

**SELECT COMMITTEE ON
INTELLIGENCE**

UNITED STATES SENATE



**Additional Pre-Hearing Questions for
John Andrew Eisenberg upon his nomination to be Assistant Attorney General for
the National Security Division, Department of Justice**

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 not only to the Director of National Intelligence (DNI) but also to “the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities.” Section 503 establishes a similar requirement concerning covert actions. Sections 502(a)(2) and 503(b)(2) provide that these officials shall “furnish to the congressional intelligence committees any information or material” concerning intelligence activities or covert actions, including the legal basis for them, that is requested by either of the committees in order to carry out its authorized responsibilities. Finally, 28 C.F.R. § 0.72(a)(1) provides that the Assistant Attorney General for National Security (AAG/NS) shall conduct, handle, or supervise the “brief[ing] of Congress, as appropriate, on matters relating to the national security activities of the United States[.]”

- a. What is your understanding of the obligation of the Attorney General and the Director of the Federal Bureau of Investigation (FBI) to keep the congressional intelligence committees, including all their Members, fully and currently informed?

RESPONSE: I understand that Section 502 of the National Security Act of 1947 (50 U.S.C. § 3092) obligates the Director of National Intelligence and the heads of agencies involved in intelligence activities to “keep the congressional intelligence committees fully and currently informed of all intelligence activities, other than a covert action” and to “furnish the congressional intelligence committees any information or material concerning intelligence activities . . . other than covert actions[.]” These responsibilities are to be undertaken “[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.” With respect to the Department of Justice (DOJ), these obligations apply to the intelligence activities of DEA and FBI components that are part of the Intelligence Community (IC). The Attorney General has a duty to ensure that these statutory obligations are fulfilled for DOJ’s IC components. Regulations governing the functions of the National Security Division (NSD) require the Assistant Attorney General for National Security to “[a]dvice the Attorney General [and others and to] brief Congress, as appropriate, on matters relating to the national security activities of the United States.” See 28 C.F.R. § 0.72(a)(1).

- b. To what activities of the Department of Justice (Department), including the FBI, does this obligation ordinarily apply?

RESPONSE: It is my understanding that these obligations ordinarily apply to the FBI's Intelligence Branch and the DEA's Office of National Security Intelligence, which are both elements of the IC, consistent with Section 3 of the National Security Act of 1947 (50 U.S.C. § 3003).

- c. What is your understanding of the Attorney General's obligation to provide to the congressional intelligence committees any information or material concerning the legal basis for intelligence activities or covert actions, which either committee requests in order to carry out its legislative or oversight responsibilities?

RESPONSE: The congressional intelligence committees serve an important and unique function in authorizing and overseeing the intelligence activities of the Executive Branch. I recognize the importance providing the committees timely information concerning the legal basis for intelligence activities or covert actions, as contemplated in Sections 502 and 503 of the National Security Act of 1947. That statute obligates IC members to provide the committees with information and material relevant to their intelligence activities, and the Attorney General has a duty to ensure that these statutory obligations are fulfilled for DOJ's IC components.

- d. The Committee utilizes detailed information on the overall national security threat environment and other intelligence matters to fulfill its intelligence authorization and oversight functions. Do you agree that the Department and the FBI should fully notify and brief the congressional intelligence committees on potential counterterrorism and counterintelligence threats to the United States, as well as FBI intelligence-related activities to thwart such threats?

RESPONSE: Yes. I agree that the Department of Justice, including the FBI, should fully notify and brief, consistent with the statutes discussed above, the congressional intelligence committees on potential counterterrorism and counterintelligence threats to the United States and FBI intelligence-related activities to thwart such threats.

- e. The Committee's legislative and oversight responsibilities include assessing the utility and effectiveness of counterterrorism and counterintelligence authorities, as well as the legality of those authorities as applied. Do you agree that the Department's and FBI's notifications and briefings should include detailed information on these authorities, as well as their use in ongoing and completed investigations?

RESPONSE: Yes. The Department's and FBI's briefings and notifications should keep the Committee fully informed of the utility and effectiveness of counterterrorism and counterintelligence authorities, consistent with due regard for law enforcement and

intelligence responsibilities. Such briefings help ensure effective congressional oversight of intelligence activities, which reinforces public confidence in the appropriate and effective use of these authorities.

Liaison to the Director of National Intelligence

QUESTION 2: Pursuant to 28 U.S.C. § 507A(b)(2), the AAG/NS “shall serve as primary liaison” to the DNI for the Department.

- a. What is your understanding of how past AAG/NS’s have performed this responsibility? Describe the principal ways in which the AAG/NS should carry out this responsibility and the principal matters that the AAG/NS should address in performing this responsibility.

RESPONSE: It is my understanding the Assistant Attorney General for National Security and NSD as a whole perform this liaison function by working closely with the Office of the Director of National Intelligence (ODNI) and the ODNI Office of General Counsel in order to help align law enforcement and intelligence efforts to protect against threats to the national security. In addition, the Assistant Attorney General for National Security represents and protects Intelligence Community interests within the Department, ensuring, for example, that the Department properly weighs risks to intelligence sources and methods. Conversely, the Assistant Attorney General for National Security helps to ensure that the Intelligence Community properly weights law enforcement equities in its decisionmaking. It is my understanding that this work is primarily done through frequent consultations between NSD and ODNI and the ODNI Office of General Counsel.

- b. Have you discussed with the DNI, and with personnel in the Office of the Director of National Intelligence (ODNI), your understanding of that responsibility? If so, please describe.

RESPONSE: I have not had the opportunity to discuss my understanding of this responsibility with the Director of National Intelligence. If confirmed, I look forward to working with the Director of National Intelligence and the Office of National Intelligence to discharge this important duty.

Priorities of the National Security Division and the Attorney General

QUESTION 3: Have you discussed with the Attorney General her specific expectations of you, if confirmed as Assistant Attorney General, and her expectations of the National Security Division (NSD) as a whole? If so, please describe those expectations.

RESPONSE: If I am confirmed, the Attorney General expects me to protect the Nation from threats to our national security by pursuing justice through the law. If confirmed, I look forward to discussing these matters in detail with the Attorney General.

QUESTION 4: Based on your experience in, and current understanding of, NSD, please provide any observations or recommendations related to the strengths or weaknesses of NSD, including its organization, responsibilities, personnel, allocation of resources, and any other matters that you believe are relevant to strengthening NSD.

RESPONSE: If confirmed, I look forward to meeting with other members of the Department and discussing how NSD can most effectively protect the United States from threats to our national security by pursuing justice through the law.

Oversight of Intelligence Activities

QUESTION 5: Pursuant to 28 C.F.R. § 0.72(17), the AAG/NS shall “[p]rovide oversight of intelligence, counterintelligence, or national security matters by executive branch agencies to ensure conformity with applicable law, executive branch regulations, and Departmental objectives and report to the Attorney General on such activities.”

- a. What is your understanding of NSD’s oversight role, including the manner in which it has been exercised, concerning the FBI’s intelligence activities?

RESPONSE: NSD oversees intelligence, counterintelligence, and other national security activities conducted by the FBI and the broader Intelligence Community to ensure compliance with the law and applicable policies. I understand that NSD’s Office of Intelligence (OI) is responsible for much of this work, including oversight of the FBI’s and other agencies’ activities undertaken pursuant to the Foreign Intelligence Surveillance Act (FISA). I further understand that, as part of this work, OI conducts compliance audits and, as appropriate, reports the results to the FISC and Congress.

- b. What is your understanding of NSD’s oversight role undertaken in the offices of United States Attorneys, including the manner in which it has been exercised?

