

**Questions for the Record from Rep. Moore for The Honorable Merrick Garland**  
**“Oversight of the U.S. Department of Justice”**  
**Tuesday, June 4, 2024**

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**Concerning the Clearance Rate**

- 1. Looking at crime data from recent years, only approximately a third of crimes result in an arrest. In 2022, just 41 percent of crimes against persons were solved—42 percent of assaults, roughly half of homicides, and 22 percent of sex offenses. These numbers are troubling. What are you doing, as the chief law enforcement official in the country, to press upon state and local law enforcement to make arrests when crimes are committed?**
  
- 2. What can Congress do to better assist state and local law enforcement in boosting clearance rates and solving crime?**

**Response:** According to statistics released by the FBI, in 2023, there was a historic drop in homicides, and violent crime was at one of the lowest levels in 50 years.<sup>1</sup> In the first six months of 2024, violent crime decreased compared to the same period last year, including an almost 23% decrease in murders.<sup>2</sup> The Department has poured every available resource into working with our law enforcement and community partners to drive down violent crime. The Department will continue to deploy our technological and prosecutorial resources to identify and prosecute the principal drivers of gun violence. It will continue to invest in the essential programs that allow police departments to hire more officers. It will continue to build the public trust essential for public safety. And the Department will continue to support the evidence-based community violence intervention initiatives that save lives.

On April 3, 2024, the Department announced it added three new cities to the Criminal Division’s Violent Crime Initiative (VCI), building on the successful model for combating violent crime that was launched in Houston, Texas, in September 2022, and expanded to Memphis, Tennessee, in November 2023. The newly identified VCI cities were St. Louis, Missouri; Jackson, Mississippi; and Hartford, Connecticut. The VCI utilizes prosecutors from the Criminal Division’s Violent Crime and Racketeering Section—the nation’s foremost experts in racketeering prosecutions—to work alongside prosecutors from the U.S. Attorneys’ Offices, as well as dedicated investigative agents, analysts, and forensic experts from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), FBI, Drug Enforcement Administration (DEA), and other federal, state, and local law enforcement agencies. Through the VCI, the Criminal Division also works with community leaders in each city to best understand citizens’ concerns and to work to support them. Since the start of Houston’s VCI in September 2022, Houston saw reductions of 9% in violent crime and 20% in homicides when compared to 2023. In Memphis,

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<sup>1</sup> See FBI Crime Data Explorer, <https://cde.ucr.cjis.gov/> (last visited Dec. 2, 2024).

<sup>2</sup> See Press Release, Fed. Bureau of Investigation, [FBI Releases 2024 Quarterly Crime Report and Use-of-Force Data Update \(Sept. 30, 2024\)](https://www.fbi.gov/news/press-releases/fbi-releases-2024-quarterly-crime-report-and-use-of-force-data-update-q2), <https://www.fbi.gov/news/press-releases/fbi-releases-2024-quarterly-crime-report-and-use-of-force-data-update-q2>.

when compared to 2023, official counts of murders, robberies, and aggravated assaults have decreased since the VCI has been operational.

In addition, our grantmaking programs provide resources to assist state, local, Tribal, and territorial governments to combat and prevent crime, and to promote justice for victims. In FY 2023, the Department made awards totaling more than \$1 billion to promote safety and strengthen trust between law enforcement and the public, in addition to providing federal leadership, training, and technical assistance.

The Department's Office of Justice Programs (OJP) advises as follows:

OJP provides grant funding to support state, local, and Tribal law enforcement, courts, prosecutor offices, and other critical community safety stakeholders in strategic enforcement, prevention, and intervention efforts to address violent crime and improve clearance rates. OJP also provides funding, technical assistance, and other support for state, local, and Tribal law enforcement partnerships and collaboration efforts; forensic programs to identify those who commit crimes; and police training programs and equipment, such as body-worn cameras and bulletproof vests; and programs to investigate certain types of crimes.

For example, in FY 2023, OJP's Bureau of Justice Assistance (BJA) awarded over \$306 million through the Edward Byrne Memorial Justice Assistance Grant (JAG) program. The JAG program provides resources to states, local governments, and Tribes for additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for a range of program areas including law enforcement, prosecution, courts, crime prevention and education, and more.

BJA also provides grant funding and technical assistance to support the Department's Project Safe Neighborhoods (PSN) program. PSN is a nationwide initiative that brings together federal, state, local, and Tribal law enforcement officials, prosecutors, community-based partners, and other stakeholders to identify the most pressing violent crime problems in a community and develop comprehensive solutions to address them. Coordinated by the U.S. Attorneys' Offices (USAOs) in federal judicial districts throughout the 50 states and U.S. territories, PSN is customized to account for local violent crime problems and resources. In FY 2023, BJA distributed more than \$17 million in PSN funds across 93 judicial districts.

BJA also coordinates the Department's National Public Safety Partnership (PSP) program, which helps communities experiencing serious violent crime to build their capacity to fight crime by providing expedited, coordinated, and intensive training and technical assistance. To date, BJA has supported 63 jurisdictions through this program.

In addition, BJA's DNA and forensics programs provide tools that can lead to arrests and clearing cases. For example, in FY 2023, BJA awarded over \$160 million to support processing of DNA tests and sexual assault kits, and to investigate and prosecute cold cases.

BJA's National Sexual Assault Kit Initiative (SAKI) is a comprehensive program aimed at addressing and improving the criminal justice response to sexual assault, sexually motivated

homicides, and other violent cold cases. Established in 2015, SAKI provides support to jurisdictions by promoting victim-centered policies and practices, enhancing the testing of sexual assault kits (SAKs), and developing effective investigative and prosecutorial strategies.

Since its inception, SAKI has awarded funding to 90 grantees across 43 states and the District of Columbia. These jurisdictions have tested over 101,000 previously unsubmitted or partially tested SAKs, resulting in the creation of 39,171 DNA profiles. These profiles have been uploaded to the Combined DNA Index System (CODIS), leading to 30,233 new investigations and 19,035 CODIS hits. Notably, 10,176 of these kits have been linked to serial violent offenders, including 2,830 serial sex offenders. Through these efforts, SAKI significantly contributes to reducing violent crime, improving public safety, and enhancing criminal justice outcomes nationwide.

OJP's Bureau of Justice Statistics redesigned the National Crime Victimization Survey to improve data for crimes not reported to the police. The new survey features updated screening questions and expands measures of victim experiences, including use of victim services and satisfaction with police response. This year OJP's National Institute of Justice, through its FY 2024 Research and Evaluation of Policing Practices program, encouraged the submission of rigorous research proposals on investigative practices to enhance clearance rates.

