

Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 18, 2015

QUESTIONS 1-18 FROM CHAIRMAN GRASSLEY

HSBC: As United States Attorney for the Eastern District of New York, you found that HSBC had laundered, “at least \$881 million in drug trafficking proceeds – including proceeds of drug trafficking by the Sinaloa Cartel in Mexico and the Norte del Valle Cartel in Colombia.”¹ Yet to date, you have not charged or fined a single HSBC employee. In your response to my questions for the record, you said that you “carefully considered whether there was sufficient admissible evidence to prosecute an individual and whether such a prosecution otherwise would have been consistent with the principles of federal prosecution contained in the United States Attorney’s Manual.”

1. In the course of your investigation, which individuals at HSBC do you believe were most culpable for this money laundering?

RESPONSE: As explained in the Statement of Facts attached to the Deferred Prosecution Agreement (DPA) filed with the Court on December 11, 2012, as a result of “concurrent [anti-money laundering] failures” at HSBC Bank USA and HSBC Mexico, at least \$881 million in drug trafficking proceeds “were laundered through HSBC Bank USA without being detected.” Note that we did not charge HSBC with money laundering. Rather, HSBC’s failure to maintain an effective anti-money laundering program violated the Bank Secrecy Act by creating a corporate environment that failed to stop others from laundering money through HSBC. Although grand jury secrecy rules prevent me from discussing the facts involving any individual or entity against whom we decided not to bring charges, as I do in all cases in which I am involved, I and the dedicated career prosecutors handling the investigation carefully considered whether there was sufficient admissible evidence to prosecute individuals at HSBC and whether any such prosecution otherwise would have been consistent with the principles of federal prosecution contained in the United States Attorney’s Manual.

2. What consequences or accountability, if any, were you able to impose on those individuals through the deferred prosecution agreement? If none, please explain why not.

RESPONSE: Our prosecution of HSBC resulted in a number of consequences to the individuals who oversaw HSBC’s anti-money laundering and sanctions compliance programs during the relevant time period. As noted above, the weaknesses in these programs allowed others to launder money through HSBC. Virtually all of the senior executives who oversaw HSBC’s flawed compliance programs were replaced. Furthermore, HSBC “clawed back” bonuses for senior executives who oversaw the anti-money laundering program. HSBC also took a number of steps to correct the lack of accountability over its anti-money laundering and sanctions

¹ Press Release, U.S. Department of Justice, Office of Public Affairs, HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement (Dec. 11, 2012).

compliance programs. These steps included: restructuring its executive bonus system so that any executive's bonus is dependent upon that executive meeting compliance and anti-money laundering standards; reorganizing its anti-money laundering department to elevate its status within the institution, including having the anti-money laundering director report directly to the Board of Directors and senior management; simplifying its control and reporting structures for the entire organization, which enables HSBC to better understand and address anti-money laundering and sanctions risks worldwide; and taking significant steps to promote the sharing of information within the organization. As described in detail below, through the DPA, the Department also secured from HSBC a commitment to U.S. compliance standards throughout the world.

3. Why do you believe that concluding an investigation into \$881 million in money laundering without a single indictment or fine of an individual is a satisfactory result?

RESPONSE: As discussed in response to question 1, the HSBC investigation stemmed from the prosecution and conviction of several money launderers who took advantage of HSBC's lax controls and resulted in charges that HSBC violated the Bank Secrecy Act. That investigation revealed systemic flaws in the bank's anti-money laundering regime, which led to the Department's scrutiny of the bank. As the United States District Judge overseeing the case observed in his opinion approving the DPA, "the DPA imposes upon HSBC significant, and in some respect extraordinary, measures" and the "decision to approve the DPA is easy, for it accomplishes a great deal." For example, the anti-money laundering provisions of the Bank Secrecy Act apply only to domestic U.S. financial institutions. The DPA requires HSBC to engage in anti-money laundering and compliance efforts beyond the requirements of the Bank Secrecy Act, and it requires such efforts worldwide, and that HSBC follow the highest or most effective anti-money laundering standards available in any location in which it operates. That means, at a minimum, all of HSBC worldwide must adhere to U.S. anti-money laundering standards. We could not have accomplished this by obtaining a conviction at trial. This provision of the DPA represents a significant benchmark for future anti-money laundering compliance and enforcement. In addition, the other terms of the DPA are perhaps the most stringent ever imposed on a financial institution. The DPA has a five-year term, which is among the longest that has ever been imposed on a financial institution for anti-money laundering or sanctions violations. This term reflects the seriousness of HSBC's conduct and allows for an extended period during which the government will closely monitor HSBC. HSBC is also required to retain and pay for an independent monitor to ensure that remedial measures are implemented. The DPA also ensures that HSBC will continue to cooperate with the government in any criminal investigation for the term of the agreement and explicitly does not bind the Department's Tax Division or Fraud Section of the Criminal Division. Additionally, HSBC was required to forfeit \$1.256 billion, which was the largest ever forfeiture in a bank prosecution to that point.

