

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

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 to boost clearance rates and solve crime?

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 on-going¹ rulemakings that may be impacted if *Chevron* is abrogated or significantly narrowed by the *Loper Bright* decision?
 - a. If so, please list the ongoing rulemakings 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 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?

6. Has the Department conducted a review of recently final² 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 regulations³ 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.

¹ 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*.

² 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.

³ 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.

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?
 - a. On what legal basis are immigration judges authorized to administratively close cases?
 - b. On what legal basis are immigration judges authorized to dismiss cases?
 - c. What are the implications for an alien whose case has been administratively closed or dismissed?
 - d. How do case dismissals, terminations, and closures benefit the American people?
11. How has the Doyle Memorandum⁴ affected the Executive Office for Immigration Review (EOIR)?
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?
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?
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?

⁴ Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion, April 3 2022

- 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?
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”⁵?
- 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?
 - 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?

⁵ Press Release, U.S. Off. of Special Counsel, OSC Strongly Enforces the Prohibition Against Employee Gag Orders That Chill Whistleblowing (Apr. 3, 2024), <https://osc.gov/News/Pages/24-11-Prohibition-Gag-Orders-Whistleblowing.aspx>.

Questions for the Record from Rep. Fitzgerald for The Honorable Merrick Garland
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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?
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?
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?

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?

Questions for the Record from Rep. Spartz for The Honorable Merrick Garland
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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?
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?
3. Will you enforce the ATF’s Engaged in the Business Rule in states that have a preliminary injunction?
4. Will you enforce ATF’s Engaged in the Business Rule against members of organizations that have a preliminary injunction?
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)?
6. Will you enforce the rule against new members of GOA, VCDL, or TFA?
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?
8. How many pistol braces were turned in pursuant to ATF’s pistol brace rule?
9. How many pistol braces does ATF have in its possession?
10. What will ATF do with these pistol braces now that the rule has been vacated?
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?
12. How many bump stocks does ATF have in its possession?
13. Has DOJ kept all the bump stocks which were surrendered to ATF pursuant to the bump stock ban?

14. Will ATF be returning bump stocks to their rightful owners—including individuals and corporations?
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?
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?
18. How many forced reset triggers were surrendered to ATF?
19. How many forced reset triggers does ATF currently possess?
20. Will ATF be returning forced reset triggers to their rightful owners—including individuals and corporations?
21. Will ATF be reimbursing gun owners for forced reset triggers it destroyed?
22. What will ATF do to compensate gun owners who destroyed their forced reset triggers in compliance with ATF's illegal bump stock ban?
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."?
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."
25. Is ATF or DOJ working on any new rules related to firearms?
26. 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?
27. Can you confirm now that the "Hunter Biden laptop" (as entered into evidence at the Hunter Biden trial) was not Russian disinformation?