

**SELECT COMMITTEE ON
INTELLIGENCE**

UNITED STATES SENATE



**Additional Pre-Hearing Questions for
Mr. Patrick Hovakimian upon his nomination to be
General Counsel for the Office of the Director of National Intelligence**

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: My understanding aligns closely with the way past General Counsels have characterized the obligation during their confirmations. Section 502 of the National Security Act requires the DNI, and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities, to keep the two intelligence committees “fully and currently informed” of all U.S. intelligence activities (excepting covert actions that are covered in section 503), including “significant anticipated intelligence activities” and “significant intelligence failures.”

Previous DNIs have issued IC-wide directives on the subject of congressional notifications to ensure timely reporting to Congress consistent with Section 502. In keeping with these directives, Director Ratcliffe stated during his confirmation that he expects all Intelligence Community (IC) elements to follow both the laws and policies that are in place within the IC concerning congressional notification.

As the chief legal officer for the ODNI, the General Counsel assists the Director in carrying out his legal obligations, and, if confirmed, I will help to ensure IC elements follow all applicable laws and policies.

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 [.]” Although I do not believe this provision limits the obligation to keep the intelligence committees fully informed, I do understand it to mean that the DNI has a degree of latitude in deciding how he will bring extremely sensitive matters to the committees’ attention. My understanding is that, where exceptional circumstances have required limited congressional notifications, it has been the case that committee leadership would work with the Executive Branch to determine when to expand access to the information to the full Committee.

Priorities of the Director of National Intelligence

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

ANSWER: Director Ratcliffe and I have discussed the expectation that all officials in the ODNI act with the utmost integrity and adherence to the Constitution and the rule of law. If confirmed, I will do precisely that. In addition, the Director has specifically noted his appreciation for the work of the career professionals in the Office of General Counsel and discussed the need to empower the attorneys and staff in the Office of General Counsel to fulfill their critical mission of providing sound, timely, and relevant legal advice to ODNI and to the IC. I fully concur with the Director's views and expectations in this regard, and, if confirmed, I plan to work to effectuate this end.

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: My expectations align closely with those expressed by past General Counsels during their confirmations. By statute, the ODNI General Counsel is the chief legal officer of ODNI and performs such functions as the DNI may prescribe. The Office of General Counsel supports the General Counsel carrying out these duties, to include by providing expert legal counsel to ODNI leadership and the Agency's personnel, ensuring that all personnel assigned to the ODNI act in accordance with the Constitution and laws of the United States.

I expect the lawyers in the office to identify legal issues proactively and to provide timely, sound advice on the law related to those issues. I also expect the office to provide helpful policy counsel on ODNI's activities and to be able to distinguish that counsel from legal advice. More broadly, I expect the Office of General Counsel lawyers to be experts in their particular areas of responsibility and to engage cooperatively with their counterparts in the IC and interagency and, where appropriate, to lead efforts to resolve cross-cutting legal issues that may arise. Finally, just as the DNI expects absolute integrity from me, if confirmed, I will expect the same of every attorney in the Office of General Counsel.

If confirmed, I look forward to leading the office and ensuring that it provides valuable legal services to the ODNI. To date, I have had only limited interactions with lawyers in the office's current management and others who have worked for, or interacted with, the office. I have been impressed with the competence, experience, knowledge and dedication of the lawyers I have met so far. The office appears to be capable, effective, and well respected within ODNI and the larger legal community. Similarly, all of the interactions I have had with the Office of General Counsel lawyers and staff while serving as a Department of Justice official have been productive and I have been impressed with their professionalism and dedication to the mission. If confirmed, I would consult with the current management and staff before determining whether changes in numbers or qualifications of attorneys in the office or the operations of the office would benefit the mission.

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: The principal clients of the ODNI General Counsel are the DNI, ODNI leadership, and the other personnel assigned to the ODNI. By statute, the ODNI General Counsel is the chief legal officer of the ODNI and performs such functions as the DNI may prescribe. The Office of General Counsel supports the General Counsel carrying out these duties, to include by providing expert legal counsel to ODNI leadership and the Agency's personnel and ensuring that all personnel assigned to the ODNI act in accordance with the Constitution and laws of the United States. If confirmed, I would also expect lawyers in the office to engage cooperatively with their counterparts in the IC and interagency and, where appropriate, to lead efforts to resolve cross-cutting legal issues that may arise, which I see as an important part of ODNI's community management role.

QUESTION 5: Please explain how you would respond to each of the following scenarios:

- a. If the President or a White House official asks you to perform an action that is in the President's interest, but contrary to the interests of the IC and/or the ODNI.
- b. If you become aware that the President or a White House official has asked the DNI to perform an action that is in the President's interest, but contrary to the interests of the IC and/or the ODNI.