4. Did you communicate with any bank regulators regarding your investigation of HSBC? If so, who did you communicate with? Please describe the communications in detail and explain what actions, if any, you took as a result.

RESPONSE: I or other Department attorneys working on the case communicated with regulators at the Federal Reserve, the Office of the Comptroller of the Currency, the Department of the Treasury, the Federal Deposit Insurance Corporation, and appropriate foreign counterparts. In HSBC, as in many cases involving financial institutions, regulators were conducting parallel investigations, so there were communications between the regulators and the Department with regard to the facts of the investigations. In addition, in the HSBC case, as in many cases involving financial institutions, we conferred with regulators to test HSBC's arguments regarding regulatory and collateral consequences and to better understand the processes that regulators would follow in the wake of the case's resolution, including whether those processes were mandatory or discretionary. As I recall, the regulators provided us information regarding statutory requirements, but did not opine on how they might exercise their discretion, nor did the regulators provide any substantive opinions on the potential economic consequences of a criminal charge. We considered the responses we received from regulators in analyzing the nine factors in the Department's Principles of Federal Prosecution of Business Organizations. However, consideration of potential collateral consequences was but one factor among many we analyzed.

5. Did you communicate with any economists regarding your investigation of HSBC? If so, who did you communicate with? Please describe the communications in detail and explain what actions, if any, you took as a result.

RESPONSE: I did not communicate with economists regarding the investigation of HSBC. I am not aware of anyone else within the Department communicating with economists regarding the investigation.

Whistleblower Documents: Recent news reports have referenced at least two sets of whistleblower documents relating to HSBC. According to the International Consortium of Investigative Journalists (ICIJ), the source of one set of documents is HSBC IT specialist Hervé Falciani.² The source for the other is reportedly former HSBC Vice President and Client Relationships Manager John Cruz.

Hervé Falciani: While at HSBC Private Bank (Suisse) in Geneva with access to a Customer Relationship Management (CRM) system for the bank, Falciani reportedly "gained access to and collected unencrypted bank data."³ Falciani reportedly provided the data to French authorities, who "shared it with other governments in 2010, leading to

² Martha M. Hamilton, Whistleblower? Thief? Hero? Introducing the Source of the Data that Shook HSBC, International Consortium of Investigative Journalists (Feb. 8, 2015), available at: <http://www.icij.org/project/swiss-leaks/whistleblower-thief-hero-introducing-source-data-shook-hsbc>.

³ Martha M. Hamilton, Whistleblower? Thief? Hero? Introducing the Source of the Data that Shook HSBC, International Consortium of Investigative Journalists (Feb. 8, 2015), available at: <http://www.icij.org/project/swiss-leaks/whistleblower-thief-hero-introducing-source-data-shook-hsbc>.

prosecutions or settlements with individuals for tax evasion in several countries.”⁴ According to the ICIJ, “Nations whose tax authorities received the French files include **the U.S.**, Spain, Italy, Greece, Germany, Britain, Ireland, India, Belgium and Argentina.”⁵

John Cruz: A former Vice President and Client Relationships Manager for HSBC, Cruz spoke with IRS criminal investigators in Colorado in early 2012 and provided approximately one thousand pages of documents and 30 hours of audio recordings to the IRS and the Securities and Exchange Commission in whistleblower submissions in July 2012. He also provided the material to the Department of Justice in September 2012, more than two months before your office filed the deferred prosecution agreement on December 11, 2012.