RESPONSE: Pursuant to 28 C.F.R. § 0.72(a)(2), one of NSD's functions is to "[d]evelop, enforce, and supervise the application of all federal criminal laws related to the national counterterrorism and counterespionage programs, except those specifically assigned to other Divisions." The Justice Manual, which is publicly available and sets forth internal DOJ policies and procedures, provides specific guidance regarding the relationship between NSD and United States Attorneys Offices, including applicable notification, consultation, and approval requirements, which help NSD ensure a coordinated approach to countering national security threats. I am also aware that NSD serves as the liaison for United States Attorneys' Offices and other Department litigating components in matters involving classified information or requiring engagement with the Intelligence Community.

- c. What is your understanding of NSD's oversight role, including the manner in which it has been exercised, concerning the IC's intelligence activities outside of the Department?

RESPONSE: NSD's oversight role with respect to the foreign intelligence, counterintelligence, and other national security activities of the Intelligence Community is set out in Department of Justice regulation 28 C.F.R. § 0.72. This work includes the administration of FISA, including oversight requirements, as well as the fulfillment of Congressional reporting requirements. The regulation also assigns NSD responsibility to provide legal assistance and advice, in coordination with the Office of Legal Counsel where appropriate, to other agencies on matters of national security law and policy, and to advise and assist the Attorney General in carrying out her responsibilities under Executive Order 12333 ("United States Intelligence Activities") and other statutes, executive orders, and authorities related to intelligence, counterintelligence, or national security matters. NSD works with the IC to develop Attorney General-approved guidelines for handling U.S. person information, as required by Executive Order 12333. Those guidelines generally require IC elements to consult with NSD regarding significant questions under the guidelines.

- d. Are there improvements, in terms of resources, methodology, and objectives in the conduct of this oversight that you believe should be considered?

RESPONSE: If confirmed, I look forward to meeting with other members of the Department to ensure NSD fulfills its oversight responsibilities and pursues improvements where appropriate.

Foreign Intelligence Surveillance Act

QUESTION 6: Pursuant to 28 C.F.R. § 0.72(6), the AAG/NS shall administer the Foreign Intelligence Surveillance Act (FISA).

- a. What responsibility does NSD have with regard to ensuring that representations made to the United States courts, both by other Department elements and by Intelligence Community (IC) elements, are accurate and complete with regard to intelligence activities and other classified matters? What responsibility does NSD have to correct any inaccurate or incomplete representations? Please describe how NSD fulfills this responsibility.

RESPONSE: It is my understanding that NSD is responsible for ensuring that the Department's representations made in court are accurate and complete, and that the same is true for representations by other Department elements and by Intelligence Community elements in matters handled by NSD. To that end, NSD attorneys, like attorneys in general, must conduct a rigorous review of information and legal arguments to ensure that they understand the underlying law and facts before any representations are made to the court. NSD must also promptly correct any inaccurate or incomplete representations made to the court.

- b. Based on your experience in and current understanding of NSD, what improvements, if any, would you make to the administration of FISA, in terms of policies, resources, technology, and relations with both the Foreign Intelligence Surveillance Court (FISC) and IC elements?

RESPONSE: If confirmed, I look forward to meeting with other members of the Department and discussing NSD's administration of FISA to identify and pursue, where appropriate, any improvements.

QUESTION 7: Title VII of FISA, which includes foreign-based collection authorities, expires on April 20, 2026. Do you support reauthorization of these provisions? If so, do you support reauthorization for a period of years or making these provisions permanent? Please provide the principal reasons for your support.

RESPONSE: Based on my previous experience as Legal Advisor to the National Security Council, I believe that section 702 is a vital national security tool. Section 702 provides critical authorities for collecting foreign intelligence information necessary to protect our national security. We must protect this critical authority while also enhancing protection of the civil liberties of Americans.

QUESTION 8: How has FISA Section 702 been valuable to national security investigations?

RESPONSE: Based on my prior government service and public reporting, I am aware that FISA Section 702 has been valuable to national security investigations by identifying

information critical to our efforts to counter terrorist organizations, spies, drug cartels, malicious cyber actors, and other adversaries. If confirmed, I look forward to receiving additional briefings on the ways in which Section 702 has benefitted national security investigations.

QUESTION 9: Congress passed the Reforming Intelligence and Securing America Act (RISAA) in April 2024, which extended Title VII of FISA until April 20, 2026, and enacted other reforms. What reforms do you view as most critical to our national security? Do you believe additional reforms are required? If so, what reforms do you recommend?

RESPONSE: I understand that RISAA incorporated a number of substantial reforms to the handling of information acquired pursuant to Section 702, including imposing additional restrictions and requirements related to FBI queries of such information. I anticipate working closely with NSD, FBI, and other agencies to gain a better understanding of how well these reforms are working and whether additional reforms may be in order.

QUESTION 10: An important provision in RISAA added international narcotics trafficking to the definition of “foreign intelligence information” under FISA, so that the IC can specifically target foreign narco-traffickers to stop the flow of deadly narcotics, including fentanyl, into the United States. How integral will this provision be to Section 702 collection for counternarcotics operations?

RESPONSE: RISAA expanded FISA’s definition of “foreign intelligence information” to include information that relates to international production, distribution, or financing of certain drugs, including fentanyl. Although it is difficult to predict, especially from outside NSD, I anticipate this change will improve our intelligence with respect to actors involved in international drug trafficking, thus strengthening our efforts to counter and disrupt their activity.

QUESTION 11: During RISAA’s floor action, there was much debate about whether to require a warrant for a query of U.S. person information within lawfully collected Section 702 data. What is your position on whether to include a warrant requirement for U.S. person queries of Section 702 data?

OR: While I do not believe a warrant is required as a matter of law, I am not aware of an Administration position as to whether such a requirement is desirable as a matter of policy. On the one hand, imposing a warrant requirement could significantly impair the government’s ability to identify national security threats in the early stages of an investigation. On the other hand, such a requirement would enhance the protection of the privacy of Americans. If I am confirmed, I look forward to reviewing available information

and to helping the Administration formulate its views on this question and on other ways to increase privacy protections for Americans.

QUESTION 12: In addition to the FISC, the legislative and executive branches have oversight of FISA’s Title VII authorities. Please describe your understanding of NSD’s and the IC’s oversight to ensure FISA’s authorities – and specifically, Section 702 – are constitutional and ensure U.S. persons’ legal rights are protected. Are there adequate oversight protocols in place? If not, what additional protocols would you recommend, if confirmed?

RESPONSE: Section 702 includes a number of critical safeguards for Americans. For example, it prohibits targeting anyone inside the United States and also all U.S. persons anywhere in the world; the FISA court reviews Section 702 procedures annually to ensure that they comply with the Fourth Amendment and the statute; and NSD reviews all targeting decisions. If confirmed, I look forward to engaging in further consideration of whether any additional safeguards are advisable.

Protection of Classified Information

QUESTION 13: Describe your understanding of the personnel resources that NSD should devote to the prosecution of unauthorized disclosures of classified information, and how NSD should divide responsibility on these matters with the Criminal Division. Please describe any recommendations related to prosecutions connected to unauthorized disclosures of classified information with regard to Department policies and resources.

RESPONSE: The prosecution of unauthorized disclosures of classified information is a critical matter for national security and is necessary to any system of protecting classified information. Responsibility for coordinating and supervising prosecutions of unauthorized disclosures of classified information is assigned by regulation and Department policy to NSD. If confirmed, I would examine the allocation of resources within NSD to ensure that NSD devotes appropriate resources to the prosecution of unauthorized disclosures of classified information.

QUESTION 14: Describe your understanding of the personnel resources within NSD that should be devoted to the prosecution of media leak cases, and how NSD should divide responsibility on these matters with the Criminal Division.

RESPONSE: It is my understanding that responsibility for coordinating and supervising prosecutions of unauthorized disclosures of classified information (including media leak cases) is assigned by regulation and Department policy to NSD. Leaking classified information to the

media can cause real harm to our national security. If confirmed, I look forward to examining the allocation of resources to such cases to ensure that appropriate resources are devoted to that threat.

