

**LORETTA E. LYNCH**

February 9, 2015

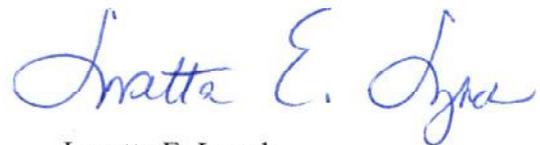
The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Leahy:

Thank you again for giving me the opportunity to appear before the Senate Judiciary Committee on January 28, 2015. Enclosed please find my responses to the Questions for the Record that I received from you, as well as Senators Hatch, Sessions, Graham, Cornyn, Lee, Cruz, Flake, Vitter, Perdue, Tillis, Feinstein, Schumer, Durbin, Whitehouse, and Franken.

Sincerely,



Loretta E. Lynch

Enclosure

## NOTICE OF LIMITED QUESTIONS AND ANSWERS

The following questions and answers are limited to “Marijuana.”

There are many questions on other matters that have been presented to Loretta E. Lynch to be Attorney General of the United States. Those questions and answers are not germane to “Marijuana” and as such, they are not presented.

### Marijuana Video - Attorney General Confirmation



**Nomination of Loretta E. Lynch to be Attorney General of the United States**  
**Questions for the Record**  
**Submitted February 9, 2015**  
**QUESTIONS FROM CHAIRMAN GRASSLEY**

70. I was glad to hear you say during your hearing that you do not support the legalization of marijuana. As you know, in 2013, the Department of Justice decided that it would not seek to strike down state laws in Colorado, Washington, and elsewhere that have legalized the recreational use of that drug, so long as these states implement effective regulatory regimes that protect key federal interests. This policy is outlined in the August 29, 2013 Cole Memorandum.

- a. In some of these states, like Colorado, businesses are currently advertising the availability of recreational marijuana on websites and on television news programs such as 60 Minutes. To be clear, do you agree that individuals that manufacture and distribute marijuana in that state are breaking federal law, no matter what state law permits?

**RESPONSE:** The manufacture and distribution of marijuana is prohibited by federal law, specifically, the Controlled Substances Act (CSA), except as authorized pursuant to limited exceptions within the CSA concerning research and related activities.

- b. I understand the Department of Justice is not gathering data on the federal priorities identified in the Cole Memorandum to evaluate whether that policy needs re-visiting. Yet these priorities are already being negatively affected, including through the increasing diversion of recreational marijuana to nearby states like Iowa. This sounds to me like the Department does not want to know how its policy is functioning. Even the New York Times has editorialized that it's important to evaluate whether the states are "holding up their end of the bargain." Do you believe the Department should be systemically collecting data related to these federal priorities in a centralized place, establishing metrics,

and analyzing the data for the purpose of evaluating whether the policy outlined in the Cole Memorandum is working, and if you are confirmed will you commit to taking these steps?

**RESPONSE:** If I am confirmed as Attorney General, I will commit that the Department will continue to consider data of all forms—including existing federal surveys on drug usage, state and local research, and, of course, feedback from communities and from federal, state, and local law enforcement—on the degree to which existing Department policies and the state systems regulating marijuana-related activity protect federal enforcement priorities and the public. The Department will continue to collect data and make these assessments through its various components, and will continue to work with the Office of National Drug Control Policy and other partner agencies throughout the government to identify other mechanisms by which to collect and assess data on the effects of these state systems.

- c. As you also mentioned in your testimony, in some of these states there is a specific problem presented by edible marijuana products falling into the hands of children. Some of these marijuana products, as well as other products containing different illegal drugs like methamphetamine, are marketed and packaged like candy. Would you support legislation to address this problem by increasing the penalties for those manufacturers or distributors of controlled substances that know, or have reasonable cause to believe, that their controlled substances will be distributed to minors? If confirmed, would you commit to working with me on such legislation?