6. According to public reporting about the Falciani documents, they indicate that HSBC did not merely launder money for drug cartels, it also helped launder money for dictators, arms dealers who sold mortars to child soldiers, and traffickers in blood diamonds. Descriptions of the Cruz documents also suggest that the extent of HSBC’s criminal conduct may not have been fully described in the Statement of Facts associated with the DPA reached with the government. If HSBC did not inform the government about the ongoing criminal conduct allegedly demonstrated by the Falciani and Cruz documents:
 - a. Did HSBC provide any of the Falciani or Cruz documents to the Department?

RESPONSE: To the best of my knowledge, HSBC did not provide any of the Falciani documents to my Office. I understand that investigators spoke with and received documents from Mr. Cruz, and after speaking with Mr. Cruz, required information from HSBC; I am not aware at this time whether HSBC then supplied documents identical to those that Mr. Cruz had supplied.

- b. If HSBC did provide these documents to the Department, why was the conduct evidenced in them not charged in the Information, included in the Statement of Facts, or otherwise brought to the attention of the court?

RESPONSE: With respect to the Falciani documents, as stated in response to question 6a, to my knowledge, HSBC did not provide them to my Office. Investigators considered the information and documents provided by Mr. Cruz, and took appropriate additional investigative steps. We believe that through the DPA, we ultimately reached the most favorable resolution based on the sufficiency of the admissible evidence and application of the Department’s Principles of Federal Prosecution of Business Organizations. I should reiterate, however, that the DPA reached with HSBC in 2012 addressed only the charges filed in the criminal information, which are limited to violations of the Bank Secrecy Act for failure to maintain an adequate anti-

⁴ Gerard Ryle et al., *Banking Giant HSBC Sheltered Murky Cash Linked to Dictators and Arms Dealers*, International Consortium of Investigative Journalists (Feb. 8, 2015), *available at*: <http://www.icij.org/project/swiss-leaks/banking-giant-hsbc-sheltered-murky-cash-linked-dictators-and-arms-dealers>.

⁵ *Id.* (emphasis added).

money laundering program and sanctions violations. The DPA explicitly does not provide any protection to HSBC against prosecution for conduct beyond what was described in the Statement of Facts. Furthermore, I should note the DPA explicitly mentions that the agreement does not bind the Department's Tax Division or the Fraud Section of the Criminal Division.

- c. Paragraph 6 of HSBC's DPA requires it to fully cooperate with the Department in its investigation of HSBC and related parties. If HSBC failed to provide the Falciani or Cruz documents to the Department, isn't that a violation of HSBC's obligation to fully cooperate with the Department?

RESPONSE: As you note, the DPA requires HSBC to cooperate fully with the Department on an ongoing basis. This requirement applies not only to Bank Secrecy Act and sanctions violations, but also any related investigations. In the event of a failure to comply with the DPA—including the requirement to cooperate—we would take appropriate remedial action.

- d. Paragraph 16 of HSBC's DPA permits the Department to declare that HSBC has breached the agreement, which would then allow it to prosecute HSBC for the conduct set forth in the related Statement of Facts. If HSBC failed to provide the Falciani or Cruz documents to the Department, isn't that a breach of the DPA? If so, why shouldn't the Department seek to prosecute HSBC for the conduct set forth in the Statement of Facts?

RESPONSE: As stated in response to question 6c, in the event of a failure to comply with the DPA—including the requirement to cooperate—we would take appropriate remedial action.

- e. Is there an ongoing investigation by any component of the Department into the conduct evidenced in the Falciani or Cruz documents? If so, when was that investigation initiated?

RESPONSE: As described above, the DPA reached with HSBC in 2012 explicitly does not provide any protection against prosecution for conduct outside of that described in the Statement of Facts, and does not bind the Department's Tax Division or the Fraud Section of the Criminal Division. I appreciate your understanding that in accordance with Department policy and applicable law, as a general matter, the Department can neither confirm nor deny any particular investigation, nor comment about inquiries of an investigative nature.