QUESTION 15: Describe your understanding of the role that NSD has played since its inception in media leak prosecutions in United States district courts and on appeal to the United States courts of appeals.

RESPONSE: I am aware that, since its inception, NSD has been responsible for overseeing prosecutions involving unauthorized disclosures of classified information, including matters involving members of the media. I have not been involved in such matters but look forward to working on these matters to ensure that they are handled appropriately, consistent with NSD's mission to coordinate and oversee national security investigations and strengthen the effectiveness of the federal government's national security efforts.

QUESTION 16: Are there any additional steps that the U.S. government as a whole should take to prevent the unauthorized disclosures of classified information from occurring? If so, please describe.

RESPONSE: As I have not worked on investigations and prosecutions involving unauthorized disclosures of classified information, I have not had occasion to study this issue in detail. I welcome the opportunity to meet with other members of the Department and examine this issue if I am confirmed.

QUESTION 17: Are there any additional steps that the U.S. government as a whole should take to prevent the unauthorized removal and retention of classified information from occurring? If so, please describe.

RESPONSE: I just recently returned to the government, I and therefore am not familiar with everything the Department and government are doing in this regard. If confirmed, I look forward to meeting with other members of the Department to discuss this issue.

QUESTION 18: Please describe your understanding of NSD's prepublication review responsibilities and the administrative and judicial review, which is available to an officer or employee, or former officer or employee, with respect to the Department's exercise of prepublication authorities, including those applicable to the FBI. In answering this question, please provide your evaluation of the extent to which present and former officers and employees of the Department adhere to their prepublication obligations.

RESPONSE: It is my understanding that NSD is responsible, in some circumstances, for prepublication review of material produced by current and former Department officials, but I am not familiar with the specific nature of that process or the types of review that are available.

I also do not have a basis to evaluate the extent to which present and former officers and employees of the Department adhere to their prepublication obligations.

Counterterrorism Prosecutions

QUESTION 19: Describe your understanding of the personnel resources that NSD should devote to the prosecution of terrorism cases.

RESPONSE: The prosecution of terrorism cases is one of Department's highest priorities. If confirmed, I would ensure that NSD allocates appropriate resources to this mission.

QUESTION 20: Describe your understanding of the role that NSD has played since its inception in terrorism prosecutions in United States district courts and on appeal to the United States courts of appeals.

RESPONSE: Since its inception, NSD has played a central role in terrorism prosecutions in federal court. NSD, for example, retains the authority to approve the use of certain statutes in terrorism prosecutions and has an appellate group that advises on appeals involving these authorities. NSD is thus able to ensure a coordinated approach to terrorism prosecutions. Its expertise in national security law, its coordination with other law enforcement and intelligence agencies, and its role in handling sensitive classified information make it essential in the fight against terrorism.

Counterespionage Prosecutions

QUESTION 21: Describe your understanding of the personnel resources that NSD should devote to the prosecution of espionage cases.

RESPONSE: The prosecution of espionage cases is among the Department's highest priorities. If confirmed, I will ensure that appropriate resources are devoted to the prosecution of these cases.

QUESTION 22: Describe your understanding of the role that NSD has played since its inception in espionage prosecutions in United States district courts and on appeal to the U.S. courts of appeals.

RESPONSE: It is my understanding that, since its inception, NSD has played a central role in espionage prosecutions in federal court. NSD, for example, retains the authority to approve the use of certain statutes in espionage prosecutions and has an appellate group that advises on appeals involving these authorities. NSD is thus able to ensure a coordinated approach to espionage prosecutions. NSD is also able to help the Intelligence Community vindicate its equities, thus making the Intelligence Community more likely to agree with bringing particular prosecutions.

Foreign Investment Review Section/CFIUS

QUESTION 23: What is your vision for the Foreign Investment Review Section?

RESPONSE: NSD's Foreign Investment Review Section (FIRS) is responsible for a range of national security efforts relating to foreign investment, sensitive personal data, telecommunications networks, and supply-chain security. FIRS assists in executing NSD's role as the Department's representative to the Committee on Foreign Investments in the United States and to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector. If confirmed, I look forward to examining the relevant threats and appropriately directing FIRS's efforts to counter them.

QUESTION 24: What foreign investment, if any, requires extra scrutiny in order to protect national security interests? From which countries and in what sectors?

RESPONSE: If confirmed, I intend to review relevant intelligence regarding the threats posed by foreign investments and consult with Department and other government experts to determine where and how to allocate NSD resources for the review of foreign investment. As a general matter, efforts will be guided by the President's February 21, 2025 National Security Presidential Memorandum (NSPM) aimed at promoting foreign investment while protecting our national security, particularly from threats posed by China and other foreign adversaries. As identified in the NSPM, strategic U.S. sectors like technology, critical infrastructure, healthcare, agriculture, energy, and raw materials would be prioritized.

QUESTION 25: As the Attorney General's representative on the Committee on Foreign Investment in the United States, if confirmed, what would be your approach to CFIUS reviews?

RESPONSE: If confirmed, my approach to CFIUS reviews would be guided by the relevant authorities and the policies of the Administration, including the NSPMP.

Professional Experience

QUESTION 26: For each of the following, describe specifically how your experiences will enable you to serve effectively as the AAG/NS. Include within each response a description of issues relating to NSD that you can identify based on those experiences.

- a. Senior Counselor to the Attorney General.;

RESPONSE: *I have been in this role for little more than a month, during which time I have re-engaged with the Department of Justice and established relationships with its senior leadership. Should I be confirmed, I believe my time in the Office of the Attorney General will enable me to be effective from the outset.*

- b. Deputy Assistant to the President, Deputy Counsel to the President for National Security Affairs, and Legal Advisor to the National Security Council;

RESPONSE: *In my positions at the National Security Council and the White House, I became deeply familiar with many of the major legal issues that arise in the Executive Branch relating to national security. Perhaps more importantly, I became intimately familiar with the decisionmaking processes the Executive Branch employs for national security and foreign affairs questions and the functioning of the White House more generally. I believe this knowledge will prove very useful as the Department navigates the interagency process.*

- c. Law Partner at Kirkland & Ellis, LLP;

RESPONSE: *As a partner at a large, international law firm, I learned how to manage teams of associates working towards a common goal. I learned how to synthesize large amounts of information and present it to clients and decisionmakers effectively. These skills were also important to my success as the NSC Legal Advisor, and I believe they will be helpful if I am confirmed to this position.*

- d. Associate Deputy Attorney General in the Office of the Deputy Attorney General;

RESPONSE: *In this role, I helped to oversee the Department of Justice's national security components and functions, including NSD and the FBI. I was a frequent representative of the Department at NSC meetings at all levels. The experience I gained in this position will be very helpful to me if I am confirmed. I understand that the national security issues facing the country have changed. Cybersecurity has increased dramatically in importance, and artificial intelligence has quickly become a major issue. Nevertheless, this experience would be very helpful, and, in combination with the rest of my career, I believe I am well-prepared to be effective in this position.*

- e. Deputy Assistant Attorney General and Counsel to the Assistant Attorney General in the Office of Legal Counsel; and

RESPONSE: *When I served in these positions in the Office of Legal Counsel (OLC), I worked largely on national security issues. As a deputy in OLC, I provided legal advice on national security matters to the Counsel to the President, the Attorney General, the Legal Advisor to the NSC, and many throughout the defense and intelligence agencies. This position gave me the opportunity to think deeply about legal issues in a variety of*

national security contexts. It also gave me an opportunity to learn how to devise concise summaries of complex legal issues. These skills will be useful if I am confirmed.

- f. Special Assistant for Counterterrorism in the Office of Legal Counsel.

RESPONSE: In this position, I primarily learned about the law governing surveillance, particularly the application of the Fourth Amendment and the Foreign Intelligence Surveillance Act of 1978. This understanding will be very helpful to me if I am confirmed.

