukraine. That is what we are seeing play out.

So, no, we do not believe that this is just a random accident or the rogue act of a particular individual. We believe that this was part of the plan. We declared it from this podium as part of the plan, and now we are seeing it play out in real life, in living color, in these terrible, tragic images we are seeing come from Bucha.

Yeah.

Q Thanks. So, I know you don't want to talk about possible venues for a war trial -- war crimes trial, but can you talk a little bit about the evidence-gathering aspect of it? That's going to be crucial to combatting disinformation and what Russians will say -- that "Ukrainian rebels are fighting us. That was legitimate warfare what happened." That could be a tactic they're taking.

So can you walk us through the evidence-gathering? Who's doing it? Are there people on the ground gathering evidence? How long does that take to, sort of, build a case? And what does that look like?

MR. SULLIVAN: So, I will directly answer your question, but I also think it is important for our team at the State Department, which will take the lead on this, including our Global War Crimes Coordinator, to give you a fully elaborate answer to this question, in technical detail, so that everybody understands exactly how this process works.

But with that being said, there are four main sources of information that we will develop in an effort to help build the case for war crimes.

The first is the information we and our allies and partners gather, including through intelligence sources. And we, actually, within our intelligence community, had previously stood up a team to be able to document and analyze war crimes and worked closely with the State Department in doing so. And we're also coordinating with key allies and partners who have their own capacities.

The second is what the Ukrainians themselves will do on the ground to develop this case, to document the forensics of these tragic and senseless killings in this particular instance and in other instances across Ukraine.

The third is international organizations, including the United Nations, but others as well -- prominent international non-governmental organizations with real credibility and expertise in this area.

And then the fourth is all of you. Because part of building this case is relying upon the global independent media, who has images, interviews, documentation. And when you put all of those four sources together, you can build, we believe, a package that can stand up to the relentless disinformation we are likely to see and have already started seeing from Russia, and that, ultimately, the truth will withstand the assault on the truth that we can expect to come from Moscow.

Q On former President Trump, he's having Save America rallies where he's decrying the Biden administration, decrying the response that you all in the White House have been giving to this war in Ukraine. He said if he was in here in office, he would do it better; it wouldn't happen under him. What is your response to the former President, Donald J. Trump, saying these things about the current administration?

MR. SULLIVAN: I don't -- I don't have a response to the former President. We are focused on getting the job done, getting the support to the Ukrainian people that they need, applying unprecedented pressure to the Russian economy, and building a form of Western unity that no one could reasonably have expected and that we have sustained through the early weeks of the war and will sustain for the period ahead.

And I'll leave the commentary on what the former President said to others.

Q Thank you very much. Thanks, Jake. To follow up on what you said about Ukraine setting terms for any potential resolution, President Zelenskyy said on "Face the Nation" that with regard to any potential peace agreement, the important thing in this agreement are security guarantees. But he also said the U.S. has not received -- has not provided any yet. Is the U.S. considering that? And what would that look like?

MR. SULLIVAN: So we are in regular contact -- and by "regular," I mean near daily contact. I personally am in near daily contact with my counterpart in the Ukrainian government. And we are talking constantly about how we can support a negotiated solution that defends Ukraine's sovereignty and territorial integrity. And we have told them that we are prepared to do our part to support that, including by ensuring that Ukraine has the means to defend itself in the future.

I'm not going to get into the specifics of what those negotiations are because I believe it's very important that they have a protected space to be able to be carried out. But you can rest assured that the United States is actively working in consultation with Ukrainians to support their efforts at the peace table.

Q And then, a question on the sanctions. You just said that you're under no illusions that Russia will adjust its target. So what function will an additional sanctions package have when you announce it?

MR. SULLIVAN: So, I would say two things about sanctions. One is that sanctions are intended to impose costs so that Russia cannot carry on these grotesque acts without paying a severe price for it. The other is to have an effect on Russia's behavior over time.

But as President Biden has made clear repeatedly, we don't expect that that shift in behavior will be caused by sanctions overnight or in a week. It will take time to grind down the elements of Russian power within the Russian economy, to hit their industrial base hard, to hit the sources of revenue that have propped up this war and have propped up the klepto- -- kleptocracy in Russia. That's going to take some time to play out.

But there's no better time than now to be working at that so that the costs end up setting in and that ends up sharpening Russia's choices.

So, sanctions are not alone going to solve any of these problems, but they are a critical tool in ultimately producing a better outcome to this conflict than would otherwise be produced.

Q Have the revelations about Bucha prompted the administration and its allies to reconsider what kind of military assistance it's providing to Ukraine? Are tanks now part of, you know, potential transfers that could be provided to the Ukrainian military?

MR. SULLIVAN: So, I'm not going to get into certain specific systems because, as I said at the outset, there are operational sensitivities and the sensitivities of our allies and partners for why we wouldn't speak about a particular capability like tanks.

But I will say this: Even before Bucha, the United States was working with Ukrainians on every item on its priority list and how we could go ahead and ensure that that could be provided to them. The only capability that we have discussed with them where there has been a difference in perspective that has been played out in living color and in this podium many times over has been the question of direct facilitation from a U.S. airbase in Germany into contested airspace over Ukraine -- the MiG-29s.

Otherwise, before Bucha, we were working with them on a wide range of capabilities, including some capabilities that people here were writing we weren't prepared to provide. That wasn't right.

Now, it's hard for me to correct the record in every case because, for very good reasons, some of these systems we cannot advertise, we cannot talk to you all about it.

But what I want to make clear, as I said at the outset, is the extent and depth of effort to acquire and transfer a variety of advanced weapons capabilities is extraordinary, it is unprecedented, and it has been ongoing from well before the terrible images came out this week.

Yeah.

Q Jake, on the International Criminal Court: Is one of the reasons why the U.S. is considering alternate venues is because the U.S. is not a signatory? And does that undercut the U.S. push to hold Putin accountable with a war crimes trial of some kind when the U.S. is not a signatory of the International Criminal Court?

MR. SULLIVAN: The U.S. has in the past been able to collaborate with the International Criminal Court in other contexts, despite not being a signatory. But there's a variety of reasons one might consider alternative venues as well, beyond the specific relationship between the U.S. and the ICC.

Most importantly, this is not a decision the United States is going to make by itself. We're not going to make the call out of Washington for the appropriate venue for accountability; that is going to be done in consultation with allies and with partners around the world. And I don't want to prejudge those conversations that are ongoing.

And what I can communicate is the very real, sustained, and committed proposition that the United States has that we are going to ensure that there is accountability.

Yeah. I'll just take one more. Yeah.

Q Thanks, Jake. The U.S. had rejected Poland's plan for a peacekeeping force to protect civilians. Is that something that's being reconsidered, given what we've seen of these atrocities? And is there any talk among the Allies to do some sort of force to help protect the civilian population?

MR. SULLIVAN: So, I don't quite accept the premise of the question. There -- there had been various peacekeeping proposals floated; none of them have ever been given full shape or been kind of formally put forward and suggested should actually be implemented.

And so, we continue to consult with our Allies and partners, including Poland, on what makes sense going forward. We have not yet seen a proposal that actually has been fleshed out that could be operationalized.

The one thing that the United States has made clear throughout this is that it is not our intention to send U.S. soldiers to fight Russian soldiers in Ukraine. But in terms of the supply of capabilities, in terms of other steps to support the Ukrainians and to do our best to protect civilians in Ukraine, we continue to look at every possible option, including in consultation with our partners on that.

And I'll -- I'll leave it at that. Thank you, guys.

MS. PSAKI: Thank you, Jake, so much for joining us.

Q Thank you. Come again, please.

MS. PSAKI: He will, I'm sure. He's probably our most frequent guest. I don't know if you get -- I probably owe him something for that.

Okay, a couple of items for all of you at the top. Today, Vice President Harris and administration officials announced the Biden-Harris Action Plan for Building Better School Infrastructure.

By leveraging funds from the Bipartisan Infrastructure Law and the American Rescue Plan, this action plan will activate the entire federal government to support students' health and learning, from upgraded HVAC systems to electric school buses, from on-site solar energy installations to safe routes to school.

I also wanted to note, in light of the President's event on trucking, a couple of details or facts for all of you. 2021 was the best year for trucking growth -- jobs growth since 1994. And December 2021 through February of 2022 was the best three-month stretch for long-distance truck hiring since the 1990s.

Thanks to the efforts of the Department of Transportation, we doubled the issuance of Commercial Driver's License issuances in January and February of 2022, compared to the prior January and February of 2021.

And over 100 employers -- including Domino's, Frito-Lay, and UPS -- launched registered apprenticeship programs in the past 90 days. This could result in more than ten thou- -- 10,000 additional apprentices -- apprenticeships nationwide, which, of course, get more people -- more truckers trained, more trucks on the road, more goods moving around and onto shelves across the country.

shelves across the country.

I also wanted to note -- I think you all saw this, but just to confirm for all of you: Tomorrow, the President and Vice President will be joined by former President Obama to highlight how the Affordable Care Act continues to lower healthcare costs for American families. This will be the first time former President Obama returns to the White House since leaving office.

Since we've taken office -- since we've entered -- the President -- since President Biden has entered office, we've taken big steps to reduce healthcare costs and expand access to healthcare for the American people.

And how President Biden and former President Obama both see the Affordable Care Act is an example -- a shining example of how government can work for the American people. Not only did it ensure that millions of people had access to affordable healthcare, but it has been an opportunity to build on that and make changes and make improvements over the course of time, which, of course, is what they will talk about tomorrow.

But even since the President took office, through the American Rescue Plan, we lowered premiums for 9 million Americans -- the biggest expansion of affordable healthcare since the ACA. We've made affordable health coverage more accessible during the pandemic through the opening of the special enrollment period, which enabled nearly 3 million Americans to have access -- to newly sign up for coverage under the ACA.

And President Biden has overseen the most successful open enrollment period in history last year, with a historic 14.5 million Americans signing up for the -- for ACA coverage and another million people signing up for the basic healthcare program.

So, tomorrow, they'll announce more steps.

I'll also note, as they did every week when President -- former President Obama was president and President Biden was vice president -- that's a mouthful -- they will have lunch tomorrow as well, as they used to do on a weekly basis.

I would note they continue to talk regularly. They are real friends, not just Washington friends, and so I'm sure they will talk about events in the world as well as their families and personal lives.

So, I'll try to get around the room as best as I can. But, Chris, why don't you kick us off?

Q So, one question on Title 42. Some Republican attorneys general are suing the administration over the plan to lift it. What is the administration's response? And is the administration concerned that this would end up blocking the push to lift the order?

MS. PSAKI: Well, on the lawsuit itself, I'd of course refer you to the Department of Justice; they would be overseeing any steps there.

But broadly speaking, I think it's important to note for any critics in any lawsuits that Title 42 is a public health directive; it's not an immigration/migration enforcement measure. And the decision on when to lift Title 42 was made by the CDC.

And our objective from here -- and this is why we have the implementation period over the next several weeks -- continues to be to ensure we are increasing our resources, surging personnel and resources to the border, improving border processing, implementing COVID-19 mitigation measures, and continuing to work with other countries in the Western Hemisphere to manage migration and address root causes.

But this is, again, a healthcare measure -- a health measure determination and not one on immigration policy.

Go ahead.

Q Thanks, Jen. Let me ask you the question I was going to ask Jake, which is that: As part of this new effort to ramp up sanctions, is the administration going to be ramping up pressure on China and India to abide by existing sanctions? And what does that look like? I know Daleep Singh was just in India.

MS. PSAKI: Yeah.

Q Are you going to intensify some criticism of them and others who haven't done so?

MS. PSAKI: Well -- well, certainly our expectation and our public and private message is -- will continue to be that every country should abide by the sanctions that we have announced and that we are implementing around the world.

As you noted -- so let me start with India, if that's okay. As you noted, Daleep Singh, our Deputy National Security Advisor, was just there. I would note that, you know, just given some of the reporting, energy payments are not sanctioned; that's a decision made by each individual country. And we've been very clear that each country is going to make their own choices, even as we have made the decision and other countries have made the decision to ban energy imports.

What -- what Daleep did make clear to his counterparts during this visit was that we don't believe it's in India's interest to accelerate or increase imports of Russian energy and other commodities.

Right now, just to give everybody the full scope of it, India's imports of Russian energy represent only 1 to 2 percent of their total energy imports.

So, while he al- -- he explained both the mechanisms of our sanctions and reiterated that any country or entity should be abiding by those, we also made clear that we'd be happy to be a partner in reducing their reliance or even their small percentage of -- of reliance on that.

As it relates to China -- I know that Jake spoke to this the last time he was here -- our assessment hasn't changed on that front, but we continue to convey the same expectations of abiding by sanctions.

Q And then, on COVID funding, there are reports that the Republicans and Democrats in the Senate are nearing a deal on a \$10 billion package that doesn't include global aid. Is a package of that size, and that doesn't include global vaccine assistance, something that President Biden could sign into law?

MS. PSAKI: Well, let me first say that we are encouraged by the strong progress that Congress is making in finalizing a deal -- not yet final, but finalizing a deal -- to fund some of our most very urgent COVID response needs.

I would remind everyone that what we had requested was \$22.5 billion, not \$10 billion, in order to achieve a number of objectives -- including securing enough booster shots for the general population; purchasing more monoclonal antibodies and Evusheld for the immune- -- immunocompromised; maintaining our testing capacity; getting shots in arms abroad, to go to your question; and funding for variant-specific vaccines if needed.

So, this does not -- will, obviously, not meet all of those -- all of those needs -- dire needs in this country. And certainly, our objective would continue be -- to be to press for funding for international -- support for international -- for ensuring we continue to be the arsenal of vaccines in the world, regardless of what this final package looks like.

I'd note that the reason that's so important is not just because of the need to have vaccine doses, it's because we need to -- a lot of -- there are countries around the world who are refusing our vaccine dose- -- doses because they don't have the mechanisms, the know-how, and the capacity to be able to distribute those doses. So that funding that we've been requesting and we'll continue to press for would be accounting for that as well.

I -- can I note one more last thing? Sorry, I've got a lot on this. Is -- I would also note that as you're watching Congress

and the Senate, there are a wide number of Republicans who have called for funding for and called for ensuring that we continue to be the arsenal of vaccine distribution around the world -- they don't use that exact phrase, but basically that's the basics -- including Senator Graham, who said, "I support the effort" -- just in June of last year -- "of the Biden Administration to donate vaccines to at-risk populations throughout the world."

Senator Portman said that -- that he is "pleased" that legislation -- this is last summer -- that has passed the committee at the time would help ensure that -- that domestic supply is part of our -- what we're doing in domestic supply -- excess domestic supply is part of our global vaccination strategy.

Senator McConnell said it would be "terribly unfortunate" if a supplemental COVID-19 funding package did not include international vaccines.

So I'm not going to prejudge where all they -- they will all be on this or future legislation. I would just note that if we want to continue to be providing to the world, we need money. And that's a case we will continue to make.

Go ahead.

Q Ukraine's Prosecutor General just suggested that there's more gruesome evidence of the aftermath of Russia's occupation around Kyiv, saying that the worst situation may, in fact, be in Borodyanka. I apologize if I don't pronounce that correctly.

But do you have a sense of how widespread this may be in the Kyiv region? I mean, I know Jake just said that you're going to continue to see these kinds of brazen attacks, but what more can you tell us about some of these other areas that we may be hearing about?

MS. PSAKI: I don't have a new or additional assessment. This is something we will continue to gather information on, and Jake, obviously, outlined a number of ways we will do that -- both by intel gathering, working with our partners and allies around the world.

But I would also note, Mary -- to go back to your earlier question -- that the fact that we're seeing these horrific images from Bucha around the wor- -- you know, now around the world, thanks to all of your broadcasts and many global broadcasters -- I mean, we have access. There's access to this area. There's not access to a lot of the areas around Mariupol and other areas of Ukraine where we have not even begun to see the impact of the atrocities and the impact of what, as Jake said, President Putin and the Russians made clear they were intending to do from the outset of the war.

So, while I don't have additional assessment, I would just note that, you know, we should brace ourselves for what we may see as we gain greater access and learn more about what atrocities they have implemented.

Go ahead.

Q Thank you. The U.S. ambassador to the U.N. says that tomorrow she's going to go to New York and seek Russia's suspension from Human Rights Council.

MS. PSAKI: Yeah.

Q Is that at the direction of the President?

MS. PSAKI: Yes. The President does not believe -- he believes it's ludicrous for Russia to be a member of the Human Rights Council. And certainly, the ambassador spoke to this today and while she was on her overseas trip, and she will continue to make the case in her role when she returns to New York.

Q Why not seek to permanently expel them?

MS. PSAKI: From the Human Rights Council?

I would point -- I would point you to our U.N. ambassador on what specific steps, but obviously removing them would be the next appropriate step in the process.

Go ahead.

Q Thank you, Jen. So, President Biden is talking about putting Putin on a wartime trial. Does he expect Putin to turn himself in to stand trial? Or does he think somebody's going to have to go into Russia and arrest him?

MS. PSAKI: Well, without getting into the mechanisms -- which, I know, were the good questions everybody was asking our National Security Advisor -- there is precedent in the past of how this process can work.

We're not going to prejudge what the process would work or -- or what steps would be taken through -- through an international legal process.

So, that's not quite where we're at right now, Peter, and I can't give you a sense of the mechanisms of -- of, if convicted, what would happen.

Q Okay.

A question about college sports. In some places like the Ivy League, now there are biological males competing against women. Does the White House think that is fair?

MS. PSAKI: Well, I would note that we're not the governing body for the NCAA or any other system out there that -- I believe you're probably referring to the case over -- in swimming in the NCAA.

We understand how important sports are to student athletes across the country. But the NCAA obviously makes -- puts these policies in place.

What I would say, Peter, if we look at this broadly, is that we celebrated International Transgender Day of Visibility last week with a slate of new actions to ensure we are continuing -- we continue to protect the dignity and identity of all Americans.

And at a moment where we're looking at and we're seeing increased mental health issues related to young people, especially LGBTQ+ young people, we're providing additional funding and resources to address this issue.

And we hope all leaders can focus on those important issues and the impact on many of these young people who are impacted across the country.

Q And then, what about this new law in Florida? At what age does the White House think that students should be taught about sexual orientation and gender identity?

MS. PSAKI: Well, I would say, first of all, Peter, we have spoken to the "Don't Say Gay" bill in the past -- I believe is what you're referring to --

Q Right.

MS. PSAKI: -- and made clear that as we look at this -- this law, what we think it's a reflection of is politicians in Florida propagating misinformed, hateful policies that do absolutely nothing to address the real issues.

The Department of Education is well positioned and ready to evaluate what to do next, and when -- and its implementation -- whether its implementation violates federal civil rights law.

But I would note that parents across the country are looking to, you know, national, state, and district leaders to support our nation's students, to ensure that kids are treated equally in schools. And that is certainly not -- this is not a reflection of that.

Q And so, just the last one. So if you guys oppose this law that bans classroom instruction about sexual orientation and gender identity in K through 3, does the White House support that kind of classroom instruction before kindergarten?

MS. PSAKI: Do you have examples of schools in Florida that are teaching kindergarteners about sex education?

Q I'm just asking for the President's opinion about this law.

MS. PSAKI: Well, I think that's a -- I think that's a relevant question, because I think this is a politically charged, harsh law that is putting parents and LGBTQ+ kids in a very difficult, heartbreaking circumstance. And so, I actually think that's a pretty relevant question.

Go ahead.

Q On the Ukraine atrocities, Jake referenced some of the images that all our news organizations have been gathering. Is the administration able to gather other and document other cases that you have assembled that we may not be aware of, in terms of this collection of data on war crimes, rapes, murders -- things like that -- that we have not yet seen? Is there more data that --

MS. PSAKI: On the ground, you mean?

Q Yes.

MS. PSAKI: So, I'm sure you've seen, Kelly, that the EU announced their intention to send a team there, which obviously hasn't happened yet. But that was an announcement made earlier today.

Certainly, through intel gathering, we likely do have access to different types of information. We have declassified a range of information over the course of time, which I would expect we continue to do -- we will continue to do.

Right now, I can't give you an assessment of what we may know that you don't know. But I would just say and reiterate what Jake said, which is we're going to use every tool at our disposal we can -- some of that is through intel channels; some of that is, of course, working with our counterparts around the world -- to gather as much data and information as we can.

It is difficult -- to go back to an earlier question -- given that we need access, or even our European friends and partners need access, to gather. But -- but it is vital, it is important, and we are going to do everything we can to support those efforts from here.

Q And if the Russians are able to take some territory in the east and have greater stability of their control there, would it ever be the U.S. position that that could be a stable outcome? Or is maintaining the current map of Ukrainian sovereignty what the West would want?

MS. PSAKI: Sure. Well, it's going to be up to the Ukrainians and Ukrainian leaders to determine what the diplomatic path forward looks like here -- what discussions, what negotiations they are comfortable with.

What our objective is and what tool we can -- we feel we can most be effective at, I should say, is supporting them and strengthening their hand in these negotiations. And that includes not just the economic support, the military support. I

would note, over the course of the last couple of days, the Department of Defense announced an additional package beyond what was announced just a few weeks ago. So we're going to continue to do that.

But in terms of the negotiations and what they would be comfortable with, we're here to support them, and we're not going to predetermine that.

Go ahead.

Q Thanks, Jen. Just last week, you said that the U.S. is sending protective gear to Ukraine --

MS. PSAKI: Yeah.

Q -- to help shield Ukrainians from chemical weapons use. Have those deliveries been made, or have they started? Is there any timeline specifically for those deliveries? Because Jake did mention that deliveries have started.

MS. PSAKI: Sure. I can check for you a status of that. We try to do it in an expedited manner. And we still have means of getting equipment of -- a range of equipment to people who need it on the ground. And I can check if that equipment has been delivered, or is in process -- I guess you're asking.

Yeah.

Q And I have a quick question on Elon Musk and him picking up a 9 percent stake in Twitter, which makes him the largest shareholder in the company. Obviously, the White House uses Twitter quite extensively, and Musk has been very critical of President Biden. I'm wondering if there is perhaps any recalibration of the use of the platform or to what extent, you know, the White House is using Twitter, going forward.

MS. PSAKI: That's a decision of a private sector leader. I don't have any specific comment on it. But I expect we will continue to use Twitter, as you all will as well, I would expect.

Go ahead.

Q Thanks, Jen. I was wondering if you could elaborate a little bit more on President Biden and former President Obama and their relationship and how often and how they communicate. And you had mentioned that they are real friends and not just Washington friends. But given that they only live a few miles apart, why is this the first time that the former President has been invited to the White House?

MS. PSAKI: Well, I would say, first, I have known them both for some time. And I have watched -- I watched their friendship grow over the course of the period of time when the President was vice president and when the former President was president.

And why I noted that at the top is because I think people who didn't have the seat I had may just think that it's like inviting any former President to the White House. And it certainly is not that. They talk on the phone; they do that on a regular basis. I'm not going to give you the number of times they've had conversations, but I would note they consult on a range of issues, but also about their families and things happening in their personal lives. And, you know, it's not a relationship of obligation. It's one where they developed a deep and close friendship through the course of their time serving together, and that has continued.

And tomorrow is, of course, exactly the right time to have the former President come here, given this is one of the proudest accomplishments that they worked on together, they shared together. And it is emblematic of their shared view and belief that government can work for people, and it can work for the American people. And this is an example of building on a success from more than 10 years ago and making it better over time.

So -- and I suspect that former President Obama will be back when there is a portrait unveiling and perhaps for other -- other engagements here as well in the future.

Go ahead, Karen.

Q Thanks, Jen. Can you tell us how the President or if he -- the President has engaged with lawmakers in the last couple of days on the COVID funding deal? And has he talked to any Republicans on this?

MS. PSAKI: I'm not going to give you an outline or a detail of people he's spoken to. I will note that it's rare that I am in the Oval Office on any given day where he doesn't just pick up the phone and call a member of Congress, often a Republican -- at least when I'm in there -- to talk to them about a range of priorities.

This is clearly a huge focus for the President because of the dire need we have at this moment to get this funding through and the fact that we are already at a point where we have had to halt, delay a range of programs and purchases that we feel are imperative.

I would note that on the global side, you know, we are -- we already need to stop plans to ex- -- expand the global vaccination initiative to more countries. We'll also have to immediately scale back our global efforts to provide lifesaving tools -- this is a little bit of what I mentioned earlier -- like oxygen systems, antiviral pills -- things that can cut death rates by 90 percent for the unvaccinated.

And I would also note that, even as we're very encouraged by the progress, we're going to need more -- because our objective here is going to continue to be -- to be ahead of the process and be ahead in planning to make sure we can have funding for antivirals, the vaccines needed for people for many months to come.

Q And just to be clear: So, he has been talking on this specific issue (inaudible) --

MS. PSAKI: He's been engaged with a range of members about a range of issues. This is a huge priority. I'm just not going to get into the details of what those calls look like.

Go ahead.

Q Thanks, Jen. I just wanted to clarify what I was asking Jake there, because it sounded like, at the end, he was leaving open the possibility of U.S. boots on the ground to protect civilians in Ukraine or to protect the supply chain.

MS. PSAKI: I don't think that was his intention.

Q Okay. Because he did say, in terms of the supply chain or civilians, that you're discussing all possibilities with allies.

MS. PSAKI: We -- nothing has changed about the President's view about boots on the ground.

Go ahead.

Q So, the jobs report came out on Friday. Inflation is at 7.9 percent. It shows average hourly wages went up 5.6 percent. I wonder what the level of concern is for the President and the White House that people will stop spending because the stuff they want is more expensive and that leads us to a recession.

MS. PSAKI: Well, I would say on the latter part of your question that what we know is that the economy is strong, our recovery has been strong. And that continues to be -- while we, of course, are monitoring progress and where we have concern -- including rising costs and, obviously, the need to continue to address inflation -- that continues to be our assessment, which is -- which is even as there are challenges we need to continue to address, it means that we have a strong basis that we are building from.

I would remind you also that the unemployment rate is 3.6 percent. And the President created more jobs last year than any president in American history. So those fundamentals are also backed up by data.

And obviously, what we're trying to do -- as you know from following this closely, there are a couple of areas that are impacting rising costs more than others -- right? -- including the price of gas, including the price of automobiles and the impacts on the car industry of the lack of -- the chip shortages.

So, what we're also trying to do is take steps to address each area where we see rising costs. And obviously, the President's announcement on Thursday to do a historic release from the Strategic Petroleum Reserve, where we've seen already a small reduction in the price of gas and the price of oil come down by several dollars, is an effort to bring down costs that are impacting people's checkbook, pocketbooks -- checkbook, et cetera.

Q But you're not concerned about if consumers stop spending?

MS. PSAKI: We, of course, continue to assess, but I don't have any projection of that at this point in time.

Q Well, one thing on the wealth tax. Elon Musk tweeted out last week that Tesla and SpaceX would "have died" if such attacks existed in 2008, after the Great Recession. With the push for EVs and space exploration, what's the White House level of concern that that a wealth tax could stifle innovation?

MS. PSAKI: Well, I would first say that, you know, right now, America's teachers and firefighters pay a higher tax rate than billionaires. I don't even think Elon Musk probably thinks that's fair. I don't know who thinks that's fair. It's not fair, and that should not be the case.

And so, what this proposal does and why the President supports it, in his view, is it fixes that. And this would close an unfair tax loophole and promote economic growth by encouraging productivity, enhancing investments.

And, really, what it does -- to get into the nitty gritty of it -- is, you know, right now, the super wealthy -- billionaires -- I think everyone considers them super wealthy -- are able to access the value of their assets, even if they never sell them, in order to finance lavish consumption.

And right now, billionaires with unrealized gains borrow against their assets during li- -- their life at ultra-low interest rates. And when -- when they die, they get a step-up in basis and no tax is paid on the appreciation of their asset. In other words, their income is never taxed.

That's not fair. And I think what the President is trying to do and what many senators and others support is closing that. Why that should impact a lack of innovation, I think there should be more explanation on. This is trying to make the system more fair.

Go ahead. Oh, sorry, Weijia. I'll come back to you. Go ahead, in the middle.

Q Thank you. Thank you, Jen. It seemed U.S. senators have written President Biden, urging him to designate Cameroon for TPS. Is that something he's willing to do?

MS. PSAKI: That's -- an assessment is made by a process led by the Department of Homeland Security, so I don't have any prediction of that at this point in time.

Q And then on his approval rating: When he came into office last year, he was around 60 percent and even more, and now he's around 40 percent and sometimes less. Who does he blame now: Putin, Trump, you -- the communication team?

MS. PSAKI: Oh, does he blame me? Oh, I don't know. (Laughter.) I hope not.

Look, I think that the President recognizes that the country is still grappling with a number of challenges that impact people and their everyday lives, whether that is a continuing fight with a pandemic that has been going on for several years or the fact that costs are going up. Some of those are a result of the actions of President Putin -- yes, as it relates to gas prices -- but others are related to impacts of COVID-19 and impacts on the supply chain.

So, what our focus is and his focus continues to be: on solutions to address these challenges, and keeping our heads down and trying to continue to deliver for the American people.

Go ahead, Weijia.

Q Thanks, Jen. Shifting to Russian billionaires because, today, the DOJ announced the seizure of that --

MS. PSAKI: Yes. Yeah.

Q -- huge, \$90 million yacht. Is there any evidence that zoning in on Putin's close allies in this way -- seizing their assets -- is having an impact on his calculations? And if not, what is the end goal here to try to apply pressure to Putin himself?

MS. PSAKI: Well, I think it's not the only approach we're taking -- right, Weijia? -- but it is one of the steps that we have -- our national security team determined from the beginning would hopefully be effective on putting necessary pressure on. That includes significant consequences we have implemented on the Russian economy, but it also includes going after people who are in the inner circle and are close, where their actions have warranted that, including Russian oligarchs.

But it is not our -- our expectation is not that one component is going to lead to a direct change. These are just a range of pressure points, and we're going to use all of them that we possibly can.

Q What is the hope that this particular action will take? What -- because we're seeing so many images of yachts around the world being seized, other assets being seized.

MS. PSAKI: Well, again, it's one of several actions we're taking. And I think if you look at the totality of it and the pool of the actions, the Russian economy has been on a downward spiral. There are businesses -- private sector businesses around the world have pulled their -- their business and their investments out of Russia. They're isolated from the world. The oligarchs are isolated from the world. All of these are meant to be consequences and meant to, of course, impact the calculation over the longer term.

Q And then just one quick one --

MS. PSAKI: Yeah.

Q -- on the President's announcement last week about the strategic supply of oil.

MS. PSAKI: Yep.

Q So, you know, the crude prices came down -- we saw that almost right away -- but how long do you expect that Band-Aid will hold if OPEC does not also agree to ramp up production, which it has not so far?

MS. PSAKI: Well, here's how you should look at it. It was intentionally done as a million barrels a day over the course of six months because we knew there needed to be, kind of, a gap filled for that period of time, where our expectation and hope is that there could be greater production by the oil companies over that course of time.

There are also steps -- as you've seen, this as a coordinated release around the world, and there was an announcement last

Friday about that as well -- by other countries to help fill the gap that we see from Russia and from the fact that their oil is not contributing as much as it had historically onto the global marketplace.

And obviously, oil prices are global -- I mean, it's a global marketplace. So, we're already seeing, as you said, a reduction, but this is meant to be a six-month effort to kind of bridge the gap in many ways for that period of time and ramp up production in a range of ways.

Yes, you referenced OPEC Plus, but also other countries last Friday announced their plans and their intentions to release more oil to help meet the supply needs on the market. That's what we're intending to do here, and we're going to continue to look at many ways to achieve that objective.

Go ahead.

Q Iran, over the weekend, said that a deal was close. We heard something different from U.S. officials only days before that. So, what is the current assessment of that deal?

MS. PSAKI: Well, our assessment is that the onus for concluding this deal is squarely on Iran. Together with our European allies, the United States has negotiated the roadmap for a mutual return to compliance through the Vienna talks. The President will reenter the deal if it's in our national security interests. And both ourselves and our allies are prepared to conclude a strong agreement if Iran is prepared to do the same.

What we've seen, however, is that Iran has raised a number of issues that has nothing to do with the mutual compliance under the nuclear deal. And that is where our focus and our objective is. So, we would encourage Iran to focus on the deal negotiated in Vienna, rather than seeking to open issues outside the Vienna context or casting blame, of course, on others for a pause in the talks.

Q Is the White House making a -- any push this week -- last-minute push -- to get another Republican or two to support Judge Jackson?

And secondly, if you could reflect on what Senator Graham said about if Republicans were in control, that she wouldn't get a hearing.

MS. PSAKI: Well, let me say on the first part that our view continues to be that Judge Jackson's credentials, her record warrant bipartisan support. We've seen some of that to date. But certainly, we're going to continue to work the phones up until the last moment here. But I can't make a prediction for you on what the end result of that will be.

I would say on Senator Graham's comments, I think the best questions are probably posed to Senator Graham. I would remind you all that he has previously voted for Judge Jackson when her record and her credentials were exactly the same as they are today. So, it seems like there's more questions that could be posed to him.

Go ahead.

Q As a follow-up on the Senate Supreme Court confirmation hearing: Republicans have said that they wanted to -- that this would be a respectful and fair process, and it's been very contentious.

Given Senator Graham's comments, what do you think is the nature of the Supreme Court as we look ahead for the future, not just this Supreme Court nominee but for future nominations, given the contentious comments from Senator Graham?

MS. PSAKI: Well, look, I think that our view continues to be that qualified nominees, those who meet every objective bar of qualification of backgrounds should be considered and treated with fairness as they go through the process. That's how President Biden is going to continue to -- to operate. And that's how we would expect every member of the Senate to continue to operate.

So, obviously, his comments are disappointing, but our focus needs to continue to be on supporting Judge Jackson and her path to the Supreme Court.

Go ahead.

Q Thanks, Jen. I wanted to ask two questions -- one about refugees and one about the Supreme Court.

MS. PSAKI: Sure.

Q On refugees, the 100,000 number that the President put out when you all were in Europe --

MS. PSAKI: Yeah.

Q -- can you talk about how you arrived at that number and what preparations are being made at this point to accept those refugees? I haven't seen the State Department really put out a lot of detail yet.

MS. PSAKI: Yeah, I expect we'll have more soon. And I think the understandable questions are kind of the prioritization and how the process will work and what the models will be -- all very good questions. And we're just working through the final pieces of the policy process at this point in time.

In terms of the number, it doesn't mean we will -- we will reach that number. As you know, while there have been a startling number of refugees -- individuals who have been kicked out of their homes because of the Russian invasion of Ukraine -- the vast majority of them want to stay in neighboring countries. And that continues to be our expectation.

But this is just an effort for us to play a role, beyond the historic amount of humanitarian assistance and support we're providing to neighboring countries, to ensure that we can find a pathway for those who want to come to the United States to come here too.

But we're still finalizing the policy details, and hopefully we'll have more soon on that for you.

Go ahead.

Q I wanted to ask one more on the Supreme Court.

MS. PSAKI: Yeah.

Q President Biden was asked last week about Justice Clarence Thomas. I believe he said something -- or he said it was up to the Justice Department or the January 6th Committee on whether Justice Clarence Thomas would recuse himself from any of those cases -- those being the January 6th cases.

Judicial ethics mean that the Supreme Court Justice generally makes his own decision on recusals. Does the President still agree with the view of the Justice Department or January 6th Committee should decide? Has he taken a position at this point on whether Justice Thomas should recuse himself?

MS. PSAKI: That's a decision up to the Supreme Court. We don't have any additional position from here.

Go ahead.

Q They were friends from the time they were on Foreign Relations Committee together.

So in terms of -- Japan has the largest number of U.S. troops. Is there some way that they could be involved, as a country that also went through war, with this current situation in Russia? And do you know if they've been included in some of

that also went through war, with this current situation in Russia? And do you know if they've been included in some of these discussions going forward?

MS. PSAKI: I know that they have been included and a part of the conversations, including during President Biden's recent trip to Europe, and that our partnership and friendship with Japan continues as we discuss how to help support Ukraine through the invasion -- Russia's invasion.

Go ahead.

Q Jen, I believe you're running out of time. Maybe just a couple more?

MS. PSAKI: Okay, we're going to do one or two more.

Go ahead.

Q Amid the Ukraine crisis, we know the United States and Russia are still working together on Afghanistan issues. Actually, last Thursday, March 31st, there was a meeting in China where the U.S., China, and Russia delegations went over this issue. Can you describe the working relations between U.S. and Russia on this meeting? And what's China's role on it? Do you worry China might take advantage of the tension between the U.S. and Russia right now?

MS. PSAKI: China -- and just to make sure I'm unpacking your question: What you're asking about -- you're asking about a meeting on Afghanistan between Russian, U.S., and Afg- -- I'm sorry, Chinese officials?

Q Yes.

MS. PSAKI: I would really point you to the State Department. I'm happy to get more details on it and see. I would note that Russia and China are both members of the P5+1. And obviously, we're continuing to pursue a diplomatic deal there as well. So, there are other examples of us working, even as we are horrified by the atrocities in Ukraine.

Okay, last one.

Q Thank you, Jen. Moments ago, you said that it was "ludicrous" that Russia would be allowed to sit on the U.N. Human Rights Council. I'm wondering if the President wants to see China remain on that Human Rights Council as well, given that his administration has already made a determination that China is engaged in genocide against the Uyghur people.

MS. PSAKI: Well, our focus right now on the international stage on this question is on Russia, given the invasion of Ukraine and given what we're seeing -- the photos from Bucha, others that we may see in the future.

Obviously, we will continue to press publicly and privately where we have concerns about human rights violations, including as it relates to China.

Thanks so much, everyone.

4:14 P.M. EDT

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From: White House Press Office
Subject: [EXTERNAL] Press Briefing by Press Secretary Jen Psaki and National Security Advisor Jake Sullivan
To: Loeb, Emily M. (ODAG)
Sent: April 4, 2022 8:00 PM (UTC-04:00)



FOR IMMEDIATE RELEASE

April 4, 2022

Press Briefing by Press Secretary Jen Psaki and National Security Advisor Jake Sullivan

James S. Brady Press Briefing Room

3:06 P.M. EDT

MS. PSAKI: Hi, everyone. Okay. We have a return guest: Jake Sullivan, our National Security Advisor, who will give some brief remarks, take some questions. And then we will do a briefing from there.

With that, I'll turn it over to Jake.

MR. SULLIVAN: Hi, everyone. I hope you guys are doing well.

With apologies to Jen and to you, my remarks are not going to be so brief because I have a number of points I want to get through before opening it to questions.

First, you heard the President today condemn in powerful terms the atrocities committed by Russian forces retreating from Bucha and other towns in Ukraine. The images that we see are tragic, they're shocking, but unfortunately, they're not surprising.

We released information even before Russia's invasion showing that Russia would engage in acts of brutality against civilians, included it tar- -- including targeted killings of dissidents and others they deemed a threat to their occupation. And as the horrific images that have emerged from Bucha have shown, that's exactly what they have done.

We had already concluded that Russia committed war crimes in Ukraine, and the information from Bucha appears to show

further evidence of war crimes. And as the President said, we will work with the world to ensure there is full accountability for these crimes. We are also working intensively with our European allies on further sanctions to raise the pressure and raise the cost on Putin and on Russia.

Today, I'd like to take a step back and talk about where we are and where we think we are going.

Russia launched its invasion of Ukraine more than a month ago. When Russia started this war, its initial aims were to seize the capital of Kyiv, replace the Zelenskyy government, and take control of much -- if not all -- of Ukraine. Russia believed that it could accomplish these objectives swiftly and efficiently.

But Russia did not account for the strength of the Ukrainian military and the Ukrainian people, or the amount or effectiveness of military assistance provided by the United States and its allies and partners.

The Ukrainian people, backed resolutely by the United States and other nations, have held firm. Kyiv and other cities still stand.

The Ukrainian military has performed exceptionally well. And many Ukrainian civilians have joined local militias in addition to using nonviolent means to resist.

Vladimir Putin also believed that the West would not hold together in support of Ukraine. Russia was surprised that President Biden and the United States were so effective in rallying the world to prepare for and respond to the invasion.

And after President Biden reinforced and reinvigorated Western unity at a series of summits in Brussels just 11 days ago, the Russians have now realized that the West will not break.

At this juncture, we believe that Russia is revising its war aims. Russia is repositioning its forces to concentrate its offensive operations in eastern and parts of southern Ukraine, rather than target most of the territory. All indications are that Russia will seek to surround and overwhelm Ukrainian forces in eastern Ukraine.

We anticipate that Russian commanders are now executing their redeployment from northern Ukraine to the region around the Donbas in eastern Ukraine.

Russian forces are already well on their way of retreating from Kyiv to Belarus as Russia likely prepares to deploy dozens of additional battalion tactical groups, constituting tens of thousands of soldiers, to the frontline in Ukraine's east.

We assess Russia will focus on defeating the Ukrainian forces in the broader Luhansk and Donetsk provinces, which encompasses significantly more territory than Russian proxies already controlled before the new invasion began in late February.

Russia could then use any tactical successes it achieves to propagate a narrative of progress and mask or un- -- or try to discount or downplay prior military failures.

In order to protect any territory it seizes in the east, we expect that Russia could potentially extend its force proje- -- projection and presence even deeper into Ukraine, beyond Luhansk and Donetsk provinces. At least that is their intention and their plan.

In the south, we also expect that Russian military forces will do what they can to try to hold the city of Kherson, to enable their control of the waterflow to Crimea, and try to block Mykolaiv so that Ukrainian forces cannot proceed to retake Kherson.

In the north, Russia will likely keep pressure on Kharkiv.

During this renewed ground offensive in eastern Ukraine, Mas- -- Moscow will likely continue to launch air and missile strikes across the rest of the country to cause military and economic damage -- and, frankly, to cause terror, including against cities like Kyiv, Odesa, Kharkiv, and Lviv.

Russia's goal, in the end, is to weaken Ukraine as much as possible.

Russia still has forces available to outnumber Ukraine's, and Russia is now concentrating its military power on fewer lines of attack.

But this does not mean that Russia will succeed in the east. So far, Russia's military has struggled to achieve its war aims, while Ukraine's military has done an extraordinary and courageous job demonstrating its will to fight and putting its considerable capabilities to use.

The next stage of this conflict may very well be protracted. We should be under no illusions that Russia will adjust its tactics, which have included and will likely continue to include wanton and brazen attacks on civilian targets.

And while Moscow may be interested now in using military pressure to find a political settlement, if this offensive in the east proves to gain some traction, Russia could regenerate forces for additional goals, including trying to gain control of yet more territory within Ukraine.

Now, as the images from Bucha so powerfully reinforce, now is not the time for complacency. The Ukrainians are defending their homeland courageously, and the United States will continue to back them with military assistance, humanitarian aid, and economic support.

We know that military assistance is having a critical impact on this conflict. Ukrainians are effectively defending themselves with U.S.-produced air defense systems and anti-tank systems, such as Stingers and Javelins, as well as radar systems that give the Ukrainians early warning and target data, and multiple other types of arms and munitions.

The administration is working around the clock to fulfill Ukraine's main security assistance requests -- delivering weapons from U.S. stocks where they are available and facilitating the delivery of weapons by Allies where Allied systems better suit Ukraine's needs. This is happening at what the Pentagon has described as an "unprecedented pace."

Last Friday, we announced an additional \$300 million in security assistance, bringing the U.S. commitment to \$1.65 billion in weapons and ammunition since Russia's invasion and \$2.3 billion since the beginning of the administration.

The latest package includes laser-guided rocket systems, Puma unmanned aerial systems, armored High-Mobility Multipurpose Wheeled Vehicles, and more.

Material is arriving every day, including today, from the United States and our Allies and partners. And we will have further announcements of additional military assistance in the coming days.

We are working with the Ukrainians, as I said, to identify solutions to their priority requests. In some cases, that means sourcing systems from other countries because the U.S. either doesn't have the system or doesn't have a version that could effectively be integrated into the fight. Sorts of systems like this include longer-range anti-aircraft systems, artillery systems, and coastal defense systems.

So, let's take coastal defense systems as an example. President Biden went to Brussels to talk to key Allies 11 days ago about how to get coastal defense systems to Ukraine, because there is not, at the moment, a good U.S. option.

Last week, the UK announced at the close of its donor conference that coastal defense systems would be provided to the Ukrainians. It is a good example how, working with Allies and partners, we are successfully responding to Ukraine's requests.

We expect additional new capabilities to be delivered in the near future. We can't always advertise what is being delivered out of deference to our Allies and partners or for operational sensitivities, but we are moving with speed and efficiency to deliver.

Let me close with this: Even as Russia acknowledges the failure of its initial plans and shifts its goals, three elements of this war remain constant.

First, Russia will continue to use its military to try to conquer and occupy sovereign Ukrainian territory.

Second, the Ukrainian military and people will continue to effectively and bravely defend their homeland.

And third, the United States will stand by them for as long as it takes.

Russia has tried to subjugate the whole of Ukraine, and it has failed. Now it will attempt to bring parts of the country under its rule. It may succeed in taking some territory through sheer force and brutality.

But no matter what happens over the coming weeks, it is clear that Russia will never be welcomed by the Ukrainian people. Instead, its gains will be temporary, as the brave Ukrainian people resist Russian occupation and carry on their fight for an independent, sovereign nation that they so richly deserve.

And with that, I'd be happy to take your questions.

Yeah.

Q Jake, can I ask you about the President's call for a war crimes trial for Vladimir Putin? What are the mechanics of how the President sees that playing out? Would it be at the International Criminal Court or at some other tribunal?

MR. SULLIVAN: So, we have to consult with our allies and partners on what makes most sense as a mechanism moving forward. Obviously, the ICC is one venue where war crimes have been tried in the past, but there have been other examples in other conflicts of other mechanisms being set up.

So, there is work to be done to work out the specifics of that. And between now and then, every day, what we are focused on is continuing to apply pressure to the Russian economy and provide weapons to the Ukrainian people to be able to defend themselves.

Q Other --

MR. SULLIVAN: Yeah.

Q Sorry, forgive me. Other forums for this might include something that the U.N. General -- the U.N. Security Council might adopt. Is that what you're suggesting -- that you would go to the Security Council?

MR. SULLIVAN: Well, obviously, with Russia as a permanent member of the U.N. Security Council, it would be difficult to imagine that they would not attempt to exercise their veto to block something.

But there have been creative solutions to the question of accountability in the past, and I'm not going to prejudge what solution would be applied here or what forum or venue would be applied here.

What I will say is what the President said this morning: There has to be accountability for these war crimes. That accountability has to be felt at every level of the Russian system, and the United States will work with the international community to ensure that accountability is applied at the appropriate time.

Yes.

Q The President was careful to say he does not see this as genocide. Many Ukrainians believe that it is because their nation, their people are being attacked. Where is the line, in your view? And how have you counseled the President between “genocide” and “war crimes”?

MR. SULLIVAN: So this is something we, of course, continue to monitor every day. Based on what we have seen so far, we have seen atrocities, we have seen war crimes. We have not yet seen a level of systematic deprivation of life of the Ukrainian people to rise to the level of genocide. But, again, that's something we will continue to monitor.

There is not a mechanical formula for this. There is a process that we have run just recently at the State Department to ultimately determine that the killing -- the mass killing of Rohingya in Burma constituted genocide. That was a lengthy process based on an amassing of evidence over a considerable -- a considerable period of time and involving, frankly, mass death, the mass incarceration of a significant portion of the Rohingya population.

And we will look to a series of indicators along those lines to ultimately make a determination in Ukraine. But as the President said today, we have not arrived at that conclusion yet.

Yes.

Q Thanks. I just have three quick questions. When you say the next stage will be “protracted,” do you mean years? I mean, Russia has been in Crimea and Donbas since 2014. What -- what's “protracted”?

MR. SULLIVAN: So we can't predict, but I would just say that, so far, this conflict has lasted a little more than five weeks. And yet, in that time, we've seen an enormous amount of killing and death and, also, an enormous amount of bravery and success on the part of the Ukrainian forces.

What I'm saying when I say “protracted” is that it may not be just a matter of a few more weeks before all is said and done. That first, quote, unquote, “phase” of the conflict, of -- the Russians put it, was measured in weeks.

This next phase could be measured in months or longer.

Q In the beginning, the consensus seemed to be: Russia was unstoppable; we just had to make the price as high as possible for them.

Then the new thinking is: Maybe Ukraine can actually win. Do you agree with that? And what would winning look like?

MR. SULLIVAN: So we believe that our job is to support the Ukrainians. They will set the military objectives. They will set the objectives at the bargaining table. And I am quite certain they are going to set those objectives at success, and we are going to give them every tool we can to help them achieve that success.

But we are not going to define the outcome of this for the Ukrainians. That is up for them to define and us to support them in. That's what we're going to do. And we do have confidence in the bravery, skill, and capacity of the Ukrainian armed forces and the resilience of the Ukrainian people.

Q I just have one -- one quick thing on chemical weapons. The President and other allies have promised consequences without saying what they would be. The last time Russia used chemical weapons, there were sanctions but not very stiff ones. Are you ready to define consequences?

MR. SULLIVAN: So I'm going to say the same thing I've said from this podium that the President has said from a podium down the hall in this same building, which is that Russia will pay a severe price. We have communicated to them directly.

We have coordinated with our allies and partners. And I'm not going to go further in terms of the specifics here today.

Q Jake, two questions.

MR. SULLIVAN: Yeah.

Q The administration initially did not call this "war crimes," and eventually, though, they did after they -- what they saw on the ground. Do you think that's going to be the case with calling it a genocide?

MR. SULLIVAN: Well, so, first, it's not just that we sit around and debate terms and then, ultimately, decide to apply a term based against static circumstances. We watch as things unfold. We gather evidence. We continue to develop facts. And as we gathered evidence and as we got the facts together, we ultimately came to the conclusion that war crimes were committed.

And, in fact, I would say, on this front, President Biden was a leader. He went out and said Putin is a war criminal. And many of you raised your eyebrows at that; many people out in the public raised their eyebrows at that. And now you see the scenes coming out of Bucha today.

And so, he's not going to hesitate to call a spade a spade, to call it like he sees it, and neither is the U.S. government.

So as the facts develop, could we see ourselves reaching a different conclusion on that question? Of course we could. But it's going to be based on evidence and facts as we gather it along the way.

Q And two more quick ones for you. On the sanctions that the President was talking about today, should we expect those this week, or what's the timing?

MR. SULLIVAN: You can expect further sanctions announcements this week. And we are coordinating with our allies and partners on what the exact parameters of that will be. But, yes, this week, we will have additional economic pressure elements to announce.

Q And my last question, quickly. You keep using the word "retreat" instead of "reposition." How much is that in part due to the spring conditions, the muddy conditions that are on the ground in Ukraine?

MR. SULLIVAN: The reason I use the phrase "retreat" is just kind of quite simple common sense. It's not some fancy technical military term. It's a term that all of us understand, which is, if you run pell-mell for an objective and you get stopped, and then you start to get beaten back, and then you withdraw, you pull out -- that's what I would call a retreat.

That's what happened to the Russians in Kyiv: They attacked Kyiv. They failed. They started to get beaten backwards by the Russian -- by the Ukrainian military. And they ultimately retreated back across the border into Belarus.

Now, with those forces, as I said in my opening comments, they are not intending to stand pat. They are going to reposition those forces to go after a different objective -- a scaled-down objective, but nonetheless a dangerous and disturbing objective, which is to conquer an occupied territory in eastern Ukraine.

And now it's our job to help the Ukrainian people have the tools they need to be able to stymie that objective. That is what we're intent on doing at this time.

Q Jake, I know you're not willing to call it a genocide, but does the U.S. government have information that you can -- that you can use to independently corroborate Ukraine's allegations about atrocities in Bucha?

MR. SULLIVAN: So we have -- obviously got access to a lot of the information that you all have. We also have information that the Ukrainians have provided us directly. And we will also work with fact finders -- independent fact finders as we go

forward to get to a level of documentation that allows us to help build very strong dossiers of evidence for war crimes prosecutions. And that is what we intend to do.

Now, on the question of the genocide determination: Obviously, we will continue on a daily basis to have consultations with the Ukrainians to reach determinations. And if at some point we reach the judgment that there, in fact, has been a level of atrocity, a level of killing, a level of intentional activity that rises to meet our definition of genocide, we'll call it for what it is.

We have never hesitated to call out the Russians for what they have done in Ukraine, and we will not start now.

Q And sorry -- sorry, one quick question on France, Jake. They are -- they have suggested that, you know, a hefty EU-wide tariff should be imposed, as opposed to a blanket ban on Russian energy imports into the EU. Does the U.S. support that? And will that be part of what you're planning to do next in terms of sanctions?

MR. SULLIVAN: We are having conversations, as I stand here at this podium, with senior officials in the main European capitals, as well as in Brussels, on the full range of sanctions options, including sanctions options or pressure options that relate to energy.

I'm not going to negotiate that out at this podium. We want to make sure that we're able to pull together a consensus along with the rest of the European Union.

Q Jake, the Kremlin is denying the images out of Bucha, saying that they don't show any kind of apparent execution. What is the U.S. doing to try and expose Russia's actions to its own citizens? I mean, what can we do to sort of fight this information war?

MR. SULLIVAN: Well, first, I would note that the Kremlin is working overtime to close down the information space inside of Russia, which is not exactly the action of a strong and confident government that feels really good about the story that it would be telling if it were allowing independent news sources to come in.

Second, we are, of course, supporting, through a variety of means, the provision of information about these atrocities and about the entire effort by the Russians to unjustly and unlawfully invade a sovereign neighboring country not just to the Russian people, but to people everywhere. We will continue to do that.

Q And just to be clear: Is it your sense that the atrocities that we're seeing in Bucha are based on orders coming from Putin or his senior military officials? Or is there a chance here that this is sort of Russian forces acting on their own? And is there even a distinction?

MR. SULLIVAN: I don't want to get into the specific intelligence related to Bucha at this point. But what I will say, as I said at the outset, is that even before the invasion happened, we shared information with the public, with the press, including from this podium, that Russia was intending as a matter of policy -- not as a matter of one guy in a unit in a suburb of Kyiv, but as a matter of policy in this war -- to kill dissidents, to kill those who caused problems for the occupation, and to impose a reign of terror across occupied territories within Ukraine. That is what we are seeing play out.

So, no, we do not believe that this is just a random accident or the rogue act of a particular individual. We believe that this was part of the plan. We declared it from this podium as part of the plan, and now we are seeing it play out in real life, in living color, in these terrible, tragic images we are seeing come from Bucha.

Yeah.

Q Thanks. So, I know you don't want to talk about possible venues for a war trial -- war crimes trial, but can you talk a little bit about the evidence-gathering aspect of it? That's going to be crucial to combatting disinformation and what Russians will say -- that "Ukrainian rebels are fighting us. That was legitimate warfare what happened." That could be a tactic they're taking.

So can you walk us through the evidence-gathering? Who's doing it? Are there people on the ground gathering evidence? How long does that take to, sort of, build a case? And what does that look like?

MR. SULLIVAN: So, I will directly answer your question, but I also think it is important for our team at the State Department, which will take the lead on this, including our Global War Crimes Coordinator, to give you a fully elaborate answer to this question, in technical detail, so that everybody understands exactly how this process works.

But with that being said, there are four main sources of information that we will develop in an effort to help build the case for war crimes.

The first is the information we and our allies and partners gather, including through intelligence sources. And we, actually, within our intelligence community, had previously stood up a team to be able to document and analyze war crimes and worked closely with the State Department in doing so. And we're also coordinating with key allies and partners who have their own capacities.

The second is what the Ukrainians themselves will do on the ground to develop this case, to document the forensics of these tragic and senseless killings in this particular instance and in other instances across Ukraine.

The third is international organizations, including the United Nations, but others as well -- prominent international non-governmental organizations with real credibility and expertise in this area.

And then the fourth is all of you. Because part of building this case is relying upon the global independent media, who has images, interviews, documentation. And when you put all of those four sources together, you can build, we believe, a package that can stand up to the relentless disinformation we are likely to see and have already started seeing from Russia, and that, ultimately, the truth will withstand the assault on the truth that we can expect to come from Moscow.

Q On former President Trump, he's having Save America rallies where he's decrying the Biden administration, decrying the response that you all in the White House have been giving to this war in Ukraine. He said if he was in here in office, he would do it better; it wouldn't happen under him. What is your response to the former President, Donald J. Trump, saying these things about the current administration?

MR. SULLIVAN: I don't -- I don't have a response to the former President. We are focused on getting the job done, getting the support to the Ukrainian people that they need, applying unprecedented pressure to the Russian economy, and building a form of Western unity that no one could reasonably have expected and that we have sustained through the early weeks of the war and will sustain for the period ahead.

And I'll leave the commentary on what the former President said to others.

Q Thank you very much. Thanks, Jake. To follow up on what you said about Ukraine setting terms for any potential resolution, President Zelenskyy said on "Face the Nation" that with regard to any potential peace agreement, the important thing in this agreement are security guarantees. But he also said the U.S. has not received -- has not provided any yet. Is the U.S. considering that? And what would that look like?

MR. SULLIVAN: So we are in regular contact -- and by "regular," I mean near daily contact. I personally am in near daily contact with my counterpart in the Ukrainian government. And we are talking constantly about how we can support a negotiated solution that defends Ukraine's sovereignty and territorial integrity. And we have told them that we are prepared to do our part to support that, including by ensuring that Ukraine has the means to defend itself in the future.

I'm not going to get into the specifics of what those negotiations are because I believe it's very important that they have a protected space to be able to be carried out. But you can rest assured that the United States is actively working in consultation with Ukrainians to support their efforts at the peace table.

Q And then, a question on the sanctions. You just said that you're under no illusions that Russia will adjust its target. So what function will an additional sanctions package have when you announce it?

MR. SULLIVAN: So, I would say two things about sanctions. One is that sanctions are intended to impose costs so that Russia cannot carry on these grotesque acts without paying a severe price for it. The other is to have an effect on Russia's behavior over time.

But as President Biden has made clear repeatedly, we don't expect that that shift in behavior will be caused by sanctions overnight or in a week. It will take time to grind down the elements of Russian power within the Russian economy, to hit their industrial base hard, to hit the sources of revenue that have propped up this war and have propped up the klepto- -- kleptocracy in Russia. That's going to take some time to play out.

But there's no better time than now to be working at that so that the costs end up setting in and that ends up sharpening Russia's choices.

So, sanctions are not alone going to solve any of these problems, but they are a critical tool in ultimately producing a better outcome to this conflict than would otherwise be produced.

Q Have the revelations about Bucha prompted the administration and its allies to reconsider what kind of military assistance it's providing to Ukraine? Are tanks now part of, you know, potential transfers that could be provided to the Ukrainian military?

MR. SULLIVAN: So, I'm not going to get into certain specific systems because, as I said at the outset, there are operational sensitivities and the sensitivities of our allies and partners for why we wouldn't speak about a particular capability like tanks.

But I will say this: Even before Bucha, the United States was working with Ukrainians on every item on its priority list and how we could go ahead and ensure that that could be provided to them. The only capability that we have discussed with them where there has been a difference in perspective that has been played out in living color and in this podium many times over has been the question of direct facilitation from a U.S. airbase in Germany into contested airspace over Ukraine -- the MiG-29s.

Otherwise, before Bucha, we were working with them on a wide range of capabilities, including some capabilities that people here were writing we weren't prepared to provide. That wasn't right.

Now, it's hard for me to correct the record in every case because, for very good reasons, some of these systems we cannot advertise, we cannot talk to you all about it.

But what I want to make clear, as I said at the outset, is the extent and depth of effort to acquire and transfer a variety of advanced weapons capabilities is extraordinary, it is unprecedented, and it has been ongoing from well before the terrible images came out this week.

Yeah.

Q Jake, on the International Criminal Court: Is one of the reasons why the U.S. is considering alternate venues is because the U.S. is not a signatory? And does that undercut the U.S. push to hold Putin accountable with a war crimes trial of some kind when the U.S. is not a signatory of the International Criminal Court?

MR. SULLIVAN: The U.S. has in the past been able to collaborate with the International Criminal Court in other contexts, despite not being a signatory. But there's a variety of reasons one might consider alternative venues as well, beyond the specific relationship between the U.S. and the ICC.

Most importantly, this is not a decision the United States is going to make by itself. We're not going to make the call out of Washington for the appropriate venue for accountability; that is going to be done in consultation with allies and with partners around the world. And I don't want to prejudge those conversations that are ongoing.

And what I can communicate is the very real, sustained, and committed proposition that the United States has that we are going to ensure that there is accountability.

Yeah. I'll just take one more. Yeah.

Q Thanks, Jake. The U.S. had rejected Poland's plan for a peacekeeping force to protect civilians. Is that something that's being reconsidered, given what we've seen of these atrocities? And is there any talk among the Allies to do some sort of force to help protect the civilian population?

MR. SULLIVAN: So, I don't quite accept the premise of the question. There -- there had been various peacekeeping proposals floated; none of them have ever been given full shape or been kind of formally put forward and suggested should actually be implemented.

And so, we continue to consult with our Allies and partners, including Poland, on what makes sense going forward. We have not yet seen a proposal that actually has been fleshed out that could be operationalized.

The one thing that the United States has made clear throughout this is that it is not our intention to send U.S. soldiers to fight Russian soldiers in Ukraine. But in terms of the supply of capabilities, in terms of other steps to support the Ukrainians and to do our best to protect civilians in Ukraine, we continue to look at every possible option, including in consultation with our partners on that.

And I'll -- I'll leave it at that. Thank you, guys.

MS. PSAKI: Thank you, Jake, so much for joining us.

Q Thank you. Come again, please.

MS. PSAKI: He will, I'm sure. He's probably our most frequent guest. I don't know if you get -- I probably owe him something for that.

Okay, a couple of items for all of you at the top. Today, Vice President Harris and administration officials announced the Biden-Harris Action Plan for Building Better School Infrastructure.

By leveraging funds from the Bipartisan Infrastructure Law and the American Rescue Plan, this action plan will activate the entire federal government to support students' health and learning, from upgraded HVAC systems to electric school buses, from on-site solar energy installations to safe routes to school.

I also wanted to note, in light of the President's event on trucking, a couple of details or facts for all of you. 2021 was the best year for trucking growth -- jobs growth since 1994. And December 2021 through February of 2022 was the best three-month stretch for long-distance truck hiring since the 1990s.

Thanks to the efforts of the Department of Transportation, we doubled the issuance of Commercial Driver's License issuances in January and February of 2022, compared to the prior January and February of 2021.

And over 100 employers -- including Domino's, Frito-Lay, and UPS -- launched registered apprenticeship programs in the past 90 days. This could result in more than ten thou- -- 10,000 additional apprentices -- apprenticeships nationwide, which, of course, get more people -- more truckers trained, more trucks on the road, more goods moving around and onto shelves across the country.

shelves across the country.

I also wanted to note -- I think you all saw this, but just to confirm for all of you: Tomorrow, the President and Vice President will be joined by former President Obama to highlight how the Affordable Care Act continues to lower healthcare costs for American families. This will be the first time former President Obama returns to the White House since leaving office.

Since we've taken office -- since we've entered -- the President -- since President Biden has entered office, we've taken big steps to reduce healthcare costs and expand access to healthcare for the American people.

And how President Biden and former President Obama both see the Affordable Care Act is an example -- a shining example of how government can work for the American people. Not only did it ensure that millions of people had access to affordable healthcare, but it has been an opportunity to build on that and make changes and make improvements over the course of time, which, of course, is what they will talk about tomorrow.

But even since the President took office, through the American Rescue Plan, we lowered premiums for 9 million Americans -- the biggest expansion of affordable healthcare since the ACA. We've made affordable health coverage more accessible during the pandemic through the opening of the special enrollment period, which enabled nearly 3 million Americans to have access -- to newly sign up for coverage under the ACA.

And President Biden has overseen the most successful open enrollment period in history last year, with a historic 14.5 million Americans signing up for the -- for ACA coverage and another million people signing up for the basic healthcare program.

So, tomorrow, they'll announce more steps.

I'll also note, as they did every week when President -- former President Obama was president and President Biden was vice president -- that's a mouthful -- they will have lunch tomorrow as well, as they used to do on a weekly basis.

I would note they continue to talk regularly. They are real friends, not just Washington friends, and so I'm sure they will talk about events in the world as well as their families and personal lives.

So, I'll try to get around the room as best as I can. But, Chris, why don't you kick us off?

Q So, one question on Title 42. Some Republican attorneys general are suing the administration over the plan to lift it. What is the administration's response? And is the administration concerned that this would end up blocking the push to lift the order?

MS. PSAKI: Well, on the lawsuit itself, I'd of course refer you to the Department of Justice; they would be overseeing any steps there.

But broadly speaking, I think it's important to note for any critics in any lawsuits that Title 42 is a public health directive; it's not an immigration/migration enforcement measure. And the decision on when to lift Title 42 was made by the CDC.

And our objective from here -- and this is why we have the implementation period over the next several weeks -- continues to be to ensure we are increasing our resources, surging personnel and resources to the border, improving border processing, implementing COVID-19 mitigation measures, and continuing to work with other countries in the Western Hemisphere to manage migration and address root causes.

But this is, again, a healthcare measure -- a health measure determination and not one on immigration policy.

Go ahead.

Q Thanks, Jen. Let me ask you the question I was going to ask Jake, which is that: As part of this new effort to ramp up sanctions, is the administration going to be ramping up pressure on China and India to abide by existing sanctions? And what does that look like? I know Daleep Singh was just in India.

MS. PSAKI: Yeah.

Q Are you going to intensify some criticism of them and others who haven't done so?

MS. PSAKI: Well -- well, certainly our expectation and our public and private message is -- will continue to be that every country should abide by the sanctions that we have announced and that we are implementing around the world.

As you noted -- so let me start with India, if that's okay. As you noted, Daleep Singh, our Deputy National Security Advisor, was just there. I would note that, you know, just given some of the reporting, energy payments are not sanctioned; that's a decision made by each individual country. And we've been very clear that each country is going to make their own choices, even as we have made the decision and other countries have made the decision to ban energy imports.

What -- what Daleep did make clear to his counterparts during this visit was that we don't believe it's in India's interest to accelerate or increase imports of Russian energy and other commodities.

Right now, just to give everybody the full scope of it, India's imports of Russian energy represent only 1 to 2 percent of their total energy imports.

So, while he al- -- he explained both the mechanisms of our sanctions and reiterated that any country or entity should be abiding by those, we also made clear that we'd be happy to be a partner in reducing their reliance or even their small percentage of -- of reliance on that.

As it relates to China -- I know that Jake spoke to this the last time he was here -- our assessment hasn't changed on that front, but we continue to convey the same expectations of abiding by sanctions.

Q And then, on COVID funding, there are reports that the Republicans and Democrats in the Senate are nearing a deal on a \$10 billion package that doesn't include global aid. Is a package of that size, and that doesn't include global vaccine assistance, something that President Biden could sign into law?

MS. PSAKI: Well, let me first say that we are encouraged by the strong progress that Congress is making in finalizing a deal -- not yet final, but finalizing a deal -- to fund some of our most very urgent COVID response needs.

I would remind everyone that what we had requested was \$22.5 billion, not \$10 billion, in order to achieve a number of objectives -- including securing enough booster shots for the general population; purchasing more monoclonal antibodies and Evusheld for the immune- -- immunocompromised; maintaining our testing capacity; getting shots in arms abroad, to go to your question; and funding for variant-specific vaccines if needed.

So, this does not -- will, obviously, not meet all of those -- all of those needs -- dire needs in this country. And certainly, our objective would continue be -- to be to press for funding for international -- support for international -- for ensuring we continue to be the arsenal of vaccines in the world, regardless of what this final package looks like.

I'd note that the reason that's so important is not just because of the need to have vaccine doses, it's because we need to -- a lot of -- there are countries around the world who are refusing our vaccine dose- -- doses because they don't have the mechanisms, the know-how, and the capacity to be able to distribute those doses. So that funding that we've been requesting and we'll continue to press for would be accounting for that as well.

I -- can I note one more last thing? Sorry, I've got a lot on this. Is -- I would also note that as you're watching Congress

and the Senate, there are a wide number of Republicans who have called for funding for and called for ensuring that we continue to be the arsenal of vaccine distribution around the world -- they don't use that exact phrase, but basically that's the basics -- including Senator Graham, who said, "I support the effort" -- just in June of last year -- "of the Biden Administration to donate vaccines to at-risk populations throughout the world."

Senator Portman said that -- that he is "pleased" that legislation -- this is last summer -- that has passed the committee at the time would help ensure that -- that domestic supply is part of our -- what we're doing in domestic supply -- excess domestic supply is part of our global vaccination strategy.

Senator McConnell said it would be "terribly unfortunate" if a supplemental COVID-19 funding package did not include international vaccines.

So I'm not going to prejudge where all they -- they will all be on this or future legislation. I would just note that if we want to continue to be providing to the world, we need money. And that's a case we will continue to make.

Go ahead.

Q Ukraine's Prosecutor General just suggested that there's more gruesome evidence of the aftermath of Russia's occupation around Kyiv, saying that the worst situation may, in fact, be in Borodyanka. I apologize if I don't pronounce that correctly.

But do you have a sense of how widespread this may be in the Kyiv region? I mean, I know Jake just said that you're going to continue to see these kinds of brazen attacks, but what more can you tell us about some of these other areas that we may be hearing about?

MS. PSAKI: I don't have a new or additional assessment. This is something we will continue to gather information on, and Jake, obviously, outlined a number of ways we will do that -- both by intel gathering, working with our partners and allies around the world.

But I would also note, Mary -- to go back to your earlier question -- that the fact that we're seeing these horrific images from Bucha around the wor- -- you know, now around the world, thanks to all of your broadcasts and many global broadcasters -- I mean, we have access. There's access to this area. There's not access to a lot of the areas around Mariupol and other areas of Ukraine where we have not even begun to see the impact of the atrocities and the impact of what, as Jake said, President Putin and the Russians made clear they were intending to do from the outset of the war.

So, while I don't have additional assessment, I would just note that, you know, we should brace ourselves for what we may see as we gain greater access and learn more about what atrocities they have implemented.

Go ahead.

Q Thank you. The U.S. ambassador to the U.N. says that tomorrow she's going to go to New York and seek Russia's suspension from Human Rights Council.

MS. PSAKI: Yeah.

Q Is that at the direction of the President?

MS. PSAKI: Yes. The President does not believe -- he believes it's ludicrous for Russia to be a member of the Human Rights Council. And certainly, the ambassador spoke to this today and while she was on her overseas trip, and she will continue to make the case in her role when she returns to New York.

Q Why not seek to permanently expel them?

MS. PSAKI: From the Human Rights Council?

I would point -- I would point you to our U.N. ambassador on what specific steps, but obviously removing them would be the next appropriate step in the process.

Go ahead.

Q Thank you, Jen. So, President Biden is talking about putting Putin on a wartime trial. Does he expect Putin to turn himself in to stand trial? Or does he think somebody's going to have to go into Russia and arrest him?

MS. PSAKI: Well, without getting into the mechanisms -- which, I know, were the good questions everybody was asking our National Security Advisor -- there is precedent in the past of how this process can work.

We're not going to prejudge what the process would work or -- or what steps would be taken through -- through an international legal process.

So, that's not quite where we're at right now, Peter, and I can't give you a sense of the mechanisms of -- of, if convicted, what would happen.

Q Okay.

A question about college sports. In some places like the Ivy League, now there are biological males competing against women. Does the White House think that is fair?

MS. PSAKI: Well, I would note that we're not the governing body for the NCAA or any other system out there that -- I believe you're probably referring to the case over -- in swimming in the NCAA.

We understand how important sports are to student athletes across the country. But the NCAA obviously makes -- puts these policies in place.

What I would say, Peter, if we look at this broadly, is that we celebrated International Transgender Day of Visibility last week with a slate of new actions to ensure we are continuing -- we continue to protect the dignity and identity of all Americans.

And at a moment where we're looking at and we're seeing increased mental health issues related to young people, especially LGBTQ+ young people, we're providing additional funding and resources to address this issue.

And we hope all leaders can focus on those important issues and the impact on many of these young people who are impacted across the country.

Q And then, what about this new law in Florida? At what age does the White House think that students should be taught about sexual orientation and gender identity?

MS. PSAKI: Well, I would say, first of all, Peter, we have spoken to the "Don't Say Gay" bill in the past -- I believe is what you're referring to --

Q Right.

MS. PSAKI: -- and made clear that as we look at this -- this law, what we think it's a reflection of is politicians in Florida propagating misinformed, hateful policies that do absolutely nothing to address the real issues.

The Department of Education is well positioned and ready to evaluate what to do next, and when -- and its implementation -- whether its implementation violates federal civil rights law.

But I would note that parents across the country are looking to, you know, national, state, and district leaders to support our nation's students, to ensure that kids are treated equally in schools. And that is certainly not -- this is not a reflection of that.

Q And so, just the last one. So if you guys oppose this law that bans classroom instruction about sexual orientation and gender identity in K through 3, does the White House support that kind of classroom instruction before kindergarten?

MS. PSAKI: Do you have examples of schools in Florida that are teaching kindergarteners about sex education?

Q I'm just asking for the President's opinion about this law.

MS. PSAKI: Well, I think that's a -- I think that's a relevant question, because I think this is a politically charged, harsh law that is putting parents and LGBTQ+ kids in a very difficult, heartbreaking circumstance. And so, I actually think that's a pretty relevant question.

Go ahead.

Q On the Ukraine atrocities, Jake referenced some of the images that all our news organizations have been gathering. Is the administration able to gather other and document other cases that you have assembled that we may not be aware of, in terms of this collection of data on war crimes, rapes, murders -- things like that -- that we have not yet seen? Is there more data that --

MS. PSAKI: On the ground, you mean?

Q Yes.

MS. PSAKI: So, I'm sure you've seen, Kelly, that the EU announced their intention to send a team there, which obviously hasn't happened yet. But that was an announcement made earlier today.

Certainly, through intel gathering, we likely do have access to different types of information. We have declassified a range of information over the course of time, which I would expect we continue to do -- we will continue to do.

Right now, I can't give you an assessment of what we may know that you don't know. But I would just say and reiterate what Jake said, which is we're going to use every tool at our disposal we can -- some of that is through intel channels; some of that is, of course, working with our counterparts around the world -- to gather as much data and information as we can.

It is difficult -- to go back to an earlier question -- given that we need access, or even our European friends and partners need access, to gather. But -- but it is vital, it is important, and we are going to do everything we can to support those efforts from here.

Q And if the Russians are able to take some territory in the east and have greater stability of their control there, would it ever be the U.S. position that that could be a stable outcome? Or is maintaining the current map of Ukrainian sovereignty what the West would want?

MS. PSAKI: Sure. Well, it's going to be up to the Ukrainians and Ukrainian leaders to determine what the diplomatic path forward looks like here -- what discussions, what negotiations they are comfortable with.

What our objective is and what tool we can -- we feel we can most be effective at, I should say, is supporting them and strengthening their hand in these negotiations. And that includes not just the economic support, the military support. I

would note, over the course of the last couple of days, the Department of Defense announced an additional package beyond what was announced just a few weeks ago. So we're going to continue to do that.

But in terms of the negotiations and what they would be comfortable with, we're here to support them, and we're not going to predetermine that.

Go ahead.

Q Thanks, Jen. Just last week, you said that the U.S. is sending protective gear to Ukraine --

MS. PSAKI: Yeah.

Q -- to help shield Ukrainians from chemical weapons use. Have those deliveries been made, or have they started? Is there any timeline specifically for those deliveries? Because Jake did mention that deliveries have started.

MS. PSAKI: Sure. I can check for you a status of that. We try to do it in an expedited manner. And we still have means of getting equipment of -- a range of equipment to people who need it on the ground. And I can check if that equipment has been delivered, or is in process -- I guess you're asking.

Yeah.

Q And I have a quick question on Elon Musk and him picking up a 9 percent stake in Twitter, which makes him the largest shareholder in the company. Obviously, the White House uses Twitter quite extensively, and Musk has been very critical of President Biden. I'm wondering if there is perhaps any recalibration of the use of the platform or to what extent, you know, the White House is using Twitter, going forward.

MS. PSAKI: That's a decision of a private sector leader. I don't have any specific comment on it. But I expect we will continue to use Twitter, as you all will as well, I would expect.

Go ahead.

Q Thanks, Jen. I was wondering if you could elaborate a little bit more on President Biden and former President Obama and their relationship and how often and how they communicate. And you had mentioned that they are real friends and not just Washington friends. But given that they only live a few miles apart, why is this the first time that the former President has been invited to the White House?

MS. PSAKI: Well, I would say, first, I have known them both for some time. And I have watched -- I watched their friendship grow over the course of the period of time when the President was vice president and when the former President was president.

And why I noted that at the top is because I think people who didn't have the seat I had may just think that it's like inviting any former President to the White House. And it certainly is not that. They talk on the phone; they do that on a regular basis. I'm not going to give you the number of times they've had conversations, but I would note they consult on a range of issues, but also about their families and things happening in their personal lives. And, you know, it's not a relationship of obligation. It's one where they developed a deep and close friendship through the course of their time serving together, and that has continued.

And tomorrow is, of course, exactly the right time to have the former President come here, given this is one of the proudest accomplishments that they worked on together, they shared together. And it is emblematic of their shared view and belief that government can work for people, and it can work for the American people. And this is an example of building on a success from more than 10 years ago and making it better over time.

So -- and I suspect that former President Obama will be back when there is a portrait unveiling and perhaps for other -- other engagements here as well in the future.

Go ahead, Karen.

Q Thanks, Jen. Can you tell us how the President or if he -- the President has engaged with lawmakers in the last couple of days on the COVID funding deal? And has he talked to any Republicans on this?

MS. PSAKI: I'm not going to give you an outline or a detail of people he's spoken to. I will note that it's rare that I am in the Oval Office on any given day where he doesn't just pick up the phone and call a member of Congress, often a Republican -- at least when I'm in there -- to talk to them about a range of priorities.

This is clearly a huge focus for the President because of the dire need we have at this moment to get this funding through and the fact that we are already at a point where we have had to halt, delay a range of programs and purchases that we feel are imperative.

I would note that on the global side, you know, we are -- we already need to stop plans to ex- -- expand the global vaccination initiative to more countries. We'll also have to immediately scale back our global efforts to provide lifesaving tools -- this is a little bit of what I mentioned earlier -- like oxygen systems, antiviral pills -- things that can cut death rates by 90 percent for the unvaccinated.

And I would also note that, even as we're very encouraged by the progress, we're going to need more -- because our objective here is going to continue to be -- to be ahead of the process and be ahead in planning to make sure we can have funding for antivirals, the vaccines needed for people for many months to come.

Q And just to be clear: So, he has been talking on this specific issue (inaudible) --

MS. PSAKI: He's been engaged with a range of members about a range of issues. This is a huge priority. I'm just not going to get into the details of what those calls look like.

Go ahead.

Q Thanks, Jen. I just wanted to clarify what I was asking Jake there, because it sounded like, at the end, he was leaving open the possibility of U.S. boots on the ground to protect civilians in Ukraine or to protect the supply chain.

MS. PSAKI: I don't think that was his intention.

Q Okay. Because he did say, in terms of the supply chain or civilians, that you're discussing all possibilities with allies.

MS. PSAKI: We -- nothing has changed about the President's view about boots on the ground.

Go ahead.

Q So, the jobs report came out on Friday. Inflation is at 7.9 percent. It shows average hourly wages went up 5.6 percent. I wonder what the level of concern is for the President and the White House that people will stop spending because the stuff they want is more expensive and that leads us to a recession.

MS. PSAKI: Well, I would say on the latter part of your question that what we know is that the economy is strong, our recovery has been strong. And that continues to be -- while we, of course, are monitoring progress and where we have concern -- including rising costs and, obviously, the need to continue to address inflation -- that continues to be our assessment, which is -- which is even as there are challenges we need to continue to address, it means that we have a strong basis that we are building from.

I would remind you also that the unemployment rate is 3.6 percent. And the President created more jobs last year than any president in American history. So those fundamentals are also backed up by data.

And obviously, what we're trying to do -- as you know from following this closely, there are a couple of areas that are impacting rising costs more than others -- right? -- including the price of gas, including the price of automobiles and the impacts on the car industry of the lack of -- the chip shortages.

So, what we're also trying to do is take steps to address each area where we see rising costs. And obviously, the President's announcement on Thursday to do a historic release from the Strategic Petroleum Reserve, where we've seen already a small reduction in the price of gas and the price of oil come down by several dollars, is an effort to bring down costs that are impacting people's checkbook, pocketbooks -- checkbook, et cetera.

Q But you're not concerned about if consumers stop spending?

MS. PSAKI: We, of course, continue to assess, but I don't have any projection of that at this point in time.

Q Well, one thing on the wealth tax. Elon Musk tweeted out last week that Tesla and SpaceX would "have died" if such attacks existed in 2008, after the Great Recession. With the push for EVs and space exploration, what's the White House level of concern that that a wealth tax could stifle innovation?

MS. PSAKI: Well, I would first say that, you know, right now, America's teachers and firefighters pay a higher tax rate than billionaires. I don't even think Elon Musk probably thinks that's fair. I don't know who thinks that's fair. It's not fair, and that should not be the case.

And so, what this proposal does and why the President supports it, in his view, is it fixes that. And this would close an unfair tax loophole and promote economic growth by encouraging productivity, enhancing investments.

And, really, what it does -- to get into the nitty gritty of it -- is, you know, right now, the super wealthy -- billionaires -- I think everyone considers them super wealthy -- are able to access the value of their assets, even if they never sell them, in order to finance lavish consumption.

And right now, billionaires with unrealized gains borrow against their assets during li- -- their life at ultra-low interest rates. And when -- when they die, they get a step-up in basis and no tax is paid on the appreciation of their asset. In other words, their income is never taxed.

That's not fair. And I think what the President is trying to do and what many senators and others support is closing that. Why that should impact a lack of innovation, I think there should be more explanation on. This is trying to make the system more fair.

Go ahead. Oh, sorry, Weijia. I'll come back to you. Go ahead, in the middle.

Q Thank you. Thank you, Jen. It seemed U.S. senators have written President Biden, urging him to designate Cameroon for TPS. Is that something he's willing to do?

MS. PSAKI: That's -- an assessment is made by a process led by the Department of Homeland Security, so I don't have any prediction of that at this point in time.

Q And then on his approval rating: When he came into office last year, he was around 60 percent and even more, and now he's around 40 percent and sometimes less. Who does he blame now: Putin, Trump, you -- the communication team?

MS. PSAKI: Oh, does he blame me? Oh, I don't know. (Laughter.) I hope not.

Look, I think that the President recognizes that the country is still grappling with a number of challenges that impact people and their everyday lives, whether that is a continuing fight with a pandemic that has been going on for several years or the fact that costs are going up. Some of those are a result of the actions of President Putin -- yes, as it relates to gas prices -- but others are related to impacts of COVID-19 and impacts on the supply chain.

So, what our focus is and his focus continues to be: on solutions to address these challenges, and keeping our heads down and trying to continue to deliver for the American people.

Go ahead, Weijia.

Q Thanks, Jen. Shifting to Russian billionaires because, today, the DOJ announced the seizure of that --

MS. PSAKI: Yes. Yeah.

Q -- huge, \$90 million yacht. Is there any evidence that zoning in on Putin's close allies in this way -- seizing their assets -- is having an impact on his calculations? And if not, what is the end goal here to try to apply pressure to Putin himself?

MS. PSAKI: Well, I think it's not the only approach we're taking -- right, Weijia? -- but it is one of the steps that we have -- our national security team determined from the beginning would hopefully be effective on putting necessary pressure on. That includes significant consequences we have implemented on the Russian economy, but it also includes going after people who are in the inner circle and are close, where their actions have warranted that, including Russian oligarchs.

But it is not our -- our expectation is not that one component is going to lead to a direct change. These are just a range of pressure points, and we're going to use all of them that we possibly can.

Q What is the hope that this particular action will take? What -- because we're seeing so many images of yachts around the world being seized, other assets being seized.

MS. PSAKI: Well, again, it's one of several actions we're taking. And I think if you look at the totality of it and the pool of the actions, the Russian economy has been on a downward spiral. There are businesses -- private sector businesses around the world have pulled their -- their business and their investments out of Russia. They're isolated from the world. The oligarchs are isolated from the world. All of these are meant to be consequences and meant to, of course, impact the calculation over the longer term.

Q And then just one quick one --

MS. PSAKI: Yeah.

Q -- on the President's announcement last week about the strategic supply of oil.

MS. PSAKI: Yep.

Q So, you know, the crude prices came down -- we saw that almost right away -- but how long do you expect that Band-Aid will hold if OPEC does not also agree to ramp up production, which it has not so far?

MS. PSAKI: Well, here's how you should look at it. It was intentionally done as a million barrels a day over the course of six months because we knew there needed to be, kind of, a gap filled for that period of time, where our expectation and hope is that there could be greater production by the oil companies over that course of time.

There are also steps -- as you've seen, this as a coordinated release around the world, and there was an announcement last

Friday about that as well -- by other countries to help fill the gap that we see from Russia and from the fact that their oil is not contributing as much as it had historically onto the global marketplace.

And obviously, oil prices are global -- I mean, it's a global marketplace. So, we're already seeing, as you said, a reduction, but this is meant to be a six-month effort to kind of bridge the gap in many ways for that period of time and ramp up production in a range of ways.

Yes, you referenced OPEC Plus, but also other countries last Friday announced their plans and their intentions to release more oil to help meet the supply needs on the market. That's what we're intending to do here, and we're going to continue to look at many ways to achieve that objective.

Go ahead.

Q Iran, over the weekend, said that a deal was close. We heard something different from U.S. officials only days before that. So, what is the current assessment of that deal?

MS. PSAKI: Well, our assessment is that the onus for concluding this deal is squarely on Iran. Together with our European allies, the United States has negotiated the roadmap for a mutual return to compliance through the Vienna talks. The President will reenter the deal if it's in our national security interests. And both ourselves and our allies are prepared to conclude a strong agreement if Iran is prepared to do the same.

What we've seen, however, is that Iran has raised a number of issues that has nothing to do with the mutual compliance under the nuclear deal. And that is where our focus and our objective is. So, we would encourage Iran to focus on the deal negotiated in Vienna, rather than seeking to open issues outside the Vienna context or casting blame, of course, on others for a pause in the talks.

Q Is the White House making a -- any push this week -- last-minute push -- to get another Republican or two to support Judge Jackson?

And secondly, if you could reflect on what Senator Graham said about if Republicans were in control, that she wouldn't get a hearing.

MS. PSAKI: Well, let me say on the first part that our view continues to be that Judge Jackson's credentials, her record warrant bipartisan support. We've seen some of that to date. But certainly, we're going to continue to work the phones up until the last moment here. But I can't make a prediction for you on what the end result of that will be.

I would say on Senator Graham's comments, I think the best questions are probably posed to Senator Graham. I would remind you all that he has previously voted for Judge Jackson when her record and her credentials were exactly the same as they are today. So, it seems like there's more questions that could be posed to him.

Go ahead.

Q As a follow-up on the Senate Supreme Court confirmation hearing: Republicans have said that they wanted to -- that this would be a respectful and fair process, and it's been very contentious.

Given Senator Graham's comments, what do you think is the nature of the Supreme Court as we look ahead for the future, not just this Supreme Court nominee but for future nominations, given the contentious comments from Senator Graham?

MS. PSAKI: Well, look, I think that our view continues to be that qualified nominees, those who meet every objective bar of qualification of backgrounds should be considered and treated with fairness as they go through the process. That's how President Biden is going to continue to -- to operate. And that's how we would expect every member of the Senate to continue to operate.

So, obviously, his comments are disappointing, but our focus needs to continue to be on supporting Judge Jackson and her path to the Supreme Court.

Go ahead.

Q Thanks, Jen. I wanted to ask two questions -- one about refugees and one about the Supreme Court.

MS. PSAKI: Sure.

Q On refugees, the 100,000 number that the President put out when you all were in Europe --

MS. PSAKI: Yeah.

Q -- can you talk about how you arrived at that number and what preparations are being made at this point to accept those refugees? I haven't seen the State Department really put out a lot of detail yet.

MS. PSAKI: Yeah, I expect we'll have more soon. And I think the understandable questions are kind of the prioritization and how the process will work and what the models will be -- all very good questions. And we're just working through the final pieces of the policy process at this point in time.

In terms of the number, it doesn't mean we will -- we will reach that number. As you know, while there have been a startling number of refugees -- individuals who have been kicked out of their homes because of the Russian invasion of Ukraine -- the vast majority of them want to stay in neighboring countries. And that continues to be our expectation.

But this is just an effort for us to play a role, beyond the historic amount of humanitarian assistance and support we're providing to neighboring countries, to ensure that we can find a pathway for those who want to come to the United States to come here too.

But we're still finalizing the policy details, and hopefully we'll have more soon on that for you.

Go ahead.

Q I wanted to ask one more on the Supreme Court.

MS. PSAKI: Yeah.

Q President Biden was asked last week about Justice Clarence Thomas. I believe he said something -- or he said it was up to the Justice Department or the January 6th Committee on whether Justice Clarence Thomas would recuse himself from any of those cases -- those being the January 6th cases.

Judicial ethics mean that the Supreme Court Justice generally makes his own decision on recusals. Does the President still agree with the view of the Justice Department or January 6th Committee should decide? Has he taken a position at this point on whether Justice Thomas should recuse himself?

MS. PSAKI: That's a decision up to the Supreme Court. We don't have any additional position from here.

Go ahead.

Q They were friends from the time they were on Foreign Relations Committee together.

So in terms of -- Japan has the largest number of U.S. troops. Is there some way that they could be involved, as a country that also went through war, with this current situation in Russia? And do you know if they've been included in some of

that also went through war, with this current situation in Russia? And do you know if they've been included in some of these discussions going forward?

MS. PSAKI: I know that they have been included and a part of the conversations, including during President Biden's recent trip to Europe, and that our partnership and friendship with Japan continues as we discuss how to help support Ukraine through the invasion -- Russia's invasion.

Go ahead.

Q Jen, I believe you're running out of time. Maybe just a couple more?

MS. PSAKI: Okay, we're going to do one or two more.

Go ahead.

Q Amid the Ukraine crisis, we know the United States and Russia are still working together on Afghanistan issues. Actually, last Thursday, March 31st, there was a meeting in China where the U.S., China, and Russia delegations went over this issue. Can you describe the working relations between U.S. and Russia on this meeting? And what's China's role on it? Do you worry China might take advantage of the tension between the U.S. and Russia right now?

MS. PSAKI: China -- and just to make sure I'm unpacking your question: What you're asking about -- you're asking about a meeting on Afghanistan between Russian, U.S., and Afg- -- I'm sorry, Chinese officials?

Q Yes.

MS. PSAKI: I would really point you to the State Department. I'm happy to get more details on it and see. I would note that Russia and China are both members of the P5+1. And obviously, we're continuing to pursue a diplomatic deal there as well. So, there are other examples of us working, even as we are horrified by the atrocities in Ukraine.

Okay, last one.

Q Thank you, Jen. Moments ago, you said that it was "ludicrous" that Russia would be allowed to sit on the U.N. Human Rights Council. I'm wondering if the President wants to see China remain on that Human Rights Council as well, given that his administration has already made a determination that China is engaged in genocide against the Uyghur people.

MS. PSAKI: Well, our focus right now on the international stage on this question is on Russia, given the invasion of Ukraine and given what we're seeing -- the photos from Bucha, others that we may see in the future.

Obviously, we will continue to press publicly and privately where we have concerns about human rights violations, including as it relates to China.

Thanks so much, everyone.

4:14 P.M. EDT

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FOR IMMEDIATE RELEASE

April 4, 2022

Press Briefing by Press Secretary Jen Psaki and National Security Advisor Jake Sullivan

James S. Brady Press Briefing Room

3:06 P.M. EDT

MS. PSAKI: Hi, everyone. Okay. We have a return guest: Jake Sullivan, our National Security Advisor, who will give some brief remarks, take some questions. And then we will do a briefing from there.

With that, I'll turn it over to Jake.

MR. SULLIVAN: Hi, everyone. I hope you guys are doing well.

With apologies to Jen and to you, my remarks are not going to be so brief because I have a number of points I want to get through before opening it to questions.

First, you heard the President today condemn in powerful terms the atrocities committed by Russian forces retreating from Bucha and other towns in Ukraine. The images that we see are tragic, they're shocking, but unfortunately, they're not surprising.

We released information even before Russia's invasion showing that Russia would engage in acts of brutality against civilians, included it tar- -- including targeted killings of dissidents and others they deemed a threat to their occupation. And as the horrific images that have emerged from Bucha have shown, that's exactly what they have done.

We had already concluded that Russia committed war crimes in Ukraine, and the information from Bucha appears to show

further evidence of war crimes. And as the President said, we will work with the world to ensure there is full accountability for these crimes. We are also working intensively with our European allies on further sanctions to raise the pressure and raise the cost on Putin and on Russia.

Today, I'd like to take a step back and talk about where we are and where we think we are going.

Russia launched its invasion of Ukraine more than a month ago. When Russia started this war, its initial aims were to seize the capital of Kyiv, replace the Zelenskyy government, and take control of much -- if not all -- of Ukraine. Russia believed that it could accomplish these objectives swiftly and efficiently.

But Russia did not account for the strength of the Ukrainian military and the Ukrainian people, or the amount or effectiveness of military assistance provided by the United States and its allies and partners.

The Ukrainian people, backed resolutely by the United States and other nations, have held firm. Kyiv and other cities still stand.

The Ukrainian military has performed exceptionally well. And many Ukrainian civilians have joined local militias in addition to using nonviolent means to resist.

Vladimir Putin also believed that the West would not hold together in support of Ukraine. Russia was surprised that President Biden and the United States were so effective in rallying the world to prepare for and respond to the invasion.

And after President Biden reinforced and reinvigorated Western unity at a series of summits in Brussels just 11 days ago, the Russians have now realized that the West will not break.

At this juncture, we believe that Russia is revising its war aims. Russia is repositioning its forces to concentrate its offensive operations in eastern and parts of southern Ukraine, rather than target most of the territory. All indications are that Russia will seek to surround and overwhelm Ukrainian forces in eastern Ukraine.

We anticipate that Russian commanders are now executing their redeployment from northern Ukraine to the region around the Donbas in eastern Ukraine.

Russian forces are already well on their way of retreating from Kyiv to Belarus as Russia likely prepares to deploy dozens of additional battalion tactical groups, constituting tens of thousands of soldiers, to the frontline in Ukraine's east.

We assess Russia will focus on defeating the Ukrainian forces in the broader Luhansk and Donetsk provinces, which encompasses significantly more territory than Russian proxies already controlled before the new invasion began in late February.

Russia could then use any tactical successes it achieves to propagate a narrative of progress and mask or un- -- or try to discount or downplay prior military failures.

In order to protect any territory it seizes in the east, we expect that Russia could potentially extend its force proje- -- projection and presence even deeper into Ukraine, beyond Luhansk and Donetsk provinces. At least that is their intention and their plan.

In the south, we also expect that Russian military forces will do what they can to try to hold the city of Kherson, to enable their control of the waterflow to Crimea, and try to block Mykolaiv so that Ukrainian forces cannot proceed to retake Kherson.

In the north, Russia will likely keep pressure on Kharkiv.

During this renewed ground offensive in eastern Ukraine, Mas- -- Moscow will likely continue to launch air and missile strikes across the rest of the country to cause military and economic damage -- and, frankly, to cause terror, including against cities like Kyiv, Odesa, Kharkiv, and Lviv.

Russia's goal, in the end, is to weaken Ukraine as much as possible.

Russia still has forces available to outnumber Ukraine's, and Russia is now concentrating its military power on fewer lines of attack.

But this does not mean that Russia will succeed in the east. So far, Russia's military has struggled to achieve its war aims, while Ukraine's military has done an extraordinary and courageous job demonstrating its will to fight and putting its considerable capabilities to use.

The next stage of this conflict may very well be protracted. We should be under no illusions that Russia will adjust its tactics, which have included and will likely continue to include wanton and brazen attacks on civilian targets.

And while Moscow may be interested now in using military pressure to find a political settlement, if this offensive in the east proves to gain some traction, Russia could regenerate forces for additional goals, including trying to gain control of yet more territory within Ukraine.

Now, as the images from Bucha so powerfully reinforce, now is not the time for complacency. The Ukrainians are defending their homeland courageously, and the United States will continue to back them with military assistance, humanitarian aid, and economic support.

We know that military assistance is having a critical impact on this conflict. Ukrainians are effectively defending themselves with U.S.-produced air defense systems and anti-tank systems, such as Stingers and Javelins, as well as radar systems that give the Ukrainians early warning and target data, and multiple other types of arms and munitions.

The administration is working around the clock to fulfill Ukraine's main security assistance requests -- delivering weapons from U.S. stocks where they are available and facilitating the delivery of weapons by Allies where Allied systems better suit Ukraine's needs. This is happening at what the Pentagon has described as an "unprecedented pace."

Last Friday, we announced an additional \$300 million in security assistance, bringing the U.S. commitment to \$1.65 billion in weapons and ammunition since Russia's invasion and \$2.3 billion since the beginning of the administration.

The latest package includes laser-guided rocket systems, Puma unmanned aerial systems, armored High-Mobility Multipurpose Wheeled Vehicles, and more.

Material is arriving every day, including today, from the United States and our Allies and partners. And we will have further announcements of additional military assistance in the coming days.

We are working with the Ukrainians, as I said, to identify solutions to their priority requests. In some cases, that means sourcing systems from other countries because the U.S. either doesn't have the system or doesn't have a version that could effectively be integrated into the fight. Sorts of systems like this include longer-range anti-aircraft systems, artillery systems, and coastal defense systems.

So, let's take coastal defense systems as an example. President Biden went to Brussels to talk to key Allies 11 days ago about how to get coastal defense systems to Ukraine, because there is not, at the moment, a good U.S. option.

Last week, the UK announced at the close of its donor conference that coastal defense systems would be provided to the Ukrainians. It is a good example how, working with Allies and partners, we are successfully responding to Ukraine's requests.

We expect additional new capabilities to be delivered in the near future. We can't always advertise what is being delivered out of deference to our Allies and partners or for operational sensitivities, but we are moving with speed and efficiency to deliver.

Let me close with this: Even as Russia acknowledges the failure of its initial plans and shifts its goals, three elements of this war remain constant.

First, Russia will continue to use its military to try to conquer and occupy sovereign Ukrainian territory.

Second, the Ukrainian military and people will continue to effectively and bravely defend their homeland.

And third, the United States will stand by them for as long as it takes.

Russia has tried to subjugate the whole of Ukraine, and it has failed. Now it will attempt to bring parts of the country under its rule. It may succeed in taking some territory through sheer force and brutality.

But no matter what happens over the coming weeks, it is clear that Russia will never be welcomed by the Ukrainian people. Instead, its gains will be temporary, as the brave Ukrainian people resist Russian occupation and carry on their fight for an independent, sovereign nation that they so richly deserve.

And with that, I'd be happy to take your questions.

Yeah.

Q Jake, can I ask you about the President's call for a war crimes trial for Vladimir Putin? What are the mechanics of how the President sees that playing out? Would it be at the International Criminal Court or at some other tribunal?

MR. SULLIVAN: So, we have to consult with our allies and partners on what makes most sense as a mechanism moving forward. Obviously, the ICC is one venue where war crimes have been tried in the past, but there have been other examples in other conflicts of other mechanisms being set up.

So, there is work to be done to work out the specifics of that. And between now and then, every day, what we are focused on is continuing to apply pressure to the Russian economy and provide weapons to the Ukrainian people to be able to defend themselves.

Q Other --

MR. SULLIVAN: Yeah.

Q Sorry, forgive me. Other forums for this might include something that the U.N. General -- the U.N. Security Council might adopt. Is that what you're suggesting -- that you would go to the Security Council?

MR. SULLIVAN: Well, obviously, with Russia as a permanent member of the U.N. Security Council, it would be difficult to imagine that they would not attempt to exercise their veto to block something.

But there have been creative solutions to the question of accountability in the past, and I'm not going to prejudge what solution would be applied here or what forum or venue would be applied here.

What I will say is what the President said this morning: There has to be accountability for these war crimes. That accountability has to be felt at every level of the Russian system, and the United States will work with the international community to ensure that accountability is applied at the appropriate time.

Yes.

Q The President was careful to say he does not see this as genocide. Many Ukrainians believe that it is because their nation, their people are being attacked. Where is the line, in your view? And how have you counseled the President between “genocide” and “war crimes”?

MR. SULLIVAN: So this is something we, of course, continue to monitor every day. Based on what we have seen so far, we have seen atrocities, we have seen war crimes. We have not yet seen a level of systematic deprivation of life of the Ukrainian people to rise to the level of genocide. But, again, that's something we will continue to monitor.

There is not a mechanical formula for this. There is a process that we have run just recently at the State Department to ultimately determine that the killing -- the mass killing of Rohingya in Burma constituted genocide. That was a lengthy process based on an amassing of evidence over a considerable -- a considerable period of time and involving, frankly, mass death, the mass incarceration of a significant portion of the Rohingya population.

And we will look to a series of indicators along those lines to ultimately make a determination in Ukraine. But as the President said today, we have not arrived at that conclusion yet.

Yes.

Q Thanks. I just have three quick questions. When you say the next stage will be “protracted,” do you mean years? I mean, Russia has been in Crimea and Donbas since 2014. What -- what's “protracted”?

MR. SULLIVAN: So we can't predict, but I would just say that, so far, this conflict has lasted a little more than five weeks. And yet, in that time, we've seen an enormous amount of killing and death and, also, an enormous amount of bravery and success on the part of the Ukrainian forces.

What I'm saying when I say “protracted” is that it may not be just a matter of a few more weeks before all is said and done. That first, quote, unquote, “phase” of the conflict, of -- the Russians put it, was measured in weeks.

This next phase could be measured in months or longer.

Q In the beginning, the consensus seemed to be: Russia was unstoppable; we just had to make the price as high as possible for them.

Then the new thinking is: Maybe Ukraine can actually win. Do you agree with that? And what would winning look like?

MR. SULLIVAN: So we believe that our job is to support the Ukrainians. They will set the military objectives. They will set the objectives at the bargaining table. And I am quite certain they are going to set those objectives at success, and we are going to give them every tool we can to help them achieve that success.

But we are not going to define the outcome of this for the Ukrainians. That is up for them to define and us to support them in. That's what we're going to do. And we do have confidence in the bravery, skill, and capacity of the Ukrainian armed forces and the resilience of the Ukrainian people.

Q I just have one -- one quick thing on chemical weapons. The President and other allies have promised consequences without saying what they would be. The last time Russia used chemical weapons, there were sanctions but not very stiff ones. Are you ready to define consequences?

MR. SULLIVAN: So I'm going to say the same thing I've said from this podium that the President has said from a podium down the hall in this same building, which is that Russia will pay a severe price. We have communicated to them directly.

We have coordinated with our allies and partners. And I'm not going to go further in terms of the specifics here today.

Q Jake, two questions.

MR. SULLIVAN: Yeah.

Q The administration initially did not call this "war crimes," and eventually, though, they did after they -- what they saw on the ground. Do you think that's going to be the case with calling it a genocide?

MR. SULLIVAN: Well, so, first, it's not just that we sit around and debate terms and then, ultimately, decide to apply a term based against static circumstances. We watch as things unfold. We gather evidence. We continue to develop facts. And as we gathered evidence and as we got the facts together, we ultimately came to the conclusion that war crimes were committed.

And, in fact, I would say, on this front, President Biden was a leader. He went out and said Putin is a war criminal. And many of you raised your eyebrows at that; many people out in the public raised their eyebrows at that. And now you see the scenes coming out of Bucha today.

And so, he's not going to hesitate to call a spade a spade, to call it like he sees it, and neither is the U.S. government.

So as the facts develop, could we see ourselves reaching a different conclusion on that question? Of course we could. But it's going to be based on evidence and facts as we gather it along the way.

Q And two more quick ones for you. On the sanctions that the President was talking about today, should we expect those this week, or what's the timing?

MR. SULLIVAN: You can expect further sanctions announcements this week. And we are coordinating with our allies and partners on what the exact parameters of that will be. But, yes, this week, we will have additional economic pressure elements to announce.

Q And my last question, quickly. You keep using the word "retreat" instead of "reposition." How much is that in part due to the spring conditions, the muddy conditions that are on the ground in Ukraine?

MR. SULLIVAN: The reason I use the phrase "retreat" is just kind of quite simple common sense. It's not some fancy technical military term. It's a term that all of us understand, which is, if you run pell-mell for an objective and you get stopped, and then you start to get beaten back, and then you withdraw, you pull out -- that's what I would call a retreat.

That's what happened to the Russians in Kyiv: They attacked Kyiv. They failed. They started to get beaten backwards by the Russian -- by the Ukrainian military. And they ultimately retreated back across the border into Belarus.

Now, with those forces, as I said in my opening comments, they are not intending to stand pat. They are going to reposition those forces to go after a different objective -- a scaled-down objective, but nonetheless a dangerous and disturbing objective, which is to conquer an occupied territory in eastern Ukraine.

And now it's our job to help the Ukrainian people have the tools they need to be able to stymie that objective. That is what we're intent on doing at this time.

Q Jake, I know you're not willing to call it a genocide, but does the U.S. government have information that you can -- that you can use to independently corroborate Ukraine's allegations about atrocities in Bucha?

MR. SULLIVAN: So we have -- obviously got access to a lot of the information that you all have. We also have information that the Ukrainians have provided us directly. And we will also work with fact finders -- independent fact finders as we go

forward to get to a level of documentation that allows us to help build very strong dossiers of evidence for war crimes prosecutions. And that is what we intend to do.

Now, on the question of the genocide determination: Obviously, we will continue on a daily basis to have consultations with the Ukrainians to reach determinations. And if at some point we reach the judgment that there, in fact, has been a level of atrocity, a level of killing, a level of intentional activity that rises to meet our definition of genocide, we'll call it for what it is.

We have never hesitated to call out the Russians for what they have done in Ukraine, and we will not start now.

Q And sorry -- sorry, one quick question on France, Jake. They are -- they have suggested that, you know, a hefty EU-wide tariff should be imposed, as opposed to a blanket ban on Russian energy imports into the EU. Does the U.S. support that? And will that be part of what you're planning to do next in terms of sanctions?

MR. SULLIVAN: We are having conversations, as I stand here at this podium, with senior officials in the main European capitals, as well as in Brussels, on the full range of sanctions options, including sanctions options or pressure options that relate to energy.

I'm not going to negotiate that out at this podium. We want to make sure that we're able to pull together a consensus along with the rest of the European Union.

Q Jake, the Kremlin is denying the images out of Bucha, saying that they don't show any kind of apparent execution. What is the U.S. doing to try and expose Russia's actions to its own citizens? I mean, what can we do to sort of fight this information war?

MR. SULLIVAN: Well, first, I would note that the Kremlin is working overtime to close down the information space inside of Russia, which is not exactly the action of a strong and confident government that feels really good about the story that it would be telling if it were allowing independent news sources to come in.

Second, we are, of course, supporting, through a variety of means, the provision of information about these atrocities and about the entire effort by the Russians to unjustly and unlawfully invade a sovereign neighboring country not just to the Russian people, but to people everywhere. We will continue to do that.

Q And just to be clear: Is it your sense that the atrocities that we're seeing in Bucha are based on orders coming from Putin or his senior military officials? Or is there a chance here that this is sort of Russian forces acting on their own? And is there even a distinction?

MR. SULLIVAN: I don't want to get into the specific intelligence related to Bucha at this point. But what I will say, as I said at the outset, is that even before the invasion happened, we shared information with the public, with the press, including from this podium, that Russia was intending as a matter of policy -- not as a matter of one guy in a unit in a suburb of Kyiv, but as a matter of policy in this war -- to kill dissidents, to kill those who caused problems for the occupation, and to impose a reign of terror across occupied territories within Ukraine. That is what we are seeing play out.

So, no, we do not believe that this is just a random accident or the rogue act of a particular individual. We believe that this was part of the plan. We declared it from this podium as part of the plan, and now we are seeing it play out in real life, in living color, in these terrible, tragic images we are seeing come from Bucha.

Yeah.

Q Thanks. So, I know you don't want to talk about possible venues for a war trial -- war crimes trial, but can you talk a little bit about the evidence-gathering aspect of it? That's going to be crucial to combatting disinformation and what Russians will say -- that "Ukrainian rebels are fighting us. That was legitimate warfare what happened." That could be a tactic they're taking.

So can you walk us through the evidence-gathering? Who's doing it? Are there people on the ground gathering evidence? How long does that take to, sort of, build a case? And what does that look like?

MR. SULLIVAN: So, I will directly answer your question, but I also think it is important for our team at the State Department, which will take the lead on this, including our Global War Crimes Coordinator, to give you a fully elaborate answer to this question, in technical detail, so that everybody understands exactly how this process works.

But with that being said, there are four main sources of information that we will develop in an effort to help build the case for war crimes.

The first is the information we and our allies and partners gather, including through intelligence sources. And we, actually, within our intelligence community, had previously stood up a team to be able to document and analyze war crimes and worked closely with the State Department in doing so. And we're also coordinating with key allies and partners who have their own capacities.

The second is what the Ukrainians themselves will do on the ground to develop this case, to document the forensics of these tragic and senseless killings in this particular instance and in other instances across Ukraine.

The third is international organizations, including the United Nations, but others as well -- prominent international non-governmental organizations with real credibility and expertise in this area.

And then the fourth is all of you. Because part of building this case is relying upon the global independent media, who has images, interviews, documentation. And when you put all of those four sources together, you can build, we believe, a package that can stand up to the relentless disinformation we are likely to see and have already started seeing from Russia, and that, ultimately, the truth will withstand the assault on the truth that we can expect to come from Moscow.

Q On former President Trump, he's having Save America rallies where he's decrying the Biden administration, decrying the response that you all in the White House have been giving to this war in Ukraine. He said if he was in here in office, he would do it better; it wouldn't happen under him. What is your response to the former President, Donald J. Trump, saying these things about the current administration?

MR. SULLIVAN: I don't -- I don't have a response to the former President. We are focused on getting the job done, getting the support to the Ukrainian people that they need, applying unprecedented pressure to the Russian economy, and building a form of Western unity that no one could reasonably have expected and that we have sustained through the early weeks of the war and will sustain for the period ahead.

And I'll leave the commentary on what the former President said to others.

Q Thank you very much. Thanks, Jake. To follow up on what you said about Ukraine setting terms for any potential resolution, President Zelenskyy said on "Face the Nation" that with regard to any potential peace agreement, the important thing in this agreement are security guarantees. But he also said the U.S. has not received -- has not provided any yet. Is the U.S. considering that? And what would that look like?

MR. SULLIVAN: So we are in regular contact -- and by "regular," I mean near daily contact. I personally am in near daily contact with my counterpart in the Ukrainian government. And we are talking constantly about how we can support a negotiated solution that defends Ukraine's sovereignty and territorial integrity. And we have told them that we are prepared to do our part to support that, including by ensuring that Ukraine has the means to defend itself in the future.

I'm not going to get into the specifics of what those negotiations are because I believe it's very important that they have a protected space to be able to be carried out. But you can rest assured that the United States is actively working in consultation with Ukrainians to support their efforts at the peace table.

Q And then, a question on the sanctions. You just said that you're under no illusions that Russia will adjust its target. So what function will an additional sanctions package have when you announce it?

MR. SULLIVAN: So, I would say two things about sanctions. One is that sanctions are intended to impose costs so that Russia cannot carry on these grotesque acts without paying a severe price for it. The other is to have an effect on Russia's behavior over time.

But as President Biden has made clear repeatedly, we don't expect that that shift in behavior will be caused by sanctions overnight or in a week. It will take time to grind down the elements of Russian power within the Russian economy, to hit their industrial base hard, to hit the sources of revenue that have propped up this war and have propped up the klepto- -- kleptocracy in Russia. That's going to take some time to play out.

But there's no better time than now to be working at that so that the costs end up setting in and that ends up sharpening Russia's choices.

So, sanctions are not alone going to solve any of these problems, but they are a critical tool in ultimately producing a better outcome to this conflict than would otherwise be produced.

Q Have the revelations about Bucha prompted the administration and its allies to reconsider what kind of military assistance it's providing to Ukraine? Are tanks now part of, you know, potential transfers that could be provided to the Ukrainian military?

MR. SULLIVAN: So, I'm not going to get into certain specific systems because, as I said at the outset, there are operational sensitivities and the sensitivities of our allies and partners for why we wouldn't speak about a particular capability like tanks.

But I will say this: Even before Bucha, the United States was working with Ukrainians on every item on its priority list and how we could go ahead and ensure that that could be provided to them. The only capability that we have discussed with them where there has been a difference in perspective that has been played out in living color and in this podium many times over has been the question of direct facilitation from a U.S. airbase in Germany into contested airspace over Ukraine -- the MiG-29s.

Otherwise, before Bucha, we were working with them on a wide range of capabilities, including some capabilities that people here were writing we weren't prepared to provide. That wasn't right.

Now, it's hard for me to correct the record in every case because, for very good reasons, some of these systems we cannot advertise, we cannot talk to you all about it.

But what I want to make clear, as I said at the outset, is the extent and depth of effort to acquire and transfer a variety of advanced weapons capabilities is extraordinary, it is unprecedented, and it has been ongoing from well before the terrible images came out this week.

Yeah.

Q Jake, on the International Criminal Court: Is one of the reasons why the U.S. is considering alternate venues is because the U.S. is not a signatory? And does that undercut the U.S. push to hold Putin accountable with a war crimes trial of some kind when the U.S. is not a signatory of the International Criminal Court?

MR. SULLIVAN: The U.S. has in the past been able to collaborate with the International Criminal Court in other contexts, despite not being a signatory. But there's a variety of reasons one might consider alternative venues as well, beyond the specific relationship between the U.S. and the ICC.

Most importantly, this is not a decision the United States is going to make by itself. We're not going to make the call out of Washington for the appropriate venue for accountability; that is going to be done in consultation with allies and with partners around the world. And I don't want to prejudge those conversations that are ongoing.

And what I can communicate is the very real, sustained, and committed proposition that the United States has that we are going to ensure that there is accountability.

Yeah. I'll just take one more. Yeah.

Q Thanks, Jake. The U.S. had rejected Poland's plan for a peacekeeping force to protect civilians. Is that something that's being reconsidered, given what we've seen of these atrocities? And is there any talk among the Allies to do some sort of force to help protect the civilian population?

MR. SULLIVAN: So, I don't quite accept the premise of the question. There -- there had been various peacekeeping proposals floated; none of them have ever been given full shape or been kind of formally put forward and suggested should actually be implemented.

And so, we continue to consult with our Allies and partners, including Poland, on what makes sense going forward. We have not yet seen a proposal that actually has been fleshed out that could be operationalized.

The one thing that the United States has made clear throughout this is that it is not our intention to send U.S. soldiers to fight Russian soldiers in Ukraine. But in terms of the supply of capabilities, in terms of other steps to support the Ukrainians and to do our best to protect civilians in Ukraine, we continue to look at every possible option, including in consultation with our partners on that.

And I'll -- I'll leave it at that. Thank you, guys.

MS. PSAKI: Thank you, Jake, so much for joining us.

Q Thank you. Come again, please.

MS. PSAKI: He will, I'm sure. He's probably our most frequent guest. I don't know if you get -- I probably owe him something for that.

Okay, a couple of items for all of you at the top. Today, Vice President Harris and administration officials announced the Biden-Harris Action Plan for Building Better School Infrastructure.

By leveraging funds from the Bipartisan Infrastructure Law and the American Rescue Plan, this action plan will activate the entire federal government to support students' health and learning, from upgraded HVAC systems to electric school buses, from on-site solar energy installations to safe routes to school.

I also wanted to note, in light of the President's event on trucking, a couple of details or facts for all of you. 2021 was the best year for trucking growth -- jobs growth since 1994. And December 2021 through February of 2022 was the best three-month stretch for long-distance truck hiring since the 1990s.

Thanks to the efforts of the Department of Transportation, we doubled the issuance of Commercial Driver's License issuances in January and February of 2022, compared to the prior January and February of 2021.

And over 100 employers -- including Domino's, Frito-Lay, and UPS -- launched registered apprenticeship programs in the past 90 days. This could result in more than ten thou- -- 10,000 additional apprentices -- apprenticeships nationwide, which, of course, get more people -- more truckers trained, more trucks on the road, more goods moving around and onto shelves across the country.

shelves across the country.

I also wanted to note -- I think you all saw this, but just to confirm for all of you: Tomorrow, the President and Vice President will be joined by former President Obama to highlight how the Affordable Care Act continues to lower healthcare costs for American families. This will be the first time former President Obama returns to the White House since leaving office.

Since we've taken office -- since we've entered -- the President -- since President Biden has entered office, we've taken big steps to reduce healthcare costs and expand access to healthcare for the American people.

And how President Biden and former President Obama both see the Affordable Care Act is an example -- a shining example of how government can work for the American people. Not only did it ensure that millions of people had access to affordable healthcare, but it has been an opportunity to build on that and make changes and make improvements over the course of time, which, of course, is what they will talk about tomorrow.

But even since the President took office, through the American Rescue Plan, we lowered premiums for 9 million Americans -- the biggest expansion of affordable healthcare since the ACA. We've made affordable health coverage more accessible during the pandemic through the opening of the special enrollment period, which enabled nearly 3 million Americans to have access -- to newly sign up for coverage under the ACA.

And President Biden has overseen the most successful open enrollment period in history last year, with a historic 14.5 million Americans signing up for the -- for ACA coverage and another million people signing up for the basic healthcare program.

So, tomorrow, they'll announce more steps.

I'll also note, as they did every week when President -- former President Obama was president and President Biden was vice president -- that's a mouthful -- they will have lunch tomorrow as well, as they used to do on a weekly basis.

I would note they continue to talk regularly. They are real friends, not just Washington friends, and so I'm sure they will talk about events in the world as well as their families and personal lives.

So, I'll try to get around the room as best as I can. But, Chris, why don't you kick us off?

Q So, one question on Title 42. Some Republican attorneys general are suing the administration over the plan to lift it. What is the administration's response? And is the administration concerned that this would end up blocking the push to lift the order?

MS. PSAKI: Well, on the lawsuit itself, I'd of course refer you to the Department of Justice; they would be overseeing any steps there.

But broadly speaking, I think it's important to note for any critics in any lawsuits that Title 42 is a public health directive; it's not an immigration/migration enforcement measure. And the decision on when to lift Title 42 was made by the CDC.

And our objective from here -- and this is why we have the implementation period over the next several weeks -- continues to be to ensure we are increasing our resources, surging personnel and resources to the border, improving border processing, implementing COVID-19 mitigation measures, and continuing to work with other countries in the Western Hemisphere to manage migration and address root causes.

But this is, again, a healthcare measure -- a health measure determination and not one on immigration policy.

Go ahead.

Q Thanks, Jen. Let me ask you the question I was going to ask Jake, which is that: As part of this new effort to ramp up sanctions, is the administration going to be ramping up pressure on China and India to abide by existing sanctions? And what does that look like? I know Daleep Singh was just in India.

MS. PSAKI: Yeah.

Q Are you going to intensify some criticism of them and others who haven't done so?

MS. PSAKI: Well -- well, certainly our expectation and our public and private message is -- will continue to be that every country should abide by the sanctions that we have announced and that we are implementing around the world.

As you noted -- so let me start with India, if that's okay. As you noted, Daleep Singh, our Deputy National Security Advisor, was just there. I would note that, you know, just given some of the reporting, energy payments are not sanctioned; that's a decision made by each individual country. And we've been very clear that each country is going to make their own choices, even as we have made the decision and other countries have made the decision to ban energy imports.

What -- what Daleep did make clear to his counterparts during this visit was that we don't believe it's in India's interest to accelerate or increase imports of Russian energy and other commodities.

Right now, just to give everybody the full scope of it, India's imports of Russian energy represent only 1 to 2 percent of their total energy imports.

So, while he al- -- he explained both the mechanisms of our sanctions and reiterated that any country or entity should be abiding by those, we also made clear that we'd be happy to be a partner in reducing their reliance or even their small percentage of -- of reliance on that.

As it relates to China -- I know that Jake spoke to this the last time he was here -- our assessment hasn't changed on that front, but we continue to convey the same expectations of abiding by sanctions.

Q And then, on COVID funding, there are reports that the Republicans and Democrats in the Senate are nearing a deal on a \$10 billion package that doesn't include global aid. Is a package of that size, and that doesn't include global vaccine assistance, something that President Biden could sign into law?

MS. PSAKI: Well, let me first say that we are encouraged by the strong progress that Congress is making in finalizing a deal -- not yet final, but finalizing a deal -- to fund some of our most very urgent COVID response needs.

I would remind everyone that what we had requested was \$22.5 billion, not \$10 billion, in order to achieve a number of objectives -- including securing enough booster shots for the general population; purchasing more monoclonal antibodies and Evusheld for the immune- -- immunocompromised; maintaining our testing capacity; getting shots in arms abroad, to go to your question; and funding for variant-specific vaccines if needed.

So, this does not -- will, obviously, not meet all of those -- all of those needs -- dire needs in this country. And certainly, our objective would continue be -- to be to press for funding for international -- support for international -- for ensuring we continue to be the arsenal of vaccines in the world, regardless of what this final package looks like.

I'd note that the reason that's so important is not just because of the need to have vaccine doses, it's because we need to -- a lot of -- there are countries around the world who are refusing our vaccine dose- -- doses because they don't have the mechanisms, the know-how, and the capacity to be able to distribute those doses. So that funding that we've been requesting and we'll continue to press for would be accounting for that as well.

I -- can I note one more last thing? Sorry, I've got a lot on this. Is -- I would also note that as you're watching Congress

and the Senate, there are a wide number of Republicans who have called for funding for and called for ensuring that we continue to be the arsenal of vaccine distribution around the world -- they don't use that exact phrase, but basically that's the basics -- including Senator Graham, who said, "I support the effort" -- just in June of last year -- "of the Biden Administration to donate vaccines to at-risk populations throughout the world."

Senator Portman said that -- that he is "pleased" that legislation -- this is last summer -- that has passed the committee at the time would help ensure that -- that domestic supply is part of our -- what we're doing in domestic supply -- excess domestic supply is part of our global vaccination strategy.

Senator McConnell said it would be "terribly unfortunate" if a supplemental COVID-19 funding package did not include international vaccines.

So I'm not going to prejudge where all they -- they will all be on this or future legislation. I would just note that if we want to continue to be providing to the world, we need money. And that's a case we will continue to make.

Go ahead.

Q Ukraine's Prosecutor General just suggested that there's more gruesome evidence of the aftermath of Russia's occupation around Kyiv, saying that the worst situation may, in fact, be in Borodyanka. I apologize if I don't pronounce that correctly.

But do you have a sense of how widespread this may be in the Kyiv region? I mean, I know Jake just said that you're going to continue to see these kinds of brazen attacks, but what more can you tell us about some of these other areas that we may be hearing about?

MS. PSAKI: I don't have a new or additional assessment. This is something we will continue to gather information on, and Jake, obviously, outlined a number of ways we will do that -- both by intel gathering, working with our partners and allies around the world.

But I would also note, Mary -- to go back to your earlier question -- that the fact that we're seeing these horrific images from Bucha around the wor- -- you know, now around the world, thanks to all of your broadcasts and many global broadcasters -- I mean, we have access. There's access to this area. There's not access to a lot of the areas around Mariupol and other areas of Ukraine where we have not even begun to see the impact of the atrocities and the impact of what, as Jake said, President Putin and the Russians made clear they were intending to do from the outset of the war.

So, while I don't have additional assessment, I would just note that, you know, we should brace ourselves for what we may see as we gain greater access and learn more about what atrocities they have implemented.

Go ahead.

Q Thank you. The U.S. ambassador to the U.N. says that tomorrow she's going to go to New York and seek Russia's suspension from Human Rights Council.

MS. PSAKI: Yeah.

Q Is that at the direction of the President?

MS. PSAKI: Yes. The President does not believe -- he believes it's ludicrous for Russia to be a member of the Human Rights Council. And certainly, the ambassador spoke to this today and while she was on her overseas trip, and she will continue to make the case in her role when she returns to New York.

Q Why not seek to permanently expel them?

MS. PSAKI: From the Human Rights Council?

I would point -- I would point you to our U.N. ambassador on what specific steps, but obviously removing them would be the next appropriate step in the process.

Go ahead.

Q Thank you, Jen. So, President Biden is talking about putting Putin on a wartime trial. Does he expect Putin to turn himself in to stand trial? Or does he think somebody's going to have to go into Russia and arrest him?

MS. PSAKI: Well, without getting into the mechanisms -- which, I know, were the good questions everybody was asking our National Security Advisor -- there is precedent in the past of how this process can work.

We're not going to prejudge what the process would work or -- or what steps would be taken through -- through an international legal process.

So, that's not quite where we're at right now, Peter, and I can't give you a sense of the mechanisms of -- of, if convicted, what would happen.

Q Okay.

A question about college sports. In some places like the Ivy League, now there are biological males competing against women. Does the White House think that is fair?

MS. PSAKI: Well, I would note that we're not the governing body for the NCAA or any other system out there that -- I believe you're probably referring to the case over -- in swimming in the NCAA.

We understand how important sports are to student athletes across the country. But the NCAA obviously makes -- puts these policies in place.

What I would say, Peter, if we look at this broadly, is that we celebrated International Transgender Day of Visibility last week with a slate of new actions to ensure we are continuing -- we continue to protect the dignity and identity of all Americans.

And at a moment where we're looking at and we're seeing increased mental health issues related to young people, especially LGBTQ+ young people, we're providing additional funding and resources to address this issue.

And we hope all leaders can focus on those important issues and the impact on many of these young people who are impacted across the country.

Q And then, what about this new law in Florida? At what age does the White House think that students should be taught about sexual orientation and gender identity?

MS. PSAKI: Well, I would say, first of all, Peter, we have spoken to the "Don't Say Gay" bill in the past -- I believe is what you're referring to --

Q Right.

MS. PSAKI: -- and made clear that as we look at this -- this law, what we think it's a reflection of is politicians in Florida propagating misinformed, hateful policies that do absolutely nothing to address the real issues.

The Department of Education is well positioned and ready to evaluate what to do next, and when -- and its implementation -- whether its implementation violates federal civil rights law.

But I would note that parents across the country are looking to, you know, national, state, and district leaders to support our nation's students, to ensure that kids are treated equally in schools. And that is certainly not -- this is not a reflection of that.

Q And so, just the last one. So if you guys oppose this law that bans classroom instruction about sexual orientation and gender identity in K through 3, does the White House support that kind of classroom instruction before kindergarten?

MS. PSAKI: Do you have examples of schools in Florida that are teaching kindergarteners about sex education?

Q I'm just asking for the President's opinion about this law.

MS. PSAKI: Well, I think that's a -- I think that's a relevant question, because I think this is a politically charged, harsh law that is putting parents and LGBTQ+ kids in a very difficult, heartbreaking circumstance. And so, I actually think that's a pretty relevant question.

Go ahead.

Q On the Ukraine atrocities, Jake referenced some of the images that all our news organizations have been gathering. Is the administration able to gather other and document other cases that you have assembled that we may not be aware of, in terms of this collection of data on war crimes, rapes, murders -- things like that -- that we have not yet seen? Is there more data that --

MS. PSAKI: On the ground, you mean?

Q Yes.

MS. PSAKI: So, I'm sure you've seen, Kelly, that the EU announced their intention to send a team there, which obviously hasn't happened yet. But that was an announcement made earlier today.

Certainly, through intel gathering, we likely do have access to different types of information. We have declassified a range of information over the course of time, which I would expect we continue to do -- we will continue to do.

Right now, I can't give you an assessment of what we may know that you don't know. But I would just say and reiterate what Jake said, which is we're going to use every tool at our disposal we can -- some of that is through intel channels; some of that is, of course, working with our counterparts around the world -- to gather as much data and information as we can.

It is difficult -- to go back to an earlier question -- given that we need access, or even our European friends and partners need access, to gather. But -- but it is vital, it is important, and we are going to do everything we can to support those efforts from here.

Q And if the Russians are able to take some territory in the east and have greater stability of their control there, would it ever be the U.S. position that that could be a stable outcome? Or is maintaining the current map of Ukrainian sovereignty what the West would want?

MS. PSAKI: Sure. Well, it's going to be up to the Ukrainians and Ukrainian leaders to determine what the diplomatic path forward looks like here -- what discussions, what negotiations they are comfortable with.

What our objective is and what tool we can -- we feel we can most be effective at, I should say, is supporting them and strengthening their hand in these negotiations. And that includes not just the economic support, the military support. I

would note, over the course of the last couple of days, the Department of Defense announced an additional package beyond what was announced just a few weeks ago. So we're going to continue to do that.

But in terms of the negotiations and what they would be comfortable with, we're here to support them, and we're not going to predetermine that.

Go ahead.

Q Thanks, Jen. Just last week, you said that the U.S. is sending protective gear to Ukraine --

MS. PSAKI: Yeah.

Q -- to help shield Ukrainians from chemical weapons use. Have those deliveries been made, or have they started? Is there any timeline specifically for those deliveries? Because Jake did mention that deliveries have started.

MS. PSAKI: Sure. I can check for you a status of that. We try to do it in an expedited manner. And we still have means of getting equipment of -- a range of equipment to people who need it on the ground. And I can check if that equipment has been delivered, or is in process -- I guess you're asking.

Yeah.

Q And I have a quick question on Elon Musk and him picking up a 9 percent stake in Twitter, which makes him the largest shareholder in the company. Obviously, the White House uses Twitter quite extensively, and Musk has been very critical of President Biden. I'm wondering if there is perhaps any recalibration of the use of the platform or to what extent, you know, the White House is using Twitter, going forward.

MS. PSAKI: That's a decision of a private sector leader. I don't have any specific comment on it. But I expect we will continue to use Twitter, as you all will as well, I would expect.

Go ahead.

Q Thanks, Jen. I was wondering if you could elaborate a little bit more on President Biden and former President Obama and their relationship and how often and how they communicate. And you had mentioned that they are real friends and not just Washington friends. But given that they only live a few miles apart, why is this the first time that the former President has been invited to the White House?

MS. PSAKI: Well, I would say, first, I have known them both for some time. And I have watched -- I watched their friendship grow over the course of the period of time when the President was vice president and when the former President was president.

And why I noted that at the top is because I think people who didn't have the seat I had may just think that it's like inviting any former President to the White House. And it certainly is not that. They talk on the phone; they do that on a regular basis. I'm not going to give you the number of times they've had conversations, but I would note they consult on a range of issues, but also about their families and things happening in their personal lives. And, you know, it's not a relationship of obligation. It's one where they developed a deep and close friendship through the course of their time serving together, and that has continued.

And tomorrow is, of course, exactly the right time to have the former President come here, given this is one of the proudest accomplishments that they worked on together, they shared together. And it is emblematic of their shared view and belief that government can work for people, and it can work for the American people. And this is an example of building on a success from more than 10 years ago and making it better over time.

So -- and I suspect that former President Obama will be back when there is a portrait unveiling and perhaps for other -- other engagements here as well in the future.

Go ahead, Karen.

Q Thanks, Jen. Can you tell us how the President or if he -- the President has engaged with lawmakers in the last couple of days on the COVID funding deal? And has he talked to any Republicans on this?

MS. PSAKI: I'm not going to give you an outline or a detail of people he's spoken to. I will note that it's rare that I am in the Oval Office on any given day where he doesn't just pick up the phone and call a member of Congress, often a Republican -- at least when I'm in there -- to talk to them about a range of priorities.

This is clearly a huge focus for the President because of the dire need we have at this moment to get this funding through and the fact that we are already at a point where we have had to halt, delay a range of programs and purchases that we feel are imperative.

I would note that on the global side, you know, we are -- we already need to stop plans to ex- -- expand the global vaccination initiative to more countries. We'll also have to immediately scale back our global efforts to provide lifesaving tools -- this is a little bit of what I mentioned earlier -- like oxygen systems, antiviral pills -- things that can cut death rates by 90 percent for the unvaccinated.

And I would also note that, even as we're very encouraged by the progress, we're going to need more -- because our objective here is going to continue to be -- to be ahead of the process and be ahead in planning to make sure we can have funding for antivirals, the vaccines needed for people for many months to come.

Q And just to be clear: So, he has been talking on this specific issue (inaudible) --

MS. PSAKI: He's been engaged with a range of members about a range of issues. This is a huge priority. I'm just not going to get into the details of what those calls look like.

Go ahead.

Q Thanks, Jen. I just wanted to clarify what I was asking Jake there, because it sounded like, at the end, he was leaving open the possibility of U.S. boots on the ground to protect civilians in Ukraine or to protect the supply chain.

MS. PSAKI: I don't think that was his intention.

Q Okay. Because he did say, in terms of the supply chain or civilians, that you're discussing all possibilities with allies.

MS. PSAKI: We -- nothing has changed about the President's view about boots on the ground.

Go ahead.

Q So, the jobs report came out on Friday. Inflation is at 7.9 percent. It shows average hourly wages went up 5.6 percent. I wonder what the level of concern is for the President and the White House that people will stop spending because the stuff they want is more expensive and that leads us to a recession.

MS. PSAKI: Well, I would say on the latter part of your question that what we know is that the economy is strong, our recovery has been strong. And that continues to be -- while we, of course, are monitoring progress and where we have concern -- including rising costs and, obviously, the need to continue to address inflation -- that continues to be our assessment, which is -- which is even as there are challenges we need to continue to address, it means that we have a strong basis that we are building from.

I would remind you also that the unemployment rate is 3.6 percent. And the President created more jobs last year than any president in American history. So those fundamentals are also backed up by data.

And obviously, what we're trying to do -- as you know from following this closely, there are a couple of areas that are impacting rising costs more than others -- right? -- including the price of gas, including the price of automobiles and the impacts on the car industry of the lack of -- the chip shortages.

So, what we're also trying to do is take steps to address each area where we see rising costs. And obviously, the President's announcement on Thursday to do a historic release from the Strategic Petroleum Reserve, where we've seen already a small reduction in the price of gas and the price of oil come down by several dollars, is an effort to bring down costs that are impacting people's checkbook, pocketbooks -- checkbook, et cetera.

Q But you're not concerned about if consumers stop spending?

MS. PSAKI: We, of course, continue to assess, but I don't have any projection of that at this point in time.

Q Well, one thing on the wealth tax. Elon Musk tweeted out last week that Tesla and SpaceX would "have died" if such attacks existed in 2008, after the Great Recession. With the push for EVs and space exploration, what's the White House level of concern that that a wealth tax could stifle innovation?

MS. PSAKI: Well, I would first say that, you know, right now, America's teachers and firefighters pay a higher tax rate than billionaires. I don't even think Elon Musk probably thinks that's fair. I don't know who thinks that's fair. It's not fair, and that should not be the case.

And so, what this proposal does and why the President supports it, in his view, is it fixes that. And this would close an unfair tax loophole and promote economic growth by encouraging productivity, enhancing investments.

And, really, what it does -- to get into the nitty gritty of it -- is, you know, right now, the super wealthy -- billionaires -- I think everyone considers them super wealthy -- are able to access the value of their assets, even if they never sell them, in order to finance lavish consumption.

And right now, billionaires with unrealized gains borrow against their assets during li- -- their life at ultra-low interest rates. And when -- when they die, they get a step-up in basis and no tax is paid on the appreciation of their asset. In other words, their income is never taxed.

That's not fair. And I think what the President is trying to do and what many senators and others support is closing that. Why that should impact a lack of innovation, I think there should be more explanation on. This is trying to make the system more fair.

Go ahead. Oh, sorry, Weijia. I'll come back to you. Go ahead, in the middle.

Q Thank you. Thank you, Jen. It seemed U.S. senators have written President Biden, urging him to designate Cameroon for TPS. Is that something he's willing to do?

MS. PSAKI: That's -- an assessment is made by a process led by the Department of Homeland Security, so I don't have any prediction of that at this point in time.

Q And then on his approval rating: When he came into office last year, he was around 60 percent and even more, and now he's around 40 percent and sometimes less. Who does he blame now: Putin, Trump, you -- the communication team?

MS. PSAKI: Oh, does he blame me? Oh, I don't know. (Laughter.) I hope not.

Look, I think that the President recognizes that the country is still grappling with a number of challenges that impact people and their everyday lives, whether that is a continuing fight with a pandemic that has been going on for several years or the fact that costs are going up. Some of those are a result of the actions of President Putin -- yes, as it relates to gas prices -- but others are related to impacts of COVID-19 and impacts on the supply chain.

So, what our focus is and his focus continues to be: on solutions to address these challenges, and keeping our heads down and trying to continue to deliver for the American people.

Go ahead, Weijia.

Q Thanks, Jen. Shifting to Russian billionaires because, today, the DOJ announced the seizure of that --

MS. PSAKI: Yes. Yeah.

Q -- huge, \$90 million yacht. Is there any evidence that zoning in on Putin's close allies in this way -- seizing their assets -- is having an impact on his calculations? And if not, what is the end goal here to try to apply pressure to Putin himself?

MS. PSAKI: Well, I think it's not the only approach we're taking -- right, Weijia? -- but it is one of the steps that we have -- our national security team determined from the beginning would hopefully be effective on putting necessary pressure on. That includes significant consequences we have implemented on the Russian economy, but it also includes going after people who are in the inner circle and are close, where their actions have warranted that, including Russian oligarchs.

But it is not our -- our expectation is not that one component is going to lead to a direct change. These are just a range of pressure points, and we're going to use all of them that we possibly can.

Q What is the hope that this particular action will take? What -- because we're seeing so many images of yachts around the world being seized, other assets being seized.

MS. PSAKI: Well, again, it's one of several actions we're taking. And I think if you look at the totality of it and the pool of the actions, the Russian economy has been on a downward spiral. There are businesses -- private sector businesses around the world have pulled their -- their business and their investments out of Russia. They're isolated from the world. The oligarchs are isolated from the world. All of these are meant to be consequences and meant to, of course, impact the calculation over the longer term.

Q And then just one quick one --

MS. PSAKI: Yeah.

Q -- on the President's announcement last week about the strategic supply of oil.

MS. PSAKI: Yep.

Q So, you know, the crude prices came down -- we saw that almost right away -- but how long do you expect that Band-Aid will hold if OPEC does not also agree to ramp up production, which it has not so far?

MS. PSAKI: Well, here's how you should look at it. It was intentionally done as a million barrels a day over the course of six months because we knew there needed to be, kind of, a gap filled for that period of time, where our expectation and hope is that there could be greater production by the oil companies over that course of time.

There are also steps -- as you've seen, this as a coordinated release around the world, and there was an announcement last

Friday about that as well -- by other countries to help fill the gap that we see from Russia and from the fact that their oil is not contributing as much as it had historically onto the global marketplace.

And obviously, oil prices are global -- I mean, it's a global marketplace. So, we're already seeing, as you said, a reduction, but this is meant to be a six-month effort to kind of bridge the gap in many ways for that period of time and ramp up production in a range of ways.

Yes, you referenced OPEC Plus, but also other countries last Friday announced their plans and their intentions to release more oil to help meet the supply needs on the market. That's what we're intending to do here, and we're going to continue to look at many ways to achieve that objective.

Go ahead.

Q Iran, over the weekend, said that a deal was close. We heard something different from U.S. officials only days before that. So, what is the current assessment of that deal?

MS. PSAKI: Well, our assessment is that the onus for concluding this deal is squarely on Iran. Together with our European allies, the United States has negotiated the roadmap for a mutual return to compliance through the Vienna talks. The President will reenter the deal if it's in our national security interests. And both ourselves and our allies are prepared to conclude a strong agreement if Iran is prepared to do the same.

What we've seen, however, is that Iran has raised a number of issues that has nothing to do with the mutual compliance under the nuclear deal. And that is where our focus and our objective is. So, we would encourage Iran to focus on the deal negotiated in Vienna, rather than seeking to open issues outside the Vienna context or casting blame, of course, on others for a pause in the talks.

Q Is the White House making a -- any push this week -- last-minute push -- to get another Republican or two to support Judge Jackson?

And secondly, if you could reflect on what Senator Graham said about if Republicans were in control, that she wouldn't get a hearing.

MS. PSAKI: Well, let me say on the first part that our view continues to be that Judge Jackson's credentials, her record warrant bipartisan support. We've seen some of that to date. But certainly, we're going to continue to work the phones up until the last moment here. But I can't make a prediction for you on what the end result of that will be.

I would say on Senator Graham's comments, I think the best questions are probably posed to Senator Graham. I would remind you all that he has previously voted for Judge Jackson when her record and her credentials were exactly the same as they are today. So, it seems like there's more questions that could be posed to him.

Go ahead.

Q As a follow-up on the Senate Supreme Court confirmation hearing: Republicans have said that they wanted to -- that this would be a respectful and fair process, and it's been very contentious.

Given Senator Graham's comments, what do you think is the nature of the Supreme Court as we look ahead for the future, not just this Supreme Court nominee but for future nominations, given the contentious comments from Senator Graham?

MS. PSAKI: Well, look, I think that our view continues to be that qualified nominees, those who meet every objective bar of qualification of backgrounds should be considered and treated with fairness as they go through the process. That's how President Biden is going to continue to -- to operate. And that's how we would expect every member of the Senate to continue to operate.

So, obviously, his comments are disappointing, but our focus needs to continue to be on supporting Judge Jackson and her path to the Supreme Court.

Go ahead.

Q Thanks, Jen. I wanted to ask two questions -- one about refugees and one about the Supreme Court.

MS. PSAKI: Sure.

Q On refugees, the 100,000 number that the President put out when you all were in Europe --

MS. PSAKI: Yeah.

Q -- can you talk about how you arrived at that number and what preparations are being made at this point to accept those refugees? I haven't seen the State Department really put out a lot of detail yet.

MS. PSAKI: Yeah, I expect we'll have more soon. And I think the understandable questions are kind of the prioritization and how the process will work and what the models will be -- all very good questions. And we're just working through the final pieces of the policy process at this point in time.

In terms of the number, it doesn't mean we will -- we will reach that number. As you know, while there have been a startling number of refugees -- individuals who have been kicked out of their homes because of the Russian invasion of Ukraine -- the vast majority of them want to stay in neighboring countries. And that continues to be our expectation.

But this is just an effort for us to play a role, beyond the historic amount of humanitarian assistance and support we're providing to neighboring countries, to ensure that we can find a pathway for those who want to come to the United States to come here too.

But we're still finalizing the policy details, and hopefully we'll have more soon on that for you.

Go ahead.

Q I wanted to ask one more on the Supreme Court.

MS. PSAKI: Yeah.

Q President Biden was asked last week about Justice Clarence Thomas. I believe he said something -- or he said it was up to the Justice Department or the January 6th Committee on whether Justice Clarence Thomas would recuse himself from any of those cases -- those being the January 6th cases.

Judicial ethics mean that the Supreme Court Justice generally makes his own decision on recusals. Does the President still agree with the view of the Justice Department or January 6th Committee should decide? Has he taken a position at this point on whether Justice Thomas should recuse himself?

MS. PSAKI: That's a decision up to the Supreme Court. We don't have any additional position from here.

Go ahead.

Q They were friends from the time they were on Foreign Relations Committee together.

So in terms of -- Japan has the largest number of U.S. troops. Is there some way that they could be involved, as a country that also went through war, with this current situation in Russia? And do you know if they've been included in some of

that also went through war, with this current situation in Russia? And do you know if they've been included in some of these discussions going forward?

MS. PSAKI: I know that they have been included and a part of the conversations, including during President Biden's recent trip to Europe, and that our partnership and friendship with Japan continues as we discuss how to help support Ukraine through the invasion -- Russia's invasion.

Go ahead.

Q Jen, I believe you're running out of time. Maybe just a couple more?

MS. PSAKI: Okay, we're going to do one or two more.

Go ahead.

Q Amid the Ukraine crisis, we know the United States and Russia are still working together on Afghanistan issues. Actually, last Thursday, March 31st, there was a meeting in China where the U.S., China, and Russia delegations went over this issue. Can you describe the working relations between U.S. and Russia on this meeting? And what's China's role on it? Do you worry China might take advantage of the tension between the U.S. and Russia right now?

MS. PSAKI: China -- and just to make sure I'm unpacking your question: What you're asking about -- you're asking about a meeting on Afghanistan between Russian, U.S., and Afg- -- I'm sorry, Chinese officials?

Q Yes.

MS. PSAKI: I would really point you to the State Department. I'm happy to get more details on it and see. I would note that Russia and China are both members of the P5+1. And obviously, we're continuing to pursue a diplomatic deal there as well. So, there are other examples of us working, even as we are horrified by the atrocities in Ukraine.

Okay, last one.

Q Thank you, Jen. Moments ago, you said that it was "ludicrous" that Russia would be allowed to sit on the U.N. Human Rights Council. I'm wondering if the President wants to see China remain on that Human Rights Council as well, given that his administration has already made a determination that China is engaged in genocide against the Uyghur people.

MS. PSAKI: Well, our focus right now on the international stage on this question is on Russia, given the invasion of Ukraine and given what we're seeing -- the photos from Bucha, others that we may see in the future.

Obviously, we will continue to press publicly and privately where we have concerns about human rights violations, including as it relates to China.

Thanks so much, everyone.

4:14 P.M. EDT

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Press Briefing by Press Secretary Jen Psaki and Deputy NSA for Cyber and Emerging Technologies Anne Neuberger, March 21, 2022,

James S. Brady Press Briefing Room

2:45 P.M. EDT

MS. PSAKI: Hi, everyone. Okay, we have a very special return guest today, Deputy National Security Advisor Anne Neuberger, who is here to provide a brief update on cyber. You probably have seen the statement from the President we issued, as well as a factsheet; she'll talk about that. Has a little bit of time to take some questions, and then we'll do a briefing from there.

With that, I'll turn it over to Anne.

MS. NEUBERGER: Thank you, Jen. Good afternoon, everyone.

This afternoon, the President released a statement and factsheet regarding cyber threats to the homeland, urging private sector partners to take immediate action to shore up their defenses against potential cyberattacks.

We've previously warned about the potential for Russia to conduct cyberattacks against the United States, including as a response to the unprecedented economic costs that the U.S. and Allies and partners imposed in response to Russia's further invasion of Ukraine.

Today, we are reiterating those warnings, and we're doing so based on evolving threat intelligence that the Russian

government is exploring options for potential cyberattacks on critical infrastructure in the United States.

To be clear, there is no certainty there will be a cyber incident on critical infrastructure. So why am I here? Because this is a call to action and a call to responsibility for all of us.

At the President's direction, the administration has worked extensively over the last year to prepare to meet this sort of threat, providing unprecedented warning and advice to the private sector and mandating cybersecurity measures where we have the authority to do so.

For example, just last week, federal agencies convened more than 100 companies to share new cybersecurity threat information in light of this evolving threat intelligence. During those meetings, we shared resources and tools to help companies harden their security, like advisories sourced from sensitive threat intelligence and hands-on support from local FBI field offices and sister regional offices, including their Shields Up program.

The meeting was part of an extensive cybersecurity resilience effort that we began in the fall, prompted by the President. Agencies like Energy, EPA, Treasury, and DHS have hosted both classified and unclassified briefings with hundreds of owners and operators of privately owned critical infrastructure. CISA, NSA, and FBI have published cybersecurity advisories that set out protections the private sector can deploy to improve security.

The President has also directed departments and agencies to use all existing government authorities to mandate new cybersecurity and network defense measures. You've seen us do that where we have the authority to do so, including TSA's work that mandated directives for the oil and gas pipelines following the Colonial Pipeline incident that highlighted the significant gaps in resilience for that sector.

Our efforts together over the past year has helped drive much-needed and significant improvements. But there's so much more we need to do to have the confidence that we've locked our digital doors, particularly for the critical services Americans rely on.

The majority of our critical infrastructure, as you know, is owned and operated by the private sector. And those owners and operators have the ability and the responsibility to harden the systems and networks we all rely on.

Notwithstanding these repeated warnings, we continue to see adversaries compromising systems that use known vulnerabilities for which there are patches. This is deeply troubling.

So we're urging, today, companies to take the steps within your control to act immediately to protect the services millions of Americans rely on and to use the resources the federal government makes available. The factsheet released alongside the President's statement contains the specific actions that we're calling companies to do.

I would be remiss if I didn't reiterate the President's thanks to Congress for its partnership in this effort, including making cybersecurity resources available in the Bipartisan Infrastructure Law and, most recently, for working across the aisle to require companies to report cyber incidents to the federal government. That will ensure federal resources are focused on the most important cyber threats to the American people.

We welcome additional congressional work to identify new authorities that can help address gaps and drive down collective cybersecurity risk.

Bottom line: This is about us -- the work we need to do to lock our digital doors and to put the country in the best defensive position.

And there is them. As the President has said: The United States is not seeking confrontation with Russia. But he has also said that if Russia conducts disruptive cyberattacks against critical infrastructure, we will be prepared to respond.

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Thank you.

MS. PSAKI: All right. Let me just first ask, for those of you in the aisles, if you're not a photographer, there's plenty of seats. So if you could sit down, that would be great, and not crowd the others in the seats.

So, we don't have unlimited time, so if people -- we just want to get to as many people as possible.

So, go ahead.

Q Thank you, Jen. Hi, Anne. Just a quick question on the Viasat attack that happened on the 24th of Feb, the day Russia attacked Ukraine. We've obviously seen that impact satellite communication networks in Eastern Europe. And since then, the FBI and CISA have issued warnings that similar attacks can happen against U.S. companies.

Is the U- -- is the U.S. in a position to perhaps identify who is behind the hack at this moment?

MS. NEUBERGER: It's a really good question. So, first, I want to lift up: FBI and CISA and NSA also highlighted protective security measures that U.S. companies can put in place to protect against exactly that kind of attack. We have not yet attributed that attack, but we're carefully looking at it because, as you noted, of the impact not only in Ukraine but also in satellite communication systems in Europe as well.

Q Does the sophistication of the attack, perhaps the timing of it, suggest that it's a state actor? I mean, are you willing to -

MS. NEUBERGER: Those are certainly factors that are -- we're looking at carefully as we look at who is responsible for them.

MS. PSAKI: Phil.

Q The "evolving intelligence," it doesn't mean that it's a certainty there's going to be an attack. Can you explain for the layman what you're seeing right now that precipitated this statement today, and what the evolving intelligence may be now compared to on the 24th or prior to the invasion?

MS. NEUBERGER: Absolutely. So, the first part of that is: You've seen the administration continuously lean forward and share even fragmentary pieces of information we have to drive and ensure maximum preparedness by the private sector.

So as soon as we learned about that, last week we hosted classified briefings with companies and sectors who we felt would be most affected, and provided very practical, focused advice.

Today's broader, unclassified briefing is to raise that broader awareness and to raise that call to action.

Q So there was something specific you saw last week that was raised to the industries that it would have affected, is what you're saying?

MS. NEUBERGER: So I want to reiterate: There is no evidence of any -- of any specific cyberattack that we're anticipating for. There is some preparatory activity that we're seeing, and that is what we shared in a classified context with companies who we thought might be affected. And then we're lifting up a broader awareness here in this -- in this warning.

MS. PSAKI: Major?

Q Hey, Anne. When you say a "call to action," many who hear you say that might believe that something is imminent. Is it?

MS. NEUBERGER: So I want to reiterate: There is no evidence of any -- of any specific cyberattack that we're anticipating for. There is some preparatory activity that we're seeing, and that is what we shared in a classified context with companies who we thought might be affected. And then we're lifting up a broader awareness here in this -- in this warning.

MS. NEUBERGER: So, first, a "call to action" is because there are cyberattacks that occur every day. Hundreds of millions of dollars were paid in ransoms by U.S. companies just last year against criminal activity happening in the U.S. today. Every single day, there should be a call to action.

We're using the opportunity of this evolving threat intelligence regarding potential cyberattacks against critical infrastructure to reiterate those with additional focus specifically to critical infrastructure owners and operators to say, "You have the responsibility to take these steps to protect the critical services Americans rely on."

Q And as a follow-up: "Critical infrastructure" is a broad term. Is it as broad as you typically mean it when the government speaks about critical infrastructure, or is there something you've seen that you can be more -- a little bit more specific within that large frame of critical infrastructure?

MS. NEUBERGER: I won't get into specific sectors at this time, because the steps that are needed to lock our digital doors need to be done across every sector of critical infrastructure. And even those sectors that we do not see any specific threat intelligence for, we truly want those sectors to double down and do the work that's needed.

MS. PSAKI: Jacqui.

Q You guys, the administration, successfully declassified a lot of intelligence about what the Russians were planning leading up to the invasion to prebut what they might do. Can you do that a little bit here and at least list some of the industries that might be the biggest targets so that they can have a heightened awareness about what might be coming?

MS. NEUBERGER: As we consider declassifying intelligence, to your excellent point, that really has been the work that has been done the last few weeks and was driven by a focus on outcomes. It was driven by the President's desire to avoid war at all costs, to really invest in diplomacy.

So, as we consider this information, the first step we did was we gave classified, detailed briefings to the companies and sectors for which we had some preparatory information about. And then for those where we don't, that's the purpose of today's unclassified briefing: to give that broad warning. And I want to lift up the factsheet, which is really the call to action for specific activities to do.

Q So you believe the people, the industries that need to know about this risk know?

MS. NEUBERGER: We believe the key entities who need to know have been provided classified briefings. I mentioned, for example, just last week, several hundred companies were brought in to get that briefing.

MS. PSAKI: Peter.

Q Does the U.S. have any evidence that Russia has attempted a hack, either here in the U.S., in Europe, or in Ukraine, over the course of the last several weeks since this offensive began?

MS. NEUBERGER: So, we certainly believe that Russia has conducted cyberattacks to undermine, coerce, and destabilize Ukraine. And we attributed some of those a couple of weeks ago.

We consistently see nation states doing preparatory activity. That preparatory activity can pan out to become an incident; it cannot. And that's the reason we're here.

Q So, specifically in the U.S., as there was an assessment early on that we thought that we would be a likely target here, why do you think we have not seen any attack on critical infrastructure in the United States to this point so far?

MS. NEUBERGER: I can't speak to Putin or Russian leadership's strategic thinking regarding how cyberattacks factor in.

What I can speak to is the preparatory work we've been doing here in the U.S. and the fact that as soon as we have some

what I can speak to is the preparatory work we've been doing here in the U.S. and the fact that as soon as we have some evolving threat intelligence regarding a shift in that intention, that were coming out and raising the awareness to heighten our preparedness as well.

Q So you can't say declaratively that we stopped an attack, I guess I'm saying, to this point on critical infrastructure?

MS. NEUBERGER: Correct.

Q Okay. Thank you.

MS. PSAKI: Colleen.

Q Can you explain a little bit more what preparatory activity on the part of the Russians would be? What does that look like?

MS. NEUBERGER: So, preparatory activity could mean scanning websites; it could be hunting for vulnerabilities. There's a range of activity that malicious cyber actors use, whether they're nation state or criminals.

The most troubling piece and really one I mentioned a moment ago is we continue to see known vulnerabilities, for which we have patches available, used by even sophisticated cyber actors to compromise American companies, to compromise companies around the world. And that's one of the reasons -- and that makes it far easier for attackers than it needs to be.

It's kind of -- you know, I joke -- I grew up in New York -- you had a lock and an alarm system. The houses that didn't or left the door open clearly were making it easier than they should have. Right? No comment about New York. (Laughter.)

So, clearly what we're asking for is: Lock your digital doors. Make it harder for attackers. Make them do more work.

Because a number of the practices we include in the factsheet will make it significantly harder, even for a sophisticated actor, to compromise a network.

MS. PSAKI: Go ahead.

Q Sorry, just to be clear: The warning today, is this in response to some of these more desperate tactics we've seen from Russia on ground? Are you now fearing that there might be more of a cyber risk because of what we're seeing on the ground in Ukraine?

MS. NEUBERGER: So, we've given a number of threat intel- -- of threat warnings over the last number of weeks that Russia could consider conducting cyberattacks in response to the very significant economic costs the U.S. and partners have put on Russia in response. This speaks to evolving threat intelligence and a potential shift in intention to do so.

Q And do you have a message for individuals? You're talking a lot about private companies. What about households? Should they be worried about cyberattacks here?

MS. NEUBERGER: The items in the factsheet apply to companies and individuals as well. I'm specifically speaking to companies because there's a responsibility to protect the critical services Americans rely on. But every individual should take a look at that fact sheet because it's a truly helpful one. We only put in place the things that we really try to practice and work to practice ourselves.

MS. PSAKI: Jordan.

Q Thanks. As part of this preparatory activity, do you have evidence that Russian hackers have infiltrated the networks of U.S. companies already and just haven't carried out the attacks?

MS. NEUBERGER: There was -- as I noted, we frequently see preparatory activity. Whenever we do, we do sensitive

MS. NEUBERGER: There was -- as I noted, we frequently see preparatory activity. Whenever we do, we do sensitive warnings to the individual companies and provide them information to ensure they can look quickly at their networks and remediate what may be occurring.

Q So have you seen any evidence that there have been infiltrations as part of that activity?

MS. NEUBERGER: We routinely see information about infiltrations. Right? Technology is not as secure as it needs to be. I mentioned the ransomware activity. There are multiple nation-state actors. It's a line of work for the intelligence community and the FBI to knock on a company's door and say, "We've seen some evidence of an intrusion. We'll work with you. We'll make these resources available via a regional office to work with you to help you recover." That's -- that's pretty routine practice.

What we're seeing now is an evolving threat intelligence to conduct potential cyberattacks on critical infrastructure. And that raises up a point because we're concerned about potential disruption of critical services.

MS. PSAKI: Ken.

Q Anne, you did a briefing for us about a month ago. Do you think the U.S. banking system is more vulnerable, less vulnerable since the briefing, given the warnings that the government has produced?

MS. NEUBERGER: The U.S. banking sector truly takes cyber threats seriously, both individually and as a group. Treasury has worked extensively with the sector to share sensitive threat intelligence at the executive level, at the security executive level, repeatedly at the classified and unclassified level. So, I do not believe they're more at risk, but it is always important for every critical infrastructure sector to double down in this heightened period of geopolitical tension to carefully look at any threat.

MS. PSAKI: Go ahead.

Q Can you paint a worst-case scenario picture for us? What exactly are you most worried about if people -- the private sector chooses to not take these steps?

MS. NEUBERGER: Clearly, what we're always -- I won't get into hypotheticals, right? But the reason I'm here is because critical infrastructure -- power, water, many hospitals -- in the United States are owned by the private sector. And while the federal government makes extensive resources available -- I mentioned FBI's 56 regional offices -- you can just walk in; CISA has offices near most FEMA sites in the United States. They've had their Shields Up program. We can make those resources available. For those sectors where we can mandate measures like oil and gas pipelines, we have. But it's ultimately the private sector's responsibility, in our current authority structure, to do those steps, to use those resources to take those steps.

So, the purpose here is to say: Americans rely on those critical services. Please act. And we're here to support with the resources we have.

MS. PSAKI: Kayla, last one.

Q Thank you. Anne, are you still seeing the Russians carrying out cyberattacks inside Ukraine? It's been a few weeks since we've been discussing that in particular.

And as financial tools levied by the West have proven ineffective, what cyber tools does the West have that it can possibly utilize?

MS. NEUBERGER: We do continue to see Russia conducting both -- as you know, right? -- significant malicious activity in Ukraine; major kinetic attacks, which have disrupted and killed lives; as well as cyber activity. And we believe the unprecedented economic costs the United States and partners have levied is significant in that way.

unprecedented economic costs the United States and partners have levied is significant in that way.

With regard to your question about whether cyberattacks would change that: I think the President was very clear we're not looking for a conflict with Russia. If Russia initiates a cyberattack against the United States, we will respond.

MS. PSAKI: Thank you, Anne, so much for joining us.

MS. NEUBERGER: Thank you. Thank you for having me.

Q Thanks, Anne.

Q Thank you, Anne.

MS. PSAKI: All right. I just had two brief items for all of you at the top.

There was a scheduled meeting today that Secretary Yellen, Secretary Raimondo, Jake Sullivan, and Brian Deese had with 16 CEOs this afternoon. The President also dropped by for about 20 minutes and provided them an update on Russia, Ukraine. I'm sure we can get you a list of the attendees at that meeting as well.

Also wanted to note -- a number of you have asked about whether the President would be watching the hearings today. One scheduling note is the Quint meet- -- call he had this morning was at exactly the same time as her opening statement, but he did request regular updates -- or has been requesting regular updates from members of the team on how the hearing is going.

And he also called her last night to wish her good luck this week at the hearings.

And I would also note that he's very grateful to Judge Tom Grif- -- Thomas Griffith, as well as Lisa Fairfax, for introducing her today.

So with that, I will stop. And, Colleen, why don't you kick us off.

Q Okay. So, do you -- can give us a readout of the call with the European leaders from earlier? Just sort of what was discussed, what happened.

And then I have one other question after that.

MS. PSAKI: Absolutely. If you haven't already -- there should be a readout going out shortly, but let me give you a few of the preview points of this call:

During this call with President Macron of France, Chancellor Scholz of Germany, Prime Minister Draghi of Italy, and Prime Minister Boris Johnson of the United Kingdom, they discussed their serious concerns about Russia's brutal tactics in Ukraine, including its attacks on civilians. They underscored their continued support for Ukraine, including by providing security assistance to the brave Ukrainians who are defending their country from Russian aggression and humanitarian assistance to the millions of Ukrainians who have fled the violence.

They also reviewed recent diplomatic efforts in support of Ukraine's effort to reach a ceasefire.

I would note: The President will obviously see these leaders -- a number of them -- in person later this week. And this is a call with this group that he has already had a few times. And when he had the last call with them -- I believe it was last week or the week before; it may have been last week -- they talked about doing this on a regular basis, not necessarily because there is a big deliverable out of it but just to keep an open line of communication as they're conti- -- all continuing to respond to the brutal actions of President Putin in Ukraine.

Q And then, on the potential discussions with Ukrainian leaders and Russia, has the White House or has the President been in communication with Ukrainian leaders, with Zelenskyy on this? Has he given any sort of counseling on how to go about these talks with Russian leaders in the hope of, you know, ending the conflict?

MS. PSAKI: We are in touch with the Ukrainian government -- senior government officials every day. The President obviously speaks with -- has spoken with President Zelenskyy a number of times, as you all know. And we convey, through all of those discussions, that we support any diplomatic effort that they choose to take part in.

The role that we feel we can play most effectively is by continuing to provide a broad range of security assistance, military assistance to them as well as economic and humanitarian assistance to strengthen their hand in these negotiations.

And what we always convey publicly and privately is that we're going to be watching closely their actions, not just what words they say.

But we just continue to support their efforts and whatever decisions they make about choosing to engage diplomatically.

Go ahead.

Q President Zelenskyy said if those talks don't work out, it's World War Three. Does the President agree?

MS. PSAKI: Without knowing more of what President Zelenskyy means by that, I would say that our view and the President's view is that the way we need to avoid World War Three is preventing the United States from having direct military involvement on the ground and same on NATO, direct involvement on the ground, and that the most effective role we can continue to play is by providing that extensive military assistance that we have been providing -- economic and humanitarian assistance. So, I can't assess.

Obviously, I know many of you will speak or hear more from President Zelenskyy soon, and I would expect he can speak more to what he meant by that.

Q And related to that, does the President believe that President Zelenskyy owes him or other NATO leaders a check-in as these negotiations progress and as he may approach a final resolution? Meaning, does NATO or does the President want either implied or soft veto power over whatever Zelenskyy might decide to do?

MS. PSAKI: Well, we support President Zelenskyy and Ukrainian leaders' decisions -- ability to make their own decisions through the course of these negotiations.

Now, obviously, if it involves something related to the United States or NATO, we're here to support. But, of course, we'd need to be engaged in that aspect of the discussion.

Q One last thing.

MS. PSAKI: Yeah.

Q On "Face the Nation," the Chinese ambassador said China's position is for peace and that it's constantly doing everything it can to de-escalate. Do you agree with that?

MS. PSAKI: Well, what I would note --

Q Do you say it's a fair characterization of what China is doing?

MS. PSAKI: Well, what I would note: Also in the same interview, he failed to condemn the actions of --

Q He said it wouldn't do any good.

MS. PSAKI: -- President Putin.

I'm sorry?

Q He said it wouldn't make any difference. Do you agree with that?

MS. PSAKI: I think our view is that verbal condemnation of the actions of President Putin and the actions of Russian military is important and vital, and it's about what side of history you want to stand on at this point in time.

At the same time, as you know, the President had a lengthy discussion with President Xi on Friday, and we're going to continue to keep those lines of communication open.

But what we would note here is also what is absent from a lot of their public commentary, which is condemnation at times; sometimes it has been echoing of conspiracy theories that the Russians have put out there about chemical weapons. And we note that, you know, what we want to hear is condemnation of what we're seeing on the ground.

Q Thanks, Jen.

MS. PSAKI: Go ahead.

Q Can you walk us through the President's trip a little bit later this week? We know he's going to stop in Brussels first, obviously. Then he goes to Poland, as you announced this weekend. Will he see refugees? Will he deliver a speech? Are there deliverables? Can you walk us through what you can tell us?

MS. PSAKI: There will certainly be deliverables, as there always are on these trips.

Q Yeah, there are.

MS. PSAKI: And -- there always are. We're still finalizing, believe it or not, the details of the trip and the specifics of what he'll be doing while he's in Poland.

He, of course, will be seeing his counterpart there. And he will certainly thank him for the efforts and the work that Poland has done and the leaders have done there to welcome refugees, to get them settled in Poland for this time being as devastating as the circumstances are.

Jake Sullivan is going to be joining us here tomorrow. And hopefully by then we will have more specifics to lay out for all of you, but we're finalizing the details as we speak.

Q Let me ask you about their assessments we're hearing from NATO right now that are -- some are saying that if we're not in a stalemate, we are rapidly approaching one. Does the U.S. have a position on that that appears to be the way this is heading and how that changes the sort of trajectory of this, and what your view is --

MS. PSAKI: You mean in terms of the military situation on the ground?

Q In Ukraine. Correct.

MS. PSAKI: Well, here's what we've seen on the ground: We're seeing that -- the Department of Defense has assessed -- and I know they've done briefings in this regard, so let me echo this -- that there certainly could be some morale issues of troops on the ground, that they are in a stalemate in the sense that they have not been making the -- the level of progress or the pace of progress that they had hoped from the beginning.

Now, obviously, things can change rapidly in conflicts, and so we are mindful of that as well. We're also seeing, obviously, over the course of the last couple of days, that fighting around Mariupol is fierce but remains, at this point, isolated. It remains a high priority for Russia because it would provide President Putin with a land bridge to Crimea and cut off Ukrainian forces there from the rest of the country, provide the Russians with a new port.

But the military situation elsewhere in Ukraine, according to our assessment, remains largely static. It doesn't mean that can't change; it's just an assessment as of this moment.

Q Last quick one, as it relates to Belarus: Right now, some in NATO are saying that Russia is preparing to potentially -- or that Belarus is potentially preparing to let Russia position nuclear weapons on Belarusian soil. Does the U.S. have a message to the government of Belarus? And how would you view that escalation?

MS. PSAKI: Well, we don't have any confirmation of those reports or suggestions. Certainly, that would be of concern to us, yes.

Go ahead, Jacqui.

Q Thanks, Jen.

In the past, you've said that domestic oil producers have the leases, resources that they need to ramp up production. Is there any thought about invoking the Defense Production Act when it comes to energy?

MS. PSAKI: Well, there are a range of ideas out there -- that's one of them -- that a number of people have put forward. I would say that the Defense Production Act is -- would mean giving government funding to companies or to purchase products. That's how it typically works, as you've seen it work with COVID supplies and otherwise. And we think they have the resources they need in order to expand their production.

Q And then, on government money and supplies: There are reports that the EU is seeking to stockpile iodine pills and nuclear protective gear amid an increased concern about a nuclear threat, and also looking for more ways to deal with potential biological and chemical attacks.

Is the U.S. taking similar measures when it comes to these things, especially with iodine pills? Are we taking, sort of, the lessons learned in the pandemic and applying it to this challenge?

MS. PSAKI: Sure, Jacqui, it's a good question. Let me check with our national security team and see if there's any details I can get into. We are always prepared, even as we aren't making predictions at this point in time. I don't have confirmation of that report about the Europeans, but I will -- I will check and see if there's more to report out to all of you.

Q And then, there are reports that China has fully militarized at least three islands in the disputed South China Sea with anti-ship, anti-aircraft missile systems; laser and jamming equipment; and fighter jets, despite Beijing's promises not to turn these islands into military bases. What is our takeaway from that? And how are we responding to that?

MS. PSAKI: Well, Jacqui, again, I don't have confirmation of that from here. I've certainly seen the reports. I would point you to the Department of Defense for any more specific analysis. But, obviously, any escalatory actions in the South China Sea would be of concern to us.

Q And then one more on the White House assessment of global food insecurity --

MS. PSAKI: Yeah.

Q -- that's sort of coming out of all this in Ukraine.

MS. PSAKI: Sure.

Q Is there any -- is there any money that's going to be allocated to provide diesel fuel to Ukrainian farmers to try to mitigate some of this?

MS. PSAKI: Yeah, so, let me -- so, let me give you a couple of things on this, because there's been a lot of interesting reporting on this, and where the impacts are is a good question.

While we're not expecting a food shortage here at home, we do anticipate that higher energy, fertilizer, wheat, and corn prices could impact the price of growing and purchasing critical fuel [sic] supply -- food supplies for countries around the world. And early estimates from the World Bank suggest disproportionate impacts on low- and middle-income countries including in Africa, the Middle East, and Southeast Asia.

And actually -- and Ukraine is a big exporter of fertilizer. So as it relates to even that need in the United States and other parts of the world, that's something that we're continuing to closely assess as well.

But right now, to go back to the root of your question, we are working with our partners in the G7, multilateral development banks, the World Food Programme, and the U.N. Food and Agriculture Organization to mitigate the impacts to poorer nations.

So we are discussing what that looks like and how to mitigate the shortage on those -- on those growing and purchasing entities from impacting parts of the world that would be severely impacted, even if we're not.

Q What kind of a timeline do we think we have to take some action on that before it becomes a really big problem?

MS. PSAKI: Well, there -- there are active discussions now. And we're certainly mindful that even if we're not seeing an impact in this moment that sometimes supply chain impacts can have a lagging -- can be a -- have a lagging impact.

So we're having discussions now with all of those partners. Those have been ongoing so we can do everything we can to mitigate it in advance.

Q And can I ask one question -- just a reaction to the Israeli Prime Minister. This weekend, he said, on the JCPOA, "Unfortunately, [we're seeing a] determination to sign a nuclear deal...at almost any cost, including saying the [biggest] terrorist [group] in the world is not a terrorist organization. This is too [steep] a price." Can I get your reaction to that? Is that what we're saying by pursuing this deal?

MS. PSAKI: I would say we are in regular touch with our Israeli counterparts, including leaders. We don't have a deal yet. We're consulting with our allies and partners, including Israel, as we negotiate.

And the President is going to make a decision on whether to reenter the deal based on what's in the best interest of American security and strategic interests, including the security of our partners in regions like Israel.

And once -- if and when we have a deal, I'm sure we can discuss more specifics.

Go ahead.

Q Thanks, Jen. We've now had a chance to hear from some of the Judiciary Committee members in this confirmation for Judge Jackson. Any thoughts on whether she will receive bipartisan support in her confirmation?

MS. PSAKI: Well, without being able to get into the minds of a range of Republican members, our view is that given she has been confirmed three times with bipartisan support, that she has extensive experience, that she has ruled in favor of

Democrats and Republicans under leaders of both parties, that she certainly deserves that. But we will see what the outcome ends up being.

Q And has the White House had any contact with Justice Thomas, given his hospitalization? Do you have any updates there?

MS. PSAKI: I'm not aware of any direct contacts. Of course, we wish him a speedy recovery. And of course, thoughts - - thoughts out to his family.

Q And just a quick follow-up on the NATO trip. Can you give us just the big picture of what would a successful NATO summit look like to the White House? What are we looking for to measure that?

MS. PSAKI: Sure. I mean, I think what's important to remember here from the beginning of the Presi- -- of the President's presidency but also, certainly, over the last couple of months is that unity has been front and center for the President in terms of how -- what will make us successful over time -- unity with our European counterparts, unity among NATO, unity among the G7. And that doesn't happen by accident.

And so, coming out of this, what the President is hoping to achieve is continued coordination and a unified response to the continued escalatory actions of President Putin.

Go ahead.

Q The U.S. Ambassador to the U.N. was asked about this this weekend, but given the Poles appear to be planning to put upon the table some type of peacekeeping force idea, is there any feasible structure that the White House could support for something like that? Or have you guys looked into the idea at all?

MS. PSAKI: Well, we, of course, will continue to work with Poland and other allies and partners in Europe to provide support for the Ukrainian people and help them defend their country against Russian aggression and provide relief to the people of Ukraine. And we will continue to impose severe consequences.

The President -- we've been -- he's been clear: We're not going to send American troops to fight Russian troops. It's not in the interest of the American people or our national security. But we'll continue to discuss a range of ideas, including this one out there.

Q And then, there's been, kind of, a reinvigoration in the EU of discussions about banning -- or sanctions on energy. Can you update us on what the efforts in the administration has been to kind of backfill, which would, I think, be a necessity if those actions were taken? Where do those stand at this point?

MS. PSAKI: Sure. In terms of engagements with global energy suppliers? Those engage- -- engagements are ongoing. And, you know, they are -- they are led, in part, by Amos Hochstein, Brett McGurk has been involved in many of them, other members of our national security team and National Economic Council. And we are continuing to discuss with a range of large global suppliers how we can meet the demand in the market out there.

We also are continuing to look at domestic options and what those may look like to help ease the burden on the American public. I wish I had more specifics for you, but I don't have anything more to read out for you at this point in time.

Go ahead.

Q Thank you, Jen. The meeting you mentioned that President Biden participated in with CEOs earlier today, there were oil industry CEOs at that meeting. And considering the White House has been engaging with them for several weeks now -- sort of, you know, talking about ways to increase production to take care of gas prices -- I'm wondering what kind of specific assurances the White House has managed to get from these companies so far, and what was really discussed in

today's meeting, especially with the oil industry CEOs.

MS. PSAKI: Well, while the President was there, he was simply giving them an update on Russia and Ukraine. He was not making an ask at that -- in that capacity. Obviously, there are a range of senior officials who participated in these meetings. We've had a range of engagements with them, as you've noted. And we've stated publicly that they should do greater production, but they can speak for themselves on what, if anything, they would commit to.

Q Have there been any assurances that the industry has perhaps offered the White House so far?

MS. PSAKI: We'll let the oil industry speak for themselves.

Q Okay. And one quick question on China. Are you getting any indications yet that China will actually heed to President Biden's appeal to President Xi to not provide material support to Russia? Or are you seeing, perhaps, evidence suggesting that Chinese companies are maybe violating or going around U.S. export controls to, you know, send the material -- the U.S. material to Russia? I mean, do you -- are you seeing any evidence to that effect?

MS. PSAKI: I don't have an assessment to share on this. You can look at the public comments that one of your colleagues brought up earlier, during an interview yesterday, where the Chinese ambassador highlighted China's friendly relations and maintenance of normal economic ties with Russia while also refusing to condemn Russia's invasion of Ukraine. But I don't have a further assessment beyond that.

Go ahead.

Q Thanks, Jen. The Russian Foreign Ministry summoned Ambassador Sullivan to the Ministry in Moscow and warned that U.S.-Russian relations are on the verge of rupture, said the President's comments calling Putin a war criminal were unworthy of a statesman of such high rank. Does the White House have any response to this? And is there any concern about the warning that they're going to respond with a "decisive and firm response"?

MS. PSAKI: I'm not sure -- the last part -- I'm not sure what you mean by that.

Q They warned of a "decisive and firm response."

MS. PSAKI: Okay. Well, I would say that Ambassador Sullivan did meet with Russian government officials today; I believe the State Department also confirmed.

While we don't provide extensive details in general of these type of diplomatic conversations, I can confirm for you that during that meeting, he repeatedly asked for consular access to American citizen detainees, which -- who have been improperly detained ac- -- been improperly denied access for months in some cases. We find this completely unacceptable.

As it relates to their comments or their calling of him in, I think it's important to remind everyone that it is Russia who is carrying out an unprovoked, unjustified war on Ukraine.

We're seeing clear evidence that they are intentionally targeting civilians and committing indiscriminate attacks. And the President's comments speak to the horror, the brutality that Russia and President Putin are inflicting.

So, they are in control of their own -- the global perception of them is based on their actions.

Q And one quick other one.

MS. PSAKI: Oh, go ahead. Yeah, go ahead.

Q So, you mentioned that the President spoke to Judge Brown Jackson last night. Is there any other details you can

share just about how she's been preparing for the hearings, who's been involved in the practice sessions, or --

MS. PSAKI: Sure. I mean, I had outlined for you guys a couple of weeks ago some of the members of her team who played a role in preparing her, of course, whether it was Dana Remus or Senator Jones and Ben LaBolt, Minyon Moore -- others who have been playing a role in preparing her for the hearings.

I would note -- which won't surprise anyone, given her credentials -- she began preparing and studying and getting ready for these hearings as soon as she was nominated.

I would note that also, over the course of the last few weeks, she's also met with every single member of the Judiciary Committee and then several more members beyond that.

So, she has been both meeting and preparing for the last few weeks, ever since she was nominated, with the team internally and externally that we had announced just a few weeks ago.

Go ahead, Zolan.

Q Does the administration expect to discuss the -- Poland's offer on the MiG fighter jets at this point? Or is the stance that the Pentagon has made the decision clear at that point and this won't be a subject in anticipation of the President's trip to Poland?

And then secondly, during the Vice President's trip to Poland, the Pol- -- Polish leaders, at that point, said one thing that -- one ask that they had in that bilateral was to expedite the processing of Ukrainian refugees who have relatives in the United States.

MS. PSAKI: Yeah.

Q Does -- is the administration expecting to oblige on that request or meet halfway in any way?

MS. PSAKI: So, I would say that, while we have done our own assessment here on the Polish jets based on a couple of factors that the military -- as you as you noted, Zolan -- has outlined, including what's most effective in fighting this war on the ground, the risk assessment of what would be escalatory, and also the fact that the Ukrainians have a number of squadrons that they can utilize.

But if Poland -- if they want to raise this, I'm -- you know, these -- these conversations, these diplomatic negotia- -- or conversations are two ways, right? And we'll, of course, read out their meeting once it -- once it is complete. So, we'll see what they -- what they raise in that meeting.

In terms of refugees, we are -- we have taken a number of steps. And we do -- part of what the President wants to do is thank President Duda for the efforts of Poland in welcoming refugees, and talk about what we can do to continue to provide support.

Now, to date, that has been largely financial support, humanitarian support, even as we granted Temporary Protected Status, and also -- you know, just -- just a few weeks ago.

But what we are doing and continuing to assess is what -- if there are Ukrainian nationals who are not able to remain safely in Europe and for whom resettlement the United States is a better option, we are continuing to work with UNCR [UNHCR] and the EU to consider that.

And that might require -- because typically, individuals who are seeking refugee status have to go to a third country. So that's something we're looking at and assessing.

And we're also -- the UNHCR, the U.N. Refugee Agency, is working with the State Department and many resettlement partners and our overseas posts to determine where the Ukrainian nationals and others who have fled Ukraine were -- you know, whether there's more we can do beyond the humanitarian assistance that we are providing.

So, I'm certain it will be a point of discussion. We are having ongoing discussions internally about what more we can do to welcome refugees.

Q And specifically, the thing that's different about that process that the administration is looking at is allowing Ukrainians to basically finish the refugee process in that same country that they would receive a UNHCR referral?

MS. PSAKI: That's part of the discussion is what can ha- -- what can be done if Ukrainian nationals are not able to remain safely in Europe, for example, and for whom resettlement in the United States would be a better option for a range of reasons -- the State Department is discussing with UNHCR and the EU how to consider them, what would be required for that process.

But this is an ongoing discussion internally. And I'm certain it will be a part of the discussion, to go back to your original question, with President Duda, as well, this weekend.

Go ahead, Matt.

Q Thanks, Jen. You had written on Twitter that the President --

MS. PSAKI: Uh-oh. (Laughter.)

Q -- did not plan to go to Ukraine --

MS. PSAKI: Yeah.

Q -- on his trip. Given that the prime ministers of Poland, Slovenia, and the Czech Republic visited Kyiv last week and that President Zelenskyy was urging others to do the same, can you talk a little bit about whether President Biden had explored going to Ukraine at all, if he was asked to, and sort of what considerations went into the factors either way?

MS. PSAKI: Sure. We have not explored that option. I put that -- I tweeted, I guess I should say, because there was some confusion about this question, and we did not want to leave that out there as an unanswered question.

But certainly, any president of the United States traveling into a war zone requires not only security considerations but also an enormous amount of resources on the ground, which is always a factor for us as we make considerations.

But also, the President felt and our national security team felt that he could have the most effective and impactful trip by convening these meetings with NATO leaders, the G7, the EU in Brussels to determine both continued military coordination, humanitarian and economic coordination, as well as by going to visit Poland, right next door, to talk about everything from refugees, refugee assistance, and continued assistance we can all provide together.

So, it was a decision made about what -- what would be most effective on the trip.

Q And then I just wanted to follow up quickly. You had said earlier that the President was unable to watch the opening statement of the judge in the Supreme Court hearings. I think she --

MS. PSAKI: He was on with the Quint.

Q That's right. But she has to sit through the opening statements, first, of all of these senators, so I don't think she's actually given her opening statement quite yet.

MS. PSAKI: Ah, there you go.

Q Do you know if there's time carved into his schedule? Does he plan -- through the afternoon? Is he following this? Or -

MS. PSAKI: Well, some of these are a little difficult to predict, as just evidenced. Thank you for giving me a lifeline there, because, clearly, I've been in meetings this morning as well.

You know, he -- it was hard to plan his schedule around this, so what he asked is that he be provided updates from his team and aides as the -- as the hearings progress.

And obviously, Chairman Durbin gave his opening, Senator Grassley gave his opening this morning, and it proceeds. But it's hard to plan the President's schedule around a moving Senate hearing.

So, I'm sure he'll be able to watch replays of it and more specifics, but he wanted updates from aides as well.

Go ahead.

Q Thanks. On -- on oil, President Biden has been very vocal about his belief that U.S. producers should be producing more and that there's the possibility of price gouging, but he didn't raise any of those concerns in the meeting of oil CEOs earlier today?

MS. PSAKI: He -- it wasn't a meeting with oil CEOs. There were a couple of the 18 -- or 16 to 18 CEOs there. It was not intended to be a meeting with oil CEOs; it was intended to be a meeting with a broad swath of the economic sectors. And he provided them an update on Russia and Ukraine, so it wasn't meant to be that type of a meeting.

Q And then there was a report in the Washington Post earlier, saying that Biden administration -- administration officials are seeing data showing that Russian oil exports have dropped off a cliff and that there was some -- there was a data point that said there are 2 million barrels per day on tankers that have gone from close -- down to zero in a certain period of time.

Is that -- can you confirm that? Is that -- is that true in what you're seeing about Russian oil exports?

MS. PSAKI: I've seen those reports, but I don't have a new assessment from here.

Q And then, lastly, has the President tested for COVID-19 this week? And what were the results of that test?

MS. PSAKI: He was tested today, and he was negative.

Q Thank you.

Go ahead.

Q Thank you, Jen. Can you walk us through the administration's thinking behind adding this Poland stop? And what is President Biden hoping to demonstrate by sitting alongside President Duda?

MS. PSAKI: Sure. Well, we have -- this -- this trip has been coming together quite rapidly, I think, as you would all note. And so, as I noted a little bit earlier, we will have more details about his Poland stop.

But this is an opportunity for him to thank President Duda for welcoming refugees, as they have done over the last few weeks, and for being an important partner in providing a range of assistance to the Ukrainians -- to the Ukrainian people and the Ukrainian government. And they are an important partner as we -- as we work to remain unified in the weeks and

and the Ukrainian government. And they are an important partner as we -- as we work to remain united in the weeks and months ahead.

There will obviously be a couple of components of his trip there, which I think, as we have more details of it to announce, will showcase the purpose of the trip.

Q And then, to follow on that, one of my colleagues asked if the President would be meeting with Ukrainian refugees in -- at one of these stops. Is there any reason why the President wouldn't? Is that something we can find out more about soon?

MS. PSAKI: I think, as I noted, we're going to be providing more details to all of you in the next 24 hours, of his trip. Sometimes there are things we announce in advance, and sometimes there are not. But I've noted repeatedly that refugees is a key component of his stop in Poland.

Go ahead.

Q Yeah. If I can shift gears to COVID for a minute --

MS. PSAKI: Sure.

Q What is the White House's response to some experts who have said that the U.S. is not necessarily doing enough to prepare for this next bit of a pandemic surge that we're already beginning to see in other parts of the globe?

MS. PSAKI: Well, I would say -- I'm not sure -- can you give me a little more additional context of the comments?

Q I had seen -- yes, some comments just basically that the U.S. needs to be doing more to prepare, whether that is around, you know, building up a supply. They pointed to the low rates of booster shots, in particular, as being a point of concern. And that was -- yeah. And the booster shots, in particular.

MS. PSAKI: Well, I think our primary concern right now is that we're about to run out of funding, and we are always making an effort to be ahead of and be prepared for any new wave, any new variant.

And even as BA.2 has been in this country for some time -- and, as of last week, it was about a quarter to a third of cases. We know it's quite transmissible, but we know that the treatments we have are effective in treating BA.2 -- the BA.2 variant.

Our concern right now is that we are going to run out of money to provide the types of vaccines, boosters, treatments to the immunocompromised and others free of charge that will help continue to battle increasing -- you know, the increase or the upflow or the, you know, increase of -- of COVID in the future.

So that's where our primary focus is. I don't -- beyond that, I'm not sure additional context of those comments.

Q Can I ask just more question. Has the White House been in touch with any of the pharmaceutical companies who are specifically working on the under-age-five population, recently, vaccines? I know that those were put into practice and then removed in terms of actually having implementation. I just wondered what the communication has been.

MS. PSAKI: Yeah, well, the -- it typically goes, of course, through the FDA and CDC, as it should -- all of the data. So we would leave those channels to continue to consider when it's ready to move to the next phase.

Q So no sort of increased communication or urgency around getting (inaudible)?

MS. PSAKI: Well, I think data moves, science moves at the speed of science, right? And, of course, we would all -- many people here have children under five, but it's important that it moves through the effective, gold standard process

people here have children under five, but it's important that it moves through the effective, gold standard process.

And of course, we are in touch with the pharmaceutical companies for a range of reasons, including purchasing supplies to plan ahead for the need for boosters and other vaccines in the future, even as we are worried about running out of money.

But the process for when it would be ready to go through the FDA and CDC process is left to the scientists.

Q Jen, can I ask --

MS. PSAKI: Go ahead.

Q Jen, just on the food security issue --

MS. PSAKI: Yeah.

Q Cargill and ADM are still operating in Russia. A lot of companies have obviously left. Does the administration have a view on whether these companies should stay, given the concerns about food security and production of wheat and that sort of (inaudible)?

MS. PSAKI: We have not asked any company specifically to take steps to pull out. We have applauded those who have made that decision, and they are going to have to make decisions of their own regard.

Q Just a housekeeping item. I know you're still getting plans for the trip. Do you expect the President to hold a joint news conference with President Duda after their meeting in Poland?

MS. PSAKI: We're still planning all the specifics of it, so I don't have that quite yet. I would expect one for sure on Thursday.

Go ahead.

Q Jen, thank you so much. On Ukraine, we are seeing reports about Mariupol and about people and Ukrainians there being deported, arrested, and sent to remote regions in Russia. Is this something that is consistent with American intelligence? Can you comment on this?

MS. PSAKI: I -- one, those reports are horrific, but I don't -- we don't have any independent confirmation of those reports at this point in time.

Q And a follow-up on China, maybe? So, the President has warned that China would face costs if it decided to help Russia. How confident is he that European allies would also support such costs? And will that be part of the discussion in Brussels?

MS. PSAKI: Well, I think that certainly any -- the concern about China's closer alignment with Russia is one that's not just the United -- one of the United States, it's also a concern of many in Europe, and we expect it to be a topic of discussion over the course of the next several days.

Go ahead.

Q Jen, as I understand the peacekeeping proposal from the Polish Prime Minister: It will be a peacekeeping force, they would be in Ukraine, and they would be able to defend themselves. So, I know the President doesn't want to send Americans to fight Russians, but is the U.S. open to sending Americans as part of an internationally recognized peacekeeping force that could be NATO or not NATO?

MS. PSAKI: Again, these are a range of conversations that are happening behind the scenes. I'll leave it to those at this point in time. But forces on the ground is certainly about fighting, but it's also about having forces on the ground in

point in time. But forces on the ground is certainly about fighting, but it's also about having forces on the ground in Ukraine, which we have not supported at this point. I don't think that will change.

Go ahead.

Q Thanks, Jen. I have a question about the COVID-19 Response Team. Obviously, there's going to be a change in leadership in the White House Coordinator on COVID.

MS. PSAKI: Yeah.

Q And, by my count, there hasn't been a press briefing with the COVID team in about three weeks. I just wondered if you could speak to, kind of, what the role of that team is at this point. You know, how often does the President meet with that team? Is there any talk of disbanding it at this point, given the phase of the pandemic? I'm just kind of curious, sort of, what (inaudible).

MS. PSAKI: I hope not, for Dr. Jha's sake, given he's coming in. (Laughter.)

Q (Inaudible).

MS. PSAKI: Look, this is -- communicating with all of you on a regular basis has been a huge priority for the COVID team, and I'm certain we will continue to do that.

And, obviously, Dr. Jha is somebody who is not just a medical expert and a doctor, but somebody who is a very effective communicator on public health issues, and we think that's going to be a very effective part of his role. So, I'm certain you will be seeing a lot of him, and we will continue to have a range of briefings with the COVID team. So, no, they're not disbanding.

Go ahead.

Q Thanks, Jen.

Q Thank you, Jen.

Q Go ahead. I'll go after you.

Q I have questions. First, the United States declared the Myanmar military government committed genocide against the Rohingya, today. We also know the Myanmar government has supported Russia's invasion of Ukraine. And what happened to the Rohingya have happened for a while now. So, based on the timing, are they supporting the Russia related to this declaration today?

MS. PSAKI: Well, let me say for those of you who haven't -- I know you've been following it as closely, but for those of you who have not: Following a rigorous, factual, and legal analysis, the Secretary of State determined that the members of -- that members of the Burmese military committed genocide and crimes against humanity against a Rohingya -- against Rohingya.

His announcement at the U.S. Holocaust Memorial Museum emphasizes, especially to victims and survivors, that the United States recognizes the gravity of these crimes.

He also announced nearly \$1 million for the Independent Investigative Mechanism for Myanmar to support its mandate to investigate, collect, preserve, and analyze evidence of the most serious international crimes in Burma since 2011.

I would note that our view is that shining a light on the crimes of Burmese military will increase international pressure, make it harder for them to commit further abuses. But this has been -- as you know. Rohingya have long faced

discrimination and been subject to exclusionary policies. And this has been a lengthy review process at the State Department to come to this conclusion, unrelated to current events.

Q My second question is -- we've been talking about being in communication with China, including President Biden's calling the President Xi last week. Besides the consequences China might face if it aids Russia, does the United States also tell China what would happen to Russia right now while or might also happen to China if it invades U.S. allies and partners in the Indo-Pacific region, such as Taiwan?

MS. PSAKI: During this call, which was largely focused on Russia's inte- -- Russia's invasion of Ukraine, the President also reiterated his support for the Taiwan Relations Act and the one-China policy based on the Taiwan Relations Act. And he made clear that we remain opposed to any unilateral changes to the status quo across the Taiwan Strait, and that we have concerns about Beijing's coercive and provocative actions. So that was the other topic that was discussed at the meet- -- during the call.

Go ahead.

Q Thanks, Jen.

MS. PSAKI: Oh, and then we'll go -- okay, go ahead.

Q As the United States looks to up sanctions on Russia, and given Russia's history of assassinating dissidents, giving sanctuary to terror- -- U.S.-designated terrorist organizations, would the U.S. consider labeling Russia a State Sponsor of Terrorism?

MS. PSAKI: I don't have any assessment of that at this point in time. Obviously, we're continuing to look at the actions on the ground and the actions of leaders.

Go ahead.

Q Thank you. Two immigration questions for you. First, I wanted to confirm whether the administration supports an Afghan Adjustment Act; that's potential legislation that would secure permanent status for those thousands of evacuees that are here. It would go beyond, obviously, the TPS designation last week, which is 18 months.

MS. PSAKI: Sure. I'd have to check with our Department of Homeland Security. Obviously, we just announced Temporary Protected Status last week, and we're continuing to assess and consider a range of ways to welcome and -- our Afghan partners.

Q And, just quickly: It's been two years since President Trump implemented Title 42. There are protests outside the White House today. Democrats are now actively calling for it to end. COVID cases are low. Is the administration at least preparing for the possibility that this can end? And how so?

MS. PSAKI: Sure. There are timelines, including, I think, upcoming in April, on when it's -- continues to be reconsidered. And those discussions happen among the health experts from the CDC and other medical experts within the administration.

And you always have to prepare, because if they make that decision, there would be an implementation that would be, in part, led by the Department of Homeland Security and others that you have to plan for.

Q Does that include preparing for a large influx of migrants at the border, specifically?

MS. PSAKI: Well, certainly that would be part of it if -- if and when the CDC makes that determination.

Q Thanks, Jen.

MS. PSAKI: Thanks, everyone.

Q Can I ask you --

MS. PSAKI: We'll have Jake here tomorrow. Lots of questions, I'm sure you have.
Thank you, everyone.

3:41 P.M. EDT

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From: White House Press Office
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To: Loeb, Emily M. (ODAG)
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FOR IMMEDIATE RELEASE

March 21, 2022

Press Briefing by Press Secretary Jen Psaki and Deputy NSA for Cyber and Emerging Technologies Anne Neuberger, March 21, 2022,

James S. Brady Press Briefing Room

2:45 P.M. EDT

MS. PSAKI: Hi, everyone. Okay, we have a very special return guest today, Deputy National Security Advisor Anne Neuberger, who is here to provide a brief update on cyber. You probably have seen the statement from the President we issued, as well as a factsheet; she'll talk about that. Has a little bit of time to take some questions, and then we'll do a briefing from there.

With that, I'll turn it over to Anne.

MS. NEUBERGER: Thank you, Jen. Good afternoon, everyone.

This afternoon, the President released a statement and factsheet regarding cyber threats to the homeland, urging private sector partners to take immediate action to shore up their defenses against potential cyberattacks.

We've previously warned about the potential for Russia to conduct cyberattacks against the United States, including as a response to the unprecedented economic costs that the U.S. and Allies and partners imposed in response to Russia's further invasion of Ukraine.

Today, we are reiterating those warnings, and we're doing so based on evolving threat intelligence that the Russian

government is exploring options for potential cyberattacks on critical infrastructure in the United States.

To be clear, there is no certainty there will be a cyber incident on critical infrastructure. So why am I here? Because this is a call to action and a call to responsibility for all of us.

At the President's direction, the administration has worked extensively over the last year to prepare to meet this sort of threat, providing unprecedented warning and advice to the private sector and mandating cybersecurity measures where we have the authority to do so.

For example, just last week, federal agencies convened more than 100 companies to share new cybersecurity threat information in light of this evolving threat intelligence. During those meetings, we shared resources and tools to help companies harden their security, like advisories sourced from sensitive threat intelligence and hands-on support from local FBI field offices and sister regional offices, including their Shields Up program.

The meeting was part of an extensive cybersecurity resilience effort that we began in the fall, prompted by the President. Agencies like Energy, EPA, Treasury, and DHS have hosted both classified and unclassified briefings with hundreds of owners and operators of privately owned critical infrastructure. CISA, NSA, and FBI have published cybersecurity advisories that set out protections the private sector can deploy to improve security.

The President has also directed departments and agencies to use all existing government authorities to mandate new cybersecurity and network defense measures. You've seen us do that where we have the authority to do so, including TSA's work that mandated directives for the oil and gas pipelines following the Colonial Pipeline incident that highlighted the significant gaps in resilience for that sector.

Our efforts together over the past year has helped drive much-needed and significant improvements. But there's so much more we need to do to have the confidence that we've locked our digital doors, particularly for the critical services Americans rely on.

The majority of our critical infrastructure, as you know, is owned and operated by the private sector. And those owners and operators have the ability and the responsibility to harden the systems and networks we all rely on.

Notwithstanding these repeated warnings, we continue to see adversaries compromising systems that use known vulnerabilities for which there are patches. This is deeply troubling.

So we're urging, today, companies to take the steps within your control to act immediately to protect the services millions of Americans rely on and to use the resources the federal government makes available. The factsheet released alongside the President's statement contains the specific actions that we're calling companies to do.

I would be remiss if I didn't reiterate the President's thanks to Congress for its partnership in this effort, including making cybersecurity resources available in the Bipartisan Infrastructure Law and, most recently, for working across the aisle to require companies to report cyber incidents to the federal government. That will ensure federal resources are focused on the most important cyber threats to the American people.

We welcome additional congressional work to identify new authorities that can help address gaps and drive down collective cybersecurity risk.

Bottom line: This is about us -- the work we need to do to lock our digital doors and to put the country in the best defensive position.

And there is them. As the President has said: The United States is not seeking confrontation with Russia. But he has also said that if Russia conducts disruptive cyberattacks against critical infrastructure, we will be prepared to respond.

--

Thank you.

MS. PSAKI: All right. Let me just first ask, for those of you in the aisles, if you're not a photographer, there's plenty of seats. So if you could sit down, that would be great, and not crowd the others in the seats.

So, we don't have unlimited time, so if people -- we just want to get to as many people as possible.

So, go ahead.

Q Thank you, Jen. Hi, Anne. Just a quick question on the Viasat attack that happened on the 24th of Feb, the day Russia attacked Ukraine. We've obviously seen that impact satellite communication networks in Eastern Europe. And since then, the FBI and CISA have issued warnings that similar attacks can happen against U.S. companies.

Is the U- -- is the U.S. in a position to perhaps identify who is behind the hack at this moment?

MS. NEUBERGER: It's a really good question. So, first, I want to lift up: FBI and CISA and NSA also highlighted protective security measures that U.S. companies can put in place to protect against exactly that kind of attack. We have not yet attributed that attack, but we're carefully looking at it because, as you noted, of the impact not only in Ukraine but also in satellite communication systems in Europe as well.

Q Does the sophistication of the attack, perhaps the timing of it, suggest that it's a state actor? I mean, are you willing to -

MS. NEUBERGER: Those are certainly factors that are -- we're looking at carefully as we look at who is responsible for them.

MS. PSAKI: Phil.

Q The "evolving intelligence," it doesn't mean that it's a certainty there's going to be an attack. Can you explain for the layman what you're seeing right now that precipitated this statement today, and what the evolving intelligence may be now compared to on the 24th or prior to the invasion?

MS. NEUBERGER: Absolutely. So, the first part of that is: You've seen the administration continuously lean forward and share even fragmentary pieces of information we have to drive and ensure maximum preparedness by the private sector.

So as soon as we learned about that, last week we hosted classified briefings with companies and sectors who we felt would be most affected, and provided very practical, focused advice.

Today's broader, unclassified briefing is to raise that broader awareness and to raise that call to action.

Q So there was something specific you saw last week that was raised to the industries that it would have affected, is what you're saying?

MS. NEUBERGER: So I want to reiterate: There is no evidence of any -- of any specific cyberattack that we're anticipating for. There is some preparatory activity that we're seeing, and that is what we shared in a classified context with companies who we thought might be affected. And then we're lifting up a broader awareness here in this -- in this warning.

MS. PSAKI: Major?

Q Hey, Anne. When you say a "call to action," many who hear you say that might believe that something is imminent. Is it?

MS. NEUBERGER: So I want to reiterate: There is no evidence of any -- of any specific cyberattack that we're anticipating for. There is some preparatory activity that we're seeing, and that is what we shared in a classified context with companies who we thought might be affected. And then we're lifting up a broader awareness here in this -- in this warning.

MS. NEUBERGER: So, first, a "call to action" is because there are cyberattacks that occur every day. Hundreds of millions of dollars were paid in ransoms by U.S. companies just last year against criminal activity happening in the U.S. today. Every single day, there should be a call to action.

We're using the opportunity of this evolving threat intelligence regarding potential cyberattacks against critical infrastructure to reiterate those with additional focus specifically to critical infrastructure owners and operators to say, "You have the responsibility to take these steps to protect the critical services Americans rely on."

Q And as a follow-up: "Critical infrastructure" is a broad term. Is it as broad as you typically mean it when the government speaks about critical infrastructure, or is there something you've seen that you can be more -- a little bit more specific within that large frame of critical infrastructure?

MS. NEUBERGER: I won't get into specific sectors at this time, because the steps that are needed to lock our digital doors need to be done across every sector of critical infrastructure. And even those sectors that we do not see any specific threat intelligence for, we truly want those sectors to double down and do the work that's needed.

MS. PSAKI: Jacqui.

Q You guys, the administration, successfully declassified a lot of intelligence about what the Russians were planning leading up to the invasion to prebut what they might do. Can you do that a little bit here and at least list some of the industries that might be the biggest targets so that they can have a heightened awareness about what might be coming?

MS. NEUBERGER: As we consider declassifying intelligence, to your excellent point, that really has been the work that has been done the last few weeks and was driven by a focus on outcomes. It was driven by the President's desire to avoid war at all costs, to really invest in diplomacy.

So, as we consider this information, the first step we did was we gave classified, detailed briefings to the companies and sectors for which we had some preparatory information about. And then for those where we don't, that's the purpose of today's unclassified briefing: to give that broad warning. And I want to lift up the factsheet, which is really the call to action for specific activities to do.

Q So you believe the people, the industries that need to know about this risk know?

MS. NEUBERGER: We believe the key entities who need to know have been provided classified briefings. I mentioned, for example, just last week, several hundred companies were brought in to get that briefing.

MS. PSAKI: Peter.

Q Does the U.S. have any evidence that Russia has attempted a hack, either here in the U.S., in Europe, or in Ukraine, over the course of the last several weeks since this offensive began?

MS. NEUBERGER: So, we certainly believe that Russia has conducted cyberattacks to undermine, coerce, and destabilize Ukraine. And we attributed some of those a couple of weeks ago.

We consistently see nation states doing preparatory activity. That preparatory activity can pan out to become an incident; it cannot. And that's the reason we're here.

Q So, specifically in the U.S., as there was an assessment early on that we thought that we would be a likely target here, why do you think we have not seen any attack on critical infrastructure in the United States to this point so far?

MS. NEUBERGER: I can't speak to Putin or Russian leadership's strategic thinking regarding how cyberattacks factor in.

What I can speak to is the preparatory work we've been doing here in the U.S. and the fact that as soon as we have some

what I can speak to is the preparatory work we've been doing here in the U.S. and the fact that as soon as we have some evolving threat intelligence regarding a shift in that intention, that were coming out and raising the awareness to heighten our preparedness as well.

Q So you can't say declaratively that we stopped an attack, I guess I'm saying, to this point on critical infrastructure?

MS. NEUBERGER: Correct.

Q Okay. Thank you.

MS. PSAKI: Colleen.

Q Can you explain a little bit more what preparatory activity on the part of the Russians would be? What does that look like?

