

UNCLASSIFIED

**SELECT COMMITTEE ON
INTELLIGENCE**

UNITED STATES SENATE



**Additional Prehearing Questions for
Mr. John Bradford Wiegmann upon his nomination to be
General Counsel for the Office of the Director of National Intelligence**

UNCLASSIFIED

Keeping the Intelligence Committee Fully and Currently Informed

QUESTION 1: Section 502 of the National Security Act of 1947 provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies to the Director of National Intelligence (DNI) and to the heads of all departments, agencies, and other entities of the U.S. Government involved in intelligence activities. What is your understanding of the standard for meaningful compliance with this obligation by the Office of the Director of National Intelligence (ODNI) and the heads of all departments, agencies and other entities of the U.S. Government involved in intelligence activities to keep the congressional intelligence committees, including all their Members, fully and currently informed of intelligence activities? Under what circumstances do you believe it is appropriate to brief the Chairman and Vice Chairman and not the full committee membership?

ANSWER: Under section 502 of the National Security Act, the DNI and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities “shall keep the congressional intelligence committees fully and currently informed of all intelligence activities, other than covert actions.” (Covert actions are covered by a separate reporting obligation.) Intelligence Community Directive (ICD) 112 has been issued to provide guidance to the IC on reporting to Congress consistent with section 502.

Under ICD 112, intelligence community (IC) element heads are responsible for determining whether an event is reportable to the Intelligence Committees. The ICD provides that “[d]etermining whether notification should be provided is a judgment based on all the facts and circumstances known to the IC element, and on the nature and extent of previous notifications or briefings to Congressional committees on the same matter.” It further provides that reportable “significant anticipated intelligence activities” include, among other things, those that entail significant risk of exposure, compromise, and loss of human life; those that are expected to have a major impact on important foreign policy or national security interests; and those that involve deployment of new collection techniques that represent a significant departure from previous operations. There are also similar standards for what constitutes a reportable “significant intelligence failure.” “Significant legal interpretations” affecting intelligence activities conducted by IC elements must be reported by those elements as well, consistent with section 510 of the National Security Act. If confirmed, among my responsibilities would be to help ensure that ODNI and IC elements comply with their congressional notification obligations under section 502 and ICD 112.

Section 502 also provides that congressional notification must be made “[t]o the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters.” My understanding is that this provision affords the DNI a degree of

flexibility in deciding how she will bring extremely sensitive matters to the committees' attention, without undermining the obligation to keep the intelligence committees fully informed. For example, in some exceptional cases it might be appropriate to brief the Chairman and Vice Chairman of the intelligence committees on particularly sensitive matters. But I would expect these circumstances to be limited to the minimum necessary, and that there would likely be discussions with the Chair and Vice Chair about the need for such limited briefings.

Priorities of the Director of National Intelligence

QUESTION 2: Have you discussed with the DNI her specific expectations of you, if confirmed as General Counsel, and her expectations of the Office of the General Counsel as a whole? If so, please describe those expectations.

ANSWER: I have discussed with the DNI her expectation that, if confirmed as General Counsel, I would lead the efforts of the Office of General Counsel to provide ODNI with accurate and thoughtful legal advice and work to help her ensure that the IC's activities comply with the Constitution and laws of the United States, consistent with her responsibilities under the National Security Act.

The Office of the General Counsel

QUESTION 3: The Office of the General Counsel of the ODNI has many roles and responsibilities. What are your expectations for the Office?

- a. Do you have any preliminary observations on its responsibilities, performance, and effectiveness?
- b. If confirmed, will you seek to make changes in the numbers or qualifications of attorneys in the office, or the operations of the office?

ANSWER: Under the National Security Act, the ODNI General Counsel is "the chief legal officer of the Office of the Director of National Intelligence" and "shall perform such functions as the Director of National Intelligence may prescribe." The duties of the General Counsel are otherwise unspecified in law. If confirmed, I would expect ODNI's Office of the General Counsel (ODNI OGC) to help me provide accurate and thoughtful legal advice to ODNI and also assist in the effort to ensure that IC elements comply with the Constitution and laws of the United States, working with the lawyers for those elements. I would work closely together with the attorneys in ODNI OGC to advise ODNI staff on all legal issues with which they may be confronted and to provide any necessary legal support to their activities. ODNI OGC would also work with the general counsels' offices of IC elements on issues of mutual concern.

Over the years, I have worked with lawyers from ODNI OGC on many issues, and these efforts have left me with a very positive impression of the performance and effectiveness of the office. Since I have served on a detail assignment to ODNI OGC in recent weeks, I have had more exposure to the office and my positive impression has only been strengthened. If I am fortunate enough to be confirmed, I would consult with the current leadership of the office to assess whether any changes in numbers or qualifications of attorneys or the operations of the office would be beneficial.

QUESTION 4: Please describe who or what you understand to be your client or clients in the position of General Counsel of the Office of the Director of National Intelligence (ODNI/GC). As part of your answer, please address how that will guide your relationship with and obligations to the ODNI, the DNI, the Intelligence Community (IC) as a whole, and the President.

ANSWER: I am a member of the D.C. Bar, and pursuant to D.C. Bar rules, the client of a government lawyer is the agency that employs the lawyer unless expressly provided to the contrary by appropriate law, regulation, or order. The ODNI General Counsel's client is the ODNI, and if confirmed, I would anticipate working closely with lawyers from ODNI OGC to provide legal advice to the DNI and other ODNI officials in a manner consistent with the oath I have taken to support and defend the Constitution.

If confirmed, I would also expect to engage cooperatively with my counterparts in the IC and other departments and agencies to ensure that IC activities comply with the Constitution and laws of the United States. In some cases, ODNI OGC can help lawyers at different IC elements collaborate on and resolve novel legal issues that they may have in common, as well as to develop IC-wide legal positions on important issues and communicate those positions to others outside the IC, including to the National Security Council staff acting on behalf of the President.

Under Article II of the Constitution, executive power is vested in the President, including with respect to the conduct of intelligence activities to protect national security, and under the National Security Act, the DNI is responsible for ensuring that national intelligence is provided to the President, the heads of departments and agencies, senior military commanders, and the Congress. The General Counsel of ODNI would assist the DNI and ODNI in carrying out these responsibilities, under the guidance and direction of the President.

QUESTION 5: Describe your understanding of the responsibilities of the DNI and the GC/ODNI in reviewing, and providing legal advice on, the work of the Central Intelligence Agency (CIA), including covert action undertaken by the CIA.

ANSWER: Under the National Security Act, the DNI "shall ensure compliance with the Constitution and laws of the United States by the Central Intelligence Agency." This

responsibility includes oversight of covert action undertaken by the CIA. The ODNI General Counsel helps the DNI carry out this responsibility, including by providing legal advice on covert action, working closely with the General Counsel of the CIA.

QUESTION 6: What are your plans to recruit and retain top talent in the Office of General Counsel at ODNI? Do you plan to offer additional detailee options at all career levels so that attorneys from other agencies can bring their expertise to ODNI and, in turn, bring ODNI experience back to their home agency?