QUESTION 27: Please describe your law practice and the clients you served while a law partner at Kirkland & Ellis, LLP.

RESPONSE: Initially, my practice focused on white collar matters including internal investigations. In the last few years of my time at Kirkland, my practice began to focus more on data security and other cyber matters. My practice did not focus on a particular segment of the economy, and I worked on cyber matters for clients from a variety of sectors.

QUESTION 28: What, if any, conflicts might arise from your law firm practice if you are confirmed as Assistant Attorney General, and how would you address these conflicts?

RESPONSE: If confirmed, were any matter to come before me that might present a conflict of interest, I would consult with the Department of Justice ethics officials and follow my ethical obligations.

QUESTION 29: Please describe your activities as a:

- a. Representative of the National Archives and Records Administration; and

RESPONSE: As a representative of President Trump to the National Archives and Records Administration, I reviewed documents from President Trump's first term when they were requested by the then-current Biden Administration or other parts of the government.

- b. Member of the Oak Ridge National Laboratory's Global Security Directorate Strategic Advisory Group.

RESPONSE: The Strategic Advisory Group met quarterly in order to help the Director of the Global Security Directorate prioritize projects. From that group, I learned a significant amount about the national security functions of the Department of Energy.

Questions from Senator Warner

Staffing

QUESTION 30: Since January 20, 2025, essentially all the career civil servants in leadership positions in NSD have been reassigned or otherwise removed from the Division, depriving the Division of decades of expertise and experience. What are your views on the decisions to reassign or remove these personnel? Will you reverse any of the decisions? How do you plan to address the loss of expertise and experience so that Division may effectively carry out its mission?

RESPONSE: *I have not been involved in the management of NSD and do not know the reasons for changes that have been made. If I am confirmed, I will review NSD's personnel needs and, as appropriate, fill them with the best candidates I can find.*

Foreign Agents Registration Act

QUESTION 31: Please familiarize yourself with the Attorney General memorandum dated February 5th, with the subject of “General Policy Regarding Charging, Plea Negotiations, and Sentencing.” In June 2020, the Trump Administration released over a dozen determination letters regarding enforcement of the Foreign Agents Registration Act (FARA). It included ten letters addressed to media organizations acting on behalf of foreign principals indicating their need to comply with FARA. Do you interpret Attorney General Bondi’s February 5th memo and its reference to limiting criminal FARA enforcement to “traditional espionage to foreign government actors” to rescind or otherwise alter FARA enforcement policy previously reflected in these determination letters?

RESPONSE: *All individuals and organizations are obliged to comply with the law, including the Foreign Agents Registration Act (FARA). I am familiar with the Attorney General's February 5, 2025 memorandum regarding charging, plea negotiations, and sentencing. The memorandum establishes Department policy regarding criminal enforcement of FARA. I would need to consult with NSD's FARA experts to assess the implications of the memorandum.*

Questions from Senator Wyden

Section 702 of FISA

QUESTION 32: During her confirmation process, Director of National Intelligence Gabbard wrote: “Warrants should generally be required before an agency undertakes

a U.S. Person query of FISA Section 702 data, except in exigent circumstances, such as imminent threats to life or national security.” Do you agree?

RESPONSE: In my view, Section 702 is a valuable tool to protect against threats to our national security. At the same time, government actors have an obligation to respect the civil liberties of Americans. If I am confirmed, I would confer with experts in the National Security Division to get a better understanding of this issue and with the Deputy Attorney General and the Attorney General to determine what additional steps should be taken to protect civil liberties of Americans.

QUESTION 33: During his confirmation process, former 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.” How would you ensure that this fact specific analysis is applied to the nomination of and ongoing collection on Section 702 targets?

RESPONSE: Section 702 of FISA prohibits targeting persons inside the United States or a U.S. person anywhere in the world. It also prohibits so-called “reverse targeting,” meaning the targeting of a foreign person located abroad as a pretext for targeting a communicant of that person who is a U.S. person or person located in the United States. NSD reviews all targeting decisions and one of NSD’s functions, which is largely carried out by the NSD’s Office of Intelligence, is oversight of the FBI’s and other agencies’ compliance with FISA. If confirmed, I will look into the ways in which NSD executes that function and consider whether any additional steps may be necessary to strengthen oversight and ensure compliance with the statute’s requirements.

QUESTION 34: The 2018 legislation reauthorizing Section 702 of FISA codified limitations on the use of U.S. person information in criminal proceedings. Do you believe these limitations should be extended to other provisions of FISA?

RESPONSE: As far as I am aware, the Administration has not endorsed such a limitation. If such a limitation is proposed, and (assuming I am confirmed) I am asked to offer my views, I would do so only after careful consideration of the proposal and consultation with my colleagues within the National Security Division.

QUESTION 35: Under Section 702 of FISA, the government can direct an electronic communications service provider to provide “assistance necessary to accomplish the acquisition.” Under Section 702(h)(5), if the provider does not comply with a directive, the government may seek an order from the FISA Court to compel compliance.

- a. Do you believe that the government should inform the FISA Court should it issue a directive to a provider to alter the encryption afforded by a service or a product, regardless of whether the government files a motion to compel compliance?

RESPONSE: My understanding is that FISA does not impose a notification obligation in this scenario. Further, as far as I am aware, the Administration has not endorsed such an obligation. Were such an obligation proposed and (assuming I am confirmed) I am asked to offer my views, I would do so only after careful consideration of the proposal and in consultation with my colleagues within the National Security Division.

- b. Will you commit to notifying Congress of any such directive?

RESPONSE: Consistent with DOJ’s long-standing policies, I cannot commit to notifying Congress about investigatory steps being taken in active, law enforcement investigations. I am committed to following the Constitution and all federal and applicable state laws.

Other FISA authorities

QUESTION 36: During her confirmation process, Director Gabbard wrote that she would oppose any effort to re-codify Section 215 of the USA PATRIOT Act. Do you agree?

RESPONSE: I understand that Section 215, sometimes referred to as the “business records” provision, allowed the government to apply to the FISA Court for an order to collect “tangible things,” such as records, papers, and other documents relevant to an authorized national security investigation. It is also my understanding that the authority expired in 2020, although a prior, narrower version of the provision remains in effect. If a proposal to re-codify Section 215 were introduced and (assuming I am confirmed) I am asked to offer my views, I would do so only after careful consideration of the proposal and in consultation with my colleagues within the National Security Division.

QUESTION 37: If you do *not* oppose the re-codification of Section 215 of the USA PATRIOT Act or similar business records authorities, please respond to the following questions:

- a. Do you believe the government’s authority to collect business records should be limited to “tangible things” that pertain to: (1) a foreign power or an agent of a foreign power; (2) the activities of a suspected agent of a foreign power who is the subject of an authorized investigation; or (3) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of an authorized investigation? Under what circumstances do you believe an application for business records could be based on the “relevance” standard without satisfying any of the above three requirements for presumptive relevance?

RESPONSE: I have not considered this issue and could offer a view only after careful consideration of the question in consultation with my colleagues within the National Security Division.

- b. In November 2019, the government acknowledged that it was not collecting cell-site or GPS information pursuant to Section 215 of the USA PATRIOT Act, which does not require a warrant. In 2020, both houses of Congress passed legislation reauthorizing Section 215 that prohibited such collection, although the legislation was not passed into law. Do you agree that no re-codification of warrantless business records collection should authorize cell-site or GPS information?

RESPONSE: If a proposal were introduced to re-codify Section 215, and (assuming I am confirmed) I am asked to offer my views, I would do so only after careful consideration of the proposal and consultation with my colleagues within the National Security Division.