MS. NEUBERGER: So, preparatory activity could mean scanning websites; it could be hunting for vulnerabilities. There's a range of activity that malicious cyber actors use, whether they're nation state or criminals.

The most troubling piece and really one I mentioned a moment ago is we continue to see known vulnerabilities, for which we have patches available, used by even sophisticated cyber actors to compromise American companies, to compromise companies around the world. And that's one of the reasons -- and that makes it far easier for attackers than it needs to be.

It's kind of -- you know, I joke -- I grew up in New York -- you had a lock and an alarm system. The houses that didn't or left the door open clearly were making it easier than they should have. Right? No comment about New York. (Laughter.)

So, clearly what we're asking for is: Lock your digital doors. Make it harder for attackers. Make them do more work.

Because a number of the practices we include in the factsheet will make it significantly harder, even for a sophisticated actor, to compromise a network.

MS. PSAKI: Go ahead.

Q Sorry, just to be clear: The warning today, is this in response to some of these more desperate tactics we've seen from Russia on ground? Are you now fearing that there might be more of a cyber risk because of what we're seeing on the ground in Ukraine?

MS. NEUBERGER: So, we've given a number of threat intel- -- of threat warnings over the last number of weeks that Russia could consider conducting cyberattacks in response to the very significant economic costs the U.S. and partners have put on Russia in response. This speaks to evolving threat intelligence and a potential shift in intention to do so.

Q And do you have a message for individuals? You're talking a lot about private companies. What about households? Should they be worried about cyberattacks here?

MS. NEUBERGER: The items in the factsheet apply to companies and individuals as well. I'm specifically speaking to companies because there's a responsibility to protect the critical services Americans rely on. But every individual should take a look at that fact sheet because it's a truly helpful one. We only put in place the things that we really try to practice and work to practice ourselves.

MS. PSAKI: Jordan.

Q Thanks. As part of this preparatory activity, do you have evidence that Russian hackers have infiltrated the networks of U.S. companies already and just haven't carried out the attacks?

MS. NEUBERGER: There was -- as I noted, we frequently see preparatory activity. Whenever we do, we do sensitive

MS. NEUBERGER: There was -- as I noted, we frequently see preparatory activity. Whenever we do, we do sensitive warnings to the individual companies and provide them information to ensure they can look quickly at their networks and remediate what may be occurring.

Q So have you seen any evidence that there have been infiltrations as part of that activity?

MS. NEUBERGER: We routinely see information about infiltrations. Right? Technology is not as secure as it needs to be. I mentioned the ransomware activity. There are multiple nation-state actors. It's a line of work for the intelligence community and the FBI to knock on a company's door and say, "We've seen some evidence of an intrusion. We'll work with you. We'll make these resources available via a regional office to work with you to help you recover." That's -- that's pretty routine practice.

What we're seeing now is an evolving threat intelligence to conduct potential cyberattacks on critical infrastructure. And that raises up a point because we're concerned about potential disruption of critical services.

MS. PSAKI: Ken.

Q Anne, you did a briefing for us about a month ago. Do you think the U.S. banking system is more vulnerable, less vulnerable since the briefing, given the warnings that the government has produced?

MS. NEUBERGER: The U.S. banking sector truly takes cyber threats seriously, both individually and as a group. Treasury has worked extensively with the sector to share sensitive threat intelligence at the executive level, at the security executive level, repeatedly at the classified and unclassified level. So, I do not believe they're more at risk, but it is always important for every critical infrastructure sector to double down in this heightened period of geopolitical tension to carefully look at any threat.

MS. PSAKI: Go ahead.

Q Can you paint a worst-case scenario picture for us? What exactly are you most worried about if people -- the private sector chooses to not take these steps?

MS. NEUBERGER: Clearly, what we're always -- I won't get into hypotheticals, right? But the reason I'm here is because critical infrastructure -- power, water, many hospitals -- in the United States are owned by the private sector. And while the federal government makes extensive resources available -- I mentioned FBI's 56 regional offices -- you can just walk in; CISA has offices near most FEMA sites in the United States. They've had their Shields Up program. We can make those resources available. For those sectors where we can mandate measures like oil and gas pipelines, we have. But it's ultimately the private sector's responsibility, in our current authority structure, to do those steps, to use those resources to take those steps.

So, the purpose here is to say: Americans rely on those critical services. Please act. And we're here to support with the resources we have.

MS. PSAKI: Kayla, last one.

Q Thank you. Anne, are you still seeing the Russians carrying out cyberattacks inside Ukraine? It's been a few weeks since we've been discussing that in particular.

And as financial tools levied by the West have proven ineffective, what cyber tools does the West have that it can possibly utilize?

MS. NEUBERGER: We do continue to see Russia conducting both -- as you know, right? -- significant malicious activity in Ukraine; major kinetic attacks, which have disrupted and killed lives; as well as cyber activity. And we believe the unprecedented economic costs the United States and partners have levied is significant in that way.

unprecedented economic costs the United States and partners have levied is significant in that way.

With regard to your question about whether cyberattacks would change that: I think the President was very clear we're not looking for a conflict with Russia. If Russia initiates a cyberattack against the United States, we will respond.

MS. PSAKI: Thank you, Anne, so much for joining us.

MS. NEUBERGER: Thank you. Thank you for having me.

Q Thanks, Anne.

Q Thank you, Anne.

MS. PSAKI: All right. I just had two brief items for all of you at the top.

There was a scheduled meeting today that Secretary Yellen, Secretary Raimondo, Jake Sullivan, and Brian Deese had with 16 CEOs this afternoon. The President also dropped by for about 20 minutes and provided them an update on Russia, Ukraine. I'm sure we can get you a list of the attendees at that meeting as well.

Also wanted to note -- a number of you have asked about whether the President would be watching the hearings today. One scheduling note is the Quint meet- -- call he had this morning was at exactly the same time as her opening statement, but he did request regular updates -- or has been requesting regular updates from members of the team on how the hearing is going.

And he also called her last night to wish her good luck this week at the hearings.

And I would also note that he's very grateful to Judge Tom Grif- -- Thomas Griffith, as well as Lisa Fairfax, for introducing her today.

So with that, I will stop. And, Colleen, why don't you kick us off.

Q Okay. So, do you -- can give us a readout of the call with the European leaders from earlier? Just sort of what was discussed, what happened.

And then I have one other question after that.

MS. PSAKI: Absolutely. If you haven't already -- there should be a readout going out shortly, but let me give you a few of the preview points of this call:

During this call with President Macron of France, Chancellor Scholz of Germany, Prime Minister Draghi of Italy, and Prime Minister Boris Johnson of the United Kingdom, they discussed their serious concerns about Russia's brutal tactics in Ukraine, including its attacks on civilians. They underscored their continued support for Ukraine, including by providing security assistance to the brave Ukrainians who are defending their country from Russian aggression and humanitarian assistance to the millions of Ukrainians who have fled the violence.

They also reviewed recent diplomatic efforts in support of Ukraine's effort to reach a ceasefire.

I would note: The President will obviously see these leaders -- a number of them -- in person later this week. And this is a call with this group that he has already had a few times. And when he had the last call with them -- I believe it was last week or the week before; it may have been last week -- they talked about doing this on a regular basis, not necessarily because there is a big deliverable out of it but just to keep an open line of communication as they're conti- -- all continuing to respond to the brutal actions of President Putin in Ukraine.

Q And then, on the potential discussions with Ukrainian leaders and Russia, has the White House or has the President been in communication with Ukrainian leaders, with Zelenskyy on this? Has he given any sort of counseling on how to go about these talks with Russian leaders in the hope of, you know, ending the conflict?

MS. PSAKI: We are in touch with the Ukrainian government -- senior government officials every day. The President obviously speaks with -- has spoken with President Zelenskyy a number of times, as you all know. And we convey, through all of those discussions, that we support any diplomatic effort that they choose to take part in.

The role that we feel we can play most effectively is by continuing to provide a broad range of security assistance, military assistance to them as well as economic and humanitarian assistance to strengthen their hand in these negotiations.

And what we always convey publicly and privately is that we're going to be watching closely their actions, not just what words they say.

But we just continue to support their efforts and whatever decisions they make about choosing to engage diplomatically.

Go ahead.

Q President Zelenskyy said if those talks don't work out, it's World War Three. Does the President agree?

MS. PSAKI: Without knowing more of what President Zelenskyy means by that, I would say that our view and the President's view is that the way we need to avoid World War Three is preventing the United States from having direct military involvement on the ground and same on NATO, direct involvement on the ground, and that the most effective role we can continue to play is by providing that extensive military assistance that we have been providing -- economic and humanitarian assistance. So, I can't assess.

Obviously, I know many of you will speak or hear more from President Zelenskyy soon, and I would expect he can speak more to what he meant by that.

Q And related to that, does the President believe that President Zelenskyy owes him or other NATO leaders a check-in as these negotiations progress and as he may approach a final resolution? Meaning, does NATO or does the President want either implied or soft veto power over whatever Zelenskyy might decide to do?

MS. PSAKI: Well, we support President Zelenskyy and Ukrainian leaders' decisions -- ability to make their own decisions through the course of these negotiations.

Now, obviously, if it involves something related to the United States or NATO, we're here to support. But, of course, we'd need to be engaged in that aspect of the discussion.

Q One last thing.

MS. PSAKI: Yeah.

Q On "Face the Nation," the Chinese ambassador said China's position is for peace and that it's constantly doing everything it can to de-escalate. Do you agree with that?

MS. PSAKI: Well, what I would note --

Q Do you say it's a fair characterization of what China is doing?

MS. PSAKI: Well, what I would note: Also in the same interview, he failed to condemn the actions of --

Q He said it wouldn't do any good.

MS. PSAKI: -- President Putin.

I'm sorry?

Q He said it wouldn't make any difference. Do you agree with that?

MS. PSAKI: I think our view is that verbal condemnation of the actions of President Putin and the actions of Russian military is important and vital, and it's about what side of history you want to stand on at this point in time.

At the same time, as you know, the President had a lengthy discussion with President Xi on Friday, and we're going to continue to keep those lines of communication open.

But what we would note here is also what is absent from a lot of their public commentary, which is condemnation at times; sometimes it has been echoing of conspiracy theories that the Russians have put out there about chemical weapons. And we note that, you know, what we want to hear is condemnation of what we're seeing on the ground.

Q Thanks, Jen.

MS. PSAKI: Go ahead.

Q Can you walk us through the President's trip a little bit later this week? We know he's going to stop in Brussels first, obviously. Then he goes to Poland, as you announced this weekend. Will he see refugees? Will he deliver a speech? Are there deliverables? Can you walk us through what you can tell us?

MS. PSAKI: There will certainly be deliverables, as there always are on these trips.

Q Yeah, there are.

MS. PSAKI: And -- there always are. We're still finalizing, believe it or not, the details of the trip and the specifics of what he'll be doing while he's in Poland.

He, of course, will be seeing his counterpart there. And he will certainly thank him for the efforts and the work that Poland has done and the leaders have done there to welcome refugees, to get them settled in Poland for this time being as devastating as the circumstances are.

Jake Sullivan is going to be joining us here tomorrow. And hopefully by then we will have more specifics to lay out for all of you, but we're finalizing the details as we speak.

Q Let me ask you about their assessments we're hearing from NATO right now that are -- some are saying that if we're not in a stalemate, we are rapidly approaching one. Does the U.S. have a position on that that appears to be the way this is heading and how that changes the sort of trajectory of this, and what your view is --

MS. PSAKI: You mean in terms of the military situation on the ground?

Q In Ukraine. Correct.

MS. PSAKI: Well, here's what we've seen on the ground: We're seeing that -- the Department of Defense has assessed -- and I know they've done briefings in this regard, so let me echo this -- that there certainly could be some morale issues of troops on the ground, that they are in a stalemate in the sense that they have not been making the -- the level of progress or the pace of progress that they had hoped from the beginning.

Now, obviously, things can change rapidly in conflicts, and so we are mindful of that as well. We're also seeing, obviously, over the course of the last couple of days, that fighting around Mariupol is fierce but remains, at this point, isolated. It remains a high priority for Russia because it would provide President Putin with a land bridge to Crimea and cut off Ukrainian forces there from the rest of the country, provide the Russians with a new port.

But the military situation elsewhere in Ukraine, according to our assessment, remains largely static. It doesn't mean that can't change; it's just an assessment as of this moment.

Q Last quick one, as it relates to Belarus: Right now, some in NATO are saying that Russia is preparing to potentially -- or that Belarus is potentially preparing to let Russia position nuclear weapons on Belarusian soil. Does the U.S. have a message to the government of Belarus? And how would you view that escalation?

MS. PSAKI: Well, we don't have any confirmation of those reports or suggestions. Certainly, that would be of concern to us, yes.

Go ahead, Jacqui.

Q Thanks, Jen.

In the past, you've said that domestic oil producers have the leases, resources that they need to ramp up production. Is there any thought about invoking the Defense Production Act when it comes to energy?

MS. PSAKI: Well, there are a range of ideas out there -- that's one of them -- that a number of people have put forward. I would say that the Defense Production Act is -- would mean giving government funding to companies or to purchase products. That's how it typically works, as you've seen it work with COVID supplies and otherwise. And we think they have the resources they need in order to expand their production.

Q And then, on government money and supplies: There are reports that the EU is seeking to stockpile iodine pills and nuclear protective gear amid an increased concern about a nuclear threat, and also looking for more ways to deal with potential biological and chemical attacks.

Is the U.S. taking similar measures when it comes to these things, especially with iodine pills? Are we taking, sort of, the lessons learned in the pandemic and applying it to this challenge?

MS. PSAKI: Sure, Jacqui, it's a good question. Let me check with our national security team and see if there's any details I can get into. We are always prepared, even as we aren't making predictions at this point in time. I don't have confirmation of that report about the Europeans, but I will -- I will check and see if there's more to report out to all of you.

Q And then, there are reports that China has fully militarized at least three islands in the disputed South China Sea with anti-ship, anti-aircraft missile systems; laser and jamming equipment; and fighter jets, despite Beijing's promises not to turn these islands into military bases. What is our takeaway from that? And how are we responding to that?

MS. PSAKI: Well, Jacqui, again, I don't have confirmation of that from here. I've certainly seen the reports. I would point you to the Department of Defense for any more specific analysis. But, obviously, any escalatory actions in the South China Sea would be of concern to us.

Q And then one more on the White House assessment of global food insecurity --

MS. PSAKI: Yeah.

Q -- that's sort of coming out of all this in Ukraine.

MS. PSAKI: Sure.

Q Is there any -- is there any money that's going to be allocated to provide diesel fuel to Ukrainian farmers to try to mitigate some of this?

MS. PSAKI: Yeah, so, let me -- so, let me give you a couple of things on this, because there's been a lot of interesting reporting on this, and where the impacts are is a good question.

While we're not expecting a food shortage here at home, we do anticipate that higher energy, fertilizer, wheat, and corn prices could impact the price of growing and purchasing critical fuel [sic] supply -- food supplies for countries around the world. And early estimates from the World Bank suggest disproportionate impacts on low- and middle-income countries including in Africa, the Middle East, and Southeast Asia.

And actually -- and Ukraine is a big exporter of fertilizer. So as it relates to even that need in the United States and other parts of the world, that's something that we're continuing to closely assess as well.

But right now, to go back to the root of your question, we are working with our partners in the G7, multilateral development banks, the World Food Programme, and the U.N. Food and Agriculture Organization to mitigate the impacts to poorer nations.

So we are discussing what that looks like and how to mitigate the shortage on those -- on those growing and purchasing entities from impacting parts of the world that would be severely impacted, even if we're not.

Q What kind of a timeline do we think we have to take some action on that before it becomes a really big problem?

MS. PSAKI: Well, there -- there are active discussions now. And we're certainly mindful that even if we're not seeing an impact in this moment that sometimes supply chain impacts can have a lagging -- can be a -- have a lagging impact.

So we're having discussions now with all of those partners. Those have been ongoing so we can do everything we can to mitigate it in advance.

Q And can I ask one question -- just a reaction to the Israeli Prime Minister. This weekend, he said, on the JCPOA, "Unfortunately, [we're seeing a] determination to sign a nuclear deal...at almost any cost, including saying the [biggest] terrorist [group] in the world is not a terrorist organization. This is too [steep] a price." Can I get your reaction to that? Is that what we're saying by pursuing this deal?

MS. PSAKI: I would say we are in regular touch with our Israeli counterparts, including leaders. We don't have a deal yet. We're consulting with our allies and partners, including Israel, as we negotiate.

And the President is going to make a decision on whether to reenter the deal based on what's in the best interest of American security and strategic interests, including the security of our partners in regions like Israel.

And once -- if and when we have a deal, I'm sure we can discuss more specifics.

Go ahead.

Q Thanks, Jen. We've now had a chance to hear from some of the Judiciary Committee members in this confirmation for Judge Jackson. Any thoughts on whether she will receive bipartisan support in her confirmation?

MS. PSAKI: Well, without being able to get into the minds of a range of Republican members, our view is that given she has been confirmed three times with bipartisan support, that she has extensive experience, that she has ruled in favor of

Democrats and Republicans under leaders of both parties, that she certainly deserves that. But we will see what the outcome ends up being.

Q And has the White House had any contact with Justice Thomas, given his hospitalization? Do you have any updates there?

MS. PSAKI: I'm not aware of any direct contacts. Of course, we wish him a speedy recovery. And of course, thoughts - - thoughts out to his family.

Q And just a quick follow-up on the NATO trip. Can you give us just the big picture of what would a successful NATO summit look like to the White House? What are we looking for to measure that?

MS. PSAKI: Sure. I mean, I think what's important to remember here from the beginning of the Presi- -- of the President's presidency but also, certainly, over the last couple of months is that unity has been front and center for the President in terms of how -- what will make us successful over time -- unity with our European counterparts, unity among NATO, unity among the G7. And that doesn't happen by accident.

And so, coming out of this, what the President is hoping to achieve is continued coordination and a unified response to the continued escalatory actions of President Putin.

Go ahead.

Q The U.S. Ambassador to the U.N. was asked about this this weekend, but given the Poles appear to be planning to put upon the table some type of peacekeeping force idea, is there any feasible structure that the White House could support for something like that? Or have you guys looked into the idea at all?

MS. PSAKI: Well, we, of course, will continue to work with Poland and other allies and partners in Europe to provide support for the Ukrainian people and help them defend their country against Russian aggression and provide relief to the people of Ukraine. And we will continue to impose severe consequences.

The President -- we've been -- he's been clear: We're not going to send American troops to fight Russian troops. It's not in the interest of the American people or our national security. But we'll continue to discuss a range of ideas, including this one out there.

Q And then, there's been, kind of, a reinvigoration in the EU of discussions about banning -- or sanctions on energy. Can you update us on what the efforts in the administration has been to kind of backfill, which would, I think, be a necessity if those actions were taken? Where do those stand at this point?

MS. PSAKI: Sure. In terms of engagements with global energy suppliers? Those engage- -- engagements are ongoing. And, you know, they are -- they are led, in part, by Amos Hochstein, Brett McGurk has been involved in many of them, other members of our national security team and National Economic Council. And we are continuing to discuss with a range of large global suppliers how we can meet the demand in the market out there.

We also are continuing to look at domestic options and what those may look like to help ease the burden on the American public. I wish I had more specifics for you, but I don't have anything more to read out for you at this point in time.

Go ahead.

Q Thank you, Jen. The meeting you mentioned that President Biden participated in with CEOs earlier today, there were oil industry CEOs at that meeting. And considering the White House has been engaging with them for several weeks now -- sort of, you know, talking about ways to increase production to take care of gas prices -- I'm wondering what kind of specific assurances the White House has managed to get from these companies so far, and what was really discussed in

today's meeting, especially with the oil industry CEOs.

MS. PSAKI: Well, while the President was there, he was simply giving them an update on Russia and Ukraine. He was not making an ask at that -- in that capacity. Obviously, there are a range of senior officials who participated in these meetings. We've had a range of engagements with them, as you've noted. And we've stated publicly that they should do greater production, but they can speak for themselves on what, if anything, they would commit to.

Q Have there been any assurances that the industry has perhaps offered the White House so far?

MS. PSAKI: We'll let the oil industry speak for themselves.

Q Okay. And one quick question on China. Are you getting any indications yet that China will actually heed to President Biden's appeal to President Xi to not provide material support to Russia? Or are you seeing, perhaps, evidence suggesting that Chinese companies are maybe violating or going around U.S. export controls to, you know, send the material -- the U.S. material to Russia? I mean, do you -- are you seeing any evidence to that effect?

MS. PSAKI: I don't have an assessment to share on this. You can look at the public comments that one of your colleagues brought up earlier, during an interview yesterday, where the Chinese ambassador highlighted China's friendly relations and maintenance of normal economic ties with Russia while also refusing to condemn Russia's invasion of Ukraine. But I don't have a further assessment beyond that.

Go ahead.

Q Thanks, Jen. The Russian Foreign Ministry summoned Ambassador Sullivan to the Ministry in Moscow and warned that U.S.-Russian relations are on the verge of rupture, said the President's comments calling Putin a war criminal were unworthy of a statesman of such high rank. Does the White House have any response to this? And is there any concern about the warning that they're going to respond with a "decisive and firm response"?

MS. PSAKI: I'm not sure -- the last part -- I'm not sure what you mean by that.

Q They warned of a "decisive and firm response."

MS. PSAKI: Okay. Well, I would say that Ambassador Sullivan did meet with Russian government officials today; I believe the State Department also confirmed.

While we don't provide extensive details in general of these type of diplomatic conversations, I can confirm for you that during that meeting, he repeatedly asked for consular access to American citizen detainees, which -- who have been improperly detained ac- -- been improperly denied access for months in some cases. We find this completely unacceptable.

As it relates to their comments or their calling of him in, I think it's important to remind everyone that it is Russia who is carrying out an unprovoked, unjustified war on Ukraine.

We're seeing clear evidence that they are intentionally targeting civilians and committing indiscriminate attacks. And the President's comments speak to the horror, the brutality that Russia and President Putin are inflicting.

So, they are in control of their own -- the global perception of them is based on their actions.

Q And one quick other one.

MS. PSAKI: Oh, go ahead. Yeah, go ahead.

Q So, you mentioned that the President spoke to Judge Brown Jackson last night. Is there any other details you can

share just about how she's been preparing for the hearings, who's been involved in the practice sessions, or --

MS. PSAKI: Sure. I mean, I had outlined for you guys a couple of weeks ago some of the members of her team who played a role in preparing her, of course, whether it was Dana Remus or Senator Jones and Ben LaBolt, Minyon Moore -- others who have been playing a role in preparing her for the hearings.

I would note -- which won't surprise anyone, given her credentials -- she began preparing and studying and getting ready for these hearings as soon as she was nominated.

I would note that also, over the course of the last few weeks, she's also met with every single member of the Judiciary Committee and then several more members beyond that.

So, she has been both meeting and preparing for the last few weeks, ever since she was nominated, with the team internally and externally that we had announced just a few weeks ago.

Go ahead, Zolan.

Q Does the administration expect to discuss the -- Poland's offer on the MiG fighter jets at this point? Or is the stance that the Pentagon has made the decision clear at that point and this won't be a subject in anticipation of the President's trip to Poland?

And then secondly, during the Vice President's trip to Poland, the Pol- -- Polish leaders, at that point, said one thing that -- one ask that they had in that bilateral was to expedite the processing of Ukrainian refugees who have relatives in the United States.

MS. PSAKI: Yeah.

Q Does -- is the administration expecting to oblige on that request or meet halfway in any way?

MS. PSAKI: So, I would say that, while we have done our own assessment here on the Polish jets based on a couple of factors that the military -- as you as you noted, Zolan -- has outlined, including what's most effective in fighting this war on the ground, the risk assessment of what would be escalatory, and also the fact that the Ukrainians have a number of squadrons that they can utilize.

But if Poland -- if they want to raise this, I'm -- you know, these -- these conversations, these diplomatic negotia- -- or conversations are two ways, right? And we'll, of course, read out their meeting once it -- once it is complete. So, we'll see what they -- what they raise in that meeting.

In terms of refugees, we are -- we have taken a number of steps. And we do -- part of what the President wants to do is thank President Duda for the efforts of Poland in welcoming refugees, and talk about what we can do to continue to provide support.

Now, to date, that has been largely financial support, humanitarian support, even as we granted Temporary Protected Status, and also -- you know, just -- just a few weeks ago.

But what we are doing and continuing to assess is what -- if there are Ukrainian nationals who are not able to remain safely in Europe and for whom resettlement the United States is a better option, we are continuing to work with UNCR [UNHCR] and the EU to consider that.

And that might require -- because typically, individuals who are seeking refugee status have to go to a third country. So that's something we're looking at and assessing.

And we're also -- the UNHCR, the U.N. Refugee Agency, is working with the State Department and many resettlement partners and our overseas posts to determine where the Ukrainian nationals and others who have fled Ukraine were -- you know, whether there's more we can do beyond the humanitarian assistance that we are providing.

So, I'm certain it will be a point of discussion. We are having ongoing discussions internally about what more we can do to welcome refugees.

Q And specifically, the thing that's different about that process that the administration is looking at is allowing Ukrainians to basically finish the refugee process in that same country that they would receive a UNHCR referral?

MS. PSAKI: That's part of the discussion is what can ha- -- what can be done if Ukrainian nationals are not able to remain safely in Europe, for example, and for whom resettlement in the United States would be a better option for a range of reasons -- the State Department is discussing with UNHCR and the EU how to consider them, what would be required for that process.

But this is an ongoing discussion internally. And I'm certain it will be a part of the discussion, to go back to your original question, with President Duda, as well, this weekend.

Go ahead, Matt.

Q Thanks, Jen. You had written on Twitter that the President --

MS. PSAKI: Uh-oh. (Laughter.)

Q -- did not plan to go to Ukraine --

MS. PSAKI: Yeah.

Q -- on his trip. Given that the prime ministers of Poland, Slovenia, and the Czech Republic visited Kyiv last week and that President Zelenskyy was urging others to do the same, can you talk a little bit about whether President Biden had explored going to Ukraine at all, if he was asked to, and sort of what considerations went into the factors either way?

MS. PSAKI: Sure. We have not explored that option. I put that -- I tweeted, I guess I should say, because there was some confusion about this question, and we did not want to leave that out there as an unanswered question.

But certainly, any president of the United States traveling into a war zone requires not only security considerations but also an enormous amount of resources on the ground, which is always a factor for us as we make considerations.

But also, the President felt and our national security team felt that he could have the most effective and impactful trip by convening these meetings with NATO leaders, the G7, the EU in Brussels to determine both continued military coordination, humanitarian and economic coordination, as well as by going to visit Poland, right next door, to talk about everything from refugees, refugee assistance, and continued assistance we can all provide together.

So, it was a decision made about what -- what would be most effective on the trip.

Q And then I just wanted to follow up quickly. You had said earlier that the President was unable to watch the opening statement of the judge in the Supreme Court hearings. I think she --

MS. PSAKI: He was on with the Quint.

Q That's right. But she has to sit through the opening statements, first, of all of these senators, so I don't think she's actually given her opening statement quite yet.

MS. PSAKI: Ah, there you go.

Q Do you know if there's time carved into his schedule? Does he plan -- through the afternoon? Is he following this? Or -

MS. PSAKI: Well, some of these are a little difficult to predict, as just evidenced. Thank you for giving me a lifeline there, because, clearly, I've been in meetings this morning as well.

You know, he -- it was hard to plan his schedule around this, so what he asked is that he be provided updates from his team and aides as the -- as the hearings progress.

And obviously, Chairman Durbin gave his opening, Senator Grassley gave his opening this morning, and it proceeds. But it's hard to plan the President's schedule around a moving Senate hearing.

So, I'm sure he'll be able to watch replays of it and more specifics, but he wanted updates from aides as well.

Go ahead.

Q Thanks. On -- on oil, President Biden has been very vocal about his belief that U.S. producers should be producing more and that there's the possibility of price gouging, but he didn't raise any of those concerns in the meeting of oil CEOs earlier today?

MS. PSAKI: He -- it wasn't a meeting with oil CEOs. There were a couple of the 18 -- or 16 to 18 CEOs there. It was not intended to be a meeting with oil CEOs; it was intended to be a meeting with a broad swath of the economic sectors. And he provided them an update on Russia and Ukraine, so it wasn't meant to be that type of a meeting.

Q And then there was a report in the Washington Post earlier, saying that Biden administration -- administration officials are seeing data showing that Russian oil exports have dropped off a cliff and that there was some -- there was a data point that said there are 2 million barrels per day on tankers that have gone from close -- down to zero in a certain period of time.

Is that -- can you confirm that? Is that -- is that true in what you're seeing about Russian oil exports?

MS. PSAKI: I've seen those reports, but I don't have a new assessment from here.

Q And then, lastly, has the President tested for COVID-19 this week? And what were the results of that test?

MS. PSAKI: He was tested today, and he was negative.

Q Thank you.

Go ahead.

Q Thank you, Jen. Can you walk us through the administration's thinking behind adding this Poland stop? And what is President Biden hoping to demonstrate by sitting alongside President Duda?

MS. PSAKI: Sure. Well, we have -- this -- this trip has been coming together quite rapidly, I think, as you would all note. And so, as I noted a little bit earlier, we will have more details about his Poland stop.

But this is an opportunity for him to thank President Duda for welcoming refugees, as they have done over the last few weeks, and for being an important partner in providing a range of assistance to the Ukrainians -- to the Ukrainian people and the Ukrainian government. And they are an important partner as we -- as we work to remain unified in the weeks and

and the Ukrainian government. And they are an important partner as we -- as we work to remain united in the weeks and months ahead.

There will obviously be a couple of components of his trip there, which I think, as we have more details of it to announce, will showcase the purpose of the trip.

Q And then, to follow on that, one of my colleagues asked if the President would be meeting with Ukrainian refugees in -- at one of these stops. Is there any reason why the President wouldn't? Is that something we can find out more about soon?

MS. PSAKI: I think, as I noted, we're going to be providing more details to all of you in the next 24 hours, of his trip. Sometimes there are things we announce in advance, and sometimes there are not. But I've noted repeatedly that refugees is a key component of his stop in Poland.

Go ahead.

Q Yeah. If I can shift gears to COVID for a minute --

MS. PSAKI: Sure.

Q What is the White House's response to some experts who have said that the U.S. is not necessarily doing enough to prepare for this next bit of a pandemic surge that we're already beginning to see in other parts of the globe?

MS. PSAKI: Well, I would say -- I'm not sure -- can you give me a little more additional context of the comments?

Q I had seen -- yes, some comments just basically that the U.S. needs to be doing more to prepare, whether that is around, you know, building up a supply. They pointed to the low rates of booster shots, in particular, as being a point of concern. And that was -- yeah. And the booster shots, in particular.

MS. PSAKI: Well, I think our primary concern right now is that we're about to run out of funding, and we are always making an effort to be ahead of and be prepared for any new wave, any new variant.

And even as BA.2 has been in this country for some time -- and, as of last week, it was about a quarter to a third of cases. We know it's quite transmissible, but we know that the treatments we have are effective in treating BA.2 -- the BA.2 variant.

Our concern right now is that we are going to run out of money to provide the types of vaccines, boosters, treatments to the immunocompromised and others free of charge that will help continue to battle increasing -- you know, the increase or the upflow or the, you know, increase of -- of COVID in the future.

So that's where our primary focus is. I don't -- beyond that, I'm not sure additional context of those comments.

Q Can I ask just more question. Has the White House been in touch with any of the pharmaceutical companies who are specifically working on the under-age-five population, recently, vaccines? I know that those were put into practice and then removed in terms of actually having implementation. I just wondered what the communication has been.

MS. PSAKI: Yeah, well, the -- it typically goes, of course, through the FDA and CDC, as it should -- all of the data. So we would leave those channels to continue to consider when it's ready to move to the next phase.

Q So no sort of increased communication or urgency around getting (inaudible)?

MS. PSAKI: Well, I think data moves, science moves at the speed of science, right? And, of course, we would all -- many people here have children under five, but it's important that it moves through the effective, gold standard process

people here have children under five, but it's important that it moves through the effective, gold standard process.

And of course, we are in touch with the pharmaceutical companies for a range of reasons, including purchasing supplies to plan ahead for the need for boosters and other vaccines in the future, even as we are worried about running out of money.

But the process for when it would be ready to go through the FDA and CDC process is left to the scientists.

Q Jen, can I ask --

MS. PSAKI: Go ahead.

Q Jen, just on the food security issue --

MS. PSAKI: Yeah.

Q Cargill and ADM are still operating in Russia. A lot of companies have obviously left. Does the administration have a view on whether these companies should stay, given the concerns about food security and production of wheat and that sort of (inaudible)?

MS. PSAKI: We have not asked any company specifically to take steps to pull out. We have applauded those who have made that decision, and they are going to have to make decisions of their own regard.

Q Just a housekeeping item. I know you're still getting plans for the trip. Do you expect the President to hold a joint news conference with President Duda after their meeting in Poland?

MS. PSAKI: We're still planning all the specifics of it, so I don't have that quite yet. I would expect one for sure on Thursday.

Go ahead.

Q Jen, thank you so much. On Ukraine, we are seeing reports about Mariupol and about people and Ukrainians there being deported, arrested, and sent to remote regions in Russia. Is this something that is consistent with American intelligence? Can you comment on this?

MS. PSAKI: I -- one, those reports are horrific, but I don't -- we don't have any independent confirmation of those reports at this point in time.

Q And a follow-up on China, maybe? So, the President has warned that China would face costs if it decided to help Russia. How confident is he that European allies would also support such costs? And will that be part of the discussion in Brussels?

MS. PSAKI: Well, I think that certainly any -- the concern about China's closer alignment with Russia is one that's not just the United -- one of the United States, it's also a concern of many in Europe, and we expect it to be a topic of discussion over the course of the next several days.

Go ahead.

Q Jen, as I understand the peacekeeping proposal from the Polish Prime Minister: It will be a peacekeeping force, they would be in Ukraine, and they would be able to defend themselves. So, I know the President doesn't want to send Americans to fight Russians, but is the U.S. open to sending Americans as part of an internationally recognized peacekeeping force that could be NATO or not NATO?

MS. PSAKI: Again, these are a range of conversations that are happening behind the scenes. I'll leave it to those at this point in time. But forces on the ground is certainly about fighting, but it's also about having forces on the ground in

point in time. But forces on the ground is certainly about fighting, but it's also about having forces on the ground in Ukraine, which we have not supported at this point. I don't think that will change.

Go ahead.

Q Thanks, Jen. I have a question about the COVID-19 Response Team. Obviously, there's going to be a change in leadership in the White House Coordinator on COVID.

MS. PSAKI: Yeah.

Q And, by my count, there hasn't been a press briefing with the COVID team in about three weeks. I just wondered if you could speak to, kind of, what the role of that team is at this point. You know, how often does the President meet with that team? Is there any talk of disbanding it at this point, given the phase of the pandemic? I'm just kind of curious, sort of, what (inaudible).

MS. PSAKI: I hope not, for Dr. Jha's sake, given he's coming in. (Laughter.)

Q (Inaudible).

MS. PSAKI: Look, this is -- communicating with all of you on a regular basis has been a huge priority for the COVID team, and I'm certain we will continue to do that.

And, obviously, Dr. Jha is somebody who is not just a medical expert and a doctor, but somebody who is a very effective communicator on public health issues, and we think that's going to be a very effective part of his role. So, I'm certain you will be seeing a lot of him, and we will continue to have a range of briefings with the COVID team. So, no, they're not disbanding.

Go ahead.

Q Thanks, Jen.

Q Thank you, Jen.

Q Go ahead. I'll go after you.

Q I have questions. First, the United States declared the Myanmar military government committed genocide against the Rohingya, today. We also know the Myanmar government has supported Russia's invasion of Ukraine. And what happened to the Rohingya have happened for a while now. So, based on the timing, are they supporting the Russia related to this declaration today?

MS. PSAKI: Well, let me say for those of you who haven't -- I know you've been following it as closely, but for those of you who have not: Following a rigorous, factual, and legal analysis, the Secretary of State determined that the members of -- that members of the Burmese military committed genocide and crimes against humanity against a Rohingya -- against Rohingya.

His announcement at the U.S. Holocaust Memorial Museum emphasizes, especially to victims and survivors, that the United States recognizes the gravity of these crimes.

He also announced nearly \$1 million for the Independent Investigative Mechanism for Myanmar to support its mandate to investigate, collect, preserve, and analyze evidence of the most serious international crimes in Burma since 2011.

I would note that our view is that shining a light on the crimes of Burmese military will increase international pressure, make it harder for them to commit further abuses. But this has been -- as you know. Rohingya have long faced

...that it might be more to continue to look at that, but this has been a long process, including a long review of discrimination and been subject to exclusionary policies. And this has been a lengthy review process at the State Department to come to this conclusion, unrelated to current events.

Q My second question is -- we've been talking about being in communication with China, including President Biden's calling the President Xi last week. Besides the consequences China might face if it aids Russia, does the United States also tell China what would happen to Russia right now while or might also happen to China if it invades U.S. allies and partners in the Indo-Pacific region, such as Taiwan?

MS. PSAKI: During this call, which was largely focused on Russia's invasion of Ukraine, the President also reiterated his support for the Taiwan Relations Act and the one-China policy based on the Taiwan Relations Act. And he made clear that we remain opposed to any unilateral changes to the status quo across the Taiwan Strait, and that we have concerns about Beijing's coercive and provocative actions. So that was the other topic that was discussed at the meeting -- during the call.

Go ahead.

Q Thanks, Jen.

MS. PSAKI: Oh, and then we'll go -- okay, go ahead.

Q As the United States looks to up sanctions on Russia, and given Russia's history of assassinating dissidents, giving sanctuary to terror- -- U.S.-designated terrorist organizations, would the U.S. consider labeling Russia a State Sponsor of Terrorism?

MS. PSAKI: I don't have any assessment of that at this point in time. Obviously, we're continuing to look at the actions on the ground and the actions of leaders.

Go ahead.

Q Thank you. Two immigration questions for you. First, I wanted to confirm whether the administration supports an Afghan Adjustment Act; that's potential legislation that would secure permanent status for those thousands of evacuees that are here. It would go beyond, obviously, the TPS designation last week, which is 18 months.

MS. PSAKI: Sure. I'd have to check with our Department of Homeland Security. Obviously, we just announced Temporary Protected Status last week, and we're continuing to assess and consider a range of ways to welcome and -- our Afghan partners.

Q And, just quickly: It's been two years since President Trump implemented Title 42. There are protests outside the White House today. Democrats are now actively calling for it to end. COVID cases are low. Is the administration at least preparing for the possibility that this can end? And how so?

MS. PSAKI: Sure. There are timelines, including, I think, upcoming in April, on when it's -- continues to be reconsidered. And those discussions happen among the health experts from the CDC and other medical experts within the administration.

And you always have to prepare, because if they make that decision, there would be an implementation that would be, in part, led by the Department of Homeland Security and others that you have to plan for.

Q Does that include preparing for a large influx of migrants at the border, specifically?

MS. PSAKI: Well, certainly that would be part of it if -- if and when the CDC makes that determination.

Q Thanks, Jen.

MS. PSAKI: Thanks, everyone.

Q Can I ask you --

MS. PSAKI: We'll have Jake here tomorrow. Lots of questions, I'm sure you have.
Thank you, everyone.

3:41 P.M. EDT

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To: Robertson, Ashley E. (ODAG)
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FOR IMMEDIATE RELEASE

March 21, 2022

Press Briefing by Press Secretary Jen Psaki and Deputy NSA for Cyber and Emerging Technologies Anne Neuberger, March 21, 2022,

James S. Brady Press Briefing Room

2:45 P.M. EDT

MS. PSAKI: Hi, everyone. Okay, we have a very special return guest today, Deputy National Security Advisor Anne Neuberger, who is here to provide a brief update on cyber. You probably have seen the statement from the President we issued, as well as a factsheet; she'll talk about that. Has a little bit of time to take some questions, and then we'll do a briefing from there.

With that, I'll turn it over to Anne.

MS. NEUBERGER: Thank you, Jen. Good afternoon, everyone.

This afternoon, the President released a statement and factsheet regarding cyber threats to the homeland, urging private sector partners to take immediate action to shore up their defenses against potential cyberattacks.

We've previously warned about the potential for Russia to conduct cyberattacks against the United States, including as a response to the unprecedented economic costs that the U.S. and Allies and partners imposed in response to Russia's further invasion of Ukraine.

Today, we are reiterating those warnings, and we're doing so based on evolving threat intelligence that the Russian

government is exploring options for potential cyberattacks on critical infrastructure in the United States.

To be clear, there is no certainty there will be a cyber incident on critical infrastructure. So why am I here? Because this is a call to action and a call to responsibility for all of us.

At the President's direction, the administration has worked extensively over the last year to prepare to meet this sort of threat, providing unprecedented warning and advice to the private sector and mandating cybersecurity measures where we have the authority to do so.

For example, just last week, federal agencies convened more than 100 companies to share new cybersecurity threat information in light of this evolving threat intelligence. During those meetings, we shared resources and tools to help companies harden their security, like advisories sourced from sensitive threat intelligence and hands-on support from local FBI field offices and sister regional offices, including their Shields Up program.

The meeting was part of an extensive cybersecurity resilience effort that we began in the fall, prompted by the President. Agencies like Energy, EPA, Treasury, and DHS have hosted both classified and unclassified briefings with hundreds of owners and operators of privately owned critical infrastructure. CISA, NSA, and FBI have published cybersecurity advisories that set out protections the private sector can deploy to improve security.

The President has also directed departments and agencies to use all existing government authorities to mandate new cybersecurity and network defense measures. You've seen us do that where we have the authority to do so, including TSA's work that mandated directives for the oil and gas pipelines following the Colonial Pipeline incident that highlighted the significant gaps in resilience for that sector.

Our efforts together over the past year has helped drive much-needed and significant improvements. But there's so much more we need to do to have the confidence that we've locked our digital doors, particularly for the critical services Americans rely on.

The majority of our critical infrastructure, as you know, is owned and operated by the private sector. And those owners and operators have the ability and the responsibility to harden the systems and networks we all rely on.

Notwithstanding these repeated warnings, we continue to see adversaries compromising systems that use known vulnerabilities for which there are patches. This is deeply troubling.

So we're urging, today, companies to take the steps within your control to act immediately to protect the services millions of Americans rely on and to use the resources the federal government makes available. The factsheet released alongside the President's statement contains the specific actions that we're calling companies to do.

I would be remiss if I didn't reiterate the President's thanks to Congress for its partnership in this effort, including making cybersecurity resources available in the Bipartisan Infrastructure Law and, most recently, for working across the aisle to require companies to report cyber incidents to the federal government. That will ensure federal resources are focused on the most important cyber threats to the American people.

We welcome additional congressional work to identify new authorities that can help address gaps and drive down collective cybersecurity risk.

Bottom line: This is about us -- the work we need to do to lock our digital doors and to put the country in the best defensive position.

And there is them. As the President has said: The United States is not seeking confrontation with Russia. But he has also said that if Russia conducts disruptive cyberattacks against critical infrastructure, we will be prepared to respond.

--

Thank you.

MS. PSAKI: All right. Let me just first ask, for those of you in the aisles, if you're not a photographer, there's plenty of seats. So if you could sit down, that would be great, and not crowd the others in the seats.

So, we don't have unlimited time, so if people -- we just want to get to as many people as possible.

So, go ahead.

Q Thank you, Jen. Hi, Anne. Just a quick question on the Viasat attack that happened on the 24th of Feb, the day Russia attacked Ukraine. We've obviously seen that impact satellite communication networks in Eastern Europe. And since then, the FBI and CISA have issued warnings that similar attacks can happen against U.S. companies.

Is the U- -- is the U.S. in a position to perhaps identify who is behind the hack at this moment?

MS. NEUBERGER: It's a really good question. So, first, I want to lift up: FBI and CISA and NSA also highlighted protective security measures that U.S. companies can put in place to protect against exactly that kind of attack. We have not yet attributed that attack, but we're carefully looking at it because, as you noted, of the impact not only in Ukraine but also in satellite communication systems in Europe as well.

Q Does the sophistication of the attack, perhaps the timing of it, suggest that it's a state actor? I mean, are you willing to -

MS. NEUBERGER: Those are certainly factors that are -- we're looking at carefully as we look at who is responsible for them.

MS. PSAKI: Phil.

Q The "evolving intelligence," it doesn't mean that it's a certainty there's going to be an attack. Can you explain for the layman what you're seeing right now that precipitated this statement today, and what the evolving intelligence may be now compared to on the 24th or prior to the invasion?

MS. NEUBERGER: Absolutely. So, the first part of that is: You've seen the administration continuously lean forward and share even fragmentary pieces of information we have to drive and ensure maximum preparedness by the private sector.

So as soon as we learned about that, last week we hosted classified briefings with companies and sectors who we felt would be most affected, and provided very practical, focused advice.

Today's broader, unclassified briefing is to raise that broader awareness and to raise that call to action.

Q So there was something specific you saw last week that was raised to the industries that it would have affected, is what you're saying?

MS. NEUBERGER: So I want to reiterate: There is no evidence of any -- of any specific cyberattack that we're anticipating for. There is some preparatory activity that we're seeing, and that is what we shared in a classified context with companies who we thought might be affected. And then we're lifting up a broader awareness here in this -- in this warning.

MS. PSAKI: Major?

Q Hey, Anne. When you say a "call to action," many who hear you say that might believe that something is imminent. Is it?

MS. NEUBERGER: So I want to reiterate: There is no evidence of any -- of any specific cyberattack that we're anticipating for. There is some preparatory activity that we're seeing, and that is what we shared in a classified context with companies who we thought might be affected. And then we're lifting up a broader awareness here in this -- in this warning.

MS. NEUBERGER: So, first, a "call to action" is because there are cyberattacks that occur every day. Hundreds of millions of dollars were paid in ransoms by U.S. companies just last year against criminal activity happening in the U.S. today. Every single day, there should be a call to action.

We're using the opportunity of this evolving threat intelligence regarding potential cyberattacks against critical infrastructure to reiterate those with additional focus specifically to critical infrastructure owners and operators to say, "You have the responsibility to take these steps to protect the critical services Americans rely on."

Q And as a follow-up: "Critical infrastructure" is a broad term. Is it as broad as you typically mean it when the government speaks about critical infrastructure, or is there something you've seen that you can be more -- a little bit more specific within that large frame of critical infrastructure?

MS. NEUBERGER: I won't get into specific sectors at this time, because the steps that are needed to lock our digital doors need to be done across every sector of critical infrastructure. And even those sectors that we do not see any specific threat intelligence for, we truly want those sectors to double down and do the work that's needed.

MS. PSAKI: Jacqui.

Q You guys, the administration, successfully declassified a lot of intelligence about what the Russians were planning leading up to the invasion to prebut what they might do. Can you do that a little bit here and at least list some of the industries that might be the biggest targets so that they can have a heightened awareness about what might be coming?

MS. NEUBERGER: As we consider declassifying intelligence, to your excellent point, that really has been the work that has been done the last few weeks and was driven by a focus on outcomes. It was driven by the President's desire to avoid war at all costs, to really invest in diplomacy.

So, as we consider this information, the first step we did was we gave classified, detailed briefings to the companies and sectors for which we had some preparatory information about. And then for those where we don't, that's the purpose of today's unclassified briefing: to give that broad warning. And I want to lift up the factsheet, which is really the call to action for specific activities to do.

Q So you believe the people, the industries that need to know about this risk know?

MS. NEUBERGER: We believe the key entities who need to know have been provided classified briefings. I mentioned, for example, just last week, several hundred companies were brought in to get that briefing.

MS. PSAKI: Peter.

Q Does the U.S. have any evidence that Russia has attempted a hack, either here in the U.S., in Europe, or in Ukraine, over the course of the last several weeks since this offensive began?

MS. NEUBERGER: So, we certainly believe that Russia has conducted cyberattacks to undermine, coerce, and destabilize Ukraine. And we attributed some of those a couple of weeks ago.

We consistently see nation states doing preparatory activity. That preparatory activity can pan out to become an incident; it cannot. And that's the reason we're here.

Q So, specifically in the U.S., as there was an assessment early on that we thought that we would be a likely target here, why do you think we have not seen any attack on critical infrastructure in the United States to this point so far?

MS. NEUBERGER: I can't speak to Putin or Russian leadership's strategic thinking regarding how cyberattacks factor in.

What I can speak to is the preparatory work we've been doing here in the U.S. and the fact that as soon as we have some

what I can speak to is the preparatory work we've been doing here in the U.S. and the fact that as soon as we have some evolving threat intelligence regarding a shift in that intention, that were coming out and raising the awareness to heighten our preparedness as well.

Q So you can't say declaratively that we stopped an attack, I guess I'm saying, to this point on critical infrastructure?

MS. NEUBERGER: Correct.

Q Okay. Thank you.

MS. PSAKI: Colleen.

Q Can you explain a little bit more what preparatory activity on the part of the Russians would be? What does that look like?

MS. NEUBERGER: So, preparatory activity could mean scanning websites; it could be hunting for vulnerabilities. There's a range of activity that malicious cyber actors use, whether they're nation state or criminals.

The most troubling piece and really one I mentioned a moment ago is we continue to see known vulnerabilities, for which we have patches available, used by even sophisticated cyber actors to compromise American companies, to compromise companies around the world. And that's one of the reasons -- and that makes it far easier for attackers than it needs to be.

It's kind of -- you know, I joke -- I grew up in New York -- you had a lock and an alarm system. The houses that didn't or left the door open clearly were making it easier than they should have. Right? No comment about New York. (Laughter.)

So, clearly what we're asking for is: Lock your digital doors. Make it harder for attackers. Make them do more work.

Because a number of the practices we include in the factsheet will make it significantly harder, even for a sophisticated actor, to compromise a network.

MS. PSAKI: Go ahead.

Q Sorry, just to be clear: The warning today, is this in response to some of these more desperate tactics we've seen from Russia on ground? Are you now fearing that there might be more of a cyber risk because of what we're seeing on the ground in Ukraine?

MS. NEUBERGER: So, we've given a number of threat intel- -- of threat warnings over the last number of weeks that Russia could consider conducting cyberattacks in response to the very significant economic costs the U.S. and partners have put on Russia in response. This speaks to evolving threat intelligence and a potential shift in intention to do so.

Q And do you have a message for individuals? You're talking a lot about private companies. What about households? Should they be worried about cyberattacks here?

MS. NEUBERGER: The items in the factsheet apply to companies and individuals as well. I'm specifically speaking to companies because there's a responsibility to protect the critical services Americans rely on. But every individual should take a look at that fact sheet because it's a truly helpful one. We only put in place the things that we really try to practice and work to practice ourselves.

MS. PSAKI: Jordan.

Q Thanks. As part of this preparatory activity, do you have evidence that Russian hackers have infiltrated the networks of U.S. companies already and just haven't carried out the attacks?

MS. NEUBERGER: There was -- as I noted, we frequently see preparatory activity. Whenever we do, we do sensitive

MS. NEUBERGER: There was -- as I noted, we frequently see preparatory activity. Whenever we do, we do sensitive warnings to the individual companies and provide them information to ensure they can look quickly at their networks and remediate what may be occurring.

Q So have you seen any evidence that there have been infiltrations as part of that activity?

MS. NEUBERGER: We routinely see information about infiltrations. Right? Technology is not as secure as it needs to be. I mentioned the ransomware activity. There are multiple nation-state actors. It's a line of work for the intelligence community and the FBI to knock on a company's door and say, "We've seen some evidence of an intrusion. We'll work with you. We'll make these resources available via a regional office to work with you to help you recover." That's -- that's pretty routine practice.

What we're seeing now is an evolving threat intelligence to conduct potential cyberattacks on critical infrastructure. And that raises up a point because we're concerned about potential disruption of critical services.

MS. PSAKI: Ken.

Q Anne, you did a briefing for us about a month ago. Do you think the U.S. banking system is more vulnerable, less vulnerable since the briefing, given the warnings that the government has produced?

MS. NEUBERGER: The U.S. banking sector truly takes cyber threats seriously, both individually and as a group. Treasury has worked extensively with the sector to share sensitive threat intelligence at the executive level, at the security executive level, repeatedly at the classified and unclassified level. So, I do not believe they're more at risk, but it is always important for every critical infrastructure sector to double down in this heightened period of geopolitical tension to carefully look at any threat.

MS. PSAKI: Go ahead.

Q Can you paint a worst-case scenario picture for us? What exactly are you most worried about if people -- the private sector chooses to not take these steps?

MS. NEUBERGER: Clearly, what we're always -- I won't get into hypotheticals, right? But the reason I'm here is because critical infrastructure -- power, water, many hospitals -- in the United States are owned by the private sector. And while the federal government makes extensive resources available -- I mentioned FBI's 56 regional offices -- you can just walk in; CISA has offices near most FEMA sites in the United States. They've had their Shields Up program. We can make those resources available. For those sectors where we can mandate measures like oil and gas pipelines, we have. But it's ultimately the private sector's responsibility, in our current authority structure, to do those steps, to use those resources to take those steps.

So, the purpose here is to say: Americans rely on those critical services. Please act. And we're here to support with the resources we have.

MS. PSAKI: Kayla, last one.

Q Thank you. Anne, are you still seeing the Russians carrying out cyberattacks inside Ukraine? It's been a few weeks since we've been discussing that in particular.

And as financial tools levied by the West have proven ineffective, what cyber tools does the West have that it can possibly utilize?

MS. NEUBERGER: We do continue to see Russia conducting both -- as you know, right? -- significant malicious activity in Ukraine; major kinetic attacks, which have disrupted and killed lives; as well as cyber activity. And we believe the unprecedented economic costs the United States and partners have levied is significant in that way.

unprecedented economic costs the United States and partners have levied is significant in that way.

With regard to your question about whether cyberattacks would change that: I think the President was very clear we're not looking for a conflict with Russia. If Russia initiates a cyberattack against the United States, we will respond.

MS. PSAKI: Thank you, Anne, so much for joining us.

MS. NEUBERGER: Thank you. Thank you for having me.

Q Thanks, Anne.

Q Thank you, Anne.

MS. PSAKI: All right. I just had two brief items for all of you at the top.

There was a scheduled meeting today that Secretary Yellen, Secretary Raimondo, Jake Sullivan, and Brian Deese had with 16 CEOs this afternoon. The President also dropped by for about 20 minutes and provided them an update on Russia, Ukraine. I'm sure we can get you a list of the attendees at that meeting as well.

Also wanted to note -- a number of you have asked about whether the President would be watching the hearings today. One scheduling note is the Quint meet- -- call he had this morning was at exactly the same time as her opening statement, but he did request regular updates -- or has been requesting regular updates from members of the team on how the hearing is going.

And he also called her last night to wish her good luck this week at the hearings.

And I would also note that he's very grateful to Judge Tom Grif- -- Thomas Griffith, as well as Lisa Fairfax, for introducing her today.

So with that, I will stop. And, Colleen, why don't you kick us off.

Q Okay. So, do you -- can give us a readout of the call with the European leaders from earlier? Just sort of what was discussed, what happened.

And then I have one other question after that.

MS. PSAKI: Absolutely. If you haven't already -- there should be a readout going out shortly, but let me give you a few of the preview points of this call:

During this call with President Macron of France, Chancellor Scholz of Germany, Prime Minister Draghi of Italy, and Prime Minister Boris Johnson of the United Kingdom, they discussed their serious concerns about Russia's brutal tactics in Ukraine, including its attacks on civilians. They underscored their continued support for Ukraine, including by providing security assistance to the brave Ukrainians who are defending their country from Russian aggression and humanitarian assistance to the millions of Ukrainians who have fled the violence.

They also reviewed recent diplomatic efforts in support of Ukraine's effort to reach a ceasefire.

I would note: The President will obviously see these leaders -- a number of them -- in person later this week. And this is a call with this group that he has already had a few times. And when he had the last call with them -- I believe it was last week or the week before; it may have been last week -- they talked about doing this on a regular basis, not necessarily because there is a big deliverable out of it but just to keep an open line of communication as they're conti- -- all continuing to respond to the brutal actions of President Putin in Ukraine.

Q And then, on the potential discussions with Ukrainian leaders and Russia, has the White House or has the President been in communication with Ukrainian leaders, with Zelenskyy on this? Has he given any sort of counseling on how to go about these talks with Russian leaders in the hope of, you know, ending the conflict?

MS. PSAKI: We are in touch with the Ukrainian government -- senior government officials every day. The President obviously speaks with -- has spoken with President Zelenskyy a number of times, as you all know. And we convey, through all of those discussions, that we support any diplomatic effort that they choose to take part in.

The role that we feel we can play most effectively is by continuing to provide a broad range of security assistance, military assistance to them as well as economic and humanitarian assistance to strengthen their hand in these negotiations.

And what we always convey publicly and privately is that we're going to be watching closely their actions, not just what words they say.

But we just continue to support their efforts and whatever decisions they make about choosing to engage diplomatically.

Go ahead.

Q President Zelenskyy said if those talks don't work out, it's World War Three. Does the President agree?

MS. PSAKI: Without knowing more of what President Zelenskyy means by that, I would say that our view and the President's view is that the way we need to avoid World War Three is preventing the United States from having direct military involvement on the ground and same on NATO, direct involvement on the ground, and that the most effective role we can continue to play is by providing that extensive military assistance that we have been providing -- economic and humanitarian assistance. So, I can't assess.

Obviously, I know many of you will speak or hear more from President Zelenskyy soon, and I would expect he can speak more to what he meant by that.

Q And related to that, does the President believe that President Zelenskyy owes him or other NATO leaders a check-in as these negotiations progress and as he may approach a final resolution? Meaning, does NATO or does the President want either implied or soft veto power over whatever Zelenskyy might decide to do?

MS. PSAKI: Well, we support President Zelenskyy and Ukrainian leaders' decisions -- ability to make their own decisions through the course of these negotiations.

Now, obviously, if it involves something related to the United States or NATO, we're here to support. But, of course, we'd need to be engaged in that aspect of the discussion.

Q One last thing.

MS. PSAKI: Yeah.

Q On "Face the Nation," the Chinese ambassador said China's position is for peace and that it's constantly doing everything it can to de-escalate. Do you agree with that?

MS. PSAKI: Well, what I would note --

Q Do you say it's a fair characterization of what China is doing?

MS. PSAKI: Well, what I would note: Also in the same interview, he failed to condemn the actions of --

Q He said it wouldn't do any good.

MS. PSAKI: -- President Putin.

I'm sorry?

Q He said it wouldn't make any difference. Do you agree with that?

MS. PSAKI: I think our view is that verbal condemnation of the actions of President Putin and the actions of Russian military is important and vital, and it's about what side of history you want to stand on at this point in time.

At the same time, as you know, the President had a lengthy discussion with President Xi on Friday, and we're going to continue to keep those lines of communication open.

But what we would note here is also what is absent from a lot of their public commentary, which is condemnation at times; sometimes it has been echoing of conspiracy theories that the Russians have put out there about chemical weapons. And we note that, you know, what we want to hear is condemnation of what we're seeing on the ground.

Q Thanks, Jen.

MS. PSAKI: Go ahead.

Q Can you walk us through the President's trip a little bit later this week? We know he's going to stop in Brussels first, obviously. Then he goes to Poland, as you announced this weekend. Will he see refugees? Will he deliver a speech? Are there deliverables? Can you walk us through what you can tell us?

MS. PSAKI: There will certainly be deliverables, as there always are on these trips.

Q Yeah, there are.

MS. PSAKI: And -- there always are. We're still finalizing, believe it or not, the details of the trip and the specifics of what he'll be doing while he's in Poland.

He, of course, will be seeing his counterpart there. And he will certainly thank him for the efforts and the work that Poland has done and the leaders have done there to welcome refugees, to get them settled in Poland for this time being as devastating as the circumstances are.

Jake Sullivan is going to be joining us here tomorrow. And hopefully by then we will have more specifics to lay out for all of you, but we're finalizing the details as we speak.

Q Let me ask you about their assessments we're hearing from NATO right now that are -- some are saying that if we're not in a stalemate, we are rapidly approaching one. Does the U.S. have a position on that that appears to be the way this is heading and how that changes the sort of trajectory of this, and what your view is --

MS. PSAKI: You mean in terms of the military situation on the ground?

Q In Ukraine. Correct.

MS. PSAKI: Well, here's what we've seen on the ground: We're seeing that -- the Department of Defense has assessed -- and I know they've done briefings in this regard, so let me echo this -- that there certainly could be some morale issues of troops on the ground, that they are in a stalemate in the sense that they have not been making the -- the level of progress or the pace of progress that they had hoped from the beginning.

Now, obviously, things can change rapidly in conflicts, and so we are mindful of that as well. We're also seeing, obviously, over the course of the last couple of days, that fighting around Mariupol is fierce but remains, at this point, isolated. It remains a high priority for Russia because it would provide President Putin with a land bridge to Crimea and cut off Ukrainian forces there from the rest of the country, provide the Russians with a new port.

But the military situation elsewhere in Ukraine, according to our assessment, remains largely static. It doesn't mean that can't change; it's just an assessment as of this moment.

Q Last quick one, as it relates to Belarus: Right now, some in NATO are saying that Russia is preparing to potentially -- or that Belarus is potentially preparing to let Russia position nuclear weapons on Belarusian soil. Does the U.S. have a message to the government of Belarus? And how would you view that escalation?

MS. PSAKI: Well, we don't have any confirmation of those reports or suggestions. Certainly, that would be of concern to us, yes.

Go ahead, Jacqui.

Q Thanks, Jen.

In the past, you've said that domestic oil producers have the leases, resources that they need to ramp up production. Is there any thought about invoking the Defense Production Act when it comes to energy?

MS. PSAKI: Well, there are a range of ideas out there -- that's one of them -- that a number of people have put forward. I would say that the Defense Production Act is -- would mean giving government funding to companies or to purchase products. That's how it typically works, as you've seen it work with COVID supplies and otherwise. And we think they have the resources they need in order to expand their production.

Q And then, on government money and supplies: There are reports that the EU is seeking to stockpile iodine pills and nuclear protective gear amid an increased concern about a nuclear threat, and also looking for more ways to deal with potential biological and chemical attacks.

Is the U.S. taking similar measures when it comes to these things, especially with iodine pills? Are we taking, sort of, the lessons learned in the pandemic and applying it to this challenge?

MS. PSAKI: Sure, Jacqui, it's a good question. Let me check with our national security team and see if there's any details I can get into. We are always prepared, even as we aren't making predictions at this point in time. I don't have confirmation of that report about the Europeans, but I will -- I will check and see if there's more to report out to all of you.

Q And then, there are reports that China has fully militarized at least three islands in the disputed South China Sea with anti-ship, anti-aircraft missile systems; laser and jamming equipment; and fighter jets, despite Beijing's promises not to turn these islands into military bases. What is our takeaway from that? And how are we responding to that?

MS. PSAKI: Well, Jacqui, again, I don't have confirmation of that from here. I've certainly seen the reports. I would point you to the Department of Defense for any more specific analysis. But, obviously, any escalatory actions in the South China Sea would be of concern to us.

Q And then one more on the White House assessment of global food insecurity --

MS. PSAKI: Yeah.

Q -- that's sort of coming out of all this in Ukraine.

MS. PSAKI: Sure.

Q Is there any -- is there any money that's going to be allocated to provide diesel fuel to Ukrainian farmers to try to mitigate some of this?

MS. PSAKI: Yeah, so, let me -- so, let me give you a couple of things on this, because there's been a lot of interesting reporting on this, and where the impacts are is a good question.

While we're not expecting a food shortage here at home, we do anticipate that higher energy, fertilizer, wheat, and corn prices could impact the price of growing and purchasing critical fuel [sic] supply -- food supplies for countries around the world. And early estimates from the World Bank suggest disproportionate impacts on low- and middle-income countries including in Africa, the Middle East, and Southeast Asia.

And actually -- and Ukraine is a big exporter of fertilizer. So as it relates to even that need in the United States and other parts of the world, that's something that we're continuing to closely assess as well.

But right now, to go back to the root of your question, we are working with our partners in the G7, multilateral development banks, the World Food Programme, and the U.N. Food and Agriculture Organization to mitigate the impacts to poorer nations.

So we are discussing what that looks like and how to mitigate the shortage on those -- on those growing and purchasing entities from impacting parts of the world that would be severely impacted, even if we're not.

Q What kind of a timeline do we think we have to take some action on that before it becomes a really big problem?

MS. PSAKI: Well, there -- there are active discussions now. And we're certainly mindful that even if we're not seeing an impact in this moment that sometimes supply chain impacts can have a lagging -- can be a -- have a lagging impact.

So we're having discussions now with all of those partners. Those have been ongoing so we can do everything we can to mitigate it in advance.

Q And can I ask one question -- just a reaction to the Israeli Prime Minister. This weekend, he said, on the JCPOA, "Unfortunately, [we're seeing a] determination to sign a nuclear deal...at almost any cost, including saying the [biggest] terrorist [group] in the world is not a terrorist organization. This is too [steep] a price." Can I get your reaction to that? Is that what we're saying by pursuing this deal?

MS. PSAKI: I would say we are in regular touch with our Israeli counterparts, including leaders. We don't have a deal yet. We're consulting with our allies and partners, including Israel, as we negotiate.

And the President is going to make a decision on whether to reenter the deal based on what's in the best interest of American security and strategic interests, including the security of our partners in regions like Israel.

And once -- if and when we have a deal, I'm sure we can discuss more specifics.

Go ahead.

Q Thanks, Jen. We've now had a chance to hear from some of the Judiciary Committee members in this confirmation for Judge Jackson. Any thoughts on whether she will receive bipartisan support in her confirmation?

MS. PSAKI: Well, without being able to get into the minds of a range of Republican members, our view is that given she has been confirmed three times with bipartisan support, that she has extensive experience, that she has ruled in favor of

Democrats and Republicans under leaders of both parties, that she certainly deserves that. But we will see what the outcome ends up being.

Q And has the White House had any contact with Justice Thomas, given his hospitalization? Do you have any updates there?

MS. PSAKI: I'm not aware of any direct contacts. Of course, we wish him a speedy recovery. And of course, thoughts - - thoughts out to his family.

Q And just a quick follow-up on the NATO trip. Can you give us just the big picture of what would a successful NATO summit look like to the White House? What are we looking for to measure that?

MS. PSAKI: Sure. I mean, I think what's important to remember here from the beginning of the Presi- -- of the President's presidency but also, certainly, over the last couple of months is that unity has been front and center for the President in terms of how -- what will make us successful over time -- unity with our European counterparts, unity among NATO, unity among the G7. And that doesn't happen by accident.

And so, coming out of this, what the President is hoping to achieve is continued coordination and a unified response to the continued escalatory actions of President Putin.

Go ahead.

Q The U.S. Ambassador to the U.N. was asked about this this weekend, but given the Poles appear to be planning to put upon the table some type of peacekeeping force idea, is there any feasible structure that the White House could support for something like that? Or have you guys looked into the idea at all?

MS. PSAKI: Well, we, of course, will continue to work with Poland and other allies and partners in Europe to provide support for the Ukrainian people and help them defend their country against Russian aggression and provide relief to the people of Ukraine. And we will continue to impose severe consequences.

The President -- we've been -- he's been clear: We're not going to send American troops to fight Russian troops. It's not in the interest of the American people or our national security. But we'll continue to discuss a range of ideas, including this one out there.

Q And then, there's been, kind of, a reinvigoration in the EU of discussions about banning -- or sanctions on energy. Can you update us on what the efforts in the administration has been to kind of backfill, which would, I think, be a necessity if those actions were taken? Where do those stand at this point?

MS. PSAKI: Sure. In terms of engagements with global energy suppliers? Those engage- -- engagements are ongoing. And, you know, they are -- they are led, in part, by Amos Hochstein, Brett McGurk has been involved in many of them, other members of our national security team and National Economic Council. And we are continuing to discuss with a range of large global suppliers how we can meet the demand in the market out there.

We also are continuing to look at domestic options and what those may look like to help ease the burden on the American public. I wish I had more specifics for you, but I don't have anything more to read out for you at this point in time.

Go ahead.

Q Thank you, Jen. The meeting you mentioned that President Biden participated in with CEOs earlier today, there were oil industry CEOs at that meeting. And considering the White House has been engaging with them for several weeks now -- sort of, you know, talking about ways to increase production to take care of gas prices -- I'm wondering what kind of specific assurances the White House has managed to get from these companies so far, and what was really discussed in

today's meeting, especially with the oil industry CEOs.

MS. PSAKI: Well, while the President was there, he was simply giving them an update on Russia and Ukraine. He was not making an ask at that -- in that capacity. Obviously, there are a range of senior officials who participated in these meetings. We've had a range of engagements with them, as you've noted. And we've stated publicly that they should do greater production, but they can speak for themselves on what, if anything, they would commit to.

Q Have there been any assurances that the industry has perhaps offered the White House so far?

MS. PSAKI: We'll let the oil industry speak for themselves.

Q Okay. And one quick question on China. Are you getting any indications yet that China will actually heed to President Biden's appeal to President Xi to not provide material support to Russia? Or are you seeing, perhaps, evidence suggesting that Chinese companies are maybe violating or going around U.S. export controls to, you know, send the material -- the U.S. material to Russia? I mean, do you -- are you seeing any evidence to that effect?

MS. PSAKI: I don't have an assessment to share on this. You can look at the public comments that one of your colleagues brought up earlier, during an interview yesterday, where the Chinese ambassador highlighted China's friendly relations and maintenance of normal economic ties with Russia while also refusing to condemn Russia's invasion of Ukraine. But I don't have a further assessment beyond that.

Go ahead.

Q Thanks, Jen. The Russian Foreign Ministry summoned Ambassador Sullivan to the Ministry in Moscow and warned that U.S.-Russian relations are on the verge of rupture, said the President's comments calling Putin a war criminal were unworthy of a statesman of such high rank. Does the White House have any response to this? And is there any concern about the warning that they're going to respond with a "decisive and firm response"?

MS. PSAKI: I'm not sure -- the last part -- I'm not sure what you mean by that.

Q They warned of a "decisive and firm response."

MS. PSAKI: Okay. Well, I would say that Ambassador Sullivan did meet with Russian government officials today; I believe the State Department also confirmed.

While we don't provide extensive details in general of these type of diplomatic conversations, I can confirm for you that during that meeting, he repeatedly asked for consular access to American citizen detainees, which -- who have been improperly detained ac- -- been improperly denied access for months in some cases. We find this completely unacceptable.

As it relates to their comments or their calling of him in, I think it's important to remind everyone that it is Russia who is carrying out an unprovoked, unjustified war on Ukraine.

We're seeing clear evidence that they are intentionally targeting civilians and committing indiscriminate attacks. And the President's comments speak to the horror, the brutality that Russia and President Putin are inflicting.

So, they are in control of their own -- the global perception of them is based on their actions.

Q And one quick other one.

MS. PSAKI: Oh, go ahead. Yeah, go ahead.

Q So, you mentioned that the President spoke to Judge Brown Jackson last night. Is there any other details you can

share just about how she's been preparing for the hearings, who's been involved in the practice sessions, or --

MS. PSAKI: Sure. I mean, I had outlined for you guys a couple of weeks ago some of the members of her team who played a role in preparing her, of course, whether it was Dana Remus or Senator Jones and Ben LaBolt, Minyon Moore -- others who have been playing a role in preparing her for the hearings.

I would note -- which won't surprise anyone, given her credentials -- she began preparing and studying and getting ready for these hearings as soon as she was nominated.

I would note that also, over the course of the last few weeks, she's also met with every single member of the Judiciary Committee and then several more members beyond that.

So, she has been both meeting and preparing for the last few weeks, ever since she was nominated, with the team internally and externally that we had announced just a few weeks ago.

Go ahead, Zolan.

Q Does the administration expect to discuss the -- Poland's offer on the MiG fighter jets at this point? Or is the stance that the Pentagon has made the decision clear at that point and this won't be a subject in anticipation of the President's trip to Poland?

And then secondly, during the Vice President's trip to Poland, the Pol- -- Polish leaders, at that point, said one thing that -- one ask that they had in that bilateral was to expedite the processing of Ukrainian refugees who have relatives in the United States.

MS. PSAKI: Yeah.

Q Does -- is the administration expecting to oblige on that request or meet halfway in any way?

MS. PSAKI: So, I would say that, while we have done our own assessment here on the Polish jets based on a couple of factors that the military -- as you as you noted, Zolan -- has outlined, including what's most effective in fighting this war on the ground, the risk assessment of what would be escalatory, and also the fact that the Ukrainians have a number of squadrons that they can utilize.

But if Poland -- if they want to raise this, I'm -- you know, these -- these conversations, these diplomatic negotia- -- or conversations are two ways, right? And we'll, of course, read out their meeting once it -- once it is complete. So, we'll see what they -- what they raise in that meeting.

In terms of refugees, we are -- we have taken a number of steps. And we do -- part of what the President wants to do is thank President Duda for the efforts of Poland in welcoming refugees, and talk about what we can do to continue to provide support.

Now, to date, that has been largely financial support, humanitarian support, even as we granted Temporary Protected Status, and also -- you know, just -- just a few weeks ago.

But what we are doing and continuing to assess is what -- if there are Ukrainian nationals who are not able to remain safely in Europe and for whom resettlement the United States is a better option, we are continuing to work with UNCR [UNHCR] and the EU to consider that.

And that might require -- because typically, individuals who are seeking refugee status have to go to a third country. So that's something we're looking at and assessing.

And we're also -- the UNHCR, the U.N. Refugee Agency, is working with the State Department and many resettlement partners and our overseas posts to determine where the Ukrainian nationals and others who have fled Ukraine were -- you know, whether there's more we can do beyond the humanitarian assistance that we are providing.

So, I'm certain it will be a point of discussion. We are having ongoing discussions internally about what more we can do to welcome refugees.

Q And specifically, the thing that's different about that process that the administration is looking at is allowing Ukrainians to basically finish the refugee process in that same country that they would receive a UNHCR referral?

MS. PSAKI: That's part of the discussion is what can ha- -- what can be done if Ukrainian nationals are not able to remain safely in Europe, for example, and for whom resettlement in the United States would be a better option for a range of reasons -- the State Department is discussing with UNHCR and the EU how to consider them, what would be required for that process.

But this is an ongoing discussion internally. And I'm certain it will be a part of the discussion, to go back to your original question, with President Duda, as well, this weekend.

Go ahead, Matt.

Q Thanks, Jen. You had written on Twitter that the President --

MS. PSAKI: Uh-oh. (Laughter.)

Q -- did not plan to go to Ukraine --

MS. PSAKI: Yeah.

Q -- on his trip. Given that the prime ministers of Poland, Slovenia, and the Czech Republic visited Kyiv last week and that President Zelenskyy was urging others to do the same, can you talk a little bit about whether President Biden had explored going to Ukraine at all, if he was asked to, and sort of what considerations went into the factors either way?

MS. PSAKI: Sure. We have not explored that option. I put that -- I tweeted, I guess I should say, because there was some confusion about this question, and we did not want to leave that out there as an unanswered question.

But certainly, any president of the United States traveling into a war zone requires not only security considerations but also an enormous amount of resources on the ground, which is always a factor for us as we make considerations.

But also, the President felt and our national security team felt that he could have the most effective and impactful trip by convening these meetings with NATO leaders, the G7, the EU in Brussels to determine both continued military coordination, humanitarian and economic coordination, as well as by going to visit Poland, right next door, to talk about everything from refugees, refugee assistance, and continued assistance we can all provide together.

So, it was a decision made about what -- what would be most effective on the trip.

Q And then I just wanted to follow up quickly. You had said earlier that the President was unable to watch the opening statement of the judge in the Supreme Court hearings. I think she --

MS. PSAKI: He was on with the Quint.

Q That's right. But she has to sit through the opening statements, first, of all of these senators, so I don't think she's actually given her opening statement quite yet.

MS. PSAKI: Ah, there you go.

Q Do you know if there's time carved into his schedule? Does he plan -- through the afternoon? Is he following this? Or -

MS. PSAKI: Well, some of these are a little difficult to predict, as just evidenced. Thank you for giving me a lifeline there, because, clearly, I've been in meetings this morning as well.

You know, he -- it was hard to plan his schedule around this, so what he asked is that he be provided updates from his team and aides as the -- as the hearings progress.

And obviously, Chairman Durbin gave his opening, Senator Grassley gave his opening this morning, and it proceeds. But it's hard to plan the President's schedule around a moving Senate hearing.

So, I'm sure he'll be able to watch replays of it and more specifics, but he wanted updates from aides as well.

Go ahead.

Q Thanks. On -- on oil, President Biden has been very vocal about his belief that U.S. producers should be producing more and that there's the possibility of price gouging, but he didn't raise any of those concerns in the meeting of oil CEOs earlier today?

MS. PSAKI: He -- it wasn't a meeting with oil CEOs. There were a couple of the 18 -- or 16 to 18 CEOs there. It was not intended to be a meeting with oil CEOs; it was intended to be a meeting with a broad swath of the economic sectors. And he provided them an update on Russia and Ukraine, so it wasn't meant to be that type of a meeting.

Q And then there was a report in the Washington Post earlier, saying that Biden administration -- administration officials are seeing data showing that Russian oil exports have dropped off a cliff and that there was some -- there was a data point that said there are 2 million barrels per day on tankers that have gone from close -- down to zero in a certain period of time.

Is that -- can you confirm that? Is that -- is that true in what you're seeing about Russian oil exports?

MS. PSAKI: I've seen those reports, but I don't have a new assessment from here.

Q And then, lastly, has the President tested for COVID-19 this week? And what were the results of that test?

MS. PSAKI: He was tested today, and he was negative.

Q Thank you.

Go ahead.

Q Thank you, Jen. Can you walk us through the administration's thinking behind adding this Poland stop? And what is President Biden hoping to demonstrate by sitting alongside President Duda?

MS. PSAKI: Sure. Well, we have -- this -- this trip has been coming together quite rapidly, I think, as you would all note. And so, as I noted a little bit earlier, we will have more details about his Poland stop.

But this is an opportunity for him to thank President Duda for welcoming refugees, as they have done over the last few weeks, and for being an important partner in providing a range of assistance to the Ukrainians -- to the Ukrainian people and the Ukrainian government. And they are an important partner as we -- as we work to remain unified in the weeks and

and the Ukrainian government. And they are an important partner as we -- as we work to remain united in the weeks and months ahead.

There will obviously be a couple of components of his trip there, which I think, as we have more details of it to announce, will showcase the purpose of the trip.

Q And then, to follow on that, one of my colleagues asked if the President would be meeting with Ukrainian refugees in -- at one of these stops. Is there any reason why the President wouldn't? Is that something we can find out more about soon?

MS. PSAKI: I think, as I noted, we're going to be providing more details to all of you in the next 24 hours, of his trip. Sometimes there are things we announce in advance, and sometimes there are not. But I've noted repeatedly that refugees is a key component of his stop in Poland.

Go ahead.

Q Yeah. If I can shift gears to COVID for a minute --

MS. PSAKI: Sure.

Q What is the White House's response to some experts who have said that the U.S. is not necessarily doing enough to prepare for this next bit of a pandemic surge that we're already beginning to see in other parts of the globe?

MS. PSAKI: Well, I would say -- I'm not sure -- can you give me a little more additional context of the comments?

Q I had seen -- yes, some comments just basically that the U.S. needs to be doing more to prepare, whether that is around, you know, building up a supply. They pointed to the low rates of booster shots, in particular, as being a point of concern. And that was -- yeah. And the booster shots, in particular.

MS. PSAKI: Well, I think our primary concern right now is that we're about to run out of funding, and we are always making an effort to be ahead of and be prepared for any new wave, any new variant.

And even as BA.2 has been in this country for some time -- and, as of last week, it was about a quarter to a third of cases. We know it's quite transmissible, but we know that the treatments we have are effective in treating BA.2 -- the BA.2 variant.

Our concern right now is that we are going to run out of money to provide the types of vaccines, boosters, treatments to the immunocompromised and others free of charge that will help continue to battle increasing -- you know, the increase or the upflow or the, you know, increase of -- of COVID in the future.

So that's where our primary focus is. I don't -- beyond that, I'm not sure additional context of those comments.

Q Can I ask just more question. Has the White House been in touch with any of the pharmaceutical companies who are specifically working on the under-age-five population, recently, vaccines? I know that those were put into practice and then removed in terms of actually having implementation. I just wondered what the communication has been.

MS. PSAKI: Yeah, well, the -- it typically goes, of course, through the FDA and CDC, as it should -- all of the data. So we would leave those channels to continue to consider when it's ready to move to the next phase.

Q So no sort of increased communication or urgency around getting (inaudible)?

MS. PSAKI: Well, I think data moves, science moves at the speed of science, right? And, of course, we would all -- many people here have children under five, but it's important that it moves through the effective, gold standard process

people here have children under five, but it's important that it moves through the effective, gold standard process.

And of course, we are in touch with the pharmaceutical companies for a range of reasons, including purchasing supplies to plan ahead for the need for boosters and other vaccines in the future, even as we are worried about running out of money.

But the process for when it would be ready to go through the FDA and CDC process is left to the scientists.

Q Jen, can I ask --

MS. PSAKI: Go ahead.

Q Jen, just on the food security issue --

MS. PSAKI: Yeah.

Q Cargill and ADM are still operating in Russia. A lot of companies have obviously left. Does the administration have a view on whether these companies should stay, given the concerns about food security and production of wheat and that sort of (inaudible)?

MS. PSAKI: We have not asked any company specifically to take steps to pull out. We have applauded those who have made that decision, and they are going to have to make decisions of their own regard.

Q Just a housekeeping item. I know you're still getting plans for the trip. Do you expect the President to hold a joint news conference with President Duda after their meeting in Poland?

MS. PSAKI: We're still planning all the specifics of it, so I don't have that quite yet. I would expect one for sure on Thursday.

Go ahead.

Q Jen, thank you so much. On Ukraine, we are seeing reports about Mariupol and about people and Ukrainians there being deported, arrested, and sent to remote regions in Russia. Is this something that is consistent with American intelligence? Can you comment on this?

MS. PSAKI: I -- one, those reports are horrific, but I don't -- we don't have any independent confirmation of those reports at this point in time.

Q And a follow-up on China, maybe? So, the President has warned that China would face costs if it decided to help Russia. How confident is he that European allies would also support such costs? And will that be part of the discussion in Brussels?

MS. PSAKI: Well, I think that certainly any -- the concern about China's closer alignment with Russia is one that's not just the United -- one of the United States, it's also a concern of many in Europe, and we expect it to be a topic of discussion over the course of the next several days.

Go ahead.

Q Jen, as I understand the peacekeeping proposal from the Polish Prime Minister: It will be a peacekeeping force, they would be in Ukraine, and they would be able to defend themselves. So, I know the President doesn't want to send Americans to fight Russians, but is the U.S. open to sending Americans as part of an internationally recognized peacekeeping force that could be NATO or not NATO?

MS. PSAKI: Again, these are a range of conversations that are happening behind the scenes. I'll leave it to those at this point in time. But forces on the ground is certainly about fighting, but it's also about having forces on the ground in

point in time. But forces on the ground is certainly about fighting, but it's also about having forces on the ground in Ukraine, which we have not supported at this point. I don't think that will change.

Go ahead.

Q Thanks, Jen. I have a question about the COVID-19 Response Team. Obviously, there's going to be a change in leadership in the White House Coordinator on COVID.

MS. PSAKI: Yeah.

Q And, by my count, there hasn't been a press briefing with the COVID team in about three weeks. I just wondered if you could speak to, kind of, what the role of that team is at this point. You know, how often does the President meet with that team? Is there any talk of disbanding it at this point, given the phase of the pandemic? I'm just kind of curious, sort of, what (inaudible).

MS. PSAKI: I hope not, for Dr. Jha's sake, given he's coming in. (Laughter.)

Q (Inaudible).

MS. PSAKI: Look, this is -- communicating with all of you on a regular basis has been a huge priority for the COVID team, and I'm certain we will continue to do that.

And, obviously, Dr. Jha is somebody who is not just a medical expert and a doctor, but somebody who is a very effective communicator on public health issues, and we think that's going to be a very effective part of his role. So, I'm certain you will be seeing a lot of him, and we will continue to have a range of briefings with the COVID team. So, no, they're not disbanding.

Go ahead.

Q Thanks, Jen.

Q Thank you, Jen.

Q Go ahead. I'll go after you.

Q I have questions. First, the United States declared the Myanmar military government committed genocide against the Rohingya, today. We also know the Myanmar government has supported Russia's invasion of Ukraine. And what happened to the Rohingya have happened for a while now. So, based on the timing, are they supporting the Russia related to this declaration today?

MS. PSAKI: Well, let me say for those of you who haven't -- I know you've been following it as closely, but for those of you who have not: Following a rigorous, factual, and legal analysis, the Secretary of State determined that the members of -- that members of the Burmese military committed genocide and crimes against humanity against a Rohingya -- against Rohingya.

His announcement at the U.S. Holocaust Memorial Museum emphasizes, especially to victims and survivors, that the United States recognizes the gravity of these crimes.

He also announced nearly \$1 million for the Independent Investigative Mechanism for Myanmar to support its mandate to investigate, collect, preserve, and analyze evidence of the most serious international crimes in Burma since 2011.

I would note that our view is that shining a light on the crimes of Burmese military will increase international pressure, make it harder for them to commit further abuses. But this has been -- as you know. Rohingya have long faced

discrimination and been subject to exclusionary policies. And this has been a lengthy review process at the State Department to come to this conclusion, unrelated to current events.

Q My second question is -- we've been talking about being in communication with China, including President Biden's calling the President Xi last week. Besides the consequences China might face if it aids Russia, does the United States also tell China what would happen to Russia right now while or might also happen to China if it invades U.S. allies and partners in the Indo-Pacific region, such as Taiwan?

MS. PSAKI: During this call, which was largely focused on Russia's inte- -- Russia's invasion of Ukraine, the President also reiterated his support for the Taiwan Relations Act and the one-China policy based on the Taiwan Relations Act. And he made clear that we remain opposed to any unilateral changes to the status quo across the Taiwan Strait, and that we have concerns about Beijing's coercive and provocative actions. So that was the other topic that was discussed at the meet- -- during the call.

Go ahead.

Q Thanks, Jen.

MS. PSAKI: Oh, and then we'll go -- okay, go ahead.

Q As the United States looks to up sanctions on Russia, and given Russia's history of assassinating dissidents, giving sanctuary to terror- -- U.S.-designated terrorist organizations, would the U.S. consider labeling Russia a State Sponsor of Terrorism?

MS. PSAKI: I don't have any assessment of that at this point in time. Obviously, we're continuing to look at the actions on the ground and the actions of leaders.

Go ahead.

Q Thank you. Two immigration questions for you. First, I wanted to confirm whether the administration supports an Afghan Adjustment Act; that's potential legislation that would secure permanent status for those thousands of evacuees that are here. It would go beyond, obviously, the TPS designation last week, which is 18 months.

MS. PSAKI: Sure. I'd have to check with our Department of Homeland Security. Obviously, we just announced Temporary Protected Status last week, and we're continuing to assess and consider a range of ways to welcome and -- our Afghan partners.

Q And, just quickly: It's been two years since President Trump implemented Title 42. There are protests outside the White House today. Democrats are now actively calling for it to end. COVID cases are low. Is the administration at least preparing for the possibility that this can end? And how so?

MS. PSAKI: Sure. There are timelines, including, I think, upcoming in April, on when it's -- continues to be reconsidered. And those discussions happen among the health experts from the CDC and other medical experts within the administration.

And you always have to prepare, because if they make that decision, there would be an implementation that would be, in part, led by the Department of Homeland Security and others that you have to plan for.

Q Does that include preparing for a large influx of migrants at the border, specifically?

MS. PSAKI: Well, certainly that would be part of it if -- if and when the CDC makes that determination.

Q Thanks, Jen.

MS. PSAKI: Thanks, everyone.

Q Can I ask you --

MS. PSAKI: We'll have Jake here tomorrow. Lots of questions, I'm sure you have.
Thank you, everyone.

3:41 P.M. EDT

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FOR IMMEDIATE RELEASE

March 14, 2022

Press Briefing by Press Secretary Jen Psaki, March 14, 2022

James S. Brady Press Briefing Room

3:25 P.M. EDT

MS. PSAKI: Hi, everyone.

Q Hello. Good to see you.

MS. PSAKI: Good to see you. Okay, I have nothing at the top for you.

Josh, what is on your mind?

Q Thanks, Jen. Two questions. First, after the Rome meeting, since the war began, has China provided any military or economic aid to Russia or expressed any specific intentions to do so?

MS. PSAKI: I'm not in a position to confirm or detail any intelligence from here at this point in time.

Q Okay. Moving on to the Russia-Ukraine talks: What does the U.S. see that would be a sign for optimism that some kind of ceasefire could be reached? And which carrots and which sticks do you think Putin is most responding to, if that's the case --

MS. PSAKI: Sure.

Q -- most likely to respond to?

MS. PSAKI: Sure. Well, as you've heard us say in the past, we certainly will continue to support the Ukrainian participation in these talks and conversations as long as they choose to continue to participate in them, of course. And we are trying to boost them by providing a range of not just economic and humanitarian assistance, but military assistance that we believe strengthens -- strengthens -- strengthens -- excuse me -- their positions in these talks.

Our view continues to be that, despite words that are said in these talks or coming out of these talks, diplomacy requires engaging in good faith to de-escalate. And what we're really looking for is evidence of that. And we're not seeing any evidence, at this point, that President Putin is doing anything to stop the onslaught or de-escalate. But that is really what we would be looking for.

Go ahead.

Q Thank you, Jen. To follow up on the Rome meeting, what are the consequences for China if they do aid Russia?

MS. PSAKI: Well, I'm not going to get into specific consequences. I think what we have conveyed and what was conveyed by our National Security Advisor in this meeting is that should they provide military or other assistance that, of course, violates sanctions or supports the war effort, that there will be significant consequences.

But in terms of what the specifics look like, we would coordinate with our partners and allies to make that determination.

Q Okay. But Jake Sullivan certainly communicated that there would be consequences?

MS. PSAKI: Yes, as we have also said publicly a number of times.

Q Okay. And then, is there anything you can share about the President's potential meeting -- potential trip to Europe in the next couple of weeks? Who he might be meeting with and really what the point would be of going to Europe?

MS. PSAKI: Sure. Well, we are, of course, closely engaged with our NATO partners and European allies, as you heard us say a number of times, about the next steps in diplomacy, whether that's providing additional humanitarian or security assistance or the mechanics for future conversations.

But there's not been any final decision about a trip, so I don't have anything to preview about what that would look like if he were to take a trip.

Q Okay. Thanks, Jen.

MS. PSAKI: Go ahead.

Q Thanks, Jen. The President said back in February that the U.S. would respond forcefully if Americans were targeted in Ukraine. Brent Renaud was killed over the weekend. One of my colleagues was injured today. We're still waiting to hear if he's okay. So what is that response going to look like?

MS. PSAKI: Well, let me first say: Your colleague, Benjamin Hall -- I know there's not final reports yet or we would wait for your news organization to confirm those -- but our thoughts, the President's thoughts, our administration's thoughts are with him, his family, and all of you at Fox News as well.

In terms of specific actions, I think you have seen the President lead the world in taking -- putting in place consequence -- consequences, putting in place repercussions and steps in response to the actions of Russia -- the brutal actions that have certainly impacted Ukrainian people and now have certainly impacted some Americans.

But in terms of next steps or what the next consequence would be, I don't have anything to preview for you at this point in time.

Q But we've seen the President been, so far, unwilling to draw a red line on the kinds of atrocities that we're going to watch from the sidelines. We've seen maternity wards being bombed, illegal weapons being used, pediatric hospitals being targeted.

President Obama drew the red line for Syria at chemical weapons. So is there any thought process about what we're willing to watch happen before there's --

MS. PSAKI: Well, Jacqui, I think it's important to reiterate as often as we can that what we're seeing is horrific, what we're seeing is barbaric. And the steps that the President has taken and led the world in taking have essentially led the Russian financial system to be on the brink of collapse. We have provided more military assistance to the Ukrainian military and the Ukrainian government than any other country in the world and more historic assistance than any other year to Ukraine in history. And we're doing that so that we can support them in this difficult moment.

So I would say that, at this moment in time, we have been hardly on the sidelines. We have been leading this effort around the world to respond to every step and every escalatory step that President Putin and the Russians are taking.

Q But isn't there a concern that if we don't draw the line at something like chemical weapons, that it'll make it easier for malign actors to use them in the future, because they'll just go unpunished?

MS. PSAKI: Well, Jacqui, I think that you heard the President say on Friday that there would be severe consequences and the world would respond if they were to use chemical weapons.

And what we have been doing over the course of the last several weeks, if not months, is providing as much information to the global community, to the media, and to others about what to expect.

And when you have President Putin suggesting -- and Russian -- Russian officials suggesting that the United States and Ukrainians are the ones who are working on a chemical weapons program, it's clear that this is a pattern that we've seen in the past of them trying to set up a predicate for their own actions.

Q But what does -- what does that end up looking like if the world responds? Because so far, we've heard the President talk a lot about what the U.S. is not going to do, in terms of, you know, not wanting to trigger war with a nuclear power. But do we believe that Putin is, you know, a rational kind of person who, you know, would pay attention to something like that? I mean, he didn't need provocation to, you know, invade Ukraine. Why wouldn't we think that he would just create a pretext that is fabricated for something like that?

MS. PSAKI: We do. That's why we've talked about it.

And I think, Jacqui, what's important here is -- and then I'm just going to move on to get to more people -- is that for any President, you have to weigh how you can lead the world, how you can make very clear that actions are horrific, that they are not acceptable, they're not aligned with global norms, while also thinking about our own national security interests. And starting World War Three is certainly not in our national security interests. Putting U.S. troops on the ground in Ukraine to fight a war with Russia is not in our national security interests.

Go ahead.

Q I do have one -- one quick --

MS. PSAKI: I just have to move on because I -- otherwise I'm not going to get to other people.

Go ahead.

Q It's a follow-up to what you had said though about misinformation and Twitter.

MS. PSAKI: Yeah.

Q Because, last year, the President worked with Twitter specifically to address misinformation on vaccines, called it a "wartime effort." Has there been any conversations with Twitter to address misinformation as it pertains to chemical attacks and that kind of thing, given that the -- you know, Russia has banned this platform within the country and they're using it to, obviously, target eyes outside of the country, including within the U.S., to spread propaganda and misinformation?

MS. PSAKI: We were the ones who told you all about that.

I agree. I don't have anything to read out for you in terms of private conversations with Twitter or any other social platform. But I'm happy to check and see if there's more.

Go ahead.

Q Back on the Rome talks. Have you seen any -- or did you -- your colleagues see in this meeting any sign that China got the message, that they are going to heed your warnings?

MS. PSAKI: Well, what we're going to be watching closely, of course, is actions. So beyond that, I think, as my colleagues just -- just read out for you in a call that we delayed the briefing slightly to make sure you could all participate in: It was an intense seven-hour session reflecting the gravity of the moment. And it was an opportunity to be very clear about what you've heard our National Security Advisor convey publicly but more directly about what the consequences would be.

Q And, you know, your colleagues have said that your deep concerns were conveyed about what would happen if China were to align more closely with Russia. Just, big picture: If China does not heed the U.S.'s warnings, if they do move forward with this, how concerned are you that this is inching closer to the world war that the President has been warning of?

MS. PSAKI: Well, I think what we're looking at here -- one is: If China were to decide to be an economic provider, or to take additional steps, there to Russia, they only make up 15 percent or 20 -- 15 to 20 percent of the world's economy. The G7 countries make up more than 50 percent. So there are a range of tools at our disposal in coordination with our European partners should we need to use them.

But, again, we are -- don't have anything to update you on in terms of an assessment. This is obviously an area we're watching closely.

While this meeting has been planned for some time as a follow-up from the November call that pres- -- the President had with President Xi, it was a timely -- an important moment to have this conversation, especially given the reports we've seen and -- and the invasion, of course, of Ukraine.

Go ahead. Oh, one more? Go ahead..

Q Just one quick follow-up, actually, to Jacqui's questions --

MS. PSAKI: Sure.

Q -- about chemical weapons. You know, the President, as you noted, said on Friday that Russia would pay a severe price. What would that price look like? Are we talking in the realm of more sanctions? Can you give us sort of any big

picture about what that would entail?

MS. PSAKI: That would be a conversation that we would have with our partners around the world.

But there's no question if Russia were to decide to use chemical weapons, there would be a severe reaction from the global community.

Go ahead.

Q So when you talk about, kind of, the possibilities for China if they don't go along with what you've asked, would you say, like you've said with Russia, that "everything is on the table," including ending trade negotiations, sanctions? Is that all on the table?

MS. PSAKI: I'm just not going to be in a position to detail it further from here. We'll see. We'll keep having this conversation over the coming days.

Q But you won't do nothing if China decides to provide military support?

MS. PSAKI: We've been clear there would be consequences.

Q And that you would -- you all would initiate?

MS. PSAKI: Yes.

Q Okay. And then, what's kind of your end -- thinking about what an endgame looks like, as far as these conversations with China, do you want them to shift their strategic priorities and not have a relationship with Russia that it does now? Or are you looking for something more modest?

MS. PSAKI: It's less about changing their mind and more about making clear with them what the consequences would be should they take additional actions to support this invasion.

MS. PSAKI: Go ahead.

Q On the additional \$200 million in security assistance --

MS. PSAKI: Yeah.

Q -- the President signed off on this past weekend, an official said that part of it would go to anti-armor and anti-aircraft systems. I know the Pentagon says it's still kind of in process right now. Are these -- are we talking about weapon systems that have already been delivered, or is there consideration of new types of weapon systems in this tranche of funding?

MS. PSAKI: It's a good question, Phil. My understanding -- and just to give you all more detail: This weekend, as I think you all saw it, we announced -- and I think this is why you're asking -- the President authorized an additional \$200 million of security assistance, which utilizes the maximum amount of funding available to provide Ukrainians with the type of weapons they are using so effectively.

It's really a continuity, as I understand it -- let me double check this for you -- of the type of weapons that they have been using very effectively on the ground to push back on Russia, both in the air and on the ground.

So that includes, as you -- as you noted, anti-armor, anti-tank, and air defense capabilities and ammunition of other types, and other types of assistance to address the armored, airborne, and other threats that they are facing.

But my understanding, Phil, is it's a continuation of the types of security assistance that we have been providing. And, of course, the President is looking forward to -- there's a significant amount of funding, as I think you all have noted, in the omnibus for Ukraine, which would enable us to provide even additional assistance to add to that package.

Q Okay. And then just a quick follow-up to one of Josh's questions. The Deputy Secretary of State this weekend said, quote, she'd seen some signs of "willingness to have real, serious negotiations." I think that differed a little bit from what we've heard from officials about the Russian posture up to this point.

Can you elaborate on what the signs may have been -- may have been seen in terms of giving the Deputy Secretary of State that view of things?

MS. PSAKI: Well, she also said that they would have to back any words with actions, essentially, which I think is an important context. Right?

They did have talks today. There have been reports that they will have additional talks. We've been very appreciative of the efforts of our allies -- France, Germany, Israel, and Turkey, and others -- to be participants in these talks at times or engage in these talks at times.

But, again, diplomacy requires both sides engaging in good faith and to deescalate. And what we're really looking for is specific delivery of actions.

I think it's important to remember that there have been five or six attempts to implement a humanitarian corridor. Those have not been effective. Those have not worked. You've seen, through video footage and others' reports, that those -- that has not been abided by. So that is where we are keeping our eye and focus.

Go ahead, Kelly.

Q Do you get a sense that as this conflict with Russia and Ukraine is happening, that other actors that are adversaries to the United States -- China, Iran, North Korea -- are also testing the West, with China's work with Russia, as you're dealing with that, perhaps with Taiwan; Iran with its rockets; North Korea also showing its provocative nature?

Is there a test of the West coming from some of the adversaries of the United States?

MS. PSAKI: We have not assessed those to be related, as you have said. I mean, if you look at the Iran -- the missile strike that we saw over the weekend, no U.S. facilities were hit, no personnel were harmed. We were not the targets of that.

We've obviously seen tests and information we put out publicly as it relates to North Korea. We've seen dozens of tests over the course of past administrations as well. So I would say we are not assessing it through those -- that prism.

Q Has the administration reached out to American companies that have property, infrastructure in Russia -- to expect that to be nationalized by Russia and to lose those assets in Russia?

MS. PSAKI: We have been, of course, engaged with U.S. companies -- not encouraging them; obviously, we've -- publicly applauding them. But they're going to make their own decisions as private sector companies.

We've also conveyed, as we did publicly, I think on Friday, that there would be -- we would certainly look to consequences should that happen.

Go ahead.

Q The former White House COVID Advisor, Andy Slavitt, has a Twitter thread today in which he talks about the

potential for an increase in COVID cases this spring. He says, "Based on European case increases, the U.S. could see a new rise in COVID cases..." Are you confident the administration has the real-time data it needs to provide the best information possible to the public?

MS. PSAKI: To pr -- to assess data?

Q Yes.

MS. PSAKI: Yes, we are. I would note that -- I did not see his tread -- his thread, but let me note -- and I'm not sure if it was related to the BA.2 variant. Was it related to the BA.2 variant?

Q Yes.

MS. PSAKI: Okay. What we do know about the BA.2 variant, which I think is important context for people, is that it's circulated in the United States for some time. We've been watching it closely, of course. We currently have about 35,000 cases in this country. We expect some fluctuation, especially at this relatively low level, and, certainly, that to increase.

I would also note that while BA.2 is more transmissi- -- is a more transmissible version of Omicron, the tools we have -- including mRNA vaccines, therapeutics, and tests -- are all effective tools against the virus. And we know because it's been in the country.

And so, as we're watching, and I think a lot of the reporting has been about, of course, the UK but also China. And China has a zero-tolerance policy, as you all know, but they also did not conduct their vaccination and booster campaigns with mRNA vaccine. So that is important context, too, as you're seeing the impact.

What I would note, just to go back to your earlier part of your question, is that we are still pressing -- the place where it is concerning is the fact that we need additional COVID funding. And we have talked about this -- we talked about this a little bit in the past, but -- last week -- all running together.

But -- but without COVID response resources and additional money, there could be immediate impacts on testing capacity; the uninsured fund, which offers coverage of testing and treatments for tens of millions of Americans who lack health insurance; and on our supply of monoclonal antibodies. And that means that some programs, if we don't get funding, could abruptly end or need to be pared back. And that could impact how we are able to respond to any variant, of course.

Q I do just want to ask you one more --

MS. PSAKI: Yeah.

Q -- quick question.

Q We noticed the President, when he came on stage today at the Marriott, had a mask on. Is that something he has been advised to do, or is that something he just feels more comfortable doing?

MS. PSAKI: Often he does that when it's required by a specific event, as he did when he went to Texas last week. I can certainly check on that. He was tested yesterday and tested negative.

Go ahead.

Q Thanks, Jen. So, on Ukraine, the President has made clear that he sort of has a red line with Russia, in terms of not wanting to do anything that would get into a direct confrontation or lead to World War Three, as he puts it.

I'm curious -- I know you're not sharing specifics, but in broad strokes, does he have a similar red line now with China

assisting Russia? And are -- is the -- does he not want to get into a direct confrontation with China? And are there certain things he's not willing to do because of that?

MS. PSAKI: Let me see if I can answer your question, but tell me if I'm not.

We don't like red lines around here, so I'm not going to use that phrasing. But you are obviously correct that what he is -- he's been very clear and consistent about his -- that he does not have the intention of sending U.S. troops to Ukraine. That has not changed.

I would look at -- while we are certainly watching closely the actions of China, whether -- whether that is support of any kind -- in support of any kind for Russia, and certainly there would be consequences to that -- I do think we look at it through a slightly different prism. I mean, Russia is invading Ukraine actively. So, I'm not -- but I'm not sure if I'm answering your question or not.

Q Well, sort of. Just to follow up, I mean -- right, no ground troops in Ukraine, but also, there have been other things, such as not enforcing a no-fly zone or not providing the fighter jets --

MS. PSAKI: Yeah.

Q -- that the President has been reluctant to do. So, again, you said you're not sharing specifics. You said Jake Sullivan said "significant consequences" for the Chinese. But I'm wondering if there are certain things that you will not consider because it could lead to a direct confrontation with China that you're reluctant to get into, the same way you are with Russia.

MS. PSAKI: I just think we look at it slightly differently. I mean, what I'm talking -- what we -- why the President has been so clear about not sending U.S. troops is obviously because that would be a military conflict. We're not fighting, obviously, in a -- there's no military conflict at this moment with China, nor do we -- nor are we predicting that. So I think we just -- it's slightly different.

Q And one just on a --

MS. PSAKI: Sure.

Q -- different topic. How high is the administration expecting gas prices to go? And how much -- is there a limit -- not a red line but a limit at what you think -- (laughter) -- the U.S. public can bear?

MS. PSAKI: Just flows off the tongue. (Laughs.) It's okay.

So it's a good question. We don't have -- I don't have a prediction from here, in terms of what it could look like. There are outside predictors, of course. And, obviously, what we're trying to do is mitigate the impact. You know, and you've seen, of course, you know, the price of oil go down a little bit. And the President will continue to look at a range of steps that he can take, whether it is engaging through his team, or through even himself personally, with big global producers, or it is looking at a range of domestic options.

But we've seen it go up. I mean, we look at a lot of the same data you look at -- AAA and other data -- that shows us how much it has gone up since the period of time when Russian troops lined up on the border.

But in terms of how far -- you know, we still believe it will continue to go up, but we're trying to take steps we can take to mitigate that and reduce it.

Go ahead, Mara.

Q Thank you. I understand you don't want to lay out what the severe consequences would be if Russia used chemical

Q I thank you. I understand you don't want to lay out what the severe consequences would be if Russia used chemical weapons, but I guess what I'm confused about is we know there's not going to be any U.S. troops, no jets, no no-fly zone. Other than the things you've already done, which you have already described as severe, could you give us some examples of what more you can do since you've ruled out all these things?

Just -- when you talk about severe consequences, what does that mean, given that we know what it doesn't mean?

MS. PSAKI: Sure. I --

Q Yeah.

MS. PSAKI: I understand your question. I'm just not going to outline that from here. Those are conversations that will happen -- continue to happen with our national security team and with our partners and allies around the world.

Q But what you're asking us to believe is that there are severe consequences that you haven't used yet but that are not on the "no" list?

MS. PSAKI: Correct.

Q Okay. But you won't tell us what kinds of things those might be?

MS. PSAKI: We're going to have those conversations privately through our national security team and with our partners around the world.

Q Okay. But -- but do you -- I guess what I'm wondering -- what about the argument that there just aren't any more severe consequences for you to use because most of the severe ones you've ruled out?

MS. PSAKI: That's inaccurate.

Q Okay.

MS. PSAKI: Go ahead.

Q Just on the Fed nominations --

MS. PSAKI: Yeah.

Q Nice try, Mara.

Q -- does the White House have any assurances from any Republican senators that they would support Sarah Bloom Raskin's nomination? And did Senator Manchin give the President or anyone in the administration a heads up about his opposition to her -- to her nomination? I'm trying to figure out if that was a surprise.

MS. PSAKI: Sure. I understand your question. We were aware of his position in advance of his -- of Senator Manchin's announcement. We are -- she is one of the most qualified individuals to ever be nominated to this position. And so where we are now is -- our focus is on continuing to work with Chairman -- Chairman Brown to garner bipartisan support. But I don't have anything to read out for you on that front at this point.

Q How did Senator Manchin make you aware that -- of his opposition? Was there a call to someone in the White House? Did the President know? What did that look like today?

MS. PSAKI: I'm just not going to detail more specifics.

Q Okay. And just one last question, if you don't mind.

MS. PSAKI: Yep.

Q How is the administration preparing to respond to the potential supplies chain shock -- excuse me -- posed by China's decision to lock down the tech production hub in Shenzhen?

MS. PSAKI: So we are, of course, monitoring this incredibly closely, and our team is quite focused on it. What I will say is that, because of the steps we've taken and a number of steps we've taken to better -- better prepare and strengthen the supply chain, you know, we -- we feel that that has helped us -- will help us sustain.

But in terms of -- right now, we're basically in the stage where we're monitoring with the State Department. What we're looking at is, of course, as you know, the impact on some of these ports around where -- the impacted areas of China.

And we know here that, of course, our Port Action Plan and the work of our Supply Chain Disruptions Task Force, that we have a strong inventory that we can rely on. It's about 90 percent of goods at groceries and drugstores are in stock currently. And we've also reduced the number of import containers sitting at the docks for over nine days by over 60 percent.

But in terms of specific impacts of ports in China, we're monitoring it, and we don't have a new assessment at this -- in addition -- up-to-date assessment, I should say, at this point in time.

Go ahead.

Q Thanks, Jen. Is it the U.S. assessment, just to be clear, that Russia is deliberately targeting civilians in Ukraine?

MS. PSAKI: Well, this is part of our assessment and review as we're looking at how we're -- whether we will designate as a war crime. And we look at this through a legal process internally. Obviously, the targeting of civilians -- and we have seen a range of very concerning video reports -- other would be categorized in that -- through that as -- in that phrasing, but we have a process that we're still working through here.

Q And then, last week at a briefing, you told us that us, as reporters, should, quote, "not focus a lot" of our conversations "about the future of the United States importing oil at this point...from Venezuela." Were you ruling out that the U.S. would import oil from Venezuela (inaudible)?

MS. PSAKI: I was saying it's not an active conversation at this time.

Go ahead.

Q Hi, thanks. Does the White House have any reaction to Ginni Thomas acknowledging that she attended the January 6th rally?

MS. PSAKI: I do not.

Q And just kind of on that: Does her attendance there raise any kind of concerns about the independence of the Supreme Court, potential conflicts of interest, anything like that?

MS. PSAKI: I just don't have any more comment on it at this point in time.

Go ahead.

Q Hi, Jen. For the second time in two weeks, a group of hundreds of Haitian migrants has landed by boat in the Florida

Q -- Hi, Jen. For the second time in two weeks, a group of hundreds of Haitian migrants has landed by boat in the Florida Keys. Given the surge we saw last year in Del Rio of Haitian migration, what is the administration's reaction to these landings? Are there any plans to send any assistance either to Haiti or Florida?

MS. PSAKI: I'm sure we can get you an update on the humanitarian assistance we provide directly to Haiti. We are the largest, if not one of the largest, providers of humanitarian assistance in the world. In terms of the individuals arriving, I think in Florida, as you said --

Q Yeah, the Florida Keys.

MS. PSAKI: -- I would really point you to the Department of Homeland Security. We are still applying Title 42, and so that applies no matter which country you're coming from.

Go ahead.

Q Hi, yeah. The President of Colombia said last week that he had offered President Biden the possibility of supplying more Colombian oil to the U.S. as an alternative to Venezuelan oil. Is that an option that the White House is considering?

MS. PSAKI: We are continuing to talk to a range of producers on the importance of maintaining global supply. This is not, as you know, about just the supply in the U.S. but about ensuring there is supply for the global market. And we do appreciate our partnership with Colombia. And President Biden did discuss a range of issues like economic recovery, energy security during their conversation. But beyond that, I don't have an update on what that might look like.

Q Would you say that it is under active consideration as --

MS. PSAKI: Again, they had a -- they had a wide-ranging conversation, a very constructive conversation. This is really about supply in the global markets. But I don't have an update at this point in time.

Q Yeah. And as a follow-up, Chevron is preparing to take operating control of its joint ventures in Venezuela -- Reuters just reported that -- in case the U.S. would grant them a special license to operate. Is that something that's on the table?

MS. PSAKI: I think I just answered it a few minutes ago.

Go ahead. Go ahead.

Q Oh, yeah. Thanks, Jen. You said earlier in the press briefing that nothing has been decided about President Biden traveling to Europe." Can you confirm that such a trip is under consideration?

MS. PSAKI: We discuss a range of ways and mechanics for engaging with our friends and partners around the world, but I don't have any more specifics for you at this point in time.

Q Okay. And this morning, Leader Schumer and Speaker Pelosi announced that Zelenskyy -- President Zelenskyy of Ukraine --

MS. PSAKI: Yeah.

Q -- will be delivering an address to the full House and Senate on Wednesday morning. What's the White House reaction to this address? Are there any concerns that the White House has about the Ukrainian President speaking directly with Congress as opposed to the White House on its various positions and requests?

MS. PSAKI: We speak frequently with President Zelenskyy. The President spoke with him -- had a lengthy conversation with him directly on Friday, and we're in touch with Ukrainian government officials nearly every day -- not every day.

We certainly support leaders in Congress inviting him to address a joint session. And I would again reiterate that there's strong, bipartisan support for Ukraine, for the leadership, and the bravery of President Zelenskyy. And we'll all look forward to watching his speech on Wednesday.

Q And then, finally, on Sarah Bloom Raskin and Senator Manchin's announcement that he doesn't support her confirmation: Does the White House still see a path to getting her confirmed in the evenly divided Senate?

MS. PSAKI: We are going to continue our work with Chairman Brown to garner bipartisan support. But again, she is one of the most qualified individuals ever to be nominated to this position. So that's where our focus is.

Q So you are pushing her forward still and --

MS. PSAKI: Yes.

Q -- and believe that you can get her --

MS. PSAKI: Yes.

Q -- confirmed? Okay.

MS. PSAKI: That is where our focus is. We wouldn't be pushing for bipartisan support if she wasn't still our nominee.

Go ahead.

Q Thanks, Jen. Two questions on WNBA star Brittney Griner. Last week you had said you couldn't comment on the case. Is there any update you can give now on the efforts the administration may be taking to secure her release?

MS. PSAKI: We do not have a Privacy Act waiver.

Q Okay. And does the White House have any reason to believe that Griner is being used as a political pawn by the Russian government? Or does the administration see this strictly as part of the Russian criminal justice system?

MS. PSAKI: We just can't speak any more to the reports of this case.

Go ahead.

Q Hey, Jen. Thank you very much, Jen.

MS. PSAKI: I'll come back to you. Go ahead.

Q Thank you. On the possible trip to Europe: Is President Biden considering visiting, maybe, perhaps the Ukrainian border and visit refugees -- Ukrainian refugees -- like other foreign leaders are doing? Is this something you'd like to do?

MS. PSAKI: I just don't have anything more on the reports. Again, we have a range of conversations with our NATO partners and European allies about the next steps in diplomacy, but I don't have anything to confirm for you in terms of the report.

Q And just one more.

MS. PSAKI: Yeah.

Q Not just China but some of the biggest countries in the world, like India or Brazil, some countries in Latin America like Mexico, they're not part of this economic war -- warfare against Russia. Is this something that undermine the efforts from this White House and European countries?

MS. PSAKI: I would say it doesn't undermine our efforts. We've been working to build a global coalition far beyond the G7 and our NATO partners, and had a great deal of success in that. And every country has to decide where they want to stand, where they want to be as we look and the history books are written.

Go ahead.

Q And you believe the --

MS. PSAKI: I think we've got to move on. We've got to get around.

Q Just very quickly.

MS. PSAKI: Okay.

Q Do you just believe this economic pressure will stop Vladimir Putin from his invasion?

MS. PSAKI: Well, I think as we've seen, the impact of the President's leadership on the global stage and the economic consequences that have been put into place have led Russia and the Russian economy to be on the brink of collapse. And there's no question that, over time, that will have an impact.

Go ahead.

Q Oh, actually -- thank you. Furthering that point, you did mention at the top of this briefing that there has been no action on the part of Putin to stop the onslaught; you haven't seen any action.

MS. PSAKI: Mm-hmm.

Q And that is after, again, all of these severe economic sanctions have been levied. And so, you know, I'm wondering why the administration thinks that this threat of further severe action that is vague, that is unnamed will deter him from using chemical weapons.

MS. PSAKI: Well, I think the reason that we spoke out last week about chemical weapons is because we felt that it was important for the global community to understand that they had the capacity, the capabilities, and that they have used them in the past. And at the same time, they were accusing, inaccurately -- they were spreading false information about the U.S. and the Ukrainians' intentions. That was the origin of why we were so outspoken last week.

So, this is more about us making clear to the world what we've seen as patterns in the past and what their capabilities and capacities are.

Go ahead.

Q Thank you, Jen. President Biden has repeatedly said, "No U.S. troops inside Ukraine."

MS. PSAKI: Mm-hmm.

Q Are there any U.S. troops still training Ukrainians outside Ukraine? And if not, could that be a thing, as we move forward, if this turns into (inaudible)?

MS. PSAKI: You mean in neighboring countries?

Q Yeah, like bases outside Ukraine. And if it becomes a long-term conflict, as obviously many predict, would that be a thing the United States does?

MS. PSAKI: Let -- let me check with the Department of Defense. We obviously had trainers on the ground for a period of time. We hadn't -- then we pulled them back. We obviously have a significant military presence in a range of countries in the region, but I can see if there's anything that we are looking ahead to.

Q That wouldn't be considered an escalatory type of thing? You know, a bit like the MiGs, which got complicated because no one knew kind of how to get them to the Ukrainians. Like, if you had Ukrainian soldiers going into Poland --

MS. PSAKI: Sure.

Q -- being trained by U.S. troops to go back and fight Russians.

MS. PSAKI: I mean, I think, really, our focus right now is on providing them and continuing to expedite the military assistance to them. And the good news is that we still -- through our coordination with them and our NATO Allies, we're able to get them that assistance on the ground. They're actively fighting now, so that's where our focus really is at this point in time.

Go ahead.

Q Yeah, on the Federal Reserve: Would the administration then support the four nominees, who seem to have the votes to be confirmed, to go forward and deal with the Raskin nominee after?

MS. PSAKI: Well, there's enough support to move all five nominees through the committee. So we think the Republicans should show up so that they can vote them through the committee.

Q And on -- one last thing. The fact that China is in the conversation about helping Russia, should U.S. companies then look at maybe decoupling from China with their investments there and be cautious? What's the message that you have? Can you trust the Chinese?

MS. PSAKI: I don't think it's about trust, but we have not made an ask or a request at this point of that.

Go ahead.

Q Jen, thank you. At the Democratic retreat in Philadelphia last week, some of my colleagues were hearing a lot from Democratic lawmakers who want the President to do more by executive action, whether it's on immigration or whether it is on some of the other priorities of the administration. Did he have any conversations with the members there about possible further executive actions? And is there anything else -- I think you're hearing from the members in those meetings with the Black Caucus and other members of Congress in the last week or two -- that may be coming forward?

MS. PSAKI: Well, I would say all of these members can speak for themselves on what they're interested in and what they're requesting from the President and from this administration.

We have a range of executive authorities -- the President does, I should say, has a range of executive authorities. I think there have been some reports about some that are under consideration, including one on policing, which we have talked about a bit in the past.

So, sure, we still continue to consider what steps we can take through executive actions, even as we work with Congress to see what we can move through there as well.

Q And I take it that there's no update beyond the legal review continuing on the student loan question.

MS. PSAKI: I don't have an update at this point in time. No.

Go ahead in the back. Go ahead.

Q Thank you. Me?

MS. PSAKI: Okay. And then I'll go to your friend next to you.

Q Thank you very much. On North Korea, it is reported that the North Koreans' ICBM launch is imminent. Do you have anything on the North Korea's imminent launch (inaudible) ICBM?

MS. PSAKI: I don't have anything on that report. I've not seen that report. What I can tell you is that, you know, as you know, last week, we proactively decided to reveal information publicly about recent tests and share it with allies and partners as well as Congress.

We have seen North Korea escalate its testing in different periods over the last four presidents. And this time, North Korea hid these tests, unlike the fanfare over past tests.

But I don't have anything to predict in terms of the future.

I said I'd go to -- go ahead.

Q Japan and some of the other treaty countries are increasingly alarmed after Afghanistan and this recent situation. Could you let the Japanese government know that the Security Treaty will be honored?

And then second, for those of us that were embedded during the war, the whole situation with Afghanistan is quite personal. There's a large number of our people that helped us that are still left. Could you just update us on -- almost six months -- whether they'll be able to come back?

MS. PSAKI: Well, I would say on the second part, that that is one of the reasons that we've worked so closely with our Qatari -- with the Qataris to maintain a diplomatic presence there so that we continue to engage with neighboring countries to bring people home and help some of our partners and allies who stood by our side, fought by our side over the course of the 20-year war. That's ongoing.

In terms of the numbers, I would point you to the State Department who would have the most up-to-date numbers.

I'm not sure I understand your first question.

Q Well, just a reassurance to Japan and a lot of the countries that have treaties with us that are worried -- you know, if a situation like this develops, if those treaties are going to be honored.

MS. PSAKI: Which situation? How would it relate to Japan?

Q Well, Afghanistan is a long partner of ours. And so, you know, the whole situation that's happening now -- Taiwan -- there's a great concern that if you have a treaty and it comes to a difficult situation, whether it's really going to be honored.

MS. PSAKI: We've never stepped back from the commitments we've made under the Taiwan Relations Act. And the President stands by those.

Go ahead, James.

Q Thank you very much, Jen. Two questions on Russia/Ukraine. Prior to February 24, the President, our NATO Allies, and the EU were embarked on a deterrence project. That's exactly the word that you and other senior U.S. officials used at the time.

Quite clearly, the invasion was launched on the 24th of February. And so we can say, as a factual matter, that that deterrence project failed. Is it the view of the White House that Mr. Putin could not be deterred by any set of steps? Or are you willing to concede that perhaps some other set of steps by the President and our allies might have deterred the invasion?

MS. PSAKI: You know, James, I would say that when we put in place the threat of sanctions and the threat of consequences, we never thought that that would be failproof or that would be 100 percent effective. We did that because we wanted to lay out the clear consequences should President Putin proceed in invading Ukraine, even as we predicted, quite consistently, that that was very much his intention.

And what we have done since that point in time is implement those sanctions and implement those consequences, far beyond what I think most people's expectations were in the world about what those would look like.

I don't think it's -- I don't think I can look in a rearview mirror, or any of us can, and predict what would have been different. What we did is we took steps to rally the world to stand up to the aggressions of President Putin. And we have implemented them and followed up on what we committed to since that point in time.

Q One key decision made by the President early on was to remove strategic ambiguity from this equation. Never really was Mr. Putin forced to wonder what consequences he would face. He was told at the outset he would never face military intervention by the United States and NATO, that the full range of the punishments he would face would amount to diplomatic and economic sanctions.

I think a lot of people wonder why a greater effort wasn't made to leave Mr. Putin in doubt about the consequences he might face.

MS. PSAKI: Because the President is the President of the United States of America, and he felt it was important to be clear with the American people about what his intentions were and what they were not.

And his intentions were not to send men and women, their sons and daughters to fight a war in Ukraine against Russia.

Go ahead.

Q Thank you. On Iran.

MS. PSAKI: Okay, I'll do bo- -- go ahead. Ladies first. Okay, go ahead.

Q Thank you. On Iran: The Iran talks appeared to have stalled amid some last-minute demands by Russia. Are the Iran talks dead? And if not, what now?

MS. PSAKI: Well, right now, the negotiators are back home in their capitals. We'll see what happens in the days ahead with diplomacy around the deal.

We continue to believe that, you know, obviously, a diplomatic path forward is the best path forward. But this is a natural part of the process. It is also standard for the most difficult parts of the conversation -- negotiations to be happening at the end.

Q And then, just on Ukraine: South African President Cyril Ramaphosa says he's been asked to mediate between Russia and Ukraine. Would the White House support that, endorse that, in any way assist with that, especially since the African model kind of tends towards, like, restorative justice, truth, and reconciliation instead of, you know, traditional justice?

MS. PSAKI: I'm happy to check with our national security team on his role.

What I can tell you is that there have been a half a dozen global leaders who have been meeting with both the Russians and the Ukrainians and engaging, of course, directly through diplomatic channels and trying to come to a diplomatic conclusion here.

We have been engaged directly with them on the front end and back end of those conversations, and encourage them to also make sure they are engaging with the Ukrainians and not just the Russians.

But I will check if there's any specific --

Q (Inaudible) South Africans about this offer (inaudible)?

MS. PSAKI: I'm happy to check specifically. But again, there's a range of countries that are already playing this role. So --

Go ahead. In the -- go ahead.

Q With the COVID -- thank you, by the way.

MS. PSAKI: Sure.

Q With COVID funds falling off the omnibus --

MS. PSAKI: Yeah.

Q -- and it may take a bit -- you know, if Congress kind of (inaudible) get done -- has the White House ask changed at all? Have they come back to, you know, lawmakers and said, "Hey, while it's going to take a while, you know, we need more," or it's in a different place? I'm just curious how that --

MS. PSAKI: You mean in terms of asking for less money or something like that? Or --

Q Or more?

MS. PSAKI: Or more money. Yeah.

Q You know, my question is: What is the timing -- and does the timing change the needs of the White House?

MS. PSAKI: Well, the time -- I mean, we're asking for money to meet exactly the needs that are going to start to come up soon in the coming -- in the coming weeks even, and in supporting a number of the programs that have been pivotal to people across this country, especially people who are uninsured, people who are relying on access to free treatments, testing, vaccines.

Obviously, these are programs that it's not only in the United -- in the U.S. government's interest to continue, but it's in the interest of the American people, especially people who don't have the resources to cover and pay for a lot of these different treatments.

We had originally -- we had requested \$22.5 billion, I think you're aware, for immediate and urgent COVID response needs

because that is the funding we felt we needed. That does not mean it would cover the needs in -- forever. That would just be the needs we have at this moment in time.

So these conversations are still ongoing with leaders in Congress. We are -- but we want to be very clear about the fact that some of these programs could abruptly end and be pared back without additional funding.

Q A real quick follow-up. Just -- you mentioned the uninsured, about the HRSA program that reimburses from uninsured funds. You guys previously said that would end this month. Is that timeline still there? I mean, is that --

MS. PSAKI: You mean if we don't have funding?

Q Yeah. Is it still the end of the month they shut that down?

MS. PSAKI: A lot of these programs could end quite abruptly. So, it could. But I will check and see if that specific one would.

Go ahead.

Q Jen, real quick on Title 42 -- two related questions.

MS. PSAKI: Yeah.

Q One of them: Democratic senators and congresspeople and activists are criticizing the President. During the campaign, he said that this Trump-era policy was inhumane, yet he's keeping it, even though the country is opening again. But then, a few days back, the CDC decided to let unaccompanied minors in. So the fear is that this is going to make a lot of parents just send their children by themselves and lead to another humanitarian tragedy at the border.

MS. PSAKI: Well, I would say, first -- I mean, as you've noted, the CDC makes determinations about Title 42. I think, as it relates to the recent decision, I'd have to talk to the Department of Homeland Security specifically about that and how they're applying it or implementing it.

As you know, our intention is certainly not to put more children at da- -- in danger or put them -- incentivize parents sending kids on a journey that's treacherous and dangerous across the border.

But the President -- you know, he is implementing this because we are still in the middle of a public health crisis. That continues to be the case, as ~~designed~~ [designated] by the CDC.

Q But he still plans to reopen the border and make more humane policy, like he promised?

MS. PSAKI: That is -- that is what he proposed on his first day in office. And we are very supportive of the efforts in the Senate to do exactly that.

And just because it's not done yet, it doesn't mean that we aren't going to stay at the fight to get exactly that accomplished and done.

Q Jen, is there any reason why you have not condemned racism against Africans in Ukraine? I understand that Ukrainians are the victims here; they are being bombed by Russia, and they are being killed. But a lot of Africans, they are facing racism. I know you are providing a lot of financial assistance to Poland and to Ukraine, but Africans there are being banned from even entering Poland. Why have you not officially -- the White House -- issued a statement condemning racism against Africans in Ukraine?

MS. PSAKI: We have, and I believe the State Department has. But we have spoken out against that and expressed

concern about any reports of discrimination or -- at the border.

Q And then finally, if I may: I'm trying to understand where you're trying -- your endgame in Ukraine. You're not going there. You're not sending troops there. There will be no fly -- no no-fly zone over Ukraine. And are you -- will it be a fair assessment to say that you are pushing these guys to commit suicide, knowing that Russia has a superpower and, eventually, it will capture the main cities, Kyiv and Kharkiv, and other these cities around there? What's the endgame?

MS. PSAKI: Well, the endgame is really a question for President Putin. We have -- we have completely crushed his economy. We have provided military assistance, humanitarian assistance to the Ukrainians, enabling them to fight back for far longer than the Russian leadership anticipated.

And, again, he has to -- he has to determine what the path forward looks for -- like for him.

Thanks, everyone.

Q Jen, can you confirm or deny the rumors that there are Russian hit squads in Kyiv going after journalists?

MS. PSAKI: I don't have any details on that for you.

Q But you've heard of it?

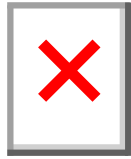
MS. PSAKI: I can see if there's more.

4:10 P.M. EDT

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FOR IMMEDIATE RELEASE

March 14, 2022

Press Briefing by Press Secretary Jen Psaki, March 14, 2022

James S. Brady Press Briefing Room

3:25 P.M. EDT

MS. PSAKI: Hi, everyone.

Q Hello. Good to see you.

MS. PSAKI: Good to see you. Okay, I have nothing at the top for you.

Josh, what is on your mind?

Q Thanks, Jen. Two questions. First, after the Rome meeting, since the war began, has China provided any military or economic aid to Russia or expressed any specific intentions to do so?

MS. PSAKI: I'm not in a position to confirm or detail any intelligence from here at this point in time.

Q Okay. Moving on to the Russia-Ukraine talks: What does the U.S. see that would be a sign for optimism that some kind of ceasefire could be reached? And which carrots and which sticks do you think Putin is most responding to, if that's the case --

MS. PSAKI: Sure.

Q -- most likely to respond to?

MS. PSAKI: Sure. Well, as you've heard us say in the past, we certainly will continue to support the Ukrainian participation in these talks and conversations as long as they choose to continue to participate in them, of course. And we are trying to boost them by providing a range of not just economic and humanitarian assistance, but military assistance that we believe strengthens -- strengthens -- strengthens -- excuse me -- their positions in these talks.

Our view continues to be that, despite words that are said in these talks or coming out of these talks, diplomacy requires engaging in good faith to de-escalate. And what we're really looking for is evidence of that. And we're not seeing any evidence, at this point, that President Putin is doing anything to stop the onslaught or de-escalate. But that is really what we would be looking for.

Go ahead.

Q Thank you, Jen. To follow up on the Rome meeting, what are the consequences for China if they do aid Russia?

MS. PSAKI: Well, I'm not going to get into specific consequences. I think what we have conveyed and what was conveyed by our National Security Advisor in this meeting is that should they provide military or other assistance that, of course, violates sanctions or supports the war effort, that there will be significant consequences.

But in terms of what the specifics look like, we would coordinate with our partners and allies to make that determination.

Q Okay. But Jake Sullivan certainly communicated that there would be consequences?

MS. PSAKI: Yes, as we have also said publicly a number of times.

Q Okay. And then, is there anything you can share about the President's potential meeting -- potential trip to Europe in the next couple of weeks? Who he might be meeting with and really what the point would be of going to Europe?

MS. PSAKI: Sure. Well, we are, of course, closely engaged with our NATO partners and European allies, as you heard us say a number of times, about the next steps in diplomacy, whether that's providing additional humanitarian or security assistance or the mechanics for future conversations.

But there's not been any final decision about a trip, so I don't have anything to preview about what that would look like if he were to take a trip.

Q Okay. Thanks, Jen.

MS. PSAKI: Go ahead.

Q Thanks, Jen. The President said back in February that the U.S. would respond forcefully if Americans were targeted in Ukraine. Brent Renaud was killed over the weekend. One of my colleagues was injured today. We're still waiting to hear if he's okay. So what is that response going to look like?

MS. PSAKI: Well, let me first say: Your colleague, Benjamin Hall -- I know there's not final reports yet or we would wait for your news organization to confirm those -- but our thoughts, the President's thoughts, our administration's thoughts are with him, his family, and all of you at Fox News as well.

In terms of specific actions, I think you have seen the President lead the world in taking -- putting in place consequence -- consequences, putting in place repercussions and steps in response to the actions of Russia -- the brutal actions that have certainly impacted Ukrainian people and now have certainly impacted some Americans.

But in terms of next steps or what the next consequence would be, I don't have anything to preview for you at this point in time.

Q But we've seen the President been, so far, unwilling to draw a red line on the kinds of atrocities that we're going to watch from the sidelines. We've seen maternity wards being bombed, illegal weapons being used, pediatric hospitals being targeted.

President Obama drew the red line for Syria at chemical weapons. So is there any thought process about what we're willing to watch happen before there's --

MS. PSAKI: Well, Jacqui, I think it's important to reiterate as often as we can that what we're seeing is horrific, what we're seeing is barbaric. And the steps that the President has taken and led the world in taking have essentially led the Russian financial system to be on the brink of collapse. We have provided more military assistance to the Ukrainian military and the Ukrainian government than any other country in the world and more historic assistance than any other year to Ukraine in history. And we're doing that so that we can support them in this difficult moment.

So I would say that, at this moment in time, we have been hardly on the sidelines. We have been leading this effort around the world to respond to every step and every escalatory step that President Putin and the Russians are taking.

Q But isn't there a concern that if we don't draw the line at something like chemical weapons, that it'll make it easier for malign actors to use them in the future, because they'll just go unpunished?

MS. PSAKI: Well, Jacqui, I think that you heard the President say on Friday that there would be severe consequences and the world would respond if they were to use chemical weapons.

And what we have been doing over the course of the last several weeks, if not months, is providing as much information to the global community, to the media, and to others about what to expect.

And when you have President Putin suggesting -- and Russian -- Russian officials suggesting that the United States and Ukrainians are the ones who are working on a chemical weapons program, it's clear that this is a pattern that we've seen in the past of them trying to set up a predicate for their own actions.

Q But what does -- what does that end up looking like if the world responds? Because so far, we've heard the President talk a lot about what the U.S. is not going to do, in terms of, you know, not wanting to trigger war with a nuclear power. But do we believe that Putin is, you know, a rational kind of person who, you know, would pay attention to something like that? I mean, he didn't need provocation to, you know, invade Ukraine. Why wouldn't we think that he would just create a pretext that is fabricated for something like that?

MS. PSAKI: We do. That's why we've talked about it.

And I think, Jacqui, what's important here is -- and then I'm just going to move on to get to more people -- is that for any President, you have to weigh how you can lead the world, how you can make very clear that actions are horrific, that they are not acceptable, they're not aligned with global norms, while also thinking about our own national security interests. And starting World War Three is certainly not in our national security interests. Putting U.S. troops on the ground in Ukraine to fight a war with Russia is not in our national security interests.

Go ahead.

Q I do have one -- one quick --

MS. PSAKI: I just have to move on because I -- otherwise I'm not going to get to other people.

Go ahead.

Q It's a follow-up to what you had said though about misinformation and Twitter.

MS. PSAKI: Yeah.

Q Because, last year, the President worked with Twitter specifically to address misinformation on vaccines, called it a "wartime effort." Has there been any conversations with Twitter to address misinformation as it pertains to chemical attacks and that kind of thing, given that the -- you know, Russia has banned this platform within the country and they're using it to, obviously, target eyes outside of the country, including within the U.S., to spread propaganda and misinformation?

MS. PSAKI: We were the ones who told you all about that.

I agree. I don't have anything to read out for you in terms of private conversations with Twitter or any other social platform. But I'm happy to check and see if there's more.

Go ahead.

Q Back on the Rome talks. Have you seen any -- or did you -- your colleagues see in this meeting any sign that China got the message, that they are going to heed your warnings?

MS. PSAKI: Well, what we're going to be watching closely, of course, is actions. So beyond that, I think, as my colleagues just -- just read out for you in a call that we delayed the briefing slightly to make sure you could all participate in: It was an intense seven-hour session reflecting the gravity of the moment. And it was an opportunity to be very clear about what you've heard our National Security Advisor convey publicly but more directly about what the consequences would be.

Q And, you know, your colleagues have said that your deep concerns were conveyed about what would happen if China were to align more closely with Russia. Just, big picture: If China does not heed the U.S.'s warnings, if they do move forward with this, how concerned are you that this is inching closer to the world war that the President has been warning of?

MS. PSAKI: Well, I think what we're looking at here -- one is: If China were to decide to be an economic provider, or to take additional steps, there to Russia, they only make up 15 percent or 20 -- 15 to 20 percent of the world's economy. The G7 countries make up more than 50 percent. So there are a range of tools at our disposal in coordination with our European partners should we need to use them.

But, again, we are -- don't have anything to update you on in terms of an assessment. This is obviously an area we're watching closely.

While this meeting has been planned for some time as a follow-up from the November call that pres- -- the President had with President Xi, it was a timely -- an important moment to have this conversation, especially given the reports we've seen and -- and the invasion, of course, of Ukraine.

Go ahead. Oh, one more? Go ahead..

Q Just one quick follow-up, actually, to Jacqui's questions --

MS. PSAKI: Sure.

Q -- about chemical weapons. You know, the President, as you noted, said on Friday that Russia would pay a severe price. What would that price look like? Are we talking in the realm of more sanctions? Can you give us sort of any big

picture about what that would entail?

MS. PSAKI: That would be a conversation that we would have with our partners around the world.

But there's no question if Russia were to decide to use chemical weapons, there would be a severe reaction from the global community.

Go ahead.

Q So when you talk about, kind of, the possibilities for China if they don't go along with what you've asked, would you say, like you've said with Russia, that "everything is on the table," including ending trade negotiations, sanctions? Is that all on the table?

MS. PSAKI: I'm just not going to be in a position to detail it further from here. We'll see. We'll keep having this conversation over the coming days.

Q But you won't do nothing if China decides to provide military support?

MS. PSAKI: We've been clear there would be consequences.

Q And that you would -- you all would initiate?

MS. PSAKI: Yes.

Q Okay. And then, what's kind of your end -- thinking about what an endgame looks like, as far as these conversations with China, do you want them to shift their strategic priorities and not have a relationship with Russia that it does now? Or are you looking for something more modest?

MS. PSAKI: It's less about changing their mind and more about making clear with them what the consequences would be should they take additional actions to support this invasion.

MS. PSAKI: Go ahead.

Q On the additional \$200 million in security assistance --

MS. PSAKI: Yeah.

Q -- the President signed off on this past weekend, an official said that part of it would go to anti-armor and anti-aircraft systems. I know the Pentagon says it's still kind of in process right now. Are these -- are we talking about weapon systems that have already been delivered, or is there consideration of new types of weapon systems in this tranche of funding?

MS. PSAKI: It's a good question, Phil. My understanding -- and just to give you all more detail: This weekend, as I think you all saw it, we announced -- and I think this is why you're asking -- the President authorized an additional \$200 million of security assistance, which utilizes the maximum amount of funding available to provide Ukrainians with the type of weapons they are using so effectively.

It's really a continuity, as I understand it -- let me double check this for you -- of the type of weapons that they have been using very effectively on the ground to push back on Russia, both in the air and on the ground.

So that includes, as you -- as you noted, anti-armor, anti-tank, and air defense capabilities and ammunition of other types, and other types of assistance to address the armored, airborne, and other threats that they are facing.

But my understanding, Phil, is it's a continuation of the types of security assistance that we have been providing. And, of course, the President is looking forward to -- there's a significant amount of funding, as I think you all have noted, in the omnibus for Ukraine, which would enable us to provide even additional assistance to add to that package.

Q Okay. And then just a quick follow-up to one of Josh's questions. The Deputy Secretary of State this weekend said, quote, she'd seen some signs of "willingness to have real, serious negotiations." I think that differed a little bit from what we've heard from officials about the Russian posture up to this point.

Can you elaborate on what the signs may have been -- may have been seen in terms of giving the Deputy Secretary of State that view of things?

MS. PSAKI: Well, she also said that they would have to back any words with actions, essentially, which I think is an important context. Right?

They did have talks today. There have been reports that they will have additional talks. We've been very appreciative of the efforts of our allies -- France, Germany, Israel, and Turkey, and others -- to be participants in these talks at times or engage in these talks at times.

But, again, diplomacy requires both sides engaging in good faith and to deescalate. And what we're really looking for is specific delivery of actions.

I think it's important to remember that there have been five or six attempts to implement a humanitarian corridor. Those have not been effective. Those have not worked. You've seen, through video footage and others' reports, that those -- that has not been abided by. So that is where we are keeping our eye and focus.

Go ahead, Kelly.

Q Do you get a sense that as this conflict with Russia and Ukraine is happening, that other actors that are adversaries to the United States -- China, Iran, North Korea -- are also testing the West, with China's work with Russia, as you're dealing with that, perhaps with Taiwan; Iran with its rockets; North Korea also showing its provocative nature?

Is there a test of the West coming from some of the adversaries of the United States?

MS. PSAKI: We have not assessed those to be related, as you have said. I mean, if you look at the Iran -- the missile strike that we saw over the weekend, no U.S. facilities were hit, no personnel were harmed. We were not the targets of that.

We've obviously seen tests and information we put out publicly as it relates to North Korea. We've seen dozens of tests over the course of past administrations as well. So I would say we are not assessing it through those -- that prism.

Q Has the administration reached out to American companies that have property, infrastructure in Russia -- to expect that to be nationalized by Russia and to lose those assets in Russia?

MS. PSAKI: We have been, of course, engaged with U.S. companies -- not encouraging them; obviously, we've -- publicly applauding them. But they're going to make their own decisions as private sector companies.

We've also conveyed, as we did publicly, I think on Friday, that there would be -- we would certainly look to consequences should that happen.

Go ahead.

Q The former White House COVID Advisor, Andy Slavitt, has a Twitter thread today in which he talks about the

potential for an increase in COVID cases this spring. He says, "Based on European case increases, the U.S. could see a new rise in COVID cases..." Are you confident the administration has the real-time data it needs to provide the best information possible to the public?

MS. PSAKI: To pr -- to assess data?

Q Yes.

MS. PSAKI: Yes, we are. I would note that -- I did not see his tread -- his thread, but let me note -- and I'm not sure if it was related to the BA.2 variant. Was it related to the BA.2 variant?

Q Yes.

MS. PSAKI: Okay. What we do know about the BA.2 variant, which I think is important context for people, is that it's circulated in the United States for some time. We've been watching it closely, of course. We currently have about 35,000 cases in this country. We expect some fluctuation, especially at this relatively low level, and, certainly, that to increase.

I would also note that while BA.2 is more transmissi- -- is a more transmissible version of Omicron, the tools we have -- including mRNA vaccines, therapeutics, and tests -- are all effective tools against the virus. And we know because it's been in the country.

And so, as we're watching, and I think a lot of the reporting has been about, of course, the UK but also China. And China has a zero-tolerance policy, as you all know, but they also did not conduct their vaccination and booster campaigns with mRNA vaccine. So that is important context, too, as you're seeing the impact.

What I would note, just to go back to your earlier part of your question, is that we are still pressing -- the place where it is concerning is the fact that we need additional COVID funding. And we have talked about this -- we talked about this a little bit in the past, but -- last week -- all running together.

But -- but without COVID response resources and additional money, there could be immediate impacts on testing capacity; the uninsured fund, which offers coverage of testing and treatments for tens of millions of Americans who lack health insurance; and on our supply of monoclonal antibodies. And that means that some programs, if we don't get funding, could abruptly end or need to be pared back. And that could impact how we are able to respond to any variant, of course.

Q I do just want to ask you one more --

MS. PSAKI: Yeah.

Q -- quick question.

Q We noticed the President, when he came on stage today at the Marriott, had a mask on. Is that something he has been advised to do, or is that something he just feels more comfortable doing?

MS. PSAKI: Often he does that when it's required by a specific event, as he did when he went to Texas last week. I can certainly check on that. He was tested yesterday and tested negative.

Go ahead.

Q Thanks, Jen. So, on Ukraine, the President has made clear that he sort of has a red line with Russia, in terms of not wanting to do anything that would get into a direct confrontation or lead to World War Three, as he puts it.

I'm curious -- I know you're not sharing specifics, but in broad strokes, does he have a similar red line now with China

assisting Russia? And are -- is the -- does he not want to get into a direct confrontation with China? And are there certain things he's not willing to do because of that?

MS. PSAKI: Let me see if I can answer your question, but tell me if I'm not.

We don't like red lines around here, so I'm not going to use that phrasing. But you are obviously correct that what he is -- he's been very clear and consistent about his -- that he does not have the intention of sending U.S. troops to Ukraine. That has not changed.

I would look at -- while we are certainly watching closely the actions of China, whether -- whether that is support of any kind -- in support of any kind for Russia, and certainly there would be consequences to that -- I do think we look at it through a slightly different prism. I mean, Russia is invading Ukraine actively. So, I'm not -- but I'm not sure if I'm answering your question or not.

Q Well, sort of. Just to follow up, I mean -- right, no ground troops in Ukraine, but also, there have been other things, such as not enforcing a no-fly zone or not providing the fighter jets --

MS. PSAKI: Yeah.

Q -- that the President has been reluctant to do. So, again, you said you're not sharing specifics. You said Jake Sullivan said "significant consequences" for the Chinese. But I'm wondering if there are certain things that you will not consider because it could lead to a direct confrontation with China that you're reluctant to get into, the same way you are with Russia.

MS. PSAKI: I just think we look at it slightly differently. I mean, what I'm talking -- what we -- why the President has been so clear about not sending U.S. troops is obviously because that would be a military conflict. We're not fighting, obviously, in a -- there's no military conflict at this moment with China, nor do we -- nor are we predicting that. So I think we just -- it's slightly different.

Q And one just on a --

MS. PSAKI: Sure.

Q -- different topic. How high is the administration expecting gas prices to go? And how much -- is there a limit -- not a red line but a limit at what you think -- (laughter) -- the U.S. public can bear?

MS. PSAKI: Just flows off the tongue. (Laughs.) It's okay.

So it's a good question. We don't have -- I don't have a prediction from here, in terms of what it could look like. There are outside predictors, of course. And, obviously, what we're trying to do is mitigate the impact. You know, and you've seen, of course, you know, the price of oil go down a little bit. And the President will continue to look at a range of steps that he can take, whether it is engaging through his team, or through even himself personally, with big global producers, or it is looking at a range of domestic options.

But we've seen it go up. I mean, we look at a lot of the same data you look at -- AAA and other data -- that shows us how much it has gone up since the period of time when Russian troops lined up on the border.

But in terms of how far -- you know, we still believe it will continue to go up, but we're trying to take steps we can take to mitigate that and reduce it.

Go ahead, Mara.

Q Thank you. I understand you don't want to lay out what the severe consequences would be if Russia used chemical

Q I thank you. I understand you don't want to lay out what the severe consequences would be if Russia used chemical weapons, but I guess what I'm confused about is we know there's not going to be any U.S. troops, no jets, no no-fly zone. Other than the things you've already done, which you have already described as severe, could you give us some examples of what more you can do since you've ruled out all these things?

Just -- when you talk about severe consequences, what does that mean, given that we know what it doesn't mean?

MS. PSAKI: Sure. I --

Q Yeah.

MS. PSAKI: I understand your question. I'm just not going to outline that from here. Those are conversations that will happen -- continue to happen with our national security team and with our partners and allies around the world.

Q But what you're asking us to believe is that there are severe consequences that you haven't used yet but that are not on the "no" list?

MS. PSAKI: Correct.

Q Okay. But you won't tell us what kinds of things those might be?

MS. PSAKI: We're going to have those conversations privately through our national security team and with our partners around the world.

Q Okay. But -- but do you -- I guess what I'm wondering -- what about the argument that there just aren't any more severe consequences for you to use because most of the severe ones you've ruled out?

MS. PSAKI: That's inaccurate.

Q Okay.

MS. PSAKI: Go ahead.

Q Just on the Fed nominations --

MS. PSAKI: Yeah.

Q Nice try, Mara.

Q -- does the White House have any assurances from any Republican senators that they would support Sarah Bloom Raskin's nomination? And did Senator Manchin give the President or anyone in the administration a heads up about his opposition to her -- to her nomination? I'm trying to figure out if that was a surprise.

MS. PSAKI: Sure. I understand your question. We were aware of his position in advance of his -- of Senator Manchin's announcement. We are -- she is one of the most qualified individuals to ever be nominated to this position. And so where we are now is -- our focus is on continuing to work with Chairman -- Chairman Brown to garner bipartisan support. But I don't have anything to read out for you on that front at this point.

Q How did Senator Manchin make you aware that -- of his opposition? Was there a call to someone in the White House? Did the President know? What did that look like today?

MS. PSAKI: I'm just not going to detail more specifics.

Q Okay. And just one last question, if you don't mind.

MS. PSAKI: Yep.

Q How is the administration preparing to respond to the potential supplies chain shock -- excuse me -- posed by China's decision to lock down the tech production hub in Shenzhen?

MS. PSAKI: So we are, of course, monitoring this incredibly closely, and our team is quite focused on it. What I will say is that, because of the steps we've taken and a number of steps we've taken to better -- better prepare and strengthen the supply chain, you know, we -- we feel that that has helped us -- will help us sustain.

But in terms of -- right now, we're basically in the stage where we're monitoring with the State Department. What we're looking at is, of course, as you know, the impact on some of these ports around where -- the impacted areas of China.

And we know here that, of course, our Port Action Plan and the work of our Supply Chain Disruptions Task Force, that we have a strong inventory that we can rely on. It's about 90 percent of goods at groceries and drugstores are in stock currently. And we've also reduced the number of import containers sitting at the docks for over nine days by over 60 percent.

But in terms of specific impacts of ports in China, we're monitoring it, and we don't have a new assessment at this -- in addition -- up-to-date assessment, I should say, at this point in time.

Go ahead.

Q Thanks, Jen. Is it the U.S. assessment, just to be clear, that Russia is deliberately targeting civilians in Ukraine?

MS. PSAKI: Well, this is part of our assessment and review as we're looking at how we're -- whether we will designate as a war crime. And we look at this through a legal process internally. Obviously, the targeting of civilians -- and we have seen a range of very concerning video reports -- other would be categorized in that -- through that as -- in that phrasing, but we have a process that we're still working through here.

Q And then, last week at a briefing, you told us that us, as reporters, should, quote, "not focus a lot" of our conversations "about the future of the United States importing oil at this point...from Venezuela." Were you ruling out that the U.S. would import oil from Venezuela (inaudible)?

MS. PSAKI: I was saying it's not an active conversation at this time.

Go ahead.

Q Hi, thanks. Does the White House have any reaction to Ginni Thomas acknowledging that she attended the January 6th rally?

MS. PSAKI: I do not.

Q And just kind of on that: Does her attendance there raise any kind of concerns about the independence of the Supreme Court, potential conflicts of interest, anything like that?

MS. PSAKI: I just don't have any more comment on it at this point in time.

Go ahead.

Q Hi, Jen. For the second time in two weeks, a group of hundreds of Haitian migrants has landed by boat in the Florida

Q -- Hi, Jen. For the second time in two weeks, a group of hundreds of Haitian migrants has landed by boat in the Florida Keys. Given the surge we saw last year in Del Rio of Haitian migration, what is the administration's reaction to these landings? Are there any plans to send any assistance either to Haiti or Florida?

MS. PSAKI: I'm sure we can get you an update on the humanitarian assistance we provide directly to Haiti. We are the largest, if not one of the largest, providers of humanitarian assistance in the world. In terms of the individuals arriving, I think in Florida, as you said --

Q Yeah, the Florida Keys.

MS. PSAKI: -- I would really point you to the Department of Homeland Security. We are still applying Title 42, and so that applies no matter which country you're coming from.

Go ahead.

Q Hi, yeah. The President of Colombia said last week that he had offered President Biden the possibility of supplying more Colombian oil to the U.S. as an alternative to Venezuelan oil. Is that an option that the White House is considering?

MS. PSAKI: We are continuing to talk to a range of producers on the importance of maintaining global supply. This is not, as you know, about just the supply in the U.S. but about ensuring there is supply for the global market. And we do appreciate our partnership with Colombia. And President Biden did discuss a range of issues like economic recovery, energy security during their conversation. But beyond that, I don't have an update on what that might look like.

Q Would you say that it is under active consideration as --

MS. PSAKI: Again, they had a -- they had a wide-ranging conversation, a very constructive conversation. This is really about supply in the global markets. But I don't have an update at this point in time.

Q Yeah. And as a follow-up, Chevron is preparing to take operating control of its joint ventures in Venezuela -- Reuters just reported that -- in case the U.S. would grant them a special license to operate. Is that something that's on the table?

MS. PSAKI: I think I just answered it a few minutes ago.

Go ahead. Go ahead.

Q Oh, yeah. Thanks, Jen. You said earlier in the press briefing that nothing has been decided about President Biden traveling to Europe." Can you confirm that such a trip is under consideration?

MS. PSAKI: We discuss a range of ways and mechanics for engaging with our friends and partners around the world, but I don't have any more specifics for you at this point in time.

Q Okay. And this morning, Leader Schumer and Speaker Pelosi announced that Zelenskyy -- President Zelenskyy of Ukraine --

MS. PSAKI: Yeah.

Q -- will be delivering an address to the full House and Senate on Wednesday morning. What's the White House reaction to this address? Are there any concerns that the White House has about the Ukrainian President speaking directly with Congress as opposed to the White House on its various positions and requests?

MS. PSAKI: We speak frequently with President Zelenskyy. The President spoke with him -- had a lengthy conversation with him directly on Friday, and we're in touch with Ukrainian government officials nearly every day -- not every day.

We certainly support leaders in Congress inviting him to address a joint session. And I would again reiterate that there's strong, bipartisan support for Ukraine, for the leadership, and the bravery of President Zelenskyy. And we'll all look forward to watching his speech on Wednesday.

Q And then, finally, on Sarah Bloom Raskin and Senator Manchin's announcement that he doesn't support her confirmation: Does the White House still see a path to getting her confirmed in the evenly divided Senate?

MS. PSAKI: We are going to continue our work with Chairman Brown to garner bipartisan support. But again, she is one of the most qualified individuals ever to be nominated to this position. So that's where our focus is.

Q So you are pushing her forward still and --

MS. PSAKI: Yes.

Q -- and believe that you can get her --

MS. PSAKI: Yes.

Q -- confirmed? Okay.

MS. PSAKI: That is where our focus is. We wouldn't be pushing for bipartisan support if she wasn't still our nominee.

Go ahead.

Q Thanks, Jen. Two questions on WNBA star Brittney Griner. Last week you had said you couldn't comment on the case. Is there any update you can give now on the efforts the administration may be taking to secure her release?

MS. PSAKI: We do not have a Privacy Act waiver.

Q Okay. And does the White House have any reason to believe that Griner is being used as a political pawn by the Russian government? Or does the administration see this strictly as part of the Russian criminal justice system?

MS. PSAKI: We just can't speak any more to the reports of this case.

Go ahead.

Q Hey, Jen. Thank you very much, Jen.

MS. PSAKI: I'll come back to you. Go ahead.

Q Thank you. On the possible trip to Europe: Is President Biden considering visiting, maybe, perhaps the Ukrainian border and visit refugees -- Ukrainian refugees -- like other foreign leaders are doing? Is this something you'd like to do?

MS. PSAKI: I just don't have anything more on the reports. Again, we have a range of conversations with our NATO partners and European allies about the next steps in diplomacy, but I don't have anything to confirm for you in terms of the report.

Q And just one more.

MS. PSAKI: Yeah.

Q Not just China but some of the biggest countries in the world, like India or Brazil, some countries in Latin America like Mexico, they're not part of this economic war -- warfare against Russia. Is this something that undermine the efforts from this White House and European countries?

MS. PSAKI: I would say it doesn't undermine our efforts. We've been working to build a global coalition far beyond the G7 and our NATO partners, and had a great deal of success in that. And every country has to decide where they want to stand, where they want to be as we look and the history books are written.

Go ahead.

Q And you believe the --

MS. PSAKI: I think we've got to move on. We've got to get around.

Q Just very quickly.

MS. PSAKI: Okay.

Q Do you just believe this economic pressure will stop Vladimir Putin from his invasion?

MS. PSAKI: Well, I think as we've seen, the impact of the President's leadership on the global stage and the economic consequences that have been put into place have led Russia and the Russian economy to be on the brink of collapse. And there's no question that, over time, that will have an impact.

Go ahead.

Q Oh, actually -- thank you. Furthering that point, you did mention at the top of this briefing that there has been no action on the part of Putin to stop the onslaught; you haven't seen any action.

MS. PSAKI: Mm-hmm.

Q And that is after, again, all of these severe economic sanctions have been levied. And so, you know, I'm wondering why the administration thinks that this threat of further severe action that is vague, that is unnamed will deter him from using chemical weapons.

MS. PSAKI: Well, I think the reason that we spoke out last week about chemical weapons is because we felt that it was important for the global community to understand that they had the capacity, the capabilities, and that they have used them in the past. And at the same time, they were accusing, inaccurately -- they were spreading false information about the U.S. and the Ukrainians' intentions. That was the origin of why we were so outspoken last week.

So, this is more about us making clear to the world what we've seen as patterns in the past and what their capabilities and capacities are.

Go ahead.

Q Thank you, Jen. President Biden has repeatedly said, "No U.S. troops inside Ukraine."

MS. PSAKI: Mm-hmm.

Q Are there any U.S. troops still training Ukrainians outside Ukraine? And if not, could that be a thing, as we move forward, if this turns into (inaudible)?

MS. PSAKI: You mean in neighboring countries?

Q Yeah, like bases outside Ukraine. And if it becomes a long-term conflict, as obviously many predict, would that be a thing the United States does?

MS. PSAKI: Let -- let me check with the Department of Defense. We obviously had trainers on the ground for a period of time. We hadn't -- then we pulled them back. We obviously have a significant military presence in a range of countries in the region, but I can see if there's anything that we are looking ahead to.

Q That wouldn't be considered an escalatory type of thing? You know, a bit like the MiGs, which got complicated because no one knew kind of how to get them to the Ukrainians. Like, if you had Ukrainian soldiers going into Poland --

MS. PSAKI: Sure.

Q -- being trained by U.S. troops to go back and fight Russians.

MS. PSAKI: I mean, I think, really, our focus right now is on providing them and continuing to expedite the military assistance to them. And the good news is that we still -- through our coordination with them and our NATO Allies, we're able to get them that assistance on the ground. They're actively fighting now, so that's where our focus really is at this point in time.

Go ahead.

Q Yeah, on the Federal Reserve: Would the administration then support the four nominees, who seem to have the votes to be confirmed, to go forward and deal with the Raskin nominee after?

MS. PSAKI: Well, there's enough support to move all five nominees through the committee. So we think the Republicans should show up so that they can vote them through the committee.

Q And on -- one last thing. The fact that China is in the conversation about helping Russia, should U.S. companies then look at maybe decoupling from China with their investments there and be cautious? What's the message that you have? Can you trust the Chinese?

MS. PSAKI: I don't think it's about trust, but we have not made an ask or a request at this point of that.

Go ahead.

Q Jen, thank you. At the Democratic retreat in Philadelphia last week, some of my colleagues were hearing a lot from Democratic lawmakers who want the President to do more by executive action, whether it's on immigration or whether it is on some of the other priorities of the administration. Did he have any conversations with the members there about possible further executive actions? And is there anything else -- I think you're hearing from the members in those meetings with the Black Caucus and other members of Congress in the last week or two -- that may be coming forward?

MS. PSAKI: Well, I would say all of these members can speak for themselves on what they're interested in and what they're requesting from the President and from this administration.

We have a range of executive authorities -- the President does, I should say, has a range of executive authorities. I think there have been some reports about some that are under consideration, including one on policing, which we have talked about a bit in the past.

So, sure, we still continue to consider what steps we can take through executive actions, even as we work with Congress to see what we can move through there as well.

Q And I take it that there's no update beyond the legal review continuing on the student loan question.

MS. PSAKI: I don't have an update at this point in time. No.

Go ahead in the back. Go ahead.

Q Thank you. Me?

MS. PSAKI: Okay. And then I'll go to your friend next to you.

Q Thank you very much. On North Korea, it is reported that the North Koreans' ICBM launch is imminent. Do you have anything on the North Korea's imminent launch (inaudible) ICBM?

MS. PSAKI: I don't have anything on that report. I've not seen that report. What I can tell you is that, you know, as you know, last week, we proactively decided to reveal information publicly about recent tests and share it with allies and partners as well as Congress.

We have seen North Korea escalate its testing in different periods over the last four presidents. And this time, North Korea hid these tests, unlike the fanfare over past tests.

But I don't have anything to predict in terms of the future.

I said I'd go to -- go ahead.

Q Japan and some of the other treaty countries are increasingly alarmed after Afghanistan and this recent situation. Could you let the Japanese government know that the Security Treaty will be honored?

And then second, for those of us that were embedded during the war, the whole situation with Afghanistan is quite personal. There's a large number of our people that helped us that are still left. Could you just update us on -- almost six months -- whether they'll be able to come back?

MS. PSAKI: Well, I would say on the second part, that that is one of the reasons that we've worked so closely with our Qatari -- with the Qataris to maintain a diplomatic presence there so that we continue to engage with neighboring countries to bring people home and help some of our partners and allies who stood by our side, fought by our side over the course of the 20-year war. That's ongoing.

In terms of the numbers, I would point you to the State Department who would have the most up-to-date numbers.

I'm not sure I understand your first question.

Q Well, just a reassurance to Japan and a lot of the countries that have treaties with us that are worried -- you know, if a situation like this develops, if those treaties are going to be honored.

MS. PSAKI: Which situation? How would it relate to Japan?

Q Well, Afghanistan is a long partner of ours. And so, you know, the whole situation that's happening now -- Taiwan -- there's a great concern that if you have a treaty and it comes to a difficult situation, whether it's really going to be honored.

MS. PSAKI: We've never stepped back from the commitments we've made under the Taiwan Relations Act. And the President stands by those.

Go ahead, James.

Q Thank you very much, Jen. Two questions on Russia/Ukraine. Prior to February 24, the President, our NATO Allies, and the EU were embarked on a deterrence project. That's exactly the word that you and other senior U.S. officials used at the time.

Quite clearly, the invasion was launched on the 24th of February. And so we can say, as a factual matter, that that deterrence project failed. Is it the view of the White House that Mr. Putin could not be deterred by any set of steps? Or are you willing to concede that perhaps some other set of steps by the President and our allies might have deterred the invasion?

MS. PSAKI: You know, James, I would say that when we put in place the threat of sanctions and the threat of consequences, we never thought that that would be failproof or that would be 100 percent effective. We did that because we wanted to lay out the clear consequences should President Putin proceed in invading Ukraine, even as we predicted, quite consistently, that that was very much his intention.

And what we have done since that point in time is implement those sanctions and implement those consequences, far beyond what I think most people's expectations were in the world about what those would look like.

I don't think it's -- I don't think I can look in a rearview mirror, or any of us can, and predict what would have been different. What we did is we took steps to rally the world to stand up to the aggressions of President Putin. And we have implemented them and followed up on what we committed to since that point in time.

Q One key decision made by the President early on was to remove strategic ambiguity from this equation. Never really was Mr. Putin forced to wonder what consequences he would face. He was told at the outset he would never face military intervention by the United States and NATO, that the full range of the punishments he would face would amount to diplomatic and economic sanctions.

I think a lot of people wonder why a greater effort wasn't made to leave Mr. Putin in doubt about the consequences he might face.

MS. PSAKI: Because the President is the President of the United States of America, and he felt it was important to be clear with the American people about what his intentions were and what they were not.

And his intentions were not to send men and women, their sons and daughters to fight a war in Ukraine against Russia.

Go ahead.

Q Thank you. On Iran.

MS. PSAKI: Okay, I'll do bo- -- go ahead. Ladies first. Okay, go ahead.

Q Thank you. On Iran: The Iran talks appeared to have stalled amid some last-minute demands by Russia. Are the Iran talks dead? And if not, what now?

MS. PSAKI: Well, right now, the negotiators are back home in their capitals. We'll see what happens in the days ahead with diplomacy around the deal.

We continue to believe that, you know, obviously, a diplomatic path forward is the best path forward. But this is a natural part of the process. It is also standard for the most difficult parts of the conversation -- negotiations to be happening at the end.

Q And then, just on Ukraine: South African President Cyril Ramaphosa says he's been asked to mediate between Russia and Ukraine. Would the White House support that, endorse that, in any way assist with that, especially since the African model kind of tends towards, like, restorative justice, truth, and reconciliation instead of, you know, traditional justice?

MS. PSAKI: I'm happy to check with our national security team on his role.

What I can tell you is that there have been a half a dozen global leaders who have been meeting with both the Russians and the Ukrainians and engaging, of course, directly through diplomatic channels and trying to come to a diplomatic conclusion here.

We have been engaged directly with them on the front end and back end of those conversations, and encourage them to also make sure they are engaging with the Ukrainians and not just the Russians.

But I will check if there's any specific --

Q (Inaudible) South Africans about this offer (inaudible)?

MS. PSAKI: I'm happy to check specifically. But again, there's a range of countries that are already playing this role. So --

Go ahead. In the -- go ahead.

Q With the COVID -- thank you, by the way.

MS. PSAKI: Sure.

Q With COVID funds falling off the omnibus --

MS. PSAKI: Yeah.

Q -- and it may take a bit -- you know, if Congress kind of (inaudible) get done -- has the White House ask changed at all? Have they come back to, you know, lawmakers and said, "Hey, while it's going to take a while, you know, we need more," or it's in a different place? I'm just curious how that --

MS. PSAKI: You mean in terms of asking for less money or something like that? Or --

Q Or more?

MS. PSAKI: Or more money. Yeah.

Q You know, my question is: What is the timing -- and does the timing change the needs of the White House?

MS. PSAKI: Well, the time -- I mean, we're asking for money to meet exactly the needs that are going to start to come up soon in the coming -- in the coming weeks even, and in supporting a number of the programs that have been pivotal to people across this country, especially people who are uninsured, people who are relying on access to free treatments, testing, vaccines.

Obviously, these are programs that it's not only in the United -- in the U.S. government's interest to continue, but it's in the interest of the American people, especially people who don't have the resources to cover and pay for a lot of these different treatments.

We had originally -- we had requested \$22.5 billion, I think you're aware, for immediate and urgent COVID response needs

because that is the funding we felt we needed. That does not mean it would cover the needs in -- forever. That would just be the needs we have at this moment in time.

So these conversations are still ongoing with leaders in Congress. We are -- but we want to be very clear about the fact that some of these programs could abruptly end and be pared back without additional funding.

Q A real quick follow-up. Just -- you mentioned the uninsured, about the HRSA program that reimburses from uninsured funds. You guys previously said that would end this month. Is that timeline still there? I mean, is that --

MS. PSAKI: You mean if we don't have funding?

Q Yeah. Is it still the end of the month they shut that down?

MS. PSAKI: A lot of these programs could end quite abruptly. So, it could. But I will check and see if that specific one would.

Go ahead.

Q Jen, real quick on Title 42 -- two related questions.

MS. PSAKI: Yeah.

Q One of them: Democratic senators and congresspeople and activists are criticizing the President. During the campaign, he said that this Trump-era policy was inhumane, yet he's keeping it, even though the country is opening again. But then, a few days back, the CDC decided to let unaccompanied minors in. So the fear is that this is going to make a lot of parents just send their children by themselves and lead to another humanitarian tragedy at the border.

MS. PSAKI: Well, I would say, first -- I mean, as you've noted, the CDC makes determinations about Title 42. I think, as it relates to the recent decision, I'd have to talk to the Department of Homeland Security specifically about that and how they're applying it or implementing it.

As you know, our intention is certainly not to put more children at da- -- in danger or put them -- incentivize parents sending kids on a journey that's treacherous and dangerous across the border.

But the President -- you know, he is implementing this because we are still in the middle of a public health crisis. That continues to be the case, as ~~designed~~ [designated] by the CDC.

Q But he still plans to reopen the border and make more humane policy, like he promised?

MS. PSAKI: That is -- that is what he proposed on his first day in office. And we are very supportive of the efforts in the Senate to do exactly that.

And just because it's not done yet, it doesn't mean that we aren't going to stay at the fight to get exactly that accomplished and done.

Q Jen, is there any reason why you have not condemned racism against Africans in Ukraine? I understand that Ukrainians are the victims here; they are being bombed by Russia, and they are being killed. But a lot of Africans, they are facing racism. I know you are providing a lot of financial assistance to Poland and to Ukraine, but Africans there are being banned from even entering Poland. Why have you not officially -- the White House -- issued a statement condemning racism against Africans in Ukraine?

MS. PSAKI: We have, and I believe the State Department has. But we have spoken out against that and expressed

concern about any reports of discrimination or -- at the border.

Q And then finally, if I may: I'm trying to understand where you're trying -- your endgame in Ukraine. You're not going there. You're not sending troops there. There will be no fly -- no no-fly zone over Ukraine. And are you -- will it be a fair assessment to say that you are pushing these guys to commit suicide, knowing that Russia has a superpower and, eventually, it will capture the main cities, Kyiv and Kharkiv, and other these cities around there? What's the endgame?

MS. PSAKI: Well, the endgame is really a question for President Putin. We have -- we have completely crushed his economy. We have provided military assistance, humanitarian assistance to the Ukrainians, enabling them to fight back for far longer than the Russian leadership anticipated.

And, again, he has to -- he has to determine what the path forward looks for -- like for him.

Thanks, everyone.

Q Jen, can you confirm or deny the rumors that there are Russian hit squads in Kyiv going after journalists?

MS. PSAKI: I don't have any details on that for you.

Q But you've heard of it?

MS. PSAKI: I can see if there's more.

4:10 P.M. EDT

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From: White House Press Office
Subject: [EXTERNAL] ICYMI: Ketanji Brown Jackson Endorsed by Fellow Supreme Court Clerks
To: Goodlander, Margaret V. (OAG)
Sent: March 4, 2022 9:57 AM (UTC-05:00)



FOR IMMEDIATE RELEASE

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From: White House Press Office
Subject: [EXTERNAL] Press Briefing by Press Secretary Jen Psaki, February 1, 2022
To: Goodlander, Margaret V. (OAG)
Sent: February 1, 2022 7:00 PM (UTC-05:00)



FOR IMMEDIATE RELEASE

February 1, 2022

Press Briefing by Press Secretary Jen Psaki, February 1, 2022

James S. Brady Press Briefing Room

2:27 P.M. EST

MS. PSAKI: All right. Kristen, welcome back.

Q Thank you, Jen. I appreciate it.

MS. PSAKI: Okay. We missed you.

A couple of items for you all at the top. I know there was some good questions yesterday about the status of the infrastructure law implementation, so I just wanted to bring you a few updates that are hopefully helpful to all of you.

In the 79 days since the bill -- the law was signed, our team has hit the ground running to get money out the door, engage partners, and provide comprehensive resources to help municipalities unlock funding opportunities so no community is left behind.

To date, over \$80 billion has already been allocated and is headed out to states, territories, and local governments. That includes over \$50 billion to states for highways and roads; \$14 billion for 500 Army Corps projects; over \$5 billion for -- to states for bridges; over \$7 billion to states for water infrastructure; \$3 billion to repair and rebuild over 3,000 airports; \$1 billion to support Superfund cleanup to 49 sites; and \$239 million in Port Infrastructure Development Grants.

And this is just the beginning, and we'll do our best to provide you all updates in here on the status of these funds being

allocated. State, local, Tribal, and territorial governments will receive over 90 percent of funding from the Bipartisan Infrastructure Law to rebuild their communities.

We mentioned yesterday -- or I talked a little bit yesterday about this large guidebook we had put out to provide guidance and information to communities to apply for the part of this that will be through competitive awards.

As we did with the American Rescue Plan, we also know that local leaders have the best sense of where the communities need funding. And the formula funds in the Bipartisan Infrastructure Law include flexibility to deal with unique local and state challenges.

As we've also said many times, with flexibility comes great responsibility to use funds wisely. So, to ensure accountability and transparency, Mitch Landrieu and the infrastructure team convened a meeting with inspector general -- inspectors general -- general from all agencies with funding from the infrastructure law to discuss oversight and transparency. He called for each state to appoint an infrastructure implementation lead, and we are committed to showing transparency on how money is allocated and spent.

Also, one other update for all of you at the top. As you know, the President is headed to New York City on Thursday, and I wanted to give you a quick preview of his trip.

He will be joined on the trip by Attorney General Garland to talk about the steps the administration has taken so far to reduce crime -- gun crime, and how we can be a strong partner for New York City and other cities grappling with increased gun violence over the past two years.

The President and the Attorney General will join with law enforcement officials alongside elected leaders, including Mayor Adams, Governor Hochul, at the New York Police Department headquarters to discuss the work that federal, state, and local law enforcement officials are doing to quickly take guns and repeat shooters off of our streets.

Afterward, President Biden, Attorney General Garland, Mayor Adams, Governor Hochul, and other elected leaders will visit with community violence intervention leader -- leaders in Queens to talk about the community-led work to interrupt gun violence.

The President outlined a comprehensive plan last year to tackle gun crime that includes giving cities historic funding through the American Rescue Plan to put more cops on the beat and support community violence intervention programs, as well as initiatives like afterschool programming, creating economic opportunities, and reducing recidivism to address the root causes of gun crime.

The President's budget also doubles federal support for community policing, with \$300 million more for cities plus another \$200 million for community violence interventions -- a total of a half a billion dollars for these strategies that are proven to reduce gun crime. And he's going to continue to urge Congress to act on that.

Finally, the Department of Justice continues to step up their efforts to combat violent crime and gun trafficking, including through five strike forces launched last year in New York City and other regions.

As the Department of Justice reported just last week, those efforts have resulted in thousands of guns and violent criminals being taken off the streets over the past year. But they will, of course, have more to say on Thursday.

Why don't you kick us off?

Q Thanks, Jen. It's been a busy news day so I have a few. Off the top, Senator Manchin just said Build Back Better is "dead." Was the White House aware that he felt this way? And what's the path forward for some of those Democratic priorities?

MS. PSAKI: Well, as you know, as a policy, we're not going to get into private conversations we have with Senator Manchin or any other senators about this piece of legislation or our efforts moving forward.

What I will note and where there is strong support moving forward across the Democratic Caucus is on taking steps to lower costs for childcare, for healthcare, for eldercare; on making sure that Medicare can negotiate the cost of prescription drugs; and ensuring the tax system is fair. Whatever you call that, there is strong support for that, strong passion for that, a lot of advocacy for that, and there are a lot of members having continued conversations about it.

Q And then Russian President Vladimir Putin just said today that the U.S. is ignoring its top security demands but that Moscow is still open for more talks. Is the U.S. open to more talks? If not, what is the step forward with respect to Russia?

MS. PSAKI: Absolutely we are. The door to diplomacy remains open. We don't know what decision President Putin will make. While we've seen the buildup of troops on the border, Secretary -- our Secretary of State, Tony Blinken, just spoke this morning with Foreign Minister Lavrov, and he reiterated our commitments and openness to a diplomatic path forward.

Let me give you a little bit more of a readout of that. And I can give you more of an update of some of the other conversations we've been having with a range of counterparts as well.

So, Secretary Blinken -- I know the State Department did a bit of a background call on this, but let me give you some highlights: The Secretary emphasized the U.S. willingness, bilaterally and together with Allies and partners, to continue a substantive exchange with Russia on mutual security concerns, which we intend to do in full coordination with our partners and Allies. He reiterated the United States commitment to Ukraine's sovereignty and territorial integrity, as well as the right of all countries to determine their own foreign policy and alliances.

He also urged immediate Russian de-escalation and the withdrawal of troops and equipment from Ukraine's borders, and was clear that further invasion of Ukraine would be met with swift and severe consequences and urged Russia to pursue a diplomatic path.

Our National Security Advisor, Jake Sullivan, also met with his German counterpart today as part of our regular consultations with our Allies and partners. But certainly, the door to diplomacy remains open. As we've said many times, de-escalation will, of course, make that diplomatic path easier moving forward.

Q And then one more on HHS. Last week, there was a GAO report warning that HHS may not be prepared for a future pandemic and that it had fallen short in a number of ways in this pandemic. There have also been reports about White House officials being frustrated with Secretary Becerra's leadership. So does the President still have confidence in Secretary Becerra? And has he talked to him about any changes he might want to see at HHS or about his leadership of the department?

MS. PSAKI: Well, you know how we feel about anonymous sources around here.

Q They weren't all anonymous. There were some experts that are publicly criticizing the way HHS has --

MS. PSAKI: From -- from within the government, I'm referring to.

Q Sure.

MS. PSAKI: I would just reiterate that the President remains confident in the role of Secretary Becerra. He is somebody who is an important partner. He has been leading a range of efforts from the Department of Homeland Security -- I mean -- Homeland Security -- the -- from the Department of Health and Human Services. And we have strong partnerships from the very top down with HHS.

We're less focused on -- not at all focused, I should say, on palace intrigue, as much as we are on vaccinating more Americans, fighting the Omicron surge, expanding testing capacity, and getting more therapeutics out to the American people. And that's how we believe we and the leadership of the Cabinet will be judged.

Go ahead.

Q A couple of follow-ups here. On Ukraine, we've seen some of the major European allies talking directly with Putin. Emmanuel Macron has spoken with him twice. The Italian Prime Minister has spoken with him. Boris Johnson is now traveling to Ukraine. Why not have the President have a -- you know, take more direct involvement like some of these other allies are?

MS. PSAKI: Well, the President remains certainly open to that if there's a determination that that is the appropriate and most constructive step moving forward. We also have a very active and engaged Secretary of State, who has had a number of conversations with his counterpart, including this morning, and that's the channel that those conversations are happening through at this point -- as well as at many other levels, I should say.

Q And on the question about Senator Manchin: He also said that no one has reached out to him. He hasn't been having talks about trying to do this "in chunks," as the President has suggested may be the path forward. Why not?

MS. PSAKI: I'm not going to outline from here conversations that we are having with a range of senators and a range of senators are having with each other, but I can assure you we've been in touch with and hav- -- with every member of the Democratic Caucus.

Q And just some housekeeping on the Supreme Court pick. The Times is reporting that Doug Jones will be the sherpa on the Hill. Can you confirm that and talk about that decision?

MS. PSAKI: I don't have anything to confirm yet at this point about what the team will look like that we bring in, as has been done historically, to help sherpa through our nominee whenever that person is selected.

I can reiterate that we intend to have that team in place before the President makes a selection, and that team will be more than one person.

Go ahead, Kristen.

Q Thank you, Jen. And thank you for the welcome back. Following up on the Supreme Court decision, a number of Republicans, as you know and as you've been asked about, have spoken out about the President's pledge to pick a Black woman for the High Court. How do you respond specifically to Ted Cruz who, overnight, called it "offensive" -- offensive to Black women that he would make that pledge?

MS. PSAKI: Well, here's what I would say first: Just over a year ago, the previous president also promised to select a woman for the Supreme Court. Not only were there no complaints about choosing a nominee from a specific demographic -- from the same corners -- but there was widespread praise of now-Justice Barrett on those grounds with Republican lawmakers widely highlighting that they thought this was positive for women in America.

So, take Senator Cruz himself: He had no objection to Donald Trump promising he'd nominate a woman in 2020. I repeat: No objection at all. In fact, he praised her on these grounds during -- praised her on these grounds -- the nominee. During her confirmation hearing, Senator Cruz said, quote, "I think you're an amazing role model for little girls. What advice would you give little girls?"

When President Reagan honored his campaign pledge to place the first woman on the Court, he said it symbolizes the unique American opportunity. There is no outcry around that.

The President's view is that after 230 years of the Supreme Court being in existence, the fact that not a single Black woman has served on the Supreme Court is a failure in the process, not a failure -- or a lack of qualified Black women to serve as Supreme Court justices.

Q And broadly speaking, we just heard from the President on how he is viewing this pick. He says he is taking the "advise and consent" role very seriously --

MS. PSAKI: Yes.

Q -- of the Senate. If he thought -- and I know you've been getting questions around this, but just to kind of put a finer point on it: If he thought that a nominee could get more Republican support, how would that weigh on his decision?

MS. PSAKI: I talked with him about this exact question this morning because I know a lot of you are asking about it. And what he reiterated to me is that his focus is on picking the person who is eminently qualified, who is ready to serve and prepared to serve in a lifetime appointment to the Supreme Court, not in navigating the legislative process.

Q Just yesterday -- on different a topic, HBCUs: A number of them have gotten more bomb threats today. You ca- -- yesterday said that the bomb threats were disturbing. Can you update us on what, if any, more information the White House, the President has about these potential threats? And is there a concern that it is, in fact, linked to Black History Month?

MS. PSAKI: Well, we don't have an assessment at this point. We are continuing to evaluate. Our homeland security advisor here in the White House, Liz Sherwood-Randall, is providing regular updates to senior staff, to the President as well. And he certainly is aware of the latest instance of bomb threats not just yesterday, but also those this morning.

And let me just reiterate that we condemn these disturbing threats, and our thoughts are with the students, faculty, and staff of these storied institutions.

We have been long supporters and have made historic investments in HBCUs and deeply value the significant role they continue to play in advancing opportunity for Black students across America. But, right now, we don't have any assessment or new assessment right now.

Q Any chance that the President -- or are there any discussions about the President visiting one of these HBCUs to reaffirm the commitment that the White House has to the protection of the students (inaudible)?

MS. PSAKI: He has certainly visited HBCUs in the past, Kristen. Obviously, right now, our focus is on ensuring we are working in close coordination with our law enforcement authorities and ensuring that the leaders of these institutions and the students know that we are watching closely and that we are standing with them as they face these threats.

But I don't have any trip to predict at this point in time.

Q Jen, can I follow on that, please? Just one --

MS. PSAKI: I'll go to you next, April. Let me just finish Kristen's --

Q One more, really quickly.

Q Tomorrow is the one-year anniversary of the Family Reunification Task Force. As you know, Secretary Mayorkas has told NBC News that the White House is 100 percent supportive of permanent legal status for families separated at the border. Is that a true statement? Is that a (inaudible)?

MS. PSAKI: We stand by Secretary Mayorkas.

Q Okay. Thank you.

MS. PSAKI: Go -- April, go ahead. And then, I'll come back to you. Go ahead.

Q Okay. So, Jen, back on the HBCU bomb threats. There is a historic issue when it comes to bomb threats in the Black community.

MS. PSAKI: Mm-hmm.

Q And with that said, you have people like Lee Merritt calling it "terrorism." And he's asking for the DOJ, Homeland Security, and U.S. Attorney's Office to investigate -- to form a task force, particularly specifically on these issues. Is there talk around the White House for this to happen?

MS. PSAKI: Well, what I can tell you, April, is that we take these threats incredibly seriously; that, again, our homeland security advisor is in close touch with law enforcement authorities at a federal and local level. And we are assessing what we think the origin, the reasoning, the motivation behind it is. We don't have an assessment of that quite yet. And I don't want to get ahead of that process.

But we absolutely are behind these HBCUs. We are -- want to make very clear that we take these threats seriously and we deeply value their contributions.

But it's important for law enforcement authorities and others to make an assessment before we make any determinations about next steps.

Q And does the White House see the irony in this moment with these continued bomb threats of HBCUs, particularly as much of the power structure up and down Pennsylvania Avenue are graduates of HBCUs, starting with the Vice President, Howard University; Cedric Richmond, Morehouse; Joyce Beatty, the head of the CBC, Central State; the House Whip, James Clyburn, South Carolina State. So, is there irony in this moment?

MS. PSAKI: I'm not sure I would say -- call it "irony," April. But I would say that it is -- it is scary. It is horrifying. It is terrible that these students, these faculty, these institutions are feeling under threat.

Now, again, we don't know more details at this point in time, and I don't want to get ahead of law enforcement authorities. But certainly, given the history you referenced, you know, this is something we're very mindful of and that is why we're so focuses on providing regular updates and seeing what our law enforcement team assess.

Q And lastly, on the policing executive orders: Reverend Al Sharpton says that there is now a move to break apart the George Floyd Justice in Policing Act for standalone pieces that could possibly go up for a vote and, one way or another, pass or fail. And they're doing that because the executive orders don't have as much teeth as a law. What do you say to this effort to break apart the George Floyd Justice in Policing Act and make each portion a standalone bill?

MS. PSAKI: Well, what I can't assess from here, April, is whether there'd be support for getting that across the finish line and signed into law.

As you know, the President very much wanted to sign the George Floyd Justice in Policing Act into law, and we did not take executive actions because -- at the time, because we wanted to leave room and space for that process to proceed in a bipartisan manner.

So, I'd really point you to leadership and committee chairs in Congress to see what is possible on that front.

And certainly, we agree, a law is more permanent than executive orders. That is absolutely true. But we have not even

finalized, nor do I have a preview of exactly when it would be, a police reform executive order. So, I would also encourage people to wait to assess what that looks like.

Go ahead, Weijia.

Q Thank you, Jen. Back to the Supreme Court.

MS. PSAKI: Sure.

Q I know the President said he wanted to seek the advice of the Senate, in addition to consent. Is there anything you can share about his conversation with Senators Durbin and Grassley, and whether he shared his list of potential candidates with them?

MS. PSAKI: Well, I think they were still meeting when I came out here, or I had not spoken with him yet if it was breaking, so I have not gotten a rundown from him quite yet.

I think he wanted to have an open and engaging conversation with them. In terms of what specific information he shared, I think it was more of him looking to listen to them and hear what they had to say about -- there are a range of names, a range of candidates out there. But also look to them for their advice and their counsel.

As we have noted before, Senator Durbin has been through seven confirmation hearings for Supreme Court justices. Senator Grassley is certainly a veteran of these committee processes. The President takes his role seriously and, as he said today and as your referenced, takes the role of consent of the Senate seriously. But I don't think we're going to read out too many specifics other than to say he was looking forward to having an engaging conversation.

Q And since Justice Breyer announced his retirement, has the President spoken personally with any of the candidates who he might be considering?

MS. PSAKI: We're not going to give a process update or assessment from here, just as a policy. But I can tell you that what we're focused on now is -- obviously, the President is continuing to consult with leadership in Congress, as is evidenced -- as was evidenced by this morning. He'll do more of that this week.

There is obviously an ongoing process as we look to name and nominate a Supreme Court justice before the end of this month. As is, you know, related to Mary's earlier question, we'll also be announcing soon a team that we will be bringing in from the outside. So, there are a number of steps that are happening at the same time. But we're not going to be going into specifics of confirming the internal processes.

Q And you mentioned just a bit ago that he is looking for -- to someone who will obviously serve for a lifetime. Will age be a factor as he considers who to nominate so whoever it is can have a longer imprint on the Court?

MS. PSAKI: I'm just not going to get into more specifics of what he's looking for. I mean, I think the President outlined, when he spoke earlier, that he's looking for somebody who is qualified -- who is eminently qualified, who is prepared to serve in this role.

There is a range of candidates he's been reviewing bios of for some time now. But beyond that, I'll let him speak to more specifics.

Q Thank you. And then one more question on Russia: How soon could the U.S. move troops to the eastern flank? And just to clarify: When the President said "it will happen in the near term," did he mean troops that are already stationed in Europe? Or would some of those troops be the ones based here at home?

MS. PSAKI: Well, I think we've said previously that there's NATO troops, of course; there's 8,500 of them that we've

committed to the NATO -- the NATO effort. That would be a decision made by the Alliance. Some of those troops are in the United States; some are in Europe.

I don't have anything to preview for you in terms of any additional troops. Obviously, there are troops currently that are stationed in Eastern European countries. Some of those troops, of course, are not -- many of them are not under the NATO Alliance.

But I don't have anything to predict for you at this point in time.

Q Thank you, Jen.

MS. PSAKI: Go ahead.

Q Thanks, Jen. A couple quick ones on the Supreme Court first. Last week, I know you said you'd look for an answer on whether you thought the Vice President could break a tie on a Supreme Court vote. Have you guys come to a determination on that?

MS. PSAKI: So, the Vice President has been the tiebreaking vote for a number of judicial appointments -- or nominees in the past. But our intention is, of course, to get broad support for an eminently qualified nominee.

Q In the Oval, the President evoked the Ninth Amendment as he was talking about the qualifications he's looking for for a judicial nominee. In the past and in committee hearings, he's certainly brought that amendment up in the context of abortion rights. Is it a fair reading that that is what he was specifically saying that he was looking for from a candidate here?

MS. PSAKI: I'm just not going to give any more detail on any qualifications he's looking for at this point in time. I'm sure we'll have more conversations about that in the days ahead.

Q And there was a kind of long New Yorker story over the weekend in which a former NSC aide, Andrea Flores, made two claims. One was that Susan Rice and Ron Klain had opposed expanding asylum access for political reasons, and that the White House, partially because of that, wasn't doing contingency planning for the lifting of Title 42 whenever we get to that point in the pandemic and hadn't, kind of, built out capacity to do that.

So I was wondering if you could kind of respond to, I think, those two points that would suggest that immigration policy has shifted within the White House from the campaign.

MS. PSAKI: Well, what I can tell you is that -- I did not work with Andrea Flores, so I don't know her well, nor can I speak to her role here -- but that our policy as an administration has been entirely consistent with what the President committed to on the campaign. And his effort has been to build a fair, humane, and lawful immigration system and bring it into the 21st century.

Hence, he obviously proposed an immigration bill on his first day in office. And beyond that, he has taken steps to protect DACA recipients, ended the Muslim ban and the Public Charge Rule, put together the Family Reunification Task Force, restarted the Central American Minors Program that the previous administration ended, extended or newly designated Temporary Protected Status for a number of countries, and worked with DHS to give clear guidance for internal enforcement.

It's also true that we're still in the midst of a pandemic. And that is not something, of course, as we've talked about here a bit in the past, that everybody anticipated still being at, at this point in time. The CDC is obviously the determinant of having Title 42 in place, and that still is in place because of the pandemic that we're in.

But I would also note that we have -- and I think this was noted, I believe, in the story -- but that we have also been very clear about our views on the MPP program and very clear on our views about the inhumanity of the prior administration and

clear about our view on the MPR program and very clear on our view about the inhumanity of the prior administration and how they handled immigration and that we had every intention of implementing a different approach.

Q And one last one. There's been a bit of a controversy this week on the other side of the pond. Prime Minister Johnson and the actions of him and his staff -- a report came out this week.

I'm wondering: Is the President aware of what's going on? Is he at all worried that that political controversy is impacting, you know, the U.S. and UK's ability to, sort of, press President Putin on the Ukraine situation? And, you know, has he ever been "ambushed by a cake"? (Laughs.) How --

MS. PSAKI: Has the President ever been ambushed by a cake? (Laughs.) Not that I'm aware of.

Q But just what his reaction is, sort of, to this controversy that's been blowing up.

MS. PSAKI: You know, I have not spoken with him specifically about the reports in the UK. But what I can tell you is that he is confident in the important partnership we have with the United Kingdom, the role they play as an important partner in making clear to Russia the unacceptable nature of the buildup of troops and their bellicose rhetoric as it relates to Ukraine. And that certainly has not changed, despite cakes in anyone's faces.

Go ahead.

Q Thanks, Jen. Starting quickly just with Ukraine. You guys keep holding up this, kind of, diplomatic path for Vladimir Putin. But as he noted today, you've already rejected both of his, kind of, central demands. So, what exactly is this a diplomatic path to if you've already rejected what he's asked for? And can you kind of sympathize with the fact that he may be feeling like he's strung along and wants to pursue things on another battlefield?

MS. PSAKI: As in invading a sovereign country? Which would be the alternative, right? Right? Is that what you're saying?

Q Perhaps. Perhaps.

MS. PSAKI: Okay. Well, here's our view: We don't know what President Putin is going to do. And it is our responsibility to -- and it's an imperative to keep the door to diplomacy open. That does not mean that we are going to not stand by our own values, which includes the -- our belief that -- and the belief of NATO countries -- that it should be up to NATO members to determine who is able to join NATO and that the door to that should be open.

So if that is one of their claims, we have reiterated the same thing privately that we have reiterated publicly.

In our view, do we have sympathy? I mean, this is -- you know, Secretary Blinken has used some of these analogies in the past, but when the fox is screaming from the top of the henhouse that he's scared of the chickens, which is essentially what they're doing, that fear isn't reported as a statement of fact. And as you watch President Putin screaming about the fear of Ukraine and the Ukrainians, that should not be reported as a statement of fact.

We know who the fox is in this case. We have seen the buildup of troops at the border. We have seen them move troops to Belarus, on another border.

And our role in the United States is to work with other countries around the world to keep that bor- -- door to diplomacy open, because certainly all of our preference is to de-escalate and to prevent an invasion from happening.

But that is up to President Putin to make that decision.

Q And do you think a possible endgame here could be just mutual de-escalation and then live to talk --

MS. PSAKI: De-escalation in what regard?

Q -- about the issues another day?

MS. PSAKI: "Mutual de-escalation" -- tell me more what you mean by that.

Q I mean, it's up -- I suppose it's up to you to define. But I mean, you guys have asked for him to move troops back from the border.

MS. PSAKI: But here's what I'm getting at: We are defin- -- it's a mistake, I would say, to define things by the terms that President Putin is defining things. This is a country and a leader who has, you know, used chemical weapons, who has invaded multiple countries in the past several years, who has taken aggressive steps on the global stage on many occasions.

So, when we talk about mutual de-escalation, Russia has 100,000 troops on the border; they are the aggressor. We are working with NATO countries to make sure they feel secure in this moment. NATO is a defensive alliance. It is not the same thing. And I think we need to be careful about comparing them as the same thing.

Q Thank you. And just to switch gears to Supreme Court. You guys, obviously, have got this big nomination that you're working on, but there's also huge existential questions hanging over the Supreme Court. Does the President plan to decide what he's going to do on Supreme Court reform before he makes this nomination?

MS. PSAKI: He is reviewing the Supreme Court Commission report. I don't have a prediction of when he will conclude his analysis of that.

Q And I just asked because the report includes suggestions about things like changing the number of people on the Court, and you would think he would want to know who -- if he's going to increase the size of the court, who he's going to put on first. Right?

MS. PSAKI: I think, Trevor, his focus right now is on going through a process that takes it -- that values the seriousness of the role he has as president, that cons- -- where he consults, as you saw today, with Democrats and Republicans to select and nominate an eminently qualified Black woman to serve on the Court. That's his focus right now.

Q And finally, there have been some ethical questions about Supreme Court Justice Clarence Thomas. His wife is -- has a number of political affiliations with groups that file amicus briefs before the Court, have other business before the Court. It's his choice whether or not to recuse himself from those cases; he hasn't. Does the President feel that there is an ethical issue there that he'd like to see dealt with?

MS. PSAKI: I have not had a discussion about that with the President or our counsel's office. I will see if there's any comment we have from here, or it might be a Department of Justice comment. I'll get back to you.

Go ahead.

Q Hey, Jen. How's it going?

MS. PSAKI: Good.

Q The Center for American Progress put out a memo today focusing on specific priorities for a more narrow Build Back Better bill, but not listed is the extended Child Tax Credit. Could the White House (inaudible) support a revised bill that didn't include the extended Child Tax Credit?

MS. PSAKI: Well, I'm not going to make a prediction or negotiate from here. Obviously, the President proposed an extension of the Child Tax Credit as you know because it helped cut the -- child poverty by 40 percent last year. It's

extension of the Child Tax Credit, as you know, because it helped cut the child poverty by 40 percent last year. It's something he would absolutely like to be extended.

There is a question here as to what 50 members of the Democratic caucus will support. And they support, as we were talking about a little bit earlier, some big fundamental goals, which is important: lowering cost of childcare, healthcare; negotiating prescription drugs. That's important. But I can't predict for you here what all 50 of them will support.

Q Sure. Last week, the Surgeon General also was asked on MSNBC about Joe Rogan's vaccine comments on Spotify. And he said that tech companies have an "important role to play" in stopping misinformation because he -- they are the "predominant places" where misinformation spreads.

Spotify is putting out advisory warnings on episodes that have to do with COVID-19. Does the White House and the administration think this is a satisfactory step? Or do you -- do you think that companies like Spotify should go further than just, you know, putting a label on there to say, "Hey, go do your own -- you know, check this out. You know, there's more research you can look at -- you know, scientific research regarding COVID"?

MS. PSAKI: Sure. Well, last July, I -- you probably know, but the Surgeon General also took the unprecedented step to issue an advisory on the risk of misinformation and public health, which is a very significant step. And amid that, he talked about the role social media platforms have.

So our hope is that all major tech platforms -- and all major news sources, for that matter -- be responsible and be vigilant to ensure the American people have access to accurate information on something as significant as COVID-19. And that certainly includes Spotify [sic].

So, this disclaimer -- it's a positive step. But we want every platform to continue doing more to call out misinform- -- mis- and disinformation while also uplifting accurate information.

I mean, look at the facts, right? You are 16 times more likely to be hospitalized if you're unvaccinated and 68 times more likely to die than someone who is boosted if you're unvaccinated. That's pretty significant. And we think that is something that unquestionably should be the basis of how people are communicating about it.

But, ultimately, you know, our view is it's a -- it's a -- it's a good step, it's a positive step, but there's more that can be done.

Q And I have another tech question for you --

MS. PSAKI: Sure.

Q -- which is: There have been some recent reports that the White House is planning to issue a series of executive actions on cryptocurrencies in the next few weeks. Can you give a timeline on when those are coming and what actually might be in those executive actions?

MS. PSAKI: I would have to check with our NEC team on that and see if that's something that is coming down the road. But I will check and see if there's anything to predict for you.

Go ahead, Brian.

Q Thanks a lot, Jen.

MS. PSAKI: I wanted to first follow up on something you said about the Supreme Court process.

MS. PSAKI: Sure.

O You said that President Biden has been looking at bios for some time now. How long has that been that he's been

looking at bios of potential candidates?

MS. PSAKI: Since last year.

Q So that was something that started in the transition process? Or --

MS. PSAKI: No, since last year, not during the transition process.

Q And what prompted that for him to start looking at bios last year?

MS. PSAKI: He takes his role incredibly seriously. And we certainly know and he committed, of course, to the American people he would nominate a Black woman -- a qualified Black woman to serve on the Supreme Court. And so he's just been reviewing a range of bios.

Q And Justice Breyer notified him on the 27th of January. Did he get advance notice before that --

MS. PSAKI: I'm not going to get into any more details. If Justice Breyer wants to get into details about our communications, he can certainly do that.

Q And I have a question on Russia as well. This is -- the jailed Russian dissident, Aleksey Navalny --

MS. PSAKI: Yeah.

Q -- in an interview with Time Magazine, said that the U.S. is repeatedly falling into Putin's traps -- that Putin makes escalations, like he's doing now, and then seeks concessions.

I want to quote Navalny here, where he says, with Putin, the U.S. is acting "like a frightened schoolboy who's been bullied by an upperclassman." What's President Biden's reaction to this? Is he -- is the U.S. reacting like a "frightened schoolboy"?

MS. PSAKI: Well, I would say, first, that we have great respect for Aleksey Navalny and the role he's played in speaking out and being vocal, even under duress himself. And that's to be hugely admired.

I think the President's actions, the administration's actions that have been broadly supported in a bipartisan manner speak for themselves, whether it's our engagement and leadership on the global stage, having more than 200 engagements, leading an effort to have a unified front and making clear about the severity of economic consequences there will be should Russia decide to invade, or whether it is making clear that we are going to continue to stand up for what is a global value, which is the fact that no country should be able to invade another country and take their territory.

I'll let others define that. I don't think that's a "frightened schoolboy."

Q So when the President talks about economic actions that -- and economic consequences for Russia if it does invade, why not enact some of those sanctions now? Why not enact those economic consequences now? Why wait for an invasion?

MS. PSAKI: Well, we have enacted some sanctions. But I would say that we think it's an important point of leverage in the discussions.

Go ahead.

Q Thanks, Jen. To clarify something you said earlier about the BBB talks --

MS. PSAKI: Yeah.

Q -- you know, to the extent that you're going to tell us about them: You said that -- you know, rest assured the President -- you said, "We've been in touch with every member of the Democratic Caucus." "We've been in touch..."

MS. PSAKI: We in the White House.

Q So that's the leg affairs team, mainly, and the --

MS. PSAKI: The leg affairs team and senior members of the White House. We're just not going to detail more specifics.

Q So you can't say if the President has been involved personally in any of the conversations with (inaudible)?

MS. PSAKI: The President has talked to a range of senators. He always does.

Q Okay. On the Ukraine-Russia stuff, any plans in the works for another conversation between the President and President Zelenskyy?

MS. PSAKI: He has talked to him a couple of times in the last few weeks, and we've been in regular contact. We also are in very close contact from Jake Sullivan's level and Secretary Blinken's level. So, certainly, it's possible. We've been in regular touch, but I don't have any call to predict at this point. He just talked to him a couple days ago.

Q Sure. And one other question. Today, obviously, is the start of Black History Month. The President issued a couple of tweets about that.

MS. PSAKI: Yeah.

Q I wonder what the administration -- the President's response is to what has been happening in Texas and other states where a number of books have been banned by school districts. These are, generally, books that have focused on slavery, on Jim Crow, on civil rights, even on the Obamas. Does the White House have a position on the books that are being banned by these local school boards?

MS. PSAKI: I have not discussed this with the President, but I can tell you that, as an administration, we believe in the freedom of speech and expression. And certainly, we have never been advocates of preventing people from understanding and reading history.

Q And does the President plan to do more to recognize -- commemorate Black History Month this month?

MS. PSAKI: Absolutely. Let me see if we can get you some more details.

Go ahead.

Q Good afternoon, Jen.

MS. PSAKI: Good afternoon.

Q A couple of questions for you. Back to the Supreme Court.

MS. PSAKI: Sure.

Q How will the debate over abortion shake the President's selection process?

MS. PSAKI: The President is going to select an eminently qualified Black woman to serve on the Court, someone -- and he's going to do that through consulting with a range of members of Congress, through outside experts, and obviously through engagement with them directly. But I don't think I'm going to give you more specifics from here.

Q But that person -- will that person have to be pro-abortion?

MS. PSAKI: I think somebody asked a similar question. I'm not going to outline litmus tests from here today.

Q Okay. Following up on that, the President has said in the past he does not believe that life begins at conception. When does he believe it begins?

MS. PSAKI: You know the President's position. He believes in a woman's right to choose.

Q But that's not the question I asked. I said --

MS. PSAKI: And he's spoken -- he's spoken to this in the past. And I know you ask this every time you come in here, which is your --

Q (Inaudible.)

MS. PSAKI: -- your absolute right, but I don't think I have anything new to --

Q But I -- that's not -- that's not --

MS. PSAKI: -- reveal for you.

Q The question is: When does he believe life -- and essential to the debate over the question of a baby's viability, pro-life Americans -- don't you agree? -- should know where the President stands on his thinking on this. It's a fundamental question.

MS. PSAKI: The President believes in a woman's right to choose.

Q But his -- when does he believe life begins?

MS. PSAKI: Go ahead. I think we're going to move on unless you have another question. Go ahead.

Q Oh, let's do another question. One more question --

MS. PSAKI: Go ahead.

Q -- unrelated to that.

MS. PSAKI: Okay.

Q Following up on the question for -- on the expanded Child Tax Credit.

MS. PSAKI: Yep.

Q You have said time and again that this has taken lots of kids and families out of poverty.

MS. PSAKI: Yeah.

Q A tremendous success there.

MS. PSAKI: Yeah.

Q But with that now gone -- it looks like it's gone, dead -- inflation creeping up, high gas prices, high food prices, how quickly are those same kids and families going to go back into poverty, do you fear?

MS. PSAKI: Well, how it's implemented -- first, the President is going to continue to fight for the Child Tax Credit. It's something he very much believes in. I just can't predict what a package will look like and what there will be support from 50 senators on.