ANSWER: If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law. The DNI's foremost responsibility is to ensure that the President and his team receive the best intelligence possible on which to base policy decisions that provide for the best interests of the American people. The mission of the ODNI and the IC is of paramount importance and, if confirmed, in all instances my objective will be to enhance that mission and my loyalty will be to the Constitution and to the rule of law.

QUESTION 6: 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: My understanding aligns closely with the way past General Counsels have characterized these responsibilities during their confirmations. The DNI is the head of the IC and has significant authority to oversee the work of all IC elements, including the CIA. This includes responsibilities over budget requests and appropriations for the National Intelligence Program, oversight of intelligence priorities and taskings, and governance of national intelligence activities. In addition, the DNI has a specific mandate to ensure that all IC elements conduct activities, including covert action undertaken by the CIA, in compliance with the Constitution and the laws of the United States. The ODNI General Counsel plays a central role in helping the DNI carry out this responsibility, including working closely with the General Counsel of the CIA to ensure that CIA's intelligence activities are carried out in a manner consistent with the Constitution and applicable federal law.

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

ANSWER: My understanding aligns closely with the way past General Counsels have characterized the role during their confirmations. Section 102A(f)(4) of the National Security Act provides that the DNI shall ensure compliance with the Constitution and laws of the United States by the CIA and by other elements of the IC "through the host executive departments" of those elements. As noted in my response to question 6, it is my understanding that the ODNI General Counsel plays a significant role in helping the Director carry out this requirement. As such, the ODNI General Counsel works closely with the General Counsels across the IC to identify and resolve cross-cutting legal issues or conflicting legal positions. It is also my understanding that the ODNI General Counsel often presents the consensus views of the IC legal community to the broader Federal Government. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to identify and address conflicting legal interpretations whenever they arise.

Guidelines under Executive Order 12333

QUESTION 8: One of the fundamental documents governing the activities of the IC is Executive Order 12333. Under Executive Order 12333, as amended in July 2008, there are requirements for Attorney General-approved guidelines. For each of the following requirements, please update the Committee on the principal matters to be addressed by each of the required Attorney General-approved guidelines or procedures, any issues you believe need to be resolved, and your perspective on where things stand at present.

ANSWER: My understanding with respect to each of these questions aligns closely with what was communicated by past General Counsels during their confirmations.

- a. Guidelines under section 1.3(a)(2) for how information or intelligence is provided to, or accessed by, and used or shared by the IC, except for information excluded by law, by the President, or by the Attorney General acting under presidential order in accordance with section 1.5(a).

ANSWER: It is my understanding that section 1.3(a)(2) addresses the IC's access to, or use of, information collected by Federal Government departments and agencies outside the IC and that these guidelines should implement the provision of section 1.5(a) directing the heads of Executive Branch departments and agencies to "[p]rovide the Director access to all information and intelligence relevant to the national security or that otherwise is required for the performance of the Director's duties, to include administrative and other appropriate management information, except such information excluded by law, by the President, or by the Attorney General acting under this order at the direction of the President[.]"

Section 1.5(a) of the Executive Order is intended to ensure that the Director, and by extension the IC, has access to relevant information possessed by the Federal Government. The sharing of such information may present legal and policy issues that are specific to a particular circumstance. It is my understanding that the IC has addressed these issues on a case-by-case basis relying on a combination of guiding documents, including, most notably, the Attorney General-approved procedures for the collection, retention, and dissemination of information concerning U.S. persons required by section 2.3 of Executive Order 12333. If confirmed, I will review this approach and consider whether additional Attorney General-approved procedures are necessary.

- b. Procedures under section 1.3(b)(18) for implementing and monitoring responsiveness to the advisory tasking authority of the DNI for collection and analysis directed to departments and other U.S. entities that are not elements of the IC.

ANSWER: It is my understanding that, under section 1.3(b)(18), the DNI may provide advisory tasking to departments, agencies, and establishments of the United States Government that are not elements of the IC in order to collect information that is relevant to the national intelligence mission. Section 1.5(d) provides that the heads of Executive Branch departments and agencies shall provide such support to the Director as he may request, to the maximum extent permitted by law and to the extent consistent with that department's or agency's mission. This would include responding to any advisory tasking by the Director. It is my understanding that the ODNI has not prioritized the issuance of Attorney General-approved procedures for implementing and monitoring responsiveness to advisory taskings because relevant information may be effectively obtained through existing interagency processes. If confirmed, I will review this approach and consider whether additional Attorney General-approved procedures are necessary.

- c. Procedures under section 1.6(g) governing production and dissemination of information or intelligence resulting from criminal drug intelligence activities abroad if the elements of the IC involved have intelligence responsibilities for foreign or domestic criminal drug production and trafficking.

ANSWER: Section 1.6(g) directs the heads of IC elements to participate in the development of procedures approved by the Attorney General to govern the production and dissemination of intelligence resulting from criminal drug intelligence activities abroad. It is my understanding that these activities are governed by IC elements' Attorney General-approved procedures for the collection, retention, and dissemination of information concerning U.S. persons required by section 2.3 of Executive Order 12333.