- c. In a November 6, 2020, letter, then-DNI John Ratcliffe wrote that, “with respect to the use of Title V [of FISA] to obtain records from ISPs, the FBI does not request and obtain pursuant to Title V the content of any communication, to include search terms submitted to an online search engine.” Do you agree that internet search information constitutes content of communications and thus can only be obtained with a probable cause warrant?

RESPONSE: Please see my response to Question 37a. above.

QUESTION 38: 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.” During his confirmation process to be IC General Counsel, then-Principal Deputy

Assistant Attorney General Brad Wiegmann wrote that he was “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.” Do you agree?

RESPONSE: *I have not considered this issue and could offer a view only after careful consideration of the question in consultation with my colleagues within the National Security Division.*

QUESTION 39: Do Sections 703, 704 or 705 of FISA limit the targeted collection of geo-location information, communications metadata, or business records of a U.S. person who is overseas?

RESPONSE: *I understand that these sections of FISA apply when the government seeks to collect information about a United States person outside the United States in circumstances where the person has a reasonable expectation of privacy and a court order would be required if the same collection happened in the United States for law enforcement purposes, and that these sections require that the FISA Court find probable cause that the United States person is a foreign power, an agent of a foreign power, or an officer or employee of a foreign power. I am not familiar with how any limitations in these provisions might apply to the types of information specified in the question.*

Other surveillance authorities

QUESTION 40: Former NSA Director Paul Nakasone has stated that, absent consent of the U.S. person or certain emergency situations, U.S. person queries of communications collected under Executive Order 12333 “normally must be approved by the Attorney General on a case-by-case basis after a finding of probable cause.”

- a. Is there any reason this requirement should not apply to other IC entities, particularly with regard to U.S. person queries of data collected in bulk?

RESPONSE: *Intelligence activities conducted under E.O. 12333 are carried out in accordance with procedures approved by the agency head and the Attorney General. NSD works closely with the IC to develop Attorney General-approved guidelines for handling U.S. person information, as required by Executive Order 12333. If confirmed, I will as necessary review these Attorney General-approved guidelines to determine if updates or amendments should be made to better protect the safety and security of Americans.*

- b. How, if at all, should evidence of probable cause presented to the Attorney General by NSA differ than that required under FISA?

RESPONSE: *Intelligence activities conducted under E.O. 12333 are carried out in accordance with guidelines approved by the agency head and the Attorney General, whereas collection under FISA occurs pursuant to the specific requirements of that statute. I am not familiar with specific factual scenarios involving the application of the probable cause standards that exist within these separate authorities.*

QUESTION 41: 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. How does the finding in *United States v. Katz* that “the Fourth Amendment protects people, not places” protect U.S. persons, regardless of where the collection occurs?

RESPONSE: *I have not examined this question and would want to discuss the matter with NSD’s Office of Intelligence and others. My understanding is, however, that, to the extent the contemplated intelligence activities were conducted under E.O. 12333, they would be carried out in accordance with guidelines approved by the agency head and the Attorney General, which account for constitutional requirements. To the extent they were carried out under FISA, constitutional rights would be safeguarded under the procedural requirements of that statute, including relevant FISA Court review of collection activities.*

QUESTION 42: Do you believe that communications and communications data collected in transit are or should be treated differently than communications and 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.

RESPONSE: *I have not considered this issue and could offer a view only after careful consideration of the question in consultation with my colleagues within the National Security Division.*

QUESTION 43: In December 2020, the Department of Justice Office of the Inspector General released its Audit of the Federal Bureau of Investigation’s Strategy and Efforts to Disrupt Illegal Dark Web Activities. The audit described Network Investigative Techniques (NITs) which “require computer exploits that the FBI is increasingly developing for national security purposes but not for criminal investigations.” If confirmed, will you agree to make public annual statistics on the number of times these computer exploits have been used in national security cases and how often they have been used against Americans?

RESPONSE: *At present I do not have sufficient knowledge of the Department's use of NITs in national security or other investigations to evaluate this request. If confirmed, I do commit to being as transparent as possible, consistent with the work NSD does.*

QUESTION 44: In June 2018, in the case of *Carpenter v. U.S.*, the U.S. Supreme Court found that the government's collection of cell-site locational records was a Fourth Amendment search. Do you support transparency with regard to whether, and under what circumstances, *Carpenter* applies to the Intelligence Community?

RESPONSE: *I support transparency, as a general matter, consistent with the need to protect national security information.*

QUESTION 45: Do you believe the Intelligence Community can or should collect U.S. location information pursuant to EO 12333 authorities? If no, how should the IC ensure that it is not collecting the information through incidental collection? If yes, should there be any limitations on the Intelligence Community's use, retention, or dissemination of the information?

RESPONSE: *I am not in NSD and would need to discuss these questions with experts in NSD and other relevant components of the Department.*

QUESTION 46: The Senate Judiciary Committee requested that you provide "any reports, memoranda or policy statements you prepared or contributed in the preparation of" on behalf of entities to which you were a member. In response, you identified "Legal Authorities Supporting the Activities of the National Security Agency Described by the President," U.S. Dep't of Justice, January 19, 2006.

- a. Please describe, in detail, your participation in and contribution to the "Legal Authorities" memorandum.

RESPONSE: *The memorandum to which you refer is nearly 20 years old and was prepared by a number of attorneys, including myself, within the Department of Justice. Consistent with my role within the Office of Legal Counsel at that time, I would have reviewed drafts and provided analysis and commentary during the preparation process.*

- b. The "Legal Authorities" memorandum cited as legal support for NSA's activities the President's "inherent constitutional authority as Commander in Chief" and the September 18, 2001, Authorization for Use of Military Force, arguing that the AUMF placed the President at the "zenith of his powers" under the *Youngstown* framework. Is it currently your view that an AUMF that makes no reference to surveillance can grant surveillance authorities

otherwise in violation of FISA, the Electronic Communications Privacy Act, or other relevant statutes?

RESPONSE: *As I noted above, I was one of several attorneys who worked on this memorandum more than 19 years ago. If I am confirmed and such a question arises, I would consult with attorneys in NSD and with the Office of Legal Counsel.*

- c. Do you believe that the President has, by virtue of “inherent constitutional authority,” and absent an AUMF, surveillance authorities otherwise in violation of FISA, the Electronic Communications Privacy Act, or other relevant statutes?

RESPONSE: *Please see my response to Question 46b.*

- d. 50 U.S.C. § 1812, establishes the exclusive means by which electronic surveillance and interception of certain communications may be conducted. Is this provision absolutely binding on all U.S. departments and agencies and on the President?

Section 1812, like all statutes, binds departments, agencies, and the President to the extent such the statute is constitutional.

- e. Is the exclusive means provision in 50 U.S.C. § 1812 binding, regardless of whether Section 702 of FISA is reauthorized?

RESPONSE: *Please see my response to Question 46d.*

- f. Did you prepare or contribute to any other memoranda or other legal opinions during your period at the Department of Justice (2004 – 2009) with regard to the President’s Surveillance Program? If yes, please identify those memoranda or other opinions and provide them to the Committee.

RESPONSE: *From 2004 to 2009 I served in several positions within the Office of Legal Counsel. In these positions I assisted in the preparation of, or contributed to, numerous opinions issued by the Office, including opinions touching on or related to surveillance activities of the Executive Branch. For a number of reasons, the Office of Legal Counsel does not publish, or otherwise make public, all the opinions it issues. I have reviewed the Office’s publicly available opinions (at <https://www.justice.gov/olc/opinions-main>). The only publicly available opinion that discussed surveillance activities of the Executive Branch is “Legal Authorities Supporting the Activities of the National Security Agency Described by the President.”*

- g. The “Legal Authorities” memorandum only addressed the content component of the President’s Surveillance Program; at the time, the bulk collection of telephony and metadata communications records had not yet been acknowledged. What is your view of the legal justifications for the bulk collection program components prior to their approval by the FISA Court?