What I can tell you is that as individuals who are eligible file their taxes, they will get the other half of the Child Tax Credit benefit from last year. That is not a forever solution, but that is something that many can look ahead to.

The other part of the Build -- the President's Build Back Better Agenda that's important, as you're talking about rising costs for people: You know, we have -- we have a proposal -- the President has a proposal, many Democrats across the board support it, which is -- that will lower costs for Americans across the country and all the issues you talked about, things that really weigh on people's family budgets, whether it's healthcare, which is a huge -- has a huge impact on people's budgets; childcare, which is contributing to preventing 2 million women from rejoining the workforce. That's the Build Back Better plan, and that's something that we know will help lower costs for families.

Q And finally, does the President have a message for those struggling families who are very worried right now not seeing that extra \$500 or \$1,000 a month or whatever that are saying, "I can't afford the groceries. I can't afford the gas. This is getting very stressful"? A message from the President to those families.

MS. PSAKI: The President would say, "I am here to fight for you, and I -- that's why I'm going to continue to fight to pass legislation that will lower your costs." And that is a top priority for him.

Go ahead.

Q Thank you, Jen. I want to go back to what you said in the beginning about the money that's going to be flowing down to states and that there's going to be an appointment of --

MS. PSAKI: Infrastructure?

Q Infrastructure. Mm-hmm. An infrastructure lead. Can you tell me more about who is -- who's going to be appointing that person in each state? Because there may be concern over states when you get to, like, Florida, where you have Governor DeSantis saying that the President is trying to implement "woke-ification" policy and saying that there is no racism within some of the (inaudible) that have been in the past. How can there -- when you talk about accountability, how is that process going to go? And what information may be accessible to the public as far as reporting?

MS. PSAKI: Well, we have a huge -- several -- 100-page book that we put out yesterday about how people can apply for a range of funding. And I just outlined for you the money to date that has been allocated. And we have taken steps, and we will continue to, to make sure that is as transparent as possible.

Now, some of these -- the funding in this package -- as I mentioned, 90 percent of it will go to local, Tribal, and territorial governments. So, that really gives the opportunity for a range of leaders to apply for funding. And the book is meant to give them the information and access they need so they don't have to hire lobbyists to do that, so that they can do that on their own. And we're doing that in part to ensure that equity is at the central -- is central to how we're implementing this bill.

Q My final question is: What do you say to many organizations -- I've talked to several civil rights organizations -- on the

process of selecting a Vice President? They feel like some of the desires of the Black community have been put on the backburner. So, when it comes to selecting a Vice President, why is there no need or no push to speed up the process? The President has said he --

MS. PSAKI: You mean a Supreme Court justice?

Q A Supreme Court justice.

MS. PSAKI: Sure.

Q I'm sorry. I'm sorry.

MS. PSAKI: No, it's okay.

Q A Supreme Court justice. Why is there no need to speed up that process --

MS. PSAKI: Of selecting a nominee? Well, he's going to --

Q He's going to name one (inaudible).

MS. PSAKI: He's going to name one this month.

Q Right -- name one this month. But there has been a little bit of pushback as far as comparing the process -- the timing to Amy Coney Barrett, as opposed to what the President is going to do during this time.

We've heard Chuck Schumer say that, but is the -- does the President feel the same way as far as moving -- how long, how quickly and expeditiously he wants to move this process along?

MS. PSAKI: I just want to make sure I'm answering the right question. So, you were saying there's unhappiness in the civil rights community about the pace? Or are you talking about the Schumer call for the 38 days?

Q Well, is the President going on board with that to push -- to push it that fast?

MS. PSAKI: Well, the President takes the decision to select an eminently qualified individual to nominate to the Supreme Court very seriously. He wants that to be a thorough process. And he's still doing that expeditiously by nominating someone this month.

And he wants, of course, the Senate to move forward expeditiously, but we're not setting artificial deadlines beyond that.

Go ahead in the back. Okay, we actually have two more, so let me get to them quickly. Go ahead.

Q Thank you, Jen. I have a couple of questions on two different topics.

MS. PSAKI: Sure.

Q One is Russia and then immigration. On Russia, I know the President has -- spoke with the Amir of Qatar regarding the role of that country exporting natural gas to the European Union. But is the U.S. considering increasing its role as a natural gas exporter to the European Union to serve as an alternative to Russian gas?

MS. PSAKI: We are having a conversation with not just countries but also suppliers about how to help meet any shortage of natural gas that could come about if -- if there's an invasion.

Q Also on Russia: Since Ukraine is not a NATO member, according to the North Atlantic Treaty, NATO cannot really respond militarily to Russia in Ukrainian territory. But are U.S. unilateral military actions on the table to support Kyiv?

MS. PSAKI: You mean sending U.S. troops to Ukraine?

Q Yeah.

MS. PSAKI: No.

Q Okay, no.

And on the other topic that I wanted to ask real quick: This administration is now sending Venezuelan migrants arrested at the U.S.-Mexico border to Colombia under Title 42. What agreement has been reached with the Colombian government? Is it similar to the MPP with Mexico?

MS. PSAKI: Well, I think what we tried to do from the beginning is ensure that, for Venezuelans who are coming -- who were coming from a third country, right? -- that they were able, at some point, to return to that country.

So, in this case, pursuant to Title 42, we began repatriating Venezuelan nationals who had attempted to unlawfully enter the United States to Colombia, where they had previously resided. So, it was, you know, a place where they had been living before.

Flights to Colombia with Venezuelan nationals who have legal status are expected to take place on a regular basis and will be operated by U.S. Immigration and Customs Enforcement. Of course, that requires agreement with the government.

Q When did that started? And how temporary is that supposed to be -- this program?

MS. PSAKI: Well, it's -- it's just starting now. And I can -- I'm sure I can get you a timeline of when it actually started to commence.

Q And is there a deadline until when this will be implemented?

MS. PSAKI: I don't believe we've set a deadline, but I can -- I can get that information for you as well.

Go ahead. Last one.

Q Thank you, Jen. One on the Supreme Court and two on COVID, if you'll indulge me.

MS. PSAKI: Sure.

Q First, on the Supreme Court: Does President Biden have plans to talk to Senator McConnell -- McConnell at all today or this week?

MS. PSAKI: I expect he will have many more consultations with Democrats and Republicans. I don't have anything yet for you at this point, but hopefully we'll have more in the next 24 hours.

Q Okay. And then two quick ones on the pandemic. First of all, I was wondering if you'd be able to provide an update on the free mask program that the White House was doing? I'm just curious if there's an update on the how many of the -- of the hundreds of millions of masks have been distributed already.

And also, is there a way for Americans to know, you know, if there are masks in their area, if they've been delivered to the area pharmacies -- just, you know, sort of, when -- when they know that they can go find them in their area?

MS. PSAKI: Sure. So, we just announced this last week, but we've already cranked up our shipments. We've shipped 100 million N95 masks [sic] -- masks so far, which is incredible progress. They're available at thousands of locations around the country.

The initial wave of health centers or for people who are looking to see if they're available near them is available on the Health Resources and Services Administration's website.

And the program, we -- we're working to expand it to make it available across all health centers over the coming weeks.

Q And then lastly, one from our colleague who couldn't be here. At NewsNation, they reported hearing from people who signed up to receive the free COVID tests through the website -- the government website, but they had issues where either the tests were shipped to the wrong address or they never received a confirmation email.

So, what should people do in that case? Is there a way for them to rectify that? Does the White House have, like, a response team in case somebody never gets a test that they ordered or anything like that?

MS. PSAKI: Yeah. There's a -- there's a -- there's a "Help" component on the website. Hopefully, it should be easy for people. There's also a phone number -- I'm sure we can get that to you after the briefing -- as well that people could call should they have any concerns.

I will note that we confirmed last week that 60 million tests have been -- had been ordered as of then. I don't have an updated number. Tens of millions of tests have gone out the door and reached the right -- right doors. I think that's the vast, vast, vast majority.

That is earlier than we were scheduled and were planning to get those tests out the doors.

But we can -- we can get you the phone number and you can publicize that in your publication.

Thanks, everyone.

Q Can you make sure we all get a list of what's going on for Black History Month?

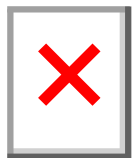
MS. PSAKI: Sure.

Q Thank you.

3:13 P.M. EST

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Sent: February 1, 2022 7:00 PM (UTC-05:00)



FOR IMMEDIATE RELEASE

February 1, 2022

Press Briefing by Press Secretary Jen Psaki, February 1, 2022

James S. Brady Press Briefing Room

2:27 P.M. EST

MS. PSAKI: All right. Kristen, welcome back.

Q Thank you, Jen. I appreciate it.

MS. PSAKI: Okay. We missed you.

A couple of items for you all at the top. I know there was some good questions yesterday about the status of the infrastructure law implementation, so I just wanted to bring you a few updates that are hopefully helpful to all of you.

In the 79 days since the bill -- the law was signed, our team has hit the ground running to get money out the door, engage partners, and provide comprehensive resources to help municipalities unlock funding opportunities so no community is left behind.

To date, over \$80 billion has already been allocated and is headed out to states, territories, and local governments. That includes over \$50 billion to states for highways and roads; \$14 billion for 500 Army Corps projects; over \$5 billion for -- to states for bridges; over \$7 billion to states for water infrastructure; \$3 billion to repair and rebuild over 3,000 airports; \$1 billion to support Superfund cleanup to 49 sites; and \$239 million in Port Infrastructure Development Grants.

And this is just the beginning, and we'll do our best to provide you all updates in here on the status of these funds being

allocated. State, local, Tribal, and territorial governments will receive over 90 percent of funding from the Bipartisan Infrastructure Law to rebuild their communities.

We mentioned yesterday -- or I talked a little bit yesterday about this large guidebook we had put out to provide guidance and information to communities to apply for the part of this that will be through competitive awards.

As we did with the American Rescue Plan, we also know that local leaders have the best sense of where the communities need funding. And the formula funds in the Bipartisan Infrastructure Law include flexibility to deal with unique local and state challenges.

As we've also said many times, with flexibility comes great responsibility to use funds wisely. So, to ensure accountability and transparency, Mitch Landrieu and the infrastructure team convened a meeting with inspector general -- inspectors general -- general from all agencies with funding from the infrastructure law to discuss oversight and transparency. He called for each state to appoint an infrastructure implementation lead, and we are committed to showing transparency on how money is allocated and spent.

Also, one other update for all of you at the top. As you know, the President is headed to New York City on Thursday, and I wanted to give you a quick preview of his trip.

He will be joined on the trip by Attorney General Garland to talk about the steps the administration has taken so far to reduce crime -- gun crime, and how we can be a strong partner for New York City and other cities grappling with increased gun violence over the past two years.

The President and the Attorney General will join with law enforcement officials alongside elected leaders, including Mayor Adams, Governor Hochul, at the New York Police Department headquarters to discuss the work that federal, state, and local law enforcement officials are doing to quickly take guns and repeat shooters off of our streets.

Afterward, President Biden, Attorney General Garland, Mayor Adams, Governor Hochul, and other elected leaders will visit with community violence intervention leader -- leaders in Queens to talk about the community-led work to interrupt gun violence.

The President outlined a comprehensive plan last year to tackle gun crime that includes giving cities historic funding through the American Rescue Plan to put more cops on the beat and support community violence intervention programs, as well as initiatives like afterschool programming, creating economic opportunities, and reducing recidivism to address the root causes of gun crime.

The President's budget also doubles federal support for community policing, with \$300 million more for cities plus another \$200 million for community violence interventions -- a total of a half a billion dollars for these strategies that are proven to reduce gun crime. And he's going to continue to urge Congress to act on that.

Finally, the Department of Justice continues to step up their efforts to combat violent crime and gun trafficking, including through five strike forces launched last year in New York City and other regions.

As the Department of Justice reported just last week, those efforts have resulted in thousands of guns and violent criminals being taken off the streets over the past year. But they will, of course, have more to say on Thursday.

Why don't you kick us off?

Q Thanks, Jen. It's been a busy news day so I have a few. Off the top, Senator Manchin just said Build Back Better is "dead." Was the White House aware that he felt this way? And what's the path forward for some of those Democratic priorities?

MS. PSAKI: Well, as you know, as a policy, we're not going to get into private conversations we have with Senator Manchin or any other senators about this piece of legislation or our efforts moving forward.

What I will note and where there is strong support moving forward across the Democratic Caucus is on taking steps to lower costs for childcare, for healthcare, for eldercare; on making sure that Medicare can negotiate the cost of prescription drugs; and ensuring the tax system is fair. Whatever you call that, there is strong support for that, strong passion for that, a lot of advocacy for that, and there are a lot of members having continued conversations about it.

Q And then Russian President Vladimir Putin just said today that the U.S. is ignoring its top security demands but that Moscow is still open for more talks. Is the U.S. open to more talks? If not, what is the step forward with respect to Russia?

MS. PSAKI: Absolutely we are. The door to diplomacy remains open. We don't know what decision President Putin will make. While we've seen the buildup of troops on the border, Secretary -- our Secretary of State, Tony Blinken, just spoke this morning with Foreign Minister Lavrov, and he reiterated our commitments and openness to a diplomatic path forward.

Let me give you a little bit more of a readout of that. And I can give you more of an update of some of the other conversations we've been having with a range of counterparts as well.

So, Secretary Blinken -- I know the State Department did a bit of a background call on this, but let me give you some highlights: The Secretary emphasized the U.S. willingness, bilaterally and together with Allies and partners, to continue a substantive exchange with Russia on mutual security concerns, which we intend to do in full coordination with our partners and Allies. He reiterated the United States commitment to Ukraine's sovereignty and territorial integrity, as well as the right of all countries to determine their own foreign policy and alliances.

He also urged immediate Russian de-escalation and the withdrawal of troops and equipment from Ukraine's borders, and was clear that further invasion of Ukraine would be met with swift and severe consequences and urged Russia to pursue a diplomatic path.

Our National Security Advisor, Jake Sullivan, also met with his German counterpart today as part of our regular consultations with our Allies and partners. But certainly, the door to diplomacy remains open. As we've said many times, de-escalation will, of course, make that diplomatic path easier moving forward.

Q And then one more on HHS. Last week, there was a GAO report warning that HHS may not be prepared for a future pandemic and that it had fallen short in a number of ways in this pandemic. There have also been reports about White House officials being frustrated with Secretary Becerra's leadership. So does the President still have confidence in Secretary Becerra? And has he talked to him about any changes he might want to see at HHS or about his leadership of the department?

MS. PSAKI: Well, you know how we feel about anonymous sources around here.

Q They weren't all anonymous. There were some experts that are publicly criticizing the way HHS has --

MS. PSAKI: From -- from within the government, I'm referring to.

Q Sure.

MS. PSAKI: I would just reiterate that the President remains confident in the role of Secretary Becerra. He is somebody who is an important partner. He has been leading a range of efforts from the Department of Homeland Security -- I mean -- Homeland Security -- the -- from the Department of Health and Human Services. And we have strong partnerships from the very top down with HHS.

We're less focused on -- not at all focused, I should say, on palace intrigue, as much as we are on vaccinating more Americans, fighting the Omicron surge, expanding testing capacity, and getting more therapeutics out to the American people. And that's how we believe we and the leadership of the Cabinet will be judged.

Go ahead.

Q A couple of follow-ups here. On Ukraine, we've seen some of the major European allies talking directly with Putin. Emmanuel Macron has spoken with him twice. The Italian Prime Minister has spoken with him. Boris Johnson is now traveling to Ukraine. Why not have the President have a -- you know, take more direct involvement like some of these other allies are?

MS. PSAKI: Well, the President remains certainly open to that if there's a determination that that is the appropriate and most constructive step moving forward. We also have a very active and engaged Secretary of State, who has had a number of conversations with his counterpart, including this morning, and that's the channel that those conversations are happening through at this point -- as well as at many other levels, I should say.

Q And on the question about Senator Manchin: He also said that no one has reached out to him. He hasn't been having talks about trying to do this "in chunks," as the President has suggested may be the path forward. Why not?

MS. PSAKI: I'm not going to outline from here conversations that we are having with a range of senators and a range of senators are having with each other, but I can assure you we've been in touch with and hav- -- with every member of the Democratic Caucus.

Q And just some housekeeping on the Supreme Court pick. The Times is reporting that Doug Jones will be the sherpa on the Hill. Can you confirm that and talk about that decision?

MS. PSAKI: I don't have anything to confirm yet at this point about what the team will look like that we bring in, as has been done historically, to help sherpa through our nominee whenever that person is selected.

I can reiterate that we intend to have that team in place before the President makes a selection, and that team will be more than one person.

Go ahead, Kristen.

Q Thank you, Jen. And thank you for the welcome back. Following up on the Supreme Court decision, a number of Republicans, as you know and as you've been asked about, have spoken out about the President's pledge to pick a Black woman for the High Court. How do you respond specifically to Ted Cruz who, overnight, called it "offensive" -- offensive to Black women that he would make that pledge?

MS. PSAKI: Well, here's what I would say first: Just over a year ago, the previous president also promised to select a woman for the Supreme Court. Not only were there no complaints about choosing a nominee from a specific demographic -- from the same corners -- but there was widespread praise of now-Justice Barrett on those grounds with Republican lawmakers widely highlighting that they thought this was positive for women in America.

So, take Senator Cruz himself: He had no objection to Donald Trump promising he'd nominate a woman in 2020. I repeat: No objection at all. In fact, he praised her on these grounds during -- praised her on these grounds -- the nominee. During her confirmation hearing, Senator Cruz said, quote, "I think you're an amazing role model for little girls. What advice would you give little girls?"

When President Reagan honored his campaign pledge to place the first woman on the Court, he said it symbolizes the unique American opportunity. There is no outcry around that.

The President's view is that after 230 years of the Supreme Court being in existence, the fact that not a single Black woman has served on the Supreme Court is a failure in the process, not a failure -- or a lack of qualified Black women to serve as Supreme Court justices.

Q And broadly speaking, we just heard from the President on how he is viewing this pick. He says he is taking the "advise and consent" role very seriously --

MS. PSAKI: Yes.

Q -- of the Senate. If he thought -- and I know you've been getting questions around this, but just to kind of put a finer point on it: If he thought that a nominee could get more Republican support, how would that weigh on his decision?

MS. PSAKI: I talked with him about this exact question this morning because I know a lot of you are asking about it. And what he reiterated to me is that his focus is on picking the person who is eminently qualified, who is ready to serve and prepared to serve in a lifetime appointment to the Supreme Court, not in navigating the legislative process.

Q Just yesterday -- on different a topic, HBCUs: A number of them have gotten more bomb threats today. You ca- -- yesterday said that the bomb threats were disturbing. Can you update us on what, if any, more information the White House, the President has about these potential threats? And is there a concern that it is, in fact, linked to Black History Month?

MS. PSAKI: Well, we don't have an assessment at this point. We are continuing to evaluate. Our homeland security advisor here in the White House, Liz Sherwood-Randall, is providing regular updates to senior staff, to the President as well. And he certainly is aware of the latest instance of bomb threats not just yesterday, but also those this morning.

And let me just reiterate that we condemn these disturbing threats, and our thoughts are with the students, faculty, and staff of these storied institutions.

We have been long supporters and have made historic investments in HBCUs and deeply value the significant role they continue to play in advancing opportunity for Black students across America. But, right now, we don't have any assessment or new assessment right now.

Q Any chance that the President -- or are there any discussions about the President visiting one of these HBCUs to reaffirm the commitment that the White House has to the protection of the students (inaudible)?

MS. PSAKI: He has certainly visited HBCUs in the past, Kristen. Obviously, right now, our focus is on ensuring we are working in close coordination with our law enforcement authorities and ensuring that the leaders of these institutions and the students know that we are watching closely and that we are standing with them as they face these threats.

But I don't have any trip to predict at this point in time.

Q Jen, can I follow on that, please? Just one --

MS. PSAKI: I'll go to you next, April. Let me just finish Kristen's --

Q One more, really quickly.

Q Tomorrow is the one-year anniversary of the Family Reunification Task Force. As you know, Secretary Mayorkas has told NBC News that the White House is 100 percent supportive of permanent legal status for families separated at the border. Is that a true statement? Is that a (inaudible)?

MS. PSAKI: We stand by Secretary Mayorkas.

Q Okay. Thank you.

MS. PSAKI: Go -- April, go ahead. And then, I'll come back to you. Go ahead.

Q Okay. So, Jen, back on the HBCU bomb threats. There is a historic issue when it comes to bomb threats in the Black community.

MS. PSAKI: Mm-hmm.

Q And with that said, you have people like Lee Merritt calling it "terrorism." And he's asking for the DOJ, Homeland Security, and U.S. Attorney's Office to investigate -- to form a task force, particularly specifically on these issues. Is there talk around the White House for this to happen?

MS. PSAKI: Well, what I can tell you, April, is that we take these threats incredibly seriously; that, again, our homeland security advisor is in close touch with law enforcement authorities at a federal and local level. And we are assessing what we think the origin, the reasoning, the motivation behind it is. We don't have an assessment of that quite yet. And I don't want to get ahead of that process.

But we absolutely are behind these HBCUs. We are -- want to make very clear that we take these threats seriously and we deeply value their contributions.

But it's important for law enforcement authorities and others to make an assessment before we make any determinations about next steps.

Q And does the White House see the irony in this moment with these continued bomb threats of HBCUs, particularly as much of the power structure up and down Pennsylvania Avenue are graduates of HBCUs, starting with the Vice President, Howard University; Cedric Richmond, Morehouse; Joyce Beatty, the head of the CBC, Central State; the House Whip, James Clyburn, South Carolina State. So, is there irony in this moment?

MS. PSAKI: I'm not sure I would say -- call it "irony," April. But I would say that it is -- it is scary. It is horrifying. It is terrible that these students, these faculty, these institutions are feeling under threat.

Now, again, we don't know more details at this point in time, and I don't want to get ahead of law enforcement authorities. But certainly, given the history you referenced, you know, this is something we're very mindful of and that is why we're so focuses on providing regular updates and seeing what our law enforcement team assess.

Q And lastly, on the policing executive orders: Reverend Al Sharpton says that there is now a move to break apart the George Floyd Justice in Policing Act for standalone pieces that could possibly go up for a vote and, one way or another, pass or fail. And they're doing that because the executive orders don't have as much teeth as a law. What do you say to this effort to break apart the George Floyd Justice in Policing Act and make each portion a standalone bill?

MS. PSAKI: Well, what I can't assess from here, April, is whether there'd be support for getting that across the finish line and signed into law.

As you know, the President very much wanted to sign the George Floyd Justice in Policing Act into law, and we did not take executive actions because -- at the time, because we wanted to leave room and space for that process to proceed in a bipartisan manner.

So, I'd really point you to leadership and committee chairs in Congress to see what is possible on that front.

And certainly, we agree, a law is more permanent than executive orders. That is absolutely true. But we have not even

finalized, nor do I have a preview of exactly when it would be, a police reform executive order. So, I would also encourage people to wait to assess what that looks like.

Go ahead, Weijia.

Q Thank you, Jen. Back to the Supreme Court.

MS. PSAKI: Sure.

Q I know the President said he wanted to seek the advice of the Senate, in addition to consent. Is there anything you can share about his conversation with Senators Durbin and Grassley, and whether he shared his list of potential candidates with them?

MS. PSAKI: Well, I think they were still meeting when I came out here, or I had not spoken with him yet if it was breaking, so I have not gotten a rundown from him quite yet.

I think he wanted to have an open and engaging conversation with them. In terms of what specific information he shared, I think it was more of him looking to listen to them and hear what they had to say about -- there are a range of names, a range of candidates out there. But also look to them for their advice and their counsel.

As we have noted before, Senator Durbin has been through seven confirmation hearings for Supreme Court justices. Senator Grassley is certainly a veteran of these committee processes. The President takes his role seriously and, as he said today and as your referenced, takes the role of consent of the Senate seriously. But I don't think we're going to read out too many specifics other than to say he was looking forward to having an engaging conversation.

Q And since Justice Breyer announced his retirement, has the President spoken personally with any of the candidates who he might be considering?

MS. PSAKI: We're not going to give a process update or assessment from here, just as a policy. But I can tell you that what we're focused on now is -- obviously, the President is continuing to consult with leadership in Congress, as is evidenced -- as was evidenced by this morning. He'll do more of that this week.

There is obviously an ongoing process as we look to name and nominate a Supreme Court justice before the end of this month. As is, you know, related to Mary's earlier question, we'll also be announcing soon a team that we will be bringing in from the outside. So, there are a number of steps that are happening at the same time. But we're not going to be going into specifics of confirming the internal processes.

Q And you mentioned just a bit ago that he is looking for -- to someone who will obviously serve for a lifetime. Will age be a factor as he considers who to nominate so whoever it is can have a longer imprint on the Court?

MS. PSAKI: I'm just not going to get into more specifics of what he's looking for. I mean, I think the President outlined, when he spoke earlier, that he's looking for somebody who is qualified -- who is eminently qualified, who is prepared to serve in this role.

There is a range of candidates he's been reviewing bios of for some time now. But beyond that, I'll let him speak to more specifics.

Q Thank you. And then one more question on Russia: How soon could the U.S. move troops to the eastern flank? And just to clarify: When the President said "it will happen in the near term," did he mean troops that are already stationed in Europe? Or would some of those troops be the ones based here at home?

MS. PSAKI: Well, I think we've said previously that there's NATO troops, of course; there's 8,500 of them that we've

committed to the NATO -- the NATO effort. That would be a decision made by the Alliance. Some of those troops are in the United States; some are in Europe.

I don't have anything to preview for you in terms of any additional troops. Obviously, there are troops currently that are stationed in Eastern European countries. Some of those troops, of course, are not -- many of them are not under the NATO Alliance.

But I don't have anything to predict for you at this point in time.

Q Thank you, Jen.

MS. PSAKI: Go ahead.

Q Thanks, Jen. A couple quick ones on the Supreme Court first. Last week, I know you said you'd look for an answer on whether you thought the Vice President could break a tie on a Supreme Court vote. Have you guys come to a determination on that?

MS. PSAKI: So, the Vice President has been the tiebreaking vote for a number of judicial appointments -- or nominees in the past. But our intention is, of course, to get broad support for an eminently qualified nominee.

Q In the Oval, the President evoked the Ninth Amendment as he was talking about the qualifications he's looking for for a judicial nominee. In the past and in committee hearings, he's certainly brought that amendment up in the context of abortion rights. Is it a fair reading that that is what he was specifically saying that he was looking for from a candidate here?

MS. PSAKI: I'm just not going to give any more detail on any qualifications he's looking for at this point in time. I'm sure we'll have more conversations about that in the days ahead.

Q And there was a kind of long New Yorker story over the weekend in which a former NSC aide, Andrea Flores, made two claims. One was that Susan Rice and Ron Klain had opposed expanding asylum access for political reasons, and that the White House, partially because of that, wasn't doing contingency planning for the lifting of Title 42 whenever we get to that point in the pandemic and hadn't, kind of, built out capacity to do that.

So I was wondering if you could kind of respond to, I think, those two points that would suggest that immigration policy has shifted within the White House from the campaign.

MS. PSAKI: Well, what I can tell you is that -- I did not work with Andrea Flores, so I don't know her well, nor can I speak to her role here -- but that our policy as an administration has been entirely consistent with what the President committed to on the campaign. And his effort has been to build a fair, humane, and lawful immigration system and bring it into the 21st century.

Hence, he obviously proposed an immigration bill on his first day in office. And beyond that, he has taken steps to protect DACA recipients, ended the Muslim ban and the Public Charge Rule, put together the Family Reunification Task Force, restarted the Central American Minors Program that the previous administration ended, extended or newly designated Temporary Protected Status for a number of countries, and worked with DHS to give clear guidance for internal enforcement.

It's also true that we're still in the midst of a pandemic. And that is not something, of course, as we've talked about here a bit in the past, that everybody anticipated still being at, at this point in time. The CDC is obviously the determinant of having Title 42 in place, and that still is in place because of the pandemic that we're in.

But I would also note that we have -- and I think this was noted, I believe, in the story -- but that we have also been very clear about our views on the MPP program and very clear on our views about the inhumanity of the prior administration and

clear about our view on the MPR program and very clear on our view about the inhumanity of the prior administration and how they handled immigration and that we had every intention of implementing a different approach.

Q And one last one. There's been a bit of a controversy this week on the other side of the pond. Prime Minister Johnson and the actions of him and his staff -- a report came out this week.

I'm wondering: Is the President aware of what's going on? Is he at all worried that that political controversy is impacting, you know, the U.S. and UK's ability to, sort of, press President Putin on the Ukraine situation? And, you know, has he ever been "ambushed by a cake"? (Laughs.) How --

MS. PSAKI: Has the President ever been ambushed by a cake? (Laughs.) Not that I'm aware of.

Q But just what his reaction is, sort of, to this controversy that's been blowing up.

MS. PSAKI: You know, I have not spoken with him specifically about the reports in the UK. But what I can tell you is that he is confident in the important partnership we have with the United Kingdom, the role they play as an important partner in making clear to Russia the unacceptable nature of the buildup of troops and their bellicose rhetoric as it relates to Ukraine. And that certainly has not changed, despite cakes in anyone's faces.

Go ahead.

Q Thanks, Jen. Starting quickly just with Ukraine. You guys keep holding up this, kind of, diplomatic path for Vladimir Putin. But as he noted today, you've already rejected both of his, kind of, central demands. So, what exactly is this a diplomatic path to if you've already rejected what he's asked for? And can you kind of sympathize with the fact that he may be feeling like he's strung along and wants to pursue things on another battlefield?

MS. PSAKI: As in invading a sovereign country? Which would be the alternative, right? Right? Is that what you're saying?

Q Perhaps. Perhaps.

MS. PSAKI: Okay. Well, here's our view: We don't know what President Putin is going to do. And it is our responsibility to -- and it's an imperative to keep the door to diplomacy open. That does not mean that we are going to not stand by our own values, which includes the -- our belief that -- and the belief of NATO countries -- that it should be up to NATO members to determine who is able to join NATO and that the door to that should be open.

So if that is one of their claims, we have reiterated the same thing privately that we have reiterated publicly.

In our view, do we have sympathy? I mean, this is -- you know, Secretary Blinken has used some of these analogies in the past, but when the fox is screaming from the top of the henhouse that he's scared of the chickens, which is essentially what they're doing, that fear isn't reported as a statement of fact. And as you watch President Putin screaming about the fear of Ukraine and the Ukrainians, that should not be reported as a statement of fact.

We know who the fox is in this case. We have seen the buildup of troops at the border. We have seen them move troops to Belarus, on another border.

And our role in the United States is to work with other countries around the world to keep that bor- -- door to diplomacy open, because certainly all of our preference is to de-escalate and to prevent an invasion from happening.

But that is up to President Putin to make that decision.

Q And do you think a possible endgame here could be just mutual de-escalation and then live to talk --

MS. PSAKI: De-escalation in what regard?

Q -- about the issues another day?

MS. PSAKI: "Mutual de-escalation" -- tell me more what you mean by that.

Q I mean, it's up -- I suppose it's up to you to define. But I mean, you guys have asked for him to move troops back from the border.

MS. PSAKI: But here's what I'm getting at: We are defin- -- it's a mistake, I would say, to define things by the terms that President Putin is defining things. This is a country and a leader who has, you know, used chemical weapons, who has invaded multiple countries in the past several years, who has taken aggressive steps on the global stage on many occasions.

So, when we talk about mutual de-escalation, Russia has 100,000 troops on the border; they are the aggressor. We are working with NATO countries to make sure they feel secure in this moment. NATO is a defensive alliance. It is not the same thing. And I think we need to be careful about comparing them as the same thing.

Q Thank you. And just to switch gears to Supreme Court. You guys, obviously, have got this big nomination that you're working on, but there's also huge existential questions hanging over the Supreme Court. Does the President plan to decide what he's going to do on Supreme Court reform before he makes this nomination?

MS. PSAKI: He is reviewing the Supreme Court Commission report. I don't have a prediction of when he will conclude his analysis of that.

Q And I just asked because the report includes suggestions about things like changing the number of people on the Court, and you would think he would want to know who -- if he's going to increase the size of the court, who he's going to put on first. Right?

MS. PSAKI: I think, Trevor, his focus right now is on going through a process that takes it -- that values the seriousness of the role he has as president, that cons- -- where he consults, as you saw today, with Democrats and Republicans to select and nominate an eminently qualified Black woman to serve on the Court. That's his focus right now.

Q And finally, there have been some ethical questions about Supreme Court Justice Clarence Thomas. His wife is -- has a number of political affiliations with groups that file amicus briefs before the Court, have other business before the Court. It's his choice whether or not to recuse himself from those cases; he hasn't. Does the President feel that there is an ethical issue there that he'd like to see dealt with?

MS. PSAKI: I have not had a discussion about that with the President or our counsel's office. I will see if there's any comment we have from here, or it might be a Department of Justice comment. I'll get back to you.

Go ahead.

Q Hey, Jen. How's it going?

MS. PSAKI: Good.

Q The Center for American Progress put out a memo today focusing on specific priorities for a more narrow Build Back Better bill, but not listed is the extended Child Tax Credit. Could the White House (inaudible) support a revised bill that didn't include the extended Child Tax Credit?

MS. PSAKI: Well, I'm not going to make a prediction or negotiate from here. Obviously, the President proposed an extension of the Child Tax Credit as you know because it helped cut the -- child poverty by 40 percent last year. It's

extension of the Child Tax Credit, as you know, because it helped cut the child poverty by 40 percent last year. It's something he would absolutely like to be extended.

There is a question here as to what 50 members of the Democratic caucus will support. And they support, as we were talking about a little bit earlier, some big fundamental goals, which is important: lowering cost of childcare, healthcare; negotiating prescription drugs. That's important. But I can't predict for you here what all 50 of them will support.

Q Sure. Last week, the Surgeon General also was asked on MSNBC about Joe Rogan's vaccine comments on Spotify. And he said that tech companies have an "important role to play" in stopping misinformation because he -- they are the "predominant places" where misinformation spreads.

Spotify is putting out advisory warnings on episodes that have to do with COVID-19. Does the White House and the administration think this is a satisfactory step? Or do you -- do you think that companies like Spotify should go further than just, you know, putting a label on there to say, "Hey, go do your own -- you know, check this out. You know, there's more research you can look at -- you know, scientific research regarding COVID"?

MS. PSAKI: Sure. Well, last July, I -- you probably know, but the Surgeon General also took the unprecedented step to issue an advisory on the risk of misinformation and public health, which is a very significant step. And amid that, he talked about the role social media platforms have.

So our hope is that all major tech platforms -- and all major news sources, for that matter -- be responsible and be vigilant to ensure the American people have access to accurate information on something as significant as COVID-19. And that certainly includes Spotify [sic].

So, this disclaimer -- it's a positive step. But we want every platform to continue doing more to call out misinform- -- mis- and disinformation while also uplifting accurate information.

I mean, look at the facts, right? You are 16 times more likely to be hospitalized if you're unvaccinated and 68 times more likely to die than someone who is boosted if you're unvaccinated. That's pretty significant. And we think that is something that unquestionably should be the basis of how people are communicating about it.

But, ultimately, you know, our view is it's a -- it's a -- it's a good step, it's a positive step, but there's more that can be done.

Q And I have another tech question for you --

MS. PSAKI: Sure.

Q -- which is: There have been some recent reports that the White House is planning to issue a series of executive actions on cryptocurrencies in the next few weeks. Can you give a timeline on when those are coming and what actually might be in those executive actions?

MS. PSAKI: I would have to check with our NEC team on that and see if that's something that is coming down the road. But I will check and see if there's anything to predict for you.

Go ahead, Brian.

Q Thanks a lot, Jen.

MS. PSAKI: I wanted to first follow up on something you said about the Supreme Court process.

MS. PSAKI: Sure.

O You said that President Biden has been looking at bios for some time now. How long has that been that he's been

looking at bios of potential candidates?

MS. PSAKI: Since last year.

Q So that was something that started in the transition process? Or --

MS. PSAKI: No, since last year, not during the transition process.

Q And what prompted that for him to start looking at bios last year?

MS. PSAKI: He takes his role incredibly seriously. And we certainly know and he committed, of course, to the American people he would nominate a Black woman -- a qualified Black woman to serve on the Supreme Court. And so he's just been reviewing a range of bios.

Q And Justice Breyer notified him on the 27th of January. Did he get advance notice before that --

MS. PSAKI: I'm not going to get into any more details. If Justice Breyer wants to get into details about our communications, he can certainly do that.

Q And I have a question on Russia as well. This is -- the jailed Russian dissident, Aleksey Navalny --

MS. PSAKI: Yeah.

Q -- in an interview with Time Magazine, said that the U.S. is repeatedly falling into Putin's traps -- that Putin makes escalations, like he's doing now, and then seeks concessions.

I want to quote Navalny here, where he says, with Putin, the U.S. is acting "like a frightened schoolboy who's been bullied by an upperclassman." What's President Biden's reaction to this? Is he -- is the U.S. reacting like a "frightened schoolboy"?

MS. PSAKI: Well, I would say, first, that we have great respect for Aleksey Navalny and the role he's played in speaking out and being vocal, even under duress himself. And that's to be hugely admired.

I think the President's actions, the administration's actions that have been broadly supported in a bipartisan manner speak for themselves, whether it's our engagement and leadership on the global stage, having more than 200 engagements, leading an effort to have a unified front and making clear about the severity of economic consequences there will be should Russia decide to invade, or whether it is making clear that we are going to continue to stand up for what is a global value, which is the fact that no country should be able to invade another country and take their territory.

I'll let others define that. I don't think that's a "frightened schoolboy."

Q So when the President talks about economic actions that -- and economic consequences for Russia if it does invade, why not enact some of those sanctions now? Why not enact those economic consequences now? Why wait for an invasion?

MS. PSAKI: Well, we have enacted some sanctions. But I would say that we think it's an important point of leverage in the discussions.

Go ahead.

Q Thanks, Jen. To clarify something you said earlier about the BBB talks --

MS. PSAKI: Yeah.

Q -- you know, to the extent that you're going to tell us about them: You said that -- you know, rest assured the President -- you said, "We've been in touch with every member of the Democratic Caucus." "We've been in touch..."

MS. PSAKI: We in the White House.

Q So that's the leg affairs team, mainly, and the --

MS. PSAKI: The leg affairs team and senior members of the White House. We're just not going to detail more specifics.

Q So you can't say if the President has been involved personally in any of the conversations with (inaudible)?

MS. PSAKI: The President has talked to a range of senators. He always does.

Q Okay. On the Ukraine-Russia stuff, any plans in the works for another conversation between the President and President Zelenskyy?

MS. PSAKI: He has talked to him a couple of times in the last few weeks, and we've been in regular contact. We also are in very close contact from Jake Sullivan's level and Secretary Blinken's level. So, certainly, it's possible. We've been in regular touch, but I don't have any call to predict at this point. He just talked to him a couple days ago.

Q Sure. And one other question. Today, obviously, is the start of Black History Month. The President issued a couple of tweets about that.

MS. PSAKI: Yeah.

Q I wonder what the administration -- the President's response is to what has been happening in Texas and other states where a number of books have been banned by school districts. These are, generally, books that have focused on slavery, on Jim Crow, on civil rights, even on the Obamas. Does the White House have a position on the books that are being banned by these local school boards?

MS. PSAKI: I have not discussed this with the President, but I can tell you that, as an administration, we believe in the freedom of speech and expression. And certainly, we have never been advocates of preventing people from understanding and reading history.

Q And does the President plan to do more to recognize -- commemorate Black History Month this month?

MS. PSAKI: Absolutely. Let me see if we can get you some more details.

Go ahead.

Q Good afternoon, Jen.

MS. PSAKI: Good afternoon.

Q A couple of questions for you. Back to the Supreme Court.

MS. PSAKI: Sure.

Q How will the debate over abortion shake the President's selection process?

MS. PSAKI: The President is going to select an eminently qualified Black woman to serve on the Court, someone -- and he's going to do that through consulting with a range of members of Congress, through outside experts, and obviously through engagement with them directly. But I don't think I'm going to give you more specifics from here.

Q But that person -- will that person have to be pro-abortion?

MS. PSAKI: I think somebody asked a similar question. I'm not going to outline litmus tests from here today.

Q Okay. Following up on that, the President has said in the past he does not believe that life begins at conception. When does he believe it begins?

MS. PSAKI: You know the President's position. He believes in a woman's right to choose.

Q But that's not the question I asked. I said --

MS. PSAKI: And he's spoken -- he's spoken to this in the past. And I know you ask this every time you come in here, which is your --

Q (Inaudible.)

MS. PSAKI: -- your absolute right, but I don't think I have anything new to --

Q But I -- that's not -- that's not --

MS. PSAKI: -- reveal for you.

Q The question is: When does he believe life -- and essential to the debate over the question of a baby's viability, pro-life Americans -- don't you agree? -- should know where the President stands on his thinking on this. It's a fundamental question.

MS. PSAKI: The President believes in a woman's right to choose.

Q But his -- when does he believe life begins?

MS. PSAKI: Go ahead. I think we're going to move on unless you have another question. Go ahead.

Q Oh, let's do another question. One more question --

MS. PSAKI: Go ahead.

Q -- unrelated to that.

MS. PSAKI: Okay.

Q Following up on the question for -- on the expanded Child Tax Credit.

MS. PSAKI: Yep.

Q You have said time and again that this has taken lots of kids and families out of poverty.

MS. PSAKI: Yeah.

Q A tremendous success there.

MS. PSAKI: Yeah.

Q But with that now gone -- it looks like it's gone, dead -- inflation creeping up, high gas prices, high food prices, how quickly are those same kids and families going to go back into poverty, do you fear?

MS. PSAKI: Well, how it's implemented -- first, the President is going to continue to fight for the Child Tax Credit. It's something he very much believes in. I just can't predict what a package will look like and what there will be support from 50 senators on.

What I can tell you is that as individuals who are eligible file their taxes, they will get the other half of the Child Tax Credit benefit from last year. That is not a forever solution, but that is something that many can look ahead to.

The other part of the Build -- the President's Build Back Better Agenda that's important, as you're talking about rising costs for people: You know, we have -- we have a proposal -- the President has a proposal, many Democrats across the board support it, which is -- that will lower costs for Americans across the country and all the issues you talked about, things that really weigh on people's family budgets, whether it's healthcare, which is a huge -- has a huge impact on people's budgets; childcare, which is contributing to preventing 2 million women from rejoining the workforce. That's the Build Back Better plan, and that's something that we know will help lower costs for families.

Q And finally, does the President have a message for those struggling families who are very worried right now not seeing that extra \$500 or \$1,000 a month or whatever that are saying, "I can't afford the groceries. I can't afford the gas. This is getting very stressful"? A message from the President to those families.

MS. PSAKI: The President would say, "I am here to fight for you, and I -- that's why I'm going to continue to fight to pass legislation that will lower your costs." And that is a top priority for him.

Go ahead.

Q Thank you, Jen. I want to go back to what you said in the beginning about the money that's going to be flowing down to states and that there's going to be an appointment of --

MS. PSAKI: Infrastructure?

Q Infrastructure. Mm-hmm. An infrastructure lead. Can you tell me more about who is -- who's going to be appointing that person in each state? Because there may be concern over states when you get to, like, Florida, where you have Governor DeSantis saying that the President is trying to implement "woke-ification" policy and saying that there is no racism within some of the (inaudible) that have been in the past. How can there -- when you talk about accountability, how is that process going to go? And what information may be accessible to the public as far as reporting?

MS. PSAKI: Well, we have a huge -- several -- 100-page book that we put out yesterday about how people can apply for a range of funding. And I just outlined for you the money to date that has been allocated. And we have taken steps, and we will continue to, to make sure that is as transparent as possible.

Now, some of these -- the funding in this package -- as I mentioned, 90 percent of it will go to local, Tribal, and territorial governments. So, that really gives the opportunity for a range of leaders to apply for funding. And the book is meant to give them the information and access they need so they don't have to hire lobbyists to do that, so that they can do that on their own. And we're doing that in part to ensure that equity is at the central -- is central to how we're implementing this bill.

Q My final question is: What do you say to many organizations -- I've talked to several civil rights organizations -- on the

process of selecting a Vice President? They feel like some of the desires of the Black community have been put on the backburner. So, when it comes to selecting a Vice President, why is there no need or no push to speed up the process? The President has said he --

MS. PSAKI: You mean a Supreme Court justice?

Q A Supreme Court justice.

MS. PSAKI: Sure.

Q I'm sorry. I'm sorry.

MS. PSAKI: No, it's okay.

Q A Supreme Court justice. Why is there no need to speed up that process --

MS. PSAKI: Of selecting a nominee? Well, he's going to --

Q He's going to name one (inaudible).

MS. PSAKI: He's going to name one this month.

Q Right -- name one this month. But there has been a little bit of pushback as far as comparing the process -- the timing to Amy Coney Barrett, as opposed to what the President is going to do during this time.

We've heard Chuck Schumer say that, but is the -- does the President feel the same way as far as moving -- how long, how quickly and expeditiously he wants to move this process along?

MS. PSAKI: I just want to make sure I'm answering the right question. So, you were saying there's unhappiness in the civil rights community about the pace? Or are you talking about the Schumer call for the 38 days?

Q Well, is the President going on board with that to push -- to push it that fast?

MS. PSAKI: Well, the President takes the decision to select an eminently qualified individual to nominate to the Supreme Court very seriously. He wants that to be a thorough process. And he's still doing that expeditiously by nominating someone this month.

And he wants, of course, the Senate to move forward expeditiously, but we're not setting artificial deadlines beyond that.

Go ahead in the back. Okay, we actually have two more, so let me get to them quickly. Go ahead.

Q Thank you, Jen. I have a couple of questions on two different topics.

MS. PSAKI: Sure.

Q One is Russia and then immigration. On Russia, I know the President has -- spoke with the Amir of Qatar regarding the role of that country exporting natural gas to the European Union. But is the U.S. considering increasing its role as a natural gas exporter to the European Union to serve as an alternative to Russian gas?

MS. PSAKI: We are having a conversation with not just countries but also suppliers about how to help meet any shortage of natural gas that could come about if -- if there's an invasion.

Q Also on Russia: Since Ukraine is not a NATO member, according to the North Atlantic Treaty, NATO cannot really respond militarily to Russia in Ukrainian territory. But are U.S. unilateral military actions on the table to support Kyiv?

MS. PSAKI: You mean sending U.S. troops to Ukraine?

Q Yeah.

MS. PSAKI: No.

Q Okay, no.

And on the other topic that I wanted to ask real quick: This administration is now sending Venezuelan migrants arrested at the U.S.-Mexico border to Colombia under Title 42. What agreement has been reached with the Colombian government? Is it similar to the MPP with Mexico?

MS. PSAKI: Well, I think what we tried to do from the beginning is ensure that, for Venezuelans who are coming -- who were coming from a third country, right? -- that they were able, at some point, to return to that country.

So, in this case, pursuant to Title 42, we began repatriating Venezuelan nationals who had attempted to unlawfully enter the United States to Colombia, where they had previously resided. So, it was, you know, a place where they had been living before.

Flights to Colombia with Venezuelan nationals who have legal status are expected to take place on a regular basis and will be operated by U.S. Immigration and Customs Enforcement. Of course, that requires agreement with the government.

Q When did that started? And how temporary is that supposed to be -- this program?

MS. PSAKI: Well, it's -- it's just starting now. And I can -- I'm sure I can get you a timeline of when it actually started to commence.

Q And is there a deadline until when this will be implemented?

MS. PSAKI: I don't believe we've set a deadline, but I can -- I can get that information for you as well.

Go ahead. Last one.

Q Thank you, Jen. One on the Supreme Court and two on COVID, if you'll indulge me.

MS. PSAKI: Sure.

Q First, on the Supreme Court: Does President Biden have plans to talk to Senator McConnell -- McConnell at all today or this week?

MS. PSAKI: I expect he will have many more consultations with Democrats and Republicans. I don't have anything yet for you at this point, but hopefully we'll have more in the next 24 hours.

Q Okay. And then two quick ones on the pandemic. First of all, I was wondering if you'd be able to provide an update on the free mask program that the White House was doing? I'm just curious if there's an update on the how many of the -- of the hundreds of millions of masks have been distributed already.

And also, is there a way for Americans to know, you know, if there are masks in their area, if they've been delivered to the area pharmacies -- just, you know, sort of, when -- when they know that they can go find them in their area?

MS. PSAKI: Sure. So, we just announced this last week, but we've already cranked up our shipments. We've shipped 100 million N95 masks [sic] -- masks so far, which is incredible progress. They're available at thousands of locations around the country.

The initial wave of health centers or for people who are looking to see if they're available near them is available on the Health Resources and Services Administration's website.

And the program, we -- we're working to expand it to make it available across all health centers over the coming weeks.

Q And then lastly, one from our colleague who couldn't be here. At NewsNation, they reported hearing from people who signed up to receive the free COVID tests through the website -- the government website, but they had issues where either the tests were shipped to the wrong address or they never received a confirmation email.

So, what should people do in that case? Is there a way for them to rectify that? Does the White House have, like, a response team in case somebody never gets a test that they ordered or anything like that?

MS. PSAKI: Yeah. There's a -- there's a -- there's a "Help" component on the website. Hopefully, it should be easy for people. There's also a phone number -- I'm sure we can get that to you after the briefing -- as well that people could call should they have any concerns.

I will note that we confirmed last week that 60 million tests have been -- had been ordered as of then. I don't have an updated number. Tens of millions of tests have gone out the door and reached the right -- right doors. I think that's the vast, vast, vast majority.

That is earlier than we were scheduled and were planning to get those tests out the doors.

But we can -- we can get you the phone number and you can publicize that in your publication.

Thanks, everyone.

Q Can you make sure we all get a list of what's going on for Black History Month?

MS. PSAKI: Sure.

Q Thank you.

3:13 P.M. EST

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FOR IMMEDIATE RELEASE

February 1, 2022

Press Briefing by Press Secretary Jen Psaki, February 1, 2022

James S. Brady Press Briefing Room

2:27 P.M. EST

MS. PSAKI: All right. Kristen, welcome back.

Q Thank you, Jen. I appreciate it.

MS. PSAKI: Okay. We missed you.

A couple of items for you all at the top. I know there was some good questions yesterday about the status of the infrastructure law implementation, so I just wanted to bring you a few updates that are hopefully helpful to all of you.

In the 79 days since the bill -- the law was signed, our team has hit the ground running to get money out the door, engage partners, and provide comprehensive resources to help municipalities unlock funding opportunities so no community is left behind.

To date, over \$80 billion has already been allocated and is headed out to states, territories, and local governments. That includes over \$50 billion to states for highways and roads; \$14 billion for 500 Army Corps projects; over \$5 billion for -- to states for bridges; over \$7 billion to states for water infrastructure; \$3 billion to repair and rebuild over 3,000 airports; \$1 billion to support Superfund cleanup to 49 sites; and \$239 million in Port Infrastructure Development Grants.

And this is just the beginning, and we'll do our best to provide you all updates in here on the status of these funds being

allocated. State, local, Tribal, and territorial governments will receive over 90 percent of funding from the Bipartisan Infrastructure Law to rebuild their communities.

We mentioned yesterday -- or I talked a little bit yesterday about this large guidebook we had put out to provide guidance and information to communities to apply for the part of this that will be through competitive awards.

As we did with the American Rescue Plan, we also know that local leaders have the best sense of where the communities need funding. And the formula funds in the Bipartisan Infrastructure Law include flexibility to deal with unique local and state challenges.

As we've also said many times, with flexibility comes great responsibility to use funds wisely. So, to ensure accountability and transparency, Mitch Landrieu and the infrastructure team convened a meeting with inspector general -- inspectors general -- general from all agencies with funding from the infrastructure law to discuss oversight and transparency. He called for each state to appoint an infrastructure implementation lead, and we are committed to showing transparency on how money is allocated and spent.

Also, one other update for all of you at the top. As you know, the President is headed to New York City on Thursday, and I wanted to give you a quick preview of his trip.

He will be joined on the trip by Attorney General Garland to talk about the steps the administration has taken so far to reduce crime -- gun crime, and how we can be a strong partner for New York City and other cities grappling with increased gun violence over the past two years.

The President and the Attorney General will join with law enforcement officials alongside elected leaders, including Mayor Adams, Governor Hochul, at the New York Police Department headquarters to discuss the work that federal, state, and local law enforcement officials are doing to quickly take guns and repeat shooters off of our streets.

Afterward, President Biden, Attorney General Garland, Mayor Adams, Governor Hochul, and other elected leaders will visit with community violence intervention leader -- leaders in Queens to talk about the community-led work to interrupt gun violence.

The President outlined a comprehensive plan last year to tackle gun crime that includes giving cities historic funding through the American Rescue Plan to put more cops on the beat and support community violence intervention programs, as well as initiatives like afterschool programming, creating economic opportunities, and reducing recidivism to address the root causes of gun crime.

The President's budget also doubles federal support for community policing, with \$300 million more for cities plus another \$200 million for community violence interventions -- a total of a half a billion dollars for these strategies that are proven to reduce gun crime. And he's going to continue to urge Congress to act on that.

Finally, the Department of Justice continues to step up their efforts to combat violent crime and gun trafficking, including through five strike forces launched last year in New York City and other regions.

As the Department of Justice reported just last week, those efforts have resulted in thousands of guns and violent criminals being taken off the streets over the past year. But they will, of course, have more to say on Thursday.

Why don't you kick us off?

Q Thanks, Jen. It's been a busy news day so I have a few. Off the top, Senator Manchin just said Build Back Better is "dead." Was the White House aware that he felt this way? And what's the path forward for some of those Democratic priorities?

MS. PSAKI: Well, as you know, as a policy, we're not going to get into private conversations we have with Senator Manchin or any other senators about this piece of legislation or our efforts moving forward.

What I will note and where there is strong support moving forward across the Democratic Caucus is on taking steps to lower costs for childcare, for healthcare, for eldercare; on making sure that Medicare can negotiate the cost of prescription drugs; and ensuring the tax system is fair. Whatever you call that, there is strong support for that, strong passion for that, a lot of advocacy for that, and there are a lot of members having continued conversations about it.

Q And then Russian President Vladimir Putin just said today that the U.S. is ignoring its top security demands but that Moscow is still open for more talks. Is the U.S. open to more talks? If not, what is the step forward with respect to Russia?

MS. PSAKI: Absolutely we are. The door to diplomacy remains open. We don't know what decision President Putin will make. While we've seen the buildup of troops on the border, Secretary -- our Secretary of State, Tony Blinken, just spoke this morning with Foreign Minister Lavrov, and he reiterated our commitments and openness to a diplomatic path forward.

Let me give you a little bit more of a readout of that. And I can give you more of an update of some of the other conversations we've been having with a range of counterparts as well.

So, Secretary Blinken -- I know the State Department did a bit of a background call on this, but let me give you some highlights: The Secretary emphasized the U.S. willingness, bilaterally and together with Allies and partners, to continue a substantive exchange with Russia on mutual security concerns, which we intend to do in full coordination with our partners and Allies. He reiterated the United States commitment to Ukraine's sovereignty and territorial integrity, as well as the right of all countries to determine their own foreign policy and alliances.

He also urged immediate Russian de-escalation and the withdrawal of troops and equipment from Ukraine's borders, and was clear that further invasion of Ukraine would be met with swift and severe consequences and urged Russia to pursue a diplomatic path.

Our National Security Advisor, Jake Sullivan, also met with his German counterpart today as part of our regular consultations with our Allies and partners. But certainly, the door to diplomacy remains open. As we've said many times, de-escalation will, of course, make that diplomatic path easier moving forward.

Q And then one more on HHS. Last week, there was a GAO report warning that HHS may not be prepared for a future pandemic and that it had fallen short in a number of ways in this pandemic. There have also been reports about White House officials being frustrated with Secretary Becerra's leadership. So does the President still have confidence in Secretary Becerra? And has he talked to him about any changes he might want to see at HHS or about his leadership of the department?

MS. PSAKI: Well, you know how we feel about anonymous sources around here.

Q They weren't all anonymous. There were some experts that are publicly criticizing the way HHS has --

MS. PSAKI: From -- from within the government, I'm referring to.

Q Sure.

MS. PSAKI: I would just reiterate that the President remains confident in the role of Secretary Becerra. He is somebody who is an important partner. He has been leading a range of efforts from the Department of Homeland Security -- I mean -- Homeland Security -- the -- from the Department of Health and Human Services. And we have strong partnerships from the very top down with HHS.

We're less focused on -- not at all focused, I should say, on palace intrigue, as much as we are on vaccinating more Americans, fighting the Omicron surge, expanding testing capacity, and getting more therapeutics out to the American people. And that's how we believe we and the leadership of the Cabinet will be judged.

Go ahead.

Q A couple of follow-ups here. On Ukraine, we've seen some of the major European allies talking directly with Putin. Emmanuel Macron has spoken with him twice. The Italian Prime Minister has spoken with him. Boris Johnson is now traveling to Ukraine. Why not have the President have a -- you know, take more direct involvement like some of these other allies are?

MS. PSAKI: Well, the President remains certainly open to that if there's a determination that that is the appropriate and most constructive step moving forward. We also have a very active and engaged Secretary of State, who has had a number of conversations with his counterpart, including this morning, and that's the channel that those conversations are happening through at this point -- as well as at many other levels, I should say.

Q And on the question about Senator Manchin: He also said that no one has reached out to him. He hasn't been having talks about trying to do this "in chunks," as the President has suggested may be the path forward. Why not?

MS. PSAKI: I'm not going to outline from here conversations that we are having with a range of senators and a range of senators are having with each other, but I can assure you we've been in touch with and hav- -- with every member of the Democratic Caucus.

Q And just some housekeeping on the Supreme Court pick. The Times is reporting that Doug Jones will be the sherpa on the Hill. Can you confirm that and talk about that decision?

MS. PSAKI: I don't have anything to confirm yet at this point about what the team will look like that we bring in, as has been done historically, to help sherpa through our nominee whenever that person is selected.

I can reiterate that we intend to have that team in place before the President makes a selection, and that team will be more than one person.

Go ahead, Kristen.

Q Thank you, Jen. And thank you for the welcome back. Following up on the Supreme Court decision, a number of Republicans, as you know and as you've been asked about, have spoken out about the President's pledge to pick a Black woman for the High Court. How do you respond specifically to Ted Cruz who, overnight, called it "offensive" -- offensive to Black women that he would make that pledge?

MS. PSAKI: Well, here's what I would say first: Just over a year ago, the previous president also promised to select a woman for the Supreme Court. Not only were there no complaints about choosing a nominee from a specific demographic -- from the same corners -- but there was widespread praise of now-Justice Barrett on those grounds with Republican lawmakers widely highlighting that they thought this was positive for women in America.

So, take Senator Cruz himself: He had no objection to Donald Trump promising he'd nominate a woman in 2020. I repeat: No objection at all. In fact, he praised her on these grounds during -- praised her on these grounds -- the nominee. During her confirmation hearing, Senator Cruz said, quote, "I think you're an amazing role model for little girls. What advice would you give little girls?"

When President Reagan honored his campaign pledge to place the first woman on the Court, he said it symbolizes the unique American opportunity. There is no outcry around that.

The President's view is that after 230 years of the Supreme Court being in existence, the fact that not a single Black woman has served on the Supreme Court is a failure in the process, not a failure -- or a lack of qualified Black women to serve as Supreme Court justices.

Q And broadly speaking, we just heard from the President on how he is viewing this pick. He says he is taking the "advise and consent" role very seriously --

MS. PSAKI: Yes.

Q -- of the Senate. If he thought -- and I know you've been getting questions around this, but just to kind of put a finer point on it: If he thought that a nominee could get more Republican support, how would that weigh on his decision?

MS. PSAKI: I talked with him about this exact question this morning because I know a lot of you are asking about it. And what he reiterated to me is that his focus is on picking the person who is eminently qualified, who is ready to serve and prepared to serve in a lifetime appointment to the Supreme Court, not in navigating the legislative process.

Q Just yesterday -- on different a topic, HBCUs: A number of them have gotten more bomb threats today. You ca- -- yesterday said that the bomb threats were disturbing. Can you update us on what, if any, more information the White House, the President has about these potential threats? And is there a concern that it is, in fact, linked to Black History Month?

MS. PSAKI: Well, we don't have an assessment at this point. We are continuing to evaluate. Our homeland security advisor here in the White House, Liz Sherwood-Randall, is providing regular updates to senior staff, to the President as well. And he certainly is aware of the latest instance of bomb threats not just yesterday, but also those this morning.

And let me just reiterate that we condemn these disturbing threats, and our thoughts are with the students, faculty, and staff of these storied institutions.

We have been long supporters and have made historic investments in HBCUs and deeply value the significant role they continue to play in advancing opportunity for Black students across America. But, right now, we don't have any assessment or new assessment right now.

Q Any chance that the President -- or are there any discussions about the President visiting one of these HBCUs to reaffirm the commitment that the White House has to the protection of the students (inaudible)?

MS. PSAKI: He has certainly visited HBCUs in the past, Kristen. Obviously, right now, our focus is on ensuring we are working in close coordination with our law enforcement authorities and ensuring that the leaders of these institutions and the students know that we are watching closely and that we are standing with them as they face these threats.

But I don't have any trip to predict at this point in time.

Q Jen, can I follow on that, please? Just one --

MS. PSAKI: I'll go to you next, April. Let me just finish Kristen's --

Q One more, really quickly.

Q Tomorrow is the one-year anniversary of the Family Reunification Task Force. As you know, Secretary Mayorkas has told NBC News that the White House is 100 percent supportive of permanent legal status for families separated at the border. Is that a true statement? Is that a (inaudible)?

MS. PSAKI: We stand by Secretary Mayorkas.

Q Okay. Thank you.

MS. PSAKI: Go -- April, go ahead. And then, I'll come back to you. Go ahead.

Q Okay. So, Jen, back on the HBCU bomb threats. There is a historic issue when it comes to bomb threats in the Black community.

MS. PSAKI: Mm-hmm.

Q And with that said, you have people like Lee Merritt calling it "terrorism." And he's asking for the DOJ, Homeland Security, and U.S. Attorney's Office to investigate -- to form a task force, particularly specifically on these issues. Is there talk around the White House for this to happen?

MS. PSAKI: Well, what I can tell you, April, is that we take these threats incredibly seriously; that, again, our homeland security advisor is in close touch with law enforcement authorities at a federal and local level. And we are assessing what we think the origin, the reasoning, the motivation behind it is. We don't have an assessment of that quite yet. And I don't want to get ahead of that process.

But we absolutely are behind these HBCUs. We are -- want to make very clear that we take these threats seriously and we deeply value their contributions.

But it's important for law enforcement authorities and others to make an assessment before we make any determinations about next steps.

Q And does the White House see the irony in this moment with these continued bomb threats of HBCUs, particularly as much of the power structure up and down Pennsylvania Avenue are graduates of HBCUs, starting with the Vice President, Howard University; Cedric Richmond, Morehouse; Joyce Beatty, the head of the CBC, Central State; the House Whip, James Clyburn, South Carolina State. So, is there irony in this moment?

MS. PSAKI: I'm not sure I would say -- call it "irony," April. But I would say that it is -- it is scary. It is horrifying. It is terrible that these students, these faculty, these institutions are feeling under threat.

Now, again, we don't know more details at this point in time, and I don't want to get ahead of law enforcement authorities. But certainly, given the history you referenced, you know, this is something we're very mindful of and that is why we're so focuses on providing regular updates and seeing what our law enforcement team assess.

Q And lastly, on the policing executive orders: Reverend Al Sharpton says that there is now a move to break apart the George Floyd Justice in Policing Act for standalone pieces that could possibly go up for a vote and, one way or another, pass or fail. And they're doing that because the executive orders don't have as much teeth as a law. What do you say to this effort to break apart the George Floyd Justice in Policing Act and make each portion a standalone bill?

MS. PSAKI: Well, what I can't assess from here, April, is whether there'd be support for getting that across the finish line and signed into law.

As you know, the President very much wanted to sign the George Floyd Justice in Policing Act into law, and we did not take executive actions because -- at the time, because we wanted to leave room and space for that process to proceed in a bipartisan manner.

So, I'd really point you to leadership and committee chairs in Congress to see what is possible on that front.

And certainly, we agree, a law is more permanent than executive orders. That is absolutely true. But we have not even

finalized, nor do I have a preview of exactly when it would be, a police reform executive order. So, I would also encourage people to wait to assess what that looks like.

Go ahead, Weijia.

Q Thank you, Jen. Back to the Supreme Court.

MS. PSAKI: Sure.

Q I know the President said he wanted to seek the advice of the Senate, in addition to consent. Is there anything you can share about his conversation with Senators Durbin and Grassley, and whether he shared his list of potential candidates with them?

MS. PSAKI: Well, I think they were still meeting when I came out here, or I had not spoken with him yet if it was breaking, so I have not gotten a rundown from him quite yet.

I think he wanted to have an open and engaging conversation with them. In terms of what specific information he shared, I think it was more of him looking to listen to them and hear what they had to say about -- there are a range of names, a range of candidates out there. But also look to them for their advice and their counsel.

As we have noted before, Senator Durbin has been through seven confirmation hearings for Supreme Court justices. Senator Grassley is certainly a veteran of these committee processes. The President takes his role seriously and, as he said today and as your referenced, takes the role of consent of the Senate seriously. But I don't think we're going to read out too many specifics other than to say he was looking forward to having an engaging conversation.

Q And since Justice Breyer announced his retirement, has the President spoken personally with any of the candidates who he might be considering?

MS. PSAKI: We're not going to give a process update or assessment from here, just as a policy. But I can tell you that what we're focused on now is -- obviously, the President is continuing to consult with leadership in Congress, as is evidenced -- as was evidenced by this morning. He'll do more of that this week.

There is obviously an ongoing process as we look to name and nominate a Supreme Court justice before the end of this month. As is, you know, related to Mary's earlier question, we'll also be announcing soon a team that we will be bringing in from the outside. So, there are a number of steps that are happening at the same time. But we're not going to be going into specifics of confirming the internal processes.

Q And you mentioned just a bit ago that he is looking for -- to someone who will obviously serve for a lifetime. Will age be a factor as he considers who to nominate so whoever it is can have a longer imprint on the Court?

MS. PSAKI: I'm just not going to get into more specifics of what he's looking for. I mean, I think the President outlined, when he spoke earlier, that he's looking for somebody who is qualified -- who is eminently qualified, who is prepared to serve in this role.

There is a range of candidates he's been reviewing bios of for some time now. But beyond that, I'll let him speak to more specifics.

Q Thank you. And then one more question on Russia: How soon could the U.S. move troops to the eastern flank? And just to clarify: When the President said "it will happen in the near term," did he mean troops that are already stationed in Europe? Or would some of those troops be the ones based here at home?

MS. PSAKI: Well, I think we've said previously that there's NATO troops, of course; there's 8,500 of them that we've

committed to the NATO -- the NATO effort. That would be a decision made by the Alliance. Some of those troops are in the United States; some are in Europe.

I don't have anything to preview for you in terms of any additional troops. Obviously, there are troops currently that are stationed in Eastern European countries. Some of those troops, of course, are not -- many of them are not under the NATO Alliance.

But I don't have anything to predict for you at this point in time.

Q Thank you, Jen.

MS. PSAKI: Go ahead.

Q Thanks, Jen. A couple quick ones on the Supreme Court first. Last week, I know you said you'd look for an answer on whether you thought the Vice President could break a tie on a Supreme Court vote. Have you guys come to a determination on that?

MS. PSAKI: So, the Vice President has been the tiebreaking vote for a number of judicial appointments -- or nominees in the past. But our intention is, of course, to get broad support for an eminently qualified nominee.

Q In the Oval, the President evoked the Ninth Amendment as he was talking about the qualifications he's looking for for a judicial nominee. In the past and in committee hearings, he's certainly brought that amendment up in the context of abortion rights. Is it a fair reading that that is what he was specifically saying that he was looking for from a candidate here?

MS. PSAKI: I'm just not going to give any more detail on any qualifications he's looking for at this point in time. I'm sure we'll have more conversations about that in the days ahead.

Q And there was a kind of long New Yorker story over the weekend in which a former NSC aide, Andrea Flores, made two claims. One was that Susan Rice and Ron Klain had opposed expanding asylum access for political reasons, and that the White House, partially because of that, wasn't doing contingency planning for the lifting of Title 42 whenever we get to that point in the pandemic and hadn't, kind of, built out capacity to do that.

So I was wondering if you could kind of respond to, I think, those two points that would suggest that immigration policy has shifted within the White House from the campaign.

MS. PSAKI: Well, what I can tell you is that -- I did not work with Andrea Flores, so I don't know her well, nor can I speak to her role here -- but that our policy as an administration has been entirely consistent with what the President committed to on the campaign. And his effort has been to build a fair, humane, and lawful immigration system and bring it into the 21st century.

Hence, he obviously proposed an immigration bill on his first day in office. And beyond that, he has taken steps to protect DACA recipients, ended the Muslim ban and the Public Charge Rule, put together the Family Reunification Task Force, restarted the Central American Minors Program that the previous administration ended, extended or newly designated Temporary Protected Status for a number of countries, and worked with DHS to give clear guidance for internal enforcement.

It's also true that we're still in the midst of a pandemic. And that is not something, of course, as we've talked about here a bit in the past, that everybody anticipated still being at, at this point in time. The CDC is obviously the determinant of having Title 42 in place, and that still is in place because of the pandemic that we're in.

But I would also note that we have -- and I think this was noted, I believe, in the story -- but that we have also been very clear about our views on the MPP program and very clear on our views about the inhumanity of the prior administration and

clear about our view on the MPP program and very clear on our view about the inhumanity of the prior administration and how they handled immigration and that we had every intention of implementing a different approach.

Q And one last one. There's been a bit of a controversy this week on the other side of the pond. Prime Minister Johnson and the actions of him and his staff -- a report came out this week.

I'm wondering: Is the President aware of what's going on? Is he at all worried that that political controversy is impacting, you know, the U.S. and UK's ability to, sort of, press President Putin on the Ukraine situation? And, you know, has he ever been "ambushed by a cake"? (Laughs.) How --

MS. PSAKI: Has the President ever been ambushed by a cake? (Laughs.) Not that I'm aware of.

Q But just what his reaction is, sort of, to this controversy that's been blowing up.

MS. PSAKI: You know, I have not spoken with him specifically about the reports in the UK. But what I can tell you is that he is confident in the important partnership we have with the United Kingdom, the role they play as an important partner in making clear to Russia the unacceptable nature of the buildup of troops and their bellicose rhetoric as it relates to Ukraine. And that certainly has not changed, despite cakes in anyone's faces.

Go ahead.

Q Thanks, Jen. Starting quickly just with Ukraine. You guys keep holding up this, kind of, diplomatic path for Vladimir Putin. But as he noted today, you've already rejected both of his, kind of, central demands. So, what exactly is this a diplomatic path to if you've already rejected what he's asked for? And can you kind of sympathize with the fact that he may be feeling like he's strung along and wants to pursue things on another battlefield?

MS. PSAKI: As in invading a sovereign country? Which would be the alternative, right? Right? Is that what you're saying?

Q Perhaps. Perhaps.

MS. PSAKI: Okay. Well, here's our view: We don't know what President Putin is going to do. And it is our responsibility to -- and it's an imperative to keep the door to diplomacy open. That does not mean that we are going to not stand by our own values, which includes the -- our belief that -- and the belief of NATO countries -- that it should be up to NATO members to determine who is able to join NATO and that the door to that should be open.

So if that is one of their claims, we have reiterated the same thing privately that we have reiterated publicly.

In our view, do we have sympathy? I mean, this is -- you know, Secretary Blinken has used some of these analogies in the past, but when the fox is screaming from the top of the henhouse that he's scared of the chickens, which is essentially what they're doing, that fear isn't reported as a statement of fact. And as you watch President Putin screaming about the fear of Ukraine and the Ukrainians, that should not be reported as a statement of fact.

We know who the fox is in this case. We have seen the buildup of troops at the border. We have seen them move troops to Belarus, on another border.

And our role in the United States is to work with other countries around the world to keep that bor- -- door to diplomacy open, because certainly all of our preference is to de-escalate and to prevent an invasion from happening.

But that is up to President Putin to make that decision.

Q And do you think a possible endgame here could be just mutual de-escalation and then live to talk --

MS. PSAKI: De-escalation in what regard?

Q -- about the issues another day?

MS. PSAKI: "Mutual de-escalation" -- tell me more what you mean by that.

Q I mean, it's up -- I suppose it's up to you to define. But I mean, you guys have asked for him to move troops back from the border.

MS. PSAKI: But here's what I'm getting at: We are defin- -- it's a mistake, I would say, to define things by the terms that President Putin is defining things. This is a country and a leader who has, you know, used chemical weapons, who has invaded multiple countries in the past several years, who has taken aggressive steps on the global stage on many occasions.

So, when we talk about mutual de-escalation, Russia has 100,000 troops on the border; they are the aggressor. We are working with NATO countries to make sure they feel secure in this moment. NATO is a defensive alliance. It is not the same thing. And I think we need to be careful about comparing them as the same thing.

Q Thank you. And just to switch gears to Supreme Court. You guys, obviously, have got this big nomination that you're working on, but there's also huge existential questions hanging over the Supreme Court. Does the President plan to decide what he's going to do on Supreme Court reform before he makes this nomination?

MS. PSAKI: He is reviewing the Supreme Court Commission report. I don't have a prediction of when he will conclude his analysis of that.

Q And I just asked because the report includes suggestions about things like changing the number of people on the Court, and you would think he would want to know who -- if he's going to increase the size of the court, who he's going to put on first. Right?

MS. PSAKI: I think, Trevor, his focus right now is on going through a process that takes it -- that values the seriousness of the role he has as president, that cons- -- where he consults, as you saw today, with Democrats and Republicans to select and nominate an eminently qualified Black woman to serve on the Court. That's his focus right now.

Q And finally, there have been some ethical questions about Supreme Court Justice Clarence Thomas. His wife is -- has a number of political affiliations with groups that file amicus briefs before the Court, have other business before the Court. It's his choice whether or not to recuse himself from those cases; he hasn't. Does the President feel that there is an ethical issue there that he'd like to see dealt with?

MS. PSAKI: I have not had a discussion about that with the President or our counsel's office. I will see if there's any comment we have from here, or it might be a Department of Justice comment. I'll get back to you.

Go ahead.

Q Hey, Jen. How's it going?

MS. PSAKI: Good.

Q The Center for American Progress put out a memo today focusing on specific priorities for a more narrow Build Back Better bill, but not listed is the extended Child Tax Credit. Could the White House (inaudible) support a revised bill that didn't include the extended Child Tax Credit?

MS. PSAKI: Well, I'm not going to make a prediction or negotiate from here. Obviously, the President proposed an extension of the Child Tax Credit as you know because it helped cut the -- child poverty by 40 percent last year. It's

extension of the Child Tax Credit, as you know, because it helped cut the child poverty by 40 percent last year. It's something he would absolutely like to be extended.

There is a question here as to what 50 members of the Democratic caucus will support. And they support, as we were talking about a little bit earlier, some big fundamental goals, which is important: lowering cost of childcare, healthcare; negotiating prescription drugs. That's important. But I can't predict for you here what all 50 of them will support.

Q Sure. Last week, the Surgeon General also was asked on MSNBC about Joe Rogan's vaccine comments on Spotify. And he said that tech companies have an "important role to play" in stopping misinformation because he -- they are the "predominant places" where misinformation spreads.

Spotify is putting out advisory warnings on episodes that have to do with COVID-19. Does the White House and the administration think this is a satisfactory step? Or do you -- do you think that companies like Spotify should go further than just, you know, putting a label on there to say, "Hey, go do your own -- you know, check this out. You know, there's more research you can look at -- you know, scientific research regarding COVID"?

MS. PSAKI: Sure. Well, last July, I -- you probably know, but the Surgeon General also took the unprecedented step to issue an advisory on the risk of misinformation and public health, which is a very significant step. And amid that, he talked about the role social media platforms have.

So our hope is that all major tech platforms -- and all major news sources, for that matter -- be responsible and be vigilant to ensure the American people have access to accurate information on something as significant as COVID-19. And that certainly includes Spotify [sic].

So, this disclaimer -- it's a positive step. But we want every platform to continue doing more to call out misinform- -- mis- and disinformation while also uplifting accurate information.

I mean, look at the facts, right? You are 16 times more likely to be hospitalized if you're unvaccinated and 68 times more likely to die than someone who is boosted if you're unvaccinated. That's pretty significant. And we think that is something that unquestionably should be the basis of how people are communicating about it.

But, ultimately, you know, our view is it's a -- it's a -- it's a good step, it's a positive step, but there's more that can be done.

Q And I have another tech question for you --

MS. PSAKI: Sure.

Q -- which is: There have been some recent reports that the White House is planning to issue a series of executive actions on cryptocurrencies in the next few weeks. Can you give a timeline on when those are coming and what actually might be in those executive actions?

MS. PSAKI: I would have to check with our NEC team on that and see if that's something that is coming down the road. But I will check and see if there's anything to predict for you.

Go ahead, Brian.

Q Thanks a lot, Jen.

MS. PSAKI: I wanted to first follow up on something you said about the Supreme Court process.

MS. PSAKI: Sure.

O You said that President Biden has been looking at bios for some time now. How long has that been that he's been

looking at bios of potential candidates?

MS. PSAKI: Since last year.

Q So that was something that started in the transition process? Or --

MS. PSAKI: No, since last year, not during the transition process.

Q And what prompted that for him to start looking at bios last year?

MS. PSAKI: He takes his role incredibly seriously. And we certainly know and he committed, of course, to the American people he would nominate a Black woman -- a qualified Black woman to serve on the Supreme Court. And so he's just been reviewing a range of bios.

Q And Justice Breyer notified him on the 27th of January. Did he get advance notice before that --

MS. PSAKI: I'm not going to get into any more details. If Justice Breyer wants to get into details about our communications, he can certainly do that.

Q And I have a question on Russia as well. This is -- the jailed Russian dissident, Aleksey Navalny --

MS. PSAKI: Yeah.

Q -- in an interview with Time Magazine, said that the U.S. is repeatedly falling into Putin's traps -- that Putin makes escalations, like he's doing now, and then seeks concessions.

I want to quote Navalny here, where he says, with Putin, the U.S. is acting "like a frightened schoolboy who's been bullied by an upperclassman." What's President Biden's reaction to this? Is he -- is the U.S. reacting like a "frightened schoolboy"?

MS. PSAKI: Well, I would say, first, that we have great respect for Aleksey Navalny and the role he's played in speaking out and being vocal, even under duress himself. And that's to be hugely admired.

I think the President's actions, the administration's actions that have been broadly supported in a bipartisan manner speak for themselves, whether it's our engagement and leadership on the global stage, having more than 200 engagements, leading an effort to have a unified front and making clear about the severity of economic consequences there will be should Russia decide to invade, or whether it is making clear that we are going to continue to stand up for what is a global value, which is the fact that no country should be able to invade another country and take their territory.

I'll let others define that. I don't think that's a "frightened schoolboy."

Q So when the President talks about economic actions that -- and economic consequences for Russia if it does invade, why not enact some of those sanctions now? Why not enact those economic consequences now? Why wait for an invasion?

MS. PSAKI: Well, we have enacted some sanctions. But I would say that we think it's an important point of leverage in the discussions.

Go ahead.

Q Thanks, Jen. To clarify something you said earlier about the BBB talks --

MS. PSAKI: Yeah.

Q -- you know, to the extent that you're going to tell us about them: You said that -- you know, rest assured the President -- you said, "We've been in touch with every member of the Democratic Caucus." "We've been in touch..."

MS. PSAKI: We in the White House.

Q So that's the leg affairs team, mainly, and the --

MS. PSAKI: The leg affairs team and senior members of the White House. We're just not going to detail more specifics.

Q So you can't say if the President has been involved personally in any of the conversations with (inaudible)?

MS. PSAKI: The President has talked to a range of senators. He always does.

Q Okay. On the Ukraine-Russia stuff, any plans in the works for another conversation between the President and President Zelenskyy?

MS. PSAKI: He has talked to him a couple of times in the last few weeks, and we've been in regular contact. We also are in very close contact from Jake Sullivan's level and Secretary Blinken's level. So, certainly, it's possible. We've been in regular touch, but I don't have any call to predict at this point. He just talked to him a couple days ago.

Q Sure. And one other question. Today, obviously, is the start of Black History Month. The President issued a couple of tweets about that.

MS. PSAKI: Yeah.

Q I wonder what the administration -- the President's response is to what has been happening in Texas and other states where a number of books have been banned by school districts. These are, generally, books that have focused on slavery, on Jim Crow, on civil rights, even on the Obamas. Does the White House have a position on the books that are being banned by these local school boards?

MS. PSAKI: I have not discussed this with the President, but I can tell you that, as an administration, we believe in the freedom of speech and expression. And certainly, we have never been advocates of preventing people from understanding and reading history.

Q And does the President plan to do more to recognize -- commemorate Black History Month this month?

MS. PSAKI: Absolutely. Let me see if we can get you some more details.

Go ahead.

Q Good afternoon, Jen.

MS. PSAKI: Good afternoon.

Q A couple of questions for you. Back to the Supreme Court.

MS. PSAKI: Sure.

Q How will the debate over abortion shake the President's selection process?

MS. PSAKI: The President is going to select an eminently qualified Black woman to serve on the Court, someone -- and he's going to do that through consulting with a range of members of Congress, through outside experts, and obviously through engagement with them directly. But I don't think I'm going to give you more specifics from here.

Q But that person -- will that person have to be pro-abortion?

MS. PSAKI: I think somebody asked a similar question. I'm not going to outline litmus tests from here today.

Q Okay. Following up on that, the President has said in the past he does not believe that life begins at conception. When does he believe it begins?

MS. PSAKI: You know the President's position. He believes in a woman's right to choose.

Q But that's not the question I asked. I said --

MS. PSAKI: And he's spoken -- he's spoken to this in the past. And I know you ask this every time you come in here, which is your --

Q (Inaudible.)

MS. PSAKI: -- your absolute right, but I don't think I have anything new to --

Q But I -- that's not -- that's not --

MS. PSAKI: -- reveal for you.

Q The question is: When does he believe life -- and essential to the debate over the question of a baby's viability, pro-life Americans -- don't you agree? -- should know where the President stands on his thinking on this. It's a fundamental question.

MS. PSAKI: The President believes in a woman's right to choose.

Q But his -- when does he believe life begins?

MS. PSAKI: Go ahead. I think we're going to move on unless you have another question. Go ahead.

Q Oh, let's do another question. One more question --

MS. PSAKI: Go ahead.

Q -- unrelated to that.

MS. PSAKI: Okay.

Q Following up on the question for -- on the expanded Child Tax Credit.

MS. PSAKI: Yep.

Q You have said time and again that this has taken lots of kids and families out of poverty.

MS. PSAKI: Yeah.

Q A tremendous success there.

MS. PSAKI: Yeah.

Q But with that now gone -- it looks like it's gone, dead -- inflation creeping up, high gas prices, high food prices, how quickly are those same kids and families going to go back into poverty, do you fear?

MS. PSAKI: Well, how it's implemented -- first, the President is going to continue to fight for the Child Tax Credit. It's something he very much believes in. I just can't predict what a package will look like and what there will be support from 50 senators on.

What I can tell you is that as individuals who are eligible file their taxes, they will get the other half of the Child Tax Credit benefit from last year. That is not a forever solution, but that is something that many can look ahead to.

The other part of the Build -- the President's Build Back Better Agenda that's important, as you're talking about rising costs for people: You know, we have -- we have a proposal -- the President has a proposal, many Democrats across the board support it, which is -- that will lower costs for Americans across the country and all the issues you talked about, things that really weigh on people's family budgets, whether it's healthcare, which is a huge -- has a huge impact on people's budgets; childcare, which is contributing to preventing 2 million women from rejoining the workforce. That's the Build Back Better plan, and that's something that we know will help lower costs for families.

Q And finally, does the President have a message for those struggling families who are very worried right now not seeing that extra \$500 or \$1,000 a month or whatever that are saying, "I can't afford the groceries. I can't afford the gas. This is getting very stressful"? A message from the President to those families.

MS. PSAKI: The President would say, "I am here to fight for you, and I -- that's why I'm going to continue to fight to pass legislation that will lower your costs." And that is a top priority for him.

Go ahead.

Q Thank you, Jen. I want to go back to what you said in the beginning about the money that's going to be flowing down to states and that there's going to be an appointment of --

MS. PSAKI: Infrastructure?

Q Infrastructure. Mm-hmm. An infrastructure lead. Can you tell me more about who is -- who's going to be appointing that person in each state? Because there may be concern over states when you get to, like, Florida, where you have Governor DeSantis saying that the President is trying to implement "woke-ification" policy and saying that there is no racism within some of the (inaudible) that have been in the past. How can there -- when you talk about accountability, how is that process going to go? And what information may be accessible to the public as far as reporting?

MS. PSAKI: Well, we have a huge -- several -- 100-page book that we put out yesterday about how people can apply for a range of funding. And I just outlined for you the money to date that has been allocated. And we have taken steps, and we will continue to, to make sure that is as transparent as possible.

Now, some of these -- the funding in this package -- as I mentioned, 90 percent of it will go to local, Tribal, and territorial governments. So, that really gives the opportunity for a range of leaders to apply for funding. And the book is meant to give them the information and access they need so they don't have to hire lobbyists to do that, so that they can do that on their own. And we're doing that in part to ensure that equity is at the central -- is central to how we're implementing this bill.

Q My final question is: What do you say to many organizations -- I've talked to several civil rights organizations -- on the

process of selecting a Vice President? They feel like some of the desires of the Black community have been put on the backburner. So, when it comes to selecting a Vice President, why is there no need or no push to speed up the process? The President has said he --

MS. PSAKI: You mean a Supreme Court justice?

Q A Supreme Court justice.

MS. PSAKI: Sure.

Q I'm sorry. I'm sorry.

MS. PSAKI: No, it's okay.

Q A Supreme Court justice. Why is there no need to speed up that process --

MS. PSAKI: Of selecting a nominee? Well, he's going to --

Q He's going to name one (inaudible).

MS. PSAKI: He's going to name one this month.

Q Right -- name one this month. But there has been a little bit of pushback as far as comparing the process -- the timing to Amy Coney Barrett, as opposed to what the President is going to do during this time.

We've heard Chuck Schumer say that, but is the -- does the President feel the same way as far as moving -- how long, how quickly and expeditiously he wants to move this process along?

MS. PSAKI: I just want to make sure I'm answering the right question. So, you were saying there's unhappiness in the civil rights community about the pace? Or are you talking about the Schumer call for the 38 days?

Q Well, is the President going on board with that to push -- to push it that fast?

MS. PSAKI: Well, the President takes the decision to select an eminently qualified individual to nominate to the Supreme Court very seriously. He wants that to be a thorough process. And he's still doing that expeditiously by nominating someone this month.

And he wants, of course, the Senate to move forward expeditiously, but we're not setting artificial deadlines beyond that.

Go ahead in the back. Okay, we actually have two more, so let me get to them quickly. Go ahead.

Q Thank you, Jen. I have a couple of questions on two different topics.

MS. PSAKI: Sure.

Q One is Russia and then immigration. On Russia, I know the President has -- spoke with the Amir of Qatar regarding the role of that country exporting natural gas to the European Union. But is the U.S. considering increasing its role as a natural gas exporter to the European Union to serve as an alternative to Russian gas?

MS. PSAKI: We are having a conversation with not just countries but also suppliers about how to help meet any shortage of natural gas that could come about if -- if there's an invasion.

Q Also on Russia: Since Ukraine is not a NATO member, according to the North Atlantic Treaty, NATO cannot really respond militarily to Russia in Ukrainian territory. But are U.S. unilateral military actions on the table to support Kyiv?

MS. PSAKI: You mean sending U.S. troops to Ukraine?

Q Yeah.

MS. PSAKI: No.

Q Okay, no.

And on the other topic that I wanted to ask real quick: This administration is now sending Venezuelan migrants arrested at the U.S.-Mexico border to Colombia under Title 42. What agreement has been reached with the Colombian government? Is it similar to the MPP with Mexico?

MS. PSAKI: Well, I think what we tried to do from the beginning is ensure that, for Venezuelans who are coming -- who were coming from a third country, right? -- that they were able, at some point, to return to that country.

So, in this case, pursuant to Title 42, we began repatriating Venezuelan nationals who had attempted to unlawfully enter the United States to Colombia, where they had previously resided. So, it was, you know, a place where they had been living before.

Flights to Colombia with Venezuelan nationals who have legal status are expected to take place on a regular basis and will be operated by U.S. Immigration and Customs Enforcement. Of course, that requires agreement with the government.

Q When did that started? And how temporary is that supposed to be -- this program?

MS. PSAKI: Well, it's -- it's just starting now. And I can -- I'm sure I can get you a timeline of when it actually started to commence.

Q And is there a deadline until when this will be implemented?

MS. PSAKI: I don't believe we've set a deadline, but I can -- I can get that information for you as well.

Go ahead. Last one.

Q Thank you, Jen. One on the Supreme Court and two on COVID, if you'll indulge me.

MS. PSAKI: Sure.

Q First, on the Supreme Court: Does President Biden have plans to talk to Senator McConnell -- McConnell at all today or this week?

MS. PSAKI: I expect he will have many more consultations with Democrats and Republicans. I don't have anything yet for you at this point, but hopefully we'll have more in the next 24 hours.

Q Okay. And then two quick ones on the pandemic. First of all, I was wondering if you'd be able to provide an update on the free mask program that the White House was doing? I'm just curious if there's an update on the how many of the -- of the hundreds of millions of masks have been distributed already.

And also, is there a way for Americans to know, you know, if there are masks in their area, if they've been delivered to the area pharmacies -- just, you know, sort of, when -- when they know that they can go find them in their area?

MS. PSAKI: Sure. So, we just announced this last week, but we've already cranked up our shipments. We've shipped 100 million N95 masks [sic] -- masks so far, which is incredible progress. They're available at thousands of locations around the country.

The initial wave of health centers or for people who are looking to see if they're available near them is available on the Health Resources and Services Administration's website.

And the program, we -- we're working to expand it to make it available across all health centers over the coming weeks.

Q And then lastly, one from our colleague who couldn't be here. At NewsNation, they reported hearing from people who signed up to receive the free COVID tests through the website -- the government website, but they had issues where either the tests were shipped to the wrong address or they never received a confirmation email.

So, what should people do in that case? Is there a way for them to rectify that? Does the White House have, like, a response team in case somebody never gets a test that they ordered or anything like that?

MS. PSAKI: Yeah. There's a -- there's a -- there's a "Help" component on the website. Hopefully, it should be easy for people. There's also a phone number -- I'm sure we can get that to you after the briefing -- as well that people could call should they have any concerns.

I will note that we confirmed last week that 60 million tests have been -- had been ordered as of then. I don't have an updated number. Tens of millions of tests have gone out the door and reached the right -- right doors. I think that's the vast, vast, vast majority.

That is earlier than we were scheduled and were planning to get those tests out the doors.

But we can -- we can get you the phone number and you can publicize that in your publication.

Thanks, everyone.

Q Can you make sure we all get a list of what's going on for Black History Month?

MS. PSAKI: Sure.

Q Thank you.

3:13 P.M. EST

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From: White House Press Office
Subject: PRESS RELEASE: President Biden to Sign Executive Order Creating the Presidential Commission on the Supreme Court of the United States
To: Goodlander, Margaret V. (OAG)
Sent: April 9, 2021 11:14 AM (UTC-04:00)



FOR IMMEDIATE RELEASE

April 9, 2021

President Biden to Sign Executive Order Creating the Presidential Commission on the Supreme Court of the United States

President Biden will today issue an executive order forming the Presidential Commission on the Supreme Court of the United States, comprised of a bipartisan group of experts on the Court and the Court reform debate. In addition to legal and other scholars, the Commissioners includes former federal judges and practitioners who have appeared before the Court, as well as advocates for the reform of democratic institutions and of the administration of justice. The expertise represented on the Commission includes constitutional law, history and political science.

The Commission's purpose is to provide an analysis of the principal arguments in the contemporary public debate for and against Supreme Court reform, including an appraisal of the merits and legality of particular reform proposals. The topics it will examine include the genesis of the reform debate; the Court's role in the Constitutional system; the length of service and turnover of justices on the Court; the membership and size of the Court; and the Court's case selection, rules, and practices.

To ensure that the Commission's report is comprehensive and informed by a diverse spectrum of views, it will hold public meetings to hear the views of other experts, and groups and interested individuals with varied perspectives on the issues it will be examining. The Executive Order directs that the Commission complete its report within 180 days of its first public meeting. This action is part of the Administration's commitment to closely study measures to improve the federal judiciary, including those that would expand access the court system.

The two co-chairs of this Commission are Bob Bauer, Professor of Practice and Distinguished Scholar in Residence at New York University School of Law and a former White House Counsel, as well as Yale Law School Professor Cristina Rodriguez, former Deputy Assistant Attorney General in the Office of Legal Counsel at the U.S. Department of Justice.

COMMISSIONERS

Michelle Adams

Michelle Adams is a Professor of Law at Benjamin N. Cardozo School of Law, where she teaches Constitutional Law, Federal Courts, and Federal Civil Rights. At Cardozo, she is a Director of the Floersheimer Center for Constitutional Democracy and was a Board Member of the Innocence Project. Adams has published in the *Yale Law Journal*, the *California Law Review*, and the *Texas Law Review*. She recently appeared in “Amend: The Fight for America,” a 2021 Netflix documentary about the 14th Amendment. She is the author of *The Containment: Detroit, The Supreme Court, and the Battle for Racial Justice in the North*, forthcoming in 2022 from Farrar, Straus and Giroux. Previously, she was a Law Professor at Seton Hall Law School, practiced law at the Legal Aid Society, and served as a Law Clerk for Magistrate Judge James C. Francis IV in the Southern District of New York. Adams holds a B.A. from Brown University, a J.D. from City University of New York Law School, and an LL.M. from Harvard Law School, where she was the first Charles Hamilton Houston Scholar. She is a two-time recipient of Cardozo’s Faculty Inspire Award.

Kate Andrias (Rapporteur)

Kate Andrias is a Professor of Law at the University of Michigan. She teaches and writes about constitutional law, labor and employment law, and administrative law, with a focus on problems of economic and political inequality. Her work has been published in numerous books and journals, including the *Harvard Law Review*, the *NYU Law Review*, the *Supreme Court Review*, and the *Yale Law Journal*. In 2016, Andrias was the recipient of Michigan Law School’s L. Hart Wright Award for Excellence in Teaching. Andrias previously served as special assistant and associate counsel to President Obama, and as chief of staff of the White House Counsel’s Office. A graduate of Yale Law School, she clerked for Justice Ruth Bader Ginsburg of the U.S. Supreme Court and the Hon. Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit.

Jack M. Balkin

Jack M. Balkin is Knight Professor of Constitutional Law and the First Amendment at Yale Law School. He is the founder and director of Yale’s Information Society Project, an interdisciplinary center that studies law and new information technologies. He also directs the Abrams Institute for Freedom of Expression, and the Knight Law and Media Program at Yale. Balkin is a member of the American Law Institute and the American Academy of Arts and Sciences, and founded and edits the group blog Balkinization. His most recent books include *The Cycles of Constitutional Time, Democracy and Dysfunction* (with Sanford Levinson), *Processes of Constitutional Decisionmaking* (7th ed. with Brest, Levinson, Amar, and Siegel), *Living Originalism*, and *Constitutional Redemption: Political Faith in an Unjust World*.

Bob Bauer (Co-Chair)

Bob Bauer is Professor of Practice and Distinguished Scholar in Residence at the New York University School of Law and Co-Director of NYU Law’s Legislative and Regulatory Process Clinic. Bauer served as White House Counsel to President Obama from 2009 to 2011. In 2013, the President named him to be Co-Chair of the Presidential Commission on Election Administration. He is co-author with Jack Goldsmith of *After Trump: Reconstructing the Presidency* (2020), books on federal campaign finance and numerous articles on law and politics for legal periodicals. He has co-authored numerous bipartisan reports on policy and legal reform, including “The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration” (Presidential Commission on Election Administration, 2014); “The State of Campaign Finance in the United States” (Bipartisan Policy Center, 2018); and “Democratizing the Debates” (Annenberg Working Group on Presidential Campaign Debate Reform, 2015); ; He is a Contributing Editor of *Lawfare* and has published opinion pieces on constitutional and political law issues in *The New York Times*, *The Washington Post*, and *The Atlantic*, among other publications.

William Baude

William Baude is a Professor of Law and Faculty Director of the Constitutional Law Institute at the University of Chicago Law School, where he teaches federal courts, constitutional law, conflicts of law, and elements of the law. His most recent articles include *Adjudication Outside Article III*, and *Is Quasi-Judicial Immunity Qualified Immunity?* He is also the co-editor of the textbook, *The Constitution of the United States*, and an Affiliated Scholar at the Center for the Study of Constitutional Originalism. He is a graduate of the University of Chicago and the Yale Law School, and a former clerk for then-Judge Michael McConnell and Chief Justice John Roberts.

Elise Boddie

Elise Boddie is a Professor of Law and Judge Robert L. Carter Scholar at Rutgers University. An award-winning scholar, Boddie teaches and writes about constitutional law and civil rights and has published in leading law reviews. Her commentary has appeared multiple times in

The New York Times, as well as in *The Washington Post*, among other national news outlets. Boddie has served on the national board of the American Constitution Society and the board of the New Jersey Institute for Social Justice and is the founder and director of The Inclusion Project at Rutgers. Before joining the Rutgers faculty, Boddie was Director of Litigation for the NAACP Legal Defense & Educational Fund, Inc. and supervised its nationwide litigation program, including its advocacy in several major U.S. Supreme Court cases. An honors graduate of Harvard Law School and Yale, she also holds a master's degree in public policy from the Harvard Kennedy School of Government. Boddie clerked for Judge Robert L. Carter in the Southern District of New York. She is a member of the American Law Institute and an American Bar Foundation Fellow. In 2016, Rutgers University President Barchi appointed Boddie a Henry Rutgers Professor in recognition of her scholarship, teaching, and service. In 2021, Boddie was named the founding Newark Director of Rutgers University's Institute for the Study of Global Racial Justice.

Guy-Uriel E. Charles

Guy-Uriel E. Charles is the Edward and Ellen Schwarzman Professor of Law at Duke Law School. He writes about the relationship between law and political power and law's role in addressing racial subordination. He teaches courses on civil procedure; election law; constitutional law; race and law; legislation and statutory interpretation; law, economics, and politics; and law, identity, and politics. He is currently working on book, with Luis Fuentes-Rohwer, on the past and future of voting rights, under contract with Cambridge University Press. He is also co-editing, with Aziza Ahmed, a handbook entitled *Race, Racism, and the Law*, under contract with Edward Elgar Publishing. This book will survey the current state of research on race and the law in the United States and aims to influence the intellectual agenda of the field. He clerked on the Sixth Circuit for the late Judge Damon J. Keith. He has published numerous articles in top law journals. He is the co-author of two leading casebooks and two edited volumes. He is also a member of the American Law Institute. On July 1, 2021, he will become the inaugural Charles J. Ogletree Jr. Professor of Law at Harvard Law School.

Andrew Manuel Crespo

Andrew Manuel Crespo is a Professor of Law at Harvard University where he teaches and writes about criminal law and procedure. Professor Crespo's scholarship has been published in multiple leading academic journals including the *Harvard Law Review*, the *Yale Law Journal*, and the *Columbia Law Review*. Prior to beginning his academic career, Professor Crespo served as a Staff Attorney with the Public Defender Service for the District of Columbia, where he represented over one hundred people accused of crimes who could not afford a lawyer. Professor Crespo graduated magna cum laude from Harvard Law School, where he served as president of the *Harvard Law Review* and was the first Latino to hold that position. Following law school, he served as a law clerk to Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit before going on to serve for two years as a law clerk at the United States Supreme Court, first to Associate Justice Stephen Breyer and then to Associate Justice Elena Kagan during her inaugural term on the Court.

Walter Dellinger

Walter Dellinger is the Douglas Maggs Emeritus Professor of Law at Duke University and a Partner in the firm of O'Melveny & Myers. He was named one of the 100 Most Influential Lawyers in America by the National Law Journal and is the recipient of Lifetime Achievement Awards from the American Lawyer, the American Constitution Society and the Mississippi Center for Justice. Dellinger served in the White House and as Assistant Attorney General and head of the Office of Legal Counsel (OLC) from 1993 to 1996. He was acting Solicitor General for the 1996-97 Term of the US Supreme Court. He has argued 25 cases before the United States Supreme Court and has testified more than 30 times before committees of Congress. He has published in academic journals including the *Harvard Law Review*, the *Yale Law Journal* and the *Duke Law Journal*, and has written extensively for the *Washington Post*, *The New York Times*, the *Wall Street Journal*, *Slate*, and other publications. In 1987-88 he was a scholar at the National Humanities Center and has lectured at universities throughout the United States and other countries including China, Belgium, Netherlands, Germany, Mexico, Italy, Brazil, and Denmark. He graduated from University of North Carolina and Yale Law School and served as law clerk to Supreme Court Justice Hugo Black.

Justin Driver

Justin Driver is the Robert R. Slaughter Professor of Law at Yale Law School. He teaches and writes in the area of constitutional law, education law, and prison law. His book, *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind*, was selected as a *Washington Post* Notable Book of the Year, an Editors' Choice of the *New York Times Book Review*, and received the Steven S. Goldberg Award for Distinguished Scholarship in Education Law, among numerous other honors. A recipient of the American Society for Legal History's William Nelson Cromwell Article Prize, he has a distinguished publication record in the nation's leading law reviews and has also written extensively for general audiences. He is an editor of the *Supreme Court Review* and an elected member of the *American Law Institute*. He holds degrees from Brown, Oxford (where he was a Marshall Scholar), Duke (where he received certification to teach public school), and Harvard Law School (where he was an editor of the *Harvard Law Review*). After graduating from Harvard, he

clerked for Judge Merrick Garland, Justice Sandra Day O'Connor (Ret.), and Justice Stephen Breyer.

Richard H. Fallon, Jr.

Richard H. Fallon, Jr., joined the Harvard Law School faculty as an assistant professor in 1982 and is currently Story Professor of Law. He is also an Affiliate Professor in the Harvard University Government Department. Fallon is a graduate of Yale University and Yale Law School. He also earned a B.A. degree in Philosophy, Politics, and Economics from Oxford University, which he attended as a Rhodes Scholar. Before entering teaching, Fallon served as a law clerk to Judge J. Skelly Wright and to Justice Lewis F. Powell of the United States Supreme Court. Fallon has written extensively about Constitutional Law and Federal Courts Law. He is the author of *The Nature of Constitutional Rights: The Invention and Logic of Strict Judicial Scrutiny* (Cambridge University Press, 2019); *Law and Legitimacy in the Supreme Court* (Harvard University Press, 2018), *The Dynamic Constitution* (Cambridge University Press, 2d ed. 2013), and *Implementing the Constitution* (Harvard University Press, 2001) and a co-editor of *Hart & Wechsler's The Federal Courts and the Federal System* (7th ed. 2015). Fallon is a fellow of the American Academy of Arts and Sciences and a member of the American Law Institute. He is a two-time winner of Harvard Law School's Sacks-Freund Award, which is voted annually by the School's graduating class to honor excellence in teaching. In 2021, the Federal Courts Section of the American Association of Law Schools honored Fallon with its lifetime achievement award.

Caroline Fredrickson

Caroline Fredrickson served as the President of the American Constitution Society from 2009-2019. Fredrickson has published works on many legal and constitutional issues and is a frequent guest on television and radio, including serving as a regular on-air commentator on impeachment. Before joining ACS, Fredrickson served as the Director of the ACLU's Washington Legislative Office and as General Counsel and Legal Director of NARAL Pro-Choice America. In addition, she served as the Chief of Staff to Senator Maria Cantwell, of Washington, and Deputy Chief of Staff to then-Senate Democratic Leader Tom Daschle, of South Dakota. During the Clinton Administration, she served as Special Assistant to the President for Legislative Affairs. Fredrickson is currently an elected member of the American Law Institute, co-chair of the National Constitution Center's Coalition of Freedom Advisory Board, a member of If/When/How's Advisory Board, and on the boards of American Oversight and the National Institute of Money and Politics. In 2015 Fredrickson was appointed a member of the Yale Les Aspin Fellowship Committee. Fredrickson received her J.D. from Columbia Law School with honors and her B.A. from Yale University in Russian and East European Studies summa cum laude, phi beta kappa. She clerked for the Hon. James L. Oakes of the United States Court of Appeals for the Second Circuit.

Heather Gerken

Heather Gerken is the Dean and Sol & Lillian Goldman Professor of Law at Yale Law School and one of the country's leading experts on constitutional law and election law. A founder of the "nationalist school" of federalism, her work focuses on federalism, diversity, and dissent. Gerken's work has been featured in the *Harvard Law Review*, the *Yale Law Journal*, and the *Stanford Law Review* as well as *The Atlantic*, *The Boston Globe*, NPR, and *The New York Times*. In 2017, *Politico* Magazine named Gerken one of The Politico 50, a list of idea makers in American politics. At Yale, she founded and runs the country's most innovative clinic in local government law, the San Francisco Affirmative Litigation Project (SFALP). Gerken is also a renowned teacher who has won awards at both Yale and Harvard. She was named one of the nation's "twenty-six best law teachers" in a book published by the Harvard University Press. She became dean of Yale Law School on July 1, 2017.

Nancy Gertner

Nancy Gertner was United States District Court Judge (D. Mass.) from 1994-2011. She retired to join the faculty at Harvard Law School and has been a Visiting Lecturer at Yale Law School. Prior to 1994, Gertner was a civil rights and criminal defense lawyer. Named one of "The Most Influential Lawyers of the Past 25 Years" by Massachusetts Lawyers Weekly, she has published widely on sentencing, discrimination, forensic evidence, women's rights, and the jury system. Her autobiography, "In Defense of Women: Memoirs of an Unrepentant Advocate," (Beacon Press) was published in 2011. She is coauthor of "The Law of Juries" (Thomson Reuters, 2021). She is the author of an edited volume of the dissenting and majority opinions of Justice Ruth Bader Ginsburg (Talbot, forthcoming). She is writing a memoir, "Incomplete Sentences" (Beacon, forthcoming) about the men she has sentenced. A graduate of Barnard College, with a M.A. in Political Science and J.D. from Yale, she clerked for Justice Luther Swygert, Chief Judge, 7th Circuit. She has received numerous awards, including the ABA's Margaret Brent Award, the National Association of Women Lawyers' Arabella Babb Mansfield Award, and the Thurgood Marshall Award from the American Bar Association. In October 2014, she was a resident scholar at the Rockefeller Foundation in Bellagio, Italy.

Jack Goldsmith

Jack Goldsmith is the Learned Hand Professor of Law at Harvard Law School, a Senior Fellow at the Hoover Institution, and co-founder of Lawfare. He teaches and writes about national security law, presidential power, cybersecurity, international law, internet law, foreign relations law, and federal courts. Before coming to Harvard, Professor Goldsmith served as Assistant Attorney General, Office of Legal Counsel from 2003-2004, and Special Counsel to the Department of Defense from 2002-2003.

Thomas B. Griffith

Thomas B. Griffith served on the U. S. Court of Appeals for the D. C. Circuit from 2005 – 2020. He is now Special Counsel at Hunton Andrews Kurth, a Senior Advisor to the National Institute for Civil Discourse, and a Lecturer on Law at Harvard Law School. During his tenure on the D.C. Circuit, Judge Griffith served on the Judicial Conference's Committee on the Judicial Branch, which is concerned with the federal judiciary's relationship to the Executive Branch and Congress, and the Code of Conduct Committee, which sets the ethical standards that govern the federal judiciary. Prior to his appointment to the D.C. Circuit, Judge Griffith was the General Counsel of Brigham Young University. Previously he served as Senate Legal Counsel, the nonpartisan chief legal officer of the U.S. Senate, and before that was a partner at Wiley, Rein & Fielding. Judge Griffith has long been active in the American Bar Association's rule of law projects in Eastern Europe and Eurasia and is currently a member of the International Advisory Board of the CEELI Institute in Prague. He is a graduate of Brigham Young University and the University of Virginia School of Law.

Tara Leigh Grove

Tara Leigh Grove is the Charles E. Tweedy, Jr., Endowed Chairholder of Law and Director of the Program in Constitutional Studies at the University of Alabama School of Law. After graduating *summa cum laude* from Duke University and *magna cum laude* from Harvard Law School, Grove clerked for Judge Emilio Garza of the U.S. Court of Appeals for the Fifth Circuit. She then spent four years as an appellate attorney for the U.S. Department of Justice, arguing fifteen cases in the courts of appeals. Grove has written extensively about the federal judiciary, exploring issues related to judicial legitimacy and judicial independence. Grove's work has been published in prestigious law journals, such as the *Harvard Law Review*, the *Columbia Law Review*, the *University of Pennsylvania Law Review*, the *New York University Law Review*, the *Cornell Law Review*, and the *Vanderbilt Law Review*. Grove has served as a visiting professor at Harvard Law School and Northwestern Pritzker School of Law.

Bert I. Huang

Bert I. Huang is Michael I. Sovern Professor of Law at Columbia University, where he received the Reese Prize for Excellence in Teaching from the law school's graduating class. The university has also recognized him with its Presidential Award for Outstanding Teaching. At Columbia, he created the Courts & Legal Process colloquium to bring judges, students, and faculty together to discuss new academic research about the judiciary; and he previously served as a vice dean. He has also taught at Harvard. He served as the president of the Harvard Law Review and as a law clerk for Justice David H. Souter of the U.S. Supreme Court. He also clerked for Judge Michael Boudin of the U.S. Court of Appeals for the First Circuit. He completed his J.D. and Ph.D. at Harvard University, where he was a Paul & Daisy Soros Fellow. After receiving his A.B. from Harvard, he was a Marshall Scholar at the University of Oxford and worked for the White House Council of Economic Advisers.

Sherrilyn Ifill

Sherrilyn Ifill is the President & Director-Counsel of the NAACP Legal Defense & Educational Fund, Inc. (LDF), the nation's oldest and premier civil rights law organization fighting for racial justice and equality. Ifill began her career as a Fellow at the American Civil Liberties Union, and then as an Assistant Counsel at LDF where she litigated voting rights cases in the South. In 1993 Ifill joined the faculty at University of Maryland School of Law, where she taught civil procedure, constitutional law, and a broad range of civil rights and clinical offerings. Her scholarship focused on the critical importance of a racially diverse judiciary to the integrity of judicial decision-making. Ifill also studies and writes about racial violence. Her critically acclaimed book, *On The Courthouse Lawn: Confronting The Legacy Of Lynching In The 21st Century*, is credited with inspiring contemporary conversations about lynching and reconciliation. Since returning to LDF as its 7th President & Director-Counsel in 2013, Ifill has led the organization's bold advocacy in the federal courts, including the U.S. Supreme Court, on behalf of clients fighting voter suppression, racial discrimination in the criminal justice system, and a broad array of other urgent civil rights issues. Ifill is a member of the American Law Institute and the American Academy of Arts & Sciences. She holds an undergraduate degree from Vassar College, a J.D. from New York University School of Law, and numerous honorary doctorates.

Michael S. Kang

Michael S. Kang is the William G. and Virginia K. Karnes Research Professor at Northwestern Pritzker School of Law and nationally recognized expert on campaign finance, voting rights, redistricting, judicial elections, and corporate governance. His research has been

published widely in leading law journals and featured in *The New York Times*, *The Washington Post*, and *Forbes*, among others. His recent work focuses on partisan gerrymandering; the influence of party and campaign finance on elected judges; the de-regulation of campaign finance after Citizens United; and so-called “sore loser laws” that restrict losing primary candidates from running in the general election. Kang previously served as the Thomas Simmons Professor of Law at Emory University School of Law. He received his BA and JD from the University of Chicago, where he served as technical editor of the Law Review and graduated Order of the Coif. He also received a PhD in government from Harvard University and an MA from the University of Illinois. After law school, he clerked for Judge Kanne on the U.S. Court of Appeals for the Seventh Circuit and worked in private practice at Ropes & Gray in Boston.

Olatunde Johnson

Olatunde Johnson is the Jerome B. Sherman Professor of Law at Columbia Law School where she teaches and writes about legislation, administrative law, antidiscrimination law, litigation, and inequality in the United States. In February 2020, she was appointed by the United States Department of Justice to the Resolutions Committee honoring Justice John Paul Stevens. In 2016, she was awarded Columbia University’s Presidential Award for Outstanding Teaching, and Columbia Law School’s Willis L.M. Reese Prize for Excellence in Teaching. Previously, Professor Johnson served as constitutional and civil rights counsel to Senator Edward M. Kennedy on the Senate Judiciary Committee and as an attorney at the NAACP Legal Defense Fund. Professor Johnson graduated from Yale University and from Stanford Law School. After law school, she clerked for Judge David Tatel on the U.S. Court of Appeals for the D.C. Circuit and for Justice John Paul Stevens on the United States Supreme Court.

Alison L. LaCroix

Alison L. LaCroix is the Robert Newton Reid Professor of Law at the University of Chicago Law School. She is also an Associate Member of the University of Chicago Department of History. Professor LaCroix is the author of *The Ideological Origins of American Federalism* (Harvard University Press, 2010), and in 2018 she was awarded a National Endowment for the Humanities Fellowship for her current book project, titled *The Interbellum Constitution: Union, Commerce, and Slavery From the Long Founding Moment to the Civil War* (Yale University Press, forthcoming). Before joining the University of Chicago faculty in 2006, she practiced in the litigation department at Debevoise & Plimpton in New York. Professor LaCroix received her B.A. and J.D. from Yale University, and her A.M. and Ph.D. from Harvard University.

Margaret H. Lemos

Maggie Lemos is the Robert G. Seaks LL.B. ’34 Professor of Law, Senior Associate Dean for Faculty and Research, and faculty co-advisor for the Bolch Judicial Institute at Duke Law School. She is a scholar of constitutional law, legal institutions, and procedure. Her current research focuses on the institutions of law interpretation and enforcement, including both public and private lawyers, and their effects on substantive rights. Lemos is also a co-author of a new multidisciplinary coursebook on judicial decision making. She teaches courses on civil procedure, legislation, and judicial process, and was awarded Duke’s Distinguished Teaching Award in 2013. Prior to joining the Duke Law faculty, Lemos was an associate professor at the Benjamin N. Cardozo School of Law; a Bristow Fellow at the Office of the Solicitor General; and a law clerk for Judge Kermit V. Lipez of the U.S. Court of Appeals for the First Circuit, and for U.S. Supreme Court Justice John Paul Stevens. She received her J.D. from New York University School of Law and her B.A. from Brown University.

David F. Levi

David F. Levi is the Levi Family Professor of Law and Judicial Studies and Director of the Bolch Judicial Institute at Duke Law School. Levi was previously the James B. Duke and Benjamin N. Duke Dean of the Duke Law School. He served as dean for 11 years from 2007-2018. Prior to his appointment at Duke, Levi was the Chief United States District Judge for the Eastern District of California with chambers in Sacramento. He was appointed to the district court in 1990. From 1986-1990 he was the United States Attorney for the Eastern District of California. Following graduation from Stanford Law School in 1980, Levi served as a law clerk to Judge Ben C. Duniway of the U.S. Court of Appeals for the Ninth Circuit, and then to Justice Lewis F. Powell, Jr., of the U.S. Supreme Court. Levi has served as member and chair of two U.S. Judicial Conference committees — the Advisory Committee on the Civil Rules and the Standing Committee on the Rules of Practice and Procedure. He was chair of the American Bar Association’s Standing Committee on the American Judicial System (2014-2016). He is an elected fellow of the American Academy of Arts and Sciences. He is the author or co-author of several books, articles, and published speeches mostly on the judiciary, judicial independence, and judicial decision-making. He is President of the American Law Institute.

Trevor W. Morrison

Trevor Morrison serves as Dean of NYU School of Law, where he is also the Eric M. and Laurie B. Roth Professor of Law. He previously

held faculty appointments at Cornell Law School and Columbia Law School. Morrison's research and teaching interests are in constitutional law (especially separation of powers), federal courts, and the law of the executive branch. After graduating from Columbia Law School, he served as a law clerk to Judge Betty Fletcher of the U.S. Court of Appeals for the Ninth Circuit and to Justice Ruth Bader Ginsburg of the U.S. Supreme Court. Between those clerkships, he was a Bristow Fellow in the U.S. Justice Department's Office of the Solicitor General, an attorney-adviser in the Justice Department's Office of Legal Counsel, and an associate at Wilmer, Cutler & Pickering (now WilmerHale). Morrison also served as associate counsel to President Barack Obama. He is a fellow of the American Academy of Arts & Sciences and a member of the American Law Institute and the Council on Foreign Relations.

Caleb Nelson

Caleb Nelson is the Emerson G. Spies Distinguished Professor of Law and the Caddell and Chapman Professor of Law at the University of Virginia School of Law. He earned his A.B. from Harvard College and his J.D. from Yale Law School. After law school, he clerked for Judge Stephen F. Williams on the United States Court of Appeals for the D.C. Circuit and Justice Clarence Thomas on the United States Supreme Court. He joined the Virginia faculty in 1998. At Virginia, he has taught Federal Courts, Civil Procedure, Legislation, and Constitutional Law. His articles have appeared in the *Columbia Law Review*, the *Harvard Law Review*, the *Michigan Law Review*, the *NYU Law Review*, the *University of Chicago Law Review*, the *University of Pennsylvania Law Review* (forthcoming), the *Virginia Law Review*, and the *Yale Law Journal*. He is also the author of a casebook on statutory interpretation, published by Foundation Press. He is a member of the American Law Institute and a past winner of the University of Virginia's All-University Teaching Award. He has also taught as a visiting professor at Harvard Law School and as the James S. Carpentier Visiting Professor at Columbia Law School.

Richard H. Pildes

Professor Richard H. Pildes is Sudler Family Professor of Constitutional Law at New York University School of Law and one of the country's leading experts on the legal aspects of American democracy and government. His academic work focuses on all aspects of the political process, as well as legal issues concerning the structure of American government, including the powers of the President, Congress, and the Supreme Court. His two casebooks, *The Law of Democracy* and *When Elections Go Bad*, created the law of democracy as a field of study in the law schools. In addition to editing the book, *The Future of the Voting Rights Act*, he has published more than seventy academic articles. Pildes has represented numerous clients before the Supreme Court. He served as a law clerk at the Court to Justice Thurgood Marshall and to Judge Abner J. Mikva of the United States Court of Appeals for the D.C. Circuit. He has testified several times before the United States Senate and House of Representatives. Born in Chicago, he began his teaching career at the University of Michigan Law School, before moving to NYU. He is an elected member of the American Academy of Arts and Sciences and the American Law Institute, as well as a Guggenheim Fellow.

Michael D. Ramsey

Michael D. Ramsey is Hugh and Hazel Darling Foundation Professor of Law at the University of San Diego School of Law, where he teaches and writes in the areas of constitutional law, foreign relations law, and international law. He is the author of *The Constitution's Text in Foreign Affairs* (Harvard University Press 2007), co-editor of *International Law in the U.S. Supreme Court: Continuity and Change* (Cambridge University Press 2011), and co-author of two casebooks, *Transnational Law and Practice* (Aspen 2015) and *International Business Transactions: A Problem-Oriented Coursebook* (12th ed., West 2015). His scholarly articles have appeared in publications such as the *Yale Law Journal*, the *University of Chicago Law Review*, the *Georgetown Law Journal* and the *American Journal of International Law*. He received his B.A. *magna cum laude* from Dartmouth College and his J.D. *summa cum laude* from Stanford Law School. Prior to teaching, he served as a judicial clerk for Judge J. Clifford Wallace of the United States Court of Appeals for the Ninth Circuit and Justice Antonin Scalia of the United States Supreme Court, and practiced law with the law firm of Latham & Watkins. He has taught as a visiting professor at the University of California, San Diego, in the Department of Political Science and at the University of Paris – Sorbonne, in the Department of Comparative Law.

Cristina M. Rodríguez (Co-Chair)

Cristina M. Rodríguez is the Leighton Homer Surbeck Professor of Law at Yale Law School. Her fields of research and teaching include constitutional law and theory, immigration law and policy, and administrative law and process. Her new book, *The President and Immigration Law* (with Adam B. Cox) was published by Oxford University Press in September 2020, and explores the long history of presidential control over immigration policy and its implications for the future of immigration law and the presidency itself. Rodríguez joined Yale Law School in 2013 after serving for two years as Deputy Assistant Attorney General in the Office of Legal Counsel at the U.S. Department of Justice. She was on the faculty at the New York University School of Law from 2004–2012 and has been Visiting Professor of Law at Stanford, Harvard, and Columbia Law Schools. She is a member of the American Academy of Arts and Sciences and the American

Law Institute, a non-resident fellow at the Migration Policy Institute in Washington, D.C., and a past member of the Council on Foreign Relations. She is also a past recipient of the Yale Law Women Award for Excellence in Teaching. She earned her B.A. and J.D. degrees from Yale and attended Oxford University as a Rhodes Scholar, where she received a Master of Letters in Modern History. Following law school, Rodríguez clerked for Judge David S. Tatel of the U.S. Court of Appeals for the D.C. Circuit and Justice Sandra Day O'Connor of the U.S. Supreme Court.

Kermit Roosevelt

Kermit Roosevelt is a professor of law at the University of Pennsylvania Carey Law School, where he teaches constitutional law and conflict of laws. He is a graduate of Harvard College and Yale Law School. Before joining the Penn faculty, he practiced appellate litigation with Mayer Brown in Chicago and clerked for D.C. Circuit Judge Stephen F. Williams and Supreme Court Justice David H. Souter.

Bertrall Ross

Bertrall Ross is the Chancellor's Professor of Law at the University of California, Berkeley School of Law. He teaches and writes in the areas of constitutional law, election law, administrative law, and statutory interpretation. Ross's research is driven by a concern about democratic responsiveness and accountability, as well as the inclusion of marginalized communities in administrative and political processes. His past scholarship has been published in several books and journals, including the *Columbia Law Review*, the *NYU Law Review*, and the *University of Chicago Law Review*. Ross is currently working on book projects related to separation of powers, gerrymandering, and voter data as a tool for disfranchisement. Ross has been the recipient of the Berkeley Law Rutter Award for Teaching Distinction, the Berlin Prize from the American Academy in Berlin, the Princeton University Law and Public Affairs Fellowship, the Columbia Law School Kellis Parker Academic Fellowship, and the Marshall Scholarship. He is currently a public member of the Administrative Conference of the United States. Ross earned his law degree from Yale Law School and Masters degrees from the London School of Economics and Princeton University's School of Public and International Affairs. Prior to joining Berkeley Law, he clerked for Judge Dorothy Nelson of the U.S. Court of Appeals for the Ninth Circuit and Judge Myron Thompson of the U.S. District Court for the Middle District of Alabama.

David A. Strauss

David Strauss is the Gerald Ratner Distinguished Service Professor of Law and the Faculty Director of the Supreme Court and Appellate Clinic at the University of Chicago. He is the author of *The Living Constitution* (Oxford University Press, 2010) and the co-author of *Democracy and Equality: The Enduring Constitutional Vision of the Warren Court* (Oxford University Press, 2019), and he has written many academic and popular articles on constitutional law and related subjects. He is a Fellow of the American Academy of Arts and Sciences and a co-editor of the *Supreme Court Review*. He has been a visiting professor at Harvard and Georgetown. He has served as an Assistant to the Solicitor General of the United States, in the Office of Legal Counsel of the U.S. Department of Justice, and as Special Counsel to the Senate Judiciary Committee. He has argued nineteen cases before the U.S. Supreme Court.

Laurence H. Tribe

Laurence Tribe is the Carl M. Loeb University Professor and Professor of Constitutional Law Emeritus at Harvard University. Tribe has taught at Harvard since 1968 and was voted the best professor by the class of 2000. The title "University Professor" is Harvard's highest academic honor, awarded to a handful of professors at any given time and to fewer than 75 professors in Harvard University's history. Tribe clerked for the California and U.S. Supreme Courts; was elected to the American Academy of Arts and Sciences in 1980 and the American Philosophical Society in 2010; helped write the constitutions of South Africa, the Czech Republic, and the Marshall Islands; and has received eleven honorary degrees, most recently a degree honoris causa from the Government of Mexico in March 2011 (never before awarded to an American) and an LL.D from Columbia University. Tribe has argued 35 cases in the U.S. Supreme Court. He was appointed in 2010 by President Obama and Attorney General Holder to serve as the first Senior Counselor for Access to Justice. He has written 115 books and articles, most recently, "To End A Presidency: The Power of Impeachment." His treatise, "American Constitutional Law," has been cited more than any other legal text since 1950.

Adam White

Adam White is a resident scholar at the American Enterprise Institute and an assistant professor of law at George Mason University's Antonin Scalia Law School, where he directs the C. Boyden Gray Center for the Study of the Administrative State. He writes on the courts, the Constitution, administrative law, and regulatory policy. He is a public member of the Administrative Conference of the United States, and he serves on the board of the Land Conservation Assistance Network. Previously he practiced constitutional and administrative law in Washington, D.C., and he clerked for the U.S. Court of Appeals for the D.C. Circuit. In 2005, the *Harvard Journal of Law & Public Policy*

published his study of the Senate's constitutional power to grant or withhold its "advice and consent" for judicial nominations.

Keith E. Whittington

Keith E. Whittington is the William Nelson Cromwell Professor of Politics at Princeton University and is currently the chair of Academic Freedom Alliance. He works on American constitutional history, politics and law, and on American political thought. He is the author of *Repugnant Laws: Judicial Review of Acts of Congress from the Founding to the Present* and *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History*, among other works. He has been a visiting professor at Harvard Law School, Georgetown University Law Center, and the University of Texas School of Law, and he is a member of the American Academy of Arts and Sciences. He did his undergraduate work at the University of Texas at Austin and completed his Ph.D. in political science at Yale University.

Michael Waldman

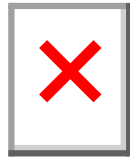
Michael Waldman is the president of the Brennan Center for Justice at NYU School of Law. The Brennan Center is a nonpartisan law and policy institute that works to strengthen the systems of democracy and justice so they work for all Americans. The Center is a leading national voice on voting rights, money in politics, criminal justice reform, and constitutional law. Waldman has led the Center since 2005. He is the author of *The Fight to Vote* (2016), a history of the struggle to win voting rights for all citizens, *The Second Amendment: A Biography* (2014), and five other books. Waldman served as director of speechwriting for President Bill Clinton from 1995-1999, and special assistant to the president for policy coordination from 1993-1995. He was responsible for writing or editing nearly two thousand speeches, including four State of the Union and two inaugural addresses. He is a graduate of NYU School of Law and Columbia College.

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From: White House Press Office
Subject: PRESS RELEASE: President Biden to Sign Executive Order Creating the Presidential Commission on the Supreme Court of the United States
To: Loeb, Emily M. (ODAG)
Sent: April 9, 2021 11:14 AM (UTC-04:00)



FOR IMMEDIATE RELEASE

April 9, 2021

President Biden to Sign Executive Order Creating the Presidential Commission on the Supreme Court of the United States

President Biden will today issue an executive order forming the Presidential Commission on the Supreme Court of the United States, comprised of a bipartisan group of experts on the Court and the Court reform debate. In addition to legal and other scholars, the Commissioners includes former federal judges and practitioners who have appeared before the Court, as well as advocates for the reform of democratic institutions and of the administration of justice. The expertise represented on the Commission includes constitutional law, history and political science.

The Commission's purpose is to provide an analysis of the principal arguments in the contemporary public debate for and against Supreme Court reform, including an appraisal of the merits and legality of particular reform proposals. The topics it will examine include the genesis of the reform debate; the Court's role in the Constitutional system; the length of service and turnover of justices on the Court; the membership and size of the Court; and the Court's case selection, rules, and practices.

To ensure that the Commission's report is comprehensive and informed by a diverse spectrum of views, it will hold public meetings to hear the views of other experts, and groups and interested individuals with varied perspectives on the issues it will be examining. The Executive Order directs that the Commission complete its report within 180 days of its first public meeting. This action is part of the Administration's commitment to closely study measures to improve the federal judiciary, including those that would expand access the court system.

The two co-chairs of this Commission are Bob Bauer, Professor of Practice and Distinguished Scholar in Residence at New York University School of Law and a former White House Counsel, as well as Yale Law School Professor Cristina Rodriguez, former Deputy Assistant Attorney General in the Office of Legal Counsel at the U.S. Department of Justice.

COMMISSIONERS

Michelle Adams

Michelle Adams is a Professor of Law at Benjamin N. Cardozo School of Law, where she teaches Constitutional Law, Federal Courts, and Federal Civil Rights. At Cardozo, she is a Director of the Floersheimer Center for Constitutional Democracy and was a Board Member of the Innocence Project. Adams has published in the *Yale Law Journal*, the *California Law Review*, and the *Texas Law Review*. She recently appeared in “Amend: The Fight for America,” a 2021 Netflix documentary about the 14th Amendment. She is the author of *The Containment: Detroit, The Supreme Court, and the Battle for Racial Justice in the North*, forthcoming in 2022 from Farrar, Straus and Giroux. Previously, she was a Law Professor at Seton Hall Law School, practiced law at the Legal Aid Society, and served as a Law Clerk for Magistrate Judge James C. Francis IV in the Southern District of New York. Adams holds a B.A. from Brown University, a J.D. from City University of New York Law School, and an LL.M. from Harvard Law School, where she was the first Charles Hamilton Houston Scholar. She is a two-time recipient of Cardozo’s Faculty Inspire Award.

Kate Andrias (Rapporteur)

Kate Andrias is a Professor of Law at the University of Michigan. She teaches and writes about constitutional law, labor and employment law, and administrative law, with a focus on problems of economic and political inequality. Her work has been published in numerous books and journals, including the *Harvard Law Review*, the *NYU Law Review*, the *Supreme Court Review*, and the *Yale Law Journal*. In 2016, Andrias was the recipient of Michigan Law School’s L. Hart Wright Award for Excellence in Teaching. Andrias previously served as special assistant and associate counsel to President Obama, and as chief of staff of the White House Counsel’s Office. A graduate of Yale Law School, she clerked for Justice Ruth Bader Ginsburg of the U.S. Supreme Court and the Hon. Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit.

Jack M. Balkin

Jack M. Balkin is Knight Professor of Constitutional Law and the First Amendment at Yale Law School. He is the founder and director of Yale’s Information Society Project, an interdisciplinary center that studies law and new information technologies. He also directs the Abrams Institute for Freedom of Expression, and the Knight Law and Media Program at Yale. Balkin is a member of the American Law Institute and the American Academy of Arts and Sciences, and founded and edits the group blog Balkinization. His most recent books include *The Cycles of Constitutional Time, Democracy and Dysfunction* (with Sanford Levinson), *Processes of Constitutional Decisionmaking* (7th ed. with Brest, Levinson, Amar, and Siegel), *Living Originalism*, and *Constitutional Redemption: Political Faith in an Unjust World*.

Bob Bauer (Co-Chair)

Bob Bauer is Professor of Practice and Distinguished Scholar in Residence at the New York University School of Law and Co-Director of NYU Law’s Legislative and Regulatory Process Clinic. Bauer served as White House Counsel to President Obama from 2009 to 2011. In 2013, the President named him to be Co-Chair of the Presidential Commission on Election Administration. He is co-author with Jack Goldsmith of *After Trump: Reconstructing the Presidency* (2020), books on federal campaign finance and numerous articles on law and politics for legal periodicals. He has co-authored numerous bipartisan reports on policy and legal reform, including “The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration” (Presidential Commission on Election Administration, 2014); “The State of Campaign Finance in the United States” (Bipartisan Policy Center, 2018); and “Democratizing the Debates” (Annenberg Working Group on Presidential Campaign Debate Reform, 2015); ; He is a Contributing Editor of *Lawfare* and has published opinion pieces on constitutional and political law issues in *The New York Times*, *The Washington Post*, and *The Atlantic*, among other publications.

William Baude

William Baude is a Professor of Law and Faculty Director of the Constitutional Law Institute at the University of Chicago Law School, where he teaches federal courts, constitutional law, conflicts of law, and elements of the law. His most recent articles include *Adjudication Outside Article III*, and *Is Quasi-Judicial Immunity Qualified Immunity?* He is also the co-editor of the textbook, *The Constitution of the United States*, and an Affiliated Scholar at the Center for the Study of Constitutional Originalism. He is a graduate of the University of Chicago and the Yale Law School, and a former clerk for then-Judge Michael McConnell and Chief Justice John Roberts.

Elise Boddie

Elise Boddie is a Professor of Law and Judge Robert L. Carter Scholar at Rutgers University. An award-winning scholar, Boddie teaches and writes about constitutional law and civil rights and has published in leading law reviews. Her commentary has appeared multiple times in

The New York Times, as well as in *The Washington Post*, among other national news outlets. Boddie has served on the national board of the American Constitution Society and the board of the New Jersey Institute for Social Justice and is the founder and director of The Inclusion Project at Rutgers. Before joining the Rutgers faculty, Boddie was Director of Litigation for the NAACP Legal Defense & Educational Fund, Inc. and supervised its nationwide litigation program, including its advocacy in several major U.S. Supreme Court cases. An honors graduate of Harvard Law School and Yale, she also holds a master's degree in public policy from the Harvard Kennedy School of Government. Boddie clerked for Judge Robert L. Carter in the Southern District of New York. She is a member of the American Law Institute and an American Bar Foundation Fellow. In 2016, Rutgers University President Barchi appointed Boddie a Henry Rutgers Professor in recognition of her scholarship, teaching, and service. In 2021, Boddie was named the founding Newark Director of Rutgers University's Institute for the Study of Global Racial Justice.

Guy-Uriel E. Charles

Guy-Uriel E. Charles is the Edward and Ellen Schwarzman Professor of Law at Duke Law School. He writes about the relationship between law and political power and law's role in addressing racial subordination. He teaches courses on civil procedure; election law; constitutional law; race and law; legislation and statutory interpretation; law, economics, and politics; and law, identity, and politics. He is currently working on book, with Luis Fuentes-Rohwer, on the past and future of voting rights, under contract with Cambridge University Press. He is also co-editing, with Aziza Ahmed, a handbook entitled *Race, Racism, and the Law*, under contract with Edward Elgar Publishing. This book will survey the current state of research on race and the law in the United States and aims to influence the intellectual agenda of the field. He clerked on the Sixth Circuit for the late Judge Damon J. Keith. He has published numerous articles in top law journals. He is the co-author of two leading casebooks and two edited volumes. He is also a member of the American Law Institute. On July 1, 2021, he will become the inaugural Charles J. Ogletree Jr. Professor of Law at Harvard Law School.

Andrew Manuel Crespo

Andrew Manuel Crespo is a Professor of Law at Harvard University where he teaches and writes about criminal law and procedure. Professor Crespo's scholarship has been published in multiple leading academic journals including the *Harvard Law Review*, the *Yale Law Journal*, and the *Columbia Law Review*. Prior to beginning his academic career, Professor Crespo served as a Staff Attorney with the Public Defender Service for the District of Columbia, where he represented over one hundred people accused of crimes who could not afford a lawyer. Professor Crespo graduated magna cum laude from Harvard Law School, where he served as president of the *Harvard Law Review* and was the first Latino to hold that position. Following law school, he served as a law clerk to Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit before going on to serve for two years as a law clerk at the United States Supreme Court, first to Associate Justice Stephen Breyer and then to Associate Justice Elena Kagan during her inaugural term on the Court.

Walter Dellinger

Walter Dellinger is the Douglas Maggs Emeritus Professor of Law at Duke University and a Partner in the firm of O'Melveny & Myers. He was named one of the 100 Most Influential Lawyers in America by the National Law Journal and is the recipient of Lifetime Achievement Awards from the American Lawyer, the American Constitution Society and the Mississippi Center for Justice. Dellinger served in the White House and as Assistant Attorney General and head of the Office of Legal Counsel (OLC) from 1993 to 1996. He was acting Solicitor General for the 1996-97 Term of the US Supreme Court. He has argued 25 cases before the United States Supreme Court and has testified more than 30 times before committees of Congress. He has published in academic journals including the *Harvard Law Review*, the *Yale Law Journal* and the *Duke Law Journal*, and has written extensively for the *Washington Post*, *The New York Times*, the *Wall Street Journal*, *Slate*, and other publications. In 1987-88 he was a scholar at the National Humanities Center and has lectured at universities throughout the United States and other countries including China, Belgium, Netherlands, Germany, Mexico, Italy, Brazil, and Denmark. He graduated from University of North Carolina and Yale Law School and served as law clerk to Supreme Court Justice Hugo Black.

Justin Driver

Justin Driver is the Robert R. Slaughter Professor of Law at Yale Law School. He teaches and writes in the area of constitutional law, education law, and prison law. His book, *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind*, was selected as a *Washington Post* Notable Book of the Year, an Editors' Choice of the *New York Times Book Review*, and received the Steven S. Goldberg Award for Distinguished Scholarship in Education Law, among numerous other honors. A recipient of the American Society for Legal History's William Nelson Cromwell Article Prize, he has a distinguished publication record in the nation's leading law reviews and has also written extensively for general audiences. He is an editor of the *Supreme Court Review* and an elected member of the *American Law Institute*. He holds degrees from Brown, Oxford (where he was a Marshall Scholar), Duke (where he received certification to teach public school), and Harvard Law School (where he was an editor of the *Harvard Law Review*). After graduating from Harvard, he

clerked for Judge Merrick Garland, Justice Sandra Day O'Connor (Ret.), and Justice Stephen Breyer.

Richard H. Fallon, Jr.

Richard H. Fallon, Jr., joined the Harvard Law School faculty as an assistant professor in 1982 and is currently Story Professor of Law. He is also an Affiliate Professor in the Harvard University Government Department. Fallon is a graduate of Yale University and Yale Law School. He also earned a B.A. degree in Philosophy, Politics, and Economics from Oxford University, which he attended as a Rhodes Scholar. Before entering teaching, Fallon served as a law clerk to Judge J. Skelly Wright and to Justice Lewis F. Powell of the United States Supreme Court. Fallon has written extensively about Constitutional Law and Federal Courts Law. He is the author of *The Nature of Constitutional Rights: The Invention and Logic of Strict Judicial Scrutiny* (Cambridge University Press, 2019); *Law and Legitimacy in the Supreme Court* (Harvard University Press, 2018), *The Dynamic Constitution* (Cambridge University Press, 2d ed. 2013), and *Implementing the Constitution* (Harvard University Press, 2001) and a co-editor of *Hart & Wechsler's The Federal Courts and the Federal System* (7th ed. 2015). Fallon is a fellow of the American Academy of Arts and Sciences and a member of the American Law Institute. He is a two-time winner of Harvard Law School's Sacks-Freund Award, which is voted annually by the School's graduating class to honor excellence in teaching. In 2021, the Federal Courts Section of the American Association of Law Schools honored Fallon with its lifetime achievement award.

Caroline Fredrickson

Caroline Fredrickson served as the President of the American Constitution Society from 2009-2019. Fredrickson has published works on many legal and constitutional issues and is a frequent guest on television and radio, including serving as a regular on-air commentator on impeachment. Before joining ACS, Fredrickson served as the Director of the ACLU's Washington Legislative Office and as General Counsel and Legal Director of NARAL Pro-Choice America. In addition, she served as the Chief of Staff to Senator Maria Cantwell, of Washington, and Deputy Chief of Staff to then-Senate Democratic Leader Tom Daschle, of South Dakota. During the Clinton Administration, she served as Special Assistant to the President for Legislative Affairs. Fredrickson is currently an elected member of the American Law Institute, co-chair of the National Constitution Center's Coalition of Freedom Advisory Board, a member of If/When/How's Advisory Board, and on the boards of American Oversight and the National Institute of Money and Politics. In 2015 Fredrickson was appointed a member of the Yale Les Aspin Fellowship Committee. Fredrickson received her J.D. from Columbia Law School with honors and her B.A. from Yale University in Russian and East European Studies summa cum laude, phi beta kappa. She clerked for the Hon. James L. Oakes of the United States Court of Appeals for the Second Circuit.

Heather Gerken

Heather Gerken is the Dean and Sol & Lillian Goldman Professor of Law at Yale Law School and one of the country's leading experts on constitutional law and election law. A founder of the "nationalist school" of federalism, her work focuses on federalism, diversity, and dissent. Gerken's work has been featured in the *Harvard Law Review*, the *Yale Law Journal*, and the *Stanford Law Review* as well as *The Atlantic*, *The Boston Globe*, NPR, and *The New York Times*. In 2017, *Politico* Magazine named Gerken one of The Politico 50, a list of idea makers in American politics. At Yale, she founded and runs the country's most innovative clinic in local government law, the San Francisco Affirmative Litigation Project (SFALP). Gerken is also a renowned teacher who has won awards at both Yale and Harvard. She was named one of the nation's "twenty-six best law teachers" in a book published by the Harvard University Press. She became dean of Yale Law School on July 1, 2017.

Nancy Gertner

Nancy Gertner was United States District Court Judge (D. Mass.) from 1994-2011. She retired to join the faculty at Harvard Law School and has been a Visiting Lecturer at Yale Law School. Prior to 1994, Gertner was a civil rights and criminal defense lawyer. Named one of "The Most Influential Lawyers of the Past 25 Years" by Massachusetts Lawyers Weekly, she has published widely on sentencing, discrimination, forensic evidence, women's rights, and the jury system. Her autobiography, "In Defense of Women: Memoirs of an Unrepentant Advocate," (Beacon Press) was published in 2011. She is coauthor of "The Law of Juries" (Thomson Reuters, 2021). She is the author of an edited volume of the dissenting and majority opinions of Justice Ruth Bader Ginsburg (Talbot, forthcoming). She is writing a memoir, "Incomplete Sentences" (Beacon, forthcoming) about the men she has sentenced. A graduate of Barnard College, with a M.A. in Political Science and J.D. from Yale, she clerked for Justice Luther Swygert, Chief Judge, 7th Circuit. She has received numerous awards, including the ABA's Margaret Brent Award, the National Association of Women Lawyers' Arabella Babb Mansfield Award, and the Thurgood Marshall Award from the American Bar Association. In October 2014, she was a resident scholar at the Rockefeller Foundation in Bellagio, Italy.

Jack Goldsmith

Jack Goldsmith is the Learned Hand Professor of Law at Harvard Law School, a Senior Fellow at the Hoover Institution, and co-founder of Lawfare. He teaches and writes about national security law, presidential power, cybersecurity, international law, internet law, foreign relations law, and federal courts. Before coming to Harvard, Professor Goldsmith served as Assistant Attorney General, Office of Legal Counsel from 2003-2004, and Special Counsel to the Department of Defense from 2002-2003.

Thomas B. Griffith

Thomas B. Griffith served on the U. S. Court of Appeals for the D. C. Circuit from 2005 – 2020. He is now Special Counsel at Hunton Andrews Kurth, a Senior Advisor to the National Institute for Civil Discourse, and a Lecturer on Law at Harvard Law School. During his tenure on the D.C. Circuit, Judge Griffith served on the Judicial Conference's Committee on the Judicial Branch, which is concerned with the federal judiciary's relationship to the Executive Branch and Congress, and the Code of Conduct Committee, which sets the ethical standards that govern the federal judiciary. Prior to his appointment to the D.C. Circuit, Judge Griffith was the General Counsel of Brigham Young University. Previously he served as Senate Legal Counsel, the nonpartisan chief legal officer of the U.S. Senate, and before that was a partner at Wiley, Rein & Fielding. Judge Griffith has long been active in the American Bar Association's rule of law projects in Eastern Europe and Eurasia and is currently a member of the International Advisory Board of the CEELI Institute in Prague. He is a graduate of Brigham Young University and the University of Virginia School of Law.

Tara Leigh Grove

Tara Leigh Grove is the Charles E. Tweedy, Jr., Endowed Chairholder of Law and Director of the Program in Constitutional Studies at the University of Alabama School of Law. After graduating *summa cum laude* from Duke University and *magna cum laude* from Harvard Law School, Grove clerked for Judge Emilio Garza of the U.S. Court of Appeals for the Fifth Circuit. She then spent four years as an appellate attorney for the U.S. Department of Justice, arguing fifteen cases in the courts of appeals. Grove has written extensively about the federal judiciary, exploring issues related to judicial legitimacy and judicial independence. Grove's work has been published in prestigious law journals, such as the *Harvard Law Review*, the *Columbia Law Review*, the *University of Pennsylvania Law Review*, the *New York University Law Review*, the *Cornell Law Review*, and the *Vanderbilt Law Review*. Grove has served as a visiting professor at Harvard Law School and Northwestern Pritzker School of Law.

Bert I. Huang

Bert I. Huang is Michael I. Sovern Professor of Law at Columbia University, where he received the Reese Prize for Excellence in Teaching from the law school's graduating class. The university has also recognized him with its Presidential Award for Outstanding Teaching. At Columbia, he created the Courts & Legal Process colloquium to bring judges, students, and faculty together to discuss new academic research about the judiciary; and he previously served as a vice dean. He has also taught at Harvard. He served as the president of the Harvard Law Review and as a law clerk for Justice David H. Souter of the U.S. Supreme Court. He also clerked for Judge Michael Boudin of the U.S. Court of Appeals for the First Circuit. He completed his J.D. and Ph.D. at Harvard University, where he was a Paul & Daisy Soros Fellow. After receiving his A.B. from Harvard, he was a Marshall Scholar at the University of Oxford and worked for the White House Council of Economic Advisers.

Sherrilyn Ifill

Sherrilyn Ifill is the President & Director-Counsel of the NAACP Legal Defense & Educational Fund, Inc. (LDF), the nation's oldest and premier civil rights law organization fighting for racial justice and equality. Ifill began her career as a Fellow at the American Civil Liberties Union, and then as an Assistant Counsel at LDF where she litigated voting rights cases in the South. In 1993 Ifill joined the faculty at University of Maryland School of Law, where she taught civil procedure, constitutional law, and a broad range of civil rights and clinical offerings. Her scholarship focused on the critical importance of a racially diverse judiciary to the integrity of judicial decision-making. Ifill also studies and writes about racial violence. Her critically acclaimed book, *On The Courthouse Lawn: Confronting The Legacy Of Lynching In The 21st Century*, is credited with inspiring contemporary conversations about lynching and reconciliation. Since returning to LDF as its 7th President & Director-Counsel in 2013, Ifill has led the organization's bold advocacy in the federal courts, including the U.S. Supreme Court, on behalf of clients fighting voter suppression, racial discrimination in the criminal justice system, and a broad array of other urgent civil rights issues. Ifill is a member of the American Law Institute and the American Academy of Arts & Sciences. She holds an undergraduate degree from Vassar College, a J.D. from New York University School of Law, and numerous honorary doctorates.

Michael S. Kang

Michael S. Kang is the William G. and Virginia K. Karnes Research Professor at Northwestern Pritzker School of Law and nationally recognized expert on campaign finance, voting rights, redistricting, judicial elections, and corporate governance. His research has been

published widely in leading law journals and featured in *The New York Times*, *The Washington Post*, and *Forbes*, among others. His recent work focuses on partisan gerrymandering; the influence of party and campaign finance on elected judges; the de-regulation of campaign finance after *Citizens United*; and so-called “sore loser laws” that restrict losing primary candidates from running in the general election. Kang previously served as the Thomas Simmons Professor of Law at Emory University School of Law. He received his BA and JD from the University of Chicago, where he served as technical editor of the *Law Review* and graduated Order of the Coif. He also received a PhD in government from Harvard University and an MA from the University of Illinois. After law school, he clerked for Judge Kanne on the U.S. Court of Appeals for the Seventh Circuit and worked in private practice at Ropes & Gray in Boston.

Olatunde Johnson

Olatunde Johnson is the Jerome B. Sherman Professor of Law at Columbia Law School where she teaches and writes about legislation, administrative law, antidiscrimination law, litigation, and inequality in the United States. In February 2020, she was appointed by the United States Department of Justice to the Resolutions Committee honoring Justice John Paul Stevens. In 2016, she was awarded Columbia University’s Presidential Award for Outstanding Teaching, and Columbia Law School’s Willis L.M. Reese Prize for Excellence in Teaching. Previously, Professor Johnson served as constitutional and civil rights counsel to Senator Edward M. Kennedy on the Senate Judiciary Committee and as an attorney at the NAACP Legal Defense Fund. Professor Johnson graduated from Yale University and from Stanford Law School. After law school, she clerked for Judge David Tatel on the U.S. Court of Appeals for the D.C. Circuit and for Justice John Paul Stevens on the United States Supreme Court.

Alison L. LaCroix

Alison L. LaCroix is the Robert Newton Reid Professor of Law at the University of Chicago Law School. She is also an Associate Member of the University of Chicago Department of History. Professor LaCroix is the author of *The Ideological Origins of American Federalism* (Harvard University Press, 2010), and in 2018 she was awarded a National Endowment for the Humanities Fellowship for her current book project, titled *The Interbellum Constitution: Union, Commerce, and Slavery From the Long Founding Moment to the Civil War* (Yale University Press, forthcoming). Before joining the University of Chicago faculty in 2006, she practiced in the litigation department at Debevoise & Plimpton in New York. Professor LaCroix received her B.A. and J.D. from Yale University, and her A.M. and Ph.D. from Harvard University.

Margaret H. Lemos

Maggie Lemos is the Robert G. Seaks LL.B. ’34 Professor of Law, Senior Associate Dean for Faculty and Research, and faculty co-advisor for the Bolch Judicial Institute at Duke Law School. She is a scholar of constitutional law, legal institutions, and procedure. Her current research focuses on the institutions of law interpretation and enforcement, including both public and private lawyers, and their effects on substantive rights. Lemos is also a co-author of a new multidisciplinary coursebook on judicial decision making. She teaches courses on civil procedure, legislation, and judicial process, and was awarded Duke’s Distinguished Teaching Award in 2013. Prior to joining the Duke Law faculty, Lemos was an associate professor at the Benjamin N. Cardozo School of Law; a Bristow Fellow at the Office of the Solicitor General; and a law clerk for Judge Kermit V. Lipez of the U.S. Court of Appeals for the First Circuit, and for U.S. Supreme Court Justice John Paul Stevens. She received her J.D. from New York University School of Law and her B.A. from Brown University.

David F. Levi

David F. Levi is the Levi Family Professor of Law and Judicial Studies and Director of the Bolch Judicial Institute at Duke Law School. Levi was previously the James B. Duke and Benjamin N. Duke Dean of the Duke Law School. He served as dean for 11 years from 2007-2018. Prior to his appointment at Duke, Levi was the Chief United States District Judge for the Eastern District of California with chambers in Sacramento. He was appointed to the district court in 1990. From 1986-1990 he was the United States Attorney for the Eastern District of California. Following graduation from Stanford Law School in 1980, Levi served as a law clerk to Judge Ben C. Duniway of the U.S. Court of Appeals for the Ninth Circuit, and then to Justice Lewis F. Powell, Jr., of the U.S. Supreme Court. Levi has served as member and chair of two U.S. Judicial Conference committees — the Advisory Committee on the Civil Rules and the Standing Committee on the Rules of Practice and Procedure. He was chair of the American Bar Association’s Standing Committee on the American Judicial System (2014-2016). He is an elected fellow of the American Academy of Arts and Sciences. He is the author or co-author of several books, articles, and published speeches mostly on the judiciary, judicial independence, and judicial decision-making. He is President of the American Law Institute.

Trevor W. Morrison

Trevor Morrison serves as Dean of NYU School of Law, where he is also the Eric M. and Laurie B. Roth Professor of Law. He previously

held faculty appointments at Cornell Law School and Columbia Law School. Morrison's research and teaching interests are in constitutional law (especially separation of powers), federal courts, and the law of the executive branch. After graduating from Columbia Law School, he served as a law clerk to Judge Betty Fletcher of the U.S. Court of Appeals for the Ninth Circuit and to Justice Ruth Bader Ginsburg of the U.S. Supreme Court. Between those clerkships, he was a Bristow Fellow in the U.S. Justice Department's Office of the Solicitor General, an attorney-adviser in the Justice Department's Office of Legal Counsel, and an associate at Wilmer, Cutler & Pickering (now WilmerHale). Morrison also served as associate counsel to President Barack Obama. He is a fellow of the American Academy of Arts & Sciences and a member of the American Law Institute and the Council on Foreign Relations.

Caleb Nelson

Caleb Nelson is the Emerson G. Spies Distinguished Professor of Law and the Caddell and Chapman Professor of Law at the University of Virginia School of Law. He earned his A.B. from Harvard College and his J.D. from Yale Law School. After law school, he clerked for Judge Stephen F. Williams on the United States Court of Appeals for the D.C. Circuit and Justice Clarence Thomas on the United States Supreme Court. He joined the Virginia faculty in 1998. At Virginia, he has taught Federal Courts, Civil Procedure, Legislation, and Constitutional Law. His articles have appeared in the *Columbia Law Review*, the *Harvard Law Review*, the *Michigan Law Review*, the *NYU Law Review*, the *University of Chicago Law Review*, the *University of Pennsylvania Law Review* (forthcoming), the *Virginia Law Review*, and the *Yale Law Journal*. He is also the author of a casebook on statutory interpretation, published by Foundation Press. He is a member of the American Law Institute and a past winner of the University of Virginia's All-University Teaching Award. He has also taught as a visiting professor at Harvard Law School and as the James S. Carpentier Visiting Professor at Columbia Law School.

Richard H. Pildes

Professor Richard H. Pildes is Sudler Family Professor of Constitutional Law at New York University School of Law and one of the country's leading experts on the legal aspects of American democracy and government. His academic work focuses on all aspects of the political process, as well as legal issues concerning the structure of American government, including the powers of the President, Congress, and the Supreme Court. His two casebooks, *The Law of Democracy* and *When Elections Go Bad*, created the law of democracy as a field of study in the law schools. In addition to editing the book, *The Future of the Voting Rights Act*, he has published more than seventy academic articles. Pildes has represented numerous clients before the Supreme Court. He served as a law clerk at the Court to Justice Thurgood Marshall and to Judge Abner J. Mikva of the United States Court of Appeals for the D.C. Circuit. He has testified several times before the United States Senate and House of Representatives. Born in Chicago, he began his teaching career at the University of Michigan Law School, before moving to NYU. He is an elected member of the American Academy of Arts and Sciences and the American Law Institute, as well as a Guggenheim Fellow.

Michael D. Ramsey

Michael D. Ramsey is Hugh and Hazel Darling Foundation Professor of Law at the University of San Diego School of Law, where he teaches and writes in the areas of constitutional law, foreign relations law, and international law. He is the author of *The Constitution's Text in Foreign Affairs* (Harvard University Press 2007), co-editor of *International Law in the U.S. Supreme Court: Continuity and Change* (Cambridge University Press 2011), and co-author of two casebooks, *Transnational Law and Practice* (Aspen 2015) and *International Business Transactions: A Problem-Oriented Coursebook* (12th ed., West 2015). His scholarly articles have appeared in publications such as the *Yale Law Journal*, the *University of Chicago Law Review*, the *Georgetown Law Journal* and the *American Journal of International Law*. He received his B.A. *magna cum laude* from Dartmouth College and his J.D. *summa cum laude* from Stanford Law School. Prior to teaching, he served as a judicial clerk for Judge J. Clifford Wallace of the United States Court of Appeals for the Ninth Circuit and Justice Antonin Scalia of the United States Supreme Court, and practiced law with the law firm of Latham & Watkins. He has taught as a visiting professor at the University of California, San Diego, in the Department of Political Science and at the University of Paris – Sorbonne, in the Department of Comparative Law.

Cristina M. Rodríguez (Co-Chair)

Cristina M. Rodríguez is the Leighton Homer Surbeck Professor of Law at Yale Law School. Her fields of research and teaching include constitutional law and theory, immigration law and policy, and administrative law and process. Her new book, *The President and Immigration Law* (with Adam B. Cox) was published by Oxford University Press in September 2020, and explores the long history of presidential control over immigration policy and its implications for the future of immigration law and the presidency itself. Rodríguez joined Yale Law School in 2013 after serving for two years as Deputy Assistant Attorney General in the Office of Legal Counsel at the U.S. Department of Justice. She was on the faculty at the New York University School of Law from 2004–2012 and has been Visiting Professor of Law at Stanford, Harvard, and Columbia Law Schools. She is a member of the American Academy of Arts and Sciences and the American

Law Institute, a non-resident fellow at the Migration Policy Institute in Washington, D.C., and a past member of the Council on Foreign Relations. She is also a past recipient of the Yale Law Women Award for Excellence in Teaching. She earned her B.A. and J.D. degrees from Yale and attended Oxford University as a Rhodes Scholar, where she received a Master of Letters in Modern History. Following law school, Rodríguez clerked for Judge David S. Tatel of the U.S. Court of Appeals for the D.C. Circuit and Justice Sandra Day O'Connor of the U.S. Supreme Court.

Kermit Roosevelt

Kermit Roosevelt is a professor of law at the University of Pennsylvania Carey Law School, where he teaches constitutional law and conflict of laws. He is a graduate of Harvard College and Yale Law School. Before joining the Penn faculty, he practiced appellate litigation with Mayer Brown in Chicago and clerked for D.C. Circuit Judge Stephen F. Williams and Supreme Court Justice David H. Souter.

Bertrall Ross

Bertrall Ross is the Chancellor's Professor of Law at the University of California, Berkeley School of Law. He teaches and writes in the areas of constitutional law, election law, administrative law, and statutory interpretation. Ross's research is driven by a concern about democratic responsiveness and accountability, as well as the inclusion of marginalized communities in administrative and political processes. His past scholarship has been published in several books and journals, including the *Columbia Law Review*, the *NYU Law Review*, and the *University of Chicago Law Review*. Ross is currently working on book projects related to separation of powers, gerrymandering, and voter data as a tool for disfranchisement. Ross has been the recipient of the Berkeley Law Rutter Award for Teaching Distinction, the Berlin Prize from the American Academy in Berlin, the Princeton University Law and Public Affairs Fellowship, the Columbia Law School Kellis Parker Academic Fellowship, and the Marshall Scholarship. He is currently a public member of the Administrative Conference of the United States. Ross earned his law degree from Yale Law School and Masters degrees from the London School of Economics and Princeton University's School of Public and International Affairs. Prior to joining Berkeley Law, he clerked for Judge Dorothy Nelson of the U.S. Court of Appeals for the Ninth Circuit and Judge Myron Thompson of the U.S. District Court for the Middle District of Alabama.

David A. Strauss

David Strauss is the Gerald Ratner Distinguished Service Professor of Law and the Faculty Director of the Supreme Court and Appellate Clinic at the University of Chicago. He is the author of *The Living Constitution* (Oxford University Press, 2010) and the co-author of *Democracy and Equality: The Enduring Constitutional Vision of the Warren Court* (Oxford University Press, 2019), and he has written many academic and popular articles on constitutional law and related subjects. He is a Fellow of the American Academy of Arts and Sciences and a co-editor of the *Supreme Court Review*. He has been a visiting professor at Harvard and Georgetown. He has served as an Assistant to the Solicitor General of the United States, in the Office of Legal Counsel of the U.S. Department of Justice, and as Special Counsel to the Senate Judiciary Committee. He has argued nineteen cases before the U.S. Supreme Court.

Laurence H. Tribe

Laurence Tribe is the Carl M. Loeb University Professor and Professor of Constitutional Law Emeritus at Harvard University. Tribe has taught at Harvard since 1968 and was voted the best professor by the class of 2000. The title "University Professor" is Harvard's highest academic honor, awarded to a handful of professors at any given time and to fewer than 75 professors in Harvard University's history. Tribe clerked for the California and U.S. Supreme Courts; was elected to the American Academy of Arts and Sciences in 1980 and the American Philosophical Society in 2010; helped write the constitutions of South Africa, the Czech Republic, and the Marshall Islands; and has received eleven honorary degrees, most recently a degree honoris causa from the Government of Mexico in March 2011 (never before awarded to an American) and an LL.D from Columbia University. Tribe has argued 35 cases in the U.S. Supreme Court. He was appointed in 2010 by President Obama and Attorney General Holder to serve as the first Senior Counselor for Access to Justice. He has written 115 books and articles, most recently, "To End A Presidency: The Power of Impeachment." His treatise, "American Constitutional Law," has been cited more than any other legal text since 1950.

Adam White

Adam White is a resident scholar at the American Enterprise Institute and an assistant professor of law at George Mason University's Antonin Scalia Law School, where he directs the C. Boyden Gray Center for the Study of the Administrative State. He writes on the courts, the Constitution, administrative law, and regulatory policy. He is a public member of the Administrative Conference of the United States, and he serves on the board of the Land Conservation Assistance Network. Previously he practiced constitutional and administrative law in Washington, D.C., and he clerked for the U.S. Court of Appeals for the D.C. Circuit. In 2005, the *Harvard Journal of Law & Public Policy*

published his study of the Senate's constitutional power to grant or withhold its "advice and consent" for judicial nominations.

Keith E. Whittington

Keith E. Whittington is the William Nelson Cromwell Professor of Politics at Princeton University and is currently the chair of Academic Freedom Alliance. He works on American constitutional history, politics and law, and on American political thought. He is the author of *Repugnant Laws: Judicial Review of Acts of Congress from the Founding to the Present* and *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History*, among other works. He has been a visiting professor at Harvard Law School, Georgetown University Law Center, and the University of Texas School of Law, and he is a member of the American Academy of Arts and Sciences. He did his undergraduate work at the University of Texas at Austin and completed his Ph.D. in political science at Yale University.

Michael Waldman

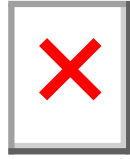
Michael Waldman is the president of the Brennan Center for Justice at NYU School of Law. The Brennan Center is a nonpartisan law and policy institute that works to strengthen the systems of democracy and justice so they work for all Americans. The Center is a leading national voice on voting rights, money in politics, criminal justice reform, and constitutional law. Waldman has led the Center since 2005. He is the author of *The Fight to Vote* (2016), a history of the struggle to win voting rights for all citizens, *The Second Amendment: A Biography* (2014), and five other books. Waldman served as director of speechwriting for President Bill Clinton from 1995-1999, and special assistant to the president for policy coordination from 1993-1995. He was responsible for writing or editing nearly two thousand speeches, including four State of the Union and two inaugural addresses. He is a graduate of NYU School of Law and Columbia College.

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From: White House Press Office
Subject: PRESS RELEASE: President Biden to Sign Executive Order Creating the Presidential Commission on the Supreme Court of the United States
To: Robertson, Ashley E. (ODAG)
Sent: April 9, 2021 11:14 AM (UTC-04:00)



FOR IMMEDIATE RELEASE

April 9, 2021

President Biden to Sign Executive Order Creating the Presidential Commission on the Supreme Court of the United States

President Biden will today issue an executive order forming the Presidential Commission on the Supreme Court of the United States, comprised of a bipartisan group of experts on the Court and the Court reform debate. In addition to legal and other scholars, the Commissioners includes former federal judges and practitioners who have appeared before the Court, as well as advocates for the reform of democratic institutions and of the administration of justice. The expertise represented on the Commission includes constitutional law, history and political science.

The Commission's purpose is to provide an analysis of the principal arguments in the contemporary public debate for and against Supreme Court reform, including an appraisal of the merits and legality of particular reform proposals. The topics it will examine include the genesis of the reform debate; the Court's role in the Constitutional system; the length of service and turnover of justices on the Court; the membership and size of the Court; and the Court's case selection, rules, and practices.

To ensure that the Commission's report is comprehensive and informed by a diverse spectrum of views, it will hold public meetings to hear the views of other experts, and groups and interested individuals with varied perspectives on the issues it will be examining. The Executive Order directs that the Commission complete its report within 180 days of its first public meeting. This action is part of the Administration's commitment to closely study measures to improve the federal judiciary, including those that would expand access the court system.

The two co-chairs of this Commission are Bob Bauer, Professor of Practice and Distinguished Scholar in Residence at New York University School of Law and a former White House Counsel, as well as Yale Law School Professor Cristina Rodriguez, former Deputy Assistant Attorney General in the Office of Legal Counsel at the U.S. Department of Justice.

COMMISSIONERS

Michelle Adams

Michelle Adams is a Professor of Law at Benjamin N. Cardozo School of Law, where she teaches Constitutional Law, Federal Courts, and Federal Civil Rights. At Cardozo, she is a Director of the Floersheimer Center for Constitutional Democracy and was a Board Member of the Innocence Project. Adams has published in the *Yale Law Journal*, the *California Law Review*, and the *Texas Law Review*. She recently appeared in “Amend: The Fight for America,” a 2021 Netflix documentary about the 14th Amendment. She is the author of *The Containment: Detroit, The Supreme Court, and the Battle for Racial Justice in the North*, forthcoming in 2022 from Farrar, Straus and Giroux. Previously, she was a Law Professor at Seton Hall Law School, practiced law at the Legal Aid Society, and served as a Law Clerk for Magistrate Judge James C. Francis IV in the Southern District of New York. Adams holds a B.A. from Brown University, a J.D. from City University of New York Law School, and an LL.M. from Harvard Law School, where she was the first Charles Hamilton Houston Scholar. She is a two-time recipient of Cardozo’s Faculty Inspire Award.

Kate Andrias (Rapporteur)

Kate Andrias is a Professor of Law at the University of Michigan. She teaches and writes about constitutional law, labor and employment law, and administrative law, with a focus on problems of economic and political inequality. Her work has been published in numerous books and journals, including the *Harvard Law Review*, the *NYU Law Review*, the *Supreme Court Review*, and the *Yale Law Journal*. In 2016, Andrias was the recipient of Michigan Law School’s L. Hart Wright Award for Excellence in Teaching. Andrias previously served as special assistant and associate counsel to President Obama, and as chief of staff of the White House Counsel’s Office. A graduate of Yale Law School, she clerked for Justice Ruth Bader Ginsburg of the U.S. Supreme Court and the Hon. Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit.

Jack M. Balkin

Jack M. Balkin is Knight Professor of Constitutional Law and the First Amendment at Yale Law School. He is the founder and director of Yale’s Information Society Project, an interdisciplinary center that studies law and new information technologies. He also directs the Abrams Institute for Freedom of Expression, and the Knight Law and Media Program at Yale. Balkin is a member of the American Law Institute and the American Academy of Arts and Sciences, and founded and edits the group blog Balkinization. His most recent books include *The Cycles of Constitutional Time, Democracy and Dysfunction* (with Sanford Levinson), *Processes of Constitutional Decisionmaking* (7th ed. with Brest, Levinson, Amar, and Siegel), *Living Originalism*, and *Constitutional Redemption: Political Faith in an Unjust World*.

Bob Bauer (Co-Chair)

Bob Bauer is Professor of Practice and Distinguished Scholar in Residence at the New York University School of Law and Co-Director of NYU Law’s Legislative and Regulatory Process Clinic. Bauer served as White House Counsel to President Obama from 2009 to 2011. In 2013, the President named him to be Co-Chair of the Presidential Commission on Election Administration. He is co-author with Jack Goldsmith of *After Trump: Reconstructing the Presidency* (2020), books on federal campaign finance and numerous articles on law and politics for legal periodicals. He has co-authored numerous bipartisan reports on policy and legal reform, including “The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration” (Presidential Commission on Election Administration, 2014); “The State of Campaign Finance in the United States” (Bipartisan Policy Center, 2018); and “Democratizing the Debates” (Annenberg Working Group on Presidential Campaign Debate Reform, 2015); ; He is a Contributing Editor of *Lawfare* and has published opinion pieces on constitutional and political law issues in *The New York Times*, *The Washington Post*, and *The Atlantic*, among other publications.

William Baude

William Baude is a Professor of Law and Faculty Director of the Constitutional Law Institute at the University of Chicago Law School, where he teaches federal courts, constitutional law, conflicts of law, and elements of the law. His most recent articles include *Adjudication Outside Article III*, and *Is Quasi-Judicial Immunity Qualified Immunity?* He is also the co-editor of the textbook, *The Constitution of the United States*, and an Affiliated Scholar at the Center for the Study of Constitutional Originalism. He is a graduate of the University of Chicago and the Yale Law School, and a former clerk for then-Judge Michael McConnell and Chief Justice John Roberts.

Elise Boddie

Elise Boddie is a Professor of Law and Judge Robert L. Carter Scholar at Rutgers University. An award-winning scholar, Boddie teaches and writes about constitutional law and civil rights and has published in leading law reviews. Her commentary has appeared multiple times in

The New York Times, as well as in *The Washington Post*, among other national news outlets. Boddie has served on the national board of the American Constitution Society and the board of the New Jersey Institute for Social Justice and is the founder and director of The Inclusion Project at Rutgers. Before joining the Rutgers faculty, Boddie was Director of Litigation for the NAACP Legal Defense & Educational Fund, Inc. and supervised its nationwide litigation program, including its advocacy in several major U.S. Supreme Court cases. An honors graduate of Harvard Law School and Yale, she also holds a master's degree in public policy from the Harvard Kennedy School of Government. Boddie clerked for Judge Robert L. Carter in the Southern District of New York. She is a member of the American Law Institute and an American Bar Foundation Fellow. In 2016, Rutgers University President Barchi appointed Boddie a Henry Rutgers Professor in recognition of her scholarship, teaching, and service. In 2021, Boddie was named the founding Newark Director of Rutgers University's Institute for the Study of Global Racial Justice.

Guy-Uriel E. Charles

Guy-Uriel E. Charles is the Edward and Ellen Schwarzman Professor of Law at Duke Law School. He writes about the relationship between law and political power and law's role in addressing racial subordination. He teaches courses on civil procedure; election law; constitutional law; race and law; legislation and statutory interpretation; law, economics, and politics; and law, identity, and politics. He is currently working on book, with Luis Fuentes-Rohwer, on the past and future of voting rights, under contract with Cambridge University Press. He is also co-editing, with Aziza Ahmed, a handbook entitled *Race, Racism, and the Law*, under contract with Edward Elgar Publishing. This book will survey the current state of research on race and the law in the United States and aims to influence the intellectual agenda of the field. He clerked on the Sixth Circuit for the late Judge Damon J. Keith. He has published numerous articles in top law journals. He is the co-author of two leading casebooks and two edited volumes. He is also a member of the American Law Institute. On July 1, 2021, he will become the inaugural Charles J. Ogletree Jr. Professor of Law at Harvard Law School.

Andrew Manuel Crespo

Andrew Manuel Crespo is a Professor of Law at Harvard University where he teaches and writes about criminal law and procedure. Professor Crespo's scholarship has been published in multiple leading academic journals including the *Harvard Law Review*, the *Yale Law Journal*, and the *Columbia Law Review*. Prior to beginning his academic career, Professor Crespo served as a Staff Attorney with the Public Defender Service for the District of Columbia, where he represented over one hundred people accused of crimes who could not afford a lawyer. Professor Crespo graduated magna cum laude from Harvard Law School, where he served as president of the *Harvard Law Review* and was the first Latino to hold that position. Following law school, he served as a law clerk to Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit before going on to serve for two years as a law clerk at the United States Supreme Court, first to Associate Justice Stephen Breyer and then to Associate Justice Elena Kagan during her inaugural term on the Court.

Walter Dellinger

Walter Dellinger is the Douglas Maggs Emeritus Professor of Law at Duke University and a Partner in the firm of O'Melveny & Myers. He was named one of the 100 Most Influential Lawyers in America by the National Law Journal and is the recipient of Lifetime Achievement Awards from the American Lawyer, the American Constitution Society and the Mississippi Center for Justice. Dellinger served in the White House and as Assistant Attorney General and head of the Office of Legal Counsel (OLC) from 1993 to 1996. He was acting Solicitor General for the 1996-97 Term of the US Supreme Court. He has argued 25 cases before the United States Supreme Court and has testified more than 30 times before committees of Congress. He has published in academic journals including the *Harvard Law Review*, the *Yale Law Journal* and the *Duke Law Journal*, and has written extensively for the *Washington Post*, *The New York Times*, the *Wall Street Journal*, *Slate*, and other publications. In 1987-88 he was a scholar at the National Humanities Center and has lectured at universities throughout the United States and other countries including China, Belgium, Netherlands, Germany, Mexico, Italy, Brazil, and Denmark. He graduated from University of North Carolina and Yale Law School and served as law clerk to Supreme Court Justice Hugo Black.

Justin Driver

Justin Driver is the Robert R. Slaughter Professor of Law at Yale Law School. He teaches and writes in the area of constitutional law, education law, and prison law. His book, *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind*, was selected as a *Washington Post* Notable Book of the Year, an Editors' Choice of the *New York Times Book Review*, and received the Steven S. Goldberg Award for Distinguished Scholarship in Education Law, among numerous other honors. A recipient of the American Society for Legal History's William Nelson Cromwell Article Prize, he has a distinguished publication record in the nation's leading law reviews and has also written extensively for general audiences. He is an editor of the *Supreme Court Review* and an elected member of the *American Law Institute*. He holds degrees from Brown, Oxford (where he was a Marshall Scholar), Duke (where he received certification to teach public school), and Harvard Law School (where he was an editor of the *Harvard Law Review*). After graduating from Harvard, he

clerked for Judge Merrick Garland, Justice Sandra Day O'Connor (Ret.), and Justice Stephen Breyer.

Richard H. Fallon, Jr.

Richard H. Fallon, Jr., joined the Harvard Law School faculty as an assistant professor in 1982 and is currently Story Professor of Law. He is also an Affiliate Professor in the Harvard University Government Department. Fallon is a graduate of Yale University and Yale Law School. He also earned a B.A. degree in Philosophy, Politics, and Economics from Oxford University, which he attended as a Rhodes Scholar. Before entering teaching, Fallon served as a law clerk to Judge J. Skelly Wright and to Justice Lewis F. Powell of the United States Supreme Court. Fallon has written extensively about Constitutional Law and Federal Courts Law. He is the author of *The Nature of Constitutional Rights: The Invention and Logic of Strict Judicial Scrutiny* (Cambridge University Press, 2019); *Law and Legitimacy in the Supreme Court* (Harvard University Press, 2018), *The Dynamic Constitution* (Cambridge University Press, 2d ed. 2013), and *Implementing the Constitution* (Harvard University Press, 2001) and a co-editor of *Hart & Wechsler's The Federal Courts and the Federal System* (7th ed. 2015). Fallon is a fellow of the American Academy of Arts and Sciences and a member of the American Law Institute. He is a two-time winner of Harvard Law School's Sacks-Freund Award, which is voted annually by the School's graduating class to honor excellence in teaching. In 2021, the Federal Courts Section of the American Association of Law Schools honored Fallon with its lifetime achievement award.

Caroline Fredrickson

Caroline Fredrickson served as the President of the American Constitution Society from 2009-2019. Fredrickson has published works on many legal and constitutional issues and is a frequent guest on television and radio, including serving as a regular on-air commentator on impeachment. Before joining ACS, Fredrickson served as the Director of the ACLU's Washington Legislative Office and as General Counsel and Legal Director of NARAL Pro-Choice America. In addition, she served as the Chief of Staff to Senator Maria Cantwell, of Washington, and Deputy Chief of Staff to then-Senate Democratic Leader Tom Daschle, of South Dakota. During the Clinton Administration, she served as Special Assistant to the President for Legislative Affairs. Fredrickson is currently an elected member of the American Law Institute, co-chair of the National Constitution Center's Coalition of Freedom Advisory Board, a member of If/When/How's Advisory Board, and on the boards of American Oversight and the National Institute of Money and Politics. In 2015 Fredrickson was appointed a member of the Yale Les Aspin Fellowship Committee. Fredrickson received her J.D. from Columbia Law School with honors and her B.A. from Yale University in Russian and East European Studies summa cum laude, phi beta kappa. She clerked for the Hon. James L. Oakes of the United States Court of Appeals for the Second Circuit.

Heather Gerken

Heather Gerken is the Dean and Sol & Lillian Goldman Professor of Law at Yale Law School and one of the country's leading experts on constitutional law and election law. A founder of the "nationalist school" of federalism, her work focuses on federalism, diversity, and dissent. Gerken's work has been featured in the *Harvard Law Review*, the *Yale Law Journal*, and the *Stanford Law Review* as well as *The Atlantic*, *The Boston Globe*, NPR, and *The New York Times*. In 2017, *Politico* Magazine named Gerken one of The Politico 50, a list of idea makers in American politics. At Yale, she founded and runs the country's most innovative clinic in local government law, the San Francisco Affirmative Litigation Project (SFALP). Gerken is also a renowned teacher who has won awards at both Yale and Harvard. She was named one of the nation's "twenty-six best law teachers" in a book published by the Harvard University Press. She became dean of Yale Law School on July 1, 2017.

Nancy Gertner

Nancy Gertner was United States District Court Judge (D. Mass.) from 1994-2011. She retired to join the faculty at Harvard Law School and has been a Visiting Lecturer at Yale Law School. Prior to 1994, Gertner was a civil rights and criminal defense lawyer. Named one of "The Most Influential Lawyers of the Past 25 Years" by Massachusetts Lawyers Weekly, she has published widely on sentencing, discrimination, forensic evidence, women's rights, and the jury system. Her autobiography, "In Defense of Women: Memoirs of an Unrepentant Advocate," (Beacon Press) was published in 2011. She is coauthor of "The Law of Juries" (Thomson Reuters, 2021). She is the author of an edited volume of the dissenting and majority opinions of Justice Ruth Bader Ginsburg (Talbot, forthcoming). She is writing a memoir, "Incomplete Sentences" (Beacon, forthcoming) about the men she has sentenced. A graduate of Barnard College, with a M.A. in Political Science and J.D. from Yale, she clerked for Justice Luther Swygert, Chief Judge, 7th Circuit. She has received numerous awards, including the ABA's Margaret Brent Award, the National Association of Women Lawyers' Arabella Babb Mansfield Award, and the Thurgood Marshall Award from the American Bar Association. In October 2014, she was a resident scholar at the Rockefeller Foundation in Bellagio, Italy.

Jack Goldsmith

Jack Goldsmith is the Learned Hand Professor of Law at Harvard Law School, a Senior Fellow at the Hoover Institution, and co-founder of Lawfare. He teaches and writes about national security law, presidential power, cybersecurity, international law, internet law, foreign relations law, and federal courts. Before coming to Harvard, Professor Goldsmith served as Assistant Attorney General, Office of Legal Counsel from 2003-2004, and Special Counsel to the Department of Defense from 2002-2003.

Thomas B. Griffith

Thomas B. Griffith served on the U. S. Court of Appeals for the D. C. Circuit from 2005 – 2020. He is now Special Counsel at Hunton Andrews Kurth, a Senior Advisor to the National Institute for Civil Discourse, and a Lecturer on Law at Harvard Law School. During his tenure on the D.C. Circuit, Judge Griffith served on the Judicial Conference's Committee on the Judicial Branch, which is concerned with the federal judiciary's relationship to the Executive Branch and Congress, and the Code of Conduct Committee, which sets the ethical standards that govern the federal judiciary. Prior to his appointment to the D.C. Circuit, Judge Griffith was the General Counsel of Brigham Young University. Previously he served as Senate Legal Counsel, the nonpartisan chief legal officer of the U.S. Senate, and before that was a partner at Wiley, Rein & Fielding. Judge Griffith has long been active in the American Bar Association's rule of law projects in Eastern Europe and Eurasia and is currently a member of the International Advisory Board of the CEELI Institute in Prague. He is a graduate of Brigham Young University and the University of Virginia School of Law.

Tara Leigh Grove

Tara Leigh Grove is the Charles E. Tweedy, Jr., Endowed Chairholder of Law and Director of the Program in Constitutional Studies at the University of Alabama School of Law. After graduating *summa cum laude* from Duke University and *magna cum laude* from Harvard Law School, Grove clerked for Judge Emilio Garza of the U.S. Court of Appeals for the Fifth Circuit. She then spent four years as an appellate attorney for the U.S. Department of Justice, arguing fifteen cases in the courts of appeals. Grove has written extensively about the federal judiciary, exploring issues related to judicial legitimacy and judicial independence. Grove's work has been published in prestigious law journals, such as the *Harvard Law Review*, the *Columbia Law Review*, the *University of Pennsylvania Law Review*, the *New York University Law Review*, the *Cornell Law Review*, and the *Vanderbilt Law Review*. Grove has served as a visiting professor at Harvard Law School and Northwestern Pritzker School of Law.

Bert I. Huang

Bert I. Huang is Michael I. Sovern Professor of Law at Columbia University, where he received the Reese Prize for Excellence in Teaching from the law school's graduating class. The university has also recognized him with its Presidential Award for Outstanding Teaching. At Columbia, he created the Courts & Legal Process colloquium to bring judges, students, and faculty together to discuss new academic research about the judiciary; and he previously served as a vice dean. He has also taught at Harvard. He served as the president of the Harvard Law Review and as a law clerk for Justice David H. Souter of the U.S. Supreme Court. He also clerked for Judge Michael Boudin of the U.S. Court of Appeals for the First Circuit. He completed his J.D. and Ph.D. at Harvard University, where he was a Paul & Daisy Soros Fellow. After receiving his A.B. from Harvard, he was a Marshall Scholar at the University of Oxford and worked for the White House Council of Economic Advisers.

Sherrilyn Ifill

Sherrilyn Ifill is the President & Director-Counsel of the NAACP Legal Defense & Educational Fund, Inc. (LDF), the nation's oldest and premier civil rights law organization fighting for racial justice and equality. Ifill began her career as a Fellow at the American Civil Liberties Union, and then as an Assistant Counsel at LDF where she litigated voting rights cases in the South. In 1993 Ifill joined the faculty at University of Maryland School of Law, where she taught civil procedure, constitutional law, and a broad range of civil rights and clinical offerings. Her scholarship focused on the critical importance of a racially diverse judiciary to the integrity of judicial decision-making. Ifill also studies and writes about racial violence. Her critically acclaimed book, *On The Courthouse Lawn: Confronting The Legacy Of Lynching In The 21st Century*, is credited with inspiring contemporary conversations about lynching and reconciliation. Since returning to LDF as its 7th President & Director-Counsel in 2013, Ifill has led the organization's bold advocacy in the federal courts, including the U.S. Supreme Court, on behalf of clients fighting voter suppression, racial discrimination in the criminal justice system, and a broad array of other urgent civil rights issues. Ifill is a member of the American Law Institute and the American Academy of Arts & Sciences. She holds an undergraduate degree from Vassar College, a J.D. from New York University School of Law, and numerous honorary doctorates.

Michael S. Kang

Michael S. Kang is the William G. and Virginia K. Karnes Research Professor at Northwestern Pritzker School of Law and nationally recognized expert on campaign finance, voting rights, redistricting, judicial elections, and corporate governance. His research has been

published widely in leading law journals and featured in *The New York Times*, *The Washington Post*, and *Forbes*, among others. His recent work focuses on partisan gerrymandering; the influence of party and campaign finance on elected judges; the de-regulation of campaign finance after *Citizens United*; and so-called “sore loser laws” that restrict losing primary candidates from running in the general election. Kang previously served as the Thomas Simmons Professor of Law at Emory University School of Law. He received his BA and JD from the University of Chicago, where he served as technical editor of the *Law Review* and graduated Order of the Coif. He also received a PhD in government from Harvard University and an MA from the University of Illinois. After law school, he clerked for Judge Kanne on the U.S. Court of Appeals for the Seventh Circuit and worked in private practice at Ropes & Gray in Boston.

Olatunde Johnson

Olatunde Johnson is the Jerome B. Sherman Professor of Law at Columbia Law School where she teaches and writes about legislation, administrative law, antidiscrimination law, litigation, and inequality in the United States. In February 2020, she was appointed by the United States Department of Justice to the Resolutions Committee honoring Justice John Paul Stevens. In 2016, she was awarded Columbia University’s Presidential Award for Outstanding Teaching, and Columbia Law School’s Willis L.M. Reese Prize for Excellence in Teaching. Previously, Professor Johnson served as constitutional and civil rights counsel to Senator Edward M. Kennedy on the Senate Judiciary Committee and as an attorney at the NAACP Legal Defense Fund. Professor Johnson graduated from Yale University and from Stanford Law School. After law school, she clerked for Judge David Tatel on the U.S. Court of Appeals for the D.C. Circuit and for Justice John Paul Stevens on the United States Supreme Court.

Alison L. LaCroix

Alison L. LaCroix is the Robert Newton Reid Professor of Law at the University of Chicago Law School. She is also an Associate Member of the University of Chicago Department of History. Professor LaCroix is the author of *The Ideological Origins of American Federalism* (Harvard University Press, 2010), and in 2018 she was awarded a National Endowment for the Humanities Fellowship for her current book project, titled *The Interbellum Constitution: Union, Commerce, and Slavery From the Long Founding Moment to the Civil War* (Yale University Press, forthcoming). Before joining the University of Chicago faculty in 2006, she practiced in the litigation department at Debevoise & Plimpton in New York. Professor LaCroix received her B.A. and J.D. from Yale University, and her A.M. and Ph.D. from Harvard University.

Margaret H. Lemos

Maggie Lemos is the Robert G. Seaks LL.B. ’34 Professor of Law, Senior Associate Dean for Faculty and Research, and faculty co-advisor for the Bolch Judicial Institute at Duke Law School. She is a scholar of constitutional law, legal institutions, and procedure. Her current research focuses on the institutions of law interpretation and enforcement, including both public and private lawyers, and their effects on substantive rights. Lemos is also a co-author of a new multidisciplinary coursebook on judicial decision making. She teaches courses on civil procedure, legislation, and judicial process, and was awarded Duke’s Distinguished Teaching Award in 2013. Prior to joining the Duke Law faculty, Lemos was an associate professor at the Benjamin N. Cardozo School of Law; a Bristow Fellow at the Office of the Solicitor General; and a law clerk for Judge Kermit V. Lipez of the U.S. Court of Appeals for the First Circuit, and for U.S. Supreme Court Justice John Paul Stevens. She received her J.D. from New York University School of Law and her B.A. from Brown University.

David F. Levi

David F. Levi is the Levi Family Professor of Law and Judicial Studies and Director of the Bolch Judicial Institute at Duke Law School. Levi was previously the James B. Duke and Benjamin N. Duke Dean of the Duke Law School. He served as dean for 11 years from 2007-2018. Prior to his appointment at Duke, Levi was the Chief United States District Judge for the Eastern District of California with chambers in Sacramento. He was appointed to the district court in 1990. From 1986-1990 he was the United States Attorney for the Eastern District of California. Following graduation from Stanford Law School in 1980, Levi served as a law clerk to Judge Ben C. Duniway of the U.S. Court of Appeals for the Ninth Circuit, and then to Justice Lewis F. Powell, Jr., of the U.S. Supreme Court. Levi has served as member and chair of two U.S. Judicial Conference committees — the Advisory Committee on the Civil Rules and the Standing Committee on the Rules of Practice and Procedure. He was chair of the American Bar Association’s Standing Committee on the American Judicial System (2014-2016). He is an elected fellow of the American Academy of Arts and Sciences. He is the author or co-author of several books, articles, and published speeches mostly on the judiciary, judicial independence, and judicial decision-making. He is President of the American Law Institute.

Trevor W. Morrison

Trevor Morrison serves as Dean of NYU School of Law, where he is also the Eric M. and Laurie B. Roth Professor of Law. He previously

held faculty appointments at Cornell Law School and Columbia Law School. Morrison's research and teaching interests are in constitutional law (especially separation of powers), federal courts, and the law of the executive branch. After graduating from Columbia Law School, he served as a law clerk to Judge Betty Fletcher of the U.S. Court of Appeals for the Ninth Circuit and to Justice Ruth Bader Ginsburg of the U.S. Supreme Court. Between those clerkships, he was a Bristow Fellow in the U.S. Justice Department's Office of the Solicitor General, an attorney-adviser in the Justice Department's Office of Legal Counsel, and an associate at Wilmer, Cutler & Pickering (now WilmerHale). Morrison also served as associate counsel to President Barack Obama. He is a fellow of the American Academy of Arts & Sciences and a member of the American Law Institute and the Council on Foreign Relations.

Caleb Nelson

Caleb Nelson is the Emerson G. Spies Distinguished Professor of Law and the Caddell and Chapman Professor of Law at the University of Virginia School of Law. He earned his A.B. from Harvard College and his J.D. from Yale Law School. After law school, he clerked for Judge Stephen F. Williams on the United States Court of Appeals for the D.C. Circuit and Justice Clarence Thomas on the United States Supreme Court. He joined the Virginia faculty in 1998. At Virginia, he has taught Federal Courts, Civil Procedure, Legislation, and Constitutional Law. His articles have appeared in the *Columbia Law Review*, the *Harvard Law Review*, the *Michigan Law Review*, the *NYU Law Review*, the *University of Chicago Law Review*, the *University of Pennsylvania Law Review* (forthcoming), the *Virginia Law Review*, and the *Yale Law Journal*. He is also the author of a casebook on statutory interpretation, published by Foundation Press. He is a member of the American Law Institute and a past winner of the University of Virginia's All-University Teaching Award. He has also taught as a visiting professor at Harvard Law School and as the James S. Carpentier Visiting Professor at Columbia Law School.

Richard H. Pildes

Professor Richard H. Pildes is Sudler Family Professor of Constitutional Law at New York University School of Law and one of the country's leading experts on the legal aspects of American democracy and government. His academic work focuses on all aspects of the political process, as well as legal issues concerning the structure of American government, including the powers of the President, Congress, and the Supreme Court. His two casebooks, *The Law of Democracy* and *When Elections Go Bad*, created the law of democracy as a field of study in the law schools. In addition to editing the book, *The Future of the Voting Rights Act*, he has published more than seventy academic articles. Pildes has represented numerous clients before the Supreme Court. He served as a law clerk at the Court to Justice Thurgood Marshall and to Judge Abner J. Mikva of the United States Court of Appeals for the D.C. Circuit. He has testified several times before the United States Senate and House of Representatives. Born in Chicago, he began his teaching career at the University of Michigan Law School, before moving to NYU. He is an elected member of the American Academy of Arts and Sciences and the American Law Institute, as well as a Guggenheim Fellow.

Michael D. Ramsey

Michael D. Ramsey is Hugh and Hazel Darling Foundation Professor of Law at the University of San Diego School of Law, where he teaches and writes in the areas of constitutional law, foreign relations law, and international law. He is the author of *The Constitution's Text in Foreign Affairs* (Harvard University Press 2007), co-editor of *International Law in the U.S. Supreme Court: Continuity and Change* (Cambridge University Press 2011), and co-author of two casebooks, *Transnational Law and Practice* (Aspen 2015) and *International Business Transactions: A Problem-Oriented Coursebook* (12th ed., West 2015). His scholarly articles have appeared in publications such as the *Yale Law Journal*, the *University of Chicago Law Review*, the *Georgetown Law Journal* and the *American Journal of International Law*. He received his B.A. *magna cum laude* from Dartmouth College and his J.D. *summa cum laude* from Stanford Law School. Prior to teaching, he served as a judicial clerk for Judge J. Clifford Wallace of the United States Court of Appeals for the Ninth Circuit and Justice Antonin Scalia of the United States Supreme Court, and practiced law with the law firm of Latham & Watkins. He has taught as a visiting professor at the University of California, San Diego, in the Department of Political Science and at the University of Paris – Sorbonne, in the Department of Comparative Law.

Cristina M. Rodríguez (Co-Chair)

Cristina M. Rodríguez is the Leighton Homer Surbeck Professor of Law at Yale Law School. Her fields of research and teaching include constitutional law and theory, immigration law and policy, and administrative law and process. Her new book, *The President and Immigration Law* (with Adam B. Cox) was published by Oxford University Press in September 2020, and explores the long history of presidential control over immigration policy and its implications for the future of immigration law and the presidency itself. Rodríguez joined Yale Law School in 2013 after serving for two years as Deputy Assistant Attorney General in the Office of Legal Counsel at the U.S. Department of Justice. She was on the faculty at the New York University School of Law from 2004–2012 and has been Visiting Professor of Law at Stanford, Harvard, and Columbia Law Schools. She is a member of the American Academy of Arts and Sciences and the American

Law Institute, a non-resident fellow at the Migration Policy Institute in Washington, D.C., and a past member of the Council on Foreign Relations. She is also a past recipient of the Yale Law Women Award for Excellence in Teaching. She earned her B.A. and J.D. degrees from Yale and attended Oxford University as a Rhodes Scholar, where she received a Master of Letters in Modern History. Following law school, Rodríguez clerked for Judge David S. Tatel of the U.S. Court of Appeals for the D.C. Circuit and Justice Sandra Day O'Connor of the U.S. Supreme Court.

Kermit Roosevelt

Kermit Roosevelt is a professor of law at the University of Pennsylvania Carey Law School, where he teaches constitutional law and conflict of laws. He is a graduate of Harvard College and Yale Law School. Before joining the Penn faculty, he practiced appellate litigation with Mayer Brown in Chicago and clerked for D.C. Circuit Judge Stephen F. Williams and Supreme Court Justice David H. Souter.

Bertrall Ross

Bertrall Ross is the Chancellor's Professor of Law at the University of California, Berkeley School of Law. He teaches and writes in the areas of constitutional law, election law, administrative law, and statutory interpretation. Ross's research is driven by a concern about democratic responsiveness and accountability, as well as the inclusion of marginalized communities in administrative and political processes. His past scholarship has been published in several books and journals, including the *Columbia Law Review*, the *NYU Law Review*, and the *University of Chicago Law Review*. Ross is currently working on book projects related to separation of powers, gerrymandering, and voter data as a tool for disfranchisement. Ross has been the recipient of the Berkeley Law Rutter Award for Teaching Distinction, the Berlin Prize from the American Academy in Berlin, the Princeton University Law and Public Affairs Fellowship, the Columbia Law School Kellis Parker Academic Fellowship, and the Marshall Scholarship. He is currently a public member of the Administrative Conference of the United States. Ross earned his law degree from Yale Law School and Masters degrees from the London School of Economics and Princeton University's School of Public and International Affairs. Prior to joining Berkeley Law, he clerked for Judge Dorothy Nelson of the U.S. Court of Appeals for the Ninth Circuit and Judge Myron Thompson of the U.S. District Court for the Middle District of Alabama.

David A. Strauss

David Strauss is the Gerald Ratner Distinguished Service Professor of Law and the Faculty Director of the Supreme Court and Appellate Clinic at the University of Chicago. He is the author of *The Living Constitution* (Oxford University Press, 2010) and the co-author of *Democracy and Equality: The Enduring Constitutional Vision of the Warren Court* (Oxford University Press, 2019), and he has written many academic and popular articles on constitutional law and related subjects. He is a Fellow of the American Academy of Arts and Sciences and a co-editor of the *Supreme Court Review*. He has been a visiting professor at Harvard and Georgetown. He has served as an Assistant to the Solicitor General of the United States, in the Office of Legal Counsel of the U.S. Department of Justice, and as Special Counsel to the Senate Judiciary Committee. He has argued nineteen cases before the U.S. Supreme Court.

Laurence H. Tribe

Laurence Tribe is the Carl M. Loeb University Professor and Professor of Constitutional Law Emeritus at Harvard University. Tribe has taught at Harvard since 1968 and was voted the best professor by the class of 2000. The title "University Professor" is Harvard's highest academic honor, awarded to a handful of professors at any given time and to fewer than 75 professors in Harvard University's history. Tribe clerked for the California and U.S. Supreme Courts; was elected to the American Academy of Arts and Sciences in 1980 and the American Philosophical Society in 2010; helped write the constitutions of South Africa, the Czech Republic, and the Marshall Islands; and has received eleven honorary degrees, most recently a degree honoris causa from the Government of Mexico in March 2011 (never before awarded to an American) and an LL.D from Columbia University. Tribe has argued 35 cases in the U.S. Supreme Court. He was appointed in 2010 by President Obama and Attorney General Holder to serve as the first Senior Counselor for Access to Justice. He has written 115 books and articles, most recently, "To End A Presidency: The Power of Impeachment." His treatise, "American Constitutional Law," has been cited more than any other legal text since 1950.

Adam White

Adam White is a resident scholar at the American Enterprise Institute and an assistant professor of law at George Mason University's Antonin Scalia Law School, where he directs the C. Boyden Gray Center for the Study of the Administrative State. He writes on the courts, the Constitution, administrative law, and regulatory policy. He is a public member of the Administrative Conference of the United States, and he serves on the board of the Land Conservation Assistance Network. Previously he practiced constitutional and administrative law in Washington, D.C., and he clerked for the U.S. Court of Appeals for the D.C. Circuit. In 2005, the *Harvard Journal of Law & Public Policy*

published his study of the Senate's constitutional power to grant or withhold its "advice and consent" for judicial nominations.

Keith E. Whittington

Keith E. Whittington is the William Nelson Cromwell Professor of Politics at Princeton University and is currently the chair of Academic Freedom Alliance. He works on American constitutional history, politics and law, and on American political thought. He is the author of *Repugnant Laws: Judicial Review of Acts of Congress from the Founding to the Present* and *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History*, among other works. He has been a visiting professor at Harvard Law School, Georgetown University Law Center, and the University of Texas School of Law, and he is a member of the American Academy of Arts and Sciences. He did his undergraduate work at the University of Texas at Austin and completed his Ph.D. in political science at Yale University.

Michael Waldman

Michael Waldman is the president of the Brennan Center for Justice at NYU School of Law. The Brennan Center is a nonpartisan law and policy institute that works to strengthen the systems of democracy and justice so they work for all Americans. The Center is a leading national voice on voting rights, money in politics, criminal justice reform, and constitutional law. Waldman has led the Center since 2005. He is the author of *The Fight to Vote* (2016), a history of the struggle to win voting rights for all citizens, *The Second Amendment: A Biography* (2014), and five other books. Waldman served as director of speechwriting for President Bill Clinton from 1995-1999, and special assistant to the president for policy coordination from 1993-1995. He was responsible for writing or editing nearly two thousand speeches, including four State of the Union and two inaugural addresses. He is a graduate of NYU School of Law and Columbia College.

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From: Steves, Vincent A.
Subject: [EXTERNAL] "This Week" Full Transcript: Sunday, April 3, 2022
To: Steves, Vincent A.
Sent: April 3, 2022 2:00 PM (UTC-04:00)



ABC NEWS MEDIA RELATIONS

April 3, 2022

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"THIS WEEK WITH GEORGE STEPHANOPOULOS"
FULL SHOW TRANSCRIPT



Transcript Link: <https://abcn.ws/38iQyVf>

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*A rush transcript of "This Week with George Stephanopoulos" airing on Sunday morning, April 3, 2022 on ABC News is below. This copy may not be in its final form and may be updated. **All excerpts must be attributed to ABC News "This Week with George Stephanopoulos"***
George Stephanopoulos serves as Anchor, Martha Raddatz and Jonathan Karl are Co-anchors. The program airs Sundays on the ABC Television Network (check local listings). Visit the "This Week" website to read more about the show at: www.abcnews.go.com/thisweek

Transcript:

ANNOUNCER: "This Week" with George Stephanopoulos starts right now.

(BEGIN VIDEO CLIP)

GEORGE STEPHANOPOULOS, ABC HOST (voiceover): Turning point?

JOHN KIRBY, UNITED STATES ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC AFFAIRS: What they call de-escalation I call repositioning.

STEPHANOPOULOS (voiceover): Russian forces pull back from Kyiv, focus their fire on Ukraine's east. Putin lashes out at his top advisers.

JOE BIDEN, PRESIDENT OF THE UNITED STATES: He seems to be self-isolating. And there's some indication that he has fired or put under house arrest some of his advisers.

STEPHANOPOULOS (voiceover): Pain at the pump.

BIDEN: As Russian oils comes off the market, supply oil drops and prices are rising.

STEPHANOPOULOS (voiceover): With gas prices soaring, President Biden taps an emergency reserve.

MITCH MCCONNELL, MINORITY LEADER OF THE UNITED STATES SENATE: A million barrels is a drop in the bucket.

STEPHANOPOULOS (voiceover): Closing in.

REP. LIZ CHENEY, (R-WY): We're entering a critical stage of our investigation.

STEPHANOPOULOS (voiceover): A federal judge finds Donald Trump likely broke the law on January 6th as the Justice Department steps up criminal probes of Trump and Hunter Biden.

MERRICK GARLAND, UNITED STATES ATTORNEY GENERAL: We follow the facts and the law wherever they lead.

STEPHANOPOULOS (voiceover): Topics [ph] this morning for our headliners, White House Chief of Staff, Ron Klain, Republican Policy Committee Chair, Senator Roy Blunt, and our powerhouse roundtable.

(END VIDEO CLIP)

ANNOUNCER: From ABC News, it's "This Week." Here now George Stephanopoulos.

STEPHANOPOULOS (on camera): Good morning and welcome to "This Week."

Five weeks into Putin's invasion of Ukraine is Russia losing the war? Russian forces appear to be retreating from Kyiv in the face of stiff resistance. But President Zelenskyy warned that they are leaving behind a catastrophic situation around Kyiv. He's bracing for more bloody fighting as the focus moves to the east. And overnight, Russian forces firing missiles on the strategic core [ph] city of Odessa.

Senior National Correspondent Terry Moran starts us off from Lviv. And Terry, we know Russian forces are pulling back

from Kyiv, we don't know exactly what that means.

TERRY MORAN, ABC NEWS SENIOR NATIONAL CORRESPONDENT: Good morning, George.

We don't know exactly what the withdraw means. But one thing is clear, the war that Russia started 39 days ago has changed. Seizing Kyiv was a primary Russian war end [ph]. They're trying to deny that now. But the evidence says otherwise. They committed huge forces to it and took huge losses, especially in equipment, armor in trying to fight for it. And now they are withdrawing.

But U.S. and Ukrainian officials say that this looks more like a redeployment with Russian units seen redeploying to the east of the country where a major battle looms in the coming weeks. And while those Russian forces have withdrawn, they have exposed behind them hellish scenes and possible war crimes.

There are bodies in the streets. Reports of a mass grave and signs of looting, as well. The Ukrainians are extremely concerned about the extent of this in the other occupied areas as well.

And then today, as you mentioned, a major attack in Odessa, in the south. A missile attack that hit an oil refinery and three fuel depots sending black smoke over that city and a sign that no matter what happens here in the north, the Ukrainians are celebrating [ph] that this war is a long way from over.

STEPHANOPOULOS: Terry, what more do we know about these atrocities in the wake of the retreat?

MORAN: George, there is no question as humans' rights [ph] watch and as the Ukrainian prosecutors are saying that there is evidence of -- significant evidence of war crimes. The mayor of Bucha, which is just a few miles outside of Kyiv, says there is a mass grave there with 300 bodies in it. Now, that needs to be confirmed, but there were also bodies evident on the streets. People with their hands tied behind their back, other evidence of war crimes and extensive looting, as well. There were armored trucks that had dish washers and washing machines packed in them, perhaps heading back to Russia.

It looks like this army was not just beaten in the field, but undisciplined. This is something that may have been part of the war plan. There were leaders of some of the communities north of Kyiv, that were, it looks like, executed. And we have seen Russia targeting leaders, mayors in other communities as well in an attempt to destroy the elite here as they hope to take over the country and dominant it. The Ukrainian armed forces are stymying that right now. But it does look like these atrocities are a sign of something systemic.

George?

STEPHANOPOULOS: Just brutal. Terry Moran, thanks very much.

The American public have generally approved of President Biden's handling of the war but soaring gas prices and persistent inflation have created major problems from the president and his party as they head into he midterm.

We're going to ask White House Chief of Staff Ron Klain about those challenges after this report from Chief Washington Correspondent Jon Karl.