Additionally, the Office of Community Oriented Policing Services (COPS Office) advises as follows:

The COPS Office has a number of grants and technical assistance resources available for law enforcement, including the COPS Hiring Program (CHP). CHP provides funding directly to law enforcement agencies to hire and/or rehire additional career law enforcement officers in an effort to increase their community policing capacity and crime prevention efforts.

For technical assistance, the COPS Office offers a continuum of services:

- The Collaborative Reform Initiative Technical Assistance Center (CRI-TAC) offers training and technical assistance upon request through a consortium of law enforcement stakeholder associations, subject matter experts (SME), and training providers. These engagements are narrowly scoped and conducted at the pace of the requesting agency.
- The Organizational Assessment program offers a more intensive form of technical assistance, involving in-depth assessments and technical assistance on systemic issues that challenge community trust and confidence. These engagements are the most comprehensive.
- The Critical Response program offers an intermediate form of technical assistance that includes issue-specific or after-action reviews and reports or targeted assistance in the wake of a critical incident. In contrast to Organizational Assessment, this program does not involve on-going implementation and technical assistance in the long term.

Additionally, the Office on Violence Against Women (OVW) advises as follows: OVW currently administers grant programs authorized by the Violence Against Women Act of 1994 and subsequent legislation. These grant programs are designed to develop the nation's capacity to reduce domestic violence, dating violence, sexual assault, and stalking by strengthening services to victims and holding offenders accountable. OVW also administers a Technical Assistance Program to provide OVW grantees with the training, expertise, and problem-solving strategies they need to meet the challenges of addressing sexual assault, domestic violence, dating violence and stalking. OVW's technical assistance projects offer in-person and online educational opportunities, peer-to-peer consultations, site visits and tailored assistance for OVW grantees and potential grantees. In more limited circumstances, OVW's technical assistance projects offer technical assistance to a small number of pilot sites as part of demonstration initiatives or assessments of newly developed training curricula or tools.

**Concerning the Potential Impact of *Loper Bright Enterprises v. Raimondo* (*Loper Bright*):**

3. **Has the Department, including its adjudicative bodies, conducted a review of ongoing adjudications that may be impacted, including on appeal, if *Chevron v. Natural Resources Defense Council* (*Chevron*) is abrogated or significantly narrowed by the *Loper Bright* decision?**
  - a. **If so, please list the adjudications you have identified which may be impacted.**
  - b. **If a review is ongoing, please provide the date it commenced, its status, the estimated completion date, and a list of the adjudications you have identified to- date which may be impacted.**
  - c. **If not, why hasn't the Department commenced a review? And is a review planned, and if so, when will it commence and when does the agency estimate it will conclude?**
4. **Has the Department conducted a review of ongoing civil enforcement actions that may be impacted, including on appeal, if *Chevron* is abrogated or significantly narrowed by the *Loper Bright* decision?**
  - a. **If so, please list the civil enforcement actions you have identified which may be impacted.**
  - b. **If a review is ongoing, please provide the date it commenced, its status, the estimated completion date, and a list of the recently final rules you have identified to-date which may be impacted.**
  - c. **If not, why hasn't the agency commenced a review? And is a review planned, and if so, when will it commence and when does the agency estimate it will conclude?**
5. **Has the Department conducted a review of recently final<sup>2</sup> rules that may be impacted if *Chevron* is abrogated or significantly narrowed by the *Loper Bright* decision?**

- a. If so, please list the recently final rules you have identified which may be impacted.
  - b. If a review is ongoing, please provide the date it commenced, its status, the estimated completion date, and a list of the recently final rules you have identified to-date which may be impacted.
  - c. If not, why hasn't the agency commenced a review? And is a review planned, and if so, when will it commence and when does the agency estimate it will conclude?
6. Has the Department conducted a review of recently final<sup>2</sup> rules that may be impacted if *Chevron* is abrogated or significantly narrowed by the *Loper Bright* decision?
- a. If so, please list the recently final rules you have identified which may be impacted.
  - b. If a review is ongoing, please provide the date it commenced, its status, the estimated completion date, and a list of the recently final rules you have identified to-date which may be impacted.
  - c. If not, why hasn't the agency commenced a review? And is a review planned, and if so, when will it commence and when does the agency estimate it will conclude?

Given the possibility that the Court's decision in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System* could subject older agency interpretations to this more searching judicial inquiry, and to facilitate coordination as described above, please answer the following questions:

7. Has the agency conducted a review of existing regulations<sup>3</sup> that may be impacted if *Chevron* is abrogated or significantly narrowed by the *Loper Bright* decision?
- a. If so, please list the existing regulations that you have identified which may be impacted.
  - b. If a review is ongoing, please provide the date the review commenced, the status of the review, the estimated date of completion, and a list of existing regulations that you have identified to-date which may be impacted.

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<sup>1</sup> For the purpose question 3., "on-going" includes any item that appears in either of the two (2) most recent versions of the Unified Regulatory Agenda that has yet to progress to a final rule, interim final rule, or direct final rule published in the *Federal Register*.

<sup>2</sup> For the purpose of question 4., "recently final" includes any final rule, interim final rule, or direct final rule published in the *Federal Register* from January 21, 2021 to the present.

<sup>3</sup> For the purpose of question 5., "existing regulations" includes any regulations appearing in the most recent edition of the Code of Federal Regulations that were

published as a final rule, interim final rule, or direct final rule at any time before January 21, 2021.

- c. **If not, why hasn't the agency commenced a review? And is a review planned, and if so, when will it commence and when does the agency estimate it will conclude?**
8. **Please describe any other work that your agency has done to prepare for the pending decision in *Loper Bright*, including when that work commenced, its status, and key insights produced from this work.**
9. **If your agency hasn't done other work, please explain why. If other work is planned, please describe the nature of that work, the date it will commence and the date your agency estimates it will conclude.**

**Response to Questions 3-9:** The Civil Division advises as follows:

The Department is continuing to assess how *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024) (*Loper Bright*) impacts the Department's operations, including when litigating cases on behalf of and providing legal advice to other federal agencies. *Loper Bright* held that, when reviewing agency action under the Administrative Procedures Act, "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." *Loper*, 144 S.Ct. at 2273. The Department has addressed the *Loper Bright* decision in a number of recent filings in federal court, often at the request of those courts.

Information about these court cases and any filings related to *Loper Bright*, as well as rulemakings is publicly available on the Public Access to Court Electronic Records (PACER) service, various commercial databases, the Federal Register ([federalregister.gov](http://federalregister.gov)), and the Unified Agenda of Regulatory and Deregulatory Actions (Unified Agenda), which is available at [reginfo.gov](http://reginfo.gov) and is sortable by agency.