- d. Regulations under section 1.7(g)(1) for collection, analysis, production, and intelligence by intelligence elements of the Federal Bureau of Investigation (FBI) of foreign intelligence and counterintelligence to support national and departmental missions.

ANSWER: It is my understanding that the Federal Bureau of Investigation issued the procedures called for by section 1.7(g)(1) with the approval of the Attorney General, in coordination with the DNI, on September 29, 2008.

- e. Procedures under section 2.3 on the collection, retention, and dissemination of United States person information and on the dissemination of information derived from signals intelligence to enable an IC element to determine where the information is relevant to its responsibilities.

ANSWER: IC elements' Attorney General-approved U.S. person procedures establish the parameters under which IC elements may lawfully collect, retain, and disseminate information concerning U.S. persons in a manner that protects privacy and civil liberties. It is my understanding that, since the 2008 amendment to Executive Order 12333, a

number of elements have engaged in a process to issue new or updated procedures. It is my understanding that the ODNI Office of General Counsel has been substantially involved in developing these procedures and has primarily sought to ensure that their requirements are consistent with each other to the greatest extent possible, accounting for elements' unique missions and authorities. If confirmed, I will continue to make engagement in this process a priority for the ODNI Office of General Counsel.

With regard to the signals intelligence procedures called for by section 2.3, former Director Clapper issued these procedures on January 3, 2017, with the approval of former Attorney General Lynch. These procedures identify the circumstances under which such disseminations may occur and require that recipient IC elements apply protections to the raw signals intelligence that are comparable to those applied by the National Security Agency to the same information. It is my understanding that these procedures were the product of several years of interagency coordination led by the ODNI Office of General Counsel. If confirmed, I intend to ensure that the office remains closely involved in their implementation and use.

- f. Procedures under section 2.4 on the use of intelligence collection techniques to ensure that the IC uses the least intrusive techniques feasible within the U.S. or directed at U.S. persons abroad.

ANSWER: Section 2.4 of Executive Order 12333 limits the use of certain collection techniques, such as physical surveillance, and establishes the governing principle that IC elements shall use the least intrusive collection techniques feasible when conducting collection activities within the United States or when collection activities are directed at U.S. persons abroad. This provision recognizes that certain collection techniques are inherently more intrusive than others and thus require specific rules governing their use. It is my understanding that most elements have addressed the requirements of this section within their Attorney General-approved procedures for the collection, retention, and dissemination of information concerning U.S. persons required by section 2.3 of Executive Order 12333. It is my understanding that, in conjunction with the process for developing procedures required by section 2.3, the ODNI Office of General Counsel has been closely involved in the development of procedures under section 2.4. If confirmed, I will ensure that the office remains closely involved in the development of any future procedures under this section.

- g. Procedures under section 2.9 on undisclosed participation in any organization in the United States by anyone acting on behalf of an IC element.

ANSWER: Section 2.9 of Executive Order 12333 is intended to regulate undisclosed participation in any organization in the United States by anyone acting on behalf of an IC element and is one of the key privacy and civil liberties protections found in the Executive Order. Like the procedures required by section 2.4, most IC elements have

incorporated the section 2.9 procedures into their Attorney General-approved procedures for the collection, retention, and dissemination of information concerning U.S. persons required by section 2.3 of Executive Order 12333. It is my understanding that, in conjunction with the process for developing procedures required by section 2.3, the ODNI Office of General Counsel has been closely involved in the development of procedures under section 2.9. If confirmed, I will ensure that the office remains closely involved in the development of any future procedures under this section.

Foreign Intelligence Surveillance Act

QUESTION 9: The FISA Amendments Reauthorization Act of 2017 (P.L. 115-118) was enacted on January 19, 2018 (hereinafter, the Act). Under section 702, the Attorney General and the DNI may authorize jointly, for a period up to one year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information. Section 702(l) also provides for semiannual or annual assessments and reviews.

ANSWER: My understanding with respect to each of these questions aligns closely with what was communicated by past General Counsels during their confirmations.

- a. Describe your understanding of the matters that the Attorney General and DNI, with the assistance of the ODNI/GC, should evaluate in order to determine whether there should be revisions in the substance or implementation of (1) targeting procedures, (2) minimization procedures, (3) querying procedures, and (4) guidelines required, to ensure both their effectiveness and their compliance with any applicable constitutional or statutory requirements.