**RESPONSE:** As I stated in my testimony before the Committee, the issue of edible marijuana products and the possibility of these products falling into the hands of children is of particular concern, as reflected by the Department's explicit enforcement priority of preventing the distribution of marijuana to minors, as well as the Department's enforcement priority of addressing threats to public health. If I am confirmed as

Attorney General, I look forward to working with this Committee to address this issue in a comprehensive manner that most effectively protects public health and safety.

- d. Attorney General Holder has indicated that he believes that marijuana businesses in states like Colorado should have access to the U.S. banking system. Do you agree? If so, doesn't depositing the proceeds of marijuana businesses into banks violate the federal laws prohibiting money laundering, and do you believe it is appropriate for the nation's top law enforcement officer to advocate for conduct that violates those laws?

**RESPONSE:** Pursuant to the Department's February 14, 2014, guidance, investigations and prosecutions of offenses related to financial transactions based upon marijuana-related activity are focused on using the Department's limited investigative and prosecutorial resources to address the most significant public health and public safety threats. Accordingly, in determining whether to charge individuals or institutions with offenses related to financial transactions based upon marijuana-related activity, prosecutors should assess this activity in light of the Department's stated enforcement priorities. Further, as made clear in the Department's February 14, 2014, guidance, financial institutions must continue to apply appropriate risk-based anti-money laundering policies, procedures, and controls sufficient to address the risks posed by customers engaged in marijuana-related activity, including by conducting customer due diligence designed to identify conduct that relates to any of the eight priority factors. As the Department of Justice's and the Department of the Treasury's FinCEN guidance are designed to complement each other, it also is essential that financial institutions adhere to guidance issued by FinCEN on this subject.

## **Questions on DOJ Legal Positions and Practices**

### **III. DOJ Refusal to Enforce Federal Marijuana Laws**

The Obama Administration arguably refuses to fully enforce federal drug laws with respect to marijuana, which is still listed as a Schedule I controlled substance in accordance with the Controlled Substance Act. Marijuana continues to be listed under Schedule I because it has long been considered by federal law enforcement and medical authorities to be both dangerous and without medicinal value.

**1. Do you agree or disagree with the federal position that marijuana is a dangerous controlled substance? If you disagree with the federal position, please provide a detailed explanation as to why.**

**RESPONSE:** As I stated in my testimony before the Committee, I do not support the legalization of marijuana. It is the Administration's position to oppose the legalization of marijuana and other drugs because legalization would increase the availability and use of illicit drugs, and pose significant health and safety risks to all Americans, particularly young people.

**2. Do you agree or disagree with the federal position that marijuana has no medicinal value? If you disagree with the federal position, please provide a detailed explanation as to why.**

**RESPONSE:** Marijuana is a Schedule I controlled substance with no currently accepted medical use in the United States. The potential for medicinal uses of marijuana and its components is the subject of ongoing research, and such research is appropriately assessed and evaluated by the Department of Health and Human Services within the statutory framework of the Controlled Substances Act as I understand has occurred in the past, as recently as 2011, in the consideration of petitions to reschedule marijuana.

**3. Do you agree or disagree with the statement that states that have legalized marijuana for recreational use have done so in violation of federal law? If you disagree with this statement, please provide a detailed explanation as to why.**

**RESPONSE:** The manufacture and distribution of marijuana is prohibited by federal law, specifically, the Controlled Substances Act (CSA), except as authorized pursuant to limited exceptions within the CSA concerning research and related activities.

**4. Do you agree or disagree with the statement that states that have legalized marijuana for medicinal use have done so in violation of existing federal law? If you disagree with this statement, please provide a detailed explanation as to why.**

**RESPONSE:** Please see response to Part III, Question 3, above.

**5. Do you agree or disagree with the statement that federal prosecutors possess the prosecutorial discretion to refuse to prosecute all federal marijuana cases as a class or group? If you agree with this statement, please provide a detailed explanation as to why.**

**RESPONSE:** In all areas of civil and criminal enforcement, the Department uses its discretionary enforcement authority in a manner that seeks to focus limited investigative and prosecutorial resources to address the most significant public health and public safety threats. In every instance, prosecutors must make decisions about how limited resources are brought to bear to best confront those threats. The Department's policies, including in the area of marijuana enforcement, as stated in the Department's August 29, 2013 memorandum, are crafted to provide guidance on doing so in an effective, consistent and rational way, while giving prosecutors discretion within the constraints of that guidance to take into account the circumstances of each case.