ANSWER: The success of any legal office in rendering accurate and thoughtful legal advice depends on the talent, experience and dedication of its attorneys, and it is therefore critical that ODNI OGC be able to recruit and retain top talent. I have also found it helpful over the years to support detail opportunities both from and to the legal offices I have led in order that the offices can benefit from different types of expertise and experience, to enhance professional development, and to improve interagency cooperation and understanding. If confirmed, I would work with current leadership in the office to assess whether any changes in current recruitment and detail policies would be beneficial.

QUESTION 7: Explain your understanding of the role of the ODNI/GC in resolving conflicting legal interpretations within the IC.

ANSWER: It is my understanding that ODNI OGC works cooperatively with lawyers for IC elements in an effort to resolve conflicting legal interpretations within the IC. This work is rooted in the DNI's responsibility under the National Security Act to "ensure . . . compliance [with the Constitution and laws of the United States] by other elements of the intelligence community through the host executive departments that manage the programs and activities that are part of the National Intelligence Program." Ultimately, however, the Office of Legal Counsel at the Department of Justice has the binding legal authority to resolve disagreements among agencies about interpretation of federal law.

Intelligence Collection

QUESTION 8: As defined in Title 50, "the term 'intelligence' includes 'foreign intelligence' and 'counterintelligence.'" Title 50 defines "national intelligence" as referring "to all intelligence, regardless of the source from which derived and including information gathered within or outside the United States that – (A) pertains, as determined consistent with any guidance issued by the President, to more than one United States Government agency; and (B) that involves (i) threats to the United States, its people, property, or interests; (ii) the development, proliferation, or use of weapons of mass destruction; or (iii) any other matter bearing on United States national or homeland security."

a. Do you interpret the term “intelligence” to include anything beyond “foreign intelligence” or “counterintelligence?” If so, what other kinds of intelligence do you believe falls under the term “intelligence?”

ANSWER: Yes. The use of the term “includes” in the definition of “intelligence” in the National Security Act suggests that “intelligence” can include information beyond “foreign intelligence” and “counterintelligence.” Such intelligence could include a wide range of information that may be relevant to the legally authorized missions of IC elements but that do not qualify as foreign intelligence or counterintelligence. For example, the Department of Homeland Security’s IC element, the Office of Intelligence and Analysis (I&A), is charged by law (6 U.S.C. 121) “to carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States” and “to integrate relevant information, analysis and vulnerability assessments . . . in order to identify priorities for protective and support measures regarding terrorist and other threats to homeland security by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.” Information collected in support of these responsibilities, such as information concerning vulnerabilities of critical infrastructure to malicious cyber activity, may not constitute foreign intelligence or counterintelligence. Likewise, the National Geospatial-Intelligence Agency is directed by law (10 U.S.C. 442) to provide accurate geospatial information for use by the departments and agencies of the United States, the merchant marine, and navigators generally. Information collected in support of this responsibility, such as domestic imagery, may not qualify as foreign intelligence or counterintelligence.

b. What are the differences between “intelligence” and “national intelligence?” Please provide examples of something you would consider to be “intelligence” that is not “national intelligence,” and something that is “national intelligence” but not “intelligence.” Your examples can be included in a classified annex.

It is my understanding that “national intelligence,” in contrast to “intelligence,” must pertain to more than one agency and must also meet one of the criteria identified in subsection (B). For example, intelligence about an international financial issue that is germane only to the Department of Treasury might be considered “intelligence” but not “national intelligence.” Likewise, intelligence about an environmental problem or political party in a foreign country might be considered “intelligence” but not “national intelligence,” depending on whether it bears on U.S. national or homeland security. I expect that “national intelligence” could be considered a subset of “intelligence.”

QUESTION 9: Congress recently passed the Reforming Intelligence and Securing America Act (RISAA), which extended Title VII of the Foreign Intelligence Surveillance Act until 2026 and enacted other reforms. What recently enacted reforms do you view as

most critical to our national security? What changes, if any, do you feel are necessary to either RISAA or to FISA as a whole?

ANSWER: The reforms in the RISAA as a whole are critical to our national security because they preserve the operational efficacy of a vital foreign intelligence authority – section 702 of FISA – as well as continuing the other important provisions in Title VII of FISA, while implementing reforms that continue to improve compliance and protect privacy and civil liberties of all Americans. At this point, the Administration is focused principally on implementing the many new statutory requirements and authorities in the RISAA rather than considering additional changes.

The RISAA extended the authority for intelligence collection under section 702 of FISA for two years. If confirmed, I look forward to working with this Committee in considering whether further changes to FISA would be beneficial in connection with the next reauthorization debate.

Classification and Declassification

QUESTION 10: The government systematically overclassifies too much information. At the same time, the government often fails to protect the nation's most important secrets. Executive Order 13526 (December 29, 2009), which prescribes the system for classifying, safeguarding, and declassifying national security information, has not been updated in 15 years. What changes, if any, do you think are necessary to improve the classification system?

ANSWER: As the DNI stated in connection with her confirmation hearing, the overclassification of information not only undermines critical democratic objectives, such as increasing transparency to promote an informed citizenry, but also negatively impacts national security objectives because it can increase the challenges associated with sharing information to address threats and furthermore undermines the basic trust that the public has in government. I also share the concern of this Committee that the current approach to declassification will be unable to handle the vast and ever-growing volume of digital records that are classified. I understand that legislation has been considered in both the Senate and the House to address the problem of overclassification, though I have not studied these bills in detail. I am also aware that there is a White House-led process underway to consider possible changes to Executive Order 13526 on classified information in order to reduce overclassification and achieve other goals. Although I do not have an informed view at this time as to precisely what sorts of changes would best address this longstanding problem, potential reforms might include changes to the substantive standards and processes for classifying information; changes to the standards and processes for declassifying information; organizational changes designed to put more focus on and dedicate more resources to this challenging issue; a greater focus on declassifying material of interest to the public; and greater use of technology in

classifying and declassifying information. Any potential reforms will have to be carefully crafted so as not to undermine the legal authorities under which information may be classified and to preserve the Executive Branch's flexibility to classify and protect information where necessary in a wide range of contexts.

Evaluation of Office of the Director of National Intelligence

QUESTION 11: Members of the Committee have expressed concern that the ODNI does not have all of the legal authorities necessary to fulfill congressional expectations for the office. Do you have any preliminary observations on strengths or weaknesses of the authorities of the Office with respect to a successful mission of the ODNI? If so, please describe.

ANSWER: As Director Haines stated during her confirmation process, the Intelligence Reform and Terrorism Prevention Act of 2004, which amended the National Security Act to establish the DNI and the ODNI, provides significant authority to the DNI in the execution of her IC management role. During the few weeks in which I have served on a detail assignment to ODNI OGC, I have not yet formed an opinion on the strengths and weaknesses of the authorities of the ODNI in helping it carry out its mission successfully. If I am fortunate enough to be confirmed and I assess that additional authority would be beneficial, I will inform the Committee.