Additionally, the Department takes seriously its obligation to exercise our statutory authorities lawfully. The Department will continue to implement our statutory directives and obligations, including, as necessary and appropriate, through regulations, consistent with our statutory authorities.

**Concerning the Immigration Court Backlog, National Security & Chief Judge McNulty:**

**10. How many cases have immigration judges dismissed, terminated, or administratively closed since January 20, 2021?**

**Response:** The Executive Office for Immigration Review (EOIR) advises as follows:

**Administrative Closures**

- FY 2021 (beginning January 20, 2021): 5,214
- FY 2022: 35,775
- FY 2023 (through July 31, 2023): 30,476

**Dismissals**

- FY 2021 (beginning January 20, 2021): 13,651
- FY 2022: 115,111
- FY 2023 (through July 31, 2023): 131,628

**Terminations**

- FY 2021 (beginning January 20, 2021): 30,611
- FY 2022: 38,968
- FY 2023 (through July 31, 2023): 43,275

**a. On what legal basis are immigration judges authorized to administratively close cases?**

**Response:** The Executive Office for Immigration Review (EOIR) advises as follows: Department regulations confirm the longstanding authority for immigration judges to administratively close cases. *See* 8 C.F.R. 1003.18; 89 FR 46742. Since at least the 1980s, immigration judges and the Board of Immigration Appeals have exercised their authority, where appropriate, to use administrative closure as a docketing tool. *See Arcos Sanchez v. Att’y Gen.*, 997 F.3d 113, 116–17 (3d Cir. 2021); *see also* 88 FR 62243–46 (describing the history of administrative closure). Administrative closure authority “is not limited to the immigration context” and is “utilized throughout the Federal court system, under a variety of names, as a tool for managing a court’s docket.” *Matter of Avetisyan*, 25 I&N Dec. 688, 690 n.2 (BIA 2012). Further, the Immigration and Nationality Act (INA) authorizes the Attorney General, broadly, to “establish such regulations . . . as the Attorney General determines to be necessary” for carrying out his duties in implementing the INA, *see* INA § 103(g)(2), 8 U.S.C. § 1103(g)(2). That authority encompasses establishing additional procedural rules that the Attorney General deems will promote the fair and efficient functioning of the adjudication system, especially on the many procedural issues that the INA itself does not address. Under this authority, the Attorney General has authorized immigration judges to administratively close cases in appropriate circumstances. 8 C.F.R. § 1003.18, 89 FR 46742.

**b. On what legal basis are immigration judges authorized to dismiss cases?**

**Response:** The Executive Office for Immigration Review (EOIR) advises as follows: The Immigration and Nationality Act (INA) grants the Attorney General the authority to create regulations necessary for implementing the INA and overseeing the adjudication system of EOIR. This authority is outlined in INA § 240, 8 U.S.C. § 1229(a); INA §§ 103(g)(1)-(2), 8 U.S.C. §§ 1103(g)(1)-(2). Utilizing this authority, the Attorney General has established regulations that support the ability of immigration judges to grant motions to dismiss. These regulations are detailed in 8 C.F.R. § 1003.10 and were published in the Federal Register on 89 FR 46742.

**c. What are the implications for an alien whose case has been administratively closed or dismissed?**

**Response:** The Executive Office for Immigration Review (EOIR) advises as follows:

Administrative closure is the temporary suspension of a case and removes the case from the active calendar until the case is recalendared. A noncitizen's case that has been administratively closed may be recalendared following a motion by either party. Dismissal ends removal proceedings, and proceedings may only be reinitiated upon Department of Homeland Security's (DHS) filing of a new charging document with the immigration court. Administrative closure and dismissal have different implications for a noncitizen's case. With either disposition, a noncitizen may proceed with any applications for relief for which they are eligible before the DHS, U.S. Citizenship and Immigration Services.

**d. How do case dismissals, terminations, and closures benefit the American people?**

**Response:** The Executive Office for Immigration Review (EOIR) advises as follows: Those docket management tools serve the interests of the American people by, among other things, promoting efficient and expeditious adjudication of cases and more efficient allocation of limited adjudicatory resources. An immigration judge or appellate immigration judge can administratively close, dismiss, or terminate cases when consistent with applicable law. These actions allow the immigration court or Board of Immigration Appeals to focus on cases that are ripe for adjudication.

**11. How has the Doyle Memorandum<sup>4</sup> affected the Executive Office for Immigration Review (EOIR)?**

**Response:** The Executive Office for Immigration Review (EOIR) advises as follows: The Doyle Memorandum guides the actions of the Department of Homeland Security. Immigration judges in EOIR decide the cases before them based on the facts and evidence presented during the course of the case.



**12. In FY23, there were nearly 160,000 *in absentia* removal orders for aliens who did not appear at their immigration court proceedings. What has led to an increase in *in absentia* removal orders?**

**Response:** EOIR advises as follows: EOIR has taken many steps in recent years to increase access to information about the immigration court system in multiple languages and to simplify the processes for updating the address at which a noncitizen receives hearing notices to ensure proper notice is served. If a noncitizen receives proper notice of the hearing, does not appear for the hearing, and the Department of Homeland Security (DHS) proves removability, the immigration judge will order the noncitizen removed *in absentia*. If an immigration judge determines that notice was not properly served, an *in absentia* order will not be issued; instead, the case could be reset for a new date to provide proper notice to the noncitizen. Alternatively, if DHS does not meet its burden to prove a case for removability, the immigration judge could terminate the case.

**13. Are you aware of any circumstances in which anyone at the Deputy Attorney General’s Office has been involved in hiring, termination, or non-conversion decisions related to immigration judges?**

**Response:** The Executive Office for Immigration Review (EOIR) advises as follows: Consistent with EOIR’s hiring policy, the Office of the Deputy Attorney General provides “consideration and approval” for the hiring decisions recommended by the EOIR Director.<sup>3</sup>

**14. According to news reports, earlier this year an immigration judge released on bond an alien on the terrorist watchlist after ICE prosecutors in court “did not share some classified information with the judge that purportedly showed” the alien’s ties to a terrorist organization. As a result, the immigration judge ordered the alien released on bond. Are you familiar with this case and the alien in question, Mohammad Kharwin?**

- a. **What are the circumstances that led to Kharwin’s release?**
- b. **What Department policies and procedures allowed Kharwin to be released on bond despite his terrorist ties?**
- c. **Last month, DHS revised its policy to allow immigration judges to have more access to classified information. Was this policy change precipitated by the Kharwin situation?**
- d. **How is the new policy different from the previous policy?**
- e. **Are you aware of any other situations in which an immigration judge released on bond an alien with terrorist ties or national security concerns due to a lack of sufficient information from DHS?**
- f. **Has the Department changed any of its policies because of this case?**

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<sup>3</sup> See Exec. Office for Immigr. Rev., *Immigration Judge and Appellate Immigration Judge Hiring Process* (Aug. 12, 2024), <https://www.justice.gov/eoir/JudgeHiringPolicy1>.