ANSWER: Under Section 702 of the Foreign Intelligence Surveillance Act (FISA), the Attorney General and the DNI make annual certifications that authorize IC elements to target non-U.S. persons reasonably believed to be located outside the United States to acquire specific categories of foreign intelligence information. As part of that annual certification, by statute, the Attorney General and the DNI must make certain representations regarding the legal sufficiency of the procedures and guidelines required under the statute, including that the procedures and guidelines are consistent with the requirements of the Fourth Amendment to the Constitution of the United States. In making these representations, it is my understanding that the Attorney General and the DNI rely on the information they have learned over the course of the year in their roles as overseers of the program. This information includes the regular and extensive oversight performed by the Department of Justice and the ODNI, including attorneys within the ODNI Office of General Counsel, of targeting decisions, querying activities, and minimization practices of each element that participates in the program. I understand that this extensive oversight informs both the Attorney General's and the DNI's representations in the Section 702 certifications and their recommendations on whether

the relevant certifications, including underlying procedures and guidelines, should be revised to ensure the effective implementation of this authority in a manner that comports with all Constitutional and statutory requirements. If confirmed, I will ensure that ODNI Office of General Counsel remains closely involved in these oversight activities.

- b.** Describe how the semiannual or annual assessments and reviews required by the Act should be integrated, both in substance and timing, into the process by which the Attorney General and DNI consider whether there should be revisions for the next annual authorization or authorizations under the Act, including in applicable targeting and minimization procedures and guidelines.

ANSWER: Section 702(m) requires the Attorney General and the DNI to assess compliance with the procedures and guidelines adopted pursuant to the statute. The Attorney General and the DNI must submit these assessments to the Foreign Intelligence Surveillance Court (FISC) and the relevant congressional oversight committees at least once every six months. I understand this statutory requirement also informs the Attorney General's and the DNI's representations in the Section 702 certifications to the FISC and their conclusion regarding whether revisions are necessary to ensure the effective implementation of this authority and consistency with the Constitution and the statute. If confirmed, I will ensure that ODNI Office of General Counsel remains closely involved in these oversight activities.

- c.** In addition to the matters described in the Act for semiannual or annual assessment or review, are there additional matters that should be evaluated periodically by the Attorney General or the DNI to improve and ensure the lawful and effective administration of the Act?

ANSWER: I have not had occasion to form an opinion on additional matters that should be evaluated by the Attorney General or the DNI in relation to their oversight of activities conducted pursuant to Section 702 of FISA. If confirmed, I look forward to engaging with both ODNI and Department of Justice staff to assess whether there are additional topics or issues that should be considered in conducting such oversight to ensure the lawful and effective administration of the Act.

QUESTION 10: The USA FREEDOM Act of 2015 (P.L. 114-53) reauthorized three national security tools – Business Records collection, Roving Surveillance, and the Lone Wolf provision – that expired on March 15, 2020.

- a.** Given your experience at the Department of Justice, what concerns do you have with the expiration of these authorities?
- b.** If confirmed as ODNI/GC, what efforts would you undertake to address these concerns?

ANSWER: The provisions of FISA that expired on March 15, 2020, include important authorities that have greatly assisted investigations involving terrorists or spies who pose a threat to U.S. national security. If these provisions are not reauthorized the government will be unable to use them in future investigations, leaving us all more vulnerable. If confirmed, I look forward to working with Congress to reauthorize these expired provisions.

Other Surveillance Matters

QUESTION 11: Section 4 of PPD-28 calls on each IC element to update or issue policies and procedures to implement principles for safeguarding all personal information collected through SIGINT. Those policies and procedures are currently posted publicly. Will you ensure that the IC continues to post these policies and procedures as well as any modifications, superseding policies and procedures, or significant interpretations?

ANSWER: As Director Ratcliffe stated during his confirmation, the publication of the policies and procedures established pursuant to Presidential Policy Directive 28 (PPD-28) in a manner that protects sources and methods but considers the public interest to the maximum extent feasible, is a critical aspect of the IC's transparency efforts. If confirmed, I will work with the Director and senior leadership to ensure that the IC continues to follow all legal requirements related to PPD-28 implementation policies and procedures, along with any modifications or superseding policies and procedures, consistent with longstanding Executive Branch confidentiality interests.

QUESTION 12: Are there any circumstances in which an element of the IC may *not* conduct a warrantless search for a U.S. person of communications that have been collected pursuant to Section 12333? If so, please describe.

ANSWER: If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law, as well as Presidential directives such as Executive Order 12333. It is my understanding that IC elements' Attorney General-approved U.S. person procedures for the collection, retention, and dissemination of information concerning U.S. persons required by section 2.3 of Executive Order 12333 establish the parameters under which elements' may lawfully collect, retain, and disseminate information concerning U.S. persons in a manner that protects privacy and civil liberties.

Transparency

QUESTION 13: Executive Order 13526 (December 29, 2009) 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.” Executive Order 13292 (March 25, 2003) and Executive Order 12958 (April 17, 1995) prohibited classification based on the same factors. Do you agree with the prohibitions in these Executive Orders?

ANSWER: Yes.

QUESTION 14: If, for any reason, you make a public statement that is inaccurate, do you commit to making a public statement correcting the record?