QUESTION 12: Members also have expressed concerns that the ODNI's bureaucracy has resulted in inefficiencies. Do you have any preliminary observations on strengths or weaknesses of the authorities of the Office with respect to the ability of the General Counsel's office to function within the ODNI bureaucracy? If so, please describe.

ANSWER: During the few weeks I have served on a detail assignment at ODNI, I have not yet had a sufficient opportunity to observe the operation of the ODNI's organizational structure, or the authorities that underlie it, to form an opinion on how that structure may affect the functioning of the Office of General Counsel. If confirmed, I will consider this question and inform the Committee if I identify any problems.

Intelligence Community Whistleblowers

QUESTION 13: Do you believe that IC whistleblowers currently have all the protections they need to interact directly with the congressional intelligence committees?

- a. If not, what legal authorities are required to ensure these protections?
- b. If so, what legal authorities provide the basis for those protections?

As Director Haines stated during her confirmation process, whistleblowers serve a vital role within the IC by promoting government accountability, maintaining the integrity of the workforce, and addressing allegations of wrongdoing without improperly disclosing classified information. The Intelligence Community Whistleblower Protection Act, and more recent amendments to the statutes that address reporting to Inspectors General and Congress and protections from reprisal, provide IC whistleblowers the means to report to Congress complaints or information pertaining to “urgent concerns.” IC whistleblowers first report such complaints or information to Inspectors General, who have sole authority to determine whether the complaint or information is a matter of urgent concern. If confirmed, I look forward to learning more about how these processes work in practice and whether existing authorities provide sufficient protections to protect whistleblowers. If I conclude that additional authorities are needed, I will inform the Committee.

QUESTION 14: What is your view of the ODNI/GC’s role relative to advancing an IC “whistleblower” complaint to Congress, pursuant to the Intelligence Community Whistleblower Protection Act?

ANSWER: The ODNI General Counsel is responsible for giving legal advice to the DNI and other ODNI officials as they carry out their duties, including those under the Intelligence Community Whistleblower Protection Act and related statutes. These statutes provide IC whistleblowers the means to report to Congress complaints or information pertaining to “urgent concerns” by first reporting such complaints or information to Inspectors General, including the IC Inspector General. If confirmed, I would work to ensure that whistleblower complaints are treated in accordance with applicable legal requirements and that whistleblowers are afforded the legal protections to which they are entitled.

QUESTION 15: How would you address a situation in which you disagree with the IC Inspector General’s determination that a whistleblower complaint qualifies as an “urgent concern,” for the purposes of advancing a complaint to Congress?

ANSWER: During her confirmation process, Director Haines committed to transmitting to Congress whistleblower complaints determined by the IC Inspector General to be an urgent concern. Recent statutory amendments have clarified that the Inspectors General have sole authority to determine whether a complaint or information is a matter of urgent concern. Even if I were to disagree on whether a complaint qualifies as an urgent concern, I don’t foresee any circumstances in which it would be appropriate for the ODNI General Counsel to intervene to prevent a whistleblower complaint from advancing to Congress.

Executive Branch Oversight of Intelligence Activities

QUESTION 16: Are there improvements, in terms of resources, methodology, and objectives that you believe should be considered for Executive Branch oversight of the intelligence activities of the United States Government?

ANSWER: I am not currently aware of structural improvements that are needed in Executive Branch oversight of intelligence activities. Many different components of the Executive Branch participate in oversight of the IC in an effort to ensure compliance with applicable laws and policies, including general counsels' offices; civil liberties and privacy officials; inspectors general of IC elements; the Privacy and Civil Liberties Oversight Board (PCLOB); the President's Intelligence Advisory Board (and its Intelligence Oversight Board); and the Department of Justice. If confirmed, assisting with oversight would be an important part of my role as ODNI General Counsel.

Additional oversight of FISA activities is among the primary features of the recently-enacted RISAA, and additional resources or efforts will have to be dedicated to implement that law. If I am fortunate enough to be confirmed, I will inform this Committee if I conclude that further resources or authorities are needed to effectuate appropriate oversight of IC activities.

Relationship with Other Officials

QUESTION 17: What should be the relationship of the ODNI/GC with respect to the following officers of the IC:

- a. General Counsel, CIA;

ANSWER: I have worked closely with the CIA General Counsel over the years on a number of issues from my position as a Deputy Assistant Attorney General (DAAG) for National Security. Under the National Security Act, the DNI is charged with many responsibilities relating to the CIA. The statute thus clearly contemplates a close working relationship between the two agencies and, with respect to legal matters, their General Counsels. If confirmed, I would expect to continue to have a close and collaborative working relationship with the General Counsel of the CIA across a range of legal issues.

- b. Assistant Attorney General for National Security, Department of Justice;

ANSWER: As a DAAG for National Security at DOJ, I have seen firsthand the importance of a close working relationship between ODNI and the National Security Division (NSD) of DOJ on many different issues. These include administration of FISA; coordination on prosecutions involving classified information or other IC equities; developing and advising on Attorney General-approved guidelines under E.O. 12333 and other national security-related policies; engaging in international negotiations on data

privacy issues relevant to the IC; and others. Given this, and given my background at NSD, I would expect to have a close and collaborative working relationship with the Assistant Attorney General for National Security.

c. Inspector General, ODNI; and

ANSWER: Inspectors General (IGs) enjoy significant independence in conducting their critical oversight and investigative functions; at the same time, general counsels' offices often work cooperatively with inspectors general in order to ensure that they can carry out these missions effectively and consistent with applicable law. If I am fortunate enough to be confirmed, I would intend to have an effective and appropriate working relationship with the IG of the Intelligence Community (IC IG) that is also respectful of the IC IG's independence.

d. Civil Liberties and Privacy Officer, ODNI.

ANSWER: ODNI's Civil Liberties Protection Officer plays a key role in promoting privacy and civil liberties, as well as transparency, in IC policies and activities, both at ODNI and throughout the IC, and in oversight of applicable rules in this area. I have worked closely with the ODNI CLPO on a range of issues during my time at DOJ, and I have seen firsthand how the ODNI General Counsel often works closely with the ODNI CLPO as well. If confirmed, I will seek to continue these productive working relationships.

QUESTION 18: What is your understanding of the relationship between the ODNI/GC and the White House Counsel's Office (WHCO)? When do you believe it is appropriate to include WHCO in your legal deliberations?

ANSWER: It is important for the ODNI General Counsel to have a close working relationship with the White House Counsel's Office, often through the Legal Adviser to the National Security Council, which is part of that office. The ODNI General Counsel plays an important role in making sure that IC equities are represented during the NSC-led interagency process, including both lawyers' groups and policy committees. In my experience, the NSC Legal Adviser often gets involved in legal deliberations relevant to the IC pertaining to policy issues that come before the National Security Council, and thus the President. If confirmed, I would work to maintain close collaboration between the offices, which is critical to supporting the DNI in her roles as the head of the IC and the principal advisor to the President for intelligence matters related to the national security.