7. The Falciani and Cruz documents reportedly support allegations that, among other things:
 - a. HSBC engaged in sophisticated tax evasion;
 - b. HSBC had laundered money and helped evade taxes for associates of Haitian dictator Jean Claude "Baby Doc" Duvalier and Syrian dictator Bashar al Assad;
 - c. HSBC laundered money and helped evade taxes for Katex Mines Guinee, a company which helped supply arms to child soldiers in Liberia;

- d. HSBC laundered money and helped evade taxes for Emmanuel Shallop, who has since been convicted of dealing in blood diamonds;
- e. HSBC created codenames for tax evasion clients, for example Australian financier Charles Goode was referred to as “Mr. Shaw;”
- f. an HSBC manager specifically advised Keith Humphreys, a British client, on how to evade taxes by making “withdrawals from ‘cash points’ when they are outside the UK.”⁶

Did your office have access to the Falciani or Cruz documents prior to the execution of the DPA? If not, please explain why not.

RESPONSE: To my knowledge, my Office did not have access to the Falciani documents prior to execution of the DPA. I am not aware of whether or how the information was conveyed to the Department, nor do I have information about why my office did not have access to it. I understand that investigators did speak with and receive information and documents from Mr. Cruz. I should note that the DPA reached with HSBC addresses only Bank Secrecy Act and sanctions violations and explicitly provides no protection from prosecution for conduct outside of the Statement of Facts.

8. Regardless of how you may have known, if you did know about the information in the Falciani or Cruz documents before the DPA was executed, why did you think that justice was served by not charging HSBC with that conduct or otherwise bringing it to the court’s attention in connection with the prosecution?

RESPONSE: I do not recall reviewing or being aware of the information in the Falciani documents before the DPA was executed. With respect to the documents and information provided by Mr. Cruz, they were reviewed during the course of the investigation.

9. Regardless of how you may have known, if you did know about the information in the Falciani or Cruz documents before the DPA was executed, what effect if any did this have on your decision to approve the agreement? If not, would this have affected your decision to approve the agreement had you know the information? Please explain.

RESPONSE: As I previously stated, I do not recall reviewing or being aware of the information in the Falciani documents before the DPA was executed, and cannot now speculate as to whether or how receiving them then may have affected our investigation. We did consider documents and information provided by Mr. Cruz.

⁶ David Leigh et al., Catalogue of malpractice endorsed by bankers laid bare in HSBC files, The Guardian (Feb. 8, 2015).

10. The DOJ's deferred prosecution agreement allowed HSBC to retain its American banking charter. Please explain why you believe that was appropriate.

RESPONSE: The Department does not decide whether or not any institution is allowed to retain its banking charter. Those decisions are made by the institution's regulators. In the case of HSBC in the United States, it is my understanding that the lead regulator is the Office of the Comptroller of the Currency.

11. Were you aware of Mr. Falciani submissions to French authorities, which were reportedly shared with the United States prior to the execution of the DPA? If so, what actions if any did you take to investigate the information provided? If not, please explain why not.

RESPONSE: As described above, I do not recall reviewing or being aware of the information in Mr. Falciani's submission to French authorities prior to the execution of the DPA.

12. Were you aware of Mr. Cruz's whistleblower submissions to the IRS, SEC, and Justice Department prior to the execution of the DPA? If so, what actions if any did you take to investigate the documents he provided? If not, please explain why not.

RESPONSE: As stated above, investigators did speak with and receive documents and information from Mr. Cruz. Based on the information he provided, we took appropriate additional investigative steps, including requiring additional information from HSBC. Investigators carefully considered the information he provided as we considered whether there was sufficient admissible evidence to prosecute violations at HSBC and whether any such prosecution otherwise would have been consistent with the principles of federal prosecution contained in the United States Attorney's Manual. Ultimately, HSBC entered into a DPA that required remarkable reforms based on Bank Secrecy Act and sanctions violations, and that explicitly provides no protection from prosecution for conduct outside of the Statement of Facts.

HSBC Forfeiture: In deciding to pursue a forfeiture DPA with HSBC, rather than a criminal prosecution, you stated that your office "carefully considered whether there was sufficient admissible evidence to prosecute an individual and whether such a prosecution otherwise would have been consistent with the principles of federal prosecution contained in the United States Attorney's Manual". As you are aware, the Department's Equitable Sharing program would allow the HSBC forfeiture proceeds to be directly shared with the participating investigative agencies involved, including, for example, the New York County District Attorney's Office.