**6. Do you agree or disagree with the statement that federal prosecutors possess the prosecutorial discretion to refuse to prosecute federal marijuana cases where the amount of marijuana at issue falls below a certain threshold? If you agree with this statement, please provide a detailed explanation as to why.**

**RESPONSE:** Please see my response to Question 5, above. Rather than focus solely on quantity, the Department's 2013 memorandum provides guidance for Department employees regarding the use of the Department's limited investigative and prosecutorial resources to address the most significant public health and public safety threats in an effective, consistent and rational way. In doing so, the guidance identifies eight enforcement priorities that historically have been and continue to be of primary importance in guiding the exercise of prosecutorial discretion in the area of marijuana enforcement. The guidance further acknowledges the importance of examining the particular circumstances of each case and the authority of the Department to pursue investigations and prosecutions that otherwise serve an important federal interest. In April 2013, the Drug Enforcement Administration (DEA) released a report that reaffirmed the following: (1) that marijuana remains a dangerous controlled substance, <sup>1/</sup> and that its continued listing in Schedule I was entirely appropriate, <sup>2/</sup> and (2) that many (if not all) major American medical association, including the American Medical Association, the American Society of Addiction Medicine, the American Cancer Society, and the American Academy of Pediatrics, reaffirm the view that marijuana does not have medicinal value. <sup>3/</sup>

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<sup>1/</sup> U.S. Drug Enforcement Administration, *The DEA Position on Marijuana* (Apr. 2013).

<sup>2/</sup> *Id.* at 1 (noting that “[m]arijuana is properly categorized under Schedule I of the Controlled Substances Act,” that [t]he clear weight of the currently available evidence supports this classification,” and that “there is a general lack of accepted safety for its use even under medical supervision”).

<sup>3/</sup> *Id.* at 2-4 (citing these and other medical associations and organizations that reject the notion that smoked marijuana has any medicinal value).

The DEA's position on marijuana continues to be echoed by Dr. Nora Volkow, Director of the National Institutes of Health's National Institute on Drug Abuse, who is on record stating that marijuana is a harmful, non-medicinal substance.

**7. Please read the cited DEA report and, based on the material and information contained in that report, answer each of the following questions separately:**

- a. Do you agree or disagree with any statement within, or portion of, the DEA April 2013 report? If you disagree with any statement within, or portion of, the DEA report, please provide a detailed explanation as to why. /<sup>4</sup>**

**RESPONSE:** While I have not read the report to which you refer, as I stated in my testimony and in response to Question 1 above, I do not support the legalization of marijuana. Marijuana is a Schedule I controlled substance with no currently accepted medical use in the United States. The potential for medicinal uses of marijuana and its components is the subject of ongoing research, and such research is appropriately assessed and evaluated by the Department of Health and Human Services within the statutory framework of the Controlled Substances Act as I understand has occurred in the past, as recently as 2011, in the consideration of petitions to reschedule marijuana.

- b. Do you agree or disagree with any of the American medical associations that marijuana has no medicinal value? If you disagree with any of these American medical associations, please provide a detailed explanation as to why.**

**RESPONSE:** While I have not reviewed the particular views stated by the American medical associations you reference, please see response to Part III, Question 2, above.

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<sup>4/</sup> e.g., New England Journal of Medicine, *Adverse Health Effects of Marijuana Use* (Jun. 5, 2014) (co-authored by Dr. Volkow, and discussing the short- and long-term harmful effects of smoking marijuana, which can include neurological impairment); American Psychological Association, *Marijuana addiction a growing risk as society grows more tolerant* (May 2011) (noting Volkow's comments about how smoking marijuana has the potential to interfere with cognitive development and function, particularly in developing brains).