QUESTION 19: What do you believe the relationship is between the Office of General Counsel at ODNI and the Office of Legal Counsel (OLC) at the Department of Justice? Do you consider OLC opinions to be binding on the ODNI/GC? Please describe

the circumstances under which you believe soliciting an opinion from OLC is appropriate.

ANSWER: I have worked closely with OLC on a wide range of issues during my decades in government, and I would expect to continue to do so if I am confirmed as ODNI General Counsel. OLC provides legal advice on behalf of the Attorney General to the President and all Executive Branch agencies, and its opinions are binding on Executive Branch agencies. In my experience, departments and agencies typically consult OLC on many legal issues of particular complexity or importance, on significant novel issues, or in situations where two or more agencies disagree on the law, and that would be my practice if am fortunate enough to be confirmed.

Additional Questions from Vice Chairman Rubio

Professional Experience

QUESTION 1: In your current position as Senior Adviser in the Office of the General Counsel at the Office of the Director of National Intelligence (on detail from the Department of Justice), have you advised on the following matters? If yes, please explain.

- a. United States border security, including terrorist travel;

ANSWER: No.

- b. Israel-Hamas war;

ANSWER: No. I have participated in a meeting about certain intelligence issues related to the conflict but I have not provided any advice.

- c. Ukraine war;

ANSWER: No. I have participated in a meeting about certain accountability issues associated with the conflict in Ukraine but I have not provided any advice.

- d. Iran and its proxies;

ANSWER: No.

- e. The Maduro regime in Venezuela;

ANSWER: No.

QUESTION 2: In your various positions at the Department of Justice from 2009 to present, did you or have you advised on the following matters? If yes, please explain.

- a. United States border security, including terrorist travel;

ANSWER: I have been involved in multiple matters relating to terrorist travel or other threats to national security posed by individuals seeking to enter the United States at various times throughout my time at DOJ. For example, I have served on the National Vetting Center Governance Board, an interagency group charged with overseeing the activities of the National Vetting Center, which is a collaborative, interagency effort to provide a clearer picture of threats to national security, border security, homeland security, or public safety posed by individuals seeking to transit our borders or exploit our immigration system. I have advised on issues relating to watch-listing, the terrorist screening database, the no-fly list, vetting of travelers and associated civil litigation. I have sometimes been involved in discussion of operational issues posed by travel to the United States of individuals suspected of being potential threats to national security based on derogatory intelligence information.

b. Israel-Hamas war;

ANSWER: Among my responsibilities at DOJ has been to assist in review or preparation of memoranda, or oversee attorneys in my office preparing such memoranda, to advise senior DOJ leadership about issues to be discussed at Principals' and Deputies' committee meetings about the full range of national security topics, which since last October have included the Israel-Hamas conflict in Gaza. Generally speaking, the purpose of these memoranda is to identify any DOJ equities in the issues to be discussed and enable leadership to address those issues, if any. I have also been involved in providing legal support concerning certain classified activities related to the conflict in Gaza.

c. Ukraine war;

ANSWER: Among my responsibilities at DOJ has been to assist in review or preparation of memoranda, or oversee attorneys in my office preparing such memoranda, to advise senior DOJ leadership about issues to be discussed at Principals' and Deputies' committee meetings about the full range of national security topics, which have included the conflict in Ukraine since it began in February of 2022. Generally speaking, the purpose of these memoranda is to identify any DOJ equities in the issues to be discussed and enable leadership to address those issues, if any. I have also been involved in discussion of sanctions on Russia and Russian individuals arising from Russia's invasion of Ukraine, and enforcement thereof, and associated legal-policy issues, such as issues relating to Russian sovereign assets. I have also been involved in providing legal support concerning certain classified activities related to the conflict in Ukraine.

d. Iran and its proxies;

ANSWER: Among my responsibilities at DOJ has been to assist in review or preparation of memoranda, or oversee attorneys in my office preparing such memoranda, to advise senior DOJ leadership about issues to be discussed at Principals' and Deputies' committee meetings about the full range of national security topics, which over the years have often included Iran and its malign activities, as well as Iran-aligned militia groups. Generally speaking, the purpose of these memoranda is to identify any DOJ equities in the issues to be discussed and enable leadership to address those issues, if any. I have also been involved in discussion of sanctions on Iran, enforcement thereof and associated litigation, and various other policy issues relating to Iran, such as designation of the Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization. I have also been involved in providing legal support concerning certain classified activities related to Iran.

e. The Maduro regime in Venezuela;

ANSWER: Not that I recall. However, among my responsibilities at DOJ has been to assist in review or preparation of memoranda, or oversee attorneys in my office preparing such memoranda, to advise senior DOJ leadership about issues to be discussed at Principals' and Deputies' committee meetings about the full range of national security topics, and it is possible that foreign policy towards the Maduro regime was among these topics.

f. The decision to terminate the China Initiative;

ANSWER: Not that I recall, though I was aware at the time that the Assistant Attorney General was conducting a review to consider terminating the China Initiative and I likely participated in discussions about the announcement of, or explaining the rationale for, the decision, or provided assistance in that regard.

g. The Biden Administration's withdrawal from Afghanistan;

ANSWER: Among my responsibilities at DOJ has been to assist in review or preparation of memoranda, or oversee attorneys in my office preparing such memoranda, to advise senior DOJ leadership about issues to be discussed at Principals' and Deputies' committee meetings about the full range of national security topics, which included the withdrawal from Afghanistan in 2021. Generally speaking, the purpose of these memoranda is to identify any DOJ equities in the issues to be discussed and enable leadership to address those issues, if any. I have also participated in discussions concerning resettlement of Afghan nationals in the United States in the wake of the withdrawal and associated vetting issues. I have also been involved in providing legal support concerning certain classified activities related to Afghanistan.

h. The decision to remove the FARC from the Foreign Terrorist Organization list;

ANSWER: The decision to designate groups as Foreign Terrorist Organizations (FTOs), and to maintain or revoke any such designations, lies with the Secretary of State under the Immigration and Nationality Act, in consultation with the Attorney General and Secretary of Treasury. Among my responsibilities at DOJ has been to assist DOJ leadership in exercising this consultative function, in coordination with the FBI, our counterterrorism prosecutors, and the Civil Division. My role has typically been to assess whether there is a sufficient legal and factual basis to support the Secretary's designation, maintenance, or revocation decisions, not to consider the advisability of the decisions from a policy perspective.