ANSWER: If confirmed, I intend to ensure that any public statements that I make are entirely accurate and appropriately coordinated with the relevant policy and public affairs personnel within the Executive Branch. However, if for some reason I inadvertently make a public statement that is inaccurate, I will—consistent with the requirement to protect classified information and sensitive intelligence sources and methods—publicly correct that statement. If I am not able to make a public correction because of a requirement to protect such information, I will inform the intelligence committees of the inaccuracy in a classified setting.

Evaluation of Office of the Director of National Intelligence

QUESTION 15: 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: I have not had occasion to form an opinion on the relative strengths or weaknesses of ODNI’s current authorities as they apply to its mission. If confirmed, I will consider this question closely throughout my tenure as ODNI General Counsel and I will work closely with the Committee to address any areas where the ODNI would require additional authorities.

QUESTION 16: 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: I have not had occasion to form an opinion on the relative strengths or weaknesses of ODNI’s current authorities as they apply to the function of the Office of General Counsel. If confirmed, I will consider this question closely throughout my

tenure as ODNI General Counsel and I will work closely with the Committee to address any areas where the ODNI would require additional authorities.

Intelligence Community Whistleblowers

QUESTION 17: 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?

ANSWER: As Director Ratcliffe stated during his confirmation, 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. If confirmed, I commit to ensure that every complaint is handled in compliance with all legal requirements and whistleblowers are afforded all legal protections to which they are entitled. I have not had occasion to form an opinion on the sufficiency of existing authorities that provide for protection of whistleblowers. If confirmed, I intend to consider this question closely throughout my tenure as ODNI General Counsel and I will work closely with the intelligence committees to address any areas where additional authorities may be appropriate.

QUESTION 18: 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 foremost responsibility of the ODNI General Counsel is to provide expert legal counsel to the DNI and senior leadership to ensure that the DNI and senior leadership conduct their activities in accordance with the Constitution and laws of the United States, including applicable provisions of the Intelligence Community Whistleblower Protection Act that govern transmittal of whistleblower complaints to Congress. If confirmed, I commit to ensure that every complaint is handled in compliance with all legal requirements and whistleblowers are afforded all legal protections to which they are entitled.

QUESTION 19: Under what circumstances would you judge it appropriate to intercede in advancing a whistleblower complaint to Congress?

ANSWER: The foremost responsibility of the ODNI General Counsel is to provide expert legal counsel to the DNI and senior leadership to ensure that the DNI and senior leadership conduct their activities in accordance with the Constitution and laws of the United States, to include applicable provisions of the Intelligence Community

Whistleblower Protection Act that govern transmittal of whistleblower complaints to Congress. If confirmed, I commit to ensure that every complaint is handled in compliance with all legal requirements and whistleblowers are afforded all legal protections to which they are entitled.

QUESTION 20: 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: The foremost responsibility of the ODNI General Counsel is to provide expert legal counsel to the DNI and senior leadership to ensure that the DNI and senior leadership conduct their activities in accordance with the Constitution and laws of the United States, to include applicable provisions of the Intelligence Community Whistleblower Protection Act that govern transmittal of whistleblower complaints to Congress. If confirmed, I commit to ensure that every complaint is handled in compliance with all legal requirements and whistleblowers are afforded all legal protections to which they are entitled.

QUESTION 21: Under what circumstances would you inform a party named in a whistleblower complaint that he or she is the subject of the complaint?

ANSWER: As Director Ratcliffe stated during his confirmation, 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. If confirmed, I commit to ensure that every complaint is handled in compliance with all legal requirements and whistleblowers are afforded all legal protections to which they are entitled.

Executive Branch Oversight of Intelligence Activities

QUESTION 22: 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: My understanding aligns closely with what was communicated by past General Counsels during their confirmations. All three branches of government conduct oversight of intelligence activities. Within the Executive Branch, this oversight is conducted from entities inside IC elements, such as offices of general counsel, agency civil liberties and privacy officials, and inspectors general, as well as by independent entities like the Privacy and Civil Liberties Oversight Board and the Intelligence Oversight Board that play a critical role in overseeing the IC’s activities. The Department of Justice also conducts oversight of activities under FISA. Finally, under section 102A(f)(4) of the National Security Act, the DNI also has a specific statutory

obligation to ensure compliance with the Constitution and laws of the United States by elements of the IC. It is my understanding that the ODNI General Counsel plays a significant role in helping the Director to carry out this requirement. I cannot say at this point whether improvements in the structure or function of Executive Branch oversight activities are needed. If confirmed, I will consider this question closely throughout my tenure as ODNI General Counsel and I will work closely with the Committee to address any areas where I identify needed improvements.