(BEGIN VIDEO CLIP)

BIDEN: This is a moment of consequence and peril for the world and pain at the pump for American families.

JON KARL, ABC NEWS CHIEF WASHINGTON CORRESPONDENT (voiceover): For President Biden, the outlook is pretty grim - war abroad, anxiety at home, and inflation at its highest level in 40 years. Biden's message to Americans struggling with rising prices for food, for gas, and just about everything else, he feels it too. He understands your pain.

BIDEN: Well, I grew up in a family like many of you where if the price of a gallon gasoline went up, it was a discussion at

the kitchen table.

KARL (voiceover): Those words echo the message of the last Democratic president who faced the toxic mix of unrest abroad and high inflation, Jimmy Carter.

JIMMY CARTER, 39TH PRESIDENT OF THE UNITED STATES: I promise to you a president who is not isolated from the people, who feels your pain and who shares your dreams.

KARL (voiceover): Now it's Biden feeling the malaise. His own crisis of confidence, tapping into the Strategic Petroleum Reserve as he did this week might help, but it won't make that much of a difference. He's pointing the finger at Vladimir Putin for high gas prices.

BIDEN: Our prices are rising because of Putin's action. There isn't enough supply. And the bottom line is if we want lower gas prices we need to have more oil supply right now.

KARL (voiceover): Biden has called it a Putin price hike. But most Americans aren't buying it. And the fact is, gas prices were on the rise before Russia invaded Ukraine.

The national average is now \$4.22 a gallon, that's up 60 cents since the war began, but up \$1.34 from a year ago. Presidents usually see a bump in approval ratings during a time of crisis, but Biden is now at new lows. His overall approval rating at 36 percent in a new Quinnipiac poll. Just one in three approve of how he is handling the economy.

There is good news out there. The economy added 431,000 jobs in March and the unemployment rate fell to 3.6 percent.

BIDEN: Even though we created a record number of jobs, we know -- I know that this job is not finished. We need to do more to get prices under control.

KARL (on camera): Biden got some other significant good news this week. He has the votes to confirm Ketanji Brown Jackson to the Supreme Court and it will be a bipartisan vote, but by the narrowest of margins. Other than Susan Collins, no other Republican has come forward to say they'll vote yes.

KARL (voiceover): But voter anxiety is about more than rising prices or Russia's war on Ukraine. Violent crime in American cities remains persistently high. And there is a growing problem at the border.

A record 1.7 million undocumented immigrants were apprehended last year. The numbers so far this year are dramatically higher. And this week, the CDC announced that the Trump era rule of expelling undocumented immigrants because of COVID concerns will end in May. A decision criticized by Arizona's two Democratic senators, both now predicting a huge influx of undocumented immigrants as a result.

All that voter anxiety adds up to Democratic anxiety and fears of a brutal environment for the president's party going into the midterm elections this fall.

Jonathan Karl, ABC News, Washington.

(END VIDEO CLIP)

STEPHANOPOULOS: Thanks to Jon for that.

Let's bring in the White House Chief of Staff Ron Klain.

Ron, thank you for joining us this morning. Let's pick up where Jon left off. How anxious are you?

RON KLAINE, WHITE HOUSE CHIEF OF STAFF: George, I think we've done a great job and progress on creating jobs. As

Jon mentioned, the unemployment rate down to 3.6 percent, there's only been three months in 50 years where it's been that low. Record job creation. We're bringing the deficit down.

We saw the highest economic growth in a single year in American history since 40 years ago in 2021. But we have work to do. And that's what the president's been talking about this week, a new budget to bring the deficit down even further and to improve education and health care, which he introduced on Monday.

Steps to bring down the price of gas, which -- already bringing down the price of oil, we'll see it at the pump in the weeks ahead. Steps to bring down the price of everyday goods like prescription drugs. We made progress on that in the House this week. And the steps to bring down other costs that people are facing every single day -- child care, elder care, the kind of everyday costs that people face.

So we have done a lot of work to bring the economy back from dead in the water when we got here, virtually no jobs being created, businesses closed, schools closed. Tremendous amount of progress on getting the economy going again in 14 months, but a lot of work left to be done.

STEPHANOPOULOS: And I want to ask more about that coming up. But let's go to Ukraine right now. What do you make of this Russian retreat from Kyiv? Is Russia losing this war?

KLAIN: Well, I think Russia -- I think the Ukrainians are winning the war around Kyiv and in the northern part of the country. And that's tremendous credit to the fighting they've done and to the support that the United States and our NATO allies have provided them.

We send weapons into Ukraine almost every single day. The Ukrainian military, the Ukrainian volunteers, they're fighting this war, have shown their bravery, their tenacity, again, backed up by the generosity of the U.S. and our allies.

But I think we have to be very clear. I think there's a lot of evidence that Putin is simply taking his troops out of the northern part of the country to redeploy them to the eastern part of the country, to relaunch the battle there.

So, I think there have been victories for the Ukrainians so far, but this war, sadly, is far from over.

STEPHANOPOULOS: That's right. And a lot of people look at this redeployment and say that the end game, the approaching end game appears to be something like a frozen conflict after a long war, much like what we saw in Korea division. Russia gets the east. Ukraine maintains control of the re -- of the rest.

Is that acceptable to the United States?

KLAIN: George, that's -- that's not for -- really, the outcome here is for Ukraine to decide. What I would tell you is President Zelenskyy has said that's not acceptable to him, and we are going to support him with military aid, with economic aid, with humanitarian aid.

The political future of Ukraine is up for Ukraine to decide. But the military future of this attack has to be pushed back. And that's why we're doing so much to back President Zelenskyy and his military with the tools they need, with the weapons they need, with the other aid they need to oust the Russian invasion from their country.

STEPHANOPOULOS: Let's go back to the economy.

In the wake of that jobs report on Friday, Austan Goolsbee, your former colleague in the Obama administration, the economist from the University of Chicago, said we may be moving toward the idea that the COVID era of the U.S. economy is done.

Do you agree with that?

KLAIN: Well, I cautiously agree with that. I certainly we -- thanks to the success President Biden has had in vaccinating

over 225 million Americans, boosting 100 million Americans -- America is back to work. I mean, again, as I said before, the unemployment rate is one of the lowest months in the past 50 years. We have fewer people requiring unemployment assistance today than we did anytime since 1970.

So, we've solved the jobs crisis. We got America back to work. America has protection from the existing forms of COVID.

We have to be always vigilant and on guard, George, for this virus mutating again for future waves. We have to be prepared to deal with that.

But, right now, as we stand here today, our schools are open. Our businesses are open. People are coming back to work. People are coming back into the labor force. We had a big jump in labor participation in March.

So, I think there are a lot of encouraging signs in terms of this economy coming back to being a robust jobs and business-creating economy.

STEPHANOPOULOS: A lot of signs of a powerful economy. As you know, inflation comes with that, and that's what -- appears to be on people's minds right now. You saw that poll about the president's approval on the economy. We know gas prices are climbing higher and higher.

And we also are seeing that Republicans are poised to exploit that in the midterms. Here's a montage of some of their ads.

(BEGIN VIDEO CLIP)

MIKE GIBBONS (R), OHIO SENATE CANDIDATE: It's worded (ph) into our lives, Biden's raging inflation. We're paying the high price. Politicians are completely to blame.

AD ANNOUNCER: Mark Kelly, you rubber-stamped Joe Biden's agenda, shutting down pipelines, spiking gas prices, causing rampant inflation.

DR. MEHMEH OZ (R), PENNSYLVANIA SENATE CANDIDATE: Washington got COVID wrong. They got the economy wrong, too. Biden's reckless spending caused inflation.

(END VIDEO CLIP)

STEPHANOPOULOS: How should Democrats respond?

KLAIN: First of all, let's respond with some facts. The deficit rose every single year Donald Trump was president. His last year, he had the highest deficit in American history.

We brought down the deficit each of the two years Joe Biden's been in office. A trillion dollar cut in the deficit this year, the largest cut of any president in the history of this country. We're going to cut Trump's deficit in half in Biden's first three years. So, let's start with the facts about spending and nonsense like that.

Gas prices are a problem -- absolutely, George. That's why the president took the actions he took this week to release a million barrels a day from the Strategic Petroleum Reserve, to tell the oil companies they either need to pump oil on the 9,000 permits they have or give them back for others to do that, to increase production here. Those things we think are going to bring down the price of gasoline, relieve some of the pain at the pump.

And we also have an agenda to cut taxes for people, to bring down the cost of every day things.

Now, look, the Republicans have an agenda, too. Senator Scott says their agenda is to raise taxes on millions of Americans, to get rid of Social Security and to do other things that are going to devastate middle class people.

So, I think when people compare our agenda to the Republican agenda, that's going to be a clear choice for folks.

STEPHANOPOULOS: Border is also looming. It's a big issue. We saw that CDC decision on Friday to lift Title 42, which allows -- allowed the government to expel migrants during the pandemic.

Getting a lot of push back on that. Senator Joe Manchin, Democrat, called it frightening. Kyrsten Sinema, another senator, Democrat, says it poses a threat to Arizona. Mitt Romney says it's going to elect Republicans in November.

How worried are you about a possible surge at the border? Is there anything the president can do about it?

KLAIN: Sure, George. So, I think -- let's be clear -- Title 42 isn't an immigration law, it's a public health law. It says you can exclude people who pose a public health risk. The Centers for Disease Control decide how to apply that. And they've decided that sometime in late May the pandemic will be a place where we can no longer exclude people on a public health rationale.

Look, we need to do more work at the border. The president sent an immigration plan to Congress on his first day in office. We've asked consistently for more resources. We put in place a new rule that will take effect next month to enable us to process asylum claims more clearly.

We also have to be honest about what's happening at the border. We have people showing up with asylum claims from places like Cuba, Nicaragua, Venezuela, Brazil. People fleeing regimes where they are feeling persecution, coming here to make asylum claims.

I think the goal for everyone should be to make sure those asylum claims, those claims of people fleeing persecution, are heard in a prompt way. Those who deserve protection from prosecution get that protection. Those who don't are promptly sent back to where they came from.

STEPHANOPOULOS: How did Democrats get on the wrong side of the crime issue that's coming up right now, especially in the wake overnight another killing in Sacramento, at least six dead in a mass shooting?

KLAIN: Well, George, I don't think Democrats are on the wrong side of the crime issue. The president has sent to Congress plans for robust funding of police. Congress passed one of them just last week, two weeks ago, in the omnibus bill and raised our funding for police. We want to make sure we have strong law enforcement to respond to crime. We also want to make sure we have in place police reform and community violent intervention to help reduce crime. We have a plan to fight crime. Congress is making progress on that.

I met yesterday with the new mayor of New York, Eric Adams, who's been a leader in this effort to control crime in New York. So we're working very hard to be at the forefront of efforts to both control crime and have balanced and sensible policing. We think we can do both. That's what we stand for. And that's the plans we put forward to the Congress.

STEPHANOPOULOS: Let me ask you about the January 6th investigation and the possible prosecution of former President Trump. "The New York Times" is reporting today that as recently as late last year, this is a quote, Mr. Biden confided in his inner circle that he believed former President Donald J. Trump was a threat to democracy and should be prosecuted. He has said privately that he wanted Mr. Garland to act less like a ponderous judge and more like a prosecutor.

Is that true?

KLAIN: I've never heard the president say that -- advocate the prosecution of any person. Look, one reason why Joe Biden got elected was he promised that we'd take the decision over who got prosecuted and what away from the White House and put it in the Justice Department. Only Richard Nixon and Donald Trump, in the modern era, believed that prosecution decisions should be made in the Oval Office not at the Justice Department. We have returned the practice that every other president, Democratic and Republican has had since Watergate, other than Trump, to let those

decisions be made at the Justice Department. The president has confidence in the attorney general to make those decisions, and that's where those decisions should be made.

STEPHANOPOULOS: We also know the Justice Department is intensifying its investigation into Hunter Biden, the president's son. I assume the president has had no contact with the Justice Department about that?

KLAIN: Neither the president or any of us at the White House have had any contact with the Justice Department about that.

STEPHANOPOULOS: Is the president confident Hunter Biden didn't break the law?

KLAIN: Of course the president's confident that his son didn't break the law. But, most importantly, as I said, that's a matter that's going to be decided by the Justice Department, by the legal process. It's something that no one at the White House has involvement in.

STEPHANOPOULOS: "The Washington Post" also reported this week on deals that Hunter Biden had with a Chinese energy company, paid \$4.8 million to entities controlled by Hunter and the president's brother. Is the president confident his family didn't cross any ethical lines?

KLAIN: George, the president is confident that his family did the right thing. But, again, I want to just be really clear, these are actions by Hunter and his brother. They're private matters. They don't involve the president. And they certainly are something that no one at the White House is involved in.

STEPHANOPOULOS: In the wake of these text messages we saw this week from -- last week from Ginni Thomas, the wife of Supreme Court Justice Clarence Thomas, many are calling for an ethics code for Supreme Court justices, including Senator Chris Murphy, Democrat of Connecticut. If that passes the Congress, will the president sign that into law?

KLAIN: Well, George, I'm not familiar with the specific legislation you're talking about. I think you've got the January 6th committee doing its job. And I think we ought to let that committee do its -- do its work. Our position here has been that the -- the investigation of what happened on January 6th, this insurrection, this effort to turn back democracy, this effort to reverse the outcome of a democratic election, that should be explored by the January 6th committee, by the Justice Department, not by us at the White House.

STEPHANOPOULOS: Should Clarence Thomas recuse himself from on any issues, any cases having to do with January 6th?

KLAIN: Well, again, I don't think that's for me to say, but -- but I know -- but I know a lot of people have said that. Again, I don't think this is a place for us in the White House to be involved with -- with the rulings at the Supreme Court. I think that's for others to decide.

STEPHANOPOULOS: Finally, I do know you're confident that Judge Ketanji Brown Jackson is going to be confirmed as a Supreme Court justice. Do you -- do you expect any more Republican votes?

KLAIN: Well, I think she deserves more REpublican votes, that's for sure, George. She's one of the most qualified nominees in modern history. She'll be only the second person ever to serve on the Supreme Court who was both a trial judge and appellate court judge before she came to the Supreme COurt. She's got an outstanding academic record, outstanding record in private practice, on the sentencing commission, and all throughout her career. And she acquitted herself before the committee admirably in the face of some ridiculous, absurd and debasing questionings from some members of the committee.

So I hope that everyone looks at that, looks at her record of accomplishment, looks at her performance before that committee and -- and does the right thing, which is vote to confirm Judge Jackson to the Supreme Court. She deserves those votes.

What I know is she will get enough votes to get confirmed. In the end, I suppose, that's the only thing that matters. But I wish more Republicans would look at the case here, look at the record and vote to confirm Judge Jackson.

STEPHANOPOULOS: Ron Klain, we covered a lot of ground this morning. Thanks for your time.

KLAIN: Thanks for having me, George.

STEPHANOPOULOS: Roundtable's coming up. And Republican Senator Roy Blunt joins us, next. Stay with us.

(COMMERCIAL BREAK)

(BEGIN VIDEOTAPE)

SEN. MITCH MCCONNELL, (R) MINORITY LEADER & (R) KENTUCKY: Justice Clarence Thomas is a great American, an outstanding justice. I have total confidence in Justice Thomas's impartiality in every aspect of the work of the court.

HOUSE SPEAKER NANCY PELOSI, (D) CALIFORNIA: Well, if your wife is an admitted and proud contributor to a coup of our country, maybe you should weigh that in your ethical standards.

(END VIDEOTAPE)

STEPHANOPOULOS: Congressional leaders weighing in on Justice Thomas. Let's talk to Republican Senator Roy Blunt of Missouri right now.

Senator Blunt, thanks for joining us this morning. Let's start with those issues that I -- where I finished with Ron Klain, starting with Judge Ketanji Brown Jackson. Have you made up your mind yet?

SEN. ROY BLUNT, REPUBLICAN POLICY COMMITTEE CHAIR & (R) MISSOURI: Well, I have, George. And good to be with you this morning.

You know, I've thought -- initially, my sense is that the president certainly had every good intention and every right in the campaign to talk about putting the first black woman on the court. I think it's time for that to happen. I was hoping that I could be part of that. I had a great conversation with her.

Really, there are two criterias, I said immediately. One is, is the person qualified for teh job? And two is, what's her judicial philosophy?

She's certainly qualified. I think she's got a great personality, I think will be a good colleague on the court. But the judicial philosophy seems to be not the philosophy of looking at what the law says and the Constitution says and applying that, but going through some method that allows you to try to look at the Constitution as a more flexible document, and even the law. And there are cases that show that that's her view.

I think she's certainly going to be confirmed. I think it will be a high point for the country to see her go on the Court and take her unique perspective to the Court but I don't think she's the kind of judge that will really do the kind of work that I think needs to be done by the Court.

And I won't be supporting her but I'll be joining others in understanding the importance of this moment.

STEPHANOPOULOS: If it's a high point for the country, why not support her?

BLUNT: Well, I think the lifetime appointments have a different criteria than other appointments. I've supported a significant number of President Biden's nominees to offices that will end -- their time will end while he's still in office or when he leaves office. I think that's a different criteria than somebody -- putting somebody on the Court for life.

I don't think I've supported any district judges that he's appointed up til now -- the Court of Appeals level justice -- judges. And she just doesn't meet the criteria that over and over again I've said that in the last decade that -- the advise and consent part of the Constitution gives the Senate more responsibility than just saying she's qualified, you appointed her, we're going to approve her.

And that, clearly, has not been the role of the Senate for a couple of decades now. And it certainly wasn't the role that Democrats saw as their role in the last Congress when three qualified judges had the same kind of view that I think we have now, that you need to also agree with whether you think that judge is going to be a judge that thinks it's their job to rule on what they think the law and the Constitution should say or is it their job to rule on what the law and the Constitution does say? And I come down strongly on that side.

STEPHANOPOULOS: How about these calls for Justice Thomas to recuse himself from the January 6th investigation cases given the active involvement of his wife Ginni Thomas and the push for an ethics code for Supreme Court justices?

BLUNT: Well, the idea that you can't disagree with your wife on a public issue and still be able to function as a judge or as a government figure of any kind, I think is an idea that's long outlived any idea that it might be reasonable. Judge --

(CROSSTALK)

STEPHANOPOULOS: -- know that he disagrees with her?

BLUNT: -- that. No -- Judge Thomas has to decide that, in his personal opinions, I think in his writings over the years in -- aren't part of his judicial philosophy. He's going to look at the law. He's going to look at what the law says and what the Constitution says and rule in that regard.

I'm certainly totally supportive of the Justice Department effort to find out who did what on January 6th, if they were part of any illegal activity, either executing that or planning that. I think they should be prosecuted and I'm very supportive of that and have been publicly.

In fact, the committee that Senator Klobuchar and I run, we did an early investigation. We've made a number of changes about how to secure the Capitol and 85 recommendations on how we can prevent that from happening again. But it was totally unacceptable what happened on January 6th. I think the Justice Department is pursuing that exactly as they should.

STEPHANOPOULOS: Including the possible prosecution of President Trump? We saw that federal judge say it's likely the president broke the law.

BLUNT: Well, federal judges say a lot of things. And we'll see how that comes through the process. I think what I said is what I believe. I think the Justice Department has a job to do. They should do it. And people who were involved in planning or execution of illegal activities on January 6th should be prosecuted.

STEPHANOPOULOS: You heard Ron Klain taking on critics of the president's budget, like you, who said it's reckless spending, pointing out that the deficit has come down from the high level of the deficit under President Trump.

BLUNT: Well, I think the most reckless thing the president did in spending is the March decision on a totally partisan way for the first time in anything dealing with COVID, to try to come back and put \$2 trillion into an economy that was already well on the way to recovery.

Larry Summers said that was a problem. Others have said not only is that a part, but further massive spending on new programs is a problem. The biggest political issue in the country today is clearly inflation.

People are seeing not only gas prices at astronomical levels, and they were, by the way, at that unacceptable levels long

before Putin did anything regarding Ukraine. They went up almost every day beginning not just the day after the president was inaugurated, but the day after he was elected as people are seeing what was going to happen with his energy policies. And commodity prices are high in some cases as 20 percent.

All you have to do is go to the gas station or the grocery store or pay your winter heating bill to know that something unacceptable has happened. I think that's the excessive level of spending that Democrats all on their own put \$1.9 trillion into the economy in March, and it will take us a long time to recover from that and even longer to pay it back.

STEPHANOPOULOS: Finally, let me end with you where I began with Ron Klain. Do you believe that Russia is losing this war in Ukraine? And what more can the United States be doing right now to support the Ukrainian resistance?

BLUNT: Well, I think we should be doing everything we can. We should give them what they need as quickly as they needed. I think, frankly, what the president has done has generally been the right thing, but about two or three weeks slower than it should have been. I've been saying that since we had the sanctions discussion before the invasion.

What would be interesting I think would be to know whether Putin was more surprised by the incredible resistance of the Ukrainians, the rallying around of NATO to the original and unified purpose of NATO, particularly the German change in attitude, or how poorly his own military has performed. I'm sure he's surprised by all three of those, and frankly, I think we've been surprised by all three of those.

Our intelligence did a great job of knowing what the Russians were doing, the false flag operations -- all those things incredibly helpful. But I don't think anybody could have anticipated those three big events or those three big items or, frankly, the leadership of President Zelenskyy. I hope he continues to be safe and brave and his country is rallying behind that willingness to be there and be in the fight.

STEPHANOPOULOS: Senator Blunt, thanks for your time this morning.

Roundtable is coming up.

Plus, Nate Silver's take on the Georgia governor's race where former President Trump is trying to take out the Republican incumbent.

(COMMERCIAL BREAK)

STEPHANOPOULOS: FiveThirtyEight's Nate Silver is next. We'll be right back.

(COMMERCIAL BREAK)

STEPHANOPOULOS: FiveThirtyEight's Nate Silver is next.

We'll be right back.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

DAVID PERDUE (R), GEORGIA GUBERNATORIAL CANDIDATE: Where's Brian? He's not here. You know why? Because he kicked sand in the face of the president over the last two years and said no every time the president asked him for anything. So I have President Trump's endorsement because he knows I fought with him.

GOV. BRIAN KEMP (R), GEORGIA: Republicans are rallying to me now because they realize I am indeed the person to win the race, not the guy that was scared to debate Jon Ossoff and lost to -- lost to him in the U.S. senate race.

(END VIDEO CLIP)

STEPHANOPOULOS: Georgia's Republican Governor Brian Kemp locked in a close primary race for re-election against former Senator David Perdue. Donald Trump is backing Purdue after Kemp refused to overturn Joe Biden's Georgia victory in 2020. The race is an early test of Trump's say in the 2022 midterms.

FiveThirtyEight's Nate Silver has a closer look at the race.

(BEGIN VIDEOTAPE)

NATE SILVER, FIVETHIRTYEIGHT: My basic rule for forecasting election sis, trust the polls unless you have a really good reason not to. And those polls show Governor Kemp with a modest but meaningful lead against former Senator David Perdue. A Fox News poll last month, for example, found Kemp ahead by 11 points, 50 to 39.

The primary is not until May 24th, so there's still a fairly long wait to go. But, frankly, I don't see any reason to go against the polls. If anything, the other indicators look solid for Kemp too. One is a strong track record of incumbent governors facing primary challenges. Historically, 87 percent of elected incumbent governors win renomination even when they face a contested primary.

The other factor, David Perdue may just not be that strong a candidate. He's only been elected once in his life for the U.S. Senate in 2014. And that was by a single-digit 7.5 point margin in a very good cycle for Republicans at a time when Georgia was a lot redder than it is now.

There are also signs of minimal enthusiasm for Purdue. As of January, he had just \$1.1 million in cash on hand as compared to \$12.7 million for Kemp. And although Perdue has President Trump's endorsement based on his willingness to indulge Trump's false claims about election fraud, something may be lost in translation. A Trump-led rally in Commerce, Georgia, last week drew only about 5,000 attendees, well down from the tens of thousands that turned out to see Trump in Georgia in 2020.

My conclusion, I wouldn't write Perdue off entirely just yet, but I definitely buy that Kemp is the favorite.

(END VIDEOTAPE)

STEPHANOPOULOS: Thanks to Nate for that.

We'll be right back with the roundtable.

(COMMERCIAL BREAK)

(BEGIN VIDEOTAPE)

REP. ADAM SCHIFF, (D) JANUARY 6 COMMITTEE & (D) CALIFORNIA: The Department of Justice has a duty to act on this referral and others we have sent. Without enforcement of congressional subpoenas, there is no oversight.

REP. ELAINE LURIA, (D) JANUARY 6 COMMITTEE & (D) VIRGINIA: Attorney General Garland, do your job so that we can do ours.

ATTORNEY GENERAL MERRICK GARLAND: The only pressure I feel and the only pressure that our line of prosecutors feel is to do the right thing. That means we follow the facts and the law wherever they may lead.

(END VIDEOTAPE)

STEPHANOPOULOS: Merrick Garland may have the second or third hardest job in Washington right now. Of course he's the attorney general, facing all kinds of -- of questions about cases involving Donald Trump, Hunter Biden, and charges of contempt for members of the Trump administration.

Let's bring on our roundtable, Chris Christie, Donna Brazile, Washington Post editorial page editor Ruth Marcus, and New York Times national political reporter Astead Herndon.

And, Ruth, let me begin with you. You've covered the Justice Department for a long time. This constellation of issues facing Merrick Garland, extraordinary?

MARCUS: Yeah, you really don't want to be Merrick Garland right now if you're not used to making or ready to make hard decisions, because he's got a lot of hard decisions to make.

And this week, I think, ramped up the pressure on him. He says he doesn't feel it. I take him at his word. But I would if I were him. The decision by a federal judge in California that said the president, more likely than not -- I mean the former president, more likely than not committed a crime; the -- the revelation of this long gap in the phone records; and the revelation of something that Merrick Garland knew but we didn't, which is that they are looking beyond the immediate perpetrators of the insurrection, which I think is good news, to those who planned the rally and may have planned the insurrection.

All -- of all of those, I think that the most important and most significant may be this gap. Because if that gap turns out to be the result of steps that the president knowingly took, President Trump knowingly took, to avoid creating a record, that's evidence of -- that could be evidence of intent.

STEPHANOPOULOS: We don't -- we don't know that yet.

MARCUS: Yeah, if -- I said "if."

STEPHANOPOULOS: Yeah. Astead, I was struck by Ron Klain's non-denial denial of the New York Times story this morning that President Biden has expressed to others that he believes that former President Trump should be prosecuted.

HERNDON: Yeah, you heard that he says he didn't hear...

(LAUGHTER)

... the president say that. But I think that reporting has been very important. It says that President Biden has been looking advisers, hasn't (ph) been saying that he wishes that the attorney general would act more aggressively in private.

Now, we know this is generally the feeling of a lot of elected Democrats right now. They are looking and that kind of political pressure is ramping up on the attorney general to act. But we also know that Republicans are insulating him as well.

You had Senator Mitch McConnell last week say that he -- say that he thinks that that's -- that that type of talk isn't appropriate. And so we have -- we're going to have a kind of convergence of issues here, having Democrats kind of ramp up the political pressure to try to see some actions on this front, both on this and the text messages that came out from the Supreme Court -- Supreme Court Justice Clarence Thomas' wife.

You have the political pressure ramping up there, but you also have Republicans trying to dig in their heels and provide a defense on that front also.

STEPHANOPOULOS: Chris Christie, the case against President Trump could be kind of tough because you have to go to state of mind. And all he really needs is one lawyer who was telling him, no (ph), this is legal.

CHRISTIE: Yes, no, look, the problem with what the judge said is a couple-fold. What he said may have been completely accurate, the standard there is a civil standard, which is a preponderance of the evidence.

The standard for criminal prosecution, as we know, is beyond a reasonable doubt. And the gap between preponderancy evidence and beyond a reasonable doubt, having done this for seven years of my life, is about as big a gap as you can find.

And so, add to it that if you're Merrick Garland you're sitting there saying, I'm not going to prosecute the former President of the United States unless it's a head shot. I mean, you're just not going to do that.

So, you know, I don't think -- I disagree. But I don't think it's a particularly tough job at the moment. Merrick Garland has done this stuff in his life. If he does it the right way, if he resists political pressure from Democrats, the same way that Bill Barr should've resisted Republican political pressure, he'll be fine. You make the decisions, you make the calls. If you can't do that, you shouldn't have taken the job in the first place.

STEPHANOPOULOS: Also facing, Donna Brazile, a big decision about Hunter Biden.

BRAZILE: Absolutely. Look, we'll see what happens in Delaware because that case is originating there. And based on what I read in "The Washington Post" and some of the other examination with Hunter's laptop, there's a lot of information that we're learning, new information, in fact, about what may have occurred because he left his laptop at a repair shop and now they have the hard drive.

But look, I want to just say something about the January 6th Committee, what the judge did in California and all of the other legal challenges that the former president -- this is a cloud (ph), George. It's a drip, drip, drip. At some point it's going to flood the conversation because the president is -- the former president is facing so many legal hurdles.

January 6th Committee is really drilling down on what happened that morning, not only who organized it, but what was happening in the morning hours all the way into the afternoon. At some point we're going to find more and more documents, the documents that will be released as a result of what Judge Carter just ordered that will show that the president really -- the former president believed that he had legal grounds to overturn the election. There's so much more that we're going to learn over the next couple of weeks.

STEPHANOPOULOS: Ruth Marcus, "The Washington Post" reported this week, as I mentioned with Ron Klain, more on Hunter Biden's dealings with China, which a lot on the right -- many on the right have said it's too little too late for "The Washington Post" to come forward now after dismissing these claims all through the election.

MARCUS: I think this is the point where I'm supposed to say that I represent the opinion side of "The Washington Post" and not the newsroom.

I think there are a lot of -- I think that all news organizations, not just "The Washington Post," faced a very big dilemma and -- as they tried to figure out how to deal with the reporting about that laptop in real-time. We knew there had been efforts -- we, the news media, knew there had been efforts at Russian disinformation. You don't want to jump at that and report something that's wrong.

On the other hand, you don't want to be putting a finger on the scale. I don't -- as a journalist, I'm for one side or the other. So I'm not going to second guess the decisions that were made though I think there's a lot of interesting reporting to be done and I'm really glad that we are looking at this now.

Hunter Biden is not the first political relative to take advantage and make money off of his father's access and power, but it's not a very attractive story. Not an attractive --

(CROSSTALK)

STEPHANOPOULOS: -- "The New York Times"?

HERNDON: I don't think so. I think that there is no fear about reporting facts and following where those go. I want to

defer to my colleagues in Washington who have been really doing that type of work. And I know that there is full support in the newsroom to follow the facts wherever they go.

On the election side -- on the politics side where we focus, this hasn't really dripped into the real public consciousness yet. But we know this is going to be an effort for Republicans to try to drive that narrative, to try to make the electorate more motivated on this front.

We haven't seen that yet, but they're going to try.

STEPHANOPOULOS: Merrick Garland is going to have to resist the pressure from Republicans on this issue.

CHRISTIE: Well, yeah -- and that's your job when you're attorney general.

But, look, the idea that somehow when making the Hunter Biden decision in the midst of an election campaign, we're saying, oh, we've got to be careful about Russian disinformation. But all through 2016 and 2017, we now know that it was the Hillary Clinton campaign that was creating that dossier, paying for it, and that became the basis of a "New York Times" Pulitzer Prize.

And it's sort of --

STEPHANOPOULOS: Well, there's a separate FBI investigation based on completely different evidence that generate --

(CROSSTALK)

CHRISTIE: But, George, no, no, George, look, Operation Crossfire Hurricane was all about the potential infiltration of the Trump campaign by the Russians. The basis of that was the dossier. And instead --

MARCUS: And most news organizations, Chris, didn't publish the dossier.

CHRISTIE: Oh, they didn't publish the dossier, Ruth, but what they did was aggressively pursued that and called it as if it was fact.

And with the Hunter Biden case, Twitter took "The New York Post" Twitter account down because they reported on the Hunter Biden laptop which now turns out to be completely true. So, let's just call what -- let's call what it was.

(CROSSTALK)

STEPHANOPOULOS: Chris, nobody reported on the dossier during the campaign.

CHRISTIE: "The New York Post" had it right - but, George, "The New York Post" had it right, and "The Washington Post" and "The New York Times" had it wrong.

Now, you can decide -- everyone will decide what the motivation for that was, whether it was simple error, whether it was not sufficient reporting, whether it was bias, everyone is going to have their opinions on that.

But the facts that we know now are, "The New York Post" had it right during the campaign last year, and the other media outlets had it wrong.

MARCUS: Is "The Washington Post" supposed to report on a hard drive that they didn't have at the time that was given to Rudy Giuliani? I mean, it's not an easy call if you're an editor.

CHRISTIE: They reported on a lot of stuff regarding Russian infiltration on the Trump campaign that turned out to be flat wrong, dead wrong.

BRAZILE: Well, they also failed to report on the Russian infiltration of the Democratic National Committee and the damage that was done as a result of Mr. Putin trying to basically interfere in our elections.

Look, George, I understand that the Hunter Biden situation -- look, we know a lot -- Hunter is selling art work that is valued at a lot of money. Hunter is also -- we had nude photos.

I mean, I don't know what's right and what's wrong, but I'm going to tell you one thing, Hunter is not going to be a conversation piece this midterm. Hunter is going to be a conversation piece for those of us who like salacious gossip.

What's going to be a conversation piece is, of course, the economy, how the American people are feeling about their own lives and what's in their pocketbooks and wallets, and also the outcome of the war in Ukraine which will not just impact us at the gas pump, but pretty soon at the grocery store when we go and buy bread and other -- wheat and barley, because this war is going to take a toll on the American economy.

STEPHANOPOULOS: And it does look -- it does look like it's going to go on for sometime, Chris Christie. But there's all this evidence out there that Russia is retreating in the face of such strong resistance, that this was a war they thought they could win easily, it's not happening.

CHRISTIE: Well, we know now that those people who called Putin a genius and very savvy for how he's done this look like they really have egg all over their face because he's made obviously significant strategic mistakes. And worse yet, when confronted with those strategic mistakes, it seems now from reporting that we're seeing this morning that they committed war crimes in the face of that, on top of it. As they're retreating from Kyiv, we're now seeing what they did while they were there.

And so, there's going to be a lot that goes on here, George. But the real problem still is the same that we talked about a couple weeks ago, which is when confronted with this now, is he's pulling back, is he going to amp up or is he going to try to get this to a peace position where they try to make some kind of negotiated settlement?

I don't know which one it's going to be, but I'll tell you the guy who is watching it the most closely besides President Zelenskyy is President Xi in China, because if they ramp this up, Xi is going to be held responsible by the rest of the world for supporting Putin.

STEPHANOPOULOS: It could also face tough choices for President Biden, Ruth Marcus, because if you approach an end game where Russia consolidates control in the east in the wake of these war crimes, can President Biden still lift the sanctions in the face of all that evidence?

MARCUS: I think this is a not good situation for President Biden because if things go badly, he gets blamed. If things go well, he is not going to probably get credit because people are going to be looking at inflation and all sorts of other things. I thought what Ron Klain said was interesting to you, that -- that it's going to be up to the Ukrainians to decide what limits to accept.

But this is a -- no matter what we do and no matter what Ukraine decides, the risk here is rewarding Putin for war crimes, rewarding Putin for war crimes, rewarding Putin for a war of aggression that has no basis for going forward. And yet the alternative, as Chris was suggesting, is that will push him in the situation where he has to, as the Russian's say, escalate to deescalate. This is just a horrible conundrum most of all for Ukraine.

HERNDON: But I think she this on the key quagmire for President Biden here, which is that there's no real upside here politically. I hate to talk about this in such callus terms, but, you know, the president will be blamed for that situation if it does go poorly. But we're not seeing that bump, even though people do approve of how he has handled that situation largely in Poland, the domestic issues like inflation and the economy, fears of crime and other are to -- are a higher priority for folks right now. And so the White House has a governing problem on its hands, but the reward politically hasn't really shown up either.

BRAZILE: But, you know, who wants to get a reward for saving lives --

HERNDON: I was going to say (INAUDIBLE). The (INAUDIBLE) effect (ph).

BRAZILE: For making sure that -- that a country's not bombed off the -- the planet earth the way that Putin has now gone after the people of Ukraine? Shooting people in the back of the heads. You know, striking hospitals and schools. At some point, Mr. Putin needs to account for his war crimes. And maybe that's where the president can show more leadership in terms of making sure that we document these war crimes. This is horrific to see what's happening in Ukraine each and every day carried out by a man who still wants to come and sit at the table. I would work my you know what to boot him out of G-7.

CHRISTIE: Listen, we -- we -- we've got to be careful about how we do it. I think you're right, but we've got to be careful about how we escalate or not escalate with this. And I think you're right, Ruth, the president has a lot of very difficult decisions -- decisions to make here on this. And, you know, to show how skilled she is across the table on your -- the last question that you had, you know, Donna talked about all the different issues that are going to affect the midterms. And she's right. But the American people are going to look at, do they think the president has acted in a way that is strong and projects American strength almost more than any particular issue. And how he handles this is going to determine that.

BRAZILE: And he will succeed at that, my friend.

CHRISTIE: Oh, I'm sure you think so.

BRAZILE: Yes.

STEPHANOPOULOS: And that is the last word for today. Thank you all very much.

We'll be right back.

(COMMERCIAL BREAK)

STEPHANOPOULOS: That is all for us today. Thanks for sharing part of your Sunday with us. Check out "WORLD NEWS TONIGHT" and I'll see you tomorrow on "GMA."

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From: Steves, Vincent A.
Subject: [EXTERNAL] "This Week" Transcript: Sen. Roy Blunt
To: Steves, Vincent A.
Sent: April 3, 2022 10:39 AM (UTC-04:00)



ABC NEWS MEDIA RELATIONS

April 3, 2022

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SEN. ROY BLUNT ON "THIS WEEK WITH GEORGE STEPHANOPOULOS"



Transcript Link: <https://abcn.ws/38iQyVf>

*A rush transcript of "This Week with George Stephanopoulos" airing on Sunday morning, April 3, 2022 on ABC News is below. This copy may not be in its final form and may be updated. **All excerpts must be attributed to ABC News "This Week with George Stephanopoulos"** George Stephanopoulos serves as Anchor, Martha Raddatz and Jonathan Karl are Co-anchors. The program airs Sundays on the ABC Television Network (check local listings). Visit the "This Week" website to read more about the show at: www.abcnews.go.com/thisweek*

Transcript:

STEPHANOPOULOS: Congressional leaders weighing in on Justice Thomas. Let's talk to Republican Senator Roy Blunt of Missouri right now.

Senator Blunt, thanks for joining us this morning. Let's start with those issues that I -- where I finished with Ron Klain, starting with Judge Ketanji Brown Jackson. Have you made up your mind yet?

SEN. ROY BLUNT, REPUBLICAN POLICY COMMITTEE CHAIR & (R) MISSOURI: Well, I have, George. And good to be with you this morning.

You know, I've thought -- initially, my sense is that the president certainly had every good intention and every right in the campaign to talk about putting the first black woman on the court. I think it's time for that to happen. I was hoping that I could be part of that. I had a great conversation with her.

Really, there are two criterias, I said immediately. One is, is the person qualified for the job? And two is, what's her judicial philosophy?

She's certainly qualified. I think she's got a great personality, I think will be a good colleague on the court. But the judicial philosophy seems to be not the philosophy of looking at what the law says and the Constitution says and applying that, but going through some method that allows you to try to look at the Constitution as a more flexible document, and even the law. And there are cases that show that that's her view.

I think she's certainly going to be confirmed. I think it will be a high point for the country to see her go on the Court and take her unique perspective to the Court but I don't think she's the kind of judge that will really do the kind of work that I think needs to be done by the Court.

And I won't be supporting her but I'll be joining others in understanding the importance of this moment.

STEPHANOPOULOS: If it's a high point for the country, why not support her?

BLUNT: Well, I think the lifetime appointments have a different criteria than other appointments. I've supported a significant number of President Biden's nominees to offices that will end -- their time will end while he's still in office or when he leaves office. I think that's a different criteria than somebody -- putting somebody on the Court for life.

I don't think I've supported any district judges that he's appointed up til now -- the Court of Appeals level justice -- judges. And she just doesn't meet the criteria that over and over again I've said that in the last decade that -- the advise and consent part of the Constitution gives the Senate more responsibility than just saying she's qualified, you appointed her, we're going to approve her.

And that, clearly, has not been the role of the Senate for a couple of decades now. And it certainly wasn't the role that Democrats saw as their role in the last Congress when three qualified judges had the same kind of view that I think we have now, that you need to also agree with whether you think that judge is going to be a judge that thinks it's their job to rule on what they think the law and the Constitution should say or is it their job to rule on what the law and the Constitution does say? And I come down strongly on that side.

STEPHANOPOULOS: How about these calls for Justice Thomas to recuse himself from the January 6th investigation cases given the active involvement of his wife Ginni Thomas and the push for an ethics code for Supreme Court justices?

BLUNT: Well, the idea that you can't disagree with your wife on a public issue and still be able to function as a judge or as a government figure of any kind, I think is an idea that's long outlived any idea that it might be reasonable. Judge --

(CROSSTALK)

STEPHANOPOULOS: -- know that he disagrees with her?

BLUNT: -- that. No -- Judge Thomas has to decide that, in his personal opinions, I think in his writings over the years in -- aren't part of his judicial philosophy. He's going to look at the law. He's going to look at what the law says and what the Constitution says and rule in that regard.

I'm certainly totally supportive of the Justice Department effort to find out who did what on January 6th, if they were part of any illegal activity, either executing that or planning that. I think they should be prosecuted and I'm very supportive of that and have been publicly.

In fact, the committee that Senator Klobuchar and I run, we did an early investigation. We've made a number of changes about how to secure the Capitol and 85 recommendations on how we can prevent that from happening again. But it was totally unacceptable what happened on January 6th. I think the Justice Department is pursuing that exactly as they should.

STEPHANOPOULOS: Including the possible prosecution of President Trump? We saw that federal judge say it's likely the president broke the law.

BLUNT: Well, federal judges say a lot of things. And we'll see how that comes through the process. I think what I said is what I believe. I think the Justice Department has a job to do. They should do it. And people who were involved in planning or execution of illegal activities on January 6th should be prosecuted.

STEPHANOPOULOS: You heard Ron Klain taking on critics of the president's budget, like you, who said it's reckless spending, pointing out that the deficit has come down from the high level of the deficit under President Trump.

BLUNT: Well, I think the most reckless thing the president did in spending is the March decision on a totally partisan way for the first time in anything dealing with COVID, to try to come back and put \$2 trillion into an economy that was already well on the way to recovery.

Larry Summers said that was a problem. Others have said not only is that a part, but further massive spending on new programs is a problem. The biggest political issue in the country today is clearly inflation.

People are seeing not only gas prices at astronomical levels, and they were, by the way, at that unacceptable levels long before Putin did anything regarding Ukraine. They went up almost every day beginning not just the day after the president was inaugurated, but the day after he was elected as people are seeing what was going to happen with his energy policies. And commodity prices are high in some cases as 20 percent.

All you have to do is go to the gas station or the grocery store or pay your winter heating bill to know that something unacceptable has happened. I think that's the excessive level of spending that Democrats all on their own put \$1.9 trillion into the economy in March, and it will take us a long time to recover from that and even longer to pay it back.

STEPHANOPOULOS: Finally, let me end with you where I began with Ron Klain. Do you believe that Russia is losing this war in Ukraine? And what more can the United States be doing right now to support the Ukrainian resistance?

BLUNT: Well, I think we should be doing everything we can. We should give them what they need as quickly as they needed. I think, frankly, what the president has done has generally been the right thing, but about two or three weeks slower than it should have been. I've been saying that since we had the sanctions discussion before the invasion.

What would be interesting I think would be to know whether Putin was more surprised by the incredible resistance of the Ukrainians, the rallying around of NATO to the original and unified purpose of NATO, particularly the German change in attitude, or how poorly his own military has performed. I'm sure he's surprised by all three of those, and frankly, I think we've been surprised by all three of those.

Our intelligence did a great job of knowing what the Russians were doing, the false flag operations -- all those things incredibly helpful. But I don't think anybody could have anticipated those three big events or those three big items or, frankly, the leadership of President Zelenskyy. I hope he continues to be safe and brave and his country is rallying behind that willingness to be there and be in the fight.

STEPHANOPOULOS: Senator Blunt, thanks for your time this morning.

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From: Steves, Vincent A.
Subject: [EXTERNAL] "This Week" Transcript: White House Chief of Staff Ron Klain
To: Steves, Vincent A.
Sent: April 3, 2022 10:36 AM (UTC-04:00)



ABC NEWS MEDIA RELATIONS

April 3, 2022

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WHITE HOUSE CHIEF OF STAFF RON KLAİN ON "THIS WEEK WITH GEORGE STEPHANOPOULOS"



Transcript Link: <https://abcn.ws/38iQyVf>

*A rush transcript of "This Week with George Stephanopoulos" airing on Sunday morning, April 3, 2022 on ABC News is below. This copy may not be in its final form and may be updated. **All excerpts must be attributed to ABC News "This Week with George Stephanopoulos"** George Stephanopoulos serves as Anchor, Martha Raddatz and Jonathan Karl are Co-anchors. The program airs Sundays on the ABC Television Network (check local listings). Visit the "This Week" website to read more about the show at: www.abcnews.go.com/thisweek*

Transcript:

STEPHANOPOULOS: Let's bring in the White House Chief of Staff Ron Klain.

Ron, thank you for joining us this morning. Let's pick up where Jon left off. How anxious are you?

RON KLAİN, WHITE HOUSE CHIEF OF STAFF: George, I think we've done a great job and progress on creating jobs. As Jon mentioned, the unemployment rate down to 3.6 percent, there's only been three months in 50 years where it's been that low. Record job creation. We're bringing the deficit down.

We saw the highest economic growth in a single year in American history since 40 years ago in 2021. But we have work to do. And that's what the president's been talking about this week, a new budget to bring the deficit down even further and to improve education and health care, which he introduced on Monday.

Steps to bring down the price of gas, which -- already bringing down the price of oil, we'll see it at the pump in the weeks ahead. Steps to bring down the price of everyday goods like prescription drugs. We made progress on that in the House this week. And the steps to bring down other costs that people are facing every single day -- child care, elder care, the kind of everyday costs that people face.

So we have done a lot of work to bring the economy back from dead in the water when we got here, virtually no jobs being created, businesses closed, schools closed. Tremendous amount of progress on getting the economy going again in 14 months, but a lot of work left to be done.

STEPHANOPOULOS: And I want to ask more about that coming up. But let's go to Ukraine right now. What do you make of this Russian retreat from Kyiv? Is Russia losing this war?

KLAIN: Well, I think Russia -- I think the Ukrainians are winning the war around Kyiv and in the northern part of the country. And that's tremendous credit to the fighting they've done and to the support that the United States and our NATO allies have provided them.

We send weapons into Ukraine almost every single day. The Ukrainian military, the Ukrainian volunteers, they're fighting this war, have shown their bravery, their tenacity, again, backed up by the generosity of the U.S. and our allies.

But I think we have to be very clear. I think there's a lot of evidence that Putin is simply taking his troops out of the northern part of the country to redeploy them to the eastern part of the country, to relaunch the battle there.

So, I think there have been victories for the Ukrainians so far, but this war, sadly, is far from over.

STEPHANOPOULOS: That's right. And a lot of people look at this redeployment and say that the end game, the approaching end game appears to be something like a frozen conflict after a long war, much like what we saw in Korea division. Russia gets the east. Ukraine maintains control of the re -- of the rest.

Is that acceptable to the United States?

KLAIN: George, that's -- that's not for -- really, the outcome here is for Ukraine to decide. What I would tell you is President Zelenskyy has said that's not acceptable to him, and we are going to support him with military aid, with economic aid, with humanitarian aid.

The political future of Ukraine is up for Ukraine to decide. But the military future of this attack has to be pushed back. And that's why we're doing so much to back President Zelenskyy and his military with the tools they need, with the weapons they need, with the other aid they need to oust the Russian invasion from their country.

STEPHANOPOULOS: Let's go back to the economy.

In the wake of that jobs report on Friday, Austan Goolsbee, your former colleague in the Obama administration, the economist from the University of Chicago, said we may be moving toward the idea that the COVID era of the U.S. economy is done.

Do you agree with that?

KLAIN: Well, I cautiously agree with that. I certainly we -- thanks to the success President Biden has had in vaccinating over 225 million Americans, boosting 100 million Americans -- America is back to work. I mean, again, as I said before, the unemployment rate is one of the lowest months in the past 50 years. We have fewer people requiring

unemployment assistance today than we did anytime since 1970.

So, we've solved the jobs crisis. We got America back to work. America has protection from the existing forms of COVID.

We have to be always vigilant and on guard, George, for this virus mutating again for future waves. We have to be prepared to deal with that.

But, right now, as we stand here today, our schools are open. Our businesses are open. People are coming back to work. People are coming back into the labor force. We had a big jump in labor participation in March.

So, I think there are a lot of encouraging signs in terms of this economy coming back to being a robust jobs and business-creating economy.

STEPHANOPOULOS: A lot of signs of a powerful economy. As you know, inflation comes with that, and that's what -- appears to be on people's minds right now. You saw that poll about the president's approval on the economy. We know gas prices are climbing higher and higher.

And we also are seeing that Republicans are poised to exploit that in the midterms. Here's a montage of some of their ads.

(BEGIN VIDEO CLIP)

MIKE GIBBONS (R), OHIO SENATE CANDIDATE: It's worded (ph) into our lives, Biden's raging inflation. We're paying the high price. Politicians are completely to blame.

AD ANNOUNCER: Mark Kelly, you rubber-stamped Joe Biden's agenda, shutting down pipelines, spiking gas prices, causing rampant inflation.

DR. MEHMEH OZ (R), PENNSYLVANIA SENATE CANDIDATE: Washington got COVID wrong. They got the economy wrong, too. Biden's reckless spending caused inflation.

(END VIDEO CLIP)

STEPHANOPOULOS: How should Democrats respond?

KLAIN: First of all, let's respond with some facts. The deficit rose every single year Donald Trump was president. His last year, he had the highest deficit in American history.

We brought down the deficit each of the two years Joe Biden's been in office. A trillion dollar cut in the deficit this year, the largest cut of any president in the history of this country. We're going to cut Trump's deficit in half in Biden's first three years. So, let's start with the facts about spending and nonsense like that.

Gas prices are a problem -- absolutely, George. That's why the president took the actions he took this week to release a million barrels a day from the Strategic Petroleum Reserve, to tell the oil companies they either need to pump oil on the 9,000 permits they have or give them back for others to do that, to increase production here. Those things we think are going to bring down the price of gasoline, relieve some of the pain at the pump.

And we also have an agenda to cut taxes for people, to bring down the cost of every day things.

Now, look, the Republicans have an agenda, too. Senator Scott says their agenda is to raise taxes on millions of Americans, to get rid of Social Security and to do other things that are going to devastate middle class people.

So, I think when people compare our agenda to the Republican agenda, that's going to be a clear choice for folks.

STEPHANOPOULOS: Border is also looming. It's a big issue. We saw that CDC decision on Friday to lift Title 42, which allows -- allowed the government to expel migrants during the pandemic.

Getting a lot of push back on that. Senator Joe Manchin, Democrat, called it frightening. Kyrsten Sinema, another senator, Democrat, says it poses a threat to Arizona. Mitt Romney says it's going to elect Republicans in November.

How worried are you about a possible surge at the border? Is there anything the president can do about it?

KLAIN: Sure, George. So, I think -- let's be clear -- Title 42 isn't an immigration law, it's a public health law. It says you can exclude people who pose a public health risk. The Centers for Disease Control decide how to apply that. And they've decided that sometime in late May the pandemic will be a place where we can no longer exclude people on a public health rationale.

Look, we need to do more work at the border. The president sent an immigration plan to Congress on his first day in office. We've asked consistently for more resources. We put in place a new rule that will take effect next month to enable us to process asylum claims more clearly.

We also have to be honest about what's happening at the border. We have people showing up with asylum claims from places like Cuba, Nicaragua, Venezuela, Brazil. People fleeing regimes where they are feeling persecution, coming here to make asylum claims.

I think the goal for everyone should be to make sure those asylum claims, those claims of people fleeing persecution, are heard in a prompt way. Those who deserve protection from prosecution get that protection. Those who don't are promptly sent back to where they came from.

STEPHANOPOULOS: How did Democrats get on the wrong side of the crime issue that's coming up right now, especially in the wake overnight another killing in Sacramento, at least six dead in a mass shooting?

KLAIN: Well, George, I don't think Democrats are on the wrong side of the crime issue. The president has sent to Congress plans for robust funding of police. Congress passed one of them just last week, two weeks ago, in the omnibus bill and raised our funding for police. We want to make sure we have strong law enforcement to respond to crime. We also want to make sure we have in place police reform and community violent intervention to help reduce crime. We have a plan to fight crime. Congress is making progress on that.

I met yesterday with the new mayor of New York, Eric Adams, who's been a leader in this effort to control crime in New York. So we're working very hard to be at the forefront of efforts to both control crime and have balanced and sensible policing. We think we can do both. That's what we stand for. And that's the plans we put forward to the Congress.

STEPHANOPOULOS: Let me ask you about the January 6th investigation and the possible prosecution of former President Trump. "The New York Times" is reporting today that as recently as late last year, this is a quote, Mr. Biden confided in his inner circle that he believed former President Donald J. Trump was a threat to democracy and should be prosecuted. He has said privately that he wanted Mr. Garland to act less like a ponderous judge and more like a prosecutor.

Is that true?

KLAIN: I've never heard the president say that -- advocate the prosecution of any person. Look, one reason why Joe Biden got elected was he promised that we'd take the decision over who got prosecuted and what away from the White House and put it in the Justice Department. Only Richard Nixon and Donald Trump, in the modern era, believed that prosecution decisions should be made in the Oval Office not at the Justice Department. We have returned the practice that every other president, Democratic and Republican has had since Watergate, other than Trump, to let those decisions be made at the Justice Department. The president has confidence in the attorney general to make those decisions, and that's where those decisions should be made.

STEPHANOPOULOS: We also know the Justice Department is intensifying its investigation into Hunter Biden, the president's son. I assume the president has had no contact with the Justice Department about that?

KLAIN: Neither the president or any of us at the White House have had any contact with the Justice Department about that.

STEPHANOPOULOS: Is the president confident Hunter Biden didn't break the law?

KLAIN: Of course the president's confident that his son didn't break the law. But, most importantly, as I said, that's a matter that's going to be decided by the Justice Department, by the legal process. It's something that no one at the White House has involvement in.

STEPHANOPOULOS: "The Washington Post" also reported this week on deals that Hunter Biden had with a Chinese energy company, paid \$4.8 million to entities controlled by Hunter and the president's brother. Is the president confident his family didn't cross any ethical lines?

KLAIN: George, the president is confident that his family did the right thing. But, again, I want to just be really clear, these are actions by Hunter and his brother. They're private matters. They don't involve the president. And they certainly are something that no one at the White House is involved in.

STEPHANOPOULOS: In the wake of these text messages we saw this week from -- last week from Ginni Thomas, the wife of Supreme Court Justice Clarence Thomas, many are calling for an ethics code for Supreme Court justices, including Senator Chris Murphy, Democrat of Connecticut. If that passes the Congress, will the president sign that into law?

KLAIN: Well, George, I'm not familiar with the specific legislation you're talking about. I think you've got the January 6th committee doing its job. And I think we ought to let that committee do its -- do its work. Our position here has been that the -- the investigation of what happened on January 6th, this insurrection, this effort to turn back democracy, this effort to reverse the outcome of a democratic election, that should be explored by the January 6th committee, by the Justice Department, not by us at the White House.

STEPHANOPOULOS: Should Clarence Thomas recuse himself from on any issues, any cases having to do with January 6th?

KLAIN: Well, again, I don't think that's for me to say, but -- but I know -- but I know a lot of people have said that. Again, I don't think this is a place for us in the White House to be involved with -- with the rulings at the Supreme Court. I think that's for others to decide.

STEPHANOPOULOS: Finally, I do know you're confident that Judge Ketanji Brown Jackson is going to be confirmed as a Supreme Court justice. Do you -- do you expect any more Republican votes?

KLAIN: Well, I think she deserves more REpublican votes, that's for sure, George. She's one of the most qualified nominees in modern history. She'll be only the second person ever to serve on the Supreme Court who was both a trial judge and appellate court judge before she came to the Supreme COurt. She's got an outstanding academic record, outstanding record in private practice, on the sentencing commission, and all throughout her career. And she acquitted herself before the committee admirably in the face of some ridiculous, absurd and debasing questionings from some members of the committee.

So I hope that everyone looks at that, looks at her record of accomplishment, looks at her performance before that committee and -- and does the right thing, which is vote to confirm Judge Jackson to the Supreme Court. She deserves those votes.

What I know is she will get enough votes to get confirmed. In the end, I suppose, that's the only thing that matters. But

I wish more Republicans would look at the case here, look at the record and vote to confirm Judge Jackson.

STEPHANOPOULOS: Ron Klain, we covered a lot of ground this morning. Thanks for your time.

KLAIN: Thanks for having me, George.

STEPHANOPOULOS: Roundtable's coming up. And Republican Senator Roy Blunt joins us, next. Stay with us.

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From: Steves, Vincent A.
Subject: [EXTERNAL] "This Week" Full Transcript: Sunday, March 27, 2022
To: Steves, Vincent A.
Sent: March 27, 2022 2:36 PM (UTC-04:00)



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March 27, 2022

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"THIS WEEK WITH GEORGE STEPHANOPOULOS"
FULL SHOW TRANSCRIPT



Transcript Link: <https://abcn.ws/3IMPtBA>

ABCNews.com Reporting:

Ginni Thomas' texts present 'textbook case' for Justice Thomas to recuse himself: Klobuchar

READ: <https://abcn.ws/3iKia7y>

WATCH: <https://abcnews.go.com/ThisWeek/video/ginni-thomas-texts-meadows-textbook-case-recusal-sen-83699543>

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*A rush transcript of "This Week with George Stephanopoulos" airing on Sunday morning, March 27, 2022 on ABC News is below. This copy may not be in its final form and may be updated. **All excerpts must be attributed to ABC News "This Week with George Stephanopoulos"***
George Stephanopoulos serves as Anchor, Martha Raddatz and Jonathan Karl are Co-anchors. The program airs Sundays on the ABC Television Network (check local listings). Visit the "This Week" website to read more about the show at: www.abcnews.go.com/thisweek

Transcript:

ANNOUNCER: "This Week" with George Stephanopoulos starts right now.

(BEGIN VIDEO CLIP)

JONATHAN KARL, ABC "THIS WEEK" CO-ANCHOR (voiceover): Show of force.

JOE BIDEN, PRESIDENT OF THE UNITED STATES: Ukraine will never be a victory for Russia.

KARL (voiceover): President Biden wraps up his trip to Europe with a blunt warning to Vladimir Putin.

BIDEN: Don't even think about moving on one single inch of NATO territory.

KARL (voiceover): Just hours after Russian missiles strike western Ukraine. Terry Moran joins us live from Lviv this morning. Plus, Ukraine's deputy prime minister, Olga Stefanishyna, and former CIA director, General David Petraeus.

Supreme scrutiny.

SEN. MITCH MCCONNELL (R-KY): Many of Judge Jackson's responses have been evasive and unclear.

KARL (voiceover): After some bizarre questioning from Republicans, Judge Ketanji Brown Jackson moves one step closer to confirmation.

KETANJI BROWN JACKSON, FORMER VICE CHAIR OF THE UNITED STATES SENTENCING COMMISSION: I hope that you will see how much I love our country and the rights that make us free.

KARL (voiceover): Senator Amy Klobuchar, a key member of the Judiciary Committee, joins us live.

And, shocking texts.

REP. SETH MOULTON (D-MA): She's trying to do exactly what Vladimir Putin failed to do.

KARL (voiceover): Newly revealed messages show the wife of Supreme Court Justice Clarence Thomas urged The White House chief of staff to overturn the 2020 election.

Our Powerhouse Roundtable tackles the fallout.

ANNOUNCER: From ABC News, it's "This Week." Here now, co-anchor Jonathan Karl.

(END VIDEO CLIP)

KARL (on camera): Good morning and welcome to "This Week."

It was Joe Biden's most consequential trip as president yet, back-to-back-to-back summit meetings in Brussels with the European Union, the G7 and NATO, all designed to unify our most powerful allies against Vladimir Putin's unprovoked assault on Ukraine.

The president also traveled to NATO's eastern border in Poland where he met with some of the 100,000 American troops now stationed in Europe. That's the largest U.S. Military presence in Europe in 20 years.

In a stark reminder of the peril of this moment, while President Biden was still in Poland, Russian missiles struck western Ukraine bringing destruction and massive clouds of black smoke less than 50 miles from NATO's border. Hours later, Biden delivered an address that invoked the weight of history, putting the fight against Putin's aggression in broader terms, declaring the battle between democracy and autocracy as the test of all time.

Biden also issued a blunt warning to Vladimir Putin, that any attack on NATO territory would be met with the full force of the alliance's collective power. And he denounced Russia's leader with what seemed to be a call for him to be ousted from power.

(BEGIN VIDEO CLIP)

BIDEN: A dictator bent on rebuilding an empire will never erase the people's love for liberty. For God's sake, this man cannot remain in power.

(END VIDEO CLIP)

KARL: The White House quickly clarified issuing a statement that despite what he said, President Biden is not actually calling for regime change in Moscow.

Our Senior National Correspondent Terry Moran was with the president for part of his trip. He starts us off from Lviv.

Good morning, Terry.

TERRY MORAN, ABC NEWS SENIOR NATIONAL CORRESPONDENT: Good morning, Jon.

This city has taken in hundreds of thousands of people who fled their homes elsewhere in Ukraine and you can see it and feel it here. The streets are thronged with people, traffic at a standstill in many places. But those missile attacks here yesterday, one just about a mile north to us, the other a mile south to us over here, they're the fiercest attacks yet.

The mayor of Lviv calling them, quote, "Greetings from the Russian aggressor to President Biden" who was across the border in Poland.

(BEGIN VIDEO CLIP)

MORAN (voiceover): At Warsaw Castle in Poland, President Biden declared that today's war in Ukraine is --

BIDEN: The battle between democracy and autocracy, between liberty and repression, between a rules-based order and one governed by brute force.

MORAN (voiceover): -- the president summoning free nations to a new cause -- a new and dangerous 21st century struggle.

BIDEN: History shows this is the task of our time, the task of this generation.

MORAN (voiceover): After more than a month, the Russian invasion of Ukraine is stalling on many fronts and, in some places, it's in reverse. So now in what may be a major change in strategy, Russia says its main goal is simply to take control of the Donbass Region in eastern Ukraine. That's a far cry from Vladimir Putin's vow to demilitarize and denazify all of Ukraine. Which sounded a lot like regime change.

But Putin's forces have proved badly led, poorly trained, and inadequately supplied. Determined Ukrainian forces have gone on the counterattack. Russian troops once threatening the Capital of Kyiv, have been pushed back more than 30 miles and are now digging in, according to U.S. defense officials.

So now Russia has turned to long-range, indiscriminate and merciless bombardments of urban centers. Kyiv is being hit almost daily by artillery and missile strikes, residential areas mainly taking the brunt of the attacks, the deadliest so far coming this week. Video verified by ABC shows the moment a missile hit a shopping mall on the edge of Kyiv. Russia claims this site was being used by Ukrainian forces to launch missiles.

Today, more and more of this ancient European capital looks like this. But Russia's main effort now is in the east and south in Donbass, Kharkiv, and, above all, in Mariupol'. As the fighting rages there, Russia is inching closer to capturing the key port city. Several missile strikes targeting the city of Lviv, where so many refugees have fled, joined by most nation's diplomats.

In Brussels this week, a show of unity and determination by the Western allies and a sense that suddenly everything has changed in Europe.

JENS STOLTENBERG, SECRETARY GENERAL OF NATO: It's a pivotal moment in history.

MORAN (voiceover): I asked NATO Secretary General Jens Stoltenberg about growing concerns that Russia might use chemical weapons.

STOLTENBERG: Any use of a chemical weapons will be totally unacceptable. It will be a blatant violation on international law and will, affirmatively, change the nature of the conflict.

MORAN (voiceover): But Ukrainian President Volodymyr Zelenskyy is urging NATO to do more, asking in an address to Ukrainians last night, what is NATO doing? Is it being run by Russia? What are they waiting for? It's been 31 days, we are only asking for one percent of what NATO has, nothing more.

Near the Polish border, President Biden mingled with Ukrainian refugees, listened to their stories.

He's promised over \$1 billion to humanitarian aid for the crisis and opened the doors of America to 100,000 Ukrainians. But that resettlement process can take years. And the war might still be grinding on.

That was one of the president's main messages here, this crisis which has changed so much so fast is far from over.

(END VIDEO CLIP)

MORAN (on camera): That fight will be fought here by all Ukrainians because as the missile attacks near Lviv show, there is no real safe haven in Ukraine. And while Ukrainian forces have checked Russian advances mostly around the country, they are taking heavy losses too. And that's why President Zelenskyy keeps asking for more because if this war grinds on, those forces will need more weapons, more help, a lot more.

Jon?

KARL: Terry Moran in Lviv this morning. Thank you, Terry.

Joining us now is Ukraine's deputy prime minister and top adviser to President Zelenskyy, Olga Stefanishyna. Madam Deputy Prime Minister, thank you for joining us.

You heard President Biden's words, his declaration, we stand with you, period. Speaking to you, speaking to all of Ukraine. Do those words match the actions that we're seeing from the United States and from NATO?

OLGA STEFANISHYNA, UKRAINIAN DEPUTY PRIME MINISTER: Well, first of all, this address was to the Ukrainian people, not only to the Ukrainian leadership. And it was really important because in this time of the severe war and nearly all possible war crimes have been committed against the country, but also the eastern Ukrainian people, it was really important to have the sense of an international leadership and an understanding of the tragedy which is happening there for us.

We have also heard a very important message related to the war crimes committed in our territory and the clear understanding and readiness to form the anti-war coalition led (ph) by the strongest democracies in the world to stop the war and to stop the aggressive, terroristic regime in Russia.

KARL: But there's a clear frustration that we're hearing from President Zelenskyy. I mean, just yesterday he was saying -- he was expressing frustration with NATO, even saying is it being run by Russia? Why can't he get all you need?

What more do you need? You, as you stand there right now in Kyiv, what more do you need to defend yourselves against this aggression?

STEFANISHYNA: Well, first of all, all this messages -- they should not be precepted as an emotion. It's really different what do we feel and understand right now happening in Ukraine when the dozens and hundreds of civilian people and children are dying. We see the situation in the field.

While for the leaders outside Ukraine and in Europe and transatlantic, it takes more time to build the consensus on the face (ph).

So we feel very much concentrating and understanding what we need. The no-fly zone we were requesting, because the understanding that sooner or later this decision will be taken. But it will be taken by massive cost of civilian deaths in the Ukraine. That's why it's not an emotion. It's the understanding of need and our willingness to wait for proper political moment to that.

While we have these discussions, it's really important that the West and the leaders of European nations, most of them are there already, understand that Ukraine should get any possible assistance, including military, to be capable to defend itself and to hold the European sky safe while the broader political consensus of how to stop this aggression is there.

So everybody should be concentrated over one goal, to make sure that Ukraine is capable, financially stable to resist and defend until the political solution, how to restore the territorial integrity of our Ukraine and a peace around Europe, is there.

KARL: What can you tell us is the latest out of Mariupol? We hear just horrific, horrific reports of no electricity, of no food or water -- food or water running out, Russians taking over neighborhoods, taking people out of the country. What is -- what is the very latest?

STEFANISHYNA: I would start by saying a couple of very important elements of pretext. First of all, it's more than 80 towns and villages around Ukraine which are in more or less the same position. While Mariupol is politically for Russians, a full force of the control over the whole Donetsk region.

And secondly, for Russians, war is, some language (ph), their ordinary business. The wars Russians has been doing all around the world for decades. And they're extremely skilled in manipulating. That's why they do it with the U.N. system, the Red Cross organization, and what I can confirm as an insider of some parts of this negotiation is that they do not really care about a single life of a person who died or suffers there.

So, for them, this has nothing to do with the humanity.

In Mariupol, the situation is extremely complicated, although we managed to take out of there more than 150,000 people, but too many of them still remain there. They don't have access to water, to any food supplies, to anything. More than 85 percent of the whole town is destroyed. So, it simply does not exist anymore.

While people there and they -- some of them have been forcefully displaced to Russian Federation. And this is even worse than being in a humanitarian crisis in a city.

KARL: Given all of that, is there any sign of any even glimmer of hope on negotiations with the Russians? And you've heard people speculate, you know, that -- you know, perhaps NATO -- perhaps Ukraine needs to make concessions, rule out joining NATO, or even ceding Crimea or the territories in the east.

Could you -- is any of that on the table, the idea of rewarding the Russians for all this by ceding territory in the east?

STEFANISHYNA: Well, Russians has naturally putting everything on the table while there are like absolutely clear red lines for Ukraine. And these are red lines, first of all, for Ukrainian people but also for the whole world, because now we have the decision (ph) on being International Court of Justice abiding Russian Federation to stop the military operation and to refrain from any military action. So, this is one point where no discussions are possible.

Second element there's no discussions which are possible as regards to territorial integrity and sovereignty and of inevitability of Ukrainian territory and, of course, Ukraine will never step up for any element of discussions which would anyhow legitimize all the war crimes which has been committed in Ukrainian territory.

KARL: Yeah. Thank you, Madam Deputy Prime Minister. And thank you for your resolve and your bravery. Appreciate your time.

Let's bring in former CIA director and retired four-star general, David Petraeus.

General Petraeus, first of all, let's pick up what we just heard there, the idea that giving any concessions as part of -- as part of negotiations with Russia would be rewarding basically their terrorism that they've rained down upon the Ukrainian people.

GEN. DAVID PETRAEUS, FORMER CIA DIRECTOR: Yeah. I mean, it indicates that the Venn diagrams if you will what's acceptable, in other words, to President Putin and also President Zelenskyy, there's still very little overlap if any.

Basically, what you have is a president in Moscow who's watching his economy, his financial system, his inner circle, and his business community be seriously damaged, in some cases irreparably so. And then, of course, another president in Kyiv who's watching his country slowly be damaged, parts of it destroyed, terrible loss of innocent life, as well as of his forces.

Although the battlefield situation is a bit of a bloody stalemate, the Ukrainians actually having halted the Russians around Kyiv, Kharkiv and some others, and even pushing them back a bit in Kyiv.

But then you have the situation in Mariupol, which has become a bit of a Ukrainian Alamo at this point in time. It's fighting to the last defender, and pinning down multiple Russian battalions in so doing, very heroically but, ultimately, it looks as if it's going to have to collapse. It's going to be taken.

And when it does, that is a moment of some peril for Ukraine, because now that port can be used by the Russians. Remember, they were using a port just to the west to that where a ship was hit and destroyed, a Russian ship. They'll now have quite a good port on the Sea of Azov out to the Black Sea.

And then it will free up a number of battalions that were the ones that have been closing the circle, closing the noose on Mariupol, who can then push further north and perhaps enable Russia to achieve what it has now said, as it's redefined its objectives, to taking control of all of the Donetsk and Luhansk oblasts, provinces if you will, and then solidifying its grip on the land corridor from the Donbas, from those two oblasts, all the way to Crimea.

So, this is going to be very tenuous period the next few days as we see what happens in Mariupol, what the Russians are able to do as a result of it, and then how the Ukrainians can respond, because that's a very long distance from anywhere where they might have forces that they could possibly spare.

And, of course, in the meantime, very understandably, President Zelenskyy, who despite hearing this extraordinary commitment from President Biden and from all the leaders of NATO at the summit this past week, nonetheless wants more. And I fully understand that.

I mean he's like a battlefield commander, and no commander has ever had enough forces, drones, air force, whatever it maybe. And that's the position in which he finds himself. And we should understand.

And what we need to do is provide everything we can that can be provided without needlessly provoking a direct confrontation with Russia. I very much understand President Biden's concerns about that.

KARL: Well, let me -- let me ask you about that because we saw President Biden's speech in Warsaw outline this basically as the struggle, the fight of our time. But there was that line at the end of his speech where he said flatly that Putin must go, that this man must not remain in power.

Obviously, that's not -- I mean, that's not the policy. But how does something like that, a very -- it made headlines all around the world -- how does complicate the efforts to resolve this situation?

PETRAEUS: Well, I mean, it reminds us that message discipline has its virtues. That was reportedly very clearly an unscripted moment, in addition in the emotion of that very emotional moment. And, you know, it will cause some challenges down the road.

It will be -- disappear. You know, the headlines will move on to something else within a few days. But in the mind of Putin, he's someone who has, you know, watched and rewatched, you know, old videos of Gadhafi being taken and killed, this kind of thing, it will play on his mind, and it could complicate matters going down the road.

Look, I think President Biden would be the first -- knowing him, he'd be the first to say, oops, you know, OK, hey, guys, OK, well, let's get on with it and let -- this should not overshadow what was an extraordinary, important and successful trip to Europe, one that the U.S. really led, as it has done so impressively, really, throughout this entire effort, and pulled together, guided and then ultimately, with this speech, that did -- it was a very, very strong statement, obviously.

KARL: I want to ask you a little flashback here to a statement made by the president of Poland visiting Tbilisi, Georgia, after the Russians invaded Georgia back in 2008. A statement that echoes today. He said at the time, again, this is 2008, today, Georgia, tomorrow, Ukraine, the day after tomorrow, the Baltic states, and later perhaps time will come for my country, Poland.

Obviously, you know, Ukraine did come. Is there a concern here that whatever ends up resolving this, if there is a resolution here with the Russians backing down, that giving them -- rewarding them in any way for this is ultimately a green light for Putin's ultimate plan to -- to rebuild the Russian empire?

PETRAEUS: Jon, I tend to think that this has complicated any ambitions that he might have had very, very considerably. This is going to set back his military for years. It's -- it's showing the whole world that it wasn't the wonderfully modernized force that, you know, everybody thought it might be.

This has been a huge challenge for the Russians. You know, the fact that they've lost seven generals, just because they can't command-and-control sufficiently; they have to get out of their armored vehicles and...

KARL: Huddle?

(CROSSTALK)

PETRAEUS: ... forward, to find out why are they stopped again, this kind of thing. So I -- I tend to think that his ambitions are going to be seriously set back by what takes place in Ukraine, noting that this is by no means nearing a conclusion.

KARL: All right. General David Petraeus, thank you very much for joining us on "This Week."

Coming up, as Judge Ketanji Brown Jackson moves one step closer to joining the Supreme Court, Clarence Thomas is facing new scrutiny about his wife's involvement in attempts to overturn the 2020 election. We'll discuss the fallout with Senator Amy Klobuchar, next.

(COMMERCIAL BREAK)

(BEGIN VIDEOTAPE)

REP. DAVID CICILLINE (D-RI): Justice Thomas has to recuse himself from anything related to the Trump administration, anything related to the January 6th Commission, anything related to our effort to hold individuals accountable for their participation in this attack on our democracy.

REP. KEVIN MCCARTHY (R-CA): Justice Thomas could make his decisions like he's made them every other time. It's his decision based upon law. If he sees it's not upholding the Constitution, he'll rule against it.

(END VIDEOTAPE)

KARL: Some reaction to those extraordinary text messages revealing that Ginni Thomas, the conservative activist married to Supreme Court Justice Clarence Thomas, urged Donald Trump's White House chief of staff to overturn the 2020 election in the days and weeks after the vote, just as Trump and his allies were promising to take their case to the Supreme Court.

Here to discuss that and more is Senator Amy Klobuchar, member of the Judiciary Committee.

Before we get to matters related to the Supreme Court, I want to ask you about President Biden's speech, and that line that we all heard him say very bluntly, "This man, Vladimir Putin, cannot remain in power."

I mean, wasn't he saying exactly what he believed?

SEN. AMY KLOBUCHAR (D-MN): First, the White House has clarified that he was talking about the region and that he was talking about that Vladimir Putin has got to stay out of NATO countries, something he specifically said in his speech. But I think what General Petraeus said was meaningful here.

We know the policy of our country. We know what it is. I think Vladimir Putin knows what it is and certainly our NATO allies and Americans know what it is. We're part of NATO. We're doing all we can to protect those NATO countries, doubling the number of troops in Poland that I just visited a few weeks ago. Incredible command there, incredible leadership. Giving them significant military assistance that is so necessary and we have done a lot and we should do more.

But beyond that, our policy is clear. NATO is a defensive alliance. The president has said it himself. And we will do all we can to help Ukraine and you can see the strength of that help coming through with the fact that they've literally pushed Russian troops back from Kyiv.

KARL: And that message came through but, as you know, during the campaign -- I mean, you ran against Joe Biden, you know full well what he said, he said the words of a president matter. And that was the headline around the world. That was the message heard in Moscow. That's what the Russians are responding to. And whatever walk back there is, his words -- cannot remain in power --

KLOBUCHAR: Having stood there myself on that border and embraced those kids -- the refugees coming in, hearing about the horror, they leave there with nothing on their -- no -- and leaving everything they have behind, everything, their little stuffed animals and their backpacks, moms with suitcases leaving their husbands behind to fight -- yes, the moment is clear.

Vladimir Putin is a monster. But the position of the United States Government is not to send troop in there. It is to give all the aid we can to Ukraine, which includes Switchblade drones, incredible drones that have done a lot of damage to the Russian army --

(CROSSTALK)

KLOBUCHAR: -- Russian planes. You have got Stingers, 800 more Stingers, thousands of more Javelins and we're doing more and more and more, and we must. I have personally advocated for doing more. That's what this is. And it's the humanitarian aid, over \$1 billion pledged, taking in over 100,000 refugees, that is what we are doing.

KARL: And it's not regime change in Moscow --

KLOBUCHAR: That has been made very clear.

KARL: Okay, let's turn to matters related to the high court. You saw those text messages from Ginni Thomas, Clarence Thomas' wife. I want to read just two of them.

One, on November 6th, she said, "Do not concede. It takes time for the army who is gathering for his back."

And then on November 19th, "Sounds like Sidney" -- meaning Sidney Powell -- "and her team are getting inundated with evidence of fraud. Make a plan. Release the Kraken and save us from the left taking America down."

I mean, my goodness.

KLOBUCHAR: Jonathan, the facts are clear here. This is unbelievable. You have the wife of a sitting Supreme Court justice advocating for an insurrection, advocating for overturning a legal election to the sitting president's chief of staff and she also knows this election, these cases, are going to come before her husband. This is a textbook case for removing him, recusing him from these decisions.

And I don't think -- all I hear is silence from the Supreme Court right now and that better change in the coming week because every other federal judge in the country except Supreme Court justices would have a guidance from ethics rules that says you got to recuse himself.

Thomas himself recused himself in 1995 from a case involving a school because his son was going to that school. Justice Breyer recused himself when his wife was on the board of an entity and that case came before the Supreme Court.

KARL: Okay, and if he doesn't? If he doesn't recuse himself?

KLOBUCHAR: Justice -- I mean, the entire integrity of the court is on the line here. And they had better speak out on this because you cannot have a justice hearing cases related to this election and, in fact, the ethics rules that apply to all the other federal judges say that if it involves a family member, appearance of impartiality, they have to recuse themselves.

So not only should he recuse himself, but this Supreme Court badly needs ethics rules. Chris Murphy's leading a bill I've long been on -- supportive of, that says basically get your act together. Get ethics rules in place. And I would hope Justice Roberts, who I respect, will stand up and get those ethics rules in place. They've got to do that. They should do it themselves.

KARL: Okay. So Ketanji Brown Jackson, I mean, some fascinating questions from your Republican colleagues. But Joe Manchin's on board. Her confirmation seems to be given (ph). Is she going to get Republican support? What are you hearing?

KLOBUCHAR: I think she is. She has in every other nomination that she's had for very levels of the court.

And I would make very clear here, she's not going to get confirmed in two years, she's not going to get confirmed in two months. She's going to get confirmed in two weeks. And so much of that has to do with her vast experience, more judicial experience than four of the justices that currently sit on that court, but also the pillar of strength, how she handled those attacks, and just sat there and answered their questions. And she, literally, is the first black woman to serve on the Supreme Court, when she walks into that court with her head held high, every little boy and girl in America is going to know that anything and everything is possible.

KARL: I mean, it's clear that the overwhelming majority of Republicans will vote against her.

Lindsey Graham in an interview with "The Washington Post" said that when Democrats, all Democrats, voted against Amy Coney Barrett, they set a precedent.

This is what he said: Is that the new norm? If that's going to be the new norm, what do you do when party has the Senate and the other party has the White House? How do you ever get anybody confirmed?

I mean, what has happened to this process? I mean, you know -- I mean, we had Scalia was overwhelmingly confirmed. Ruth Bader Ginsburg overwhelmingly confirmed. Sandra Day O'Connor.

Now, I mean, we -- you're going to have a court where nobody had the majority of both parties.

KLOBUCHAR: I'm not going to relitigate the whole past, but remember the unique circumstances with Amy Coney Barrett where Mitch McConnell shoved through that nomination right before an election. That aside, what we have here is someone who is highly qualified, who has gotten votes of Republicans in the past and those Republicans, at least two of them, have issued positive statements in the months leading up to this hearing.

And so, I believe she will get Republican support. I can't tell you who. I can't tell you how much. But it think that will be very important to this process.

KARL: All right. Senator Amy Klobuchar, thank you for being here on set with us on "This Week".

KLOBUCHAR: Thank you. It's great to be on, Jonathan.

KARL: The roundtable weights in next.

Plus, FiveThirtyEight's Nate Silver on the political fallout from Judge Jackson's confirmation hearings.

Stay with us.

(COMMERCIAL BREAK)

KARL: The roundtable is here ready to go. We'll be right back.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

SEN. LINDSEY GRAHAM (R-SC): On a scale of one to ten, how faithful would you say you are in terms of religion?

SEN. TED CRUZ (R-TX): Do you agree with this book that is being taught with kids that babies are racist?

SEN. JOSH HAWLEY (R-MO): Do you think that these -- that these laws are too tough, that we're too tough on sex offenders? Explain what you meant.

SEN. MARSHA BLACKBURN (R-TN): Can you provide a definition for the word "woman"?

(END VIDEO CLIP)

KARL: Some harsh and highly unusual questions from Republicans to Judge Ketanji Brown Jackson during her confirmation hearings this week.

But as the parties gear up for midterm elections and beyond, could the sharp questioning backfire on the GOP? We'll

discuss the hearings with our roundtable after this analysis from FiveThirtyEight's Nate Silver.

(BEGIN VIDEOTAPE)

NATE SILVER, FIVETHIRTYEIGHT: Well, let's start with the simple fact. Ketanji Brown Jackson is a popular nominee. According to Gallup polling, 58 percent of Americans want the Senate to confirm her. That's the second highest figure for any nominee Gallup has tested since 1987.

It's also true that 30 percent of Americans oppose Jackson's confirmation in the same poll. Still, her net rating of plus 28 is higher than other recent nominees, like Judge Kavanaugh, who was a plus four, or Amy Coney Barrett at a plus five.

In an election where Republicans have a lot going for them, that means they're taking a real risk.

Supreme Court confirmation votes are one of the most important things a Senate does and they can swing Senate races. In 2020, for instance, Maine Senator Susan Collins unexpectedly held on to her seat after voting against Barrett who was relatively unpopular in Maine. And in 2018, several red Democrats, including Missouri's Claire McCaskill and Indiana's Joe Donnelly, may have sealed their fates after voting against Kavanaugh.

Part of the risk for Republicans could be uniting the Democratic base, which has been split over issues like COVID. Eighty-eight percent of Democrats favor KBJ's confirmation, while just 7 percent oppose.

It could also motivate black Democrats, after the party failed to deliver on promises like voting rights. Still, with President Biden's approval numbers among black voters having slipped into the mid 60s, there is room for improvement.

Overall, I'd buy this one, reflexive partisan opposition may be the norm for Supreme Court nominations these days, but that doesn't mean it's politically wise.

(END VIDEOTAPE)

KARL: Thanks to Nate for that.

The roundtable is here.

We'll be right back.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

PRESIDENT JOSEPH R. BIDEN, JR.: We must commit now to be in this fight for the long haul. We must remain unified today and tomorrow and the day after, and for the years and decades to come.

It will not be easy.

(APPLAUSE)

There will be costs. But it's a price we have to pay because the darkness that drives autocracy is ultimately no match for the flame of liberty that lights the souls of free people everywhere.

(END VIDEO CLIP)

KARL: President Biden speaking in Poland yesterday. Here to discuss that and more, Ramesh Ponnuru, the new editor of the National Review; former DNC chair Donna Brazile; the Atlantic editor-in-chief Jeffrey Goldberg; and Wall Street

Journal national security reporter Vivian Salama.

Donna, that speech in Warsaw, the White House really raised expectations for it. This was a major address. Obviously, he said "This is the fight of all time."

BRAZILE: Yes.

KARL: Did he meet the moment?

DONNA BRAZILE, FORMER DNC CHAIR & ABC NEWS CONTRIBUTOR: I thought so. Some people describe it as Churchillian. Some other -- it was -- it was inspiring; it was powerful. He spoke to me; I don't know if he spoke to others, when he said "Be not afraid," quoting Pope John Paul.

He said, "Every generation must choose its battle, and democracy is the battle of our lifetime."

It was powerful. I know everyone is focusing on those nine words, for God's sake. But I think we should focus on the core message, is that the United States is -- will stand with our NATO allies; the United States has committed more resources to help the Ukrainians; and that the country understood its role in this battle.

KARL: Well, we'll get to those nine words in a minute. But, Ramesh, he did outline this as basically the ultimate struggle of our time, and -- and seemed to be saying this is -- this is along -- this is about much more than Ukraine, and this is not going to be over any time soon?

RAMESH PONNURU, BLOOMBERG OPINION COLUMNIST & NATIONAL REVIEW SENIOR EDITOR: The very proud outlines of his policy, I think, command a consensus in the country, that is we are going to support the Ukrainians and we're going to avoid a direct military conflict.

I think the debate in the U.S. has been over the parameters of that. So, are we supporting enough? Do we need to do more? Do we need to do less, and then the execution of it?

And I think that's where we get back into those nine words, I think that that does -- that did create some doubt about whether President Biden is in control of his own administration or in control of himself at all times. I think that it is not good if you have a (inaudible) speech followed by clean-up from your own administration.

KARL: And, Jeffery, the clean-up. So the nine words, of course, that he must go, he must not remain in power, meaning Vladimir Putin. For God's sake, he must not remain in power.

And then The White House comes out and says, no, he wasn't calling for --

JEFFREY GOLDBERG, EDITOR-IN-CHIEF, "THE ATLANTIC": Yes.

KARL: He wasn't calling for him to be removed from power.

GOLDBERG: At that point, they probably should not have walked it back and just left it out there ambiguously or non-ambiguously, as the case may be. The argument that we're hearing is that he didn't mean what the plain meaning of the words are.

And you know, and it is -- I mean, look, this speech was a very powerful speech. It's true. It is also true that when you're calling for regime change in a nuclear state, that's a policy that you might want to think through before you do it. And Joe Biden, as a veteran of the Obama administration, obviously, understood how presidents can get tripped up by rhetorical flourishes. President Obama and the red line, for instance.

And so --

KARL: Which was a response to a question. It wasn't a planned statement.

GOLDBERG: Right. And all sympathy to Joe Biden, these trips are difficult. This was an emotional moment. Of course, how could you not want a monster, a person he describes as a monster, to be removed? Nevertheless, this is a nuclear power and a person who's in a corner and has nuclear weapons is a more dangerous foe than one who doesn't feel like he's in a total corner. So it's a tough moment.

KARL: And to quote another thing from Biden, a president's words matter. But Vivian, is there any doubt that he was not saying what he believes?

VIVIAN SALAMA, NATIONAL SECURITY REPORTER, "WALL STREET JOURNAL": President Biden is going to say what President Biden wants to say and so it is important. And we've seen this, actually, in the last couple weeks. He called President Putin a war criminal before they officially came out and declared from the State Department that they believed that Russian forces were committing war crimes.

He also called him a butcher this weekend. And so you don't necessarily see that reflected in official U.S. policy, but obviously the president is going to go out there and he is going to basically project what he believes -- The White House has said it all along, even with his war criminal comments. They said he was speaking from the heart.

And so this is something that President Biden has a history of doing. But whether or not U.S. foreign policy will officially reflect that, remains to be seen. Something like calling for regime change or even just suggesting the notion of regime change has a lot of land mines.

The U.S. has obviously a dark cloud over it, for a long history of seeming like they are meddling in other countries' affairs. And trying, even suggesting regime change set suggests that the U.S. would somehow get involved in that. And so obviously U.S. foreign policy very, very careful to not suggest that because that creates a lot of problems down the line for the U.S.

BRAZILE: So think about his audience, his audience was the entire world including the Russian people and he spoke directly to them.

(CROSSTALK)

KARL: You are not our enemies.

BRAZILE: Right. That's right. And we all know that Mr. Putin doesn't like opposition. I mean, he's eliminated most of the opposition in Russia. I mean, we know what happens when the Russian people stand up against their government and their leader.

So I do believe that this was a really important moment for America to not just lead on the issue of democracy, but also lead the international community. And I think -- I believe, overall his trip was a successful trip. Because he did what we wanted him -- I think, Americans, what we wanted him to do, to show leadership on the international stage.

KARL: It's hard to take issue with his characterization of Putin as a butcher or as a war criminal or even his desire that he be, ultimately, removed from power. But how do you get from those words to a solution -- any kind of a diplomatic solution? I mean, where does this go?

PONNURU: You know, and then the other problem is if you do have an announced policy of regime change or wish a regime change just -- that raises the question, so what's the plan? How are you going to do this? Which is another reason you don't want to get into this territory.

Right now I think we are looking at continued bloody stalemates and it is -- you know, there are no signs that that is going to change and we're going to be, I think, probably having the same basic kind of conversation next week and the week after.

KARL: Wasn't it just haunting to see those missile strikes in Lviv? You know, just, what, 40, 50 miles from the -- from NATO's border at a time when Biden had just been there.

GOLDBERG: Right. You know, just to add something to what Donna said, the -- you know, this was an extraordinarily emotional trip for Joe Biden. He's at the end of the trip. He'd seen --

KARL: He'd seen these refugees.

GOLDBERG: He'd seen horrors. And so, it's completely understandable that you want the monster to go.

KARL: Yes.

GOLDBERG: And, you know -- and just to add on to sort of the framing that you provided that says that overall, it was a successful trip. If you really look back at it, you sort of step back or step up, you know, America in some ways is back.

I mean, I hate to use sort of sloganeering version of that, but European country after European country wants the U.S. behind it, right by its side. The Polish people are very happy to see an American president.

I mean, things have become clarified. And this trip was very, very useful in terms of clarifying who the free people of Europe want on their side and who they're scared of. So, that was all very useful.

And, of course, Putin is playing right into it by firing missiles at Lviv, by behaving like a monster. So, it's all -- I mean, in the broader context, it was obviously a successful trip and something he should do again and again and again to remind the world that America is fundamentally different than Russia and also China.

SALAMA: Jon, I mean, just to answer that question as well, president Putin knows that he can kind of go up to the line without crossing it and that crossing being to hit a NATO country. This is something that --

KARL: But there is a margin of error. I mean, what happens --

SALAMA: Completely so. And it's obviously -- I mean, we see he has no real boundaries as far as, you know, invading a sovereign country and just the extent of the damage that he's inflicted upon Ukraine.

But this is also something that President Volodymyr Zelenskyy has been insisting on all along, is that we are not part of NATO. And so, ultimately, regardless of anything, even if he gets within five miles of the Polish border, we are on our own, because we are not part of NATO and NATO will not act unless it is actually hit.

GOLDBERG: We might suggest a correct note. We might see in the fullness of time that the most important thing that Joe Biden said in that speech was not one inch. That was a very direct and forceful reminder to Russia that you cross into NATO territory, all bets are off.

KARL: And that was, let's face it, a red line even if he didn't say red line.

GOLDBERG: Well, that is, that's the stated red line. That is a red line that actually exists.

KARL: All right. I want to turn to Ginni Thomas, Clarence Thomas' wife and her text messages. I want to highlight one other text message. This is one she sent out, sent to Mark Meadows, chief of staff on January 10th.

We're living through what feels like the end of America. Most of us are disgusted with the VP. She's talking about Mike Pence, and are in listening mode where to fight with our teams.

Those who attacked the Capitol are not representative of our great team of patriots for DJT.

I mean, Ramesh, explain, just explain. What is this?

PONNURU: Well, this is a conservative activist who went pretty far down the rabbit hole of conspiratorial thinking and apocalyptic thinking, and was encouraged by then President Trump to believe a lot of nonsense about what had happened in the 2020 election.

KARL: Is that -- so Trump was encouraging her or she was encouraging him? Where was the nonsense running to and from?

PONNURU: Well, it may have been one of those eco chamber sorts of things where people spin themselves up and spin one another up.

So, yeah, it's a very dismaying, and, in fact, she took what was one of the most honorable and shining moments of Vice President Pence's careers when he stood up to the pressure and fulfilled his constitutional duty and said she was disgusted by it. I think it speaks very poorly about her judgment.

KARL: Senator Klobuchar made a powerful case for Thomas to recuse himself. Do you agree with that?

PONNURU: I think whether Justice Thomas recuses himself is going to have to depend on the facts of that case. You know, if it's something that involves specific records involving his wife, then I think he's going to have to recuse himself.

But there's now also this appearance of impropriety question which is going to affect how he evaluates in any of those future cases. And, frankly, I would not be surprised if the Supreme Court were that much more likely to want to stay out of future cases involving the January 6th Committee, for example.

BRAZILE: You know, when Judge Roberts, Justice Roberts concluded that a press report of the exchange between Mr. Gorsuch and Ms. Sotomayor was an error, the Supreme Court put out a statement.

KARL: Yeah, right.

BRAZILE: I would hope that they will put out a statement. Now --

KARL: A statement saying what?

BRAZILE: A statement to the fact that the judge, Justice Thomas would recuse himself on any cases involving the January 6th --

KARL: But that's not the court to say. It's Thomas to say, right?

BRAZILE: Yes, it is. But I still believe that there needs to be a statement.

Look, I think she was unhinged. I know she's a conservative activist. I'm an activist.

KARL: Yeah, it seemed way out of line.

BRAZILE: But, boy, that -- that went really over the top. Seriously. You've got to look at --

GOLDBERG: You could have a great career on Twitter I think. I mean that would be a good place.

But, you know, the point -- going to your question, Justice Roberts could walk down the hall and just pop in to Justice Thomas' chambers and says, we have a little bit of a mess and I would like to say something about this.

But, the Supreme Court is self-regulating. We know that.

BRAZILE: Oh, yes.

GOLDBERG: The Supreme Court sets its own --

KARL: The only court in the land not guided by ethics rules.

GOLDBERG: Because -- that's why it's supreme, you know?

KARL: Yes.

GOLDBERG: I mean it's the -- it's -- it's -- they are -- they are in charge of their own ethics and they are in charge of their own appearance and they've got a problem.

KARL: Yes.

SALAMA: But to the question of impropriety, there's already this lingering question over Justice Thomas because of the fact that he was the only justice to block the January 6th committee from getting President Trump --

KARL: To vote to block --

BRAZILE: That's right.

SALAMA: Former President Trump's papers. And so you already have this lingering over him. And now, for future cases as well, there's going to be intense scrutiny about any decisions he's making that has any link to what happened.

KARL: And, Donna, before we go, I've got to get your thoughts on -- on the -- on the Ketanji Brown Jackson confirmation hearings.

BRAZILE: We were promised by Minority Leader McConnell that it would be a fair process, free of rancor. Within 30 minutes or 60 minutes, the first question, on a scale of one to ten, tell me about your religion, your religious -- there's no religious text.

And then, of course, the other one, define a woman. And my -- the best one was -- and, you know, for me, to watch these proceedings, to quote Dr. King, and then to turn Dr. King into somebody who's against the people who are still fighting for their dream, it was -- it was pathetic.

KARL: Yes, no, it's pretty -- but -- but -- but this -- but this focus on -- on child pornography and pedophiles.

BRAZILE: QAnon.

KARL: I mean -- I mean it was a message to QAnon, wasn't it? Oi mean these are not major cases. These were -- these were sentencing -- these were decisions.

PONNURU: I think that we had a confirmation process where the conclusion that she's going to get confirmed was pretty much foregone by everybody. And so some republicans, a few Republicans, wanted to take some shots and make some political points. And some Democrats found it in their interest to act as though those people represented the entire Republican Party and that was what the entire confirmation hearing was about, when, in fact, the majority of the questioning was not only normal, but also -- but kind of anticlimactic.

KARL: The majority.

PONNURU: Yes.

KAR: I mean there was -- there was a lot of questioning on -- on -- on -- on pedophiles.

Anyway, we're out of time. Thank you very much to the roundtable.

We will be right back.

(COMMERCIAL BREAK)

KARL: That's all for us today. Thank you for sharing part of your Sunday with uh. Check out "WORLD NEWS TONIGHT" and have a good day.

###

From: Rojo, Hugo
Subject: [EXTERNAL] FTN Transcript: CBS News' Robert Costa and The Washington Post's Bob Woodward - March 27, 2022
To: Rojo, Hugo
Sent: March 27, 2022 12:00 PM (UTC-04:00)



This is a transcript of John Dickerson's interview with CBS News chief election & campaign correspondent Robert Costa and The Washington Post associate editor Bob Woodward from the March 27, 2022 broadcast of "Face the Nation with Margaret Brennan" on the CBS Television Network.

Watch + online transcript: [CLICK HERE](#)

Please credit: "Face the Nation with Margaret Brennan" / CBS News

****INTERVIEW HIGHLIGHTS****

Woodward on the significance of the texts between Ginni Thomas and Mark Meadows and placing efforts to overturn the election in historical context: "They come after the election is over... Watergate was about tampering with the electoral process at the front... This is after the election."

Costa said his reporting with Woodward shows a "campaign spearheaded by then-President Trump that played out in the post-election period across all three branches of government in at least tangential ways... this was Trump pulling every lever of power. One of those levers appears to be his own chief of staff communicating on a legal strategy with the spouse of a justice."

Woodward said Chief Justice John Roberts "has grounds to be worried" about the independence of the judicial branch following his and Costa's reporting of the Ginni Thomas and Mark Meadows texts: "We now have a situation where the wife of a justice has gone on a crusade and has said 'this is warfare. Do not concede.' ... Mark Meadows himself said 'this is a fight of good versus evil.'"

"Based on our reporting that the Meadows text messages do provide, to a point, a roadmap of sorts of some of the things that were being done by the white house chief-of-staff, and then president trump during this post-election period... But they still feel they do not have enough. Steve Bannon has refused to cooperate. Mark Meadows has now refused to cooperate."

Costa posed a question about the status of the Jan. 6 committee investigation: "Where is the John Dean who's going to put the hand in the air and start outlining all of these different facets?" When John Dickerson asked Woodward if there's a John Dean around, he said "there's always room for surprises."

****RUSH TRANSCRIPT****

JOHN DICKERSON: Welcome back to FACE THE NATION. We are joined now by Washington Post associate editor Bob Woodward and CBS chief election and campaign correspondent Robert Costa. These are the reporters responsible for that scoop about Clarence Thomas' his wife's efforts to overturn the 2020 elections. Good morning to both of you.

CBS NEWS CHIEF ELECTION AND CAMPAIGN CORRESPONDENT ROBERT COSTA: Good morning.

JOHN DICKERSON: Glad to have you here. Bob Woodward, I'll start with you. Congressman Kinzinger was not forthcoming. He barely admitted that these exist. Why are these texts so important?

WASHINGTON POST ASSOCIATE EDITOR BOB WOODWARD: Well, because they- they come after the election is over. And the general rule in things like the Constitution and the law say there's going to be one thing that happens after the election is over, and that is the certification before Congress when the vice president, the president of the Senate presides. And so this is- I'm sorry to go back to this. We were talking earlier about Watergate, but Watergate was about tampering with the electoral process at the front. Nixon and his underlings mounted a massive sabotage and espionage campaign against a Democrat. But this is after the election and people who believe in the Constitution and the law would say, okay, it's over, you can go to court. But you read- when Robert and I were reading these texts at the beginning, it was almost unbelievable that you would have somebody in Ginni Thomas's position say, quote, others saying- in war, you know, there is no rule, there are no rules, that this is warfare. Well, it shouldn't be.

JOHN DICKERSON: And Bob Costa this brings in another branch of government into this, tangentially. I mean, she's married to a Supreme Court justice. So that's part of- that's- that's the other element of this as well.

COSTA: What Bob Woodward and I have found is this campaign spearheaded by then President Trump that played out in the post-election period across all three branches of government in at least tangential ways. You had Congress working with President Trump to try to block the certification of President- that President-elect Biden at the time. You had the president pressuring state lawmakers. You had the spouse of a Supreme Court justice communicating with the White House chief of staff. And you had the executive branch doing everything possible to have a legal challenge that would maybe go all the way, as Trump said, to the Supreme Court. This was Trump pulling every lever of power. And one of those levers it appears to be, was his own chief of staff at least communicating on legal strategy with the spouse of a justice.

JOHN DICKERSON: Want to stay on the Supreme Court issue with you, Bob. One of your books is about the Supreme Court. Chief Justice John Roberts is very concerned about judicial independence. He wrote at the end of last year in his letter from the Chief Justice, 'the judiciary's power to manage its internal affairs insulates the courts from inappropriate political influence and is crucial to preserving public trust.' The idea that if the court is seen as political, its rulings won't have the weight in American life that it should.

WOODWARD: Well, he really has grounds for being worried. Now, Justice Amy Coney Barrett six months ago went to the McConnell Center in Kentucky, which is the center Mitch McConnell, the leader of the Republicans, set up and she made a remarkable speech. She said, I want to prove to you that we are not a bunch of partisan hacks in the Supreme Court. And she said justices, all justices must be hyper-vigilant to make sure they're not letting personal biases creep into their decision since justices and judges are people, too. So she made it very clear that this hyper-vigilance should be the condition in which justices operate. We now have a situation where

the wife of a justice has gone on a crusade and has said 'this is warfare,' 'Do not concede.' The White House chief of staff, Mark Meadows, himself said this fight is good, good versus evil.

JOHN DICKERSON: Yeah. And you have an instance where the Supreme Court justice was overseeing cases related to January 6th and may again and didn't and didn't recuse himself. Bob Costa, I want to get your sense of these texts. Do they give us a flavor for the kinds of things the committee has? What does this tell us about the work of the January 6 committee in terms of putting together this picture of what President Trump was doing and what those acting in his name were trying to do to overturn the election.

COSTA: John, your interview with Congressman Kinzinger referenced how they have Mark Meadows' text messages to a point, and they are frustrated that for at least the Thomas exchanges, based on our reporting, they do end in late November. And where are the text messages, if any, from December at or around January 6? But at the same time, it's important to note that based on our reporting that the Meadows text messages do provide, to a point, a road map of sorts of some of the things that were being done by the White House chief of staff, then President Trump, during this post-election period. They've also done hundreds of interviews. They have thousands of pages of documents from different people who are cooperating with the committee, but they still feel in many ways they do not have enough. Steve Bannon has refused to cooperate. Mark Meadows has now refused to cooperate. So the question facing- that- Congressman Kinzinger and others is where's the John Dean who's going to put the hand in the air and start outlining all of these different facets?

JOHN DICKERSON: You think there's any John Dean around, Bob?

WOODWARD: There are always surprises as we find in this. And remember, the January 6 committee in a filing in California has said they have a good faith conclusion that Trump and people around him engaged in a full-fledged criminal conspiracy to overturn the election. They rule this is criminal and if you go back 100 years to the Supreme Court, it was Chief Justice Taft, of all people, saying this, we're not going to let people meddle with things like the certification on January 6, which is in the law. So, much is hinging on the committee's effort. I think Robert and I found they're- they're really working hard. They're talking to people, that there is an aggressiveness and a sense of expanding the universe of likely witnesses.

COSTA: The real test is going to be will they ask Ginni Thomas to appear first voluntarily? If they don't ask her to appear voluntarily, are they going to the full extent they can to find the truth? Or will they issue a subpoena? The challenge is here is like any investigation, things go in different directions. Will you pursue all leads or not?

JOHN DICKERSON: And Ginni Thomas not just about what she may have said, but what she was on the listening end of. I mean she has material that she can provide about what Mark Meadows was saying and others she was talking to.

COSTA: We just don't have the full picture at this point about her relationship with Justice Thomas and his knowledge of her exchanges with the chief of staff.

JOHN DICKERSON: Well, we have a little bit more of the picture because of the two of you. So thanks so much to both of you for being here and we'll be back in a moment.

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From: Steves, Vincent A.
Subject: [EXTERNAL] "This Week" Transcript: Sen. Amy Klobuchar
To: Steves, Vincent A.
Sent: March 27, 2022 10:35 AM (UTC-04:00)



ABC NEWS MEDIA RELATIONS

March 27, 2022

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SEN. AMY KLOBUCHAR ON "THIS WEEK WITH GEORGE STEPHANOPOULOS"



Transcript Link: <https://abcn.ws/3IMPtBA>

*A rush transcript of "This Week with George Stephanopoulos" airing on Sunday morning, March 27, 2022 on ABC News is below. This copy may not be in its final form and may be updated. **All excerpts must be attributed to ABC News "This Week with George Stephanopoulos"** George Stephanopoulos serves as Anchor, Martha Raddatz and Jonathan Karl are Co-anchors. The program airs Sundays on the ABC Television Network (check local listings). Visit the "This Week" website to read more about the show at: www.abcnews.go.com/thisweek*

Transcript:

KARL: Here to discuss that and more is Senator Amy Klobuchar, member of the Judiciary Committee.

Before we get to matters related to the Supreme Court, I want to ask you about President Biden's speech, and that line that we all heard him say very bluntly, "This man, Vladimir Putin, cannot remain in power."

I mean, wasn't he saying exactly what he believed?

SEN. AMY KLOBUCHAR (D-MN): First, the White House has clarified that he was talking about the region and that he

was talking about that Vladimir Putin has got to stay out of NATO countries, something he specifically said in his speech. But I think what General Petraeus said was meaningful here.

We know the policy of our country. We know what it is. I think Vladimir Putin knows what it is and certainly our NATO allies and Americans know what it is. We're part of NATO. We're doing all we can to protect those NATO countries, doubling the number of troops in Poland that I just visited a few weeks ago. Incredible command there, incredible leadership. Giving them significant military assistance that is so necessary, and we have done a lot and we should do more.

But beyond that, our policy is clear. NATO is a defensive alliance. The president has said it himself. And we will do all we can to help Ukraine and you can see the strength of that help coming through with the fact that they've literally pushed Russian troops back from Kyiv.

KARL: And that message came through but, as you know, during the campaign -- I mean, you ran against Joe Biden, you know full well what he said, he said the words of a president matter. And that was the headline around the world. That was the message heard in Moscow. That's what the Russians are responding to. And whatever walk back there is, his words -- cannot remain in power --

KLOBUCHAR: Having stood there myself on that border and embraced those kids -- the refugees coming in, hearing about the horror, they leave there with nothing on their -- no -- and leaving everything they have behind, everything, their little stuffed animals and their backpacks, moms with suitcases leaving their husbands behind to fight -- yes, the moment is clear.

Vladimir Putin is a monster. But the position of the United States Government is not to send troop in there. It is to give all the aid we can to Ukraine, which includes Switchblade drones, incredible drones that have done a lot of damage to the Russian army --

(CROSSTALK)

KLOBUCHAR: -- Russian planes. You have got Stingers, 800 more Stingers, thousands of more Javelins and we're doing more and more and more, and we must. I have personally advocated for doing more. That's what this is. And it's the humanitarian aid, over \$1 billion pledged, taking in over 100,000 refugees, that is what we are doing.

KARL: And it's not regime change in Moscow --

KLOBUCHAR: That has been made very clear.

KARL: Okay, let's turn to matters related to the high court. You saw those text messages from Ginni Thomas, Clarence Thomas' wife. I want to read just two of them.

One, on November 6th, she said, "Do not concede. It takes time for the army who is gathering for his back."

And then on November 19th, "Sounds like Sidney" -- meaning Sidney Powell -- "and her team are getting inundated with evidence of fraud. Make a plan. Release the Kraken and save us from the left taking America down."

I mean, my goodness.

KLOBUCHAR: Jonathan, the facts are clear here. This is unbelievable. You have the wife of a sitting Supreme Court justice advocating for an insurrection, advocating for overturning a legal election to the sitting president's chief of staff and she also knows this election, these cases, are going to come before her husband. This is a textbook case for removing him, recusing him from these decisions.

And I don't think -- all I hear is silence from the Supreme Court right now and that better change in the coming week because every other federal judge in the country except Supreme Court justices would have a guidance from ethics

rules that says you got to recuse himself.

Thomas himself recused himself in 1995 from a case involving a school because his son was going to that school. Justice Breyer recused himself when his wife was on the board of an entity and that case came before the Supreme Court.

KARL: Okay, and if he doesn't? If he doesn't recuse himself?

KLOBUCHAR: Justice -- I mean, the entire integrity of the court is on the line here. And they had better speak out on this because you cannot have a justice hearing cases related to this election and, in fact, the ethics rules that apply to all the other federal judges say that if it involves a family member, appearance of impartiality, they have to recuse themselves.

So not only should he recuse himself, but this Supreme Court badly needs ethics rules. Chris Murphy's leading a bill I've long been on -- supportive of, that says basically get your act together. Get ethics rules in place. And I would hope Justice Roberts, who I respect, will stand up and get those ethics rules in place. They've got to do that. They should do it themselves.

KARL: Okay. So Ketanji Brown Jackson, I mean, some fascinating questions from your Republican colleagues. But Joe Manchin's on board. Her confirmation seems to be given (ph). Is she going to get Republican support? What are you hearing?

KLOBUCHAR: I think she is. She has in every other nomination that she's had for very levels of the court.

And I would make very clear here, she's not going to get confirmed in two years, she's not going to get confirmed in two months. She's going to get confirmed in two weeks. And so much of that has to do with her vast experience, more judicial experience than four of the justices that currently sit on that court, but also the pillar of strength, how she handled those attacks, and just sat there and answered their questions. And she, literally, is the first black woman to serve on the Supreme Court, when she walks into that court with her head held high, every little boy and girl in America is going to know that anything and everything is possible.

KARL: I mean, it's clear that the overwhelming majority of Republicans will vote against her.

Lindsey Graham in an interview with "The Washington Post" said that when Democrats, all Democrats, voted against Amy Coney Barrett, they set a precedent.

This is what he said: Is that the new norm? If that's going to be the new norm, what do you do when party has the Senate, and the other party has the White House? How do you ever get anybody confirmed?

I mean, what has happened to this process? I mean, you know -- I mean, we had Scalia was overwhelmingly confirmed. Ruth Bader Ginsburg overwhelmingly confirmed. Sandra Day O'Connor.

Now, I mean, we -- you're going to have a court where nobody had the majority of both parties.

KLOBUCHAR: I'm not going to relitigate the whole past, but remember the unique circumstances with Amy Coney Barrett where Mitch McConnell shoved through that nomination right before an election. That aside, what we have here is someone who is highly qualified, who has gotten votes of Republicans in the past and those Republicans, at least two of them, have issued positive statements in the months leading up to this hearing.

And so, I believe she will get Republican support. I can't tell you who. I can't tell you how much. But it think that will be very important to this process.

KARL: All right. Senator Amy Klobuchar, thank you for being here on set with us on "This Week".

KLOBUCHAR: Thank you. It's great to be on, Jonathan.

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From: Rojo, Hugo
Subject: [EXTERNAL] FTN Transcript: Sen. Mitch McConnell (R-KY) - March 20, 2022
To: Rojo, Hugo
Sent: March 20, 2022 1:41 PM (UTC-04:00)



This is a transcript of moderator **Margaret Brennan's** interview with **Minority Leader Sen. Mitch McConnell (R-KY)** from the March 20, 2022 broadcast of "Face the Nation with Margaret Brennan" on the CBS Television Network.

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Please credit: "Face the Nation with Margaret Brennan" / CBS News

****INTERVIEW HIGHLIGHTS****

Sen. McConnell said of President Biden and his administration's response to the conflict in Ukraine: "He needs to step up his game... he has generally done the right thing but never soon enough... I think we ought to go into this believing the Ukrainians can actually win. And the way they win is for us to get these defensive weapon systems to them as rapidly as possible. I am perplexed as to why we couldn't get the Polish Russian MiGs into the country."

McConnell added: "What I would like to see the president do is to reassure our Eastern Bloc allies it's fine to go to Brussels, it's fine to go to Berlin. I would like to see them go to Romania or Poland or the Baltics... they need to know we're in this fight with them to win."

Will the \$13 billion authorized to help the Ukrainians be enough? McConnell: "If they need more, we ought to give them more."

McConnell on Ukraine rhetoric from Madison Cawthorn and Marjorie Taylor-Greene and its place in the Republican party: "There are some lonely voices that are in a different place... I wouldn't pay much attention to them."

On the confirmation hearings of Judge Ketanji Brown Jackson: "I haven't made a final decision as to how I'm going to vote... I'm going to listen to the evidence – I'm going to listen to the hearings. By the way, she'll be treated much better than Democrats have typically treated Republican nominees."

More COVID funds on the horizon? McConnell from the Senate perspective and spending what's already available: "We're willing to listen to the case that we need to spend more money on COVID but they ought to reprogram some of this massive amount that was spent last year that is not out the door yet. So let's take a look at how to pay for it, and then we'll be happy to decide whether or not to support it."

****RUSH TRANSCRIPT****

MARGARET BRENNAN: Welcome back to Face the Nation, we turn now to Senate Republican Leader Mitch McConnell, who joins us from Louisville, Kentucky, this morning. Good morning to you, sir. Welcome to Face the Nation.

U.S. SENATE MINORITY LEADER MITCH MCCONNELL: Good morning.

MARGARET BRENNAN: President Biden heads to Europe this week to meet with NATO allies. You helped give him about 13 billion in urgent support along with the rest of Congress. What do you expect the president to deliver this week?

SEN. MCCONNELL: Well, we've given him plenty of money. I think he needs to step up his game. He's generally done the right thing, but never soon enough. Mean, let's take a look at what's happened here. The Ukrainians have killed more Russians in three weeks than we lost in Afghanistan and Iraq in 20 years. I think we ought to go into this believing the Ukrainians can actually win. And the way they win is for us to get these defensive weapons system to them as rapidly as possible. For example, I am perplexed as to why we couldn't get the Polish Russian MiGs into the country. Now, the Ukrainians have plenty of pilots who know how to fly them.

MARGARET BRENNAN: Mm-Hmm.

SEN. MCCONNELL: In those Eastern Bloc countries, they have Soviet ground to air systems that the Ukrainians know how to work. We have the resources we give-given to the president to get those weapons in there as rapidly as possible.

MARGARET BRENNAN: Right.

SEN. MCCONNELL: And then we provided loan guarantees to the countries that ship the weapons into Ukraine to purchase new weapons and probably better weapons from us. So what I'd like to see the president do is to reassure our Eastern Bloc allies. It's fine to go to Brussels. It's fine to go to Berlin, and I'd like to see him go to Romania or Poland--

MARGARET BRENNAN: Mm-Hmm.

SEN. MCCONNELL: --or to the Baltics. They're right on the front lines--

MARGARET BRENNAN: Right.

SEN. MCCONNELL: --and need to know that we're in this fight with them to win.

MARGARET BRENNAN: There aren't a lot of policy differences here, really, other- I mean, you agree with the president that there should not be a no-fly zone. There's a matter of a few dozen MiG fighter jets there, but I don't hear a lot of policy differences from Republicans. In your view, does the 13 billion that you all just authorized ensure the funding of a Ukrainian insurgency if the government were to fall? Like how long does this money last for?

SEN. MCCONNELL: Well, if they need more, we ought to give them more. Look, what- this is a way to have a no fly zone in effect, to have these weapons systems ground to air weapon systems give them a fighting chance to control the air, to shoot down planes and others that are seeking to control the air. Without the US having a no fly zone that has our own pilots in there. So, I think the weapons systems are available. Look, I think we need to change our attitude here. The Ukrainians could actually win this thing--

MARGARET BRENNAN: Mm-Hmm.

SEN. MCCONNELL: --and that's what- the attitude we ought to have that we're in it to help them win.

MARGARET BRENNAN: You are very clear in your language there, but others in your party have not been. Congresswoman Liz Cheney has said there's actually a Putin wing of the Republican Party these days. Think she's referring to Congressman Cawthorn, who called Zelenskyy a thug? Marjorie Taylor Greene said the U.S. should not fund a war the Ukrainians cannot possibly win. Is there any room in the Republican Party for this rhetoric and why isn't there more discipline?

SEN. MCCONNELL: Well, there's some lonely voices out there that are in a different place, but looking at Senate Republicans, I can tell you that I would have had I been the Majority Leader put this Ukraine supplemental up by itself. I think virtually every one of my members would have voted for it. The vast majority of the Republican Party writ large, both in the Congress and across the country, are totally behind the Ukrainians and urging the president to do- take these steps quicker. Yeah, to be bolder. So, there may be a few lonely voices off the side. I wouldn't pay much attention to them.

MARGARET BRENNAN: I want to ask you about what is about to get underway this week. You've said President Biden's nominee to the Supreme Court, Judge Brown Jackson, is very intelligent, clearly qualified and highly likely to be confirmed. You personally have voted against her before. Are you inclined to vote for her this time?

SEN. MCCONNELL: You know, we had a very good conversation in my office and I asked her, you know, typically the Supreme Court nominees of both parties have never answered the questions. What they typically say is that something that might come before me, and I don't want to prejudge how I might actually vote, but I ask her to defend the court. Ruth Bader Ginsburg and Justice Breyer both publicly opposed court packing that is--

MARGARET BRENNAN: Mm-Hmm.

SEN. MCCONNELL: --trying to increase the number of court- court members in order to get an outcome you like, that would have been an easy thing for her to do to defend the integrity of the court. She wouldn't do that. So, in the meantime, the committee will ask her all the tough questions. I haven't made a final decision as to how I'm going to vote.

MARGARET BRENNAN: You haven't made a final decision, but you're open to be persuaded? I mean, this is a historic nominee.

SEN. MCCONNELL: I'm going to listen to the evidence. I'm going to listen to the hearings. And by the way, she'll be treated much better than Democrats typically treated Republican nominees like Clarence Thomas and Brett Kavanaugh. It will be a respectful, deep-dive into her record, which I think is entirely appropriate for a lifetime appointment.

MARGARET BRENNAN: Mmhmm. So you are open to voting for her then? OK, we'll see.

SEN. MCCONNELL: I'm willing to listen to the testimony. That's why we have hearings.

MARGARET BRENNAN: OK, I want to ask you as well about COVID aid. Dr. Fauci on another network this morning said Congress needs to authorize spending to continue to build up our supply of antivirals of tests and give the ability to provide booster shots. Republicans haven't been on board with this idea of more COVID aid. Dr. Fauci says we need it. Are you afraid of an empty arsenal?

SEN. MCCONNELL: Well, last year, the Congress passed a two trillion dollar package, allegedly for COVID and passed on an entirely partisan basis. Much of that money is yet to be spent. We're willing to listen to the case that we need to spend more money on COVID, but they ought to reprogram some of this massive amount that was spent last year that's not out the door yet. So let's take a look at how to pay for it, and then we'll be happy to decide whether or not to support it.

MARGARET BRENNAN: Minority Leader McConnell, thank you very much for your time today. We'll be right back.

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From: Steves, Vincent A.
Subject: [EXTERNAL] "This Week" Full Transcript: Sunday, January 30, 2022
To: Steves, Vincent A.
Sent: January 30, 2022 4:38 PM (UTC-05:00)



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**"THIS WEEK WITH GEORGE STEPHANOPOULOS"
FULL SHOW TRANSCRIPT**



Transcript Link: <https://abcn.ws/3rZDZEI>

ABCNews.com Reporting:

Biden's handling of Supreme Court vacancy has been 'clumsy at best': Sen. Collins

READ: <https://abcn.ws/3uhU3o5>

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Sen. Dick Durbin 'hopeful' Supreme Court nominee will get bipartisan support

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*A rush transcript of "This Week with George Stephanopoulos" airing on Sunday morning, January 30, 2022 on ABC News is below. This copy may not be in its final form and may be updated. **All excerpts must be attributed to ABC News "This Week with George Stephanopoulos"** George Stephanopoulos serves as Anchor, Martha Raddatz and Jonathan Karl are Co-anchors. The program airs Sundays on the ABC Television Network (check local listings). Visit the "This Week" website to read more about the show at: www.abcnews.go.com/thisweek*

Transcript:

ANNOUNCER: "This Week With George Stephanopoulos" starts right now.

(BEGIN VIDEOTAPE)

GEORGE STEPHANOPOULOS, ABC "THIS WEEK" ANCHOR (voice-over): Supreme shakeup.

JOE BIDEN, PRESIDENT OF THE UNITED STATES: Justice Breyer has been everything his country could have asked of him.

STEPHANOPOULOS: Stephen Breyer announces his retirement from the court with a challenge for the country.

STEPHEN BREYER, U.S. SUPREME COURT ASSOCIATE JUSTICE: It's an experiment that's still going on. And I will tell you something. You know who will see whether that experiment works? It's that next generation.

STEPHANOPOULOS: President Biden promises to make history.

BIDEN: That person will be the first black woman ever nominated to the United States Supreme Court.

STEPHANOPOULOS: We will get the latest on the confirmation process with the chairman of the Senate Judiciary Committee, Senator Dick Durbin, and key Republican Senator Susan Collins.

Plus: show of force. U.S. troops on alert, as Russia displays its military might.

WENDY SHERMAN, U.S. DEPUTY SECRETARY OF STATE: We certainly see every indication that he is going to use military force.

GEN. MARK MILLEY, CHAIRMAN, JOINT CHIEFS OF STAFF: It would be horrific. It would be terrible. And it's not necessary.

STEPHANOPOULOS: With the U.N. Security Council meeting tomorrow on Ukraine, U.S. Ambassador to the United Nations Linda Thomas-Greenfield joins us in a "This Week" exclusive.

And:

REP. NANCY PELOSI (D-CA): This election is crucial. Nothing less is at stake than our democracy.

STEPHANOPOULOS: House Speaker Nancy Pelosi announces she will run again, bucking a wave of Democratic retirements ahead of the midterms -- that and all the week's politics on our powerhouse roundtable.

(END VIDEOTAPE)

ANNOUNCER: From ABC News, it's "This Week."

Here now, George Stephanopoulos.

STEPHANOPOULOS: Good morning, and welcome to "This Week." We have a lot to cover this morning.

And we begin with our brand-new poll with Ipsos. It shows big challenges for President Biden heading into this year's midterm elections. Three out of four Americans are pessimistic about the state of the economy. Only 29 percent support deploying troops to counter the Russian threat to Ukraine.

And more than three-quarters of all Americans question the president's pledge to consider only black women to replace retiring Supreme Court Justice Stephen Breyer, saying he should consider all possible nominees.

Chief Washington correspondent Jon Karl starts us off.

(BEGIN VIDEOTAPE)

JONATHAN KARL, ABC NEWS CHIEF WASHINGTON CORRESPONDENT AND ABC "THIS WEEK" CO-ANCHOR (voice-over): It was an untreated flash of frustration triggered by a shouted question.

PETER DOOCY, FOX NEWS: Do you think inflation is a political liability ahead of the midterms?

BIDEN: It's a great asset, more inflation.

What a stupid son of a bitch.

KARL: Not President Biden's finest moment. He later apologized. But Biden has ample reason to be frustrated. He starts the second year of his presidency with his lowest approval rating yet. Voting rights legislation failed, as did the centerpiece of his domestic agenda, opposed by every single Republican and tanked by fellow Democrats.

Frustration abroad too, North Korean missile tests, Iran advancing its nuclear programs, and fears Russia may invade Ukraine. Biden is sending some U.S. troops to Eastern Europe. But he candidly acknowledged there's only so much he can do.

BIDEN: I don't think even his people know for certain what he's going to do.

KARL: So it was welcome news at the White House this week when word came that Justice Stephen Breyer would be retiring from the Supreme Court, giving Biden a chance to change the subject and to make history, keeping a campaign promise to nominate the first black woman to the Supreme Court.

BIDEN: It's long overdue, in my view. I made that commitment during the campaign for president, and I will keep that commitment.

KARL: And while the retirement of a liberal justice won't give Biden the opportunity to change the court's conservative majority, maybe, just maybe, he can get at least some Republican support for whoever he nominates.

BIDEN: I'm going to invite senators from both parties to offer their ideas and points of view.

KARL: In a foreshadowing of what is likely to come, though, Republican Leader Mitch McConnell declared -- quote -- "The president must not outsource this important decision to the radical left," prompting a sharp response from the White House.

JEN PSAKI, WHITE HOUSE PRESS SECRETARY: If anyone is saying they plan to characterize whoever he nominates, after thorough consideration with both parties, as radical before they know literally anything about who she is, they just obliterated their own credibility.

KARL: With a 50/50 Senate, there's no room for error. Biden can reach out to Republicans, but he can't count on them. He will need all 50 Democrats healthy, voting, and on board.

In announcing his plan to retire, Justice Breyer invoked Lincoln's words at Gettysburg and offered his own plea for an American democracy that seems more fragile than it has for a long time.

BREYER: We're now engaged in a great civil war to determine whether that nation or any nation so conceived and so dedicated can long endure.

And I found some letters that George Washington wrote where he said the same thing. It's an experiment. And I will tell you something. You know who will see whether that experiment works? It's you, my friend.

(END VIDEOTAPE)

STEPHANOPOULOS: And we are joined now by the Chair of the Senate Judiciary Committee, Senator Dick Durbin. Senator Durbin, thank you for joining us this morning.

You're going to be in charge, of course, of this confirmation hearing for whoever the president nominates. Lay out your timeline for when the -- when these hearings could happen, when the president's pick could be confirmed.

SEN. DICK DURBIN (D-IL): George, we'll be ready from a staff viewpoint and logistic viewpoint. But the decision really starts with the president, as it should. When he chooses a nominee and sends it to the Senate, then we're off and running. And that nominee and the background of the nominee, in terms of whether they've been before the committee, how recently they were there and how much information we can bring together quickly will decide the timeline.

STEPHANOPOULOS: You saw that poll, a number of Americans questioning the president limiting the possible nominees to a black woman. He's also faced some criticism from Republican's Nikki Haley. Want to show her tweet. "Would be nice if President Biden chose a Supreme Court nominee who is best qualified without a race/gender litmus test. That's what I did when I picked Tim Scott as Senator of South Carolina." Senator Roger Wicker has called an affirmative action quota pick. How do you respond?

DURBIN: I'd remind them to take a look back at history and recall that it was Ronald Reagan who announced that he was going to appoint a woman to the Supreme Court, and he did, Sandra Day O'Connor, and it was Donald Trump who announced that he was going to replace Ruth Bader Ginsburg with a woman nominee as well. So this is not the first time that a president has signaled what they're looking for in a nominee.

And I would just say, the bottom line is this, it's -- towards (ph) African American women, if they have achieved the level of success in the practice of law and jurisprudence, they've done it against great odds. They're extraordinary people, usually the first of anything in the United States turns out to be extraordinary in their background. And the same is true there.

They're all going to face the same close scrutiny. This is a lifetime appointment to the highest court in the land. And I just hope that those who are critical of the president's selection aren't doing it for personal reasons.

STEPHANOPOULOS: You've also got some Republican Senators like Chuck Grassley, Tim Scott suggesting that because the Senate is so closely divided, because the country is so closely divided the president should take care to pick a moderate who reflects the entire country, who reflects that close division in the Senate.

DURBIN: Well, I could just tell you, George -- and you remember this, it was Mitch McConnell who decided that he would eliminate the filibuster on Supreme Court nominees. And for those who aren't following the Senate procedure that closely, it meant that it used to take 60 votes. McConnell said no, let's make it a majority. And that meant that the selection process was more partisan than it had been in the past.

But I'm still hopeful. I know Susan Collins is a guest on your show this morning. I've spoken to her. I'm reaching out to the Republicans and saying the nominee will be available for you to get to know them. We're going to make sure we have answers to any questions you might have. It's going to be a deliberate process but we're not going to get bogged down. Amy Coney Barrett broke all records in terms of nomination to approval in the Senate. We want to make sure that we have a timely nomination that's handled in a responsible, professional way.

STEPHANOPOULOS: The president, of course, is going to consult with you as well. Your former colleague in the Senate. He was also Chair of the Senate Judiciary Committee. I want to show a list of the possible contenders that have been discussed by The White House and others.

Ketanji Brown Jackson, D.C. Court of Appeals; Leandra Kruger of the California Supreme Court; Leslie Abrams Gardner, U.S. District Court of Georgia; also J. Michelle Childs, the U.S. District Court of South Carolina, of course, is a favorite of Congressman Clyburn.

Do you have a favorite and what have you told the president?

DURBIN: Well, Ron Klain called me this -- last week when the word was being spread around about Stephen Breyer's decision. And I asked him, I said, how close is the president to choosing a nominee, and he said, he's going to go through the process carefully, and he has not made his mind up, at that point a few days ago.

I'm going to trust his judgment on this. I don't want to put the finger on the scale for any one of the nominees. I think there is some extraordinary talent there. And going back to the point I made earlier, for these African women to have -- African American women to have reached the level of success that they have reached, they are extraordinary people. They have been put to the test. They are the first in many instances of their race and gender to be in this position. So that extraordinary talent, I think, should be taken into consideration on a favorable side.

STEPHANOPOULOS: I also want to ask you about reform of the Electoral College Act and the possibilities for bipartisan reform there. You said you've talked to Susan Collins about the president's nominee for the Supreme Court. What about Electoral College Act reform, what's possible this year? Can it be bipartisan?

DURBIN: Yes, it can be. I think it should be. There's an effort -- Susan's part of an effort to take a look at it with a bipartisan group. And I've joined with Amy Klobuchar and Angus King on the Democratic side. I think we're talking about the same basic challenges that we want to make sure the Electoral College is valid.

And, of course, we have the disclosure this last week of the January 6th Committee in the House looking into false slates of electors that are being selected in seven or eight states in the last election -- in the last presidential election.

You know, it really raises a question about the integrity of that process. It hasn't been looked at for 150 years. Now's the time.

STEPHANOPOULOS: And also, finally, how about on Build Back Better? Is it dead right now? Is it dormant? What can happen before the midterms?

DURBIN: I don't want to give up on it. There are so many important things for families across America. You talked about some of the polling data that's coming back.

Take a look at basic issues, making sure that we negotiate on the price of prescription drugs -- overwhelming popular, Democrats and Republicans. If we can achieve that, it's really a step forward. Helping families pay for daycare so that the folks can go to work with peace of mind that their kids are in good hands.

These issues and many like them are part of Build Back Better. Let's find the things that really make the biggest difference and let's move them as quickly as we can. I don't want to drag this process out and I'm sure most of the American people want to see it come to a positive conclusion.

STEPHANOPOULOS: Have you had any signs from Senators Manchin or Sinema that they're willing to do that?

DURBIN: Well, I can't say that I personally have. I will tell you, they were arguing on the floor when we considered the rules on voting rights that we can be productive and bipartisan even in the world of filibuster. Now, my challenge to them is prove that we can -- on reconciliation, at least on the Democratic side, come to a positive conclusion that moves us forward as a nation.

We debated it long enough. We know all the theories. Let's get something done.

STEPHANOPOULOS: Senator Durbin, thanks very much for your time this morning.

DURBIN: Thanks, George.

STEPHANOPOULOS: And let's bring in Republican Senator Susan Collins now.

Senator Collins, thank you for joining us this morning.

You just heard Senator Durbin talk about his timeline for the Supreme Court pick, talk that he's consulted with you.

Are you open to supporting who the president picks?

SEN. SUSAN COLLINS (R-ME): George, I would welcome the appointment of a Black female to the court. I believe that diversity benefits the Supreme Court.

But the way that the president has handled this nomination has been clumsy at best. It adds to the further perception that the court is a political institution like Congress when it is not supposed to be.

So, I certainly am open to whomever he decides to nominate. My job as a senator is to evaluate the qualifications of that person under the advice and consent role.

STEPHANOPOULOS: You say that it's clumsy. But isn't, as Senator Durbin pointed out, isn't it exactly what Senator Reagan did when he said he would appoint a woman to the Supreme Court? Isn't it exactly what President Trump did when he said he would appoint a woman to replace Justice Ruth Bader Ginsburg?

COLLINS: Actually, this isn't exactly the same. I've looked at what was done in both cases. And what President Biden did was as a candidate, make this pledge. And that helped politicize the entire nomination process.

What President Reagan said is, as one of his Supreme Court justices, he would like to appoint a woman. And he appointed a highly qualified one in Sandra Day O'Connor.

STEPHANOPOULOS: Isn't this process politicized no matter what you do?

I mean, look what happened after the death of justice Ruth Bader Ginsburg. Justice Barrett pushed through in record time -- one of the reasons I suppose you voted against her.

COLLINS: Actually, the reason I voted against Amy Coney Barrett was that her nomination and vacancy occurred too close to the election, the presidential election. And Republicans just in the Obama administration had established a precedent that we were not going to confirm someone -- it was Merrick Garland in that case, in an election year.

I did not agree with that decision, but once that precedent was established and given how close the death of the Supreme Court justice was to when the appointment was made of Justice Barrett, I felt that it was -- should have been up to the next president to make the decision.

STEPHANOPOULOS: You voted for Judge Ketanji Brown Jackson for elevation to D.C. Court of Appeals. If she's the

president's nominee, can you support her for the Supreme Court?

COLLINS: I'll certainly give her every consideration. I have no idea, since she was confirmed, what rulings she's been involved in, whether -- what writings she has done. And I have not met her personally. And that's why I really appreciated Chairman Durbin reaching out to me and offering to make the nominee available for an extensive interview and to provide me with whatever information I need to make a decision on whomever the nominee is.

STEPHANOPOULOS: Do you share Senator Durbin's confidence that Electoral College reform -- the reform of the Electoral College Act can take place this year on a bipartisan basis?

COLLINS: I certainly hope so.

This is not a small matter. This 1887 law governs the counting and the certification of the presidential vote. And we saw, on January 6th of 2021, how ambiguities, simple (ph) law, were exploited. We need to prevent that from happening again.

I have brought together a group of 16 senators. It's a bipartisan group. Joe Manchin is involved in -- on leading the Democratic side. And together we have been having discussions, Zoom meetings. We'll resume them tomorrow. And I'm hopeful that we can come up with a bipartisan bill that will make very clear that the vice president's role is simply ministerial, that he has no ability to halt the count and that we'll raise the threshold from one House member, one senator, for triggering a challenge to a vote count submitted by the states. This is no small thing. I think it is really important that we do this reform. And I hope it can be done on a bipartisan, overwhelming basis.

STEPHANOPOULOS: The events in the aftermath of the 2020 election show how important that is.

As you're working on this reform, former President Trump is out on the campaign trail. He was out in Texas last night suggesting he may pardon those -- if he were elected in 2024 -- those who were part of the January 6th riots.

Given that, can you imagine any circumstances where you could support his election in 2024?

COLLINS: Well, we're a long ways from 2024. But let me say this, I do not think the president should have made -- that President Trump should have made that pledge to do pardons. We should let the judicial process proceed.

STEPHANOPOULOS: You say we're a long way away from --

COLLINS: January 6th was a dark day in our history.

STEPHANOPOULOS: It was. And you voted to convict President Trump as well. Why can't you rule out supporting him in 2024?

COLLINS: Well, certainly it's not likely given the many other qualified candidates that we have that have expressed interest in running. So it's very unlikely.

STEPHANOPOULOS: Senator Collins, thanks for your time this morning.

COLLINS: Thank you.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

SECRETARY OF STATE ANTONY BLINKEN: Our actions over the past week have sharpened the choice facing Russia now. We've laid out a diplomatic path. We've lined up steep consequences should Russia choose further aggressiion. We've stepped forward with more support for Ukraine's security and economy. And we and our allies and partners are united

across the board. It remains up to Russia to decide how to respond. We are ready either way.

(END VIDEO CLIP)

STEPHANOPOULOS: Secretary of State Antony Blinken, head of tomorrow's U.N. Security Council meeting on the crisis. And we are joined now by the U.S. Ambassador to the U.N., Linda Thomas-Greenfield.

Thank you for joining us, Madam Ambassador.

Let's begin with that U.N. Security Council meeting. Can Russia block it? If not, what do you hope to achieve?

AMBASSADOR LINDA THOMAS-GREENFIELD, U.S. AMBASSADOR TO THE UNITED NATIONS: Well, thank you very much, and I'm delighted to be here with you this morning.

Russia cannot block the Security Council from holding a meeting. They will certainly attempt to. They will distract from our unified voices. But they know that they -- they cannot block the meeting. And I expect that, knowing what we're dealing with, that they will make an attempt. But the Security Council is unified. Our voices are unified in calling for the Russians to explain themselves.

We're -- we're going to go in the room prepared to listen to them, but we're not going to be distracted by their propaganda. And we're going to be prepared to respond to any disinformation that they attempt to spread during this meeting.

STEPHANOPOULOS: What's your latest read on President Putin's intentions?

Does the U.S. believe an invasion is imminent?

THOMAS-GREENFIELD: Look, we're all watching the press every single day. You've -- you've heard from several of us in the administration. The Russians have amassed 100,000 troops along the border. They have moved troops into Belarus. They have continued to escalate, despite our efforts to try to find a diplomatic route for them and to encourage them to de-escalate.

And part of the reason we're calling for this meeting on Monday is one more opportunity to find the diplomatic way out for -- for the Russians.

STEPHANOPOULOS: President Zelensky and his team have expressed some irritation, even alarm, saying the U.S. is exaggerating the threat for political reasons. How do you respond to that?

THOMAS-GREENFIELD: Look, we have engaged very, very closely with the -- with the Ukrainian government. As you know, President Biden spoke with President Zelensky. President (sic) Blinken travelled there. I'm meeting on a regular basis with the Ukrainian ambassador here in New York. Ukraine also called for this meeting. They actually sent a letter to the Security Council calling for -- for the meeting.

We've also been working with the Ukrainians on building up their defenses in the event of an attack. And over the course of -- of -- since 2014, we have provided close to \$5 billion in support to them; \$200 million of that was just provided in the past week.

So, again, we're engaging with them to be prepared. We've seen the Russian playbook before. They are using disinformation. They're encouraging Ukrainians not to worry about an attack, but we know that the attack is possible. You don't amass 100,000 troops if you don't have intentions to use them.

STEPHANOPOULOS: So that sounds -- it sounds pretty ominous right there. But what could a diplomatic settlement look like?

THOMAS-GREENFIELD: You know, at first it would mean Russia making the decision to de-escalate, to pull their troops back, and to come to the diplomatic table and talk with -- with the United States, with the Ukrainians, with our NATO allies about their security concerns.

We have made clear that we're prepared to address our concerns, Ukrainian concerns, and Russian concerns at the diplomatic table. But it cannot be done on the battlefield.

STEPHANOPOULOS: Finally, I want to ask you about North Korea.

They had their seventh ballistic missile test this month last night, the longest-range missile they have tested since 2017. What's behind this flurry of tests? And how will the U.S. respond?

THOMAS-GREENFIELD: It is provocative, and it is something that we have very, very strongly condemned in the Security Council.

The United States, as you know, imposed unilateral sanctions in the past few weeks against the DPRK. And we have pushed for sanctions within the -- within the Security Council. And I will be engaging with our allies the Koreans, as well as Japanese, who are also threatened by this, to look at other options for responding.

STEPHANOPOULOS: Is it time for President Biden to engage personally with Kim Jong-un?

THOMAS-GREENFIELD: We have been clear on that from the beginning.

We are open to having diplomatic discussions. We have offered this over and over to the DPRK. And they have not accepted it. But we're absolutely open to a diplomatic engagement without preconditions. Our goal is to end the threatening actions that the DPRK is taking against their neighbors.

STEPHANOPOULOS: Madam Ambassador, thanks very much for your time this morning.

THOMAS-GREENFIELD: Thank you very much.

STEPHANOPOULOS: The roundtable is coming up.

We will be right back.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

REP. NANCY PELOSI (D-CA), SPEAKER OF THE HOUSE: While we made progress, much more needs to be done to improve people's lives. Our democracy is at risk because of the assaults on the truth, assault on the U.S. Capitol, and the state by state assault on voting rights.

This election is crucial. Nothing less is at stake than our democracy. But as we say, we don't agonize. We organize.

And that is why I am running for re-election to Congress and respectfully seek your support.

(END VIDEO CLIP)

STEPHANOPOULOS: House Speaker Nancy Pelosi now saying she will seek re-election this November. But at least 29 of her Democratic colleagues are headed to the exits ahead of the midterm elections. Do the retirements signal a Republican wave?

We ask Nate Silver of FiveThirtyEight.

(BEGIN VIDEO CLIP)

NATE SILVER, FIVETHIRTYEIGHT: It's true that members of Congress sometimes vote with their feet. They'll retire if they think they're going to lose. But as a historical indicator, the number of retirements is surprisingly unreliable.

In 2018, 37 Republicans did not seek re-election as compared to 18 Democrats. Republicans then lost 42 seats at the midterms. So, that year fits the pattern you might expect.

But go back to the midterm just before that, in 2014, and you also had more Republicans retiring, even though the GOP had a good year and gained 13 seats.

In 2010, same thing. Slightly more Republicans retired, but the party had an extraordinary gain of 63 seats.

So far this year, 29 Democrats have retired as compared to 13 Republicans. That's not a good sign for Democrats, but there are some complicating factors.

One is that Democrats in Congress are a geriatric group, 23 Republican members of the U.S. House are age 70 or older, so are the whopping 61 Democrats. That includes House Nancy Pelosi, age 81, who announced this week that she will seek another term.

The other factor is redirecting. For example, Jim Cooper, the long-time incumbent in Nashville, announced this week he was retiring. That came after a proposed map that would shift his district from leaning Democratic by 17 to Republicans by 15 points according to FiveThirtyEight's analysis.

And indeed retirements are higher in redirecting years. As we talked about on the segment, I think Democrats are probably in trouble for the midterms. But I don't buy that these retirements tell us all that much.

(END VIDEOTAPE)

STEPHANOPOULOS: Thanks to Nate for that.

Roundtable is next. We'll be right back.

(COMMERCIAL BREAK)

STEPHANOPOULOS: Roundtable is all here and ready to go. We'll be right back.

(COMMERCIAL BREAK)

STEPHANOPOULOS: Let's talk about this on our roundtable. I'm joined by Chris Christie, Donna Brazile, Donna Shalala, former university president, Democratic member of Congress and HHS secretary under President Clinton, and the Manhattan Institute President Reihan Salam.

Donna, let me begin with you.

We just saw Ronald Reagan right there, but you heard Susan Collins earlier in the program and you saw our poll. More than three quarters of all Americans question the fact that President Biden pledged to consider only black women for this Supreme Court appointment.

What do you make of this?

DONNA BRAZILE, FORMER DNC CHAIR & ABC NEWS CONTRIBUTOR: Well, fortunately, we're on the verge, after 233 years, of having the first black female justice. I am confident that President Biden will select one of the most

extraordinary black female lawyers that he can find. That's what I'm confident of.

But I have to say this, George. One hundred and fifteen of our justices -- of the 115, 108 have been white males. And as I've said over and over again, some of those white males were extraordinary. And thanks to them, we were able to break the vestiges of segregation and much, much more.

But the fact is, 55 years after Thurgood Marshall was put on the court, 31 years after Clarence Thomas, 13 years after Sonia Sotomayor, this is a moment when the country can finally say equal justice under the law applies to everybody.

It's an extraordinary move by the president. I welcome this appointment. And I'm going to fight with everything I have to make sure that this extraordinary woman gets confirmed.

STEPHANOPOULOS: Chris Christie, I was a bit surprised to see that this was Senator Collins' first talking point, coming out. I was also, frankly, surprised by the polling numbers, right there. Is this an effective point of criticism from Republicans?

CHRISTIE: Well, look, I'm going to say the same thing I said when Donald Trump was nominating justices. Elections have consequences. The president of the United States has the right to pick whoever he wants for that seat and nominate them. And then they have to face the scrutiny of the United States Senate.

And so it wouldn't have been the way I would have approached it, by pre-announcing something like that, but Joe Biden won the election. He gets to make the choice. And every one of the 100 senators has a right then to scrutinize this person's background, experience, and decide whether or not they deserve lifetime tenure.

STEPHANOPOULOS: Donna, we know this pick is not going to change the ideological balance on the court. It will likely still be 6-3. But what difference could it make on the court to have the first black woman?

SHALALA: Well, it brings someone with a different experience, a black woman's experience. It makes the court look like America. It makes it look fairer. And I'm not surprised the majority of Americans think he ought to just pick the -- the qualified candidate. That's, in fact, an advancement, that we ought to pick the qualified candidate. But a black woman on the court, it will make a difference.

STEPHANOPOULOS: Was the promise a mistake?

SALAM: I think the promise was a mistake insofar as it limited, it narrowed the president's options. He has a great many diverse candidates to choose from. And I think that one thing to keep in mind is that the Democratic coalition is awfully diverse along many different dimensions.

Donna Shalala mentioned that there's such a thing as a black women's experience. When you look at the four leading contenders, as far as news reports go, these are people with dramatically different experiences and actually some subtle differences in ideological sensibilities as well.

Someone like a Leandra Kruger is known as a pretty heterodox person, someone who has oftentimes voted with conservatives on the California Supreme Court. That's interesting. That's something that could potentially build bridges. Her experience is meaningfully different from other potential nominees who have a more ideological reputation.

So I think that recognizing the distinctions among black women and recognizing that there are many other kinds of diversity one could bring to the bench is a good and valuable thing. And Democrats ought to keep it in mind.

STEPHANOPOULOS: The four candidates we showed earlier are -- are quite different. And the president is going to have to weigh certain things. Judge Ketanji Brown Jackson, overwhelmingly confirmed by -- by the Senate before, graduate of Harvard.

We know that Senator Clyburn's favorite, more of -- I mean, Congressman Clyburn's favorite, more of a -- they're

hoping for someone who's outside of the Ivy League world.

BRAZILE: And that is the beauty, I think, of being an American, is that there's diversity within the black community. There's diversity within the Hispanic community. I mean, we knew that Clarence Thomas was conservative. And yet we also knew that Amy Coney Barrett was conservative. I think it's just important that we open this door that has - that was closed, that barred women at one point in our history and barred people of color.

This is an extraordinary moment. She will have -- she will be tested, her -- her temperament, her merits, her qualifications.

You know, I have to tell you, George, I'll never forget that moment when Justice Sotomayor was up for confirmation. I told her that I spent that entire year reading every case. We got into every case, every background, every detail. And, you know what, she brought an extraordinary amount of experience. And what the American people saw when they saw her, they saw a woman like themselves. And that's why she remains one of the most popular justices.

(CROSSTALK)

CHRISTIE: Guys, let's -- let's talk about the politics of this for a second, though.

We're going to see how much Joe Biden thinks he really owes to Jim Clyburn, because Jim Clyburn -- and Donna and I sat on the set during those primaries. Jim Clyburn saved Joe Biden's backside.

Without Jim Clyburn, Joe Biden would not be sitting in the White House right now. That's a political reality. And the question in my mind is going to be, how much is Congressman Clyburn going to call in that chit on this one?

Because, if he calls it in, I think it's very, very difficult for Joe Biden to look at Jim Clyburn in the eye and say no. And, if he does, there's going to be some political fallout from that as well. So there's a lot of politics inside the Democratic Party and inside the Biden White House that we're going to have to watch here as he makes that choice.

STEPHANOPOULOS: Some internal Democratic politics.

I wonder, on the flip side, Donna, are we at the point now where you're simply not going to see bipartisan support for a Supreme Court nominee?

SHALALA: I don't think, in this case, that's going to be true.

I really think there's going to be some bipartisan support for the president's nominee. And you sense that when you listen to Susan Collins.

STEPHANOPOULOS: You think she's looking for a way to get to yes?

SHALALA: Absolutely.

STEPHANOPOULOS: Do you agree?

SALAM: Well, I will say this.

There's another dimension to the politics that Governor Christie had mentioned, which is that people have long memories. We're talking about plans to -- diversity, the importance of bringing new voices onto the court.

There are a lot of people who remember, for example, the treatment of Miguel Estrada, an exceptionally qualified person of Central American origin, really scrappy story, but also someone who had achieved really the most distinction you can have in the legal profession.

And many people feel like his reputation was dragged through the mud. His personal life was really ravaged by that experience. And there are a lot of Republicans, for better or for worse, who remember that.

So, when we talk about the historical occasion, how important that is, how important representation is, there are a lot of Republicans who just don't take those claims at face value because this is an iterative game.

STEPHANOPOULOS: The other political reality is, it's coming during midterm elections.

Will it make a difference?

BRAZILE: I'm a black woman. We vote. We take names, and we vote. And we bring our families with us.

So, yes, there's a lot of politics. Jim Clyburn is very, very important, but also understanding that black women will also help to determine the outcome of many of these Senate races, the open seats in North Carolina and Pennsylvania, the competitive seats in Florida, of course, in Georgia.

So, yes, this is political. But I hope that the president, who understands the Senate, understands the process, will reach out to Republicans, because I do believe that this nominee will be able to garner bipartisan support.

CHRISTIE: He picks the right person, he will get some Republican votes, I think.

But in terms of...

STEPHANOPOULOS: What does "the right person" mean?

CHRISTIE: Well, I think he's got to pick someone -- and Reihan talked about this -- someone who, when you look at their record, you see a record of fairness, you see an open-mindedness in the person.

And I think, if they see that, I think they will get some -- they will get some Republican votes.

But on the politics of this, George, for the midterms, when you have inflation where it is, when you have crime where it is, the things that affect people's everyday lives, they don't see the Supreme Court affecting their everyday lives in the same way that inflation, crime and foreign policy crises do.

So, I think it may have some small effect, but nowhere near a determinative one.

STEPHANOPOULOS: It has rarely been a big -- a big voting issue in either presidential or midterm elections.

So, Donna, what else does the president needs to do? We saw Jon Karl's piece at the top of this program. He's entering 2022 in a very dismal political state.

What does he need to do to reset and limit Democratic losses...

(CROSSTALK)

SHALALA: Well, I agree with Chris. Elections are about people's lives.

So, breaking up Build Back Better into things like child care, which will make a huge difference for working families, will make a difference in the election, because people will feel the fact that they can take care of their children and go to work.

If I was the president, I would put 100,000 more cops on the street and tie it to reform of the police, as well as -- as more training for police. And I would name it after Detective Rivera and Detective Mora, who -- these young men who just died in New York.

But I do things that would reassure people that the streets were safe, that they could send their kids to child care, and go to work, and things that actually affect people's lives.

And he can do that by repackaging many of the issues that he cares deeply about.

STEPHANOPOULOS: That may be a very good idea.

A hundred thousand police on the street for Bill Clinton in 1994 did not prevent a bloodbath in the November midterms...

(CROSSTALK)

STEPHANOPOULOS: ... in 1994.

A lot of Republicans right now think there's nothing the Democrats could do to hold onto the House and -- and the Senate.

SALAM: There are a lot of structural obstacles they're facing. There are a lot of challenges.

My advice would be, listen to Larry Summers -- you know, veteran of the Clinton and Obama White Houses who was ridiculed and marginalized for saying that the American Relief Plan might have been structured a little bit poorly, might have been a little too big.

I think there's a lot of groupthink right now within the White House and also in the broader center left.

And I think that listening to the veterans of those administrations, I frankly think that Donna Shalala's advice right now, you know, it's not necessarily a silver bullet, but talking about investing in public safety, in a very visible and meaningful way, it's a heck of a lot better to talk about than the things that, you know, young campaign professionals in D.C. fixate on in their 20s (ph), on Twitter.

STEPHANOPOULOS: We agree on this?

BRAZILE: Well, look, one of the reasons why the American people are in such a foul mood is that we're tired of wearing masks. We're tired of being in lockdown. We're just tired -- sick and tired of being sick and tired. Thank you, Fannie Lou Hamer.

The point is, is that we have the best economy in 40 years. Unemployment is down below 4 percent. We have an economy that is outpacing China. We have so much good news that all we want to do is talk about the bad news because we feel bad.

So, Joe Biden should continue to focus on what he's been doing, which is investing in the long term. There's money for community policing. There's money for violence prevention. But there's also money for child care, paid family leave.

Keep telling the American people your story, and perhaps one day, when we get out of this lockdown, we will hear Joe Biden say, I planned this. I invested in it. And now let's all enjoy and celebrate.

STEPHANOPOULOS: Stay the course a good strategy?

CHRISTIE: Yeah, I love it. Stay the course, baby. Maybe you can get down to the 20s if you're Joe Biden.

Look, here are two things people understand. You saw that funeral in New York City this week. And that isn't, Donna, because we have too few cops on the street. That's because prosecutors and political leaders in the Democratic Party have undercut those police officers and made it impossible for them to do their job. And the reaction you saw in New

York City this week is a reaction to that.

And until the president stands up and becomes the old Joe Biden who stood up for crime prevention and safety in the streets, he's going to continue to lose in that issue.

Second, I spoke to Governor Burgum of North Dakota this week. There are 500,000 barrels of oil a day in North Dakota that the Biden administration is preventing from being extracted. You know, at the same time, they're begging OPEC to raise their production so that gas prices go down when we have in Pennsylvania, in North Dakota and in Texas the ability to do this.

It doesn't mean you can't continue to work on wind energy and solar and electric cars. You can continue to do that, and we should. But we should not cripple the American people and cost \$4 and \$5 gasoline because he wants to make a political stand.

Last thing, worst part of his week, was calling that reporter a stupid son of a bitch, because the one that Joe Biden has always had on his side was he was seen as a kind person. What he's showing now is that frustration and that anger that came out there are making people wonder whether that's still true, too.

STEPHANOPOULOS: That might have cut both ways. As we're talking about crime right now, Donna, I can't escape the irony of former President Trump last night calling perhaps for pardoning those who rioted on January 6th.

DONNA SHALALA, FORMER HHS SECRETARY: I think that was outrageous. I mean, there -- it just is simply outrageous for him to say that and do that. And you heard Susan Collins. It was totally inappropriate.

And I believe that Trump is losing ground, that there will be other candidates, including my own governor who is anti-science among other things, but popular in the party.

STEPHANOPOULOS: But even Susan Collins who didn't vote for Donald Trump, who voted to convict him last year, cannot rule out supporting him in 2024 even after a statement like yesterday.

SALAM: Well, I think that it makes sense for people to want to preserve freedom of action. You do not know how the environment might change.

There are a lot of Republicans, a lot of conservatives who said at the very beginning of the 2015-2016 campaign cycle that they wouldn't support Donald Trump. But then things changed.

And we could condemn them. We could praise them for that. But the reality is that, you know, politics, the environment moves very, very quickly.

(CROSSTALK)

STEPHANOPOULOS: Dan Balz actually has a column in the "Washington Post", I wonder what you think about it, suggesting that Donald Trump may be -- his hold on the Republican Party may be weakening slightly. Do you buy that?

SALAM: Well, if you're looking at public opinion surveys, the number of people who identify themselves as Trump Republicans first, or as loyal to the larger GOP, there is movement there. President Trump still commands a great deal of authority and respect, but it certainly seems to be waning.

There are plenty of Republican candidates and Senate races, gubernatorial races who have not received this endorsement and yet who keep on keeping on.

What's happening is that it seems to be much more about a set of issues. It seems to be much more about a -- a kind of resistance to what people see as authoritarian or centralizing moves coming from the federal government. And, actually, President Trump in some cases -- former President Trump seems to actually be losing control of the narrative.

BRAZILE: I can't imagine President Trump saying he will pardon the very same people who injured 140 policemen. I can't imagine President Trump saying at a rally that he would pardon people who said, kill Mike Pence, assassinate Nancy Pelosi. There's -- there's -- there's no place in our politics for that type of rhetoric and that type of action and leadership. So I hope the Republicans reject Donald Trump so that they can move past this movement and we can try to figure out how to bring the country together.

You know, Joe Biden's number one priority is the health, safety and well-being of the American people, which means crime prevention, which means jobs creation, which means making sure that we can go home to safe neighborhoods and have clean drinking water. He's a good president. He might be at 40 percent or 30 percent, but, you know what, he's doing everything right.

STEPHANOPOULOS: And that is all we have time for today. Thank you all very much.

We'll be right back.

(COMMERCIAL BREAK)

STEPHANOPOULOS: And that is all for us today. Thanks for sharing part of your Sunday with us.

Check out "WORLD NEWS TONIGHT," and I'll see you tomorrow on "GMA."

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From: Rojo, Hugo
Subject: [EXTERNAL] FTN Transcript: Rep. Adam Kinzinger (R-IL) - March 27, 2022
To: Rojo, Hugo
Sent: March 27, 2022 11:43 AM (UTC-04:00)



This is a transcript of John Dickerson's interview with Rep. Adam Kinzinger (R-IL) from the March 27, 2022 broadcast of "Face the Nation with Margaret Brennan" on the CBS Television Network.

Watch + online transcript: [CLICK HERE](#)

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****INTERVIEW HIGHLIGHTS****

Kinzinger on aid to Ukraine: "We have to give them everything they need to win this war because we made it clear we're not going to intervene directly, and I don't think we should at this point."

Kinzinger did not directly address CBS News and Washington Post reporting of text messages between Ginni Thomas and Mark Meadows: "I'll tell you we have thousands of text messages from lots of people. We have a lot of documents, and we are going to, in a methodical, fact-driven way, get to the bottom line."

Will the Jan. 6th committee subpoena Ginni Thomas? "We want to make sure that this isn't driven, even though it is in the political realm, it is not driven by a political motivation, it is driven by fact. So when it comes to any potential future calling of Ms. Thomas, we'll take a look at what the evidence is."

Has former White House chief of staff Mark Meadows shared everything? "I'm not confident that Meadows has handed over everything at all. He was cooperating with us for a little bit, but in an attempt to make Donald Trump happy, he stopped cooperating. We gave him plenty of space to come back and resume that, and he has not. He has waived executive privilege a thousand times by presenting us what he has, and I'm not convinced he has handed over everything to us."

****RUSH TRANSCRIPT****

JOHN DICKERSON: We go now to Illinois Republican Congressman Adam Kinzinger. He's a member of the panel investigating the January 6th attack on the Capitol and he's in Houston this morning. Congressman, welcome.

U.S. CONGRESSMAN ADAM KINZINGER: Thank you. Good to be with you.

JOHN DICKERSON: Let's start- before we go to the January 6 committee, let's start with Ukraine. President Zelenskyy called for more planes and tanks from NATO, as you heard us just discuss. He said, I've talked to the defenders of Mariupol today, if only those who have been thinking for 31 days on how to handle- handover dozens of jets and tanks had 1% of their courage. You have advocated for a no-fly zone. What's your feeling about giving planes and tanks to the Ukrainians?

REP. KINZINGER: Look, I mean, I've talked to Ukrainian members of parliament, those out, you know, advocating for what's needed on the ground as well. And they say they need these. I mean, we can have the Pentagon all they want say, well, we don't think they have the pilots for the MiGs. They do. They have pilots trained and waiting. We can have the Pentagon say, well, we think this is escalatory. Well, if you don't think, you know, javelins that are killing thousands of Russian soldiers are escalatory, but then sending an airplane, you know, and frankly, Ukraine has already flown some airplanes is the, like, escalatory thing, that's just wrong. And I think it's sending the wrong message. We have to give them everything they need to win this war because we've made it clear we're not going to intervene directly. And I don't think we should at this point.

JOHN DICKERSON: All right. We're going to move on, Congressman, to the January 6 committee. Bob Costa and Bob Woodward, who are both on with me a little bit later, reported on texts to the committee this- that the committee has from the wife of Clarence Thomas. And I just want to read a little excerpts of them. They are to the White House chief of staff, Mark Meadows, urging efforts to overthrow the election. Mr. Thomas wrote 'Do not concede,' And then in another she wrote, 'The majority knows Biden and the left is attempting the greatest heist of our history.' Where are these significant?

REP. KINZINGER: Well, look, I can't, as a member of the committee, confirm, deny the existence of those. I'll tell you, though, we have thousands of text messages from lots of people. We have a lot of documents. And we are going to, in a methodical, fact-driven way, get to the answers here. We'll- we'll call in whoever we need to call in. I think the bottom line for the committee is this, was there an effort to overturn the legitimate election of the United States? What was January 6 in relation to that? And what is the rot in our system that led to that and does it still exist today? You know, with conspiracy theories, as we've seen, you know, reported this idea of releasing the kracken or that the CIA attacked the DOD or was attacked by the DOD in Germany. John, like half of the country at one point believed some of that stuff. And this is a roadmap for how to overturn a legitimately elected government. So this is important. We're going to get to the bottom of this. And as we're seeing in Ukraine, people are willing to die for democracy. We at least have to be willing to put careers on the line for the same cause.

JOHN DICKERSON: So no one's disputing the authenticity of these texts. Which leads to the question: will the committee subpoena Mrs. Thomas and question her?

REP. KINZINGER: Look, I think, again, we want to make sure that this isn't driven, even though it's in the political realm, it's not driven by a political motivation, it's driven by facts. So when it comes to any potential future calling in of Ms. Thomas, we'll- we'll take a look at what the evidence is and we'll make a decision and you all will know as soon as we do. What I don't want to do is get into speculating too much, because I think it is important that we have answers for the American people in a factual way here.

JOHN DICKERSON: You talked about rot in the system. Does the rot reach the Supreme Court?

REP. KINZINGER: Look, again, I'm not going to say that. I'm not going to say that it does or doesn't. We're just going to present the American people what the answer is. And the Supreme Court handles their own ethics. They handle their own internal stuff. But what we need to do is present to the American people where they've been lied to, where they've believed lies, where there are bad actors out there, for instance, that are sympathetic to Vladimir Putin. That kind of stuff is very important so that in

five or ten years when kids are reading in the history books about January 6th, they're not buying into any of these conspiracies. They're getting the truth.

JOHN DICKERSON: What is wrong with- you said the Supreme Court has its own ethics, so we'll let them handle that. Why can't a private citizen send texts, as many as they may be, to the White House chief of staff, what's- what's wrong with that?

REP. KINZINGER: Well, again, we're in a position where we're not confirming or denying, you know, what's been reported by Costa and Woodward. But if they're- you know, look, in any case, if a- if a private citizen has a conversation, of course, we have a freedom of speech- speech in this country. The question for the committee is this or any exchange, was there a conspiracy or an attempt to come up with a reason or how close did we get to overturn an election. Look, we are not as the committee out to, you know, to throw people in jail. We can have criminal referrals like we do against Mark Meadows because he has denied legitimate requests from Congress to come in repeatedly. So that's in DOJ. Our job is just to get answers to the American people and then they can decide.

JOHN DICKERSON: Before- these texts drop off. They go away in December and January, given the passion with which Mrs. Thomas was texting. Do you- are you confident that Meadows has handed over all of his texts?

REP. KINZINGER: I'm not confident that- that Meadows's handed over everything at all. I mean, he was cooperating with us for a little bit, and then in an attempt to make Donald Trump happy, he stopped cooperating. We gave him plenty of space to come back to resume that. He has not. And in fact, he's waived executive privilege, you know, a thousand times by-by presenting us what he already has. So, no, I'm not convinced he's handed over everything to us. And that's why it's in the DOJ's hands now, whether to prosecute him for contempt. He has contempt not just for Congress, for his old institution of Congress, and thereby for the American people. I hope DOJ does the right thing and I hope we get all the information that- not- it's not Congress that the American people deserve, John. The American people deserve these answers.

JOHN DICKERSON: All right, Congressman Kinzinger, thank you so much for being with us. We'll see you again. And we'll be right back with a lot more on FACE THE NATION. Stay with us.

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From: Steves, Vincent A.
Subject: [EXTERNAL] "This Week" Full Transcript: Sunday, October 3, 2021
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October 3, 2021

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**"THIS WEEK WITH GEORGE STEPHANOPOULOS"
FULL SHOW TRANSCRIPT**



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*A rush transcript of "This Week with George Stephanopoulos" airing on Sunday morning, October 3, 2021 on ABC News is below. This copy may not be in its final form and may be updated. **All excerpts must be attributed to ABC News "This Week with George Stephanopoulos"** George Stephanopoulos serves as Anchor, Martha Raddatz and Jonathan Karl are Co-anchors. The program airs Sundays on the ABC Television Network (check local listings). Visit the "This Week" website to read more about the show at: www.abcnews.go.com/thisweek*

Transcript:

ANNOUNCER: "This Week With George Stephanopoulos" starts right now.

(BEGIN VIDEOTAPE)

JONATHAN KARL, ABC "THIS WEEK" CO-ANCHOR (voice-over): No deal.

JOE BIDEN, PRESIDENT OF THE UNITED STATES: I'm telling you, we're going to get this done.

(CROSSTALK)

BIDEN: It doesn't matter when. It doesn't matter whether it's in six minutes, six days or six weeks.

KARL: Democrats deadlocked over President Biden's agenda.

SEN. JOE MANCHIN (D-WV): You have a good piece of legislation. Don't let the perfect be the enemy of the good.

REP. NANCY PELOSI (D-CA): You cannot tire. You cannot concede. This is the fun part.

BIDEN: Everybody's frustrated. It's part of being in government, being frustrated.

KARL: Can Democrats get on the same page? What happens next? Will there be a vote?

Senator Bernie Sanders is our guest.

COVID game-changer.

UNIDENTIFIED MALE: This is a pill. You can take it home.

KARL: Merck announces a breakthrough drug that could cut the risk of hospitalization or death in half.

DR. ANTHONY FAUCI, CHIEF MEDICAL ADVISER TO PRESIDENT BIDEN: The news of the efficacy is obviously very good news.

KARL: This as the United States crosses another grim milestone, 700,000 deaths.

Dr. Anthony Fauci joins us this morning.

And Supreme distrust. Public approval of the nation's highest court sinks to an all-time low, abortion, gun rights and the death penalty on the line, our inside look, as the High Court starts a new term.

(END VIDEOTAPE)

ANNOUNCER: From ABC News, it's "This Week."

Here now, co-anchor Jonathan Karl.

KARL: Good morning, and welcome to "This Week."

For much of this week, President Biden stayed out of public sight, as Democrats fought bitterly among themselves. When he emerged Friday to meet with Democrats on Capitol Hill, there were two schools of thought about what he was up to. Either he had a plan to break the impasse and push for a vote, or he was making a desperate attempt to bring his fractured Democratic majority together.

It turned out it was neither. This morning, lawmakers are back home, the president is at his retreat in Delaware, and the fate of the Biden agenda is anything but certain.

In a way, the spectacle that unfolded this week was an unforced error created by an artificial deadline. Biden still has time. The real question is whether he has the votes. After all, he is attempting to pass a program as ambitious and expensive as FDR's New Deal or LBJ's Great Society.

But FDR and LBJ enjoyed huge Democratic majorities. Biden's majority is razor-thin, and time may not help. There is increasing tension among moderate and progressive Democrats and a sense that the White House is falling short.

As one Democratic lawmaker told ABC News -- quote -- "Most of us are at a loss for words. There was no plan, no strategy, no timing."

ABC's Rachel Scott has covered it all for us this week. And she joins us now from Capitol Hill.

So, Rachel, where are things this morning? What comes next?

RACHEL SCOTT, ABC NEWS CONGRESSIONAL CORRESPONDENT: Well, Jon, good morning.

House Speaker Nancy Pelosi has already had to push this vote off twice. Now she has set a new deadline of October 31. That gives President Biden roughly four weeks to try and unite his party to pass his domestic agenda.

And this is proving not to be easy. Tensions between progressives and moderates are only worsening, Senator Kyrsten Sinema, a key holdout there in the Senate, releasing a blistering statement, saying it's not only deeply disappointing, but inexcusable for the House not to pass and vote on that bipartisan infrastructure package immediately.

She also says that it erodes the trust needed for these good-faith negotiations. She went on to call the strategy by progressives ineffective.

But progressives this morning are flexing their muscles. They know that their strategy is working and they have the votes to block that bipartisan infrastructure package until their party reaches a deal on that much larger social spending bill that includes funding to combat climate change and for child care.

The cost of that is \$3.5 trillion over 10 years. I'm told, when the president met with Democrats here on Friday, he told them that number is likely to come down to roughly \$2 trillion. But even that is still too high for some moderates there in the Senate.

And, as you know, Jon, they cannot afford to lose a single vote.

KARL: So, Rachel, on that point, where are Republicans in all this?

Because, of course, that bipartisan deal passed in the Senate with 19 Republican senators voting yes. Is there still significant or any Republican support in the House for the -- for at least that first bipartisan -- or what has been a bipartisan infrastructure bill?

SCOTT: Well, Jon, I was talking to one Republican aide who told me that Democrats linking these two items together is -- quote -- "the poison pill."

House Republican leadership is now encouraging its members to vote against the bipartisan infrastructure package. Now only a handful of Republicans even seem open to the idea. But they were frustrated by Speaker Pelosi pushing this off yet again, and they may reconsider.

Now, of course, Democrats do not need any Republican support to get this passed. But they need to get their party united first, Jon.

KARL: Thank you, Rachel Scott. And joining me now, the senator in the middle of it all, budget chairman in the Senate, Bernie Sanders.

Senator Sanders, thank you for joining us. The bottom line, where do things stand now?

SEN. BERNIE SANDERS, (I) VERMONT AND BUDGET COMMITTEE CHAIR: Well, I think we're going to make real progress, and I think, Jonathan, we're going to do what the American people want us to do.

And the American people are very clear, they want to substantially lower the cost of prescription drugs, they want to expand home health care so that people are not forced out of their homes into nursing homes, they want to expand Medicare so that elderly people can have dental care, can have hearing aids, can have eyeglasses, they want us to address the existential threat of climate change.

And I'll tell you what else they want, they are sick and tired of the rich getting richer and not paying their fair share of taxes, and they want this reconciliation bill to be paid for by doing away with the loopholes that the wealthy and large corporations enjoy.

So we have the American people very, very strongly on our side. We've got the President of the United States on our side. Got 96 percent of the members of the Democratic caucus in the House on our side. We got all but two senators at this point in the Democratic caucus on our side. We're going to win this thing. We're going to pass a strong infrastructure bill to rebuild our crumbling infrastructure, and we're going to pass the reconciliation bill.

KARL: Well, and I want to get to one of those two senators that is not with you right now, Senator Sinema, as we heard Rachel Scott refer to, put out a lengthy statement overnight about the failure of the House to vote on that infrastructure bill. She said in part, "The failure of the U.S. House to hold a vote on infrastructure investment and Jobs Act is inexcusable and deeply disappointing for communities across our country. Denying Americans millions of good-paying jobs, safer roads, cleaner water, more reliable electricity and better broadband only hurts everyday families."

She accuses you, Senator, and other progressives of pulling off what she calls an ineffective stunt, and holding that infrastructure bill hostage to the larger social infrastructure bill. Your response?

SANDERS: Well, I think Senator Sinema is wrong. I think from day one, Jonathan, it has been clear the President of the United States has said it. Speaker of the House Pelosi has made it clear. Majority Leader in the Senate Schumer has made it clear. Both of these bills are going forward in tandem, going forward in tandem. We've got to pass them both.

I voted for the infrastructure bill. It is an important bill. I'm a former mayor. I know how much we have got to address our crumbling infrastructure and create jobs there, but I also know that elderly people in this country cannot chew their food because they don't have teeth in their mouth. I know that the American people are sick and tired of paying 10 times more for prescription drugs than the people of Canada and other countries. I know there are young people out there who would love the opportunity to get a higher education, but can't afford community college. We're going to make two years of community college tuition free. And I also that the scientists are telling us that if we do not act boldly in terms of cutting carbon emissions, that the planet we're leaving our kids and grandchildren will be increasingly uninhabitable.

And let me also say this, Jonathan. We are not just taking on or dealing with Senators Manchin or Senator Sinema. We're taking on the entire ruling class of this country. Right now the drug companies, the health care -- the health insurance companies, the fossil fuel industry are spending hundreds and hundreds of millions of dollars to prevent us from doing what the American people want. And this really is a test of whether or not American democracy can work.

The Republican Party is bought and paid for by the pharmaceutical industry. They're not going to do anything. But I hope very much and I expect that the Democratic caucus and the president, I know he will, stand firm and tell the drug companies, "Stop ripping us off (ph)." Tell the insurance companies that the American people need -- elderly people need dental care, hearing aids and eyeglasses. People need home health care, our young people need --

KARL: So let me --

SANDERS: -- quality child care that they deserve.

KARL: So let me ask you about where the president is on this. As I understand it, he has now floated a \$2 trillion top line number on this broader bill. You are at \$3.5 trillion. I remember you initially wanted closer to \$6 trillion. Are you comfortable with the idea of cutting this down to about \$2 trillion?

SANDERS: No, I'm -- well, first of all, I'm not sure that that's accurate. As you know, there's a lot of gossip that goes on. What the president has said is that there's going to have to be some give and take, and I think that that's right. I think if anything, Jonathan, when we especially talk about the crisis of climate change, and the need to transform our energy system away from fossil fuel, the \$6 trillion that I had originally proposed was probably too little, \$3.5 trillion should be a minimum. But I accept there's going to have to be give and take.

But at the end of the day, the real issue now --

KARL But, OK, OK. So, give and take, but not \$2 trillion. That's not enough?

SANDERS: No. Not enough.

KARL: Because the president also said that a smaller investment could create historic achievements. But you -- \$2 trillion is not enough?

SANDERS: What we are -- what the president is saying is that what we are trying to do is for the working families of this country for the children, for the elderly, we're trying to pass the most consequential piece of legislation since the Great Depression, and he's right, you know?

KARL: Yeah.

SANDERS: So, the bottom line is we've got to pass it. We've got to pass the infrastructure bill. And the American people are going to have to stand up.

You know, what bothers me about this whole thing -- poll after poll shows what we are doing is exactly what the American people want. It's not what the big money interest wants, not what the lobbyists want. It's what the American people want, and we got to do it.

KARL: Now, Senator Manchin is the other senator in the middle of this. He's been consistent. We actually had him on this program back in July. And let me -- let me play you what he said about his top line number back then.

(BEGIN VIDEO CLIP)

KARL: So, what's your bottom line? The question is, this is over a trillion dollars.

SEN. JOE MANCHIN (D-WV): The bottom line --

KARL: Bernie Sanders wants 6 more trillion.

MANCHIN: Yeah. Here's --

KARL: What -- how far are you willing to go?

MANCHIN: I want to make sure we pay for it. I do not want to add more debt on. So, if that's \$1 trillion or \$1.5 trillion or \$2 trillion, whatever that comes out to be over a ten-year period, that's what I would be voting for.

(END VIDEO CLIP)

KARL: So, I mean, basic math tells me if you have Sinema and Manchin both willing -- unwilling to go --

(CROSSTALK)

SANDERS: No, no, no. If you will just listen -- Jonathan, if you just listen to what Manchin said. He said he wants it to be paid for.

He's right. I want it to be paid for. And, in fact, that is exactly what we are going to do, and if it's \$3.5 trillion, we can pay for it because as everybody knows, we got some of the wealthiest people in this country who in a given year don't pay a penny in federal income tax. Large corporations don't pay a nickel in federal income tax.

So if Manchin wants to pay for it, I'm there. Let's do it, and by the way, you could pay for it at \$3.5 trillion, you can pay for it at \$6 trillion. We have massive income and wealth inequality in this country.

KARL: But --

(CROSSTALK)

SANDERS: We have a broken tax system. We can do that.

KARL: But as you know, I mean -- imagine what he's saying is the only taxes (ph) he's willing to go would give you at most \$2 trillion. We also heard --

(CROSSTALK)

SANDERS: That's in -- I'm sorry.

KARL: That's where he is. And Terry McAuliffe who, of course, is on the ballot running in Virginia is saying that \$3.5 trillion is simply too big. It's going to hurt Democrats, and he thinks it might hurt him in his own race in Virginia.

What do you say -- you're --

(CROSSTALK)

SANDERS: I wish -- I wish Terry McAuliffe the best of luck. I hope he becomes the governor of Virginia again. But let -- let him focus on Virginia issues. Some of us have got to deal with the national issues.

And what I am telling you, ask the American people whether or not we shall have Medicare negotiating prescription drug prices. Ask them. Ask them whether or not we should expand home health care, whether we should make community colleges tuition-free, whether or not we should deal with climate. And when we do all of those things, by the way, we create millions of good-paying jobs.

What we are fighting for is precisely what the American people want, and that's when we've got to do.

KARL: OK. We're just about out of time. Bottom line, if Manchin and Sinema don't come up, don't do what you are suggesting and what most of the Democrats are -- almost all of the other Democrats want, does that mean we get nothing? No infrastructure bill? Nothing?

SANDERS: No. At the end of the day -- at the end of the day, I am absolutely convinced we're going to have a strong infrastructure bill, and we're going to have a great consequential reconciliation bill which addresses the needs of the American people.

KARL: All right. Senator Sanders, thank you for joining us.

SANDERS: Thank you.

KARL: Let's bring in the roundtable for a reaction. Former New Jersey Governor Chris Christie, former DNC Chair Donna Brazile, "Politico Playbook" co-author Rachael Bade who has had scoop after scoop at this drama is unfolding this week, and ABC News political director, Rick Klein.

So, Donna, it's looked like a circular firing squad of Democrats up there. What -- what is the strategy?

DONNA BRAZILE, ABC NEWS CONTRIBUTOR: First of all, it's not a circle. It's coming from one side, and that side is not even at the table because they're AWOL.

What's happening right now is the Democrats are trying to put together the best possible package for the American people.

What happened this week? We avoided a government shutdown which is important because federal workers didn't want the uncertainty. We made sure that the transportation bill was extended for 30 more days. That's 3,700 people that didn't get furloughed this week.

What we have to -- we have to face the consequences of putting forward two bills that have a -- a hefty price tag. But here's what Speaker Pelosi has said from day one, we're going to pay for it. We're going to pay for it.

Now, Republicans are still trying to hold on to the past and the Trump tax cuts. The Democrats are saying, you know what, we're going to invest in the American people. With those three buckets -- thank you, Rachael -- those three buckets, because they contain jobs, we're going to retool the American workforce, yes, Chris, we're going to give free college, and that's important, Chris.

CHRISTIE: Right.

BRAZILE: And here's -- here's what else.

CHRISTIE: That's right.

BRAZILE: We're going to tackle climate change so that we never have to suffer the consequences of a Sandy or an Ida.

KARL: But -- but -- but you don't think -- you don't think this week went well for Democrats, do you? I mean -- I mean that -- I mean --

BRAZILE: It -- it depends on which -- which side of the aisle you're looking. If you're a Republican, you're saying, oh my God, look at those folks. But if you're a Democrat, you're saying, you know what, we're having a robust conversation about the future of the American workforce and we're having a robust conversation about health care and our transportation needs.

Look, I'm a Democrat. We like to talk to each other.

KARL: All right, I -- Rachael, you -- you were up there in the middle covering all of this. And "Playbook" put it very, very provocatively that when Biden went up there on Friday, he was essentially whipping against his own bill.

BADE: Well, look, those aren't my words.

KARL: Yes.

BADE: I got a call on Friday night from a very senior, very upset Democrat who was like, I've never seen anything like this. I mean there are a lot of Democrats on The Hill that were looking to President Biden this week for some leadership. What do you want? Do you want an infrastructure bill passed this week? Do you want to take that win? But they couldn't get clarity. How did he want them to vote? You know, Pelosi kept delaying this vote because the progressives were saying they weren't going to -- they weren't going to support it and she didn't have the numbers and they were trying to get a separate reconciliation deal. And then the president came to The Hill on Friday and he said, we're going to wait. We're going to hold off on this until we get both of these packages negotiated. And I think, you know, that means that there are some promises that were made to moderate Democrats about having a vote on infrastructure this week. They want a campaign on that. They want that victory. And, you know, Speaker Pelosi said she was going to give them this vote, and then President Biden came in and totally trampled it.

And so there's a lot of people on The Hill, Democrats, who are very frustrated right now. They feel like, you know, their promises are not being kept. You know, progressives, there was a sort of secret agreement contract thing that was released this week. We reported on it at "Politico" between Chuck Schumer and Joe Manchin.

KARL: Yes. It was signed and everything. It was a strange thing, yes.

BADE: It was signed. It was bizarre. And it said the top line number would be 1.5 when progressives were thinking it was 3.5 and it dated back to July. I mean there's just -- there's so much uncertainty and no clear strategy and people are privately very upset.

KARL: And there's no clear path, Rick, because -- I mean we -- we see where Sinema is. She didn't -- she's not getting any softer on this. That statement overnight was tough. We know where Manchin is. And you just heard Bernie Sanders say \$2 trillion is nowhere near enough.

KLEIN: Right. President Biden has been shopping that number in the lows twos. I'm -- I'm told that the White House has been saying we need something that -- that -- the number has to start with a two. The rest of it is just hundreds of billions of dollars in -- in between.

But, you're right, look, you've got people that are taking different lessons out of this week and they see a president that is as engaged on one side or the other. He's kind of still sounding people out.

And I think where Democrats' problem here is, there's just so much mistrust. They really don't like each other. They don't believe in each other's same political motives. And the problem, though, I think isn't that they're lying to each other, it's actually that they've been honest with each other and they don't want to hear it because they have different visions. They have different numbers. They have different values.

And so much of this is a -- is a long-running feud inside the Democratic Party that is no closer to being -- to being sorted out. And I think there's maybe an inevitability to the clash of this week and I think that's the White House perspective. This was going to happen at some point or the other, so let's just delay this vote. But I don't see what changes in the dynamics in the next couple of weeks because you have the progressives just as dug in, and the moderates still willing to walk away.

KARL: And Kevin McCarthy gets to lean back on it.

CHRISTIE: Well, look, it -- it doesn't matter. When -- you know, I had a political science professor in college who told me, when your adversary's in the midst of committing suicide, there's no reason to commit murder. The result is the same. And that's what's happening with Democrats right now.

It's the death of 2020 Joe Biden. When he went to The Hill, 2020 Joe Biden is now officially dead and buried. The guy who ran against the progressives, ran against Bernie Sanders and Elizabeth Warren, ran to be a uniter in this country, ran saying he was going to force compromise. And he went up to Capitol Hill, and he capitulated to the progressives, the liberals in his party. And why should we be surprised? He couldn't stand up to the Taliban. How could we expect him to stand up to AOC?

BRAZILE: Oh.

KARL: OK. So -- so -- so, look, Donna, that's a partisan take to be sure, but -- but --

CHRISTIE: Well, no, no, wait, let me ask you a question.

KARL: But, I mean --

CHRISTIE: Hold on a second.

KARL: Yes.

CHRISTIE: Did he stand up to the Taliban? Why is that partisan?

BRAZILE: He wasn't (INAUDIBLE). Joe --

CHRISTIE: He hasn't stood up to anyone except for the people in his own party who nominated him.

KARL: Right.

BRAZILE: Donald Trump invited the Taliban --

CHRISTIE: Bernie Sanders didn't vote for him.

BRAZILE: Donald -- Donald Trump was inviting the Taliban to Camp David.

CHRISTIE: Oh, I know.

BRAZILE: And I would have (INAUDIBLE) --

CHRISTIE: Donald Trump -- by the way, Donald Trump --

BRAZILE: And I would have personally driven to that mountain to say, take your butt home.

CHRISTIE: Wait, wait, wait, by the way, Donald Trump -- in case you didn't know, Donald Trump's --

BRAZILE: All right, but that -- that -- that's -- but that's not fair.

CHRISTIE: By the way, Donald Trump's not in the White House anymore and Joe Biden is kind of in the White House.

BRAZILE: Joe Biden has created more jobs in the first couple months of his presidency than any other president.

CHRISTIE: And more inflation, thank you.

BRAZILE: He -- that inflation was already coming down the pipe.

CHRISTIE: Yeah, sure, it was.

KARL: But, Donna...

(CROSSTALK)

BRAZILE: And look, this notion -- and, look, I'm sorry that you have to cover this, Rachel, and Rick, okay?

CHRISTIE: They're OK. They -- we can pay for that.

(LAUGHTER)

BRAZILE: I -- I've been in a room with Democrats all my life, and I still look good, OK?

You sometimes bleed in the middle of a fight, but when you're fighting for principles -- these are principles, bedrock principles that Democrats believe, that we help people, that we take them out of harm's way, that we provide them with education and jobs. This is why we're Democrats.

CHRISTIE: These bedrock principles lost in the Democratic primary.

(CROSSTALK)

CHRISTIE: What Bernie Sanders was just arguing, and Elizabeth Warren lost in the Democratic primary. Joe Biden said they were extreme.

KARL: Not -- not really.

CHRISTIE: They were extreme.

BRAZILE: No.

CHRISTIE: Did Joe Biden say Bernie Sanders was extreme? He did.

KARL: Well, Bernie Sanders was fighting on Medicare for all. That's not part of this...

BRAZILE: Yes.

KARL: There's a whole -- but let me ask you, to...

(CROSSTALK)

BRAZILE: ... lower the prescription drug prices, medicines, and that that's bad?

KARL: To the larger point, though, why wouldn't Biden want to take the victory...

BRAZILE: Of \$1.5 trillion? Because they promised -- you're right. They promised the moderates that...

KARL: That's a lot of money, by the way, \$1.5 trillion plus...

CHRISTIE: Plus \$1.9 trillion in January.

KARL: Plus...

BRAZILE: And you want me to count up all of the \$1.9 trillion tax cuts in the trickle-down? Look...

CHRISTIE: And guess what, those...

(CROSSTALK)

CHRISTIE: By the way, it doesn't even count.

BRAZILE: I would need a...

CHRISTIE: I understand that you want the American people...

BRAZILE: ... to deal with that trickle-down...

CHRISTIE: ... the American people to give their money rather than keep it themselves. I get that, that's fine. You can spend it better.

BRAZILE: No, we -- you know how much money we spent every day in Afghanistan and got nothing to show for it?

So let's -- let's talk...

CHRISTIE: Until the next terrorist is back, we'll see what we have to show for it.

BRAZILE: Let's start talking about how much it costs, and how many lives we're going to save, how many people we're going to educate, and how -- how many seniors will have the comfort of knowing that they can take their medicine.

KARL: If -- if you get -- if you get it passed.

Now, let me -- let's play what -- what President Biden said yesterday, expressing some real frustration at two Democrats in particular.

(BEGIN VIDEO CLIP)

PRESIDENT JOSEPH R. BIDEN, JR.: We can bring the moderates and progressives together very easily if we had two more votes.

QUESTION: Yeah.

BIDEN: Two -- two people.

(END VIDEO CLIP)

KARL: He leans in. Two more votes -- two more votes. It would be very easy. All we need is two more votes.

(LAUGHTER)

He's talking about Manchin and Sinema, but...

BADE: Oh, I thought -- OK, I was actually taking it as in two more votes, vote on infrastructure, vote on reconciliation, easy, peasy, one and done.

I mean, the problem that the president has right now is, because of this breakdown of trust, you could potentially see people walk away from the negotiating table. And with such very narrow margins in both chambers, they can't lose anybody. They can't lose a single senator in this -- or Democrat in the Senate right now.

And, you know, Kyrsten Sinema told President Biden at least twice that if this vote -- this infrastructure vote this week was delayed or went down, she was going to walk away. And so it will be interesting to see what happens this week. Is she going to keep talking to them? Is she going to push pause on this?

I mean, Nancy Pelosi has this new October 31st deadline, but she needs to strike a deal with these moderates.

And, you know, to go back to the point, you know, that Chris was just making, you know, if you look at the overall total,

Democrats have been talking \$6 trillion, then it was \$3.5 trillion, but \$2 trillion is quite significant when you add another \$1 trillion with infrastructure and what they've already passed this year.

You know, they're going to have to, at some point, change the way they talk about this if they're going to sell this as not, you know, to their own party, their own base, as a victory. And Speaker Nancy Pelosi this week, you know, she got down to business and she put together a preliminary proposal to the moderates that was at \$2 trillion. And so the longer they're, sort of, fighting about this \$3.5 trillion...

KARL: And let me ask you just very quickly. You -- you count these votes as well as anybody. Are there the votes even in the House to pass \$3.5 trillion?

BADE: Absolutely not. No, I mean, moderate Democrats in the House...

KARL: It's not just Manchin and Sinema. It's...

BADE: And they -- these moderate Democrats, they know that the House is very vulnerable in 2022, and they're probably going to lose their seats. And so they are trying really hard to force the leadership to do a negotiation with the Senate, bring the number down so they don't have to take such a politically risky vote.

KARL: All right, we've got to take a break. We we will be back with the roundtable with more.

Coming up next, Dr. Anthony Fauci -- Fauci joins us to weigh in on the new breakthrough treatment to treat COVID.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

GOV. GAVIN NEWSOM (D-CA): Once the FDA approves the vaccination in different cohorts starting with 12 and above, grades seven to 12, we will begin to apply that requirement in the next term.

(END VIDEO CLIP)

KARL: California Governor Gavin Newsom, fresh off defeating a recall effort against him, announcing the nation's first COVID vaccine mandate for schoolchildren.

It comes as the nation passes the once unthinkable milestone of 700,000 lives lost due to the pandemic.

Dr. Anthony Fauci joins us now.

Dr. Fauci, thank you for being here.

I want to start with that number, that just almost incomprehensible number, 700,000 people who have died just in the United States from the pandemic. How did -- how did we get here? Did so many have to die?

DR. ANTHONY FAUCI, CHIEF MEDICAL ADVISER TO PRESIDENT BIDEN: Well, this is the most formidable virus, Jon.

It is really -- from the very beginning, it's evolved, to the point where we're now dealing with this Delta variant, which is an extraordinary virus, in the sense -- the same virus. It's still SARS-CoV-2, except that it has the capability of transmitting extraordinarily -- efficiency.

There are certain elements about this that were just unavoidable, in the sense that there were going to be deaths, there were going to be a lot of infections globally, no matter what anyone did. But there were situations where we could have done better and we can do better.

And I think we're living through that right now, Jon, because we now have within our capability highly effective and safe vaccines. And although we have done well, in the sense that we now have 55 percent of the population fully vaccinated, 64 percent having received at least one dose, but there are 70 million people who are eligible to be vaccinated who have not gotten vaccinated.

So, when you say, are some of those deaths avoidable, they certainly are. In fact, looking forward now, most of the deaths could be avoidable if we get people vaccinated, because, if you look at the people who get hospitalized, at the people who die, it is overwhelmingly weighted towards the people who are unvaccinated.

So, where we are right now, many of these could be avoidable.

KARL: We also have this breakthrough, apparent breakthrough, that Merck announced, this new treatment that seems to be able to cut down hospitalizations and severe illness in half.

How big a deal is this -- is this new treatment?

FAUCI: It's a big deal, Jon.

I mean, you have now a small molecule, a drug that can be given orally. And the results of the trial that were just announced yesterday and the day before are really quite impressive. I mean, if you do a statistical significant analysis on it, it's very, very significant, cutting the deaths and hospitalization by 50 percent.

Importantly placebo versus the drug group, in the drug group, there were zero deaths. In the placebo group, there were eight deaths.

So, that is -- you know, no matter how you slice that, that's impressive. So, we're really looking forward to the implementation of this.

KARL: Is that potentially that would -- that would make the vaccine not necessary?

FAUCI: Oh, absolutely not. That's such a false narrative. That someone says, well, now you have a drug. Remember, the easiest way to stay out of the hospital and not die is don't get infected. This drug is very good but --

KARL: Don't get sick in the first place. Yeah.

FAUCI: Exactly.

I mean, this idea about we have a drug, don't get vaccinated just doesn't make any sense.

KARL: And let me ask you about this new announcement from Governor Newsom in California. A mandate for students -- all eligible students to get the vaccine. And there's no out here. He's not allowing testing as an alternative.

Do you favor that or should testing be an alternative for those that don't want their kids to take this vaccine?

FAUCI: You know, Jon, I have been and I still am in favor of these kinds of mandates. You can make some exceptions to them. But in general, people look at this like this is something novel and new when, in fact, throughout, you know, years and years, decades, we have made it a requirement for children to get into schools to get different types of vaccines -- measles, mumps, rubella, and others.

So when people treat this as something novel and terrible, it isn't. A requirement for children to come to school to be vaccinated with certain vaccines is not something new. It's been around for a very long time.

KARL: What do you say to those that say, this is such a new vaccine that they're reluctant? They want to -- you know, for their young children, they just feel -- I mean, obviously, the other vaccines are required, but there have been

decades of experience with those vaccines and they're hesitant.

What do you say to them? How do you reassure them?

FAUCI: Well, Jon, a couple of things. First of all, our Food and Drug Administration, before they allow something to be given to anyone, it has to be proved to be safe and effective. They are very meticulous in their examination of the data.

In addition, Jon, this vaccine has been given to hundreds of millions of people. So when you say it's a new vaccine -- well, you know, when you have a new vaccine that's been given to 10,000, 15,000, 20,000, 30,000, 100,000 people, you're talking about hundreds and hundreds of millions of people throughout the world. So, although it is, quote, new, there is a lot of experience with this vaccine.

KARL: All right. Last question, Dr. Fauci. There has been some good news. It looks like infections are down dramatically over the last couple of weeks. Deaths are still on the rise. That's obviously a lagging indicator.

Is it possible that we are finally beginning to turn the corner on this pandemic?

FAUCI: We certainly are turning the corner on this particular surge, Jon. But we have experienced over now close to 20 months of surges that go up and then come down, and then go back up again. The way to keep it down, to make that turnaround continue to go down is to do what we mentioned. Get people vaccinated.

When you have 70 million people in the country who are eligible to be vaccinated who are not yet vaccinated, that's the danger zone right there. So it's within our capability to make sure that that turnaround that we're seeing, that very favorable and optimistic turnaround continues to go down, and doesn't do what we've seen multiple times before where it goes down, and then it comes back up. We can do that merely by getting vaccinated.

KARL: All right. Dr. Fauci, thank you for joining us.

When we come back, the roundtable takes on the fallout from the nation's top military leaders breaking with President Biden over Afghanistan.

Plus, a look at this year's most hotly contested and high stakes election.

(COMMERCIAL BREAK)

KARL: The roundtable's back, ready for more.

We'll be right back.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

UNIDENTIFIED MALE: General Milley, was this Afghanistan retrograde operation an extraordinary success?

GEN. MARK MILLEY, CHAIRMAN, JOINT CHIEFS OF STAFF: I think one of the other senators said it very well, it was a logistical success, but a strategic failure.

GEN. KENNETH MCKENZIE, COMMANDER, CENTRAL COMMAND: My concern was that if we withdrew below 2,500 and went to zero, that the Afghan military and government would collapse.

(END VIDEO CLIP)

KARL: Blunt words from the nation's top military commanders who directly contradicted what President Biden told

George Stephanopoulos about the decision to withdrawal all U.S. troops from Afghanistan.

Let's discuss it all with the roundtable.

Rick, I've got to say, I've covered the Pentagon; I've covered Congress, covered the White House. I have never seen the top military brass in the country so directly contradict the commander in chief.

KLEIN: It was an extraordinary moment. And I think it confirmed the perceptions that were coming out in real time, that there was different advice that was coming into the White House than that President Biden was willing to talk about. Because he was standing behind that decision even as the situation crumbled, even as those service members were killed, even as it became clear that there were serious intelligence failures along the way.

And I think this episode has had a more lasting impact than just foreign policy or just Afghanistan. You can look at President Biden's approval ratings on a range of issues, and they've flipped, almost mirror image, around that moment, around the Afghanistan, that botched withdrawal.

And now to have information come in from military commanders that there were other options on the table, it's devastating, potentially, to the White House, and it helps feed a narrative of a lack of credibility, at a moment where the White House needs it more than ever. These are critical weeks for the Biden presidency.

And -- take that as it may be, Donna, it is still somewhat jarring to hear four-star generals, the top four-star general in the military, chairman of the Joint Chiefs, talk so bluntly in contradiction to what the president was saying.

BRAZILE: Oh, no, I thought it was refreshing.

KARL: It was refreshing?

BRAZILE: You know why?

KARL: Why?

BRAZILE: Because they told the truth. Look, they come to the table and say, "Mr. President, we should keep 2,500; Mr. President, we should do this," and at the end of the day, the president decides.

And they said it's about civilian control. That was a very acrimonious -- not just on Tuesday, but also on Wednesday. I loved watching it because, again, it shows you our system of government worked. That was the job of the president to make the decision. He -- that's why President Biden said, "I will own it." He owned it.

KARL: Chris, what -- what do you make of General Milley?

Because now we've seen him, I mean, more starkly take on Donald Trump, but also, again, "strategic failure" -- strong words.

I mean, he's the president's top military adviser, two different presidents. And he's been at odds with both of them.

BRAZILE: Look, listen, I agree with Donna on this one.

I mean, I think, you know, their job is to go up there and tell the truth, and they did. And that should be without regard to politics.

Here's my problem. Why didn't the president?

I mean, why wouldn't the president have said to George, "You know what? I got a whole bunch of different opinions, but in the end, the people elected me to make these decisions. I'm the commander in chief, and I'm taking it."

Instead, he didn't do that. He said, "No, no, no, I didn't get any other contrary advice," wanting to make it seem like -- and this is Joe Biden's pattern, right?

Over the course of his entire career, he's a little bit loose with the facts. And he always wants to make himself look better. And -- and maybe when you're in the Senate, it matters less. But when you're the president, and you sit there and say there was no opposition and then these guys come out and say it, it does what Rick said. It erodes public trust in what he says.

The president should have just said, "There were different opinions. I disagreed with this general or that general. My choice, I'm the commander in chief, my call, and I own it."

He got close, but he had to just make himself seem a little bit better, and it's costing him.

KARL: Donna?

BRAZILE: Well, look, at the end of the day, did anyone foresee the collapse of the Afghan army or the Afghan government?

They also said that. I mean, I listened to the hearings because I want to -- I want to learn from our mistakes. We should all learn from our mistakes in Afghanistan, the trillions of dollars, the lives lost.

We couldn't build a lasting army or a government, and the women and people of Afghanistan, it's suffering, a humanitarian crisis. At the end of the day, President Biden took responsibility. He owns it. And whether his poll numbers bounce back, the American people should understand, that war, something went wrong.

KARL: Yeah, and it's -- it's 20 years of something going wrong.

OK, I want to get now to the -- to the big race of this year, of this calendar year, the governor's race in New Jersey. I want to get all you to weigh in.

CHRISTIE: New Jersey...

BRAZILE: Wait. Wait. Wait.

KARL: But first...

(LAUGHTER)

... we have Nate Silver, took a look at the race. Let's look at Nate's take.

(BEGIN VIDEO CLIP)

NATE SILVER, FOUNDER, FIVETHIRTYEIGHT, AND ABC NEWS SPECIAL CORRESPONDENT: If you watch enough of these segments, you know that we really try to emphasize probability. And there certainly is the chance the GOP could win in Virginia next month.

According to the new FiveThirtyEight polling average in Virginia, Democrat Terry McAuliffe, the former governor, leads businessman Glenn Youngkin by only about three percentage points.

Translated into a probability, a candidate who trails by that amount with about a month to go might expect to win the race around 30 percent of the time, which is a pretty decent chance.

At the same time, we've seen versions of this movie before, and it didn't end so well for Republicans. In the 2017

governor's race in Virginia, Democrat Ralph Northam led Republican Ed Gillespie by three points in a final polling average. And the conventional wisdom was that the race was a tossup. But Northam ended up winning by around nine points, not really a close call at all.

More recently, polls of the California gubernatorial recall showed the race nearly tied with a month to go, but "No recall" bound up winning by a whopping 24 points.

Virginia isn't California, but it's more blue at this point than purple. Joe Biden beat Donald Trump there by 10 points last November, relevant in the state, where Youngkin's got Trump's endorsement. It has two Democratic senators, and it's had Democratic governors for 16 of the past 20 years.

So, do I buy the Democrats should be worried? Well, sure. Democrats tend to worry about everything, and a loss in Virginia would be a bad sign for the party come 2022. But, still, the odds on McAuliffe's side.

(END VIDEOTAPE)

KARL: OK, so thank you, Nate.

I said New Jersey. I meant Virginia. Chris Christie's getting into my head over here.

(LAUGHTER)

KARL: Rachael, to Nate's last point there, if Youngkin pulls off a win in the increasingly blue state of Virginia, how big a blow is that to Democrats going into the midterms?

BADE: I mean, it's certainly going to create a morale problem. And a lot of people are looking at this race to sort of figure out what they should be expecting in 2022.

I mean, the odds are that the House is going to flip in 2022, if you just look at the party in power typically loses two dozen seats. And, right now, Pelosi has like a three-seat margin. And so, obviously, people are looking at this governor's race to see if -- if Youngkin can pull this out.

At the same time, McAuliffe is sort of showing Democrats how to run. He's definitely been distancing himself from Biden. There was a debate earlier this week where Youngkin was going hard after Biden on effort, everything from Afghanistan to the border. And McAuliffe didn't defend him...

KARL: Yes.

BADE: ... and, in fact, said the \$3.5 trillion reconciliation number is too big.

So we're seeing that distance start to happen as Biden's poll numbers go down.

KARL: Which is interesting to see McAuliffe not like -- well, to see Youngkin attacking McAuliffe over Biden in a state that Biden won handedly.

KLEIN: Yes, and McAuliffe is the incumbent in this race, for all intents and purposes. He even talks like he's still the governor sometimes.

KARL: He does, yes.

KLEIN: And what's interesting here -- and this gets back to the conversation around infrastructure -- both of those candidates are for the bipartisan infrastructure plan. They both want to see it pass.

And that, I think, is one of the reasons that this October 31 deadline matters, because if the Democrats can't show

they're on the move, that they're getting things done, Terry McAuliffe is much more likely to take the blame for Democrats' inability to govern, inability to be competent in governance, if that's the narrative that comes out of this.

And he's been trying to make -- McAuliffe has been trying to make Glenn Youngkin into Donald Trump. His basic problem is, Donald Trump is not Glenn Youngkin, and Glenn Youngkin is not Donald Trump.

KARL: And you know Terry McAuliffe.

BRAZILE: Very well. I have known...

(CROSSTALK)

KARL: For a long time.

BRAZILE: Outside of Chris Christie, he's my other favorite former governor, who I hope to see as a new governor.

(LAUGHTER)

BRAZILE: Look, Terry is a good closer. We all know that.

The problem that Democrats face right now -- and the early voting started on September 17 -- is enthusiasm. We have got to raise the level of activity and enthusiasm. Terry is going to win this. Glenn Youngkin is a Trump wannabe. He may not sound like Trump. Clearly, he doesn't have Trump's hair or flair.

But he's a Trump wannabe. And Terry's going to close.

KARL: Is that right?

CHRISTIE: No, it's not. He's not a Trump wannabe at all. He's a much more pragmatic Republican in both his manner and his policies.

But here's the problem. Look, this looks a lot to me like 2009. And 2009 was a race that I was familiar with and Bob McDonnell after Barack Obama won overwhelmingly. Barack Obama won New Jersey by 700,000 votes in 2008. And then I came back and won by 100,000 in 2009.

Obama won Virginia. Then Bob McDonnell came back. And it gave a preview. So, I think it is an indicator for what will happen in 2022 in some respects. And I think it's this -- the breadth of a Republican win in '22.