With respect to the FARC, Secretary Blinken concluded that "following a 2016 Peace Accord with the Colombian government, the FARC formally dissolved and disarmed. It no longer exists as a unified organization that engages in terrorism or terrorist activity or has the capability or intent to do so. The decision to revoke the designation does not

change the posture with regard to any charges or potential charges in the United States against former leaders of the FARC, including for narcotrafficking.” At the same time, the Secretary designated two FARC offshoot groups who had refused to demobilize and continued to engage in terrorist activity: FARC-People’s Army (FARC-EP) and Segunda Marquetalia.

i. The Joint Comprehensive Plan of Action;

ANSWER: Among my responsibilities at DOJ has been to assist in review or preparation of memoranda, or oversee attorneys in my office preparing such memoranda, to advise senior DOJ leadership about issues to be discussed at Principals’ and Deputies’ committee meetings about the full range of national security topics, which included the Joint Comprehensive Plan of Action. Generally speaking, the purpose of these memoranda is to identify any DOJ equities in the issues to be discussed and enable leadership to address those issues, if any.

j. The Obama administration’s efforts to “normalize” relations with Cuba, including removing it as a State Sponsor of Terrorism?

ANSWER: Not that I recall. However, among my responsibilities at DOJ has been to assist in review or preparation of memoranda, or oversee attorneys in my office preparing such memoranda, to advise senior DOJ leadership about issues to be discussed at Principals’ and Deputies’ committee meetings about the full range of national security topics, and it is possible that removal of Cuba’s designation as a state sponsor of terrorism was among these topics.

k. The Trump administration’s decision to designate Cuba as a State Sponsor of Terrorism?

ANSWER: Not that I recall. However, among my responsibilities at DOJ has been to assist in review or preparation of memoranda, or oversee attorneys in my office preparing such memoranda, to advise senior DOJ leadership about issues to be discussed at Principals’ and Deputies’ committee meetings about the full range of national security topics, and it is possible that designation of Cuba as a state sponsor of terrorism was among these topics.

Threats to the United States

QUESTION 3: Is it in the national security interests of the United States to transfer detainees from Joint Task Force Guantanamo Bay? Please explain your answer.

ANSWER: By law the decision to transfer detainees from Guantanamo Bay rests with the Secretary of Defense. Under applicable law, Congress has authorized the transfer of Guantanamo Bay detainees where the Secretary of Defense certifies to Congress that the

transfer is in the national security interest of the United States. My understanding is that since this legal requirement was adopted, all transfers of detainees from Guantanamo Bay have been based on such national security certifications.

QUESTION 4: Is it in the national security interests of the United States to close Joint Task Force Guantanamo Bay? Please explain your answer.

ANSWER: The decision whether to close the detention facility at Guantanamo Bay rests with the Congress. Given the dwindling detainee population at Guantanamo Bay and its high cost of operation, I find the arguments in favor of closing the facility to be compelling, but only if it can be done in a manner that is consistent with national security and ensures accountability for those who have been charged with crimes, including the conspirators in the 9/11 attacks and the bombing of the U.S.S. Cole.

QUESTION 5: What is your current assessment of the threat posed to the United States by foreign terrorists?

ANSWER: I credit the views expressed in the IC's Annual Threat Assessment released earlier this year that we face diverse global terrorism threats, including from al-Qaida affiliates, ISIS, Hizballah, and transnational racially or ethnically motivated violent extremist movements, in particular those motivated by a white supremacist ideology. The global threat includes terrorist groups' continued interest in developing the ability to conduct attacks using chemical, biological, and radioactive materials. I also understand that Hamas's attack in October 2023 and the resulting Israel-Hamas conflict will have a persistent impact as terrorist groups from across the ideological spectrum seek to exploit the attack for their own goals.

QUESTION 6: What or who poses the most significant threat of terrorism to the United States today?

ANSWER: I credit the FBI Director's assessment that threats to U.S. persons and interests are most likely to manifest in lone actors or small cells inspired by foreign terrorist organizations and violent extremist ideologies to conduct attacks. We also, of course, remain concerned with the potential for attacks from global terrorist organizations such as al-Qaida, ISIS and Hizballah.

QUESTION 7: Do you agree that China, under control of the Chinese Communist Party, is engaging in a zero-sum game of economic and technological competition against the United States?

ANSWER: As the U.S. Intelligence Community has concluded, the Chinese Communist Party (CCP) is committed to building China into the preeminent power in East Asia and a leading power on the world stage; bolstering its economic, technological, and military standing; and undercutting U.S. influence and regional partnerships. China remains the

most active and persistent cyber threat to U.S. Government, private-sector, and critical infrastructure networks. Its cyber espionage pursuits and its industry's export of surveillance, information, and communications technologies increase the threats of aggressive cyber operations against the United States and the suppression of the free flow of information in cyberspace.

China seeks to become a world science-and-technology (S&T) superpower and to use this technological superiority for economic, political, and military gain. The CCP is implementing a whole-of-government effort to boost indigenous innovation and promote self-reliance, and is prioritizing advanced power and energy, artificial intelligence, biotechnology, quantum information science, and semiconductors. It is trying to fast-track its S&T development through investments, intellectual property acquisition and theft, cyber operations, talent recruitment, scientific and academic collaboration, and illicit procurements.

QUESTION 8: Do you agree that one of the primary goals of the Chinese Communist Party is to displace the United States and rewrite the international-rules based system?

ANSWER: Yes, my understanding is that the CCP seeks to bolster its reputation and legitimacy on the world stage, undercut U.S. influence, and foster global norms that favor China's authoritarian system.

QUESTION 9: What threat does the Chinese Communist Party pose to the national security of the United States?

ANSWER: I credit the IC's assessment that China will continue to seek to expand its global influence on the world stage, challenge U.S. influence and the rules-based international order, and steal trade secrets and intellectual property to bolster China's indigenous S&T sectors and shape the global economy in its favor. China remains the most active and persistent cyber threat to U.S. Government, private sector, and critical infrastructure networks, including through its cyber espionage pursuits and the export of surveillance, information, and communications technologies that enable cyber operations against the United States and the suppression of the free flow of information in cyberspace. These concerns also include the CCP's efforts to expand its global covert influence posture and capabilities, including disseminating disinformation.

QUESTION 10: What is your assessment of the Chinese Communist Party's tactics to achieve global dominance, particularly as it relates to their efforts within the United States?

ANSWER: As the IC has found, the CCP has sought to fast-track China's rise to prominence on the global stage, including by bolstering its domestic S&T capacity through theft of trade secrets and intellectual property; conducting cyber operations

targeting individuals beyond its borders to counter views it considers critical of CCP narratives, policies, and actions; and expanding its global covert influence posture to sow doubts about U.S. leadership, undermine democracy, and extend Beijing's influence. These actions pose a significant challenge to the United States, our allies, and the rules-based global order.

QUESTION 11: Is the threat from People's Republic of China and the Chinese Communist Party different than those from other nation-state actors?

ANSWER: I credit the IC's assessment that China is unique in its desire and capability to directly compete with the United States and U.S. allies and to alter that rules-based global order in ways that support Beijing's power and form of governance. The CCP vies to surpass the United States in comprehensive national power.

QUESTION 12: Are there private companies in China?