Relationship with Other Officials

QUESTION 23: What should be the relationship of the ODNI/GC with respect to the following officers of the IC?

a. General Counsel, CIA;

ANSWER: As I stated in my response to questions 6 and 7, the ODNI General Counsel works closely with the General Counsels across the IC, including the CIA General Counsel, to identify and resolve cross-cutting legal issues or conflicting legal positions. These strong partnerships across the IC legal community, and in particular CIA, are important as the ODNI General Counsel plays a significant role in helping the Director to carry out his statutory oversight function. It is my understanding that, with regard to the relationship between the ODNI General Counsel and the General Counsel of the CIA, this has meant that, in practice, both general counsels work together closely on significant matters of legal interpretation or legal issues that otherwise have implications for the broader IC. If confirmed, I will seek to maintain what I understand has been an open and collaborative working relationship between past general counsels for the two agencies.

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

ANSWER: Although the National Security Division of the Department of Justice is not part of the IC, it is my understanding that the ODNI General Counsel and the Assistant Attorney General for National Security have had a close working relationship, mirrored by close working relationships among members of their respective offices. Maintaining this close, collaborative relationship is necessary because of the number of areas where the DNI and Attorney General share responsibilities. For instance, many of the procedures and guidelines required by Executive Order 12333 must be approved by the Attorney General in consultation with the DNI. Likewise, activities under Section 702 of FISA must be jointly authorized and overseen by the Attorney General and the Director.

c. Inspector General, ODNI; and

ANSWER: I fully support a strong, independent Inspector General of the Intelligence Community (IC IG) and believe that the ODNI General Counsel must have a strong

working relationship with the IC IG because, along with the ODNI Civil Liberties Protection Officer, they form the core group of officials responsible for overseeing ODNI's activities. If confirmed, I will seek to maintain what I understand to be a close working relationship with both the IC IG and the IG's legal counsel.

d. Civil Liberties and Privacy Officer, ODNI.

ANSWER: The ODNI's Civil Liberties Protection Officer, who heads the ODNI Office of Civil Liberties, Privacy, and Transparency, reports directly to the DNI by statute. In addition, he serves as the Chief Transparency Officer for the ODNI, and in that capacity, coordinates the implementation across the IC of the Principles of Intelligence Transparency. It is my understanding the Civil Liberties Protection Officer and ODNI General Counsel, and their respective offices, have had a very close working relationship and, if confirmed, I will seek to maintain that relationship.

QUESTION 24: Do you see the ODNI/GC in a supervisory role in relation to other IC agency General Counsel?

ANSWER: The ODNI General Counsel does not have a supervisory relationship with respect to other IC agency General Counsels; however, it is my understanding that the ODNI General Counsel often plays a lead role in identifying cross-cutting legal issues or conflicting legal positions among the IC elements and facilitating resolution of those issues. It is also my understanding that the General Counsel often presents the consensus views of the IC legal community to the broader Federal Government. In addition, and as indicated in my response to question 7, Section 102A(f)(4) of the National Security Act provides that the DNI shall ensure compliance with the Constitution and laws of the United States by the CIA and by other elements of the IC "through the host executive departments" of those elements. It is my understanding that the ODNI General Counsel plays a significant role in helping the Director carry out this requirement.

QUESTION 25: Do you see the ODNI/GC in a supervisory role in relation to the Inspector General of the IC?

ANSWER: No, by statute, the IC IG reports directly to, and is under the supervision of, the DNI.

QUESTION 26: 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: The foremost responsibility of the ODNI General Counsel is to provide expert legal counsel to the DNI, ODNI leadership, and other personnel assigned to ODNI, to ensure that the agency conducts its activities in accordance with the Constitution and

laws of the United States. Direct and open collaboration between the ODNI Office of General Counsel and the White House Counsel's Office is critical to fulfilling this function and supporting the DNI in his roles as the head of the IC and the principal advisor to the President for intelligence matters related to the national security.

QUESTION 27: 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: The foremost responsibility of the ODNI General Counsel is to provide expert legal counsel to the DNI, ODNI leadership, and other personnel assigned to ODNI, to ensure that the agency conducts its activities in accordance with the Constitution and laws of the United States. Direct and open collaboration between the ODNI Office of General Counsel and OLC is critical to fulfilling this function and supporting the DNI in his roles as the head of the IC and the principal advisor to the President for intelligence matters related to the national security.

By delegation from the Attorney General, OLC provides legal advice to the President and all Executive Branch agencies. In effect, the Office serves as outside counsel for the other agencies of the Executive Branch, and its opinions are generally understood to be binding on Executive Branch agencies. The Office drafts legal opinions of the Attorney General and provides its own written opinions and other advice in response to requests from the various agencies of the Executive Branch. Such requests typically deal with legal issues of particular complexity and importance or those about which two or more agencies are in disagreement.