I think Rachael is right. Republicans are very likely to win the House back, just given historic norms. The question about what this will show is, do they have a chance to win the Senate back too? And if Virginia or New Jersey were to go, I think they have a very good chance.

KARL: All right, that is it. That is the time we have.

Up next: guns, God and abortion. A blockbuster Supreme Court term gets under way tomorrow. And, as the court's political independence is scrutinized, perhaps more than ever, you might be surprised to look at who is coming to the court's defense.

Stay with us.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

“THIS WEEK” TRIVIA: Which House Speaker presided over two government shutdowns with President Bill Clinton?

Newt Gingrich.

NEWT GINGRICH, THEN-SPEAKER OF THE HOUSE: For the purpose of getting the federal government up to full speed, we are prepared to focus on the central question. Will the president sign a balanced budget agreement of seven years scored by the Congressional Budget Office?

(END VIDEO CLIP)

(COMMERCIAL BREAK)

KARL: Supreme Court Justice Amy Coney Barrett's long awaited investiture ceremony on Friday. She'll take a seat alongside most of her colleagues for the in-person oral arguments of the Supreme Court.

But with Justice Brett Kavanaugh joining remotely after testing positive for COVID-19, the term is already proving to be one of the most unpredictable and consequential in decades.

Our Devin Dwyer takes a closer look.

(BEGIN VIDEOTAPE)

DEVIN DWYER, ABC NEWS CORRESPONDENT (voice-over): In rare rapid succession, the justices have been disavowing politics.

CLARENCE THOMAS, ASSOCIATE JUSTICE, SUPREME COURT: I think the court was thought to be the least dangerous branch. And we may have become the most dangerous.

DWYER: The Supreme Court on a PR offensive.

STEPHEN BREYER, SUPREME COURT ASSOCIATE JUSTICE: We don't trade votes, and members of the court have different judicial philosophies.

DWYER: Justice Amy Coney Barrett, in a speech along Mitch McConnell, insisting the court is not comprised of a bunch of partisan hacks. The blitz a sign of growing concern about the court's credibility.

IRVING GORSTEIN, EXEC. DIR., GEORGETOWN LAW SUPREME COURT INSTITUTE: Not since Bush against Gore has the public perception of the court's legitimacy seemed so seriously threaten.

DWYER: Public approval of the Supreme Court has hit its lowest level in more than two decades, down 18 points from last year, sinking nine points just since July.

CROWD: (INAUDIBLE).

DWYER: The court's 5-4 midnight decision in September to allow that Texas ban on nearly all abortions only adding to public controversy.

MARY ZIEGLER, PROFESSOR, FLORIDA STATE UNIV. LAW: Roe v. Wade is on thin ice. At the moment, it really feels more as if it's a question of when, not if, and how, not whether.

DWYER: In a major case out of Mississippi this fall, the justices will decide whether to overturn nearly 50 years of abortion rights precedent. They'll hear cases on the death penalty, separation of church and state and a major Second Amendment case that could establish a right to carry a handgun outside the home.

ERIC RUBEN, ASSISTANT PROFESSOR, SMU LAW: It would mean that you could expect more people to be carrying handguns in places like New York City, Boston and Los Angeles.

DWYER: A blockbuster case is playing out before the most conservative court in a generation. A FiveThirtyEight analysis found Justice Sonya Sotomayor is now the most liberal justice. Clarence Thomas remains the most conservative. But no longer is there one justice in the middle, there are three, all conservatives, Chief Justice John Roberts and Trump appointees Brett Kavanaugh and Amy Coney Barrett.

LAURA BRONNER, FIVETHIRTYEIGHT: Barrett, for example, voted with Roberts and Kavanaugh over 90 percent of the time. She seems like she's going to be a core component of the conservative triad at the center of the court.

DWYER: Democrats had sounded the alarm about Barrett.

SEN. SHELDON WHITEHOUSE, (D) RHODE ISLAND: A judicial torpedo they are firing at the ACA.

DWYER: That she has so far defied expectations of both sides.

JEFFREY ROSEN, PRESIDENT, NATIONAL CONSTITUTION CENTER: The expectation that Justice Barrett would be a reliable vote for the most doctrine (ph) originalist position has not materialized.

DWYER: Brett Kavanaugh, the justice in the majority, more than any other last term, is also a critical vote to watch.

ZIEGLER: We don't know what a Brett Kavanaugh, who is no longer beholden to John Roberts to get the deciding vote, will say about abortion, and we don't know the same about -- about Justice Barrett.

DWYER: Barrett and Kavanaugh broke with the chief justice to allow that Texas abortion law to go ahead on technical grounds. A sign John Roberts' once dominant influence may be coming to an end.

ROSEN: Whenever it's possible to find a narrow, technical solution to a case, Chief Justice Roberts will encourage his colleagues to do it. And not all of them are on board with that.

DWYER: A court at a crossroads as Americans remain on edge over just how far and how fast the Supreme Court will go.

(END VIDEOTAPE)

KARL: Our thanks to Devin Dwyer for that.

And thank you for sharing part of your Sunday with us.

Check out "WORLD NEWS TONIGHT," and have a good day.

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From: Valle-Riestra, Jenna (Judiciary-Dem)
Subject: [EXTERNAL] A PROVEN CONSENSUS BUILDER, KETANJI BROWN JACKSON RECEIVES BROAD SUPPORT FROM ACROSS THE POLITICAL SPECTRUM
To: Valle-Riestra, Jenna (Judiciary-Dem)
Sent: March 15, 2022 4:44 PM (UTC-04:00)



For Immediate Release
March 15, 2022
Contact: Jenna Valle-Riestra
202-819-3335

A PROVEN CONSENSUS BUILDER, KETANJI BROWN JACKSON RECEIVES BROAD SUPPORT FROM ACROSS THE POLITICAL SPECTRUM

Writes one Bush-appointed judge: “[S]he is as highly credentialed and experienced in the law as any nominee in history... Republicans, in particular, should vote to confirm Judge Jackson.”

WASHINGTON – Since the day President Biden announced his intention to nominate Judge Jackson to the Supreme Court, support for her nomination has flooded in. The Senate Judiciary Committee has received—and continues to receive—glowing support letters for her, highlighting her fair and evenhanded approach; her track record of collegiality and consensus-building; and her qualifications and preparedness to serve on our nation’s highest court.

The examples outlined below are just some of the many statements of support the Committee has received for Judge Jackson.

Conservative support for Judge Jackson

Former George W. Bush-appointed D.C. Circuit Judge Thomas Griffith:“Judge Jackson has a demonstrated record of excellence, and I believe, based upon her work as a trial judge when I served on the Court of Appeals, that she will adjudicate based on the facts and the law and not as a partisan.” [LINK](#)

Former George H.W. Bush-appointed Fourth Circuit Judge Michael Luttig:“Judge Ketanji Brown Jackson is eminently qualified to serve on the Supreme Court of the United States. Indeed, she is as highly credentialed and experienced in the law as any nominee in history... Republicans, in particular, should vote to confirm Judge Jackson.” [LINK](#)

Two dozen conservatives and former Republican-appointed officials: “While some of us might differ concerning

particular positions she has taken as a judge, we are united in our view that she is exceptionally well-qualified, given her breadth of experience, demonstrated ability, and personal attributes of intellect and character. Indeed, we think that her confirmation on a consensus basis would strengthen the Court and the nation in important ways.” [LINK](#)

Prominent Republican lawyer William Burck: “I strongly support Judge Ketanji Brown Jackson for the Supreme Court. I have known Judge Jackson since we clerked for different justices during the 1999-2000 Supreme Court term... As a Republican, I hope Judge Jackson will garner substantial bipartisan support because she deserves to be judged on her personal merits which overwhelmingly weigh in favor of confirmation. No serious person can question her qualifications to the Court and to my mind her judicial philosophy is well within the mainstream.” [LINK](#)

President of the American Law Institute (ALI) and former U.S. District Court Judge David Levi: “[Judge Jackson’s] record as a judge, particularly as a trial judge, shows her to be a careful, enormously capable judicial officer who understands the role of a judge and has the skills and personal qualities to excel in the position.... What is important to me is that the nominee has the ability and temperament to excel as a judge and that the nominee shows an understanding that, in our system, a good judge must be neutral, nonpartisan, exercise self-restraint, model civility, and approach each case with an open mind and with the determination to reach as just, wise, and correct a result as possible. Based on what I know of Judge Jackson, from her record on the bench and my own interactions with her at the American Law Institute, I believe she has been that kind of a judge and will be that kind of a Justice. I am therefore pleased to support her nomination.” [LINK](#)

Law enforcement support and statements for Judge Jackson

The Fraternal Order of Police (FOP) National President, Patrick Yoes: “From our analysis of Judge Jackson’s record and some of her cases, we believe she has considered the facts and applied the law consistently and fairly on a range of issues. There is little doubt that she has the temperament, intellect, legal experience, and family background to have earned this appointment. We are reassured that, should she be confirmed, she would approach her future cases with an open mind and treat issues related to law enforcement fairly and justly.” [LINK](#)

The International Association of Chiefs of Police (IACP): “[W]hen the IACP chooses to support an individual, we do not take it lightly, and take into careful consideration their background, experience, and previous opinions issued as they relate to law enforcement and criminal justice issues... During her time as a judge, she has displayed her dedication to ensuring that our communities are safe and that the interests of justice are served. We believe that Judge Jackson’s years of experience have shown she has the temperament and qualifications to serve as the next Associate Justice of the United States Supreme Court. The IACP urges the Judiciary Committee, and the members of the United States Senate, to confirm Judge Jackson’s nomination.” [LINK](#)

63 top law enforcement officials, including Chief Charles Ramsey, Dwayne Crawford (Exec. Director of NOBLE), and Fred Fletcher (former Chief of Police in Chattanooga, Tennessee): “As members of the law enforcement community, we write in recognition of Judge Jackson’s strong, effective and long-standing role in criminal justice issues... Judge Jackson comes from a law enforcement family. Such direct familiarity with the experiences and challenges of law enforcement enriches her understanding of criminal justice issues... In sum, as law enforcement leaders, we offer our recognition of Judge Jackson’s strong qualifications to serve the nation’s highest court and urge her historic confirmation to proceed without delay.” [LINK](#)

Almost 60 former Department of Justice Officials, including Loretta Lynch, David Ogden, and Sally Yates: “We prosecutors can tell you how important it is to have skilled lawyers serving as Public Defenders—and Judge Jackson was among the most skilled and the most dedicated. She has been even-handed in her treatment of the defense and prosecution alike when she has ruled in criminal cases. Her appreciation for how the criminal justice system works would be a critical addition to the Court.” [LINK](#)

86 bipartisan former state Attorneys General: “As former Attorneys General who served as the chief legal officer of our respective states and jurisdictions, we comprise a diverse group of individuals with differing legal

backgrounds and experiences with our justice system... We understand and appreciate the qualifications and background that nominees for the Supreme Court should possess, and Judge Jackson has them all.” [LINK](#)

Former fellow Supreme Court clerk support for Judge Jackson

Twenty-five of Judge Jackson’s fellow clerks during the Supreme Court’s October Term 1999—including those who clerked for justices such as Clarence Thomas and Sandra Day O’Connor: “We have followed many different paths since our clerkships in, among other things, private practice, government service, academia, and business, and we hold diverse points of view on politics, judicial philosophy, and much else. Yet we all support Judge Jackson’s nomination to the Supreme Court because we know her to be eminently qualified for this role in intellect, character, and experience.” [LINK](#)

Groups and organizations support for Judge Jackson

U.S. Hispanic Chamber of Commerce: “The American people cannot wait. We urge the U.S. Senate to confirm Judge Ketanji Brown Jackson to the Supreme Court immediately. She is capable and ready to get to work to serve our justice system for all Americans. Her excellence and leadership will deliver equitable justice to America’s more than 63.5 million Latinos/as.” [LINK](#)

35 prominent crime victims, survivors, and advocates: “Many of us have personal experience as victims and survivors of crime, and all have long been advocates and providers of critical assistance services to crime victims and survivors... Judge Brown Jackson not only meets but greatly exceeds the qualifications for this position... Judge Brown Jackson’s nomination has earned widespread support from those representing the full spectrum of political and legal philosophies. We join with them in strongly urging the confirmation of Judge Ketanji Brown Jackson as Associate Supreme Court Justice.” [LINK](#)

U.S. Black Chambers: “It is long overdue for a Black woman to serve on the Supreme Court, and it is rare to find such a brilliant, thoughtful, and uniquely qualified legal mind such as Judge Jackson’s to address the 21st century’s most pressing domestic legal questions. Your committee has the once-in-a-generation opportunity to not only make history, but in so doing, to also elevate an exceptional candidate to the highest court in the land. It is because of this that the USBC is proud to support Judge Jackson’s nomination and again urges her swift confirmation.” [LINK](#)

National Education Association (NEA): “Judge Jackson has garnered respect and recognition across partisan and ideological lines, and received broad support from the Senate for several high-level appointments... Our public schools, educators, students and their families are facing tremendous challenges. We need a Supreme Court whose lived experience reflects all of America, a court that understands how its rulings impact people’s daily lives. Help make our country more just and fair: Support the confirmation of Judge Jackson to the United States Supreme Court.” [LINK](#)

Asian/Pacific Islander American Chamber of Commerce and Entrepreneurship (ACE): “Judge Ketanji Brown Jackson is exceptionally qualified and has devoted the majority of her successful career to serving the public... National ACE celebrates this historic nomination and looks forward to a timely and bipartisan process to confirm Judge Ketanji Brown Jackson to the Supreme Court.” [LINK](#)

Senate Judiciary Committee Holds Hearing on Justice Department Oversight

LIST OF PANEL MEMBERS AND WITNESSES

DICK DURBIN:

Good morning. This hearing will come to order. We've had three oversight hearings this year in the Senate Judiciary Committee, including the committee's first FBI oversight since 2019, and next month, first Department of Homeland Security oversight hearing since January 2018. Today, we're holding the first Department of Justice oversight hearing since October 18, 2017. That was the only time during the four-year Trump administration this committee held an agency-wide Department of Justice oversight hearing.

Annual oversight hearings were the norm under the Obama administration, I'm pleased to restore this tradition. I thank Attorney General Garland for appearing today. You were confirmed by the Senate in March on a bipartisan basis and took the helm of the Justice Department at a precarious moment.

DICK DURBIN:

Under Attorney General Barr and his predecessors, the department often played the role of President Trump's personal law firm. Time and again, Trump appointees overrode the professional judgment of the department's nonpartisan career attorneys to advance the president's agenda. Their efforts took a dark and dangerous turn in the waning months of the Trump term when DOJ political appointees aided President Trump's big lie efforts to challenge the integrity of our election.

First, Attorney General Barr cast aside decades-old policy designed to prevent the department from impacting elections. He directed US attorneys and the FBI to investigate the election fraud claims of, nonetheless, Rudy Giuliani after these claims had been summarily discredited and disproven by countless state election officials and borrow repeatedly publicly and baselessly claim that mail voting would be rampant to fraud, a charge he himself rejected when the votes were actually counted.

After he lost the 2020 election President Trump found another Justice Department ally in Jeffrey Clark, a mid-level political appointee who became the president's big lie lawyer. Clark pushed the Department of Justice leaders to overturn the election. And when they refused, he plotted with President Trump to replace them.

Trump and Clark brought the department to the brink and were thwarted only after the threat of mass resignations across the Department of Justice. I commend those Department of Justice attorneys, many of whom were Trump appointees who, at that critical moment in history, resisted President Trump and his plot to attack our democracy.

The events this committee described in a recent Subverting Justice report were among the most brazen examples of President Trump attempting to bend the Department of Justice to his will and his agenda, but they were the natural culmination of four years' attack -- four years of attacks on the Department of Justice.

There is a straight line from these events to the violent insurrection in the Capitol Building on January 6. When Trump and his allies could not prevail in court and lost case after case after case claiming voter fraud, they took their big lie to the Justice Department. And when they didn't prevail there, they dispatched an angry mob to storm the Capitol to stop us from counting the electoral votes.

I commend the many agents and prosecutors who are working day in and day out to bring these violent insurrectionists to justice. I hope the department will be just as steadfast in pursuit of those who encouraged and incited the attack and those who would prevent the American people and their representatives from uncovering the truth.

I am sorry that the Republican Senate leader refused to join the bipartisan commission that was proposed to investigate the January 6 insurrection attack. I look forward to hearing from the attorney general this morning about the work that is underway to combat the growing threat of domestic violent extremism.

The department cooperated with our committee's investigation into the Jeffrey Clark scheme, and it deserves credit for doing so. Over the course of several months, the department provided documents, authorized testimony, and resolved executive privilege issues, enables -- enabling us to uncover, on a bipartisan basis, I might add, just how close we came to a full-blown constitutional crisis.

Attorney General Garland, when you appeared before us in February, you acknowledged "great respect for, belief in the oversight role of the committee", and you committed your department to "be as responsible as" -- pardon me, "as responsive as we possibly can to comply with information request". I commend you for the steps you've taken, but I believe I speak for all of my colleagues in saying there is still room for improvement when it comes to department responses, and the department must deliver on its mission to ensure fair and impartial justice.

Let me give you an example. In the closing days of the Trump administration, the department's Office of Legal Counsel issued a memo wrongly declaring, in my estimation, that federal inmates released to home confinement under the bipartisan CARES Act must return to the Federal Bureau of Prisons' custody following the COVID-19 emergency.

In fact, the CARES Act includes no such requirement. These nonviolent inmates are already home and are overwhelmingly reintegrating into community with success. On April 23, I sent you a letter, joined by Senator Booker, urging you to rescind this memo. Six months later, six months later, we still have not received a response.

Another example. In November of 2020, the Trump administration published a rule discouraging inmates from completing programs under the First Step Act to reduce their chances of re-offending. This was a major measure that was undertaken, the First Step Act, by combining a prison reform measure that was co-sponsored by Senator Cornyn and Senator Whitehouse, with a sentencing measure co-sponsored by Senator Grassley and myself and signed into law by the president.

Now, Senator Grassley and I sent you a letter on May 5, urging the department to reject the proposed rule and instead enact a rule consistent with the goal of the First Step Act of reducing recidivism. It's been five months. In fact, more than 5 months. We still haven't received a response. The First Step Act allowed the Bureau of Prisons to grant compassionate release in extraordinary and compelling circumstances, such as a once-in-a-century global pandemic.

Under the Trump administration, listen to these numbers, the Bureau of Prisons denied all but 36, 36 of 31,000, 31,000 compassionate release petitions filed during the pandemic. In the first six months of the Biden administration, the Bureau of Prisons approved just nine compassionate release requests. This is extraordinary when the infection rate in the Bureau of Prisons was six to seven times the national infection rate and the death rate equally appalling.

When compassionate release requests were received, 31,000 of them, only 36 were allowed.

Meanwhile, the pandemic has been devastating in our Bureau of Prison facilities. Two hundred and sixty-five inmates have died, including six within the last few weeks. The death of a 42-year-old man in August came after the Department of Justice denied his compassionate release request.

Republicans and Democrats worked together to pass the First Step Act to make our justice system fairer and our community safer. These reforms are only as good as their implementation. Attorney General Garland, as you come before this committee, the right to vote and have the votes of every American counted is under attack like no time in decades.

This year alone, state legislators have introduced more than 425 bills, making it more difficult for Americans to vote, particularly people of color. Nineteen states have enacted 33 of these laws. Some of these laws set new limits on voting by mail. Others cut hours for polling locations. All of them, all of them, are designed to achieve the same outcome: make it more difficult to vote.

At the same time, big lie proponents are pushing new laws to give partisan state legislators the ability to overturn election results they don't agree with. They are ousting local election officials who faithfully apply the law and oversaw an election that Trump's own Department of Homeland Security called the most secure in American history.

And their efforts coincide with an unprecedented increase in violent threats toward state and local election officials. I'd like to add at this point about these violent threats. It is rife across America. Those of us who are airline passengers know what the flight attendants are facing with, thousands of confrontations, even violent confrontations, over wearing masks on aircraft.

I've sent a letter to you, joined by others, saying this has to be taken seriously. These assaults in the name -- so-called name of liberty are unacceptable. And your October 4 memo relative to schools and school board officials and their own peril at this point, I think, should be mentioned. I have heard statements from members of this committee, which I think are really inconsistent with reality.

Those who think the insurrectionists' mob of January 6 was merely a group of tourists visiting the Capitol ignore the pillaging, the deaths, and the serious injuries to over 100 law enforcement officials. And those who argue that school board meetings across America are not more dangerous and more violent than in the past are ignoring reality.

I went on and just typed in this morning school board violence on one of the search engines, page after page is coming up. In my state of Illinois, Mendon, Illinois, is a small rural town in Adams County, the western part of our state that I have represented for almost 40 years. It is a quiet, solid community, and yet they had their own instance at a school board meeting where an individual had to be arrested because he had threatened violence against the school board members over masks in schools, for example.

The story is repeated over and over again. The state of Minnesota, Senator Klobuchar knows the story well, the state of Idaho, we are seeing violence at these school board meetings at an unprecedented number.

DICK DURBIN:

I don't believe -- I think you made it clear that -- and you don't believe that we should infringe on free speech, But free speech does not involve threats and violence. Period. And we ought to join with local law enforcement officials to protect the school board members who are being intimidated in this way. I want to close by mentioning an issue I said to you personally. I'm honored to represent the city which you grew up in and which I now visit with great frequency, obviously.

And that's the city of Chicago. The gun violence situation there is intolerable. Intolerable. And we're not the only city in America, by any means, that's facing this. We need to have your assurance that there is a concerted, determined effort to deal with gun violence at the federal level, coordinating our effort with the state and local officials.

With that in mind, I hope we can reach some agreement to do so very quickly. And let me hand it off now to the ranking member, Senator Grassley.

CHUCK GRASSLEY:

Thank you, Chairman Durbin. This committee has a constitutional obligation to ensure that the department complies with the laws that we write and execute those laws according to our intent. In the performance of our constitutional duty, we write letters seeking answers and records from the department and its component agencies to better understand what they're doing.

Likewise, the entire executive branch, not just DOJ, has an obligation to respond to Congressional oversight requests. Today, I can say with confidence that under General Garland's leadership, the department has failed across the board to comply with this committee's Republican oversight request. And I appreciate very much Chairman Durbin pointing out a letter that he and I wrote five months haven't received an answer.

If my name being on that letter has any reason it hasn't been responded to, I'll take my name off of that letter. In contrast, Governor -- or General Garland, you've provided Democrat colleagues with thousands of pages of materials. Moreover, President Biden has politicized and inserted himself into the department policymaking, notably direct -- notably directing the end of compulsory process for reporter records in criminal-leaked investigations.

And most recently, inserting himself when he said the department should prosecute anyone who defies compulsory process from the January 6 committee. At your confirmation hearing, I read to you what I told Senator Sessions at his confirmation hearing for being attorney general this, "If Senator Feinstein, who then was a ranking member, if Senator Feinstein contacts you, do not use this excuse as so many people use.

That if you are not a chair of our committee, you do not have to answer the questions. I want her questions answered just like you would answer my questions." that I gave to Senator Sessions. So, you said to me at your hearing, "I will not use any excuse to not answer your questions, Senator." You have failed to satisfy that statement.

Example, I've asked the department for records relating to Hunter Biden's October 2018 firearm incident, where his gun ended up in a trash can near a school. Now, that's a firearm incident. Your ATF use of Federal Freedom of Information Act to refuse producing those records when that law doesn't even apply to the Congress.

I've also asked for information relating to Chinese nationals linked to the communist Chinese regime that are connected to the Biden family. One individual, Patrick Hall, was not just linked to Chinese regime, he was apparently connected to that country's intelligence service. Hunter Biden reportedly represented him for \$1 million.

Now, even though the department already made public in court filings that DOJ possesses FISA information relating to Patrick Hall. In response, you stated, "Unfortunately, under the circumstances described in your letter, we are not in a position to confirm the existence of the information that is

sought if it exists in the department's possession." Well, let me emphasize what you already made public in a court filing.

So, you're telling me you can't even confirm its existence. Now, with respect to the criminal investigation of Hunter Biden, Senator Johnson and I wrote to you twice this year regarding a person named Nicholas McQuaid. Mr. McQuaid was employed at a law firm until January 20, 2021, when he was hired to be then acting assistant attorney general for the department's criminal division.

Before he was hired, he worked with Christopher Clark, who Hunter Biden reportedly hired to work on his federal criminal case a month before President Biden's inauguration. Now, the department hasn't disputed any of these facts. However, you refused to confirm whether Mr. McQuaid recused from the Hunter Biden case.

That seems to be a pretty simple thing to say one way or the other. The son of the president of the United States is under criminal investigation for financial matters. A senior attorney under your command has apparent conflicts with that matter. Your refusal to answer just straightforward questions cast a very public cloud over the entire investigation, a cloud that you should easily do away with if you just -- were just a little bit transparent.

When I placed holds on your nominees for the department's failure to comply with Republican oversight requests, I said either you run the Department of Justice or the department runs you. Right now, it looks like the Department of Justice is running you. Since your confirmation, in less than a year, the department has moved as far left as it can go. You've politicized the department in ways it shouldn't be. Case in point, your infamous school board memo.

You publicly issued this memo merely five days after the National School Board Association wrote a letter to President Biden. Now, incredibly, they asked the department to use the anti-terrorist Patriot Act against parents speaking their minds to local school officials. The School Board Association has since apologized for that letter but not before the department relied on their letter to mobilize federal law enforcement in state and local matters.

Meanwhile, actual violent crime is on the rise in the country. Your memo treats parents speaking freely to be worthy of the department's heavy investigative and prosecutorial hand. You've created a task force -- now, a task force that includes the department's criminal division and National Security Division to potentially weaponize against parents.

Your memo also creates a special training and guidance for local school boards and school administrators to recognize threats against them. According to your memo, these threats including -- include an undefined category of "other forms of intimidation and harassment." So, now, the last thing the Justice Department and FBI need is a very vague memo to unleash their power, especially when they've shown zero interest in holding their own accountable.

I don't -- when you don't hold your own accountable. Let's not forget about the Obama-Biden administration FISA abuse during Crossfire Hurricane, abuses at the department of the FBI for years denied even to be possible. And then you allowed a disgraced former FBI official off the hook, paying him hundreds of thousands of dollars in taxpayers' money when the inspector general determined that he lied to investigators seven times.

Yes, seven times, over the course of three different occasions.

CHUCK GRASSLEY:

Or the FBI and the department's total failure to protect hundreds of kids from abused by Larry Nassar and then cover it up. When we had a bipartisan hearing to learn about those courageous survivors, your deputy attorney general didn't even show up. So, getting back to the National School Board Association matter, these parents are trying to protect their children.

They're worried about divisive and harmful curricula based upon critical race theory. They're speaking their minds about mask mandates. This is the very core of constitutionally protected speech. And free speech is deadly to the tyranny of government and is the lifeblood of our constitutional republic. To say your policies are outside of the mainstream would be an understatement.

Mothers and fathers have a vested interest in how schools educate their children. They are not as the Biden Justice Department apparently believes them to be: national security threats. What is a national security threat? It's things like MS-13. What is a national security threat? It's like our open southern borders.

What is a national security threat? Is the federal government failing to adequately vet individuals from Afghanistan? I suggest that you quickly change your course because you're losing credibility with the American people and with this Senator in particular. Thank you.

DICK DURBIN:

Thanks, Senator Grassley. We now turn to the attorney general for his testimony. First, welcome Honorable Merrick Garland to testify before the Senate Judiciary Committee for the information of the members. The mechanics such as after I swear in, Attorney General Garland, he will make his opening statement.

Then we'll go to a round of questions. Each Senator will have seven minutes. I'm going to try to hold folks close to that number so everybody can be accommodated. If there is a request, we may have a second round of questions, three minutes per Senator. Attorney General Garland, would you please stand to be sworn in? Do you swear or affirm the testimony you're about to give before the committee will be the truth, the whole truth, and nothing but the truth, so help you God?

MERRICK GARLAND:

I do.

DICK DURBIN:

Thank you. Let the record reflect that the attorney general answered in the affirmative. Now, please proceed with your opening statement.

MERRICK GARLAND:

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

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

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

That policy is designed to protect the department's criminal and civil law enforcement decisions and its legal judgments from partisan or other inappropriate influences. We also issued a new policy to better protect the freedom and independence of the press by restricting the use of compulsory process to obtain information from our records of members of the news media.

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

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

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

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

Opioids, including illicit fentanyl caused nearly 70,000 fatal overdoses in 2020. We will continue to use all of our resources to save lives. Finally, keeping our country safe requires protecting its democratic institutions, including the one we sit in today from violent attack. As this committee is well aware, the department is currently engaged in one of the most sweeping investigations in its history in connection with the January 6 attack on the Capitol.

The department's third priority is protecting civil rights. This was a founding purpose when the department was established in 1870. Today, the civil rights division's work remains vital to safeguarding voting rights, prosecuting hate crimes, ensuring constitutional policing, and stopping unlawful discrimination.

This year we doubled the size of the civil rights division's voting section, and our FY '22 budget seeks the largest ever increase for the division, totaling more than 15 percent. We have appointed department wide coordinators for our hate crimes work. We have stepped up our support for the community relations service.

We are also revitalizing and expanding our work to ensure equal access to justice. In addition to these core priorities, another important area of department focus is ensuring economic opportunity and fairness by reinvigorating antitrust enforcement, combating fraud and protecting consumers. We are aggressively enforcing the antitrust laws by challenging anti-competitive mergers and exclusionary practices.

In FY '22, we are seeking a substantial increase in funds for the division. We likewise set up a COVID-19 Fraud Enforcement Task Force to bring to justice those who defraud the government of federal dollars meant for the most vulnerable among us. And some -- in seven months, the Justice Department has accomplished a lot of important work for the American people, and there is much more to be done.

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

DICK DURBIN:

Thank you, Mr. Attorney General. Hardly a day goes by in the city of Chicago that someone isn't killed with a firearm. The cases are heartbreaking. Little boys and girls coming and standing on their porches and going to school. And on August 7th, the Chicago police officer, Ella French, and her partner officer, Carlos Yanez, were conducting a routine traffic stop in the city.

The person in the car opened fire. Officer French, age 29, was murdered, and Officer Yanez was severely wounded. I never saw such an outpouring of emotions in the city. I went down to read a high school on the south side near Beverly, where they had the memorial service. There were hundreds, if not thousands, of women and men in uniform and just ordinary citizens standing waiting for their turn to pay tribute to Ella French for what she had done for our city.

Two days later, we found out from the US Attorney's office that the gun used to murder her was obtained from Indiana through a straw purchase. That's when a person who can clear a background check, buys a gun in a federally licensed gun dealer and gives it to someone who cannot clear it. What are we going to do about this?

What is going to be done at the federal level to show that we're taking this seriously? Ours isn't the only city that is facing this challenge and we've got to act and act soon.

MERRICK GARLAND:

Mr. Chairman, I am as concerned as you are, and as I'm sure all members of this committee are, about the rise of violent crime all across the country. I was in Chicago, as you know, almost the exact time that the officer that you speak of was killed.

MERRICK GARLAND:

I have gone to meet with the families of ATF agents who was Killed on duty, and I have stood on the mall with a candlelight vigil for many other police officers who were killed in the line of duty. The Justice Department is doing everything possible with respect to violent crime. In May of this year, I launched a violent crime initiative, which brings together all of our law enforcement on the federal level to meet with, to coordinate with, to cooperate with state, local, tribal, territorial law enforcement to fight this issue.

Our federal agencies, DEA, ATF, marshals, and the FBI are all deeply involved in this. Our programs, Project Safe Neighborhoods, continue in all of these ways, and we're looking for large amounts of money to provide in grants to police departments, specifically with respect to the gun trafficking that you're speaking about.

As you know, Chicago is one of the task force cities that we've announced for purposes of tracing this gun trafficking problem. And we are doing so and finding the straw purchasers and arresting them as well. I could not agree more that this is a serious, serious problem that needs the attention of the entire country's law enforcement, and the Justice Department is very much involved in the fight.

DICK DURBIN:

I'm going to be meeting with those federal law enforcement agencies to talk about the strike force and what they're doing, how they're cooperating with state and local law enforcement. I hope to do it maybe even this week on a private basis and then see what more I can do. I think we all have a responsibility when it comes to this issue.

Let me ask you about the home confinement issue. We all know, under the CARES Act, there was an allowance for that possibility. And we know that since March of last year, more than 33,000 inmates have been released to home confinement, including those released under the CARES Act's expanded authority. Less than one percent of those inmates have been returned to BOP facilities for any rule violation.

Do you agree that recalling the thousands of individuals who've successfully transitioned back into society would be contrary to the purpose of home confinement, which is to allow an individual "a reasonable opportunity to adjust to and prepare for reentry of that prisoner in the community?"

MERRICK GARLAND:

Senator, I very much agree that the home confinement program has proven successful, that it both relieved the pressure on the prisons with respect to COVID-19 pandemic, but also gave people an opportunity to adjust themselves to their communities. And you are right that we have seen very few violations of the conditions.

So, I'm very strongly in favor of being able to continue this program.

DICK DURBIN:

Well, I'm hoping that we can get a definitive reversal of the OLC opinion that was dropped on the desk as President Trump left office and make it very clear what will happen if and when, and I pray that soon, the COVID-19 emergency is lifted. I'd like to move to another topic, which has already been addressed by myself and Senator Grassley.

I really invite the members of this committee. If you don't believe me, type school board violence into your computer and take a look at what's happening. It's happening all across the country. In my state, as I mentioned, a 30-year-old man arrested and charged with battery, disorderly conduct after striking a school board member at a meeting.

California, father yelling profanities at an elementary school principal. His daughter calmed him down. He later returned to confront the principal and struck a teacher in the face who attempted to intervene. Ohio, a school board member sent a threatening letter saying, "We're coming after you." And after the board member posted a letter on Facebook, the president of the board of education for a nearby district reported his board had received similar threats.

Pennsylvania, a person posted threats on social media, which required the police to station outside each of that district school. Local law enforcement is investigating the person who made the threats and will maintain a police presence at schools and school board meetings for the foreseeable future. In Texas, a parent physically assaulting a teacher, ripping off her mask.

And it goes on and on and on. These are not routine people, incensed or angry. These are people who are acting out their feelings in a violent manner over and over again. The same people we see on airplanes and other places. Same people, some of whom we saw here on January 6. So, when you responded as quickly as you did to that school board request, did you have second thoughts after they sent a follow-up letter saying they didn't agree with their original premise in their first letter?

MERRICK GARLAND:

Senator, I think all of us have seen these reports of violence and threats of violence. That is what the Justice Department is concerned about. It's not only in the context of violence and threats of violence against school board members, school personnel, teachers, staff. It's in a rising tide of threats of violence against judges, against prosecutors, against secretaries of state, against election administrators, against doctors, against protesters, against news reporters.

That's the reason that we responded as quickly as we did when we got a letter indicating that there were threats of violence and violence with respect to school officials and school staff. That's the reason. That's what we are concerned about. That's part of our core responsibility. The letter that we - that was subsequently sent does not change the association's concern about violence or threats of violence.

It alters some of the language in the letter, language in the letter that we did not rely on and is not contained in my own memorandum. The only thing the Justice Department is concerned about is violence and threats of violence.

DICK DURBIN:
Senator Grassley?

CHUCK GRASSLEY:

Yeah, before I ask my question, I'd like a permission to introduce in the hearing record a letter from the Iowa Association of School Boards disagreeing with the National School Boards Association request for intervention from federal agencies and law enforcement and other concerns that they have.

DICK DURBIN:
Without objection.

CHUCK GRASSLEY:

General Garland, regarding your October 4th school board memo, last week, you said the memo was for law enforcement audience despite it being on your public website as a press release. As a result of your memo, local school officials and parents may not speak up in these meetings out of fear that the federal government will do something to them.

So, that's a poisonous chilling effect. Apparently, that letter wasn't actually supported by organization but was sent by two unauthorized staff. So, last week, the organization disavowed it, sent you on the White House based to your memo on this de-legitimized letter. I assume you're going to revoke your extremely divisive memo that you said was instigated because of that letter?

That's a question.

MERRICK GARLAND:

Senator, the memo, which referred to as one page. It responds to concerns about violence, threats of violence, other criminal conduct. That's all it's about. And all it asks is for federal law enforcement to consult with, meet with local law enforcement to assess the circumstances, to strategize about what may or may not be necessary, to provide federal assistance if it is necessary.

CHUCK GRASSLEY:

Presumably, you wrote the memo because of the letter. The letter is disavowed now. So, you're going to keep your memo going anyway, right? Is that what you're telling me?

MERRICK GARLAND:

Senator, I have the letter from NSBA that you're referring to. It apologizes for language in the letter, but it continues its concern about the safety of school officials and school staff. The language in the letter that they disavow is language that was never included in my memo and never would have been. I did not adopt every concern that they had in their letter.

I adopted only the concern about violence and threats of violence, and that hasn't changed.

CHUCK GRASSLEY:

Who in the Justice Department was responsible for drafting your polarizing October 4 memo?

MERRICK GARLAND:

I signed the memo, and I worked on the memo.

CHUCK GRASSLEY:

The press release accompanying your memo mentions that the National Security Division will get involved in school board investigations. Is the Justice Department National Security Division really necessary for keeping local school boards safe if parents aren't domestic terrorists? And if the PATRIOT Act isn't being used, why is the National Security Division involved at all?

This kind of -- it looks like something that would come out of some communist country expansive definition of national security.

MERRICK GARLAND:

The memo is only about violence and threats of violence. It makes absolutely clear in the first paragraph that spirited debate about policy matters is protected under our constitution. That includes debate by parents criticizing school boards. That is welcome. The Justice Department protects that kind of debate.

The only thing we're concerned about, Senator, is violence and threats of violence against school officials, school teachers, school staff, just like we're concerned about those kind of threats against senators, members of Congress, election officials.

MERRICK GARLAND:

In all of those circumstances, we are trying to prevent the violence that some occurs after threats.

CHUCK GRASSLEY:

Your memo stated that the Justice Department is opening dedicated lines of communication for threat reporting, assessment and response. Why is the department -- what is the department doing with tips it receives on this dedicated line? And what are you doing with those parents who have been reported?

MERRICK GARLAND:

The FBI gets complaints, concerns from people around the country for all different kinds of threats and violence. That's what this is about, a place where people who feel that they've been threatened with violence can report that, these are then assessed and they are only pursued if consistent with the First Amendment.

We have a true threat that violates federal statutes or that needs to be referred to state or local government, federal agents, local law enforcement agency or their assistance.

CHUCK GRASSLEY:

On the other hand, are there criminal investigations being opened for instances where school officials are trying to access private data of parents with opposing views on critical race theory?

MERRICK GARLAND:

I don't know about that, but the Justice Department certainly does not believe that anybody's personal information should be accessed in that way. If there is a federal offense involved or state or local offense involved, then of course those should be reported.

CHUCK GRASSLEY:

The nonpartisan, Justice Department inspector general established that, Andrew McCabe lied under oath to FBI investigators. He lied under oath to the Justice Department inspector general. It should also be noted that McCain leaked government information to the media, and then called the New York and Washington FBI field offices and blame them for the very leaks that he caused.

Under your leadership instead of punishing them, the department reinstated his retirement expunge his records as part of the settlement. He will reportedly receive \$200,000 in retirement back pay and his attorney will reportedly receive 500,000 in legal fees. So, it seems to me that that's beyond incredible.

So General Garland, did you authorize the McCain settlement and if you -- if not, who did?

MERRICK GARLAND:

Senator, the McCabe settlement was the recommendation of the career lawyers litigating that case based on their prospects of success in the case, the case did not involve the issues about lying. It involved a claim that he was not given amount of time necessary to respond to allegations, and that the litigators concluded that they needed to settle the case because of the likelihood of loss on the merits of that claim.

The inspector general's report still stands. There is no -- we have not questioned in any way the inspector general's findings. The reference with respect to false statements was made to the Justice Department, in the previous administration, and declined in the previous administration. The only issue here was an assessment of litigation merits.

CHUCK GRASSLEY:

Short follow up, do you agree with the taxpayer -- since you didn't somebody else authorized it? Do you agree with the taxpayer picking up a multimillion-dollar bill for someone that lied under oath to government officials?

MERRICK GARLAND:

I think the assessment made by the litigators was that the bill to the taxpayers would be higher if we didn't resolve the matter as it was resolved.

CHUCK GRASSLEY:

Thank you, Mr. Chairman.

DICK DURBIN:

Senator Leahy.

PATRICK LEAHY:

Thank you. Mr. Chairman. Attorney General Garland, good to see you and thank you for being here. I'm sure the members of the committee are eager to discuss with you what the Justice Department is doing, what could be done better. Just say this, after four tumultuous years in which the former president viewed the Justice Department as his personal law firm put in place.

The department is again living up to the most fundamental principle in our American justice system that, no one, nobody is above the law, that's what I learned about the Justice Department and I was in law school that the experience I had with it for years as a prosecutor and as a litigator. So, I was dismayed saying what was happening in the past four years and I thank you, Attorney General for bringing the department back from the brink.

There's still a lot to be done, but I think the Americans should take comfort that the rule of law is again being enforced. Now it's hard to overstate how urgently we must act to protect Americans, constitutional right to vote. And there is reason for alarm. Many states are rapidly moving to restrict access to the ballot for tens of thousands of Americans from all walks of life.

In the wake of the Shelby County this year, [Inaudible] decision, the department's tools to stem the tide of voter suppression have been greatly diminished. I know you're doing whatever you can to defend the right to vote. How does Congressional inaction, in response to the Supreme Court decisions, limit the ability of the department to protect Americans constitutional right to vote?

MERRICK GARLAND:

Thank you for that question, Senator. The right to vote is a central pillar of our democracy, and as I've said many times, it's the central pillar that allows all of the rights to proceed from it. The Justice Department was established in part to protect the rights of a guaranteed under the 13th, 14th and 15th Amendment to vote.

The Voting Rights Act gave us further authorities in that respect. We are doing, as you say everything we can. We have doubled the size of the voting rights section. We brought on a Section 2 case, but there are limitations on our authority that the Supreme Court has imposed, one of which is the elimination of Section 5 of the Voting Rights Act, which provided an opportunity to do pre-clearance reviews, so that we did not have to Review each matter on a one-by-one basis.

And then the recent has been, that was Shelby County, as you pointed out recently in the Brnovich case, a narrowing of what we regarded as the meaning of Section 2 in our authorities under Section 2. Both of those could be fixed by this Congress. And if they were, it would give us considerably greater opportunity and ability to ensure the sacred right to vote.

PATRICK LEAHY:

And then the Supreme Court make it very clear that we could fix that if the Congress wanted to.

MERRICK GARLAND:

That's correct. In the opinions indicated, these were matters that could be fixed by the Congress.

PATRICK LEAHY:

And I hope we will because I think it's very important that all Americans be protected the right to vote, which I know in my own state of Vermont, we take that very seriously. Now we have the bipartisan VOCA fix to stay in the crime victims fund here to try and trim what has been signed into law. A major piece of this legislation requires funds collected and deferred and non-prosecution agreements be deposited into the crime veterans fund, which had been projected to reach a 10-year low.

Since this bill has become law, have any funds from deferred or non-prosecution agreement been deposited and into the crime victim's fund. And if not, why not?

MERRICK GARLAND:

Senator, the VOCA fix was something we sought and we're grateful for your support for and for your introduction of, we acted immediately after it was passed and something like north of \$200 million has already been deposited in the fund. Thanks to that act. We now project that the funds should be liquid all the way through the end of 2022.

PATRICK LEAHY:

Thank you and we can review it after that because I think, you and I would both agree, we want to have long term sustainability in this fund.

MERRICK GARLAND:

Absolutely.

PATRICK LEAHY:

So, let's work together on that. Now there's been some discussion here and elsewhere about the Larry Nassar investigation and the chairman had a very impressive gymnasts who testified before us. It was heart wrenching listening to them. And they talked about how there were seeking accountability. And I could not help and think how brave they were to testify.

The Justice Department initially declined to bring charges against the disgraced FBI agents involved in their investigation. I was concerned and I said at the time -- I've seen many people prosecuted for lying to FBI agents.

PATRICK LEAHY:

Here you had two FBI agents who lied to FBI agents. One was fired, the other resigned, no prosecutions. Is the department now reviewing that decision not to prosecute, and do you have any update in regard to that review?

MERRICK GARLAND:

Senator, I think heart-wrenching is as not even strong enough as a description of what happened to those gymnasts and to the testimony they gave. I believe Deputy Attorney General Monaco said at her hearing that we are reviewing this matter. New evidence has come to light, and that is cause for a review of the matters that you're discussing.

PATRICK LEAHY:

Well, I hope you will because, as I said, I've seen so many prosecutions of somebody for lying to the FBI agent. And I understand that. When an FBI agent lies to an FBI agent, they should also face the

same that anybody else does. Thank you very much, Mr. Chairman.

DICK DURBIN:

Thank you, Senator Leahy.

CHUCK GRASSLEY:

Mr. Chairman, could I put something in the record from 17 state attorney generals expressing their disagreement with the department's October 4th memorandum and ask that that memorandum be withdrawn?

DICK DURBIN:

Without objection. Senator Graham.

LINDSEY GRAHAM:

Thank you, Mr. Chairman. Mr. Attorney General, are you aware of the caravan of about 3,000 people approaching the state of Texas?

MERRICK GARLAND:

I have read about it in the news media. Yes. I didn't know -- I think it's south of Mexico City is what I read.

LINDSEY GRAHAM:

Yeah. They're --

MERRICK GARLAND:

Is that what you're talking about?

LINDSEY GRAHAM:

Apparently headed towards Texas. So, what would you tell these people?

MERRICK GARLAND:

Well, I would tell them not to come. But the job of the Justice Department has to do with prosecution and with the use -- the way in which the asylum and removal claims are adjudicated.

LINDSEY GRAHAM:

Right.

MERRICK GARLAND:

Principal --

LINDSEY GRAHAM:

So, you would tell them not to come?

MERRICK GARLAND:

It depends on why they are coming but --

LINDSEY GRAHAM:

Well, if they're coming to make asylum claims, what would you tell them?

MERRICK GARLAND:

Well, the Department of Homeland Security is the agency that's responsible for border control.

LINDSEY GRAHAM:

Right, I get that, but you're the attorney general of the United States. Do you think our asylum laws are being abused?

MERRICK GARLAND:

The asylum laws are statutes passed by the Congress.

LINDSEY GRAHAM:

Yeah. Do you think they're being abused?

MERRICK GARLAND:

I think this is a -- that question is one that has to be evaluated on a one-by-one basis in each --

LINDSEY GRAHAM:

Have you talked to the -- when's the last time you've been to the border?

MERRICK GARLAND:

I think a week ago, maybe 10 days ago.

LINDSEY GRAHAM:

Did they tell you anything about asylum claims being made by people that are mostly economic claims, not asylum claims? Did they mention that to you?

MERRICK GARLAND:

I think it's fair -- I don't recall exactly. I think it's fair --

LINDSEY GRAHAM:

You don't recall being told by the Border Patrol that they're overwhelmed, they can't hold the line much anymore, that we've had 1.7 million people apprehended, and the big magnet, the pull factor, is the way the catch and release program around asylum? That didn't stick out to you?

MERRICK GARLAND:

That was not a discussion that I had when I was --

LINDSEY GRAHAM:

Who did you talk to?

MERRICK GARLAND:

I was at the border at Nogales and spoke to a Border Patrol --

LINDSEY GRAHAM:

Now, I was there about six months ago. They never mentioned to you the pull factors of illegal immigration?

MERRICK GARLAND:

This was a review of what they were doing at the border with respect to --

LINDSEY GRAHAM:

Why? It's simple question. They never mentioned to you that they've got a problem with being overrun by asylum seekers?

MERRICK GARLAND:

I know, from reading the news media, that Border Patrol agents feel that way.

LINDSEY GRAHAM:

So, I mean it's not about reading the paper. You were there talking to them.

MERRICK GARLAND:

Well, I don't recall that -- I don't want to --

LINDSEY GRAHAM:

OK.

MERRICK GARLAND:

Tell you about a conversation that I'm not sure happened.

LINDSEY GRAHAM:

I'm just stunned that that didn't -- that you can't recall that. So, let's talk about Afghanistan. The secretary -- undersecretary for defense policy, Mr. Kael said, "While ISIS-K poses more of a short-term external threat, al-Qaida could regain the ability to launch attacks outside of Afghanistan within a year or two." Do you agree with that?

MERRICK GARLAND:

I agree that al-Qaida has always presented and continues to present a persistent threat to the United States homeland.

LINDSEY GRAHAM:

Well, no. But the question is: What's changed? You say always. Has any recent event change the likelihood of an attack?

MERRICK GARLAND:

I don't know.

LINDSEY GRAHAM:

You don't know that we withdrew from Afghanistan?

MERRICK GARLAND:

I know we withdrew. I don't know whether the withdrawal will increase the risk from al-Qaida or not. I do know --

LINDSEY GRAHAM:

So, you're the attorney general of the United States. Secretary Wray testified openly twice that due to the lack of ability to have eyes and ears on the ground and the unreliability of the Taliban, that a attack on the United States within six months to a year is far more likely after our withdrawal. You're not aware that he said that?

MERRICK GARLAND:

The job of the Justice Department and the job of the FBI is to protect against those kinds of attacks in the homeland.

LINDSEY GRAHAM:

Does it make sense that that would be a dynamic of our withdrawal? Do you trust the Taliban to police al-Qaida and ISIS on our behalf?

MERRICK GARLAND:

I do not trust the Taliban.

LINDSEY GRAHAM:

As a matter of fact, they have openly told us, they will not work with us regarding containing the al-Qaida-ISIS threat. Are you aware of that?

MERRICK GARLAND:

I think there's been inconsistent statements, but I don't --

LINDSEY GRAHAM:

No, no, they just literally said that.

MERRICK GARLAND:

I think there have been inconsistent statements, but their statements are not anything that we can rely on. The actions [Inaudible]

LINDSEY GRAHAM:

Well, when they tell you to your face, "We're not going to help you," do you think they're kidding? You think they really will help us, but they're just telling us to our face they won't?

MERRICK GARLAND:

Sir, I think, ISIS-K, al-Qaida associated forces are and continue to be [Inaudible]

LINDSEY GRAHAM:

We're talking about the Taliban, the Taliban who has told the United States they will not work with our counterterrorism forces when it comes to al-Qaida or ISIS. What response should we have regarding the Taliban when they say that?

MERRICK GARLAND:

Well, I think we have a number of different tools available.

LINDSEY GRAHAM:

Like what?

MERRICK GARLAND:

We have economic sanctions where they need money from the United States for humanitarian and other reasons. This is --

LINDSEY GRAHAM:

So, the leverage over the Taliban is whether or not we'll give them money?

MERRICK GARLAND:

Senator, the job of the Justice Department is protecting -- using the FBI and the National Security Agency --

LINDSEY GRAHAM:

The National Security Division is part of our counterterrorism operation, right?

MERRICK GARLAND:

It is one.

LINDSEY GRAHAM:

Has anybody from the National Security Division briefed you about the increased likelihood of attack emanating from Afghanistan after our withdrawal?

MERRICK GARLAND:

Every day, I'm briefed by the FBI.

LINDSEY GRAHAM:

No, my question is specific. Has anybody briefed you about the increased likelihood of an attack emanating from Afghanistan by ISIS or al-Qaida because of our complete withdrawal?

MERRICK GARLAND:

We are worried about the risk of attack by ISIS-K --

LINDSEY GRAHAM:

I know -- it's one thing to be worried. Has anybody told you the likelihood of an attack is greater because of our withdrawal or not?

MERRICK GARLAND:

There are different views about the degrees of likelihood that doesn't change our posture. We just [Inaudible] be protective --

LINDSEY GRAHAM:

It doesn't change your posture if you go from a possibility of being attacked to a six-months-to-a-year time window of being attacked.

MERRICK GARLAND:

We have asked for substantial additional funds for our counterterrorism operations in light of --

LINDSEY GRAHAM:

Is that in light of the withdrawal from Afghanistan?

MERRICK GARLAND:

In light of a lot of changing circumstances in the world with respect [Inaudible]

LINDSEY GRAHAM:

Well, let me just put a fine point on this. Secretary Wray has told the world that ISIS and al-Qaida in Afghanistan present a threat to our homeland. The Taliban has told us they're not going to help us when it comes to policing these groups. The Department of Defense has said we're six months to a year away from a possible attack by ISIS and al-Qaida.

And it just seems to me there's not a sense of urgency about this.

MERRICK GARLAND:

There is a sense of urgency. This [Inaudible]

LINDSEY GRAHAM:

What have you done specifically? And I'll end with this. Specifically, what have you done since our withdrawal in Afghanistan to deal with this new threat?

MERRICK GARLAND:

We have strengthened and increased the efforts of our joint terrorism task forces. I have met with them.

LINDSEY GRAHAM:

Literally, what have you done?

MERRICK GARLAND:

I'm telling you.

LINDSEY GRAHAM:

Just put it in writing. Just write down what you've done?

MERRICK GARLAND:

Well, I'll be happy to have our staff assess what [Inaudible]

LINDSEY GRAHAM:

Thank you.

MERRICK GARLAND:

And return.

DICK DURBIN:

Thank you, Senator Graham. Senator Whitehouse.

SHELDON WHITEHOUSE:

Thank you, Chairman. Welcome, Attorney General Garland. Two topics. The first is executive privilege. We've been through a rather bleak period with regard to executive privilege. I think you could call it the anything goes period, in which any assertion of executive privilege, no matter how fanciful or preposterous, was essentially allowed to stand in very significant departure from the law that has been out there for years regarding executive privilege.

SHELDON WHITEHOUSE:

And at the same time, that the substance of executive privilege was being expanded beyond recognition. The procedure for evaluating executive procedure determinations was completely ignored.

And this is a procedure that was established by President Reagan's White House. So, we now have a situation in which there is very substantial destruction and disarray in the area of executive privilege determinations. And as you know, under the Reagan memo, the Department of Justice had a role, kind of as an arbiter to be the honest broker between whatever executive agency was objecting and whatever Congressional Committee was pursuing information.

That role completely fell apart in the last administration and it needs to be rebuilt in some predictable fashion. The role of the courts has become highly problematic because delay is very often dispositive in these matters and the courts are now a haven for delay with respect to executive privilege determinations.

So, I think we need to look at that as well. Senator Kennedy and I had a hearing on this executive privilege problem in our court subcommittee. The Department of Justice was not represented at that hearing, but I would like to ask you to detail somebody from the Department of Justice to talk to Senator Kennedy and me about this executive privilege problem and work with us on trying to figure out a solution, making the role of the Department of Justice more clear and transparent and perhaps embodying it in rule or regulation or law and trying to figure out how to accelerate at the courts a way to get quicker decisions because otherwise, as I said, delay is just dispositive and we lose not because we're wrong, but because we're delayed.

Would you have somebody be our point of contact on that, please? When I say detail, I don't mean on to our payroll, you know, I just mean as a point of contact.

MERRICK GARLAND:

Yes, absolutely, of course.

SHELDON WHITEHOUSE:

Great. Thank you. Next, I've been pursuing the question of the department's investigation into January 6, since pretty early days, starting with a letter in January 8 that asked about the resources that were being deployed into this investigation and whether a task force -- prosecution task force was being set up and so forth.

And then, another letter February 24 with regarding to -- with regard to domestic extremist violence groups, potential role. We've learned a little bit more now and we've learned that there was a lot of money sloshing around in the background behind the January 6 rally and behind the raid, the riot in the capital.

For instance, we know that the Bradley Foundation, which is a big funder, gave money to Turning Point USA and to Public Interest Legal Foundation. And it gets even more interesting because Turning Point USA has a twin called Turning Point Action 501(c)(3), 501(c)(4) combo, which also got money from the Judicial Crisis Network to support the so-called Italy gate -- the debunked, Italy gate theory.

At the same time, the Public Interest Legal Foundation had as its director, Mr. Eastman who was cranking out his fanciful memo for President Trump how to overturn the election. The Judicial Crisis Network is the same thing from a corporate standpoint as something called the Honest Elections Project, which was bringing a fanciful case in Pennsylvania regarding election fraud.

And the Judicial Crisis Network was also funding [Inaudible] the Republican Attorney Generals Association, which was making robocalls to get people to come to the riot. Now, I don't know what's going on behind all of that, but I am hoping that the due diligence of the FBI is being deployed not just to the characters who trespassed in the capital that day and who engaged in violent acts.

But that you're taking that look, you would properly take at any case involving players behind the scenes, funders of the enterprise, and so forth in this matter as well. And there has been no decision to

say, "We're limiting this case just to the people in the building that day. We're not going to take a serious look at anybody behind it."

MERRICK GARLAND:

Senator, I'm very limited as to what I can say.

SHELDON WHITEHOUSE:

I understand that.

MERRICK GARLAND:

We have a criminal investigation going forward.

SHELDON WHITEHOUSE:

Please tell me it has not been constrained only to people in the capital.

MERRICK GARLAND:

The investigation is being conducted by the prosecutors, in the US Attorney's Office, and by the FBI field office. We have not constrained them in any way.

SHELDON WHITEHOUSE:

Great. And the old doctrine of follow the money, which is a well-established principle of prosecution, is alive and well.

MERRICK GARLAND:

It's fair to say that all investigative techniques of which you're familiar and some maybe that you're not familiar with because they post at your time are all being pursued in this manner.

SHELDON WHITEHOUSE:

Thank you. Thank you, Chairman.

DICK DURBIN:

Thank you very much. Senator Cornyn.

JOHN CORNYN:

Thank you. Good morning, Mr. Attorney General. On September 29, 2021, as you know, the National School Board Association wrote a letter to the president asking him to address the disruptions, the confrontations that we've seen at local school boards across the country. Parents expressing their concerns about not only the curriculum but also just generally their -- the education of their children in the public schools.

Would you agree that parents have a fundamental right to be involved in their children's education?

MERRICK GARLAND:

Absolutely. This is the job of parents to be involved and this is the role of the First Amendment to protect their ability to be involved. That's why my memo begins by saying that we respect the right to spirited debate about curriculum, about school policies, about anything like that.

JOHN CORNYN:

So, it's not just a good idea, it's actually protected by the Constitution of the United States. Would you agree?

MERRICK GARLAND:

Absolutely.

JOHN CORNYN:

On October 4, a few days later, less than a week later after the National School Board Association wrote this letter, the Justice Department issued the memo that's already been discussed. Why did this rise to the level of a federal concern as opposed to being addressed at the local and state level?

MERRICK GARLAND:

So, this arises out of repeated reports of violence and threats of violence, not only with respect to school boards, and school officials, and teachers. But, as I mentioned earlier, also with respect to

secretaries of state and election administrators, judges, prosecutors, Senators, members of Congress. The Justice Department has two roles here.

We assist state and local law enforcement in all ways and we enforce federal laws which prohibit threats of violence in a -- by telephone, by email --

JOHN CORNYN:

Well, you, as a longtime federal judge with a distinguished legal career, you understand that not every crime, assuming it is a crime, is a federal crime, correct?

MERRICK GARLAND:

Absolutely.

JOHN CORNYN:

And some of these things, unless there's some nexus to interstate commerce or to the federal government, they're largely within the purview of the state local law enforcement authorities. Correct?

MERRICK GARLAND:

I think you put that correctly. We have authority with respect to the mail, with respect to the internet, with respect to [Inaudible]

JOHN CORNYN:

Right, Well, I'm not -- well, let me give you an example. Somebody says to the school board member, if you do that, I'm going to meet you outside and punch you in the nose. Is that a federal offense or --

MERRICK GARLAND:

That's not a federal offense.

JOHN CORNYN:

I agree.

MERRICK GARLAND:

There's nothing in this memo suggesting that it is.

JOHN CORNYN:

And why in the world would you cite the National Security Division in this memo as being one of the appropriate entities in the Department of Justice to investigate and perhaps prosecute these offenses.

MERRICK GARLAND:

So, my memo itself doesn't mention the National Security Division that is mentioned in another memo that was released by the department. The National Security Division, like all the other law enforcement components cooperates with and is involved in discussions about how to go forward on different kinds of matters.

They were involved, for example, in the election threats. They were involved in the threats against judges and prosecutors. They were involved in the hate crimes threats cases as a natural part of our internal analysis.

JOHN CORNYN:

Let me ask you, did you see the National School Board Association letter to President Biden before you issued your memorandum on October 4?

MERRICK GARLAND:

Yes, I did and that was part of the reason. Their expression at the beginning of that memorandum of --

JOHN CORNYN:

And they raised some of the concerns that you voiced here today.

JOHN CORNYN:

Correct?

MERRICK GARLAND:

They raised some of them, they raised others that I don't agree with and were not included in my memo.

JOHN CORNYN:

Well, you're aware that on October 22, the National School Board Association apologized for its letter. You're aware of that, aren't you, sir?

MERRICK GARLAND:

I am, but --

JOHN CORNYN:

And it said that -- it went on to say, we regret and apologize for the letter, there was no justification for some of the language in the letter. They've acknowledged that the voices of parents should be and must continue to be heard, and when it comes to decisions about their children's education, health, and safety.

You did not apologize for your memorandum of October 4, even though the National School Board Association did. Why didn't you rescind that memorandum and apologize for your -- for the memorandum?

MERRICK GARLAND:

A core responsibility of the Justice Department, as I said in my opening, is protecting Americans from violence and threats of violence.

JOHN CORNYN:

But you just said not every act of violence is a federal crime, correct?

MERRICK GARLAND:

Right, and not every bit of street crime and the kind of violence that we've been talking about earlier today is also a federal crime, but we assist state and locals to help them in their investigations of these

kind of matters. Every single day in nonfederal matters, we are partners with our state and local partners.

JOHN CORNYN:

Well, Mr. Attorney General, you've acknowledged that parents have a right, a constitutional right to be heard on the education of their children in public schools. Can you imagine the sort of intimidation, the sort of bullying impact that a memorandum from the Department of Justice would have, and how that would chill the willingness of parents to exercise their rights under threat of federal prosecution?

Did you consider the chilling impact your memorandum would have on parents exercising their constitutional rights?

MERRICK GARLAND:

The only thing this memorandum is about is violence and threats of violence. And it opens with a statement --

JOHN CORNYN:

But my question is did you consider the chilling effect this would have on parents' constitutional rights?

MERRICK GARLAND:

To say that the Justice Department is against violence and threats of violence --

JOHN CORNYN:

Did you consider the chilling effect your memorandum might have on parents exercising their constitutional rights? I think you can answer that, yes or no?

MERRICK GARLAND:

What I considered, what I wanted the memorandum to assure people, that we recognize the rights of spirited debate and --

JOHN CORNYN:

Mr. Attorney General, you're a very intelligent and accomplished lawyer and judge. You can answer the question.

MERRICK GARLAND:

I did not --

JOHN CORNYN:

Did you consider --

MERRICK GARLAND:

I do not --

JOHN CORNYN:

The chilling effect that this sort of threat of federal prosecution would have on parents' exercise of their constitutional rights to be involved in their children's education?

MERRICK GARLAND:

I don't believe it's reasonable to read this memorandum as chilling anyone's rights. It's about threats of violence and it expressly recognized this constitutional right to make arguments about your children's education.

DICK DURBIN:

Senators are going back and forth for votes during this time. We have to try to keep it --

JOHN CORNYN:

Let the record reflect the attorney general refused to answer the question.

DICK DURBIN:

And let the record reflect that the senator from Texas is allowed to go over his allotted time. Senator Klobuchar.

AMY KLOBUCHAR:

Thank you very much. Just to confirm something, Mr. Attorney General, can you confirm to this committee, as you did earlier before the House Judiciary Committee, that the purpose of the memo that you were just discussing with Senator Cornyn is to have meetings to discuss whether there is a problem, to discuss strategies, to discuss whether law -- local law enforcement needs assistance or doesn't need assistance?

Was that the purpose of it?

MERRICK GARLAND:

Yes. I thank you for making that point, Senator. That's -- I say that in the memo that the purpose of the meeting -- of the memo is to convene meetings with federal, state and local, tribal leaders, and to facilitate discussions of strategies for addressing threats, to assess the question, and to open lines of communication about such threats.

AMY KLOBUCHAR:

Thank you. I want to move to some other threats, and that is a hearing that actually, Senator Blunt and I had yesterday. It was a bipartisan hearing. We both called witnesses. It was before the Rules Committee. And it was with both Republican and Democratic election officials, the attorney general of Arizona, a Republican local official in Philadelphia.

And they told stories that horrified senators on both sides of the aisle. The Philadelphia election official commissioner -- local election official had been sent letters basically saying that they were going to kill him and his three kids, naming the kids, as well as putting his house and his address out there.

Katie Hobbs, the attorney general of Arizona, received a voicemail saying, I am a hunter and I think you should be hunted. You will never be safe in Arizona again. Could you talk about what's going on with threats against election workers? And, by the way, we had the Republican secretary of State from Kentucky talked about the fact that it has been difficult.

They are losing in many jurisdictions across the country. They don't have enough election workers because people are afraid. And we don't have to discuss at length, where these threats are coming from. I just want to have election officials; I want to have a functioning democracy. Can you provide

an update on the election threats task force and see -- talk about the kind of threats we're seeing to election officials?

MERRICK GARLAND:

Yes, Senator. Very much like the circumstances with respect to the school boards when the National School Board Association wrote us a letter advising of threats of violence and violence, earlier this year, we received communications from the National Association of Secretaries of State and the National Association of Election Administrators raising concerns about threats of violence and violence in that area.

And that there -- soon thereafter, I met virtually, unfortunately, because of the pandemic, with a large number of election administrators and secretary of States, where they recounted these -- the kind of threats that you're talking about. And that led us to establish a task force, which, again, coordinated efforts between the federal law enforcement agencies, US Attorneys' offices, and state and local law enforcement across the country.

It is the case that many of those kind of threats can be handled by state and local law enforcement, and should be where they're capable of doing that. But the federal government has an important role, as you say, in protecting our democracy and protecting its threats against public officials. And so, there -- that is an ongoing task force evaluating threats in that particular area.

AMY KLOBUCHAR:

Thank you. Thank you. To another area, as chair of the Competition Policy and Antitrust Subcommittee, I've urged the Justice Department to make antitrust enforcement, a top priority. We recently had a nominations hearing for Jonathan Kanter that seems to be moving ahead, and I support the division's enforcement efforts, including, I know they're preparing for 18 trials, which is the most in decades.

And could you talk about the antitrust budget? Senator Grassley and I have passed a bill, with the support of the members of this committee, to add some additional resources to the Antitrust Division. Senator Lee and I have held numerous very informative hearings about various issues related to antitrust.

Could you talk about what's happening there?

MERRICK GARLAND:

Yes. Look, the Justice Department is very much committed. As I said, it's a key focus of our attention, antitrust enforcement, because it's essential for consumer well-being and for the well-being of our citizens. We have aggressively moved in this area. We've already stopped a merger of two of the top three largest and international insurance brokers.

We have, as you say, continued -- we are in the middle of trials -- criminal trials with respect to price fixing and market allocation. We have the ongoing matter involving exclusionary conduct in the Google case. We are looking -- we have investigations and attention in many areas from health care to agriculture, to allocations within labor markets.

AMY KLOBUCHAR:

Could I just ask you -- you talked about the criminal cases. Could -- given the antitrust agency's authority to seek substantial civil fines for Sherman Act violations, help enforcers deter anti-competitive conduct --

MERRICK GARLAND:

I'm sorry, I --

AMY KLOBUCHAR:

A civil -- with civil fines. Would that be helpful?

MERRICK GARLAND:

Yes, having the ability to seek civil fines as well would be helpful. Of course, if we succeed in a criminal case, the follow-on civil cases become quite easy --

AMY KLOBUCHAR:

Mmm hmm.

MERRICK GARLAND:

As I know from my own antitrust practice.

MERRICK GARLAND:

But we are down in the number of attorneys in the Antitrust Division considerably, and we need an expansion. That's why we've asked for a nine percent increase, a total increase of 201 million in our FY22 budget.

AMY KLOBUCHAR:

OK.

MERRICK GARLAND:

The number of mergers has skyrocketed, and the number of people we have in the division evaluating those mergers has decreased.

AMY KLOBUCHAR:

Mmm hmm.

MERRICK GARLAND:

We need help in that regard.

AMY KLOBUCHAR:

Thank you, and I really appreciate the bipartisan work we've done in this committee on that front. Last question. In July, the department announced that it was adopting a new policy that restricts the use of compulsory process to obtain information from members of the news media acting within the scope of newsgathering activities, an issue we discussed, you and I discussed, at your confirmation hearing.

As a part of that announcement, you asked the deputy attorney general to undertake a review process to further explain, develop, and codify the policy. Can you provide an update on the steps the deputy attorney general has taken to ensure that the new policy is implemented?

MERRICK GARLAND:

Yeah. So, issuing a memo is good, and it controls the Justice Department now. The next step, though, is to have a regulation which will give us some greater permanence. And the next step after that would be legislation, which the Justice Department supports. And what the attorney general -- deputy attorney general is doing now is trying to formulate the general outlines of my memorandum into a regulation, which can replace the current pretty detailed regulations that we have.

That's what she's involved in right now.

AMY KLOBUCHAR:

Excellent. Thank you very much.

DICK DURBIN:

Mr. Attorney General, we promised you a five-minute break at 11:30. We can either take it right now, or I can have Senator Lee and Coons ask. Up to you.

MERRICK GARLAND:

I'm happy to go ahead with Senator Lee and Coons.

DICK DURBIN:

Let's proceed. Senator Lee?

MIKE LEE:

Thank you, Mr. Chairman. Thank you, Attorney General Garland, for being here. Mr. Attorney General, I have been concerned in recent weeks by some steps that have been taken by the Biden administration, steps that I fear represent a significant amount of overreach. You know, seven weeks ago, you had President Biden giving a speech in which he promised to enlist the assistance of corporate America, all of corporate America with more than 99 employees, in firing people who don't get vaccinated.

Now, I'm vaccinated. I've encouraged everyone close to me to get vaccinated. But I don't think it's the role of the federal government to do that. He's threatening to cripple employers by imposing absolutely punishing fines on them, and they're now doing his dirty work even before this act of

overreach has been reduced to an order that could be litigated, litigation that, I believe, would end the say -- the same way *Youngstown Sheet and Tube v. Sawyer* ended.

And now, you know, about a month after that, we had your October 4 memorandum in which you direct the Department of Justice and the FBI to intervene in what, as far as I can tell, is a state and local issue. It is a series of issues involving how parents advocate for their children with their local school boards.

And I also believe that in doing that -- in doing that through the Department of Justice, doing it in the way that you did it, directing the assistance, enlisting the help of all 94 US attorneys, therefore, every satellite office of the Department of Justice nationwide, you do it in a way that, I think, has a natural tendency to chill free speech in this area.

I question seriously the role of the federal government in protecting people at local school board meetings from their neighbors. It is, after all, most of the time, state law, not federal that's at play when there is criminal activity. Federal crimes are a subset of crimes generally. So, you've referenced several times today that your letter covered only violence and threats of violence.

And yet the very opening line of your memo says, in recent months, there's been a disturbing spike in harassment, intimidation, and threats of violence against school administrators, school board members, teachers, and staff who participate in the vital work of running our nation's public schools. You referred to this over and over again, and that's a pretty broad statement.

I believe this has a tendency to chill free speech, free speech that is exercised at the state and local level, typically by neighbors, by parents, to local school boards. In hindsight, would you agree that a natural consequence of your memo could be chilling free speech, protected speech, by parents protesting local school board policies?

MERRICK GARLAND:

Senator, the memo is aimed only at violence and threats of violence. It states on its face that vigorous debate is protected. That is what this is about, and that is all this is about.

MIKE LEE:

What about harassment and intimidation, are those federal crimes?

MERRICK GARLAND:

They are federal crimes.

MIKE LEE:

What -- are you referring to, like, witness tampering, intimidation under 18 USC 1512, or what?

MERRICK GARLAND:

18 USC 2261A, which makes it a crime, with intent to injure, harass, or intimidate, placing a person in reasonable fear of serious bodily injury through communications over the internet. Likewise, 47 USC 22 -- 223A, making telephone calls with intention to harass. Now, I want to be clear, though, that those only are within -- I take your point, those are only within what is permitted by the First Amendment, and there -- and the Supreme Court has been clear about that too.

In the Virginia v. Black case, the court explained, when intimidation is not protected by the Constitution and that is when it is made with the intent of placing the victim in fear of bodily harm or death. So, that's what we're concerned about here.

MIKE LEE:

Well -- and one of the things that concerns me is, you know, we've got 17 attorneys general led by Attorney General Todd Rokita in Nevada and joined by a total of 17 attorneys general, including Sean Reyes, the fantastic attorney general of the state of Utah. They've weighed in, and they've said they've -- there is not a barrage of accusations, not -- no unusual flood of accusations of threats of violence against school board members, nothing unusual, nothing that they can't handle at the state and local level that, normally, things like this against state and local officials, involving state and local government entities like school boards are not federal.

Now, in response to a series of questions before the House Judiciary Committee, including some questions asked by Congressman Jim Jordan from Ohio, you were asked your factual predicate for your October 4 memorandum and for your conclusions in this regard. You answered before that committee that your factual predicate for that was the October 22 memorandum from the National School Boards Association.

The National School Boards Association, as has been mentioned, has since withdrawn that memo, and yet you said that was the factual predicate. Given that that was the factual predicate and that it's rescinded its memo, saying that there was no justification for some of the language that they used in that letter, will you rescind your memo?

MERRICK GARLAND:

Senator, I -- best of my recollection, I said that the impetus for the letter -- for my memorandum was that letter and also reports of this kind of activity.

MIKE LEE:

What reports?

MERRICK GARLAND:

I said, again, at the time that there were news reports that had been published, and I think that some of the other senators here have described some of those news reports. And we've certainly seen, subsequently, more news reports and more statements by board members of threats to kill them.

MIKE LEE:

Congressman Chip Roy of Texas said -- raised in that same hearing the issue of a 14-year-old girl in a school bathroom being sexually assaulted in Loudoun County, and you indicated in response to that that you weren't aware of that. And in the six days before you testified before the House Judiciary Committee, have you become familiar with the publicly reported details of that case?

MERRICK GARLAND:

Yes, I have read about the case, yes.

MIKE LEE:

If you were unfamiliar with the supposed instances of threats of violence and intimidation that the National School Boards Association cited in the letter, then how did you determine that intervention by the FBI and the DOJ was necessary, that that was the right approach?

MERRICK GARLAND:

So, the right approach in the letter is to meet with local law enforcement. That's what we've asked for, is to meet, to assess the situation, to see what their needs are to strategize, and to open lines of communication. Now, I'm hopeful that many areas of local law enforcement will be well able to handle this on their own.

But this is what the Justice Department does every day. We consult with our local and state partners and see whether assistance is necessary.

MERRICK GARLAND:

And of course, we continue to have our own Federal responsibilities with respect to communications by the internet and on social media and phone and through the mail. But I'm hopeful that we will not be needed in this area that our state and local partners will be able to handle these threats.

MIKE LEE:

My time's expired. I just want to state for the record as I close that my staff and I went through every news source raised by the National School Board Association, there was no explicit death threat. And I choose here to reiterate my concern that not every outburst or expression of concern by neighbors among neighbors at a local school board meeting warrants a federal investigation, certainly doesn't warrant the involvement of 94 US attorneys in a way that threatens, intimidates, intends inevitably to chill First Amendment activity.

Thank you, Mr. Chairman.

DICK DURBIN:

Thank you, Senator Lee. Senator Coons.

PATRICK LEAHY:

Mr. Chairman --

CHRISTOPHER COONS:

Well, thank you.

DICK DURBIN:

Just one second.

PATRICK LEAHY:

One more request for the introduction of a letter from another attorney general on rescinding the memorandum. This one from Ohio, Attorney General Yost.

DICK DURBIN:

Without objection. Senator Coons.

CHRISTOPHER COONS:

Thank you, Chairman Durbin, Ranking Member Grassley. Thank you, Attorney General Garland. As you well know, oversight of the executive branch is an important part of the duties of this body, and so I just want to commend the chair and ranking for prioritizing this and you for your time here. Well at times challenging, this process is key to fulfilling our constitutional responsibilities and we know that we have substantial work to do to restore confidence in our democratic institutions.

And I think your engagement here today is a key part of that, so thank you for your diligent and thorough answers to the questions that are being presented today. Let me just start with a question about some characterizations that are being made here and in other settings about the trajectory of the Biden administration in terms of responding to violent crimes.

Some are asserting that the Department of Justice is focused on defunding the police or hamstringing or undermining law enforcement. As an appropriate -- or my impression, instead, is that the president requested an additional \$388 million for the COPS Hiring Program, an increase of \$200 million over the previous year.

The CJRS probes that was just posted includes \$100 million for new community violence intervention programs. And the Biden administration ensured that over \$350 billion previously available grants under the CARES Act could be used to hire more law enforcement personnel at the state and local level, even beyond prepandemic levels.

Could you just speak briefly to how these different programs and initiatives are, in fact, designed to prevent violent crime, designed to support our state and local partners? And how these investments could work to assist, support, and protect law enforcement in conducting them -- their obligations and duties in our communities in an appropriate way?

MERRICK GARLAND:

Yes, Senator. I thought that I would just add one more pile of requests there which was for over \$500 million for the Byrne JAG Grants, which also go directly to state and local law enforcement. So, yes, look, we are very concerned about violent crime. This is an area which is primarily the -- again, primarily the responsibility of state and local law enforcement.

But nonetheless, has bipartisan support, has had this since the 1990s for federal government involvement to help prevent. We are -- as a consequence, we have historically since then and accelerating now lashed up with our state and local partners and task forces and joint organizations in every city and every community in the United States to help our local law enforcement protect their communities against violence.

We also have federal, obviously, laws which help us in this regard. And these include money that we've requested for DEA, for ATF, for the FBI, for the Marshals Service, all increases to allow us to support these circumstances.

CHRISTOPHER COONS:

And as we've discussed before, my hometown is one where I was responsible for local law enforcement when I was an elected county official. We appreciate these additional investments in the partnership with federal law enforcement. I think it's an important part of our work to combat violent crime all over this country.

I want to turn to immigration. You've been asked by a number of my colleagues about it. There seem to be some who think that anything we do to help migrants will necessarily make the border less secure, more chaotic. But I disagree. I think it is possible for us to reduce multiyear court backlogs, improve access to counsel, improve the humanitarian aspects of handling migrants and build a system that is orderly, consistent with the rule of law, more humane, and more fair.

I'd love to understand how we in Congress can help you through legislation, as well as through funding to reduce immigration court backlogs, improve access to counsel, improve the process, and also contribute to securing our southern border. Do you have thought you care to share briefly or would you be willing to share those with us in writing?

MERRICK GARLAND:

Well, I'll be happy to have the department get back to you in writing. But I will say we have requested additional funds so that we can put an additional 600 personnel, including 100 immigration judges into our Executive Office of Immigration Review so that we can do the kind of acceleration that you're talking about.

We've made a number of internal changes with respect to the way cases are handled in order to accelerate that, but we do need more money in that respect and I've made that plea already to the Appropriations Committee. But be happy to get back to you in more detail.

CHRISTOPHER COONS:

And just superficially, is it your understanding that when applicants for asylum have access to counsel or to legal counseling, the odds that they return for their final disposition and the odds that they will have a fair and appropriate process go up?

MERRICK GARLAND:

Well, I certainly think the odds that they have a fair and appropriate process would go up. I -- it seems quite logical that the odds of them returning for the proceedings would go up because they would know they would have that opportunity. I don't know any of the statistics about that.

CHRISTOPHER COONS:

Understood. On intellectual property, as you know, a long concern of mine. I just briefly wanted to mention, back in December of 2019, DOJ Antitrust issued a statement jointly with NIST in the Department of Commerce and the US Patent and Trademark Office, recognizing that when a patent involved in voluntary standard-setting effort.

These are typically global efforts around critical communications technologies and others, that all legal remedies should be available when a patent is infringed. And that policy ensures competition,

incentivizes participation in standard-setting activities, and plays a vital role in bringing the benefits of innovation to Americans.

It's also critical for our global competition with China and other countries. I'm hearing DOJ has imminent plans to abandon that position or reverse it and replace it with one that does not embrace the availability of all remedies. Given that there are nominees in process likely now for both AAG for antitrust and now for Patent and Trademark Office, would you commit to waiting until there are Senate-confirmed leaders in these positions before a change in policy?

MERRICK GARLAND:

I would love to have Senate-confirmed leadership in the Antitrust Division. And everything you can do to make that go swifter would be greatly appreciated. I don't -- I have to say this is a bit outside the area of my own expertise, but nothing -- I assume any such thing would have to come through me before it would be announced.

Nothing like that has come to my office yet.

CHRISTOPHER COONS:

Well, I'd welcome the opportunity to stay in communication with it. My last quick question relates to the Office for Access to Justice, which has in the past under previous administration, been a leader in debtors' prisons and the criminalization of poverty. Tomorrow, this committee will hold a vote on the Driving for Opportunity Act, a bipartisan bill I'm leading with Senator Wicker and a number of members of this committee.

And it will make progress in terms of ways in which a decades-old practice of stripping people of their driver's licenses for unpaid court-related fees or fines, which advances the criminalization of poverty will be reversed. Could you say just a moment about the plans for the Office of Access to Justice and your view about the importance of continued progress in criminal justice reform?

MERRICK GARLAND:

Yes, Senator. Equal justice under law is inscribed in the pediment above the Supreme Court and is a core principle of American democracy. But you can't have equal justice under law if you don't have access to justice. And for much of my career as a judge and even before that, even before being in the Justice Department.

And in addition, even as a lawyer in private practice, I've been concerned about getting access to attorneys so that lawyers -- so that people who need help with their individual circumstances can have assistance. The president issued an executive order on this. We have -- and there is a report, I'm not positive whether it's public but I believe it is, with respect to reinvigorating the roundtable whose job it is to address this question of which I believe I'm a co-chair.

MERRICK GARLAND:

We are -- I asked for a review within the department. And we have determined that we should stand up once again an independent within the department Office for Access to Justice. We have enough money to do that in the very short term, but our -- not to talk too much about requests for money, but our FY '22 budget request does ask for a significant appropriation so that we can stand up a staff and get that office going.

CHRISTOPHER COONS:

Great. Thank you, Mr. Attorney General. Thank you, Mr. Chairman.

DICK DURBIN:

Thank you, Senator Coons, the committee is going to stand in recess for five minutes. When we return, Senator Cotton is up if he is here. If not, Senator Kennedy.

DICK DURBIN:

Senate Judiciary Committee will resume. Senator Cotton is recognized.

TOM COTTON:

Judge Garland, on May 11, Tony Fauci testified that his agency "has not ever and does not now fund gain-of-function research in the Wuhan Institute of Virology." Last week, his agency admitted that they had, in fact, funded gain of research in the Wuhan Institute of Virology. Are you investigating Tony Fauci for lying to Congress?

MERRICK GARLAND:

So, the long-time rule in the Justice Department is not to discuss pending investigations, potential investigations.

TOM COTTON:

OK, that's fine. That's fine. Do you believe Tony Fauci was truthful when he said his agency had never funded gain-of-function research?

MERRICK GARLAND:

This is outside of my scope of knowledge.

TOM COTTON:

OK. Let's turn to your outrageous directive seeking the feds on parents at school boards across America. When you crafted that October 4 memo, did you consult with senior leadership at the FBI?

MERRICK GARLAND:

My understanding was that the memo or the idea of the memo had been discussed with the FBI before.

TOM COTTON:

Did anyone at the FBI express any doubt or disagreement or hesitation with your decision to issue that memo?

MERRICK GARLAND:

No one expressed that to me.

TOM COTTON:

No one?

MERRICK GARLAND:

To me. No one expressed that to me, no.

TOM COTTON:

Because a lot of them have contacted us, and they said they did, Judge.

MERRICK GARLAND:

I'm sorry.

TOM COTTON:

A lot of FBI officials have contacted my office and said that they opposed this decision.

MERRICK GARLAND:

Well, I doubt any of them spoke to me about it because I didn't speak to -- and no one [Inaudible] to me.

TOM COTTON:

All right, all right. Judge, you've repeatedly, you've repeatedly dissembled this morning about that directive. For instance, about the National Security Division. Chuck Grassley asked you a very simple question why you would seek the National Security Division of the Department of Justice on parents. John Cornyn asked you the same thing.

You said it wasn't in your October 4th memorandum, it was in another office's memorandum. It wasn't another office's memorandum, Judge. It was in a press release from your office. Right here in front of me, October 4, 2021, for immediate release. You're going to create a task force that includes the National Security Division.

What on earth does the National Security Division have to do with parents who are expressing disagreements at school boards?

MERRICK GARLAND:

Nothing in this memorandum or any memorandum is about parents expressing disagreements with their school boards. The memorandum makes clear that parents are entitled and protected by the First Amendment to have vigorous debates. We don't -- the Justice Department is not interested in that question at all.

[Inaudible]

TOM COTTON:

OK. So, even in that case, what is the National Security Division, Judge, the national -- these are the people that are supposed to be chasing jihadis and Chinese spies. What is the National Security Division have to do with parents at school boards?

MERRICK GARLAND:

This is not, again, about parents at school boards. It's about threats of violence.

TOM COTTON:

OK. Let me turn to that because you've said that phrase repeatedly throughout the morning. Threats -- violence and threats of violence, violence and threats of violence.

MERRICK GARLAND:

Yeah.

TOM COTTON:

We have heard it a dozen times this morning. As Senator Lee pointed out, the very first line in your October 4th memorandum refers to harassment and intimidation. Why do you continue to dissemble in front of this committee that you are only talking about violence and threats of violence when your memo says harassment and intimidation?

MERRICK GARLAND:

Senator, I said it in my testimony that it involved other kinds of criminal conduct and the -- and I explained to Senator Lee that the statutory definitions of those terms and the constitutional definitions of those terms involved threats of violence.

TOM COTTON:

OK. Let's look at one of the statutes you cited.

MERRICK GARLAND:

Yeah.

TOM COTTON:

Section 223.

MERRICK GARLAND:

Yeah.

TOM COTTON:

That statute covers the use of not just telephones but telecommunications devices to annoy, to annoy someone. So, are you going to seek your US attorneys and the FBI on a parents' group if they post on Facebook something that annoys a school board member, Judge?

MERRICK GARLAND:

Well, the answer to that is no, and the provision that I was particularly drawing to his attention was 2261A, which was to engage --

TOM COTTON:

I wasn't talking about 2261A. I know you mentioned that. You also mentioned 223. That's what I mention.

MERRICK GARLAND:

Yeah, but the [Inaudible]

TOM COTTON:

OK. Judge, you also tell -- you also told Senator Klobuchar that this memorandum was about meetings and coordination.

MERRICK GARLAND:

Yeah.

TOM COTTON:

Meetings and coordination.

MERRICK GARLAND:

Yeah.

TOM COTTON:

Well, I have in my hand right here that I'll submit to the record, a letter from one of your US attorneys to all of the county attorneys, to the attorney general, to all sheriffs, to the school board association of his state, in which he talks about federal investigation and prosecution. It's not about meetings, not about coordination.

It's about federal investigation and prosecution.

MERRICK GARLAND:

I --

TOM COTTON:

Did you direct your US attorneys to issue such a letter?

MERRICK GARLAND:

I did not. I have not seen that letter. My [Inaudible]

TOM COTTON:

It's got three pages. It's got three pages of spreadsheet about all the federal crimes that a parent could be charged with to include the ones you cited.

MERRICK GARLAND:

My memo --

TOM COTTON:

Did main justice make the spreadsheet, Judge?

MERRICK GARLAND:

I don't have any idea. My memorandum speaks specifically about setting up meetings. And I'll just read it again, convene meetings.

TOM COTTON:

Judge, we've all read your memorandum. We've also heard you dissemble about your memorandum. I have and the record now shows one of your US attorneys sending out a letter about federal prosecution investigation and list in detail the federal statutes for which you could be prosecuted. Judge, you've talked a lot about intimidation and harassment.

Have you issued a memorandum like your October 4 memorandum about the Black Lives Matters rights from last summer?

MERRICK GARLAND:

You're talking about the summer of 2020? In the summer of 2020, there --

TOM COTTON:

A lot of crimes committed. People have [Inaudible]

MERRICK GARLAND:

There were a lot of prosecutions, and they were under the previous administration. [Inaudible] of prosecutions.

TOM COTTON:

OK. Judge, what about this? It is no doubt, you're -- even though parents at school boards aren't within federal jurisdiction, there's no doubt that federal officials are. You keep saying senators. Have you started an investigation into the harassment of Senator Kyrsten Sinema in a bathroom, in a bathroom because she won't go along with the Democratic Party's big tax and spend agenda?

That is a sitting United States senator being harassed in a bathroom.

MERRICK GARLAND:

I don't know whether the senator has referred the matter to the Justice Department or not.

TOM COTTON:

You've cited as the basis for that directive the National School Board Association's letter of September 29. Was that directive being prepared before September 29, before the School Board Association letter was issued?

MERRICK GARLAND:

I don't believe so. Certainly, I didn't have any idea.

TOM COTTON:

So, it was only prepared -- OK, I think that answers the question.

MERRICK GARLAND:

I already answered that question before.

TOM COTTON:

So, you keep citing the school board letter and news reports, news reports.

TOM COTTON:

One of the news report cited in that letter, which you presumably mean is from Loudoun County, Virginia.

MERRICK GARLAND:

No, that's not -- that is not what I was talking about.

TOM COTTON:

Well, you keep citing news reports and that's the most prominent news report that anyone in America has seen. That refers to Scott Smith, whose 15-year-old daughter was raped. She was raped in a

bathroom by a boy wearing girl's clothes and the Loudoun County School Board covered it up because it would have interfered with their transgendered policy during pride month.

And that man, Scott Smith, because he went to a school board and tried to defend his daughter's rights, was condemned internationally. Do you apologize to Scott Smith and his 15-year-old daughter, Judge?

MERRICK GARLAND:

Senator, anyone who was child was raped as is a most horrific crime I can imagine and is certainly and title and protected by the First Amendment to protest to their school board about that.

TOM COTTON:

But he was cited by the School Board Association.

MERRICK GARLAND:

That's fine. But that's not --

TOM COTTON:

As a domestic terrorist, which we now know, that letter and those reports were the basis for your --

MERRICK GARLAND:

No, Senator.

TOM COTTON:

This is -- this is --

MERRICK GARLAND:

That's wrong.

TOM COTTON:

Judge, this is shameful. This testimony, your directive, your performance is shameful.

MERRICK GARLAND:

That's not --

TOM COTTON:

Thank God, you are not on the Supreme Court. You should resign in disgrace Judge.

DICK DURBIN:

General Garland, do you want to complete your answer on?

MERRICK GARLAND:

I wasn't sure there was a question there, but let me be clear that the news reports I'm talking about were not the news reports in that letter. There were other news reports that everybody here has heard about, subsequent reports that everybody has heard about. We are -- there is nothing in this memorandum and I wish if senators were concerned about this, they would quote my words, "This memorandum is not about parents being able to object in their school boards.

They are protected by the First Amendment, as long as there are no threats of violence, they are completely protected", so parents can object to their school parts about curriculum, about the treatment of their children, about school policies. All of that is 100 percent protected by the First Amendment, and there is nothing in this memorandum contrary to that, we are only trying to prevent violence against school officials.

Thank you.

DICK DURBIN:

Senator Hirono.

MAZIE HIRONO:

Thank you, Mr. Chairman. I'd like to insert into the record, The Washington Post article by Salvador Rizzo, that is entitled, "The False GOP claim that the Justice Department is spying on parents at school board meetings". I'd like to insert this article into the record.

DICK DURBIN:

Without objection.

MAZIE HIRONO:

It's good to see you, Mr. Attorney General.

MERRICK GARLAND:

Thank you, Senator.

MAZIE HIRONO:

I will quote from the first sentence of your memo. In recent months, there has been a disturbing spike in harassment, intimidation and threat of violence against school administrators, board members, teachers and staff, who participate in the vital work of running our nation's public schools. This is a fact we have all seen the news coverage of people actually threatening to hurt school board members for going about their jobs.

That is a fact. So, when I listen to my Republican colleagues going on about the intent of this memo, I'm again reminded of the often take the position, to not believe what we -- that we should all not believe what we see with our own eyes. It's like characterizing the January 6 insurrection as just a bunch of tourists visiting the Capitol.

Give me a break, we now see a Supreme Court weaponized to support the position of the most conservative causes. We see a rush to the Supreme Court on cases involving abortion rights gun rights, LGBTQ rights, voting rights, union rights. Thank you, Mr. Attorney General for making the protection of our civil rights, one of the department's core priorities.

I want to turn to the need to combat hate crimes. It's been about five months since President Biden signed the COVID-19 Hate Crimes Act into law, and I sent a letter to you last month requesting an update on the department's implementation of the act and as efforts to reduce hate crimes and hate incidents.

Yet another thing that we have all seen with our own eyes, the rise in hate crimes during this period of the pandemic, Mr. Attorney General, would you briefly describe the actions that you and the

department have taken thus far to implement the COVID-19 Hate Crimes Act?

MERRICK GARLAND:

Thank you, Senator. Even before the act, I had issued a memorandum within the department to assess how we were dealing with hate crimes and to better organize the manner in which we were doing that. And then we're grateful that the Congress passed the COVID-19 Hate Crimes Act. Since then, I issued a subsequent memorandum based on what the associate attorney general and the deputy attorney general had provided, in terms of the department's progress under that act.

And I believe we have now implemented everything that was required of us in the act. But that of course doesn't mean we've solved hate in America, but we have done the things that the statute has asked us to do. We have -- I've appointed a coordinator for all hate crimes, matters. I've appointed a expediter in the Civil Rights Division's criminal section, to expedite our investigations.

We've established a task force of federal law enforcement and US attorney's offices meeting with state and local law enforcement, to coordinate, to explain, to develop strategies with respect to hate crimes. We've had trainings for state and local territorial and tribal law enforcement, to help them recognize these circumstances.

We've asked -- we've established a language coordinator, a facilitator, so that our memorandum and press releases in these regards can be translated appropriately. And we've asked for a considerable additional funds in our appropriations, so that we may give more money to state and local, tribal and territorial law enforcement to assist in these matters.

MAZIE HIRONO:

I appreciate the efforts you have taken and I think that this will result in of course, some factual information about the incident, the extent of hate crimes and incidents in our country, so that we can better prevent and prosecute as appropriate. You've been asked before, I think in the House hearing, about the China initiative.

If we end the China initiative, will we no longer go after economic espionage and IP theft by China?

MERRICK GARLAND:

There are two issues here that we always have to keep uppermost in our mind. One is that the People's Republic of China is a serious threat to our intellectual property. They represent a serious threat with respect to espionage. They represent a serious respect with respect to cyber incursions and ransomware in the United States.

And we need to protect the country against this, and we will, and we are bringing cases in that regard. The other thing that always has to be remembered is that, we never investigate or prosecute based on ethnic identity, on what country a person is from or came from or their family.

MAZIE HIRONO:

Thank you.

MERRICK GARLAND:

Thanks.

MAZIE HIRONO:

I'm sorry, were you?

MERRICK GARLAND:

That's all right.

MAZIE HIRONO:

We're you done?

MERRICK GARLAND:

Yeah.

MAZIE HIRONO:

The reason I ask about the China initiative is that under the previous administration, which Institute of the so-called initiative that there appears to have been racial profiling, which basically ruined the lives of a number of Chinese people. I want to give an example. The Justice Department, the previous

administration, dragged Dr. Anming Hu, a professor at the University of Tennessee through a two-year espionage investigation causing him to lose his job.

At the end of the investigation, DOJ lacked any evidence of espionage and instead charged Dr. Hu with wire fraud and false statements, for apparently failing to disclose his association with a Chinese university on a NASA grant application. His trial ended in a mistrial after which a juror said, she was quote, "Pretty horrified by the lack of evidence", end quote.

When DOJ sought a new trial, the District Court granted Dr. Hu's motion, for an acquittal finding no harm to NASA and no evidence that Dr. Hu knew NASA's funding restriction applied to Chinese universities. So, I would say from your answer that, regardless of whether we have something called the Chinese initiative, you have no intention of not paying attention to espionage and other bad acts by China.

So, I'd say we should get rid of this. This -- what this initiative that results in racial profiling. Thank you, Mr. Chairman.

DICK DURBIN:
Senator Kennedy?

JOHN KENNEDY:
Good morning, General.

MERRICK GARLAND:
Morning Senator.

UNKNOWN:
There's a lot that I couldn't get to.

JOHN KENNEDY:
General, I'm looking at this letter.

UNKNOWN:

Certainly, going to ask questions --

JOHN KENNEDY:

From one of your --

UNKNOWN:

If you want to --

JOHN KENNEDY:

US attorneys --

UNKNOWN:

Will come back and ask questions.

JOHN KENNEDY:

From October of this year.

JOHN KENNEDY:

Where he wrote to the Montana attorney general, all the county attorneys, and all the sheriffs in his jurisdiction, suggesting ways that parents could be prosecuted at school board mayor -- for appearing at school board meetings in accordance with your directives. And one of the suggestions made by your US attorney is parents can be prosecuted for repeated telephone calls, not threatening anyone, just on the theory that repeated telephone calls could be harassment.

Really?

MERRICK GARLAND:

Senator, I haven't seen that memorandum. I've tried to express as clearly as I can here.

JOHN KENNEDY:

I heard you general, but this is one of your US attorneys.

MERRICK GARLAND:

Again, I haven't seen --

JOHN KENNEDY:

Isn't that special? General, you're just a vessel. Let me tell you what I'm talking about. With respect to the National School Board Association letter, you're just a vessel, aren't you?

MERRICK GARLAND:

I'm not sure what you mean by that, but I signed this memorandum. I worked on this memorandum, and this memorandum is my memory. And I'm not [Inaudible]

JOHN KENNEDY:

Well, let me tell you what I mean. We know --

MERRICK GARLAND:

School board.

JOHN KENNEDY:

That the National School Board Association was upset because parents were coming to school board meetings to object to the teaching of critical race theory. We know that, in drafting the letter, the National School Board Association collaborated with the White House for several weeks. They worked on it together.

And we know that the National School Board Association wants the White House -- and the association were happy with the letter. The National School Board Association sent a letter to the White House, and the White House promptly called you and said, siccing the FBI on parents at school board hearings. And that's what I mean, that the White House is the prophet here.

You're just the vessel. Isn't that correct?

MERRICK GARLAND:

Senator, I did not speak with anyone from the White House as -- while I worked on this memorandum. This memorandum reflects my views that we need to protect public officials from violence and threats of violence while, at the same time, protecting parents' ability to object to policies [Inaudible] they disagree with.

JOHN KENNEDY:

I get that. I've heard your testimony. Were you worried that you would be fired if you didn't issue the memorandum?

MERRICK GARLAND:

Senator, I'm not -- I decided on this memorandum on my own. I don't care -- I said from the very beginning, I've taken this job to protect the Department of Justice to make independent determinations with respect to prosecutions and investigations, and I will do that.

JOHN KENNEDY:

OK.

MERRICK GARLAND:

I'm not concerned about being fired.

JOHN KENNEDY:

Sorry to interrupt, General, but I don't have much time. Now, when you got the letter that -- from the White House that prompted your memorandum to give the FBI new duties in making sure our parents aren't dangerous domestic terrorists, you didn't investigate, before you issued your memorandum, the incidences cited in the letter, did you?

MERRICK GARLAND:

Look, I took the statement by the national association, which represents thousands of school board members. When they said that they were facing violence and threats of violence and when I saw on the news media reports of, clearly --

JOHN KENNEDY:

Yeah, but you didn't investigate the incidents in the letter, did you?

MERRICK GARLAND:

No. There -- this is the first step. This is an assessment step. It comes before investigations. The purpose of this [Inaudible]

JOHN KENNEDY:

Right. Before you issued your memo, you didn't investigate the incidents.

MERRICK GARLAND:

The memo is intended to begin assessments. It is intended to [Inaudible]

JOHN KENNEDY:

And, in fact, most of the incidents in the letter were -- did not involve threats of violence, did they?

MERRICK GARLAND:

I think that's correct. Most of them did not.

JOHN KENNEDY:

Yeah.

MERRICK GARLAND:

And they would not be covered by either federal or state law. I agree with that. And they would be protected by the First Amendment. But threats of violence are not covered by the First Amendment.

JOHN KENNEDY:

Can we agree that we have thousands -- tens of thousands, maybe hundreds of thousands, of kids growing up today who are more likely to commit a crime than -- and go to jail than own a home and get married?

MERRICK GARLAND:

I don't know about the comparative statistics. I do know there are too many people who are committing crimes.

JOHN KENNEDY:

And one of the reasons for that is lack of parental involvement, isn't it?

MERRICK GARLAND:

I think parental involvement is essential. I think it's the key, both to bringing up good kids --

JOHN KENNEDY:

So, why do you only issue a memorandum listing incidents that you didn't investigate --

MERRICK GARLAND:

My memo --

JOHN KENNEDY:

That anybody who has any fair-minded knowledge of the world knows it's going to have a chilling effect on parental involvement with respect to what their kids are learning at school.

MERRICK GARLAND:

Just want to be clear, again, Senator. My memorandum did not list any of those incidents.

JOHN KENNEDY:

Come on, General. We both know this will have a chilling effect. You don't think there are parents out there in the real world that said, "Oh, my God, maybe we shouldn't go to the school board meeting. There'll be FBI agents there"? We live in a -- we're sitting in la-la land.

MERRICK GARLAND:

I tried to make clear as clear as I could, and now I have subsequently made clear in every public statement on the matter.

JOHN KENNEDY:

Your actions made it clear, General. Let me ask you one last question. When men follow a United States senator who happens to be a female into a women's room to harass her about her beliefs, why is that just part of the process, as President Biden says, but when a parent goes to a school board meeting to protest that her child is being taught that babies are -- can be white supremacists is subject to FBI prosecution?

MERRICK GARLAND:

The description that you just gave, that parent is not subject to FBI investigation. And there's nothing in this memorandum that suggests this. We protect United States senators against threats of violence.

JOHN KENNEDY:

You did a good job with Senator Sinema.

MERRICK GARLAND:

Within the last month, we have indicted somebody who made threats of violence against both Alaska US senators. Recently, we just issued -- we just indicted somebody else who made threats of violence against [Inaudible]

JOHN KENNEDY:

Can I ask one more, Mr. Chairman?

MAZIE HIRONO:

Can you wrap up, please, Senator Kennedy?

JOHN KENNEDY:

I'm sorry.

MAZIE HIRONO:

Could you wrap up? I am chairing this [Inaudible]

JOHN KENNEDY:

Oh, yes, ma'am. I will. I'm just going to ask one last one. What led you to conclude, before you issued your memorandum siccing the FBI on parents, that law enforcement at the state and local level couldn't handle it?

MERRICK GARLAND:

Let me be clear, Senator. We did not sic the FBI and parents. That's not what this memorandum is about. Nor did we conclude that local law enforcement is unable to deal with the problem. The purpose of this memorandum is for our federal law enforcement to engage with state and local and determine whether they need assistance.

JOHN KENNEDY:

And you don't think this had any chilling effect whatsoever on parents out there?

MERRICK GARLAND:

The memorandum expressly says at the beginning that it is aimed at violence and threats of violence and expressly says that robust public debate about school policies are protected.

JOHN KENNEDY:

Right. Well, I like you, General, a lot but --

MAZIE HIRONO:

Thank you --

JOHN KENNEDY:

On this issue, you've turned into someone --

MAZIE HIRONO:

Senator Kennedy.

JOHN KENNEDY:

You said you wouldn't be.

MAZIE HIRONO:

I recognize Senator Booker. Please proceed.

CORY BOOKER:

General, I want to start with an area of bipartisan accord. It seems to be what we're getting towards. Today's the 35th anniversary of the Anti-Drug Abuse Act, which established vastly different sentences for crack and powder cocaine. We are seeing a wonderful convergence in Congress, most recently in the House of Representatives, where you have this wide bipartisan vote -- I'm not sure if there's been a bigger bipartisan vote this year -- where 149 Republicans voted along with almost all the Democratic Caucus to address this disparity.

The effect of that law was 100-to-1. The work of, again, bipartisan senators here negotiated -- led by Senator Durbin, negotiated the Fair Sentencing Act, which was a change of that disparity from 100-to-1 to 80-to-1. Senator Durbin and I now have introduced something called the EQUAL Act, which is already been passed by the House.

We've got Republicans and Democrats on board.

CORY BOOKER:

We've got Republicans and Democrats on board: Tillis Leahy, Paul, Graham, as well as my colleague, Senator Ossoff on my side of the aisle. The President Biden, publicly supported the bill.

And again, I just think this is -- should be an area that's obvious accord. But I really want to know your opinion. Do you agree that it's time to end the sentencing disparity between crack and powder cocaine, especially given the disparate impact it has on people of color? And if you believe that, why do you believe that?

MERRICK GARLAND:

Yes, I do believe that. The Justice Department supports that bill that supports equal treatment of crack and powder cocaine. The Sentencing Commission has, over the last decade, maybe more than that

produced a series of reports which undercut what was supposed to be the scientific basis for the distinction between the two.

And it's made quite clear that there is no warrant basis for distinguishing between the two. So, once that is undercut, there can be no grounds for that. On the other hand -- on the other side, not only are there no grounds for it, it clearly does have a disparate impact on communities of color, also clearly recognized by the Sentencing Commission statistics.

Do we have that kind of circumstances? There's no justification for this and we should end this.

CORY BOOKER:

I appreciate that. One last, just clarification, while there is a lot of unanimous support for this on both sides of the aisle, a lot of support on both sides of the aisle. There are some people that worry about it somehow affecting crime or crime rates. Could you discuss your opinion of that perspective?

MERRICK GARLAND:

Well, I think powder cocaine is dangerous with respect to crime rates as crack cocaine, both of which have now been unfortunately overtaken by fentanyl and the opioids. But both of those are bad problems from the aspect of crime. But equalizing penalties for crack and powder should have no difference with respect to our ability to fight violent crime [Inaudible].

CORY BOOKER:

Thank you. Thank you, sir. I appreciate that. You're saying that for the record. Can I revisit what Senator Durbin brought up at the top? And this is a letter that he and I sent you regarding the people that are currently on home confinement. In the last days of the Trump administration, on January 15, 2021, the Justice Department's Office of Legal Counsel issued a memo arguing that the BOP must reincarcerate everyone on the CARES Act home confinement at the end of the covered emergency period if they do not otherwise qualify for home confinement.

Now, these are folks that were pretty, extremely scrutinized beforehand. They've been returned to their communities. They have been reengaging with family, with children. They have -- our folks are not showing any criminal activity or any problems. Senator Durbin and I really believe and we were urging the Department of Justice to rescind this Trump era memo, which incorrectly concludes that

people who have been released to home confinement and who have abided by the conditions of the release must be torn away from those families and go back to BOP custody.

And so, I just really would love to know where you stand on this issue. To me, it's an issue of justice, it's an issue of restorative justice. It's an issue of compassion and understanding the collateral consequences of ripping people back and putting them in prisons unnecessarily, not to mention the cost to taxpayers.

Clearly, I have my opinion, but I'd like to hear yours.

MERRICK GARLAND:

Look, I agree with you. It would be a terrible policy to return these people to prison after they have shown that they are able to live in home confinement without violations. And as a consequence, we are reviewing the OLC memorandum that you spoke about. We are also reviewing all of the other authorities that Congress may have given us to permit us, to keep people on home confinement.

And as you know, we are also -- and the president is reviewing the extent of his clemency authority in that respect.

CORY BOOKER:

How long should we expect that review before you make a determination?

MERRICK GARLAND:

I can't say exactly but --

CORY BOOKER:

Are we talking six months or less than six months?

MERRICK GARLAND:

I'm not exactly sure how long that will take. It may require rulemaking and so that may take more time, but we can be sure that it will be accomplished before the end of the CARES Act provision, which extends until the end of the pandemic. And so, we are not in a circumstance where anybody

will be returned before we have completed that review and implemented any changes we need to make.

CORY BOOKER:

OK. And in regards to just compassionate release in general, will the Department of Justice consider filing motions for individuals on home confinement who reside in judicial districts like the 11th Circuit where courts have interpreted compassionate release statutes to cover only medical age and family circumstances grounds.

Obviously, there is still a pandemic and we know that putting people into environments greatly increases their chances. I'm concerned about restrictions on compassionate release in places like the 11th Circuit.

MERRICK GARLAND:

So, this is something I haven't thought about, Senator. I guess the Bureau of Prisons, which is the agency that decide those questions has to have a uniform policy across the country. I hadn't thought of the possibility of making distinctions based on which circuit, because you're quite correct, the different circuits have different views about the scope of compassionate release.

I'll take that back for consideration if it's all right with you.

CORY BOOKER:

All right. I have some concerns about the First Step Act implementation, which I'll ask in writing to you. I want to be respectful of my colleague, my friend, the senator from the great state of Oklahoma.

BEN SASSE:

Ouch.

CORY BOOKER:

I'm sorry, sir. Forgive me. Omaha.

BEN SASSE:

Omaha is not a state, brother.

CORY BOOKER:

I'm sorry. Where are you from, sir?

BEN SASSE:

We used to be able to beat Stanford in football and we will return. Chairwoman.

MAZIE HIRONO:

[Inaudible]

BEN SASSE:

Thank you. Sorry, Cory, it's not as funny as I thought it would be there. Attorney General, I know you're tired of talking about the memo --

MERRICK GARLAND:

I'm not.

BEN SASSE:

But -- did you say you're not?

MERRICK GARLAND:

I'm happy to answer any questions you have, sir.

BEN SASSE:

I think most of us and most of the American people are just sort of flabbergasted if your answer is you have no regrets about this memo. Is that what you're telling us? You think this was wise?

MERRICK GARLAND:

Senator the obligation of the Justice Department is to protect the American people against violence, including threats of violence and that particularly includes public officials. I think that is still a concern for the department. This memo doesn't do anything more than ask our law enforcement to consult

with state and local law enforcement to determine whether they need assistance in this regard and whether there are any federal jurisdictional issues involved.

And we recognize --

BEN SASSE:

General, you and I both know that it is political hackery that brought that topic to your desk, not reality. I am strongly against all violence against everyone in public life and all threats of violence. You've not, at any point here, given us any data that show why this would, in any way, be a federal priority at this time.

The chairman -- he's not here right now, but Chairman Durbin has repeatedly talked about how this morning he googled it and is pretty convinced there must be lots of threads. Can you help us understand why so many states are disconnecting their organizations from the National Association of School Boards?

You are aware that the National Association of School Boards has recanted of the memo, correct? You know, they've rejected their own letter to you. Are you aware of that?

MERRICK GARLAND:

I read their letter. Their letter doesn't recant their concerns about safety. It recants some of the language in their letter --

BEN SASSE:

We're all for safety.

MERRICK GARLAND:

Which I did not adopt. The language that they have recanted, I never adopted and never would adopt.

BEN SASSE:

Why did the Ohio School Boards Association severed their relationship with the National School Boards Association?

MERRICK GARLAND:

I don't know --

BEN SASSE:

Why did the Missouri School Boards Association severed their relationship with the National School Boards Association? Why did the Pennsylvania School Boards Association severed their relationship with the National School Boards Association? Because this was political hackery. The kind of stuff you told us when you were seeking confirmation that you would be against.

And you had the audacity to begin your opening statement today by telling us one of your big three priorities was to make sure communications between the White House and the Justice Department were not politicized. The last three administrations in a row have politicized the Department of Justice, the three including you now.

You told us one of your priorities in running DOJ was to reject these kinds of politicization we saw in the Trump DOJ and in the Obama DOJ. You told us that was one of your priorities. You wrote a memo here that came from political staffers, who've been rejected by their organization, coordinating with the White House to try to exaggerate a threat so that they could make sure parents felt intimidated.

You've told us -- I wouldn't use the exact language Senator Kennedy used, about that you were a vessel, but one of two things is true here. Either you were just a vessel of political com staffers at the White House or you yourself are in favor of politicizing the DOJ. You told one of my colleagues a minute ago that you've not read the memo from the US Attorney for Montana.

BEN SASSE:

I'll read it to you if you want or I'll bring it to you and you can read it. This is one of your direct reports. It's an insane letter. The US attorney for Montana takes as predicate for why he's doing what he's doing, your memo. And on October 14, he sends a list of all the counterterrorism statutes that should be considered to be used against parents who are upset about things that might be happening at their school boards.

Maybe there's lots of specific evidence of violence being threatened against school board members in Montana. But he -- his memo -- or his response to your memo includes a letter where he says that

anonymous telecommunications harassment, repeated telephone calls, or repeated harassing communications should be things that are potentially brought up as the basis for federal charges against parents.

Do you agree with this letter of October 14?

MERRICK GARLAND:

Senator, I'm going to say again, this is aimed at violence and threats of violence. And I don't care whether they come from the left or from the right, or from up or from down. I don't care if they're in favor of curriculum or against particular kinds of curriculum. We can imagine this -- all these kind of these arguments against school boards coming from either the left or the right, it doesn't matter.

Arguments against school boards are protected by the First Amendment, threats are not protected by the First Amendment. And we got -- we received a letter from the National Association of School Boards, no reason to believe --

BEN SASSE:

No, you didn't receive an anonymous letter. White House political staff --

MERRICK GARLAND:

I didn't say --

BEN SASSE:

Co-wrote it with this organization, which is why the organization has rejected it. You know these facts now to be true and yet you still won't disavow your memo. Why? You didn't receive some objective, neutral letter because all these people were being threatened. You are the -- you are responding to a political campaign to politicize the Department of Justice.

How big is the threat that American parents pose right now? When you lead a big organization, you have 100,000+ employees, you have a lot of violence to go after. Are parents at school boards one of the top three concerns you face right now?

MERRICK GARLAND:

This memorandum is not about parents at school boards. It doesn't matter whether they are parents or anyone else. It has to do with threats against public school teachers, public school officials. It is not political --

BEN SASSE:

I'm against all those threats. I want to know what the data is.

MERRICK GARLAND:

Well, I don't need data in order to assess --

BEN SASSE:

Or respond to a political staffer's campaign out of the White House.

MERRICK GARLAND:

The purpose of this memorandum is to get our law enforcement to assess the extent of the problem. And if there is no problem, if states and local law enforcement are capable of handling the problem, then there is no need for our involvement. It -- this memo does not say to begin prosecuting anybody. It says to make assessments.

That's what we do in the Justice Department. It has nothing to do with politics.

BEN SASSE:

Well, you report back to this committee with what you find about these threats because what you just said, I completely agree with. We are against violence against public officials, you and I agree. We are against threats of violence against public officials, you and I agree. We are for local police powers investigating local crimes, and there are definitely yokels and idiots that make threats against lots of people in public life.

I don't minimize it, you shouldn't minimize it, you're not minimizing it, but we both believe, and in your heart of hearts, I'm pretty sure you believe, that local law enforcement is more than able to handle some one idiot or 12 idiots at school board meetings. But you made it a federal issue. And I don't have any idea why and at no point today have you offered us a shred of data.

So, my question is will you pledge you will report back to this committee with the results of your investigation about how big a threat the American parent class is to school boards in the country?

MERRICK GARLAND:

I will be happy to get a report back to you, but it -- this is not about the American parent.

BEN SASSE:

I know. It's about the politicization of DOJ, and you decided to submit as a vessel and you know better.

MERRICK GARLAND:

I'm sorry, but I don't agree with that, Senator.

MAZIE HIRONO:

[Off-mic]

RICHARD BLUMENTHAL:

Thank you, Senator Hirono. Welcome to our committee, Mr. Attorney General. And let me just begin by thanking you and your team for the sense of integrity and transparency that you brought to the Department of Justice after a time when the rule of law in the greatest law enforcement agency in the history of the world was gravely threatened --

UNKNOWN:

Senator Durbin [Inaudible]

MAZIE HIRONO:

Mmm hmm. I see.

RICHARD BLUMENTHAL:

By a lack of that dedication and commitment. I think it's very important, what you have done. Even though we may have differences of opinion, we may disagree, but nobody can doubt your

commitment to the rule of law. I want to ask you about a matter, I know you're familiar with it. Last month, the committee held a hearing on the FBI's mishandling of the Nassar investigation, Larry Nassar, who was convicted of the most heinous kind of abuse with respect to young athletes and gymnasts, particularly four brave women shared their stories with us. They showed up to tell those stories in spite of the very grave obstacles.

The inspector general concluded that two FBI agents made false statements during their investigation into Nassar. And to the IG himself, the inspector general, during an investigation, the FBI agents lied, he referred those cases to the Department of Justice. What I'd like to ask is that the Department of Justice now, in effect, show up by providing an explanation of whatever its decision is with respect to the prosecution of those agents.

The deputy attorney general announced that the Criminal Division was conducting a new review, as you know, and that new information has come to light. While we wait for that review to be completed, what I'm seeking from you is a commitment that you will explain the decision when it's made. I recognize as a former prosecutor, that declinations typically are not explained, but the justice manual itself says that in criminal civil rights cases, "it is often the practice to send case closing notification letters in cases closed with indictment or prosecution" because cases "often spark intense public interest even when they're not prosecuted" and that such letters are "particularly encouraged in cases of police misconduct and other cases involving law enforcement officers, subjects." In this case, we have exactly that situation.

And I'm asking for a commitment that you will provide an explanation for your decision.

MERRICK GARLAND:

Well, Senator, this is a hard problem for us. That part of the manual that you're talking about is about violations of the Civil Rights Act and what we're talking about here are false statements. Needless to say, if -- the results of this review is a prosecution that will become public. On the question of how much -- whether and how much we can say, if all we do is decline, I'm just going to have to take that back for consideration.

I take your point and I will think about it very carefully, as well, the Criminal Division.

RICHARD BLUMENTHAL:

I understand you're not ruling it out, but I'm going to continue to press for an explanation. I think the gymnasts deserve it, so does the American public. And I hope that you will make a decision to provide a full and complete explanation because I think the credibility of the decision will largely depend on it. And let me just say, in my view, we need to do more than focus on the FBI agents that the inspector general referred for prosecution because this failure was an institutional failure, institutional to the FBI, to USA Gymnastics, and the entire Olympic system.

It was an institutional breakdown. And to date, there's been no accountability for anyone in power. To that end, I am announcing that I -- in the commerce subcommittee that I chair, the Subcommittee on Consumer Protection, we're going to continue the work that Senator Moran and I began years ago. We literally began it years ago with the investigation and Olympics reform legislation.

We're going to engage in further oversight of the United States Olympic and Paralympics Committee, the national governing bodies, and SafeSport to ensure their purported commitment to safety is not an empty promise. The gymnasts have asked us, they deserve us -- they deserve it, and we're going to fulfill that obligation.

But in my view, the Department of Justice has to do more as well given the FBI's gross mishandling of the Nassar investigation. I believe a new review of all of the information related to Nassar and the USOPC more broadly is warranted here because there are other examples of potential misconduct that deserve a fresh look.

RICHARD BLUMENTHAL:

For instance Sinema [Ph] and I referred the former CEO of the USOPC to the Department of Justice for potentially perjuring himself before our subcommittee in 2018. We don't know what, if anything, the department did with that referral. We've heard virtually nothing. In addition, the former US attorney for the Southern District of Indiana, whose office was involved in the Nassar investigation, is now representing one of the disgraced FBI agents.

He's representing one of the FBI agents referred for prosecution. I don't know whether that's a violation of ethical rules or some other kinds of Department of Justice policies, but it raises significant questions, and the department should have an interest in them. So, I hope that we can expect more from you by way of explanation, and I hope that we can count on you for, and a new review of the

information related to the Nassar investigation, USA Gymnastics, and USOPC to determine whether there are additional cases where prosecution is necessary to hold wrongdoers accountable.

MERRICK GARLAND:

The institutional failure that you speak of is quite apparent. I thought that the testimony by the gymnasts was, as I said, heart-wrenching, and they were courageous. The FBI director has adopted all of the recommendations of the inspector general and is putting them into effect. And in addition, we have adopted new regulations, new authorities in the department to be clear that if the FBI is investigating a case of assault on a child and determines that it no longer had -- that it doesn't have jurisdiction, it immediately inform the relevant state or local prosecutors and law enforcement, this is what didn't happen in the Nassar circumstance, and ensure that that is done so that the state and local will be able to continue.

Likewise, with respect to transfers from one FBI office to another, another failure under those in that case, that those be monitored to ensure that those transfers occurred. We take this extremely seriously. What happened is just awful, and you have the commitment of the Justice Department and of the FBI director and of the FBI to make these kinds of institutional changes to ensure that this doesn't happen again.

RICHARD BLUMENTHAL:

I appreciate those points. But, as you well know, because of your own long and impressive record as a prosecutor, there's nothing like accountability, individuals being held accountable to send a message, particularly deterrent message, to an institution. Thank you, Madam Chair.

DICK DURBIN:

Thank you, Senator Blumenthal. And I have a list from the Republican side, and this is the order they've given me, correct me if I'm wrong: Tillis, Blackburn, Hawley, and Cruz. We have two Democratic senators who have not asked at this point. We'll wait to see if they arrive. Senator Tillis? Senator Tillis, I don't know if you're mic is on.

THOM TILLIS:

Better?

DICK DURBIN:

Better.

THOM TILLIS:

You may regret it, but, Mr. Attorney General, thank you for being here. You know, in response to the memo, I know you've repeatedly said this is not about parents. Fifteen years ago, I was PTA president, my daughter's high school, participated in a lot of school board meetings. And I still watch it on public access back in Mecklenburg County when I'm home.

The basis for your memo was substantially the letter that you all received. Is that correct?

MERRICK GARLAND:

That was an important part of it, yes, Senator.

THOM TILLIS:

Do you think there was an empirical -- I've seen some of the widely reported situations in some school board meetings but is there really any empirical basis for -- I've seen a lot of raucous school board meetings. I participated in them. Is there really any empirical basis to the DOJ do any real work outside of the public reporting to say that there's a disturbing trend that required the kind of what we consider to be overreach on part -- on behalf of the DOJ?

MERRICK GARLAND:

So, as I've explained, what we looked at was the letter from an organization that represents thousands of school board members and school boards and public reports of threats of violence. And even since then, I have further read quite express threats of violence being reported.

THOM TILLIS:

Watching -- Mr. Attorney General, I want to try and keep in time in deference to my colleagues behind me.

MERRICK GARLAND:

Yeah. I'm sorry.

THOM TILLIS:

But I do -- I know that you've said it's not about the parents. But when the DOJ releases the memo, and I think even more importantly the press statement, I think that it does have a chilling effect on parents being willing to go and express their concerns with the direction the school board's going. When all of a sudden, you think that your words and this list of crimes that the department has sent, I guess to at least the state of Montana, others, it could have a chilling effect on people who legitimately have a concern and they want to express it. But now, they may think that they come crosswise with the FBI. So, I do believe that it will have a chilling effect on peoples who's right they have to go and express their concerns, like in Loudoun County, a ridiculous overreach.

I think that it will have that effect because the full force of the FBI is now something a parent has to think about before they go before a school board meeting to express their concerns, and they get frustrated. Like I said, they've been raucous for decades, and they will be raucous for decades to come.

So, I do -- I really do believe that you should seriously consider rescinding, revising a statement out there that concerns me for the parents that I want to show up at school board meetings and have the school boards held accountable. The other thing that we should talk about are the numerous examples of school board members getting caught, saying audacious things, is one thing you've seen over the past year.

Think about some of the provocative statements that they said. They thought they were behind closed doors, but they were on the internet, basically ridiculing parents and pretending like they had ball control over their children's education and their future. We've got to get more parents engaged, and I think that the effect of the DOJ action is the exact opposite of that.

But most of my colleagues have covered my concerns, and I agree with those that have expressed on my side of the aisle. In response to Senator Graham, on immigration, you said that you did go visit the border. It sounds like you were down there mainly from the perspective of your role in the DOJ. I understand that Homeland Security is primarily responsible, but I would encourage you to go back down there, and maybe we could share with you our itinerary to talk about why I do believe it should

be a great concern to the DOJ. We've got almost 1.5 million asylum cases on the docket now, and it takes years to complete them.

And about 80 percent of them are adjudicated as not having a valid claim. So, doesn't that data lead you to suggest that the asylum system is being abused? I mean, just -- that's data from the DOJ.

MERRICK GARLAND:

So, Senator, I don't know for sure about the data, but the purpose of the -- of a -- of asylum adjudication is to adjudicate asylum. People whose --

THOM TILLIS:

I understand that, but --

MERRICK GARLAND:

Statute allows them to make these -- this is a statutory question.

THOM TILLIS:

I'm not an attorney.

MERRICK GARLAND:

Not the Justice Department.

THOM TILLIS:

I'm not an attorney, you're an accomplished judge, so, I'm looking at those just from a practical standpoint. When the data says that over -- almost 2 million people have crossed the border illegally since January, and it is 80 percent likely that they're not going to have a valid asylum claim, how any reasonable person couldn't look at that and say something is being abused here?

It's a gateway to get into this country, drift into the shadows, and virtually never leave the country. But here's the one that I'm most concerned with and why I think a briefing with the same people that we met with at the border -- many of the people on this committee were there when I was: hundreds of gotaways a day getting across the border.

And gotaways are not the ones that they -- that want to be processed through asylum. They want to evade detection; they want to drift. And how on earth can we assume that there's anything but a malign purpose for them trying to evade detection? Otherwise, you just get into the system, you're going to be here for years, you're going to abuse the asylum system.

They're skirting it to the tune of a couple of hundred a night, and this has been going on for months. So, now we have thousands of people who came into this country. When the cartel set a pick, they'll send about 50 people over to engage the Border Patrol so that they can send another couple of hundred into our society.

There are drug traffickers, there are human traffickers, there are gun smugglers, there are gang members, and they're coming in by the thousands every month.

THOM TILLIS:

That is a DOJ problem, that is a crime in our communities problem, and it's actually making the Hispanic communities, the majority of which coming over Hispanic, those communities less safe. I would really encourage you to go back to the border and look at it from the perspective of your role as attorney general and the hundreds and the thousands of illegals who are coming across our border every day.

Many of them drifting in and evading detection and making our communities less safe. I do have a number, I've got intellectual property, a number of implementation issues that I'm going to submit for the record. But Mr. Garland, we have a problem at the border and the DOJ has to engage and recognize part of that problem you're going to have to fix.

We got to stop the \$13 million a day that the cartels are getting for human trafficking. That's a documented number. We've got to stop the tons of fentanyl and drugs that are poisoning Americans because we have an out-of-control border situation. This is a law enforcement issue, I understand it's an immigration issue, but we have to get you, I think, read up the same way that we were the last time we were at the border.

I'd really encourage you to go back down there again, talk with the people on the ground, and understand why this is going to make your job more difficult, and it's already making America much less safe. Thank you, Mr. Chair.

DICK DURBIN:
Senator Padilla.

ALEX PADILLA:

Thank you, Mr. Chair. I'll begin with a comment before I get to a few issues and a few questions, particularly in light of recent comments from some of my colleagues about immigration, migration, what is, what isn't happening. And I want to start by recognizing Senator Coons' remarks earlier who asked you about what you're doing to address the backlog in immigration courts, right?

What are the best, most smart approaches to tackling unlawful migration is to improve the effectiveness, the efficiency of lawful migration? It's not just investing in immigration courts but access to counsel. And I just want to add that these are issues that my office hears about on a very regular basis.

And so, I was heartened that you'll be asking for additional resources to address those issues. This is certainly an area where money is needed to improve the processing of immigration cases while ensuring due process. Now, to my questions. First, a response that I and several of my colleagues have been waiting on since April 15, when I and seven other members of Congress sent you a letter concerning the department's funding and oversight of predictive policing tools, which are deployed by law enforcement throughout the country.

As we highlighted in that letter, and I'm happy to provide an additional copy to you, we're concerned that the Department of Justice may be devoting precious taxpayer resources to ineffective tools and encouraging local law enforcement to also devote resources to unproven strategies. We're still -- those tools may be perpetuating a vicious cycle of discriminatory policing against historically marginalized groups.

Because we have not yet received a response, we do not know for example what, if any, conditions there are by the Department of Justice on the agencies and departments who deploy predictive policing tools with the aid of federal funds. I find this unacceptable. So, Attorney General Garland, it's been over six months since our letter was sent to the Department of Justice and we have yet to receive an official response.

Can you explain the delay and when we can expect a response?

MERRICK GARLAND:

I can't explain the delay. I don't know what the reason is, but I will immediately take this back and be sure that the Office of Legislative Affairs responds to your letter.

ALEX PADILLA:

OK. We'll get you another copy of that letter before we leave here today. Next issue, as most I believe we should all agree, we need an open and competitive economy that also works for workers. We talk a lot about entrepreneurship, capitalism, consumer protection. But we need an economy that also works for workers and this demands the Department of Justice's attention to combat artificially suppressed compensation, employer collusion, and increasing inequality.

You know, for example, noncompete clauses or no-poach agreements limit the ability of many workers throughout our economy to switch to better-paying opportunities or start their own businesses in a number of sectors. Antitrust protection for labor organizing does not yet explicitly extend to gig economy workers who are classified as independent contractors by their employers.

And corporate consolidation can limit the pool of companies in a labor market competing to attract and retain workers. Attorney General Garland, what is the Department of Justice doing to ensure that there's competition in our labor markets? And is this yet another area where the department needs additional resources to fulfill the mission laid out by President Biden?

MERRICK GARLAND:

Thank you for the question. The Justice Department's Antitrust Division agrees -- I don't know if you can hear either, agrees that competition within labor markets is as much a part of the antitrust laws as competition in product markets or consumer markets. We have a number of investigations involved in those areas that you're talking about.

We have a criminal case, all public, on the no-poaching issue. We have brought cases and investigations regarding allocations of labor markets. So, I think I can fairly say we agree with you this is an area of concern and it's an area of Antitrust Division focus. The Antitrust Division does need more money and more lawyers and economists and investigators.

It was down substantially, one of the lowest headcounts in quite a number of years, and we very much need to build that back. And that's why our FY '22 appropriations request asks for a substantial

increase in money for the Antitrust Division.

ALEX PADILLA:

Yeah. Wonderful. Well, I look forward to supporting those requests for additional resources. And finally, in the time remaining, yet another topic. Earlier this month, this committee released a report detailing former President Trump's scheme to pressure the Department of Justice and overturn the will of the people who voted for now-President Joe Biden so that he could serve again as president.

The report outlined behavior that follows a pattern and practice of intimidation, coercion, and outright bullying by the former president's administration. If we don't hold these bad actors accountable, we face the possibility of eroding public trust in our institutions. Americans are looking for accountability and they're looking to you, Attorney General, as the leader of your agency to administer justice.

My question is this, are you willing to recommit yourself to pursuing every possible avenue and every possible lead for holding those accountable who have used public office to undermine and demean our democracy?

MERRICK GARLAND:

So, as a general matter, the answer of course is yes. I don't want to talk about specific investigations except to point out what's already been stated publicly on the record, which is a component of the Justice Department, although an independent one. The inspector general is examining the matters that you're -- the -- about which you're speaking and I have full confidence that he will advise me and the department of what he finds and we will then take appropriate action.

ALEX PADILLA:

OK. Thank you. And just in closing, I would hope that that would include review and consideration of allegations documented in a recent Rolling Stone article where participation in the lead up to January 6 and on January 6 was not limited to just White House officials but actual members of Congress as well.

Thank you. Thank you, Mr. Chair.

DICK DURBIN:

Thank you. We're going to recognize Senator Blackburn then take a five-minute break, return, and we have Senator Ossoff, Senator Hawley, Senator Cruz. Can I just say to the two or three members who have said they might be interested in a three-minute round? Please be here. You have to be physically present because this has been a long day for all of us who've stayed here most of the time, particularly for the attorney general.

So, Senator Blackburn and then a five-minute break.

MARSHA BLACKBURN:

Thank you, Mr. Chairman. And General Garland, thank you for being with us today. I have to tell you that it is with much disappointment that I have watched the DOJ be so politicized. And the way things have been carried out when you look at the memo to parents, you've heard a lot about that today and it's because we're hearing a lot about that.

MARSHA BLACKBURN:

And I just have to ask you, knowing that you really helped to bring to justice those that cause the Oklahoma City bombing, would you really honestly put parents in the same category as a Terry Nichols or a Timothy McVeigh?

MERRICK GARLAND:

My God, absolutely not.

MARSHA BLACKBURN:

Then why would you ever release a memo? I mean, did you write that memo? Did staff write that memo? What would have led you to do this? It is so over the top.

MERRICK GARLAND:

Senator, there's nothing in the memo that in any way draws any comparison, anything like that. This memo is about violence and threats of violence. It's not --

MARSHA BLACKBURN:

Sir, I have to tell you that that may be your opinion. And you know, many times, perception is reality. And reading that memo myself, Tennesseans reading that memo, what they found in that memo, what they heard you say was if you show up and you question the school boards, you will be deemed a domestic terrorist.

You could be investigated by the FBI. I mean, the FBI has a lot of other things that they should be focusing on. And the FBI should be there looking at issues like China. Now, the Knoxville FBI has been very concerned about China. So, why -- give me a little update, what's the status of the China Initiative at DOJ?

MERRICK GARLAND:

So, Senator, we are -- we regard People's Republic of China as an extraordinarily serious and aggressive threat to our intellectual property, to our universities, to our --

MARSHA BLACKBURN:

OK, that's -- you're stonewalling me on that. We all know they're an aggressive threat.

MERRICK GARLAND:

We continue to investigate --

MARSHA BLACKBURN:

OK.

MERRICK GARLAND:

The PRC efforts to --

MARSHA BLACKBURN:

Do you see them as an adversary?

MERRICK GARLAND:

I see them as adversarial with respect to our ransomware, with respect to hacking our --

MARSHA BLACKBURN:

OK.

MERRICK GARLAND:

With respect to counterintelligence, respect to counterespionage, and all those ways.

MARSHA BLACKBURN:

Well, we know that. Over the last several months, the last nine months, several espionage prosecutions of researchers have been dropped, our charges have been dismissed, including those of a UT professor at UT Knoxville. And, of course, the Huawei case is there. So, this is in spite of the fact that Director Wray recently testified that the FBI opens a new Chinese espionage investigation every 12 hours.

So, are there apparent failures of the initiative? Is it a lack of leadership, or is it a compromised position with the administration? Is it incompetence?

MERRICK GARLAND:

Every case is evaluated on its own with respect to the law and the facts. We continue to open cases involving the People's Republic of China daily. As the director said, we will not, in any way, let up our concerns about Chinese.

MARSHA BLACKBURN:

OK. All right. I want to move on -- I'm glad to know you're not going to go soft on China because this administration is going soft on China. On your directive, going back to the school board association and the directive that you sent. NSBA has apologized, are you planning to apologize to the parents of this country, moms and dads?

MERRICK GARLAND:

There is nothing in this memorandum that any parents should be concerned about.

MARSHA BLACKBURN:

There's a lot that parents should be concerned about it. Let me ask you about the Durham investigation because 44 Senators joined me in a letter that we sent to you in August, and we still have not received a written response from you on the status of the Durham advance -- investigation. So, will you provide for me a written status report of the Durham investigation?

MERRICK GARLAND:

So, the particular aim I think of the letter asked about the budget. And as I said at the House Committee, Mr. Durham is continuing. And the only thing he could --

MARSHA BLACKBURN:

We ask for a status update. And we also ask that the report be made public -- available to the public on the completion of his work. Will that be made public?

MERRICK GARLAND:

So, on both of those questions, his budget has been approved as already announced.

MARSHA BLACKBURN:

OK.

MERRICK GARLAND:

And with respect to the report, I would like as much as possible to be made public. I have to be concerned about Privacy Act concerns and classification. But other than that, the commitment is to provide a public report, yes.

MARSHA BLACKBURN:

Can you guarantee this committee that Special Counsel Durham has free reign to proceed wherever his investigation takes him without any political or otherwise undue influence or interference?

MERRICK GARLAND:

There will be no political or otherwise undue interference for his investigation.

MARSHA BLACKBURN:

OK. Susan Hennessey, she -- Susan Hennessey was recently hired to work in your national security division. This is a troubling hire because of her political bias. She has made several comments that show she is incapable of working impartially on sensitive matters within the national security division, particularly on the Durham investigation.

For example, December 1st 2020, Ms. Hennessey stated, and I am quoting, "Durham has made abundantly clear that in a year and a half, he hasn't come up with anything. I guess this kind of partisan silliness has become characteristic of Barr's legacy, but unclear to me why Durham would want to go along with it." So, how can the American people be certain that she is going to be fair and impartial when she is on the record making those statements?

So, has she retracted that statement? Do you intend to ask her to retract that statement?

MERRICK GARLAND:

I have to confess, I don't think I've even ever met Ms. Hennessey, and she has nothing whatsoever to do with Durham investigation.

MARSHA BLACKBURN:

Well, you may want to look at her. She is there in your national security division, and she is very much opposed to this. I want to thank you for your time. I am going to send a couple of questions to you for more complete answers. But I associate myself with the comments by my colleagues that the border issues have turned every town into a border town and every state into a border state.

The amount of drugs, the amount of trafficking that is flowing in here, talking to local law enforcement, the way they're looking at the cartels, Mr. Attorney General, there is a lot that needs to be done to secure this country. And the parents of the kiddos in our school, they are not the problem. There are other problems that need your attention.

DICK DURBIN:

Thank you, Senator Blackburn. The committee will stand in recess for five minutes.

DICK DURBIN:

Committee will resume. Senator Hawley?

JOSH HAWLEY:

Mr. Chairman, did you call on me or Senator Ossoff?

DICK DURBIN:

I'm sorry.

JOSH HAWLEY:

I'm happy to go.

DICK DURBIN:

I didn't see Senator Ossoff, I apologize. Senator Ossoff, then Senator Hawley.

JON OSSOFF:

Thank you, Senator Hawley. Thank you, Mr. Chairman. Attorney General, nice to see you. Thanks for joining us. Last week, the Senate passed legislation that I introduced alongside Chair Durbin and Ranking Member Grassley, the Prison Camera Reform Act, to reduce violence and civil rights abuses in BOP facilities by overhauling a security camera system that IG Horowitz has found as outdated, unreliable, as well as the means of preserving and recording the footage from those systems.

Do you agree that these reforms are necessary? And should this bill become law, will you commit to prioritizing the implementation of the requirements it imposes upon the BOP?

MERRICK GARLAND:

Yes and yes.

JON OSSOFF:

Thank you, Attorney General. I'd like to discuss with you staffing issues at the Bureau of Prisons. Earlier this year, the GAO, which, as you know, is a nonpartisan independent watchdog, concluded

that BOP lacks a reliable method for assessing the scope of staffing issues or the impact on incarcerated populations and staff of staffing issues at BOP facilities.

Do you agree the inability to reliably measure this problem impedes BOP's ability to address gaps, for example, shortages of medical staff, shortages of personnel who will help implement the First Step Act and anti-recidivism programs, as well as makes it more difficult for Congress to respond? And will you commit to working with my office to help identify where there's gaps in planning or budgeting or personnel management?

JON OSSOFF:

Or the authorities that BOP has?

MERRICK GARLAND:

Yes, Senator -- I met with the comptroller general about this, about the various of his reports and this one in particular and I agree this is a serious problem with the Bureau of Prisons. The deputy attorney general has been working on this problem for quite some time now. As she has repeat meetings with the Bureau of Prisons to go over this issue with respect to staffing and assessment, and I'd be happy to have somebody on our staff meet with your staff.

JON OSSOFF:

Thank you, Attorney General. The inspector general has determined that BOP lacks a clear and consistent policy for the use of solitary confinement in BOP facilities, has BOP to your knowledge issued such a policy?

MERRICK GARLAND:

I don't know the answer to that.

JON OSSOFF:

OK. Will you work with my office to determine whether they have and what may need to be done to ensure that they do?

MERRICK GARLAND:

Of course.

JON OSSOFF:

Thank you, Attorney General. Question, about commercial data and its use in DOJ investigations. In 2018, the Supreme Court issued its *Carpenter v. United States* decision that government agents must obtain a warrant before collecting cell phone data, but showed the location of a device over a seven-day period.

Of course, this data is widely available for many US persons on commercial markets through data brokers and other technology companies. To your knowledge, do any federal agencies currently purchase data or any DOJ components, currently purchase data or contract for services that provide device location data from commercial vendors?

Is this data used in investigations or prosecutions?

MERRICK GARLAND:

I don't believe that we purchase location data, but I'll be happy to look into that and get back to that -- back to you on that as well.

JON OSSOFF:

I'd be grateful because I think there are serious Fourth Amendment concerns there. I would like to discuss the FISA process with you and its report last month, the office of the inspector general noted that DOJ and FBI still had work to do to implement the IG's recommendations to strengthen the review process for FISA applications, to ensure they contain accurate information.

While this is unfortunately become a partisan issue over the last few years, it's fundamentally an issue of privacy, due process and the integrity of the Foreign Intelligence Surveillance Court and the applications that receives. The IG's report notes that the FBI has not significantly changed the process by which a supervisor, such as the assistant attorney general for National Security Division reviews and documents, the factual assertions made in FISA applications.

And I discussed this issue with Matt Olsen when he was before the committee for his confirmation. So what steps is the DOJ taking to make substantive changes to the FISA review process and comport with the IG's recommendations?

MERRICK GARLAND:

So, I completely agree that this should not be a partisan issue. FISA on the one hand is extraordinarily important tool for our ability to protect the country against foreign enemies. And on the other hand, it's a tool that has to be dealt with the most extreme care because we have to protect American citizens from unwarranted surveillance, non-judicial surveillance.

I take the inspector general's report extraordinarily seriously, I believe the one you're talking about though refers back to events from 2020 and 2019, but regardless, we take this very seriously and the FBI director does as well. The National Security Division of the Department reviews what the FBI is doing with respect to FISA's routinely, audits and analyzes them to be sure that they are following the correct rules.

And we intend to continue that kind of intensive review to ensure that our internal regulations and requirements of the FISC are maintained. Thank you.

JON OSSOFF:

Thank you, Attorney General, and I believe there is, within the last couple of months some additional recommendations or concerns expressed by the IG about the implementation of changes pursuant to his prior conclusions. So.

MERRICK GARLAND:

Well, this must be the Woods. I think this is the Woods Files that you're talking about. And again, quite --

JON OSSOFF:

That's correct.

MERRICK GARLAND:

I quite agree that this has to be done better, but as I think he said, it's a work in progress and there is certainly a considerably more room for improvement, and we are focused on making those improvements.

JON OSSOFF:

OK, well, please know that there's bipartisan concern about seeing those improvements --

MERRICK GARLAND:

[Inaudible]

JON OSSOFF:

Implemented. Final question for you about press freedom, Mr. Attorney General, you issued a memo in July prohibiting the department from using subpoenas court orders or warrants to obtain information on the confidential sources of reporters. And this new policy, as you defined it offers broad protections for members of the news media, but does not qualify or define with specificity who qualifies as members of the news media.

Is there a specific interpretation of that phrase that's been issued an internal department guidance?

MERRICK GARLAND:

So, the answer to that is no. We have discussed this with representatives of the news media continuously and as part of our review for purposes of turning this memorandum into a regulation, we are continuing to discuss this. As you can imagine, it's very difficult to make that kind of definition.

JON OSSOFF:

But very important to get it right.

MERRICK GARLAND:

I completely agree.

JON OSSOFF:

And I think my staff will likely ask yours for a briefing on the progress of your deliberations and perhaps we'll weigh in. Thank you for your service, Attorney General and for your responses. And I yield back.

DICK DURBIN:

Thanks, Senator Ossoff. Senator Hawley.

JOSH HAWLEY:

Thank you very much. Mr. Chairman. Attorney General Garland, on October 4th, you issued an unprecedented memo that involves the Department of Justice and the FBI and local school districts, local school boards, nothing like it in our country's history. It was based -- you've testified on this letter from the National School Board Association, that we now know the White House was involved in writing, they've retracted the letter, they've apologized for the letter.

They say they regret the letter, but you won't retract the memo and said earlier that you have no regrets and you've defended yourself repeatedly today before this committee by saying, " Well, you're focused on violence". But now of course, we've seen the memo from your own Justice Department advising, state and local and other prosecutors about all of the different federal causes of action that they can bring against parents, but are not about violence, they're about harassment and intimidation.

I'm looking here at this memo, it identifies no fewer than 13 possible federal crimes involving harassment and intimidation, including making annoying phone calls. Do you think a parent, who makes a phone call to a school board member that she has elected at that school board member deems the noise should be prosecuted, General Garland?

MERRICK GARLAND:

No, I don't. And the Supreme Court has made quite clear that the word intimidation, with respect to the constitutional protection, it's one that directs a threat to a person with the intent of placing the victim in fear of bodily harm or death. Prosecutors who investigate these cases know the Supreme Court's, this is a very famous case --

JOSH HAWLEY:

But prosecutors do. But parents don't General Garland, do you think that a parent who looks at the 13 different federal crimes, that your Justice Department has identified, they might be subject to and prosecuted for like making annoying phone calls? Do you think that they're going to feel that they're welcome to speak up at a school board meeting?

How about this one, they could be prosecuted for using the internet, I guess that would be Facebook, in a way that might cause emotional distress to a victim. Is that a crime of violence?

MERRICK GARLAND:

Senator, I haven't seen the memo that you're talking about.

JOSH HAWLEY:

Why haven't you?

MERRICK GARLAND:

And I don't -- even from the description, it doesn't sound like it was addressed to parents. But if --

JOSH HAWLEY:

No, it wasn't addressed to parents. It was just a prosecutors, that's the problem. Why haven't you seen the memo?

MERRICK GARLAND:

I don't know. I haven't -- I don't look at every -- I have -- I do not get every memo that every US attorney sends out. But if you're --

JOSH HAWLEY:

Wait a minute, don't -- I just want to be sure I understand this. This is a memorandum that collects 13 different federal crimes parents could be charged with. It has United States, Department of Justice on the top of it. And you're telling me, you haven't seen it?

MERRICK GARLAND:

Who was the memo from Senator?

JOSH HAWLEY:

The United States Department of Justice, United States Attorney for the District of Montana.

MERRICK GARLAND:

I have not seen a memo from the District of Montana. I --

JOSH HAWLEY:

Not high enough priority for you?

MERRICK GARLAND:

It's not -- that's not the question, I don't --

JOSH HAWLEY:

It is the question, answer my question. Is it not a high enough priority for you when you're threatening parents with 13 different federal crimes? These aren't crimes of violence, you've testified today, you're focused on violence. That's not what your US attorneys. They work for you, that's not what they're saying.

You haven't seen it because it's not a high enough priority or what?

MERRICK GARLAND:

Question a priority, no one has sent me that memo, so I haven't seen it.

JOSH HAWLEY:

What do you mean no one has sent you the memo? You run the United States Department of Justice, do you not?

MERRICK GARLAND:

There are 115,000 employees of the Department of Justice.

JOSH HAWLEY:

Indeed. And you are in charge of every one of them --

MERRICK GARLAND:

And I do not --

JOSH HAWLEY:

And this was a sufficiently important case that you issued a memo, you, over your signature issued a memo involving the FBI and the Department of Justice and local school boards, local school districts. Your US attorneys are now threatening prosecution with 13 different crimes, but it's not a high enough priority for you.

We got lost in the mix.

MERRICK GARLAND:

I'll say it again, I've never seen that memo. It was --

JOSH HAWLEY:

That's what concerns me, General Garland.

MERRICK GARLAND:

Well, it wasn't sent to me. I hope you will assure your constituents that what we are concerned about here is violence and threats of violence --

JOSH HAWLEY:

That only leads to conclude General Garland. All I can conclude from this is either that you're not in control of your own department or that more likely what I think to be the case.

JOSH HAWLEY:

Is that you knew, full well, that this is exactly the kind of thing that would happen. When you issued your memo, when you involved the Department of Justice and all of its resources, and the FBI and all

of its resources, and local school boards and local school districts, you knew that federal prosecutors would start collecting crimes that they could use against parents.

You knew they would advise state and local officials that these are all of the ways parents might be prosecuted. You knew that that was the likely outcome, and that's exactly what's happened. And we're talking about parents like Scott Smith, who's behind me over my shoulder. This is a father from Loudoun County, Virginia.

Here he is at a school board meeting, he was forcibly restrained, he was assaulted, he was arrested. Why? Because he went to an elected school board meeting. He's a voter, by the way. He went to an elected school board meeting to raise the fact that his daughter was assaulted -- sexually assaulted in a girls' restroom by a boy.

This is what happened to him. Now, you testified last week before the house that you didn't know anything about this case. I find that extraordinary because the letter that you put so much weight on, the letter that's now been retracted, it cites this case. It cites Mr. Scott's case directly. There's a news article cited in the letter.

It's discussed in the letter, but you testified you just couldn't remember it. Maybe this will refresh your memory. Do you think people like Scott Smith -- do you think parents who show up to complain about their children being assaulted ought to be treated like this man right here?

MERRICK GARLAND:

Parents who show up to complain about school boards are protected by the First Amendment.

JOSH HAWLEY:

Do you think that they ought to be prosecuted in the different ways that your US attorneys are identifying?

MERRICK GARLAND:

If what they're doing is complaining about what the school board is doing, policies, curriculum, anything else that they want to, as long as they're not committing threats of violence, then they should not be prosecuted, and they can't be.

JOSH HAWLEY:

Let me ask you about this. Several of my democratic colleagues have -- today, just today in this hearing -- multiple times have compared -- parents who show up at school board meetings like Mr. Smith here have compared them to criminal rioters. You think that's right? You think that a parent who shows up at a school board meeting, who has a complaint, who wants to voice that complaint, and maybe she doesn't use exactly the right grammar, you think they're akin to criminal rioters?

Do you agree with that?

MERRICK GARLAND:

I do not, and I do not remember any Senator here compare -- making that comparison.

JOSH HAWLEY:

Oh, really? These people are just like the folks who came here on January 6 and -- in the riot at the Capitol?

MERRICK GARLAND:

I don't think it -- they were referring to the picture that you're showing there.

JOSH HAWLEY:

Well, I certainly would hope not that they were referring to parents who go to school board meetings. Mr. Smith is a parent who went to a school board meeting. I'll leave it at this, General Garland. You have weaponized the FBI and the Department of Justice. Your US attorneys are now collecting and cataloging all the ways that they might prosecute parents, like Mr. Smith, because they want to be involved in their children's education, and they want to have a say in their elected officials.

It's wrong. It is unprecedented to my knowledge in the history of this country, and I call on you to resign. Thank you, Mr. Chairman.

DICK DURBIN:

Senator Cruz.

TED CRUZ:

Thank you, Mr. Chairman. For eight years under Barack Obama, the Department of Justice was politicized and weaponized. When you came before this committee in your confirmation hearing, you promised things would be different. I asked you specifically, "Will you commit to this committee that, under your leadership, the Department of Justice will not target the political opponents of this administration?" Here was your answer, "Absolutely.

It's totally inappropriate for the department to target any individual because of their politics or their position in a campaign." That was your promise just a few months ago. I'm sorry to say you have broken that promise. There is a difference between law and politics. And, General Garland, you know the difference between law and politics.

Law is based on facts. It is impartial. It is not used as a tool of political retribution. This memo was not law. This memo was politics. On Wednesday, September 29, the National School Board Association wrote a letter to the president asking the president to use the Department of Justice to target parents that were upset at critical race theory, that were upset at mask mandates in schools, to target them as domestic terrorists.

On the face of the letter, the letter was, in repeated consultation with the White House, an explicit political consultation with the White House. That was on Wednesday, September 29, five days later. On Monday, so, right after the weekend, boom, you pop out a memo, giving them exactly what they want. Now, by the way, I understand that.

In politics, that happens all the time. An important special interest wants something, "Sir, yes, sir. We're going to listen to him." Let me ask you something, General Garland. In the letter, which you told the House of Representatives was the basis for this abusive memo targeting parents, how many incidents are cited in that memo?

MERRICK GARLAND:

I have to look back through the memo. [Inaudible]

TED CRUZ:

OK. You don't know. How many of them were violent?

MERRICK GARLAND:

Again, the general report --

TED CRUZ:

How many of them were violent? Do you know?

MERRICK GARLAND:

I don't know.

TED CRUZ:

You don't know. There's a reason you don't know because you didn't care and nobody in your office cared to find out. I did a quick count just sitting here. During this hearing, I counted 20 incidents cited. Of the 20, 15 on their face are nonviolent. They involve things like insults. They involve a Nazi salute.

That's one of the examples. My God, a parent did a Nazi salute at a school board because he thought that the policies were oppressive. General Garland, is doing a Nazi salute on an elected official, is that protected by the First Amendment?

MERRICK GARLAND:

Yes, it is.

TED CRUZ:

OK. 15 of the 20, on the face of it, are not violent. They're not threats of violence. They're parents who are unhappy. Yet, miraculously, when you write a memo -- the opening line of your memo, "In recent months, there has been a disturbing spike in harassment, intimidation, and threats of violence." You know what, you didn't look, and nobody on your staff looked.

Did you even look up the 20 instances?

MERRICK GARLAND:

Look, I testified the decision to make -- send a memo is for an assessment of the problems --

TED CRUZ:

Did you look up the 20 instances?

MERRICK GARLAND:

I did not read --

TED CRUZ:

Did anyone on your staff look them up?

MERRICK GARLAND:

I don't know the answer, but it's not only the memo.

TED CRUZ:

But, of course, you don't. And, General, there's a reason. Look, you started your career as a law clerk to Justice Brennan. You've had many law clerks during the year, during your time as a judge. I was a clerk to Chief Justice Rehnquist. I'll tell you what. If I drafted an opinion for the chief justice and walked in and it said, "There's a disturbing pattern of violence.

Well, Ted, how do you know that? Well, I got an amicus brief here who claims it." You would fire a law clerk who did that. You're the attorney general of the United States. This was not a tweet you sent. This is a memo to the Federal Bureau of Investigation saying, "Go, investigate parents as domestic terrorists."

MERRICK GARLAND:

That is not what the memo says at all. It does not --

TED CRUZ:

Is it what the letter says?

MERRICK GARLAND:

That is not what my --

TED CRUZ:

Is it what the letter says?

MERRICK GARLAND:

I don't care what the letter says. What I care --

TED CRUZ:

You don't care. You said it was the basis of your memo. You testified under oath before the House of Representatives, the letter was the basis of your memo. Now, you don't care about the letter?

MERRICK GARLAND:

The letter and public reports of violence and threats of violence. My memo says nothing about domestic terrorism, says nothing about parents committing any such things. My memo is an attempt to get an assessment of whether there is a problem out there that the federal government needs to --

TED CRUZ:

The letter, on its face, says, "The actions of the parents could be the equivalent to a form of domestic terrorism --

MERRICK GARLAND:

And that is wrong.

TED CRUZ:

And asks the president to use the Patriot Act in regards to domestic terrorism --

MERRICK GARLAND:

And you'll --

TED CRUZ:

Directed at parents.

MERRICK GARLAND:

And you'll --

TED CRUZ:

This was the basis of your memo.

MERRICK GARLAND:

My memo --

TED CRUZ:

The Department of Justice -- when you're directing the FBI to engage in law enforcement, you're not behaving as a political operative because a political ally of the president says, "Hey, go attack these pirates because we don't like what they're saying." Department of Justice, you did no independent research on what was happening, did you?

MERRICK GARLAND:

The memo has nothing to do with partisan --

TED CRUZ:

Did you do independent research?

MERRICK GARLAND:

The memo has not --

TED CRUZ:

Did you do independent research?

MERRICK GARLAND:

The memo has nothing to do with partisan politics.

TED CRUZ:

You're not answering that question. You've testified, you know nothing about the violent sexual assault that happened in Loudoun County, even though it's one of the bases in this letter.

MERRICK GARLAND:

I read about it since then.

TED CRUZ:

OK. You told the House last week, you knew nothing about it.

MERRICK GARLAND:

I did not know at the time. No.

TED CRUZ:

OK. This week, the court concluded that a 14-year-old girl was violently raped by a boy wearing a skirt in the girls' restroom. The school district covered it up, released the boy, sent him to another school where he violently raped another girl. The father, who Mr. Hawley just showed you, was the father of the first girl.

He was understandably -- do you understand why a parent would be upset when your daughter is raped at school, the school board covers it up, and then lies to you and claims there have been no assaults, "We have no instances of assaults in our bathroom"? And that was a flat-out lie as the court concluded this week.

Do you understand why the parent would be upset?

MERRICK GARLAND:

Absolutely, and as any expressions of upset are completely protected by the First Amendment.

TED CRUZ:

Except you just called him a domestic terrorist.

MERRICK GARLAND:

I never called him that. That's not correct.

TED CRUZ:

This letter calls him a domestic terrorist.

TED CRUZ:

You based the direction to the FBI, an official direction from the attorney general, on this letter. And I'll tell you what, the NSBA is so embarrassed of this letter, they've apologized for it and retracted it, but you don't apparently have the same willingness to apologize and retract what you did.

Let me ask you something else. A big part of this letter is that they're upset about parents not wanting critical race theory taught. Your son-in-law makes a very substantial sum of money from a company involved in the teaching of critical race theory. Did you seek and receive a decision from an ethics adviser at the Department of Justice before you carried out an action that would have a predictable financial benefit to your son-in-law?

MERRICK GARLAND:

This memorandum is aimed at violence and threats.

TED CRUZ:

I just asked a question. Did you seek an ethics --

MERRICK GARLAND:

It has no predictable effect --

TED CRUZ:

Did you seek an ethics opinion?

MERRICK GARLAND:

It has no --

TED CRUZ:

Did you seek an ethics opinion? Judge, you know how to ask questions and answer them. Did you seek an ethics opinion?

MERRICK GARLAND:

You asked me whether I sought an ethics opinion about something that would have a predictable effect on something. This has no predictable effect in the way that you're talking about.

TED CRUZ:

So, if critical race theory is taught in more schools, does your son-in-law make more money?

MERRICK GARLAND:

This memo has not --

TED CRUZ:

If critical race theory is taught in more schools, does your son-in-law make more money? Yes or no?

MERRICK GARLAND:

This memorandum has nothing to do with critical race or any kind of curriculum.

TED CRUZ:

Will you answer if you sought an ethics opinion? Will you answer if you saw an ethics --

MERRICK GARLAND:

I am answering the best I can.

TED CRUZ:

Yes or no, did you seek an ethics opinion?

MERRICK GARLAND:

This memorandum has nothing --

TED CRUZ:

Did you seek an ethics opinion?

MERRICK GARLAND:

This memorandum has nothing to do with [Inaudible]

TED CRUZ:

General, are you refusing to answer if you sought an ethics opinion?

MERRICK GARLAND:

I am telling you that there is no possible --

TED CRUZ:

So, you're saying no. Just answer it directly. You know how to answer a question directly. Did you seek an ethics opinion?

MERRICK GARLAND:

I'm telling you that if I thought there was any reason to believe there was a conflict of interest, I would do that, but I cannot --

TED CRUZ:

Why do you refuse to answer the question? Why won't you just say no?

MERRICK GARLAND:

I'm sorry.

TED CRUZ:

You're not going to answer the question?

MERRICK GARLAND:

I'm sorry. Ask the question again.

TED CRUZ:

Did you seek an ethics opinion?

MERRICK GARLAND:

I'm saying again, I would seek an ethics opinion in --

TED CRUZ:

So, no is the answer, correct?

MERRICK GARLAND:

[Inaudible]

DICK DURBIN:

Senator, your time is up.

TED CRUZ:

Let the record reflect the attorney general refuses to answer whether he sought an ethics opinion. And apparently, ethics are not of terribly high priority in the Biden Justice Department.

MERRICK GARLAND:

I don't think that's a fair reflection of what I said.

TED CRUZ:

Then answer the question.

DICK DURBIN:

Senator, you've gone way beyond any other senator's time. I think you ought to be at least respectful of other senators at this point.

TED CRUZ:

Mr. Chairman, do you know the answer whether he sought an ethics opinion?

DICK DURBIN:

I think you've exchanged that so many times. We know where we stand. Now, we have a request for three-minute rounds and I have one from Senator Hirono, and Senator Lee, and Senator Booker. I'm sorry, and first, of course, Ranking Member Grassley. We're going to stick to three minutes. It's been four hours since the attorney general has been in that chair with a couple of breaks and I think we should try to wrap up if we can.

CHUCK GRASSLEY:

Request to put something in the record. A Wall Street Journal editorial titled, "About the Domestic-Terrorists Parents." The article notes that the October 4 DOJ memo should be formally rescinded.

DICK DURBIN:

Without objection.

CHUCK GRASSLEY:

Yeah. General, after a great deal of pressure from victims in Congress, I know that you're taking another look at the department's disgusting decision not to prosecute employees for lying to government officials in the Nassar investigation. Do you anticipate that the department will similarly expunge the records of these employees just like McCabe or could -- or continue to give them out get-out-of-jail-free cards as you've done so far?

MERRICK GARLAND:

As I said, Senator, we are reviewing the decisions with respect to the false -- alleged false statements. That review is being done by the Criminal Division.

CHUCK GRASSLEY:

OK. Beginning in the summer of 2020, American cities began to see appalling and unprecedented spike in violent crime, murders, and gang violence. As liberal politicians operated under the rallying cry of defund the police, this movement translated into over 1,200 deaths in 2020 alone. In the summer of 2020, then-Attorney General Barr instituted Operation Legend as a way to combat the rising spike in violent crime.

By any measure, this surge in federal agents was a resounding success. By December of 2020, over 6,000 arrests have been made, over 2,600 firearms have been taken off our streets, and approximately 467 people have been arrested for homicides. Given the clear success of Operation Legend, why is the department seemingly directing its efforts toward school board meetings, but not towards real threats or real acts of violence that happen every day in American citizens?

So, a simple question, does Operation Legend still exist?

MERRICK GARLAND:

My understanding was Operation Legend was directed at violence over the summer of 2020. We have addressed another surge of federal prosecutorial and law enforcement efforts this last summer. We have stepped up the amount of money we're giving to state and locals and we have increased our joint task forces together.

I visited federal and state law enforcement in New York, and in Chicago, and in Los Angeles, and in San Francisco. All aimed at violent crime in those areas. And we've asked for considerable additional money, about \$1 billion in grants to fund the state and local police in FY '22. So, I think that's -- I hope that answers your question.

CHUCK GRASSLEY:

OK. Only four packers: JBS, Tyson's, Cargill, and National Beef control more than 80 percent of the cattle market. These companies hold a tremendous amount of market power. The Justice Department issued civil investigative demands in May 2020, but we've yet to learn anything from this investigation. Could you provide an update and can you commit to expediting this investigation so that our cattle producers know whether there are any antitrust violations?

MERRICK GARLAND:

So, I can't discuss the specific investigations. We have longstanding policies against that, but I can tell you that the Antitrust Division is aggressively concerned with competition in the market that you described. We are also in frequent consultation with the Agriculture Department with regard to the Stockyards and -- Packers and Stockyards Act. We regard this as an area where we have to be very much concerned about exclusionary behavior and anticompetitive behavior.

CHUCK GRASSLEY:

Thank you.

DICK DURBIN:

Thanks, Senator Grassley. Senator Hirono.

MAZIE HIRONO:

[Off-mic]

DICK DURBIN:

Senator, I think you're mic is not turned on.

MAZIE HIRONO:

One thing I have to say as we listen to, I don't know, going on hour three is that the Republicans, once they focus on something, they just stick with it. It is amazing to me that there's all this mischaracterizing of the attorney general's memo as well as a letter from the acting US attorney of Montana.

And his letter is also totally mischaracterized as to what the focus of the attorney general's letter is. So, I would like to submit for the record the acting attorney -- US attorney of Montana's letter, Mr. Chairman.

DICK DURBIN:

Without objection.

MAZIE HIRONO:

So, as I said, it's pretty -- it's kind of amazing but not unusual that my Republican colleagues will continue to focus on something that the attorney general has to continue to testify for the last three hours or whatever it is that his letter is being mischaracterized. And they will focus on that until the nth degree.

At the same time, you know, what is a real problem is the fact that we have 530 voter suppression bills that have been introduced in 47 states, the vast majority by Republican legislatures and people's votes are literally being stolen through these voter suppression actions. And do we hear word one about the fact that this is happening all across our country that voter suppression, stealing of votes is happening?

Does a single Republican even care about that? No. So, let's let that sink in. That they talk about all of these memos they're totally mischaracterizing and yet what is actually happening in voter suppression, not a peep. So, I want to ask you, Mr. Attorney General, Shelby County pretty much gutted the Voting Rights Act and then followed by Brnovich, wherein the majority opinion suddenly comes up with all these guideposts that they now -- that the Justice Department now has to prove in order to protect our right to vote.

So, can you just tell us what the impact of the Supreme Court's Shelby County and Brnovich decisions have been on the Justice Department's ability to protect our right to vote? And is there something we can do?

MAZIE HIRONO:

Are there tools that we can provide through a Congressional action that will enable you to protect our right to vote?

MERRICK GARLAND:

Yes, Senator the right to vote is a fundamental pillar of American democracy. The Voting Rights Act is one of the greatest statutes that was ever passed enabled the Justice Department to protect people's right to vote and to protect against discrimination based on race and ethnicity, with respect to patterns or practices, with respect to voting.

In Shelby County, the Supreme Court took out the most important tool we have which was Section 5, which allowed pre-clearance by the Justice Department or alternatively allowed the state to go to federal court to get clearance. And that left us with a circumstance of having to examine each case one by one with the burden on the Justice Department.

So, one thing that the Congress could do is put Section 5 back in place as the Supreme Court indicated could be done with the appropriate legislative record. Second, Brnovich interpreted Section 2.

MAZIE HIRONO:

Yeah.

MERRICK GARLAND:

A statutory section in a way that the Justice Department disagrees with as we made clear in our papers, I'm not saying anything we didn't say in our Supreme Court argument, they narrowed it in a way that we think was not consistent with Congressional intent, and which makes our ability to challenge discriminatory changes in voting much more difficult.

Congress could again fix that by bringing back Section 2 to what Congress intended originally intended, and making that clear in statutory language. Both of those changes would be enormously important from the point of the Justice Department's success in protecting the right to vote.

DICK DURBIN:

Thank you, Senator.

MAZIE HIRONO:

I'm sorry.

DICK DURBIN:

Thank you, [Inaudible].

MAZIE HIRONO:

Mr. Chairman. It's clear that we will have to do those things that the Attorney General recommends to protect people's right to vote, without a single Republican going in that direction. That's how pathetic

get all this. Thank you.

DICK DURBIN:

Thank you, Senator. Senator Lee.

MIKE LEE:

Thank you, Mr. Chairman. Attorney General Garland, I find it deeply concerning that you still haven't said a single example of a true threat of violence, and if I'm understanding this correctly and I've been here for most of this hearing, I've had to step up devote a couple of times. But I think you seem to admit it didn't do any independent research outside of receiving the September 29 National School Board Association letter.

Now, one of the things I find that perplexing and quite troubling, this came in, if you sent on September 29, I believe that was a Wednesday, the following Monday just days later, just barely over a weekend. You responded with your memo relying on the NSBA memo. Now, I submit, as a member of the Judiciary Committee with oversight responsibility over your department, I submit requests for information all the time.

It takes time, I understand that sometimes it takes months to get a response back. I'm always grateful when I do get a response back, especially when it's a response that contains meaningful information. I understand people are busy and they've got a lot to comply with, but if one association can send one letter without any independent research on your part and within days barely, over a weekend get not just a response, but an action memo signed by the attorney general Of the United States, I think that's weird.

I think that makes me really uncomfortable, especially when the National School Board Association, as I understand it or those associated with it, had publicly stated that they'd been coordinating with officials at the White House on this for weeks. It doesn't feel right. It doesn't seem right to me. Now, last week two of our counterparts on, our House counterpart Judiciary Committee, asked you a little bit about the number of people entering the United States illegally, about 1.3 million have entered the United States illegally this year.

That's a lot, that's a lot of people, of those 1.3 million, I'm quite confident based on my own past experience as a federal prosecutor, I'm quite confident that some non-insignificant portion of those.

We'll have previously been deported and as you know, under 8 USC Section 1326, that is a felony federal offense, illegal reentry after previous deportation.

Since they've asked you about that, have you had a chance to identify how many prosecutions have been brought for illegal reentry this year? And I'd be curious about that. And I'd also be curious as to whether there's anything analogous to your October 4 memo, do you have anything, calling out concerns that you've got over illegal reentry?

MERRICK GARLAND:

So, on that question, the 1.3 million arrests, I think made by CBP, they are referred, they are a -- CBP make the -- Customs and Border Patrol makes a decision about whether what those people into removal proceedings or to refer them to the Justice Department for prosecution. We have this year charged thousands of cases, thousands of cases, criminal cases with respect to violations of the immigration laws, with respect to crossing of borders.

I don't have the exact number. We can get to that exact number, but the number is in the thousands.

MIKE LEE:

My times expired, I expressed the concern because when the department becomes focused on things that are not part of its business, namely harassing, threatening, intimidating, moms and dads in America on chilling their ability to express their concerns to their neighbors, their friends and those who represent them on a school board, they sometimes lose focus on the things that only the federal government can do, like controlling our border from the dangerous effects of illegal immigration generally, and illegal reentry in particular.

Thank you.

DICK DURBIN:

I think Senator Cruz and Cotton are seeking three-minute rounds, is that correct? All right, Senator Booker as well, Senator Booker.

CORY BOOKER:

We have a fourth memo reads in recent months, there's been a disturbing spike in harassment, intimidation and threats of violence against school administrators, board members, teachers and staff who participate in the vital work of running our nation's public schools. Is that true?

MERRICK GARLAND:

Yes, sir.

CORY BOOKER:

I mean it is true.

MERRICK GARLAND:

It is true.

CORY BOOKER:

I have a list of very disturbing incidents. In Texas, a parent physically assaulted a teacher, August 18th, 2021 in Pennsylvania, a person posted threats on social media, which required police to station outside of a school district law enforcement investigating the person. I could keep going. Ohio school board member was threatening letter that began with, "We are coming from you". Domestic terrorism in the United States sir, has it been more from overseas radical terrorists since 9/11 or more from homegrown terrorists, most of them being right wing extremists.

Which has been greater since 9/11.

MERRICK GARLAND:

I want to be careful about that, the threats that we face with respect to terrorism, and none of those descriptions have to do with terrorism, but the threats that we face in the United States come both from foreign terrorists and --

CORY BOOKER:

A church in South Carolina, a synagogue in Pennsylvania, a school Parkland, a school Newtown, has there have been threats and violence against schools in the United States of America?

MERRICK GARLAND:

There have been, yes.

CORY BOOKER:

Coming from what types of groups?

MERRICK GARLAND:

They come from domestic groups.

CORY BOOKER:

From domestic groups.

MERRICK GARLAND:

Yes.

CORY BOOKER:

Has there been a long, pages long list of what my staff could grab been threats and violence against school officials in the United States of America in the last year?

MERRICK GARLAND:

I have obviously haven't seen the list, but it accords with my recollections.

CORY BOOKER:

Well, let me accord your recollection with the letter that I've heard so much about that I pulled it to read it. You say literally threats, excuse me, "Spirited debate about policy matters is protected under the Constitution". I'm quoting one of my colleagues today. Does that sound like harassing and intimidating moms and dads?

You are firm at the top of your letter that spirited debate is allowed. While spirited debate about policy matters is protected under the Constitution, that protection does not extend to threats and to violence

that we have been watching on our TV screens, intimidating people, threatening to hurt them, taking physical action.

But you know what, you did not call for the DOJ and the FBI to monitor school board meetings. Did you?

MERRICK GARLAND:

No, I did not.

CORY BOOKER:

You did not call for anyone to invoke the Patriot Act. Did you?

MERRICK GARLAND:

No, I did not.

CORY BOOKER:

Sir, what you called is for the DOJ to convene meetings to discuss strategies for addressing those threats.

MERRICK GARLAND:

That's correct.

CORY BOOKER:

Is that intimidating moms and dads going to school board meetings?

MERRICK GARLAND:

I can't see how that could be interpreted as --

CORY BOOKER:

Sir, I know something about law enforcement intimidation, it stems from growing up as a Black man in America. I know what it feels like to be pulled over, to be accused of stealing things, to every time I drive over there, to George

CORY BOOKER:

I know what it feels like to be pulled over, to be accused of stealing things, to every time I drive over to George Washington Bridge as a teenager, to know I had to put extra time because I was being pulled over by law enforcement. If some was to read the actual letter, you are literally saying, as the leader of the highest law enforcement office in the land, that you protect spirited debate, that you think though given the climate of school violence in America -- I've met with victims from Parkland.

Mr. President, I'm sorry, I have watched Republican after Republican go overtime and you're -- I know you're gently banging that gavel, but I've watched all today, my colleagues violate what you said at the beginning was a strict time limit. And I would ask you to afford me two more minutes.

DICK DURBIN:

Is there objection? No objection.

CORY BOOKER:

Have you met with Parkland survivors?

MERRICK GARLAND:

I met with survivors at the White House.

CORY BOOKER:

Yes or no?

MERRICK GARLAND:

I believe -- I think the answer's --

CORY BOOKER:

You've met with survivors of school violence. Have you --

MERRICK GARLAND:

I think I met with the Parkland families.

CORY BOOKER:

Yes. Do you have a responsibility -- in a climate of threats and violence taking place at schools, do you have a responsibility to convene strategy meetings to try to make sure we do not have eruptions of violence in the country? Is that a responsibility of the federal government?

MERRICK GARLAND:

Yes, our job is to protect Americans.

CORY BOOKER:

Did you specifically say anything in this letter that can be seen as harassing moms and dads and parents? Or did you explicitly say that the Constitution protects spirited debate?

MERRICK GARLAND:

I specifically said the Constitution protects spirited debate, and I don't believe there's anything in this letter that could be read to intimidate mothers and fathers.

CORY BOOKER:

And I'm not talking about the outrage machines that seem to fuel our politics on both sides. I'm talking about the actual letter here, sir, that you wrote. You're a good-hearted person. Is there anything in this letter that could specifically lead a good-hearted parent who is against mask mandates, who somehow believes that the teaching of racial discrimination is repugnant to them?

Is there anything in this letter that would prevent them from going and speaking to it and yelling and being upset and letting their elected officials know what they really believe? Is there anything in the actual print of this letter that could be seen to -- that lead to that type of intimidation?

MERRICK GARLAND:

No, Senator. All of those things are protected by the Constitution.

CORY BOOKER:

Will you say that one more time?

MERRICK GARLAND:

All of those things are protected by the Constitution.

CORY BOOKER:

I hope that you will do your law enforcement work. There's too much violence in this country. There's been too many domestic terrorist attacks. I don't want to have the next hearing here be about some incident. I hope that you continue to convene your strategy sessions to protect parents and children and school officials from any kind of heinous violence that we have seen way too much up in this country and that we all bear a responsibility for stopping.

Thank you, Mr. Chairman, for the allowance of the extra time.

DICK DURBIN:

Thank you, Senator. Senator Cruz.

TED CRUZ:

We talked just a minute ago about the difference between law and politics. We heard some impassioned political speeches, but also a question that just was asked by my friend from New Jersey. Is there anything in this memo to tell a parent that they're being targeted for harassment and intimidation? I would note that the letter from the school boards cited 20 instances, 15 of which were nonviolent.

The letter from the school board described them as domestic terrorism. Within days, the Department of Justice snapped to the commands of the special interest and issued a memo, a directive to the Department of Justice and a directive to the FBI. This is, again, where law matters. The opening sentence describes a disturbing spike in harassment, intimidation, and threats of violence.

Now, you spent a long time as a judge when you have three things listed. Am I correct that anyone interpreting that, reading it would conclude that harassment and intimidation are something different than threats of violence given that you listed each of the three out separately? Is that consistent with the canons of construction?

MERRICK GARLAND:

The memorandum is addressed to professional --

TED CRUZ:

I asked you a question, not who was addressed to.

DICK DURBIN:

Senator, at least, let him respond.

TED CRUZ:

No, not when he answers a non sequitur. He wants to answer the --

DICK DURBIN:

He may respond [Inaudible]

TED CRUZ:

OK, you're taking my time now. This is not coming out of my time. When I ask a question, you can answer [Inaudible]

DICK DURBIN:

Listen, we've given you more time than any other senator.

TED CRUZ:

Mr. Chairman, when I ask a question --

DICK DURBIN:

Now, listen, all I'm asking is allow him to respond.

TED CRUZ:

Mr. Chairman, when I ask a question, he can answer the question, but he's proceeding to ask a total non sequitur. I asked about the canons of construction on the --

DICK DURBIN:

Please let him respond.

TED CRUZ:

I'll ask the question again. The opening line of the memo specifies harassment, intimidation, and threats of violence. Is it correct under the ordinary canons of construction that a legal reader would understand that harassment and intimidation mean something different from threats of violence? Is that correct?

MERRICK GARLAND:

A legal reader would know *Virginia v. Black*, the Supreme Court definition of intimidation. And a legal reader would know 18 USC 2261A, the definition of harassment.

TED CRUZ:

And would a parent?

MERRICK GARLAND:

This was not addressed to parents.

TED CRUZ:

But you know parents read it. You're the attorney general of the United States. You said you can't think of anything harassing. You directed the G-men, the FBI to go after parents. All right. Let's move on to a different topic. We've sadly seen that you are willing to use the enforcement power of the Department of Justice to target those who have political views different than you even if it's a mom at a PTA meeting.

Let's try the other side. Are you willing to enforce the law fairly against people who are political allies of the president? At a Senate hearing in May, Dr. Fauci said, "The NIH has not ever and does not now

fund gain-of-function research in the Wuhan Institute of Virology." That was under oath, under testimony.

On October 20th, the NIH principal deputy director, in writing, directly contradicted it. Those two statements cannot be true. As you know, Section 1001 of Title 18 makes it a federal crime to knowingly make false statements to Congress. Is the Department of Justice investigating Dr. Fauci for lying to Congress?

And will you appoint a special prosecutor to do so?

MERRICK GARLAND:

I'm going to say, again, the memorandum that I issued is not partisan in any way. It has nothing to do with what I agree with or I don't agree with. I don't care whether the threats of violence come from the left or the right. Now to the second question --

TED CRUZ:

Could you answer the question I asked?

MERRICK GARLAND:

We don't comment on criminal investigations or other investigations.

TED CRUZ:

Well, amazingly, when it's the political enemies of the administration, you comment loudly in a memo. Let me ask one other question.

MERRICK GARLAND:

You're not -- you weren't --

TED CRUZ:

That President Biden recently said in a national town hall that police officers who declined to get vaccinated should be fired. Do you agree with President Biden on that?

MERRICK GARLAND:

I think all police -- look, I stood on stage at the mall where the 700-and-some police officer who died this year were commemorated. [Inaudible]

TED CRUZ:

Let me try again. Do you agree with the president? It's a yes or no. You've asked questions as a judge. You know how to get a yes or no. Do you agree with the president? Yes or no?

MERRICK GARLAND:

A large percentage of the law officers who died this year died from COVID-19.

TED CRUZ:

Do you agree with President Biden that police officers who declined to get vaccinated should be fired, yes or no?

MERRICK GARLAND:

And if they had been vaccinated, they wouldn't have died.

TED CRUZ:

So, is that a yes? You do agree with the president?

MERRICK GARLAND:

Not one police officer --

TED CRUZ:

In Chicago, a third of the police officers did not file their vaccination status. Do you think Chicago should fire a third of its police officers when murder rates and crime rates are skyrocketing?

MERRICK GARLAND:

This is a determination that the city of Chicago will have to make.

TED CRUZ:

So, do you agree with the president? The president said yes. Do you agree with him? You are the chief law enforcement officer of the United States. Do you agree with Joe Biden saying fire police officers despite skyrocketing crime rate?

MERRICK GARLAND:

That is a question -- that is a one of state law there and will have to be decided by the state.

TED CRUZ:

You have no view on whether we should fire --

DICK DURBIN:

Senator, your time has expired.

TED CRUZ:

Well, you used two minutes of it.

DICK DURBIN:

No, I certainly did not. Senator Blumenthal.

RICHARD BLUMENTHAL:

Thanks, Mr. Chairman. And thank you, again, for being here, Mr. Attorney General. I'm going to shift topics to an issue that I know you're familiar with, the 9/11 families and the state secrets privilege. And I want to just say that I was encouraged and pleased when President Biden issued an executive order requiring the Department of Justice to complete a review of documents sought by those 9/11 survivors.

As you well know, they are in court now, taking advantage of just the overwhelmingly approved measure that gives our federal courts jurisdiction over their claims for the harm they suffered when their loved ones were killed during the 9/11 attack. And I was glad to see that the FBI has released, at least, one document on the 20th anniversary of the 9/11 deaths.

RICHARD BLUMENTHAL:

I still am focused on the state secrets privilege. The invocation of it in past years before this administration, the overuse of it. In fact, the Trump Justice Department failed to provide any meaningful justification for withholding these documents from the 9/11 families, and I think we see now that there was no justification. So, I know the department's review is ongoing and that you will continue to disclose, I hope, as much information as possible, as swiftly as possible.

Just to address the Department's use of the privilege more broadly, the memo requires the Department of Justice to provide periodic reports to Congress, identifying the cases where the privilege is invoked and explaining the basis for invoking it. I sent a letter earlier this month to you about this reporting requirement because this committee has received only two reports in 2011 and 2015. And in the six years since, the Department of Justice has failed to provide such reports.

Just to come to the point, I am respectfully asking for a commitment that you will provide these periodic reports to Congress and review the department's policies with respect to its invoking the state secrets privilege so as to comply with the 2009 memo. I may have gone too quickly over the various actions of the Department, but I'm referring to the 2009 memo, which requires those periodic reports.

So, in the eight seconds that I have left and --

MERRICK GARLAND:

Yes. The answer to both questions is, yes, we are currently reviewing that memo, and if anything, we will strengthen it. And we do intend to make periodic reports. And it is not a periodic report to have not made a response since 2015, I assure you. So, we intend to do that, yes.

RICHARD BLUMENTHAL:

Thank you very much. Thank you, Chair.

DICK DURBIN:

Thank you, Senator Blumenthal. Senator Cotton.

TOM COTTON:

Judge, I want to return to our exchange this morning. As I've reflected on it, you made a shocking admission. You issued this memo direct -- or seeking the feds on parents and school boards on Monday, October 4. You acknowledged that there was no effort in the Department of Justice, no initiative to draft this memo or create these task forces before Wednesday, September 29, when the National School Board Association issued that letter.

Is that correct?

MERRICK GARLAND:

I don't know. All I know is that the first time I started working on this was after receiving the letter. That's all I --

TOM COTTON:

So, from your standpoint, there was -- you were not aware of any effort in the Department of Justice before that letter was sent on September 29.

MERRICK GARLAND:

I think it's fair to say, as you're suggesting, that this letter and what -- the other public notices of violence against school board members and teachers are what formed the basis for this memorandum, yes.

TOM COTTON:

This memo is dated October 4 with your signature on it.

MERRICK GARLAND:

Yes.

TOM COTTON:

Did you sign it on October 4?

MERRICK GARLAND:

I did.

TOM COTTON:

So, four intervening days, two of which were weekend days.

MERRICK GARLAND:

Yes.

TOM COTTON:

I'd say that sets a land speed record for the federal government.

MERRICK GARLAND:

When we --

TOM COTTON:

Chuck Grassley pointed out that you have not responded to letters of his that have been outstanding for months. How is it the Department of Justice was able to move so rapidly on a single letter from a special interest group that has now repudiated that letter, said it regrets sending the letter, and apologized to its members for sending the letter?

How did your department move so fast on this matter?

MERRICK GARLAND:

When an organization that represents thousands of school board members --

TOM COTTON:

I would say they purport to represent thousands because state school boards across the country have been repudiating them and trying to withdraw their membership. That's why the National School Board Association withdrew its own letter. Who brought this to your attention?

MERRICK GARLAND:

May I answer the question?

TOM COTTON:

I'm asking you it -- the question now. Who brought this to your attention?

MERRICK GARLAND:

You asked me a question. May I answer the question? The question is why speed. The answer is when we get reports of violence and threats of violence, we need to act very swiftly. I would have hated it to have gotten this letter and then acts of violence occurred in the interim before we were able to act.

TOM COTTON:

OK. OK, Judge --

MERRICK GARLAND:

The only act here is assessing the circumstances. That's all there is here, and we can't wait until somebody dies.

TOM COTTON:

Judge, you keep citing --

MERRICK GARLAND:

That's why we did this.

TOM COTTON:

OK, well, you keep citing media reports. There were 24 incidents in that letter. As you've heard today, almost all of them were nonviolent. There weren't involved threats of violence --

MERRICK GARLAND:

Those are not the media reports I was referring to.

TOM COTTON:

You said earlier it was news reports. OK. What other reports that you saw about potential violence at school boards were you basing this memo on?

MERRICK GARLAND:

I don't recall them specifically, but I have now again seen since that time, people saying --

TOM COTTON:

So --

MERRICK GARLAND:

That they're repeating what they said before.

TOM COTTON:

That's a -- but that's all post-talk. It's all after the fact. It doesn't go into your mind -- your frame of mind on October 4. Who brought this to you? Who brought this memo to you and asked you to sign it?

MERRICK GARLAND:

I got -- nobody brought the memo to me and asked me to sign it.

TOM COTTON:

Well, someone had to bring it to your attention. Hey, Judge, we're about to stick the feds on parents.

MERRICK GARLAND:

I'm sorry, no one said we're about to stick the feds on parents.

TOM COTTON:

Someone brought this --

MERRICK GARLAND:

That's not an accurate description.

TOM COTTON:

Was this an initiative of Lisa Monaco?

MERRICK GARLAND:

This memorandum was -- went through the normal processes within the Department and I worked on it myself, and then signed --

TOM COTTON:

Someone is a proponent -- someone was a proponent. You -- I bet you didn't write the first draft of this. Where did it come from? Did it come from Lisa Monaco?

MERRICK GARLAND:

I didn't write the first draft, but I did work on this memorandum, and it represents my views and it represents my reading of the materials --

TOM COTTON:

Did it come from Vanita Gupta's office?

MERRICK GARLAND:

Look, I'm not going to discuss --

TOM COTTON:

Is this Matt Klapper's initiative?

MERRICK GARLAND:

I'm not going to discuss the internal workings of the Justice Department here. This memorandum respects my -- reflects my view, and I stand behind it and I continue to stand --

TOM COTTON:

Are you aware of the -- are you aware of conversations between members of your Department of Justice and the White House leading up to that letter from the School Board Association?

MERRICK GARLAND:

I am sure there were -- there were no conversations with me. I'm sure there were conversations. It's perfectly appropriate when the White House receives a letter calling for law enforcement response across the board, not with respect to a specific case, for the Justice -- for the White House to have conversations with the Justice Department.

TOM COTTON:

Are you aware of conversations between your Department of Justice officials and White House officials, and the members of the School Board Association, all cooperating together, which is why you were able to move in four days, Judge, four days, two of which were weekends?

MERRICK GARLAND:

As I said, I am sure there were conversations with the White House. I have no idea whether there were conversations with the School Board Association.

TOM COTTON:

Well, I bet we're going to find out there were. And if it doesn't happen now, it will happen in 15 months when Republicans are in charge again.

MERRICK GARLAND:

Well, there's nothing wrong with there being such conversations. Let me be clear again, this is not a request to investigate any particular person or prosecute any particular person. In the same way you ask me to worry about violence in the streets, it's perfectly appropriate for the White House to urge me to worry about violence in the streets.

Same way, they're -- perfectly appropriate for the White House or any other organization to urge me to worry about election threats. There's nothing that I know -- knew about this organization to suggest that it is in any way partisan. It's the National School Board Association. I certainly never in my mind viewed that as a partisan organization.

TOM COTTON:

And now that they've repudiated their letter, why won't you just say you made a mistake?

MERRICK GARLAND:

Because they did not --

TOM COTTON:

Why won't you say you made a mistake and you relied on bad information?

MERRICK GARLAND:

Because they didn't repudiate their letter, they repudiated language in the letter which I did not adopt and don't agree with. But their concerns are about safety in the schools and about violence, and this is a core concern of the Justice Department. That's why.

DICK DURBIN:

Thank you. Senator Blackburn has asked for three minutes, and I will conclude with my own three minutes after that. Senator Blackburn.

MARSHA BLACKBURN:

Thank you, Mr. Chairman. Attorney General Garland, you just told me that you don't think you ever met Susan Hennessey. Did you hire Susan Hennessey?

MERRICK GARLAND:

Look, I have sign-off authority for everybody I suppose in the Justice Department, but the --

MARSHA BLACKBURN:

I [Inaudible] have you --

MERRICK GARLAND:

But I've --

MARSHA BLACKBURN:

OK.

MERRICK GARLAND:

That's the best I can answer with respect to that.

MARSHA BLACKBURN:

OK.

MERRICK GARLAND:

But the question you were worried about, Senator, and I understand had to do with Durham. And as I explained, she has nothing to do with the Durham investigation.

MARSHA BLACKBURN:

OK. Were you unaware of her comments before you hired her?

MERRICK GARLAND:

Again, the --

MARSHA BLACKBURN:

You don't know.

MERRICK GARLAND:

I hire 115,000 people in the Justice Department. I don't know --

MARSHA BLACKBURN:

I'm fully aware of that. And it's amazing to us that those 115,000 people can't investigate things like crime on the border, can't investigate crime on the streets. And, you know, the -- I'm going to return to this memo of October 4. The memorandum cites harassment intimidation and threats of violence. And what I'd like to know is who chose that language, harassment, intimidation, and threats of violence.

You've said this reflected your views, but it's become apparent that you did not write this memo yourself. So, I would like to know who came up with that language. Was that yours or was that submitted language?

MERRICK GARLAND:

So, I don't know whether -- let me put it this way. This is language that law enforcement officers are very well understand. It is contained in the federal statutes --

MARSHA BLACKBURN:

OK. Well, in the House and Judiciary Committee --

MERRICK GARLAND:

And in the Supreme Court opinion

MARSHA BLACKBURN:

Last week, you said you were concerned only about true threats.

MERRICK GARLAND:

Yes.

MARSHA BLACKBURN:

So, are you going to revise your memorandum to make it clear that you -- this applies only to true threats of violence instead of classifying parents in this country with domestic terrorists such as Timothy McVeigh and Terry Nichols?

MARSHA BLACKBURN:

The other thing I would like to know, you said to me earlier that your memo was based on the NSBA letter and the news reports. So, you've said there was not a lot of independent research done by you and your staff. So, if you would, please, submit to us, for the record, the news reports that you're referencing so that we will be able to have that as a frame of reference.

And, also, we would love to know who actually did write that memo and how they came up with the idea of calling parents a domestic terrorist. One other thing I've got for you: Do you agree with the Supreme Court that the Second Amendment is a civil right? And if so, what is your Civil Rights Division doing to ensure it is being protected?

MERRICK GARLAND:

So, just to back up on some of the questions --

MARSHA BLACKBURN:

OK.

MERRICK GARLAND:

The memo doesn't say anything about domestic terrorism or calling parents domestic terrorists. I do agree, the Second Amendment is part of the Bill of Rights and is, therefore, civil right -- the Civil Rights Division has some generalized authorities, but it also has specific statutory authorities. I don't know whether there is a specific statutory authority, with respect to the Second Amendment, that has been given by Congress to the Civil Rights Division.

I'm not aware of one. There may be, but I'm not aware of it.

MARSHA BLACKBURN:

OK. So, we can depend on you and your Department of Justice to stand in support of the Second Amendment. Is that what you're saying to defend it?

MERRICK GARLAND:

Yes, of course.

MARSHA BLACKBURN:

OK, thank you.

MERRICK GARLAND:

The Second Amendment is part of the Bill of Rights.

MARSHA BLACKBURN:

What we would like to know -- and I'll look forward to the other submissions in writing. Thank you, Mr. Chairman.

DICK DURBIN:

Thank you, Senator. Mr. Attorney General, thank you for your patience. You have been sitting in that chair with a couple of breaks for four and a half hours. Many of these colleagues of mine have had ample opportunity to ask questions and then come back and ask some more, sometimes the same questions. I would just like to make this observation.

I understand completely why you issued that memo. I wish my colleagues would reflect for a single moment as to why that memo is important, not just for school board members, but to send a message across America that there's a line we're going to draw when it comes to political expression. When you say words, when you wave your arms, that's all protected.

But when you threaten someone with violence or engage in acts of violence, that is never going to be protected and shouldn't be. It isn't that long ago that Gabby Giffords, one of our colleagues in the house, was gunned down in Arizona. Her husband is now serving as our colleague in the United States Senate.

I don't know the political bent of the person who shot her. It's basically irrelevant, but we should never countenance that as adequate or proper political expression. Steve Scalise, the Republican Congressman from Louisiana, was gunned down on a baseball practice field by someone from my state, who I believe was identified with the left in politics.

It doesn't make any difference. It was an outrage that that good man has suffered as much as he has because of it. And now, we have the story in Great Britain, David Amess, who goes to a town meeting and is stabbed to death in his constituency in England. For goodness sakes, can't we, even if we disagree on issues to a great degree, agree with the premise that anyone who engages in violence or threats of violence has stepped over the line whether they come from the right or the left.

I think that's what you were trying to say in your memo about the school boards. And, like you, I have never heard the School Board Association identified as great, strong special interest group. I haven't seen that in the years I've been in Congress. And there are many great, strong special interest groups.

I would just say to you, thank you for doing that. It was the right thing to do. It has been mischaracterized and distorted, not only today, but since then. But I think we can prove, by our actions, that we are not trying to stifle free speech but only saying to people we're going to draw a line. I was -- I find it fascinating that, at least, one of the people who was criticizing you today and talking about the situation on January 6 was actually cheering the demonstrators on on January 6. And there's ample evidence of that.

I would think we've got to draw a line that accepts in this civilized society we are going to be respectful of one another even if we disagree politically. I thank you for your testimony. Would you like to have a closing comment?

MERRICK GARLAND:

No. Thank you, Senator. I appreciate your remarks, though. Thank you.

DICK DURBIN:

Thank you very much. The committee stands adjourned.

List of Panel Members and Witnesses

PANEL MEMBERS:

SEN. DICK DURBIN (D-ILL.), CHAIRMAN

SEN. PATRICK LEAHY (D-VT.)

SEN. DIANNE FEINSTEIN (D-CALIF.)

SEN. SHELDON WHITEHOUSE (D-R.I.)

SEN. AMY KLOBUCHAR (D-MINN.)

SEN. CHRISTOPHER COONS (D-DEL.)

SEN. RICHARD BLUMENTHAL (D-CONN.)

SEN. MAZIE K. HIRONO (D-HAWAII)

SEN. CORY BOOKER (D-N.J.)

SEN. ALEX PADILLA (D-CALIF.)

SEN. JON OSSOFF (D-GA.)

SEN. CHUCK GRASSLEY (R-IOWA), RANKING MEMBER

SEN. LINDSEY GRAHAM (R-S.C.)

SEN. JOHN CORNYN (R-TEXAS)

SEN. MIKE LEE (R-UTAH)

SEN. TED CRUZ (R-TEXAS)

SEN. BEN SASSE (R-NEB.)

SEN. JOSH HAWLEY (R-MO.)

SEN. TOM COTTON (R-ARK.)

SEN. JOHN KENNEDY (R-LA.)

SEN. THOM TILLIS (R-N.C.)

SEN. MARSHA BLACKBURN (R-TENN.)

WITNESSES:

DEPARTMENT OF JUSTICE ATTORNEY GENERAL MERRICK GARLAND

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Oct. 21, 2021

Oct. 21, 2021 Final

House Judiciary Committee Holds Hearing on Justice Department Oversight

LIST OF PANEL MEMBERS AND WITNESSES

JERROLD NADLER:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JIM JORDAN:

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

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

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

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

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

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

JIM JORDAN:

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

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

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

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

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

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

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

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

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

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

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

MADELEINE DEAN:

Mr. Chairman?

JIM JORDAN:

We have a video we'd like to play.

MADELEINE DEAN:

Mr. Chairman --

JERROLD NADLER:

Ms. Dean?

MADELEINE DEAN:

I object.

JERROLD NADLER:

What privilege does Ms. Dean seek recognition?

MADELEINE DEAN:

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

JIM JORDAN:

Why would --

MADELEINE DEAN:

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

JIM JORDAN:

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

JERROLD NADLER:

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

JIM JORDAN:

Mr. Chairman --

MADELEINE DEAN:

I insist -- then I insist --

JERROLD NADLER:

Forty-eight hours' notice required by the rule.

JIM JORDAN:

Mr. Chairman --

MADELEINE DEAN:

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

JERROLD NADLER:

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

JIM JORDAN:

I appeal the ruling of the chair.

UNKNOWN:

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

JERROLD NADLER:

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

JIM JORDAN:

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

JERROLD NADLER:

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

JIM JORDAN:

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

JERROLD NADLER:

There is such a rule.

JIM JORDAN:

There is not, not in our rules.

UNKNOWN:

Unless objected to.

CHIP ROY:

Mr. Chairman, what are you afraid of?

JERROLD NADLER:

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

CHIP ROY:

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

UNKNOWN:

The gentleman was recognized --

CHIP ROY:

Are they afraid of videos of parents?

UNKNOWN:

[Inaudible] opening statement.

JERROLD NADLER:

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

CHIP ROY:

Overruling any statement?

JIM JORDAN:

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

CHIP ROY:

I seek recognition for a moment for an inquiry.

JIM JORDAN:

It's not a rule --

JERROLD NADLER:

The gentleman can proceed with his opening statement.

JIM JORDAN:

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

JERROLD NADLER:

The gentlewomen objected --

JIM JORDAN:

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

CHIP ROY:

I seek recognition for a parliamentary inquiry.

JERROLD NADLER:

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

CHIP ROY:

Mr. Chairman, I seek --

JERROLD NADLER:

The gentleman have anything else --

CHIP ROY:

I seek recognition for a parliamentary inquiry.

JIM JORDAN:

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

JERROLD NADLER:

The gentleman yields back?

JIM JORDAN:

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

JERROLD NADLER:

The -- it will not be --

JIM JORDAN:

[Inaudible]

JERROLD NADLER:

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

CHIP ROY:

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

JIM JORDAN:

You have to say what rule.

UNKNOWN:

[Inaudible] by the rule.

CHIP ROY:

Please present the rule.

JERROLD NADLER:

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

CHIP ROY:

But in protocol.

JERROLD NADLER:

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

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

CHIP ROY:

Mr. Chairman, did we ever vote on that?

UNKNOWN:

The gentleman is recognized.

CHIP ROY:

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

JERROLD NADLER:

The gentleman was recognized for his opening statement.

UNKNOWN:

[Inaudible]

JIM JORDAN:

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

JERROLD NADLER:

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

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

UNKNOWN:

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

JERROLD NADLER:

The gentleman has not made a valid point of order.

UNKNOWN:

Now, we recognize the [Inaudible]

JERROLD NADLER:

The gentleman [Inaudible]

UNKNOWN:

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

JERROLD NADLER:

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

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

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

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

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

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

JERROLD NADLER:

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

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

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

Attorney General Garland, you may begin.

MERRICK GARLAND:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JERROLD NADLER:

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

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

MERRICK GARLAND:

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

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

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

JERROLD NADLER:

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

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

MERRICK GARLAND:

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

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

JERROLD NADLER:

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

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

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

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

MERRICK GARLAND:

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

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

JERROLD NADLER:

Thank you very much.

JIM JORDAN:

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

MERRICK GARLAND:

Oh, I'm sorry.

JIM JORDAN:

Mr. Chabot [Inaudible]

MERRICK GARLAND:

Is that better?

JERROLD NADLER:

Mr. Chabot?

MERRICK GARLAND:

Sure, of course.

JIM JORDAN:

Mr. Chabot.

JERROLD NADLER:

Mr. Chabot.

STEVE CHABOT:

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

JERROLD NADLER:

Without objection.

STEVE CHABOT:

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

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

MERRICK GARLAND:

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

STEVE CHABOT:

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

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

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

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

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

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

MERRICK GARLAND:

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

STEVE CHABOT:

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

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

JERROLD NADLER:

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

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

ZOE LOFGREN:

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

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

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

Do you think that's still good law?

MERRICK GARLAND:

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

ZOE LOFGREN:

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

MERRICK GARLAND:

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

ZOE LOFGREN:

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

MERRICK GARLAND:

I believe the McGahn case is still good law.

ZOE LOFGREN:

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

MERRICK GARLAND:

Yes.

ZOE LOFGREN:

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

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

With that, Mr. Chairman, I yield back.

JERROLD NADLER:

The gentlelady yields back. Mr. Gohmert.

LOUIE GOHMERT:

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

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

MERRICK GARLAND:

I don't believe so.

LOUIE GOHMERT:

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

MERRICK GARLAND:

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

LOUIE GOHMERT:

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

MERRICK GARLAND:

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

LOUIE GOHMERT:

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

MERRICK GARLAND:

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

LOUIE GOHMERT:

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

MERRICK GARLAND:

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

LOUIE GOHMERT:

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

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

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

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

MERRICK GARLAND:

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

LOUIE GOHMERT:

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

MERRICK GARLAND:

Well, he --

LOUIE GOHMERT:

Improvement.

MERRICK GARLAND:

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

JERROLD NADLER:

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

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

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

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

SHEILA JACKSON LEE:

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

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

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

MERRICK GARLAND:

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

SHEILA JACKSON LEE:

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

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

MERRICK GARLAND:

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

SHEILA JACKSON LEE:

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

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

MERRICK GARLAND:

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

SHEILA JACKSON LEE:

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

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

MERRICK GARLAND:

So, I think --

SHEILA JACKSON LEE:

Federal.

MERRICK GARLAND:

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

SHEILA JACKSON LEE:

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

MERRICK GARLAND:

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

SHEILA JACKSON LEE:

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

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

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

JERROLD NADLER:

The gentlelady's time has expired.

SHEILA JACKSON LEE:

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

JERROLD NADLER:

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

BURGESS OWENS:

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

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

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

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

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

MERRICK GARLAND:

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

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

BURGESS OWENS:

OK. Can I --

MERRICK GARLAND:

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

BURGESS OWENS:

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

MERRICK GARLAND:

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

That is what we're worried about.

BURGESS OWENS:

OK.

MERRICK GARLAND:

We are worried about that across the board.

BURGESS OWENS:

Thank you.

MERRICK GARLAND:

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

BURGESS OWENS:

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

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

MERRICK GARLAND:

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

BURGESS OWENS:

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

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

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

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

JERROLD NADLER:

Gentleman yields back. Mr. Cohen.

STEVE COHEN:

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

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

MERRICK GARLAND:

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

STEVE COHEN:

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

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

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

MERRICK GARLAND:

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

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

STEVE COHEN:

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

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

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

MERRICK GARLAND:

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

STEVE COHEN:

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

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

MERRICK GARLAND:

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

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

STEVE COHEN:

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

JERROLD NADLER:

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

MIKE JOHNSON:

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

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

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

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

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

MERRICK GARLAND:

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

MIKE JOHNSON:

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

MERRICK GARLAND:

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

MIKE JOHNSON:

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

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

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

MERRICK GARLAND:

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

MIKE JOHNSON:

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

MERRICK GARLAND:

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

MIKE JOHNSON:

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

MERRICK GARLAND:

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

MIKE JOHNSON:

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

MERRICK GARLAND:

This memorandum is aimed at violence and threats of violence.