ANSWER: China has comprehensive national security, cybersecurity, and data privacy laws and regulations that enable Beijing's intrusive oversight of domestic and foreign companies, including U.S. companies, operating within China. These laws provide the PRC government with expanded legal grounds for accessing and controlling data held by companies operating in China, and for compelling companies to collaborate with or provide assistance to intelligence and security agencies.

QUESTION 13: What should the U.S. government's response be to foreign nationals in the United States who support U.S.-designated foreign terrorist organizations (FTOs) such as Hamas?

ANSWER: Knowingly providing material support to a designated FTO such as Hamas is a federal crime that can be prosecuted under the law, whether committed by a foreign national or U.S. national.

QUESTION 14: What is your understanding of disqualifications to hold a security clearance? Is support for a U.S.-designated FTO disqualifying? Is support for an FTO "advocating for terrorist activities?"

ANSWER: I have never been responsible for adjudicating whether individuals should be granted security clearances. However, I am generally familiar with E.O. 12968 on access to classified information, and that eligibility for such access under the Order "shall be granted only to employees who are U.S. citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Knowingly providing material

support to a designated FTO is a federal crime that can be prosecuted under the law and would be disqualifying for holding a security clearance.

QUESTION 15: What is your understanding of the continuing obligations of security clearance holders who no longer work for the federal government?

ANSWER: My understanding is that security clearance holders who no longer work for the federal government have a continuing obligation not to disclose classified information to any person not authorized to receive it.

QUESTION 16: What are the most significant counterintelligence threats currently confronting the United States government?

ANSWER: My understanding is that we face a growing range of counterintelligence threats from hostile nation-states such as China, Russia, Iran, and North Korea, as well as from non-state actors including terrorist groups and transnational criminal organizations. These actors present a threat not only to the security of sensitive government information but also increasingly to U.S. critical infrastructure, cutting-edge research and technology, intellectual property, and other sensitive data held by the private sector.

QUESTION 17: Should the United States continue to pursue the extradition of Julian Assange and pursue prosecution to the fullest extent of the law?

ANSWER: This matter relates to a pending prosecution and therefore it would be inappropriate for me to comment. More broadly, however, I fully support holding accountable those who conspire to illegally obtain classified information.

QUESTION 18: Should the U.S. government work with U.S. technology companies to censor information or limit other First Amendment activity online?

ANSWER: The U.S. government should never censor or coerce technology companies to remove First Amendment-protected content online. In light of national security threats such as terrorism and foreign malign influence, the government must be able to engage appropriately with technology companies to help protect the American people from these threats. It is permissible for authorized elements of the government to share relevant information with technology companies for these purposes, so long as the companies are free to make their own choices about what, if anything, those companies will do in response to the information they have received, and that no adverse consequences from the government will result from whatever action the companies may or may not take.

Additional Questions from Senator Wyden

Foreign Intelligence Surveillance Act

QUESTION 1: Section 704 of FISA requires a warrant for the targeting of a U.S. person overseas “under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes.”

- a. Please describe any circumstances in which the first part of that test (“reasonable expectation of privacy”) is not met and thus a warrant would not be required, even if the second part of the test is met.
- b. Does the “reasonable expectation of privacy” depend on the surveillance laws or practices of the country in which the U.S. person is residing? If yes, please provide examples.

ANSWER: I am not aware of any operational contexts in which the government has concluded that a warrant would be required if an acquisition were conducted inside the United States for law enforcement purposes but nonetheless that the targeted U.S. person abroad would not have a reasonable expectation of privacy, such that 704 does not apply. I am also unaware of any operational context in which the government has assessed that a U.S. person abroad lacks a reasonable expectation of privacy with respect to U.S. intelligence collection because of the laws or practices of the country in which the U.S. person is located, and those foreign laws and practices have not in my experience generally factored into the assessment of whether a reasonable expectation of privacy exists for purposes of section 704.

QUESTION 2: Do Sections 703, 704 or 705 of FISA limit the targeted collection of a U.S. person overseas’ geo-location information, communications metadata, or business records?

ANSWER: Section 704 of FISA prohibits the intelligence community from “intentionally target[ing], for the purpose of obtaining foreign intelligence information, a U.S. person reasonably believed to be located outside the United States under circumstances in which the targeted U.S. person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes,” without first obtaining an order from the Foreign Intelligence Surveillance Court (FISC). This prohibition could apply to an IC element targeting a U.S. person to obtain any type of information, provided that the person has a

reasonable expectation of privacy in the information under the circumstances and a warrant would be required if there were a law enforcement investigation seeking to obtain that same information in similar circumstances in the United States. Whether the government would be required to use a warrant to obtain a particular type of data in the United States depends on all the facts. For example, under the Electronic Communications Privacy Act, the government can obtain basic subscriber and session information from a service provider in a criminal investigation using a subpoena; because no warrant is required, the prohibition in section 704 would not apply if, theoretically, there were any foreign intelligence collection from providers targeting U.S. persons outside the United States seeking only such data. In contrast, the government's practice under the Fourth Amendment in law enforcement investigations in the United States has been to use a warrant to obtain GPS information from a wireless carrier on a prospective basis that allows ongoing geolocation of a person. Therefore, similar efforts targeting U.S. persons abroad for foreign intelligence purposes would trigger section 704. Exceptions to the warrant requirement, such as consent, could be available depending on the facts and therefore could affect whether section 704 would be triggered. Similar analysis would apply to sections 703 and 705.

Even if FISA does not apply, Attorney General-approved guidelines issued under E.O. 12333 may apply. For example, Attorney General-approved guidelines governing NSA's signals intelligence activities expressly provide that the U.S. SIGINT System (USSS) may intentionally target a U.S. person, whether inside or outside the United States, only if the collection is not governed by FISA and one of the following circumstances exist: the U.S. person or his or her legally-authorized representative has provided consent; the Attorney General has found probable cause to believe the person is an agent of a foreign power or an officer or employee of a foreign power and the purpose of the collection is to collect significant foreign intelligence or counterintelligence; or exigent circumstances exist and appropriate approvals for such collection have been obtained. Those guidelines also state that "the USSS will not intentionally collect foreign communications for the purpose of targeting a specific U.S. person or person in the United States unless such U.S. person or person in the United States has been separately authorized for targeting under this Annex or FISA."

QUESTION 3: Please describe the constitutional and statutory restrictions on targeting U.S. persons who are inside the United States when the collection occurs outside the United States.

ANSWER: As the Supreme Court made clear in *United States v. Katz*, "the Fourth Amendment protects people, not places." If a U.S. person has a reasonable expectation of privacy with respect to items or information in particular circumstances, any government search for those items or that information must meet the requirement for reasonableness under the Fourth Amendment, even if the collection occurs outside the United States and is done for foreign intelligence purposes.