**Response to Questions 14 (a)-(f):** The Department remains vigilant in countering the threats posed by foreign terrorist organizations. Whenever the Department has indicators that criminal actors or individuals have connections to terrorism, the Department works swiftly and diligently with our partners to investigate and best mitigate any risk to the American public.

The Department is not in a position to speak for the Department of Homeland Security (DHS).

**15. Are you aware that according to the U.S. Office of Special Counsel, Chief Immigration Judge Sheila McNulty “issued immigration judges a policy on speaking engagements that did not include the anti-gag order language and emailed two judges a message referencing the speaking engagements policy that was perceived as a gag order”<sup>5</sup>?**

- a. **When did you become aware of this situation?**
- b. **Do you acknowledge that the Chief Immigration Judge’s initial email to the immigration judges in question was a mistake?**
- c. **How has this situation been resolved?**
- d. **What corrective action has been taken?**

**Response to Questions 15 (a)-(d):** The Executive Office for Immigration Review (EOIR) advises as follows:

Since at least 2011, EOIR has had policies and procedures related to speaking and writing engagements that align with the Department’s requirements surrounding employee speech in an official capacity.<sup>4</sup> In 2015, the National Association of Immigration Judges (NAIJ), the then-certified labor union for immigration judges (IJs), bargained with EOIR about the application of these policies to their members and leadership. In 2017, EOIR released a formal speaking engagement policy to document agency processes and assist employees when engaging with the public as part of their official duties. In 2018, NAIJ again engaged in formal bargaining with EOIR and agreed to using the Speaking Engagement Team (SET) process to approve IJ speaking engagements.<sup>5</sup> This agreement between EOIR and NAIJ applied the 2018 Speaking Engagement Policy to NAIJ members speaking in their official Department capacity, but NAIJ leadership retained an exception to speak in their NAIJ leadership capacity without going through the SET process.

EOIR’s current Speaking Engagement Policy (Policy), updated in 2021, requires all employees to seek supervisory approval to participate in public engagements related to their official duties. The Policy, and the associated process for seeking supervisory approval for public engagements, applies to both speaking and writing engagements and remains in place for all EOIR employees. EOIR recently met with NAIJ and agreed that the Policy applies to employees speaking in their

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<sup>4</sup> See Justice Manual 1-7.000 – Confidentiality and Media Contacts Policy (updated April 2018).

<sup>5</sup> The SET “consists of representatives from the Office of Policy, the Office of the General Counsel (OGC), and the Office of the Director, and assists with ensuring compliance with both the law and agency policy while also promoting consistency in all of EOIR’s communications.” Memorandum from the Office of the Director for the Executive Office for Immigration Review, *Speaking Engagements* (Mar. 29, 2024).

official capacity, but that the Policy does not apply when individuals speak in their capacity as NAIJ officials about topics unrelated to their official duties.

EOIR's senior executive staff, including the Chief Immigration Judge, are responsible for informing IJs and other agency staff about EOIR policies and procedures. This includes the Policy and policies regarding whistleblower rights and protections. The Department respects and takes seriously the rights of whistleblower to make protected disclosures, and all Department personnel are protected from retaliation for making a protected disclosure.<sup>6</sup> EOIR has updated the Policy to emphasize that it preserves, and does not limit, the rights of whistleblowers. Recently, the Chief Immigration Judge reaffirmed the application of EOIR's Policy to IJs, as well as EOIR's commitments to whistleblower protections as follows in an email to staff:

[N]othing in EOIR's policies is intended to supersede, conflict with, or restrict any employee's right to make protected disclosures or engage in protected activities. This includes making disclosures to Congress, the Office of Inspector General, the U.S. Office of Special Counsel, or any other agency component responsible for internal investigation or review of information relating to any violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; censorship related to scientific research or analysis; or any other whistleblower protection. You have the right to make protected disclosures and engage in protected activities without fear of experiencing any actions that are retaliatory or that could chill whistleblower activity.

EOIR has also updated its intranet page to highlight whistleblower protection information and hosted a mandatory training on July 11, 2024, for all supervisors, during which the Office of Special Counsel reviewed prohibited personnel practices.

- e. **Can you assure us that the Department is committed to transparency of the immigration courts, including through making available immigration judges and other EOIR officials for hearings and transcribed interviews?**

**16. Why did Chief Judge McNulty want to prevent immigration judges from speaking out about what is happening at EOIR during the Biden Administration?**

**Response to Questions 15(e), 16:** The Department is committed to transparency. Consistent with that commitment, the Department coordinated transcribed interviews for both the Chief Immigration Judge and the Executive Office for Immigration Review (EOIR) Acting Director in response to the Judiciary Committee's requests for that testimony. In addition, the Department coordinated a two-hour briefing with four senior officials from EOIR on December 13, 2023.

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<sup>6</sup> See Justice Manual § 1-7.120 (emphasizing, in the context of the Department's overall confidentiality policy, that "[n]othing in this Policy is intended to conflict with or limit whistleblower protections, such as those provided in 5 U.S.C. §§ 2302-2303 and applicable regulations").

**Questions for the Record from Rep. Fitzgerald for The Honorable Merrick Garland  
“Oversight of the U.S. Department of Justice”  
Tuesday, June 4, 2024**

- 1. Do you believe the VOCA Fix to Sustain the Crime Victims Fund Act of 2021 (P.L. 117- 27) will provide long-term sustainability to the Crime Victims Fund?**
- 2. Do you think the Department of Justice should continue to rely on deposits of monetary fines from criminal prosecutions to support victims of crime?**

**Response to Questions 1-2:** It is crucial to keep the Crime Victims Fund (CVF) solvent, and the Department has made great and immediate strides in protecting and growing the Fund following passage of the VOCA Fix. The FY 2025 President’s Budget contains a legislative proposal that would take effect in FY 2026 that will provide \$7.3 billion to the CVF distributed over a 5-year period. In addition, the proposal requests an annual appropriation of \$2 billion to the Fund to support VOCA programs. The goal is to provide a consistent funding source that will give states, territories, and service providers more predictability to help with effective planning.

The Office of Justice Programs (OJP) advises as follows:

OJP’s Office for Victims of Crime (OVC) is responsible for administering the CVF. The VOCA Fix became effective on July 22, 2021, and redirects monetary penalties from federal deferred prosecution agreements and nonprosecution agreements from the Treasury General Fund to the CVF. Since the enactment of the VOCA Fix, funds associated with deferred prosecution agreements and non-prosecution agreements have been deposited into the CVF, consistent with the changes made by the statute, minus the three percent offsetting collection authorized by Congress.