MIKE JOHNSON:

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

MERRICK GARLAND:

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

that anyone could have --

MIKE JOHNSON:

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

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

MERRICK GARLAND:

I am exquisitely aware of the ethics requirements.

MIKE JOHNSON:

But you're not following them.

MERRICK GARLAND:

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

MIKE JOHNSON:

Did you seek an ethics review of this or not?

MERRICK GARLAND:

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

MIKE JOHNSON:

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

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

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

JERROLD NADLER:

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

MERRICK GARLAND:

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

MIKE JOHNSON:

But you will not submit to an ethics report.

JERROLD NADLER:

Time of the gentleman has expired.

MIKE JOHNSON:

I would just put --

JERROLD NADLER:

Time of the gentleman has expired.

MIKE JOHNSON:

It wasn't innuendo. It was a question.

HANK JOHNSON:

Thank you.

MIKE JOHNSON:

It was a question.

HANK JOHNSON:

Thank you.

JERROLD NADLER:

The question is out of the time --

MIKE JOHNSON:

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

JERROLD NADLER:

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

HANK JOHNSON:

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

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

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

MERRICK GARLAND:

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

HANK JOHNSON:

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

MERRICK GARLAND:

Yes, sir.

HANK JOHNSON:

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

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

MERRICK GARLAND:

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

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

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

HANK JOHNSON:

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

MERRICK GARLAND:

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

HANK JOHNSON:

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

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

MERRICK GARLAND:

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

HANK JOHNSON:

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

This is the danger that we --

JERROLD NADLER:

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

JIM JORDAN:

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

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

MERRICK GARLAND:

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

JIM JORDAN:

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

MERRICK GARLAND:

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

JIM JORDAN:

Who gave you the letter?

MERRICK GARLAND:

I'm sorry?

JIM JORDAN:

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

MERRICK GARLAND:

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

JIM JORDAN:

With the White House told you to write the memo?

MERRICK GARLAND:

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

JIM JORDAN:

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

MERRICK GARLAND:

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

JIM JORDAN:

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

MERRICK GARLAND:

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

JIM JORDAN:

Did they talk to you, did someone call you?

MERRICK GARLAND:

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

JIM JORDAN:

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

MERRICK GARLAND:

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

JIM JORDAN:

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

MERRICK GARLAND:

I don't know.

JIM JORDAN:

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

MERRICK GARLAND:

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

JIM JORDAN:

Will FBI agents be attending local school board meetings?

MERRICK GARLAND:

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

JIM JORDAN:

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

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

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

MERRICK GARLAND:

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

JIM JORDAN:

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

MERRICK GARLAND:

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

JIM JORDAN:

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

MERRICK GARLAND:

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

JIM JORDAN:

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

MERRICK GARLAND:

Yes.

JIM JORDAN:

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

MERRICK GARLAND:

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

JIM JORDAN:

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

MERRICK GARLAND:

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

JIM JORDAN:

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

MERRICK GARLAND:

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

JIM JORDAN:

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

JERROLD NADLER:

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

TED DEUTCH:

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

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

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

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

MERRICK GARLAND:

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

TED DEUTCH:

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

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

JERROLD NADLER:

Without objection.

TED DEUTCH:

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

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

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

MERRICK GARLAND:

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

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

TED DEUTCH:

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

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

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

MERRICK GARLAND:

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

JERROLD NADLER:

The time of the gentleman has expired.

TED DEUTCH:

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

JERROLD NADLER:

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

CHIP ROY:

Do you know where Broad Run High School is?

MERRICK GARLAND:

No sir.

CHIP ROY:

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

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

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

MERRICK GARLAND:

[Inaudible]

CHIP ROY:

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

MERRICK GARLAND:

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

CHIP ROY:

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

MERRICK GARLAND:

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

CHIP ROY:

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

MERRICK GARLAND:

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

CHIP ROY:

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

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

MERRICK GARLAND:

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

CHIP ROY:

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

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

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

Yes or no.

MERRICK GARLAND:

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

CHIP ROY:

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

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

MERRICK GARLAND:

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

CHIP ROY:

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

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

MERRICK GARLAND:

I don't know anything about the Virginia legislation.

CHIP ROY:

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

MERRICK GARLAND:

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

CHIP ROY:

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

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

JERROLD NADLER:

Gentleman's time has expired. Ms. Bass.

KAREN BASS:

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

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

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

MERRICK GARLAND:

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

KAREN BASS:

OK.

MERRICK GARLAND:

Give an explanation or [Inaudible]

KAREN BASS:

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

JERROLD NADLER:

Without objection.

KAREN BASS:

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

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

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

MERRICK GARLAND:

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

KAREN BASS:

Thank you.

MERRICK GARLAND:

So, I don't know the specifics.

KAREN BASS:

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

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

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

MERRICK GARLAND:

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

KAREN BASS:

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

MERRICK GARLAND:

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

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

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

JERROLD NADLER:

Time of the gentlelady has expired. Mr. Tiffany.

TOM TIFFANY:

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

MERRICK GARLAND:

Oh.

TOM TIFFANY:

The --

MERRICK GARLAND:

No. Thank you. OK, sorry.

TOM TIFFANY:

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

MERRICK GARLAND:

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

TOM TIFFANY:

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

MERRICK GARLAND:

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

TOM TIFFANY:

So --

MERRICK GARLAND:

To tie it to race.

TOM TIFFANY:

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

MERRICK GARLAND:

So, the question --

TOM TIFFANY:

That our country has tried to rid itself of?

MERRICK GARLAND:

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

TOM TIFFANY:

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

MERRICK GARLAND:

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

TOM TIFFANY:

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

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

MERRICK GARLAND:

No.

TOM TIFFANY:

Are we criminals?

MERRICK GARLAND:

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

TOM TIFFANY:

Have states asked for help?

MERRICK GARLAND:

That's not --

TOM TIFFANY:

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

MERRICK GARLAND:

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

TOM TIFFANY:

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

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

MERRICK GARLAND:

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

TOM TIFFANY:

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

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

JERROLD NADLER:

Time of the gentleman --

TOM TIFFANY:

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

JERROLD NADLER:

Kindly yield. Gentleman has expired. Mr. Jeffries.

HAKEEM JEFFRIES:

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

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

JERROLD NADLER:

Without objection.

HAKEEM JEFFRIES:

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

MERRICK GARLAND:

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

HAKEEM JEFFRIES:

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

MERRICK GARLAND:

Inspect the federal voting, yes.

HAKEEM JEFFRIES:

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

MERRICK GARLAND:

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

HAKEEM JEFFRIES:

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

MERRICK GARLAND:

That's correct. That's correct.

HAKEEM JEFFRIES:

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

MERRICK GARLAND:

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

HAKEEM JEFFRIES:

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

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

MERRICK GARLAND:

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

HAKEEM JEFFRIES:

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

elections?

MERRICK GARLAND:

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

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

HAKEEM JEFFRIES:

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

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

UNKNOWN:

Please enter.

HAKEEM JEFFRIES:

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

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

MERRICK GARLAND:

Thank you, Congressman.

JERROLD NADLER:

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

JERROLD NADLER:

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

DAN BISHOP:

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

MERRICK GARLAND:

I certainly did and I worked on it.

DAN BISHOP:

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

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

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

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

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

MERRICK GARLAND:

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

DAN BISHOP:

Yeah [Inaudible]

MERRICK GARLAND:

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

DAN BISHOP:

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

MERRICK GARLAND:

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

DAN BISHOP:

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

MERRICK GARLAND:

They --

DAN BISHOP:

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

MERRICK GARLAND:

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

That's the purpose of these meetings.

DAN BISHOP:

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

MERRICK GARLAND:

Doesn't that make --

DAN BISHOP:

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

MERRICK GARLAND:

I --

DAN BISHOP:

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

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

MERRICK GARLAND:

Well, the memorandum specifically --

DAN BISHOP:

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

MERRICK GARLAND:

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

DAN BISHOP:

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

JERROLD NADLER:

The gentleman's time has expired.

DAN BISHOP:

My time has expired.

JERROLD NADLER:

Mr. Cicilline.

DAVID CICILLINE:

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

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

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

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

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

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

MERRICK GARLAND:

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

DAVID CICILLINE:

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

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

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

DAVID CICILLINE:

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

MERRICK GARLAND:

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

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

DAVID CICILLINE:

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

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

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

MERRICK GARLAND:

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

DAVID CICILLINE:

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

And with that, I yield back.

JERROLD NADLER:

OK. The gentleman yields back. Mr. Buck.

KEN BUCK:

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

MERRICK GARLAND:

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

KEN BUCK:

You don't need to.

MERRICK GARLAND:

OK.

KEN BUCK:

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

MERRICK GARLAND:

It's a very beautiful paint.

KEN BUCK:

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

MERRICK GARLAND:

I don't recognize the painting.

KEN BUCK:

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

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

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

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

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

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

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

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

MERRICK GARLAND:

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

KEN BUCK:

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

And that's my question.

MERRICK GARLAND:

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

KEN BUCK:

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

JERROLD NADLER:

Without objection. The gentleman yields back?

KEN BUCK:

I yield back, yes.

JERROLD NADLER:

The gentleman yields back. Mr. Swalwell.

ERIC SWALWELL:

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

Do you recall that ever occurring?

MERRICK GARLAND:

Yes, sir.

ERIC SWALWELL:

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

MERRICK GARLAND:

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

ERIC SWALWELL:

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

MERRICK GARLAND:

It is.

ERIC SWALWELL:

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

MERRICK GARLAND:

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

ERIC SWALWELL:

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

MERRICK GARLAND:

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

ERIC SWALWELL:

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

MERRICK GARLAND:

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

ERIC SWALWELL:

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

MERRICK GARLAND:

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

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

ERIC SWALWELL:

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

MERRICK GARLAND:

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

ERIC SWALWELL:

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

MERRICK GARLAND:

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

ERIC SWALWELL:

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

MERRICK GARLAND:

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

ERIC SWALWELL:

Sure.

MERRICK GARLAND:

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

ERIC SWALWELL:

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

MERRICK GARLAND:

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

ERIC SWALWELL:

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

JERROLD NADLER:

The gentleman yields back. Mr. Fitzgerald?

SCOTT FITZGERALD:

Attorney General, thank you.

MERRICK GARLAND:

Appreciate your waving at me.

SCOTT FITZGERALD:

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

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

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

MERRICK GARLAND:

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

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

SCOTT FITZGERALD:

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

MERRICK GARLAND:

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

SCOTT FITZGERALD:

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

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

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

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

MERRICK GARLAND:

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

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

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

SCOTT FITZGERALD:

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

JERROLD NADLER:

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

SCOTT FITZGERALD:

I yield back.

JERROLD NADLER:

The gentleman yields back. Mr. Lieu?

TED LIEU:

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

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

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

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

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

MERRICK GARLAND:

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

MERRICK GARLAND:

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

TED LIEU:

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

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

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

MERRICK GARLAND:

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

TED LIEU:

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

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

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

MERRICK GARLAND:

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

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

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

JERROLD NADLER:

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

TED LIEU:

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

JERROLD NADLER:

Without objection.

TED LIEU:

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

JERROLD NADLER:

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

CLIFF BENTZ:

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

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

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

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

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

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

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

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

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

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

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

JERROLD NADLER:

Without objection.

CLIFF BENTZ:

With that, I'll --

JIM JORDAN:

Will the gentleman yield?

CLIFF BENTZ:

I'll yield.

JIM JORDAN:

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

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

MERRICK GARLAND:

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

JIM JORDAN:

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

MERRICK GARLAND:

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

JIM JORDAN:

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

MERRICK GARLAND:

We expect --

JERROLD NADLER:

Time of the gentleman has expired. Mr. Raskin.

JAMIE RASKIN:

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

JIM JORDAN:

He doesn't even know.

JAMIE RASKIN:

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

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

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

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

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

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

MERRICK GARLAND:

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

JAMIE RASKIN:

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

MERRICK GARLAND:

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

JAMIE RASKIN:

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

MERRICK GARLAND:

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

JAMIE RASKIN:

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

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

MERRICK GARLAND:

I do think it's a --

UNKNOWN:

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

JAMIE RASKIN:

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

UNKNOWN:

Andrew Clyde.

JAMIE RASKIN:

I said that Andrew Clyde was in a religious cult.

UNKNOWN:

Yeah.

JAMIE RASKIN:

Cultlike.

UNKNOWN:

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

JAMIE RASKIN:

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

JERROLD NADLER:

It's not time [Inaudible]

UNKNOWN:

We have regular order.

JERROLD NADLER:

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

JAMIE RASKIN:

Thank you.

JERROLD NADLER:

Mr. McClintock.

UNKNOWN:

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

JERROLD NADLER:

Not a timely point of order.

UNKNOWN:

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

JERROLD NADLER:

Mr. McClintock --

JAMIE RASKIN:

Look, if any events --

JERROLD NADLER:

Mister --

JAMIE RASKIN:

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

JERROLD NADLER:

No, no, no, no, no.

JAMIE RASKIN:

These events was given [Inaudible]

JERROLD NADLER:

Mr. McClintock --

JAMIE RASKIN:

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

JERROLD NADLER:

OK.

JAMIE RASKIN:

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

JERROLD NADLER:

As I said, people should in --

JAMIE RASKIN:

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

UNKNOWN:

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

JAMIE RASKIN:

Yes. I'll make sure the [Inaudible]

JERROLD NADLER:

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

TOM MCCLINTOCK:

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

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

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

MERRICK GARLAND:

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

TOM MCCLINTOCK:

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

MERRICK GARLAND:

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

TOM MCCLINTOCK:

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

MERRICK GARLAND:

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

TOM MCCLINTOCK:

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

MERRICK GARLAND:

I can't --

TOM MCCLINTOCK:

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

MERRICK GARLAND:

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

TOM MCCLINTOCK:

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

MERRICK GARLAND:

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

TOM MCCLINTOCK:

Well, if you ask migrants --

MERRICK GARLAND:

And the earthquakes --

TOM MCCLINTOCK:

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

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

MERRICK GARLAND:

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

TOM MCCLINTOCK:

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

How many prosecutions you pursuing under this law?

MERRICK GARLAND:

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

TOM MCCLINTOCK:

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

TOM MCCLINTOCK:

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

MERRICK GARLAND:

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

TOM MCCLINTOCK:

When someone is ordered deported by a court --

MERRICK GARLAND:

I'm sorry.

TOM MCCLINTOCK:

If someone is someone is ordered deported --

MERRICK GARLAND:

Yeah.

TOM MCCLINTOCK:

By a court, should they be removed?

MERRICK GARLAND:

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

TOM MCCLINTOCK:

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

MERRICK GARLAND:

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

TOM MCCLINTOCK:

What circumstances would justify an independent prosecutor?

MERRICK GARLAND:

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

TOM MCCLINTOCK:

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

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

MERRICK GARLAND:

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

TOM MCCLINTOCK:

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

JERROLD NADLER:

Time of the gentleman has expired. Ms. Jayapal.

PRAMILA JAYAPAL:

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

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

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

MERRICK GARLAND:

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

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

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

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

They're working 24/7 on this.

PRAMILA JAYAPAL:

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

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

MERRICK GARLAND:

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

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

PRAMILA JAYAPAL:

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

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

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

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

MERRICK GARLAND:

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

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

PRAMILA JAYAPAL:

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

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

JERROLD NADLER:

Gentlelady yields back. Mr. Issa.

DARRELL ISSA:

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

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

Or at least the FBI is investigating?

MERRICK GARLAND:

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

DARRELL ISSA:

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

MERRICK GARLAND:

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

DARRELL ISSA:

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

MERRICK GARLAND:

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

DARRELL ISSA:

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

MERRICK GARLAND:

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

DARRELL ISSA:

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

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

DARRELL ISSA:

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

And what are you doing to discover further?

MERRICK GARLAND:

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

DARRELL ISSA:

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

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

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

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

MERRICK GARLAND:

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

DARRELL ISSA:

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

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

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

JERROLD NADLER:

Gentleman yields back. Ms. Demings.

VAL DEMINGS:

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

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

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

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

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

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

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

MERRICK GARLAND:

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

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

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

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

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

VAL DEMINGS:

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

MERRICK GARLAND:

Of course.

VAL DEMINGS:

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

MERRICK GARLAND:

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

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

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

VAL DEMINGS:

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

JERROLD NADLER:

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

CHIP ROY:

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

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

JERROLD NADLER:

Without objection.

CHIP ROY:

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

JERROLD NADLER:

Without objection. Mr. Biggs.

CHIP ROY:

Thank you, Mr. Chairman.

ANDY BIGGS:

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

MERRICK GARLAND:

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

ANDY BIGGS:

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

MERRICK GARLAND:

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

ANDY BIGGS:

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

MERRICK GARLAND:

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

ANDY BIGGS:

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

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

MERRICK GARLAND:

No.

ANDY BIGGS:

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

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

MERRICK GARLAND:

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

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

ANDY BIGGS:

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

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

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

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

MERRICK GARLAND:

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

ANDY BIGGS:

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

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

JERROLD NADLER:

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

LOU CORREA:

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

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

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

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

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

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

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

Thank you.

MERRICK GARLAND:

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

LOU CORREA:

They are protected.

MERRICK GARLAND:

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

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

LOU CORREA:

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

LOU CORREA:

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

JERROLD NADLER:

The gentleman, yields back. Mr. Gaetz.

MATT GAETZ:

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

MERRICK GARLAND:

You mean former lobbyists, I hope --

MATT GAETZ:

Yes, that's correct.

MERRICK GARLAND:

No, there is no prohibition.

MATT GAETZ:

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

MERRICK GARLAND:

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

MATT GAETZ:

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

MERRICK GARLAND:

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

MATT GAETZ:

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

MERRICK GARLAND:

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

MATT GAETZ:

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

MERRICK GARLAND:

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

MATT GAETZ:

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

MERRICK GARLAND:

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

MATT GAETZ:

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

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

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

MERRICK GARLAND:

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

MATT GAETZ:

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

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

MERRICK GARLAND:

It has jurisdiction over election crimes, yes.

MATT GAETZ:

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

MERRICK GARLAND:

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

MATT GAETZ:

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

MERRICK GARLAND:

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

MATT GAETZ:

And would you support that legislation?

MERRICK GARLAND:

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

MATT GAETZ:

I appreciate --

MERRICK GARLAND:

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

MATT GAETZ:

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

MERRICK GARLAND:

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

MATT GAETZ:

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

MERRICK GARLAND:

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

JERROLD NADLER:

Time of the gentleman has expired. Ms. Scanlon.

MARY SCANLON:

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

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

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

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

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

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

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

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

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

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

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

MERRICK GARLAND:

Yes, I do agree.

MARY SCANLON:

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

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

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

MERRICK GARLAND:

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

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

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

MARY GAY SCANLON:

Thank you.

MADELEINE DEAN:

Gentlelady's time has expired.

MARY GAY SCANLON:

I yield.

MADELEINE DEAN:

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

GREG STEUBE:

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

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

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

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

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

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

MERRICK GARLAND:

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

GREG STEUBE:

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

MERRICK GARLAND:

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

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

This is a nonpartisan determination of how to do that.

GREG STEUBE:

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

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

MERRICK GARLAND:

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

GREG STEUBE:

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

MERRICK GARLAND:

You are -- you --

GREG STEUBE:

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

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

MERRICK GARLAND:

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

GREG STEUBE:

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

MERRICK GARLAND:

Well, as you know --

GREG STEUBE:

Based on these pictures of people --

MERRICK GARLAND:

One --

GREG STEUBE:

Forcing themselves into the --

MERRICK GARLAND:

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

GREG STEUBE:

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

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

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

MADELEINE DEAN:

Gentleman's time has expired.

GREG STEUBE:

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

And that's what is horribly wrong --

MADELEINE DEAN:

Gentleman's time has expired.

GREG STEUBE:

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

MADELEINE DEAN:

Gentleman's time has expired.

GREG STEUBE:

Seeing your refusal to answer those questions.

MADELEINE DEAN:

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

JERROLD NADLER:

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

JOE NEGUSE:

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

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

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

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

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

MERRICK GARLAND:

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

JOE NEGUSE:

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

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

MERRICK GARLAND:

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

JOE NEGUSE:

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

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

So, I would certainly --

MERRICK GARLAND:

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

JOE NEGUSE:

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

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

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

MERRICK GARLAND:

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

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

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

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

JERROLD NADLER:

Gentleman's time is expired. Ms. Spartz.

VICTORIA SPARTZ:

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

VICTORIA SPARTZ:

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

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

MERRICK GARLAND:

Yes.

VICTORIA SPARTZ:

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

MERRICK GARLAND:

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

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

VICTORIA SPARTZ:

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

MERRICK GARLAND:

Of course.

VICTORIA SPARTZ:

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

MERRICK GARLAND:

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

VICTORIA SPARTZ:

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

MERRICK GARLAND:

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

VICTORIA SPARTZ:

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

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

MERRICK GARLAND:

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

VICTORIA SPARTZ:

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

MERRICK GARLAND:

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

VICTORIA SPARTZ:

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

MERRICK GARLAND:

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

VICTORIA SPARTZ:

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

MERRICK GARLAND:

[Inaudible] the FBI --

VICTORIA SPARTZ:

Considering the current situation?

MERRICK GARLAND:

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

VICTORIA SPARTZ:

Yeah, considering the current situation on the border, do you take any specific actions at the border?

MERRICK GARLAND:

Well, with respect to the first part of your question about Afghanistan, the FBI is participating, along with Homeland Security, in vetting the refugees who have landed in various locations, Qatar, Kosovo, Ramstein Air Base, and then in bases in the United States. So, they're doing everything they can to that -- for those purposes.

With respect to crossing of the border, this is a combination of the intelligence community, outside of our intelligence community, getting information about who might be trying to cross the --

VICTORIA SPARTZ:

So, you can reassure American people --

JERROLD NADLER:

Gentleman -- gentlelady's time --

VICTORIA SPARTZ:

In [Inaudible] yes?

JERROLD NADLER:

Gentlelady's time has expired. Ms. McBath.

VICTORIA SPARTZ:

I yield back.

LUCY MCBATH:

Thank you so much, Mr. Chairman. And, Attorney General Garland, there are many others in this room outside of myself that want to thank you so much for such a long career of public service. And as you may know, I lost my son, Jordan, almost nine years ago now. He was simply sitting in a car with three of his friends, playing loud music, when a stranger complained about the volume of their music, called them gang -- called the boys, gangbangers and thugs, and he took my son's life.

And I'm very pleased that the president has committed to preventing gun violence and that he's tasked you with the role of being supportive in gun violence prevention in America. Extreme risk protection orders, also known as red flag orders, allow courts to temporarily remove firearms for -- from those who pose imminent danger to themselves or risk of harming others.

In April 7, 2021, an announcement of initial actions to curb gun violence, the Biden White House encouraged Congress to pass a national red flag law. How would the national red flag law work with other federal protections to prevent gun violence?

MERRICK GARLAND:

So, we're in favor of a national red flag law. What we're doing now is making model red flag laws for the states, and these models provide that guns can be taken away for a person -- from a person in distress, normally from a mental crisis of some kind, when requested by someone close to them or if there's already a court violation of some kind.

But it provides due process protections for those people to ensure that it's not -- they haven't been inappropriately taken. That's -- you know, the risk here is that people in distress can commit violent acts, and when they have easy access to a firearm, the risk is that, that violent act ends in a death.

So, I think the red flag laws are very important in that respect.

LUCY MCBATH:

Thank you, as do I. Attorney General Garland, we lost 49 people, including many young people, at the mass shooting at Pulse nightclub in Orlando, Florida. And the shooter was previously the subject of a 10-month FBI investigation. And during this investigation, the FBI interviewed the shooter's wife, who later said that he strangled her, he raped her, beat her, and even while she was pregnant, he threatened to kill her.

Fifty three percent of mass shootings involve a shooter killing an intimate partner or family member among other victims. And even among those mass shooters who do not kill an intimate partner, as in the Pulse shooting, there's often a history of domestic violence. Since the Pulse shooting, has the Department updated its Domestic Investigations and Operations Guide or US Attorneys' Manual to ensure that it is examining whether a person has a history of domestic violence?

MERRICK GARLAND:

So, I don't know the exact answer into the past. I know that right now, the deputy attorney general is doing a review with respect to the way in which the Department treats victims, including victims in a circumstance that you talked about, and creates warning systems for those sorts of things. So, I don't -- I can't give you any fuller information than that, but I can ask my staff to get back to you.

LUCY MCBATH:

Thank you very much. If you do so, we appreciate it.

MERRICK GARLAND:

Of course.

LUCY MCBATH:

Also, can you assure me that you will take action to make sure that we are not missing any opportunities to save American lives?

MERRICK GARLAND:

Well, that's our -- this is our No. 1 goal.

LUCY MCBATH:

Thank you. And on May 7, I'm going to switch gears a little bit, May 7, 2021, you signed a proposed ATF rule to ensure the proper marking, recordkeeping, and traceability of all firearms manufactured, imported, acquired, and disposed by federal firearms licenses -- licensees by clarifying the definition of firearm and gunsmith among all other small changes.

How will this new definition help reduce the sale of ghost guns and increase background checks prior to their purchases?

MERRICK GARLAND:

So, ghost guns, which are ready -- sometimes ready build shoot -- they're called -- they're kits that you can buy in pieces and put them together. Right now, there's some lack of clarity or dispute about whether serial numbers have to be on them, and then whether you need a license -- I'm sorry, whether a check has to be made in order to determine whether the person is a prohibited purchaser.

MERRICK GARLAND:

This rule of law will require that serial numbers be put on the pieces and that a federally licensed firearms dealer has to do the background check. This does two things, one, it'll enable us to trace these guns; and second, it will make sure that people who are prohibited because they are a felon or whatever other reason shouldn't -- won't be able to get the gun.

I've been in -- both in Chicago and New York and been quite stunned to learn the high percentage of guns at murder scenes. That a high percentage, much higher than I would have expected were ghost guns. I had not realized how significant the problem is, but the police on the street are reporting that ghost guns are becoming more and more of a problem.

So, I'm hopeful that this regulation will give us some chance to beat that back.

LUCY MCBATH:

Thank you. [Inaudible]

JERROLD NADLER:

The time of the gentlelady has expired. Ms. Fischbach.

MICHELLE FISCHBACH:

Thank you, Mr. Chair. Attorney General Garland, in a press release announcing the investigation -- and I'll just preface, I'm from Minnesota, so you may guess where some of the questions are going. But in a press release announcing the investigation, you said that the DOJ's investigation into the Minneapolis Police Department will examine the use of excessive force by the police, including during those protests.

Will you also be investigating the origins of the deadly and destructive riots that ravaged large parts of Minneapolis?

MERRICK GARLAND:

So, I think these are two separate kinds of investigations. The one of the police department has one under the statute that authorizes us to do pattern or practice of unconstitutional policing done by the Civil Rights Division that was welcomed, I understand, by the chief and by the mayor. And that's a one side -- a separate one.

The investigations of the riots are undertaken by the US Attorney's Office as well as by the state's attorney. I think it's called states attorney and maybe it's the county -- state's attorney

in Minneapolis, I guess. And those are two separate sets of an investigation.

MICHELLE FISCHBACH:

So, you will not be. So, your department, DOJ, will not be investigating that?

MERRICK GARLAND:

US Attorney's Office to the extent there were federal crimes has been investigating those crimes. I don't know, I have no idea where the --

MICHELLE FISCHBACH:

DOJ will not be investigating?

MERRICK GARLAND:

At main justice, I don't believe so.

MICHELLE FISCHBACH:

OK. But during the riots following the George Floyd -- the death of George Floyd, dozens of people were injured, countless small businesses, churches were damaged, a police station was burnt down. A post office was burnt down, looted, and damaged all over. And thousands of people had to flee Minneapolis to avoid the violence.

Is the Department of Justice investigating these riots as an act of domestic terrorism at all?

MERRICK GARLAND:

So, now, I think if I'm understanding correctly, we're talking about 2020 at the --

MICHELLE FISCHBACH:

After the death of George Floyd.

MERRICK GARLAND:

Yes. And that investigation, I think -- you know, that was ordered by the previous attorney general. And I don't know whether they're -- whether that is concluded. I believe -- I don't know whether there are any ongoing investigations anymore from that investigation except for the charges that were made at the time.

And those cases are being followed obviously.

MICHELLE FISCHBACH:

Well, and Attorney General Garland, maybe you could get back to me in particular or the committee on the status of those and what is happening with that.

MERRICK GARLAND:

I'd be happy to have my staff get back to yours.

MICHELLE FISCHBACH:

Appreciate that. And I wanted to focus a little bit on the Third Police Precinct that was burnt down and still has not been rebuilt. Police officers don't even know if they're going to have a job in a few weeks given the resolution that's in front of the body. They have a resolution and you're probably not familiar with it, but they don't even know if they're going to have a job because they may be defunding the police in Minneapolis.

You know, the city is down over 200 officers since pre-COVID. If you talk to police officers, they're demoralized, they're struggling. They don't feel supported at all. They're having a very hard time. And you're the one initiating investigation of the Minneapolis Police Department. Considering all of the scrutiny that they are under, how do you propose Minneapolis can keep up police officer morale now that their under investigation and criticism, all of the criticism they're taking as well?

MERRICK GARLAND:

Well, let me say first on the defund police issue, the department does not support defunding police, nor does the president. So, we've asked for more than \$1 billion, a major increase in funds for local police departments.

MICHELLE FISCHBACH:

And sir, I didn't imply you did. I just wanted you to understand the context of the question because it's in front of the Minneapolis residents right now.

MERRICK GARLAND:

I do. I do. With respect to the pattern or practice investigation, there were a large number of serious incidents that were well reflected in the press and I think there was general agreement that there were problems. This does not mean that every police officer, quite the contrary. This means that, and I believe is, and from talking to many police officers, that they believe that it's important that there be accountability and that officers who break the law are held accountable so that the community retains its trust in the good police officers who do not break the law.

And those are by -- you know, the very large majority. They need that trust in order to have the cooperation of the community and that's the only way they can be safe and that's the only way the community can be safe. So, I think police officers should look at these investigations in a positive way and we are trying to present them in a positive way.

MICHELLE FISCHBACH:

And Attorney General, I think that the problem is, is that they're being -- it's piling on. It is continuing to pile on in particular in Minneapolis with these police officers who are there. They have -- many of them have grown up there. They are doing their job --

JERROLD NADLER:

The time of the gentlelady has expired. Mr. Stanton.

MICHELLE FISCHBACH:

Thank you. I yield back.

GREG STANTON:

Mr. Attorney General, I want to discuss with you missing and murdered indigenous women and girls. It's a national shame that when native women are murdered or when they disappear, their cases do not receive the resources or the investigations they deserve. And their loved ones are left without answers. President Biden made significant and specific commitments to travel communities to support MMIWG investigations.

But I am not convinced that those commitments have been kept particularly by the Department of Justice. Mr. Attorney General, I read your very brief statement on May 5th marking Missing and Murdered Indigenous Persons Awareness Day. But I'm not aware of you speaking publicly about this issue since you were confirmed to lead the department.

It does not appear that you have used your platform to help make this a top priority nor has DOJ really moved the needle on this issue since your confirmation. As attorney general, you serve on the Operation Lady Justice Task Force, but that was a task force created under the last attorney general, not you.

Do you agree that our tribal communities deserve more from the nation's top law enforcement official?

MERRICK GARLAND:

OK. I think this is a terrible tragedy. This circumstance, almost inexplicable tragedy. If I haven't spoken on it yet, I assume I will be because, under the president's executive order, I'll be cochairing a commission along with the secretary of the interior. I have been to the US attorney's offices in Oklahoma which have significant tribal responsibilities and we have spoken about those matters.

But you shouldn't mistake lack of public statements to be a lack of concern or passion about this issue.

GREG STANTON:

There are 574 federally recognized tribes in the United States. Of those, 326 have reservations and more than 1 million Native Americans live on or near reservations. That's not counting the many who live in urban areas, yet there are fewer than 200 special agents and victim specialists in the FBI's Indian Country program.

Do you believe the FBI's Indian country program is sufficiently staffed?

MERRICK GARLAND:

Well, I think the FBI could always use additional resources. I have to look into that specific question, which I haven't evaluated whether there are sufficient staff.

GREG STANTON:

In light of the facts I just laid out, will you commit today to adding staff to the Indian country program?

MERRICK GARLAND:

Well, I'm very interested in -- you know, our normal approach on this is cooperation with tribal officers and cooperation with the sovereign tribes, so that we are in sync on this rather than the federal government invading tribal prerogatives. But I do think that we need to look at this more closely and this is one of the things I'll be speaking with the interior secretary about.

GREG STANTON:

As you know, there's great frustration by many of our tribal leaders that when they asked for additional federal support to investigate these cases, they feel like they don't receive that

support. Our nation knows the tragic story of Gabby Petito because of the tremendous media coverage and law enforcement involvement her case garnered.

All of us grieve for Gabby's family and friends, while at the same time I wish that every missing person's case earn the same level of media attention. The FBI committed significant resources to that case, which I appreciate. But, Mr. Attorney General, when a native woman goes missing, or any woman of color for that matter, they don't get the same level of attention from the Department of Justice and FBI. What would you say to their families to explain why?

MERRICK GARLAND:

I don't think there's any excuse for not giving equal treatment to native and indigenous missing persons. And I don't believe there's any effort to not do that. I know that both the FBI and the Marshals Service are involved in this, along with their partners, their tribal partners.

MERRICK GARLAND:

And I'm not sure what else I can say about that.

GREG STANTON:

Just two weeks ago, the chairman of the Blackfeet Nation in Montana sent you a letter about the case of Ashley Loring Heavyrunner, a 20-year-old woman who went missing under suspicious circumstances three years ago. Her family and the tribal community are incredibly frustrated at the federal government's response to the case.

And in his letter to you, he asked why the federal government continues to make Ashley's family, "suffer and feel like Ashley's life doesn't matter." That breaks my heart, sir, because I can see why so many Native American families feel like their missing or murdered loved ones do not matter to the federal government.

We have a unique trust responsibility to our tribal nations, and rarely, if ever, has our federal government delivered. This is an opportunity to finally deliver. It offers you the opportunity to deliver. So, let's not fail our native communities again. So, what I hope and expect from President Biden and yourself, Mr. Attorney General, is more than lip service or empty statements on this issue --

JERROLD NADLER:

The gentleman's time --

GREG STANTON:

More than sharing task-force recommendations that will be left to sit on a shelf and look forward to your words in the near future. Thank you, Mr. Attorney General.

JERROLD NADLER:

Gentleman yields back. Mr. Massie.

THOMAS MASSIE:

Thank you, Mr. Chairman. Mr. Attorney General, you announced that the DOJ would use its authority and resources along with the FBI to police speech at school board meetings. In your opinion, what limitations does the 10th Amendment bring to your effort to police those school board meetings and the speech there in?

MERRICK GARLAND:

Well, let me be clear. We have no intention of policing school board meetings, nor does any memorandum from me suggest that we would do that. The memorandum that you're referring to is about threats of violence and violence. And that's all it's about. We greatly respect the First Amendment right of parents to appear before school boards and challenge and argue against provisions that the school boards are doing.

This memorandum has absolutely nothing to do with that.

THOMAS MASSIE:

So, you believe the sheriffs and the local police should police the school board meetings and investigate the threats of violence?

MERRICK GARLAND:

Yes, I -- obviously, the first step is for state and local authorities to do that. This memorandum is about cooperating with state and local authorities. Now, there are some federal statutes that cover threats and intimidation, and harassment. And we have the obligation to enforce those.

THOMAS MASSIE:

OK.

MERRICK GARLAND:

But those do not -- those don't apply within a school board meeting.

THOMAS MASSIE:

Need to move on. Thank you. I was hoping that you would articulate the 10th Amendment or some argument that comes from that because I'm concerned that the announcement was an effort to basically, you know, freeze the speech or to suppress the speech of school board members. But I need to move on, and I want to ask you about something.

There's a concern that there were agents of the government or assets of the government present on January 5th and January 6th during the protests. And I've got some pictures that I want to show you if my staff could bring those to you. [Begin videotape]

UNKNOWN:

[Inaudible] I'm probably going to go to jail for it. [Inaudible] We need to go into the Capitol. Into the Capitol. What?

MERRICK GARLAND:

I'm afraid I can't see that at all.

THOMAS MASSIE:

It depicts --

UNKNOWN:

Peacefully. [Inaudible] Hey, hey, hey. Peacefully. OK, folks, [Inaudible] as soon as the president starts speaking, we go to the Capitol. The Capitol's this direction. [End videotape]

JERROLD NADLER:

Is that approved video? [Begin videotape]

UNKNOWN:

We are going to the Capitol. [Inaudible] It's that direction. [End videotape]

THOMAS MASSIE:

All right. You have those images there, and they're captioned. They were from January 5th and January 6th. As far as we can determine, the individual who was saying he'll probably go to jail, he'll probably be arrested, but he wants every -- that they need to go into the Capitol the next day, is then, the next day, directing people to the Capitol.

And as far as we can find, this individual has not been charged with anything. You said this is one of the most sweeping investigations in the history. Have you seen that video or those frames from that video?

MERRICK GARLAND:

So, as I said at the outset, one of the norms of the Justice Department is to not comment on impending investigations and, particularly, not to comment about particular scenes or

particular individuals. This is [Inaudible]

THOMAS MASSIE:

OK. Without -- I was hoping, today, to give you an opportunity to put to rest the concerns that people have that there were federal agents or assets of the federal government present on January 5th and January 6th. Can you tell us, without talking about particular incidents or particular videos, how many agents or assets of the federal government were present on January 6, whether they agitated to go into the Capitol and if any of them did?

MERRICK GARLAND:

So, I'm not going to violate this norm of the rule of law. I'm not going to comment on an investigation that's ongoing.

THOMAS MASSIE:

Let me ask you about the vaccine mandate at the DOJ. Is it true that people -- employees of the DOJ can apply for religious exemption?

MERRICK GARLAND:

The mandate, as I understand it, is a mandate which allows exceptions provided by law. Religious Freedom Restoration Act is a provision of law.

THOMAS MASSIE:

So, the religious exemption has a basis in the Constitution. And so, that's required to be constitutional. Can you tell me if anybody's been granted a religious exemption?

MERRICK GARLAND:

I don't know.

THOMAS MASSIE:

So, I believe that it's fraud. In fact, fraud to tell people that you're going to preserve their constitutional religious accommodations by telling they can apply for an exemption and then not allowing any of those exemptions. And I'm sad to see that you can't tell us that anybody has been granted an exemption

JERROLD NADLER:

The gentleman's time has expired. Ms. Dean.

MADELEINE DEAN:

Thank you, Mr. Chairman. Welcome, Attorney General Garland. Thank you for your service to our country. I'd like to try to get to three important areas. Number one, let me follow up on some of the questions we've had around guns, in particular ghost guns. They are often obtained without a background check, and most ghost guns are untraceable.

These weapons are incredibly attractive to criminals, increasingly common, and should concern us all. This March, Pennsylvania investigators uncovered a trafficking ring suspected of frequenting gun shows to sell ghost guns, spreading them in my district and across our commonwealth. Access to ghost guns impacts regular Americans, like Heather Sue Campbell and Matthew Bowersox of Snyder County, Pennsylvania, who were shot and killed last year by Heather's ex-husband, the subject of a protection order.

He took her life with a ghost gun, a homemade P80 Polymer 9mm pistol. Could you continue to talk about how the proliferation of ghost gun hinders the ability of law enforcement, and what is DOJ's strategy to protect us from ghost guns? This is in follow-up to my colleague, Representative McBath.

MERRICK GARLAND:

Yes. So, we are finding more and more ghost guns at violent crime scenes. I don't remember the statistics exactly, but I believe, in both New York and in Chicago, I was told that at least 20 percent of the crime scenes, particularly the violent crime and murder scenes, we're finding, that they were done by both ghost guns.

Ghost guns have two problems. One of which is they're untraceable because they don't have serial numbers. And second, they are not subject or, at least I should say, there's been some dispute about whether they're subject to requiring background checks. That's the reason that we initiated a rule-making to require that the parts of the gun, which are sold as kits in parts, are stamped with serial numbers by the manufacturer.

And that when they are sold, they must have serial numbers on them as a kit, and they must run the background checks that you're talking about.

MADELEINE DEAN:

I thank you for that rule-making, and I hope that we, here in the Legislature, will do more to protect us and our safety from the proliferation. On the issue of opioids, as you pointed out, last year was, particularly, deadly. The total number of people who died of overdose was 93,331 people. And you know that our state, Pennsylvania, is particularly upset with DOJ sweetheart deal that was made last year with the Sacklers.

What can I say -- what can you say to victims of addiction, to the families who have lost people by the flooding of the market by the Sackler family and letting them, really, literally the rich and powerful, get away with it?

MERRICK GARLAND:

I don't think I'm able to talk about that case because it's in litigation. The only thing I will point out is the Justice Department opposed the release of liability -- personal liability of the family in that matter on behalf -- being brought by our bankruptcy trustee and is on appeal right now, I believe.

MADELEINE DEAN:

I thank you for that, and I hope that justice will be done for these families. And finally, on a third matter, asylum. Asylum is a human right.

MADELEINE DEAN:

I am horrified by the inhumanity we have seen and the ongoing use of a Trump-era Title 42 authority to expel migrants, all of which is done with no due process. Unstable government, political prosecution, violence a?" we know what people have suffered and what they are fleeing. You are now at the helm of DOJ. Will you continue the use of Title 42 authority even after CDC has repeatedly stated, there was no evidence that the use of Title 42 would slow the spread of COVID?

MERRICK GARLAND:

Well, the use of the authority comes from the CDC itself. They're the ones who issue the orders with respect to Title 42, and this is a challenge also in the courts. We believe that the CDC has a basis because of the concern about spread of COVID, which is what the grounds are. How long that will last is a determination CDC will make with respect to the pandemic and what the threats are with respect to the pandemic.

This doesn't have anything to do with, you know, my view or the government's view about the importance of asylum. It goes only to the CDC whose authority under Title 42 to issue this kind of order.

MADELEINE DEAN:

But it is my understanding, and maybe we could all look at it more closely, that CDC says there is no evidence that the use of Title 42 will slow the spread of, and the worry about, the spread of COVID from those seeking asylum. I hope we can look into that and stop the use of Title 42. Again, I yield back.

JERROLD NADLER:

The gentlelady's time has expired. Ms. Escobar?

VERONICA ESCOBAR:

Thank you, Mr. Chairman. Just a quick note. Earlier, a colleague asked that Mr. Raskin take down his words when referring to another colleague as being a member of a cult. I think if folks would just admit that President Biden won the 2020 election and would stop pushing the big lie, they wouldn't have to worry about being accused of being in a cult.

Attorney General Garland, I represent Congressional District 16 in El Paso, Texas. And we're coming into this hearing fresh off the heels of a gravely unjust redistricting session in the Texas state legislature where Republicans engaged in deliberate, shameless, extreme partisan gerrymandering. Texas gained two new House seats, fueled by the growth in our Latino population.

But instead of drawing maps reflecting that growth, Republicans chose not to add Latino majority districts and, according to a lawsuit filed by the Mexican American Legal Defense Fund, drew maps that diluted the voting rights of Latinos. This process was opaque and nontransparent perhaps because Texas Republicans hired a political operative known to have Republican members of Congress sign nondisclosure agreements.

I ask unanimous consent to enter into the record an article from The Texas Tribune entitled "Texas appears to be paying a secretive Republican political operative \$120,000 annually to work behind the scenes on redistricting".

JERROLD NADLER:

Without objection.

VERONICA ESCOBAR:

[Inaudible] Thank you so much. My own district was impacted in a process I have described as being akin to looting. And, unfortunately, Texas isn't the only state where this is happening. Mr. Garland, what steps is the Justice Department taking to ensure that redistricting plans do not violate the Voting Rights Act and discriminate against racial, ethnic, and language minority voters?

MERRICK GARLAND:

So, we announced before any of the redistricting plans began, because we knew that the decennial census would be leading to redistricting plans, that the Voting Section of the Civil Rights Division will be reviewing all of these plans. That's why we doubled the size of the Voting Section because the burden of this work is large, and there's a lot of it because of the census.

So, the Justice Department's Civil Rights Division will be examining these plans and will act accordingly as the facts and the law provide.

VERONICA ESCOBAR:

Thank you, Mr. Garland. In addition to the extreme partisan gerrymandering that is going on, states like mine have passed voter suppression legislation, all of it rooted in Donald Trump's big lie about the 2020 election. In light of these numerous state laws that passed that restrict access to the ballot box, how at risk are minority voters from being disenfranchised in elections over the coming years?

And what will the department do to confront those risks?

MERRICK GARLAND:

So, Justice Department has authority under the Voting Rights Act to prevent changes in practices and procedures with respect to voting that are discriminatory in the ways that you described. The Supreme Court in Shelby County case eliminated one tool we had, which was the Section 5 preclearance provision.

So, what we have now is Section 2, which allows us to make these determinations on a case-by-case basis with respect to discriminatory intent and discriminatory effect. That -- the Voting Rights Section is reviewing the changes that are made as they are being made and after they are being made. We have filed one lawsuit already in that respect, and the investigations are continuing.

I can't talk about any particular state though.

VERONICA ESCOBAR:

Thank you. And in my very limited time -- women in Texas are under attack. Our freedom to reproductive rights and our rights to an abortion are under attack, and this has been furthered by the Supreme Court and their recent -- the consequences of their shadow docket. In your opinion, what are some of the practical consequences of the court's decision denying stay in the case, the Texas case, via the process and formally known as the shadow docket?

You've got about 20 seconds, I'm so sorry.

MERRICK GARLAND:

All right. Well, most of what I'm about to say is reflected in the briefs that we just filed with the Supreme Court the other day, asking them to take this case. What we're particularly concerned about is the inability of anybody to challenge what is a clear violation of the Supreme Court's precedent with respect to the right to abortion because of the way that the law is structured.

And we can't have a system in which constitutional rights evade judicial review, whether it's about abortion or any other right. And I think I'll leave it with my -- our briefs which were just filed and which explicate what I just said in greater detail and, I'm sure, with greater style.

JERROLD NADLER:

The gentlelady --

VERONICA ESCOBAR:

Thank you so much, Mr. Chairman. I yield back.

JERROLD NADLER:

The gentlelady yields back. Mr. Jones?

MONDAIRE JONES:

Thank you, Mr. Chairman. I wish that rather than trying to redefine the words domestic terrorism, my Republican colleagues would simply instruct their supporters to stop engaging in it. Mr. Attorney General, thank you for your testimony today. As an alumnus of the Office of Legal Policy at Main Justice, I know about the hard work that you, your leadership team, and your line attorneys have been engaging in. And as an American citizen, I'm deeply appreciative of that.

MERRICK GARLAND:

Thank you.

MONDAIRE JONES:

You won't be surprised, given the work that I've been doing this year, that I want to speak with you about protecting the fundamental right of Americans to vote, which is clearly under assault. You underscored in your remarks to the Civil Rights Division in June that the right to vote is the cornerstone of our democracy, and you have said much the same today.

I don't need to tell you that states have launched the most severe assault on the right to vote in this country since Jim Crow. It is an onslaught that has hit voters of color, seniors, young people, and voters with disabilities the hardest. President Biden, for his part, has warned that we are facing "the greatest test of our democracy since the Civil War". As you said in your remarks to the Civil Rights Division, so far, this year, at least 14 states have passed new laws that make it harder to vote.

Well, according to the Brennan Center for Justice, that total has since risen to 19. Mr. Attorney General, let me start with a simple question to you. Which of those 19 states has the Justice Department sued for unlawful or unconstitutional voter suppression?

MERRICK GARLAND:

Well, this is on the public record. We sued Georgia.

MONDAIRE JONES:

Only one out of 19. In your June address, you emphasized that a meaningful right to vote requires meaningful enforcement. Yet even as we face a historic level of voter suppression and even as we confront grave threats to the integrity of vote counts, the Justice Department has not challenged the vast majority of these laws in court.

Would you say that bringing one case against state voter suppression is meaningful enforcement?

MERRICK GARLAND:

I think we have to prevent discriminatory violations of the Voting Rights Act wherever they occur and in as many states as they occur. But these investigations under Section 2 are very record-intensive and very labor-intensive. And voting rights -- the Voting Section of the Civil Rights Division is extremely devoted to making those kind of analyses, but we have to do each case one by one because of the elimination of Section 5. And that is what the Civil Rights Division, under our new assistant attorney general, Kristen Clarke, is doing.

I have great confidence in her and in the division.

MONDAIRE JONES:

I have great confidence in Kristen Clarke and yourself as well.

MONDAIRE JONES:

You mentioned that Section 5 has been hampered. Of course, it's been hampered in that Shelby v. Holder decision in 2013. You also mentioned earlier today that you were supportive of the John Lewis Voting Rights Act and I appreciate that. I think it is part of the

democracy saving legislation that the Senate must pass. Are you familiar with the Freedom to Vote Act, the revised version of the For the People Act that was --

MERRICK GARLAND:

I know what it is and I know some provisions, but I -- to be honest, I don't know every provision.

MONDAIRE JONES:

OK. Well, I would submit that we need to pass that in the Senate as well given the democracy saving provisions that are contained therein. It is long past time for the Senate to pass both of these pieces of legislation, and as we learned yesterday, unfortunately, the filibuster, a Senate rule that entrenched Jim Crow for decades, is the last obstacle in the way.

I am convinced, as you have said and written before, and reiterated in your testimony today, that the Justice Department needs new tools to fully protect our democracy. And as we learned yesterday, the filibuster, a rule crucial to entrenching Jim Crow, is the last obstacle. If presented with a choice between reforming the filibuster and protecting the right to vote -- or protecting the filibuster and allowing voter suppression to continue, which would you choose, Mr. Attorney General?

MERRICK GARLAND:

Look, I think the right to vote is absolutely essential and it is, as I've said repeatedly and as you quoted, a cornerstone of democracy. The question of the House rules are a question for the House. I'm very mindful of the separation of powers that this is a judgment for the members of the House to determine and not for the executive branch.

MONDAIRE JONES:

And, of course, the filibuster is a Senate rule. Mr. Attorney --

MERRICK GARLAND:

I'm sorry, I'm sorry, the Senate.

MONDAIRE JONES:

It's fine. I understood.

MERRICK GARLAND:

My bad.

MONDAIRE JONES:

Mr. Attorney General, as an alumnus of the Justice Department and as an American, I'm grateful for your work. But if we do not reform the filibuster and act now to protect the right to vote, the same white nationalists who incite violent insurrections at the Capitol, and lie about the efficacy of masks and vaccines are going to disenfranchise their way back into power.

Please take that message back to the president of the United States when you have a conversation with him hopefully about the filibuster and what he can do to help us here, and to protect American democracy, which is in grave peril.

JERROLD NADLER:

The gentleman's time has expired. I recognize Mr. Roy for the purpose of a UC request.

CHIP ROY:

I appreciate that, Mr. Chairman. I have a document from an organization, Parents Defending Education, in which they had sought a FOIA request from the National School Board Association. And we've got the email exchanges from that, that I would like to insert into the record in which the interim director discusses on an email on September 29, the talks over the last several weeks with White House staff "explaining" the coordination with the White House.

So, I'd like to insert that in record.

JERROLD NADLER:

No objection. Ms. Ross.

CHIP ROY:

Thank you, Mr. Chairman.

JERROLD NADLER:

Ms. Ross is recognized.

DEBORAH ROSS:

Thank you, Mr. Chairman. And, Attorney General Garland, thank you so much for being with us today. I also want to thank you for mentioning the work of the Department of Justice with respect to the Colonial Pipeline in your opening remarks. And I want to begin with a few questions about cybersecurity. As you know, ransomware attacks are a significant concern throughout the country, but particularly in my district in North Carolina.

In May, the Colonial Pipeline attack left nearly three-quarters of Raleigh, North Carolina gas stations simply without fuel. And as you also know, the Colonial Pipeline paid a ransom demanded by the hackers in order to unlock their systems and resume operations. While the DOJ has recently launched Ransomware and Digital Extortion Task Force, was eventually able to recoup some of the money paid by Colonial Pipeline, victims are often left to negotiate with attackers to recover the systems without any federal help.

And so, I'd like for you to share why DOJ chose to be more aggressive in the Colonial Pipeline situation, and what are the factors that leads -- lead -- would lead DOJ to get involved directly in a ransomware case?

MERRICK GARLAND:

Well, I don't want to go too far out on a limb on this, but I think DOJ would like to be involved in every ransomware case if we have the resources. The problem is generally, not all victims of ransomware tell us. Not all victims tell us before they make ransom payments. If victims would tell us before, we would have a good opportunity possibly to be able to recover.

We would have some opportunity to be able to help between the FBI and the computer section of the Justice Department, and the computer section at H -- at the Department of Homeland Security. We are willing and able to deal with victims of ransomware, including doing negotiations if necessary. So, I think this is really more of a question of getting cooperation from the victims who -- and I mean no respect to -- disrespect to the victims, but they're not always willing to tell us in advance.

And I think it would be very helpful if we were told in advance.

DEBORAH ROSS:

And would it also be helpful if you had reporting on what victims had paid in ransomware --

MERRICK GARLAND:

Yes.

DEBORAH ROSS:

In a larger registry? I've introduced legislation. There's a companion Senate legislation on this.

MERRICK GARLAND:

Like more information we can find out about who's demanding the ransoms, what victims are paying, how they're paying, what kind of wallets they're paying them into, what kind of cyber or crypto wallets they're being asked to pay them into, all of those things help us understand the ecosystem. So, the more information we have, the better.

DEBORAH ROSS:

Thank you for those responses. I'm going to switch to the ERA in women's rights. And today marks the 50th anniversary of the Equal Rights Amendment and its passage in the House of Representatives. Since the bill passed the House in 1971, 38 states have ratified the ERA, meeting the constitutional requirement necessary to certify and publish the ERA as the 28th Amendment to the Constitution.

But under the Trump administration, the DOJ's Office of Legal Counsel issued an opinion blocking the archivist of the United States from certifying the amendment even if Congress extends the deadline. As you know, women continue to face obstacles to their equality in pay, in child care, in the criminal justice system.

And scholars at the ERA Project at Columbia Law School have released a new analysis arguing that the memo should be withdrawn because it rests on erroneous interpretations of legal precedent and directly contradicts previous IOLC [Ph] opinions. Attorney General Garland, it's common practice for the DOJ to review prior legal opinions and withdraw those that are not legally sound.

Will you commit today to closely examine the OLC memo, and if you agree with these legal scholars that it is flawed, rescind this memo so that general -- gender equality can be enshrined in the Constitution?

MERRICK GARLAND:

Well, I will certainly -- I think the first step is to find out what OLC is doing in this respect. Sometimes they review previous opinions and often, they do not out of respect for their own precedents. I don't know what the status is with respect to this one. I certainly understand the argument, and I'll see if I can find out what OLC is doing in this respect.

DEBORAH ROSS:

Thank you very much, and I yield back.

JERROLD NADLER:

The gentlelady yields back. Ms. Bush.

CORI BUSH:

St. Louis and I thank you, Attorney General Garland, for being here with us today. Thank you for sitting through all of this. Since your confirmation in March of 2021, at least 128 black people have been killed by law enforcement officers in the US. That's one black person killed by law enforcement every two days, and that is an undercount.

Police killings in America have been undercounted by more than half over the past four decades. Attorney General Garland, as the people's attorney, do you think that law enforcement officials are above the law?

MERRICK GARLAND:

No one is above the law.

CORI BUSH:

I completely agree, and let's see how well that's going. Are you aware that Black and brown people are disproportionately stopped, searched, and arrested by police often for minor infractions?

MERRICK GARLAND:

I've certainly read that and I'm not surprised to learn it.

CORI BUSH:

Thank you. Are you aware that according to the FBI, white nationalists have infiltrated ranking file police departments?

MERRICK GARLAND:

I'm not sure I know the specific reference that you said about the FBI. I know that there are problems in some police departments with respect to domestic violent extremists being in the rank, and I know that many police departments are trying to make sure that that's not the case. But I'm not sure I know the reference that you're talking about.

CORI BUSH:

OK. I would like to seek unanimous consent to enter this report into -- from the Brennan Center 2020 report detailing white supremacy in police forces.

JERROLD NADLER:

Without objection.

CORI BUSH:

Thank you.

CORI BUSH:

Are you aware that from the statistics we do have, we know that black people are killed by police at three times the rate of white people?

MERRICK GARLAND:

Again, I don't know the actual statistic, but I'm more -- I wouldn't be surprised if that were the case and I'm happy to accept, you know, your representation.

CORI BUSH:

Thank you. Again, I'll -- I ask unanimous consent to introduce a Harvard School of Public Health report on fatal police encounters into the record.

JERROLD NADLER:

Without objection.

CORI BUSH:

Thank you. In light of these realities, do you believe that systemic racism exists in law enforcement agencies?

MERRICK GARLAND:

So, I think racism exists in a number of areas of our society. And the purpose, for example, of these pattern or practice investigations that we do, is to make sure that there is not a pattern or practice of unconstitutional policing.

CORI BUSH:

Mmm hmm.

MERRICK GARLAND:

That's the job of the Civil Rights Division to look at these matters, to take into account complaints in this area, and investigate them.

CORI BUSH:

Yes. The department requested \$1 billion in federal funding for law enforcement agencies in fiscal year 2022, an increase from last year. We are rewarding police departments rather than holding them accountable for racist practices. The department has a powerful tool at its disposal. Title VI of the Civil Rights Act mandates that recipients of federal funds do not discriminate.

And it makes clear that if they do, they are ineligible for federal funding. I am happy to see that the department is undergoing a 90-day review of Title VI. Given the structural racism in law enforcement agencies that you have acknowledged, will you commit today to withholding funds to law enforcement agencies that discriminate in violation of Title VI?

MERRICK GARLAND:

So, as you correctly point out, our associate attorney general and deputy attorney general are doing a review of Title VI and how it should be applied to our grants. I want to be clear, we are funding local police departments, but we are also making grants for the purpose of supporting constitutional policing, better community policing, better programs to ensure that there isn't discrimination.

I think that there are many, many, many good-hearted and nondiscriminatory police officers. We have to support them and root out the ones who violate the law. That's our job.

CORI BUSH:

Absolutely. And for me, if you know that your colleague is not doing something right, if you know your colleague is racist or has racist practices and you don't speak up, that means that you're not a good police officer as well. I mean, I don't believe in good and bad. I believe that there are officers and there are people who are below the standard.

I ask because St. Louis leads the nation in police killings per capita. It is a region where Michael Brown Jr. was killed in plain sight and there was zero accountability for his murder. It is where our movement in defense of Black lives began. Racialized violence is a policy choice. We can choose to subsidize it or we can choose to stop it. And so, for St. Louis, the choice is clear.

We must stop it. We must save lives. The Title VI review puts us on a path toward accountability. We need only to enforce it. Thank you and I yield back.

JERROLD NADLER:

The gentlelady yields back.

UNKNOWN:

Mr. Chairman.

JERROLD NADLER:

I recognize Mr. Massie for the purpose of a unanimous consent request.

THOMAS MASSIE:

Mr. Chairman, I ask unanimous consent to submit to the record two letters drafted and written and sent by Chip Roy and I to Attorney General Merrick Garland for which we have not received a response, one dated July 15 and one dated May 13.

JERROLD NADLER:

Without objection.

THOMAS MASSIE:

Then I have another unanimous consent request to submit for the record the frames from the video that were displayed in my testimony.

JERROLD NADLER:

Without objection. Ms. Jackson Lee has a UC request [Inaudible]

SHEILA JACKSON LEE:

Mr. Chairman, thank you very much. I ask unanimous consent to put into the record document produced by The Sentencing Project, "In the Extreme: Women Serve Life Without Parole and Death Sentences in the United States." I ask unanimous consent to submit into the record the Senate Judiciary Committee reports subverting justice.

I ask unanimous consent.

JERROLD NADLER:

Without objection.

SHEILA JACKSON LEE:

And also to place into the record legislation I introduced, "Preventing Vigilante Stalking that Stops Women's Access to Healthcare and Abortion Rights Act of 2021" regarding the stalking done by the Abortion Bill of Texas. I ask unanimous consent.

JERROLD NADLER:

Without objection.

SHEILA JACKSON LEE:

Thank you, Mr. Chairman.

JERROLD NADLER:

This concludes today's hearing. We thank the attorney general for participating. Without objection, all members will have five legislative days to submit additional written questions for the witness or additional materials for the record. Without objection, the hearing is adjourned.

List of Panel Members and Witnesses

PANEL MEMBERS:

REP. JERROLD NADLER (D-N.Y.), CHAIRMAN

REP. ZOE LOFGREN (D-CALIF.)

REP. SHEILA JACKSON LEE (D-TEXAS)

REP. STEVE COHEN (D-TENN.)

REP. HENRY "HANK" JOHNSON, JR. (D-GA.)

REP. THEODORE E. DEUTCH (D-FLA.)

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REP. ERIC SWALWELL (D-CALIF.)

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REP. JAMIE RASKIN (D-MD.)

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REP. SYLVIA R. GARCIA (D-TEXAS)

REP. JOE NEGUSE (D-COLO.)

REP. LUCY MCBATH (D-GA.)

REP. GREG STANTON (D-ARIZ.)

REP. MADELEINE DEAN (D-PA.)

REP. VERONICA ESCOBAR (D-TEXAS)

REP. MONDAIRE JONES (D-N.Y.)

REP. DEBORAH K. ROSS (D-N.C.)

REP. CORI BUSH (D-MO.)

REP. JIM JORDAN (R-OHIO), RANKING MEMBER

REP. STEVE CHABOT (R-OHIO)

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REP. THOMAS P. TIFFANY (R-WIS.)

REP. THOMAS MASSIE (R-KY.)

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REP. VICTORIA SPARTZ (R-IND.)

REP. SCOTT FITZGERALD (R-WIS.)

REP. CLIFF BENTZ (R-ORE.)

REP. BURGESS OWENS (R-UTAH)

WITNESSES:

DEPARTMENT OF JUSTICE ATTORNEY GENERAL MERRICK B. GARLAND

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Senate Judiciary Committee Holds Hearing on the Nomination of Merrick Garland to be Attorney General, Day One

LIST OF PANEL MEMBERS AND WITNESSES

DURBIN:

This hearing will come to order. Today, the Senate Judiciary Committee will hold a hearing on the nomination of Judge Merrick Garland to be the 86th attorney general of the United States. Judge Garland, I want to welcome you and your family. I want to welcome you back to the Senate Judiciary Committee. I know this return trip has been a long time in planning and you're here, finally.

This will be the Judiciary Committee's first hearing of the 117th Congress. Before I turn to my opening remarks, I'd like to just take a few minutes to make some acknowledgements. I want to welcome my friend, Senator Chuck Grassley as the committee's ranking member. When I first came on the Senate Judiciary Committee, 24 years ago, I was the ranking member on a subcommittee with you, and we dealt with the issue of bankruptcy.

Now, Illinois and Iowa sit next to each other, and so did Durbin and Grassley. We have our differences, but Senator Grassley and I've worked together on important legislation over the years, most recently on criminal justice and sentencing reform. I look forward to continuing that work in this Congress.

I want to recognize the outgoing chair and ranking member. Senator Lindsey Graham, who will join us remotely this morning, and Senator Dianne Feinstein. Senator Graham, as is true of Senator Grassley, while we don't always agree has always been a welcome partner on many issues, including one of the most challenging issues, immigration.

Senator Feinstein, I want to commend for leading the committee Democrats with grace and resolve over the past four years. I know she will continue to be an important voice on this committee on a host of issues, including in her new capacity as the chair of the Human Rights and Law Subcommittee, which I was proud to chair in past Congresses.

I also want to welcome our new committee members who either be here in person I see one in person, one probably remote, Senators Padilla and Ossoff on the Democratic side, Senator Cotton on the Republican side. I look forward to working with each of you.

There are some historic firsts in the Judiciary Committee this year. Senator Padilla, our new senator from California will be chairing the Subcommittee on Immigration, Citizenship, Border Safety. I am honored that he's the first Latino senator to chair that subcommittee, and we look forward to his leadership. Senator Cory Booker of New Jersey will chair the Subcommittee on Criminal Justice and Counterterrorism. He's the first black senator to chair a Judiciary Subcommittee. And we could not imagine a better choice at the helm of this particular subcommittee.

To all of our other members who are returning to serve on the committee. Welcome back. I want to thank all the committee members for agreeing to hold this committee hearing and vote on Judge Garland's nomination. It is a great honor to serve on this committee. The Senate established the Judiciary Committee by resolution on December 10, 1816, making it among the very first standing committees of the Senate.

This committee has seen many consequential debates and approved many important nominations and landmark legislation. In the committee's history. There's only been one prior Illinois senator to serve as chair, Judge Garland, Lyman Trumbull, who led the committee from 1861 to 1872. And during his term of service was a Democrat, a Republican, a radical Republican and a Democrat again. He was the most bipartisan senator you can imagine.

His tenure was also distinguished by passage of historic legislation, the 13th, 14th, and 15th Amendments to the Constitution, the Freedmen's Bureau Acts of 1865 and 1866, the Civil Rights Act of 1866.

The last of these was introduced by Trumbull and ultimately became the nation's first civil rights law. As Chair Trumbull saw a nation torn apart by Original Sin, slavery, and widespread violence and injustice that continued even after the 13th Amendment's passage as African Americans throughout the nation face racism. Our nation is still dealing with the consequences of these injustices, people of color face systemic racism, and we are still working to rid this nation of the horrific legacy of slavery and Jim Crow.

This committee can make a difference. We have the jurisdiction and the opportunity to do it through legislation oversight and nominations, including this nomination of Merrick Garland to serve as our nation's next attorney general.

There have been few moments in history where the role of attorney general and the occupant of that post have mattered more. Judge Garland should you be confirmed, and I have every confidence you will be, you'll oversee a Justice Department at an existential moment. After four tumultuous years of intrigue, controversy, and brute political force, the future of the department is clearly in the hands of the next attorney general.

Under Attorney General Sessions and his successor, Bill Barr, the Justice Department literally became an arm of the White House committed to advancing the interests of President Trump, his family, and his political allies. It came as little

surprise then that the U.S. Department of Justice became the Trump Department of Justice. General Barr stated clearly that he believed the Attorney General was the president's lawyer, not the nation's.

And what were the results? Too many in the department senior roles cast aside the rule of law. Trump appointees and the department sideline to career public servants from line attorneys to FBI agents, limited their roles, disregarded their nonpartisan input, override--overriding their professional judgment and falsely accusing them of being members of the deep state.

And the department pursued policies of almost unimaginable proportions from separating thousands, thousands of innocent migrant children from their parents, to banning innocent Muslims from traveling to our shores, from defending and even ordering violent crackdowns on peaceful protesters to parroting baseless lies about voter fraud in the lead up to the 2020 election.

The misdeeds of the Trump Justice Department brought this nation to the brink. In fact, as we learned after President Biden's inauguration, a senior official in the Trump Justice Department, Jeffrey Clark, plotted with President Trump for one final stab at the results of the 2020 election. They were thwarted at the last minute by Justice Department attorneys who threatened to resign en masse rather than joining their effort.

So Judge Garland, it's no overstatement to say that your nomination is one of the most critical in department history. When I reflect on it, I'm reminded of two previous attorneys general one a Democrat, the other Republican. Robert Kennedy, Edward Levi.

Kennedy entered office at a time of political turmoil. Although the nation had started down the path towards civil rights, Attorney General Kennedy recognized that equal rights and equal justice under law, were still an aspiration for too many people of color in the United States.

In June 1863, several years into his tenure as AG, Kennedy testified before the House Judiciary Committee. He said, "The demonstrations of the past few months have only served to point up what thinking Americans have known for years, that this country can no longer abide the moral outrage of racial discrimination." He continued, "If we fail to act promptly and wisely at this crucial point in our history, the ugly forces of disorder and violence will surely rise and multiply throughout the land, and grave doubts will be thrown on the very premise of American democracy."

The moral outrage of racial discrimination remains with us today, as do the forces of disorder and violence. And tragically, the Justice Department in the previous administration fanned the flames of discrimination. But a restored Justice Department, a department under new leadership can and I believe will meet the moment. There are great challenges ahead. The right to vote is under constant assault by those who wish to suppress the voices of communities of color.

We have a criminal justice system still in urgent need of reform. And too many Americans whether because of race, national origin, disability, sexual orientation, or gender identity, face inequality in their daily lives. It is time for the Department of Justice to confront these realities that unfortunately, continue to threaten, as Robert Kennedy said, the very premise of American democracy.

Judge Garland, when I think of what you face and restoring integrity and independence of the Justice Department, I also think another--of another one of your predecessors and fellow Chicagoan, Edward Levi, who likewise assumed time--the office at a time of turmoil. Levi had, of course, been president of the University of Chicago before his nomination to serve as attorney general for President Ford.

DURBIN:

And when he came before this committee for his confirmation in 1975, he was asked about removing the Justice Department from the ambit of part--partisan politics. This is what he said. "I do not believe that the administration of justice should be partisan matter in any sense, but I do not think the cases should be brought to reward people or to punish them for partisan reasons."

He continues, "I think it would be a bad thing for the country to believe that the administration of justice was not even handed because it was in some ways tilted by partisan politics." Why was this question asked? Why was Levi's response so important?

Just two years earlier, President Nixon had attempted to use the Justice Department as his personal law firm, ordering Elliott Richardson to fire Archibald Cox, the special prosecutor overseeing Watergate. Richardson rightly refused to fire Cox, as it is deputy, William Ruckelshaus. And so, each of them were fired in what became known as the Saturday Night Massacre.

Richardson and Ruckelshaus refused to act in a way contrary to the rule of law. They refused to put partisan politics and the personal interests of President Nixon above fidelity to the Constitution and the principle of equal justice for all, even those who occupy the White House. In the wake of Nixon's action, the Justice Department faced a reckoning. With the department's legacy--legacy still tarnished and public confidence shaken, President Gerald Ford turned to Levi to restore honor, integrity, and independence.

Well, Judge Garland, the nation now looks to you to do the same. The public's faith and the Department of Justice has been shaken, the result of department leadership consumed with advancing personal and political interests. In fact, that it not been for several Justice Department attorneys I mentioned earlier threatening to resign this January, President Trump might have gone even further than he did to overturn the election results. And that raises critic--critical questions this committee and you must reckon with.

Judge Garland, we're confident we can rebuild the department's once hallowed halls, that you can restore the faith of the American people and the rule of law and deliver equal justice. I want to close by returning to the attempt to overturn the 2020 presidential election. You probably noticed when you came to Capitol Hill how it's changed. You lived most of your life, and I've lived a large part of mine, coming to this Capitol Hill to visit, to work, really to honor the traditions of these buildings.

We now have established a perimeter around this building. It stretches for blocks in every direction and a 10 foot high fence that walls off this Capitol building from the rest of America. At the top of the fence, barbed wire; inside the fence, we have not only our loyal police force but men and women of the National Guard from all over the United States, thousands of them still standing guard over this building.

What a commentary on the current state of America that we face today, but it's needed. We were here in January 6th. We lived through it. We were lucky. For most of us, we were not in direct contact with the mob. Others were and, sadly, paid a heavy price for it.

For months, President Trump spread falsehoods about the election and fraudulent voting. And before a single vote had been cast, he claimed that he could only lose as the result of fraud.

Far too many Americans gave credence to these unproven, dangerous claims. We know the result. We saw the attempt to subvert democracy culminating in the events of January 6th when this armed mob stormed the Capitol, sought to disrupt the counting of Electoral College votes, violently targeted the Congress, our colleagues in the House, our families, even the vice president, staff ultimately causing the senseless deaths of Capital Police Officer Brian Sicknick and Howard Liebengood in DC Police Officer Jeffrey Smith.

When you're confirmed, Judge Garland, you, along with the rest of the nation, will continue to grapple with the January 6th attacks, but you'll be in a you--unique position with a new unique responsibility. As the nation's chief law enforcement officer, you'll be tasked with the solemn duty to responsibly investigate the events of that day, to prosecute all of the individuals responsible, and to prevent future attacks driven by hate, inflammatory words, and bizarre conspiracy theories.

You know what it's like. You've been there before. You've seen domestic terrorism. You led the investigation and prosecution of the Olympic--of the Oklahoma City bombing and, in doing so, made the nation safer and brought some measure of peace and healing to the victims and their families. I'm confident that, given this prior experience, you're up to the task the department now faces in the wake of January 6th. In fact, I can think of few people better suited to do it.

I look forward to hearing your testimony, but at this point I will turn to my colleague, Senator Grassley.

GRASSLEY:

Thank you, Senator Durbin. Welcome to Judge Garland, glad that you've been honored with this appointment to be attorney general of the United States. Welcome the public at large, most of them very remote, not the large crowds we normally have when we have an attorney general nominee before this committee. I have a longer statement that output in the record, and I've still got plenty to say even this morning.

I, of course, congratulate Senator Durbin on his new role as chairman. He has already referred to he and I getting appointed on the Administrative Oversight Subcommittee and working on what now is a badly needed law when agriculture is in bad shape by passing Chapter 12 agricultural bankruptcy legislation. And I look forward to working with you in the future here.

And I also want to express my admiration for Senator Feinstein, the previous Democrat leader of this committee. She and I have worked closely together during the years that I chaired, and she was ranking member, and I thank you for your leadership.

I'd also like to say a word about Judge Garland. This is, of course, Judge Garland's first time appearing before this committee since sending to the federal bench. I had something to do with that. After the death of Justice Scalia, my Republican colleagues and I decided not to hold a hearing on his nomination, in other words meaning Judge Garland's nomination to the Supreme Court, having been nominated by President Obama.

As you recall, it was an election year with a divided Congress. The position I took was consistent with previously public--publicly expressed positions by other senators and Democratic senators previous to that. So, yes, it's true that I didn't give Judge Garland a hearing. I also didn't mischaracterize his record. I didn't attack his character. I didn't go through his high school yearbook. I didn't make his wife leave the hearing in tears. I took a position on hearings and I stuck to it, and that's it.

I admire Judge Garland's public service. Just because I disagreed with anyone being nominated didn't mean that I had to be disagreeable to that nominee. Unfortunately, that's not always the way it works in this town that has great political division.

Judge Garland is here and we're here to talk about his nomination to be attorney general. And I extend a warm welcome to you, Judge Garland, and your family and friends that are probably very honored because of your nomination. This, of course, is a worthy capstone on a storied career that you have had.

Judge Garland is a good pick to lead the Department of Justice. He has decades of experience as one of the most respected appellate judges in the country and, before that, being a great prosecutor. When the domestic terrorist, Tim McVeigh--McVeigh, was executed for his crimes, we had Merrick Garland to thank for that successful prosecution.

No one doubts that Judge Garland is qualified for his job, but of course attorney general is more than just qualifications. The top law enforcement officer of the United States must be committed to enforcing the rule of law. As our former colleague and a former Attorney General John Ashcroft likes to say, the Department of Justice is the only cabinet agency whose name is an ideal. It's not the department of law enforcement, but the Department of Justice.

Justice is equality under the law. There is one law for all Americans regardless of race, color, creed, or connection. Is Judge Garland up to that task? I think he is, but today our goal is to ask them questions to find out.

GRASSLEY:

The Department of Justice has taken important steps to live up to these ideals expressed by Attorney General Ashcroft. And--and I think they've done well in that direction, particularly over the last four years. The department has undertaken many successful initiatives to reduce violent crime in all communities and has sought to maintain the rule of law by reforming consent decrees, guidance documents, and sue and settle abuse.

It has protested our civil liberties, in particular defending our religious liberties and pursuing elder justice. I hope that the Department of Justice continues these initiatives under you, Judge Garland.

What I don't want is a return to the Obama years. I don't want an attorney general who bragged about being a wingman--and those are his words--to the president. That was Eric Holder, notoriously describing himself.

I don't want a Justice Department that abuses the FISA process to spy on American citizens. I don't want consent decrees that federalize law enforcement and cause murder rates to soar. I don't want a return to catch and release on the border.

I could come up with many other examples. Unfortunately, a lot of what we've seen so far from the Justice Department is discouraging. They have whiplashed inducing changes to litigation positions. They're going through rescinding excellent rule of law memorandums right out of the gate.

President Biden is even reportedly firing nearly every Senate confirmed U.S. attorney regardless of what investigations they're supervising. That is troubling.

That is why I am especially concerned about the Durham investigation. Starting January 2017, I began an investigation on how the Justice Department and the FBI handled Crossfire Hurricane, its investigation into the Trump campaign and administration. Simply said, Crossfire Hurricane is a textbook example of what shouldn't happen during investigations.

What the Obama administration did to the Trump campaign, transition, and administration can't ever happen again. If confirmed, you'll have oversight of Special Counsel Durham's review of Crossfire Hurricane.

When Bill Barr appeared before the committee for his nomination hearing, he said, "It's finally important that the special counsel be allowed to complete his investigation." Of course, he was referring to then Special Counsel Mueller's investigation.

Today, you'll need to be clear about what your position will be with regard to Special Counsel Durham. We should expect the same level of commitment from you to protect Durham as we expected from Barr to protect Mueller.

So, Judge Garland, I just want to say that I like you, I respect you, and I think you're a good pick for this job. But I have a lot of questions about--about how you're going to run the Department of Justice. Thank you, Mr. Chairman.

DURBIN:

Thank you, Senator Grassley. At this time, we'll have formal introduction of Judge Garland. Two of our colleagues will be doing that. Because of your state of residence, Senator Chris Van Hollen of Maryland will be first and because of your roots, Senator Tammy Duckworth, my colleague of Illinois, will be second. Both are joining us by WebEx. There will be a record statement made by Senator Cardin placed in the record.

Senator Van Hollen?

VAN HOLLEN:

Thank you, Mr. Chairman. Let me thank you and Ranking Member Grassley and all of our colleagues on the Senate Judiciary Committee for being here today and I'm really grateful for the opportunity to introduce the president's nominee for attorney general, Judge Merrick Garland, who's not only a fellow Marylander, but somebody who I have known personally for many years. And I know that President Biden has picked a nominee with impeccable credentials and unimpeachable character.

His experience stretches from the halls of the Justice Department to the chambers of the U.S. Court of Appeals for the District of Columbia Circuit. And, he embodies the decency, the impartiality, and the commitment to justice that our nation deserves as the attorney general of the United States.

I'm confident that if confirmed, Judge Garland will serve admirably and faithfully as the next attorney general and I'm proud to present him to you and the committee on behalf of myself, but also Senator Cardin, who as you mentioned, Mr. Chairman, is fully in support of this nomination but could not join us because of a scheduling conflict.

The nation already knows Merrick Garland because of his Supreme Court nomination and as the former judge of the U.S. Court of Appeals for the District of Columbia Circuit, where he earned a reputation as one of our nation's finest and fairest jurists. But his tenure on the D.C. Circuit was just the most recent achievement in a life dedicated to serving the rule of law.

After excelling at law school, Judge Garland clerked for the 2nd Circuit Court of Appeals and then for the Supreme Court. He then rose through the ranks of a prominent law firm before jumping back into public service feet first, as a federal prosecutor in the U.S. Attorney's Office during the administration of President George Herbert Walker Bush and then later served as the principal associate deputy attorney general at the Department of Justice.

As a senior DOJ official, Judge Garland was tasked with overseeing the case of the Oklahoma City bombing, one of the deadliest domestic terrorist attacks in American history. It left 168 Americans dead and hundreds more injured.

Merrick Garland brought a steady hand to an operation that involved massive amounts of evidence, pressure from the public, and a large team with diverse skills and backgrounds. With fidelity to the law and meticulous attention to detail and unrelenting focus, Merrick Garland helped bring the bomber, Timothy McVeigh, to justice. He has called this case the most important thing he has done in his life.

Mr. Chairman, Ranking Members, and committee members, we are going to need his experience as we once again confront the rise of domestic terrorism, particularly in the wake of the horrific events of January 6th. And, the next Attorney General must not only take on the rise of white supremacist and radical militia groups, but also ensure that justice is rendered equally and fairly by promoting and ensuring racial equity, rooting out discrimination in our criminal justice system, addressing police reform, and ensuring that we don't see a concerted effort to limit people's citizen's right to vote in the United States of America.

As Justice Garland has himself stated, ensuring the rule of law and making real a promise of equal justice under the law are "the great principles upon which the Department of Justice was founded and for which it must always stand." Judge Garland has spent his career doing both and I have no doubt he will honor that tradition as attorney general.

While his professional experiences have prepared him for this job, it's his character that makes him right for this moment. Should he be confirmed, Judge Garland will be charged with restoring credibility and independence to the Department of Justice, making it clear that the department is not the political instrument of the White House.

I know Merrick Garland is up to the task. The lengthy list of testimonials speaking to his fairness and sound judgment span the political spectrum. He is respected by lawmakers, scholars, and lawyers of ever legal persuasion and political philosophy.

And, on a personal note, I can attest to the fact that his brilliance is matched by his kindness. His many achievements have never gone to his head. He has always stayed humble and treated everyone with respect.

Mr. Chairman, Ranking Member, members of the committee, it's for these reasons and many more that I'm honored to present to you the president's nominee to serve as the next attorney general of the United States, Judge Merrick Garland. Thank you.

DURBIN:

Thank you, Senator Van Hollen. And now I'm calling on my colleague and friend from Illinois, Senator Tammy Duckworth.

DUCKWORTH:

I thank the chairman. Thank you so much for this opportunity to introduce President Biden's nominee to serve as the next attorney general of the United States.

We in Illinois also claim Merrick Garland as a son of our state. He possesses the brilliance and the resilience, the experience, and the intellect, the expertise and integrity necessary to serve effectively as our next attorney general.

I am especially honored to be here today because I have full confidence in his capability to lead the Department of Justice in an independent and impartial manner and he will defend the civil and constitutional rights of all Americans, no matter what they look like, who they love, how they pray, or their disability status.

Judge Garland hails from our home State of Illinois, Mr. Chairman. His father ran a small business out of his home, and his mother directed volunteer services at the Council for Jewish Elderly in Chicago.

After graduating as valedictorian at Niles West High School in Skokie, he won scholarships to both college and law school. He then graduated from Harvard University in 1974 and Harvard Law School in 1977. His breadth of experience stems in part from his time in private practice and judicial clerkships. He clerked for Judge Henry Friendly on the Second Circuit and Justice William Brennan on the United States Supreme Court.

However, his commitment to public service is perhaps even more clearly demonstrated by his successful tenure at the Department of Justice and his current seat on the United States Court of Appeals with the District of Columbia Circuit. In 1979, Judge Garland joined the DOJ as a special assistant and then after a brief stint in private practice left the department as a principal associate deputy attorney general in 1997.

During his tenure, (INAUDIBLE) both Republicans and Democratic administrations, he led multiple high-profile investigations, working on a number of issues, including criminal, civil, antitrust, appellate, espionage and national security measures. He

gained valuable experience as a prosecutor by trying and supervising numerous prosecutions and appeals. Notably, he played a key role in the prosecution of the Oklahoma City bombers, as has been previously noted.

Following his career at the DOJ, the United States Senate confirmed his nomination for a lifetime appointment to serve on the DC circuit. Judge Garland authored hundreds of opinions that address disability rights, criminal justice and voting rights, among other issues, issues that affect Americans at every mile in every corner of this country.

As a judge, he joined a unanimous panel decision that upheld a Department of Labor regulation requiring contractors to comply with the Rehabilitation Act of 1973. This decision upheld regulations that sought to protect employment opportunities for individuals living with a disability, like myself.

It is this legacy of public service that gives me confidence that, if confirmed to be our nation's chief law enforcement officer, Judge Garland will not only modernize and strengthen enforcement of the Americans with Disabilities Act but will restore integrity and lift morale throughout the DOJ.

Judge Garland is ready to defend the constitutional and civil rights that our nation so deeply values, and I know he will make all of us Illinoisans proud as our country's next gen--attorney general. Thank you.

DURBIN:

Thank you, Senator Duckworth. Judge Garland, will you please stand to be sworn? Do you affirm that the testimony you're about to give before the committee will be the truth, the whole truth and nothing but the truth so help you God?

GARLAND:

I do.

DURBIN:

Thank you. Before I turn to my questions--I think there's another element in the program here, your testimony. Let me turn to Judge Garland.

GARLAND:

Thank you, Mr. Chairman, Mr. Ranking Member, members of the Judiciary Committee. I am honored to appear before you today as the president's nominee to be the attorney general. I would like first to take this opportunity to introduce you to my wife, Lynn, my daughters, Jessie and Becky, and my son-in-law, Xan. I am grateful to them and to my entire extended family that is watching today on C-SPAN, every day of my life.

The president nominates the attorney general to be the lawyer, not for any individual, but for the people of the United States. July 2020 marked the 150th anniversary of the founding of the Department of Justice, making this a fitting time to remember the mission of the attorney general and of the department. It is a fitting time to reaffirm that the rule--role of the attorney general is to serve the rule of law and to ensure equal justice under law.

And it is a fitting time to recognize the more than 115,000 career employees at the department and its law enforcement agencies and their commitment to serve the cause of justice and protect the safety of our communities.

If I am confirmed as attorney general, it will be the culmination of a career I have dedicated to ensuring that the laws of our country are fairly and faithfully enforced and the rights of all Americans are protected.

Before I became a judge almost 24 years ago, a significant portion of my professional life was spent at the Justice Department as a special assistant to Ben Civiletti, the last of the trio of post-Watergate attorneys general, as a line assistant U.S. attorney, as a supervisor in the Criminal Division, and finally, as a senior official in the department.

Many of the policies that the Justice Department developed during those years are the foundation for reaffirming the norms that will ensure that the department adheres to the rule of law. These are policies that protect the independence of the department from partisan influence in law enforcement that strictly regulate communications with the White House, that establish guidelines for FBI domestic operations and foreign intelligence collection, that ensure respectful treatment of the press, that read the Freedom of Information Act generously, that respect the professionalism of DOJ employees and that set out the principles of federal prosecution to guide the exercise of prosecutorial discretion.

In conversations that I have had with many of you before this hearing, you have asked why I would agree to leave a lifetime appointment as a judge. I've told you that I love being a judge. But I have also told you that this is an important moment for me to step forward because of my deep respect for the Department of Justice and for its critical role of ensuring the rule of law.

Celebrating DOJ's 150th year reminds us of the origins of the department, which was founded during Reconstruction in the aftermath of the Civil War to secure the civil rights that were promised in the 13th, 14th and 15th Amendments.

The first attorney general appointed by President Grant to head the new department led it in a concerted battle to protect black voting rights from the violence of white extremists, successfully prosecuting hundreds of cases against white supremacist members of the Ku Klux Klan.

Almost a century later, the Civil Rights Act of 1957 created the department's Civil Rights Division with a mission to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. That mission on the website of the department's Civil Rights Division, remains urgent because we do not yet have equal justice.

Communities of color and other minorities still face discrimination in housing, in education, in employment and in the criminal justice system. And they bear the brunt of the harm caused by a pandemic, pollution and climate change. Hundred and fifty years after the department's founding, battling extremist attacks on our democratic institutions also remains central to the department's mission. From 1995 to 1997, I supervised the prosecution of the perpetrators of the bombing of the Oklahoma City Federal Building who sought to spark a revolution that would topple the federal government.

If confirmed, I will supervise the prosecution of white supremacists and others who stormed the Capitol on January 6th, a heinous attack that sought to disrupt a cornerstone of our democracy, the peaceful transfer of power to a newly elected government. And that critical work is but a part of the broad scope of the department's responsibilities.

Justice Department protects Americans from environmental degradation and the abuse of market power, from fraud and corruption, from violent crime and cybercrime, and from drug trafficking and child exploitation. And it must do all of this without ever taking its eye off of the risk of another devastating attack by foreign terrorists. The attorney general takes an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic.

I am mindful of the tremendous responsibility that comes with this role. As attorney general, later Supreme Court Justice, Robert Jackson, famously said, "The prosecutor has more control over life, liberty, and reputation than any other person in America. While prosecutors at their best are one of the most beneficent forces in our society, when they act for malice or other base mode--motives, they are one of the worst."

Jackson then went on to say, "The citizens' safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches the task with humility." That was the prosecutor I tried to be during my prior service in the Department of Justice. That is the spirit I tried to bring to my tenure as a federal judge. And if confirmed, I promise to do my best to live up to that ideal as attorney general. Thank you.

DURBIN:

Thank you, Judge Garland. Before I turn to my questions, I want to add a few mechanics before the hearing. Senators will have eight minutes in the first round of questions, followed by a five-minute second round. And I asked members to do their best to stay within their allotted time.

We will take a break every once in a while, for 10 minutes. I am hoping the first will be sometime near 11:00. At about 12:15 or 12:30, we will break for lunch for 30 minutes. I beg you to stick with that schedule if you can and be back in time so that we can keep the hearing moving along.

So let me at this point turn to questions. You were sent to Oklahoma City 1995. What happened there was the deadliest act of homegrown domestic terrorism in modern American history. A 168 people had been killed, including 19 children. Hundreds were injured. You are supervising the prosecution of Timothy McVeigh and Terry Nichols, who are accused of being complicit and leading in that destruction.

Now, if you are confirmed as attorney general, which I believe you will be, you will face what is known as the biggest, most complex investigation in Justice Department history, and that is the investigation around the events of January 6th, 230 have been arrested so far. Some 500 are under investigation. We know that the death of at least one police officer is one of the major elements in this investigation.

I'd like to ask you to reflect on two things. What's going on in America? Was Oklahoma City just a one-off unrelated to what happened here? Can you measure, based on what you've learned so far, what kind of forces are at work to divide and destroy the American dream? Secondly, when it comes to this prosecution, are there elements that we should consider in terms of law enforcement to deal with this rising threat to the American democracy?

GARLAND:

Thank you, senator. Thank you very much for the opportunity to address the committee today. I'm grateful for this opportunity.

I don't think that this is necessarily a one-off. FBI Director Wray has indicated that the threat of domestic terrorism, and particularly of white supremacist extremists, is his number one concern in this area. This is coupled with an--an enormous rise in hate crimes over the past few years. There is a line from Oklahoma City and there's another line from Oklahoma City all the way back to the experiences that I mentioned in my opening with respect to the battles of the original Justice Department against the Ku Klux Klan.

We must do everything in the power of the Justice Department to prevent this kind of interference with the policies of American democratic institutions. And I plan, if you confirm me for it attorney general, to do everything in my power to ensure that we are protected.

DURBIN:

Judge Garland, it goes without saying that we ought to make it of record. We abhor violence whether comes from the right or left, whatever its source. It has no place in responsible constitutional dialogue in America.

Currently, though, we are faced with elements that weren't there 25 years ago in Oklahoma City; a proliferation of weapons, secondly social media and the Internet, which serves as a gathering place for many of these domestic terrorists. What are your thoughts about how we should deal with those elements from the law-enforcement viewpoint?

GARLAND:

Well, Mr. Chairman, I certainly agree that we are facing a more dangerous period than we faced in Oklahoma City at the--and at that time. From what I have seen, and I have no inside information about how the department is developing it--its work, it looks like an extremely aggressive and perfectly appropriate beginning to an investigation all across the country in the same way our original Oklahoma City investigation was, but many times more.

I don't yet know what additional resources would be required by the department. I can assure you that this will be my first priority in my first briefing when I return to the department, if I am confirmed.

DURBIN:

Judge Garland, several years ago, I went to an immigration court hearing in downtown Chicago. It was in a high-rise loop (PH) building. I met the immigration court judge. She'd been on the job almost 20 years and seem like a very conscientious and fair person. She asked me to stay for the docket call, particularly for the first clients on the docket. The first clients on the docket were a four-year-old girl named Marta.

When the judge asked that all of the people in the courtroom be seated, she had to be helped into the chair. It was too tall for her to get into. She was handed a stuffed animal to hold during the hearing. At the same table was a young boy with the unlikely name Hamilton, who was given a little Matchbox car, which he played with on the top of the table. He was six years old.

They were the victims of the Zero-Tolerance Policy. We remember it well. Thousands of children were forcibly removed from their parents, separated and many times lost in the bureaucracy. Some have incorrectly stated that that administration policy with the Trump administration was just a continuation of Obama era policy.

That isn't true. The Obama administration did not have policies that resulted in the mass separation of parents and children. And on rare occasion separations occurred, this was due to suspicion of trafficking or fraud, not because of an intentional cruel policy to separate children.

The Justice Department's inspector general conducted an investigation of the Zero-Tolerance Policy and noted that the Justice Department was "the driving force" in the policy. There is still a lot that we do not know about that policy and the

accountability for the officials who were responsible for it, so let me ask you this. This committee is going to hold oversight hearings to get to the bottom of it. Will you commit to cooperate with those investigations?

GARLAND:

Senator, I think the oversight responsibility of this committee is--is one of its very most important things. It's a duty imposed by the Constitution, and I greatly respect it.

I think that the policy was shameful. I can't imagine anything worse than tearing parents from their children. And we will provide all the cooperation that we possibly can.

DURBIN:

I thank you for that. When it comes to congressional oversight, this committee has a role in restoring independence and integrity to the Justice Department through oversight hearings.

It has a long-standing tradition of holding annual Justice Department oversight hearings, but sadly it's been three years since the attorney general has been called before this committee.

I pledge that as chairman I will hold annual DOJ oversight hearings where members from both sides of the aisle can ask important questions of you in that capacity. I don't want to go into detail, but I ask you obviously, would you agree to cooperate in that commitment oversight hearing?

GARLAND:

Of course, if I am confirmed, I will certainly cooperate with--with you.

DURBIN:

And when requests are made for information by members of the committee, I hope that I can also have your commitment to cooperation and providing timely answers?

GARLAND:

Yes, Mr. Chairman. We will be as responsive as we possibly can. As I said, a great respect for and belief in the oversight role of this committee.

DURBIN:

Thank you. Senator Grassley.

GRASSLEY:

Since you're a currently sitting judge, you're bound by the Code of Conduct of U.S. Judges. Nevertheless, I hope that we can get frank answers from you on your views. And, when we talked last on the phone, you told me you would get guidance from the administrative office on what you can or can't say. I assume that you sought that guidance. If so, what did they advise you?

GARLAND:

Yes, Senator Grassley, I did and they advised me, just as you and I thought that they would. Canon 3 bars me commenting on any pending or impending case that is in any court, but I am free to talk about policy with you.

GRASSLEY:

I'm going to go to the Durham investigation. At Barr's hearing, he stated the following regard to Mueller's investigation. "It's virtually important that the Special Counsel be allowed to complete his investigation." Also, at that same hearing, Senator Feinstein asked, "Will you commit to providing Mr. Mueller with the resources, funds, and time needed to complete his investigation?"

Attorney General Barr answered Senator Feinstein with a one word, "Yes." With respect to Special Counsel Durham's investigation, I expect that he will be allowed to complete his investigation. If confirmed, will you commit to providing Special Counsel Durham with the staff, resources, funds, and time needed to thoroughly complete the investigation?

GARLAND:

So, senator, I don't have any information about the investigation as I sit here today and the very--and another one of the very first things I'm going to have to do is speak with Mr. Durham, figure out how his investigation is going. I understand that he has been permitted to remain in his position and sitting here today, I have no reason to think that that was not the correct decision.

GRASSLEY:

Okay. And--and I suppose that would be an answer that he would only be removed for cause then. Would that be your position?

GARLAND:

Well, senator, I--I really do have to have an opportunity to talk with him. I have not had that opportunity. As I said, I don't have any reason, from what I know now, which is really very little, to make any determination on that ground. But I don't have any reason to think that he should not remain in place.

GRASSLEY:

If confirmed, would you commit to publically releasing Special Counsel Durham's report just like Mueller report was made public?

GARLAND:

So, senator, I'm--I am a great believer in transparency. I would, though, have to talk with Mr. Durham and understand the nature of what he's been doing and the nature of the report. But I am a big--very much committed to transparency and to explaining Justice Department decision making.

GRASSLEY:

At this point, I'm not going to take exception to the answers you gave me about Durham because I think you're an honorable person. They're not quite as explicit as I hoped they would be, like we got from Barr for the Mueller investigation. But, I--I think you've come close to satisfying me, but maybe not entirely.

We're in the midst of a poly-drug crisis in addition to opioids, methamphetamine, and cocaine, fentanyl and fentanyl analogs are plaguing our country. Increasingly sophisticated drug trafficking organizations, both domestic and internationally, try to skirt the law by changing their molecular structure.

So, the Center for Disease Control has found that drug overdose deaths rose to their highest level ever made during the pandemic with the overall jump in deaths being driven most substantially by drugs like fentanyl. We must stop this fentanyl substance from entering our neighborhoods and killing thousands of Americans.

So, my question is, as you lead the Justice Department, having oversight over the Drug Enforcement Administration within that department, and they will be addressing the spread of fentanyl analogs and related substances by pushing for continued class wide prohibition of fentanyl. So, I didn't quite make my question clear.

Would you lead the Justice Department in pushing for continued class wide prohibition of fentanyl analogues?

GARLAND:

Senator, I'm--I'm familiar with this problem. One of my roles as the chief judge of the D.C. Circuit was to serve on the Pre-Trial Services Committee for the--a Committee for the Pre-Trial Services Agency for the district and we were constantly advised of the fact that the formula was being slightly changed constantly and this was a problem both for detection, as well as for the problem of enforcement.

To be honest, I'm no chemist. This is one of the reasons I ended up being a lawyer instead of a doctor. But I--I would need to look at what would be proposed. But, I do understand the scope of this problem and I'm in favor of doing something, either by scheduling or legislation if I'm confirmed that would address the problem that you're talking about, which is an enormous problem for enforcement.

GRASSLEY:

I want to go to the death penalty because we have some people already prosecuted where the death penalty has been advocated or sought and one of those is the people that were involved in Boston Marathon. So, the question, the Justice Department, again under the Obama administration, sought and received an appropriate death--sentence of death. That sentence is currently being appealed. Will you commit to defending these sentences on appeal?

GARLAND:

Well senator, this--now--now we're rubbing up against exactly the problem that you asked me about in the beginning. These are pending cases and as a sitting judge, the Cannons bar me from making comment on pending cases.

GRASSLEY:

My last question will have to deal with the investigation that's underway by some of us in Congress about Hunter Biden. Have you discussed the case with the president or anyone else? And I don't expect you to discuss your private conversation with the president, but members of this committee always asked judges or other people what your--did you discuss with the president? For instance, your appoint--your position on abortion.

So, have you discussed this Hunter Biden case with the president or anyone else?

GARLAND:

I have not. The president made abundantly clear, in every public statement before and after my nomination, that decisions about investigations and prosecutions will be left to the Justice Department. That was the reason that I was willing to take on this job. So, the answer to your question is no.

GRASSLEY:

Okay, thank you.

DURBIN:

Thanks, Senator Grassley. Senator Leahy would be next but he is outside of the jurisdiction of Zoom at the moment.

(LAUGHTER)

I--I guess that's appropriate. And so Senator Feinstein will be recognized.

FEINSTEIN:

Thank you very much, Mr. Chairman, and welcome. Throughout your career, you have been praised by people on both sides of the aisle. When you were nominated to the Supreme Court, President Obama said you were "someone who would bring a spirit of decency, modesty, integrity, even handedness, and excellence."

Similarly, Senator Orrin Hatch called you "a fine man" who would be a "moderate choice for the court." Even Carrie Severino of the Conservative Judicial Crisis Network once called you "the best scenario we could hope for to bring the tension and the politics in the city down a notch."

At a time when America feels more polarized than ever before, this sort of bipartisanship is truly rare. So I ask this question. Can all Americans, regardless of their political affiliation, count on you to faithfully and fairly enforce our laws?

GARLAND:

Yes, senator. That is my personality. That is everything I've done in my career. And that is my vision for the Justice Department, to dispense the law fairly and impartially, without respect to persons and without respect to political parties.

FEINSTEIN:

Thank you for that statement. On January 6th, a group of white supremacists launched a terrorist attack on our Capitol in an attempt to overturn the results of a democratic election. Their attempt failed and resulted in at least five fatalities, including a Capitol Police officer. It also led federal prosecutors to file over 180 charges and initiate 25 domestic terrorism cases.

So this is not the first time the Justice Department has been forced to investigate and prosecute white supremacists for an act of terrorism. You received high praise for investigating and supervising the prosecution of the Oklahoma City bombing perpetrators in 1995. So here's the question. What steps will you take to ensure that the perpetrators of the attack on our Capitol are brought to justice?

GARLAND:

Senator, I think this was the most heinous attack on the democratic processes that I've ever seen and one that I never expected to see in my lifetime. One of the very first things I will do is get a briefing on the progress of this investigation.

I intend to give the career prosecutors who are working on this matter 24/7 all of the resources they could possibly require to do this, and at the same time, I intend to make sure that we look more broadly to look at where this is coming from, what other groups there might be that could raise the same problem in the future and that we protect the American people. And I know that FBI director has made the same commitment.

FEINSTEIN:

Thank you for that answer. Over the last four years, the independence of the attorney general has been repeatedly attacked. For example, President Trump once told the New York Times, quote, I have the absolute right to do what I want to do with the Justice Department, end quote. Do you believe that, in fact, the president does have the absolute right to do what he wants with the Justice Department?

GARLAND:

The president is constrained by the Constitution, as are all government officials. The issue here for us are the set of norms and standards to which this president, President Biden, has agreed, that he will not interfere with the Justice Department with respect to its prosecutions and investigations, that those decisions will be made by the department itself and by--led by the attorney general and that they will be without respect to partisanship, without respect to the power of the perpetrator or the lack of power, without respect to the influence of the perpetrator or the lack of influence. In all of those respects, the department will be independent.

The department is a part of the Executive Branch, and for that reason on policy matters we follow the lead of the president of the administration as long as it is consistent with the law, and the role of the department is to advise the president and the administration and the other agencies about what is consistent with the law. That is our obligation, and we will do so objectively based only on our reading of the law.

FEINSTEIN:

Well, thank you for that. I think you've laid it out clearly and directly, and it's very much appreciated. If the president's interest and the public's interest are in conflict, which interest does the attorney general represent?

GARLAND:

The attorney general represents the public interest, particularly and specifically as defined by the Constitution and the statutes of the United States.

FEINSTEIN:

Do you believe that the president has the authority to order the attorney general to open or close an investigation or a prostitute--a prosecution?

GARLAND:

This is a hard question of constitutional law, but I do not expect it to be a question for me. As I said--as I just said to you, the president has promised that those decisions will only be made by the attorney general, and that is what I plan to do. I do not plan to be interfered with by anyone. I expect the Justice Department will make its own decisions in this regard.

FEINSTEIN:

Well thank you. I'm going to cease at this time, but I just want to say that I think you've had a remarkable career. You've done very special things and always in a very reasonable, sober, penetrating way. So I just want to say thank you for that.

GARLAND:

I'm grateful, senator. Thank you for that.

FEINSTEIN:

Thank you, Mr. Chairman.

DURBIN:

Thank you, Senator Feinstein. We hope that-- we hope that Senator Graham, who is next up, is ready. Senator Graham.

GRAHAM:

Can you hear me?

DURBIN:

We can hear you. You have eight minutes.

GRAHAM:

Great. Yes sir. Congratulations to you, and Judge Garland, congratulations on your appointment. I think you're a very good pick for this job, so I'm going to try to go through as much information as I can. Do you promise to defend the Portland Courthouse against anarchists, the federal court building in Portland?

GARLAND:

Any attack on a federal building or damage to a federal building violates the federal statutes, and those who do it will be prosecuted.

GRAHAM:

Okay, when it comes to the people who attacked the Capitol on January 6th, will you let the committee know if you need more resources?

GARLAND:

Yes, absolutely, senator. As I--I really do think one of my first jobs is to consult with the prosecutors and the agents who are investigating that matter and see what resources they need. And I'm eager to have an invitation--

GRAHAM:
(INAUDIBLE)

GARLAND:
I'm eager to have an invitation from the Senate to ask for more resources.

GRAHAM:
Sure thing, thank you. I think all of us want to prosecute every single person that deserves to be prosecuted. So whatever you need, I'm sure you will get from this committee.

GARLAND:
Thank you, senator.

GRAHAM:
Have you read the Horowitz report?

GARLAND:
Senator, in our conversations you asked me to read it. It's some 400 pages long, and I asked you for permission to read only the also very long executive summary.

GRAHAM:
That's okay. That's good.

GARLAND:
And I have done that.

GRAHAM:
So what's your general take?

GARLAND:
Well, my general take is that there were certainly serious problems with respect to FISA applications, particularly for Mr. Page, and in the subsequent report to the way in which FISA applications are documented.

The inspector general had a substantial number of recommendations for how this could be fixed and how it must be fixed. I understand that he submitted those to the FBI director, and I understand the FBI director agreed in--totally, and either has made those changes or is in the course of making them.

I intend, if I am confirmed, to speak more deeply and directly with Mr. Horowitz, the inspector general, about this and with Director Wray and make sure that these and any other things that are necessary be done. I am always concerned and have always been concerned that we be very careful about FISA. It is a tool that is very useful and important for investigations--

GRAHAM:

That's good to hear. So Clinesmith, are you familiar with the fact that a lawyer for the FBI has been prosecuted, pled guilty to altering information to the FISA court?

GARLAND:

I did read about that, yes, senator.

GRAHAM:

What would happen to somebody under your charge that did that? How would you feel about that behavior?

GARLAND:

Well, somebody who makes a false statement to the FBI or inspector general during an investigation has violated 18 U.S.C. 1001, and I've prosecuted those myself.

GRAHAM:

Do you believe--do you believe the Durham investigation is a legitimate investigation?

GARLAND:

Senator, I don't know anything really about the investigation.

GRAHAM:

You've read the Horowitz report. Do you think somebody should look at what happened?

GARLAND:

Well, I do think somebody should look at what happened with respect to those FISAs, absolutely, and I believe the inspector general has done that.

GRAHAM:

Based on what your review of the Horowitz report, do you think Jim Comey was a good FBI director?

GARLAND:

Senator, I really don't want to get into analyzing any of the previous directors and--

GRAHAM:

Well, you know, you've been very critical, and appropriately so at times. I just find it pretty stunning that you can't say, in my view, that he was a terrible FBI director.

But have you ever been to the border? Have you ever been to the U.S.-Mexican border?

GARLAND:

No, sir, I haven't.

GRAHAM:

So, I'd like you to go because I just got back, because I learned that drug cartels are using our asylum laws against us. They will collect people to sort of rush the border. And once they're apprehended, they will claim asylum.

In most of these claims, 90 percent, are rejected. And that will take resources away from securing the border and detecting drugs and protecting the nation against terrorism. This is a--a behavior by the cartels. Will you look into that practice of using asylum claims by drug cartels to weaken border security?

GARLAND:

I--I had to not know about this, and I will certainly look into this problem. I think the drug cartels are a major menace to our society. The poison that they put into our streets is damaging communities of every kind. If they have--

GRAHAM:

--Well, I would ask--

GARLAND:

--If they have--if they have--

GRAHAM:

--I would ask you to visit the border, and I think you'll find patriots there. And when they make mistakes, they need to be held accountable. But that's one of the toughest jobs in the country. This is--

GARLAND:

--Senator, I apologize for speaking over, but there--over you just now, but there is, like, little bit of a lag.

GRAHAM:

I'm sorry.

GARLAND:

It's not your fault. It's a lag in the technology, I think.

GRAHAM:

Okay. Well, I do take--I have a southern, so I--

GARLAND:

--It's not the accent. I'm familiar with southern accents.

GRAHAM:

I'm going to get high-speed Internet. This is the 20th anniversary of 9/11. Are you concerned that al Qaeda and ISIS types are going to try to hit us again?

GARLAND:

I am very concerned that foreign terrorist organizations will try to hit us again, yes. I--I don't know enough at this point about the capabilities of those two, but it really doesn't matter which foreign terrorist. The--the--the terrible thing is the attack.

And as I said in my opening statement, with all the other things that the Justice Department has to do, it must always keep its eye on the ball with respect to foreign terrorist attack. I--I--I was sitting in--in my office--or arriving at my office as the first planes--first plane hit the Trade Center, and I was sitting in my office and could see smoke rising over the Pentagon. I can assure you that this is top of mind for me.

GRAHAM:

Well, one of the reasons I am very inclined to support you is I believe what you just said is true. I think you have a very deep understanding of the--the threats America faces. And to my colleagues on the committee, al Qaeda has been diminished. ISIS' footprint has been greatly diminished. But they're out there and they're trying to--they will this year sometime, I hope I'm wrong, let us know they're still there. So, it's great to hear the--the potential future attorney general understanding that our nation is very much still under threat.

So, when it comes to interacting with the committee, we're going to be talking about Section 230 reform. What your impression of Section 230 liability protection for big tech and is it time to revisit that topic?

GARLAND:

Senator, I--I have to be the first to confess when I have relatively limited information about a subject. I--I have had one case on Section 230. It was a very straightforward application of the law, so course I know what it is. I also know that many members of this committee have ideas for how it should be amended.

And I--I would have to have an opportunity, if I'm confirmed, to talk with you about that and understand all the conflicting concerns and the--and the complexities of--of how to alter it if it's to be altered. The devil in the sort of things is always in the details. And you--you on the committee know more about this than I do, and I look forward, if I'm confirmed, to having the chance to talk about it with you.

GRAHAM:

Thank you. Congratulations On your nomination. Thank you, Mr. Chairman.

DURBIN:

Thank you--

GARLAND:

--Thank you, senator--

DURBIN:

--Thank you, Senator Graham. Senator Whitehouse?

WHITEHOUSE:

Thank you, Chairman. And welcome, Judge Garland.

GARLAND:

Thank you, senator.

WHITEHOUSE:

People who've been prosecutors understand that it's not the legislature's business to meddle around in a prosecution. At the same time, we have oversight responsibilities. In your view, is it appropriate for Congress ask that DOJ give an honest look at investigative matters?

GARLAND:

Senator, I--I know of your own long experience as a prosecutor, including some of it which overlapped with mine, and I'm deeply respectful of it and appreciative of it. When you ask it that way, it--it's of course all--always possible for any--anyone to ask about matters like this.

The department has to be very careful with respect to the Congress, and in the same way it has to be respectful--careful with respect to the White House that no investigations get started just for partisan--and I'm not in any way suggesting--

WHITEHOUSE:

--Correct--

GARLAND:

--that that's what you were asking.

WHITEHOUSE:

Nope, I agree with you.

GARLAND:

We have to be careful about this.

WHITEHOUSE:

And after the fact, once an investigation is closed or concluded, is it appropriate in the exercise of our oversight to assure that in fact an honest look was taken?

GARLAND:

Yes, of course it is. There are obviously limitations on the department's ability to speak. They include everything from grand jury material--

WHITEHOUSE:

--Rule 6E and so forth--

GARLAND:

--and its forces and methods.

WHITEHOUSE:

Understood. Understood.

With respect to January 6th, I'd like to make sure that you are willing to look upstream from the actual occupants who assaulted the building in the same way that, in a drug case, you would look upstream from the street dealers to try to find the kingpins and that you will not rule out investigation of funders, organizers, ringleaders, or aiders and abettors who were not present in the Capitol on January 6th.

GARLAND:

Senator--

WHITEHOUSE:

Is that a fair question?

GARLAND:

Fair question. And again, your law enforcement experience is the same as mine.

Investigations--you know, I began as a line assistant U.S. attorney and was a supervisor. You know, we begin with the people on the ground and we work our way up to those who are were involved in further involved. And we will pursue these leads wherever they take us.

WHITEHOUSE:

Thank you.

GARLAND:

That's the job of a prosecution.

WHITEHOUSE:

As Chairman Durbin mentioned, there have been widely reported problems within the department in the last four years. The--Judge Gleeson's brief for Judge Sullivan is one pretty stunning reproach of the department. Judicial decisions out of the DC District Court and the Southern District--District Court have been pretty damning. And press reports, too many to mention, have raised concerns about problems within the department during that period. How do you plan to assess the damage that the department sustained so that you can go forward with a clear understanding of what needs repair?

GARLAND:

Well, senator, I am a strong believer in following the processes of the department. That--that was my experience and all of my experiences at the department regardless of whatever level I served. The traditional process is for issues to be raised before either the Inspector General or the Office of Professional Responsibility in the areas that you're--that you're talking about, that they conduct investigations.

And they certainly seem to extremely capable of conducting thorough investigations. They then make recommendations. And that would be the normal procedures in the department. And I would expect, if I'm confirmed, that those would be the kind of procedures I would want to follow.

WHITEHOUSE:

Well, I would submit to you that you may want to take it on more systematically than that, but we can leave that for a later day.

On this committee, and particularly on this side of this committee, we have experienced more or less a four-year stonewall of information from the Department of Justice and from the FBI. From 2017 to 2020, we had 25 DOJ and FBI witnesses who failed to answer some or all of the questions for the record that centers asked them. Twenty-one answered none of the questions of the record from either side.

I have sent during the course of those years 28 different letters on various subjects that went completely unanswered. It got so bad that Chairman Graham brought the deputy attorney general up to meet with him and me to go through the list and try to figure out why the hell we weren't getting answers and where the policy came from, the de facto policy, refusing to answer questions of senators.

WHITEHOUSE:

I think we need to understand what happened during that period, why these questions weren't being answered. The base question--the point of entry is where were these questions not being. Upon whose instructions were these questions not being answered? Why? What was behind? What was the motive for refusing to answer these questions? Once we've cleared that up, then I think we've got to go through the backlog of questions that the department refused to answer.

As you know, sometimes Congress asks questions that are touchy for a department. Somebody may have misbehaved. There may be wrongful conduct that has taken place and I hope you will agree that covering up misconduct is never an acceptable reason for refusing to answer questions of Congress.

GARLAND:

Well, I certainly agree that covering up anything is never an appropriate reason for not answering a question of--of Congress. There will be policy, de facto or otherwise, if I am confirmed that would direct the department to not be responsive to this committee and to its members. I want the department I lead to be as responsible--responsive as possible and at the very least, to explain why if it can't answer a question or can't answer a letter, why it can't do so.

WHITEHOUSE:

--Correct--

GARLAND:

That's the minimum you're entitled to.

WHITEHOUSE:

Correct. And I don't want this just going forward. I want to be able to go back and get answers to those backlog questions that were wrongfully refused. Would you help us make sure that that happens?

GARLAND:

Yes, senator. As we talked in our conversation before, I would definitely direct the previous answer--questions be answered. I only ask you and the other members of the committee as a matter of resource and priority allocation, to give us--the department some sense of the priorities of which ones still need to be answered and perhaps--

WHITEHOUSE:

--Correct--

GARLAND:

--even in what order.

WHITEHOUSE:

We will do that. And, last, I have just a few seconds left, so I'll just flag two things. I think that the Office of Legal Counsel has taken a lot of hits from the torture memos to the warrantless wiretap memos to the Southern District decision, to the D.C. Court decision, to extremely self-serving and self-propagating view of presidential investigations. This is a part of the department that I think is in real trouble.

Another role of the department's is the policing and the intermediation of executive privilege for an administration and I think that is an area that has been in complete collapse and I look forward, with my time now expired, to working with you to figure out what to do about it--we'll see--and, what to do about the intermediate role of the Department of Justice when executive privilege is asserted.

GARLAND:

Thank you, senator. I look forward to speaking with you.

DURBIN:

Senator Cornyn.

CORNYN:

Welcome, Judge. I enjoyed our conversation the other day. Thank you--

GARLAND:

--As did I. Thank you--

CORNYN:

--Thank you for that. As I told you, my sole criterion for voting for your confirmation is your pledge to make sure that politics does not affect your job as attorney general. And, I believe you told me that you could make that commitment. Is that a commitment you can make here publicly today?

GARLAND:

Yes, absolutely. I would not have taken this job if I thought that politics would have any influence over prosecutions and investigations. I do--I do want to just to be clear about--to clarify as to not disappoint you, with respect to policies of the administration, which I assume are driven by politics, although as a judge, I wouldn't know for sure--it is our obligation to advance the policies of the department as long as they are consistent with the law and our evaluation of the law has to be based only on the law and not politics.

CORNYN:

Thank you for that clarification. I think being attorney general has got to be the toughest job in the United States government because you serve at the pleasure of the President, but you also have, as you appropriately point out, an obligation to equal justice and impartial enforcement of the law.

If you were asked to do something that you considered to be in violation of the law or unethical, would you resign?

GARLAND:

Well, the first thing I would do is to tell the president or whoever else was asking me to do that that it was unlawful. I do not expect this to happen with this president who has made it completely clear publically and in private that he will not do that. But, of course, if I am asked to do something and an alternative is not accepted, I would resign, yes.

CORNYN:

Judge Garland, I think one of the biggest problems that the Administration of Justice has had here in the United States for the last--particularly the last couple presidencies has been the perception that there is a double standard, one that applies to maybe one political party or people with--or wealth and another one that applies to the opposing political party or people who don't have the resources in order to defend themselves against the awesome investigative and prosecutorial powers of the Department of Justice.

Of course, you're acquainted with the--with the phrase above the Supreme Court equal justice under the law. Do you agree with me that a double standard--a perception of a double standard of justice can be a cancer that will eat away at public confidence in the Administration of Justice and that commitment to equal justice?

GARLAND:

Absolutely, senator. As I have said to many people, I think probably including yourself, Ed Levi is my model for the attorney general. His role was to be sure that justice was meted out fairly and impartially without any special favors for anyone. This is the definition, in my view, of the rule of law that the powerful and the powerless, one party and another party, one community in the United States and another community in the United States all are treated equally in the Administration of Justice.

CORNYN:

The chairman's recitation of things that he perceives as being inappropriate at the Department of Justice ended with the Trump--started and ended with the Trump administration, but let me take you back a little further into the Biden-Obama administration.

You're familiar with the press conference that James Comey, the FBI director, had in July of 2016--

GARLAND:

--I remember--

CORNYN:

--where we discussed the investigation of Hillary Clinton for inappropriate use of her email server?

GARLAND:

I remember it, Senator, yes.

CORNYN:

According to the Justice Department norms and procedures and rules that you're well acquainted with as a result of your experience, is that an appropriate step for an FBI director to take to talk about derogatory information in a case that they say no reasonable prosecutor would pursue?

GARLAND:

Senator, I--I don't think it's useful for me to comment on specific matters involving specific former officials. But I have no problem at all telling you that the Justice Department's policies make clear that derogatory comments about subjects, targets, even people who have been indicted except for what's in the indictment are not appropriate. And, if I am confirmed, I will zealously attempt to incul-- re-inculcate that spirit.

When I was in--when I was speaking to the press after each court hearing in Oklahoma City, I was assiduous in making sure that I did not say anything about the defendants who had just been before the court and who had done, now we know after conviction, horrible things, that I would not say anything other than what the charges had been brought against them and what the judge reported. And, I believe that is an important part of federal prosecution.

CORNYN:

I know you don't want to comment on Mr. Comey's actions, but what you've just described strikes me as--as diametrically opposed to what he actually did.

Senator Graham asked you if you'd read the Horowitz report on the investigation of Crossfire Hurricane and I understand that your time has been limited up to this point, but do you--would you pledge to read all 404 pages of that report if you're confirmed?

GARLAND:

I will, senator. It may take me some time, but I have a head start by reading the executive summary. So, I think I should be able to get through it.

CORNYN:

Well, I think it's really important that you do so--

GARLAND:

--Okay. I--

CORNYN:

--because of the abuse, not only to the FISA process where the FBI lawyer lied to the FISA court in order to get a warrant to spy on an American citizen, but the abuse of counter intelligence investigation--a counter intelligence investigation against a presidential candidate and--in the run up to the election.

Are you familiar with the Steele dossier?

GARLAND:

Only what I've read in the newspapers and I have to admit that I've read only conflicting reports about it in the--in the papers.

CORNYN:

Well, it's been revealed that the sources for the Steele dossier, which was used in part in order to get FISA warrants, that the sub-sources could well be--could well be Russian intelligence officers using that in order to get as part of a Russian active measures campaign. Are you familiar with the practice of the Soviet Union and now the Russian Federation to use active measures as part of their intelligence service attacks against the United States?

GARLAND:

So not from my experience either as a judge or as a prosecutor, but again, from reading media reports I know what words mean, and I have a general idea of what you're speaking about, yes.

CORNYN:

Judge Garland, my time's about up, but I think we talked about the role of the Judiciary Committee and authorizing the tools, like Section 702 of the Foreign Intelligence Surveillance Act and the importance of preserving public confidence that those tools will be appropriately used, and there will be appropriate oversight both at the Department of Justice and the FBI, as well as the Judiciary Committee and the Intelligence Committees.

Do you agree with me that abuse of those authorities jeopardizes the availability of those tools in a way that is detrimental, potentially to the security of the United States?

GARLAND:

Absolutely, senator. My entire career as a Justice Department official was aimed at ensuring that we used FISA only as appropriate under the law as it existed at the time. It's not only that I'm worried about losing a tool that's essential.

It's also that I'm worried about transgressing the constitutional rights of Americans. Both of those are important, and I have to say probably the latter is way more important in my view. We have to be careful about respecting American citizens' constitutional rights.

CORNYN:

Thank you, Judge.

DURBIN:

Thank you, Senator Cornyn. Senator Klobuchar.

KLOBUCHAR:

Thank you very much, Mr. Chairman. Congratulations on your new job, and congratulations to you, Judge Garland, on your nomination.

GARLAND:

Thank you.

KLOBUCHAR:

I was--I listened with much happiness in your opening remarks when you talked about being the lawyer for the people, that you want to serve the law and not factional purposes, and that you used the important adjective, humble. I think we could need a little bit more of that in this town, so I appreciate that.

And I was also glad that you mentioned when President Biden nominated you attorney general Edward Levi, who taught an iconic first-year law class at the University of Chicago that I took, and like Edward Levi, who took office after Watergate, you will take on the Department of Justice at a critical time and will have the great task of restoring its ideals of independence and fidelity to the Constitution and to the law.

What is the number one thing you want to do to boost morale in the Department of Justice on day one?

GARLAND:

Well, on day one, hopefully if I'm confirmed I will take an oath in which I say all the things that you just said. I want to make clear to the career prosecutors, the career lawyers, the career employees, the career agents of the department, that my job is to protect them from partisan or other improper motives.

I then hope to have an opportunity over the next few months to visit with as many members of the Justice Department as possible. In the pandemic, unfortunately this will have to be over a Zoom. I had--I would much prefer to be able to go down to the Great Hall at the cafeteria and mingle with folks and let them hear what's in my heart about this, but I'm afraid that technology is the only way I'm going to be able to do it now.

KLOBUCHAR:

Okay, very good. One of the things that troubled me along these lines was the pardon process that was--that President Trump undertook, and one study found that 88 percent of the pardons that he granted had some sort of personal or political connection to the former president. What do you think we need to do to restore integrity to the pardon process? Obviously, it's an important power of the president. What do you think you can do from the attorney general's position?

GARLAND:

Well senator, you're right. This is a power granted by the Constitution to the president. I think the role of the Justice Department through its pardon attorney is to provide a careful and visualized examination of the people who are asking to be pardoned. The office has a set of very detailed regulations which describe when people are appropriate for pardons and when they are not. It provides an important screen that not only yields who maybe should be pardoned, but also protects the president from improper influence.

KLOBUCHAR:

Okay. Just a few things I want to ask quickly because I want to also get to antitrust. You talked to Senator Graham about resources for domestic terrorism and that you want to take a look. Do you think you will need additional authorities, or you want to look at that when you get in there? I'm going to be chairing a hearing tomorrow with the Rules Committee on what happened at the Capitol and what we need to do to improve security. Obviously part of it is prosecuting the perpetrators.

GARLAND:

Well, I think you for that question. The department is probably always looking for new tools, but first thing we have to do before we look for new tools is figure out what whether the tools we have are sufficient, and that will be part of this briefing that I want to have to determine whether the laws, which are quite capable, in which we're capable of the charges against McVeigh and Nichols and many other terrorists over the years, whether they are sufficient. And then I'd be interested in speaking with you and other members of the committee about what other additions might be made. But I first have to know whether anything more is necessary.

KLOBUCHAR:

Very good. Will you commit to reinstating Attorney General Holder's 2015 guidelines requiring the AG to sign off on subpoenas to journalists, something I care a lot about as a daughter of a journalist?

GARLAND:

Yes, so these guidelines came out originally when I was working for Ben Civiletti, and I had the great pleasure of working on them. These are things--this is something that I am deeply committed to. They've improved, I would say, over the years as more concerns have arisen. But I would expect re-up--to re-up those guidelines. I don't believe that they have been rescinded in any way, though. I believe they are still there.

KLOBUCHAR:

No, but there was--I couldn't really get a straight answer from Attorney General Sessions or Barr. So we can talk about this more.

GARLAND:

Well, I hope this is (INAUDIBLE) answer for you.

KLOBUCHAR:

I know you support reforms to police practices. That's correct?

GARLAND:

Yes.

KLOBUCHAR:

Okay, very good. We have--obviously have a major bill on that. Conviction Integrity Units, something that I think is very important, you support federal grants for that?

GARLAND:

Oh, yes, yes. Look, I think that convicting someone who did not commit the crime is one of the most--it's a risk, of course, of all kinds of law enforcement, but if we can determine that we made a mistake, we need very much to correct it. And I think that grants for the purpose of supporting Conviction Integrity Units in district attorneys, states attorney's offices across the country is a very good idea.

KLOBUCHAR:

We share an interest in antitrust law. I know that you used to teach that to law students, and you've handled some cases as judge, as chair of the Competition, Policy and Antitrust Subcommittee. We're going to be doing a lot in this area along with my colleague, Senator Lee. Two thirds of U.S. industries have become more concentrated between '97 and 2012. The pandemic has actually made things even harder on small businesses.

I think that we need more resources. The FTC and the antitrust division of DOJ are literally shadows of what they were when the breakup of AT&T occurred, and we can't expect the agencies to do what we need to do to take on the biggest companies the world has ever known on the tech side, in addition to other ones, with band-aids and duct tape. Senator Grassley and I have a bill to greatly increase the funding to those divisions and agencies. Would you support that?

GARLAND:

Well, I appreciate your recognizing that my first love in law school turned out was in fact antitrust, and I studied under one of the most famous scholars and was his research assistant, Phil Areeda.

As a practice I worked with Bob Pitofsky, another one of the greatest scholars and the former head of--a chair of the Federal Trade Commission, and I did practice antitrust law, including trying antitrust cases. I always want to be in a position of saying thank you, yes, when you ask whether we want more resources. My expectation is that is what I would say, but until I'm--if and until I'm confirmed, I really can't evaluate what resources we might need. But I am happy to work with you on that.

KLOBUCHAR:

Will you commit to vigorously enforcing the antitrust laws?

GARLAND:

Absolutely.

KLOBUCHAR:

I believe that we need some changes to those laws to aid you in doing that, and I hope you'll be open to those. I have a bill called the Competition Antitrust Law Enforcement Reform Act that I hope you'll look at, changing some of the standards for mergers and for exclusionary conduct.

I also think that if anything has illustrated the need to look back at the consolidation in some of these industries, it would be the lawsuits filed by DOJ and the FTC; example, Facebook's acquisitions of Instagram and WhatsApp. I'd suggest you look at Mark Zuckerberg's email where he talked about purchasing nascent competitors.

And I think the answer to that has got to come from the Justice Department, the answer--the reply to that email that this kind of exclusionary conduct is not the way capitalism works in America.

And we've always had a balance. We've had a balance through Republican presidents and Democratic presidents to say that we believe in the capitalist system and we have to make sure we keep rejuvenating it by allowing smaller competitors to emerge.

That's not happening right now in many areas, and I just need your commitment that you'll take this area of the law very seriously.

GARLAND:

I take it very seriously and have throughout my entire career. The Supreme Court has repeatedly referred to the antitrust law as the charter of American economic liberty, and I deeply believe that.

KLOBUCHAR:

Thank you very much, Judge Garland.

GARLAND:

Thank you.

DURBIN:

Thanks, Senator Klobuchar. This is the first test of the new regime. We are going to take a break now for 10 minutes and resume at 11:20 for the much-anticipated questioning of Senator Leahy.

GARLAND:

Thank you, Mr. Chairman.

(RECESS)

DURBIN:

Senator Lee?

LEE:

Thank you very much, Mr. Chairman. And thank you, Judge Garland, for being here today. I appreciated, also, your kind words about former Attorney General Ed Levi. I've been a life-long admirer of his. He truly is an attorney general in the grand tradition of that office, and he's someone my family has known in one way or another for a long time.

My late father worked for him while he was running the civil division during Ed Levi's time as attorney general. And I've had close personal and professional interactions with both his son, David Levi, former judge and later law school dean, and with Ed Levi's grandson, David's son, Will, who served with me as my chief counsel, worked on this committee for several years, and later served as chief of staff to Attorney General Bar. So a big fan of that family, and I'm glad that he's someone that you look up to.

I want to talk about a few issues today. Let's talk first, for a moment, about the Second Amendment and the right to bear arms. This is going back 15 years or so, but in a case called *Parker v. District of Columbia*, a case that later became known as--as *District of Columbia v. Heller*, as I recall, you voted for rehearing en banc with respect to an opinion, striking down that same ban on handguns within the District of Columbia.

And of course later in the same proceedings of the same case the Supreme Court struck down the ban. Can you tell us why you voted the way that you did and why you voted to give D.C. another chance to defend its ban on handguns in that case?

GARLAND:

Yes, Senator. As I know you know because you were a law clerk yourself, you know that rehearing en banc is a vote to hear a case. It's not a vote on the merits of the case. And in my case, for myself it's never a vote on the merits. It's a vote to rehear the case. The panel decision was the first time I think ever a Court of Appeals had held the individual right to keep and bear arms, which you are exactly right, the Supreme Court did uphold in the end. Every Court of Appeals had decided to the contrary, and the issue was plainly one that would require looking at a deep historical record as to the meaning of the Second Amendment and as to the way that it had been applied.

I thought this was an extremely important issue, important enough since it was the very first time, that we should hear it en banc. I was not the only judge, and other judges including a judge appointed by a president of a different party also voted, and for the same reason, so that we would have an opportunity to hear the case.

LEE:

Thank you. I appreciate that. Let's talk a little bit about the meaning of the Second Amendment. How do you view it, and do you agree with Justice Thomas's analysis in his dissent in the Rogers case that the Second Amendment right to bear arms certainly includes the right to carry operable firearms in public for self-defense?

GARLAND:

So my view is totally controlled by the Heller opinion. And in that case, Justice Scalia held that there was an individual right to keep and bear arms for self-defense. In the subsequent McDonald case the court said that was a fundamental right, which applied to the states, as well. It is a right, as Justice Scalia said in the opinion, like all rights that is subject to some limitations. The court has not given us much more to work with at this point, and I do think, as I said with respect to my vote en banc, this is a matter that requires careful historical examination, which I have never done, and I certainly can't, you know, do sitting here for you. So I don't have an opinion on that question.

LEE:

You've been in a judicial role for the last 20, going on 25 years.

GARLAND:

Yes, sir.

LEE:

You will be in a different role if confirmed to this position, one in which you'll have a significant impact on policy. So let's talk about policy as it relates to the Second Amendment briefly. Do you support universal background checks?

GARLAND:

Well, I do think that it's very important that we be careful that people who are entitled to have guns get the background check that allows them to have them, and that those who are not entitled and who we are concerned about because they are threats, because they are felons or for whatever reason barred by the law, that we have--that there is an opportunity to determine that they not be given a gun.

LEE:

Do you support banning specific types of guns?

GARLAND:

I'm sorry--I'm sorry?

LEE:

Do you support banning--the banning of certain types of firearms?

GARLAND:

Well, as I'm sure you know, the president is a strong supporter of gun control and has been an advocate all of his life, his professional life, on this question. The role of the Justice Department is to advance the policy program of the administration as long as it is consistent with the law. And as I said so far, we have a little indication from the Supreme Court as to what this means, but we don't have a complete indication. And where there is room under the law for the president's policies to be pursued, then I think the president is entitled to pursue them.

LEE:

What about policies that would support holding firearms manufacturers liable for damage caused by people using firearms they produced to commit a crime?

GARLAND:

I don't have a--I believe that the president may have a position on this question. I have not thought myself deeply about this. I don't think it raises a Second Amendment issue itself, the question of the liability protection. But I have not addressed this in any way, and I need to think about this considerably more.

LEE:

The other questions I raised potentially implicate the Second Amendment that raises other policy concerns.

GARLAND:

I understand.

LEE:

I understand that. Let's talk about FISA briefly. Senator Leahy and I have offered an amendment to reform the FISA process by strengthening the amicus curiae provisions. They are already in there in existing law that have been put in there by, among other provisions, the USA Freedom Act, which Senator Leahy and I got passed through Congress and signed into law by President Obama in 2015.

And our amendments would also require the government to disclose relevant exculpatory evidence, both to the FISA court and to the amici. This is an amendment that ended up passing the Senate last year by a bipartisan super majority of 77 to 19. Do you support reforms to FISA like those I just described in the Leahy amendment?

GARLAND:

So I think FISA is an extremely important tool for the Justice Department and intelligence community in general to protect the country from foreign agents and foreign terrorists. On the other hand, it is extremely important that everything we do with respect to FISA--and I have felt this way my entire professional life also--that we do so in accordance with the law and with respect for the constitutional rights of citizens.

I don't know very much specifically about your two proposals. I do know the current rules with respect to Amicus, and I have had the opportunity to discuss those with judges on the foreign intelligence surveillance court, and everyone seems quite happy with the way that process is going. I don't know what more might be needed. I would have to study that.

LEE:

Mr. Chairman, I see my time is expired. I've got one very brief follow-up. Can I just finish that question? Thank you. On this topic of questions related to FISA, I also wanted to ask you, do you think that the federal government ought to be able to collect American citizens' web browsing or internet search history without a search warrant supported by probable cause?

GARLAND:

I know this is a big issue. I don't--you know, my experience with FISA comes from a slightly different era. I have a lot of experience, but it was a very different era, and I follow this a little bit. I obviously haven't had any cases on it myself. I'd have to look

at it. You know, I believe in judicial review, and I am a strong supporter and respectful of judicial review of orders, but I don't know what the practicalities of going for a probable cause warrant in those circumstances would be, if it would be an emergency, etc. And I'm eager to engage with you and other members of the committee who are concerned about this so that I can understand this problem more fully.

LEE:

Thank you very much, Mr. Chairman.

DURBIN:

Senator Coons?

COONS:

Thank you, Chairman Durbin, Ranking Member Grassley. Judge Garland, welcome.

GARLAND:

Thank you.

COONS:

Congratulations on your nomination, and please convey my thanks to Lynn, to Jake, to Becky, to your family for supporting what has been a decades long career at the bench and bar as someone dedicated to public service, to law enforcement, and upholding the balance between justice and liberty.

I cannot think of a more urgent task before us than restoring the people's faith in our institutions and in the rule of law. And your opening statement, which in part was dedicated to clarifying your review that the attorney general represents the public interest and your enthusiasm for ensuring that the 115,000 career employees at the Department of Justice are appropriately sheltered from partisan or political influence, is very encouraging to me after what I think were some herring moments in the last two years.

As I'm sure you know, there are quite a few admirers of yours who work here in this committee, some of former clerks of yours who work closely with me, and many who've reassured me not just of your professional skill and great insights, but also your personal decency, kindness, and thoughtfulness. I was struck in reading through your background that you've spent 20 years quietly as a tutor at an elementary school here in the District of Columbia, something I think not enough elected or appointed officials on either the bench or in Congress do. So, thank you for your willingness to continue your service.

I am from a small town in Delaware which, like many other cities in America, was torn apart by concerns about racial justice and equality, a city that has also struggled with long-standing challenges with gun violence and with insecurity and instability in our community. Our mayor, Mike Purzycki, our governor, John Carney, are doing a great job and working hard to try and address this.

And striking the right balance between protecting our citizens from gun violence but also developing an environment where law enforcement is more transparent and accountable is going to be one of the core challenges which you and the Department of Justice will be involved in, in partnership with state and local law enforcement and with other elected officials.

In Wilmington and Dover, Delaware, we're rolling out body worn cameras for law enforcement officers. Our governor has committed to having that available for all of our law enforcement officers by 2025, but it's very expensive. It's something law enforcement has embraced, something that advocates have embrace.

I am an appropriator for the Department of Justice as well as a member of this committee. Is that something you could agree to, to be an advocate for the funding and deployment of body worn cameras to ensure both accountability and improve trust in between law enforcement and local communities?

GARLAND:

Well, Senator, I am, again, always happy to accept more resources for the Department of Justice. I don't know what that might take away from in other areas for the department, but I--I personally think that body cams are a very important tool to protect--both to protect officers and to protect the citizens.

And, you know, just as everyone of you--well, you were all on the inside. I was on the outside watching what happened on January 6th. And the fact that we were able to see exactly what was happening to the officers and the way in which they were caring about their duties in--in--in the best way they could is only possible to be captured because of the body cameras.

COONS:

Well, I--

GARLAND:

--I think it's an important tool for accountability. Yes, I do.

COONS:

Thank you, Your Honor. If--if you might, I do think it's important that we increase investment in a variety of programs. I've long worked for the Victims of Child Abuse Act. COVID-19 has demonstrated a tragic rise in child abuse, and this is a critical tool that allows state and local law enforcement to effectively address child abuse;

the Bulletproof Vest Partnership Program, which has helped save 3,000 officers' lives. These and other grant programs are things I look forward to working with you on.

There's also much-needed legislation that will move us forward in terms of criminal justice reform and protecting communities from violence. Senator Cornyn and I hope to soon reintroduce the NICS Denial Notification Act, which just ensures that state and local law enforcement gets notified when a person prohibited lies and tries, they attempt to purchase a gun. That's something that's been discussed in previous Congresses on this committee. We haven't made progress on it. I think we should.

Senator Wicker and I are soon going to introduce--reintroduce the bipartisan Driving for Opportunity Act, which incentivizes states to stop suspending drivers licenses simply for unpaid fines and fees. It's a cruel counterproductive way to take away people's ability to get to work and ensures people are trapped in modern day debt prisons. It's something that has strong support from law enforcement and civil rights groups. And I'd just be interested in whether you'll work with us here in Congress to move bipartisan bills like these two.

GARLAND:

I'm extremely interested, if I'm confirmed, and working with members of Congress, and particularly on bipartisan legislation. I don't know specifically about those, but each of them has the ring of something that's very important and--and quite reasonable.

COONS:

Well, enactable, reasonable, moving the ball forward are the sorts of things I hope we get to work on.

I'll be serving as the chair of the Subcommittee on Privacy, Technology, and the Law in this Congress, and look forward to working with Senator Sasse, who will serve as ranking member. One of the core things we'll be looking at is how online misinformation is contributing to domestic terrorism, to division here. You've discussed your own experience with domestic terrorism cases and your plan to prioritize this issue.

It's something the FBI director has said is one of our most pressing threats. Do you think the DOJ has a role to play in examining the role of misinformation and incitement online to contributing to violence, and that--that the DOJ has a role in working to help us develop reasonable solutions to this challenge?

GARLAND:

Well, again, Senator, I think that every opportunity the Justice Department has to work with members of the Senate, think about how to solve problems and how to craft legislation, is one that we should take. I--I don't have in mind particular legislation in this area. I do think that an important part of the investigation of violent extremist groups is following their activities online and getting an idea of what kind of information and misinformation is--is putting--being put out. I look forward to, you know, talking more about this with you.

COONS:

Well, there's increasing regulatory schemes, both in Europe and in California and other states, being considered. And I look forward to working with you on striking that appropriate balance between protecting data privacy, protecting individual liberty, but also protecting the competitiveness of the United States and globally making sure that we're pushing back on digital authoritarianism.

Last, I'm glad to see the department is prosecuting--I think there's 235 charges brought so far--against rioters who invaded the Capitol and attacked our democracy on January 6th. I've supported calls for 9/11 style independent commission to investigate the bigger picture of what caused this and one we might learn from it.

Do you think an independent commission of that style would help complement the department's work and help the American people better understand the root causes of that riot, that incident, and then a better help us both protect the Capitol and those of us who serve her, but more importantly protect the underpinnings of our democracy?

GARLAND:

Well, Senator, I do think the 9/11 Commission was very useful and very helpful in understanding what happened then. And of course, the--the Congress has full authority to conduct this kind of oversight investigation or to set up an independent commission.

The only thing that I would ask, if I were confirmed, is that care be taken that it not--the invest--that commission's investigation not interfere with our ability to prosecute individuals and entities that caused the Capitol--the storming of the Capitol. And--and as you well know, this is a very sensitive issue about, you know, disclosing operations which are still in progress, disclosing our sources and methods and--and allowing people to testify in a way that then it makes it impossible to prosecute them. So, with those caveats, I--I certainly could not object to anything that the--that Congress would want to do in this regard.

COONS:

Understood. Thank you, Judge. I'm encouraged by the broad bipartisan support you've already garnered from this committee and publicly, and look forward to supporting your confirmation. Thank you.

GARLAND:

Thank you very much, Senator. I appreciate it.

DURBIN:

Thank you, Senator Coons. Senator Cruz?

CRUZ:

Thank you, Mr. Chairman. Judge Garland, welcome.

GARLAND:

Thank you, Senator.

CRUZ:

Congratulations on your nomination.

GARLAND:

Thank you.

CRUZ:

In two plus decades on the court, you have built a reputation for integrity and for setting aside partisan in--interests and following the law. The job to which you have been appointed is a very different job.

CRUZ:

And as I look back over the eight years of the Obama/Biden Justice Department in my view the most problematic aspect of that tenure was that the Department of Justice was politicized and weaponized in a way that was directly contrary to over a century of tradition of the Department of Justice of being apolitical and not a partisan tool to target your opponents.

So, it is very much my hope, if you're confirmed as Attorney General, that you will bring that reputation for integrity to the Department of Justice and demonstrate a willingness to stand up for what will be inevitable political pressure to once again politicize the Department of Justice and use it as a tool to attack the political opponents of the current administration.

Eric Holder, before he was nominated as Attorney General, had likewise built a reputation as being relatively nonpartisan and a prosecutor with integrity and unfortunately, his tenure as Attorney General did enormous damage to that reputation. As was previously discussed, Eric Holder described his role as Attorney General as being the wingman for President Obama.

Am I right in--in assuming you do not view your role as Attorney General as being Joe Biden's wingman?

GARLAND:

Yeah, Senator, I--as I said, I don't want to comment on any individuals' conduct of any of my predecessors or FBI Directors' conduct in any way. But, I can assure you I do not regard myself as anything other than the lawyer for the people of the United States and I am not the president's lawyer. I am the United States' lawyer and I will do everything in my power, which I believe is considerable, to fend off any effort by anyone to make prosecutions or investigations partisan or political in any way.

My job is to protect the Department of Justice and its employees in going about their job and doing the right thing according to the facts and the law.

CRUZ:

Under the Obama administration, the IRS targeted the political opponents to the president. It targeted conservatives for their speech, it targeted pro-Israel groups, it targeted tea party groups, it targeted individuals perceived to be on the opposite political side as the administration.

Will you commit as Attorney General that you will not allow the Department of Justice to be used to target those who are perceived as political opponents because they are political opponents?

GARLAND:

Absolutely, I will not.

CRUZ:

Also under the Obama administration, Operation Choke Point was used to pressure lawful organizations, lawful institutions, institutions, for example, that sell firearms, to constrain their lawful activity and to use regulatory authority to abuse and force them to comply with the administration's stated policies.

Do you believe it's appropriate for the administration to use regulatory pressure to force lawful behavior to stop?

GARLAND:

Senator, I'm not aware of the specific that you're giving and I expect you don't expect that I would have been aware of it. But, of course, I do not believe as a general matter that regulations should be used to stop people from doing what they're lawfully entitled to do, unless the regulation is pursuant to a statute obviously, in which Congress is given authority to change the rules.

CRUZ:

As you also know, Attorney General Eric Holder was held in contempt of Congress, criminal contempt of Congress. That was a bipartisan vote. Eighteen Democrats voted to hold Attorney General Holder in contempt. They did so because he refused to produce documents to Congress for Congress's investigation of the Fast and Furious scandal, a major scandal that resulted in the death of two federal law enforcement officers.

You've previously committed to senators on this panel that under your leadership, the Department of Justice will comply to the extent possible with requests from this committee and I want to, in the course of this question, associate myself with Senator Whitehouse's comments and questions.

He and I disagree on a great many issues, but on this particular issue, we are emphatically in agreement that senators from this committee should get answers, should get candid answers, should get substantive answers, should get real answers from the Department of Justice regardless of the party of the senator asking that question, that that's--that is a level of oversight that the American people have a right to expect. Do you agree with that?

GARLAND:

I do think that this is a level of oversight the American people have a right to expect. I want the department, if I'm confirmed, to be responsive to the extent that it's possible with respect to the Justice Department's appropriate equities to be responsive to the requests for information.

CRUZ:

So, you've had--previously, you said you've read the executive summary of the Horowitz report. What--what was your reaction to the Horowitz report?

GARLAND:

Well, I thought, as Mr. Horowitz explained--and I don't--and I believe Director Wray agreed, there were problems with respect to the applications for several FISAs that those were not--they were not consistent with the internal regulations of the department and that that--those problems had to be corrected.

And, I think deeply, that we have to be careful about how we use FISA and that's a reason we have pretty strict regulations internally in policies. We need to find out why they aren't followed and to be sure that they are followed. I understand that was the purpose of his report and his recommendations to Director Wray.

CRUZ:

So, you describe the report as saying there were problems. That's a fairly (INAUDIBLE) way of characterizing it given the multiple material misstatements the Horowitz report details, including Mr. Kline Smith's fabrication of evidence and lying to a court, which he's now pleaded guilty to.

I think that was yet another example of the deep politicization of the Department of Justice culminating in a meeting with the Acting Attorney General, President Obama, Vice President Biden in the Oval Office concerning the targeting of their political opponent.

Will you commit to this committee that under your leadership, the Department of Justice will not target the political opponents of this administration, that there will be real scrutiny? What that report outlines, among other things, is weaponizing oppo research from the Hillary Clinton campaign and launching a criminal investigation based on that. Will you commit that that conduct will not be acceptable under any Department of Justice you're leading?

GARLAND:

So, absolutely, Senator. But, without trying to comment specifically on that matter, it's totally inappropriate for the department to target any individual because of their politics or their position in a campaign. The only basis for targeting has to be evidence of--of the risk for an intelligence problem or of a criminal problem and that is a nonpartisan issue. That is a question of objective facts and law and it can never be an effort to help one party or another party.

In--in politics--in investigations and prosecutions, there is no party. The department is an independent nonpartisan actor and that's my job to ensure that that's the case.

CRUZ:

Thank you.

DURBIN:

Thanks, Senator Cruz. We now understand that Senator Leahy is in Zoom range. Senator Leahy, do you read me?

LEAHY:

Hey (OFF-MIC), can you hear me?

DURBIN:

I hear the voice.

LEAHY:

I assume there's a picture coming in here somewhere.

DURBIN:

Is there a way to turn up the volume so we can hear Senator Leahy? There he is.

LEAHY:

I'll move this camera around just a little bit.

DURBIN:

All right, if you'll--

LEAHY:

--Okay.

DURBIN:

Take it away, Senator.

LEAHY:

Thank you very much. First off, Mr. Chairman, I'm glad that you're having these hearings and Judge, it's great to see you seated there. I wish five years ago, we would have seen you seated there for your Supreme Court nomination, but I'm glad you're here today.

GARLAND:

Thank you, Senator.

LEAHY:

(INAUDIBLE) The nomination comes at probably the most vulnerable moment in the 51--or 151 year history of the department and you've got to restore the integrity and the respect of the department. No small job, but I can't think of anybody more qualified to do that.

I know that a number of people stated their support of you. One person I know and respect greatly, former FBI Director, Judge Freeh, and I know he sent a letter--Mr. Chairman, if you don't mind, could we have that letter go in the record if you haven't already put it there?

DURBIN:

Without objection.

LEAHY:

Thank you. We're going--a lot of the things have already been covered, and of course you and I have talked before. Your experience in the Oklahoma City bombings, anybody who has been a prosecutor knows what a job you did there, and I do appreciate that. We have other things that we have to deal with, the Voting Rights Act, the John Lewis Voting Rights Act enforcement.

We've seen that there's been a scourge of voter suppression, which would be wrong; I don't care who is being suppressed. Unless the Justice Department gets its tools back under the Voting Rights Act, I'm afraid the right to vote is always going to be at risk, especially for minorities and under-served communities. Do you agree that legislation like the John Lewis Voting Rights Advancement Act is urgently needed?

GARLAND:

So Senator, I don't know the specifics of the act, although I certainly knew John Lewis well, and I was a great admirer. I think that respect to voting, even in this last election where a larger percentage of Americans voted than ever before, there was still a huge percentage that did not, at least a third did not vote. I think it's important that every American have the opportunity to vote. Voting is a central facet, the fulcrum of our democracy. So anything that can--any legislation that will encourage more voting, I strongly support.

Specifically, you were referring to the Supreme Court's decision in the Shelby County case, which said that the coverage formula for preclearance couldn't be used as unconstitutional because of the then state of the Congressional record, but the court indicated that a different and stronger record might support preclearance, and I would be in favor of, if I'm confirmed, of working with the committee, and the Senate and the House, to try and develop that record that would allow that important tool to be used.

The department still does have other tools. It has a Section 2, which remains in force, as the Supreme Court clearly said, in Shelby County, and it prevents interference with voting practices and procedures, you know, that interfere with minorities' ability to vote, and it is something that the department has always looked to as an important tool. There are plenty of other tools to increase the ability of Americans to vote, which I would support.

LEAHY:

Thank you. Thank you, and I know Senator Lee has already raised this, but please know that Senator Lee and I will both be talking to you about privacy matters. This is not a partisan issue. It's an issue of concern, and we'll do that. Let me ask you another area that was an issue of concern to me. In the Bush administration, the last Bush administration, they put a moratorium on death penalty in federal cases.

They gave solid reasons for that, and that moratorium has lasted--or did last from 2003 during the Bush administration, and then suddenly in the last six months the Justice Department, under the last president, rushed to execute more people--this is what is stunning--in six months than had been executed in the past 60 years. That's a matter--many of us feel that was nothing short of being a killing spree.

And what worries me, we all know the death penalty is used disproportionately against minorities and the poor. I was a prosecutor. I prosecuted many murder cases. I always opposed the death penalty. And Vermont has gotten rid of theirs. I'd much rather have somebody serve their time for years in a prison cell thinking of what they did wrong. Now, I'm joining Senator Durbin and Senator Booker in reintroducing the Federal Death Penalty Act, which would end the federal death penalty.

So I would ask you this. Would you go back to what President Bush did and reinstate the federal moratorium, which was lifted just in the last few months by the last administration, have reinstate it while Senator Durbin, Senator Booker and myself and others work on the legislation eliminating the death penalty?

GARLAND:

Well, as you know, Senator, President Biden is an opponent to the death penalty. I have to say that over those almost 20 years in which the federal death penalty had been paused, I have had great pause about the death penalty. I am very concerned about the large number of exonerations that have occurred through DNA evidence and otherwise, not only in death penalty convictions, but also in other convictions. I think a terrible thing occurs when somebody is convicted of a crime that they did not commit, and the most terrible thing happens if someone is executed for a crime they did not commit.

It's also the case that during this pause we've seen fewer and fewer death penalty applications anywhere in the country, not only in the federal government, but among the states. And as a consequence, I'm concerned about the increasing almost randomness or arbitrariness of its application when you have so few number of cases.

And finally, and very importantly as the other matter that you raise, which is its disparate impact. The data is clear that it has an enormously disparate impact on black Americans and members of communities of color, and exonerations also that something like half of the exonerations had to do with black men. So all of this has given me pause, and I expect that the president will be given direction in this area. And if so, I expect it not at all unlikely that we will return to the previous policy.

LEAHY:

Thank you. I know my time is just about up, but I'd also add as chairman of the Appropriations Committee I'm going to be talking to you about the Department of Justice and the grants they had on Violence Against Women Act, VOCA grants,

other such things. Those have--(INAUDIBLE) has had bipartisan support. Again, we've got to make sure they are done. Frankly, Judge, I am very happy you are here. I think--I have a feeling we're going to have a lot of conversations in the next few years.

GARLAND:

Well, I hope that's the case, Senator. I'd be happy to have conversations even if I'm not confirmed, but I certainly prefer them if I am confirmed.

LEAHY:

You're going to be confirmed. I'll bet my farm in Vermont on that.

GARLAND:

Never ask anybody to bet that, Senator.

DURBIN:

Thank you, Senator Leahy. Senator Sasse.

SASSE:

Thank you, Chairman. Congratulations, Judge, on your nomination, and thank you for the time you've spent in this process with those of us who were wanting to grill you in private before you were here today in public. You're in the process of moving from Article III to Article II. Were you confirmed to the bench in '96, '97?

GARLAND:

'97.

SASSE:

Okay. In the 23 years, 24 years since you left an executive role, obviously the Article II branch has grown in power, and Article I seems to be shriveling in lots of ways. Do you have a theory of why Articles II and III are gaining more power in American life, and Article I seemingly is weaker?

GARLAND:

That is, I would say, a cosmic question of our civic life. I don't really have an answer to that.

GARLAND:

Obviously, each branch has enormous powers authorized by the Constitution. And it may be, if this is the case, that the Congress has just not asserted it--itself as it should with respect to protecting its authorities. I don't have--to be honest, as--not enough of a political scientist to know exactly how this balance has changed. I--I'm sure from the point of view of the Congress, it--its--its role has diminished. But, you know, sometimes I'm sure the other branches feel the same way.

SASSE:

Right. Well, I--I think it's a--a mix of overreach by Article II and under reach by Article I. So, I'm not asking the question in a way to put you on the defensive as if everything that's wrong is chiefly outside the Congress, because I think we're probably chiefly to blame.

But you are going to become the most powerful law enforcement officer in the nation, and obviously you'll have lots of prosecutorial discretion. But could you help us understand what the line is between prosecutorial discretion, which is understandable in any complex organization, and executive unilateralism, which I hope we can agree, at least of the definitional level, is a massive constitutional problem. What's the line?

GARLAND:

Yeah. So, it's not the most easy line to--to outline. The Supreme Court's Chaney case is the best overall description. This--for the entire history of the country, prosecutors have--and government agencies have--have had discretion to make decisions about how they allocate their resources in terms of enforcement priorities, both criminal and civil. And these--this has either generally been a non-reviewable or deferentially reviewable in the courts.

The--the opposite side of the line is that the executive branch can't simply decide we're not going to enforce this lot all. Now, where a particular piece of conduct falls between those two is--is--is a difficult thing to--to say, except in an individual case.

SASSE:

Well, I mean, obviously in our tribal politics, it's easy for each party, when they're out of power, to say that the Article II branch is overreaching. But when you're in power, it turns out that those mostly look like discretion. How--how do you think not just the Supreme Court line of cases but at the level of--of you being the boss of the AAG for OLC, for instance--

GARLAND:

--Yeah--

SASSE:

--How will you dis--determine what actions are beyond the pale?

GARLAND:

Yeah. Well, I do think that when the department makes determinations based on resources, on its views about which are the most important matters that it should--should go forward with, when it thinks that state and local governments are in a better position to handle those matters, any of those kind of factors are all perfectly appropriate for deciding to--to exercise prosecutorial discretion. But mere disagreement with a law passed by Congress or a--a decision that the department will simply not enforce regardless of resources or other things would be impermissible.

But again, I think it--no matter how hard I try, I can't put this into perfect words, and I'm sure maybe will disagree in the future if I--if I do get this position. But it will be out of a good faith effort on my part to be sure that the executive is only doing what it's supposed to do.

SASSE:

I want to move on to another topic, but one--one more finer point on it. Is Congressional inaction a legitimate basis for Article II to decide it just must act because it wishes policy were different and legislation doesn't move? Therefore you have a pen and a phone, can you just act because Congress didn't?

GARLAND:

Also, you're asking really tough questions of our basic constitutional structure. Doing so simply out of upset that Congress hasn't done what you want, obviously not okay. But in the formulation that Justice Jackson, who I quoted in my opening famously gave in a Youngstown Steel case, the president does have authorities. When he acts consonant with Congress, he is at his highest power.

When Congress has not acted at all, he is left with only his own power, which is clearly available under the Constitution depending on the circumstance that we're talking about. And when he acts in contravention of Congress, he has only the authorities the Constitution gives him minus the authorities that the Congress has. And this is what Jackson famously referred to as the lowest ebb of the executive's authority. So, inaction is in the middle. You can do this just because Congress didn't act, but you can--the president can act if it's within his authority and he believes that something in the public interest.

SASSE:

Thanks. I want to switch gears a little bit. I was encouraged earlier when you said that the department's purposes are to make sure--include among them to include--to ensure that both the powerful and the powerless are treated--treated equally. I want to talk about one case where that obviously hasn't happened, and that's the case of Jeffrey Epstein and his many, many victims of domestic and international sex trafficking.

Obviously, he evaded justice for years. And when the department did ultimately partner with local authorities, it allowed charges to be brought that didn't befit the seriousness of his crimes. Infuriatingly, he was allowed to die by apparent suicide in federal custody despite the fact that everybody knew he was a suicide risk, and many people would benefit from that outcome. And then most recently, his estate has failed it to pony up to make right on all of their obligations to compensate his victims. What do you think went wrong with the department's handling of the Epstein case?

GARLAND:

Center, so my position as a judge, I'm--and also my previous position as a prosecutor, I'm always been extremely careful not to comment about something without knowing the facts. The facts I know about the Epstein matter are the ones I've read in the--in the media and that I've seen on television, so I don't think--I'm just not in a position--

SASSE:

--We--we can agree that those are disgustingly embarrassing--

GARLAND:

--Absolute--

SASSE:

--About how weak the department's pursuit of this evil man was.

GARLAND:

Absolutely. But you asked me the why question, and I--I can't answer the--the why question. But on the values question, I can answer. This is just horrendous, and he obviously should have been vigorously prosecuted substantially earlier. But I--I don't know the why.

SASSE:

And--and he has co-conspirators who are still being held and pursued. And as you and I discussed in private, I hope that we will make sure that the department prioritizes resources for this. Scores and scores of the women he victimized are in their 30s now, but they've had so much of their lives stolen from them. Obviously, sex trafficking is a scourge of our time, and I--I really would hope that the department continues to do an after action review on why we've under invested there.

I have a couple more questions on the department's China initiative, but my time is expired, so I'll follow up with that separately. Thank you, sir.

GARLAND:

I look forward to it. Thank you.

DURBIN:

Senator Blumenthal?

BLUMENTHAL:

Thanks, Mr. Chairman. I want to welcome you to the committee, Your Honor and welcome your family as well, a very supportive and accomplished family, and say that among the qualities that you bring to this job, obviously your brilliance, your service as a judge are tremendously important, but I think the lesson today is that character counts in restoring the integrity and credibility in the leadership of the Department of Justice.

I think that the character that you've demonstrated throughout your career are going to be most important, your resilience as well as your brilliance, you've been tested by adversity, and the kind of values that you exemplified beginning when I think both of us served as prosecutors in the Department of Justice and first met. So, I look forward your inspiring more young attorneys to join the ranks of law enforcement and celebrate the accomplishments of those 115,000 professionals who every day help keep us safe.

I welcome your commitment to combating violent extremism. I've supported and I'm introducing a 9/11 Commission bill. But I want to turn to an area of violence that you raised, which is hate crimes. The growing incidence of hate crimes, especially against now certain groups, Asian Americans, I think is extraordinarily alarming. I've introduced a measure called the No HATE Act. The Jabara-Heyer NO HATE Act would perform the penalties, but also increase reporting. As you know, any of these crimes are underreported. I like your commitment that you will support such a measure and enforcement of the existing penalties against hate crimes.

GARLAND:

Well, you couldn't have any opposition from me on--in that matter, Senator. I hate crimes. They tear at the fabric of our society, make our citizens worried about walking on the street and exercising even their most normal rights. And--and the role of the civil rights division is to prosecute those cases vigorously and I can assure you that it will if I'm confirmed.

BLUMENTHAL:

Thank you. On gun violence, you've been asked a few questions by Senator Lee. Three years ago this month, Parkland occurred. Parkland, Sandy Hook, other places like Las Vegas have become shorthand for massacres that are true

tragedies and also preventable by common sense steps, such as President Biden has supported and I have helped to lead in the Congress universal background checks, safe storage measures, Ethan's Law, closing the Charleston loophole, and of course, emergency risk protection orders.

Senator Graham and I have worked together on a measure that I'm hoping we will re-introduce. One of your predecessors, William Barr, said about emergency risk protection orders, "This is the single most important thing I think we can do in gun control area to stop these massacres from happening in the first place."

William Barr and I didn't agree on a lot, but I think I'm of the opinion that it is an important step to take. Would you support these kinds of common sense steps?

GARLAND:

Yeah, I don't know the specifics of all of them, certainly with respect to emergency risk orders. When somebody is acting out in a way that suggests that they are going to use violence against another human being, we have to be very careful that they don't get a weapon in their hands.

I don't know the specifics of how the legislation would do that. But, I--I do think that, yes.

BLUMENTHAL:

Well, I welcome your support to that extent--

GARLAND:

--I don't mean to be non-supportive, but unless I know the specifics, it's very hard for me to make a calculation.

BLUMENTHAL:

I understand and you're doing an excellent job of navigating your way through the requests for specific commitments. And, by the way, I understand sometimes a non-answer is the right way for you to go in this position.

GARLAND:

Thank you, Senator.

BLUMENTHAL:

Let me say also I hope you'll consider executive orders. I understand that President Biden may have some under consideration. For example, closing the Charleston loophole, redefining the nature of a firearm to prevent ghost guns from populating the world, and other steps. And, I hope you will consider using the existing authority through ATF and other agencies to take such action.

I want to ask you about two areas that are of importance I think, although they may not have reached a lot of public visibility. As you may be aware, the survivors of the 9/11 tragedy have filed a lawsuit pursuant to the Justice Against Sponsors of Terror Act, JASTA. Senator Cornyn and I were strong advocates of JASTA.

They have asked for information from the FBI in connection with that lawsuit. They've been denied that information under the state's secret privilege. In my view, there is no justification for failing to provide that information. I hope that you will consider taking prompt action to release it.

I know that you can't necessarily address it now, but I wrote to the Department of Justice last week, not to yourself but to your predecessor, and I hope that you will take that letter as a matter of priority.

GARLAND:

If I'm lucky enough to be confirmed, I will certainly get the letter and I will give it my attention. Yes, I will.

BLUMENTHAL:

And, similarly, the Department of Justice Inspector General reportedly opened an investigation in September 2018 of the FBI's potential mishandling of the investigation in to Larry Nassar's sexual abuse. I'm sure you recall his prosecution. There was an Inspector General report that goes into the FBI's possible delay and malfeasance. That report is finished, we're told. I hope that it will be published promptly in the interest of the transparency value that you outline so well.

GARLAND:

Well, I will definitely consult with the Inspector General and I do believe in making those reports public to the extent, you know, permissible within the law, yeah.

BLUMENTHAL:

Thank you. And, finally, you may be aware that a number of my former colleagues, attorneys general, have taken action against Exxon and other oil companies to hold them accountable for misleading and defrauding the public about climate change for decades.

Nothing could be so important as the United States Department of Justice similarly taking action against gas and oil companies for lying to the American public about the devastating effects of these products on climate change. I hope you'll consider taking action in that regard.

GARLAND:

Well, I guess from the way you began, it feels like there's probably pending litigation on this matter already. So, it's something I really should not be commenting on.

BLUMENTHAL:

Thank you very much, Judge.

GARLAND:

Thank you, Senator.

DURBIN:

Thank you, Senator Blumenthal. Senator Hawley.

HAWLEY:

Thank you, Mr. Chairman. Judge Garland, thank you for being here.

Congratulations on your nomination.

GARLAND:

Thank you, Senator.

HAWLEY:

Since June of last year, the City of St. Louis in my home state of Missouri, the homicide rate is at its highest level since 1970. Eleven police officers have been shot, including former police officer David Dorn, who was murdered in cold blood during rioting of the city this past summer.

In Chicago, homicides are up 50 percent, in New York, 40 percent, in LA, 30 percent. Clearly, our criminal justice system is under renewed and fairly extreme strain. Can you tell me if you are confirmed as Attorney General, what's the first thing you'll do to confront this growing crisis?

GARLAND:

I'm sorry, at the end, did you ask me what I would do or will I?

HAWLEY:

What will you do? I assume you'll do something. What will you do?

GARLAND:

Yeah. So, look, I am obviously--I've read the statistics myself and I know that there's an upswing in violent crime. I'm very concerned about it. When I--when I was an assistant U.S. attorney, the number of murders in the--I joined at a time when the number of murders in the District of Columbia were more than twice the number of murders that they are now.

I spent much of my early--early career on this problem of violent crime, searching for the best possible ways to suppress it, going after violent repeaters being one of the best ways, going after violent gangs that supported violent action being another important way, and putting resources in the places where they're necessary.

Again, sitting here and therefore only having been an observer of--of this from the outside, I don't know what information the department has now. But, I was a strong supporter and one of the developers of the Violent Crime Initiative during the time when I was in the Justice Department and it may well be time for another one.

I know that the administration of Attorney General Barr looked at this very closely as well. So, I'd have to look at, you know, what--what's going on in the department right now and what more needs to be done. But, I share your concern.

HAWLEY:

Very good. Thank you for that. In the midst of this--of this mounting crime wave, there has been increasing calls by some activists, including members of the United States Congress, to defund the police.

I have to tell you, I think this sends exactly the wrong message to law enforcement who feel very much overburdened, underpaid, under siege, and also sends the wrong message to folks who are suffering from this violent crime wave, especially working class communities.

Tell me what your position is on defunding the police. Do you support this movement? Will you support it as Attorney General?

GARLAND:

Well, as you know, President Biden has said he does not support defunding the police and neither do I. You know, we saw how difficult the lives of police officers were in the body cam videos we saw when they were defending the Capitol.

I do believe--and--President Biden believes in giving resources to police departments to help them reform and gain the trust of their communities. I do believe--and I believe he does as well--that we do need to put resources into alternative ways of confronting some actors, particularly those who are mentally ill and those who are suicidal, so that police officers don't have to do a job that they're not trained for and that, from what I understand, they do not want to do.

And so those resources need to go to mental health professionals and other health profess--and other professionals in the community so that the police can do the job that they've trained for and so that confrontations, if possible, do not lead to deaths and violence.

HAWLEY:

Let me ask you about assaults on federal property in places other than Washington, D.C., Portland, for instance, Seattle. Do you regard assaults on federal courthouses or other federal properties acts of domestic extremism, domestic terrorism?

GARLAND:

Well, Senator, my own definition, just about the same as the statutory definition, is the use of violence or threats of violence in attempt to disrupt democratic processes. So an attack on a courthouse, while in operation, trying to prevent judges from actually deciding cases, that plainly is domestic extremism, domestic terrorism. An attack simply on a government property at night or any other kind of circumstances is a clear crime and a serious one and should be punished. I don't mean--I don't know enough about the facts of the example you're talking about, but that's where I draw the line. One is--both are criminal, but one is a core attack on our democratic institutions.

HAWLEY:

Let me ask you about something that some progressive groups have recently been saying with regard to you. The Progressive Change Campaign Committee, which is a left-wing activist group that does fundraising for Democrat Party causes, is circulating a petition addressed to you that states, and I quote now, "Trump and his criminal network of associates must be investigated and prosecuted for lawbreaking," end quote.

This, of course, against the backdrop, Judge, of groups who are keeping lists of people who worked at the White House, including lists of interns who worked at the White House, trying to prevent them from getting jobs, trying to prevent them from working, whether it's in politics or government or anywhere else again.

We have seen--Senator Cruz, I know, asked you about political targeting. I have to say I'm very concerned about the specter of political targeting because it's happened before. It happened in the Obama/Biden administration. It happened--it culminated in the lies told to the FISA court during the last administration with the FBI, and sadly the Department of Justice signed off on submissions to the FISA court, which, as you know, were falsified, actively falsified, leading to an unprecedented and historic rebuke from that court.

My question is, given this pressure campaign already being mounted toward you--this petition I just quoted is addressed to you personally--if you are confirmed, will you resist the calls and efforts by political groups to politicize the Department of Justice, to use political targeting? Will you adhere to the statute right down the middle and enforce the law fairly and equally?

GARLAND:

Senator, I've been a judge now for almost 24 years. People on one side or the other of every single case think I've done the wrong thing in that case because both sides can't win. I have grown pretty immune to any kind of pressure other than the pressure to do what I think is the right thing given the facts and the law. That is what I intend to do as the attorney general. I don't care who pressures me in whatever direction.

The department under--if I am confirmed--will be under my protection for the purpose of preventing any kind of partisan or other improper motive in making any kind of investigation or prosecution. That's my vow. That's the only reason I'm willing to do this job.

HAWLEY:

Do you agree that what the Department of Justice and the FBI did in misleading--deliberately misleading a FISA court, submitting false information to a FISA court, submitting falsified information and evidence to a FISA court, drawing the rebuke of that court, do you agree that that was an egregious violation of public trust?

GARLAND:

I think a false statement to a court is a terrible thing. It is, you know many--I was going to say obstruction of justice, and it may well be, but that's a very specific concern--I can tell you how angry judges get when they learn that somebody who has made an application to them has not told them the complete truth or has spun the truth in any way. You'll hear those statements by judges all the time, and appropriately so.

HAWLEY:

Very good. Well, thank you, Judge. And I hope if you are confirmed that you will, indeed, be that guardian to make sure that the rule of law is fairly enforced equally and that it is not used for political purposes. Mr. Chairman, my time counter doesn't work. Am I--is my time expired?

DURBIN:

Yes.

HAWLEY:

It is? All right. Thank you very much, Judge. Thank you, Mr. Chairman.

DURBIN:

Senator Hirono, are you within Zoom range?

HIRONO:

Yes. Thank you. Thank you, Mr. Chairman. Welcome, Judge Garland. It's nice to see you again.

GARLAND:

Thank you.

HIRONO:

I will start with two preliminary questions that I ask--I ask every nominee that comes before any of the committees on which I sit, and these questions--two questions are, since you became a legal adult, have you ever made unwanted requests for sexual favors or committed any verbal or physical harassment or assault of a sexual nature?

GARLAND:

No.

HIRONO:

Have you ever faced discipline or entered into a settlement related to this kind of conduct?

GARLAND:

No.

HIRONO:

Judge Garland, considering that we just had a president who did not think the rule of law applied to him, I'm gratified to hear that so many of my Republican colleagues are asking you whether you as attorney general will follow the rule of law, and of course you will. I want to get to consent decrees because I don't think that you've been asked about consent decrees yet. And the Justice Department's civil rights division has described consent decrees as, I quote, most effective in ensuring accountability, transparency and flexibility for accomplishing complex institutional reforms, end quote.

So despite their effectiveness, however, the Trump administration was openly hostile to consent decrees. In November 2018, Attorney General Jeff Sessions issued a memo that drastically curtailed their use in bringing police departments into compliance with the Constitution.

The result was that the Trump administration did not enter into a single new consent decree with any law enforcement agency suspected of systemic abuse of constitutional rights, and they also actively undermined existing consent decrees. All this while excessive force by police in Minneapolis, Louisville, Kenosha and other

cities led to one of the biggest social justice movements this country has ever seen. What is your view, Judge Garland, of the role of pattern and practice investigations and consent decrees in (INAUDIBLE) civil rights abuses by police?

GARLAND:

Thank you for this question, Senator. I think police accountability is an essential element of the ability of a police department to have credibility with the community, and without credibility and trust the police department cannot do its job of ensuring the safety of the community. Police officers who violate the Constitution must be held accountable, and police officers who follow the Constitution want police officers who do not to be held accountable for just that reason, because it leads to a taint on all police officers, which would be unfair.

Congress has given the Justice Department the authority and the responsibility to investigate patterns or practices of law enforcement entities' conduct that violate the Constitution and laws of the United States. That's the statutory responsibility of the Justice Department. And so, it is an important tool the department has for ensuring accountability.

The statute further provides that if the department finds this pattern or practice of unconstitutional conduct, that it can seek equitable remedies from the court. And one of the kinds of equitable remedies which has proven effective in the past, are consent decrees.

GARLAND:

So where they are necessary to assure accountability, it's very important that we use that tool. That is not the only tool available to the Justice Department. We can use grantmaking to provide funds for police departments to reform themselves, to make themselves more accountable. We can provide technical assistance. We can provide incentives. All of these are a set of tools, and the Justice Department has been given these tools by the Congress and issued use all of them.

HIRONO:

So, you emphasize of the police departments. In the Justice Department said that consent decrees--which, by the way, are not just one-sided. They are entered into, as I understand it, after much dialogue and discussion with the affected police departments. So, they are definitely a tool.

By your answer, I--I hope that you plan to reengage the Justice Department in enforcing and abiding by the existing consent decrees, because I noted that the previous administration had undermined the existing consent decrees.

GARLAND:

Well, I think if there is an existing consent decree, then we are certainly going to require adherence to it, yes.

HIRONO:

You've been asked a number of questions about the--in my view, the active voter suppression laws that are being--being enacted, particularly, of course, after the Shelby County decision that gutted one of the major provisions of the Voting Rights Act, leaving Section II that still gives the attorney general's office some tools to go after those states that are contemplating legislation that, in effect, will result in voter suppression. Are you aware of any evidence of widespread voter fraud in the 2020 presidential election or, for that matter, any other election?

GARLAND:

No, Senator. All I know, of course, is what--what I've been able to glean from the public reports of government agencies. The Department of Homeland Security in the previous administration publicly described the last election as the most secure in American history.

Some 60 or more courts rejected claims of fraud in the election, some on legal grounds but many after providing an opportunity for the submission of evidence, and rejected the evidence that was submitted as insufficient. And Attorney General Barr authorized the U.S. attorneys to investigate voter fraud after the election before certification. At the conclusion, he announced that the department had not found evidence of--sufficiently material of widespread voter fraud to have had an effect on the election.

HIRONO:

Thank you, Judge Garland. I am running out of time. I just wanted to reiterate that I heard you--your earlier response that you would work with Congress to determine whether preclearance provision should be reenacted. There's just one more thing that I wanted to note, that is your acknowledgment that hate crimes against the AAPI community is definitely rising, and that you will do everything you can to make sure that--that there is enforcement of--of the laws against these kinds of crimes.

And I just noted that just a few weeks ago an 85-year-old man died after he was abruptly attacked while out on a morning walk in San Francisco. And in Oakland, a Chinatown--in--in Oakland's Chinatown neighborhood, a man violently shoved and injured a 91-year-old man, a 60-year-old man, and a 55-year-old woman. In each of these cases the victims were AAPI community members. Thank you.

I do have additional questions, because I'm--I'll wait for a round two. Thank you.

GARLAND:

Thank you, Senator.

DURBIN:

Thanks, Senator Hirono. Senator Cotton?

COTTON:

Judge, welcome.

GARLAND:

Thank you, sir.

COTTON:

I want to return to Senator Grassley's questions about the Durham investigation. Senator Grassley asked you if you would commit specifically to ensure that John Durham had the staff, the resources, and the time that he needed to complete an investigation. You said you didn't have the info yet that you needed to speak to him, but you had no reason to think that him staying on was not the correct decision.

GARLAND:

That's right, yes.

COTTON:

Why can't you commit specifically to saying that he will have the time, staff, and resources he needs to complete his investigation?

GARLAND:

Well, I--again, it's because I'm sitting here and I don't have any information about what he needs in his resources and how--and--and an allocation of resources. About my--everything I know sitting here suggests that he should, of course, have those resources.

COTTON:

Judge, two years ago Bill Barr made that exact commitment about the Mueller special counsel. He did not have that information. He had not consulted with the department. He was in the same posture you are. He simply said yes. Why can't you say yes today the way Bill Barr did two years ago?

GARLAND:

Again, I'm--my view about every investigation and every decision I make is I have to know the facts before I can make those kind of decisions. I don't know what in--what went into his consideration. But for myself, I have to be there and learn what's

going on before I can make a decision. But as I said, I have no reason to doubt that the decision to keep him in place and continuing his investigation was in any way wrong.

COTTON:

Was it wrong for Bill Barr to make that commitment two years ago?

GARLAND:

As I said, Senator, I'm--I'm not going to be making judgments about my predecessors. I don't think there's any purpose and that for myself. I want you to judge me on my own record and what I do going forward.

COTTON:

Was it wrong for Democratic Senators on this committee to repeatedly demand that Bill Barr make that commitment two years ago?

GARLAND:

I think my answer would be the same.

COTTON:

Okay. Let's turn to the death penalty. You said that you developed a great pause over it, and you said that Joe Biden expressed his opposition to the death penalty. Did Joe Biden or anyone from his administration, transition, or campaign ask you not to pursue capital punishment in cases against murderers or terrorists?

GARLAND:

No. No.

COTTON:

Thank you. Judge, you spoke at the outset, as did--have several other senators, but your outstanding work in the 1995 Oklahoma City bombing case, in which you were part of a team that helped to bring to justice of white supremacist mass murderer Timothy McVeigh. He was sentenced to death. That death penalty has been carried out. Do you regret the fact that Timothy McVeigh receive the death penalty and has been executed?

GARLAND:

Look, I supported the--as I said in my original setting hearing when I became a judge originally, I supported the death penalty at that time for Mr. McVeigh in that individual case. I don't have any regret.

But I have developed concerns about the death penalty in the 20 some years since then, and I--and I--and the sources of my concern are issues of exonerations, people who have been convicted, of sort of arbitrariness and randomness of its application because of how seldom it's applied and because of its disparate impact on black Americans and members of other communities of color. Those are the things that give me pause, and those are things that have given me pause over the last--you know, as I've thought about it over the last 20 years.

COTTON:

Judge, if you are confirmed as attorney general and there was another case like Timothy McVeigh's, where a white supremacist bombed a federal courthouse, killing 168 Americans including 19 children and your U.S. attorney sought your approval for the death penalty, would you give him that approval?

GARLAND:

So, I--I think it depends on what the development of the policy is. If the president asks or if we develop a policy about moratorium, then it would apply across the board. There's no point in having a policy if you make individual discretionary decisions. So, if that--if that's the policy, then that would be the policy.

COTTON:

So, Judge, you said in your opening statement and in addition to several questions from senators that you would strictly regulate communication between the White House, that there'd be no partisan influence. So, is this a case in which there would be influence from the White House, in individual cases if the U.S. attorney was seeking the death penalty against a white supremacist domestic terrorist?

GARLAND:

Oh, I understand the question. I'm sorry. Maybe I didn't understand before. What--what I'm trying to say here is, if there was a policy decision made by the president and announced by the president, he certainly has the authority to direct--and--and nothing inappropriate about it, it's within his authority to require an across-the-board moratorium.

This is not--what I was talking about was not a decision by the president in any particular case or the direction of how any particular case should go forward, but of a moratorium which would apply as a policy across the board. The Supreme Court has held that the death penalty is constitutional, but it is not required. And that's within the discretion of--of the president.

COTTON:

Before I move on from the Oklahoma City case, let me just commend you again for your work on it and say that I believe Timothy McVeigh deserved the death penalty.

GARLAND:

Thank you, Senator.

COTTON:

Another case involves Dylan Roof, a white supremacist from South Carolina who went into an African-American church and killed nine African-Americans in a racially motivated terrorist attack. The Obama Department of Justice sought the death penalty against him and received it.

COTTON:

Do you believe that was a mistake?

GARLAND:

I'm sorry--

COTTON:

--Do you believe it was a mistake to seek the death penalty against Dylan Roof for murdering--

GARLAND:

--No.--

COTTON:

--nine African Americans as they worshipped in church?

GARLAND:

I know I'm not supposed to be asking you the questions, but I have a feeling that this is still a pending matter and if it is, I can't talk about a particular--a particular case.

COTTON:

In that--in that case, let me ask you a hypothetical idea about--

GARLAND:

--I apologize for asking you because I know that's not my role.

COTTON:

Let's--let's suppose that another white supremacist walks into--

GARLAND:

--Yeah.--

COTTON:

--another African American church and murders African Americans worshipping Christ in cold blood. The U.S. attorney seeks the death penalty against that white supremacist. Would you approve it?

GARLAND:

Again, Senator, I think it does depend on what policy is adopted going forward. I would not oppose a policy of the president because it is within his authority to put a moratorium of the death penalty in all cases and instead, to seek mandatory life without possibility of--of parole, without any consideration of the facts of any particular case.

COTTON:

Some on the left are calling for President Biden to grant an across the board commutation to all federal death row inmates to reduce their sentence to life in prison. Would you recommend to President Biden that he makes a decision across the board commutation?

GARLAND:

So, this is one of the ones that I would have to think about, and which I have not thought about. I'd have to, you know, consult with the administration on such an across the board policy. I--I haven't thought about that.

COTTON:

Thank you. I want to turn to racial equity. Do you agree that a court concept judge of American law is that the government can't discriminate against a citizen on the basis of their race?

GARLAND:

Absolutely, equal justice under the law, written right there on the steps of the--the pediment above the Supreme Court.

COTTON:

And, not only is it unlawful, it's morally wrong as well?

GARLAND:

Yes, I think discrimination is morally wrong, absolutely.

COTTON:

You're aware that President Biden has signed an executive order stating that his administration will affirmatively advance racial equity, not racial equality but racial equity?

GARLAND:

Yes and I--I read--read the opening of that executive order, which defines equity as the fair and impartial treatment of every person without regard to their status and including individuals who are--who have been in underserved communities where they were not accorded that before. But, I don't see any--any distinction between--in that regard. That's the definition that was included in that executive order that you're talking about.

COTTON:

So, to you, racial equity and racial equality are the same thing?

GARLAND:

You know, this is a word that is defined in the executive order as I--as I just said it. So, I don't know what else--I can't give you any more than the way in which the executive order defined the term it was using.

COTTON:

Thanks, Judge.

DURBIN:

Senator Booker.

BOOKER:

Thank you, Mr. Chairman. Judge Garland, it's really good to see you sitting before the Judiciary Committee of the United States Senate.

GARLAND:

Thank you, Senator.

BOOKER:

I'm really grateful. If you don't mind me starting a little bit with philosophy, there's the Micah Mandate, which I'm not sure by your expression you know, but you've heard it before. It's do justice, love mercy.

GARLAND:

That mandate I do know, yes.

BOOKER:

And, walk humbly. It seems like a pretty good mandate for life.

GARLAND:

Yes.

BOOKER:

And, this idea of justice to me is fundamental to the ideals of a nation, founded with a lot of injustice at the time. But, the brilliance of the imperfect geniuses of our founders who aspired to create a society that, you know, John Lewis and others would have called a more beloved community.

And, one of my--an activist--I've read a lot of theologian--said, "What does love--what does love look like in public? It looks like justice."

And, you have, to me, perhaps one of the more important positions on the planet Earth for trying to create a more just society. And, the issues of race--and I was really grateful that you--in your opening remarks talked about your agency actually coming about to deal with issues of justice in our nation.

I want to talk to you about white supremacist violence, which has been mentioned a lot. But, before I get there, I'm actually concerned with something that I consider pernicious and very difficult to root out, which is the realities of implicit racial bias that lead to larger systemic racism.

Now, I've been kind of stunned that the issue of systemic racism has become something argued over. But, if I can just walk you through for a second, does our justice system treat people equally in this country at this point?

GARLAND:

Sadly and it's plain to me that--that it's not--that it does not.

BOOKER:

And, I'm going to stop you there. I mean, Brian (INAUDIBLE) says we have a criminal justice system that treats you better if you're rich and guilty than if you're poor and innocent because one's finances make a difference off with what kind of justice one gets. Is that correct?

GARLAND:

Senator, it's no question that there's disparate treatment in our justice system. Mass incarceration is a very good example of this problem. You know, we're incarcerating 25 percent--almost 25 percent of the world's population and we have, you know,

something like 5 percent of the world's population.

I don't think that that is because Americans are worse. But, what--

BOOKER:

--Well then--

GARLAND:

--underlies that is the disparate treatment of Blacks and communities of color.

BOOKER:

Well, let's drill down on that for a second.

GARLAND:

--Yeah--

BOOKER:

So, one of the big things driving arrests in our country, stunningly to me even that it's still the case, is marijuana arrests. We had in 2019 more marijuana arrests for possession than all violent crime arrests combined.

Now, when you break out that data and disaggregate along racial lines, it is shocking that an African American has no difference in usage or selling than someone who's white in America but their likelihood of being arrested for doing things that two of the last four presidents admit to doing, is three to four times higher than somebody white. Is that evidence that within the system, there is implicit racial bias, yes or no, sir?

GARLAND:

Well, it's definitely evidence of disparate treatment in the system, which I think does arise out of implicit bias, unconscious bias maybe, sometimes conscious bias.

BOOKER:

And, I think that's the fair point, the unconscious or conscious. Nonetheless it results in the system. And, I've had great conversations with people on both sides of the aisle, heads of think tanks that all speak to this as abhorrent to American ideals that we still have a system that so disparately treats people every point, the station house adjustment, which I know you know what that is, which I've seen happen as a mayor that people get called in for arrested for possession of marijuana and the police make a decision like, just, you know, leave and your parents come or whatever and it's dismissed with.

We see from station house adjustments to charging to--to bail to sentencing. Every objective analysis has shown that race right now in our country is still playing a specific influence in the justice that someone gets. You're aware of all of this, yes?

GARLAND:

I am and this is a particular part of the reason at this moment, I think I wanted to be the Attorney General. I want to do the best--

BOOKER:

--Right and to the point--

GARLAND:

--I can to stop this.

BOOKER:

Well, I want to get to that. To the point that a lot of my folks are making, you just made, it does not mean that the people who are engaged in this are racist overtly. It means that they have an implicit racial bias that often leads them to make different decisions about different people. That's correct.

GARLAND:

Yes and also, you know, the marijuana example is a perfect example that you've given here. Here's a non-violent crime that--with respect to usage that does not require us to incarcerate people and then we're incarcerating at different rates--at significantly different rates of the different communities.

And, that is wrong and it's the kind of problem that will then follow a person for the rest of their lives. It will make it impossible to get a job. It will--it will lead to a downward economic spiral for their family.

BOOKER:

--Right, and so--and so to that point--and now to your point that I cut you off on before, now I would like to give you the chance to answer that. Here you're in an agency that was formed to deal with the kind of systemic racism that was going on at that time.

When--when you have disparate use of the law, where you see African Americans being churned into the criminal justice system, where it is concentrated in certain communities and not in others, where it has, as the American Bar Association says, 40,000 collateral consequences on the lives of those African Americans where they can't get loans from banks, they can't get jobs, they can't get certain business

licenses, where it is so dramatic that there are estimates that it costs literally to African Americans in the persistence of a wealth gap in our country, where black families have one-tenth the wealth of white families.

If you just look at the impact of the law and the--and the disparate impact on just marijuana, it is estimated to cost African American communities in this country billions of dollars more.

My question to you now is assuming this position where you are called upon for that Micah Mandate, what are you going to do about this outrageous injustice that persists and infects our society with such a toll on Black and brown communities?

GARLAND:

There are many things that the Justice Department has to do in this regard, and I completely agree that disparate results with respect to wealth accumulation, discrimination in employment, discrimination in housing, discrimination in healthcare availability, all of which we all see now in the consequences of a pandemic, which affects communities of color enormously more with respect to infection rates, with respect to hospitalization and ultimately to death.

So one set of things we can do is the mass incarceration example that I began with. We can focus our attention on violent crimes and other crimes that put great danger in our society and not allocate our resources to something like marijuana possession. We can look at our charging policies and go--and stop charging the highest possible offense with the highest possible sentence.

BOOKER:

I was taught in law school never to interrupt a judge of your--

GARLAND:

I don't think that applies here.

BOOKER:

Forgive me. I would like to end with this question, and then my time is up.

GARLAND:

Yeah.

BOOKER:

You've talked to me a lot about your thoughts about this, and I've been really inspired, but it gets back to me to your conviction in this issue and your determination to go down at a time when our nation needs this, to go down as one

of the great leaders when it comes to dealing with the daily, unconscionable injustices faced by some Americans and not others at the hands of law enforcement.

And I think that one thing you said to me privately, particularly motivated me to believe you when you talk about your aspirations. I'm wondering if you could just conclude by talking--telling--answering the question about your motivation and maybe some of your own family history in confronting hate and discrimination in American history.

GARLAND:

Yes, Senator. So I come from a family where my grandparents fled anti-Semitism and persecution. The country took us in and protected us. And I feel an obligation to the country to pay back, and this is the highest, best use of my own set of skills to pay back. And so I want very much to be the kind of attorney general that you're saying I could become. I'll do my best to try and be that kind of attorney general.

BOOKER:

I believe your heart, and I'm grateful that you are living that Micah Mandate.

DURBIN:

Thank you, Senator Booker. I'm going to make a motion to introduce record--into the record letters of support for Judge Garland's nomination. There are 25 different categories of letters of support. I'm struck immediately by the diversity of support that you have.

150 former attorneys general and top Department of Justice officials, Alberto Gonzales, Michael Mukasey, Eric Holder, Loretta Lynch, the list goes on and on. Dozens of former federal judges, former state attorneys general. For you to have both the National Sheriffs Association, the Fraternal Order of Police and the Leadership Conference on Civil and Human Rights is an amazing political achievement, and the list goes on.

Advocates for Crime Victims and Survivors, former FBI director Louis Freeh. Senator Lee mentioned the Levi children and Green children. They both have written letters of support for you.

I want to take a moment in light of your closing statement from this round to tell you that your work and your life has been recognized across the board. This array of letters of support speaks to fairness and honesty in the way that you've dealt with your legal profession and your public service.

So without objection, I'll introduce these letters of support for your nomination into the record. And now we're going to take a lunch break, and I'm going to declare--I guess I have the power to do that now--that we will return at 1:40, and the first

person up will be from the sovereign state of Louisiana, John Kennedy. And we'll all anxiously await his contribution.

DURBIN:

So let's stand in recess.

(RECESS)

DURBIN:

The hearing will resume. Senator Kennedy of Louisiana.

KENNEDY:

Thank you, Mr. Chairman. Good afternoon, Judge.

GARLAND:

Nice to see you, Senator.

KENNEDY:

Good to see you, sir. I want to follow up a little bit on something that Senator Booker talked about. What, to you, is justice?

GARLAND:

Everybody treated equally, regardless of their position in society, powerful, powerless, rich, poor, Republican, Democrat, Black, white, equal treatment, equal justice under the law.

KENNEDY:

I want to go a little further, press you a little bit on that. Is it justice if you have an unjust law that's applied equally?

GARLAND:

Well, no, the unjust law is itself the lack of justice.

KENNEDY:

Let's narrow it down to punishment in justice. If I suggested to you that justice in the concept of punishment is when someone gets what he deserves, would you agree or disagree with that?

GARLAND:

I suppose it depends on what gets what he deserves mean, but yes, I think justice requires individualized determination of the kind of crime you did, you know, and the mitigating circumstances, yes.

KENNEDY:

Well, let me put it another way. If--is a person who commits a crime a sinner in the moral sense or a sick person?

GARLAND:

This is, again, probably beyond my competence. I think with justice comes mercy, and so I think we have to take into consideration all different kinds of things. I also think that the kind of crime that we're talking about is relevant to the question of what kind of person it is. So I'm not sure exactly what you're asking me. I'm not trying to be evasive. I just don't know exactly what you're asking me.

KENNEDY:

Okay. Let me shift gears here. Were you chief judge when the coronavirus hit us?

GARLAND:

Unfortunately for my successor, my term ran out just before coronavirus hit us.

KENNEDY:

Well, if you had been chief judge--

GARLAND:

Yes.

KENNEDY:

Would you have adopted a rule that said if one of our employees in the court gets coronavirus and goes to the hospital and is treated, and is released, and wants to come back to work at the court, it would be discriminatory to ask them to take a coronavirus test?

GARLAND:

No.

KENNEDY:

Okay. Isn't that what happened with a lot of our nursing homes throughout the country?

GARLAND:

You know, I honestly don't know what happened with the nursing homes. I don't know what they were doing with respect to--to--I'm sorry, again, I'm not trying to be evasive.

KENNEDY:

Sure.

GARLAND:

I really don't know the facts here. I mean, I think an example you gave me there's nothing discriminatory about asking people who might be infected from a public health point of view to be sure they don't infect other people, and if a determination is made they are not infected, then of course that's the end of it.

Equal treatment doesn't mean we don't take into consideration the possibilities of different degrees of health in a particular circumstance, and I don't--I honestly don't know what happened with the nursing--I know it was terrible that many people got COVID in the nursing homes, and it was a major vector of the spread of the infection, but I don't know why that was except that there are people cooped up in one place, and it's easy to spread that way.

KENNEDY:

All right. I think science tells us that keeping our schools closed has a disproportionate impact on poor people and children from poor families and on families including, but not limited to, children of color. At what point do you think our--our refusal of some of our leadership and our schools to reopen becomes a civil rights violation?

GARLAND:

Senator, I completely agree with your description of the consequences of the school closing. I tutor two children in a neighborhood of Washington, D.C., where most of the people, students in the school are people of color, and I've been able to tutor them by Zoom every week. But you know, and they are taking classes by Zoom, and it's much more difficult, obviously, for them, although they've done terrifically, not because of me, but they have--then it would be with people with other resources.

I don't--you know, I think that public officials have to weigh very serious competing concerns with respect to how to deal with COVID. There's just no doubt about it. On the one hand, we have to be very worried about setting kids back in their schooling, and on the other hand we have to be very worried about not spreading the disease in a way that kills them or, more importantly, more likely their parents or their grandparents. And I don't want to be the person who makes that judgment.

KENNEDY:

I understand. I get it. I'm sorry to interrupt. I hate to have to do that.

GARLAND:

No, no, I'm sorry I interrupted you.

KENNEDY:

I just have limited time. You have written in one of your opinions I'm going to read. I know you haven't memorized all of your opinions. You said the Constitution, quote, "does not contemplate that the district, District of Columbia, may serve as a state for purposes of the apportionment of congressional representatives. That textual evidence is supported by historical evidence concerning the general understanding at the time of the district's creation." Is that still your considered opinion?

GARLAND:

Yes, and I would say that that is a case--one of my earliest cases which taught me what it means to be a judge, which is to do something to the opposite of what you would do if you had public policy concern. I think that citizens of the District of Columbia should be able to vote, but I didn't think that the Constitution gave me authority on my own to give it to them, and it made me sad, but it reaffirmed my role as a judge.

KENNEDY:

Okay. In my last 20 seconds I'm going to ask you if you agree with this statement. Allowing--and I'm not suggesting the answer one way or other. I just want to know what you believe. Allowing biological males to compete in an all-female sport deprives women of the opportunity to participate fully and fairly in sports and is fundamentally unfair to female athletes.

GARLAND:

This is a very difficult societal question that you're asking me. I know what underlies it.

KENNEDY:

I know, but you're going to be attorney general.

GARLAND:

Well, but I may not be the one who has to make policy decisions like that, but not that I'm averse to it. Look, I think every human being should be treated with dignity and respect, and that's an overriding sense of my own character but an overriding sense of what the law requires. This particular question of how Title IX applies in

schools is one, in light of the Bostock case, which I know you're very familiar with, is something that I would have to look at when I have a chance to do that. I've not had a chance to consider these kinds of issues in my career so far. But I agree that this is a difficult question.

KENNEDY:

Thank you, Judge.

DURBIN:

For his first question as a member of the Senate Judiciary Committee, Senator Alex Padilla.

PADILLA:

Thank you, Mr. Chairman. Thank you, Mr. Chairman. Judge Garland, and to your family, thank you for your many, many years of public service and should you be fortunate enough to be confirmed in this next chapter. I've spent a little bit more than 20 years in public service myself in different capacities, including the prior six years, prior to my appointment to the Senate, as California's secretary of state and chief elections officer. My mission in that role was to increase voter participation and ensure free and fair elections.

As the country has become more diverse, not just states like California and New York, but throughout the nation, it's no coincidence that we have seen a resurgence of white supremacy and violent extremism. And history is clear. Voter suppression is rooted in white supremacy. This issue now and has been true ever since Reconstruction and the establishment of the Department of Justice, just as this committee has acknowledged at its outset.

It should not be lost on any of us that, after the 2013 Shelby v. Holder decision by the Supreme Court, we've seen a wave of legislation in states across the nation which have the effect of making it harder for eligible citizens to register to vote, to stay registered to vote, or to simply cast their ballot. I know Senator Leahy touched on the subject of voting rights in his questioning earlier today, but I want to acknowledge that this--that despite the success of the 2020 election, which has been deemed to secure, new voter suppression laws are being introduced right now across the country under the false pretext of preventing voter fraud.

Now, we all saw how former President Trump's years of lies about voter fraud, the big lie, radicalized many of his supporters and led not just to physical threats against elections officials, elections offices, polling places, and even voters, but they ultimately led to the violent insurrection here in the nation's Capitol. I know you touched on this in your opening remarks, but can you expand on how you will combat the white supremacy that threatens the safety and fairness of our elections specifically?

GARLAND:

Well, you asked a lot of questions all in one, which is--

PADILLA:

--It's complicated.

GARLAND:

It's a complicated problem, right. So, I strongly believe in voting and in increasing every possible opportunity for voting, which of course Congress can do even on its own. The elections clause of the Constitution permits the Congress to set time, place, and manner and to alter state regulations in that respect. In default, the state decides, but Congress can act that way. So, that is one thing that Congress could do as a matter of legislation.

As I said, I think I'd like to work with the Congress on improving the record with respect to Section 4 so that we can use the tool of Section 5. We do have the authority of Section 2. It does require--it changes the burden of proof and it requires to attack one by one changes in election laws, but it does give us the opportunity to bring cases both where there was intention to discriminate but also where there is a overall disparate impact with respect to discrimination.

So, we have a number of tools available to us. And the Voting Rights section of the Civil Rights Division was established for the purpose of pursuing those cases, and we would do so.

PADILLA:

Thank you. That's--I want to dig a little bit deeper on this, because you're absolutely right. We need, in my opinion, to restore the full strength of the federal Voting Rights Act. There is a lot that can and should be done not just in terms of elections administration with respect to--to voting rights, but the protection of voters themselves. You know, people should be able to vote free of any on--harassment, intimidation, obstacles, etc. And part of what works against that is, again, rooted white supremacy, this big lie.

We all sat through the impeachment trial. And the results notwithstanding, I can't help but be moved by the evidence presented by the House managers, again how President Trump's big lie about voter fraud radicalized so many of his supporters. And I was struck by a February 19th opinion piece in the Washington Post by Jim Sciutto about the parallels between the Capitol insurrectionists and foreign terrorist organization that I respectfully ask would be inserted into the record, Mr. Chairman.

PADILLA:

In it, Jim Sciutto writes, and I'll quote, "Domestic radicalism has deep parallels to jihadist terrorism. Both movements are driven by alienation from the political system and a resulting breakdown in social norms. For some groups and individuals, this breakdown leads to violence they see as justified to achieve political ends."

Now, as we all know, the definition of terrorism is the unlawful use of violence and intimidation in pursuit of political ends. President Trump's political end was clear, stopping the certification of the 2020 election at the Capitol on January 6th. One could argue that right-wing groups like the Proud Boys and the Oath Keepers have acted like terrorist cells, communicating with one another, training together, and preparing for the moment they are activated for their mission.

Indeed, President Trump instructed the Proud Boys on national television to stand back and stand by, and then he summoned them to the Capitol on January 6th as Congress was meeting to certify the election. What happened on January 6th was not a property crime. It was not a vandalism--it was not vandalism, in reference to a question you were asked earlier.

Judge Garland, as we sit here in the United States Capitol surrounded by National Guard troops and barbed wire, how you bring the full resources of the Justice Department to bear on white supremacist organizations that pose an ongoing threat to not just our safety and not just the safety of this Capitol building, but to our fundamental democracy for which it stands?

GARLAND:

I--I couldn't agree more that extremist groups and a particularly white supremacist groups do pose a fundamental threat to our democracy. And they have posed a threat throughout our history. And as I recounted, that was the reason the Justice Department was originally established, to fight the first incarnation of the Ku Klux Klan.

The best that I can do is--as I said, my first priority will be to have a briefing on where we are, if I'm confirmed, with the investigations which, from the outside, appear quite vigorous and nationwide, and to find out what additional resources we need. But that is just the focus on--on what happened in--in the Capitol. We also have to have a focus on what is happening all over the country and on where this could spread and where this came from.

And that requires--it does require a lot of resources. I--I--I am very pleased to have read that the director of the FBI believes that this kind of extremism is the most dangerous threat to the country, and that that's where he's putting FBI resources. And that is where I would put Justice Department resources. And I--I--we need very much to make it--make sure that that's the case.

I do want to be careful that we also always worry about the foreign threat because it is always with us. And the fact that nothing has happened recently doesn't mean it could not happen tomorrow. So, from whichever direction, inside, outside, right, left,

doesn't matter. An attack on our--our institutions of democracy and of our ability to go forward with our daily lives and safety has to be stopped. And that--we need it all. It's a governmentwide, but also a Justice Department wide obligation.

PADILLA:

Thank you, Judge. Thank you, Mr. Chair.

DURBIN:

Thank you, Senator. Senator Tillis would be next, but he is not in Zoom range for that possibility. And so, Senator Blackburn, if she can connect with us, is next up.

BLACKBURN:

Yes, sir. I am connected, Mr. Chairman. Thank you so much. And Judge Garland, I want to say thank you to you for your willingness to--to serve and for your career in public service.

I will tell you, as I've talked to Tennesseans about this, they care a lot about law, order, timeliness at the Justice Department. And after the Christmas Day bombing, you and I discussed this, and the bombing that took place in Nashville. They really are interested in the principles and the convictions of our nation's top law enforcement official. And my hope is and I think the expectation is that you will assure the American people that you are going to apply the law fairly and equitably because, in this country, as we know, no one is above the law.

Now, I know you've been asked about the Durham investigation. And I will tell you that this is important to Tennesseans, and making certain that that investigation is going to be completed and that you are going to work to be certain that it is not impeded and is completed, and that you are committed to seeing this through to completion.

GARLAND:

Well, thank you, Senator. I appreciate it. And I appreciate the opportunity we had to discuss these matters earlier as well.

As I said, with respect to the Durham investigation I don't know anything about it other than what has appeared in the media. The investigation has been discrete with--as appropriate with respect to expressions of the--of its status. I understand that Mr. Durham has been permitted to remain in his position, and I know of nothing that would give me any doubt that that was the correct decision.

BLACKBURN:

And I appreciate that. And likewise, we had discussed the investigation into Hunter Biden's business dealings. And we want to make certain that you commit to allowing Delaware U.S. Attorney David Weiss to complete that investigation and

bring that evidence forward.

GARLAND:

And similarly with Mr. Durham, I don't know anything about that investigation other than what I've read in the media. And again, that--that investigation has been proceeding discreetly, not publicly, as all investigations should. I understand that the Delaware U.S. attorney was permitted to say on as U.S. attorney, and I, again, have absolutely no reason to doubt that that was the correct decision.

BLACKBURN:

And let's talk a little bit about China, because we discussed some of that, for the record. And our last DNI had stated that China is our greatest threat. So, I would like to hear from you. Do you agree that the Chinese Communist Party is an enemy of the American people?

GARLAND:

Well, I--I don't have the same familiarity with the intelligence information that the director of the--of National Intelligence has. So, in terms of comparing, say, a threat from China and a threat from Russia, I'm just not competent to make that and I--that comparison. And I have learned in my professional career not to make judgments on which I am not competent.

But I--certainly from what the director said, there's no doubt that--that China is a--a threat with respect to hacking of our computers, hacking of our infrastructure, theft of our intellectual property. All of these are very difficult problems and we have to defend against.