Recruitment to the ODNI Office of General Counsel

QUESTION 28: 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: I have been impressed with the competence, experience, knowledge and dedication of the lawyers in the office that I have met so far. The office appears to be capable, effective, and well respected within ODNI and the larger legal community. Similarly, all of the interactions I have had with the Office of General Counsel lawyers and staff—both permanent ODNI employees and detailees—while serving as a Department of Justice official have been productive, and I have been impressed with their professionalism and dedication to the mission. I currently have only limited knowledge of the specifics, but if confirmed, I would anticipate consulting the current management

and staff before determining what types of recruiting efforts or detailee options would benefit the mission. If confirmed, I look forward to leading the office and ensuring that it provides valuable legal services to the ODNI and the IC.

Executive Privilege

QUESTION 29: Please describe your understanding of Executive Privilege: its general contours; to whom it can apply; and the time period during which it may apply. Please include your understanding of when the privilege can be waived.

ANSWER: My understanding is that executive privilege is a Constitutionally-based privilege that protects certain confidential information within the Executive Branch against compelled disclosure. Examples of such confidential information that may be protected by executive privilege include Presidential communications, deliberative communications, law enforcement information the disclosure of which might compromise open criminal investigations, and information relating to foreign relations and national security. These components of executive privilege exist to preserve the President's ability to perform his Constitutional functions, including his responsibility to take care that Executive Branch departments and agencies are able to faithfully execute the laws. The privilege generally should only be invoked after the Constitutionally-mandated accommodation process has failed to reach a resolution.

QUESTION 30: Please define the phrase "executive branch confidentiality interests." What are "executive branch confidentiality interests" and when/how do they differ from a claim of Executive Privilege?

ANSWER: My understanding is that the phrase, "executive branch confidentiality interests" refers to those confidentiality interests that the executive privilege exists to protect against compelled disclosure.

QUESTION 31: At what point would you refer information or material to WHCO to review for executive privilege issues?

ANSWER: My understanding is that when agencies within the Executive Branch identify information that is sought, for example, by a co-equal branch of government and may implicate Executive Branch confidentiality interests, those agencies will seek to engage in an accommodation process that is intended to accommodate the legitimate interests of the co-equal branch, while safeguarding Executive Branch confidentially interests. In such cases, it is not uncommon for agencies to consult other elements of the Executive Branch, including the White House Counsel's Office and/or the Department of Justice in order to enlist their assistance in identifying information that may be subject to privilege.

Professional Experience

QUESTION 32: For each of the following, describe specifically how your experiences will enable you to serve effectively as the ODNI/GC. Include within each response a description of issues relating to the position that you can identify based on those experiences.

- a. U.S. Department of Justice, Office of the Deputy Attorney General;

ANSWER: My various roles as a career civil servant at the Department of Justice, Office of the Deputy Attorney General, have allowed me to build significant experience handling national security and intelligence-related matters. As Associate Deputy Attorney General and Chief of Staff to the Deputy Attorney General, I work closely with the Federal Bureau of Investigation, the Department of Justice's National Security and Criminal Divisions, as well as the U.S. Attorneys' offices in the investigation and prosecution of national security-related federal crimes. Often, these investigations and prosecutions implicate the activities of the IC and involve receiving briefings from law enforcement agencies and our IC partners. Following counterterrorism, counterintelligence, and similar briefings, I work with Department of Justice leaders to collaborate with and provide strategic direction to these agencies. Serving as a principal advisor to Department of Justice leadership, I work with our national-security components and IC partners to develop strategies not only for various law-enforcement efforts, including investigations, prosecutions, and operations, but also for setting U.S. government-wide policy. Relatedly, I regularly work with Department of Justice components and advise Department of Justice leadership on matters pertaining to the Committee on Foreign Investment in the United States and on interagency matters coordinated by the National Security Council.

In addition, I have served as the Department of Justice's Director of Counter-Transnational Organized Crime. In this capacity, I routinely interacted with the IC, receiving briefings on counternarcotics efforts as well as country-specific and region-specific intelligence. Working closely with personnel across Department of Justice components, we developed law-enforcement operational plans and policy priorities to combat the national-security threats posed by transnational organized crime. Along with helping to set law enforcement priorities, I also represented the Department of Justice in the interagency process and worked with Treasury (including the Office of Foreign Assets Control and the Financial Crimes Enforcement Network), State, DOD, CIA, and ODNI, among other agencies, to effectuate a whole-of-government approach to fighting transnational crime. These counter-transnational crime efforts comprise a key national security priority and necessarily entail close collaboration with the IC.