RESPONSE: I do not have a view on these questions, which I do not think I have ever analyzed, and, if I had, it would have been long ago.

- h. Do you agree that the bulk collection of telephony and metadata communications records is currently illegal and that, under no circumstances, can it be conducted absent express congressional authorization?

RESPONSE: Whether a proposed intelligence activity is lawful depends on the facts and the law and I cannot answer such hypotheticals. I can say, however, that, if confirmed, I would not authorize an intelligence activity unless the activity were lawful.

QUESTION 47: 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?

RESPONSE: It is my understanding that IC elements may not request any person, including a foreign entity, to undertake activities that the Constitution, federal laws, or Executive Orders, including Executive Order 12333, forbid the IC elements themselves to take. If foreign partners or sources collect and share information concerning U.S. persons consistent with this prohibition, IC elements are authorized to collect, retain, or disseminate such information only in accordance with procedures approved by the Attorney General consistent with Executive Order 12333.

QUESTION 48: During her confirmation process, Director Gabbard wrote that Section 213 of the USA PATRIOT Act, which permits delayed notice of search warrants, “raised significant constitutional concerns.” Do you agree?

RESPONSE: I have not had occasion to consider this question. I would need to consider the question carefully and consult with others in the Department before formulating an opinion.

QUESTION 49: Do you agree that the Intelligence Community cannot request that a foreign entity conduct any activity that it is not authorized to undertake itself? If

yes, do you agree that this prohibition also applies to requests from Executive Branch officials outside the Intelligence Community?

RESPONSE: *Please see my response to Question 47.*

Insurrection Act

QUESTION 50: You participated in a working group that, on April 5, 2024, issued its “Principles for Insurrection Act Reform.” According to the press release, the group members “unanimously agree that Congress should reform the Insurrection Act as soon as possible.”

- a. Is it still your position that Congress should reform the Insurrection Act as soon as possible?

RESPONSE: *I have voiced personal opinions regarding the Insurrection Act. If confirmed, my role as a member of the Executive Branch will be to enforce existing federal law as appropriate and in accordance with the relevant facts and law, regardless of my personal views on any particular piece of legislation.*

- b. Please describe which of the Principles you agree with, and which you do not.

RESPONSE: *If confirmed, my role as a member of the Executive Branch will be to enforce existing federal law as appropriate and in accordance with the relevant facts and law, regardless of my personal views on any particular piece of legislation.*

Espionage Act and journalists

QUESTION 51: During her confirmation process, Director Gabbard expressed concerns related to the application of the Espionage Act “in cases involving whistleblowers and journalists, where the Act may criminalize the dissemination of information in ways that could suppress legitimate public discourse or accountability.” Director Gabbard added, “[t]he Espionage Act also does not allow for due process and the right of an American to defend themselves against such charges in a court of law.” Do you share Director Gabbard’s concerns?

RESPONSE: *I lack sufficient information to say. If confirmed, I would endeavor to ensure that all prosecutions conducted or supervised by NSD are consistent with the Constitution and applicable laws, as well as any applicable Department policies.*

QUESTION 52: During her confirmation process, Director Gabbard wrote that she supports the October 2022 Department of Justice policy restricting use of

compulsory process to obtain reporter information, calling the policy “essential to protecting press freedoms and maintaining the critical balance between national security and upholding the First Amendment.” Do you agree with Director Gabbard, and do you also support the continuation of the policy?

RESPONSE: *I am not in NSD and do not know the October 2022 policy well enough to say. If confirmed, I will examine the issue further, including the 2022 policy, to assess appropriate restrictions and safeguards in such circumstances.*

Investigations of Members and staff of Congress

QUESTION 53: In December 2024, the Department of Justice Office of the Inspector General released “A Review of the Department of Justice’s Issuance of Compulsory Process to Obtain Records of Members of Congress, Congressional staffers, and Members of the News Media.” The OIG concluded that the Department’s actions “implicated the constitutional rights and authorities of a co-equal branch of government.” It further stated:

“[W]e believe that using compulsory process to obtain such records when based solely on the close proximity in time between access to the classified information and subsequent publication of the information – which was the case with most of the process issued for non-content communications records of congressional staff in the investigation we examined – risks chilling Congress’s ability to conduct oversight of the executive branch because it exposes congressional officials to having their records reviewed by the Department solely for conducting Congress’s constitutionally authorized oversight duties and creating, at a minimum, the appearance of inappropriate interference by the executive branch in legitimate oversight activity by the legislative branch. Moreover, even non-content communications records – such as those predominantly sought here – can reveal the fact of sensitive communications of Members of Congress and staffers, including with executive branch whistleblowers and with interest groups engaging in First Amendment activity.”

Do you agree with the OIG’s concerns that the collection of communications records of congressional Members and staff raises constitutional concerns, particularly when, as in this case, the collection was based solely on those Members’ and staff’s exercise of their constitutionally authorized oversight duties? If yes, would you oppose collection of such records?

RESPONSE: *I have not reviewed the OIG report and have not had a chance to consider the weighty issues involved. I can, however, assure this Committee that I will not authorize the collection of communication records of any American that is inconsistent with or violates the law.*

QUESTION 54: Do you support the policy changes described in the OIG Review? Do you believe further policy changes should be made?

RESPONSE: *I have not reviewed the OIG report. If confirmed, I would review the report and discuss the matter with appropriate experts in NSD and with the Deputy Attorney General and Attorney General.*

QUESTION 55: Do you agree that Congress should be notified prior to any collection of communications or communications records of Members or staff? If yes, who in Congress should be notified?

RESPONSE: *Please see my answer to Question 54.*

QUESTION 56: Do you agree that the government should inform the judge issuing an order for compulsory process or a non-disclosure order that the targets are congressional Members or staff so that the judge can consider the constitutional implications?

RESPONSE: *Please see my answer to Question 54.*

Encryption

QUESTION 57: During her confirmation process, Director Gabbard wrote: “From a civil liberties perspective, there are serious constitutional concerns about the government being granted unrestricted access to America’s private digital property. Mandating mechanisms to bypass encryption or privacy technologies undermines user security, privacy, and trust, and poses significant risks of exploitation by malicious actors.” She reiterated that position during her confirmation hearing, saying, “these back doors lead down a dangerous path that can undermine Americans’ Fourth Amendment rights and civil liberties.” Do you agree?

RESPONSE: *I agree that the field of national security often presents situations where Americans’ civil liberties are implicated, and, in such situations, government actors must carry out their duties with a due respect for these liberties and, in all cases, must follow the law. If I am confirmed, I will do so.*

Competitive advantage

QUESTION 58: The October 7, 2022, Executive Order 14086 on Enhancing Safeguards for United States Signals Intelligence Activities states: “It is not a legitimate objective to collect foreign private commercial information or trade secrets to afford a competitive advantage to United States companies and United States business sectors commercially. The collection of such information is authorized only to protect the national security of the United States.” Do you agree with these limitations and should they apply as well to non-SIGINT activities?

RESPONSE: *This is not an issue I have had occasion to consider. If I am confirmed, I would discuss the matter with experts in the National Security Division.*

Security clearances

QUESTION 59: Private attorneys with security clearances play a critical role in intelligence oversight, representing providers who are issued FISA orders and directives, serving as FISA Court amicus curiae, and representing Intelligence Community whistleblowers. They also protect Americans’ liberties, including by representing criminal defendants in Classified Information Procedures Act (CIPA) cases. Do you agree with this general principle and, if yes, would you promote policies that ensure that attorneys who play these roles are not denied security clearances?

RESPONSE: *I agree that there are circumstances under which it is appropriate to grant security clearances to non-government attorneys. There may be instances in which the U.S. government has a legitimate national security concern about granting clearances to a particular attorney. I would anticipate that in such cases, the court and the parties will be able to identify a solution that ensures full and fair representation of the non-governmental party.*

Interrogation, Detention and Rendition

QUESTION 60: During your period at the Department of Justice, and, in particular, while you served in the Office of Legal Counsel (2002-2003, 2004-2005), did you play any role in the Department’s engagement with the CIA related to the Agency’s Rendition, Detention, and Interrogation Program? If yes, please detail that role.