BLACKBURN:

Well, we do. And I know that Lindsey Graham asked you about Section 230 and some of the issues that are there. We all are very concerned about the issues that surround China, whether it is the Chinese Communist Party and their--the way they threaten our democracy and our economic leadership around the globe. And we're also concerned about the Chinese military links into our American universities through things like the Confucius Institutes.

And for instance, recently there was a situation at Harvard with a cancer researcher, and he was caught trying to smuggle 21 vials of biological material out of the U.S. and get it to China. And I would hope that you agree that this threat puts American intellectual property and technology at risk. And I would hope that you would assure the American people that you're going to put to the full force of the Department of Justice to--forward to investigate and prosecute every one of these spies that are working on U.S. soil.

GARLAND:

Well--well, Senator, I'm--I'm not familiar with that circumstance, so I can't comment on it specifically. But, I can assure you that the Justice Department's National Security division was created in part for the purpose of ferreting out espionage by foreign agents and that is also the role of the FBI and the two working together. And, if--if foreign agents are caught stealing American intellectual property, American trade secrets, American materials, that they will be prosecuted, yes of course.

BLACKBURN:

Thank you. We're about a year into this pandemic and technology has allowed for us to do work like we in the Senate are doing with WebEx. I think we've all found that it gives a lot of flexibility, but as we are spending more time online, we hear from people about holding Big Tech accountable.

As I've said, you've discussed Section 230 earlier. And, we are hearing more about anti-trust lawsuits. Of course, you all have the current suit against Google and I will hope that you are going to allow that lawsuit to continue.

GARLAND:

Yeah, I don't--again, I don't want to talk about a particular lawsuit, but I--I don't see, you know, every matter. I'd have to ask for a briefing on. But, much of that lawsuit is public and again, given what I've read, I don't see any reason why that investigation--the decision to institute that investigation would be changed. But, I--I only know what I've read with respect to the descriptions of the public filings.

BLACKBURN:

Let me ask you one more question and then I'm going to have a series of questions come to you as QFRs. The--President Biden has talked about reinstating the Obama administration practice of paying settlement money from winning lawsuits to third party interest groups like La Raza, the National Community Reinvestment Coalition, and the Urban League.

And, it's just, you know, I find it really interesting that they would choose to have that money go to these outside groups instead of to victims or to the U.S. Treasury. So, do you plan on reinstating that policy and how would you justify reinstating that policy?

GARLAND:

I--I don't have any plan one way or the other. I know you raised that policy when we were talking before and I understand your concern about it. Obviously, damages recoveries should first go to help victims. I don't know very much at all about the policy and it would be something I would have to consider if I'm confirmed. I'd have to hear the arguments on both sides of why the policy obviously started and also why it was rescinded.

BLACKBURN:

Thank you so much. I appreciate your time. Mr. Chairman, thank you.

DURBIN:

Thanks, Senator Blackburn. Senator Ossoff, welcome to the committee. Your turn to question.

OSSOFF:

Thank you, Mr. Chairman, and Judge Garland, congratulations on your nomination. Thanks for the time that we spent by video conference discussing some of these issues. Thank you also for sharing your family's immigrant story with the committee.

It mirrors my own. My great grandparents came here fleeing anti-Semitism in 1911 and 1913 from Eastern Europe and I'm sure that your ancestors hardly have imagined--

GARLAND:

--They probably (INAUDIBLE)--

OSSOFF:

I'm sure that your ancestors could hardly have imagined that you'd now be sitting before this committee pending confirmation for this position. Judge, I want to ask you about equal justice.

Black Americans continue to endure profiling, harassment, brutality, discrimination in policing, in prosecution, in sentencing, and in incarceration. How can you use the immense power of the Office of the Attorney General to make real America's promise of equal justice for all? And, can you please be specific about the tools that you'll have at your disposal?

GARLAND:

So, this is a substantial part of why I wanted to be the Attorney General. I'm deeply aware of the moment that the country is in. When Senator Durbin was reading the statement of Robert Kennedy, it just--it hit me that we are in a similar moment to the moment he was in.

So, there are a lot of things that the department can do. One of--one of those things has to do with the problem of mass incarceration, the over incarceration of American citizens and of its disproportionate effect on black Americans and communities of color and other minorities.

There are different ways in which we can try--that is disproportioned in the sense of both population, but also given the data we have, on the fact that crimes are not committed by these--these crimes are not committed in any greater number than--than in others and that similar crimes are not charged in the same way. So, we have to figure out ways to deal with this.

So, one important way I think is to focus on the crimes that really matter that attract our--to bring our charging and our resting on violent crime and others that deeply affect our society and not have such an over emphasis on marijuana possession, for example, which has disproportionately affected communities of color and then damaged them for--after the original arrest because of inability to get jobs.

We have to look at our charging policies again and the--go back to the policy that I helped Janet Reno draft during her period and then Eric Holder drafted while he was the Attorney General of--of not feeling that we must charge every offense to the maximum, that we don't have to seek the highest possible offense with the highest possible sentence, that we should give discretion to our prosecutors to make the offense and the charge fit the crime and be proportional to the damage that it does to our society.

We should look at our--our--se should also look closely and be more sympathetic towards retrospective of reductions in sentences, which the First Step Act is giving a sum opportunity, although not enough to reduce sentences to a fair amount. And, legislatively, we should look at equalizing, for example, the--what's known as the crack powder ratio, which has had an enormously disproportionate impact on communities of color, but which evidence shows is not related to the dangerousness of the--of the two drugs.

And, we should do as--as President Biden has suggested, seek the elimination of mandatory minimum so that we, once again, give authority to district judges, trial judges to make determinations based on all of the sentencing factors that judges normally apply and--and that don't take away from them the ability to do justice in individual cases. All that will make a big difference in the things that you're talking about.

OSSOFF:

Thank you, Judge Garland. Let's discuss accountability for local agencies. The Civil Rights division has the authority to launch pattern or practice investigations targeting systemic violations of constitutional rights or violations of federal statutes governing law enforcement.

Tomorrow will be the first anniversary of the murder of Ahmaud Arbery in Glynn County, Georgia, who was shot to death in broad daylight in the street on camera. But, local authorities chose to look the other way and were it not for the activism of Georgia's NAACP, there likely would not have been any prosecution in that case.

How can Congress equip DOJ's Civil Rights division to launch more and more effective pattern or practice investigations without asking you to comment on the details of the Arbery case? And, how else can the Department of Justice use its authority to ensure that where local agencies violate constitutional rights or fail to uphold the guarantee of equal protection, there's accountability?

GARLAND:

Well, I--I appreciate that you're not asking me to talk about a pending case.

GARLAND:

What I will say is that like many, many Americans, I was shocked by what I saw on videos of Black Americans being killed over this last summer. That's--I do think created a moment in the national life that brought attention from people who had not seen what black Americans and other members of communities of color had known for decades. But it did bring everything to the fore and created a moment in which we have an opportunity to make dramatic changes and--and really bring forth people justice under the law, which is our commitment of the justice department.

So the Civil Rights Division is the place where we focus these--these operations. You're exactly right that pattern and practice invest--pattern or practice investigations are--are the core of our ability to bring actions here, that these lead to all different kinds of remedies, sometimes consent decrees, as--as a potential remedy. We also can--can criminally prosecute violations of constitutional rights.

And we can also provide funding for police departments to reform themselves. I do believe that officers who follow the law and the constitution want that accountability. They want officers who do not to become accountable, because if--if that doesn't happen, their--their--their law enforcement agency is tainted, they lose the credibility in the community. And without the community's trust, they can't bring safety.

So we have this--this--this number of tools, whether we need additional tools in this particular area, I don't know. Obviously, the resources are necessary. Probably going to be like a broken record, in every one of these areas for us to do our job--

OSSOFF:

--And Judge Garland with--with my time, sir--

GARLAND:

--I'm sorry--

OSSOFF:

--Will you commit to working with my office and with this committee to determine what additional authorities the department may need and what resources you may require in order to be able to bring more and more effective pattern or practice investigations where appropriate?

GARLAND:

Absolutely, Senator, I'm sorry to have gone on.

OSSOFF:

No problem. Thank you, Judge Garland. Mr. Chairman, I yield back.

DURBIN:

Thank you, Judge. And thank you, Senator Ossoff. And so only in the Senate, would we characterize a five minute round of questioning as a lightning round. That's what we're going to shift to at this moment. And those senators who wish to ask a second question will have five minutes to do so, and I'm going to kick it off, if I can.

I want to address an issue which doesn't come up very often in this type of hearing, but should. And that is the state of America's federal prisons. We talk a lot about justice under the law, sentencing, enforcement. We know the outcome in many, many cases is that a person is incarcerated for sometimes a very lengthy period of time.

How long that period of time is and how that person is treated in prison should be our concern as well. It's a reflection on our values as a nation, just as many other things are. So the first thing I would say is that I made a serious mistake, along with many others, including the current president in supporting a bill more than 25 years ago, which established the standard for sentencing crack cocaine 100 to 1 compared to powder cocaine.

The net result of it was a failure of policy. It did not reduce addiction. It did not raise the price of crack cocaine, just the opposite occurred. We ended up arresting thousands of Americans and sentencing and lengthy sentences, primarily African Americans. And so I introduced a bill several years ago, the Fair Sentencing Act, which was signed into law by President Obama. And then I worked with Senator Grassley, Senator Lee, who's here today, as well as Senator Booker and others to pass the First Step Act.

The idea was to reconcile some of the injustice in our sentencing under that earlier law. Senator--President Trump, much to our surprise, signed it into law, and even spoke positively about it at the State of the Union. Unfortunately, it has not been implemented, and the provisions in there to prepare people for release from prison as well as to reduce sentences have not been effectively enforced. So point number one, I hope you will put that on your agenda because I'll be back in touch with you to ask.

Second point. The United States has 5 percent of the population in the world, and 20 percent of the COVID infections and deaths. It's a terrible commentary on our failure to deal with this public health crisis. But to make matters even worse, infection rate in federal prison populations is four times what it is in the surrounding community, and more than 230 federal prisoners have died.

We need to have a sensible and humane response to compassionate release in this time of pandemic. Senator Grassley and I have introduced legislation along those lines. And I'm going to ask you to look at that carefully as well.

And the third is, the last item that I'll bring up for your response, was an article written several years ago in the New Yorker Magazine, and I think I may have mentioned this to you, by Dr. Atul Gawande, who is a surgeon in the Boston metropolitan area, a prolific writer and a very insightful man. And he wrote an article about the impact of solitary confinement on the human mind and went further to talk about how people in a perilous situation can be reduced to an inhuman level just by isolation 23 hours a day sitting in the cell by yourself. It--it just has that impact.

And I looked into it to see what was happening at the federal level, I'm happy to report to you that things are marginally better, but only marginally. I think that isolation is cruel and unusual. And has to be used in some circumstances, for an extremely dangerous inmate, but unfortunately, is used in too many circumstances. Now, many states are way ahead of the federal prison system in looking at this issue. I only have a minute left, and it's all yours to react.

GARLAND:

These are all easy, because I had already thought about all of them. And in each case, I think I will be looking at each one of these problems, the First Step Act, both with respect to our--the--if I'm--obviously, if I'm confirmed, the--the First Step Act with respect to the re-entry education that's required so that people don't--are--don't become recidivist, they're able to go into societies. The First Step Act with respect to the coverage of the act as--for retroactive reduction in sentences.

I also, over the years, maybe like you, I've learned more and more about the crack-powder distinction and how, by reading the Sentencing Commission reports about how there seems to be little, if any, support for making that. So I now have the view that there was no reason so I'm very interested in reforming that area.

I--I--I have read but don't know a lot about the solitary confinement issue. But I can't imagine that I--obviously it's required in some circumstances to protect people from other people, but it's not any kind of regular measure for incarceration. So all three of these areas are ones that I was already planning to look at. And I can assure you that I will.

DURBIN:

Thanks, Judge. I see senator Lee is here. And I'm going to recognize him next in the lightning round.

LEE:

Thank you, Mr. Chairman. Judge Garland, consistent with the idea of this being our lightning round, I'm going to start with some questions that can be yes or no. If they require more than that, you can say yes, with this or that minor caveat, but I'd prefer a yes or no, if you can provide one of these. Do you believe that individuals who advocate for the rights of unborn human beings are--are rendered unfit for public office by virtue of having engaged in such advocacy?

GARLAND:

No.

LEE:

Do you believe that efforts to purge voter rolls of individuals who have either died or have left the state in question or require voter identification or are racially discriminatory and an assault on voting rights?

GARLAND:

This one is when I can't answer yes or no, because you're asking about motivations of individuals, some of whom may have discriminatory purpose and some of whom have no discriminatory purpose.

LEE:

Okay. Okay. I think that answers my question there. Because I guess what I'm asking is does an individual, without knowing more than that, is there anything about those comments are sworn support for those positions that in and of themselves would make that person a racist or an assault un voting rights?

GARLAND:

Again, it--there's nothing about the comment itself, but when, you know, there's such a thing as circumstantial evidence, obviously. And if there's enormously disparate impact of--of things that somebody continues to propose, you know, it's not unreasonable to draw conclusions from that. But the mere fact of the statement, no.

LEE:

Do you believe that Republicans in the United States, and by Republicans I mean, as--as a whole, are determined to, "Leave our communities to the mercy of people and institutions driven by hate, bigotry, and fear of any threat to the status quo?"

GARLAND:

I don't make generalizations about members of political parties. I would never do that.

LEE:

I--I appreciate that and wouldn't expect otherwise. The reason I raised these ones is that these are questions that have been drawn from comments made by Vanita Gupta, who has been nominated to be the associate attorney general has advocated for each of these positions.

GARLAND:

Well, Senator I know of Vanita Gupta now quite well, I didn't know her before, but since the nomination, I've gotten a chance to talk with her and speak with her. I have to tell you I regard her as a person of great integrity and a person who is dedicated to the mission of the department, and particularly equal justice under law.

LEE:

Understandable.

GARLAND:

So, I don't know the--

LEE:

--I'm not asking you to weigh in on her, on--on--on her as a person. I'm just talking about the comments.

Let's move on. Would--would an individual's past statements, statements in the past as an adult, declaring that one racial group is superior to another, would statements like that be relevant to an evaluation of whether such a person should be put in charge of running the Department of Justice's Civil Rights Division?

GARLAND:

So, Senator, I've read in the last few days these allegations about Kristen Clarke, who I also have gotten to know, who I also trust, who I believe is a person of integrity whose views about the Civil Rights Division I have discussed with her, and they are in line with my own. I have every reason to want her. She is an experienced former line prosecutor of hate crimes, and we need somebody like that to be running the--

LEE:

--I'm asking about the statement. I'm not asking about her as a person. I'm asking about the statement. Would it--in the abstract, would someone who has made that comment, with that comment itself be relevant to the question of whether that person, having made that statement, should be put in charge of running the Civil Rights Division?

GARLAND:

All I can tell you is I've had many conversations with her about her views about that--about the Civil Rights Division, about what kind of matters she would investigate. They are all--

LEE:

--What--what about anti-Semitic comments? Would those be relevant to someone wanting to run--

GARLAND:

--You know my views--

LEE:

--The Civil Rights Division--

GARLAND:

--About anti-Semitism. I--

LEE:

--Right--

GARLAND:

--No one needs to question those, obviously.

LEE:

I'm not questioning your view.

GARLAND:

I know--I know you're not, but I also want you to know I'm a pretty good judge of what an anti-Semite is. And I have--and I do not believe that she is an anti-Semite, and I do not believe she is discriminatory in any sense.

LEE:

Okay. Tell me this. Judge, you--you are a man of--of integrity and--and one who honors and respects the laws. What assurances can you give us as--as one who has been nominated to serve as the attorney general of the United States, that you, if confirmed as attorney general of the United States, what assurances can you give Americans who are Republican, who are pro-life, who are religious people who are members of certain minority groups, you know, in short, half or more than half of the country, telling them that the U.S. Department of Justice, if you're confirmed, will protect them if--if Department of Justice leaders have condoned radical positions like those ones--those that I've described?

GARLAND:

Look, I'll say again I don't believe that either Vanita or Kristen condone those positions. But--and I--I have complete faith in them. About I--we are a leadership team, along with Lisa Monaco, that will run the department. In the end, every--the final decision is mine. The buck stops with me, as Harry Truman said. And I will assure the people that you're talking about I have--I am a strong believer in religious liberty and there will not be a--any discrimination under my watch.

LEE:

Thank you.

DURBIN:

I might remind the committee that the statements--I might remind the committee that the statements that are being alleged can all be asked of the actual witness. The committee is going to have a hearing on these individuals, and it would only be fair to take the question to them as opposed to asking for a reaction from someone who did not make that statement. Senator Klobuchar?

KLOBUCHAR:

Thank you very much, Mr. Chairman. And I appreciated, Judge, your full throated defense not only religious liberty, which I know is important to Senator Lee, but also of your team and the people that you want to work with going forward. And while the chairman is correct, we can ask questions of those nominees, I think it's important to hear from you with their hearings coming up of your beliefs about how they can do the job. So, I appreciate that. I know both of them and have a lot of respect for them.

GARLAND:

Thank--thank you, Senator. They have skills that I do not have. They have experiences that I do not have. Likewise, Lisa Monaco has experiences in the intelligence world that I do not have. No human being can have all of the skills necessary to run the Justice Department, and I need this leadership team if I'm going to be successful, if you confirm me.

KLOBUCHAR:

Very good. Well, thank you very much. And one thing that we didn't touch on when I asked my first round of questions was the Violence Against Women Act. And I'm going to be working with Senator Feinstein and others on that--this committee to finally get that done.

I don't know if you've followed this, but we've had a--a delay in getting that reauthorized. It's tended to be a bipartisan bill in the past. And I have several provisions in the bill, including one on--to fix a loophole that exists involving--it's called the boyfriend loophole, but it's not as positive as that sounds, about owning--getting guns after people have committed serious crimes.

But the second piece is a bill called the Abby Honold Act, which is a rape victim in Minnesota who worked with us, and Senator Cornyn is my cosponsor of the bill, to be able to do a better job of law enforcement to investigate sexual assault crimes. But just in general, do you want to talk about your views on the Violence Against Women Act and the Justice Department role in training and the like across the country?

GARLAND:

Yes. So, as I know you know, the Violence Against Women Act was pressed by Senator Joe Biden many years ago, and he has a deep commitment to its continued reauthorization, as do I. I was in the Justice Department when we set up the first office for violence against women for the purpose of coordinating departmental programs in this area. I know this requires resources. Both of the examples that you give seem--again, I don't know the specifics, but from the description I can hardly imagine a--a serious disagreement.

We have to do--provide the resources necessary to help rape victims, obviously. And I don't see any reason why you know, somebody who commits a violent crime against a--a--a person but isn't married or have an intimate relationship should be treated any differently than one who does. So, I think I'm all in on the violence against women--re-upping the statute--

KLOBUCHAR:

--Very good--

GARLAND:

--Authorization, I guess.

KLOBUCHAR:

Thank you. Another thing that I've been very focused on, in part because my dad struggled with alcoholism most of his life and has got through that thanks to treatment and recovery, is to give the same kind of opportunity to people in the

criminal justice system. And drug courts are a big presence in Minnesota, as is treatment. We're home of Hazelton Betty Ford, as well as many other fine treatment centers.

And we've worked really hard here. I've led to some of the efforts on diversion with federal courts with drug court. Of course, there's much use of them on state courts. Could you talk about your views on that?

GARLAND:

Yeah. No, I think courts and diversion are an excellent idea for people who have addiction and need to be treated. I think now that the opioid crisis has struck large parts of America, many Americans now understand that sometimes it's just not a question of willpower to turn this stuff down, that this is--these kind of drugs take control of your lives and you just can't do anything about it.

And treating--treating people in those circumstances in the criminal justice system is a--a abuse of them, but also it's a terrible misallocation of resources. So, the drug courts that are able to get people into addiction programs are a godsend, and I--I'm in favor of them.

KLOBUCHAR:

And thank you for also mentioning opioids, which has been such a scourge. We lost Prints in Minnesota because of opioids, but we lost a lot of other people that people may not know their names and a lot of kids to opioids.

Actually, Senator Whitehouse and I, along with Senator Portman, Senator Graham has been involved in this, and many others, Grassley, have been leading the way for a while before people were even identifying this as an issue, and commitment to the treatment side of it, which you've already made just now, but also to the prosecution of synthetic production and distribution, synthetic opioids continues to this day. Could you comment briefly? I think maybe Senator Graham asked about this, but if you could comment.

GARLAND:

Yeah. Yeah, he did. And of course, I think that--that's right.

GARLAND:

The people who are putting the poison into the communities are the ones we should be focusing on and, you know, I think that's what the DEA is well known for doing and I'd like to put as much effort into this as we possibly can.

KLOBUCHAR:

Okay, I see the Chairman is looking at me in a very polite Midwestern way to tell me that my time has expired. So, thank you.

GARLAND:

I'm familiar with the polite Midwestern way.

DURBIN:

Senator Kennedy, your diligence has been rewarded. You have five minutes.

KENNEDY:

Thank you, Mr. Chairman. Judge, I'm really curious about your thinking on this and I don't want my questions to be interpreted as suggestive or inconsistent with your thinking. But, you and I are about the same age, I think.

GARLAND:

I think so. That's right, Senator.

KENNEDY:

What is--when you refer to systemic racism, what is that?

GARLAND:

I think--I think it is plain to me that there is discrimination and widespread disparate treatment of communities of color and other ethnic minorities in this country. They have a disproportionately lower employment, disproportionately lower home ownership rates, disproportionately lower ability to accumulate wealth--

KENNEDY:

--Can I stop you because this five minutes goes so fast?

GARLAND:

I'm sorry.

KENNEDY:

So, you're basically saying there's--there's a disparate impact.

GARLAND:

A disparate impact, which in some cases is the consequence of historical patterns. Sometimes it's the consequence--

KENNEDY:

--Okay, let me--let me ask you this.

GARLAND:

--of unconscious bias and sometimes conscious.

KENNEDY:

When you were at the Department of Justice--

GARLAND:

--yes.--

KENNEDY:

--was the Department of Justice then systemically racist?

GARLAND:

I think each--we look for a pattern or practice in each institution. When you talk about a specific institution, you look for its pattern and practices.

KENNEDY:

But, how do you know what you know? In other words, you say an institution is systemically racist.

GARLAND:

I didn't say any particular institution--

KENNEDY:

--I know. I'm not saying you did. I'm saying if you say an institution is systemically racist, how do you know what you know? Do you measure it by disparate impact, controlling you for other factors?

GARLAND:

Well, the very--

KENNEDY:

--Or do you look at the numbers and say the system must be racist?

GARLAND:

Well, now you've asked me a slightly different question, which I think I have a slightly different answer for.

KENNEDY:

Okay.

GARLAND:

So, the authority of the Justice Department has to investigate institutions, is to look for patterns or practices of unconstitutional conduct and if we find a pattern or a practice of unconstitutional conduct, I would describe that as institutional racism within that institution. That may not be the perfect definition, but that's what I would think.

KENNEDY:

So, it's just a product of the numbers?

GARLAND:

Well, if there is a pattern and a practice. This is not just a question of individual numbers. What we're looking for here under those investigations are patterns. Why is it that, you know, a series of similar events are occurring like that?

Looking into any individual's heart is not something we can do.

KENNEDY:

Who bears the burden of proving that, the institution--

GARLAND:

No. No, no. Like in all matters of law, the burden is on the govern--the investigator to prove, first by investigation, then before a court.

KENNEDY:

Is there any other way to measure institutional racism other than--than the numbers, the disparate impact?

GARLAND:

Well yes, I mean, you could look at large numbers of individual cases in which discriminatory conduct is actually found, intentional discriminatory conduct. Then it's not just a question of numbers.

But, you know, if--if an institution has a very large number of incidents of unconstitutional conduct, the entity is responsible in the same way a corporation is responsible for the behavior of its individuals. It's the same way--same way--

KENNEDY:

--What's the difference, though, between people who are racist and an institution that's racist?

GARLAND:

Now, we do have a cosmic question. But, I think institutions are made up of--

KENNEDY:

--Yeah, but this is important.

GARLAND:

I know. I'm totally with you. I totally agree with that. Corporations are nothing other than the collection of their individuals and the same is true for a public entity, which is in a certain way a corporation.

KENNEDY:

I've got to get one more in. I'm sorry, I've got 24 seconds.

GARLAND:

I'm sorry, you asked a very hard question.

KENNEDY:

--We can talk about this later. But, I want to ask you about this concept of implicit bias.

GARLAND:

--Yeah.--

KENNEDY:

Does that mean I'm a racist no matter what I do or what I think? I'm a racist but I don't know I'm a racist?

GARLAND:

Okay, that--the label racist is not one that I would apply like that. Implicit bias just means that every human being has biases. That's part of what it means to be a human being. And, the point of examining our implicit biases is to bring our conscious mind up to our unconscious mind and to--to know when we're behaving in a stereotyped way.

Everybody has stereotypes. It's not possible to go through life without working through stereotypes. And, implicit biases are the ones that we don't recognize in our behavior. That doesn't make you racist, no.

KENNEDY:

Who judges that? Doesn't the person judging me have his own implicit bias? How do I know his implicit bias isn't worse than my implicit bias?

GARLAND:

I agree, but I'm not judging you, Senator, and I don't know--

KENNEDY:

--I'm not asking you--

GARLAND:

--Who would be judging--

KENNEDY:

But, somebody, if you say, "You have implicit bias," that's a pejorative statement. I'm not saying you're being mean. You're not a mean guy. That's obvious. You're a nice guy.

If you say somebody has implicit bias, somebody's got to make that subjective judgment and the person making that subjective judgment has implicit bias if it's part of being a human. Then how do you know who wins?

GARLAND:

Fair enough. But, if we say that all people have implicit bias, it's not--you shouldn't take it as pejorative. This is just an element of the human condition. So, you shouldn't take that as pejorative. Implicit bias is just a descriptor of--of the way people's minds--everyone's mind works.

KENNEDY:

How about if you say that America has racist in it, just like everybody else? Does that--just like everywhere else. Does that make America systemically racist?

GARLAND:

I think--I don't want to waste your time because I think this is what I said before. What I mean by systemic racism is the patterns of discrimination and disparate treatment across the country. It doesn't mean that any particular individual is a racist.

KENNEDY:

Judge, I'm in big trouble. I've gone way over.

DURBIN:

I'm developing a bias. Thank you for the exchange.

GARLAND:

It's a pleasure--a pleasure talking with you, Senator.

KENNEDY:

Same here, Judge.

GARLAND:

Appreciate it.

KENNEDY:

You'll be a good Attorney General.

DURBIN:

All right, so I'd like to let the committee know that Senator Hirono will be the next up and then we're going to take a break and return to five-minute rounds. Senator Hirono, are you tuned in?

HIRONO:

Yes, I am. Thank you, Mr. Chairman. I would like to ask, well what I think is a very straightforward question. Over the past couple of years, the Justice Department has initiated a number of efforts related to missing and murdered indigenous people and women, including U.S. (INAUDIBLE) pilot projects in Alaska and Oklahoma to implement tailored tribal community response plans.

To what extent do you plan to continue to focus on these and other regional engagement efforts that could help address the missing and murdered indigenous people crisis?

GARLAND:

Well, I--I certainly do intend to continue those. Again, when--last time I was in the Justice Department at the Office of Tribal Justice was established and I believe from looking at the organization chart that it is still there. This is an important aspect. We have a responsibility to indigenous peoples, both statutory and otherwise, to protect.

And, you know, many of our problems in this country are regional and we must focus our resources on problems that are regional. Not every problem is a national one and our regional problems have to be addressed directly with respect to the problems caused in those regions (OFF-MIC).

HIRONO:

Thank you, (INAUDIBLE) this is--I think this is an under--possibly underreported and definitely we don't get enough attention to what is happening to murdered and missing indigenous women and people. I think we need to put a lot more emphasis on what's going on there.

Now, the past four years have seen a reawakening of right-wing extremism. Last year, FBI Director Wray testified that the greatest domestic threat--terrorist threat facing the United States is white extremist groups. And of course, last month, we had the insurrection at the U.S. Capitol led by white supremacists and right-wing extremists. Late last month, the New York Times reported that President Trump, with the help of his Attorney General, Barr, diverted law enforcement resources from combating the serious threat posed by right-wing extremist groups. Will you reprioritize Justice Department resources to address white supremacists and other right-wing extremists?

GARLAND:

Yes, Senator. If anything was necessary to refocus our attention on white supremacists, that--that was the attack on the Capitol. And I expect to put all departmental resources necessary to combat this problem into this area, to make sure both our agents and our prosecutors have the numbers and the resources to accomplish that mission.

HIRONO:

Thank you. My next question has to do with immigration courts. And we discuss immigration and the courts when we were able to meet a few weeks ago. And it's worth highlighting that under the Trump administration the backlog of cases pending in the immigration court has exploded to almost 1.3 million cases.

That is an amazing number. In some jurisdictions, the wait to hear case for years and there are cases that have been pending for more than five years. And this not only affects families trying to reunite, but students trying to study or train in the U.S., victims of crime, are working with law enforcement, and members of our military trying to adjust status. 1.3 million backlog. How will you address this backlog and increase the efficiency of the immigration courts?

GARLAND:

This is an extraordinarily serious problem, looking from my pampered perch as an appellate judge who has a limited number of cases and weeks and weeks to study those and then weeks and weeks to write those, I can't imagine how judges can operate under the conditions that you described and that I have heard, even from other judges exist. When I get into the Department, if I'm confirmed, I will certainly look into what can be done about this.

I suppose this must mean an increase in a number of resources and judges. It must mean some ability to--to give to the judges to prioritize their cases. Even in our own appellate courts, we have developed ways in which we handle some cases more swiftly and some cases take longer. Some cases are some barely resolved. Some require full opinions.

Some way of evaluating this is required. But I can't give you any specific examine--idea with respect to court administration, which I know something about but not enormous about, until I have a chance to get into the Department, if confirmed, and to understand what the cause of this huge backlog and number of cases is.

HIRONO:

There is an executive office or immigration review that oversees these, but I think the really important thing is an acknowledgement that this kind of serious backlog has got to be addressed. And we--because lives are at stake here. Thank you, Mr. Chairman.

DURBIN:

Thank you, Senator Hirono. We're going to break now and come back at five minutes after 3:00.

(RECESS)

DURBIN:

The committee resumes, and I'm going to turn to the ranking member, Senator Grassley, five minutes. Go ahead.

GRASSLEY:

Thank you. Judge Garland, when I talked to on the phone, I said I was going to give you a binder--I'm not going to ask you to come up and give it and I'm not going to take it down to you, but I'll have my staff give it to you--of letters going back to the last two years of the Trump administration that haven't been answered the Department, and also maybe just a very few letters of the recent administration. So, I hope that you will do what you can to get those answered so six months from now I don't blame you. It's the fact that the Trump people didn't answer it.

GARLAND:

I--I would like to keep the blame on the--my predecessor, yes, Senator.

GRASSLEY:

Okay. Thank you. And then I'm going to say something about your answering questions for us, and this goes back--now that I'm ranking member, I want to give you a quote that I said to Senator Sessions when he was sitting where you are. And if Senator Feinstein contacts you, do not use this excuse as so many people use, that if you are not a chairman of a committee, you do not have to answer the questions. I want her questions answered just like you would answer mine. So, I hope that, whether I'm ranking member or chairman of the committee, you will help me get answers to the questions. And I hope Senator Durbin will do the same thing.

GARLAND:

I will not use any excuse to not answer your questions, Senator.

GRASSLEY:

Thank you. And then, the other thing is just--I don't want to dwell on Durham, but several people have asked you and you've given the same answer. And I understand why you give that answer, but would it be impossible for you to have some sort of a briefing on Durham between now and the time you get written answers back so you could give us a more definitive answer?

GARLAND:

So, I--I don't think it's appropriate. I mean, I assume, among other things, that the Durham investigation--

GRASSLEY:

--I'll--I'll accept your answer.

GARLAND:

Okay.

GRASSLEY:

You don't need to go any further.

GARLAND:

Yeah.

GRASSLEY:

Okay. Then let's go to a subject of domestic terrorism. And that--and obviously, in a democracy, we need to be able to disagree with each other without violence. Political extremism, the willingness to use violence advocate one's political views on either side, is a threat to our democracy. The Capitol attack shows us that very directly.

I think you've answered this question and--and so, just a very short answer. I think you've assured all of us that the Justice Department has all the necessary resources to investigate and prosecute all cases connected to the attack on the United States Capitol.

GARLAND:

I can't yet say we have all the resources. What I said was I would--I would look into the question of whether we--I just don't know.

GRASSLEY:

Okay.

GARLAND:

But we certainly have--we certainly have authorities to look into it. Whether we have the money and the--and the--and the person power, I just don't know yet.

GRASSLEY:

Okay. Then likewise, in the previous year there have been numerous attacks not only on other institutions of the government, like the White House and the federal courthouse in Portland, but on hundreds if not thousands of police officers who were injured, as well as on fellow citizens and their businesses, particularly small businesses.

The Justice Department over--opened over 300 domestic terrorism cases due to that violence and started an antigovernment extremism task force. So, I hope you could commit absolutely, as you did for the Capitol rioters, that you will see those investigations of the 2020 riots and continuing Antifa riots in the Pacific Northwest through to the very end.

GARLAND:

Look, the--the--the Justice Department--I think Director Wray said it exactly right, which is we investigate violence. We don't care about ideology.

GRASSLEY:

Okay.

GARLAND:

If there are investigations going on like those, then of course they're going to continue.

GRASSLEY:

Okay. And then taking off a little bit what you referred to what the FBI said, former Attorney General Barr noted that the FBI, while it had robust programs for white supremacy--supremacy [sic] and militia extremism, lacked a similar infrastructure for anarchist extremism cases. Former acting Department of Homeland Security Secretary Wolf stated that this may have contributed to law enforcement being blindsided by the civil unrest that became--that began in 2020.

So, I hope that I can get you to say that you would be willing to review your anarchist extremism program for weaknesses and fixing those weaknesses based upon what Barr said, that the FBI said, that they had better programs to con--to go after white supremacy than they did other anarchist extremism.

GARLAND:

You know, I think we need to go after violence from whatever direction, left, right, up, down. It doesn't make any difference. We need to go after--to go after that. I think what Director Wray had said was the--what he was most concerned about was the--a rise of white supremacist extremism as an element of domestic terrorism. But it doesn't matter what direction it comes from. It doesn't matter what the ideology is. We have to investigate it.

GRASSLEY:

I guess my time's up. I'm going to have a lot of questions for him. I'm going to have a lot of questions for answer in writing.

GARLAND:

Fair enough.

DURBIN:

So, I'm--I want to try to give an indication of the sequence. Dick Blumenthal is going to be next, and then on the Republican side I think it's going to be John Cornyn. Then it'll--it'll either be Senator Ossoff or Senator Booker. They can arm wrestle until I have to make that decision. And then Senator Cotton, I believe, you were the next arrival. This has become kind of a--a little difficult to predict, the sequence. I want to make sure you see it coming.

BOOKER:

I--I would never want a rookie senator go between Cotton and Cornyn, so I'll--I'll go there.

(LAUGHTER)

DURBIN:

Senator Blumenthal?

BLUMENTHAL:

Thanks, Mr. Chairman. I want to pursue a couple of the questions that I was asking when we ran out of time, just to say that on the issue of climate change, President Biden as a candidate committed to hold accountable the oil and gas industry for any lies or fraud they had committed in denying the effects of climate change. And I hope you'll take that into consideration in determining what the Department of Justice will do in those kinds of cases, pursuing any kind of pollution or climate change or lies in connection with the oil and gas industry.

And just to kind of ask a threshold question, do you have any doubt that human beings are a cause of climate change?

GARLAND:

No, no doubt at all.

BLUMENTHAL:

Thank you. You--you may--

GARLAND:

--That wasn't a trick question, I guess.

BLUMENTHAL:

It wasn't a trick question.

GARLAND:

Okay.

BLUMENTHAL:

I ask it because the last major nominee before this committee back in September, it was a Supreme Court nomination, seemed to have some trouble with the question, but I'm glad you don't.

Let me move to this--the issue of racial discrimination, which has been pursued. And I really welcome your very sincere and passionate commitment to ending racism and racial injustice. We're in the midst of a racial justice movement right now. One of the areas that most concerns me is holding accountable public officials when they violate individual rights and liberties.

As you know, Section 242 makes it a federal crime to willfully deprive a person of their constitutional rights while acting under color of law, but prosecutors have to show that that public official had specific intent to deprive constitutional rights which, as you also know, is a pretty high bar. I believe, and I have advocated we, in effect, lower the state of mind requirement in Section 242 from willfully to knowingly or with reckless disregard, because this stringent mens rea requirement makes Section 242 prosecutions rare or impossible.

And so, I hope you agree that we need to adopt measures that will enable criminal accountability where all of the elements of the crime are committed and the mens rea intent requirement can it, in effect, fit the crime.

GARLAND:

Well, what I can agree is that I--I'll consult with the career lawyers in the Civil Rights Division, who are the ones who are--would be bringing these cases and who have brought them in the--in the past.

GARLAND:

I actually just don't know. I know everyone says that they're very difficult to make. On the other hand, in the Clinton administration, we did successfully make quite a number of those cases. So, I'd like to know from talking to them what kinds of changes might be necessary in the statute and what the consequences of changing the mens rea requirement would be.

BLUMENTHAL:

Thank you. I'd also like to ask you about Section 230. I've proposed various measures, one of them actually adopted into law and signed by the president. It imposes accountability on the Big Tech platforms for certain kinds of really horrific material, human trafficking under SESTA and Senator Graham and I have led an effort. It's called the Earn It Act to hold accountable the tech companies for spreading child sexual abuse material.

I think reform of Section 230 is long overdue. I led these kinds of targeted and indeed bipartisan efforts to revise Section 230 to hold Big Tech accountable and I hope that you will consider joining with the Congress in those kinds of targeted deliberate efforts to reform Section 230, which no longer fits the world that currently it applies to.

GARLAND:

So, I don't know that much about 230 except for the case I mentioned that I'd worked on myself, which was a pretty direct application of the provision. I know that a number of members, including you spoke to me about this in our meetings and I know people have different views about how it should be altered. I really would have to study that, but I'm very eager to study that. There's no doubt the Internet has changed from when 230 was originally adopted. So, I would be eager and interested in studying it and speaking with the members about it.

BLUMENTHAL:

Great. Thank you very much.

DURBIN:

Thank you, Senator Blumenthal. Senator Cornyn.

CORNYN:

Judge, are you familiar with Title 42, which is a public-health measure which restricts traffic across the international border as a public-health measure to mitigate the spread of COVID-19? Are you familiar with that?

GARLAND:

I--I don't know the statute specifically. You know, I know that there must be provisions that do that, but I don't know the statute, no.

CORNYN:

Well, one of the things I hear from the Border Patrol and Customs and Border Protection is they're fearful that when the current Title 42 restrictions on cross-border traffic are lifted, there will be no plan in its place and certainly no transition back to normal cross-border trade traffic and visit.

And, this is a huge issue that I've raised with the--with Director Mayorkas and others as well and I just wanted to make sure that's on your radar screen. But, I also want to take up what Senator Hirono was talking about, the 1.2/1.3 asylum cases that are backlogged. There's no way that the United States government is ever going to clear that backlog, but I want to suggest to you that that is part of a conscious strategy by the cartels, who--who make a lot of money moving people across the border into the United States, along with drugs, whether it's human trafficking, whether it's, as I said, drugs, whether it's just migrants who are trying to flee poor economic circumstances and dangerous conditions in their home country.

But, if the Biden administration is not going to enforce current laws with regard to immigration and many people are suggesting, including the nominee for Health and Human Services, that we ought to give free healthcare to people who are not legally

in the country. All of this is going to be a huge incentive for more and more people to immigrate illegally into the United States and obviously the Department of Justice has a very important role to play there.

But, I want to suggest this is not an accident. This is not a coincidence. This is part of a conscious strategy by the cartels to who are enriched by each and every person, each and every load of drugs that comes across the border.

And, I hope that you will commit to working with me and all the other members of Congress to try to address this humanitarian and public-health crisis in addition to the other aspects of immigration. Will you agree to do that?

GARLAND:

Certainly, I will commit to working with members of Congress to address the public-health crisis. To say--I wasn't aware that the cartels were doing this, but this seems like something that the Justice Department needs to focus on.

CORNBYN:

Well, different times it's referred to as transnational criminal organizations, cartels. Basically it's people who are engaged in criminal enterprises for money. That's--that's why they do it. They care nothing about the people that they leave some to die in route to the United States. All they care about is money. So, I appreciate your willingness to work with me and others about that.

China and Russia, to a lesser extent, have perfected cyber espionage on the United States for many reasons but in part to steal our intellectual property. The billions of dollars that Congress appropriates for development of the next generation of stealth fighter to nuclear modernization, you name it, if the Russians and the Chinese can get it without making those investments and the years long delay necessary to--to roll them out, they have a tremendous advantage in terms of competing with us economically and also militarily.

Eighty percent of all economic espionage cases brought by the Department of Justice involve the Communist--Communist China and there are at least some nexus to China in about 60 percent of all trade theft cases.

I've told people that Director Wray, who's a pretty stoic individual, gets positively animated when he begins to talk about the role that China is playing and its rivalry with United States, both from an economic standpoint. And, if you look at the South China Sea and some of its aggressive and boisterous actions there, with the potential for military conflict in some future, this is our number one--number one challenge I believe today as we speak here.

Do you--do you share my concerns about China's role as a rival in the world, what they're doing in terms of stealing intellectual property and what that means to us economically and from a national security perspective?

GARLAND:

Well Senator, I don't have any inside information with respect to what the intelligence agencies know. But, I've read quite a lot about this and it seems quite clear to me that the Chinese are involved in hacking, of stealing our intellectual property.

We're in an age where individual espionage prosecutions don't--don't quite cut it, given the Internet and how so much can be stolen in just a single hack. So, this has to be an all of government response to this problem. There has to be a forward look as to what's happening to us.

There has to be a defensive look. I know that that's the purpose of Cyber Command. That's certainly something that the DNI is very concerned about and then of course the FBI with respect to enforcement. But, this is a dangerous problem for all the reasons you said and it requires a whole-of-government response.

CORNYN:

Thank you.

DURBIN:

Thanks, Senator Cornyn. Based on who is present and apparently interested, Senator Booker, Senator Cotton, Senator Ossoff, Senator Hawley. Those are the ones I see. So, Senator Booker.

BOOKER:

Thank you very much, Mr. Chairman, and thanks for the grace of Senator Ossoff for allowing me to go before him.

I'd love to just jump in real quick if I may and a lot has been talked about your incredible walk with the Oklahoma City bombing, but I'm also aware that you have a long record of working on domestic terrorism in pretty significant ways in the mid-1990s in response to a wave of bombings and arson attacks against black churches in the South and other houses of worship.

The Clinton administration formed a national task force where you in your leadership, along with others, helped to make this Justice Department a priority, resulting in several hundred investigations and arrests. And, I--I just really appreciate the totality of your record on fighting domestic terrorism.

I do just really quickly just wonder, just in terms of proportionality, since that time until now, we've seen just this rise of right-wing terrorist attacks in our country. In fact, since 9/11, the majority of domestic terrorist attacks have been right-wing extremist groups. The majority of those have been white supremacist groups.

And, I'm just hoping--and again you're not in the position. God willing you will be, but just the proportionality of the resources we are directing towards trying to stop the scourge of domestic terrorism. Is this something that you will look at in terms of the degree of the resources of the agency?

GARLAND:

Yeah. As I said, I think the first thing I should do as part of the--my briefings on the Capitol bombing are briefings with Director Wray as to where he sees biggest threat and whether their resources of the Bureau and of the Department are allocated towards the biggest threat and the most dangerous and direct threat. We do have to be careful across the board. We can never, you know, let--let somebody sneak around the end because we're not focusing but we also have to allocate our resources towards the biggest threat.

BOOKER:

Great. And I'd like to shift back to marijuana. Our earlier conversation, we were talking about the systemic racism there that has--I've watched tons of friends in elite colleges not worrying at all about being arrested for marijuana, while the inner-city black and brown community live into--it's a much different reality, much different set of laws applying to them.

But I actually want to get to the good news, I think in the United States of America is that red states, blue states, America, general, if you want to call those states that way, American states are moving towards more and more legalization, medical marijuana, loosening up of laws, decriminalization. It's an amazing thing. But the federal government is out of step with that, right, as of now. And I hope to work in a bipartisan way to see if we can advance the federal government maybe to delist the legislation. Think of some restorative justice elements.

Just today New Jersey signed its first major effort, legalization and restorative justice. But one thing I--that was done by the Obama administration was putting forward a--the Cole Memorandum, as I'm sure you're aware. But Attorney General Jeff Sessions rescinded the Cole Memorandum, which gave guidance to us attorneys that the Federal marijuana prohibition should not be enforced in states that have legalized marijuana in some form.

And so do you think that the guidance in the Cole Memorandum to deprioritize marijuana enforcement should be reinstated? That is, should the Justice Department respect state's decisions on marijuana policy?

GARLAND:

So I don't have every element of the Cole Memorandum in mind, but I do--do remember it and I have read it. This is a question of the prioritization of our--our resources and prosecutorial discretion. It does not seem to me a useful use of

limited resources that we have to be pursuing prosecutions in states that have legalized and reg--and that are regulating the use of marijuana either medically or otherwise. I don't think that's a useful use.

I do think we need to be sure that there are no end runs around the state laws that criminal enterprises are doing. So that kind of enforcement should be continued. But I don't think it's--it's a good use of our resources where states have already authorized. And it only confuses people, obviously, within the state.

BOOKER:

So real quickly, the violence against black trans Americans is unconscionable, with many murders every single year. The bullying and violence against a lot of trans children. About a third of LGBTQ American children report missing school because of fear, fear of violence and intimidation. Is this something that you will make a priority to protect all children from violence and discrimination, as particularly in this case, transgender children--and transgender children? And would you also commit to taking seriously the targeting of transgender adults, specifically with the trend we're seeing with the alarming number of murders of black trans--black transgender (INAUDIBLE)--

GARLAND:

--These are hate crimes, and it's the job of the Justice Department to stop this, to find them, to enforce, and to penalize. And that's what the section of the special litigation unit in the Civil Rights Division is intended to do. There is the Shepard Byrd Act, which was particularly aimed at this and I think it's--I'm not sure whether it needs broadening. But it's clear to me that this kind of hate--hateful activity has to stop. And yes, we need to put resources into it.

BOOKER:

Thank you for your time. I look forward to voting for your confirmation. And I'm going to stop here because I do not want to make Tom Cotton mad at me.

DURBIN:

So the remaining senators for five minutes each, Senators Cotton, Ossoff, Hawley, and now Senator Whitehouse is going to make a return. Senator Cotton.

COTTON:

Judge, I want to return to where we stopped this morning. The question of racial equality, specifically, race discrimination, higher education. Last year, the Department of Justice sued Yale University, for discriminating against students on the basis of race. Based on Yale's own data, if you look at one of its top academic categories--when you control for academic achievement--the admission rates by

racial categories were as follows: Asian Americans, 6 percent. White applicants, 8 percent. Hispanics, 21 percent. African Americans, 49 percent. Do you think that evidence suggests discrimination based on race in Yale's admissions process?

GARLAND:

So again, I'm--I--my best recollection is that between my nomination and now the Department has made a decision about that.

COTTON:

The case was voluntarily dismissed on February 3rd. It's no longer a pending case.

GARLAND:

So my recollection is correct. So these kinds of cases, obviously depend on application of the Supreme Court's opinion in the Grutter case and the Fisher case. And they require a lot of factual development and examination of the facts. These cases do not only depend on--on--disparate statistic--disparate statistics, but on all the factors. The Supreme Court instructed the lower courts and the government as to what kinds of affirmative action in higher education are permissible and which ones aren't. So I can't--I honestly can't draw any conclusions without knowing the facts of the case.

COTTON:

So some of that Supreme Court case law about racial discrimination, higher education says that race can only be used as a plus factor. It can't be decisive in practice, it can't be a defining feature can't be the predominant factor. When Asian American kids are eight times less likely to be admitted in the same band of academic achievement, you don't think that at least suggests a facial case of racial discrimination of Asian Americans?

GARLAND:

Well, I think that's--that's the question that you look at for the underlying facts to know. Your--I think--I don't remember exactly the words of the Supreme Court opinions, but they seem pretty much exactly, you know, what--what you just said. You can't have a rigid quota, you can't have a fixed--this was the consequence of the Gratz case, which was the companion case to Grutter. Grutter was the University of Michigan law school. Gratz was University of Michigan as a university.

With respect to Grutter, the Court said it was a holistic approach and was permissible. With respect to Gratz, it said it was a fixed ratio or a fixed number and not permissible. But those are things you find out by discovery in the case and you--examination of what the actual practices of--of the university were. And I have no idea what they were.

COTTON:

Judge, did anyone in the Biden administration consult with you about the decision to drop the lawsuit?

GARLAND:

--No--

COTTON:

--Against Yale University?

GARLAND:

No, no, I've--I have assiduously kept out of those. It's not my--it's not appropriate for me to be examining anything like that, unless you confirm me.

COTTON:

Will the Department of Justice, under your leadership, pursue cases of obvious racial discrimination and higher education?

GARLAND:

Well, if you put it that way, the answer is, of course, yes. Obvious cases--

COTTON:

--Well, I think this presents an obvious case of discrimination against Asian Americans. I suspect some Asian American parents and their kids are a little disappointed in those answers, Judge. I want to turn to the--

GARLAND:

--I just want to say, I'm only giving the answer to what the Supreme Court said the law was. I can't do any better than that.

COTTON:

Eight times less likely to be admitted.

GARLAND:

All I--my answer was you have to look at the facts inside--

COTTON:

--Okay, I want to turn to another very important topic, which is the rising rates of violent crime in the country. According to FBI's crime statistic--statistics, only 45 percent of violent crimes in this country result in an arrest. Would it be better or worse if 100 percent of violent crimes in this country resulted in arrest and prosecution instead of just 45 percent?

GARLAND:

Would be better if--if you gave--if Congress gave the Department enough money to arrest every single person? I--I assume you're talking about state crimes and--and federal crimes.

COTTON:

That's according--yes. Department of Justice, FBI crime statistics. 45 percent.

GARLAND:

So those--almost all are a large percentage, you're talking about local crime. So, yes. Better to--

COTTON:

--Do you think the Department--do you think that Department today solves too many crimes or prosecutes too many criminals?

GARLAND:

The Justice Department?

COTTON:

Yes.

GARLAND:

I think it may bring charges in areas which are not a good allocation of its resources, but I don't think it has sufficient resources to, and probably never will, to pursue every crime. That seems impossible.

COTTON:

One final point, Judge, I just want to get on the record. We spoke about this last week in our telephone call about the importance of state and local law enforcement to work together in a collaborative and cooperative fashion--profession--or fashion or fashion with the Department of Justice, both its local U.S. Attorneys and the law enforcement over--agencies that you ever see.

I was glad to know that you agree with me those partnerships are vital to reduce crime and keep our community safe. I just wanted to have--give you the chance to put that on the record today.

GARLAND:

Yes, absolutely. You know, my experience in Oklahoma City was close cooperation with the DA's office, the local police there and with the governor and with the state police. I think these joint task forces are an exceedingly good idea. They're a force multiplier, so I--I'm completely on board with this, yes, sir.

COTTON:

Thank you, Judge.

DURBIN:

Senator Ossoff?

OSSOFF:

Thank you, Mr. Chairman. Hi again, Judge Garland. I want to return to the question of the Department's authorities and mission to defend voting rights, and note that Sunday would have been Congressman John Lewis's 81st birthday. And as you know, he committed his life and indeed nearly lost his life in the struggle for voting rights.

But as we speak, Georgia's state legislature is considering legislation that would make it harder for Georgians to vote; for example, to end Sunday early-voting, which is used heavily by black and working-class voters, to cut the window during which voters can participate via absentee ballot, which would make it harder for seniors to vote. And I'm not asking you to comment on these specific bills, but what I'm hoping you can provide is an assurance that the Department of Justice will diligently and fully enforce constitutional and statutory guarantees of the rights to vote.

GARLAND:

I give you my complete assurance, yes, Senator.

OSSOFF:

Thank you so much. I'd also like to discuss with you resources available for public defender's offices around the country. And a visit to a municipal court in any major American city will reveal that a steady stream of low-income defendants, lacking the resources to hire their own attorneys, are often represented by overworked and under resourced public defenders, which contributes to class and race bias in the justice system and, in my view, is an affront to the constitutional guarantee of due process as well as of equal protection.

So, will you work with my office and this committee to determine whether grant programs, which may already exist at the Department to support local public defender's offices, or way--which may need to be created, can be considered in legislation that this committee and the Senate may consider?

GARLAND:

Yeah, I--I will, Senator. There is no equal justice in the United States unless everybody has equal access to justice. My own experience, our federal public defender's office is terrific. It needs resources, the federal public defenders across the country. I've tried my best, when I was in an administrative position, to provide as many resources as possible, the same for our lawyers who volunteer under the Criminal Justice Act.

The difference between having an excellent lawyer and not can make all the difference in the world. And I--I think we should give all the resources that we can. And with respect to the local courts and local public defenders, it would have to be through grant programs. But of course to--to the extent Congress is willing, I--I'm strongly in favor.

OSSOFF:

Well, I appreciate that answer, and I--I look forward to working with you, I hope, and the chairman and ranking member on those grant programs.

And--and finally, I want to return to the discussion that we had earlier about pattern or practice investigations. And I just want to urge you that, if you are confirmed and as you take this office, and there will be so many demands on your time and your attention and important missions for the Department to fight violent crime and to defend our national security, that you personally exercise leadership within the Department to ensure that the Civil Rights Division's mission is elevated and emphasized, and that you come to this committee to seek and to secure any resources that you need to make that real.

And just illustrate why I believe that so important, the South Fulton Jail in my home state of Georgia has been known to the public for years to have appalling conditions for incarcerated people. And actually, in the last month, a federal court ordered changes to practices within the jail, but it was after years of litigation. The U.S. Attorney's office did file a brief in the case, but the litigation was brought by independent, nonprofit plaintiffs, years it took for changes to be ordered by a federal court.

I'm going to read you a quote from the plaintiff's brief to illustrate the conditions in this jail, and I want to warn the public viewing this on television that the material is graphic. "The cells were covered in bodily fluids, rust, and mold. In these conditions, the inmates deteriorated, leaving them incoherent, screaming unintelligibly, laying

catatonic, banging their heads against walls, and repeatedly attempting suicide." This refers to the solitary confinement of women with severe psychiatric disorders in the South Fulton Jail in Georgia, and these conditions are not unique to this facility.

So, I want to urge you and ask you one more time, please, respectfully, Judge Garland, your commitment to elevate this mission within the Department and to work to secure the human rights of incarcerated people and the American public with all the power you'll have in this position.

GARLAND:

Well, you have my commitment that--that the civil rights division has responsibility and some authorities in those areas and--and so, is quite capable of pursuing these kinds of cases. I took to heart what Chairman--the Chairman said with respect to the role that Robert Kennedy played when he was the Attorney General, and I regard my responsibilities with respect to the civil rights division as--at the top of my major priorities list. So, you have my commitment to do everything I can in this area.

OSSOFF:

Thank you. And just with the chairman's indulgence, Judge, will you commit to reviewing any materials that are sent to you by Congress or by entities such as the NAACP or the Southern Center for Human Rights where it pertains to conditions of incarceration?

GARLAND:

So, I--so that I have some time to be able to read everything that I--I need to read, if it's all right with you I'll commit to being sure that the head of the Civil Rights Division and the associate attorney general, Ms. Clark and Ms. Gupta, who are directly responsible, do that and then brief me about it. I--I will, to the extent possible, read them myself, but I've already committed to--to reading a 400-page document and there are only so many hours in my day.

OSSOFF:

Understand. The Department's condition is what I'm looking for, so thank you so much. Thank you, Mr. Chairman.

DURBIN:

Senator Hawley?

HAWLEY:

Thank you, Mr. Durbin. Judge Garland, I like to talk a little bit more about the law enforcement challenges at the border, which I know a number of other members have run up with you. Just a--a fundamental question; do you believe that illegal entry at America's borders should remain a crime?

GARLAND:

I haven't thought about that question. I just haven't thought about that question. I--I think, you know, the president has made clear that we are a country of--with the borders and with a concern about national security. I don't know of a proposal to decriminalize but still make it unlawful to enter. I just don't know the answer to that question. I haven't thought about it.

HAWLEY:

Will you continue to prosecute unlawful border crossings?

GARLAND:

Well, this is, again, an--a question of allocation of resources. We will--the Department will prevent unlawful crossing. I don't know--you know, I--I have to admit I just don't under--know exactly what the conditions are and how this is done. I think if--I don't know what the current program even is with respect to this, if there--so, I--I--I assume that the answer would be yes, but I don't--I don't know what the issues around--surrounding it are.

HAWLEY:

Let me ask you about the guidelines on asylum eligibility that issued as part of the Executive Office of Immigration review. The--your--your predecessors have--have issued quite a number of guidelines about asylum eligibility. Several senators, Senator Hirono, I think Senator Cornyn, talked about the very significant backlog that we have currently in asylum cases. Will you continue to use--keep enforce the current guidelines on asylum eligibility, or do you anticipate changing them?

GARLAND:

Again, given my current professional occupation, I--I have had no experience whatsoever with the guidelines, so I can give you direct answer to that question. Asylum is part of American law and the Justice Department and the State Department have an obligation to--to apply the law. I don't know what the guidelines are that you're talking about, and I don't know even about the rescissions of the guidelines that you're talking about.

HAWLEY:

Will you--if confirmed, I'm sure that you'll be reviewing this and considering these questions. Will you pledge to keep us fully posted as you do so?

GARLAND:

Yeah, if there's a change in the government policy, if I'm confirmed, of--of course that will be a public change because you can't apply those kind of guidelines without making them public.

HAWLEY:

Let me turn to the subject of antitrust.

GARLAND:

Um-hmm.

HAWLEY:

I heard your answer to Senator Blackburn about the ongoing Google antitrust prosecution. I believe your answer was you did not anticipate any changes in that ongoing prosecution, that it--the case would go forward. Did I hear you correctly? Is that right?

GARLAND:

I don't want to talk about a pending case

GARLAND:

because it is, after all, a pending case and just what a judge can't talk about. But, as true with most of our investigations, I--you know, when I get in, if I'm confirmed, I will examine them. But, I don't have any reason to think that I would stop that kind of investigation.

HAWLEY:

Recent news--recently news outlets, various news outlets, have reported that Susan Davies being considered to lead the DOJ Antitrust Division. Susan Davies, of course, has defended Facebook from federal antitrust laws. Facebook has been another target of antitrust scrutiny.

Do you think it's appropriate to have someone who is a defender of these massive corporations leading the Antitrust Division?

GARLAND:

Well, let me say a number of things in response to this. First of all, the Department has recusal rules, which prevents somebody who had a role from taking a role in a case like that. Susan Davies is a fantastic lawyer, a woman of enormous integrity, and I have every confidence that were she in that division, she would proceed as completely appropriate.

But, it turns out that the press reports are completely incorrect. So--

HAWLEY:

--She's not under consideration?

GARLAND:

No, not that I know of, no.

HAWLEY:

And is--and is not going to be, to the best of your knowledge? (INAUDIBLE).

GARLAND:

--I don't--look, I don't think either she or I have aspirations for her to be in the Antitrust Division. So, I'm not exactly sure where this came from, but she is a woman of remarkable ability who has helped me in my previous role and I would be very eager to rely on her good judgment and her--and a woman of strong ethical judgment.

So, if she were in a position, any position anywhere in the Department, she would know when to recuse or not. But, this particular issue, she's not--as far as I know, she's not going to be in the Antitrust Division, not because she wanted to be or I wanted her to be in there and because somebody says she couldn't.

HAWLEY:

Good. Well, I think that's news I think and welcomed news and I just want to register my own point of view here, which is I think that the recusal or not, the message it would send--the Google case is perhaps the most significant antitrust case the Department has undertaken since Microsoft, easily, maybe more significant than that because Google, frankly, is significantly more powerful than Microsoft was.

The message it would send to have a lawyer defending these massive companies (INAUDIBLE)--

GARLAND:

--Well, I don't--I don't know who is sending this message or why this message was being sent. But, there is no--I don't have any intention of this, but I am confident that had this been the case, this would not be a problem.

You know, unfortunately or fortunately, a lot of the best antitrust lawyers in the country have some involvement one way or another in some part of--of Big Tech and we can't exclude every single good lawyer from being able to be in the division. But, that's not an issue, nothing you need to be concerned about.

HAWLEY:

Thank you, Judge. Thank you, Mr. Chairman.

DURBIN:

Senator Cruz.

CRUZ:

Thank you, Mr. Chairman. Judge Garland, I want to go back to the topic of protecting the Department of Justice from political influence and being weaponized politically.

A number of Senate Democrats at this hearing have used the opportunity to cast dispersions to the job Bill Barr did as Attorney General. I think those dispersions are false. I think he showed enormous courage and fighting to defend the rule of law.

But, Bill Barr, when explicitly asked about whether he would terminate Robert Mueller, at his confirmation hearing, the same situation you find yourself, he said he would not terminate him absent "good cause." Are you willing to meet the same standard of integrity that Bill Barr demonstrated and will you make that same commitment to this committee that you will not terminate Mr. Durham absent good cause?

GARLAND:

What I've said to the committee and what is, is that I need to get information about this investigation, which I do not have here. I understand the decision has been made to keep him in place and I have absolutely no reason to doubt that that was the right decision and that he should be kept in place. But, I can't go any further without learning the facts of the investigation and what the status is.

CRUZ:

So, Judge--Judge Garland, with all due respect--and I recognize you've been a judge for 23, 24 years. Judicial nominees sit in that chair and decline to answer just about every question senators pose them as saying, "Well, as a judge, I can't commit how I would rule on any given case," and that's appropriate.

You're not nominated to be a judge in this position. You were nominated to an executive position and you're a constitutional scholar. You understand fully well the difference between attorney general versus an Article 3 judge. Bill Barr didn't know the details of the Mueller investigation at the time, but he knew that Bob Mueller was investigating President Trump, that it was highly politically sensitive.

And, so to show his integrity and commitment to being nonpartisan, he said he wouldn't terminate Mueller absent good cause. You have the opportunity to do the same thing. The investigation into Durham is highly political. It potentially implicates

Joe Biden and Barack Obama.

And, I--I just want to be clear. You're refusing to give that same commitment. You want to keep the options open to terminate the investigation.

GARLAND:

Look, I'm not refusing to give that commitment because I am a judge. I'm telling you what I think an attorney general ought to do, which is to look at the facts before making a decision. I'm also telling you that I will never make a decision in the Department based on politics or on partisanship. So, whatever decision I were to make, it would not be based on that.

And, all I can ask you to do is trust me based on a record of my 24 years as a judge, my entire career before that as a prosecutor, and my life before that. That's my record of integrity and that's what you have before you.

CRUZ:

So, a similar line of questions that you were asked concern the Google antitrust investigation and--and Google--Big Tech as a whole contributed over \$15 million to the Joe Biden campaign. They're enormously important Democratic donors.

There will be enormous political pressure to abandon that case against Google. Can you give this committee assurances that you can stand up to that political pressure, just because Democratic fundraisers want to--want to be lenient on Google, that the Department of Justice will not give into that pressure?

GARLAND:

So, Senator Cruz, I'm old enough to remember when there was a political effort to end the case in--antitrust case in the Justice Department against I.T.T., which gives you an idea of how old this is that there is no I.T.T. anymore, the International Telephone and Telegraph Company.

This--if I'm not wrong, this was one of the paragraphs in the indictment, the proposed indictment impeachment of President Nixon, I think, but it was around the same time. And, it had to do with the partisan effort to influence the Justice Department and the Antitrust Division.

I grew up knowing that this is not something that is permissible for the Justice Department to do. And, my whole life has been looking at Ed Levi and Watergate--post-Watergate Attorneys General who stood up to that kind of stuff. And, I can assure you that there will--I don't care what kind of donor talks to me about what of anything. I don't expect to talk to any donors.

I have no conflicts. I don't own any Google stock and I will do whatever is the right thing and I don't own any stock or I won't if I'm--

CRUZ:

--Let me ask two very quick questions because my time is expiring.

GARLAND:

--Yeah.--

CRUZ:

Number one, you voted to rehear the Heller case or actually the Parker case en banc.

GARLAND:

I did.

CRUZ:

I argued the Parker case on the D.C. Circuit. As Attorney General, will the Department of Justice argue for the Supreme Court to overturn Heller versus District of Columbia?

GARLAND:

Look, the Department, you know, makes all kinds of judgments like that. I--I can't promise, but I find it hard to believe that the Department could think that there was any possibility of overturning the Heller case.

CRUZ:

Okay. And, then the final one, with the Chairman's indulgence because I'm at the end of my time. Nine senators wrote a letter to Chairman Durbin asking this committee to investigate Governor Andrew Cuomo's policies concerning COVID and sending COVID positive individuals into nursing homes. A senior aid of his admitted to a cover up to hide information from the Department of Justice. You've committed to a number of investigations here at this hearing today.

Will you commit to investigating the extent to which the government of New York broke laws or covered up their policies concerning COVID positive patients in nursing homes?

GARLAND:

With all--all of these investigations, the Justice Department is open to evidence of fraud, false statements, violations of the law. They normally begin in the appropriate way in the U.S.--Relevant U.S. Attorney's Office and that is the way that something like this--without commenting on this in particular because I don't know the facts--

CRUZ:

--But, in this instance, the acting U.S. attorney is the mother in law of the senior official in the Cuomo administration that admitted to the cover up. Will you at least commit to not having the investigation done by a person with a conflict of interest?

GARLAND:

Of course. I don't know any of the facts, but I can guarantee you that somebody with a conflict of interest will not be the person running an investigation of any kind.

CRUZ:

Thank you.

DURBIN:

Since it has appeared, reappeared, and then appeared again, this question about the Durham Special Counsel. For the record, the president of the United States and the White House, when they reported their policy on the future of U.S. Attorneys, made two exceptions, if I remember correctly. One was for the Delaware U.S. Attorney, and the second one was in this situation with Durham. The administration is clearly committed publicly to allowing Durham to complete his investigation. I don't know that any additional comments are needed beyond that, though you've been asked many, many times that question.

In terms of secretary--or Attorney General Barr, we do remember that he wrote an unsolicited memo questioning the legitimacy of the Mueller--Mueller investigation, before he was under active consideration for the Office of the Attorney General. I don't know why the other side keeps returning to this, but I think your position is consistent with the White House position and is what we would expect of any Attorney General when it comes to making the assessment after they learn the facts. Senator Whitehouse.

WHITEHOUSE:

Thank you, Chairman. And I may be the--am I the final questioner? Could be. So I may be all that stands between you and relief from these proceedings, Your Honor.

I would summarize our earlier conversation, as you telling us that when we ask you questions, or the Department or the FBI questions, we're entitled to an answer. And if the answer is no, we can't tell you that, we're entitled to an explanation as to why you think that is that correct?

GARLAND:

Yes, that's right, Senator.

WHITEHOUSE:

Good. I touched on the problem of executive privilege, because the Department of Justice has a role as kind of an arbiter for the whole administration of executive privilege determinations. We had--we had documents sent in here blank that had the phrase constitutional privilege stamped on them. No articulation of what constitutional privilege it was. We have had witnesses claim to assert executive privilege, but the administration never backed them up by actually asserting the privilege. So there was never actually a test of the proposition.

But our chairman wouldn't force an answer, so we were stuck. And I urge you to, maybe we should even have a hearing on it, think through what executive privilege ought to look like, what the process for declaring ought to look like, and try to get that cleared up so that in this committee, we're no longer being treated the way we were in the last administration.

You answer--you mentioned that false statements were a way that cases kind of traditionally came in, went to the U.S. Attorney first, worked their way up. There's one sort of strange anomaly which is false statements to the IRS. The administration before this one took the view that a false statement to the IRS was something that they wouldn't look at, unless it had been referred by the IRS.

So I get the policy of not getting into criminal investigations of tax law without the IRS saying, hey, we'd like you to prosecute this. We are the tax law experts and we really--we have some equities here and we either want you or don't want you to proceed criminally in this matter. I get that. When it's a plain vanilla false statement, I did that as U.S. Attorney, you did those cases, anybody who served in--as a U.S. Attorney has done those cases. I'd urge you to reconsider a policy of deferring to the IRS before proceeding on a simple false statement case. Obviously, it'll be facts specific, but I--I flag that for you.

And the last point I'd like to make is--is that it seems to me, and I'll ask you to agree or disagree with the statement, it seems to me that failing to proceed, failing to proceed where an investigation or prosecution is warranted and doing so on political grounds is just as bad as proceeding with an investigation or prosecution on political grounds. Would you agree that that's a correct proposition?

GARLAND:

Yes. Of course, absolutely.

WHITEHOUSE:

Last of all, we all need something to believe in, I think. People who worked in the Department very much believe in the Department of Justice. They believe in the merits and the norms and the values in the traditions of their service and of the Department.

People across this country need to believe and there was a lot that happened in the last administration to cause doubt about whether the Department of Justice met that standard, that they were worthy of the public's trust and belief. Let me ask you as your closing comments to respond to how you view the importance of the public's trust and belief in the Department of Justice and your commitment to salvaging, if necessary, restoring as needed, and upholding those ideals.

GARLAND:

Yeah, look, I--I couldn't agree with you more. It's not just that the Department has to do justice, it's that it has to appear to do justice and that the people of the United States has to believe that it does justice. Otherwise, people lose their faith in the rule of law. They take the law into their own hands. They've become cynical about law enforcement, about public servants.

I would like, for the time that I'm in the Justice Department, to turn down the volume on--on the way in which people view the Department that the Justice Department not be the center of partisan disagreement. That, you know, we return to the days when the department does its law enforcement and--and criminal justice policy and that this is viewed in a bipartisan way, which, for a long time in the history of the Department, that's the way it was.

I know that these are divisive times. I'm--I'm not naive. But I would like to do everything I can to have people believe that that's what we're doing. People will disagree. People on the left side, the right side, the Democratic side, the Republican side, will disagree with things that I do. And that has happened as a judge. The only thing I can hope is that people will understand that I am doing--I'm doing what I do because I believe it's the right thing, and not out of some improper motive. That's the best I can ask. And if you confirm me and if at the end of my time people still believe that, I will consider that a singular accomplishment.

WHITEHOUSE:

Godspeed to you, sir.

DURBIN:

Judge Garland, I'm going to say a few words about what he's going to do tomorrow in pursuit of your nomination and then a few closing comments. Tomorrow. The second day of the hearing begins at 10:00 am. We'll hear from a panel of outside witnesses. Reminder that questions for record from the senators on the committee must be submitted by 5:00 pm on Wednesday, February 24. I hope people will show good faith and common sense in the number of questions that they submit because you have been open now for two full rounds to ask whatever people have had on their minds.

Let me say a few words in closing. My appreciation of your background is a little different than some. I know one of your earliest inspirations was a man named Abner Mikva, who proceeded to serve with distinction all three levels of government in the federal branch, as well as his initial service in the Illinois House of Representatives. One of his closest friends and allies and colleagues over the years was a man named Paul Simon, who picked me up and dusted me off a few times when I lost elections and said you'll get them next time. He was right. I eventually did but took a while.

I knew Abner Mikva personally and through his relationship with my mentor, Paul Simon. They represented the very best in public service, integrity, honesty, hard work, all of the above time and again. We're lucky to be heirs of that legacy. And I think that this inspired both of us in our different pursuits of public service.

When President-elect Biden told me that you were under consideration for this job, I thought instantly this is the right person. At this moment in history, this is the right person to put in as Attorney General. The Department of Justice needs to have its morale restored. It needs to have its reputation restored. It needs a leadership that is honest and we can respect from every corner of this country.

You are that person. Your testimony today is evidence of that. I want to thank your family in particular. I don't know that they have--you mentioned it, but it's well worth repeating. Lynn, thank you for being here. Rebecca and her husband, Alexander. That would be Becky and Xan. And Jessica, Jessie, thank you for being here today in support of an extraordinary person who is ready to serve again and has office called by the president to be there at a moment in history when he's needed the most.

This president has put faith in you, Judge Garland. We will do the same. Thank you again. I look forward to your swift confirmation. And with that the hearing stands adjourned until 10:00 tomorrow.

List of Panel Members and Witnesses

PANEL MEMBERS:

SEN. RICHARD J. DURBIN (D-ILL.), CHAIRMAN

SEN. PATRICK J. LEAHY (D-VT.)

SEN. DIANNE FEINSTEIN (D-CALIF.)

SEN. SHELDON WHITEHOUSE (D-R.I.)

SEN. AMY KLOBUCHAR (D-MINN.)

SEN. CHRIS COONS (D-DEL.)

SEN. RICHARD BLUMENTHAL (D-CONN.)

SEN. MAZIE K. HIRONO (D-HAWAII)

SEN. CORY BOOKER (D-N.J.)

SEN. ALEX PADILLA (D-CALIF.)

SEN. JON OSSOFF (D-GA.)

SEN. CHRIS VAN HOLLEN (D-MD.)

SEN. TAMMY DUCKWORTH (D-ILL.)

SEN. CHARLES E. GRASSLEY (R-IOWA), RANKING MEMBER

SEN. LINDSEY GRAHAM (R-S.C.)

SEN. JOHN CORNYN (R-TEXAS)

SEN. MIKE LEE (R-UTAH)

SEN. TED CRUZ (R-TEXAS)

SEN. BEN SASSE (R-NEB.)

SEN. JOSH HAWLEY (R-MO.)

SEN. TOM COTTON (R-ARK.)

SEN. JOHN KENNEDY (R-LA.)

SEN. THOM TILLIS (R-N.C.)

SEN. MARSHA BLACKBURN (R-TENN.)

WITNESSES:

ATTORNEY GENERAL NOMINEE JUDGE MERRICK GARLAND

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6 OVERSIGHT OF THE UNITED STATES

7 DEPARTMENT OF JUSTICE

8 Thursday, October 21, 2021

9 House of Representatives,

10 Committee on the Judiciary,

11 Washington, D.C.

12

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15 The committee met, pursuant to call, at 10:12 a.m., in
16 Room 200, Capitol Visitor Center, Hon. Jerrold Nadler
17 [chairman of the committee] presiding.

18 Members present: Representatives Nadler, Lofgren,
19 Jackson Lee, Cohen, Johnson of Georgia, Deutch, Bass,
20 Jeffries, Cicilline, Swalwell, Lieu, Raskin, Jayapal,
21 Demings, Correa, Scanlon, Garcia, Neguse, McBath, Stanton,
22 Dean, Escobar, Jones, Ross, Bush, Jordan, Chabot, Gohmert,
23 Issa, Buck, Gaetz, Johnson of Louisiana, Biggs, McClintock,
24 Steube, Tiffany, Massie, Roy, Bishop, Fischbach, Spartz,

25 Fitzgerald, Bentz, and Owens.

26 Staff present: Perry Apelbaum, Staff Director and Chief
27 Counsel; Aaron Hiller, Deputy Chief Counsel; Arya Hariharan,
28 Deputy Chief Oversight Counsel; David Greengrass, Senior
29 Counsel; John Doty, Senior Advisor; Moh Sharma, Director of
30 Member Services and Outreach & Policy Advisor; Jacqui
31 Kappler, Oversight Counsel; Roma Venkateswaran, Professional
32 Staff Member/Legislative Aide; Cierra Fontenot, Chief Clerk;
33 John Williams, Parliamentarian and Senior Counsel; Gabriel
34 Barnett, Staff Assistant; Atarah McCoy, Staff Assistant;
35 Merrick Nelson, Digital Director; Kayla Hamed, Deputy
36 Communications Director; Chris Hixon, Minority Staff
37 Director; Tyler Grimm, Minority Chief Counsel for Policy and
38 Strategy; Stephen Castor, Minority General Counsel; Katy
39 Rother, Minority Deputy General Counsel and Parliamentarian;
40 Ella Yates, Minority Member Services Director; Andrea Loving,
41 Minority Chief Counsel for Immigration; Jason Cervenak,
42 Minority Chief Counsel for Crime; Betsy Ferguson, Minority
43 Senior Counsel; Ken David, Minority Counsel; Caroline Nabity,
44 Minority Counsel; James Lesinski, Minority Counsel; Kyle
45 Smithwick, Minority Counsel; Sarah Trentman, Minority Senior
46 Professional Staff Member; Andrea Woodard, Minority
47 Professional Staff Member; and Kiley Bidelman, Minority
48 Clerk.

49 Chairman Nadler. The House Committee on the Judiciary
50 will come to order. Without objection, the chair is
51 authorized to declare recesses of the committee at any time.
52 We welcome everyone to this morning's hearing on Oversight of
53 the Department of Justice.

54 Before we begin, I would like to remind members that we
55 have established an email address and distribution list
56 dedicated to circulating exhibits, motions, or other written
57 materials that members might want to offer as part of our
58 hearing today. If you would like to submit materials, please
59 send them to the email addresses that have been previously
60 distributed to your offices and we will circulate the
61 materials to members and staff as quickly as we can.

62 I would also remind all members of the guidance in the
63 Office of Attending Physician, which states that face
64 coverings are required for all meetings in an enclosed space
65 such as committee hearings except when you are recognized to
66 speak. I will recognize myself for an opening statement.

67 Good morning, Mr. Attorney General, and thank you for
68 appearing before our committee today.

69 When the Department of Justice performs as it should, it
70 is a champion of the Bill of Rights, the protector of the
71 rule of law, and the cornerstone of the institutions that
72 make up our republic.

73 As Attorney General, you have the responsibility to keep
74 the Department functioning at this high level, preserving the
75 Constitution for our children and our children's children.
76 You have assumed this enormous responsibility at a crossroads
77 in our nation's history.

78 For four years, the democratic institutions that you
79 have sworn to protect first as a judge, and now as Attorney
80 General, was deeply undermined by the former President and
81 his political enablers. During that time, the Trump
82 administration leveraged the Department to protect the
83 President and his friends and to punish his enemies, both
84 real and imagined. And when the former President lost the
85 last election, he summoned the top law enforcement officers
86 in the country and demanded that they use the full power of
87 the Federal Government to install him for another term.
88 Trump's plan failed, at least in part, because at least some
89 Department officials refused to help him overturn the
90 election.

91 Even now, however, the ex-President and his allies
92 continue to cast doubt on the last election and appear to be
93 drafting a plan to overturn the next one. And next time, we
94 may not be so lucky.

95 Your task as Attorney General is unenviable, Judge
96 Garland, because you must build back everything DOJ lost

97 under the last administration, its self-confidence, its
98 reputation in the eyes of the American people, and an
99 institutional respect for our Constitution and the rule of
100 law. And it is not enough just to right the ship. As the
101 chief law enforcement officer of our nation, it is also your
102 responsibility to help the country understand and reckon with
103 the violence and the lawlessness of the last administration
104 while maintaining the Department's prosecutorial
105 independence.

106 On January 6th, insurgents stormed the Capitol building
107 in what appears to be a pre-planned, organized assault on our
108 government, seeking to overturn the votes of their fellow
109 Americans and believing in the lie told them by President
110 Trump and his followers.

111 I commend the Department for doing the important work of
112 bringing those responsible for the violence of January 6th to
113 justice. I ask only that you continue to follow the facts
114 and the law where they lead because although you have rightly
115 brought hundreds of charges against those who physically
116 trespassed in the Capitol, the evidence suggests that you
117 will soon have some hard decisions to make about those who
118 organized and incited the attack in the first place.

119 And we must acknowledge the simple truth that none of
120 the individuals who attacked the Capitol that day appeared

121 out of thin air. According to the Southern Poverty Law
122 Center, membership of white nationalist groups grew 55
123 percent during the Trump Presidency. Membership in hate
124 groups overall remains historically high.

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

131 I know DOJ and its components are key to the Biden
132 administration's national strategy for countering violence
133 extremism and I am looking forward to hearing more about how
134 DOJ is working to prevent violent extremists from gaining
135 further foothold in our country. This growth in extremist
136 ideology is echoed in an epidemic of violence and
137 intimidation directed at our health care professionals,
138 teachers, essential workers, school board members, and
139 election workers.

140 To be clear, we are a country that prizes democratic
141 involvement at every level of government, the right to be
142 heard, to have a voice is guaranteed by the Constitution.
143 But nobody has a right to threaten his or her fellow citizens
144 with violence.

145 You were absolutely right to ask the FBI and federal
146 prosecutors to meet with local law enforcement agencies
147 instead of dedicated lines of communication so that we can
148 confront this spike in violence head on. There is a broader
149 pattern here. In each of these cases, former President
150 Trump's big lie, the rise in hate crimes against citizens of
151 Asian descent, and the growing threats of violence against
152 public servants, the same set of individuals who have
153 leveraged the same sorts of misinformation, stoked the same
154 sorts of grievances, and shown remarkably little interest in
155 solving our problems. But this country, and your tenure as
156 Attorney General, cannot be defined only by the outrages of
157 the last four years.

158 We have much more to do to deliver on our nation's
159 fundamental promise of liberty and justice for all.
160 Black and brown Americans deserve to live in a country where
161 they can trust that their local police departments will
162 protect, not endanger their families.

163 I applaud you for taking steps to limit the use of choke
164 holds and no-knock warrants, and we must continue to work
165 together to address the issues that allow for our criminal
166 justice system to so disproportionately impact people of
167 color.

168 Across the country, state legislatures are restricting

169 the right to vote in service of the most cynical political
170 motive. Your Department has rightly stepped in to secure our
171 next election and Congress owes you a voting rights
172 restoration act that will give you the tools you need to
173 consign these nakedly undemocratic efforts to the dust bin of
174 history where they belong.

175 Similarly, Texas law to ban abortion after six weeks,
176 and punish abortion providers is designed to restrict its
177 citizens' constitutionally-protected rights. It does so by
178 offering to pay a bounty to those who would turn in their
179 neighbors, coworkers, or even strangers if they suspect
180 someone violated the law and helped the woman get an abortion
181 after six weeks. This deliberately creates an atmosphere of
182 fear and suspicion that stops women from seeking help. It is
183 a dangerous law that is repugnant to the Constitution and I
184 thank you for the Department's swift action to protect these
185 essential rights.

186 We cannot become a country where only some people in
187 some states enjoy their constitutional rights. As Attorney
188 General, you have the power to help our country navigate the
189 generational trauma of oppression and move past the
190 challenges of the last four years.

191 Thank you again for appearing before us today. I look
192 forward to your testimony.

193 I now recognize the Ranking Member of the Judiciary
194 Committee, the gentleman from Ohio, Mr. Jordan, for his
195 opening statement.

196 Mr. Jordan. Thank you, Mr. Chairman. The chairman just
197 said the Trump DOJ was political and went after their
198 opponents. Are you kidding me? Three weeks ago, the
199 National School Board Association writes President Biden
200 asking him to involve the FBI in local school board matters.
201 Five days later, the Attorney General of the United States
202 does just that, does exactly what a political organization
203 asked to be done. Five days.

204 Republicans on this committee have sent the Attorney
205 General 13 letters in the last 6 months. It takes weeks and
206 months to get a response. Eight of the letters, we have got
207 nothing. They just gave us the finger and said we are not
208 going to get back to you. And all of our letters were
209 actually sent to the Attorney General.

210 Here is a letter sent to someone else asking for a
211 specific thing to be done and in five days the Attorney
212 General does it. Here is what the October 4th memo said. "I
213 am directing the FBI to convene meetings with local leaders.
214 These meetings will open dedicated lines of communication for
215 threat reporting. Dedicated lines of communication for
216 threat reporting. Dedicated lines of communication for

217 threat reporting. A snitch line on parents started five days
218 after a left wing political organization asked for it. If
219 that is not political, I don't know what is.

220 Where is the dedicated lines of communication with local
221 leaders regarding our Southern border? Something that
222 frankly is a federal matter.

223 Where is the dedicated lines of communication on violent
224 crime in our cities? Violent crime that went up in every
225 major urban area where Democrats have defunded the police.
226 No, can't do that. Can't do that. The Biden Justice
227 Department is going to go after parents who object to some
228 racist, hate America curriculum.

229 No, can't focus on the Southern border where 1.7 million
230 illegal encounters have happened this year alone, a record, a
231 record number. MS13 can just waltz right across the border,
232 but the Department of Justice, they are going up to open up a
233 snitch line on parents.

234 Think about this. The same FBI that Mr. Garland is
235 directing to open dedicated lines of communication for
236 reporting on parents just a few years ago spied on four
237 American citizens associated with President Trump's campaign.
238 The Clinton campaign hired Perkins Coie, who hired Fusion
239 GPS, who hired Christopher Steele, who put a bunch of garbage
240 together, gave it to the FBI. They used that as the basis to

241 open up an investigation into a Presidential campaign.

242 Oh, and then was Mr. Sussman. Mr. Sussman, who worked at
243 Perkins Coie, the firm hired by the Clinton campaign. He cut
244 out all the middle men. He just said I am just going to go
245 directly to the FBI, and not just anyone at the FBI. Who did
246 he go to? Jim Baker, the Chief Counsel at the FBI handed him
247 a bunch of false information, told him false information, and
248 of course, he has been indicted by the Special Counsel.

249 A few weeks ago, the IG at the Department of Justice
250 released a report that found that the FBI made over 200
251 errors, omissions, and lies in just 29 randomly selected FISA
252 applications. Don't worry, the Attorney General of the
253 United States just put them in charge of a dedicated line of
254 communication to report on parents who attend school board
255 meetings.

256 Mr. Chairman, Americans are afraid. For the first time
257 during my years in public office, first time, I talk to the
258 good folks I get the privilege of representing in the 4th
259 District of Ohio, folks all around the country, they tell me
260 for the first time they fear their government. And frankly,
261 I think it is obvious why. Every single liberty we enjoy in
262 the First Amendment has been assaulted over the last year.
263 It is something to think about.

264 Americans were told you couldn't go to church, couldn't

265 go to work, couldn't go to school. Small business owners
266 were told you are not an essential business, close your
267 doors, causing many of them to go bankrupt. We were given
268 curfews, stay at home orders. Last fall in Ohio, you had to
269 be in your home at ten. In Pennsylvania, when you are in
270 your home, you had to wear a mask. In Vermont, when you were
271 in your home, you didn't have to wear to a mask because you
272 weren't allowed to have friends and family over.

273 And of course, there is always the double standard with
274 these folks. Folks who make the rules, never seem to follow
275 them. And now the Biden administration says get a vaccine or
276 lose your job, even if you have had COVID and have natural
277 immunity, get a vaccine or you will lose your job.

278 Oh, I almost forgot, the Biden administration also wants
279 another dedicated line of communication for reporting. They
280 want a second snitch line. They want banks to report on
281 every single transaction over \$600 for every single American
282 to the IRS, the IRS, that agency with its stellar record of
283 customer service. The IRS, the same IRS that targeted
284 conservatives the last time Joe Biden was in the Executive
285 Branch.

286 Jefferson said once, tyranny is when the people fear the
287 government. We are there. Sadly, we are there. But I don't
288 think, I don't think the good people, I don't think the good

289 people of this great country are going to cower and hide.

290 I think your memo, Mr. Attorney General, was the last
291 straw. I think it was the catalyst for a great awakening
292 that is just getting started.

293 Pilots at Southwest Airlines, the Chicago police union,
294 parents at school board meetings, Americans are pushing back
295 because Americans value freedom.

296 A few weeks ago, a few weeks ago, Terry McAuliffe said
297 this, I don't think parents should be telling schools what to
298 teach. The government tells parents we are smarter than you.
299 Americans aren't going to tolerate it.

300 When the Attorney General of the United States sets up a
301 snitch line on parents, Americans aren't going to tolerate
302 it. I think they are going to stand up to this accelerated
303 march to communism that we now see. Americans are going to
304 fight the good fight. They are going to finish the course.
305 They are going to keep the faith because Americans value
306 freedom.

307 Mr. Chairman, we have a video we would like to play.

308 Ms. Dean. Mr. Chairman. I object.

309 Chairman Nadler. For what purpose does Ms. Dean seek
310 recognition?

311 Ms. Dean. I object. I am reserving my right to object
312 to the video. May I inquire as to whether the gentleman has

313 followed the Judiciary Committee's AV protocol by providing
314 48 hours' notice to the committee's clerk that he was going
315 to use a video?

316 Mr. Jordan. We provided notice. Well, first of all,
317 there is no 48-hour rule. It is not in the committee rules.
318 Second, we did let the committee staff and majority know that
319 we had a video and we gave the video to them this morning.

320 Chairman Nadler. Responding to the gentlelady's
321 request, he did not. He did not supply the 48 hours' rule --
322 48 hours' notice required by the rule.

323 Ms. Dean. Then I insist on my objection, having failed
324 to follow the bipartisan protocol, I insist on my objection.

325 Chairman Nadler. An objection has been heard. The
326 video will not be shown.

327 Mr. Jordan. I appeal the ruling of the chair.

328 Chairman Nadler. There has been no ruling made. There
329 has been an objection.

330 Mr. Jordan. Mr. Chairman, I would like to speak
331 regarding --

332 Chairman Nadler. No. That is out of order. This is
333 not debatable.

334 Mr. Jordan. What is out of order is there is no rule
335 that requires a 48-hour notice. That is what is out of
336 order.

337 Chairman Nadler. There is such a rule.

338 Mr. Jordan. There is not, not in our rules.

339 Mr. Roy. Mr. Chairman, what are you afraid of?

340 Chairman Nadler. There is such a rule. You objected

341 last year. You were told there was such a rule.

342 Mr. Roy. Mr. Chairman, what are our colleagues on the

343 other side of the aisle afraid of? They are afraid of

344 videos? Of parents?

345 Chairman Nadler. The gentleman was recognized for his

346 opening statement. Are you finished with your opening

347 statement?

348 Mr. Jordan. It is not a rule. It is not a rule. It is

349 what you said -- I think you used is a protocol.

350 Chairman Nadler. The gentlewoman objected --

351 Mr. Jordan. -- conduct of the committee, rules do.

352 That is not a rule. We had a video. We understood you had a

353 video.

354 Mr. Gaetz. I seek recognition for a parliamentary

355 inquiry?

356 Chairman Nadler. The gentlewoman objected because you

357 failed to follow the rule. Her objection is sustained.

358 Mr. Gaetz. I seek recognition for a parliamentary

359 inquiry?

360 Mr. Jordan. I will yield back in just a second and

361 particularly --

362 Chairman Nadler. The gentleman yields back?

363 Mr. Jordan. No, I haven't yielded back yet. I said I
364 will in a second. It is a video about parents at school
365 board meetings, moms and dads speaking at school board
366 meetings. And you guys aren't going to let us play it?

367 Chairman Nadler. It will not be played. An objection
368 has been heard that you failed to give the 48 hours required
369 by the rule and therefore it will not be heard.

370 Mr. Jordan. What rule?

371 Mr. Roy. Chairman, what rule? Parliamentary inquiry.
372 What rule? Will you present the rule?

373 Chairman Nadler. The case of audio visual materials
374 under the leadership of my predecessor, Chairman Goodlatte, a
375 Republican, the committee developed a written protocol for
376 managing the use of audio visual materials in our hearings.
377 This protocol simply requires members to provide 48 hours'
378 notice they are going to use audio visual material.

379 Until recently, this protocol was not controversial. It
380 was a helpful tool we used to manage hearings and make sure
381 videos were played properly.

382 The gentlewoman has objected to the materials because
383 the gentleman did not provide the agreed upon 48 hours'
384 notice. Playing audio visual materials during a committee

385 hearing is the equivalent of introducing printed materials
386 into the hearing record.

387 In the normal course of business, we do not object to
388 each other's requests, but members have the right to object
389 if they so choose and an objection has been heard.

390 Mr. Roy. Mr. Chairman, did we ever vote on that?

391 Mr. Johnson of Louisiana. That is a clever, written
392 statement, but a protocol is not a rule.

393 Mr. Jordan. Mr. Chairman, obviously, you are not going
394 to let us play it. Obviously, you are going to censure us
395 which is sort of the conduct of the left today it seems and
396 Democrats today it seems. I will yield back the balance of my
397 time.

398 Chairman Nadler. The gentleman yields back. A point of
399 order. The gentleman will state his point of order.

400 Mr. Biggs. I would ask you if you are going to insist
401 that this is a rule, please cite the rule, show us the actual
402 written rule. This is not a rule.

403 Chairman Nadler. It is not a point of rule as I said
404 before. Playing audio visual materials during committee
405 hearings is the equivalent of introducing --

406 Mr. Biggs. I ask that you rule on my point of order.

407 Chairman Nadler. -- printed materials into the
408 hearing record. In the normal course of business, we do not

409 object to each other's requests --

410 Mr. Biggs. That is not a rule, sir --

411 Chairman Nadler. -- members have the right to object
412 if they so choose and an objection has been heard.

413 Mr. Biggs. That is a statement, not a rule, sir. I
414 would ask you to rule on my point of order.

415 Chairman Nadler. The gentleman has not made a valid
416 point of order.

417 Mr. Biggs. I appeal the ruling of the chair.

418 Chairman Nadler. There is nothing to appeal. There has
419 been no ruling.

420 Mr. Biggs. You ruled that my --

421 Chairman Nadler. There has been no ruling.

422 Mr. Biggs. I am entitled to have --

423 Chairman Nadler. There is just been an objection and
424 the objection has been heard.

425 Now we will introduce the Attorney General. I will now
426 introduce today's witness.

427 Merrick Garland is sworn in as the 86th Attorney General
428 of the United States on March 11, 2021. Immediately
429 preceding his confirmation as Attorney General, Mr. Garland
430 was a judge of the United States Court of Appeals for the
431 District of Columbia Circuit. He was appointed to that
432 position in 1997, served as Chief Judge of the Circuit from

433 2013 to 2020, and served as Chair of the Executive Committee
434 of the Judicial Conference of the United States from 2017
435 until 2020.

436 In 2016, President Obama nominated him for the position
437 of Associate Justice of the United States Supreme Court.
438 Before becoming a federal judge, Attorney General Garland
439 spent a substantial part of his professional life at the
440 Department of Justice including as Special Assistant to the
441 Attorney General, Assistant United States Attorney, Deputy
442 Assistant Attorney General in the Criminal Division, and
443 Principal Associate Deputy Attorney General.

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

450 We welcome the Attorney General and we thank him for
451 participating today. And if you please rise, I will begin by
452 swearing you in. Raise your right hand.

453 Do you swear or affirm under penalty of perjury that the
454 testimony you are about to give is true and correct to the
455 best of your knowledge, information, and belief so help you
456 God?

457 Let the record show that the witness has answered in the
458 affirmative. Thank you and please be seated.

459 Please note that your written statement will be entered
460 into the record in its entirety. Accordingly, I ask that you
461 summarize your testimony in five minutes. To help you stay
462 within that time limit, there is a timing light on your
463 table.

464 When the light switches from green to yellow, you have
465 one minute to conclude your testimony. When the light turns
466 red, it signals your five minutes have expired.

467 Attorney General Garland, you may begin.

468 TESTIMONY OF MERRICK GARLAND, ATTORNEY GENERAL OF THE UNITED
469 STATES

470

471 Attorney General Garland. Good morning, Chairman Nadler,
472 Ranking Member Jordan, distinguished members of this
473 committee. Thank you for the opportunity to appear before
474 you today.

475 My address to all Justice Department employees on my
476 first day in office I spoke about three co-equal priorities
477 that should guide the Department's work: upholding the rule
478 of law, keeping our country safe, and protecting civil
479 rights.

480 The first core priority, upholding the rule of law, is
481 rooted in the recognition that to succeed and retain the
482 trust of the American people, the Justice Department must
483 adhere to the norms that have been part of its DNA since
484 Edward Levi's tenure as the first post-Watergate Attorney
485 General. Those norms of independence from improper influence
486 of the principled exercise of discretion and of treating like
487 cases alike define who we are as public servants.

488 Over the past seven months that I have served as
489 Attorney General, the Department has reaffirmed and where
490 appropriate, updated and strengthened policies that are
491 foundational for these norms. For example, we strengthened

492 our policy governing communications between the Justice
493 Department and the White House. That policy is designed to
494 protect the Department's criminal and civil law enforcement
495 decisions and its legal judgments from partisan or other
496 inappropriate influence.

497 We also issued a policy to better protect the freedom
498 and independence of the press by restricting the use of
499 compulsory process to obtain information from or records of
500 members of the news media.

501 The second priority is keeping our country safe from all
502 threats, foreign and domestic, while also protecting our
503 civil liberties. We are strengthening our 200 joint
504 terrorism task forces which are the essential hubs for
505 international and domestic counter terrorism cooperation
506 across all levels of government. For FY22, we are seeking
507 more than \$1.5 billion, a 12 percent increase for counter
508 terrorism work.

509 We are also taking aggressive steps to counter cyber
510 threats, whether from nation states, terrorists, or common
511 criminals. In April, we launched both a comprehensive cyber
512 review and a ransomware and digital extortion task force. In
513 June, we seized a \$2.3 million ransom payment made in Bitcoin
514 to the group that targeted Colonial Pipeline.

515 Keeping our country safe also requires reducing violent

516 crime and gun violence. In May, we announced a comprehensive
517 violent crime strategy which deploys all of our relevant
518 departmental components to those ends. We also launched five
519 cross jurisdictional strike forces to disrupt illegal
520 firearms trafficking in key corridors across the country.
521 And to support local police departments and help them build
522 trust with the communities they serve, our FY22 budget
523 requests over \$1 billion for grants.

524 We are likewise committed to keeping our country safe
525 from violent drug trafficking networks that are, among other
526 things, fueling the overdose epidemic, opioids, including
527 illegal fentanyl, causing at least 70,000 fatal overdose
528 deaths in 2020. We will continue to use all resources at our
529 disposal to save lives.

530 Finally, keeping our country safe requires protecting
531 its democratic institutions, including the one we sit in
532 today from violent attack. As the committee is well aware,
533 the Department is engaged in one of the most sweeping
534 investigations in its history in connection with the January
535 6th attack on the Capitol.

536 The Department's third core priority is protecting civil
537 rights. This was a founding purpose when the Justice
538 Department was established in 1870. Today, the Civil Rights
539 Division's work remains vital to safeguarding voting rights,

540 prosecuting hate crimes, ensuring constitutional policing,
541 and stopping unlawful discrimination. This year, we doubled
542 the size of the Civil Rights Division's Voting Section and
543 our FY22 budget seeks the largest ever increase for the
544 division, totaling more than 15 percent. We have appointed
545 Department-wide coordinators for our hate crimes work and we
546 have stepped up our support for the Community Relations
547 Service and the Department-wide efforts to advance
548 environmental justice and tackle climate change.

549 We are also revitalizing and expanding our work to
550 ensure equal access to justice. In the days ahead, we look
551 forward to working with Congress to restore a stand-alone
552 Access to Justice Office within the Department, dedicated to
553 addressing the most urgent legal needs of communities across
554 America.

555 In addition to these core priorities, another important
556 area of departmental focus is ensuring antitrust enforcement,
557 reinvigorating that enforcement, combating fraud, and
558 protecting consumers. We are aggressively enforcing our
559 antitrust laws by challenging anti-competitive mergers and
560 exclusionary conduct and by prosecuting price fixing and
561 allocation schemes that harm both consumers and workers.

562 In FY22, we are seeking additional resources to
563 reinvigorate antitrust enforcement across the board. We also

564 stood up the COVID-19 Fraud Enforcement Task Force to bring
565 to justice those who defrauded the government of federal
566 dollars meant for the most vulnerable among us.

567 In sum, in seven months, the Justice Department has
568 accomplished a lot of important work for the American people
569 and there is much more to be done.

570 Thank you for the opportunity to testify today and I
571 look forward to your questions.

572 [The statement of Attorney General Garland follows:]

573

574 *****COMMITTEE INSERT*****

575 Chairman Nadler. Thank you for your testimony. We will
576 now proceed under the five-minute rule for questions and I
577 will recognize myself to begin for five minutes.

578 Mr. Attorney General, in the 2013 decision, Shelby
579 County v. Holder, the Supreme Court gutted Section 5 of the
580 Voting Rights Act, rendering its pre-clearance provision
581 inoperative. As a direct result of this decision, the right
582 to vote has come under a renewed and steady assault and
583 states have spent the past eight years enacting a slew of
584 barriers to voting to target or impact communities of color
585 and other historically disenfranchised groups.

586 Before this committee in August, the Assistant Attorney
587 General Kristen Clarke testified that "Section 5 of the
588 Voting Rights Act was truly the heart of the act and calls it
589 the Department's most important tool for safeguarding voting
590 rights in our country."

591 Why is Section 5 pre-clearance so crucial to combating
592 discriminatory voting practices?

593 Attorney General Garland. Thank you, Mr. Chairman. The
594 right to vote is a fundamental aspect of our democracy and in
595 many ways it is the light from which all other rights occur.
596 The Voting Rights Act was a gem of American legislation,
597 President Ronald Reagan said, and other Presidents on both
598 sides of the aisle have said.

599 A key part of that provision was Section 5 as you said.
600 This was a pre-clearance provision which required specified
601 states where there had been discriminatory practices that
602 provisions for changes in patterns or practices of voting to
603 be submitted to the Department for pre-clearance to determine
604 whether they violated the Act.

605 There was another alternative if a state did not like
606 the result from the Justice Department, it could go to a
607 court and get a resolution there. But the great idea of pre-
608 clearance was to allow advance review before these things
609 went into effect, rather than require the Justice Department
610 on a one-by-one basis after the fact. It is extremely
611 difficult to attack unlawful prescriptions on voting
612 practices.

613 Chairman Nadler. Thank you. Assistant Attorney General
614 Clarke testified that Section 2 is no substitute for the
615 important, swift preemptive review that was provided by way
616 of Section 5 pre-clearance process. The full impact of the
617 Supreme Court's recent decision in Brnovich v. DNC on Section
618 2 remains to be seen. However, in the absence of an
619 operational Section 5 pre-clearance regime, what steps has
620 the Justice Department taken to increase enforcement of
621 voting rights under Section 2?

622 Attorney General Garland. Section 2 is our remaining

623 tool. It is extraordinarily important and it does give us
624 some impact. In order to better effectuate that provision,
625 we have doubled the size of the Voting Rights Section because
626 it will take more people to evaluate state laws on the one-
627 by-one basis. We are going about doing that. We have
628 brought one case, as you know, with respect to changes in
629 Georgia. We are looking carefully at other states and we are
630 looking carefully at the redistricting, which is occurring as
631 we speak now, as a result of the decennial census. We
632 continue to do that and vigorously make sure that Section 2
633 is appropriately enforced.

634 Chairman Nadler. If you should find that given states
635 reapportionment, for example, is unconstitutional and you
636 sued it could take six or eight years for those suits to be
637 resolved, as we have seen, and that is one reason, another
638 reason, for the necessity for Section 5 pre-clearance.

639 My time is short, so I have only one last question for
640 you. The country and the Congress is still reeling from the
641 events of January 6th and the Select Committee is diligently
642 pursuing its investigation into the insurrection.

643 This week, Chairman Thompson and his colleagues voted to
644 hold in contempt Steve Bannon who failed to comply with the
645 Select Committee's subpoenas. And the measure will be taken
646 up by the House later today.

647 Unfortunately, the actions of individuals like Mr.
648 Bannon are not new to us. Many committees, including this
649 one, repeatedly face obstruction from the prior
650 administration in the former President's loyal allies.
651 Congress, however, is not an enforcement body and looks to
652 the Department to handle criminal matters when appropriate.

653 So I ask you, Mr. Attorney General, regardless of
654 politics, will the Department follow the facts and the law
655 and expeditiously consider the referrals put forth by the
656 Select Committee if and when they are approved by the full
657 House?

658 Attorney General Garland. Well, the Department
659 recognizes the important oversight role that this committee,
660 the House of Representatives, and the Senate play with
661 respect to the Executive Branch. I will say what
662 spokesperson for the U.S. Attorney's Office and the District
663 of Columbia said I think yesterday or the day before. The
664 House of Representatives votes for referral of the contempt
665 charge. The Department of Justice will do what it always
666 does in such circumstances. It will apply the facts and the
667 law and make a decision consistent with the principles of
668 prosecution.

669 Chairman Nadler. Thank you very much.

670 Mr. Jordan. Could you pull the mic a little closer, Mr.

671 Attorney General?

672 Attorney General Garland. Oh, I'm sorry. Is that
673 better, Mr. Chairman?

674 Chairman Nadler. Yeah. Mr. Chabot?

675 Mr. Chabot. Thank you.

676 Mr. Chairman, I'd start by asking unanimous consent that
677 an op-ed that appeared in last week's Wall Street Journal by
678 the author of the PATRIOT Act, Mr. Sensenbrenner, former
679 chairman of this committee, entitled, "The Patriot Act Wasn't
680 Meant to Target Parents" be entered into the record.

681 Chairman Nadler. Without objection.

682 [The information follows:]

683

684 *****COMMITTEE INSERT*****

685 Mr. Chabot. Thank you.

686 Mr. Attorney General, most of us had other jobs before
687 we got here to Congress. For example, I practiced law for
688 quite a few years. I was a county commissioner. I was a
689 member of Cincinnati City Council. And before that, I was a
690 school teacher in Cincinnati in the inner city.

691 All the students in the school were African American,
692 and I taught the seventh and eighth grade. It was my
693 experience that the kids who did the best were the ones who
694 had parental involvement in their education.

695 Does that make sense to you?

696 Attorney General Garland. Yes. I think parental
697 involvement is very important in education.

698 Mr. Chabot. Thank you.

699 Now, with that in mind, having parents involved in their
700 children's education, I have to say I found it deeply
701 disturbing that the National School Board Association
702 convinced the Biden administration to sic you and your
703 Justice Department, the FBI, the full power of the federal
704 law enforcement in this country, on involved parents as if
705 they were domestic terrorists.

706 One of the tools in your arsenal of weapons, of course,
707 is the PATRIOT Act that I just mentioned. Not many current
708 members of this committee were here when we passed the

709 PATRIOT Act, but I was.

710 And, Mr. Chairman, you were too, and I remember clearly
711 that we were both concerned about potential abuse of this new
712 law enforcement tool and that's why, for example, we insisted
713 on sunset provisions on some aspects of the PATRIOT Act.

714 But I can tell you not in a million years did we dream
715 that one day we'd see the Justice Department treat American
716 parents as domestic terrorists. And in a primer on domestic
717 terrorism issued last November by none other than the FBI,
718 Mr. Attorney General, the FBI explicitly stated that, quote,
719 "Under FBI policy and federal law, no investigative activity
720 related to domestic terrorism may be initiated based on First
721 Amendment activity," unquote.

722 Now, parents speaking up at school board meeting against
723 the teaching of critical race theory or anything else that
724 they want to talk about is, clearly, a First Amendment
725 activity.

726 Now, of course, school board meetings can sometimes be
727 highly emotional affairs. Parents do care about their kids'
728 education, how they're being taught, what they're being
729 taught, and these parents have every right to be heard. Even
730 a former Virginia governor, Terry McAuliffe, thinks
731 otherwise.

732 Now, no one has the right to be violent or threaten

733 violence, and if anyone does that they can be dealt with by
734 security or by local law enforcement. But we don't need the
735 vast power of the federal government throwing its weight
736 around.

737 We don't need you, your Justice Department or the FBI
738 trampling on the rights of American parents who just want the
739 best possible education for their children.

740 So Mr. Attorney General, let me ask you this. According
741 to the Sarasota Herald Tribune, one example of a so-called
742 terrorist incident was a parent merely questioning whether
743 school board members had earned their high school diplomas.

744 Now, that might have been rude. But does that seem like
745 an act of domestic terrorism that you or your Justice
746 Department ought to be investigating?

747 Attorney General Garland. Absolutely not, and I want to
748 be clear, the Justice Department supports and defends the
749 First Amendment right of parents to complain as vociferously
750 as they wish about the education of their children, about the
751 curriculum taught in the schools.

752 That is not what the memorandum is about at all, nor
753 does it use the words "domestic terrorism" or "PATRIOT Act."
754 Like you, I can't imagine any circumstance in which the
755 PATRIOT Act would be used in the circumstances of parents
756 complaining about their children, nor can I imagine a

757 circumstance where they would be labeled as domestic
758 terrorism. It's --

759 Mr. Chabot. Thank you. I'm nearly out of time. So let
760 me just conclude with this. We ought to be encouraging
761 parents to be actively involved in the education of their
762 children. After all, if our children are to be competitive
763 with the children of Japan and South Korea and India and,
764 yes, China for tomorrow's jobs, they better be getting a top-
765 notch education in this country.

766 Let's support and welcome parental involvement, not use
767 the vast powers of federal law enforcement to target parents
768 as domestic terrorists.

769 I yield back.

770 Chairman Nadler. The gentleman yields back. Once
771 again, I would remind all members that guidance from the
772 Office of Attending Physician states of face coverings are
773 required for all meetings in an enclosed space such as
774 committee hearings except when you are recognized to speak,
775 and that means you, Jim, and Marjorie and Matt and a lot of
776 other people I can't recognize because of distance, et
777 cetera.

778 So, please, everyone observe that rule.

779 I'll now recognize Ms. Lofgren for five minutes.

780 Ms. Lofgren. Thank you, Mr. Chairman, and thank you,

781 Mr. Attorney General, for being here this morning.

782 At your confirmation hearing you characterized what
783 happened on January 6th, as, quote, "A heinous attack that
784 sought to disrupt a cornerstone of our democracy."

785 I agree with that. And in your written testimony today,
786 you point out that the intelligence community has identified
787 domestic violent extremists as the primary threat to our
788 nation and further note that your department is committed to
789 keeping our country safe by protecting our democratic
790 institutions.

791 I would note that protecting our democratic institutions
792 is not limited to the Department of Justice. The Congress
793 also has that obligation to protect our democracy.

794 To that end, we have a Select Committee that is
795 reviewing the events leading up to January 6th and has a
796 legislative mandate to devise legislative recommendations to
797 prevent future acts of domestic extremist violence, to
798 strengthen the resiliency of our nation's democratic
799 institutions to propose laws that will keep us, our
800 democratic system, safer.

801 Now, with that background in mind, we are, as you are
802 aware, seeking information to inform us to perform that role.
803 Before you were AG you were a judge, and I note that the --
804 in your judicial role in 2004 there was a case, *Judicial*

805 *Watch v. the Department of Justice*, where the court ruled,
806 quote, "Presidential communications privilege applies only to
807 documents solicited and received by the President or his
808 immediate White House advisors who have broad and significant
809 responsibility for investigating and formulating the advice
810 to be given to the President."

811 I think you're familiar with that case. Do you think
812 that's still good law?

813 Attorney General Garland. Yeah, I think the D.C.
814 Circuit is a good source of law.

815 Ms. Lofgren. In the Supreme Court case *Nixon v.*
816 *Administrator of GSA*, 1974 -- the Judicial Watch case
817 actually relied on that precedent -- that case said that the
818 communications to advise the President would be only on
819 official government matters.

820 Do you think that's still good law?

821 Attorney General Garland. I think the Supreme Court's
822 opinion is still good law until it's reversed, and I see no
823 sign that it's going to be reversed.

824 Ms. Lofgren. In the -- we were here in the Judiciary
825 Committee pursuing testimony from Mr. McGahn and the court
826 wrote in the 2019 case, and this is a quote, "To make the
827 point as plain as possible, it is clear to this court for the
828 reasons explained above that with respect to senior level

829 aides, absolute immunity from compelled congressional process
830 simply does not exist."

831 Do you think that's still good law?

832 Attorney General Garland. I believe the McGahn case is
833 still good law.

834 Ms. Lofgren. Recently, the Department of Justice
835 informed a federal district court that, quote, "Conspiring to
836 prevent the lawful certification of the 2020 election and the
837 injured members of Congress and inciting the riot at the
838 Capitol," quote, "would plainly fall outside the scope of
839 employment of an officer or employee of the United States of
840 America."

841 Since your department filed that, I assume you agree
842 with that?

843 Attorney General Garland. Yes.

844 Ms. Lofgren. So I just want to mention -- I'm not going
845 to ask you about what your department will do if the House of
846 Representatives adopts a referral to your department because
847 I take you at your word that you will follow the precedent,
848 you will follow the law in the ordinary course of events.

849 I would just note that your defense of the rule of law
850 for the Department of Justice and your standing for the rule
851 of law also means the rule of law for the Congress of the
852 United States.

853 Article One has -- was the first article for a reason.
854 We have a role to play in making sure that our democratic
855 institutions are defended. I thank you for your service to
856 our country and I look forward to your deliberations so that
857 the Congress of the United States can play its rightful role
858 in defending our institutions and adopting legislation that
859 will strengthen our institutions and preserve and protect our
860 democratic republic.

861 With that, Mr. Chairman, I yield back.

862 Chairman Nadler. The gentlelady yields back.

863 Mr. Gohmert?

864 Mr. Gohmert. Thank you, Mr. Chairman, and thank you,
865 Judge Garland, for being here.

866 You stated a moment ago you couldn't imagine a parent
867 being labeled a domestic terrorist. But parents all over the
868 country believe that's exactly what you labeled them by your
869 memo, indicating you were going to get involved in board
870 meetings -- school board meetings -- because of the threat of
871 domestic terrorism.

872 So if you can't imagine a parent being labeled a
873 domestic terrorist, I would encourage you to redo your memo
874 so it's not so perceived as being so threatening to people
875 concerned about their kids' education.

876 But I want to take you to January 6. It's a very common

877 topic here for people. Has any defendant involved in the
878 January 6 events been charged with insurrection?

879 Attorney General Garland. I don't believe so.

880 Mr. Gohmert. Well, that is the word most used by
881 Democrats here on Capitol Hill about January 6 but no one has
882 been charged with it that we could find either.

883 How many protesters on January 6 were charged with
884 obstructing an official proceeding for four to six hours? Do
885 you know?

886 Attorney General Garland. I don't know the exact
887 number. Obviously, there are 650 who were arrested, some for
888 assaulting officers, some for obstructing proceedings, some
889 for conspiring to obstruct proceedings.

890 I can get you the numbers for each of the specific --

891 Mr. Gohmert. Thank you. I'd be interested in getting
892 that number. But regarding the man who broke the glass in
893 the two doors there at the Speaker's lobby when the two
894 Capitol Police had been standing there moved to the side to
895 allow them access, were any of those people who broke glass
896 and did damage to those doors working for the FBI or other
897 federal law enforcement entities?

898 Attorney General Garland. This is an ongoing criminal
899 investigation and I'm really not at liberty to discuss.
900 There have been some filings of -- in a nature of discovery,

901 which has been provided to the defendants. But other than
902 that, I can't discuss this now.

903 Mr. Gohmert. Well, we have seen some of those filings
904 that talk about persons one through 20 something. Were those
905 persons, one, designated by number -- were those people that
906 were employed by the FBI or federal entities, or were they
907 confidential informants?

908 Attorney General Garland. Again, I don't know those
909 specifics. But I do not believe that any of the people
910 you're mentioning charged in the indictment were either one.

911 Mr. Gohmert. Was a determination ever made as to who
912 repeatedly struck Roseanne Boyland in the head with a rod
913 before she died?

914 Attorney General Garland. Again, I think this was a
915 matter that was investigated by the U.S. Attorneys Office and
916 --

917 Mr. Gohmert. Well, there's a witness on video saying
918 that it was a D.C. Metro policeman. I didn't know if you've
919 been able to confirm or deny that.

920 Well, on June 22nd of 2016, Judge, most of the Democrat
921 members of Congress took over the House floor and for the
922 first time in American history members of Congress obstructed
923 official proceedings, not for four to six hours but for
924 virtually 26 hours. Not just violating over a dozen House

925 rules, but actually committing the felony that some of the
926 January 6 people are charged with.

927 That was during the Obama administration. Nobody has
928 been charged and those kind of things where you let Democrat
929 members of Congress off for the very thing that you're
930 viciously going after people that were protesting on January
931 6 gives people the indication that there is a two-tiered
932 justice system here in America.

933 You know well -- you've been a circuit court judge --
934 you know well that confinement -- pre-trial confinement is
935 not ever to be used as punishment.

936 Yet, there are people -- and understand, as a former
937 tough law and order judge, I would sentence everyone
938 regardless of their party who did violence or committed
939 crimes on January 6th to appropriate sentences.

940 But, for Heaven's sake, they are being abused in the
941 D.C. jail. Have you done an inspection over there of the
942 D.C. jail since your department has some jurisdiction?

943 Attorney General Garland. So my understanding is Judge
944 Lamberth, who I respect very much, has --

945 Mr. Gohmert. Yeah, he held the warden in contempt, but
946 we haven't seen an improvement.

947 Attorney General Garland. Well, he asked for a review
948 and the Justice Department is conducting a review of the

949 Marshals.

950 Did an inspection the other day, which was reported in
951 the news, and the Civil Rights Division is examining the
952 circumstances. This is the District of Columbia jail. It's
953 not the Bureau of Prisons, you understand.

954 Chairman Nadler. The time of the gentleman has expired.

955 As I've explained to members on many occasions, I view
956 the wearing of face masks as a safety issue and, therefore,
957 is an important matter of order and decorum. Because I am
958 responsible for preserving order and decorum in this
959 committee, I am requiring members of staff attending this
960 hearing to wear face masks.

961 I came to this decision after the Office of the
962 Attending Physician released his guidance requiring masks in
963 committee hearings some time ago. I note that some members
964 are still not wearing masks.

965 The requirement is that members where their masks at all
966 times when they are not speaking. I will take members in
967 compliance with this rule into consideration when they seek
968 recognition.

969 I see Mr. Roy, for example.

970 I now recognize Ms. Jackson Lee.

971 Ms. Jackson Lee. Thank you, Mr. Chairman.

972 General, let me thank you for your enormous work that

973 the department is doing. I have a series of questions. Help
974 me out and in your answers so that I can secure responses.

975 As you well know, the Senate Judiciary Committee did an
976 outstanding report on how the former president and his allies
977 pressured DOJ to overturn the 2020 election.

978 In particular, they noted a series of dates in which
979 they assess that the former president grossly abused the
980 power of the presidency. He also, arguably, violated the
981 criminal provisions of the Hatch Act, which prevents any
982 person from commanding federal government employees to engage
983 in political activity.

984 Would there be any reason that the DOJ would not further
985 research or determine prospectively that the former president
986 could be prosecuted under the Hatch Act?

987 Attorney General Garland. Congresswoman, the Justice
988 Department has a very long-standing policy of not commenting
989 on potential investigations or actual or pending
990 investigations. This is a foundational element of our rule
991 of law and norms.

992 It's to protect everyone no matter what their position -
993 - former president, current president, congresswoman, a
994 senator or ordinary citizen, and I'm going to have to rest on
995 that that I can't comment on --

996 Ms. Jackson Lee. Thank you. I take that there's no

997 prohibition. But thank you so very much.

998 The Justice Department investigated Texas five secured
999 juvenile facilities, finding sexual abuse. Can I quickly get
1000 an answer of working with the Justice Department encouraging
1001 standardized conditions for these facilities since the facts
1002 were gross in terms of the abuse of those children? I think
1003 you're investigating Georgia as well.

1004 Mr. General?

1005 Attorney General Garland. So we are investigating
1006 Texas. That was announced, and I believe the government
1007 welcomed that investigation, and that's being done by a
1008 combination of the Civil Rights Division and all four U.S.
1009 Attorneys Offices in Texas.

1010 Ms. Jackson Lee. Thank you, sir. With respect to
1011 compassionate release, which came about through the CARES
1012 Act, we found that in the BOP 39 percent of American federal
1013 prisoners contracted COVID-19.

1014 According to a New York Times article, 2,700 persons
1015 have died. There is a potential of the compassionate release
1016 being eliminated and those out, but also I found that it's
1017 not being utilized appropriately now.

1018 The attorney -- inspector general said that BOP was not
1019 prepared with the issue -- was not prepared to deal with the
1020 issue of compassionate release on a granular level and, of

1021 course, the director himself said prisons are not made for
1022 social distancing.

1023 My question is, will you monitor what is going on with
1024 compassionate release either in terms of people returning
1025 and/or the utilization -- the fair utilization of
1026 compassionate release in the BOP under this issue of COVID?

1027 Attorney General Garland. Yes. Congresswoman, the
1028 answer is yes.

1029 Obviously, the pandemic was not something that the
1030 Bureau of Prisons was prepared for or, frankly, most American
1031 institutions were not prepared for. It created a lot of
1032 difficulties. It did lead to compassionate release, leaving
1033 people in home confinement.

1034 I don't know the specifics that you're mentioning, but
1035 we are, certainly, reviewing carefully how the Bureau is
1036 responding now to this dangerous circumstance of COVID-19.

1037 Ms. Jackson Lee. Thank you, General.

1038 We found as it relates to the women in prison 6,600 are
1039 serving huge sentences of life with parole -- life with
1040 parole, life without parole, virtual life, et cetera.

1041 Eighty-six percent of women in jail have experienced
1042 sexual violence. Seventy-seven percent have experienced
1043 intimate partner violence. This has given a report as it
1044 relates to women of color. Can we have a more vigorous

1045 trauma/mental health protocol for women in prison -- federal?

1046 Attorney General Garland. So I think -- federal, yeah.

1047 So I think an important part of the First Step Act requires
1048 us to be careful about those things and we have asked for
1049 additional funding for that purpose, and the deputy attorney
1050 general is monitoring the way in which the Bureau of Prisons
1051 spends that money and establishes those programs.

1052 Ms. Jackson Lee. Thank you. Can I quickly ask with
1053 VAWA, which has not been passed by the House, would that
1054 passage help you do even a more effective job dealing with
1055 violence against women like domestic violence, which is
1056 Domestic Violence Awareness Month this month? Would it help
1057 you be more effective in prosecuting, moving forward.

1058 Attorney General Garland. Yes. Yes, it would. We have
1059 strongly supported a reauthorization of the Violence Against
1060 Women Act.

1061 Ms. Jackson Lee. I'm going to make just a few
1062 statements. Gun violence in children has accelerated in a
1063 19-year high in 2017. I would appreciate talking further
1064 about greater prosecution on gun trafficking and the
1065 proliferation of guns.

1066 Secondly, hate crimes has surged as well, and we want
1067 to hear about the resources that are being used for hate
1068 crimes. And then as you well know that we have been the

1069 poster child in Texas for racial gerrymandering, and let me
1070 thank you for the work you've done under Section Two.

1071 I just want to make sure that this is on the radar
1072 screen of the Justice Department dealing with that issue of
1073 redistricting.

1074 But my question, finally, is the Texas abortion law.
1075 One of the worst components is the stalking of women.

1076 Chairman Nadler. The gentlelady's time -- the
1077 gentlelady's time has expired.

1078 Ms. Jackson Lee. And so I'm asking whether or not --

1079 Chairman Nadler. The gentlelady's time has expired.

1080 Mr. Owens?

1081 Mr. Owens. Thank you, Mr. Chairman.

1082 Thank you, Attorney General Garland, for coming before
1083 our committee today.

1084 I like to take every opportunity that I have to share
1085 with our nation the making of a great community. I grew up
1086 in one in the Deep South 1960s. Though in the depths of Jim
1087 Crow segregation, it was a community that produced giant
1088 Americans like Clarence Thomas, Condoleezza Rice, Thomas
1089 Sowell, Walter Williams, and Colin Powell. This was not by
1090 accident, and it was also not rare. It was a community of
1091 faith, family, free market, and education.

1092 Education was the very core of our success. I was

1093 raised in a home with teachers. My dad was a college
1094 professor for 40 years; my mom, a junior high school teacher.
1095 They were trusted to do what teachers have done throughout
1096 our history -- to teach children how to read, write, add,
1097 subtract, and to think critically. Success in education was
1098 always based on parental involvement. It was both expected
1099 and welcomed.

1100 In my great State of Utah, these expectations of parents
1101 have not changed. We do not expect, nor will we tolerate,
1102 leftist teaching of our children behind our backs, the evil
1103 of CRT -- how to hate our country and hate others based on
1104 skin color.

1105 Some of the most recent actions that the Department of
1106 Justice has taken against parents are concerning, and I would
1107 like to direct my questions around that topic. Some of the
1108 questions have been asked, and I do want to make it very
1109 clear to some of my constituents some of the concerns I have.

1110 We all agree that true threats and violence at school
1111 board meetings are inexcusable. Attorney General Garland, do
1112 you agree with the National School Board Association that
1113 parents who attend school board meetings and speak
1114 passionately against the inclusion of divisive programs like
1115 Critical Race Theory should be characterized as domestic
1116 terrorists?

1117 Attorney General Garland. I do not believe that parents
1118 who testify, speak, argue with, complain about school boards
1119 and schools should be classified as domestic terrorists or
1120 any kind of criminals. Parents have been complaining about
1121 the education of their children and about school boards since
1122 there were such things as school boards and public education.
1123 This is totally protected by the First Amendment.

1124 I take your point that true threats of violence are not
1125 protected by the First Amendment. Those are the things we
1126 are worried about here.

1127 Mr. Owens. Okay. Could I just say --

1128 Attorney General Garland. Those are the only things we
1129 are worried about here.

1130 Mr. Owens. Okay. Thank you so much for that.

1131 Is there legal precedence for the Department of Justice
1132 to investigate peaceful protests or parental involvement at
1133 public school meetings?

1134 Attorney General Garland. Just to say again, we are not
1135 investigating peaceful protests or parent involvement in
1136 school board meetings. There is no precedent for doing that
1137 and we would never do that. We are only concerned about
1138 violence, threats of violence, against school administrators,
1139 teachers, staff, people like your mother, a teacher. That is
1140 what we are worried about.

1141 We are worried about that across the board. We are
1142 worried about threats against Members of Congress. We are
1143 worried about threats against police.

1144 Mr. Owens. Thank you very much. Thank you much for
1145 that.

1146 I am also a member of the Education and Labor Committee.
1147 On October 7, Republican members of this committee sent you a
1148 letter, you and Secretary Cardona, expressing a concern about
1149 disparaging remarks that the Secretary had made against
1150 parents. In this letter, we requested that you brief the
1151 Education and Labor Committee before taking action on your
1152 threats to parents' lawful expression of legitimate concerns.
1153 Have you received that letter, and do you plan on testifying
1154 before the House Education and Labor Committee?

1155 Attorney General Garland. I am sorry, I don't recollect
1156 the letter, but I will ask my staff to find out where it is.

1157 Mr. Owens. Okay. Let me just say this as I wrap this
1158 up. And I do appreciate you being here, Attorney General. I
1159 watched a time, I was aware of a time when our race led our
1160 country in the percentage of men matriculating from college,
1161 black men matriculating from college. I now have been aware
1162 of, in 2017, studies at the Department of Education that 75
1163 percent of the black boys in the State of California cannot
1164 pass standard reading and writing tests. That is a big

1165 shift. And the difference is, in those days when I was
1166 growing up, parents were involved. There was a trust that we
1167 can send our kids to school and they would be taught how to
1168 love our country, love each other, and love education. That
1169 has been changed drastically.

1170 And I think I am going to implore parents out there:
1171 get involved. Now is the time. Do not trust any other
1172 adults, particularly our educational system, for the future
1173 of your kids. Get involved. Fight for your rights, for your
1174 kids to be taught how to love our country, love education,
1175 and move forward.

1176 And I think, if we do that, we will get back to the old-
1177 school America, where we can really appreciate the fact of
1178 who we are and an education system that should be teaching us
1179 how to do that.

1180 I yield back my time.

1181 Chairman Nadler. The gentleman yields back.

1182 Mr. Cohen?

1183 Mr. Cohen. Thank you, Mr. Chair.

1184 Welcome, General Garland. I feel it is a difficult
1185 position for me to question you because I have such respect
1186 for your acumen, your probity, and your rectitude, which is
1187 widely recognized, but there are questions I must ask.

1188 The Senate Judiciary Committee had a report recently

1189 about the attempts of President Trump to get Department of
1190 Justice employees involved in the Stop the Steal Campaign,
1191 trying to subvert the election. Are any of those people that
1192 were involved in that still at the Justice Department?

1193 Attorney General Garland. All the boldfaced names that
1194 I know about were political appointees, all of whom are not
1195 at the Department. I don't know the answer otherwise, but I
1196 don't believe so, but --

1197 Mr. Cohen. Thank you. I would appreciate it if you
1198 would check into that. If they were and they participated in
1199 this in any way, that they should come to your attention and
1200 they should have certain sanctions, I believe.

1201 You have defended, and sought to continue to defend,
1202 President Trump in his defamation action brought by E. Jean
1203 Carroll. He called her a liar. He accused her of conspiring
1204 with the Democratic Party in her allegation of rape, and for
1205 what it was worth, he said she wasn't "his type." His type
1206 is, apparently, fairly expansive. And you are defending him.

1207 Do you think that the public sees that as a proper use
1208 of Department of Justice resources, when it has been shown
1209 that we are short on personnel in the Civil Rights Division
1210 and that we need that personnel, and yet, we are defending
1211 President Trump's defamation lawsuit by a woman who he has
1212 defamed?

1213 Attorney General Garland. Congressman, we are not
1214 defending the defamation made by the former President. As I
1215 have said publicly several times, sometimes being the
1216 Attorney General and sometimes being the judge, that means
1217 taking positions with respect to the law that are required by
1218 the law, but which you would not take as a private citizen.

1219 In this circumstance, the Justice Department's briefing
1220 is not about whether this was defamation or it wasn't
1221 defamation. It is solely on the question, on the application
1222 of the Tort Claims Act. And there is consistent precedent in
1223 the D.C. Circuit which holds that, even defamatory statements
1224 made during press conferences by public officials are within
1225 the scope of employment for that very narrow purpose and for
1226 that very narrow definition.

1227 Mr. Cohen. If I may, sir, and I appreciate that and I
1228 have read that, but this was an action he took as a private
1229 citizen. He is now again a private citizen. And it was
1230 totally outside of anything to do with him being President.
1231 I hope you will look into it again because I think the public
1232 sees it as a mistake.

1233 The rule of law, you have made clear -- and I know you
1234 believe this -- it is one of the major tenets of the
1235 Department of Justice to uphold the rule of law. Michael
1236 Cohen has a felony on his record, spent time in prison for

1237 paying, at the direction of President Trump, hush money to
1238 Stormy Daniels and another woman. I believe that it is
1239 pretty well known that President Trump was "Individual One,"
1240 as described in the indictment. He couldn't be indicted
1241 because of a Department of Justice policy you don't indict a
1242 sitting President. He is no longer a sitting President.

1243 Do you believe that not looking into indicting
1244 Individual One equally, if not more, guilty than Michael
1245 Cohen, is not an abuse of equal protection under the law and
1246 an abrogation of the idea that the rule of law is a
1247 principle?

1248 Attorney General Garland. So, Congressman, a very
1249 important element of the rule of law is the norm of the
1250 Justice Department that we don't comment on whether we are
1251 investigating, what the status of investigations are, unless
1252 and until there is a public charge. That is important to
1253 protect everyone, whether it be a former President, an
1254 existing President, or public official, or a private
1255 individual.

1256 Mr. Cohen. I will accept that, but I hope that you will
1257 look at it because I believe that he is equally, if not more,
1258 guilty. And it does seem that people get favored treatment
1259 if he is not prosecuted.

1260 Transparency is important as well. Amy Berman Jackson

1261 tried to release some records concerning Bill Barr's
1262 downplaying of Trump's obstruction in the Mueller
1263 investigation. This committee was looking into the
1264 Emoluments Clause violations of the Trump Hotel and got an
1265 order to seize some records. And yet, the DOJ appealed.

1266 Do you believe that transparency, those two situations
1267 are ones where transparency was not permitted to the American
1268 public, as well as the whole Mueller Report, which hasn't
1269 been redacted?

1270 Attorney General Garland. With respect to Judge
1271 Jackson's ruling, I respect Judge Jackson. She was a former
1272 colleague. I respect her very much. We just have a
1273 difference of opinion with respect to the Freedom of
1274 Information Act's deliberative privilege exception. And we
1275 believe that in that circumstance the memorandum which was
1276 given to Attorney General Barr is protected by that, so that
1277 all Attorneys General can receive honest advice from their
1278 subordinates. That matter is before the D.C. Circuit now.
1279 Everything I have just said is in our papers. So, I am not
1280 saying outside the record. And it will be resolved by the
1281 D.C. Circuit.

1282 Mr. Cohen. Thank you. Chairman Nadler. The
1283 gentleman's time has expired.

1284 Mr. Cohen. I yield back the balance of my time.

1285 Chairman Nadler. Mr. Johnson of Louisiana?

1286 Mr. Johnson of Louisiana. Thank you.

1287 Mr. Attorney General, millions of Americans are deeply
1288 concerned today that, instead of addressing the most pressing
1289 issues facing our country, we are watching the Biden-Garland
1290 Justice Department be weaponized, that you are using your
1291 authorities now to advance far-left policies and attack
1292 Republican-led state actions, and erode constitutional norms.

1293 The most recent case in point has been brought up this
1294 morning, your memorandum directing the FBI and other
1295 Department of Justice officials to get involved in political
1296 school board debates. It concerns us that it was issued just
1297 five days after the National School Board Association sent a
1298 letter to President Biden which referred to concerned parents
1299 as the equivalent of, quote, "domestic terrorists and
1300 perpetrators of hate crimes." Unquote. Given the timing of
1301 all this, your memo appears to have been motivated by
1302 politics more than any pressing federal law enforcement need.
1303 This is concerning to us and it is worthy of investigation.

1304 It also concerns us that your actions may have been
1305 motivated by your family's financial stake in this issue.
1306 Published reports show that your son-in-law cofounded a
1307 company called Panorama Education. We now know that that
1308 company publishes and sells Critical Race Theory and so-

1309 called anti-racism materials to schools across the country.

1310 And it works with school districts nationwide to obtain
1311 and analyze data on students, often without parental consent.
1312 On its website, the company brags that it has surveyed more
1313 than 13 million students in the United States, it has raised
1314 \$76 million from powerful investors, including people like
1315 Mark Zuckerberg, just since 2017.

1316 My first question is this: are you familiar with Title
1317 5 of the Code of Federal Regulations which addresses the
1318 rules of impartiality for executive branch employees and
1319 officials?

1320 Attorney General Garland. I am very familiar with it.
1321 And I want to be clear once again that there is nothing in
1322 this memorandum which has any effect on the kinds of
1323 curriculums that are taught or the ability of parents to
1324 complain about the kinds of --

1325 Mr. Johnson of Louisiana. I understand your position on
1326 the free speech of parents.

1327 Attorney General Garland. It is not a position; it is
1328 the words of the memorandum.

1329 Mr. Johnson of Louisiana. Wait. Wait just a minute.
1330 The question is, the thing that has concerned many of those
1331 parents that are showing up at these school board meetings,
1332 the very basis of their objection and their vigorous debate,

1333 as you mentioned earlier, is the curricula, the very
1334 curricula that your son-in-law is selling. So, to millions
1335 of Americans, I mean my constituents -- I was home all
1336 weekend and I got an earful about this. They are very
1337 concerned about that.

1338 Subpart E of that federal regulation says, "An employee
1339 of the executive branch is discouraged from engaging in
1340 conduct that's likely to affect the financial interest of
1341 someone close to them." Your son-in-law, your daughter
1342 clearly meets that definition.

1343 And so, the question is, did you follow that regulation?
1344 Did you have the appropriate agency ethic official look into
1345 this? Did you seek guidance, as the federal regulation
1346 requires?

1347 Attorney General Garland. This memorandum is aimed at
1348 violence and threats of violence.

1349 Mr. Johnson of Louisiana. I understand that, but did
1350 you --

1351 Attorney General Garland. There is no --

1352 Mr. Johnson of Louisiana. Excuse me. Did you seek
1353 ethics counsel before you issued a letter that directly
1354 relates to the financial interest of your family? Yes or no?

1355 Attorney General Garland. This memorandum does not
1356 relate to the financial interests of anyone. It is, again,

1357 it is not --

1358 Mr. Johnson of Louisiana. I take that as a no. I take
1359 that as a no.

1360 Attorney General Garland. The memorandum is against
1361 violence and threats of violence. I don't know --

1362 Mr. Johnson of Louisiana. Will you, Mr. Attorney
1363 General, will you commit to having the appropriate ethics
1364 designee review the case and make the results public?

1365 Attorney General Garland. This memorandum is aimed at
1366 violence and threats of violence.

1367 Mr. Johnson of Louisiana. I understand your talking
1368 point. You are not asking my question, Mr. Attorney General.

1369 Attorney General Garland. I am talking --

1370 Mr. Johnson of Louisiana. With all due respect, will
1371 you submit to an ethics review of this matter? Yes or no?

1372 Attorney General Garland. There is no company in
1373 America or, hopefully, no law-abiding citizen of America who
1374 believes that threats of violence should not be prevented.
1375 There are no conflicts of interest that anyone could have --

1376 Mr. Johnson of Louisiana. According to you, but, sir,
1377 with due respect, that is the purpose of the federal
1378 regulation. We need objective third parties to review our
1379 activities. You don't get to make that decision yourself.
1380 It doesn't matter. You are the top, you are the chief law

1381 enforcement of this country. This raises questions in the
1382 minds of millions of Americans, and your impartiality is
1383 being called into question. Why would you not submit to a
1384 simple ethics review of that?

1385 Attorney General Garland. I am exquisitely aware of the
1386 ethics requirements.

1387 Mr. Johnson of Louisiana. But you are not following
1388 them.

1389 Attorney General Garland. I have followed them and
1390 lived with them for the last 25 years --

1391 Mr. Johnson of Louisiana. Did you seek an ethics review
1392 of this or not?

1393 Attorney General Garland. I am going to say again,
1394 there are no conflicts of interest involved when the Justice
1395 Department asks the --

1396 Mr. Johnson of Louisiana. Okay, okay. According to
1397 you. I got that. I'm not trying to be disrespectful. But
1398 you are not respecting our rules, our constitutional norms,
1399 and the federal law that directly applies to your activities.
1400 This is a great concern.

1401 This is why people are losing faith in our institutions.
1402 They are losing faith in this Department of Justice. And you
1403 and I both know, as constitutional attorneys, that if the
1404 people lose their faith in our system of justice, if they

1405 lose their faith in the idea that justice is blind, that
1406 there are not two standards, that there is one standard of
1407 the law and that everyone --

1408 Chairman Nadler. The time of the gentleman has expired.
1409 Would the Attorney General like to respond to the
1410 innuendo?

1411 Attorney General Garland. No. All I can say is I
1412 completely agree that the rule of law and respect for it is
1413 essential, and I will always do everything possible to uphold
1414 that and to avoid any kind of conflict of interest.

1415 Mr. Johnson of Louisiana. But you will not submit to an
1416 ethics --

1417 Chairman Nadler. The time of the gentleman has expired.

1418 Mr. Johnson of Louisiana. I would just --

1419 Chairman Nadler. The time of the gentleman has expired.

1420 Mr. Jordan. It wasn't innuendo. It was a question.

1421 Mr. Johnson of Louisiana. Yes. Thank you.

1422 Mr. Jordan. It was a question.

1423 Chairman Nadler. The question is -- the gentleman's
1424 time --

1425 Mr. Jordan. The editorial comments from the chair about
1426 other people's questions is not appreciated by this side of
1427 the aisle.

1428 Chairman Nadler. I asked the Attorney General -- Mr.

1429 Johnson of Georgia?

1430 Mr. Johnson of Georgia. Thank you, Mr. Chairman.

1431 And thank you for being here, General Garland.

1432 This summer the House passed H.R. 4, the John R. Lewis
1433 Voting Rights Advancement Act, which would strengthen
1434 Sections 2 and 5 of the Voting Rights Act. And also this
1435 summer, the Department announced that it was suing the State
1436 of Georgia under Section 2 of the Voting Rights Act. And I
1437 commend your Department for working to protect the rights of
1438 all Americans to vote.

1439 General Garland, Section 2 of the Voting Rights Act
1440 prohibits voting practices or procedures that discriminate on
1441 the basis of race, while Section 5 of the Act mandates that
1442 changes to voting practices in certain covered jurisdictions
1443 be precleared by federal authorities.

1444 With the Supreme Court having nullified Section 5, in
1445 effect, the preclearance requirement, by ruling that the
1446 coverage formula was unconstitutional, does the Department
1447 view Section 2 litigation alone as adequate to safeguard
1448 voting rights, or must Congress pass the John Lewis Voting
1449 Rights Advancement Act and reinstate Section 5 in order for
1450 voting rights to be adequately safeguarded?

1451 Attorney General Garland. The Justice Department
1452 supports that Act. Section 2 is what we have. Section 5 is

1453 what we need.

1454 Mr. Johnson of Georgia. Knowing that the House has
1455 already passed H.R. 4, does the Justice Department support
1456 passage of the John Lewis Voting Rights Advancement Act in
1457 the United States Senate?

1458 Attorney General Garland. Yes, sir.

1459 Mr. Johnson of Georgia. Thank you.

1460 On September the 4th, 2021, DOJ announced an
1461 investigation into Georgia prison conditions. The New York
1462 Times reported that over 25 incarcerated persons died last
1463 year by confirmed or suspected homicide in Georgia prisons,
1464 and 18 homicides, as well as numerous stabbings and beatings
1465 have been reported this year. What is the timeline for this
1466 investigation? And will you commit to briefing the committee
1467 and the Georgia delegation on the results of the inquiry?

1468 Attorney General Garland. We are doing that
1469 investigation. It is pursuant to a statute which authorizes
1470 the Civil Rights Division to bring those kinds of cases. I
1471 can't tell you what the timeline is. These kind of things
1472 take a considerable amount of time. And I am not sure what
1473 the legal requirements are with respect to briefings outside
1474 -- this is now in court. And so, I am not sure what
1475 additional material can be provided outside of what we
1476 provide in court. But we will look into it for you.

1477 Mr. Johnson of Georgia. Thank you.

1478 Much of what is known about conditions in Georgia
1479 prisons is derived from social media posts, including video
1480 footage posted during a prison riot last year. How are
1481 social media and the use of smuggled smartphones by inmates
1482 aiding DOJ in its civil rights investigation of Georgia's
1483 prisons?

1484 Attorney General Garland. Sorry, I don't know the
1485 answer to that question, but I will see if I can ask at the
1486 Civil Rights Division how they are using that material.

1487 Mr. Johnson of Georgia. All right. Thank you.

1488 General Garland, the Sackler has used every trick in the
1489 book to escape accountability for their role in the opioid
1490 epidemic, including abusing the bankruptcy system to secure
1491 civil immunity from their victims. And now, Johnson &
1492 Johnson has scrambled its organizational charts to put tens
1493 of thousands of legal claims into bankruptcy to avoid further
1494 liability for its cancer-causing talcum powder.

1495 Do you believe culpable individuals and corporations
1496 should be allowed to use the shell game to shield themselves
1497 from liability?

1498 Attorney General Garland. I don't know anything about
1499 the second example that you gave. As to the first, the
1500 Justice Department's bankruptcy trustee has weighed in to

1501 appeal the decision to immunize from personal liability, and
1502 I think that matter is now pending in court.

1503 Mr. Johnson of Georgia. Thank you.

1504 Lastly, I will note that there has been a lot of
1505 discussion by my friends on the other side of the aisle about
1506 local school boards. And I will point out the fact that
1507 there are reports that restrictions on the discussion of race
1508 and history in schools, these laws that are being put forward
1509 by Republican-led states, are causing administrators to tell
1510 teachers that, in addition to having an opposing view on
1511 slavery, now they are saying that you have got to include an
1512 opposing view on the Holocaust. If you have any books that
1513 are teaching about that, you have got to have an opposing
1514 view. This is the danger that we --

1515 Chairman Nadler. The gentleman's time has expired.

1516 Mr. Jordan?

1517 Mr. Jordan. Thank you, Mr. Chairman.

1518 March 25th, Joe Biden criticizes the Georgia election
1519 law. Three months later, the Department of Justice
1520 challenges it. September 1st, Joe Biden criticizes the new
1521 pro-life law in Texas. Eight days later, the Department of
1522 Justice challenges it. September 29th, the political
1523 organization asked President Biden to involve the FBI in
1524 local school board issues. Five days later, the Department

1525 of Justice does just that.

1526 Mr. Attorney General, was it just a coincidence that
1527 your memo came five days after the National School Boards
1528 Association's letter went to the President?

1529 Attorney General Garland. So, we are concerned about
1530 violence and threats of violence across the board against
1531 school officials, against --

1532 Mr. Jordan. Is there any connection, Mr. Attorney
1533 General, with the school board letter, and then, five days
1534 later, your memo regarding school board issues?

1535 Attorney General Garland. Obviously, the letter, which
1536 was public and asked for assistance from the Justice
1537 Department, was brought to our attention, and it is a
1538 relevant factor in --

1539 Mr. Jordan. Who gave you the letter?

1540 Attorney General Garland. I'm sorry?

1541 Mr. Jordan. How did you become aware of the letter?
1542 Who gave it to you?

1543 Attorney General Garland. Well, I read about the letter
1544 in the news. That's how I read about --

1545 Mr. Jordan. Who at the White House told you to write
1546 the memo?

1547 Attorney General Garland. No one in the White House
1548 spoke to me about the memo at all. I am sure, at least I

1549 certainly would believe, that the White House communicated
1550 its concerns about the letter to the Justice Department. And
1551 that is perfectly --

1552 Mr. Jordan. Well, that was my next question.

1553 Attorney General Garland. -- perfectly appropriate.

1554 Mr. Jordan. Did you or anyone at the Justice Department
1555 discuss the memo with White House personnel or with anyone at
1556 the White House before the memo was sent?

1557 Attorney General Garland. I did not. I don't know
1558 whether anyone discussed the memo. I am sure that the
1559 communication from the National Association of School Boards
1560 was discussed between the White House and the Justice
1561 Department, and that's perfectly appropriate, just as --

1562 Mr. Jordan. Who are those individuals? Who at the
1563 White House talked with who at the Justice Department?

1564 Attorney General Garland. I don't know. I don't know.

1565 Mr. Jordan. Did they talk to you? Did someone call
1566 you? Did --

1567 Attorney General Garland. I think I have answered. No
1568 one from the White House spoke to me, but the White House is
1569 perfectly appropriately concerned about violence, just like
1570 they are concerned about violence in the streets. And they
1571 make requests of the Justice Department in that respect, just
1572 like they are --

1573 Mr. Jordan. Did you or anyone at the Department of
1574 Justice communicate with the American Federation of Teachers,
1575 the National Education Association, the National School
1576 Boards Association prior to your memo?

1577 Attorney General Garland. I did not. I don't know as
1578 to --

1579 Mr. Jordan. You don't know if anyone else at the
1580 Justice Department did?

1581 Attorney General Garland. I don't know.

1582 Mr. Jordan. Did you or anyone at the Justice Department
1583 communicate with those organizations -- AFT, NEA, National
1584 School Boards Association -- prior to the letter? Did you
1585 help the National School Boards Association put together the
1586 letter?

1587 Attorney General Garland. Again, not -- I have had no
1588 such conversations. I would be surprised if that happened,
1589 but I don't know.

1590 Mr. Jordan. Will FBI agents be attending local school
1591 board meetings?

1592 Attorney General Garland. No, FBI agents will not be
1593 attending local school board meetings, and there is nothing
1594 in this memo to suggest that. I want to, again, try to be
1595 clear. This memo is about violence and threats of violence.
1596 It is not --

1597 Mr. Jordan. Well, let me just point out, the same day
1598 you did the memo, the Justice Department sent out a press
1599 release, Monday, October 24 -- or excuse me -- on Monday,
1600 October 4th, 2021. The press release says, "Justice
1601 Department Addresses Violent Threats Against School Officials
1602 and Teachers."

1603 Now you said earlier to a question from one of my
1604 colleagues on the Republican side, that parents aren't
1605 domestic terrorists; we are not going to treat them that way.
1606 But let me just read from the third paragraph: "According to
1607 the Attorney General's memorandum, the Justice Department
1608 will launch a series of additional efforts in the coming days
1609 designed to address the rising criminal conduct directed
1610 towards school personnel. Those efforts are expected to
1611 include the creation of a task force consisting of
1612 representatives from the Department's Criminal Division,
1613 Civil Rights Division, Executive Office of the U.S.
1614 Attorneys, the FBI, the Community Relations Service, Office
1615 of Justice Programs, and the National Security Division."

1616 Now I find that interesting. You said there is no way
1617 you are going to be treating parents as domestic terrorists,
1618 but you have got the National Security Division in a press
1619 release regarding your memo that day.

1620 Attorney General Garland. My memo does not mention the

1621 National Security Division. It is addressed to --

1622 Mr. Jordan. I didn't say it did. I said the press
1623 release accompanying your memo that day from the Department
1624 of Justice -- right here it is -- talks about --

1625 Attorney General Garland. I want to be as clear as I
1626 can be --

1627 Mr. Jordan. -- the National Security Division being
1628 part of this effort.

1629 Attorney General Garland. I want to be clear as I can
1630 be. This is not about what happens inside school board
1631 meetings. It is only about threats of violence, and violence
1632 aimed at school officials, school employees, and teachers.

1633 Mr. Jordan. The first sentence of your memo, the very
1634 first sentence, you said, "In recent months, there's been a
1635 disturbing spike in harassment, intimidation, threats of
1636 violence."

1637 Attorney General Garland. Yes.

1638 Mr. Jordan. When did you first review the data showing
1639 this so-called disturbing uptick?

1640 Attorney General Garland. So, I read the letter, and we
1641 have been seeing over time threats --

1642 Mr. Jordan. Whoa, whoa, whoa. I didn't ask you -- so,
1643 you read the letter. That is your source?

1644 Attorney General Garland. So, let me be clear. This is

1645 not a prosecution or an investigation --

1646 Mr. Jordan. Is there some study, some effort, some
1647 investigation someone did that said there's been a disturbing
1648 uptick? Or did you just take the words of the National
1649 School Boards Association?

1650 Attorney General Garland. When the National School
1651 Boards Association, which represents thousands of school
1652 boards and school board members, says that there are these
1653 kind of threats, when we read in the newspapers reports of
1654 threats of violence, when that is in the context of threats
1655 of violence against all --

1656 Mr. Jordan. So, the source for this, for the very first
1657 line in your memo --

1658 Chairman Nadler. The time of the gentleman has expired.

1659 Mr. Jordan. -- was the School Boards Association
1660 letter?

1661 Chairman Nadler. The time of the gentleman has expired.

1662 Mr. Deutch?

1663 Mr. Deutch. Thank you, Mr. Chairman.

1664 Thank you, General Garland, for being here.

1665 What is so disturbing to me is the lack of concern about
1666 threats of violence. General Garland, let me give you some
1667 examples.

1668 In Brevard County, Florida, a school board member

1669 reported she was followed to her car, received messages from
1670 people saying, "We are coming for you," and "Beg for mercy."
1671 She was concerned when people were going behind her home and
1672 brandishing weapons.

1673 She is not alone, Attorney General. In Texas, a parent
1674 tore a teacher's mask from her face. In California, a parent
1675 verbally assaulted a principal and physically attacked a
1676 teacher who intervened, sending him to the hospital. In
1677 Arizona, a school official was told, "You're going to get
1678 knifed." A fight broke out, a fist fight broke out after a
1679 school board meeting in Missouri.

1680 I appreciate, Attorney General Garland, your concern
1681 about threats to people who are doing their job, trying to
1682 help our kids get a good education. I am grateful to you for
1683 that.

1684 My question is, as our Governor in Florida claimed that
1685 your efforts are weaponizing the DOJ, I would like to know
1686 whether Governor DeSantis in the State of Florida has been
1687 cooperative in your efforts to protect our schools?

1688 Attorney General Garland. I don't know the answer to
1689 the question that you are asking. We are trying to prevent
1690 violence and threats of violence. It is not only about
1691 schools; we have similar concerns with respect to election
1692 workers, with respect to hate crime, with respect to judges

1693 and police officers. This is a rising problem in the United
1694 States of threats of violence, and we are trying to prevent
1695 the violence from occurring.

1696 Mr. Deutch. Attorney General Garland, I appreciate it,
1697 and I am shocked and dismayed by the lack of concern by some
1698 of my colleagues on this committee.

1699 Last year, Attorney General Garland, as you pointed out,
1700 over 93,000 people died of overdose in America. Young people
1701 15 to 24 saw a 48 percent increase. Earlier this year, I
1702 lost my nephew, Eli Weinstock, to an accidental overdose
1703 after he consumed a legal herbal supplement tainted with
1704 fentanyl.

1705 Last month, in response to the surge in overdoses caused
1706 by fentanyl and fake pills, the DEA issued its first Public
1707 Safety Alert in six years and has ramped up enforcement
1708 efforts, resulting in the seizure of over 11.3 million pills
1709 and 810 arrests.

1710 In a Washington Post article entitled, "With Overdose
1711 Deaths Soaring, DEA Warns About Fentanyl-, Meth-Laced Pills,"
1712 from September 27th, and I ask unanimous consent to submit it
1713 for the record, Mr. Chairman.

1714 Chairman Nadler. Without objection.

1715 [The information follows:]

1716

1717

*****COMMITTEE INSERT*****

1718 Mr. Deutch. In that article, it said that young people
1719 assume that a pill purchased online must be made in a
1720 reputable lab and must not be too dangerous. "We are in the
1721 midst," according to DEA Administrator Milgram, "We are in
1722 the midst of an overdose crisis, and the counterfeit pills
1723 are driving so much of it." Many of these counterfeit pills
1724 that alarm the DEA are being sold on social media sites,
1725 Snapchat, Tik Tok, Instagram, YouTube. Milgram said that
1726 "The drug dealer isn't just standing on a street corner
1727 anymore. It's sitting in a pocket on your phone."

1728 Attorney General, what more should social media
1729 companies be doing to prevent young people from finding
1730 deadly drugs on their platform, and what more can you do
1731 about it?

1732 Attorney General Garland. With respect to the latter
1733 question, what we can do about it, the DEA has intensified
1734 focus on this problem of fentanyl crossing the border from
1735 Mexico, made from precursor which often come from the
1736 People's Republic of China. This is a very dangerous
1737 circumstance. Much of, I think, the article that you are
1738 referring to comes from a press conference that the DEA
1739 Administrator gave. A significant portion of these pills are
1740 a lethal overdose with one pill. And this is an
1741 extraordinarily dangerous problem that we are putting our

1742 full attention to.

1743 Mr. Deutch. Attorney General Garland, I assure you that
1744 there is strong, notwithstanding much of what else you will
1745 hear today, strong bipartisan support in this Congress to
1746 combat the threats of fentanyl rising overdoses.

1747 Finally, yesterday the person who shot and killed 17
1748 people at Marjory Stoneman Douglas High School, injured 17
1749 more, and traumatized my entire community, pleaded guilty in
1750 a Broward County courtroom. Many Parkland families strongly
1751 believe that gun companies must also be held responsible for
1752 the dangerous marketing of assault weapons.

1753 Unfortunately, the Protection of Lawful Commerce in Arms
1754 Act, known as PLCAA, has blocked countless victims and
1755 surviving family members from their day in court. The law
1756 provides broad immunity against civil lawsuits unique to the
1757 gun industry.

1758 Unfortunately, the Department of Justice has a long
1759 history of intervening in civil cases filed by gun violence
1760 survivors to defend this law. The question is whether you
1761 believe, Attorney General Garland, that repealing PLCAA to
1762 hold gunmakers accountable for their products and the
1763 marketing of those products could improve gun safety in
1764 America.

1765 Attorney General Garland. So, the President has already

1766 stated his opposition to that statute, but our obligation in
1767 the Justice Department is to defend the constitutionality of
1768 statutes that we can reasonably argue are constitutional.
1769 That is the position that the Justice Department takes.
1770 Whether we like the statute or not, we defend the
1771 constitutionality of Congress' work.

1772 Chairman Nadler. The time of the gentleman has expired.

1773 Mr. Deutch. You support the passage of the John Lewis
1774 Voting Rights Act. I hope that you will support the repeal
1775 of PLCAA --

1776 Chairman Nadler. The time of the gentleman has expired.

1777 Mr. Deutch. -- PLCAA.

1778 Thank you.

1779 Chairman Nadler. At this time, we will take a very
1780 short 5-minute break. We will return immediately after.

1781 The committee stands in recess.

1782 [Recess.]

1783 Chairman Nadler. Committee will come to order.

1784 Mr. Roy?

1785 Mr. Roy. I thank the chairman.

1786 Attorney General Garland, do you know where Broad Run
1787 High School is?

1788 Do you know where Broad Run High School is? It's in
1789 Ashburn, Virginia in Loudoun County, Virginia.

1790 Do you know why I care? Because I'm a graduate of
1791 Loudoun Valley High School. Despite my family having Texas
1792 reach back to the 1850s, I grew up in Loudoun. It was my
1793 home. And also I care because on October 6th, a mere 15 days
1794 ago, inside Broad Run High School in Loudoun County,
1795 Virginia, a young girl was sexually assaulted.

1796 Attorney General Garland, are you aware that because
1797 Loudoun County prosecutors confirmed that the boy who
1798 assaulted this young girl in Broad Run High School is the
1799 same boy who wore a skirt and went into a girl's bathroom,
1800 sodomized and raped a 14-year-old girl in a different Loudoun
1801 County high school on May 28? Are you aware of those facts?

1802 The boy was -- are you aware of firmly -- are you aware
1803 further that the boy was arrested and charged for the first
1804 assault in July but released from juvenile detention?

1805 Attorney General Garland. It sounds like a state case
1806 and I'm not familiar with it. I'm sorry.

1807 Mr. Roy. Do you agree with Loudoun parents who said it
1808 is not okay to allow a child that has been charged with a
1809 rape to go back into a school in that public school system?

1810 Attorney General Garland. Again, I don't know any of
1811 the facts of this case. But the way you put it, it certainly
1812 sounds like I would agree with you. But I don't know the
1813 facts of the case.

1814 Mr. Roy. Is the FBI or the Department of Justice
1815 investigating the Loudoun school board for violating civil
1816 rights or under authority of, say, the Violence Against Women
1817 Act?

1818 Attorney General Garland. I don't believe so. But I
1819 don't know the answer to that question.

1820 Mr. Roy. And I would ask why not because on June 22nd
1821 at a school board meeting in Loudoun County, Virginia, the
1822 superintendent, Scott Ziegler, declared in front of the
1823 father of the girl who had been raped that the predator
1824 transgender student or person simply does not exist and that,
1825 to his knowledge, we don't have any records of assaults
1826 occurring in our restrooms.

1827 When this statement bothered the father of the girl --
1828 I'm a father of a daughter, I believe you are, too sir -- the
1829 girl who had been raped, sodomized in the bathroom of a high
1830 school by a dude wearing a skirt, that father reacted.

1831 Now, that father reacted by simply using a derogatory
1832 word. Would that statement have bothered you if your
1833 daughter had been raped if somebody said that it didn't
1834 occur?

1835 Attorney General Garland. Again, I don't know anything
1836 about the facts of this case. But derogatory words are not
1837 what my memorandum is about.

1838 Mr. Roy. Well, the victim's mother is heard on a cell
1839 phone video telling the crowd what happened. "My child was
1840 raped at school," she said. Behind her, the victim's father
1841 seen being arrested, bloodied.

1842 This man is arrested. A 48-year-old plumber became the
1843 poster boy for the new domestic terrorism, the Biden
1844 administration, the administration in which you serve, has
1845 concocted to destroy anyone who gets in the way.

1846 As the ranking member said, the National School Boards
1847 Association wrote a letter to the president citing Smith's
1848 case. We all know this to be true.

1849 Attorney General, do you believe that a father attending
1850 a meeting exercising his First Amendment rights and, yes,
1851 getting angry about whatever lies are being told about his
1852 daughter being raped in the school he sent her to be educated
1853 in, that this is domestic terrorism? Yes or no.

1854 Attorney General Garland. No, I do not think that
1855 parents getting angry at school boards for whatever reason
1856 constitute domestic terrorism. It's not even a close
1857 question.

1858 Mr. Roy. To be clear, even if there's a threat of
1859 violence, do you believe that it is domestic terrorism that
1860 the FBI has the power to target American citizens in local
1861 disputes because a father gets mad?

1862 Now, I'm not saying Mr. Smith did that. In fact, he
1863 didn't. I can tell you how I sure as hell would have
1864 reacted. Mr. Smith should be given a medal for his calm to
1865 be able to hold back his anger.

1866 Are you aware that Loudoun County failed to report this
1867 sexual assault according to state law and are you
1868 investigating this?

1869 Attorney General Garland. Again, I'm sorry. I don't
1870 know anything about this case.

1871 Mr. Roy. Are you aware that the Virginia General
1872 Assembly, run by Democrats, voted for -- and Democrat
1873 Governor Ralph Northam signed a bill allowing schools to
1874 refrain from reporting instances of sexual battery, stalking,
1875 violation of a protective order, and violent threats
1876 occurring on school property?

1877 Is the FBI investigating how this may conflict with the
1878 Violence Against Women Act or conflict with your own domestic
1879 terrorism efforts?

1880 Attorney General Garland. I don't know anything about
1881 the Virginia legislation.

1882 Mr. Roy. Do you agree with the following statement as a
1883 father or as a Cabinet member? Quote, "You don't want
1884 parents coming into every different school jurisdiction
1885 saying that this is what should be taught here and that this

1886 is what should be taught here?"

1887 Attorney General Garland. The Justice Department has no
1888 role with respect to what curriculum is taught in the
1889 schools. This is a matter for local decision making and not
1890 for the Justice Department, and we are not in any way
1891 suggesting that we have any --

1892 Mr. Roy. I would note that that statement was by a
1893 Democratic gubernatorial candidate in the Commonwealth of
1894 Virginia.

1895 I would note that there are a number of other issues of
1896 concern of the Virginia Department of Education, what's being
1897 taught there, and the lack and the total failure of Loudoun
1898 County of reporting all of these incidents that have occurred
1899 in Loudoun County public schools.

1900 I've got eight seconds left. Attorney General Garland,
1901 I sent a letter along with my colleague, Thomas Massie,
1902 regarding the incidents of January 6th on May 13th and on
1903 July 15th and have not gotten a response from the Department
1904 of Justice.

1905 Chairman Nadler. The gentleman's -- the gentleman's
1906 time has expired.

1907 Mr. Roy. Do you commit to responding?

1908 Chairman Nadler. The gentleman's time has expired.

1909 Ms. Bass?

1910 Ms. Bass. Thank you, Mr. Chair.

1911 Attorney General Garland, in 2014, 12-year-old Tamir
1912 Rice was tragically and fatally shot by a Cleveland police
1913 officer.

1914 Since then, we have learned that despite multiple
1915 requests from prosecutors in the Civil Rights Division to
1916 investigate this shooting, the case stalled without approval
1917 from DOJ officials who had political concerns about high-
1918 visibility police misconduct cases.

1919 Ultimately, department officials essentially ran the
1920 clock out on the statute of limitations for federal
1921 obstruction of justice charges. That following December, a
1922 whistleblower exposed this information to light and former AG
1923 Barr formally ended the department's inquiry into Tamir
1924 Rice's killing.

1925 This year, the family wrote a letter requesting that the
1926 department reopen the inquiry into Tamir's murder and to
1927 convene a grand jury. According to a department
1928 spokesperson, the letter has been received.

1929 I wanted to know if you could tell us today if the
1930 department has reviewed the letter and if you know when the
1931 department will respond to this request to reopen the
1932 inquiry.

1933 Attorney General Garland. So when the department

1934 receives a letter like that it would go to the Civil Rights
1935 Division for examination, and in line with our general norm
1936 of not disclosing pending investigations -- I don't know the
1937 answer to the question but even if I did I would not be able
1938 to give an explanation.

1939 Ms. Bass. Okay. Sadly, just yesterday, the AP released
1940 a report investigating how police use of force on children,
1941 and I'd like to ask the chair -- request unanimous consent to
1942 submit for the record this article, "Tiny Wrists in Cuffs:
1943 How Police Use Force Against Children."

1944 Chairman Nadler. Without objection.

1945 [The information follows:]

1946

1947 *****COMMITTEE INSERT*****

1948 Ms. Bass. Out of 3,000 cases analyzed where police use
1949 force -- thank you -- against children under 16, more than 50
1950 percent of them were African-American children. This is
1951 despite the fact that only 15 percent of the U.S. child
1952 population is African American.

1953 The American Psychological Association found that Black
1954 boys as young as 10 are more likely than their white
1955 counterparts to be perceived as guilty and face police
1956 violence.

1957 Use of force against children can include physical
1958 restraint, handcuffs, tasers, dogs, and even firearms. In
1959 one particularly distressing case cited in the AP report, law
1960 enforcement officers attempted to handcuff a six-year-old
1961 girl but were unable to because her hands were too small.

1962 These encounters can be traumatizing and impact
1963 children's perceptions of police, moving forward. I wanted
1964 to know, to the best of your knowledge are law enforcement
1965 officers trained on how to properly interact with children?

1966 There have been several reports of officers attempting
1967 to handcuff five-, six-, and seven-year-old children.

1968 Attorney General Garland. I'm afraid I don't know the
1969 answer because the federal government almost never is
1970 involved in those kind of cases. However, we do have funding
1971 for use of force guidelines and that sort of thing, and we

1972 also have under our Office of Juvenile Justice funding for
1973 helping set up standards for such things. I don't know the
1974 specifics.

1975 Ms. Bass. Okay. Thank you very much.

1976 Last month, you announced a new policy prohibiting the
1977 department's federal law enforcement components from using
1978 choke holds or carotid restraints. Thank you very much for
1979 that, considering we weren't able to pass the law in the
1980 Senate. Passed it twice here.

1981 I commend the department for taking these steps to
1982 reduce the potential for abuse of force by federal law
1983 enforcement. That being said, we have seen other incidences
1984 such as in the tragic case of Elijah McClain where methods of
1985 restraints have been used with horrifying results.

1986 What is the department's policy regarding the use of
1987 sedatives or other chemical restraints by the department's
1988 federal law enforcement components during an individual's
1989 arrest or detention?

1990 Just to remind you, the department in Colorado
1991 administered -- required a paramedic to administer ketamine.
1992 It's my understanding that medication can only be prescribed
1993 by medical personnel, not by law enforcement. But I want to
1994 know if there is any policy around prohibiting chemical
1995 restraints.

1996 Attorney General Garland. So I'm not familiar with that
1997 specifically. The deputy attorney general is doing a review
1998 of all of our use of force policies.

1999 That's where the carotid holds and the choke hold
2000 policies came out of, and I don't know about the question
2001 you're asking. But I'd be happy to have staff get back to
2002 you.

2003 Ms. Bass. Great, and once again, I appreciate DOJ trying
2004 to step in where we weren't successful in the Senate in terms
2005 of the George Floyd Justice in Policing Act, and I wanted to
2006 know if you could expand on further action that the
2007 Department of Justice will be taking in lieu of us passing
2008 legislation.

2009 Attorney General Garland. Well, I mean, there are a lot
2010 of things that we're doing. We have begun, again, to look at
2011 pattern and practice investigations of police departments for
2012 patterns of unconstitutional policing as provided by statute
2013 that Congress did pass and gave us the authority to do.

2014 We will, again, use consent decrees where they are
2015 appropriate. We have issued memoranda with quite specific
2016 standards about when they are appropriate and when not. They
2017 may include monitors, may not but, again, with new standards
2018 about when monitors are appropriate.

2019 So I think that's, you know, one -- certainly, one very

2020 significant area. I think one of the other members mentioned
2021 that we have had three of those proceedings and we also have
2022 in Texas a proceeding about the youth jails and the youth
2023 prisons. So that follows up on your other question where
2024 we're doing those kinds of investigations.

2025 Chairman Nadler. The time of the gentlelady has
2026 expired.

2027 Mr. Tiffany?

2028 Mr. Tiffany. Thank you, Mr. Attorney General, for being
2029 here today. Right over here in this corner.

2030 Attorney General Garland. Ah. Oh, thank you. Okay.
2031 Sorry.

2032 Mr. Tiffany. The equal protection clause was
2033 incorporated into the Fifth Amendment to prevent the federal
2034 government from discriminating against Americans based on
2035 race. Do you agree that race is a suspect classification?

2036 Attorney General Garland. Yes, that's what the Supreme
2037 Court has held for -- since the late 1950s, early 1960s.

2038 Mr. Tiffany. Thank you very much for that. So the so-
2039 called American Rescue Plan earmarked billions of dollars in
2040 United States Department of Agriculture debt relief based
2041 solely on race. Why are you and your department defending
2042 the American Rescue Plan that discriminates based on race?

2043 Attorney General Garland. So I believe you're referring

2044 to a district court case in which that's at issue and so I
2045 can't really say any more than is in the pleadings in that
2046 case.

2047 But if this has to do with whether there are additional
2048 indicia in addition to race that are used in making these
2049 grants and whether there is sufficient evidence of historical
2050 practices that will tie it to race.

2051 Mr. Tiffany. So, sir, it's very explicit in the bill
2052 that the Democrats wrote in this Congress and President Biden
2053 signed into law. They said, this is based on race. I mean,
2054 doesn't this meet the standard of that is pure discrimination
2055 --

2056 Attorney General Garland. The question --

2057 Mr. Tiffany. -- that our country has tried to rid
2058 itself of?

2059 Attorney General Garland. I believe the question has to
2060 do with historical patterns of discrimination against Black
2061 farmers and I believe that the purpose of what's going on in
2062 the district court now is examining the record to determine
2063 whether there is a sufficient record in that respect
2064 [inaudible] department believes there is.

2065 Mr. Tiffany. So it sounds like you -- sounds like you
2066 support the legislation then.

2067 Attorney General Garland. The question for us is the

2068 constitutionality of the legislation. That's the only
2069 question before us and the -- as I said with respect to
2070 another statute, the Justice Department defends the
2071 constitutionality of statutes that can be reasonably
2072 construed as constitutional and we believe that statute can
2073 be, yes.

2074 Mr. Tiffany. The chairman confines me to five minutes,
2075 so I'd like to move on.

2076 Recently, you directed the FBI to coordinate with 14,000
2077 school districts after the National School Boards Association
2078 asked you to protect schools from the imminent threat of
2079 parents.

2080 Along with friends, neighbors, and constituents, I've
2081 attended multiple school board meetings throughout my
2082 district here over the last year. I have a child that's in
2083 public school, yet very concerned about some of the things
2084 that are going on.

2085 And yes, some of those school board meetings get heated.
2086 Are we, my friends, neighbors, constituents -- are we
2087 domestic terrorists?

2088 Attorney General Garland. No.

2089 Mr. Tiffany. Are we criminals?

2090 Attorney General Garland. Again, I don't know the facts
2091 that you're talking about. But the only way you're criminals

2092 is if you commit acts in violation of the statutes and that
2093 would mean threats of violence or actual violence. I'm sure
2094 you haven't done that, Congressman.

2095 Mr. Tiffany. Have states -- have states asked for help?

2096 Attorney General Garland. That's not --

2097 Mr. Tiffany. The School Boards Association did but have
2098 states asked for help?

2099 Attorney General Garland. So we have state and local
2100 partners for all of our matters. This is an assessment of
2101 whether there is a problem and there are federal statutes
2102 involved and there are state statutes involved, and we are
2103 trying to prevent violence and threats of violence against
2104 public officials across a broad spectrum of kinds of public
2105 officials.

2106 Mr. Tiffany. As a -- as a former town board member, I
2107 can tell you that we know how to deal with this. We call our
2108 sheriff's department. We can handle it. It's really not a
2109 problem.

2110 William Castleberry, vice president for Facebook,
2111 admitted that the company knowingly allows users to promote
2112 information on the platform instructing people on how to
2113 break U.S. immigration law.

2114 He said, "We do allow people to share information about
2115 how to enter a country illegally or request information about

2116 how to be smuggled."

2117 Are there charges pending against Facebook?

2118 Attorney General Garland. Again, we can't, under the
2119 norms of the department, discuss whether there are pending
2120 investigations, actual investigations, the date of
2121 resolution.

2122 Mr. Tiffany. Well, let me -- let me help. I understand
2123 your answer that you're going to give there. Let me help you
2124 along.

2125 Title 8 U.S. Code 1324 makes it illegal for any person
2126 to knowingly encourage or induce an alien to come, to enter,
2127 or reside in the United States in violation of law or for
2128 individuals to aid or abet illegal entry.

2129 I would just say to you, you need to really take a look
2130 at Facebook and what they're doing to provide for greater
2131 illegal immigration that the Biden administration continues
2132 to foster also.

2133 I mean, let's get down to what's happening here in the
2134 United States of America. Under the Biden administration, we
2135 have a two-tiered justice system. They do nothing about
2136 crime. There's more cash bail and nothing is being done
2137 about it.

2138 You talk about increased crime. It is skyrocketing
2139 across the country, including in our biggest city, Milwaukee,

2140 Wisconsin.

2141 Chairman Nadler. Time of the gentlemen has expired.

2142 Mr. Tiffany. Yet, we have parents that are silenced.

2143 We have parents that are silenced.

2144 Chairman Nadler. The time of the gentleman has expired.

2145 Mr. Jeffries?

2146 Mr. Jeffries. Thank you -- thank you, Mr. Chairman.

2147 Thank you, General Garland, for your leadership, service to
2148 the country, and your presence here today.

2149 Earlier this year, the House passed on a bipartisan
2150 basis by a vote of 414 to 11 the Effective Assistance of
2151 Counsel in a Digital Error Act, which would limit the ability
2152 of the Bureau of Prisons to monitor private communications,
2153 email communications, between detainees in the BOP's custody
2154 and their attorneys.

2155 We concluded in a bipartisan way that this practice,
2156 which has occurred under Democratic administrations and
2157 Republican administrations, needs to be addressed.

2158 We are seeking technical assistance from the Department
2159 of Justice and the BOP. I sent a letter to you in that
2160 regard yesterday.

2161 I ask unanimous consent, Mr. Chairman, that it be
2162 entered into the record.

2163 Chairman Nadler. Without objection.

2164 [The information follows:]

2165

2166 *****COMMITTEE INSERT*****

2167 Mr. Jeffries. And I look forward to your response and
2168 to working with the Department of Justice on this issue.

2169 Voter fraud, if proven, a serious crime that carries a
2170 five-year prison sentence. Is that right?

2171 Attorney General Garland. I'm not sure about the
2172 sentence. But yes, if proven, it's a serious crime.

2173 Mr. Jeffries. And the Department of Justice is
2174 responsible for investigating and prosecuting voter fraud.
2175 Is that right?

2176 Attorney General Garland. With respect to federal
2177 voting, yes.

2178 Mr. Jeffries. Now, your predecessor, Bill Barr,
2179 publicly acknowledged that the Department of Justice had
2180 uncovered zero evidence of widespread fraud in the 2020
2181 election. Is that still accurate?

2182 Attorney General Garland. It's my recollection that
2183 that is what he concluded and I don't know of any evidence to
2184 the contrary.

2185 Mr. Jeffries. Right. There's no evidence that voter
2186 fraud impacted the outcome of the 2020 presidential election.
2187 True?

2188 Attorney General Garland. That's correct. That's
2189 correct.

2190 Mr. Jeffries. Is it fair to say that despite a global

2191 pandemic and record voter turnout, as prior members of the
2192 Trump administration have acknowledged the 2020 election was
2193 the most secure in American history?

2194 Attorney General Garland. That is the conclusion of the
2195 Justice Department and of the intelligence community and of
2196 the Department of Homeland Security. Yes.

2197 Mr. Jeffries. And despite the fact that there's no
2198 evidence of so-called fraud, this year at least 19 states
2199 have enacted 33 laws making it harder for everyday Americans
2200 to vote.

2201 And in the aftermath of the January 6th insurrection,
2202 instead of running toward democracy, there are people
2203 throughout this country, some, have run away from democracy
2204 and they've unleashed an epidemic of voter suppression across
2205 the land.

2206 So let me just ask a few questions about some of the
2207 things that have occurred. How does banning churches and
2208 civic groups from giving food and water to voters, some of
2209 whom have been waiting in line for hours, prevent or address
2210 voter fraud?

2211 Attorney General Garland. So, Congressman, I don't want
2212 to talk too much about that because that is the subject of
2213 our lawsuit against the state of Georgia. But you have
2214 identified a segment of that statute that we have challenges

2215 of being unlawful.

2216 Mr. Jeffries. And does restricting the times that
2217 someone can cast their vote to business hours when many
2218 Americans are at work relate in any way, rationally, to
2219 protecting the integrity of our elections?

2220 Attorney General Garland. Let me just talk generally
2221 about this. So I believe that every eligible voter should be
2222 able to vote and that there should be no restrictions on
2223 voters that make it more difficult for them to vote unless
2224 they're absolutely necessary.

2225 The Justice Department is limited in its ability to
2226 bring cases. It must find discriminatory intent or effect.
2227 So those are the kind of cases that are covered by Section
2228 Tow.

2229 But as a general matter, my view is that everyone should
2230 have the ability to vote as readily and easily as possible.

2231 Mr. Jeffries. You testified earlier today that, in
2232 fact, one of the founding reasons for the Department of
2233 Justice is to defend civil rights in the nation. In that
2234 particular context, I believe it was in the immediate
2235 aftermath of the Civil War where the rights of African
2236 Americans were under assault.

2237 We have come a long way. We still have a long way to
2238 go. We still see race baits, assaults on civil rights,

2239 taking place today, and I would just urge the Department of
2240 Justice, as it has been doing under your leadership to
2241 continue to do all that's possible to defend and protect the
2242 integrity of the right to vote.

2243 Let me just also comment that, you know, there are some
2244 who continue to lie about the election. They're lying about
2245 COVID. They're lying about the Department of Justice.

2246 Mr. Attorney General, you're a man of great integrity,
2247 and under your leadership the Department of Justice is off to
2248 a good start. We appreciate the work that you're doing.
2249 Keep it up on behalf of the American people and the
2250 Constitution.

2251 I yield back.

2252 Attorney General Garland. Thank you, Congressman.

2253 Chairman Nadler. The gentleman yields back.

2254 There is a technical issue with the Zoom feed. So we
2255 will recess for less than five minutes to resolve this issue.

2256 [Recess.]

2257 Mr. Bishop. Thank you, Mr. Chairman. Mr. Attorney
2258 General, I am right here. I was going to do another subject
2259 in my questioning, Mr. Attorney General, but I have been so
2260 concerned about the interaction about the October 4 memo that
2261 I am going to follow up on that, if I might.

2262 The memo is a one-pager. You read it before it was

2263 issued, I assume.

2264 Attorney General Garland. I certainly did, and I worked
2265 on it.

2266 Mr. Bishop. Okay. Now in that memo you issued a
2267 directive to the FBI. You directed the FBI to conduct
2268 meetings with leaders of all levels of government across the
2269 country, in every judicial district to strategize against an
2270 alleged trend of, quote, "harassment, intimidation, and
2271 threats of violence." You didn't cite examples to
2272 distinguish legitimate First Amendment activity from criminal
2273 activity, nor certainly examples of a nationwide scope or
2274 severity of such acts to constitute a rise or spike in
2275 criminal activity, which you alleged in the memo, certainly
2276 not one that would warrant nationwide action by the FBI.

2277 Here you have acknowledged that you relied in part on
2278 your knowledge of the National School Boards Association
2279 letter, which by the way characterized this activity
2280 nationwide as domestic terrorism, and maybe some vague
2281 awareness of other news reports.

2282 You have offered the justification here also that this
2283 was not the initiation of an investigation, as if that; I
2284 don't submit it doesn't, excuse the preeminent law
2285 enforcement official in the country issuing a memo of that
2286 sort. And other than a brief nod to the concept of First

2287 Amendment right you included no guidance in your memo how the
2288 FBI should go about avoiding chilling, intimidating,
2289 legitimate First Amendment activity. You have even distanced
2290 yourself from the DOJ's press release on your memo today in
2291 its reference to the National Security Division.

2292 So we come to this: You directed the FBI to act with
2293 speed. Meetings in 30 days is what you said. You directed
2294 the FBI to have these meetings nationwide, coordinated by
2295 United States attorneys. Three days later I and 30-some-odd
2296 members of Congress asked for advanced notice of these
2297 meetings, indications of what content would be shared there.

2298 We asked for that response within 10 days given the time
2299 frame that you set forth in your memo. More than half of
2300 that time has passed; no response. Are these meetings
2301 occurring?

2302 Attorney General Garland. So let me just be clear again
2303 here. This memo is expressly addressed against threats of
2304 violence and violence. The federal statutes that are
2305 relevant--

2306 Mr. Bishop. I am sorry--

2307 Attorney General Garland. --prosecutors are well aware
2308 of where the First Amendment line is. This is addressed to
2309 prosecutors and members of law enforcement. These are the
2310 kinds of statutes that we deal with every single day.

2311 Mr. Bishop. Well, I am not sure--

2312 Attorney General Garland. They know the line.

2313 Mr. Bishop. --you deal with it in this way, Mr.

2314 Attorney General. Are the meetings occurring? Do you know?

2315 Attorney General Garland. I don't know whether they are
2316 ongoing, but I expect and hope that they are going, yes,
2317 because I did ask that they take place.

2318 Mr. Bishop. So you do not have any report or you have
2319 not pursued at all to know what the progress is of your
2320 directive to do this within 30 days, have meetings in every
2321 judicial district across the country? You just don't know?

2322 Attorney General Garland. I doubt there have been
2323 meetings in every jurisdiction. I expect there have been in
2324 some jurisdictions. And I hope so because that is the
2325 purpose of the memo, to have meetings to discuss whether
2326 there is a problem, to discuss strategies, to discuss whether
2327 local law enforcement needs assistance or doesn't need
2328 assistance. That is the purpose of these meetings.

2329 Mr. Bishop. Doesn't that make it worse, Mr. Attorney
2330 General?

2331 Attorney General Garland. Doesn't that make--

2332 Mr. Bishop. You don't even know if these meetings that
2333 you directed urgently to occur are even occurring. What is
2334 left indeed of the memo except your use of federal law

2335 enforcement moral authority to stigmatize a widespread
2336 movement of First Amendment activity, at least a significant
2337 portion of which is directed--is opposed to the ideology upon
2338 your son-in-law makes his living? That is the problem.

2339 And it is no answer, I would submit, Mr. Attorney
2340 General. If you were on the bench, you would not accept an
2341 answer from counsel that simply repeated your opposition to
2342 threats of violence nationwide.

2343 Attorney General Garland. Well, the memorandum
2344 specifically--

2345 Mr. Bishop. I haven't finished my--

2346 Attorney General Garland. Oh, I am sorry.

2347 Mr. Bishop. --point or my question, sir.

2348 Attorney General Garland. I thought you did. I
2349 apologize.

2350 Mr. Bishop. In fact you would ask of counsel an answer
2351 that responds to the point. Without having a raft or a
2352 significant volume of evidence you have directed the FBI to
2353 act nationwide concerning a matter on which there is
2354 widespread First Amendment activity. There is a movement
2355 among school parents. That seems to me to be--

2356 Chairman Nadler. The gentleman's time--

2357 Mr. Bishop. My time is expired.

2358 Chairman Nadler. Mr. Cicilline?

2359 Mr. Cicilline. Thank you, Mr. Attorney General, for
2360 being here. And before I begin I just want to take a moment
2361 to acknowledge the stark contrast between the current Justice
2362 Department and the Justice Department in the prior
2363 administration.

2364 During the Trump Administration we saw over and over and
2365 over again evidence of Mr. Trump's personal grudges dictating
2366 DOJ policy, particularly how the department was often
2367 weaponized to promote Mr. Trump's own corrupt interests and
2368 punish those who would speak against him.

2369 We hear public officials often speak about how we must
2370 ensure justice is blind, but it is almost laughable to
2371 promise that to the American people if our own Justice
2372 Department is manipulated as it was during the Trump
2373 presidency.

2374 And so I want to say thank you to you because we now
2375 have an Attorney General who will not let the department be
2376 reduced to a president's personal law firm or criminal
2377 defense team, but instead understands his solemn obligation
2378 to the American people and to the rule of law. And though I
2379 have disagreed with some of the decisions you have made, I
2380 have never had any doubt about your integrity or
2381 impartiality. And so I thank you for your service.

2382 My first question, Mr. Attorney General, is

2383 approximately--actually in 2020 about 6,000 firearms were
2384 sold to prohibited purchasers because of the Charleston
2385 loophole where the background check doesn't come back within
2386 72 hours. And I have a piece of legislation, the Unlawful
2387 Gun Buyer Alert, that would require the NIC System to notify
2388 the local FBI office and the local law enforcement agency
2389 that someone who is prohibited from buying a gun because they
2390 are a convicted felon or some other disqualifying information
2391 has actually got a gun.

2392 That bill is pending in the House, but would it be
2393 possible for the Justice Department, for you to initiate the
2394 promulgation of a regulation that would require the NIC
2395 System to share information on prohibited purchasers so that
2396 we can in fact respond to people who illegal bought guns in
2397 the thousands each year?

2398 Attorney General Garland. I don't know whether we are
2399 able to do that or not, but we will certainly look into it.
2400 We are certainly interested in closing all loopholes that
2401 would allow people who are prohibited from obtaining
2402 firearms, from obtaining them.

2403 Mr. Cicilline. Thank you. And I will follow up with
2404 your staff.

2405 As you know, Mr. Attorney General, approximately a year
2406 ago the Judiciary Committee released a 450-page report

2407 detailing the lack of competition play in the digital
2408 marketplace. This report was a culmination of a 60-month
2409 bipartisan investigation and the report concluded that
2410 decades of flawed antitrust jurisprudence had made it nearly
2411 impossible for antitrust enforcers and private players to get
2412 courts to stop harmful mergers and anticompetitive conduct in
2413 the digital markets. Courts have become fixated on market
2414 definition litigation even where there is direct evidence
2415 that a firm possesses market power and is engaging in
2416 anticompetitive conduct.

2417 I know you cannot express support for specific pieces of
2418 legislation without a lengthy White House process, but my
2419 question is do you believe Congress should update the
2420 antitrust laws to give enforcement authorities additional
2421 tools and courts additional guidance on how to ensure free
2422 and fair competition in the digital economy?

2423 Attorney General Garland. Yes, we are supportive of
2424 updating the antitrust laws. I can't speak specifically
2425 without looking at particular ones. I would say though that
2426 the antitrust laws do permit us to be quite aggressive with
2427 respect to some of the kinds of exclusionary
2428 policies/practices that you are talking about, mergers. And
2429 we have been quite aggressive since we came to office. And I
2430 have also asked for in the fiscal year 2022 budget for

2431 additional personnel for the division so that we can
2432 aggressively police this area.

2433 I mean one particular problem is there are huge--new
2434 number of merger filings, and for us to possibly review the
2435 competitive or anticompetitive nature of those filings we are
2436 going to need additional people and additional assistance.

2437 Mr. Cicilline. Yes, and we are fighting very hard to be
2438 sure that you have additional resources to get this work
2439 done.

2440 In March the Subcommittee on Antitrust heard testimony
2441 from Judge Diane Wood of the U.S. Court of Appeals for the
2442 Seventh Circuit. Judge Wood explained that the Supreme
2443 Court's antitrust jurisprudence over the past four decades
2444 has contributed to under-enforcement. She told the
2445 subcommittee that legislative changes to the statutes may be
2446 appropriate, and I quote, "so that anticompetitive practices
2447 do not go unredressed because antitrust standards are overly
2448 onerous or the available remedies are either too weak or
2449 otherwise ineffective."

2450 Can you identify for us; and if you can't do it today,
2451 if you could give this some thought, are there challenges the
2452 department faces in enforcing the antitrust laws currently?
2453 Are there particular types of categories of anticompetitive
2454 practices that are going unaddressed because of these

2455 challenges? And what additional tools or authorities does
2456 the department need to overcome these challenges and
2457 aggressively enforce antitrust law?

2458 Attorney General Garland. So I am not in a position to
2459 specify those now, but our staff will get back to you. I
2460 would be happy to do that and have the--

2461 Mr. Cicilline. Great. And then finally, Mr. Attorney
2462 General, I want to say, as Congressman Deutch said, I am
2463 grateful for all of your work to make sure that school board
2464 meetings and teachers and school staff are kept safe and the
2465 notion that that is not an appropriate responsibility for the
2466 Department of Justice is curious to me.

2467 And finally Mr. Gohmert made some reference to the
2468 peaceful sit-in that we conducted with the legend John--the
2469 late John Lewis to protest inaction on gun violence
2470 legislation. And to equate that to the deadly insurrection,
2471 a violent bloody insurrection that resulted in the death of
2472 five people in an effort to undermine our democracy I think
2473 was disgraceful. And with that I yield back.

2474 Chairman Nadler. The gentleman yields back.

2475 Mr. Buck?

2476 Mr. Buck. Thank you, Mr. Chairman.

2477 Mr. Attorney General, I would like to direct your
2478 attention to the easel behind me. The first painting is a

2479 Claude Monet.

2480 Attorney General Garland. I am sorry. I can't read any
2481 of the words.

2482 Mr. Buck. You don't need to.

2483 Attorney General Garland. Okay.

2484 Mr. Buck. You just need to look at this great painting
2485 right--

2486 Attorney General Garland. It is a very beautiful
2487 painting.

2488 Mr. Buck. It is beautiful. And it is listed at
2489 Christie's for \$700,000. Now Claude Monet was the founder of
2490 the impressionist movement, something I didn't know until I
2491 researched it.

2492 The second painting is a Degas, another world-renowned
2493 artist, and this painting sold for \$500,000.

2494 The third painting; you may recognize this name, is a
2495 Hunter Biden.

2496 [Laughter.]

2497 Attorney General Garland. I don't recognize the
2498 painting.

2499 Mr. Buck. The Hunter Biden painting sold for \$500,000
2500 also. Now you may think that such an exclusive--that when
2501 Hunter Biden is in such exclusive company that he would have
2502 a background, artistic training for example. But you would

2503 be wrong if you thought that. And you might think that he
2504 had some sort of apprenticeship with a world-renowned artist,
2505 but you would be wrong again if you thought that. Or perhaps
2506 that he has been selling his works for years, and again
2507 unfortunately you would be wrong.

2508 It turns out that in 2019 Hunter Biden couldn't find a
2509 gallery to list his art. And what happened in 2020 that
2510 changed all that, his dad became President of the United
2511 States. Now a single piece of art from Hunter Biden sells
2512 for more than the average American home.

2513 This art arrangement is so suspicious that the Obama
2514 Administration ethics czar Walter Shaub tweeted on July 10 of
2515 this year Hunter Biden should cancel this art sale because he
2516 knows the prices are based on his dad's job. Shame on POTUS
2517 if he doesn't ask Hunter to stop. By the way, Mr. Attorney
2518 General, this is the same Hunter Biden who is being
2519 investigated by your department and the IRS for tax fraud.

2520 Selling fakes or selling--or having a fake skill set is
2521 nothing new to Hunter Biden. When his dad was vice-
2522 president, Hunter Biden received \$50,000 a month from a
2523 Ukrainian oligarch to sit on a board of an energy company.
2524 What was Hunter Biden's background in energy? Nada.
2525 Nothing. Zilch.

2526 Soon after he received his dad--soon after he and his

2527 dad got off Air Force Two in China, Hunter Biden became a
2528 private equity guru and assisted with a Chinese private
2529 equity firm linked to the Chinese Central Bank. You might
2530 ask what his background was with Pacific Rim investments or
2531 the Chinese Central Bank. Nothing.

2532 With this dubious track record inquiring minds might
2533 question why any art gallery would want to sell Hunter
2534 Biden's art. Well this particular art gallery had a COVID
2535 relief loan more than doubled by the Biden Administration.
2536 In a survey of more than 100 art galleries in New York's 10th
2537 Congressional District this particular art gallery received
2538 by far the largest SBA disaster loan. And as an aside, Mr.
2539 Attorney General, the member who represents the 10th
2540 Congressional District is none other than Chairman Nadler.

2541 Mr. Attorney General, who buys Hunter Biden's art? Who
2542 benefits? What benefits do they receive from the Biden
2543 Administration? The American people want to know.

2544 I have sent a letter to the Department of Justice before
2545 your tenure asking them to appoint a special counsel to
2546 investigate Hunter Biden. I have today sent a letter to you
2547 and I am asking you now will you appoint a special counsel to
2548 investigate Hunter Biden?

2549 Attorney General Garland. For the same reason that I am
2550 not able to respond to questions about investigations of the

2551 former president or of anyone else I am not able to discuss
2552 any investigations, pending or otherwise with respect to any
2553 citizen of the United States.

2554 Mr. Buck. Mr. Attorney General, I worked for the
2555 Department of Justice for 15 years. You are allowed to tell
2556 us whether you will appoint a special counsel. You may not
2557 tell us whether you are investigating or not investigating a
2558 particular matter, but you are allowed to tell us whether you
2559 will appoint a special counsel. And that is my question.

2560 Attorney General Garland. Well, apparently I just
2561 received the letter today from you and will be taking it
2562 under advisement, but I wasn't aware that you had sent me a
2563 letter.

2564 Mr. Buck. Okay. I appreciate it.

2565 Mr. Chairman, I yield back, but I would like to first
2566 place into the record two articles, one from Vox, "Why
2567 Obama's Former Ethics Czar is Highly Critical of Hunter
2568 Biden's Lucrative Art Sales," and the second from the New
2569 York Post, "Art Gallery Repping Hunter Biden Receives
2570 \$500,000 Federal COVID Loan, Records Show."

2571 Chairman Nadler. Without objection.

2572 [The information follows:]

2573

2574 *****COMMITTEE INSERT*****

2575 Chairman Nadler. The gentleman yields back?

2576 Mr. Buck. I yield back, yes.

2577 Chairman Nadler. The gentleman yields back.

2578 Mr. Swalwell?

2579 Mr. Swalwell. General Garland, you may not get these
2580 four hours back, but you may get some art history credit for
2581 today.

2582 You had a job before becoming a judge, which I think is
2583 the best job in the world. You were a prosecutory. And when
2584 you were a prosecutor for the department I imagine there were
2585 times where witnesses who you had lawfully subpoenaed did not
2586 show up to court. Do you recall that ever occurring?

2587 Attorney General Garland. Yes, sir.

2588 Mr. Swalwell. And when that would occur you would ask
2589 the judge to enforce a bench warrant and have them brought
2590 in?

2591 Attorney General Garland. Yes, but generally that did
2592 not get that far. But yes, that is true.

2593 Mr. Swalwell. That is one remedy you would have if
2594 someone does not show up?

2595 Attorney General Garland. It is.

2596 Mr. Swalwell. And today as we sit here in this room in
2597 dozens of courtrooms across America your prosecutors have
2598 that right if a witness under a lawful subpoena does not come

2599 in to ask for a warrant for that witness' arrest?

2600 Attorney General Garland. Well, again you are asking me
2601 about a particular case and what I can say is what the
2602 department has said about this on the record, which is if the
2603 House of Representatives vote to refer a criminal contempt
2604 matter to the department, we will review it and act according
2605 to the law and the facts as the principles of prosecution
2606 require.

2607 Mr. Swalwell. And, General Garland, then you would
2608 agree that a subpoena lawfully issued by an Article II
2609 administrator is to be treated the same as a subpoena
2610 lawfully issued by Article I?

2611 Attorney General Garland. Again, since we are really
2612 now talking about a very specific case, I don't want to get
2613 into the law.

2614 Mr. Swalwell. I don't want to go into specific cases.
2615 I just want to say if a Congress at any time in history
2616 issues an Article I subpoena, do you agree that generally
2617 that should be treated the same as an Article II subpoena?

2618 Attorney General Garland. Well, there is different case
2619 law about both, and we would be following the Supreme Court's
2620 case law on the subject in making our determinations.

2621 Mr. Swalwell. General Garland, in 1973 an office of
2622 legal counsel memo outlined the parameters for indicting a

2623 sitting president and said that you could not do that.
2624 Twenty-seven years later that memo was updated to reaffirm
2625 that principle. Twenty-one years later we have seen a former
2626 president test the bounds of presidential authority. And I
2627 am wondering would you commit to revisiting that principle,
2628 whether or not a president while sitting should be indicted?

2629 Attorney General Garland. Well, like an office of legal
2630 counsel memorandum, particularly when they have been reviewed
2631 and reaffirmed by attorneys general and assistant attorneys
2632 general, or different parties, it is extremely rare to
2633 reverse them. We have the same kind of respect for our
2634 precedents as the courts do. I think it is also--would not
2635 normally be under consideration unless there was an actual
2636 issue arising, and I am not aware of that issue arising now.
2637 So I don't want to make a commitment on this question.

2638 Mr. Swalwell. I don't want to talk about any specific
2639 case, but just in general should a former president's
2640 suspected crimes once they are out of office be investigated
2641 by the Department of Justice?

2642 Attorney General Garland. Again I don't want to make
2643 any discussion about any particular former president or
2644 anything else. The memorandum that you are talking about is
2645 limited to acts while the person was in office. And that is
2646 all I can say.

2647 Mr. Swalwell. And should that decision be made only
2648 after an investigation takes place rather than deciding
2649 beforehand a general principle of we are not going to
2650 investigate a former president at all? Would you agree that
2651 if there are facts, those should be looked at?

2652 Attorney General Garland. Again, you are pushing me
2653 very close to a line that I do not intend to cross. We
2654 always looked at the facts and we always look at the law in
2655 any matter before making a determination.

2656 Mr. Swalwell. General Garland, my colleague Mr. Deutch
2657 asked you about gun manufacturer liability and I wanted to
2658 follow up and ask does the recent Pennsylvania decision,
2659 which has been vacated and reargued, change your office's
2660 reasoning and thinking? And would you commit to reexamining
2661 DOJ's posture in such cases as the law changes in different
2662 states?

2663 Attorney General Garland. I am going to ask you to
2664 refresh my recollection as to the recent Pennsylvania
2665 decision about which you are speaking. I am sorry.

2666 Mr. Swalwell. Sure.

2667 Attorney General Garland. I have a lot of cases in my
2668 head, but that one doesn't came right up.

2669 Mr. Swalwell. Last year a Pennsylvania state appeals
2670 court held the Protecting Lawful Commerce in Arms Act

2671 unconstitutional. And so just asking in light of that would
2672 you commit to reexamining as new cases come in?

2673 Attorney General Garland. The Justice Department has
2674 taken the position in court that we are going to defend that
2675 statute as constitutional and I don't see a ground for
2676 changing our mind. I expect that the considerations that the
2677 judges in the Pennsylvania state court were brought to the
2678 attention of the solicitor general's office.

2679 Mr. Swalwell. Thank you. In the beginning you
2680 referenced the January 6 prosecutions and just on behalf of
2681 my law enforcement family and the law enforcement officers
2682 who work in this building I want to thank you for continuing
2683 to pursue those investigations and arrests.

2684 I yield back.

2685 Chairman Nadler. The gentleman yields back.

2686 Mr. Fitzgerald?

2687 Mr. Fitzgerald. Attorney General, thank you.

2688 Attorney General Garland. Appreciate your waving at me
2689 because --

2690 Mr. Fitzgerald. Thank you for being here. Right. I
2691 think we all agree that no one should be above the law and
2692 recent reports had Former President Clinton in California; he
2693 fell ill, and was also reported that he had been there to
2694 raise money for the Clinton Foundation.

2695 In 2017, the Attorney General Jeff Sessions launched a
2696 probe to scrutinize whether donors to the Clinton Foundation
2697 had been given special treatment by Hillary Clinton when
2698 Hillary Clinton was Secretary of State. This investigation
2699 wound down in January of 2020.

2700 In September of 2020 press reports indicated that
2701 Special Counsel Durham's team was seeking information on the
2702 FBI's handling of the Clinton Foundation investigation.

2703 During your confirmation hearing, if you remember, you
2704 were asked if you would actually ensure that the special
2705 counsel, Special Counsel Durham, would have sufficient staff
2706 and other resources to complete that investigation.

2707 Now obviously you have had more than six months on the
2708 job. Can you commit to allowing Special Counsel Durham's
2709 investigation to proceed and obviously free from any
2710 political influence?

2711 Attorney General Garland. Yes, let me just say first
2712 about the money. We are now in a new fiscal year and, as
2713 everyone knows, Mr. Durham is continuing. So I think you can
2714 readily assume that his budget has been approved. We don't
2715 normally make a statement about those things, but since he is
2716 still in action the provisions of the regulation which
2717 require approval of his budget for the next fiscal year are
2718 public. So I think you can draw--you would know if he

2719 weren't continuing to do is work.

2720 Mr. Fitzgerald. I will take that as a confirmation that
2721 the investigation is continuing into the Clinton Foundation,
2722 and I think that is important that we--

2723 Attorney General Garland. Oh, I don't want to--

2724 Mr. Fitzgerald. --ultimately get to the bottom of--

2725 Attorney General Garland. --say what it is about. That
2726 is up to Mr. Durham. I am not determining what he is
2727 investigating.

2728 Mr. Fitzgerald. Very good. Very good. If I can move
2729 on, another thing that came up during your confirmation
2730 hearing: You said that the DOJ would be under your, quote,
2731 "protection for the purpose of preventing any kind of
2732 partisan or improper motive in making any kind of
2733 investigation or prosecution." And that is the end of your
2734 quote.

2735 But I think there are many people that I interact with
2736 on a regular basis back in my congressional district that--it
2737 appears that when you have tackled and targeted specific
2738 areas since your tenure began, it has been about election
2739 integrity measures, pro-life initiatives, and what has been
2740 discussed many times here today, the silencing of parents
2741 that kind of are very upset about what is going on with some
2742 of the school boards.

2743 So it appears that you said one thing and made that
2744 commitment in your confirmation hearings, but at the same
2745 time it seems that DOJ is specifically targeting many issues
2746 that I think I have described as conservative issues. I am
2747 wondering if you could respond to that.

2748 Attorney General Garland. On the last point I hope you
2749 can assure your constituents that we are not trying--the
2750 Justice Department is not trying to chill their--whatever
2751 objections they want to make to school boards. Our only
2752 concern is violence and threats of violence. So if you could
2753 make that clear to your constituents, perhaps that would help
2754 on that question.

2755 On the other question some of these are policy
2756 differences that are natural between one administration and
2757 another, different views about what the law is. There will
2758 be people who--from the Democratic Party who disagree with my
2759 determinations, and you have already heard some of those.
2760 And there will be people from the Republican Party who will
2761 disagree with my determinations about our filings in civil
2762 cases. That comes with the territory. That is what happens
2763 to the Attorney General.

2764 I am doing my best to ensure that we make decisions on
2765 the facts and the law. When I said I would protect our
2766 people from partisan influence with respect to investigations

2767 and prosecutions, I meant that and I continue to do that
2768 regardless of which side of the aisle is criticizing me for
2769 it.

2770 Mr. Fitzgerald. An earlier member said that he was very
2771 concerned about the previous administration weaponizing DOJ,
2772 and I would say I share the same concerns and I would
2773 certainly hope that your department would maybe be much more
2774 sensitive--

2775 Chairman Nadler. The time of the gentleman has expired.

2776 Mr. Lieu?

2777 Mr. Fitzgerald. --many of these actions. I yield back.

2778 Chairman Nadler. The gentleman yields back.

2779 Mr. Lieu?

2780 Mr. Lieu. Thank you, Chairman Nadler.

2781 Thank you, Attorney General Garland for your outstanding
2782 public service. My wife is a school board member. She has
2783 been targeted with deeply disturbing death threats. The lack
2784 of concern by my Republican colleagues for the safety of
2785 teachers, school officials, and school board members is
2786 dangerous, disgusting, and utterly shameful. Thank you,
2787 Attorney General Garland, for seeking to protect Americans
2788 from violence and threats of violence.