Under Title I of FISA, the definition of “electronic surveillance” includes, among other things, “the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communications sent by or intended to be received by a particular, known U.S. person who is in the United States,” if the person is intentionally targeted and has a reasonable expectation of privacy such that a warrant would be required for law enforcement purposes. See 50 U.S.C. 1801(f)(1). This definition is agnostic as to the location of the collection; therefore, targeting a U.S. person in the United States with electronic surveillance from a point outside the United States could be regulated under the 1801(f)(1) definition of FISA. In contrast, Title III of FISA defines “physical search” by reference to “any physical intrusion within the United States into premises or property.” Thus it would appear that, depending on the circumstances, Title III may not regulate physical searches conducted outside the United States targeting a U.S. person inside the United States. Likewise section 704 of FISA would not apply to a U.S. person located in the United States because it is limited to targeting “a U.S. person reasonably believed to be located outside the United States.” (Section 702 of FISA would not of course apply to collection targeting a U.S. person at all.)

In order to ensure compliance with the Fourth Amendment with respect to a physical search outside the United States targeting a U.S. person inside the United States, my expectation is that the IC would generally seek the Attorney General’s approval as is done under section 2.5 of Executive Order 12333, which requires that the Attorney General find probable cause that the target of the collection is a foreign power or agent of a foreign power. For example, as noted above, Attorney General-approved guidelines governing NSA’s signals intelligence activities expressly provide that the U.S. SIGINT System (USSS) may intentionally target a U.S. person, whether inside or outside the United States, only if the collection is not governed by FISA and one of the following circumstances exist: the U.S. person or his or her legally-authorized representative has provided consent; the Attorney General has found probable cause to believe the person is an agent of a foreign power or an officer or employee of a foreign power and the purpose of the collection is to collect significant foreign intelligence or counterintelligence; or exigent circumstances exist and appropriate approvals for such collection have been obtained. Those guidelines also state that “the USSS will not intentionally collect foreign communications for the purpose of targeting a specific U.S. person or person in the United States unless such U.S. person or person in the United States has been separately authorized for targeting under this Annex or FISA.”

QUESTION 4: During his confirmation process, Assistant Attorney General for National Security John Demers was asked about the prohibition on reverse targeting in Section 702 of FISA. He responded: “As I understand it, determining whether a particular known U.S. person has been reverse targeted through the targeting of a Section 702 target necessitates a fact specific inquiry that would involve consideration of a variety of factors. For example, as the Privacy and Civil Liberties Oversight Board noted in its 2014

report, if a Section 702 tasking resulted in substantial reporting by the Intelligence Community regarding a U.S. person, but little reporting about the Section 702 target, that might be an indication that reverse targeting may have occurred.” Former General Counsel Fonzone stated that his “understanding of how IC entities make reverse-targeting determinations aligns with the view that Assistant Attorney General Demers expressed during his confirmation process....” Do you agree with them and, if so, how should this “fact specific inquiry” be implemented through the Section 702 nominations, querying and dissemination processes of Intelligence Community entities?

ANSWER: I agree. My understanding is that regular oversight conducted by DOJ and ODNI of activities conducted under Section 702 of FISA includes fact-specific examinations of whether reverse-targeting may have occurred, and that if and when any reverse targeting is identified, it is reported to the FISC and Congress consistent with applicable law.

QUESTION 5: 50 U.S.C. 1812, provides for exclusive means by which electronic surveillance and interception of certain communications may be conducted. During her confirmation process, Director Haines stated that “the President must take care that the law be faithfully executed and Title 50, Section 1812 is no exception.” Do you agree that this provision is binding on the President?

ANSWER: I share the view expressed by Director Haines during her confirmation process that the President must take care that the law be faithfully executed and Title 50, Section 1812 is no exception.

Surveillance authorities generally

QUESTION 6: Do you believe that communications data collected in transit are or should be treated differently than communications data at rest? Please address any distinctions as they may apply to FISA, EO 12333, PPD-28 and the October 7, 2022, Executive Order on Enhancing Safeguards for United States Signals Intelligence Activities, and USSID 18.

ANSWER: I believe all IC activities must be carried out in accordance with the Constitution and applicable federal law, including FISA, Executive Orders 12333 and 14086, as well as the portions of PPD-28 that remain in effect, and their applicable implementing procedures, such as USSID 18. Under these authorities, collection of communications data in transit is sometimes treated differently than collection of communications data at rest. For example, Title IV of FISA prescribes standards for the installation of a pen register or trap and trace device to collect dialing, routing, addressing and signaling information transmitted by an instrument or facility (“in transit” collection). Other FISA authorities, with different standards, may be used to obtain similar communications data that may be stored or “at rest.” In other contexts, however, the law

does not draw a distinction between collection of communications data in transit and at rest. For example, under applicable Attorney General-approved guidelines under E.O. 12333 governing NSA's signals intelligence activities, there appears to be no such distinction.

ODNI oversight

QUESTION 7: Please describe the role of the General Counsel in ensuring compliance with the October 7, 2022, Executive Order on Enhancing Safeguards for United States Signals Intelligence Activities.

ANSWER: Under the National Security Act, the DNI "shall ensure compliance with the Constitution and laws of the United States by the Central Intelligence Agency and shall ensure such compliance by other elements of the intelligence community through the host executive departments that manage the programs and activities that are part of the National Intelligence Program." Executive orders, including E.O. 14086 on Enhancing Safeguards for United States Signals Intelligence Activities, are part of federal law and fall within this responsibility. The General Counsel assists the DNI in carrying out this responsibility, which is shared with the relevant IC elements and their respective general counsels and oversight officials. Moreover, under ODNI's procedures implementing E.O. 14086, the ODNI General Counsel has an explicit role in assisting the ODNI Civil Liberties Protection Officer in addressing potential instances of non-compliance with E.O. 14086 at ODNI and reporting significant non-compliance to the DNI, and I expect would also provide advice on appropriate remedial actions.

QUESTION 8: 50 U.S.C. 3110 requires the Director of National Intelligence to submit to the congressional intelligence committees a report on violations of law or executive order. Please describe the role of the General Counsel in reviewing the report and recommending to the DNI IC-wide policies to address repeated or systemic violations.

ANSWER: 50 U.S.C. 3110 provides that "[t]he Director of National Intelligence shall annually submit to the congressional intelligence committees a report on violations of law or executive order relating to intelligence activities by personnel of an element of the intelligence community that were identified during the previous calendar year." It also states that each report "shall, consistent with the need to preserve ongoing criminal investigations, include a description of, and any action taken in response to, any violation of law or executive order." I would expect that the ODNI General Counsel would assist the DNI on these issues, including on any recommendations on how best to address repeated or systemic violations of law. While I have not previously been involved in preparation or review of this report, my understanding is that ODNI OGC is involved in the process and is currently working to improve ODNI's compliance with this Congressional reporting obligation.

Declassification reform

QUESTION 9: Director Haines has stated that “deficiencies in the current classification system undermine our national security, as well as critical democratic objectives.” Do you agree with her and, if so, what reforms or other measures do you believe should be implemented to resolve this problem?

ANSWER: Yes. Please see answer to Question 10 of the initial set of questions.