The Department is fully committed to supporting victims of crime. Since 2007, the CVF has received over \$31 billion in deposits from fines, penalties, special assessments, and bond forfeitures from federal cases. Through the CVF, the Department is able to support thousands of programs annually with millions of dollars awarded in services provided directly to crime victims who have been physically, emotionally, and financially harmed by criminal activity. In addition to the CVF, the Department supports crime victims by providing direct compensation through restitution, restoration, and remission. For example, since 2000, the Department has provided over \$12 billion in direct compensation to victims from forfeited funds through remission and restoration. The Department looks forward to working with Congress on other ways to provide funding to support crime victims.

- 3. Could you provide my office, and this Committee, with a briefing on the Department’s strategy to ensure sustained funding for the Crime Victims Fund?**

**Response:** The Office of Legislative Affairs reports that this briefing occurred on October 2, 2024.

4. **As you know, the Department of Justice Southern District of Florida has filed money laundering charges against the former Chair of the Philippines Commission on Elections (COMELEC) Andrew Bautista. These charges also reportedly implicate four executives of Smartmatic, a U.S.-based electronic voting machine company, as uncharged coconspirators who allegedly “caused or attempted to funnel \$4 million to Bautista,” in violation of U.S. law.**

**According to reports, the Smartmatic executives employed false email accounts, “slush funds,” code words, and “fake contracts” to conceal their alleged bribes to Mr. Bautista, who oversaw the award of nearly \$200 million in contracts to Smartmatic for voting machines used in the 2016 Philippine presidential election.**

**As I’ve previously communicated to the Department in a January 4, 2024, letter, these allegations raise significant questions about Smartmatic’s ongoing and future operations in the United States, particularly as for nearly five years the DOJ has also investigated whether Smartmatic’s alleged conduct in the Philippines is also in violation of the Foreign Corrupt Practices Act (FCPA). The Department has thus far failed to respond to my January 4, 2024, letter.**

**Could you provide my office, and this Committee, with an update regarding the DOJ’s ongoing investigation involving Smartmatic and the potential risks to U.S. national security and elections administration should these allegations prove to be true?**

**Response:** The Criminal Division advises as follows:

The Department appreciates the benefit of having your views on this matter. Consistent with Justice Manual § 1-7.410, the Department has referred your request for investigation to the proper investigative agency or component for review. The Department takes any allegation of criminal wrongdoing seriously and carefully reviews any allegation in accordance with the Principles of Federal Prosecution. *See* Justice Manual § 9-27.000. Standard Department policy is not to confirm or deny the initiation or existence of any investigation. However, for more information on a recent indictment, see <https://www.justice.gov/opa/pr/four-men-charged-philippine-bribery-and-money-laundering-scheme>.

5. **Since Congress enacted the Protecting Lawful Streaming Act of 2020 (P.L. 116-260), there has been a steady decrease in the number of copyright piracy cases filed by the Department of Justice. What is driving this decrease – is it a lack of crimes being committed, a lack of referrals, a lack of resources, or prioritization of other cases?**
  - a. **Follow on question: Have any cases been filed under the authorities that were expanded by the Protecting Lawful Streaming Act of 2020, and if not, why not?**
  - b. **Follow on question: Does DOJ expect that the authorities provided by the Protecting Lawful Streaming Act of 2020 will, in the long**

**term, result in significantly greater or more effective prosecutions of copyright piracy?**

**Response to Questions 5, 5(a), 5(b):** The Criminal Division advises as follows:

Copyright piracy cases are of enormous concern to the Department. Investigating streaming sites is very difficult, including securing foreign cooperation, which is often necessary. For example, for some streaming sites, the location of the servers, the location of the domain name registration, and the location of the individuals responsible are all outside the United States in places where they believe local law enforcement will not follow U.S. legal process.

In addition, given the profusion of these sites and the amount of streaming that is occurring, we are working to increase our capacity to address these crimes.<sup>7</sup> Specifically, the Computer Crime & Intellectual Property Section (CCIPS) executes the Criminal Division's work in enforcing criminal intellectual property (IP) statutes. CCIPS's IP team prosecutes criminal IP cases and provides expertise for other prosecutors, including more than 260 Computer Hacking and Intellectual Property Assistant United States Attorneys and investigators across the country. CCIPS also works closely with the investigative partners at the National Intellectual Property Rights Coordination Center to coordinate among multiple jurisdictions in complex IP matters.<sup>8</sup>

This year, Franklin Valverde Jr., 40, of Melbourne, Florida was sentenced to one year and one day after pleading guilty to providing illegal access to digital streaming services.<sup>9</sup> The conviction is believed to be the first in the nation under the "Protecting Lawful Streaming Act" (PLSA) that went into effect in 2021.<sup>10</sup>

The PLSA will help the Department prosecute copyright piracy by providing additional tools to target illicit streaming sites. The Department remains committed to using all available tools, including enhanced penalties under the PLSA, to pursue large-scale illicit streaming sites.

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<sup>7</sup> See *Intellectual Property: Enforcement Activities by the Executive Branch Before the S. Subcomm. On Cts., Intellectual Property, and the Internet of the H. Comm. of the Judiciary*, 118<sup>th</sup> Cong. 36 (2024).

<sup>8</sup> See *Intellectual Property: Enforcement Activities by the Executive Branch Before the S. Subcomm. On Cts., Intellectual Property, and the Internet of the H. Comm. of the Judiciary*, 118<sup>th</sup> Cong. 1-7 (2024) (Testimony of Josh Goldfoot, Deputy Asst. Attorney General, Criminal Div., U.S. Dep't of Justice, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Goldfoot%20Testimony.pdf>).

<sup>9</sup> Press Release, United States Attorney's Office for the District of South Carolina, *Florida Man Sentenced to One Year and One day in Federal Prison for Providing Illegal Access to Digital Streaming Services* (May 2, 2024), <https://www.justice.gov/usao-sc/pr/florida-man-sentenced-one-year-and-one-day-federal-prison-providing-illegal-access>.