2789 I would like to ask you some questions now about racial
2790 and ethnic profiling. In 2014 and 2015 Asian-Americans such

2791 as Sherry Chen and Professor XI and others were wrongfully
2792 arrested by Department of Justice, charged with alleged
2793 spying for China, and then months later all their charges
2794 were dropped, but not after their lives were ruined and they
2795 incurred massive legal bills.

2796 As we looked into these cases the only thing that was
2797 the same among all of them is that the defendants happened to
2798 look like me. They happened to be Asian-American. In
2799 response then Attorney General Loretta Lynch ordered implicit
2800 bias training for all her law enforcement agents and
2801 prosecutors at Department of Justice.

2802 My question to you is will you commit to implementing
2803 implicit bias training at the Department of Justice?

2804 Attorney General Garland. So I thank you for your
2805 comments. As I know you know I am greatly attuned to this
2806 problem. That is why the very first memorandum I issued when
2807 I came to the Justice Department was to investigate hate
2808 crimes on a nationwide basis, and particularly against the
2809 AAPI community. That is why we have made all of the changes
2810 required by the NO HATE Act, most of them before the act was
2811 even passed because we were already on that route. There is
2812 no excuse for this kind of discrimination and it is the
2813 obligation of the Justice Department to protect people.

2814 Mr. Lieu. Thank you. So let me bring attention to a

2815 study that came out that shows that this problem is wider
2816 than we feared. It was conducted by a visiting scholar to
2817 the South Texas College of Law and the Committee of 100, a
2818 non-profit. They analyzed economic espionage cases brought
2819 by the department between 1996 and 2020 and the findings are
2820 deeply disturbing.

2821 This study showed that one in three Asians accused of
2822 espionage were falsely accused. It found that Asian
2823 defendants were punished twice as severely as non-Asian
2824 defendants. And it showed that the Department of Justice
2825 issued press releases much more frequently under these cases
2826 if the defendant happened to have an Asian name versus a
2827 Western name.

2828 So I am going to ask you again will you commit to
2829 implementing implicit bias training that then-Attorney
2830 General Loretta Lynch had directed at the Department of
2831 Justice?

2832 Attorney General Garland. So my understanding is that
2833 that was required by the--I think--I can't remember the name,
2834 maybe the No FEAR Act. I can't remember the name. And the
2835 bar on doing such training was rescinded by the President in
2836 an executive order I think on the very first day of the new
2837 administration. And so of course we will go ahead with what
2838 was required by the statute, including implicit bias

2839 training, yes.

2840 Mr. Lieu. So if you could look into that more, I would
2841 appreciate it. So thank you.

2842 I would like to now talk about a case brought under the
2843 China Initiative that happened under your watch, the case of
2844 Professor Anming Hu, who was also wrongfully accused of
2845 spying for China. Evidence against him was so flimsy that a
2846 federal judge dismissed the case under a Rule 29 motion.

2847 I am a former prosecutor. I know that those motions are
2848 rarely if ever granted. The judge found that even viewing
2849 all of the evidence in a light most favorable to the
2850 prosecution no rational jury could conclude that the
2851 defendant violated the law.

2852 If we look at one of the darkest periods in our nation's
2853 history, over 100,000 Americans who happened to be of
2854 Japanese descent were interned because our government could
2855 not figure out the difference between the Imperial Army of
2856 Japan and Americans who happened to be of Japanese descent.

2857 I am asking the department not to repeat that similar
2858 type of mistake and I am asking you if you would look into
2859 the China Initiative to make sure it is not putting undue
2860 pressure on the department to wrongfully target people of
2861 Asian descent.

2862 Attorney General Garland. Internment of Japanese-

2863 Americans. A terrible stain on American people and on the
2864 American government, on American history. I can assure you
2865 that kind of racist behavior will not be repeated.

2866 There is a new assistant attorney general for the
2867 National Security Division who is pending confirmation. I am
2868 sure that when he is confirmed, which hopefully will be in
2869 the next few days; maybe in the next few weeks, he will
2870 review all of the activities in the department, in his
2871 division and make a determination of which cases to pursue
2872 and which ones not. I can assure you that cases will not be
2873 pursued based on discrimination, but only on facts justifying
2874 them.

2875 Chairman Nadler. The time of the gentleman is expired.

2876 Mr. Lieu. Mr. Chairman, may I ask unanimous consent to
2877 enter three documents into the record?

2878 Chairman Nadler. Without objection.

2879 Mr. Lieu. Okay. The first is a study I referenced
2880 called, "Racial Disparities in Economic Espionage Act
2881 Prosecutions: a Window Into a New Red Scare," dated September
2882 21, 2021.

2883 The second is an article entitled, "Professor Acquittal:
2884 Is China Initiative Out of Control?" dated September 25,
2885 2021.

2886 And the final document is a letter from 177 Stanford

2887 faculty members outlining why the China Initiative is
2888 discriminatory and harms American competitiveness dated
2889 September 8, 2021. Thank you.

2890 Chairman Nadler. Without objection.

2891 [The information follows.]

2892

2893 *****COMMITTEE INSERT*****

2894 Chairman Nadler. The gentleman yields back.

2895 Mr. Bentz?

2896 Mr. Bentz. Thank you, Mr. Chair.

2897 Thank you, Mr. Attorney General, for being here today.

2898 Let me begin by saying I was disappointed with your memo
2899 regarding school boards and parents, first because I, like
2900 you, am a parent of two wonderful kids. I attended too many
2901 school board meetings to count. I attended many more as a
2902 eight-year member of school boards, really long years I might
2903 add. I can assure that I welcomed parents' involvement and I
2904 appreciated their attendance. I listened to their--I
2905 listened to them carefully. The fact that they took the time
2906 to be there after long days at work spoke volumes about how
2907 much they care for their kids.

2908 And no one condones violence, no one condones threats of
2909 harm, no one condemns--condones intimidation, but what has
2910 been repeatedly said today is that your memo is far too
2911 aggressive, far too loose in its language, far too likely to
2912 chill the very parental participation we on school boards
2913 so--did so much to encourage. I would encourage a
2914 supplemental memo.

2915 Second, this goes to the assertion at the end of your
2916 memo that it is the department's steadfast commitment to
2917 protect all people in the United States from violence,

2918 threats of violence, and other forms of intimidation and
2919 harassment. This goes to the prioritization of the
2920 activities of your department. And I would just suggest that
2921 we have a situation in Oregon that I think is going to be
2922 copied across the United States.

2923 It involves the illegal growing and production of
2924 marijuana and cannabis on an almost unbelievable industrial
2925 scale based in large, and probably irreplaceable part the
2926 miserable suffering of thousand, if not tens of thousands of
2927 people coming across the border illegally and then pressed
2928 into indentured servitude by cartels.

2929 This is not me making this up. This is coming from any
2930 number of law enforcement agencies in Oregon. We will not go
2931 into the challenges on the border, other than I wish we had a
2932 border. I simply want to say that the people that are coming
2933 across by the thousands are being put to work in situations
2934 that are immensely bad. And the FBI, by the way I have
2935 spoken with, but your department needs to be doing something
2936 about it at all the levels you can.

2937 And I am tempted to each time I go through one of the
2938 horrible things that are happening to these people refer back
2939 to the memo regarding the school board because it seems to me
2940 there has been a mis-prioritization. We are talking about
2941 thousands of people that are in these inhuman living

2942 conditions. And the size of the problem is almost
2943 unbelievable.

2944 Based on estimates from law enforcement in Jackson,
2945 Klamath, and Josephine Counties in Oregon the amount being
2946 illegally raised and sold across the United States in just
2947 one of these counties exceeds 13.5 billion. In just one of
2948 my counties. I have 36 counties. Thirteen-point-five
2949 billion dollars, Mr. Attorney General, on the backs of
2950 people, human beings brought over the border and probably
2951 forced into servitude to pay back the cartels for their
2952 immigration.

2953 I want to mention that the creation of this situation
2954 doesn't all just harm those folks brought across the border.
2955 It harms the community. We have had people come in and tell
2956 us about going shopping down at the local supermarket and
2957 seeing folks wearing big bulky coats and under those coats
2958 they can see AK-47s.

2959 They have had watermasters approached--the watermaster,
2960 the guy who is trying to take care of the water that is being
2961 stolen by these cartels, and they have come up to these--to
2962 the watermaster and said you know what, I am invisible. You
2963 can't see me. I can kill you and no one will ever know.
2964 That is a threat; that is intimidation. That is the kind of
2965 thing that is referred to your memo regarding parents. I

2966 would just suggest there is a mis-prioritization.

2967 Mr. Chair, I would like to offer for the record a letter
2968 from Josephine County commissioners to me, a letter from
2969 Josephine County commissioners to the Governor of the State
2970 of Oregon, the order just issued a week or so ago from
2971 Jackson County declaring an emergency because of this
2972 situation, and finally photos of the living--squalid living
2973 conditions and a video of the valley showing thousands of
2974 hoop houses, some of which we are absolutely sure may of
2975 which are illegal.

2976 Chairman Nadler. Without objection.

2977 [The information follows:]

2978

2979 *****COMMITTEE INSERT*****

2980 Mr. Bentz. With that I will--

2981 Mr. Jordan. Will the gentleman yield?

2982 Mr. Bentz. I will yield.

2983 Mr. Jordan. I appreciate the gentleman for yielding.

2984 Mr. Attorney General, your memo you said that you--

2985 directing the Federal Bureau of Investigations to convene

2986 meetings with federal leader--federal local leaders and state

2987 leaders within 30 days of the issuance of this memorandum in

2988 each federal judicial district, 94 federal judicial

2989 districts. They got until November 3 to have these meetings.

2990 How many meetings have taken place?

2991 Attorney General Garland. I don't know the answer. I

2992 am sure that there have been meeting, but I am sure that they

2993 have not occurred--

2994 Mr. Jordan. Any idea?

2995 Attorney General Garland. --in all--

2996 Mr. Jordan. Any idea how many meetings have taken

2997 place?

2998 Attorney General Garland. I don't know how many

2999 meetings. I am sure that there are not--

3000 Mr. Jordan. There was so much urgency that five days

3001 after a political organization asked the President of the

3002 United States for FBI involvement--five days later you do a

3003 memo talking about a disturbing spike in harassment and

3004 violence. And then convening this open line of communication
3005 for reporting on parents and you say start meetings within 30
3006 days and you can't come--you come to the Justice Department
3007 and you can't tell us what is going on?

3008 Chairman Nadler. The time of the gentleman has expired.
3009 Mr. Raskin?

3010 Mr. Raskin. Thank you, Mr. Chairman.

3011 Attorney General Garland, thank you for your service to
3012 the United States of America, which is a point of special
3013 pride for those of us who live in Maryland's Eighth
3014 Congressional District.

3015 Right wing violence is now a lethal threat to American
3016 democracy. It came to the Capitol when QAnon followers,
3017 Three Percenters, Oath Keepers, Arian Nations, Militiamen
3018 stormed the Capitol of the United States in the worst assault
3019 on the Capitol since the War of 1812, injuring more than 140
3020 police officers, breaking their noses, breaking their necks,
3021 breaking their vertebrae, taking their fingers, causing
3022 traumatic brain injury, causing post-traumatic stress
3023 syndrome.

3024 And now with all of the whitewashing by Donald Trump,
3025 who lied and said that his mob was hugging and kissing the
3026 officers, and by his cult-like followers like Representative
3027 Clyde who said that this was more akin to a tourist visit,

3028 this permission for violence has given license to the darkest
3029 impulses in right wing politics and given rise to conspiracy
3030 theory-driven mob violence, not just at state capitals like
3031 we saw in Lansing, Michigan, which was a dress rehearsal for
3032 the January 6 attack, but also it is in schools and at school
3033 board across the country.

3034 Here are some headlines from across the country that
3035 tell the story: "School Boards Association Reaches Out to
3036 FBI for Help as Threats, Violence Hit Meetings." "Loudon
3037 County Board Members Have Faced Death Threats." "Prince
3038 William Meetings Have Broken Down With People Screaming."
3039 There has been violence across the country.

3040 Here is another one: "A California Teacher is
3041 Hospitalized After He is Allegedly Attacked by a Parent Over
3042 Face Masks on the First Day of School."

3043 Here is one: "An Angry Parent Allegedly Ripped Off a
3044 Teacher's Mask. It's Not the Only Physical Altercation Over
3045 Masks in Schools."

3046 I am limited by time here, but there are cases like this
3047 all across the country.

3048 Now I would like to ask you this question, Mr. Garland,
3049 because you have been vilified, you have been castigated by
3050 members of this committee for your responsiveness to the
3051 National School Boards Association, that as members of school

3052 boards across the country who are reporting this dramatic
3053 uptick in violence against school board members, education
3054 administrators, other parents who have the temerity to go to
3055 a school board meeting wearing a mask. Did you tell the
3056 School Boards Association to reach out to you? Did you coach
3057 them to reach out to the FBI?

3058 Attorney General Garland. No.

3059 Mr. Raskin. The letter signed by the NSBA president
3060 Viola Garcia and NSBA executive director and CEO Chip Slaven
3061 said, "America's public schools and its education leaders are
3062 under an immediate threat." Did you write those words or
3063 tell them to write those words?

3064 Attorney General Garland. No.

3065 Mr. Raskin. Okay. Did you violate any rule of ethics
3066 or any rule of law by responding to this clamor across the
3067 country to try to restore some calm and some peace to the
3068 schools of America?

3069 Attorney General Garland. No, I didn't. I followed my
3070 duty as I saw it.

3071 Mr. Raskin. I notice that not a single member of this
3072 committee has cited a single sentence in your memo as
3073 violating anyone's rights. Not one. They have not cited a
3074 single sentence from your memo because your memo scrupulously
3075 follows the difference between conduct and speech. Would you

3076 care to re-edify our colleagues about what the First
3077 Amendment protects and what it doesn't protect?

3078 Attorney General Garland. Well, the Supreme Court is
3079 quite clear that the First Amendment protects spirited,
3080 vigorous, argumentative, even vituperative speech. Perfectly
3081 acceptable for people to complain about what their school
3082 boards are doing or what their teachers are doing in the most
3083 aggressive terms. What they are not allowed to do is
3084 threaten people with death or serious bodily injury, the so-
3085 called true threats line of cases.

3086 Mr. Raskin. Okay. Do you think that it is going to be
3087 important for us to confront violence against public
3088 institutions, whether it is the United States Congress as we
3089 count electoral college votes, whether it is against state
3090 legislatures and governors who have been subject to
3091 assassination plots, or against school board members who
3092 maybe don't even get paid? Why is it important, if you agree
3093 that it is, for us to defend public institutions, public
3094 leaders, and public process against violent intimidation,
3095 threats, and attacks?

3096 Attorney General Garland. I do think it is--

3097 Mr. Johnson of Louisiana. Mr. Chairman? Mr. Chairman?
3098 Point of order. Mr. Raskin's words need to be taken down.
3099 He referred to one of our colleagues as being cult-like and

3100 we don't allow personal attacks under the rules.

3101 Mr. Raskin. I am sorry. Who did I refer to as cult-
3102 like?

3103 Mr. Johnson of Louisiana. Andrew Clyde.

3104 Mr. Raskin. I said that Andrew Clyde was in a religious
3105 cult?

3106 Mr. Johnson of Louisiana. Yes. Cult-like. That is a
3107 derogatory characterization; it is not allowed under the
3108 rules.

3109 Mr. Raskin. Well, I will wait for direction from the
3110 chair, but if he objects to the idea that--

3111 Chairman Nadler. It is not a timely--

3112 Mr. Johnson of Louisiana. We have regular order.

3113 Chairman Nadler. I would urge everyone to avoid
3114 engaging in personalities. And the time of the gentleman has
3115 expired.

3116 Mr. Johnson of Louisiana. Thank you.

3117 Chairman Nadler. Mr. McClintock?

3118 Mr. Johnson of Louisiana. Mr. Chairman, can you rule on
3119 my point of order? It is Rule 17, Clause 4. Standing Rules
3120 of the House.

3121 Chairman Nadler. It's not a timely point of order.

3122 Mr. Johnson of Louisiana. How could it not be timely?

3123 It was still--the gentleman--

3124 Chairman Nadler. You have to raise it at the time--
3125 Mr. Johnson of Louisiana. I did raise it at the time.
3126 Chairman Nadler. Mr. McClintock?
3127 Mr. Raskin. Look, in any event--look, I would be happy
3128 to resolve this right now.
3129 Chairman Nadler. No, no, no, no.
3130 Mr. Raskin. If any offense was given--
3131 Chairman Nadler. Mr. McClintock?
3132 Mr. Raskin. --I would be happy--
3133 Chairman Nadler. Mr.--
3134 Mr. Raskin. --very happy to withdraw the phrase cult-
3135 like as applied to Mr. Clyde of Georgia just so we can get on
3136 with our business. I am very happy to withdraw that. And we
3137 can talk about it in another context. It is interesting that
3138 our--the people--
3139 Chairman Nadler. As I said, people should--
3140 Mr. Raskin. --are interfering with my [inaudible], but
3141 I am quite fine with it, Mr. Chairman.
3142 Mr. Johnson of Louisiana. I am just trying to follow
3143 the rules, Mr. Raskin. I am told that is important around
3144 here.
3145 Mr. Raskin. [inaudible] the ACLU--
3146 Chairman Nadler. Mr. Raskin, you have said enough. We
3147 all have strong feelings; people should avoid engaging in

3148 personalities.

3149 Mr. McClintock?

3150 Mr. McClintock. Mr. Attorney General, I think the real
3151 concern of a lot of parents is they attend a school board
3152 meeting to exercise their First Amendment rights, a fight
3153 breaks out, and the next thing you know they are being
3154 tracked down by the FBI with a rap on the door, maybe a SWAT
3155 Team in the morning because they simply happened to be there.
3156 That is a serious form of intimidation. Whether it was
3157 intended or not, that's clearly the effect it is having and I
3158 think you need to be sensitive of that.

3159 But I want to talk about the news we received yesterday
3160 that we have seen the highest number of arrests of people
3161 illegally crossing our border in the history our country, 1.7
3162 million arrests this year. It is a federal crime to cross
3163 the border outside of a port of entry, is it not?

3164 Attorney General Garland. Yes, it's a misdemeanor.
3165 That's true.

3166 Mr. McClintock. Well, your job is prosecute federal
3167 crimes. How many have you actually prosecuted of that 1.7
3168 million?

3169 Attorney General Garland. So the Justice Department
3170 doesn't make those arrests. Those are made by Homeland--

3171 Mr. McClintock. No, no, but the Justice Department

3172 is responsible for prosecuting them. How many are you
3173 prosecuting?

3174 Attorney General Garland. I don't know the answer to
3175 that, but they--

3176 Mr. McClintock. A lot or a little?

3177 Attorney General Garland. --are being referred by the--

3178 Mr. McClintock. Wait. Wait a second. You know exactly
3179 how many people you're prosecuting from the riot on January
3180 6, but you can't even give me a ballpark guess of how many
3181 people--

3182 Attorney General Garland. I can't--

3183 Mr. McClintock. --you are prosecuting--

3184 Attorney General Garland. I can't--

3185 Mr. McClintock. --of the 1.7 million who have illegally
3186 crossed our border, committing a federal crime in doing so?

3187 Attorney General Garland. I don't have that number on
3188 the top of my head, but I would be happy to have our staff
3189 get back to you.

3190 Mr. McClintock. Do you think that the failure to
3191 prosecute illegal border crossings might have something to do
3192 with the fact that our border is now being overwhelmed by
3193 illegal immigrants who tell reporters they wouldn't have
3194 considered making that trip under the Donald Trump
3195 Administration?

3196 Attorney General Garland. I think there are a
3197 substantial number of issues driving migration towards the
3198 United States from the pandemic--

3199 Mr. McClintock. Well, if you ask the migrants--

3200 Attorney General Garland. --[inaudible] and the
3201 earthquakes and--

3202 Mr. McClintock. If you ask the migrants, they will tell
3203 you specifically what is driving it: They can do it now.
3204 They can get in and not fear prosecution from you. Gallup
3205 tells us there are about 42 million people living just in
3206 Latin America and the Caribbean who intend to come to the
3207 United States if they can based upon their polling. A lot of
3208 people come each year on temporary visas, but then they fail
3209 to leave when those visas expire, again in violation of
3210 federal law. Do you believe those who illegally overstay
3211 their visas should respect our laws and return to their home
3212 countries?

3213 Attorney General Garland. I think they should respect
3214 our laws. That is up to the Department of Homeland Security
3215 to make determinations about how we resolve these matters.

3216 Mr. McClintock. And yet the administration is proposing
3217 amnesty to most visa overstays who arrived before January of
3218 2021, including those whose visas have yet to expire. So
3219 what you are telling us and what you are you doing are two

3220 very different things.

3221 Let me go on. It is unlawful for an employer to
3222 knowingly hire an illegal alien. How many prosecutions are
3223 you pursuing under this law?

3224 Attorney General Garland. Again I don't know the number
3225 off the top of my head but I would be happy to have staff try
3226 to get back to you.

3227 Mr. McClintock. It shocks me. Given the fact that this
3228 is now an historic high on illegal border crossings, you are
3229 the chief law enforcement officer of our country, you come
3230 here before this committee, you devote not a word in your
3231 spoken remarks to this issue, you devote out of a 10-page
3232 written statement one paragraph simply saying we need to
3233 expedite the immigration proceedings for asylum claims. I
3234 find that astonishing.

3235 Let me ask you this: Do you agree that an alien who has
3236 received proper notice of his or her immigration court
3237 hearing who fails to appear at that hearing absent exception
3238 circumstances and is ordered removed in absentia should be
3239 removed from this country?

3240 Attorney General Garland. I am not really familiar with
3241 exactly the circumstance you are talking about. There are
3242 rules about removal and there are rules--

3243 Mr. McClintock. Well, when someone is ordered--

3244 Attorney General Garland. --that the Department of
3245 Homeland Security--

3246 Mr. McClintock. --deported by a court--

3247 Attorney General Garland. --has established. I am
3248 sorry.

3249 Mr. McClintock. If someone is ordered deported--

3250 Attorney General Garland. Yes.

3251 Mr. McClintock. --by a court, should they be removed?

3252 Attorney General Garland. If they are ordered deported
3253 by a court, then we have an obligation to follow the court's
3254 order.

3255 Mr. McClintock. And yet the President on his opening
3256 day in office instructed Customs and--or Immigration and
3257 Customs Enforcement not to conduct such deportations.

3258 Attorney General Garland. I am not familiar with the
3259 specific thing you are talking about. I am sorry.

3260 Mr. McClintock. What circumstances would justify an
3261 independent prosecutor?

3262 Attorney General Garland. So we have had some history
3263 with independent prosecutors. Neither the Democrats nor the
3264 Republicans seem to like the result regardless of who is--

3265 Mr. McClintock. No, but let me--there have been
3266 multiple reports that Hunter Biden made enormous sums of
3267 money, and he has admitted that is because of his family

3268 ties. Now that by itself might not be a crime, but there
3269 have also now been multiple reports that emails and other
3270 communications from Hunter Biden have indicated that his
3271 finances were intermingled with those of his father's,
3272 including a text to his daughter complaining that half of his
3273 earnings were going to his father.

3274 If that doesn't call for an independent investigation of
3275 the President, what would?

3276 Attorney General Garland. So I am not going to comment
3277 about this investigation, but as everyone knows there is an
3278 investigation going on in Delaware by the U.S. Attorney who
3279 was appointed by the previous administration. And I can't
3280 comment on it any further than that.

3281 Mr. McClintock. That is being done under the Justice
3282 Department, not independently and the Justice Department
3283 answers to the President who is implicated in these emails.

3284 Chairman Nadler. The time of the gentleman is expired.

3285 Ms. Jayapal?

3286 Ms. Jayapal. Thank you, Mr. Chairman.

3287 And, Attorney General Garland, thank you very much for
3288 being here and for your commitment to protecting our
3289 democracy.

3290 I would like to generally discuss the prosecutions of
3291 the January 6 insurrectionists. The prosecutors handling

3292 these cases believe that jail time is the appropriate
3293 sentence for misdemeanor charges, however the first
3294 misdemeanor defendants to receive jail time were only
3295 sentenced last month, nine months after the worst assault on
3296 the United States Capitol since the War of 1812.

3297 I am trying to understand what the process is for these
3298 prosecutions and why there are delays. Does DOJ Headquarters
3299 have final approval on all plea agreements before they are
3300 offered to a defendant?

3301 Attorney General Garland. So I don't want to discuss
3302 these investigations in that respect. I would say that the
3303 Justice Department and the U.S. Attorney's Office working
3304 together have guidelines for the kinds of pleas that can be
3305 accepted so that there are not--I don't want to use the word
3306 discrimination in the racial sense, but that there is no
3307 unequal treatment between people who did the same thing.
3308 Now we can't have every individual prosecutor following a
3309 different set of plea arguments, so that is the extent to
3310 which that is being organized.

3311 The question you asked, which is why this would take so
3312 long, this is really not long at all. I have been in lots of
3313 criminal investigations that took way longer. We have
3314 arrested 650 people already. And keep in mind that most of
3315 them were not investigated on the--arrested on the spot

3316 because the Capitol Police were overwhelmed.

3317 So they were people who had be found. And they had to
3318 be found by sometimes our--looking at our own video data;
3319 sometimes from citizen sleuths around the country identifying
3320 people. Then they have to be brought back to Washington,
3321 D.C. Then discovery of terabytes of information has to be
3322 provided. And then all of this was occurring while there was
3323 a pandemic and some of the grand juries were not fully
3324 operating and some of the courtrooms were not fully
3325 operating.

3326 So I am extremely proud of the work that the prosecutors
3327 are doing in this case and the agents are doing in this case.
3328 They are working 24/7 on this.

3329 Ms. Jayapal. Okay. Thank you, General Garland. That
3330 is helpful.

3331 I do want to talk about disparity actually of
3332 prosecutions. Federal judges have criticized the
3333 department's approach to letting many defendants stay at home
3334 or travel for vacation. One judge said, quote, "There have
3335 to be consequences for participating in an attempted violent
3336 overthrow of the government beyond sitting at home." And yet
3337 the Wall Street Journal reports that you have told DOJ
3338 officials that jailing rioters who weren't hardcore
3339 extremists could further radicalize them.

3340 General Garland, do you believe that such statements are
3341 appropriate to make as the person overseeing these
3342 prosecutions?

3343 Attorney General Garland. I don't know where that
3344 report comes from. My recollection of this is in a
3345 completely different context. That is, I worry that there
3346 will be radicalization in the Bureau of Prisons when people
3347 are--and this is radicalization that has occurred with prison
3348 gangs, with white supremacist groups in prisons, and with
3349 radical Middle Eastern groups in prisons. And I was
3350 concerned that the Bureau of Prisons have a procedures for
3351 ensuring that that radicalization doesn't spread across
3352 prison populations. I believe--

3353 Ms. Jayapal. General Garland--

3354 Attorney General Garland. --that is what I was
3355 referring to.

3356 Ms. Jayapal. --I don't know how you could further
3357 radicalize people who have attempted to overthrow the
3358 government.

3359 Let's just contrast the department's approach to the
3360 George Floyd protests. A participant at a George Floyd
3361 protest faced up to five years in felony charges for inciting
3362 a riot via social media. In contrast, three white
3363 supremacists at the 2017 Charlottesville rally received

3364 prison sentences between two and three years for their
3365 violence, assault of protestors and conspiracy to riot. And
3366 despite a series of social media posts and videos on January
3367 6 only one person was ever charged with a felony.

3368 I understand all of the challenges that you are facing
3369 with what you have mentioned, and I do appreciate that, but I
3370 am concerned about the disparity of the way sentencing is
3371 occurring. Is it fair to say that the department does and
3372 should consider deterrence in the gravity of crimes when
3373 pursuing both sentencing and pretrial confinement or
3374 detention?

3375 Attorney General Garland. The answer to that is yes,
3376 but the ultimate determination on both sentencing and
3377 pretrial detention is up to the judge and not to the
3378 department. There are some judges that are criticizing the
3379 kind of charge we are bringing being not harsh enough, but
3380 there are other judges who are criticizing the same charges
3381 as being too harsh. As I mentioned before, this comes with
3382 the territory of being a prosecutor.

3383 Ms. Jayapal. I understand. General Garland, I just
3384 want to say that I think if we are to restore faith in the
3385 Department of Justice under your leadership and a new
3386 administration, we have to make sure that the disparity of
3387 sentencing that we have continued to see under the last

3388 administration and with this administration has to be
3389 addressed. And I hope that you will do that and I thank you
3390 for your efforts.

3391 I yield back, Mr. Chairman.

3392 Chairman Nadler. The gentlelady yields back.

3393 Mr. Issa?

3394 Mr. Issa. Thank you, Mr. Chairman.

3395 General Garland, it is good to see you and it is good to
3396 have you before this committee. I appreciate your giving us
3397 so much time.

3398 As you know, your reach is global when it comes to
3399 overseas activities such as the bombing that occurred in
3400 Kabul. So the killing of 26 August of 13 U.S. troops falls
3401 under your jurisdiction, correct? Or at least the FBI is
3402 charged--

3403 Attorney General Garland. Well, the FBI can--

3404 Mr. Issa. --with investigating.

3405 Attorney General Garland. --participate. It is likely
3406 also DOD. But it is some combination, yes.

3407 Mr. Issa. Well the areas of concern -- media reports,
3408 both -- and public and private statements -- indicate that
3409 the bomber was in fact an individual who had been released
3410 from the -- the detention center there are Kabul. Can you
3411 confirm that?

3412 Attorney General. Garland. I'm sorry, I don't -- I
3413 don't know the answer to that. I don't know the answer to
3414 that.

3415 Mr. Issa. Can you respond, for the record, from the --
3416 I mean, obviously the FBI does know -- it's leaked out enough
3417 that I think it needs to be made official.

3418 Attorney General. Garland. To the extent that it would
3419 be permissible -- it's not classified information -- then of
3420 course we'll get back to you and I'll ask my staff to -- to
3421 look into this.

3422 Mr. Issa. Well the -- the records of those incarcerated
3423 at the -- at the detention center were public and certainly
3424 somebody who has blown themselves to bits would enjoy very
3425 few residual privacy rights, I would assume.

3426 Attorney General. Garland. I don't think it would be a
3427 question of privacy rights --

3428 (Laughter.)

3429 Mr. Issa. Okay, just wanted to make sure we had that.
3430 The important point, though is -- in my view is that there
3431 are 4,999 or more other individuals who were released who
3432 were free to roam the streets of Kabul on the very days that
3433 were evacuating. I was in Qatar last week and it was
3434 reported to us in unclassified sessions that more than 20
3435 percent of the individuals who boarded the aircraft in Doha

3436 for the United States -- more than 20 percent who came into
3437 there came in with no papers whatsoever. No Afghan papers,
3438 no U.S. papers, no other documentations -- and that the
3439 documentation was produced based on oral testimony. They
3440 called it a paper passport.

3441 Based on the fact that of the 60,000-plus people that
3442 passed through Doha or Qatar, 20 percent of them or more did
3443 not have any paperwork, of the remaining ones, at least 40
3444 percent had only documentation that it was produced in
3445 Afghanistan. How do we know how many -- we know some,
3446 undoubtably, but how many in fact made the way to the United
3447 States of the 5,000-plus people who were incarcerated for
3448 being ISIS terrorists and the like -- how do we know who they
3449 are, where they are, and how many of them in the United
3450 States? And what are you doing to discover further?

3451 Attorney General Garland. Congressman, you've
3452 identified a very serious problem. There was a massive
3453 airlift of refugees out of Afghanistan at the very last
3454 moment. And that required vetting at -- not only at Qatar,
3455 but also at Ramstein and the other bases where people were
3456 moved to, and then when they're moved to the United States.
3457 The --

3458 (Simultaneous speaking.)

3459 Mr. Issa. And I don't mean to interrupt you, but in the

3460 remaining time, if you could respond for the record about how
3461 many -- how many you know who -- how many you've apprehended,
3462 how many you're following? Because once we know that tens of
3463 thousands of people left Afghanistan who had no evidence of a
3464 nexus to the United States and were transported to the United
3465 States -- and knowing that there were 5,000 terrorists that
3466 had been recently released -- we do have an obligation to
3467 figure out what the steps that are being taken to find them
3468 and to incarcerate them. And I recognize that there are a
3469 number of people in Kosovo who were identified, so we would
3470 certainly include that.

3471 My last round of questioning really goes to the terrible
3472 attacks that occurred at Fort McCoy and other places. We
3473 have a significant number of -- of Afghan, slash, American-
3474 bound individuals who are currently committing crimes -- and
3475 who have committed crimes. And so I'd like to know, one, to
3476 the best of your ability, how many cases you're following --
3477 not what the cases specifically are about. And what
3478 authorities you've been given -- or need to be given -- to --
3479 to deal with these individuals, including revocation of their
3480 paroles, which of course is an executive prerogative, but one
3481 that we would like to know will -- will the individuals who
3482 have committed crimes have their paroles pulled? And if so,
3483 can they then be deported, or at least begin the deportation

3484 process?

3485 Attorney General Garland. All right, we'll try to get
3486 back to you on what we are able to tell you on -- on the
3487 questions of the crimes that you're talking about.

3488 Mr. Issa. And we're happy to accept it in a -- in an
3489 environment where it's not disclosed, but I really think that
3490 this committee has an obligation to have a good feel for the
3491 nature of the individuals, the nature of the crimes and --
3492 and how we're going to deal with them. This is an awful lot
3493 of people who are requesting special entry to the United
3494 States and -- and as we know, many of them did not do
3495 anything for the United States but simply were able to get on
3496 an aircraft in the rush at the end. Mr. Chairman, thank you
3497 for your excess time indulgence, and I yield back.

3498 Chairman Nadler. The gentleman yields back. Mrs.
3499 Demings?

3500 Mrs. Demings. Thank you so much, Mr. Chairman.
3501 Attorney General Garland, it is great to see you again. We
3502 were together last week as the nation recognized 701 law
3503 enforcement officers who died in the line of duty whose names
3504 will be added -- or were added to the wall. Here we are,
3505 just a few yards away from law enforcement officers who were
3506 beat down in this very sacred place. We've been asked to
3507 move on. But Attorney General Garland, some of us just

3508 cannot -- not yet.

3509 In your opening statement you said that the Department's
3510 core values are upholding the rule of law, keeping our
3511 country safe, and protecting civil rights. As I sit here
3512 today as a member of the House of Representatives, I see my
3513 job -- and also the job of every member of the House on both
3514 sides of the aisle -- Attorney General is, guess what, to
3515 uphold the rule of law, keep our country safe, and protect
3516 civil rights. As you know, I served as a law enforcement
3517 officer for almost three decades. It was an honor. And at
3518 all levels of government, whether local, state or federal,
3519 law enforcement officers take an oath to uphold the
3520 Constitution -- defend the Constitution against all enemies
3521 foreign and domestic; enforce the laws of the land; and
3522 protect and serve their communities -- or at least that's
3523 what the responsibility is about. It is about keeping the
3524 American people safe.

3525 Effective policing, though, requires resources and
3526 investment. We cannot sit here as policy makers and demand
3527 better policing, better training without providing the
3528 resources to achieve it. Attorney General Garland, I know
3529 you know -- very familiar with the COPS Grant Program. As
3530 you know, it provides resources and assistance to state and
3531 local enforcement for things such as community policing. The

3532 Byrne JAG Grant provides several initiatives for state and
3533 local jurisdiction including technical assistant training;
3534 personnel equipment; supplies for law enforcement; prevention
3535 and education; crime, victim, and witness assistance; mental
3536 health and related law enforcement assistance programs.
3537 Attorney General Garland, if you would just take just a
3538 moment -- I know you mentioned earlier that your commitment
3539 in terms of funding to this very important initiative. But
3540 if you would just take a moment to talk about the
3541 effectiveness of the DOJ grant programs and talk a little bit
3542 about the future of those resources.

3543 Attorney General Garland. I thank you for that
3544 opportunity. This is part of our commitment both to keep the
3545 country safe, and therefore to help state and local
3546 communities fight violence in their communities. And second,
3547 part of our obligation to uphold civil rights and so ensure
3548 that this be done with Constitutional policing. And also
3549 with respect to our first priority -- that is ensuring
3550 adherence to the rule of law.

3551 So we have asked for in the 2022 budget more than \$1
3552 billion in grants for state and local police organizations.
3553 That's \$537 million for COPS hiring, and \$513 million for
3554 Byrne JAG. Each of those are an increase for COPS -- it's an
3555 increase of \$300 million over the previous year. For Byrne

3556 JAG it's about \$30 million increase over the previous year.

3557 But there are other grant programs that we've asked for
3558 money as well. One of them is quite important -- it's \$100
3559 million for a new community violence intervention
3560 initiatives. And I met with community violence intervention
3561 experts in the Chicago earlier in the summer. I was
3562 extremely impressed by the results that they've had in taking
3563 people who might otherwise end up with -- in crime, and
3564 setting them on the straight path. That particular program
3565 was actually a well-controlled study done by the University
3566 of Chicago, and it showed that these things actually work
3567 quite well.

3568 Mrs. Demings. Attorney General, if we could just switch
3569 gears for just a second --

3570 Attorney General Garland. Of course.

3571 Mrs. Demings. I want to talk about election security
3572 and threats that have been going on against election worker -
3573 - poll workers. And I know that there was a task force
3574 established in June of last year as a result of the rise in
3575 threats, including death threats. How does the task force
3576 plan to coordinate with local and state enforcement, and
3577 prosecutors, to pursue cases against those who seek to
3578 intimidate election workers?

3579 Attorney General Garland. So like all of our anti-

3580 violence initiatives, from the violence initiatives we were
3581 just talking about, to Project Safe Neighborhoods, to the
3582 memorandum that we've been discussing earlier today -- all of
3583 our activity in this regard involves partnership with and
3584 meetings with state and local law enforcement. And with
3585 respect to election workers, we have -- as part of our normal
3586 sets of meetings with respect to state and local law
3587 enforcement -- we are meeting with them to identify threats,
3588 to find out where federal tools would be helpful; to find out
3589 where assistance to state and locals would be effective.
3590 There is a FBI tip line for threats to election workers,
3591 which are then funneled to the appropriate FBI office in the
3592 locality where the threats are occurring.

3593 This is similar to our work with respect to threats
3594 against members of the Congress, with threats against judges,
3595 threats against prosecutors, threats against police officers
3596 -- all of these things are done with tight coordination with
3597 state and local law enforcement.

3598 (Simultaneous speaking.)

3599 Mrs. Demings. Attorney General, thank you so much. I
3600 yield back.

3601 Chairman Nadler. I understand Mr. Roy has a UC request?

3602 Mr. Roy. I do, Mr. Chairman. I ask unanimous consent
3603 to insert into the record the memorandum from the National

3604 School Boards Association to President Joe Biden,
3605 specifically noting in there that this is talking about
3606 domestic terrorism and footnote 13 directly references the
3607 incidents that occurred in Loudoun County, Virginia. I'd
3608 like unanimous consent to insert that into the record.

3609 Chairman Nadler. Without objection.

3610 Mr. Roy. And then second item to insert in the record
3611 is the memorandum issued by the -- the Attorney General
3612 regarding what the federal review of investigation is
3613 supposed to do with respect to targeting parents and school
3614 boards throughout the United States.

3615 Chairman Nadler. Without objection. Mr. Biggs?

3616 Mr. Roy. Thank you, Mr. Chairman.

3617 Mr. Biggs. Thank you, Mr. Chairman. Mr. Garland,
3618 Facebook has admitted in a letter to the Arizona Attorney
3619 General that it, quote, allows people to share information
3620 about how to enter a country illegally, or request
3621 information about how to be smuggled -- close quote. 8 USC
3622 1324 criminalizes aiding and abetting entry into the U.S. by
3623 illegal aliens. Have you sent a letter or issued a
3624 memorandum similar to the 10/4/21 memorandum, directing
3625 department resources to be dedicated to investigating the
3626 apparent violation of law similar to the one -- have you done
3627 that?

3628 Attorney General Garland. I haven't seen the letter or
3629 information that you're talking about. But if it was sent to
3630 the Department, I will make sure that we look at it.

3631 Mr. Biggs. It has been reported that Mark Zuckerberg
3632 also spent over \$400 million in a, quote, carefully
3633 orchestrated attempt, closed quote, to influence the 2020
3634 election. Those efforts have been referred to as a, quote,
3635 private takeover of government election operations, closed
3636 quote. Have you sent a letter or issued a memorandum
3637 directing departmental resources be dedicated to investigate
3638 these claims?

3639 Attorney General Garland. I don't know what was done in
3640 2020 in previous -- administration of the Justice Department.
3641 I don't know --

3642 (Simultaneous speaking.)

3643 Mr. Biggs. We're talking about the election of 2020.
3644 All of this has come out since then, and you've not --

3645 (Simultaneous speaking.)

3646 Attorney General Garland. I don't -- I don't know --

3647 Mr. Biggs. You're totally unaware of that?

3648 Attorney General Garland. I'm not aware of what you're
3649 talking about, I'm sorry.

3650 Mr. Biggs. So you have not sent a memo? Or you're not
3651 investigating that either. Last Sunday, more than 300

3652 churches in Virginia aired a video featuring Vice President
3653 Harris advocating the election of Terry McAuliffe as Governor
3654 of Virginia. This appears to violate Section 501(c)(3) the
3655 IRS code, as well as other election laws -- and seems to be
3656 an orchestrated effort by the V.P. and McAuliffe to violate
3657 the law. Have you sent a letter or issued a memorandum
3658 directing departmental resources be dedicated to
3659 investigating this apparent violation of law, similar to the
3660 letter you issued -- or excuse me, the memorandum you issued
3661 on October 4 targeting parents to who exercised their First
3662 Amendment rights at local school boards?

3663 Attorney General Garland. No.

3664 Mr. Biggs. On May 24, 2021 under oath before
3665 Congressional Committee, Dr. Anthony Fauci denied the
3666 National Institute of health provided any funding for gain of
3667 function research saying, quote, that categorically was not
3668 done, closed quote. Today, this very day, the NIH issued a
3669 statement contradicting that testimony which suggested Dr.
3670 Fauci may have committed perjury. This is a criminal offense
3671 and I am left to wonder if you intend to look into that and
3672 send a communication such as a letter or a memo -- similar to
3673 the October 4 memo that you issued regarding parents going to
3674 school board meetings -- to investigate Dr. Fauci's potential
3675 perjury?

3676 Attorney General Garland. Again, I'll refer to the
3677 long-standing departmental norm that we don't comment about
3678 investigations pending or un-pending. The -- the general
3679 point that you're making normally comes with -- would come
3680 with a referral from the relevant committee. But other than
3681 that --

3682 Mr. Biggs. So the point I'm -- the actual point I'm
3683 making is, you chose as a response to a letter from the
3684 National School Board Association -- and as you said earlier
3685 today, newspaper accounts -- to issue a memorandum to
3686 organize task force and investigate and put a chill on
3687 parents participation before school boards. Now you say, I
3688 didn't mean to provide a chill. But that's exactly what any
3689 sentient being would have assumed would happen when you asked
3690 the federal government to begin looking into this. Of course
3691 parents are going to be nervous now. Of course people will
3692 step back. That's the purpose of my questioning.

3693 So when we get to these things like Zuckerberg,
3694 Facebook, Kamala Harris, we get to -- and Dr. Fauci's
3695 purported perjury -- there's no indication -- you didn't hold
3696 back. You issued a press release. Do you see the
3697 distinction? How about this one? Since January 20 of 2021,
3698 Border Patrol has encountered more than 1.3 million aliens at
3699 the southern border trying to illegally enter the country.

3700 You yourself -- you have acknowledged today that that remains
3701 a crime. Have you sent a letter or issued a memorandum to
3702 U.S. attorneys directing prosecution of these cases?

3703 Attorney General Garland. No, and the reference of
3704 cases comes from the Department of Homeland Security, as I
3705 mentioned before.

3706 Mr. Biggs. Look, you managed to issue a memorandum
3707 about parents showing up at school boards. Why can't you
3708 issue a memorandum regarding the million-plus people who
3709 illegally enter the country and encouraging your U.S.
3710 attorneys to prosecute those cases? They are there
3711 constantly.

3712 Chairman Nadler. The time of the Member -- the time of
3713 the gentleman has expired. Mr. Correa?

3714 (Simultaneous speaking.)

3715 Mr. Correa. Thank you very much, Mr. Chairman. Mr.
3716 Attorney General, welcome and thank you for your good work.
3717 I wanted to turn back to the issue of safety of elected
3718 officials -- federal and local. You mention a couple of
3719 words a few minutes ago -- true threats and serious bodily
3720 injury. And I would say that's within the context of -- as
3721 what's said already -- which is the First Amendment. And
3722 that all of us are public officials. We chose to run for
3723 office -- to be in elected office. Yet recently -- not

3724 recently, but throughout the years, we have been confronted
3725 with people in our faces, serious bodily harm, us being
3726 threatened. A dozen years ago, that happened to me in
3727 California. Called my local attorney general -- State
3728 Attorney General Bill Lockyer then. Bill told me, he said,
3729 Lou, never swing first. You will be criminally liable. I'll
3730 put you in jail myself and you'll have tort issues as well.

3731 On January 7, the day after the insurrection, I was at
3732 Dulles Airport surrounded by -- it was probably about 20
3733 people in my face. I remembered Bill Lockyer's words -- I
3734 didn't want to swing first. I had people in my face,
3735 surrounding me. My only thought was, you better make sure
3736 this guy, if he does swing, doesn't connect, otherwise I'm
3737 going down. So sir, what are we left with today? The nice
3738 Corporal that responded to that incident accused me of
3739 starting the fight. Number two, I asked for an
3740 investigation, the nice people at the airport said, no laws
3741 were broken. Yet, we talk about true threats, serious bodily
3742 injury. At what point do we essentially -- at what point
3743 would you draw the line in terms of us protecting ourselves?
3744 And the sad thing about January 7 for me is, that's nothing
3745 new. That happens in my district for the last few years
3746 over, and over again. Police officers show up, First
3747 Amendment. And we're left to essentially handle the

3748 situation -- many times on our own.

3749 So Mr. Attorney General, I'm trying to figure out some
3750 clear lines here. How do we as elected officials protect
3751 ourselves? Are we left to concealed weapons? What is it
3752 exactly that we need to do? You know, I'll take the heat.
3753 I'm an elected official. But where does that First Amendment
3754 stop and that serious bodily injury concept come into play?
3755 Thank you.

3756 Attorney General Garland. Well, the courts have been
3757 quite clear that threats that intend to commit an unlawful
3758 act of death or of threat of serious bodily injury are not
3759 protected by the First Amendment. Anger, getting up in your
3760 face, those things are protected unless there are some local
3761 provisions one way or the other.

3762 Mr. Correa. They are protected?

3763 Attorney General Garland. Yes, sir -- people can argue
3764 with you. People can say vile things to you. People can
3765 insult you. I'm sorry to say this, doesn't mean I like that
3766 idea. Doesn't mean that that's where we should be in a civil
3767 society. But the First Amendment protects vigorous argument.

3768 I -- with respect to self-protection, I am going to have
3769 to leave that to the Capitol Police and other protective
3770 organizations to give those kind of -- that kind of advice to
3771 you. If you think you have a threat -- if you've received a

3772 threat of violence, or -- threat of serious bodily injury,
3773 you should report it. Many other members of Congress have
3774 done that. We just arrested somebody in Alaska for
3775 threatening the two Alaskan Senators. This happens --

3776 (Simultaneous speaking.)

3777 Mr. Correa. Mr. Attorney General, I only have 54
3778 seconds left and I guess what I'm looking for is some kind of
3779 a message from your office at the federal level that there
3780 are certain things that are tolerated under the First
3781 Amendment and some that are not. And those that, you know,
3782 cross that line will be prosecuted. And it also spills over
3783 to protection of poll workers at elections. I'm out of
3784 Orange Country, California. We've had private poll workers
3785 threatening voters. We've had letter focused threatening
3786 certain voters, keeping them from the polls. And yes, you
3787 can come back in retrospect and prosecute, but you've already
3788 affected the outcome of an election.

3789 So I am hoping somehow to figure out a way to really
3790 send a clear message to these individuals that, you know,
3791 violations of our democracy -- messing with our elections --
3792 is not going to be tolerated so they know that going into the
3793 -- into their actions. Thank you. With that, I yield.

3794 (Simultaneous speaking.)

3795 Chairman Nadler. The gentleman yields back. Mr. Gaetz?

3796 Mr. Gaetz. Thank you, Mr. Chairman. I'm very concerned
3797 about the influence of lobbyists in Washington, D.C. There's
3798 no prohibition against the Department of Justice hiring
3799 lobbyists to be prosecutors, is there?

3800 Attorney General Garland. You mean former lobbyists --
3801 I hope you mean?

3802 Mr. Gaetz. Yes, that's correct.

3803 Attorney General Garland. No, there's no prohibition.

3804 Mr. Gaetz. And can you describe for us the specific
3805 vetting that the Department does when professional influence
3806 peddlers are hired and given prosecuting authorities?

3807 Attorney General Garland. Well a hiring of assistant
3808 U.S. attorneys is a -- this is a career hire made in the
3809 different U.S. Attorneys offices. There is a --

3810 (Simultaneous speaking.)

3811 Mr. Gaetz. I mean for the Washington. I mean, in
3812 Washington at DOJ, are there any special procedures that vet
3813 lobbying contracts or maybe who a lobbyist worked for before
3814 they're giving -- given prosecutorial authority?

3815 Attorney General Garland. So again, I'm -- I'm not sure
3816 what kind of person you're speaking with. If you're talking
3817 about front-line prosecutors, there is a background check.
3818 Everybody, I'm sure, here is familiar with the SF-86. It has
3819 to be filled out. It includes all the people that you worked

3820 for. The same is true is in main Justice.

3821 Mr. Gaetz. But there's no special review for lobbyists
3822 as opposed to people who have been engineers? Or had any
3823 other career?

3824 Attorney General Garland. I don't know. But I don't
3825 believe there's a difference. But obviously, lobbying may
3826 raise conflicts --

3827 (Simultaneous speaking.)

3828 Mr. Gaetz. Let's talk about political consultants.
3829 Political consultants are people who get paid to ensure that
3830 a candidate wins or loses an election, that a political
3831 movement is successful or unsuccessful. Is there any
3832 prohibition against hiring political consultants as
3833 prosecutors at the Department?

3834 Attorney General Garland. Again, I don't think that
3835 we're allowed to even look at people's politics. The
3836 question --

3837 Mr. Gaetz. No, no, no, no, no -- it's not their
3838 politics. It's the profession of being a political
3839 consultant. There's no special vetting for that, is there?

3840 Attorney General Garland. I don't think that there's a
3841 specific prohibition. There is a requirement that once
3842 somebody becomes a prosecutor -- just like when somebody
3843 becomes a judge -- that they get rid of whatever

3844 preconceptions they had before and that they go forward under
3845 their new responsibilities and are subject to the ethics
3846 rules of their new --

3847 (Simultaneous speaking.)

3848 Mr. Gaetz. We would hope that would be the case, Mr.
3849 Attorney General. But I tend to think that if people are in
3850 the influence-peddling game, or they're prosecutors, it can
3851 be kind of dangerous to mix those -- to be an influence
3852 peddler for hire one day, to be a prosecutor the next. Maybe
3853 to rotate back and forth among those careers. And it sounds
3854 like there's no special vetting for lobbyists or political
3855 consultants. Let me ask the question about partisan
3856 committee staff. We have partisan committee staff that you
3857 see here. Their job is to ensure that one party or another
3858 preserves or, you know, captures the majority that
3859 legislative proposals are successful or not successful. No
3860 prohibition against the Department hiring partisan committee
3861 staff as prosecutors, is there?

3862 Attorney General Garland. As I understand it, every
3863 administration including the one preceding this one has hired
3864 people who have been committee staff. I don't think there's
3865 a statutory limitation. If the House of Representatives and
3866 the Senate think that partisan or -- I'm not --

3867 (Simultaneous speaking.)

3868 Mr. Gaetz. That's how Preet Bharara got his job. He
3869 worked for Schumer and then he ended up in the Southern
3870 District. So we have people who can be lobbyists and then
3871 prosecutors. We have people who can be political consultants
3872 and then prosecutors. We have people who can be partisan
3873 committee staff and then prosecutors. The public integrity
3874 section has jurisdiction over election integrity, correct?

3875 Attorney General Garland. It has jurisdiction over
3876 election crimes, yes.

3877 Mr. Gaetz. So is there any prohibition against people
3878 who have been lobbyists, partisan committee staff, or
3879 political consultants actually going in and serving in the
3880 public integrity section? Or is that allowed?

3881 Attorney General Garland. I will just say again -- the
3882 hiring in the public integrity sector is a career hire made
3883 under the civil service. It's not made --

3884 Mr. Gaetz. I know. I'm worried about their prior
3885 career, though. See, what I think is that if someone has
3886 been a -- a political operative, to then put them in charge
3887 of election crimes, it's kind of like having the fox guard
3888 the henhouse, don't you think?

3889 Attorney General Garland. Well if you think that, that
3890 would be a perfect example of something the House should pass
3891 a statute barring people from particular professions from

3892 working in the Justice Department.

3893 Mr. Gaetz. And would you support that legislation?

3894 Attorney General Garland. I'd have to look at what it
3895 is and I'd have to look at whether it itself violates the
3896 First Amendment, but I don't think there --

3897 (Simultaneous speaking.)

3898 Mr. Gaetz. Well I appreciate --

3899 Attorney General Garland. -- there have ever been any
3900 restrictions like that before.

3901 Mr. Gaetz. Well I appreciate your open-mindedness and I
3902 hope that persists during your time at the Department. Would
3903 you provide the Committee a list of lobbyists -- former
3904 lobbyists or just former political consultants who work in
3905 the public integrity section so that we might inform on the
3906 legislation that you've suggested we might consider?

3907 Attorney General Garland. Well I don't intend to create
3908 a list of career officials and what their previous jobs were.
3909 I think that's highly --

3910 Mr. Gaetz. So if there are people -- who literally were
3911 political operatives, who have prosecuting authority in the
3912 area that oversees elections, you won't give us the list?
3913 That is --

3914 (Simultaneous speaking.)

3915 Attorney General Garland. I don't have any idea whether

3916 there is any such --

3917 Chairman Nadler. Time of the gentleman has expired.

3918 Ms. Scanlon.

3919 Ms. Scanlon. Thank you, Mr. Chairman. And thank you,
3920 Attorney General Garland, for appearing here today in a
3921 timely manner and responding to our questions, as well as for
3922 your efforts to be responsive to the issues facing America
3923 today. Thank you.

3924 I want to address two primary areas in my limited time,
3925 attacks on elected officials and attacks on elections. As
3926 several of my colleagues have pointed out, the far right's
3927 lies about election integrity have led to intimidation and
3928 threats of violence and death being made against elected
3929 officials and their families.

3930 In Pennsylvania, we saw armed extremists come across
3931 state lines to try to disrupt the counting of votes in
3932 Philadelphia. And an election commissioner had to put his
3933 children in hiding after death threats were made against him
3934 and his family.

3935 With the reopening of schools this fall, we've now
3936 similar criminal conduct being directed at teachers and
3937 school board members with the encouragement of far right
3938 extremists, including some elected officials.

3939 I take this personally because I was a school board for

3940 ten years, almost a decade, until 2015. And during that
3941 time, I had thousands of hours of conversations with involved
3942 parents and constituents in grocery stores, on baseball
3943 fields, and in courtrooms and school board meetings.

3944 Sometimes the discussions were passionate, but everyone
3945 always respected the boundaries of protected speech. And
3946 those exchanges of opinions and information were always
3947 conducted with the goal of exchanging information, reaching
3948 solutions for the community.

3949 We never, ever experienced any threats to the personal
3950 safety of board members, educators, or their families, and
3951 that has changed. The personal and physical attacks that
3952 have been directed against school leaders in recent months
3953 have crossed well over the line of protected free speech or
3954 parental involvement and have become criminal conduct, and
3955 that's what we're talking about here.

3956 As you noted, parents have a right be heard and to
3957 complain and to argue. But parents and outside agitators do
3958 not have the right to criminally harass or threaten or
3959 assault school leaders and their families. We've heard some
3960 of the incidents that have occurred elsewhere around the
3961 country.

3962 In my district, police had to be called to several
3963 meetings after agitators disrupted the meetings. And

3964 elsewhere in Pennsylvania, a candidate for office urged
3965 community members at a public rally to, and I quote, Forget
3966 going into school boards with freaking data. You go into
3967 those school boards to remove them. I'm going in with 20
3968 strong men, and I'm going to give them an option. They can
3969 leave, or they can be removed.

3970 I mean, that's not ordinary speech. I mean, it's the
3971 type of conduct that has led school boards and school
3972 officials to request help from law enforcement.

3973 It's shocking, but perhaps not surprising that some of
3974 our colleagues have tried to frame these criminal acts as
3975 free speech by involved parents. It appears to be part of a
3976 pattern by far right politicians of fanning the flames of
3977 chaos and turning a blind eye to domestic extremism and
3978 violence.

3979 The conduct that terrorizes educators now across the
3980 country is no more like that of ordinary parents showing up
3981 at school board meetings than the conduct of the violent mob
3982 that showed up at the Capitol on January 6 was that of
3983 ordinary tourists. I think there's a profound distinction
3984 here, and one that warrants the attention of law enforcement.

3985 Would you agree that allowing threats of violence and
3986 intimidation against elected officials to go unreported or
3987 unpunished could not only lead to greater violence against

3988 elected officials, but also contribute to an atmosphere
3989 that's harmful to free speech and the free exchange of ideas?

3990 Attorney General Garland. Yes, I do agree.

3991 Ms. Scanlon. Moving on to election, attacks on
3992 elections, from almost two years, the former President and
3993 his supporters have attacked and spread lies about election
3994 security in the Commonwealth of Pennsylvania. Almost a year
3995 after President Biden's victory, attacks on Pennsylvania
3996 elections occur today.

3997 Last month, Republican members of the PA legislature
3998 launched another attack on Pennsylvania voters. They sent a
3999 subpoena to the Pennsylvania Department of State demanding
4000 that the state turn over the 2020 voting records of every
4001 voter in the state, along with their driver's licenses and
4002 their Social Security numbers so that information could be
4003 turned over to an unidentified private contractor.

4004 Pennsylvania voters of every party and independents were
4005 outraged about this invasion of privacy and the possibility
4006 that sensitive personal information was being put at risk.

4007 Can you address how this kind of sweeping intrusion into
4008 election and personal data under the guise of an election
4009 audit might violate federal election laws?

4010 Attorney General Garland. Yes, I can't -- let me just
4011 say on the previous point that you made, I gave you a quick

4012 answer. A full answer is we have an election threats task
4013 force, and we've had that for quite some time.

4014 I've met with the National Association of Election
4015 Administrators and the National Association of Secretaries of
4016 State for every state. And that's what prompted us to
4017 establish this task force.

4018 Now, on the second question, I can't -- I don't want
4019 to discuss any particular circumstances, certainly not that
4020 one. But there are provisions of the Voting Rights Act that
4021 require state election officials to keep control, custody of
4022 voting records and voting equipment and materials relating to
4023 the last election, I think for 18 months.

4024 And similarly, there are provisions of the same statute
4025 which prohibit intimidation of, or acts leading to the
4026 intimidating of, voters, both of which are sort of a core of
4027 the federal government's concern with respect to post-
4028 election audits.

4029 Ms. Dean. I think the gentlelady's time has expired.

4030 Ms. Scanlon. I yield back.

4031 Ms. Dean. The gentlelady yields back. The Chair now
4032 recognizes Mr. Steube from Florida for five minutes.

4033 Mr. Steube. Thank you, Madam Chairman.

4034 Attorney General Garland, in your Senate confirmation
4035 hearing you referred to the January 6 protests as the, and I

4036 quote, Most dangerous threat to democracy in your law
4037 enforcement and judicial career. In that same hearing, you
4038 even compared January 6 to the Oklahoma City bombing case you
4039 worked on where 168 people were killed.

4040 In June 15, a speech announcing a new enhanced domestic
4041 terrorism policy, you cited January 6 as a motivation for
4042 that new policy. You went on to describe January 6, and I
4043 quote, As an assault on a mainstay of our democratic system.
4044 You have said that prosecuting extremist attacks on our
4045 democratic institution remain central to the mission of the
4046 Department of Justice.

4047 So suffice it to say, it's clear that you feel very
4048 strongly about using the full force of your position to
4049 prosecute those involved in the January 6 protest. What is
4050 not clear, however, is if you will use the same force against
4051 violent left-wing domestic terrorists.

4052 Just last week, on October 14, a group of extremist
4053 environmental and indigenous protesters forced their way into
4054 the Department of Interior. They fought with and injured
4055 security and police officers, sending some of those officers
4056 to the hospital.

4057 The extremists violently pushed their way into a
4058 restricted government building in an attempt to thwart the
4059 work of the Department of Interior. Police arrested at least

4060 55 protesters on site, but others got away.

4061 Mr. Garland, do you believe that these environmental
4062 extremists who forced their way into the Department of
4063 Interior are also domestic terrorists?

4064 Attorney General Garland. So with -- I'm not going to
4065 be able to reference that specific incident, since this is
4066 the first I know about it. But I will say that the
4067 Department does not care --

4068 Mr. Steube. This is the first that you know about an
4069 incident where protesters forced themselves into a federal
4070 government building right here in DC, like you didn't hear
4071 about this at all.

4072 Attorney General Garland. This particular example, it
4073 doesn't mean the Justice Department doesn't know about it,
4074 but I personally haven't heard about it before what you're
4075 saying right now. But I want to be clear, we don't care
4076 whether the violence comes from the left or from the right,
4077 or from the middle or from up or from down.

4078 We will prosecute violations of the law according to the
4079 statutes and facts that we have. This is a non-partisan
4080 determination of how to do that.

4081 Mr. Steube. All right, I'll make it a little clearer
4082 for you. And we're all, most of us are lawyers here, so we
4083 use evidence in court. So you got two pictures here. One

4084 picture is from January 6 of individuals forcing themselves
4085 into the Capitol. This other picture is extremists forcing
4086 themselves into the Interior Department.

4087 So looking at these pictures, and I know you say you're
4088 not aware of this, which blows my mind that you're not aware
4089 of violent extremists forcing their way into a department
4090 right here in Washington, DC into a federal building. But
4091 just with these evidence, with these two pictures that you
4092 see here of people forcing themselves into a federal
4093 building, would you call both of these acts domestic
4094 terrorism?

4095 Attorney General Garland. Look, I'm not going to
4096 comment about particular matters. This is a matter that --

4097 Mr. Steube. I'm not asking you to comment on a
4098 particular --

4099 Attorney General Garland. Well, you are --

4100 Mr. Steube. I'm asking you to comment on these two
4101 photos. You have two pictures of individuals forcing
4102 themselves into a government building right here in
4103 Washington, DC. In one, you very, as I laid out, very
4104 [inaudible] called them domestic terrorists, but you're
4105 refusing to call groups like this who commit the same
4106 atrocities here in Washington, DC domestic terrorists.

4107 Attorney General Garland. One I know the facts of, the

4108 other I don't know the facts of.

4109 Mr. Steube. Well, I'm showing you pictures. Here's
4110 facts, right here. If you want, we'll act like we're in a
4111 court room. Exhibit A, Exhibit B. January 6, Department of
4112 Interior.

4113 Attorney General Garland. Well, as you know --

4114 Mr. Steube. Based on these pictures of people forcing
4115 themselves into the --

4116 Attorney General Garland. One -- one picture is not
4117 going to be able -- I'm not going to be able to resolve a
4118 legal determination based on one picture. In the January 6
4119 case, we have terabytes of video which disclose exactly what
4120 happened then.

4121 Mr. Steube. Speaker Pelosi, mind you, still hasn't
4122 released to the American public to view all the video that
4123 has been captured here in Washington and in the Capitol
4124 complex.

4125 But that's the problem that everyday Americans are
4126 facing right now, is they see these type of comments that
4127 you've made about January 6, yet you're completely -- and
4128 you're not answering my question now, and you're saying,
4129 well, that's an ongoing investigation and I don't know about
4130 it.

4131 But clearly, based on the pictures, clearly what has

4132 occurred, factually what's been widely reported in all sorts
4133 of different American outlets, that these individuals forced
4134 themselves into a building here in the Department of
4135 Interior.

4136 And you're refusing, right here today before the
4137 American people to say yes, that's the same type of activity
4138 that I'm going to bring the full force of the Department of
4139 Justice to come against, regardless of the ideology, which
4140 you have said in the past.

4141 But you're refusing to do that today, and that's the
4142 problem with the challenges that your -- that this
4143 Administration your Department is facing is everyday
4144 Americans who are seeing this on TV.

4145 And now you have the opportunity to set the record
4146 straight and say both of those actions regardless of ideology
4147 are against federal law and will be prosecuted with the full
4148 faith and credit of the Department of Justice, and you're
4149 refusing to do that.

4150 And that's the challenge that everyday Americans are
4151 having right now. It's because they're seeing what you guys
4152 are doing to the people on January 6, to the point where even
4153 a judge is saying --

4154 Ms. Dean. The gentleman's time has expired.

4155 Mr. Steube. There's -- the speaker before me had 30

4156 extra seconds. I ask the same deference that you gave to the
4157 previous speaker.

4158 That you have even judges who recently even held the
4159 Department of Corrections in contempt related to the way that
4160 the January 6 suspects have been treated. And you're
4161 refusing to even comment on the very acts that have just
4162 occurred here. And that's -- that's what is horribly wrong
4163 --

4164 Ms. Dean. Time has expired.

4165 Mr. Steube. And is happening in our country that the
4166 American people --

4167 Ms. Dean. The gentleman's time has expired.

4168 Mr. Steube. Are seeing your refusal to answer those
4169 questions.

4170 Ms. Dean. Mr. Attorney General, members, votes have
4171 been called on the House floor, so the Committee will stand
4172 in recess until immediately after the conclusion of those
4173 votes.

4174 [Recess.]

4175 Mr. Neguse. Thank you, Mr. Chairman.

4176 Good afternoon, Attorney General. Thank you for being
4177 here and thank you for your leadership at the Department of
4178 Justice.

4179 I also want to thank my colleague Representative Bass.

4180 I know she engaged in a line of questioning earlier about the
4181 tragic death of Elijah McClain in my home state of Colorado.
4182 I was heartened to hear that the Department is engaged in a
4183 review of its use of force policies.

4184 We have introduced a bill to ban the use of ketamine in
4185 custodial settings. That bill has earned the support of
4186 Chairman Nadler and subcommittee Chairwoman Sheila Jackson
4187 Lee, which I am both grateful and certainly welcome the
4188 opportunity to work with your department on that particular
4189 legislation in honor of Elijah's memory.

4190 On March 22nd of this year, as you know, my community of
4191 Boulder, Colorado, experienced a horrific tragedy as a gunman
4192 killed 10 people at our local grocery store using an AR15-
4193 style pistol, which fired rifled rounds with a modified arm
4194 brace. The AR pistol brace attachment used by the gunman
4195 allowed the shooter to fire an easily-concealable pistol with
4196 rifle-like accuracy and fire power.

4197 In the immediate aftermath of this tragedy, as you know,
4198 I sent a letter to the President and to the Department of
4199 Justice, along with 100 of my colleagues, requesting the
4200 Administration use its authority to regulate concealable
4201 assault-style firearms that fire rifle rounds.

4202 And as I mentioned to you when we last met at the White
4203 House in April, I was very pleased with the Administration's

4204 announcement that DOJ would be issuing a proposed rule within
4205 60 days to tighten regulations on pistol-stabilizing braces,
4206 as I requested in my letter. And, so, I want to thank the
4207 Department, and wonder if you might be able to opine as to
4208 the status of the rule of where you are in the rulemaking
4209 process.

4210 Attorney General Garland. Well, I believe that we are
4211 still in the rulemaking process. I can't remember whether
4212 the comment period has closed or not. But that is part of
4213 the Administrative Procedure Act, as you know, we have to go
4214 through our rulemaking procedure, and that is what is going
4215 on here to prevent the pistols from being used as short-
4216 barreled rifles, which are prohibited.

4217 Mr. Neguse. Well, again, I appreciate the Department
4218 taking that proposed rule seriously. We certainly look
4219 forward to the results of that rulemaking process, as do my
4220 constituents in Boulder who are still very much grieving the
4221 loss of so many in our community.

4222 Two other subjects I wanted to address in my limited
4223 time; first around grand jury material.

4224 Now, I know Attorney General Garland, I think you would
4225 agree with me, so, current law allows for grand jury
4226 material, known as Rule 6(e) material, to be released
4227 publicly after 30 years. That is current law. Is that

4228 right?

4229 Mr. Neguse. Actually, I am embarrassed to say this, but
4230 I don't think that is correct. We have made a recommendation
4231 to the Federal Rules Committee that it be released. I think
4232 30 years is the time. But the Rules Committee has not yet
4233 decided whether that, that will be the case.

4234 But that is I think 30 years was the number that we
4235 recommended.

4236 Mr. Neguse. So, we think. That is the subject I was
4237 sort of wanting to dig in on.

4238 My understanding is that current law provides for 30
4239 years. The Trump administration, in 2020 a senior Trump
4240 administration official, or lawyer rather, at DOJ proposed
4241 the time period be extended to 50 years. My understanding is
4242 the Department of Justice has continued that request and made
4243 that request for the time period to be extended to 50 years.

4244 As you can imagine, there are a lot of concerns, many of
4245 which I hold and many of my colleagues hold around judicial
4246 secrecy, and the extension of the time period to 50 years
4247 would seem a bit much. Were that to be adopted, many of the
4248 materials released post-Watergate would still be secret
4249 today. So, I would certainly --

4250 Attorney General Garland. We have sent another letter
4251 post the letter that you are speaking about to the Rules

4252 Committee. There is no reason why we can't share it. It is
4253 not a private letter or anything. And it went back I believe
4254 in a shorter period than the Holder letter originally was.

4255 So I will ask my staff to get that for you.

4256 Mr. Neguse. Well, that is terrific to hear. So, thank
4257 you, Attorney General, thank you to the Department for making
4258 that change. And I think that that is going to allay many of
4259 the concerns that folks had, certainly mine. So, I
4260 appreciate the Department of Justice doing that.

4261 Finally, last question. National substance abuse
4262 prevention is this month. I know my colleague from Florida,
4263 Representative Deutch, asked you a couple of questions with
4264 respect to the opioid epidemic that is pervasive across our
4265 country, including in my state in Colorado where on average
4266 two Coloradans are dying a day from opioid overdoses.

4267 The Department has worked with us on a bill that we
4268 introduced, the Preventing Youth Substance Abuse Act. And I
4269 want to thank DOJ for their partnership in that regard. And
4270 just wanted to give you an opportunity before the hearing
4271 concludes here this afternoon to add anything else further
4272 you'd like to add with respect to your answer to
4273 Representative Deutch about the Department's work to address
4274 this epidemic.

4275 And I think there is bipartisan interest in the Congress

4276 in partnering with your department to ensure that those
4277 solutions are applied broadly across the country, including
4278 my state of Colorado.

4279 Attorney General Garland. Well, this is a terrible
4280 epidemic. I, you know, went to the U.S. Attorneys offices
4281 all across California, also in Tucson, to find out what is
4282 happening with respect to the importation of this fentanyl.
4283 It is, I would say, our most number one concern now because
4284 these pills are, something like four out of ten pills here,
4285 it is like playing Russian roulette, if you take one of those
4286 you die.

4287 And the kids who are taking those have no idea that that
4288 is what is happening. Sometimes they think they are
4289 something else that they are buying other than those. These
4290 are, you know, they use precursors coming from the People's
4291 Republic of China coming into Mexico. Then they are pressed
4292 into pill form in Mexico and then transmitted across the
4293 border.

4294 Our CBP is doing an extremely good job of checking the
4295 trucks and checking the cars for this material. But it is an
4296 overwhelming problem run by the cartels. And the DEA is
4297 working extremely hard on this matter.

4298 When I was in Mexico City I raised it with respect to
4299 the high level security talks that we recently had with their

4300 security minister, secretaries. I raised precisely this
4301 issue.

4302 Chairman Nadler. The gentleman's time is expired.

4303 Ms. Spartz.

4304 Mrs. Spartz. Thank you, Mr. Chairman.

4305 Mr. Attorney General, as someone who was born in the
4306 Soviet Union, I am disturbed, very disturbed by the use of
4307 the Department of Justice as a political tool in its power as
4308 a police state to suppress local public discourse. The FBI
4309 has started to resemble old KGB with secret words like
4310 surveillance, surveillance, wire tapping, and intimidation of
4311 citizens, overt related examples.

4312 It is interesting that during the Soviet era the United
4313 States criticized use of the domestic terrorism concept in
4314 the U.S.S.R. as a tool to suppress free speech and political
4315 dissent. In your recent statement opposing the Texas anti-
4316 abortion law you said, it is the foremost responsibility of
4317 the Department of Justice to defend the Constitution.

4318 Do you plan to defend the Second Amendment rights which
4319 are explicitly protected by our Constitution as vigorously as
4320 you do abortion rights? Just yes or no.

4321 Attorney General Garland. Yes.

4322 Mrs. Spartz. Do you believe recent inspector general
4323 FISA report citing widespread and material noncompliance by

4324 the FBI with proper due process for surveillance of U.S.
4325 citizens is a violation of the Fourth Amendment?

4326 Attorney General Garland. I think it is a violation of
4327 the FISA Act by itself, without even having to get to the
4328 Constitution. And we take this extraordinarily seriously.
4329 That is why we have an inspector general. That is why our
4330 National Security Division reviews what the FBI does with
4331 respect to FISA.

4332 And I know that the FBI director takes this very
4333 seriously as well. And they have made major fixes to their
4334 practices so this won't occur again. And this is constantly
4335 being audited and reviewed by our National Security Division.

4336 I take this very seriously. And I agree we have to be
4337 extremely careful about surveillance of American citizens,
4338 only as appropriate under the statute.

4339 Mrs. Spartz. Potentially, of course, the Fifth
4340 Amendment could be violated if you have --

4341 Attorney General Garland. Of course.

4342 Mrs. Spartz. -- material and widespread, as the report
4343 says, sir.

4344 In your June 15th remarks on domestic terrorism you said
4345 that nearly every day you get a briefing from the FBI
4346 director and his team. How often do you discuss FISA
4347 relations in your briefings?

4348 Attorney General Garland. Sorry, I didn't hear the
4349 last.

4350 Mrs. Spartz. How often do you discuss the FISA
4351 violations when you get your nearly daily briefings with the
4352 FBI?

4353 Attorney General Garland. Well, there is a quarterly
4354 review that the intelligence community and the National
4355 Security Division submits to the intelligence committees with
4356 respect to FISA reviews. And I always review those.

4357 I meet with the National Security Division relatively
4358 routinely to discuss how that's going. So, it is not every
4359 morning, but this review of violations of FISA and our
4360 efforts to make sure that it doesn't happen again is pretty
4361 frequent.

4362 Mrs. Spartz. It seems like we still get material and
4363 widespread. Every report we have material -- material, not
4364 non-material -- and widespread violations.

4365 But talking about another topic. I went to the border
4366 three times and recently visited the air base in Qatar, and
4367 Camp Atterbury in India, and housing of Afghanistan evacuees.
4368 And based on what I have seen, I have some questions and
4369 significant national security concerns.

4370 Former Border Patrol Chief Rodney Scott recently said
4371 that the open border poses a real terror threat. Do you

4372 agree with the Border Patrol chief or Secretary Mayorkas who
4373 recently said that the border is no less secure than before?

4374 Attorney General Garland. If you are asking about
4375 terrorism traveling across the border, I am concerned about
4376 that across all of our borders. This has been a continuing
4377 concern.

4378 Mrs. Spartz. But do you agree with, you know, Border
4379 Patrol chief that what is happening right now makes us less
4380 secure and have a real, you know, increased terror threat?

4381 Attorney General Garland. I believe that the
4382 combination of the intelligence community and the FBI are
4383 working very hard to make sure that people crossing the
4384 border do not constitute a terrorist threat. But we have to
4385 always be worried about the possibility, and we are ever
4386 vigilant on that subject.

4387 Mrs. Spartz. Can you assure the American people that
4388 you will be able to protect our country from a terrorist
4389 attack that may result from this lawlessness at the border or
4390 the Afghanistan debacle?

4391 Attorney General Garland. I can assure the American
4392 people that the FBI is working every day to the best they
4393 possibly can to protect the American people from terrorism
4394 from whatever direction it comes, whether it comes from
4395 Afghanistan or any other direction.

4396 Mrs. Spartz. Do you have any specific actions or plans
4397 that you are doing in light of what is happening right now on
4398 the border? Do you have a specific strategy that you are
4399 working directly with the critical --

4400 Attorney General Garland. The FBI --

4401 Mrs. Spartz. -- current situation.

4402 Attorney General Garland. I am sorry, I didn't mean to
4403 talk over.

4404 Mrs. Spartz. Yes. Considering current situation of the
4405 border do you take any specific actions at the border?

4406 Attorney General Garland. Well, with respect to the
4407 first part of your question about Afghanistan, the FBI is
4408 participating along with Homeland Security in vetting the
4409 refugees who have landed in various locations, Qatar, Kosovo,
4410 Ramstein Air Base, and then in bases in the United States.
4411 So, they are doing everything they can to vet for those
4412 purposes.

4413 With respect to crossing of the border, this is a
4414 combination of the intelligence community, outside of our
4415 intelligence community, getting information about who might
4416 be trying to cross the border.

4417 Mrs. Spartz. So, you can assure the American --

4418 Chairman Nadler. The gentlelady's time --

4419 Mrs. Spartz. -- people; the answer is yes?

4420 Chairman Nadler. The gentlelady's time has expired.

4421 Ms. McBath.

4422 Mrs. Spartz. Yield back.

4423 Mrs. McBath. Thank you so much, Mr. Chairman.

4424 And, Attorney General Garland, there are many others in
4425 this room outside of myself that want to thank you so much
4426 for such a long career of public service.

4427 And as you may know, I lost my son Jordan almost 9 years
4428 ago now. He was simply sitting in the car with three of his
4429 friends playing loud music when a stranger complained about
4430 the volume of the music, called them gang -- called the boys
4431 gangbangers and thugs, and he took my son's life.

4432 And I am very pleased that President has committed to
4433 preventing gun violence and that he has tasked you with the
4434 role of being supportive in gun violence prevention in
4435 America.

4436 Extremist protection orders, also known as red flag
4437 orders, allow courts to temporarily remove firearms from
4438 those who pose imminent danger to themselves or risk of
4439 harming others. In April 7th, 2021, an announcement of
4440 initial actions to curb violence, the Biden White House
4441 encouraged Congress to pass a national red flag law.

4442 How would the national red flag law work with other
4443 federal protections to prevent gun violence?

4444 Attorney General Garland. We are in favor of a national
4445 red flag law. What we are doing now is making model red flag
4446 laws for the states. These models provide that guns can be
4447 taken away for a person -- from a person in distress,
4448 normally from a mental crisis of some kind when requested by
4449 someone close to them, or if there is already a court
4450 violation of some kind. But it provides due process
4451 protections for those people to ensure there is not -- they
4452 haven't been inappropriately taken.

4453 The, you know, the risk here is that people in distress
4454 can commit violent acts when they have easy access to a
4455 firearm. The risk is that that violent act ends in a death.

4456 So, I think the red flag laws are very important in that
4457 respect.

4458 Mrs. McBath. Thank you. As do I.

4459 Attorney General Garland, we lost 49 people, including
4460 many young people, at the mass shooting at Pulse Night Club
4461 in Orlando, Florida. And the shooter was previously the
4462 subject of a 10-month FBI investigation. And during this
4463 investigation the FBI interviewed the shooters wife, who
4464 later said that he strangled her, he raped her, beat her, and
4465 even while she was pregnant he threatened to kill her.

4466 Fifty-three percent of mass shootings involve a shooter
4467 killing an intimate partner or family member, among other

4468 victims. And even among those mass shooters who do not kill
4469 an intimate partner, as in the Pulse shooting, there is often
4470 a history of domestic violence.

4471 Since the Pulse shooting has the Department updated its
4472 domestic investigations and operations guide or U.S.
4473 Attorneys' manual to ensure that it is examining whether a
4474 person has a history of domestic violence?

4475 Attorney General Garland. So, I don't know the exact
4476 answer into the past. I know that right now the deputy
4477 attorney general is doing a review with respect to the way in
4478 which the Department treats victims, including victims in the
4479 circumstance that you talked about, and creates warning
4480 systems for those sorts of things.

4481 So, I don't, I can't give you any fuller information
4482 than that. But I can ask my staff to get back to you.

4483 Mrs. McBath. Thank you very much. If you would do so,
4484 we would appreciate it.

4485 Attorney General Garland. Of course.

4486 Mrs. McBath. Also, can you assure me that you will take
4487 action to make sure that we are not missing any opportunities
4488 to save American lives?

4489 Attorney General Garland. That is our, this is our
4490 number one goal.

4491 Mrs. McBath. Thank you.

4492 And on May 7th -- I am going to switch gears a little
4493 bit -- May 7th, 2021, you signed a proposed ATF rule to
4494 ensure the proper marking, record keeping, and traceability
4495 of all firearms manufactured, imported, acquired, and
4496 disposed by federal firearms licenses -- licensees by
4497 clarifying the definition of firearm and gunsmith among all
4498 other small changes. How will this new definition help
4499 reduce the sale of ghost guns and increase background checks
4500 prior to their purchases?

4501 Attorney General Garland. Well, ghost guns, which are
4502 ready, sometimes ready-build shoot they are called, are kits
4503 that you can buy in pieces and put them together, right now
4504 there is some, some lack of clarity or dispute about whether
4505 serial numbers have to be on them, and then whether you need
4506 a license -- I am sorry, whether a check has to be made in
4507 order to determine whether the person is appropriately a
4508 purchaser.

4509 This rule will require that serial numbers be put on the
4510 pieces and that a fully licensed firearms dealer has to do
4511 the background check. This does two things: one, it will
4512 enable us to trace these guns, and; second, it will make sure
4513 that people who are prohibited because they are a felon or
4514 whatever other reason shouldn't -- won't be able to get the
4515 gun.

4516 I have been in both Chicago and New York and been quite
4517 stunned to learn the high percentage of guns at murder scenes
4518 were -- that a high percentage, much higher than I would have
4519 expected, were ghost guns. I had not realized how
4520 significant the problem is. But the police on the street are
4521 reporting that those guns are becoming more and more of a
4522 problem.

4523 So, I am hopeful that this regulation will give us some
4524 chance to beat that back.

4525 Chairman Nadler. The time of the gentlelady has
4526 expired.

4527 Ms. Fischbach.

4528 Mrs. Fischbach. Thank you, Mr. Chair.

4529 Attorney General Garland, in a press release announcing
4530 the investigation -- and I will just preface, I am from
4531 Minnesota, so you can guess where some of the questions are
4532 going -- but in a press release announcing the investigation,
4533 you said that the DOJ's investigation into the Minneapolis
4534 Police Department will examine the use of excessive force by
4535 the police, including during most protests.

4536 Will you also be investigating the origins of the deadly
4537 and destructive riots that ravaged large parts of
4538 Minneapolis?

4539 Attorney General Garland. So, I think these are two

4540 separate kinds of investigations. The one of the Police
4541 Department is one under the statute that authorizes us to do
4542 pattern or practice of unconstitutional policing. It is done
4543 by the Civil Rights Division. I was welcomed, I understand,
4544 by the chief and by the mayor. And that is a one, a separate
4545 one.

4546 The investigations of the riots, which are undertaken by
4547 the U.S. Attorney's Office, as well as by the State's
4548 Attorney -- I think it is called State's Attorney, maybe it
4549 is the county, State's Attorney of Minneapolis, I guess --
4550 and those are two separate sets of investigations.

4551 Mrs. Fischbach. So, you will not be, so your, your
4552 department DOJ will not be investigating that?

4553 Attorney General Garland. Well, the U.S. Attorney's
4554 Office, to the extent there were federal crimes, has been
4555 investigating those crimes. I don't know, I have no idea
4556 where the --

4557 Mrs. Fischbach. DOJ will not be investigating?

4558 Attorney General Garland. Department of Justice, I
4559 don't believe so, no.

4560 Mrs. Fischbach. Okay. But during the riots following
4561 the George Floyd, the death of George Floyd, dozens of people
4562 were injured, countless small businesses, churches were
4563 damaged, a police station was burnt down, a post office was

4564 burnt down, looted and damaged all over, and thousands of
4565 people had to flee Minneapolis to avoid the violence. Is the
4566 Department of Justice investigating these riots as an act of
4567 domestic terrorism at all?

4568 Attorney General Garland. So, now I think, if I am
4569 understanding correctly, we are talking about 2020.

4570 Mrs. Fischbach. After the death of George Floyd.

4571 Attorney General Garland. Yes. And that investigation
4572 I think, you know, that was ordered by the previous attorney
4573 general. And I don't know whether there, whether that is
4574 concluding. I believe -- I don't know whether there are any
4575 ongoing investigations anymore from that, from that
4576 investigation except for the charges that were made at the
4577 time. And those cases are being followed, obviously.

4578 Mrs. Fischbach. Well, and, Attorney General Garland,
4579 maybe you could get back me in particular or the committee on
4580 the status of those and what is happening with that.

4581 Attorney General Garland. Be happy to have my staff get
4582 back to you with it.

4583 Mrs. Fischbach. Appreciate that.

4584 And I wanted to focus a little bit on the Third Police
4585 Precinct that was burnt down and still has not been rebuilt.
4586 Police officers don't even know if they are going to have a
4587 job in a few weeks given the resolution that is in front of

4588 the, in front of the body they have a resolution. And you
4589 are probably not familiar with it. But they don't even know
4590 if they are going to have a job because they may be defunding
4591 the police in Minneapolis.

4592 You know, the city is down over 200 officers since pre-
4593 COVID. If you talk to police officers, they are demoralized,
4594 they are struggling. They don't feel supported at all. They
4595 are having a very hard time.

4596 And you are the one initiating investigation of the
4597 Minneapolis Police Department. Considering all the scrutiny
4598 that they are under, how do you propose Minneapolis can keep
4599 up police officer morale now that they are under
4600 investigation and criticism, all of the criticism they are
4601 taking as well?

4602 Attorney General Garland. Let me say first of all on
4603 the defund the police issue the Department does not support
4604 defunding the police, nor does the President. So, we have
4605 asked for more than a billion dollars, a major increase in
4606 funds for local police departments.

4607 Mrs. Fischbach. And, sir, I didn't imply you did. I
4608 just wanted you to know, understand the context of the
4609 question because it is in front of the Minneapolis residents
4610 right now.

4611 Attorney General Garland. I do.

4612 With respect to the pattern or practice investigation,
4613 where were a large number of serious incidents that were
4614 well-reflected in the press, and I think there was general
4615 agreement that there were problems.

4616 This does not mean that every police officer. Quite the
4617 contrary. This means that, and I believe it is, and from
4618 talking to many police officers, that they believe that it is
4619 important that there be accountability, and that officers who
4620 break the law are held accountable so that the community
4621 retains its trust in the good police officers who do not
4622 break the law. And those are, you know, the very large
4623 majority.

4624 They need that trust in order to have the cooperation of
4625 the community. And that is the only way they can be safe,
4626 and that is the only way the community can be safe.

4627 So, I think police officers should look at these
4628 investigations in a positive way. And we are trying to
4629 present them in a positive way.

4630 Mrs. Fischbach. And, Attorney General, I think that the
4631 problem is that they are being -- it is piling on. It is
4632 continuing to pile on, in particular in Minneapolis with
4633 these police officers who are there. They have, many of them
4634 have grown up there. They are doing their job.

4635 Chairman Nadler. The time of the gentlelady has

4636 expired.

4637 Mrs. Fischbach. I yield back.

4638 Chairman Nadler. Mr. Stanton.

4639 Mr. Stanton. Attorney General, I want to discuss with
4640 you missing and murdered indigenous women and girls. It is a
4641 national shame that when native women are murdered or when
4642 they disappear the cases do not receive the resources or the
4643 investigations they deserve, and their loved ones are left
4644 without answers.

4645 President Biden made significant and specific
4646 commitments to tribal communities to support MMIWG
4647 investigations. But I am not convinced that those
4648 commitments have been kept, particularly by the Department of
4649 Justice.

4650 Mr. Attorney General, I read your very brief statement
4651 on May 5th, marking Missing and Murdered Indigenous Persons
4652 Awareness Day. But I am not aware of you speaking publicly
4653 about this issue since you were confirmed to lead the
4654 Department. It does not appear that you have used your
4655 platform to help make this a top priority, nor has DOJ really
4656 moved the needle on this issue since your confirmation.

4657 As Attorney General you serve on the Operation Lady
4658 Justice Task Force. But that was a task force created under
4659 the last attorney general, not you.

4660 Do you agree that our tribal communities deserve more
4661 from the nation's top law enforcement official?

4662 Attorney General Garland. I think this is a terrible
4663 tragedy, this circumstance, almost inexplicable tragedy. If
4664 I haven't spoken on it yet, I soon will be because under the
4665 President's executive order I will be co-chairing a
4666 commission, along with the Secretary of the Interior.

4667 I have been to the U.S. Attorney's offices in Oklahoma
4668 which has significant tribal responsibilities. And we have
4669 spoken about those matters. But you shouldn't mistake lack
4670 of public statements to be a lack of concern or passion about
4671 this issue.

4672 Mr. Stanton. There are 574 federally recognized tribes
4673 in the United States. Of those, 326 have reservations, and
4674 more than 1 million Native Americans live on or near
4675 reservations. That is not counting the many who live in
4676 urban areas. Yet, there are fewer than 200 special agents
4677 and victim specialists in the FBI's Indian Country Program.

4678 Do you believe the FBI's Indian Country Program is
4679 sufficiently staffed?

4680 Attorney General Garland. Well, I think the FBI could
4681 always use additional resources. I have to look into that
4682 specific question, which I haven't evaluated whether there is
4683 sufficient staff.

4684 Mr. Stanton. In light of the facts I just laid out,
4685 will you commit today to adding staff to the Indian Country
4686 Program?

4687 Attorney General Garland. Well, I am very interested.
4688 And, you know, our normal approach on this is cooperation
4689 with tribal offices and cooperation with the sovereign tribes
4690 so that we are in sync on this rather than the Federal
4691 Government invading tribal prerogatives. But I do think that
4692 we need to look at this more closely. And this is one of the
4693 things I will be speaking with the Interior Secretary about.

4694 Mr. Stanton. As you know, there is great frustration by
4695 many of our tribal leaders that when they ask for additional
4696 federal support to investigate these cases they feel like
4697 they don't receive that support

4698 Our nation knows the tragic story of Gabby Petito
4699 because of the tremendous media coverage and law enforcement
4700 involvement her case garnered. All of us grieve for Gabby's
4701 family and friends. While at the same time, I wish that
4702 every missing person's case earned the same level of media
4703 attention.

4704 The FBI committed significant resources to that case,
4705 which I appreciate. But, Mr. Attorney General, when a native
4706 woman goes missing, or any woman of color for that matter,
4707 they don't get the same level of attention from the

4708 Department of Justice and FBI.

4709 What would you say to the families to explain why?

4710 Attorney General Garland. I don't think there is any
4711 excuse for not giving equal treatment to native and
4712 indigenous missing persons. And I don't believe there is any
4713 effort to not do that.

4714 I know that both the FBI and the Marshals Service are
4715 involved in this, along with their partners, their tribal
4716 partners. And I am not sure what else I can say about that.

4717 Mr. Stanton. Just two weeks ago the chairman of the
4718 Blackfeet Nation in Montana sent you a letter about the case
4719 of Ashley Loring Heavyrunner, a 20-year-old woman who went
4720 missing under suspicious circumstances 3 years ago. Her
4721 family and the tribal community are incredibly frustrated at
4722 the Federal Government's response to the case. And in his
4723 letter to you he asked why the Federal Government continues
4724 to make Ashley's family "suffer and feel like Ashley's life
4725 doesn't matter."

4726 That breaks my heart, sir, because I can see why so many
4727 Native American families feel like their missing or murdered
4728 loved ones do not matter to the Federal Government. We have
4729 a unique trust responsibility to our tribal nations. And
4730 rarely, if ever, has our Federal Government delivered.

4731 This is an opportunity to finally deliver. It offers

4732 you the opportunity to deliver. So, let's not fail our
4733 native communities again. What I hope and expect from
4734 President Biden and yourself, Mr. Attorney General, is more
4735 than lip service or empty statements on this issue, --
4736 Chairman Nadler. The gentleman's --
4737 Mr. Stanton. -- more than sharing task force
4738 recommendations that will be left to sit on the shelf. I
4739 look forward to your words in the near future.
4740 Thank you, Mr. Attorney General.
4741 Chairman Nadler. The gentleman yields back.
4742 Mr. Massie.
4743 Mr. Massie. Thank you, Mr. Chairman.
4744 Mr. Attorney General, you announced that the DOJ would
4745 use its authority and resources, along with the FBI, to
4746 police speech at school board meetings. In your opinion,
4747 what limitations does the Tenth Amendment bring to your
4748 effort to police those school board meetings and speech
4749 therein?
4750 Attorney General Garland. Let me be clear, we have no
4751 intention of policing school board meetings, nor does any
4752 memorandum from me suggest that we would do that.
4753 The memorandum that you are referring to is about
4754 threats of violence and violence, and that is all it is
4755 about. We greatly respect the First Amendment right of

4756 parents to appear before school boards and challenge and
4757 argue against positions that the school boards are doing.
4758 This memorandum has absolutely nothing to do with that.

4759 Mr. Massie. So, you believe the sheriffs and the local
4760 police should police these school board meetings and
4761 investigate the threats of violence?

4762 Attorney General Garland. Yes, sir. Obviously, the
4763 first step is for state and local authorities to do that.
4764 This memorandum is about cooperating with state and local
4765 authorities.

4766 Now, there are some federal statutes that cover threats,
4767 and intimidation, and harassment. And we have the obligation
4768 to enforce those. But those do not, those do not apply at
4769 school board meetings.

4770 Mr. Massie. Thank you. I was hoping that you would
4771 articulate the Tenth Amendment or some argument that comes
4772 from that because I am concerned that the announcement was an
4773 effort to, to basically, you know, freeze the speech or to
4774 suppress the speech of school board members.

4775 But I need to move on. And I want to ask you about
4776 something.

4777 There is a concern that there were agents of the
4778 government, or assets of the government present on January
4779 5th and January 6th during the protests. And I have got some

4780 pictures that I want to show you, if the staff could bring
4781 those to you.

4782 [Video plays.]

4783 Attorney General Garland. I'm afraid I can't see that
4784 at all.

4785 [Video plays.]

4786 Chairman Nadler. Is that an approved video?

4787 Mr. Massie. All right. You have, you have those images
4788 there, and they are captioned. They were from January 5th
4789 and January 6th.

4790 As far as we can determine, the individual who was
4791 saying he will probably go to jail, he will probably be
4792 arrested, but he wants every -- that they need to go into the
4793 Capitol the next day.

4794 We see him the next day directing people to the Capitol.

4795 And as far as we can find, this individual has not been
4796 charged with anything. You said this is one of the most
4797 sweeping investigations in history.

4798 Have you seen that video or those frames from that
4799 video?

4800 Attorney General Garland. So, as I said at the outset,
4801 one of the norms of the Justice Department is to not comment
4802 on impending investigations, and particularly not to comment
4803 about the particular scenes or particular individuals.

4804 This --

4805 Mr. Massie. I was hoping today to give you an
4806 opportunity to put to rest the concerns that people have that
4807 there were federal agents or assets of the Federal Government
4808 present on January 5th and January 6th.

4809 Can you tell us without talking about particular
4810 incidents or particular videos, how many agents or assets of
4811 the Federal Government were present on January 6th, whether
4812 they agitated to go into the Capitol, and if any of them did?

4813 Attorney General Garland. So, I am not going to violate
4814 this norm of the rule of law. I am not going to comment on
4815 an investigation that is ongoing.

4816 Mr. Massie. Let me ask you about the vaccine mandate at
4817 the DOJ. Is it true that people, employees of the DOJ can
4818 apply for religious exemptions?

4819 Attorney General Garland. The mandate, as I understand
4820 it, is a mandate which allows exceptions provided by law.

4821 Mr. Massie. So, --

4822 Attorney General Garland. Religious Freedom Restoration
4823 Act is a provision of law.

4824 Mr. Massie. So, the religious exemption has a basis in
4825 the Constitution. So, that is required to be constitutional.

4826 Can you tell me if anybody has been granted a religious
4827 exemption?

4828 Attorney General Garland. I don't know.

4829 Mr. Massie. So, I believe that it is fraud, in fact
4830 fraud to tell people that you are going to preserve their
4831 constitutional religious accommodations by telling them they
4832 can apply for an exemption and then not allowing any of those
4833 exemptions. And I am sad to see that you can't tell us that
4834 anybody has been granted an exemption.

4835 Chairman Nadler. The gentleman's time has expired.

4836 Ms. Dean.

4837 Ms. Dean. Thank you, Mr. Chairman.

4838 Welcome, Attorney General Garland. Thank you for your
4839 service to our country. I would like to get to three
4840 important areas.

4841 Number one, let me follow up on some of the questions we
4842 have had around guns, in particular ghost guns. They are
4843 often obtained without a background check. And most ghost
4844 guns are untraceable. These weapons are incredibly
4845 attractive to criminals, increasingly common, and should
4846 concern us all.

4847 This March, Pennsylvania investigators uncovered a
4848 trafficking ring suspected of frequenting gun shows to sell
4849 ghost guns, spreading them in my district and across our
4850 commonwealth. Access to ghost guns impacts regular Americans
4851 like Heather Sue Campbell and Matthew Bowersox of Snyder

4852 County, Pennsylvania, who were shot and killed last year by
4853 Heather's ex-husband, the subject of a protection order. He
4854 took her life with a ghost gun, a homemade P80 polymer nine-
4855 millimeter pistol.

4856 Could you continue to talk about how the proliferation
4857 of ghost guns hinders the ability of law enforcement? And
4858 what is DOJ's strategy to protect us from ghost guns? This
4859 is in follow-up to my colleague, Representative McBath.

4860 Attorney General Garland. Yes.

4861 So, we are finding more and more ghost guns at violent
4862 crime scenes. I don't remember the statistics exactly, but I
4863 believe in both New York and in Chicago I was told that at
4864 least 20 percent of the crime scenes, particularly the
4865 violent crime and murder scenes, were finding that they were
4866 done by ghost guns.

4867 Ghost guns have two problems, one of which is they are
4868 untraceable because they don't have serial numbers, and;
4869 second, they are not subject, or at least can say there has
4870 been some dispute about whether they are subject to requiring
4871 background checks.

4872 That is the reason that we initiated a rulemaking to
4873 require that the parts of the gun, which are sold as kits in
4874 parts, are stamped with serial numbers by the manufacturer;
4875 and that when they are sold they must have serial numbers on

4876 them as a kit, and they must run the background checks that
4877 you are talking about.

4878 Ms. Dean. I thank you for that rulemaking. And I hope
4879 that we here in the legislature will do more to protect us
4880 and our safety from this proliferation.

4881 On the issue of opioids, as you pointed out, last year
4882 was particularly deadly. The total number of people who died
4883 of overdose was 93,331 people. And you know that our state,
4884 Pennsylvania, is particularly upset with DOJ's sweetheart
4885 deal that was made last year with the Sacklers.

4886 What can I say, what can you say to victims of
4887 addiction, to the families who have lost people by the
4888 flooding of the market by the Sackler family, and letting
4889 them really, literally the rich and powerful, get away with
4890 it?

4891 Attorney General Garland. I don't think I am able to
4892 talk about that. Basically, it is in litigation.

4893 The only thing I would point out is the Justice
4894 Department opposed the release of liability, personal
4895 liability of the family in that matter on behalf, being
4896 brought by our bankruptcy trustee, and is on appeal right
4897 now, I believe.

4898 Ms. Dean. Well, I thank you for that. And I hope that
4899 justice will be done for these families.

4900 And, finally, on a third matter, asylum. Asylum is a
4901 human right. I am horrified by the inhumanity we have seen
4902 and the ongoing use of a Trump era Title 42 authority to
4903 expel migrants, all of which is done with no due process.
4904 Unstable governments, political prosecutions, violence, we
4905 know what people have suffered and what they are fleeing.

4906 You are now at the helm of DOJ. Will you continue the
4907 use of Title 42 authority even after CDC has repeatedly
4908 stated there was no evidence that the use of Title 42 would
4909 slow the spread of COVID?

4910 Attorney General Garland. Well, the use of the
4911 authority comes from the CDC itself. They are the ones who
4912 issue the orders with respect to Title 42. And this is a
4913 challenge also in the courts.

4914 We believe that the CDC has a basis because of a concern
4915 about spread of COVID, which is what the grounds are. How
4916 long that will last is a determination CDC will make with
4917 respect to the pandemic and what the threats are with respect
4918 to the pandemic.

4919 This doesn't have anything to do with, you know, my view
4920 or the Government's view about the importance of asylum. It
4921 goes only to the CDC's authority under Title 42 to issue this
4922 kind of order.

4923 Ms. Dean. It is my understanding, and maybe we could

4924 all look at it more closely, but CDC says there is no
4925 evidence that the use of Title 42 will slow the spread of and
4926 the worry about the spread of COVID from those seeking
4927 asylum. I hope we can look into that and stop the use of
4928 Title 42.

4929 Thank you. I yield back.

4930 Chairman Nadler. The gentlelady's time has expired.

4931 Ms. Escobar.

4932 Ms. Escobar. Thank you, Mr. Chairman.

4933 Just a quick note. Earlier a colleague asked that Mr.
4934 Raskin take down his words when referring to another
4935 colleague as being a member of a cult. I think if folks
4936 would just admit that President Biden won the 2020 election
4937 and would stop pushing the Big Lie they wouldn't have to
4938 worry about being accused of being in a cult.

4939 Attorney General Garland, I represent Congressional
4940 District 16 in El Paso, Texas. And we are coming into this
4941 hearing fresh off the heels of a gravely unjust redistricting
4942 session in the Texas State Legislature where Republicans
4943 engaged in deliberate, shameless, extreme partisan
4944 gerrymandering.

4945 Texas gained two new House seats fueled by the growth in
4946 our Latino population. But instead of drawing maps
4947 reflecting that growth, Republicans chose not to add Latino

4948 majority districts. And according to a lawsuit filed by the
4949 Mexican-American Legal Defense Fund, drew maps that diluted
4950 the voting rights of Latinos.

4951 This process was opaque and non-transparent, perhaps
4952 because Texas Republicans hired a political operative known
4953 to have Republican members of Congress sign non-disclosure
4954 agreements.

4955 I ask unanimous consent to enter into the record an
4956 article from the Texas Tribune entitled, "Texas Appears to Be
4957 Paying a Secretive Republican Political Operative \$120,000
4958 Annually to Work Behind the Scenes on Redistricting."

4959 Chairman Nadler. Without objection.

4960 [The information follows:]

4961

4962 *****COMMITTEE INSERT*****

4963 Ms. Escobar. Thank you, so much.

4964 My own district was impacted in a process I have
4965 described as being akin to looting. And, unfortunately,
4966 Texas isn't the only state where this is happening.

4967 Mr. Garland, what steps is the Justice Department taking
4968 to ensure that redistricting plans do not violate the Voting
4969 Rights Act and discriminate against racial, ethnic, and
4970 language minority voters?

4971 Attorney General Garland. So, we announced before any
4972 of the redistricting plans began, because we knew the
4973 decennial census would be leading to redistricting plans,
4974 that the Voting Section of the Civil Rights Division will be
4975 reviewing all of these plans. That is why we doubled the
4976 size of the Voting Section, because the burden of this work
4977 is large, and there is a lot of it because of the census.

4978 So, the Justice Department Civil Rights Division will be
4979 examining these plans and will act accordingly as the facts
4980 and the law provide.

4981 Ms. Escobar. Thank you, Mr. Garland.

4982 In addition to the extreme partisan gerrymandering that
4983 is going on, states like mine have passed voter suppression
4984 legislation, all of it rooted in Donald Trump's Big Lie about
4985 the 2020 election. In light of these numerous state laws
4986 that passed that restrict access to the ballot box, how at

4987 risk are minority voters from being disenfranchised in
4988 elections over the coming years? And what will the
4989 Department do to confront those risks?

4990 Attorney General Garland. So, Justice Department has
4991 authority under the Voting Rights Act to prevent changes in
4992 practices and procedures with respect to voting that are
4993 discriminatory in the ways that you described.

4994 The Supreme Court in the Shelby County case eliminated
4995 one tool we had, which was the Section 5 preclearance
4996 provision. So, what we have now is Section 2, which allows
4997 us to make these determinations on a case-by-case basis with
4998 respect to discriminatory intent and discriminatory effect.

4999 The Voting Rights Section is reviewing the changes that
5000 are made, as they are being made and after they are being
5001 made. We have filed one lawsuit already in that respect.
5002 And the investigations are continuing. I can't talk about
5003 any particular state, though.

5004 Ms. Escobar. Thank you.

5005 And in my very limited time, women in Texas are under
5006 attack. Our freedom to reproductive rights and our rights to
5007 an abortion are under attack. And this has been furthered by
5008 the Supreme Court in their recent -- the consequences of
5009 their shadow docket.

5010 In your opinion, what are some of the practical

5011 consequences of the court's decision denying stay in the
5012 case, the Texas case via the process informally known as the
5013 shadow docket?

5014 You have got about 20 seconds. I am so sorry.

5015 Attorney General Garland. All right. Well, most of
5016 what I am about to say is reflected in the briefs that we
5017 just filed with the Supreme Court the other day asking them
5018 to take this case. What we are particularly concerned about
5019 is the inability of anybody to challenge what is a clear
5020 violation of the Supreme Court's precedent with respect to
5021 the right to abortion because of the way that the law is
5022 structured.

5023 And we can't have a system in which constitutional
5024 rights evade judicial review, whether it is about abortion or
5025 any other right.

5026 And I think I will leave it with my, our briefs which
5027 were just filed and which explicate what I just said in
5028 greater detail and I am sure with greater style.

5029 Ms. Escobar. Thank you so much.

5030 Mr. Chairman, I yield back.

5031 Chairman Nadler. The gentlelady yields back.

5032 Mr. Jones.

5033 Mr. Jones. Thank you, Mr. Chairman.

5034 I wish that rather than trying to redefine the words

5035 "domestic terrorism" my Republican colleagues would simply
5036 instruct their supporters to stop engaging in it.

5037 Mr. Attorney General, thank you for your testimony
5038 today. As an alumnus of the Office of Legal Policy at main
5039 Justice, I know about the hard work that you, your leadership
5040 team, and your line attorneys have been engaging in. And as
5041 an American citizen I am deeply appreciative of that.

5042 You won't be surprised, given the work that I have been
5043 doing this year, that I want to speak with you about
5044 protecting the fundamental right of Americans to vote, which
5045 is clearly under assault. You underscored in your remarks to
5046 the Civil Rights Division in June that the right to vote is
5047 the cornerstone of our democracy. And you have said much the
5048 same today.

5049 I don't need to tell you that states have launched the
5050 most severe assault on the right to vote in this country
5051 since Jim Crow. It is an onslaught that has hit voters of
5052 color, seniors, young people, and voters with disabilities
5053 the hardest. President Biden, for his part, has warned that
5054 we are facing "the greatest test of our democracy since the
5055 Civil War."

5056 As you said in your remarks to the Civil Rights
5057 Division, so far this year at least 14 states have passed new
5058 laws that make it harder to vote. Well, according to the

5059 Brennan Center for Justice, that total has since risen to 19.

5060 Mr. Attorney General, let me start with a simple
5061 question to you. Which of those 19 states has the Justice
5062 Department sued for unlawful or unconstitutional voter
5063 suppression?

5064 Attorney General Garland. This is on the public record.
5065 We sued Georgia.

5066 Mr. Jones. Only one out of 19.

5067 In your June address you emphasized that a meaningful
5068 right to vote requires meaningful enforcement. Yet, even as
5069 we face an historic level of voter suppression, and even as
5070 we confront grave threats to the integrity of vote counts,
5071 the Justice Department has not challenged the vast majority
5072 of these laws in court.

5073 Would you say that bringing one case against state voter
5074 suppression is meaningful enforcement?

5075 Attorney General Garland. I think we have to prevent
5076 discriminatory violations of the Voting Rights Act wherever
5077 they occur and in as many states as they occur. But these
5078 investigations under Section 2 are very record-intensive and
5079 very labor-intensive. And voting rights, the Voting Section
5080 of the Civil Rights Division is extremely devoted to making
5081 those kind of analyses. But we have to do each case one by
5082 one because of the elimination of Section 5.

5083 That is what the Civil Rights Division under our new
5084 Assistant Attorney General Kristen Clarke is doing. I have
5085 great confidence in her and in the division.

5086 Mr. Jones. I have great confidence in Kristen Clarke
5087 and yourself as well.

5088 You mentioned that Section 5 has been hampered. Of
5089 course, it has been hampered in that Shelby v. Holder
5090 decision in 2013.

5091 You also mentioned earlier today that you are supportive
5092 of a John Lewis Voting Rights Act. And I appreciate that. I
5093 think it is part of the democracy-saving legislation that the
5094 Senate must pass.

5095 Are you familiar with the Freedom to Vote Act, the
5096 revised version of the For the People Act that --

5097 Attorney General Garland. I know what it is. And I
5098 know some provisions. But, to be honest, I don't know every
5099 provision.

5100 Mr. Jones. Okay. All right. Well, I would submit that
5101 we need to pass that in the Senate as well, given the
5102 democracy-saving provisions that are contained therein.

5103 It is long past time for the Senate to pass both of
5104 these pieces of legislation. And as we learned yesterday,
5105 unfortunately, the filibuster, a Senate rule that entrenched
5106 Jim Crow for decades, is the last obstacle in the way.

5107 I am convinced, as you have said and written before and
5108 reiterated in your testimony today, that the Justice
5109 Department needs new tools to fully protect our democracy.
5110 And as we learned yesterday, a rule crucial to entrenching
5111 Jim Crow, is the last obstacle.

5112 If presented with a choice between reforming the
5113 filibuster and protecting the right to vote, or protecting
5114 the filibuster and allowing voter suppression to continue,
5115 which would you choose, Mr. Attorney General?

5116 Attorney General Garland. I think the right to vote is
5117 absolutely essential and is, as I have said repeatedly, and
5118 as you quoted, a cornerstone of democracy.

5119 The question of the House rules are a question for the
5120 House. I am very mindful of separation of powers, that this
5121 is a judgment for the members of the House to determine and
5122 not the executive branch.

5123 Mr. Jones. And, of course, the filibuster is a Senate
5124 rule.

5125 Attorney General Garland. I am sorry. I am sorry. The
5126 Senate.

5127 Mr. Jones. It is fine. I understood.

5128 Attorney General Garland. My bad.

5129 Mr. Jones. Mr. Attorney General, as an alumnus of the
5130 Justice Department and as an American I am grateful for your

5131 work. But if we do not reform the filibuster and act now to
5132 protect the right to vote, the same White nationalists who
5133 incite violent insurrections at the Capitol and lie about the
5134 efficacy of masks and vaccines are going to disenfranchise
5135 their way back into power.

5136 Please take that message back to the President of the
5137 United States when you have a conversation with him,
5138 hopefully, about the filibuster and what he can do to help us
5139 here, and to protect American democracy which is in grave
5140 peril.

5141 Chairman Nadler. The gentleman's time has expired.

5142 I recognize Mr. Roy for the purpose of a UC request.

5143 Mr. Roy. I appreciate that, Mr. Chairman.

5144 I have a document from an organization Parents Defending
5145 Education in which they had sought a FOIA request from the
5146 National School Board Association. And we have got the email
5147 exchanges from that that I would like to insert into the
5148 record in which the interim director discusses, on an email
5149 on September 29th, the talks over the last several weeks with
5150 White House staff, quote/unquote, explaining the coordination
5151 with the White House.

5152 I would like to insert that into the record.

5153 Chairman Nadler. Without objection.

5154 [The information follows:]

5155

5156 *****COMMITTEE INSERT*****

5157 Chairman Nadler. Ms. Ross.

5158 Mr. Roy. Thank you, Mr. Chairman.

5159 Chairman Nadler. Ms. Ross is recognized.

5160 Ms. Ross. Thank you, Mr. Chairman. And, Attorney
5161 General Garland, thank you so much for being with us today.

5162 I also want to thank you for mentioning the work of the
5163 Department of Justice with respect to the Colonial Pipeline
5164 in your opening remarks. And I want to begin with a few
5165 questions about cybersecurity.

5166 As you know, ransomware attacks are a significant
5167 concern throughout the country, but particularly in my
5168 district in North Carolina. In May, the Colonial Pipeline
5169 attack left nearly three-quarters of Raleigh, North Carolina
5170 gas stations simply without fuel.

5171 And as you also know, the Colonial Pipeline paid a
5172 ransom demanded by the hackers in order to unlock their
5173 systems and resume operations.

5174 While the DOJ's recently-launched Ransomware and
5175 Digital Extortion Task Force was eventually able to recoup
5176 some of the money paid by Colonial Pipeline, victims are
5177 often left to negotiate with attackers to recover the systems
5178 without any federal help.

5179 And so, I would like you to share why DOJ chose to be
5180 more aggressive in the Colonial Pipeline situation? And what

5181 are the factors that would lead DOJ to get involved directly
5182 in a ransomware case?

5183 Attorney General Garland. Well, I don't want to go too
5184 far out on a limb on this, but I think DOJ would like to be
5185 involved in every ransomware case if we had the resources.
5186 The problem is generally not all victims of ransomware tell
5187 us. Not all victims tell us before they make ransom
5188 payments.

5189 If victims would tell us before, we would have a good
5190 opportunity, possibly, to be able to recover. We would have
5191 some opportunity to be able to help between the FBI and the
5192 Computer Section of the Justice Department and the Computer
5193 Section at H -- at Department of Homeland Security. We are
5194 willing and able to deal with victims of ransomware,
5195 including doing negotiations if necessary.

5196 So, I think this is really more of a question of getting
5197 cooperation from the victims who, and I mean no respect to --
5198 disrespect to the victims, but they are not always going to
5199 tell us in advance. And I think it would be very helpful if
5200 we were told in advance.

5201 Ms. Ross. And would it also be helpful if you had
5202 reporting on what victims had paid in ransomware in a larger
5203 registry?

5204 I have introduced legislation. There is companion

5205 Senate legislation on this.

5206 Attorney General Garland. The more information we can
5207 find out about who is demanding the ransoms, what victims are
5208 paying, how they are paying, what kind of wallets they are
5209 paying into, what kind of cyber crypto-wallets they are being
5210 asked to pay them into, all of those things help us
5211 understand the ecosystem. So, the more information we have,
5212 the better.

5213 Ms. Ross. Thank you for those responses.

5214 I am going to switch to the ERA and women's rights. And
5215 today marks the 50th anniversary of the Equal Rights
5216 Amendment and its passage in the House of Representatives.

5217 Since the bill passed the House in 1971, 38 states have
5218 ratified the ERA, meeting the constitutional requirement
5219 necessary to certify and publish the ERA as the 28th
5220 Amendment to the Constitution. But under the Trump
5221 administration the DOJ's Office of Legal Counsel issued an
5222 opinion blocking the Archivist of the United States from
5223 certifying the amendment, even if Congress extends the
5224 deadline.

5225 As you know, women continue to face obstacles to their
5226 equality in pay, in child care, in the criminal justice
5227 system. And scholars at the ERA Project at Columbia Law
5228 School have released a new analysis arguing that the memo

5229 should be withdrawn because it rests on erroneous
5230 interpretation, interpretations of legal precedent and
5231 directly contradicts previous IOLC opinions.

5232 Attorney General Garland, it is common practice for the
5233 DOJ to review prior legal opinions and withdraw those that
5234 are not legally sound. Will you commit today to closely
5235 examine the OLC memo? And if you agree with these legal
5236 scholars that it is flawed, rescind this memo so that general
5237 -- gender equality can be enshrined in the Constitution?

5238 Attorney General Garland. I will certainly, I think the
5239 first step is to find out what OLC is doing in this respect.
5240 Sometimes they review previous opinions, and often they do
5241 not out of respect for their own precedents.

5242 I don't know what the status is with respect to this
5243 one. I certainly understand the argument. And I will see if
5244 I can find out what OLC is doing in this respect.

5245 Ms. Ross. Thank you very much.

5246 And I yield back.

5247 Chairman Nadler. The gentlelady yields back.

5248 Ms. Bush.

5249 Ms. Bush. St. Louis and I thank you, Attorney General
5250 Garland, for being here with us today and for sitting through
5251 all of this.

5252 Since your confirmation in March of 2021, at least 128

5253 Black people have been killed by law enforcement officers in
5254 the U.S. That is one Black person killed by law enforcement
5255 every two days. And that is an undercount. Police killings
5256 in America have been undercounted by more than half over the
5257 past four decades.

5258 Attorney General Garland, as the people's attorney, do
5259 you think that law enforcement officials are above the law?

5260 Attorney General Garland. No one is above the law.

5261 Ms. Bush. I completely agree. And let's see how well
5262 that is going.

5263 Are you aware that Black and Brown people are
5264 disproportionately stopped, searched, and arrested by police,
5265 often for a minor infraction?

5266 Attorney General Garland. I've certainly read that.
5267 And I am not surprised, however.

5268 Ms. Bush. Thank you.

5269 Are you aware that according to the FBI, White
5270 nationalists have infiltrated rank and file police
5271 departments?

5272 Attorney General Garland. I am not sure I now the
5273 specific reference that you said about the FBI. I know that
5274 there are problems in some police departments with respect to
5275 domestic violent extremists being in the ranks. And I know
5276 that many police departments are trying to make sure that

5277 that is not the case. But I, I am not, I am not sure I know
5278 the reference that you are talking about.

5279 Ms. Bush. Okay. I would like to seek unanimous consent
5280 to enter this report into the record from the Brennan Center
5281 2020 report detailing white supremacy in police forces.

5282 Chairman Nadler. Without objection.

5283 [The information follows:]

5284

5285 *****COMMITTEE INSERT*****

5286 Ms. Bush. Thank you.

5287 Are you aware that from statistics we do have, we know
5288 that Black people are killed by police at three times the
5289 rate of White people?

5290 Attorney General Garland. Again, I don't, I don't know
5291 the actual statistic. But I wouldn't be surprised if that
5292 were the case. And I am happy to accept, you know, your
5293 representation.

5294 Ms. Bush. Thank you.

5295 Again, I will ask unanimous consent to introduce a
5296 Harvard School of Public Health report on fatal police
5297 encounters into the record.

5298 Chairman Nadler. Without objection.

5299 [The information follows:]

5300

5301 ***** COMMITTEE INSERT *****

5302 Ms. Bush. Thank you.

5303 In light of these realities, do you believe that
5304 systemic racism exists in law enforcement agencies?

5305 Attorney General Garland. Oh, I think racism exists in
5306 a number of areas of our society. And the purpose, for
5307 example, of these pattern or practice investigations that we
5308 do is to make sure that there is not a pattern or practice of
5309 unconstitutional policing. That is the job of the Civil
5310 Rights Division to look at these matters, to take into
5311 account complaints in this area and to investigate them.

5312 Ms. Bush. The Department requested \$1 billion in
5313 federal funding for law enforcement agencies in fiscal year
5314 2022, an increase from last year. We are rewarding police
5315 departments rather than holding them accountable for racist
5316 practices.

5317 The Department has a powerful tool at its disposal.
5318 Title VI of the Civil Rights Act mandates that recipients for
5319 federal funds do not discriminate. And it makes clear that
5320 if they do, they are ineligible for federal funding. I am
5321 happy to see that the Department is undergoing a 90-day
5322 review of Title VI.

5323 Given the structural racism in law enforcement agencies
5324 that you have acknowledged, will you commit to withholding
5325 funds to law enforcement agencies that discriminate in

5326 violation of Title VI?

5327 Attorney General Garland. So, as you correctly point
5328 out, our associate attorney general and our deputy attorney
5329 general are doing a review of Title VI and how it should be
5330 applied to grants.

5331 I want to be clear, we are funding local police
5332 departments, but we are also making grants for the purpose of
5333 supporting constitutional policing, better community
5334 policing, better programs to ensure that there isn't
5335 discrimination. I think that there are many, many, many
5336 good-hearted and non-discriminatory police officers. We have
5337 to support them and root out the ones who violate the law.
5338 That is our job.

5339 Ms. Bush. Absolutely. And for me, if you know that
5340 your colleague is not doing something right, if you know your
5341 colleague is racist or has racist practices and you don't
5342 speak up, that means that you are not a good one, you are not
5343 a good police officer as well. I mean, I don't believe in
5344 good and bad, I believe that there are officers and there are
5345 people who are below the standard.

5346 I ask because St. Louis leads the nation in police
5347 killings per capita. It is the region where Michael Brown,
5348 Jr. was killed in plain sight. And there was zero
5349 accountability for his murder. It is where our movement in

5350 defense of Black lives began. Racialized violence is a
5351 policy choice. We can choose to subsidize it or we can
5352 choose to stop it. And so, for St. Louis the choice is
5353 clear: we must stop it, we must save lives. The Title VI
5354 review puts us on a path toward accountability. We need only
5355 to enforce it.

5356 Thank you. And I yield back.

5357 Chairman Nadler. The gentlelady yields back.

5358 Mr. Massie. Mr. Chairman.

5359 Chairman Nadler. The Chair recognizes Mr. Massie for
5360 the purpose of a unanimous consent request.

5361 Mr. Massie. Mr. Chairman, I ask unanimous consent to
5362 submit to the record two letters drafted, and written, and
5363 sent by Chip Roy and I to Attorney General Merrick Garland
5364 for which we have not received a response: one dated July
5365 15th, and one dated May 13th.

5366 Chairman Nadler. Without objection.

5367 [The information follows:]

5368

5369 ***** COMMITTEE INSERT *****

5370 Mr. Massie. I have another unanimous consent request to
5371 submit for the record the frames from the video that were
5372 displayed in my testimony.

5373 Chairman Nadler. Without objection.

5374 [The information follows:]

5375

5376 ***** COMMITTEE INSERT *****

5377 Chairman Nadler. Ms. Jackson Lee has a UC request as
5378 well.

5379 Ms. Jackson Lee. Mr. Chairman, thank you very much.

5380 I ask unanimous consent to put into the record a
5381 document produced by the Citizen Project, "In the Extreme:
5382 Women Serve Life Without Parole and Death Sentences in the
5383 United States." I ask unanimous consent.

5384 [The information follows:]

5385

5386 ***** COMMITTEE INSERT *****

5387 Ms. Jackson Lee. I ask unanimous consent to submit into
5388 the record, from the Senate Judiciary Committee, report
5389 "Subverting Justice." I ask unanimous consent.
5390 Chairman Nadler. Without objection.
5391 [The information follows:]
5392
5393 ***** COMMITTEE INSERT *****

5394 Ms. Jackson Lee. And also to place into the record
5395 legislation I introduced, "Preventing Vigilante Stalking that
5396 Stops Women's Access to Healthcare and Abortion Rights Act of
5397 2021", regarding the stalking done by the abortion bill of
5398 Texas. I ask unanimous consent.

5399 Chairman Nadler. Without objection.

5400 [The information follows:]

5401

5402 ***** COMMITTEE INSERT *****

5403 Ms. Jackson Lee. Thank you, Mr. Chairman.

5404 Chairman Nadler. This concludes today's hearing. We
5405 thank the Attorney General for participating.

5406 Without objection, all members will have five
5407 legislative days to submit additional written questions for
5408 the witness or additional materials for the record.

5409 Without objection, the hearing is adjourned.

5410 [Whereupon, at 3:46 p.m., the committee was adjourned.]

**SUPREME COURT
OF THE UNITED STATES**

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -
TARAHRICK TERRY,)
)
Petitioner,)
)
v.) No. 20-5904
)
UNITED STATES,)
)
Respondent.)
- - - - -

Pages: 1 through 84
Place: Washington, D.C.
Date: May 4, 2021

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1 APPEARANCES:
2
3 ANDREW L. ADLER, Assistant Federal Public Defender,
4 Fort Lauderdale, Florida; on behalf of the
5 Petitioner.
6 ERIC J. FEIGIN, Deputy Solicitor General,
7 Department of Justice, Washington, D.C.; on behalf
8 of the Respondent, supporting reversal.
9 ADAM K. MORTARA, Chicago, Illinois; Court-appointed
10 amicus curiae in support of the judgment below.
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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument this morning in Case 20-5904, Terry
5 versus United States.

6 Mr. Adler.

7 ORAL ARGUMENT OF ANDREW L. ADLER

8 ON BEHALF OF THE PETITIONER

9 MR. ADLER: Mr. Chief Justice, and may
10 it please the Court:

11 The United States agrees that crack
12 offenders sentenced under (b)(1)(C) have a
13 covered offense under Section 404. Statutory
14 text, history, and common sense all compel that
15 conclusion. The textual dispute here boils down
16 to whether Section 2 modified the statutory
17 penalties for Petitioner's crack offense. It
18 did.

19 Because (b)(1)(C) cross-references
20 (b)(1)(A) and (B), when Section 2 raised the
21 crack quantities for (b)(1)(A) and (B),
22 Section 2 also modified (b)(1)(C). That
23 modification expanded the scope of conduct
24 subject only to (b)(1)(C), and it changed the
25 sentencing benchmarks by which (b)(1)(C)

1 offenses are measured.

2 Unable to dispute that modification,
3 amicus argues that the phrase "statutory
4 penalties" meets the sentencing range. But
5 Section 2 did not modify any sentencing ranges
6 at all. It merely raised the crack quantities,
7 and Congress knew that.

8 History confirms that (b)(1)(C)
9 offenses are covered. Shortly after enactment
10 of Section 2, Congress approved the Sentencing
11 Commission's decision to incorporate Section 2
12 into the guidelines for all crack offenders,
13 including (b)(1)(C) offenders. And in the eight
14 years leading up to Section 404, the Commission
15 repeatedly used the phrase "statutory penalties"
16 to refer to the higher crack quantities, not
17 lower sentencing ranges.

18 Finally, amicus's contrary
19 interpretation would make little sense. It
20 would cover kilogram trafficking kingpins but
21 exclude the lowest-level dealers. He has failed
22 to offer any coherent explanation for why
23 Congress would have done that.

24 After all, Congress did not enact
25 bipartisan criminal justice reform to create new

1 anomalies. It enacted Section 404 to purge the
2 taint of the discredited 100-to-1 disparity. To
3 do that, it gave all crack offenders sentenced
4 under that old regime an opportunity to seek a
5 reduced sentence under Section 2's new statutory
6 benchmarks.

7 I welcome the Court's questions.

8 CHIEF JUSTICE ROBERTS: Counsel, if we
9 extend the First Step Act into subsection (C),
10 as -- as you argue we should because you're
11 concerned about the crack cocaine disparity, but
12 wouldn't that also extend to other drugs?
13 Because subsection (C) covers the waterfront;
14 it's not just the crack cocaine provision?

15 MR. ADLER: No, Mr. Chief Justice,
16 because Sections 2 and 3 modified the statutory
17 penalties only for crack cocaine violations.
18 The penalties remain exactly the same for every
19 other drug. And -- and -- and Congress, of
20 course, knew that when it was drafting Section
21 404. It knew that Sections 2 and 3 were only
22 about crack cocaine, and that was the purpose of
23 Section 404, was to just make those two
24 provisions retroactive. And so that wouldn't
25 have even been on Congress's radar when it was

1 drafting Section 404.

2 And, of course, we have to keep in
3 mind the overall statutory scheme and structure
4 and context here, where we're -- when we're
5 interpreting Section 404. And, of course, crack
6 cocaine is part of the element of the offense
7 under (b)(1)(C), and so I just don't think
8 that's a -- a realistic concern here.

9 And, in fact, no court in the country
10 has granted Section 404 relief to a non-crack
11 offender, and no court in the country will do so
12 if the Court rules in our favor here.

13 CHIEF JUSTICE ROBERTS: Well, you say
14 that's what Congress had in mind, but do you
15 think the statutory language is unambiguous in
16 that respect?

17 MR. ADLER: We do. We do, Mr. Chief
18 Justice, because the -- if you look at 404(a),
19 the statutory penalties for -- which were
20 modified by Section 2 or 3, that is only
21 referring to crack cocaine violations of 841 and
22 960, nothing else.

23 So -- so it's just not something that
24 is going to happen if the Court rules in our
25 favor in this case.

1 CHIEF JUSTICE ROBERTS: What -- what's
2 the practical need to apply the First Step Act
3 into subsection (c) given the retroactive
4 sentencing guidelines?

5 MR. ADLER: Because, Mr. Chief
6 Justice, many people, many (b)(1)(C) offenders,
7 like many (b)(1)(A) and (B) offenders, did not
8 receive the benefit of the retroactive guideline
9 amendments. If they were career offenders or
10 armed career criminals, they never got any
11 benefit from Amendment 750. There are people
12 with certain quantities that never received any
13 benefit at all.

14 And then there are people who were
15 eligible for relief under Amendment 750 but were
16 limited dramatically in the scope of relief that
17 they could get by the low end of the amended
18 guideline range. And they were all, of course,
19 subject to the old statutory benchmarks. The
20 quantities in the statute at the time of --
21 of Amendment 750 were still 5 and 50 grams, as
22 opposed to 28 and 280 grams.

23 And that's certainly something that a
24 sentencing court could look at today and -- and
25 think that the person's offense was, in fact,

1 less serious today than it was when it was
2 considering a reduction under Amendment 750.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Justice Thomas.

6 JUSTICE THOMAS: Thank you, Mr. Chief
7 Justice.

8 Counsel, just so that I'm clear, I'm
9 going to just make a brief statement and ask you
10 where I'm wrong. Petitioner was convicted of
11 possessing an unspecified amount of crack with
12 the intent to distribute. And before 2010, the
13 statute -- the statutory penalty was zero to 20
14 years for this -- this offense. After 2010, the
15 statutory penalty is still zero to 20 years.

16 As far as I can see then, the
17 statutory penalty for your -- for Petitioner
18 here was not modified. Tell me where I'm wrong
19 here.

20 MR. ADLER: Yes, Justice Thomas. The
21 phrase "statutory penalties" in the context of
22 this particular statute does not refer to the
23 sentencing range as zero to 20 years. Read in
24 context, it means the statute -- the penalty
25 statutes that were actually modified by

1 Section 2.

2 So, if we look at the language of
3 404(a), we see statutory penalties for which
4 "were modified by Section 2." So Congress is
5 incorporating Section 2 directly into 404(a) and
6 -- and the penalties it modifies. So then, if
7 we look at what Section 2 actually did, it
8 raised the crack -- the quantities. That's it.

9 In -- in two statutes, 841(b) and
10 960(b), both of those statutes are entitled
11 "Penalties" -- Section 3, and it did the same
12 thing for a penalty provision in 844(a). It
13 struck that provision. 844(a) is also entitled
14 "Penalties."

15 "Statutory penalty" is just a
16 shorthand reference for the penalty statutes
17 that Sections 2 and 3 modified, not the
18 sentencing ranges that went completely
19 undisturbed. And if Congress meant "statutory
20 penalties" to refer to a sentencing range, well,
21 then it would have simply said a statutory --

22 JUSTICE THOMAS: Would you give me
23 then an example of a person who was -- would
24 have been convicted or was convicted under sub
25 -- subparagraph (c) before 2010 and how that

1 same person would face a different statutory
2 penalty now?

3 MR. ADLER: Yes, Justice Thomas. They
4 would face the same sentencing range, but the
5 benchmarks governing that sentence, the
6 discretionary sentencing determination, would be
7 different. So take Mr. Terry, who had 4 grams
8 of crack. Before Section 2, he was four-fifths
9 of the way to the five-year mandatory minimum.

10 After Section 2, he would be
11 four-twenty-eighths or one-seventh of the way to
12 that mandatory minimum. And that's certainly
13 something that the sentencing judge could look
14 at and consider under 3553(a) and decide that
15 his offense was actually less serious than was
16 previously believed.

17 JUSTICE THOMAS: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice
19 Breyer.

20 JUSTICE BREYER: All right. I -- we
21 all have the same question, I guess. Mine is
22 the same as Justice Thomas and the Chief
23 Justice. But let me try to put it less
24 accurately than they did in simpler -- and
25 directly.

1 Look, the -- the ratio between crack
2 and ordinary cocaine was ridiculous, 100 to 1 or
3 something. So Congress finally got around to
4 modifying that. Fine. And anybody who had been
5 sentenced under the old range, go back and get
6 resentenced. Fine.

7 The problem is, what has this section
8 got to do with it, (C)? Because this section
9 seems to have nothing whatsoever to do with that
10 ratio. It punishes people for 20 years or for
11 30 years if they commit a felony, for example,
12 of any drug, Schedule I, Schedule II, plus two
13 others, any drug, any of those drugs with intent
14 to distribute it.

15 It had nothing to do with the ratio.
16 And if you look at the guideline, which is Level
17 34 for a career criminal, section -- category 6,
18 that has nothing to do with it. That only --
19 not only picks up all the people who twice
20 committed that felony, the crack one, and also
21 people who twice committed many forms of robbery
22 and twice committed.

23 So, if you win this case, I don't see
24 what's to prevent any person -- any person
25 certainly who convicted of any drug felony,

1 career criminal, from going out and asking,
2 Judge, resentence me.

3 Now that's the practical problem I
4 have, as well as the language not really
5 applying. You get me out of this. I'd love to
6 get out of it. I mean, I think they were much
7 too high. I understand that. But I can't get
8 away from this statute. So you convince me, I
9 hope, that I'm wrong.

10 MR. ADLER: Well, just -- Justice
11 Breyer, let me try to make two points there.

12 First, the 100-to-1 ratio affected
13 everyone who was sentenced under that regime.
14 Whether it affected their statutory range or
15 guideline range or not, it still affected the
16 discretionary sentencing determination under
17 3553(a) because it provided the frame of
18 reference through which judges assessed the
19 severity of the offense.

20 After all, the quantities in the
21 statute reflected Congress's judgment about how
22 much crack was needed to justify a 5- and
23 10-year mandatory minimum sentence.

24 As for the language, as I was
25 attempting to explain to Justice Thomas,

1 "statutory penalties" doesn't mean the
2 sentencing --

3 JUSTICE BREYER: No, you don't have to
4 -- I know your argument on the language, and I
5 suspect you're right about that, about how the
6 -- how the mentality of the judge within his
7 leeway was different. Certainly, it couldn't
8 have been different from a career criminal. He
9 would have had to depart -- he would have had to
10 depart there. And I don't know if it affected
11 that or not.

12 But, if we read it your way, I don't
13 see how we get out of the fact that it really
14 covers every drug offender who has two or three
15 prior felonies or -- or not. You know, it's
16 covering everybody. The Chief was right. And
17 so maybe you could say they shouldn't. I agree
18 with you, they shouldn't. But I have to look at
19 the statute and see what it did, so help
20 convince me. Convince me.

21 MR. ADLER: Just -- Justice Breyer,
22 the only people who are eligible who have a
23 covered offense are crack offenders. That's it.
24 There's no dispute about that.

25 JUSTICE BREYER: You say that. It

1 says -- you're reading it to say any statutory
2 provision that covers, you know, the -- the
3 mandatory minimum part of the crack offense.
4 Sure. This is the statutory provision that
5 covers it.

6 And then it says, if you were
7 sentenced under such a statutory provision, go
8 and ask for a resentencing. And, by the way, an
9 amphetamine or whatever you call it or an
10 ordinary cocaine offense was sentenced under
11 that statute.

12 MR. ADLER: Justice Breyer, Sections 2
13 and 3 of the Fair Sentencing Act modify the
14 statutory penalties only for crack cocaine
15 violations and that's it.

16 JUSTICE BREYER: I know that.

17 MR. ADLER: And that's why --

18 CHIEF JUSTICE ROBERTS: Justice Alito.

19 JUSTICE ALITO: What does the clause,
20 the statutory penalties for which were modified
21 by Section 2 or 3 of the Fair Sentencing Act,
22 modify? Does it modify "violation" or does it
23 modify "statute"?

24 MR. ADLER: Justice Alito, we agree
25 with amicus and the government that apply --

1 that it refers to the full phrase "violation of
2 a federal criminal statute." We all agree on
3 that point.

4 JUSTICE ALITO: So that means it
5 modifies "violation." "Violation" there is the
6 noun, right?

7 MR. ADLER: Yes, we view it as a
8 concise and integrated phrase, so it's an
9 inter -- one phrase, violation of a federal
10 criminal statute. We agree with that.

11 JUSTICE ALITO: So the violation is a
12 case that could be prosecuted under subsection
13 (c), is it not?

14 MR. ADLER: We agree that the federal
15 criminal statute here refers to 841(a) and
16 (b)(1)(C).

17 JUSTICE ALITO: Right. It is a -- an
18 offense that could be prosecuted under 841 and
19 subsection (c)?

20 MR. ADLER: Yes, we agree with that.
21 We all agree with that, I believe.

22 JUSTICE ALITO: If I asked you what is
23 the statutory penalty for, let's say, bank
24 robbery or wire fraud or any other violation of
25 a criminal statute, what would you tell me and

1 where would you look to find the answer?

2 MR. ADLER: I would look to the
3 penalty statute for that particular offense,
4 and -- and so, in this case, the penalty statute
5 for Petitioner's crack offense is in
6 841(b)(1)(C), and that is a penalty statute that
7 was modified by Section 2 because the scope has
8 been enlarged. Before Section 2, it only
9 covered offenses exclusively between zero and 5
10 grams. After Section 2, that's gone from zero
11 to 28.

12 So the scope of the penalty statute
13 has been enlarged. Now it may be that the
14 phrase "statutory penalties" used in other
15 contexts or used in isolation might refer to a
16 term of years, but, in this particular context,
17 it doesn't mean that --

18 JUSTICE ALITO: Well, in --

19 MR. ADLER: -- because --

20 JUSTICE ALITO: -- every other
21 criminal statute, doesn't it refer to the term
22 of years or whatever other penalty is prescribed
23 that one would find in the statutory text
24 itself? Isn't that the statutory penalty?

25 MR. ADLER: Justice Alito, it would

1 depend on the context. And this context here
2 includes the word "modified," not the word
3 "reduced," which is what we would expect to find
4 if we're talking about lower ranges.

5 Of course, Congress could have simply
6 said "amended." That would have covered
7 (b)(1)(A) and (B) but excluded (b)(1)(C). That
8 would have been the easiest way to do it.

9 JUSTICE ALITO: Well, I'm not talking
10 about "modified," "amended," or any other
11 adjective like that. I'm just looking at the
12 term "statutory penalty."

13 MR. ADLER: Justice Alito, then I
14 would direct you to the Sentencing Commission
15 for the eight years leading up to Section 404 in
16 this context, used that phrase to refer to the
17 higher crack quantities, not to sentencing
18 ranges.

19 JUSTICE ALITO: Does it mean something
20 different with respect to subsection (C) than it
21 does with respect to every other provision of
22 the federal criminal code?

23 MR. ADLER: It means -- it has a
24 particular meaning in this particular context,
25 in the context of Section 2, because Section 2

1 didn't change any sentencing ranges at all for
2 any of the three tiers.

3 JUSTICE ALITO: Thank you.

4 MR. ADLER: All it did was raise the
5 quantities.

6 CHIEF JUSTICE ROBERTS: Justice
7 Sotomayor.

8 JUSTICE SOTOMAYOR: Counsel, when I
9 think of this case and the difficulties with
10 your argument, I simplify it in a different way,
11 okay? Pre-Act, if I sold 5.5 grams of coke, I
12 was in subdivision (B), and I had a minimum that
13 was 5 to 40 years. After the Fair Sentencing
14 Act, I had a range of zero to 20 years. And I
15 don't think there's any dispute that after the
16 Fair Sentencing Guidelines, because I was in
17 subcategory (B), I could move to be resentenced,
18 correct?

19 MR. ADLER: That's correct.

20 JUSTICE SOTOMAYOR: However, if I was
21 in subcategory (C) before the Act, if I sold
22 anything less than 5 grams, my sentencing range
23 was zero to 20 years. And after the Fair
24 Sentencing Act, if I sold 20 -- less than 5
25 grams, I was still in a sentencing range of zero

1 to 20 years.

2 My sentencing range -- anything that
3 was covered before the Fair Sentencing Act or
4 after the Fair -- Fair Sentencing Act remains
5 the same. That's your adversary's position.
6 And I think what he says is only those people
7 who received a sentence -- or who sold crack
8 above 5.1 are eligible for reductions because
9 they're the only ones for whom the penalties
10 changed.

11 And you told the Chief your reading
12 was unambiguous, but I don't think so. And if
13 it is ambiguous, why isn't your adversary -- not
14 your adversary -- the other side's position
15 simpler and more direct?

16 MR. ADLER: Justice Sotomayor --

17 JUSTICE SOTOMAYOR: If you sold 5
18 grams or less, your penalty remains the same
19 before and after.

20 MR. ADLER: Justice Sotomayor, because
21 that interpretation doesn't fit within the text
22 of 404(a) because, when you read "statutory
23 penalties" in context, it doesn't refer to the
24 sentencing range. It can't because Section 2
25 didn't modify any sentencing ranges. All it did

1 was raise the quantities, and that affected
2 everyone in all three tiers because it changed
3 the benchmarks for sentencing.

4 Now we didn't mean to say that the
5 language was unambiguous in -- all -- all I
6 meant with the Chief was simply that. I mean it
7 was unambiguous that Section 404 is limited to
8 crack offenses.

9 As for "statutory penalties," we think
10 it's unambiguous when you read it in context,
11 including the eight years of the Sentencing
12 Commission referring to the phrase "statutory
13 penalties" as we do, to refer to the higher
14 quantities, not lower sentencing ranges.

15 JUSTICE SOTOMAYOR: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice Kagan.

17 JUSTICE KAGAN: Mr. Adler, you've
18 referred a number of times to this anchoring
19 effects argument, which is to say that in
20 changing the categories, it would lead to
21 different kinds of sentences.

22 And I have no doubt that that's true,
23 but where do you find any concern about that in
24 the statute itself? The statute, when it talks
25 about statutory penalties, that means, like, the

1 penalties that -- that -- that are provided in
2 the statute, not the penalties that are actually
3 given by judges because of these anchoring
4 effects.

5 MR. ADLER: Yes, Justice Kagan. So
6 that's just an explanation for why Congress
7 would have wanted (b)(1)(C) offenders to be
8 covered just as (b)(1)(A) and (b)(1)(B)
9 offenders are covered. And -- and we see, you
10 know, that goes back to really what the
11 overarching goal of Section 404 is, which is to
12 give everyone who was sentenced under the
13 100-to-1 regime an opportunity to seek a reduced
14 sentence under Section 2's new statutory
15 benchmark.

16 So, if we look at Section 2, Section 2
17 applied prospectively to everyone sentenced
18 after August 3, 2010, including people without
19 mandatory minimums. Section 404 came along and
20 made that retroactive; everyone agrees with
21 that.

22 And then we drop down to 404(c).
23 Congress told us who it wanted to exclude from
24 Section 404, and the only people it excluded are
25 the people who have already received the

1 benefit, the opportunity to benefit from Section
2 2's new statutory benchmarks. That includes the
3 people sentenced after August 3, 2010, and it
4 includes the people resentenced after August 3,
5 2010, and it includes people who have already
6 filed a 404 motion and been denied on the
7 merits.

8 Everyone -- nobody else is excluded,
9 and that's because Congress wanted everyone
10 sentenced under the 100-to-1 regime to have an
11 opportunity to benefit from those new statutory
12 benchmarks, whether it affected their statutory
13 range or not.

14 So that's sort of where it comes into
15 the purpose aspect of this case.

16 JUSTICE KAGAN: I mean, you make this
17 -- this point about Congress wouldn't have
18 wanted lower-level offenders not to get the
19 benefit of this statute when it -- when it gave
20 that benefit to higher-level offenders. But
21 Congress knew that the Commission had already
22 made changes that benefited all these
23 subparagraph (C) offenders, except the ones
24 whose sentences weren't calculated by reference
25 to the drug guidelines at all, you know, except

1 for career criminals.

2 So why is it so clear that Congress
3 would have wanted to benefit the career
4 criminals in subparagraph (C)?

5 MR. ADLER: Justice Kagan, the same
6 exact thing would be true for the (b)(1)(A) and
7 (b)(1)(B) career offenders as well, so that's
8 not a basis to categorically exclude only the
9 (b)(1)(C) offenders. And as I was explaining
10 earlier, the ratio had the potential to affect
11 everyone, even career offenders, because of the
12 anchoring effect that you alluded to before and
13 also because it came in through the unenhanced
14 guideline range, which served as an additional
15 anchor for career offenders for downward
16 variances. And we know that from the Sentencing
17 Commission's 2016 report, which documents that
18 empirical fact.

19 JUSTICE KAGAN: Thank you.

20 CHIEF JUSTICE ROBERTS: Justice
21 Gorsuch.

22 JUSTICE GORSUCH: I have no questions.
23 Thank you.

24 CHIEF JUSTICE ROBERTS: Justice
25 Kavanaugh.

1 JUSTICE KAVANAUGH: Thank you, Chief
2 Justice.

3 And good morning, Mr. Adler. Do you
4 know what the market value, roughly, of 3.9
5 grams was at the time of the offense back in
6 2008?

7 MR. ADLER: Justice Kavanaugh, I
8 don't. It was probably -- if I had to ballpark,
9 I would say 50 bucks or something, something
10 around there.

11 JUSTICE KAVANAUGH: Okay. And you've
12 talked several times about the goal of Congress
13 here, and I guess one thing that the questions
14 of my colleagues point out is the text doesn't,
15 at least at first glance, seem exactly in line
16 with that goal, which raises the question, why
17 didn't Congress just say everyone who's been
18 sentenced for crack offenses under 841 is
19 eligible for resentencing, something simple like
20 that?

21 And I realize you can ask that kind of
22 question in almost every statutory case, but,
23 here, it seems like that would have been the
24 easy way to do what you've described as
25 Congress's goal. What -- what do you think was

1 going on there?

2 MR. ADLER: Right, Justice Kavanaugh,
3 so the reason it couldn't just refer to 841 is
4 because it was also dealing with Section 3,
5 which addressed a different problem with regard
6 to simple crack possession.

7 And I think, you know, I would -- I
8 would sort of turn it around and say, well, if
9 Congress wanted to do what amicus did, then it
10 just would have -- it would have drafted the
11 exact same statute and just substituted the word
12 "amended" for "modified," and it gets exactly to
13 where our amicus says that Congress wanted to
14 go.

15 So, of course, Congress might have
16 drafted this in an entirely different way,
17 but -- but, based on the statute we have and the
18 two competing interpretations that are in front
19 of the Court, our interpretation is textually
20 sound when you read the phrase "statutory
21 penalties" in context, and that's the
22 fundamental flaw with amicus's theory.

23 JUSTICE KAVANAUGH: And your in
24 context point, I think, ultimately rests on this
25 idea that sentencing judges will be affected, as

1 you put it, I think, by changing from
2 four-fifths of the mandatory minimum amount to
3 four-twenty-eighths of the mandatory minimum
4 amount. Is that one of the things you're
5 relying on?

6 MR. ADLER: That -- that is the
7 background of how discretionary sentencing
8 worked under 3553(a). What I mean in context, I
9 mean the actual statutory language, reading it
10 in context, because Section 2 didn't modify any
11 sentencing ranges.

12 So, if Congress was drafting
13 Section 404, it would have had the statute book
14 open to Section 2, it would have looked to see
15 what Section 2 actually did. And all it did was
16 raise these two crack quantities from 5 to 28 to
17 50 to 280 in two particular statutes, 841(b) and
18 960(b). So then Congress would have opened the
19 statute book to those statutes, and the first
20 thing it would have seen were the headings
21 entitled "Penalties." It would have done the
22 same thing for Section 3 when seeing the same
23 thing, "Penalties."

24 And so the statutory penalties
25 language is just a shorthand reference for the

1 penalty statutes at peril.

2 JUSTICE KAVANAUGH: Do you think
3 someone would have, though, after about 10
4 minutes said, well, what about those (C)
5 offenders?

6 MR. ADLER: No, Justice Kavanaugh,
7 because all Congress was doing here was trying
8 to make Sections 2 and 3 retroactive for
9 everyone sentenced under the 100-to-1 regime.
10 It wasn't sort of slicing and dicing up
11 subcategories of crack offenders.

12 JUSTICE KAVANAUGH: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice
14 Barrett.

15 JUSTICE BARRETT: So, Mr. Adler, let
16 me just pick up right there. Is your position
17 essentially then that "penalty" is kind of a
18 shorthand that pulls in -- and Justice Kavanaugh
19 alluded to this -- everyone who was sentenced
20 under the prior crack cocaine disparity?

21 MR. ADLER: Yes. Yes, Your Honor,
22 that is our position.

23 JUSTICE BARRETT: That seems pretty
24 sweeping. I mean, the word "penalty" -- and
25 Justice Alito was pointing this out -- that

1 would give "penalty" a different meaning here
2 than it has anywhere else in the criminal code.
3 But that's right, you say? In this particular
4 context, that's what it means?

5 MR. ADLER: Yes, Justice Barrett,
6 that's the only thing it can mean because
7 Section 2 didn't modify anything else, and
8 that's exactly how the Sentencing Commission
9 referred to it repeatedly over the eight years
10 leading up to Section 404. It referred to that
11 that way, and the reasons for Amendments 748,
12 750, 759, Congress approved all of those
13 amendments.

14 The Commission referred to it that way
15 again in its 2015 report to Congress on the
16 impact of the Fair Sentencing Act. And --

17 JUSTICE BARRETT: Okay. Let me -- let
18 me interrupt you there, Mr. Adler, and ask you a
19 different question.

20 So, if someone is resentenced who had
21 been convicted under Section (b)(1)(B) and let's
22 imagine that they had had, you know, 20 grams
23 when they were initially sentenced, and they're
24 resentenced under the new ranges, is it true
25 that they would have to receive a new sentence?

1 There would be no -- no discretion?

2 Statutorily, they would get to receive a -- a
3 new sentence?

4 MR. ADLER: No, Justice Barrett. This
5 is all discretionary --

6 JUSTICE BARRETT: Well, the thrust --

7 MR. ADLER: -- that if you look --

8 JUSTICE BARRETT: You're right, sorry,
9 I -- I didn't mean that. I just meant it
10 wouldn't necessarily kind of bump them down. I
11 guess what I'm trying to get at is it seems to
12 me that the thrust of your argument under (C) is
13 this benchmark idea, that it's not necessarily
14 the case that they were entitled to a different
15 range, but it's all about what the judge would
16 look at as benchmarks.

17 And I'm trying to get at, would that
18 be different under sections (a) and (b)?

19 MR. ADLER: No, Justice Barrett. The
20 exact same dynamic would apply there. Some of
21 those people might have lower statutory ranges
22 today but not necessarily all of them. If you
23 think about the kilogram offender and, you know,
24 if he was charged today under (b)(1)(A), he
25 would have the same statutory range. That's not

1 what Congress was getting at here.

2 If Congress was only concerned about
3 people who definitely have a lower range, they
4 would have targeted the people that had between
5 5 and 28 and 50 to 280 grams. And we know
6 that's not who they targeted because the
7 kilogram kingpins are included as well.

8 And, of course, 404(c) makes it
9 abundantly clear that this is all discretionary.
10 Nobody is entitled to a reduction here. That's
11 the last sentence of 404(c). Congress could not
12 have been clearer about that.

13 JUSTICE BARRETT: Thank you, Mr.
14 Adler.

15 CHIEF JUSTICE ROBERTS: A minute to
16 wrap up, Mr. Adler.

17 MR. ADLER: Thank you, Mr. Chief
18 Justice.

19 The 100-to-1 disparity permeated the
20 sentencing regime. It not only affected the
21 statutory and guideline ranges, it also affected
22 the 3553(a) determination.

23 The quantities in the statute reflect
24 Congress's judgment about how much crack was
25 needed to trigger five- and 10-year mandatory

1 minimums, so those quantities provided the frame
2 of reference through which all crack offenses
3 were viewed.

4 In Section 404, Congress sought to
5 eradicate the stain of the 100-to-1 disparity.
6 To ensure it did not warp anyone's sentence,
7 Congress gave everyone sentenced under it the
8 opportunity to seek a reduced sentence under
9 Section 2's more favorable benchmarks.

10 The only people Congress excluded in
11 Section 404(c) were those who already received
12 that opportunity. Categorically excluding
13 (b)(1)(C) offenders would leave the taint intact
14 for those with the smallest quantities. Had
15 Congress intended such a perverse result, it
16 would have said so loudly and clearly.

17 Thank you.

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel.

20 General Feigin.

21 ORAL ARGUMENT OF ERIC J. FEIGIN

22 ON BEHALF OF THE RESPONDENT, SUPPORTING REVERSAL

23 MR. FEIGIN: Thank you, Mr. Chief
24 Justice, for the promotion, and may it please
25 the Court:

1 I'd like to address the two main
2 concerns that have come up in the argument thus
3 far. First, the statutory penalties can't
4 possibly refer to punishment -- even the amicus
5 agrees on that -- or else Section 404 really
6 does nothing. Justice Thomas, your statement
7 was good as far as it goes, but you could also
8 substitute the (a) and (b) requirements and the
9 statement would remain equally true. So we're
10 talking here about moving around quantities and
11 thresholds of crack cocaine.

12 Second, I -- I don't think there's a
13 concern about resentencing or sentence
14 reductions for every drug because that's -- the
15 non-crack offenses aren't violations that were
16 modified.

17 In construing terms like "modified,"
18 like "in connection with," "related to," this
19 Court looks at statutory design in context, and
20 it should do the same here.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 Deputy General.

23 In this case, the Department switched
24 its position from being the Respondent to
25 supporting the Petitioner. Prior

1 administrations have done that. Subsequent
2 administrations are going to do that.

3 But I wondered what standard your
4 office applies in deciding when to take that --
5 that step. Is it just that you think the
6 position is wrong and you would have reached a
7 different one?

8 MR. FEIGIN: Well, Your Honor, I don't
9 know that we have a specific set of procedures
10 or guidelines that -- that I could kind of
11 publicly share.

12 Let me just say that in this case,
13 very much due consideration was given to this
14 within the Department, and the Department
15 determined that the prior position wasn't as
16 sound as the position that we're advocating now,
17 and I think we focused on -- on three factors.

18 One is the language is a very good fit
19 for what Congress was trying to accomplish here,
20 which is to try to identify the group of
21 offenders whose sentences might plausibly have
22 been affected by the discredited racially
23 disproportionate 100-to-1 ratio.

24 Second is that retroactive guidelines
25 relief just isn't enough for most of these

1 people for all the reasons explained in our
2 reply brief.

3 And, third, it's really hard to
4 justify why you'd include every (A) and (B)
5 offender and not include a single (C) offender,
6 who --

7 CHIEF JUSTICE ROBERTS: Mr. --

8 MR. FEIGIN: -- are the presumptive --

9 CHIEF JUSTICE ROBERTS: -- Mr. Feigin
10 --

11 MR. FEIGIN: Yeah?

12 CHIEF JUSTICE ROBERTS: -- is there
13 any respect in which you disagree with the
14 Petitioner's position?

15 MR. FEIGIN: I think that we
16 identified some things we were concerned about
17 as an -- in Petitioner's position in our opening
18 brief, Your Honor, and Petitioner appears in the
19 first few pages of his reply brief to have come
20 around to basically the position that we were
21 advocating. So --

22 CHIEF JUSTICE ROBERTS: Thank -- thank
23 you.

24 MR. FEIGIN: -- assuming I'm
25 understanding his position correctly, I don't

1 think there's much daylight, if any, between the
2 two of us.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Justice Thomas.

6 JUSTICE THOMAS: Thank you, Mr. Chief
7 Justice.

8 Mr. Feigin, you suggest that there's
9 no real difference between (A), (B), and (C),
10 but do you -- what's changed in (A) and (B)?

11 MR. FEIGIN: So, Your Honor, in -- to
12 the extent anything has changed in (A) and (B),
13 like to the extent the categories --

14 JUSTICE THOMAS: No, just in the
15 language.

16 MR. FEIGIN: There was an amendment to
17 (A) and (B) to the drug quantity thresholds
18 for --

19 JUSTICE THOMAS: Okay. Now what --
20 what -- what language changed in (C)?

21 MR. FEIGIN: No language changed in
22 (C), Your Honor, but, of course, (C) is
23 textually linked back to (A) and (B) by the
24 "except as provided otherwise in (A) and (B)."

25 JUSTICE THOMAS: Okay. But, in (A) --

1 in -- in a sense, (A) and (B) are linked too,
2 but the language changed, the amounts changed,
3 but the language in (C) did not change, right?

4 MR. FEIGIN: That's right, Your Honor,
5 although, on -- on this point, I think it's
6 quite relevant that Congress did not use a word
7 like "amended," which it would have been well
8 aware was a word it could have used because it
9 appears in --

10 JUSTICE THOMAS: So what's the
11 difference between "modify" and "amended"?

12 MR. FEIGIN: I think "modified" has a
13 broader connotation, and Congress used it
14 deliberately because it's not the language of
15 Section 2 of the Fair Sentencing Act, which we
16 know it was looking at. And --

17 JUSTICE THOMAS: Okay. So let me ask
18 you a question. Let's say, for example, that
19 Congress eliminated all charges of possession
20 with intent to distribute but left simple
21 possession available. Would you say that the
22 elimination of possession with intent to
23 distribute, thus forcing more pressure on the
24 possession, the simple possession charge, would
25 you say that that has modified the simple

1 possession charge?

2 MR. FEIGIN: Maybe, Your Honor, but I
3 think we're much closer here due to the textual
4 and practical interconnect. You could imagine
5 if the quantities could have been codified in
6 (C) and (B), where (A) is -- just kind of tracks
7 whatever quantities were in those --

8 JUSTICE THOMAS: Well --

9 MR. FEIGIN: -- and we'd be in the
10 same --

11 JUSTICE THOMAS: -- I'm sorry, I'm out
12 of time, but I just -- I don't understand the
13 difference here. If simple possession isn't
14 modified in my example, I don't see how (C) is
15 modified because (A) and (B) -- the change --
16 the changes in (A) and (B) put pressure on (C).
17 I just don't see it.

18 MR. FEIGIN: Well --

19 JUSTICE THOMAS: But, anyway, thank
20 you.

21 CHIEF JUSTICE ROBERTS: Justice
22 Breyer.

23 JUSTICE BREYER: Assume with me that
24 you have a statutory argument that is a
25 plausible reading. I don't think the better

1 reading, but a plausible reading. Now let's
2 take Mr. Terry, who was a career offender, I
3 take it. He had several prior convictions for
4 drugs. And we look at (C). And when we look at
5 (C), and this is before the modification, we
6 look at (C), we see that he possessed with
7 intent to distribute. He had prior convictions
8 for the same thing. And, therefore, he falls
9 within the second sentence, 30-year maximum.

10 Then we look to the guidelines. The
11 guidelines say a career offender, that's what he
12 was, is sentenced at level 34, category 6.
13 Okay? Now, he was sentenced at level 34,
14 category 6 with some modifications to get the
15 sentence down. That's a very high level.

16 Now let's imagine Mr. Terry being
17 sentenced exactly the same way after the change.
18 Why would there be a difference? The only
19 difference could be in the propensity of the
20 judge to depart from the guidelines, to depart
21 downward. And I don't see why.

22 This statute punishes people who are
23 career offenders as applied to him, whether it's
24 methamphetamine, whether it's cocaine, or
25 whether it's crack. And why would the sentence

1 be different, the one from the other, in respect
2 to drugs, whether it's one drug or the other?
3 The guideline -- or guideline in 4B, you know,
4 career offender guideline, is the same for both.

5 So I don't see how in an ordinary case
6 anything would change, at least as applied to
7 career offenders. Please explain to me how it
8 would change and why.

9 MR. FEIGIN: Sure. So three points,
10 Justice Breyer. One is that although the career
11 offender guideline hasn't changed, the drug
12 quantity table has changed for crack, and much
13 more dramatically now --

14 JUSTICE BREYER: All right.

15 MR. FEIGIN: -- than before --

16 JUSTICE BREYER: Let me interrupt you
17 right there. The quantity table has nothing to
18 do with level -- for career offender guidelines.
19 The career offender guidelines are totally
20 separate, I think.

21 MR. FEIGIN: That's true as a formal
22 matter, but, of course, we and -- and Petitioner
23 both cite the 2015 Commission report to Congress
24 to --

25 JUSTICE BREYER: Oh, yeah, we hated

1 it. I understand that. They hate it. Of
2 course, they're right. But I'm looking at what
3 Congress did --

4 MR. FEIGIN: So --

5 JUSTICE BREYER: -- not what we think
6 might be they should have done.

7 MR. FEIGIN: Your Honor, the -- the --
8 the report indicates that judges as an empirical
9 matter often depart downward because of the
10 disparity --

11 JUSTICE BREYER: All right.

12 MR. FEIGIN: -- between the different
13 results --

14 JUSTICE BREYER: I'm asking you why
15 would they depart downward more if the
16 underlying drug is crack than they would depart
17 if the underlying drug were cocaine straight or
18 methamphetamine? That's my question.

19 MR. FEIGIN: Well, I -- I think the
20 relevant question here is they've now grown
21 much, much further apart, and I think judges
22 would be entitled to take that into account.

23 CHIEF JUSTICE ROBERTS: Justice Alito.

24 JUSTICE ALITO: Let's think of some
25 statutory violations that could have been

1 prosecuted under (A) or (B) before the
2 modification. These are cases where the drug
3 quantity is just over the amount needed to
4 invoke the mandatory minimum.

5 If we look at the possible statutory
6 penalty for those offenses before and after the
7 -- the modification, is it not the case that the
8 statutory penalty is different as a result of
9 the amendment of the drug quantity needed for
10 the mandatory minimum?

11 MR. FEIGIN: The statutory penalty for
12 that particular offender, if you mean -- if by
13 that you mean punishment, would be different for
14 him, but, of course, the amicus's position would
15 allow relief for all (B) and (A) offenders. If
16 you look at the Venn diagram on page 9 of our
17 reply, there's no dispute that the outer two
18 solid areas, even though they'd be subject to
19 the exact same penalties today for their
20 quantities, would nevertheless be eligible to
21 seek sentence reductions under Section 404.

22 JUSTICE ALITO: But is it the case
23 that there are violations, namely the ones I
24 just referred to, under (A) and (B) for which
25 the statutory penalties were changed as a result

1 of the modification?

2 Is it not the case that there are no
3 such cases under (C)? No case prosecuted under
4 (C) has a different penalty as a result of the
5 modification?

6 MR. FEIGIN: Well, two points to that,
7 Justice Alito. One, if by "violation" you mean
8 a specific offender's conduct, then, yes, there
9 are going to be some in (A) and (B), and
10 everyone in (C) is subject to the same term of
11 years incarceration.

12 But I guess the second point I would
13 make is that (C), by its nature in -- as
14 interlinked with (A) and (B), has changed. It's
15 now not just the offense that punishes zero to 5
16 grams; it's the offense that is the exclusive
17 punishment for zero to 28 grams.

18 JUSTICE ALITO: All right. Thank you,
19 Mr. Feigin.

20 CHIEF JUSTICE ROBERTS: Justice
21 Sotomayor.

22 JUSTICE SOTOMAYOR: Mr. Feigin, you
23 don't disagree, do you, that no one but crack
24 cocaine users are covered by the Fair Sentencing
25 Act? No other convicted felon with respect to

1 heroin or any other drug is covered?

2 MR. FEIGIN: Under the provisions that
3 we're talking about today, where the Fair
4 Sentencing Act was addressing crack exclusively,
5 yes, Your Honor.

6 JUSTICE SOTOMAYOR: All right. Number
7 two, am I correct that every felon who is
8 convicted under subdivision (A) and (B), whether
9 they were convicted above the guidelines, below
10 the guidelines, above the statutory minimum or
11 not, that were changed, every felon got an
12 opportunity, if they chose, to be resentenced,
13 correct?

14 MR. FEIGIN: I believe that is
15 correct, Your Honor, yes.

16 JUSTICE SOTOMAYOR: So we're talking
17 about, as one of my colleagues asked, does this
18 mean that what we're advocating is that every
19 subdivision (C) felon be given the opportunity?
20 They may not necessarily be resentenced, but all
21 we're asking is equal treatment, correct? That
22 (C) felons, subdivision (C) felons, be given the
23 opportunity to be resentenced, correct?

24 MR. FEIGIN: That's correct, Your
25 Honor. The subdivision -- the (C) crack

1 offenders --

2 JUSTICE SOTOMAYOR: Now -- all right.

3 Now, counsel, do you have some estimate of those
4 numbers?

5 MR. FEIGIN: Your Honor, it's hard to
6 know precisely because it's not tracked to an
7 especially granular level, but the best estimate
8 we have is it's in the low three figures,
9 something like 100 to 200.

10 JUSTICE SOTOMAYOR: All right. So,
11 with respect to that, there have been some
12 people who -- if we were to rule against you and
13 Petitioner, who have already been resentenced.
14 What would happen to those people?

15 Would you have to go back and then
16 give them their original sentence? Because
17 there are some circuits who have read it the way
18 you do read it now, these provisions now,
19 correct?

20 MR. FEIGIN: That -- that's correct,
21 Your Honor. There's a circuit conflict on this.
22 I -- I don't know that anyone who has received
23 relief under Section 404 wouldn't be eligible to
24 seek such relief again.

25 We do think that in the circuits --

1 JUSTICE SOTOMAYOR: That's not my
2 question. If we rule against you, those people
3 who have resentenced, will they be resentenced?
4 Will you go back to their original sentence?

5 MR. FEIGIN: I don't think that
6 there's a mechanism for doing that, Your Honor.
7 So I think they would have obtained a -- a
8 windfall, I suppose, based on what this Court
9 later determined was a misinterpretation of the
10 law. I --

11 JUSTICE SOTOMAYOR: So now there's
12 even a smaller group of people who are going to
13 be denied the opportunity. Thank you, counsel.

14 CHIEF JUSTICE ROBERTS: Justice Kagan.

15 JUSTICE KAGAN: Mr. Feigin, I'd like
16 to take you back to your conversation with
17 Justice Alito and read to you a sentence from
18 your own brief where you say all crack cocaine
19 defendants sentenced under subparagraph (C) post
20 the Fair Sentencing Act are exposed to the same
21 statutory range as before.

22 So that's correct, right?

23 MR. FEIGIN: I -- I hope so. Yes,
24 Your Honor.

25 JUSTICE KAGAN: Okay. And then you

1 could not make that same statement as to (A) or
2 (B), isn't that right?

3 MR. FEIGIN: That's correct, Your
4 Honor.

5 JUSTICE KAGAN: And -- and -- and what
6 you seem to be arguing is that in (A) or (B),
7 you couldn't make that statement because some of
8 the (A) or (B) people, in fact, are now subject
9 to a different sentencing range, but some
10 aren't. And you're saying, well, if -- if --
11 if -- if those (A) and (B) people who are not
12 subject to a different sentencing range are
13 getting the benefit of this law, why shouldn't
14 the (C) people too? Is that basically what
15 you're arguing?

16 MR. FEIGIN: I think that's one piece
17 of our argument, Your Honor. That is a --

18 JUSTICE KAGAN: I guess what I want to
19 ask you --

20 MR. FEIGIN: -- fairly striking --

21 JUSTICE KAGAN: -- about that piece
22 is, isn't that just a function of the
23 categorical approach at work in this statute?
24 The reason why some (A)'s and (B)'s are getting
25 the benefit of it is because the statute works

1 categorically. And there's nothing mysterious
2 about that.

3 But -- but the (C)'s are out in the
4 cold because nobody -- nobody's sentence is
5 affected?

6 MR. FEIGIN: Well, Your Honor, let --
7 let me make two points in -- in -- in response
8 to that. The -- the first would be that just
9 looking at it categorically, I -- I do think the
10 -- the offenses -- the offenses changed because
11 it is really just mirror images of one another.
12 The (B) defendants who are no longer eligible to
13 be (B) defendants have to go somewhere, and they
14 go into the (C) range. So that's just kind of
15 that -- that they're -- they necessarily
16 correspond to one another.

17 The second point I would make is that,
18 as -- as this Court recognized in Dorsey, the
19 statutory changes, everyone understood them to
20 affect the statutory penalties for (C) because,
21 as this Court explained in Dorsey, the mandate
22 that the Sentencing Commission conform the
23 guidelines to the statutes necessarily was
24 expected to include modifications for even the
25 low-level (C) offenders.

1 And if you look at page 15 of our
2 reply brief, you'll see how dramatic those
3 changes were.

4 JUSTICE KAGAN: Thank you, Mr. Feigin.

5 CHIEF JUSTICE ROBERTS: Justice
6 Gorsuch.

7 JUSTICE GORSUCH: Thank you. I have
8 no questions.

9 CHIEF JUSTICE ROBERTS: Justice
10 Kavanaugh.

11 JUSTICE KAVANAUGH: Thank you, Chief
12 Justice.

13 And good morning, Mr. Feigin. How --
14 how do we take into account the reality of
15 sentencing as against the statutory language in
16 this case? I think Mr. Adler says -- and I
17 think this is correct -- that sentencing judges
18 -- many sentencing judges will think about this
19 differently when it's four-fifths of the
20 mandatory minimum versus four-twenty-eighths of
21 the mandatory minimum, and that will have an
22 effect on how they exercise that discretion.

23 I think that's true in many cases, but
24 then how do you link that up to the statutory
25 text?

1 MR. FEIGIN: Well, Your Honor, I think
2 the way we link it to the statutory text -- it's
3 an important consideration to keep in mind -- is
4 two main reasons.

5 One is that "statutory penalties" -- I
6 think, again, the amicus agrees on this -- has
7 to refer to the shifting of the ranges, not to
8 modification of any term of years sentences
9 because, of course, the Fair Sentencing Act
10 didn't do the latter thing.

11 So we're already in a world where
12 we're talking about shifting ranges as changed
13 statutory penalties, and that shift is
14 illustrated on page 7 of our reply brief and
15 it's quite dramatic.

16 The second linkage I would point the
17 Court to, as I was just discussing with Justice
18 Kagan, is the Court's opinion in Dorsey, where
19 it was well understood and, in fact, a reason
20 for the holding in Dorsey that the statutory
21 changes were going to necessitate changes to the
22 guidelines to conform with it.

23 And you don't have to take my or Mr.
24 Adler's word for what a judge would normally
25 think if he's looking or she is looking at a

1 zero to 28 range --

2 JUSTICE KAVANAUGH: Can I --

3 MR. FEIGIN: -- as compared to 5 --

4 JUSTICE KAVANAUGH: -- can I -- well,
5 I'll end there. Thank you, Mr. Feigin.

6 CHIEF JUSTICE ROBERTS: Justice
7 Barrett.

8 JUSTICE BARRETT: Mr. Feigin, I want
9 to make sure that I understand the distinction
10 between your arguments and the Petitioner's
11 arguments at least in the Petitioner's opening
12 brief.

13 So the Petitioner's opening brief cast
14 this scheme as floors and ceilings, kind of
15 suggesting that anything that was below, in the
16 old scheme, 5 grams, which was the limit in (B),
17 was necessarily funneled into (C).

18 And you pointed out that wasn't
19 correct, am I right?

20 MR. FEIGIN: That's right, Your Honor,
21 although if, by ceiling -- what we thought was
22 not correct was the use of the term "ceiling" to
23 imply that the defendant is actually innocent of
24 a (C) violation if it's more than a certain
25 quantity.

1 If you use "ceiling" a little bit more
2 loosely to simply mean a cap on the exclusive
3 range, then that's essentially what we're
4 saying, and it's a fine term to use.

5 JUSTICE BARRETT: Because am I right
6 that one objection you had to that
7 characterization is that those that were
8 sentenced under (C) weren't necessarily those
9 who had less than 5 grams, but it could have
10 been someone who had 200 grams but was just
11 charged under (C) instead?

12 MR. FEIGIN: That's correct, Your
13 Honor. And then sometimes you even have
14 defendants who plead to much higher amounts, but
15 they're still sentenced under (C).

16 JUSTICE BARRETT: Okay. And then my
17 other question is, did you view the government's
18 prior position -- you know, when you changed --
19 you changed pretty late. It was the day your
20 brief was due. Would you characterize it as
21 implausible, or is it your position that the
22 statute is ambiguous and that in light of the
23 purposes of the First Step Act and the Fair
24 Sentencing Act that yours is the better
25 interpretation?

1 MR. FEIGIN: The latter, Your Honor.

2 I don't think we were taking an implausible
3 position before, although we think it's
4 ultimately unsound for the reasons in our brief
5 and primarily the reasons I was just explaining
6 to the -- I was trying to explain to the Chief
7 Justice.

8 JUSTICE BARRETT: Thank you, Mr.
9 Feigin.

10 CHIEF JUSTICE ROBERTS: A minute to
11 wrap up, counsel.

12 MR. FEIGIN: Thank you, Mr. Chief
13 Justice.

14 The First Step Act finishes the job
15 that the Fair Sentencing Act started of erasing
16 the taint of the racially disproportionate
17 100-to-1 ratio. It, therefore, allows courts to
18 consider what a crack defendant would have
19 looked like if he fell within a modified
20 statutory class of offenders with a wider range
21 of culpable conduct.

22 Even after the retroactive guideline
23 changes, for the reasons explained in our reply,
24 not every low-level crack offense is going to
25 still look the same in relation to a 28-gram

1 threshold as it did to a 5-gram threshold.

2 Congress didn't foreclose every
3 offender under (C) from at least getting a look,
4 and then the -- the court that looks at the
5 Section 404 motion can decide whether, in the
6 exercise of its discretion, a reduction is, in
7 fact, warranted.

8 Thank you.

9 CHIEF JUSTICE ROBERTS: Thank you,
10 counsel.

11 Mr. Mortara.

12 ORAL ARGUMENT OF ADAM K. MORTARA

13 COURT-APPOINTED AMICUS CURIAE

14 IN SUPPORT OF THE JUDGMENT BELOW

15 MR. MORTARA: Mr. Chief Justice, and
16 may it please the Court:

17 My friends are making changes to the
18 statutory text in Section 404(a) different ways
19 of cloaking the same point. The government
20 wants to talk about a penalty scheme. My
21 friend, the public defender, says we should look
22 at penalty statutes. Both have timbered at the
23 noun "penalties" in Section 404(a) into an
24 adjective because they cannot address that the
25 noun "penalties" means punishment.

1 And we are not looking for a changed
2 penalty scheme or a changed penalty statute.
3 They argue that because more people will fall
4 under the ambit of 841(b)(1)(C) after the Act
5 that it somehow changed the penalties. But I
6 want to explain how it is, in fact, that
7 Section 2 and 3 of the Fair Sentencing Act
8 modified statutory penalties, and I want to do
9 so by reference to Mr. Dorsey of Dorsey versus
10 United States.

11 He sold 5.5 grams of crack in August
12 of 2008 and was sentenced in September 2010 as
13 an 841(b)(1)(B) offender. That's what he was
14 convicted of. He got a 10-year minimum because
15 of a prior conviction, and the statutory minimum
16 was eight years of supervised release.

17 He came to this Court. In this Court,
18 he sought sentencing under 841(b)(1)(C), more
19 lenient penalties, and this Court gave it to
20 him, modified his statutory penalties.

21 What the First Step Act does is it
22 extends that retroactive treatment of those who
23 committed crime in 2008, sentenced in 2010, to
24 everyone who was sentenced before August 3,
25 2010, and that is all it does.

1 I welcome the Court's questions.

2 CHIEF JUSTICE ROBERTS: Counsel, I
3 think you know the basic problem in terms of
4 practical effect, as the people are seeing with
5 respect to your interpretation, and that is that
6 defendants under (A) and (B) get a new
7 sentencing and, indeed, their time -- their
8 sentence can be reduced to time served. But
9 under (C), the least culpable offenders, those
10 people can't.

11 Now -- now, I understand if what
12 Congress -- if you're right about what Congress
13 said, that's what they said, but why would
14 Congress want that -- want to implement that
15 result?

16 MR. MORTARA: To the extent that the
17 drug quantity had an influence on a subsection
18 (C) offender's sentence, that was through the
19 drug quantity tables, as Justice Breyer
20 observed, and those subsection (C) offenders got
21 revised sentencing because of the retroactive
22 guidelines amendment the Commission put in place
23 almost immediately after the Fair Sentencing
24 Act.

25 CHIEF JUSTICE ROBERTS: Well, I

1 understand --

2 MR. MORTARA: But suppose --

3 CHIEF JUSTICE ROBERTS: I understand
4 that point, but I think it's a little curious to
5 say that Congress did something that really
6 makes no practical sense because they felt sure
7 that the Sentencing Commission was going to deal
8 with it, with retroactive guidelines.

9 MR. MORTARA: Well, I don't think it
10 makes no practical sense, Mr. Chief Justice,
11 Earl Dickerson of Massachusetts received a
12 mandatory life sentence under 841(b)(1)(A)
13 because of his prior convictions, exclusively
14 because of the crack-to-powder ratio. He had 57
15 grams. After the First Step Act, his sentence
16 was reduced to 206 months.

17 That makes perfect practical sense.
18 He was stuck because of the statutory minimum
19 penalties. Section 2 modified them for him.
20 The First Step Act made it retroactive.

21 CHIEF JUSTICE ROBERTS: But -- but
22 there -- there is a vast number of people that
23 were sentenced under (C) who will not get any
24 result under the First Step Act but they're
25 relegated to whatever relief they get under the

1 Sentencing Guidelines, right?

2 MR. MORTARA: And those would be
3 career offenders for whom the crack-to-powder
4 ratio had no influence whatsoever.

5 CHIEF JUSTICE ROBERTS: What -- the
6 other side suggests, and -- and maybe I'm
7 mistaking the -- the point, but that there's no
8 spillover, that these changes that we're talking
9 about apply only in the cocaine context, and
10 even though the provisions we're talking about
11 are not limited to cocaine, that the provisions
12 of the First Step Act don't have any broader
13 effect.

14 Is that -- is that right?

15 MR. MORTARA: I think that's an
16 instance of two wrongs making a right. If you
17 take the first atextual term and turn "statutory
18 penalties" into "penalty statutes," they're just
19 inviting you not to take the next turn and apply
20 that to all drugs. But that's the necessary
21 implication of what they're saying.

22 CHIEF JUSTICE ROBERTS: The problem
23 that a number of people have pointed out is this
24 -- the anchoring effect, which would result in
25 people whose sentences can't be changed under

1 (C) really being prejudiced.

2 I think it is -- you don't challenge

3 the basic logic of the fact that if your

4 sentence is zero to 5 and you have 5 grams, many

5 judges are going to give you a sentence near the

6 -- near the maximum, but if for the same

7 possession, zero to 5 under the new ranges, you

8 know, the maximum under -- not the maximum under

9 (C), but the range before you hit (B) is 28, and

10 a judge is going to look at that and say, well,

11 you're pretty close to the bottom of the range,

12 and so you're going to get a smaller sentence.

13 That seems to me to be incontestable as a

14 logical matter and a consequence of your

15 reading.

16 MR. MORTARA: Well, what I would say

17 first and foremost is I haven't found any

18 evidence of any judge ever saying I am doing

19 this. And I haven't found any evidence of any

20 First Step Act resentencing where a judge has

21 said I think this is what happened in your

22 original sentencing, even sometimes the same

23 judge. But -- but accepting that it's

24 incontestable, it is not a modification of a

25 statutory penalty.

1 But for the -- the -- 404(a) says
2 statutory penalties. What you're talking about
3 is an extra-statutory effect.

4 CHIEF JUSTICE ROBERTS: Thank you,
5 counsel.

6 Justice Thomas.

7 JUSTICE THOMAS: Thank you, Mr. Chief
8 Justice.

9 Mr. Mortara, the government and
10 Petitioner seem to -- are arguing that the
11 changes to (A) and (B) somehow have resulted in
12 a modification of (C). Could you comment on
13 their arguments?

14 MR. MORTARA: Yeah. All -- all I can
15 say is that as, I think, you and Justice Breyer
16 have observed, the penalties in (C) did not
17 change, and "penalties" means punishment. My
18 friend, the public defender, has asked the Court
19 to adopt a technical meaning or a meaning at
20 odds with ordinary meaning for "statutory
21 penalties" by referencing the subsection title
22 for 841(b), which is penalties.

23 This Court has repeatedly rejected
24 such as approach including in the Castillo case,
25 which is a decision from this Court interpreting

1 what is and is not an element in a federal
2 criminal statute.

3 JUSTICE THOMAS: You were, at one
4 point in your discussion with the Chief Justice,
5 about to make the distinction between the effect
6 of the quantities on sentencing, as opposed to
7 the career status of -- of the defendant.

8 Would you finish your -- you were
9 about to make that distinction. Could you do
10 that again?

11 MR. MORTARA: Sure. I think actually
12 Justice Breyer made that distinction very
13 capably, which is that someone who is under the
14 guidelines class as a career offender, the drug
15 quantity no longer has any guidelines influence
16 on the range they receive. It's a completely
17 separate table.

18 I do want to point out that there are
19 recidivism enhancements in the statute that can,
20 because of the ratio, force people like Earl
21 Dickerson into a mandatory life sentence under
22 841(b)(1)(A) by statute. The Fair Sentencing
23 Act did nothing for him. The First Step Act did
24 everything for him. And it makes perfect sense.

25 JUSTICE THOMAS: But if -- if you have

1 a significant change to the practical
2 application of subsection (C), why wouldn't that
3 become -- be seen as a modification, as I think
4 Petitioner argued?

5 MR. MORTARA: Well, I think it would
6 be the same thing as the idea of -- of someone
7 narrowing the scope of, say, first degree
8 murder, such that more offenders fall under the
9 category of second degree murder. That does not
10 change the statutory penalties for second degree
11 murder any more than moving people around
12 changes the statutory penalties for subsection
13 (C).

14 JUSTICE THOMAS: The -- again, and --
15 and you've mentioned that the Petitioner made a
16 point of arguing, and I think the government did
17 too, and you alluded to it a few minutes ago,
18 about the -- the use of the term "statutory
19 penalties." And you, I think, dismissed that a
20 few seconds ago by -- by saying that they are
21 changing the language to adjectival language.

22 But could you -- you address his
23 argument as to what that term actually means?

24 MR. MORTARA: I think it means the
25 punishment imposed by statutes, which is what

1 the compound noun would suggest to an ordinary
2 reader of the English language.

3 JUSTICE THOMAS: Thank you.

4 CHIEF JUSTICE ROBERTS: Justice
5 Breyer.

6 JUSTICE BREYER: Put aside, put aside
7 the language for the moment. All right? I want
8 to focus on what the chief judge -- the Chief
9 Justice said was -- was incontestable. In my
10 mind, it's totally contestable. Why? And this
11 is where I think we're having trouble.

12 Think of (C). There are two sentences
13 in (C), I mean, linguistic sentences. The
14 first, a long sentence, has to do with people
15 who are not career offenders. The second has to
16 do with career offenders.

17 Think of the first. Was that person,
18 on your reading, prevented from asking for a
19 lower sentence? Now, remember, the AUSA thought
20 these high sentences are ridiculous, so the AUSA
21 brought it under (C) and not (A) and (B) and
22 said we don't know how much drugs there are, but
23 the judge found out in the presentence report
24 and used the table.

25 Can that person challenge his

1 sentence? Yes. Why? Not under this statute,
2 but because the Sentencing Commission reduced
3 his sentence to reflect the change in the First
4 Step Act. So he's free, all those people, to be
5 resentenced.

6 Now, what about the second sentence?
7 The second sentence has to do with career
8 offenders. They aren't free to rechallenge
9 because they were not sentenced under the
10 Sentencing Guidelines having to do with drugs.
11 They were sentenced under the sentencing
12 guideline having to do with career offenders.

13 Those people -- really whether it's
14 cocaine, methamphetamine, or some other drug on
15 Table 1 or 2, it doesn't matter. The amounts
16 don't matter once it's a felony. So there's no
17 reason that they should get to ask for
18 resentencing.

19 Now, I've just stated something that's
20 in my mind, and I want you to think about it and
21 admit if what I've said is wrong or right or
22 should be modified?

23 MR. MORTARA: I -- I -- Justice
24 Breyer, I think what you said is 100 percent
25 correct. And I would further point out that

1 reclassifying somebody as a career offender or
2 not is precisely what is occurring in some of
3 these resentences --

4 JUSTICE BREYER: All right.

5 MR. MORTARA: -- under the --

6 JUSTICE BREYER: If I'm correct, why
7 did the government argue what it argued? They
8 knows these as well as I do, probably better.

9 MR. MORTARA: Your Honor, I am here to
10 explain many things. The behavior of the United
11 States Government in this case is not one of
12 them.

13 CHIEF JUSTICE ROBERTS: Justice Alito.

14 JUSTICE ALITO: If we write an opinion
15 and we want to define the term "statutory
16 penalties" as it's used in this provision, can
17 you give me a concise definition preferably for
18 that term?

19 MR. MORTARA: Just for "statutory
20 penalties," I would say the punishments
21 available under the statute.

22 JUSTICE ALITO: All right. Thank you.

23 CHIEF JUSTICE ROBERTS: Justice
24 Sotomayor.

25 JUSTICE SOTOMAYOR: Counsel, going, in

1 part, to Justice Breyer's question, under
2 subcategory (A) and (B), even offenders who have
3 had mandatory minimums previously and were
4 career offenders, some of them, their guideline
5 ranges were far above the mandatory minimums or
6 far above the career offender guidelines, yet
7 those offenders got the benefit of the
8 retroactivity in the Fair Step Act.

9 They can come in and argue that their
10 sentences should be reduced, even though the
11 original sentence was not controlled by the
12 guidelines or the mandatory minimum or the
13 career offender category, they got a higher
14 sentence.

15 That's correct, isn't it?

16 MR. MORTARA: Your -- Your Honor, I
17 have to be clear. Section 404(b) of the First
18 Step Act requires a sentence imposed as if
19 Sections 2 and 3 of the Fair Sentencing Act had
20 been in force. There is an active circuit split
21 on what district courts can do in that
22 resentencing. And so, in some circuits, no, the
23 offender that you're outlining wouldn't get any
24 different sentence.

25 JUSTICE SOTOMAYOR: All right. So

1 there is a circuit split on that, but the
2 government told us everyone was eligible.
3 That's the government's position, correct?

4 MR. MORTARA: Yes, and the government
5 in its presentation today didn't get the chance
6 to tell the Court that it has taken the position
7 that 404(b) categorically prohibits resentencing
8 people any more than just interpreting the
9 effect of 2 and 3 of the Fair Sentencing Act.
10 It took that position in Bates versus United
11 States, Number 20-535, at pages 13 and 14 of its
12 bio.

13 JUSTICE SOTOMAYOR: Counsel, there's a
14 -- bipartisan sponsors of the First Step Act
15 submitted an amicus brief urging us to reject
16 your argument. They say the Act was intended to
17 grant all crack offenders another chance at a
18 reduced sentence. And there are people who were
19 sentenced as career offenders who can be
20 sentenced now to a lower amount if the judge so
21 gave them due consideration.

22 Why should we ignore this bipartisan
23 consensus --

24 MR. MORTARA: So --

25 JUSTICE SOTOMAYOR: -- as to those who

1 fell in the lowest level of crack? The federal
2 defender tells us that the crack amount that
3 this defendant, even though he's a career
4 offender, sold was probably valued at \$50.

5 That's not to take away from his
6 criminal history. But why shouldn't we permit
7 him to be resentenced?

8 MR. MORTARA: Justice Sotomayor, I'll
9 again point out that revising somebody's career
10 offender status is illegal under Section 404(b)
11 of the First Step Act, and the government, this
12 administration, has taken that position in this
13 Court in the --

14 JUSTICE SOTOMAYOR: I didn't --

15 MR. MORTARA: -- Bates case.

16 JUSTICE SOTOMAYOR: -- I didn't say
17 revise his career offender status, counsel. I
18 said he was sentenced above the guideline range
19 for that status and it was above -- and why
20 can't he come down to whatever the bottom of the
21 career offender range is?

22 MR. MORTARA: Well, first, I want to
23 get to your question about the senators' brief,
24 that is, four members of one of our two houses
25 of Congress. I don't think it represents

1 necessarily the universal view of those who
2 voted for the First Step Act.

3 What represents that is the text of
4 the statute. And Mr. Terry was sentenced at the
5 bottom of his career offender range.

6 JUSTICE SOTOMAYOR: Thank you,
7 counsel.

8 CHIEF JUSTICE ROBERTS: Justice Kagan.

9 JUSTICE KAGAN: Mr. Mortara, something
10 I think is -- is -- is odd about this whole case
11 and your argument is that the most natural
12 reading of what "statutory penalties" means
13 isn't really even on the table, because the most
14 natural reading, you'd be looking for a
15 modification of a provision that actually gave a
16 sentencing range. You know, you'd be looking
17 for a sentencing range that went from 10 to 20
18 to 5 to 15.

19 And there's nothing of that kind in
20 this statute, you know, to refer to. So isn't
21 this statute kind of incoherent from the get-go?

22 MR. MORTARA: I don't think so,
23 Justice Kagan, for one reason, in light of
24 Dorsey. The Court's opinion in Dorsey perfectly
25 reflects what Congress is trying to extend to

1 everyone else retroactively.

2 Mr. Dorsey, charged under (B),
3 sentenced under (C), a different provision, with
4 different statutory punishments. Mr. Hill, who
5 was the companion case, charged under (A) with
6 53 grams and a 10-year minimum statutory
7 sentence but was ultimately sentenced under (B),
8 his statutory penalties were modified.

9 So read in light of Dorsey, this
10 actually makes perfect sense at both first and
11 third reading.

12 JUSTICE KAGAN: So, if I understand
13 that correctly, you're saying there are people
14 who can't be convicted of subparagraph (B) now
15 who could have been before, and you're right,
16 that that's not true of subparagraph (C). But
17 -- but you could sort of make the opposite
18 argument, that there are people who can be
19 convicted only of subparagraph (C) now who could
20 have been convicted of other crimes before.

21 So why doesn't the argument work both
22 ways?

23 MR. MORTARA: For two reasons. Number
24 one, the statute's referring to a violation, a
25 specific violation that occurred at a specific

1 time. That is Mr. Terry's violation, not a
2 group of people.

3 And secondly, for the first-degree
4 murder hypothetical reason, narrowing the scope
5 of some greater crime such that more people can
6 exclusively be punished in some lesser crime
7 does not change the penalties of the lesser
8 crime.

9 JUSTICE KAGAN: Do -- do you agree
10 that there are defendants convicted under (A)
11 and (B) whose statutory penalties weren't
12 modified but who will get the benefit of this
13 Act?

14 MR. MORTARA: No, I do not, because
15 anyone convicted under (A), the elements were 50
16 grams or greater, that only supports a
17 conviction under (B) today. Their statutory
18 penalties were changed.

19 They may not receive a sentencing
20 reduction because, under 404(b), it may be
21 determined, based on what quantity was in, for
22 instance, the judge's finding or their PSR, that
23 they were ineligible for any such change, but
24 that's a 404(b) question.

25 JUSTICE KAGAN: And let me make sure I

1 understand that.

2 I mean, do -- do you think that we use
3 the categorical approach in (A) and (B)?

4 MR. MORTARA: Yes.

5 JUSTICE KAGAN: But doesn't that mean
6 if you use the categorical approach that there
7 are some (A) and (B) offenders who -- whose
8 penalties would not change but yet will get a
9 resentencing?

10 MR. MORTARA: No, because we look to
11 the elements of an (A) charge and a (B) charge.
12 The -- the quantity element of an (A) charge is
13 50 grams or greater. After the Fair Sentencing
14 Act, that threshold changes such that that
15 element can only support a (B) charge.

16 JUSTICE KAGAN: Thank you.

17 CHIEF JUSTICE ROBERTS: Justice
18 Gorsuch.

19 JUSTICE GORSUCH: I have no questions.
20 Thank you.

21 CHIEF JUSTICE ROBERTS: Justice
22 Kavanaugh.

23 JUSTICE KAVANAUGH: Thank you, Chief
24 Justice.

25 And good morning, Mr. Mortara.

1 Picking up on Justice Kagan's
2 questions, if the statutory text is ambiguous,
3 given the cross-reference, it seems to me that
4 the other side is asking us to look at a few
5 things or maybe there are a few things that
6 could be considered in how to think about this
7 statute, and I just want to get your reaction to
8 these things.

9 And so one is the, you know,
10 relatively small amount. Justice Sotomayor
11 alluded to this. I asked about the costs.
12 Fifty dollars. And assume it's a few hundred
13 dollars, it's still a low amount that we're
14 talking about here, not the kind of situation
15 that I think most -- most people have in mind
16 when they think about lengthy sentences for --
17 for federal sentencing. So that's one.

18 Two is the history of the disparity,
19 the crack powder disparity. This all kind of
20 stems to June 19, 1986, when Len Bias died, and
21 that was a shocking event, particularly in this
22 area, particularly for those of us who -- you
23 know, I was a year younger than he was, looked
24 up to him, like everyone in this area did, and
25 that was a shocking event in this area and --

1 and ultimately in the country at large and
2 prompted Congress, along with other things, but
3 that was really the proximate cause of Congress
4 moving to establish the 100-to-1 ratio, even
5 though that was a powder situation in the Len
6 Bias situation, the 100-to-1 disparity is
7 ushered into the law, and then there are racial
8 disparities, of course, that develop over time,
9 and Congress really has been working now for 35
10 years hearing about this and working to claw
11 that back. So that -- that's something we
12 should be thinking about, I think the other side
13 would say.

14 And then the third, which we've
15 touched on, is the reality of sentencing judges
16 and how they really, in practice -- I take
17 Justice Breyer's point that some of them in some
18 cases are going to think differently about this
19 when they're close to the limit of five versus
20 not close to the 28.

21 So those three things together, to --
22 to the extent the statute's ambiguous, low
23 amount, the history, the racial disparities, and
24 the reality of sentencing, and you can take
25 whatever time you want to answer those.

1 MR. MORTARA: Thank you, Justice
2 Kavanaugh.

3 As to the low amount, as we've spoken
4 about before, Mr. Terry's sentence was dictated
5 by his career offender status. And I should
6 point out that the First Step Act did make
7 statutory modifications to the recidivism
8 enhancements, changing drug felony to serious
9 drug felony in such a way that I do not actually
10 think Mr. Terry would, if he were -- committed
11 the crimes today, be sentenced as a career
12 offender under the First Step Act.

13 But Congress didn't make those changes
14 retroactive. And so I think some of the impact
15 you're talking about is the impact of the career
16 offender enhancement, which is true for all
17 drugs and -- and has been altered by Congress
18 prospectively in the First Step Act.

19 As to the -- where this all comes from
20 and the policy and -- that you were discussing,
21 I can only say that I quibble with the premise
22 that the statutory text is ambiguous. I don't
23 think that it is.

24 And the policy here is -- is more than
25 adequately explained by the people left out of

1 the Fair Sentencing Act initially, people like
2 Mr. Dickerson, who I've referred to repeatedly,
3 who got statutory sentences that the Commission
4 could do nothing about. That's not Mr. Terry.
5 Mr. Terry's sentence is very long because, like
6 a small-amount methamphetamine dealer who's also
7 a career offender, career offenders get long
8 sentences.

9 As to the practice, as Justice Breyer
10 put it, what the Chief Justice called
11 incontestable, Justice Breyer found it
12 contestable, I also find it contestable that
13 judges were awarding higher sentences because of
14 these statutory thresholds during a time when,
15 for over a decade, the Commission and others had
16 been wildly critical of the crack-to-powder
17 ratio. I do not think that is true and I've
18 seen no evidence of it.

19 CHIEF JUSTICE ROBERTS: Justice
20 Barrett.

21 JUSTICE BARRETT: Good morning,
22 Mr. Mortara.

23 So, repeatedly, people have asked you
24 about the impact on this, the benchmarks,
25 whether it makes sense for lower-level offenders

1 in (C) to be excluded, and the interrelationship
2 between the career offender guidelines and --
3 and statutory minimums and this statute.

4 Is it your position -- I mean, you've
5 explained how, for Mr. Terry and some others,
6 their status as career offenders would preclude
7 any change being made to their sentences by
8 virtue of the First Step Act.

9 Is it your position that there's no
10 one who's left out in the cold who was sentenced
11 for a (C) crime, (b)(1)(C) crime, who now can't
12 take advantage -- is it -- is it your position
13 that they're all taken care of or not taken care
14 of, but that they're all stuck because of the
15 career offender or recidivism sentencing
16 provisions?

17 MR. MORTARA: I think 404(a) excludes
18 all 841(b)(1)(C) offenders from having a covered
19 offense. To the extent the ratio impacted their
20 sentences, the Sentencing Commission took care
21 of them. To the extent that their career
22 offender status impacted their sentence, that
23 has nothing to do with their possession of
24 crack, and it could have just as easily been
25 methamphetamine or another Schedule I or II

1 controlled substance.

2 JUSTICE BARRETT: So there's nobody
3 really who's left out in the cold?

4 MR. MORTARA: There is nobody who's
5 left out in the cold. I would say -- I would
6 say the only person left out in the cold would
7 be someone who would like to take a benefit of
8 the First Step Act's change to the statutory
9 recidivism enhancement but is left out in the
10 cold because Congress did not make that change
11 fully retroactive.

12 JUSTICE BARRETT: So, when you say --
13 to make sure that we're understanding the same
14 thing, when I say "left out in the cold," I mean
15 nobody who could have benefited even from the
16 shift in the benchmarks, you know, that we've
17 been discussing, the practical effect on the
18 sentencing judge.

19 Are -- are you taking that into
20 account so there's nobody who could have even
21 been resentenced and perhaps taken the --
22 advantage of the benchmarks?

23 MR. MORTARA: Well, to the extent that
24 someone believes that this anchoring effect
25 exists and that it was real, they, if they're

1 (C) offenders, are -- are indeed, as you put it,
2 left out in the cold because Congress used the
3 phrase "statutory penalties," not penalties
4 imposed because of anchoring effects that may
5 not even exist.

6 JUSTICE BARRETT: And that's true even
7 if they were career offenders? And --

8 MR. MORTARA: Correct.

9 JUSTICE BARRETT: -- and I guess, like
10 -- and -- and there are people who didn't have
11 the opportunity to be resentenced when the
12 Sentencing Guidelines were amended and given
13 retroactive effect initially.

14 MR. MORTARA: Those would be people
15 like Mr. Terry, career offenders, yes.

16 JUSTICE BARRETT: Okay. And is there
17 any distinction between your position and the
18 position of the Third Circuit in United States
19 versus Birt?

20 MR. MORTARA: I think, at the end of
21 the day, no, because the categorical conclusions
22 are the same. There was some slight difference
23 in logic that is not relevant.

24 JUSTICE BARRETT: Okay. Thank you,
25 Mr. Mortara.

1 CHIEF JUSTICE ROBERTS: Do any of my
2 colleagues have further questions for the
3 amicus?

4 In that case, Mr. Mortara, a minute to
5 wrap up.

6 MR. MORTARA: I will sum up with the
7 Court's words from last Thursday in Niz-Chavez.
8 "A rational Congress could reach the policy
9 judgment the statutory text suggests it did; and
10 no amount of policy-talk can overcome a plain
11 statutory command."

12 I have nothing further.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel.

15 Mr. Adler, rebuttal?

16 REBUTTAL ARGUMENT OF ANDREW L. ADLER

17 ON BEHALF OF THE PETITIONER

18 MR. ADLER: Thank you, Mr. Chief
19 Justice.

20 So let's talk about the text. There
21 are several additional problems with amicus's
22 textual interpretation that haven't been brought
23 up today.

24 First, he's effectively requiring this
25 Court to insert the word "effectively" before

1 the word "modified." Because Section 2 didn't
2 change the ranges, that -- he's asking the Court
3 to say that it effectively modified the ranges,
4 and that's just not part of the statute.

5 Second, his interpretation is
6 inconsistent with the past tense "were
7 modified." His argument depends on defining the
8 violation as a pre-Section 2 50- and 5-gram
9 offense, but no statutory penalties for those
10 offenses were modified by Section 2 because the
11 Fair Sentencing Act applied only prospectively.
12 So his -- his interpretation is inconsistent
13 with the past tense.

14 Finally, something that occurred to
15 me, his interpretation would categorically
16 exclude all pre-Apprendi offenders because none
17 of them had 5 or 50 grams as an element of their
18 offense when they were convicted, and there have
19 been 2- to 300 pre-Apprendi offenders who have
20 obtained relief under Section 404, and they
21 would have all been excluded under amicus's
22 view.

23 Finally, amicus referred several times
24 to Dorsey and at one point said that our
25 interpretation of the language would sort of do

1 violence to the English language. Well, I'd
2 refer the Court to Justice Scalia's dissent in
3 Dorsey, and he repeatedly used the phrase
4 "statutory penalties" to refer to something
5 other than a sentencing range, just as the
6 Commission did for the eight years leading up to
7 Section 404. And I think Justice Scalia had a
8 pretty good grasp of the English language.

9 Second, on the history, amicus really
10 did not say anything at all about the Sentencing
11 Commission. And all we're saying here is that
12 Section 404, like all other statutes, must be
13 interpreted in light of the historical context
14 in which it was enacted. And Section 404 was
15 just the latest part of an ongoing dialogue
16 between Congress and the Commission, so it would
17 be improper to read 404 in isolation from that
18 context.

19 On the career offender point, that's
20 just a red herring in this case. There are (A)
21 and (B) offenders that were also career
22 offenders and they were fully eligible for
23 relief under Section 404. So that cannot be a
24 basis for excluding (b)(1)(C) offenders.

25 And career offenders, the only reason

1 that they are different here is because their
2 guideline range was not determined by the
3 100-to-1 ratio, but, as we've explained
4 throughout, the 100-to-1 ratio had the potential
5 to affect them nonetheless through the 3553(a)
6 calculus. And downward variances are
7 commonplace under Section 404 for career
8 offenders.

9 And, finally, in response to the Chief
10 Justice on why would Congress do this, this
11 Court looks to the text, of course, and that's
12 paramount, but, at the same time, the Court
13 doesn't interpret statutes in a way that makes
14 no sense. And -- and all my friend could say
15 was, well, there were people that received a
16 mandatory minimum penalty. That would be a
17 handful of people.

18 So that's just an implausible
19 interpretation. Section 404 covers all
20 offenders who were sentenced under the ratio.
21 That -- the purpose was to ensure that everyone
22 sentenced has the opportunity to seek a reduced
23 sentence under Section 2. That includes the
24 kingpins and it includes the low-level dealers
25 under (b)(1)(C).

1 The judgment below should be reversed.

2 CHIEF JUSTICE ROBERTS: Thank you,

3 Mr. Adler.

4 Mr. Mortara, this Court appointed you
5 to brief and argue this case as an amicus curiae
6 in support of the judgment below. You have ably
7 discharged that responsibility, for which we are
8 grateful.

9 The case is submitted.

10 (Whereupon, at 11:23 a.m., the case
11 was submitted.)

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