RESPONSE: *During my tenure with the Office of Legal Counsel, I worked on various opinions related to the CIA, including with respect to these topics.*

QUESTION 61: Do you believe that any of the CIA’s former enhanced interrogation techniques are consistent with the Detainee Treatment Act, the U.S.

statutory prohibition on torture, the War Crimes Act, or U.S. obligations under the Convention Against Torture or Common Article 3 of the Geneva Convention?

RESPONSE: *As your question indicates, the techniques to which you refer are the former techniques and are no longer employed by the CIA. I have not considered the legal issues surrounding detention and interrogation in nearly two decades and am no longer familiar with these issues. If confirmed, I commit that the National Security Division will act in a manner that is consistent with all applicable laws and Department policy.*

QUESTION 62: Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 prohibits the use of any interrogation technique or approach or any treatment related to interrogation that is not authorized by and listed in the Army Field Manual. Is this provision absolutely binding on all U.S. government departments and agencies and on the President?

RESPONSE: *By its terms, section 1045 includes limitations on the scope of its application, including by providing that certain limitations contained in that section “shall not apply to officers, employees, or agents of the [FBI], the Department of Homeland Security, or other Federal law enforcement entities.”*

QUESTION 63: The statutory prohibition on interrogations not consistent with the Army Field Manual applies to any individual “in the custody or under the effective control of an officer, employee, or other agent of the United States Government; or detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict.”

- a. Please describe the factors that would indicate whether a detainee is in the “effective control” of any officer, employee, or other agent of the United States Government.

RESPONSE: *I have not studied this issue and am not in a position to make this determination. If confirmed, I commit that the National Security Division will act in a manner that is consistent with all applicable laws and Department policy.*

- b. Please describe how you would define whether a detainee is “detained within a facility owned, operated, or controlled by a department or agency of the United States.”

RESPONSE: *Please see my response to Question 63a.*

QUESTION 64: Section 1045 states that: “The head of any department or agency of the United States Government shall provide the International Committee of the

Red Cross with notification of, and prompt access to, any individual detained in any armed conflict in the custody or under the effective control of an officer, employee, contractor, subcontractor, or other agent of the United States Government or detained within a facility owned, operated, or effectively controlled by a department, agency, contractor, or subcontractor of the United States Government, consistent with Department of Defense regulations and policies.” Is this provision of law absolutely binding on all U.S. government departments and agencies and on the President?

RESPONSE: *I have not studied this issue and am not in a position to make this determination. If confirmed, I commit that the National Security Division will act in a manner that is consistent with all applicable laws and Department policy.*

QUESTION 65: Executive Order 13491 prohibits the CIA from operating any detention facility except to hold people “on a short-term, transitory basis.” Do you support this provision? How would you define “short-term” and “transitory”?

RESPONSE: *Executive Order 13491 is binding on the Executive Branch and, if confirmed, I would comply with it. I am not in a position to offer a definitive interpretation of the terms you identify.*

QUESTION 66: Do you agree that Intelligence Community and other U.S. officers should not participate in interrogations of detainees in liaison custody when those officers witness, know of, or otherwise suspect the torture or mistreatment of detainees?

RESPONSE: *I agree that any interrogations of detainees undertaken by the U.S. government must comply with applicable laws and policies. To the extent questions arise about the legality of the federal government’s participation in the interrogation of an individual, I would review the facts of the situation and consult with relevant attorneys in the intelligence and law enforcement communities to determine the appropriate resolution of the question, consistent with the facts and law.*

QUESTION 67: The United States recognizes its obligations under the Convention Against Torture not to “expel, return (‘refouler’) or extradite a person to another state where there are substantial grounds for believing that he [or she] would be in danger of being subjected to torture.”

- a. To what extent should written “diplomatic assurances” be required from countries to which detainees are sent?

RESPONSE: *My understanding is that federal regulations implementing the Convention Against Torture authorize the Secretary of State to make relevant decisions on extradition after a fugitive has been found extraditable by a United States judicial officer. 22 C.F.R. Part 95. I am not in a position to determine whether the Secretary should insist on written diplomatic assurances from a recipient state prior to exercising this decision-making authority.*

- b. Should such assurances be accepted from countries with established records of committing torture?

RESPONSE: *I am not in a position to determine whether the Secretary of State should decline to accept assurances from particular countries when making extradition determinations, although I understand that governing regulations require appropriate policy and legal offices within the State Department to analyze information relevant to any extradition matter in which allegations of torture are made and propose a recommendation to the Secretary based on that analysis. 22 C.F.R. Part 95.*

- c. Does the Convention Against Torture apply to scenarios in which individuals deported pursuant to the Alien Enemies Act are in danger of being subjected to torture?

RESPONSE: *The Convention Against Torture and federal laws and regulations implementing that Convention prohibit the extradition of a person to a state where there are substantial grounds for believing that the person would be in danger of being subjected to torture. To the extent questions arise about the interplay between the Alien Enemies Act and the Convention, I would review the facts of the situation and consult with relevant attorneys to determine the appropriate resolution of the question, consistent with the facts and law.*

Lethal operations

QUESTION 68: Please describe your view of the legal and policy implications of targeting or otherwise knowingly killing a U.S. person in a U.S. Government lethal operation. What additional public transparency do you believe would be warranted in that situation?

RESPONSE: *Any lethal operations undertaken by the government must comply with the law. Whether or when such operations should be made public requires consideration of the national security risks as well as the benefits of transparency.*

Classification and declassification

QUESTION 69: Executive Order 13526 provides that: “In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to: (1) conceal violations of law, inefficiency, or administrative error; (2) prevent embarrassment to a person, organization or agency; (3) restrain competition; or (4) prevent or delay the release of information that does not require protection in the interest of national security.” Do you commit to fulfilling both the letter and spirit of these prohibitions?

RESPONSE: *Executive Order 13526 is binding on the Executive Branch. If confirmed, I will comply with all applicable Executive Orders.*

QUESTION 70: What process do you believe should accompany the declassification of information? For example, do you believe there should be a written record of declassifications? When should the Committee be notified?

RESPONSE: *I have not examined this question. I understand that several authorities govern the declassification of information. If confirmed, I will comply with those authorities.*

QUESTION 71: Please review the article “Here Are the Attack Plans That Trump’s Advisors Shared on Signal” (*The Atlantic*, March 26, 2025) and the “Houthi PC small group” Signal chat messages included in the article.

- a. Do you believe that any of the messages were or should have been classified, based on your experience with classification and on the Security Classification Guides of the relevant agencies and departments? If yes, which messages?

RESPONSE: *I would need a more complete factual record to make such a determination.*

- b. Do you believe that any of the messages included any national defense information, as codified pursuant to 18 U.S.C. §§ 793 - 798? If yes, which ones?

RESPONSE: *Please see my response to Question 71a.*

- c. Regardless of classification, do you believe that the information included in the messages was appropriate for an unclassified channel, particularly given the timing?

RESPONSE: *Please see my response to Question 71a.*

- d. Do you agree that unclassified phones used by national security officials are likely targets of foreign adversaries and that, as such, should not be used to convey classified information?

RESPONSE: *National security officials are likely targets of foreign adversaries, and appropriate steps should be taken to protect them and their communications from foreign adversaries.*

Commercially Available Information

QUESTION 72: Do you support the Intelligence Community's May 2024 Policy Framework for Commercially Available Information? Please elaborate on any aspects you do or do not support.