QUESTION 10: Do you believe that there should be one or more U.S. Government entities responsible for classification and declassification across the federal government and, if so, what entit(ies) should those be? Please address technological investments, classification and declassification policy-making, and oversight.

ANSWER: I am not familiar enough with this issue to provide an informed response to this question. If I am fortunate enough to be confirmed, I will provide legal advice to the DNI as needed on any reform proposals aimed at reducing overclassification.

Data purchases

QUESTION 11: The IC Policy Framework for Commercially Available Information released by the DNI on May 8, 2024, indicates that the ODNI “shall provide a report to the public every two years regarding the IC’s access to and collection, processing, and safeguarding of Sensitive CAI.” Please describe what you believe should be included in that report, including whether it should describe the kinds of CAI the IC is collecting.

ANSWER: I understand that ODNI is committed to continuing to share with the public as much information as possible about the principles and processes that govern the IC’s work, and that the public report called for by the CAI Policy Framework is part of that effort. I share the DNI’s commitment to transparency. I don’t yet have an opinion as to the specific types of information that might be included in the report. If I am fortunate enough to be confirmed, I will provide legal advice as necessary to the DNI regarding the public disclosure of information concerning the IC’s access to and collection, processing, and safeguarding of Sensitive CAI.

QUESTION 12: Do you believe that there is any kind of data on or generated by U.S. Persons that the IC should be prohibited from purchasing and retaining? Please provide specifics.

ANSWER: The collection, use and dissemination of U.S. person information by IC elements is governed by Attorney General-approved guidelines issued under E.O. 12333, and those guidelines prescribe limitations on these activities designed to protect privacy and civil liberties while enabling fulfillment of the elements’ national security missions.

For example, DHS's Attorney General-approved guidelines set forth a variety of requirements for when DHS's Office of Intelligence and Analysis (I&A) may engage in bulk data collection containing U.S. person information, including a determination that bulk data collection is the only practicable means of identifying or using the information that will support an authorized I&A mission and that the collection is reasonable based on the totality of the circumstances, including the expected contribution of the data to a national or departmental mission; the methods and means by which the data was acquired and/or aggregated by the data provider; the volume, proportion, sensitivity, and nature of the personally identifiable information collected; and the safeguards to be applied. DHS/I&A is not authorized to purchase and retain data in bulk where this standard is not met.

The IC's recent Policy Framework for Commercially Available Information augments each IC element's Attorney General guidelines and provides more detailed guidance specific to CAI, including Sensitive CAI concerning U.S. persons. As I understand it, all CAI accessed, collected, and processed by IC elements must be authorized and consistent with all applicable law and in furtherance of a validated mission or administrative need or function. Moreover, "[b]ased on the totality of the circumstances, IC elements shall determine whether the value of accessing or collecting the Sensitive CAI likely outweighs the privacy and civil liberties risks, data integrity and quality risks, security risk, and any other risks not detailed above, that cannot reasonably be mitigated." If CAI does not meet the standards prescribed in the IC framework, it should not be purchased.

If confirmed, I will provide legal advice to the DNI regarding the relevant applicable law and appropriate uses of CAI in support of the IC's critical mission activities to protect the American people and our national security.

Outsourcing intelligence

QUESTION 13: Do you agree that no element of the IC can request that a foreign entity conduct any activity that it is not authorized to undertake itself?

ANSWER: Yes, IC elements may not request any person, including a foreign entity, to undertake activities that the Constitution, federal law, or Executive Order, including Executive Order 12333, forbid the IC elements themselves to take.

QUESTION 14: What limitations do you believe should apply to the receipt, use or dissemination of communications of U.S. persons collected by a foreign partner or source? How should those limitations address instances in which the foreign partner or source specifically targeted U.S. persons or instances in which the foreign partner or source has collected bulk communications known to include those of U.S. persons?

ANSWER: The collection, use and dissemination of U.S. person information by IC elements is governed by Attorney General-approved guidelines issued under E.O. 12333, and those guidelines prescribe limitations on these activities designed to protect privacy and civil liberties while enabling fulfillment of the elements' national security missions. This includes collection, use, and dissemination of U.S. person information obtained from foreign partners or sources. The guidelines do not preclude IC elements from collecting U.S. person information when a foreign partner or source may have targeted U.S. persons if the information obtained as a result meets the criteria for collection by the IC element, including, e.g., where the authorized IC element collection involves U.S. person information that constitutes foreign intelligence or counterintelligence, or is needed to protect the safety of persons or organizations, including those who are targets, victims, or hostages of international terrorist organizations.

In addition, the guidelines generally prescribe special rules and considerations for addressing acquisition of information that is likely to include a large volume of U.S. person data. For example, CIA's Attorney General-approved guidelines have rules imposing "exceptional handling requirements" in situations in which it collects "unevaluated information that is anticipated to contain USPII that is significant in volume, proportion, or sensitivity." Those requirements include enhanced rules for storage, access, and destruction of the data and for U.S. person queries of the data. CIA's guidelines also require that all non-public communications collected without the consent of the subject be subject to the same "exceptional handling requirements."

Transparency

QUESTION 15: Executive Order 12333 procedures and guidelines are publicly available. Do you commit to continuing to post these procedures and to making public any modifications, superseding policies and procedures, or significant interpretations?

ANSWER: If confirmed, I would support continuing to make guidelines issued under E.O. 12333 public to the maximum extent possible, subject to the guidance of the DNI.

QUESTION 16: If, for any reason, you or someone who works for you makes a public statement that is inaccurate, do you commit to making a public statement correcting the record?

ANSWER: Yes, if I am confirmed and if I become aware that I or someone who works for me has made a significant public statement that is inaccurate, I would publicly correct the statement, consistent with the requirement to protect classified information and other applicable law. If I am not able to make a public correction because of a requirement to protect such information, I will make every effort to inform the intelligence committees of the inaccuracy in a classified setting.

Chief of Mission Authorities

QUESTION 17: If a U.S. ambassador directs the Intelligence Community to cease a particular program or operation in the country where the ambassador is serving, is the Intelligence Community obligated to do so, absent or pending intervention by the President?

ANSWER: My views are similar to those expressed by Director Haines during her confirmation process. If a U.S. ambassador directs an IC element to cease certain activities within the country for which they are the U.S. representative, in my view, the IC should either stop the activities or elevate the issue or both.

Subpoenas

QUESTION 18: In March 2019, the Department of Justice Inspector General released its “Review of the Drug Enforcement Administration’s Use of Administrative Subpoenas to Collect or Exploit Bulk Data.” Do you believe that the subpoena authorities in question, and 21 U.S.C. 876(a) in particular, allow for bulk collection?

ANSWER: I am aware that the Supreme Court has recognized a constitutional reasonableness limitation on overly broad subpoenas, which I presume would apply to 21 U.S.C. 876(a) and any other subpoena authorities used by the Drug Enforcement Administration (DEA). Beyond that, I am not familiar with the cited report, how DEA has used its subpoena authorities, or what might be considered bulk collection in this context.