- c. Are you aware of any domestic medical associations that maintain that marijuana is either medicinal, not harmful, or otherwise beneficial to users?**

**RESPONSE:** While I am not aware of the particular views of every American medical association, please see my response to Part III, Question 2, above.

- 8. Please read Dr. Volkow's cited New England Journal of Medicine article and, based on the material and information contained in that article, answer each of the following questions separately:**

- a. Do you agree or disagree with the premise that smoked marijuana is harmful to a person's health? If you disagree with this statement, please provide a detailed explanation as to why.**

**RESPONSE:** While I have not read the article to which you refer, I do not disagree with the premise that smoked marijuana is harmful to a person's health.

- b. Do you agree or disagree with Dr. Volkow's professional assessment about the potential short- and long-term effects of marijuana usage? If you disagree with Dr. Volkow's professional assessment, please provide a detailed explanation as to why.**

**RESPONSE:** I have not read the article to which you refer, and have not personally studied the subject sufficiently to address particular short and long term effects of marijuana usage.

- Four states – Colorado, Washington, Oregon, and Alaska – have now legalized the cultivation, distribution, and sale of marijuana for purely recreational use, thereby creating a legalized and regulated market for the illegal controlled substance within their respective states. These states have taken these internal actions to promote marijuana, despite the fact that the cultivation, distribution,

and sale of marijuana remain illegal under federal law. <sup>5</sup> Some of these states' efforts may have at least been encouraged by the Obama Administration's recent executive declarations about new federal marijuana related enforcement priorities. <sup>6</sup> Colorado's legalization of the cultivation, distribution, and sale of marijuana has triggered at least one lawsuit by adjacent states, which now trace current marijuana enforcement difficulties to Colorado's legalization of marijuana. <sup>7</sup>

**9. Before you are confirmed to serve as the next Attorney General, what steps will you take to require these states to cease and desist their support of the cultivation, distribution, and sale of marijuana, or to otherwise bring these states into compliance with existing federal controlled substance law?**

**RESPONSE:** As the United States Attorney for the Eastern District of New York, I am not in a position to take the types of action to which you refer.

**10. Do you agree or disagree with the statement that state laws that affirmatively authorize the cultivation, distribution, or sale of marijuana and that attempt to regulate it are preempted by the Controlled Substances Act or other federal**

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<sup>5</sup>/ Governing, *State Marijuana Laws Map* (Jan. 20, 2015) (identifying Colorado, Washington, Oregon, and Alaska as recreational use states).

<sup>6</sup>/ James M. Cole, *Guidance Regarding Marijuana Enforcement* (Aug. 29, 2013), identifying the eight following federal priorities regarding the enforcement of federal law against marijuana:(1) preventing the distribution of marijuana to minors; (2) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (3) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; (4) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (5) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (6) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (7) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (8) preventing marijuana possession or use on federal property.

<sup>7</sup>/ Denver Post, *Nebraska and Oklahoma sue Colorado over marijuana legalization* (Dec. 18, 2014) (citing the multi-state lawsuit and the interstate ramifications of intrastate legalization).

**statutory law? If you disagree with this statement, please provide a detailed explanation as to why.**

**RESPONSE:** Preemption analysis is statute-specific and presents a question of whether a specific state law conflicts with a federal statutory regime. I have not personally studied the issue of preemption in the context of the particular state laws in existence sufficiently at this time to take a position with regard to any individual statutory scheme.