<sup>10</sup> *Id.*

**Questions for the Record from Rep. Spartz for The Honorable Merrick Garland  
“Oversight of the U.S. Department of Justice”**

**Tuesday, June 4, 2024**

- 1. What is the so-called gun show loophole you mentioned closing in a press conference about ATF’s Engaged in the Business Rule on April 4th, 2024? Is the gun show loophole real?**

**Response:** As part of a press conference on April 11, 2024, I spoke about the Bipartisan Safer Communities Act and Engaged in the Business. As part of the regulation, it expands the definition of who must obtain a license and conduct a background check before selling guns. It also closes the “gun show loophole.” Under this regulation, it will not matter if guns are sold on the internet, at a gun show, or at a brick-and-mortar store—if you sell guns predominantly to earn a profit, you must be licensed, and you must conduct background checks.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises the following: Many have operated as if the Gun Control Act (GCA) excludes those who sell firearms at gun shows from licensing and background check requirements. But, as the Engaged in the Business Final Rule clarifies, “There is no statutory exemption under the GCA for unlicensed persons to engage in the business of dealing in firearms at a gun show, or at any other venue,” and “all persons who engage in the business of dealing in firearms must be licensed (and, once licensed, conduct background checks), regardless of location.”<sup>11</sup>

- 2. Did ATF Director Dettelbach not tell the truth to Rep. Thomas Massie on May 23rd, 2024 when he said there is no gun show loophole “and there never was” during the Judiciary Oversight Committee hearing?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises the following:

As the Engaged in the Business Final Rule clarifies, “There is no statutory exemption under the GCA [Gun Control Act] for unlicensed persons to engage in the business of dealing in firearms at a gun show, or at any other venue,” and “all persons who engage in the business of dealing in firearms must be licensed (and, once licensed, conduct background checks), regardless of location.”<sup>12</sup> In accordance with the GCA, the Director testified:

MASSIE: OK. The department also notes that the term gun show loophole is a misnomer in that there is no statutory exemption under the Gun Control Act for unlicensed persons to engage in the business of dealing in firearms at a gun show or at any other venue. I hope the other side of the aisle, this is the one useful thing that I found in 16 page rule and, you know, hundreds of pages of explanation, is to show

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<sup>11</sup> See Definition of “Engaged in the Business” as a Dealer in Firearms, 89 Fed. Reg. 28968 (Apr. 19, 2024) (to be codified at 27 C.F.R pt 478).

<sup>12</sup> *Id.*

people that there is no gun show loophole. Do you agree with the department and with your own rule here?

DETTELBAACH: I agree that Congress never said, and has never said, and hasn't said now, didn't say before this, that somebody who is engaged in the business--those are the words there--can do that without a license depending on where they sit. People have encouraged the perception, and we have seen an increased level of noncompliance among people who are either intentionally or otherwise breaking Congress statute.

MASSIE: The only people encouraging this perception are the left side of the aisle and the media. There is no gun show loophole. I am glad you finally admitted that. Now, I want to get to something else.

DETTELBAACH: I have said that publicly. There never was.<sup>13</sup>

**3. Will you enforce the ATF's Engaged in the Business Rule in states that have a preliminary injunction?**

**Response:** The Department complies with court orders, subject to appeal where appropriate.<sup>14</sup>

**4. Will you enforce ATF's Engaged in the Business Rule against members of organizations that have a preliminary injunction?**

**Response:** The Department complies with court orders, subject to appeal where appropriate.

**5. Will you enforce the ATF's Engaged in the Business Rule against anyone who isn't in those four states or a member of Gun Owners of America (GOA), the Virginia Citizens Defense League (VCDL), or the Tennessee Firearms Association (TFA)?**

**Response:** The Department and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) have authority to enforce the Engaged in the Business Final Rule, as appropriate, for relevant violations of law, where individuals are not covered by a preliminary injunction or where enforcement is not otherwise prohibited by law.

**6. Will you enforce the rule against new members of GOA, VCDL, or TFA?**

**Response:** The Department complies with court orders, subject to appeal where appropriate.

**7. Do you think it is fair for the Department of Justice to enforce an ATF rule against some gun owners but not others merely because they did not have the money to sue or join a national organization dedicated to protecting their Second Amendment from infringement?**

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<sup>13</sup> Oversight of the Bureau of Alcohol, Tobacco, Firearms, and Explosives Before the H. Judiciary Comm. 118th Cong. (May 23, 2024).

<sup>14</sup> See *Kansas, et al. v. Garland et al*, 24-cv-01086-TC-TJJ (D. Kan. Jul. 10, 2024).



**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises as follows:

Prior to enactment of the Bipartisan Safer Communities Act (BSCA), there was significant noncompliance with the federal requirement in the Gun Control Act (GCA) to obtain a license by persons engaged in the business of dealing firearms. Licensed dealers are required to run background checks on prospective purchasers and maintain transaction records through which guns recovered at crimes scenes can be traced. Non-compliance with these Congressional mandates was arming violent criminals and preventing law enforcement from tracing crime guns. As is clear from the text of the statute, preventing these outcomes led Congress to clarify in the statute what it means to be “engaged in the business” of dealing firearms.

For example, one of the BSCA’s primary authors specifically cited a 2019 mass shooting in Midland-Odessa, a tragedy in which seven victims, including three police officers, were shot to death and 25 others were wounded with a firearm that an unlicensed dealer sold to a prohibited person, as the type of tragedy the new licensing provision is intended to prevent:

*Our proposal also cracks down on illegal sellers and manufacturers of firearms, like the man who sold a gun to the shooter who killed seven people and injured 25 others in Midland and Odessa out in West Texas. The shooter knew he couldn’t pass a traditional background test, so he traveled to Texas and purchased a firearm from somebody who made knock off AR-15s out of parts he purchased over the internet. And, of course, no background check was done, and tragedy ensued.<sup>15</sup>*

The Engaged in the Business (EIB) Final Rule, signed on April 10, 2024, amended ATF’s regulations to implement the statutory changes made by Congress in the BSCA and provides practical guidance aimed at identifying under current law, specific, identifiable actions that presumptively indicate that someone is engaged in the business of selling guns to predominately earn a profit.

The Department and ATF have promulgated the EIB Final Rule because, as Congress determined in passing the BSCA, engaging in the business of dealing firearms without a license is not a victimless crime.

In the two-year period prior to the enactment of the BSCA, prosecutions for unlawful dealing without a license had increased by 52%,<sup>16</sup> and unlawful dealing without a license is now the most frequent type of firearms trafficking, accounting for the source of firearms in 40% of all trafficking cases.<sup>17</sup> Trafficked firearms end up in the hands of violent individuals, including convicted felons (59.6% of the time); known gang

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<sup>15</sup> See C-SPAN, Sen. Cornyn on Bipartisan Gun Proposal, (June 13, 2022), <https://www.c-span.org/video/?520942-10/sen-cornyn-bipartisan-gun-proposal>.

<sup>16</sup> Press Release, U.S. Dep’t of Justice, *FACT SHEET: Update on Justice Department’s Ongoing Effort to Tackle Gun Violence* (June 14, 2023).