13. Please list the state and local law enforcement agencies involved in the HSBC investigation and/or the negotiations that resulted in the DPA.

RESPONSE: The Bank Secrecy Act portion of the HSBC investigation was conducted by Homeland Security Investigations' El Dorado Task Force and included agents and investigators

from Homeland Security Investigations, Internal Revenue Service – Criminal Investigation, and the Queens County District Attorney’s Office. The sanctions portion of the HSBC investigation was conducted in partnership with the New York County District Attorney’s Office and investigated by agents from the Federal Bureau of Investigation.

14. Which of these agencies, if any, have submitted requests for Equitable Sharing?

RESPONSE: As I understand it, the \$881 million related to the Bank Secrecy Act case was forfeited by Homeland Security Investigations within the Department of Homeland Security. The Department of the Treasury would have handled any requests for equitable sharing with regards to those funds. The \$375 million related to the sanctions case was forfeited by the Federal Bureau of Investigation. The New York County District Attorney’s Office submitted a request for equitable sharing to the Department of Justice and received approximately \$168 million.

15. How much money has been requested by each of these agencies through Equitable Sharing?

RESPONSE: As stated in response to question 14, my understanding is that the Justice Department handled equitable sharing requests for the \$375 million related to the sanctions case. The New York County District Attorney’s Office was the only requestor for that portion of the case and received approximately \$168 million.

16. How much money, if any, has been disbursed to each of these agencies?

RESPONSE: As stated in response to question 14, my understanding is that the Justice Department handled equitable sharing requests for the \$375 million related to the sanctions case. The New York County District Attorney’s Office was the only requestor for that portion of the case and received approximately \$168 million.

17. Can you confirm that these state and local law enforcement agencies were not incentivized to pursue a forfeiture DPA, in lieu of criminal prosecution, due to the prospect of winning a multimillion dollar Equitable Sharing disbursement?

RESPONSE: The ability to pursue equitable sharing of forfeited funds is the same whether funds are forfeited pursuant to a DPA or as a result of a criminal conviction.

18. While U.S. Attorney for the Eastern District of New York, did your office approve any settlement agreements that contemplated that the defendant pay money to any outside interest or advocacy groups either in addition to or in lieu of a civil penalty payable to the United States? If so, please provide the case names, the names of the outside groups, and

the amounts paid to each group, and the amount by which any civil penalty was offset by such penalty.

RESPONSE: The HSBC case did not involve the payment of money to any outside interest or advocacy groups. I am aware of two matters in EDNY that did, as described below.

The EDNY, together with another district, investigated claims against Citigroup concerning its securitization of mortgage backed securities. This investigation resulted in a \$7 billion settlement announced in July of 2014. In addition to payment of \$4 billion, which was at the time a record civil penalty, and payment of \$500 million to the Federal Deposit Insurance Corporation (FDIC) and five states, Citigroup agreed to provide \$2.5 billion in consumer relief. Of the \$2.5 billion in consumer relief, Citigroup agreed to make a minimum of \$10 million in payments to any housing counseling agency on a pre-existing list of certified organizations created by the Department of Housing and Urban Development (HUD).

In August of 2014, the Department announced a \$16.65 billion global settlement with Bank of America that resolved investigations and claims made against the bank by five United States Attorney's Offices, the FDIC, the Securities and Exchange Commission (SEC) and six states. The settlement required Bank of America to make monetary payments totaling \$9.65 billion, including \$800 million in connection with an investigation by the EDNY into the bank's origination of loans insured by the Federal Housing Administration. In addition to the \$9.65 billion in monetary payments, Bank of America agreed to provide \$7 billion in consumer relief. Of that amount, the bank agreed to make a minimum of \$20 million in payments to any housing counseling agency on the noted HUD list of certified organizations.

The settlements with Citigroup and Bank of America also provided for the appointment of monitors to evaluate the defendants' compliance with their obligations. According to the monitors' reports issued to date, neither Citigroup nor Bank of America has made donations to housing counseling agencies pursuant to the respective settlements.