**11. Do you agree or disagree with the statement that federal statutory law, by virtue of the fact that it unequivocally declares marijuana to be a Schedule I controlled substance, preempts state law on the subject of marijuana, and therefore necessarily precludes states from creating a marketplace for the cultivation, distribution, and sale of marijuana under state law? If you disagree with this statement, please provide a detailed explanation as to why.**

**RESPONSE:** Please see my response to Part III, Question 10, above.

**12. Do you agree or disagree with the Obama Administration's decision to effectively suspend enforcement of the federal ban on marijuana (except with respect to certain enforcement priorities) in states that have legalized the cultivation, distribution, and sale of marijuana? If you agree with this decision, please provide a detailed explanation as to why.**

**RESPONSE:** Neither the Administration nor the Department of Justice has suspended enforcement of the Controlled Substances Act in states that have legalized the cultivation, distribution, or sale of marijuana. The Department's 2013 memorandum provides guidance, applicable to prosecutors in every state, regarding the use of the Department's limited investigative and prosecutorial resources to address the most significant public health and public safety threats in an effective, consistent and rational way. In doing so,

the guidance identifies eight enforcement priorities that historically have been and continue to be of primary importance in guiding the exercise of prosecutorial discretion in the area of marijuana enforcement. The guidance further acknowledges the importance of examining the particular circumstances of each case and the authority of the Department to pursue investigations and prosecutions that otherwise serve an important federal interest.

**13. Do you agree or disagree with the statement that it violates the Take Care Clause for the Administration to enforce marijuana laws only in states that have not legalized the use of marijuana in some way? If you disagree with this statement, please provide a detailed explanation as to why.**

**RESPONSE:** Please see my response to Part III, Question 12, above.

- Reports indicate that there are arguably significant banking irregularities among Colorado's legalized marijuana-related businesses, which raise the significant possibility that these businesses may be improperly avoiding the reporting of marijuana-related revenue in order to avoid paying federal income taxes. <sup>8</sup>

**14. Before you are confirmed to serve as the next Attorney General, can you commit or not commit to dedicating the resources of the Department of Justice to investigating the degree to which these Colorado-based marijuana-related businesses may be avoiding the payment of federal income taxes? If you will not commit to investigating the tax compliance of these businesses, please provide a detailed explanation as to why.**

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<sup>8</sup>/ Denver Post, *IRS fines unbanked pot shops for paying federal payroll tax in cash* (Jul. 2, 2014) (noting how marijuana-based businesses are frequently unable to use legitimate banks because of the illicit nature of their business).

**RESPONSE:** As the United States Attorney for the Eastern District of New York, I am not currently privy to information about the tax compliance of businesses in Colorado, but I understand that pursuant to the Department's February 14, 2014 guidance, investigations and prosecutions of offenses related to financial transactions based upon marijuana-related activity are focused on using the Department's limited investigative and prosecutorial resources to address the most significant public health and public safety threats.

In all civil and criminal enforcement matters, including those involving violations of the federal tax laws, the Department of Justice uses its discretionary enforcement authority in a manner that seeks to focus limited investigative and prosecutorial resources to address the most significant violations and to maximize the effect of its enforcement actions.

**Nomination of Loretta E. Lynch to be Attorney General of the United States**

**Questions for the Record**

**Submitted February 9, 2015**

**QUESTIONS FROM SENATOR FEINSTEIN**

**5. Federal Marijuana Enforcement**

As you know, under Attorney General Holder, the Department of Justice has scaled back enforcement of federal marijuana laws – especially in states that have legalized recreational and/or medical marijuana under their own laws. In California, for example, we learned that there are as many as 200 to 300 large marijuana grow sites in Fresno. Yet, the U.S. Attorney in that district prosecuted only 37 marijuana cases between August 2013 and December of 2014. He told my staff that he did not have sufficient resources to bring more cases. Despite these changes to Department policy, your office in New York has reportedly prosecuted “the world’s largest marijuana suppliers.”

- As Attorney General, do you plan to continue Attorney General Holder’s policy, or do you plan to take a fresh look at the Department’s approach to the enforcement of federal drug laws?

**RESPONSE:** The Department is currently committed to enforcing the Controlled Substances Act (CSA) in a manner that efficiently applies limited resources to address the most significant threats to public health and safety, and if confirmed as Attorney General, I will ensure that we continue to enforce the CSA.