<sup>17</sup> See Bureau of Alcohol, Tobacco, Firearms and Explosives, *National Firearms Commerce and Trafficking Assessment: Firearms Trafficking Investigations, Vol. III, Pt. III: Firearm Trafficking Channels and Methods Used*, at 2 (Apr. 4, 2024), available at <https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-iii/download#page%3D2>.

members or associates (29.1% of the time); drug users (22.2% of the time); and drug traffickers (22.1% of the time).<sup>18</sup>

Trafficked firearms, moreover, are often used to commit additional crimes. A recent ATF study of thousands of investigations from 2017 to 2021, showed that trafficked guns were used for drug offenses and trafficking (653 times); aggravated assault (446 times); homicide (265 times); attempted homicide (222 times); and robbery or home invasions (133 times).<sup>19</sup>

In enacting the BSCA, Congress specifically sought to address the threat posed by unlicensed dealing by expanding the category of people who must obtain a license and conduct background checks before selling firearms. Consistent with the changes made by the BSCA, the EIB Final Rule requires makes clear that licensing is required only for those engaged in the business of firearms dealing predominantly for profit.

#### 8. How many pistol braces were turned in pursuant to ATF's pistol brace rule?

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises as follows:

ATF Final Rule 2021R-08, Factoring Criteria for Firearms with Attached 'Stabilizing Braces' (Stabilizing Brace Final Rule), was signed on January 13, 2023, amending ATF's regulations to clarify when a rifle is designed, made, and intended to be fired from the shoulder. At that time, as set forth in Section V.B of the Stabilizing Brace Final Rule, persons (who are not federal firearms licensees) in possession of a short-barreled rifle equipped with a stabilizing brace were given until May 31, 2023, to take one of the following steps to comply with the National Firearms Act's (NFA) requirements.<sup>20</sup>

1. Remove the short barrel and attach a 16-inch or longer rifled barrel to the firearm, thus removing it from the scope of the NFA.
2. Submit through the eForms system an Application to Make and Register a Firearm, ATF Form 1 ("E-Form 1") by May 31, 2023.
3. Permanently remove and dispose of, or alter, the "stabilizing brace" such that it cannot be reattached, thereby removing the weapon from regulation as a "firearm" under the NFA.
4. Turn the firearm in to a local ATF office.
5. Destroy the firearm.

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<sup>18</sup> See Bureau of Alcohol, Tobacco, Firearms and Explosives, *National Firearms Commerce and Trafficking Assessment: Firearms Trafficking Investigations, Vol. III, Pt. VI: Characteristics of Firearm Traffickers, End Users, and Defendants*, at 13 (Apr. 4, 2024) available at <https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-vi/download#page%3D13>.

<sup>19</sup> See Bureau of Alcohol, Tobacco, Firearms and Explosives, *National Firearms Commerce and Trafficking Assessment: Firearms Trafficking Investigations, Vol. III, Pt. IX: Investigation Outcomes*, at 4 (Apr. 4, 2024) available at <https://www.atf.gov/firearms/docs/report/nfcta-volume-iii-part-ix/download#page%3D4>.

<sup>20</sup> Section V.B of the Final Rule also sets forth the steps that federal firearms licensees must take to come into compliance with the NFA's requirements by May 31, 2023. See Factoring Criteria for Firearms With Attached "Stabilizing Braces," 27 C.F.R. §§ 478-79 (2023).

Pursuant to Option 4, as of August 2024, approximately 51 stabilizing braces were turned into ATF following the implementation of the Stabilizing Brace Final Rule.

**9. How many pistol braces does ATF have in its possession?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises that, as of August 2024, approximately 51 stabilizing braces were turned in to ATF following the implementation of the Stabilizing Brace Final Rule.

**10. What will ATF do with these pistol braces now that the rule has been vacated?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises that its policy is to retain stabilizing braces that were voluntarily surrendered pursuant to the Stabilizing Brace Final Rule, pending final adjudication of all legal challenges.

**11. Will ATF issue another NFA tax amnesty now that the rule has been vacated and the basis for giving tax free amnesty before no longer exists or will gun owners be forced to pay the unconstitutional tax?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises as follows: In 1934, Congress statutorily imposed taxes pursuant to the National Firearms Act (NFA) on the making or transfer of firearms regulation under the NFA. Specifically, by way of the NFA, Congress regulated shotguns having a barrel or barrels of less than 18 inches in length; weapons made from a shotgun if such weapons as modified have an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; rifles having a barrel or barrels of less than 16 inches in length; weapons made from a rifle if such weapons as modified have an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; any other weapon, as defined in subsection (e); machineguns; any silencer (as defined in section 921 of title 18, United States Code); and destructive devices. Moreover, in addition to statutorily imposed taxes on these regulated firearms, in passing the NFA, Congress also statutorily mandated an annual payment of a special (occupational) tax by licensees engaged in the business of manufacturing, dealing in, or importing NFA firearms. The Department and ATF are committed to enforcing the laws passed by Congress, including the tax and registration requirements under the NFA.

**12. How many bump stocks does ATF have in its possession?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises as follows: After the issuance of ATF Final Rule 2018R-22F, Bump-Stock-Type Devices (Bump Stock Final Rule), as of August 2024, approximately 1,100 bump stocks were voluntarily surrendered to ATF.

**13. Has DOJ kept all the bump stocks which were surrendered to ATF pursuant to the bump stock ban?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises that its policy and practice was to retain bump stocks that were surrendered pursuant to the Bump Stock Final Rule, subject to final disposition.

**14. Will ATF be returning bump stocks to their rightful owners—including individuals and corporations?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises as follows: As a result of *Garland v. Cargill*, 602 U.S. 406 (2024), ATF is in the process of identifying and notifying those individuals with potential claims to the property. A variety of factors, including the fact that the devices remain illegal under state law in a number of jurisdictions, could influence the total number of bump stocks returned.

**15. Will ATF be reimbursing gun owners for bump stocks it destroyed?**

**16. What will ATF do to compensate gun owners who destroyed their bump stocks in compliance with ATF's illegal bump stock ban?**

**Response to Questions 15-16:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises that its policy and practice was not to destroy bump stocks that were surrendered pursuant to the Bump Stock Final Rule.

**17. If a bump stock is not a machine gun, then it is clear that ATF's justification for the ban on forced reset triggers is wrong too. Will ATF retract its Open Letter To All Federal Firearms Licensees dated March 22nd, 2022 declaring forced reset triggers to be machine guns?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises as follows:

On June 14, 2024, the United States Supreme Court in *Garland v. Cargill*, 602 U.S. 406 (2024) held that a semiautomatic rifle equipped with a non-mechanical bump stock does not meet the definition of a “machinegun” as defined under 26 U.S.C. § 5845(b) of the National Firearms Act (NFA) because the Court determined it cannot fire more than one shot by a single function of the trigger and, even if it could, it does not do so automatically.