RESPONSE: *While I have not examined the policy in detail, I support efforts to clarify how the Intelligence Community will make use of commercially available information while ensuring that privacy and civil liberties remain appropriately protected.*

QUESTION 73: Do you believe that the privacy interests of Americans should depend on whether their information is purchased or obtained voluntarily by the government, as opposed to compelled through legal process?

RESPONSE: *I have not studied the issue in depth.*

QUESTION 74: Do you support transparency with regard to the type of information on Americans that the Intelligence Community, Department of Defense or other U.S. departments and agencies purchase or obtain voluntarily and the legal basis for that collection?

RESPONSE: *As a general matter, I support transparency consistent with the need to protect national security information.*

Cybersecurity

QUESTION 75: During her confirmation process, Director Gabbard wrote that she would use her position as DNI to advocate for policies, practices or legislation to strengthen cyber protections in the telecommunications sector. Will you make the same commitment?

RESPONSE: *Yes.*

QUESTION 76: During her confirmation process, Director Gabbard wrote that: “Any cybersecurity legislation should ensure that data sharing between the private sector and government or other entities is done in a way that respects privacy and avoids unnecessary exposure of personal information.” Do you agree with this view and, if so, how would you go about ensuring those privacy protections?

RESPONSE: *I agree with this view. I do not have any suggestions regarding how to ensure these protections.*

Transparency

QUESTION 77: Attorney General-approved procedures and guidelines for Executive Order 12333 are currently posted online. Do you commit to continuing to post these procedures and to make public any modifications, superseding procedures and guidelines, or significant interpretations?

RESPONSE: *I support transparency consistent with the need to protect sensitive information. If confirmed, I will act consistently with that view.*

QUESTION 78: Will you support the declassification and public release of any secret interpretation of law that provides a basis for national security activities, but is inconsistent with the public’s understanding of the law?

RESPONSE: *I support transparency consistent with the need to protect sensitive information. If confirmed, I will act consistently with that view.*

QUESTION 79: What would you do if an employee of the Department of Justice or any other Executive Branch official made a misrepresentation to Congress or to the public related to matters within your purview? If that person refused to correct the public record, would you do so personally?

RESPONSE: *Employees of the Department of Justice and the Executive Branch should be truthful in their testimony to Congress as well as in statements to the public. As to my responsibility to correct the record, I would need to consider the facts and circumstances before making a decision.*

Whistleblowers

QUESTION 80: During her confirmation process, Director Gabbard wrote: “Whistleblowers are essential to ensuring accountability and oversight within the

IC, and they must have clear, protected channels to report concerns, including the unauthorized transmittal of classified information to appropriate entities such as Members of Congress, Inspectors General (IGs), and other authorized recipients.” During her confirmation hearing, Director Gabbard was asked if she agreed “that IC whistleblowers must have a clear path to this committee and that that they don’t need permission from agencies to talk to [the committee],” to which Director Gabbard responded, “the answer is clearly yes.” Do you agree?

RESPONSE: *Yes.*

Defending the U.S. judicial process

QUESTION 81: A declassified August 2019 FBI Intelligence Bulletin concluded that “Saudi Officials Almost Certainly Assist Saudi Citizens Flee the United States to Avoid Legal Issues, Undermining the US Judicial Process.” If confirmed, will you make investigations of these kinds of efforts to undermine the U.S. judicial process a priority?

RESPONSE: *I am not familiar with the referenced document and am not sure which investigations the question references. But I would certainly take fleeing the United States in order to avoid our criminal justice system very seriously.*

Watchlisting

QUESTION 82: During her confirmation process, Director Gabbard wrote:

“Ensuring fairness and protecting civil liberties in watchlisting programs is critical to maintaining public trust while safeguarding national security. To prevent misuse, I would advocate for clear, evidence-based criteria for watchlisting American citizens, robust oversight mechanisms, and regular audits to ensure no one is listed based on First Amendment-protected activities like free speech or political affiliation. Additionally, I would work to enhance the redress process by improving the Traveler Redress Inquiry Program (TRIP) to ensure timely and transparent resolution of complaints and exploring independent review panels to provide impartial oversight and due process.”

Will you make the same commitments as Director Gabbard?

RESPONSE: *I agree that watchlisting programs should include clear standards, oversight mechanisms, and protections for constitutional rights.*

“Shifting Resources in the National Security Division”

QUESTION 83: On February 5, 2025, the Attorney General distributed a memorandum, subject: “General Policy Regarding Charging Plea Negotiations and Sentencing.” The memorandum, which includes a section on “Shifting Resources in the National Security Division,” stated that “Recourse to criminal charges under the Foreign Agents Registration Act (FARA) and 18 U.S.C. § 951 shall be limited to instances of alleged conduct similar to more traditional espionage by foreign government actors.”

- a. Please describe what is *not* included in “traditional espionage by foreign government actors.” Please address specifically whether acts that do not necessarily include collection, including foreign government corruption of and influence over U.S. officials, fall outside “traditional espionage”

RESPONSE: RESPONSE: Because I am not currently in NSD, I do not have a definitive view on what is encompassed by the term. If confirmed, I will discuss the issue with the experts in NSD who work on FARA and espionage cases.

- b. How does the limitation in the memorandum apply to scenarios in which the “traditional espionage” is not known to be committed by a “foreign government”?

RESPONSE: Please see my response to Question 83a.

- c. Does the limitation in the memorandum affect investigations into transnational repression?

RESPONSE: Please see my response to Question 83a.

- d. Does the limitation in the memorandum affect investigations into malign influence operations targeting U.S. audiences, such as the investigation announced by the Department on September 4, 2024 (“Justice Department Disrupts Covert Russian Government-Sponsored Foreign Malign Influence Operation Targeting Audiences in the United States and Elsewhere”)?

RESPONSE: [Please see my response to Question 83a.

- e. Is it your understanding that the limitation in the memorandum should result in the termination of ongoing investigations?

RESPONSE: Please see my response to Question 83a.

QUESTION 84: The February 5, 2025, memorandum disbanded the Foreign Influence Task Force. What is your understanding of the impact of that decision, including the possible termination of any ongoing investigations conducted by members of the Task Force?

RESPONSE: I am not currently in NSD and would need to discuss this issue with appropriate NSD personnel to form an opinion on this question.

QUESTION 85: The February 5, 2025, memorandum stated that the National Security Division's Corporate Enforcement Unit is disbanded. What is your understanding of the impact of that decision, including the termination of any ongoing investigations conducted by members of the Unit?

RESPONSE: I am not in NSD and would need to discuss this issue with appropriate NSD personnel to form an opinion.

QUESTION 86: The February 5, 2025, memorandum states that: "With respect to FARA and § 951, the Counterintelligence and Export Control Section, including the FARA Unit, shall focus on civil enforcement, regulatory initiatives, and public guidance. What is your understanding of the impact of that direction and, specifically, what aspects of the Section's previous work will be deprioritized?"

RESPONSE: I am not in NSD and would need to discuss this issue with appropriate NSD personnel to form an opinion.

Military operations

QUESTION 87: What justification, under international law, would there be for military operations against Canada or Greenland, if any?

RESPONSE: I have not considered the question.

Question from Senators Heinrich, Wyden, and Ossoff

Section 702 Reauthorization/ECSP Definition

QUESTION 88: RISAA, which reauthorized Section 702 of FISA, included an expanded definition of electronic communications service provider. According to the Department of Justice and the Committee leadership, this language was intended only to encompass the kind of provider at issue in a FISC / Foreign Intelligence Surveillance Court of Review case, the opinions of which were authorized for public release on August 23, 2023. The Committee passed language in the Fiscal Year 2025 Intelligence Authorization Act that would have narrowed the RISAA language to bring it into conformity with its actual purpose, as articulated by the Department of Justice and Committee leadership. Do you support the Committee's effort to ensure that statutory FISA authorities are consistent with their national security purpose and not unnecessarily broad?

RESPONSE: *I am not familiar with this issue.*