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**QUESTIONS FROM SENATOR HATCH**

7. I disagree with the Justice Department's decision not to enforce federal marijuana laws in states that have legalized marijuana. It sends the wrong message to our youth and demonstrates disregard for the rule of law. We should all agree, however, about the need to continue fighting drug trafficking organizations and the dangers they cause. In my state of Utah and other western states, drug trafficking organizations divert rivers and streams, clear cut timber, pollute the environment, and even place booby traps in the course of illegally growing marijuana on public lands. I recently introduced legislation with Sen. Feinstein to address these problems, S.348, the Protecting Lands Against Narcotics Trafficking Act. It enhances penalties for growers who degrade the environment and create public safety hazards and creates a fund to remediate environmental harms cause by illegal marijuana cultivation. Will you commit to making the prevention of marijuana growth on federal land a priority and to ensuring that prosecutors use the tools that my bill provides?

**RESPONSE:** As indicated in the Deputy Attorney General's Memorandum, dated August 29, 2013, combating large-scale marijuana grows, including those on public lands, is a priority for the Department. The geographic isolation of the marijuana grows and the size of federal public lands requires a coordinated and multi-agency effort. I understand that some of my fellow United States Attorneys, particularly those in the western part of the United States, are working closely with DEA, the National Forest Service, the Bureau of Land Management (BLM), and other federal, state, and local partners to enforce the controlled substance laws against drug traffickers who threaten public safety and the environment by using federal public lands for large-scale marijuana cultivations.

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**QUESTIONS FROM SENATOR PERDUE**

15. The 2013 Cole Memorandum explains the DOJ's priorities on enforcement of federal law regarding marijuana offenses. Several jurisdictions have recently legalized cultivation and distribution of marijuana for personal use, in effect, initiating a series of state regulatory regimes that contravene federal drug laws.

- a. Do you agree with the current DOJ enforcement policies and priorities outlines in the Cole Memorandum?

**RESPONSE:** As United States Attorney, and if I am confirmed as Attorney General, I am committed to enforcing the Controlled Substances Act (CSA). The Cole Memorandum sets out eight priority areas for federal marijuana enforcement. The Cole Memo also acknowledges the importance of examining the particular circumstances of each case and the authority of the Department to pursue investigations and prosecutions that otherwise serve an important federal interest. Accordingly, the Department's focus is on applying its limited investigative and prosecutorial resources to enforcing the CSA in a manner that addresses the most significant threats to public health and safety.

- c. Do you consider the DOJ's policy, as it is being implemented now, to reflect legitimate enforcement discretion consistent with the Take Care Clause?

**RESPONSE:** In all areas of civil and criminal enforcement, the Department uses its discretionary enforcement authority in a manner that seeks to focus limited investigative and prosecutorial resources to address the most significant public health

and public safety threats. In every instance, prosecutors must make decisions about how limited resources are brought to bear to best confront those threats. The Department's policies, including in the area of marijuana enforcement, are crafted to provide guidance on doing so in an effective, consistent and rational way, while giving prosecutors discretion within the constraints of that guidance to take into account the circumstances of each case.

- c. If you are confirmed, how do you plan to measure the effect of the DOJ's policy on the federal interest in enforcement of drug laws?

**RESPONSE:** If I am confirmed as Attorney General, the Department will continue to consider data of all forms — including existing federal surveys on drug usage, state and local research, and, of course, feedback from the community and from federal, state, and local law enforcement — on the degree to which existing Department policies and the state systems regulating marijuana related activity protect federal enforcement priorities and the public. The Department will continue to collect data and make these assessments through its various components and will continue to work with the Office of National Drug Control Policy and other partner agencies throughout the government to identify other mechanisms by which to collect and assess data on the effects of these state systems.