The bump stocks at issue in this case are non-mechanical bump stocks, i.e., bump stocks that rely on the forward pressure from the shooter's non-trigger hand to force the rifle and trigger forward after recoil. Other devices that ATF has classified as machinegun conversion devices (e.g., mechanical bump stocks with springs, forced reset triggers, and switches) were not at issue in this case. The ATF has no plans to rescind the Open Letter to All Federal Firearms Licensees. Should additional guidance be warranted, the letter will be appropriately updated.

**18. How many forced reset triggers were surrendered to ATF?**

**19. How many forced reset triggers does ATF currently possess?**

**Response to Questions 18-19:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises as follows: Forced reset triggers were not at issue in the *Garland v. Cargill*, 602 U.S. 406 (2024). Moreover, ATF classified machinegun conversion devices (forced reset triggers, switches, and bump stocks with springs) were not an issue in the case and are illegal under the Gun Contract Act and National Firearms Act. Accordingly, while such machinegun conversion devices may be seized and forfeited pursuant to federal law, ATF does not routinely accept voluntarily surrender of forced reset triggers.

**20. Will ATF be returning forced reset triggers to their rightful owners—including individuals and corporations?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises that it will follow relevant policies and procedures for disposal of property at issue in a law enforcement investigation.

**21. Will ATF be reimbursing gun owners for forced reset triggers it destroyed?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises as follows: Forced reset triggers, because forced reset triggers were not at issue in the *Garland v. Cargill*, 602 U.S. 406 (2024). Moreover, ATF has classified forced reset triggers as machinegun conversion devices (forced reset triggers, switches, and bump stocks with springs), which are illegal under the Gun Contract Act and National Firearms Act. Accordingly, while such machinegun conversion devices may be seized and forfeited pursuant to federal law, ATF does not routinely accept voluntarily surrender of forced reset triggers.

**22. What will ATF do to compensate gun owners who destroyed their forced reset triggers in compliance with ATF's illegal bump stock ban?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises as follows: The Department's Bump Stock Final Rule, 83 Fed. Reg. 66514, did not pertain to forced reset triggers. Moreover, the Department and ATF have no plans to compensate individuals if they voluntarily surrendered their forced reset triggers for other reasons, especially given, as discussed above, those devices are illegal under the Gun Contract Act and National Firearms Act.

**23. Why did ATF 2021R-05F require that Forms 4473 be kept permanently (and thus more records would be submitted to ATF pursuant to 18 U.S.C. 923(g)(4)) when Congress clearly stated in the Firearms Owners Protection Act that: "No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any**

**political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established.”?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises as follows:

Records of production, acquisition, and disposition of all firearms are required by the Gun Control Act (GCA), 18 U.S.C. §§ 923(g)(1)(A) and (g)(2), to be completed and maintained by Federal Firearms Licensees (FFLs) at their licensed business premises for such period, and in such form, as the Attorney General may prescribe by regulations. In ATF 2021R-05F, ATF exercised authority to change the manner and duration in which those records are maintained. Although ATF has the authority to inspect an FFL’s records under certain conditions pursuant to 18 U.S.C. §§ 923(g)(1)(B)–(C), the records belong to and are maintained by the FFLs, not the government. Only after an FFL discontinues business does the GCA, 18 U.S.C. § 923(g)(4), require FFLs to provide their records to ATF so that tracing of crime guns can continue. Prior to the rule, licensees were required to maintain their acquisition and disposition records for at least 20 years. This rule merely extended the 20-year retention period so that those records were not destroyed and could be used for crime gun tracing purposes. In fact, the Firearms Owners’ Protection Act provision referenced above, 18 U.S.C. § 926(a), further provides that “[n]othing in this section expands or restricts the Secretary’s authority to inquire into the disposition of any firearm in the course of a criminal investigation.”

**24. How many Out-of-Business Records does ATF currently have in its possession in both digital and physical format? The last count given to Congress was “920,664,765 OBR as of November 2021” with 865,787,086 “in digitalized format.”**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises as follows:

ATF’s National Tracing Center (NTC), which houses out-of-business records (OBRs), is the United States’ only crime gun tracing facility. NTC’s mission is to conduct firearms tracing to provide investigative leads in the fight against violent crime and to enhance public safety. Firearm tracing provides critical information to assist local, state, Federal, and foreign law enforcement agencies in investigating and solving firearms crimes; detecting firearms trafficking; and tracking the intrastate, interstate, and international movement of crime guns.

OBRs are integral in the firearms tracing process, and, between 2000 and 2021, were used in over 53% of 7.6 million gun crime traces.<sup>21</sup> By tracing OBRs, ATF was able to identify the shooter who attempted to assassinate former President Trump at a rally in Butler, Pennsylvania. ATF agents responded to the scene within minutes of the shooting and completed an urgent trace through ATF’s NTC using OBRs from a closed gun dealer. Results were provided to the FBI and Secret Service in less than 30 minutes, which helped identify the shooter.

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<sup>21</sup> See Bureau of Alcohol, Tobacco, Firearms and Explosives, *National Firearms Commerce and Trafficking Assessment: Firearms Trafficking Investigations – Volume II, Part II* (Nov. 7, 2023), available at <https://www.atf.gov/firearms/docs/report/nfcta-volume-ii-part-ii-ntc-overview/download>.

Under a longstanding statutory requirement, FFLs that discontinue business must submit their firearm transaction records to the NTC.<sup>22</sup> These OBRs are maintained by the NTC. On average, the NTC receives 6.5 million pages of OBRs per month—and as of August 2024, the NTC estimates that it has approximately 1.1 billion pages of OBRs.

ATF maintains all of these OBRs in accordance with statutory requirements, which makes them intentionally difficult to access and use. For example, search functionality of OBRs is limited, and ATF does not maintain a searchable database of these records.

**25. Is ATF or DOJ working on any new rules related to firearms?**

**Response:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) advises as follows: The Department and ATF are committed to continuous improvement in applying the authority provided by Congress to serve and protect the American people. When that involves rulemaking, the Department follows the transparency and public comment provisions provided by Congress in the Administrative Procedures Act, other legal requirements, and other relevant laws. Information about potential rulemaking is available in the Unified Agenda.

- 1. The average offender for 18 U.S.C. 922(g) was sentenced to 63 months in federal prison in FY 2022. Is DOJ going to provide similar recommendations for sentencing Hunter Biden?**
- 2. Can you confirm now that the “Hunter Biden laptop” (as entered into evidence at the Hunter Biden trial) was not Russian disinformation?**

**Response to Questions 26-27:** In ongoing matters, the Department speaks through its filings.

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<sup>22</sup> See 18 U.S.C. § 923(g)(4).