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**QUESTIONS FROM SENATOR SCHUMER**

19. Did you participate in the drafting of or provide input for the October 28, 2014 Executive Office for United States Attorneys' policy memo directing that U.S. Attorneys should pursue only the most egregious marijuana offenses on Indian reservations that are growing and selling marijuana, even if those reservations are located within states where marijuana is illegal under state (*and federal*) law? If so, what was the scope and substance of your participation and/or input?

**RESPONSE:** The Attorney General's Advisory Committee, which I chaired, provided input on the development of guidance on marijuana issues in Indian Country. That guidance makes clear that the same enforcement priorities and prosecutorial considerations that guide prosecutorial decisions in every state also apply in Indian Country. Further, the guidance emphasizes that United States Attorneys should consult with tribes individually to discuss individual tribe circumstances with regard to marijuana enforcement as they do with other issues involving federal law enforcement in Indian Country.

20. If confirmed, what actions would you direct a U.S. Attorney to take if an Indian reservation, located in a state where marijuana use is illegal under state law, legalized marijuana?

**RESPONSE:** Because each case presents different facts and legal questions, I am not in a position to comment on the hypothetical scenario raised in your question. However, as a general matter, if I am confirmed as Attorney General, consistent with

the Department's existing guidance, I would expect each United States Attorney to assess the threats and circumstances in his or her district, and to consult closely with tribal partners and the Justice Department when significant issues or enforcement decisions arise in this area.

21. If confirmed, what actions would you direct a U.S. Attorney to take if an Indian reservation, located in a state where marijuana use is legal under state law, criminalized marijuana?

**RESPONSE:** Because every circumstance is different, I am not in a position to comment on the hypothetical scenario raised in your question. However, as a general matter, if I am confirmed as Attorney General, consistent with the Department's existing guidance, I would expect each United States Attorney to assess the threats and circumstances in his or her district, and to consult closely with tribal partners and the Justice Department when significant issues or enforcement decisions arise in this area.

22. In his August 2013 memo to U.S. Attorneys, Deputy Attorney General Cole announced the Justice Department would essentially cease prosecutions in states that had legalized marijuana, as long as those states have "strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests." As Chairwoman of the Attorney General's Advisory Committee, were you involved in drafting that memo? If so, please explain your involvement, including what you advised the Attorney General with regard to the policies set forth in the memo.

**RESPONSE:** I was not involved in the drafting of the August 2013 memorandum.

23. Attorney General Holder has advocated for reducing mandatory minimum sentences for drug trafficking, and has endorsed legislation that would reduce by at least half the mandatory minimum sentences for trafficking in heroin, methamphetamine, cocaine, LSD, PCP, marijuana, and other opiates. A number of law enforcement groups, including the National Association of Assistant U.S. Attorneys (NAAUSA), the Federal Law Enforcement Officers Association, and the National Narcotic Officers' Associations' Coalition opposed that legislation. It was also reported that several other groups, including the Fraternal Order of Police, the National Sheriffs' Association, the International Association of Chiefs of Police, the National Association of Police Organizations, the Major County Sheriffs' Association and the National District Attorneys Association were very concerned that cutting mandatory minimums in half will severely impact their ability to secure a defendant's cooperation in indicting the "bigger fish" in a drug conspiracy. In a January 31, 2014 letter to this Committee, NAAUSA – which represents the interests of the 5,400 Assistant U.S. Attorneys nationwide – wrote:

“Mandatory minimums serve as an indispensable tool in enabling law enforcement and prosecutors to secure offender cooperation and dismantle criminal organizations. The current system of mandatory minimum penalties is the cornerstone in the ability of Assistant United States Attorneys and federal law enforcement agents to infiltrate and dismantle large-scale drug trafficking organizations and to take violent armed career criminals off the streets. Mandatory minimums deter crime and help gain the cooperation of defendants in lower-level roles in criminal organizations to pursue higher level targets. They have been demonstrably helpful in reducing crime. Time and again, Assistant United States Attorneys have solved crimes and secured justice through the deterrent power of mandatory minimum sentences.”

a. Do you agree with NAAUSA's statement?

**RESPONSE:** I believe that mandatory minimum sentencing statutes are among our many important tools that promote the goals of sentencing and public safety. At the same time, the Department's Smart on Crime initiative helps ensure that sentencing laws are used in a sensible and effective way that is proportional to the crime, while also holding offenders accountable and prioritizing our limited resources.

b. Do you agree that drug trafficking is a serious offense that is deserving of equally serious mandatory minimums in order to deter such behavior?

**RESPONSE:** As I noted in my testimony before the Committee, with respect to the enforcement of the narcotics laws that contain mandatory minimums — laws which I have had occasion to use on numerous occasions as a career prosecutor and United States Attorney — those laws are being followed not just by my Office but throughout the United States Attorney community. Every United States Attorney's Office retains and exercises the discretion to seek a mandatory minimum sentence. We also look at the nature of the crime and narcotics problems in our particular districts to determine whether a mandatory minimum sentence would be appropriate under the particular facts of each case.

24. As a United States Attorney, what types of drug offenders have been your priority targets?

**RESPONSE:** As noted above, as an Assistant United States Attorney, a career prosecutor, and as the United States Attorney for the Eastern District of New York, I have used narcotics laws on numerous occasions. In the Eastern District of New York, we rely heavily on the mandatory minimums statutes when dealing with the worst of the worst —

drug kingpins, against whom we have built significant trafficking cases, many of whom have been extradited from foreign countries or have been operating within our district.

25. If a member of a drug trafficking ring is apprehended while in possession of such a substantial amount of drugs so as to trigger a mandatory minimum sentence, and the individual cooperates, it is very common for the prosecutor to file a motion for “substantial assistance,” which means that person will not receive a mandatory minimum even though they were carrying enough drugs to trigger the mandatory minimum. How often would you estimate this occurs in your office?

**RESPONSE:** As a general matter, prosecutors look at all facts and evidence, as well as a defendant’s cooperation, in making charging and sentencing decisions for a particular defendant. Because every case presents its own unique set of facts that would bear on the decision regarding appropriate sentencing, I am not able to estimate how often Assistant United States Attorneys in the Eastern District of New York decide whether or not to pursue a mandatory minimum sentence in narcotics cases.

**Nomination of Loretta E. Lynch to be Attorney General of the United States**

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**QUESTIONS FROM SENATOR VITTER**

33. During your confirmation hearing, you stated that you do not support the legalization of marijuana. As you may know, DC is continuing to proceed with implementation of the initiative even though language preventing DC from moving forward with legalization efforts was included in the bill.
- a. What is your position on DC's Initiative 71 given the passage of HR 83, the Consolidated and Further Continuing Appropriations Act, which was signed into law by the President on December 16, 2014?

**RESPONSE:** As the United States Attorney for the Eastern District of New York, I am not familiar with the details of the legislation you have cited. As I noted during my testimony before the Committee, it is not the position of the Department of Justice to support the legalization of marijuana, nor would it be the position if I am confirmed as Attorney General.

- b. As the chief law enforcement official of the Executive Branch, will you enforce federal law including the Controlled Substance Act and the Anti-Deficiency Act in DC given marijuana is a Schedule 1 controlled substance and not subject to the Cole Memo since DC is not a state? If not, why not?

**RESPONSE:** As United States Attorney, and if I am confirmed as Attorney General, I am committed to enforcing the Controlled Substances Act (CSA). The Cole Memorandum sets out eight priority areas for federal marijuana enforcement, one of which is preventing the diversion of marijuana from states where it is legal under state law in some form to other states where it is not. In addition, the Cole Memorandum expressly states that

the federal government reserves the right to challenge a state marijuana law if that state does not implement strong and effective regulatory and enforcement systems that will address the threat that state law could pose to public safety, public health, and other law enforcement interests. These same considerations and limitations apply in the District of Columbia. The Department's focus is on applying its limited investigative and prosecutorial resources to enforcing the CSA in a manner that addresses the most significant threats to public health and safety, as discussed in the Cole memorandum.