In addition, I have managed and directed a staff of approximately 25 attorneys as Chief of Staff in the Office of the Deputy Attorney General. Working with these attorneys and

with others in the leadership offices, we oversee the work of tens of thousands of attorneys and law enforcement agents across all of the Department of Justice's national security, civil, criminal, policy, and law enforcement components. Providing strategic direction to these attorneys on both legal and policy matters as well as oversight of the litigation and investigations throughout the Department of Justice prepares me well to similarly manage the activities of the Office of General Counsel and interface with attorneys across the IC, if I am confirmed to serve.

b. U.S. Department of Justice, U.S. Attorney's Office, Southern District of California; and

ANSWER: Upon joining the Department of Justice in 2014, I began serving as a career federal prosecutor, investigating and litigating criminal matters in the Southern District of California. As a federal prosecutor, I spearheaded Grand Jury investigations, debriefed witnesses, drafted search warrants and other investigatory tools, provided operational and litigation-risk-based advice to federal law enforcement agents, and managed a proactive practice to ensure public safety. I handled matters in diverse substantive contexts, including investigating transnational drug trafficking organizations and various white-collar and public-corruption criminal matters. I served as point-of-contact in the Southern District of California for liquid methamphetamine and fentanyl importation cases and developed inter-agency protocols for prosecution of the importation or distribution of these deadly controlled substances.

A significant part of my active criminal caseload was comprised of a series of cases involving a former foreign defense contractor, his company, and the U.S. Navy. Some commentators have called this matter the largest and most widespread corruption matter in the history of the United States military. Serving as co-lead counsel, I led teams of federal law enforcement agents, marshaled evidence, debriefed witnesses and defendants, interfaced with other agencies and Federal Government components, negotiated with defense counsel, and actively litigated in federal court. The investigation and litigation of this series of cases frequently necessitated close cooperation with foreign law enforcement counterparts and other overseas investigatory steps. These experiences involved delving deeply into legal and factual issues (many of which implicated significant national interests and the interests of our military), navigating complex legal frameworks, and providing sound and timely legal analysis to agents and to my superiors at the Department, and then implementing the legal analysis into action vis-à-vis investigation or enforcements actions. These experiences and challenges as a line prosecutor developing and managing (along with other lawyers and federal law enforcement agents) a complex, multi-faceted, international law enforcement operation and series of ensuing litigations prepares me well to serve alongside the professional attorneys and staff of the IC, if I am confirmed to serve.

c. Latham & Watkins, LLP.

ANSWER: During my practice with Latham & Watkins LLP, I regularly counseled officers and directors of public and private companies as well as financial institutions seeking to navigate federal and state securities laws. In addition to advising clients on downstream litigation risk pertaining to transactional matters, I litigated challenges to strategic transactions and other complex commercial matters. Apart from litigation, I also participated in fact-gathering and internal investigations, as well as defending enforcement actions. In brief, my time at Latham & Watkins afforded me many occasions to handle challenging—and often entirely novel—factual and legal issues under time-pressure and then to provide sound and timely legal advice to decision-making clients. These experiences generally prepared me to provide sound legal advice across a diverse and broad set of circumstances—experience that will be useful and applicable if I am confirmed to serve as General Counsel.

QUESTION 33: What, if any, conflicts might arise from your private practice if you are confirmed as General Counsel, and how would you address these conflicts?

ANSWER: Because I have been a career federal civil servant and have not been in private practice for about six years, I do not anticipate that any conflicts might arise from my past private practice. In the course of the nomination process, I have consulted with ODNI's Designated Agency Ethics Official, who, in turn, consulted with the Office of Government Ethics to identify potential conflicts of interest. Any potential conflict of interest will be resolved consistent with the conflict of interest statutes, standards of conduct, and the terms of the Ethics Agreement that I have executed and which has been provided to the Committee. If confirmed, I will continue to consult with ODNI and U.S. Government ethics officials and will recuse myself from any matter in which it is required. In all circumstances, I will comply with all applicable statutes, regulations, policies, and practices relating to this office.

ADDITIONAL QUESTIONS FROM SENATOR FEINSTEIN

QUESTION 1: On June 2, 2020, BuzzFeed reported that the DEA requested and obtained expanded authority to engage in covert surveillance and share intelligence without any nexus to crimes related to drugs.

- a. Is it appropriate for law enforcement agencies with a specific statutory mission like the DEA to engage in more general intelligence-related activities like covert surveillance?
- b. What protections in law or policy would prevent the DEA from abusing this authority?
- c. Do you believe these activities would be subject to the requirement in Executive Order 12333 that any collection of intelligence about U.S. persons by an element of the intelligence community be pursuant to guidelines approved by the Attorney General in coordination with the DNI?

ANSWER: I am not familiar with the specifics of this article. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law.

QUESTION 2: Under what circumstances, in your view, would intelligence community elements with foreign intelligence missions be authorized to provide intelligence, technical, or other support to law enforcement agencies engaging in covert surveillance activities within the United States for law enforcement purposes? What limitations would apply to that support?

ANSWER: In accordance with Section 2.6 of Executive Order 12333, the IC is authorized to provide support to law enforcement and other civil authorities, but such support is limited. IC support within the U.S. for law enforcement purposes may include activities to protect IC employees, information, property, and facilities. Further, IC elements may participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers, or international terrorist or narcotics activities. However, any support provided by the IC must still be within the scope of that IC element's mission and authorities under statute and Executive Order 12333, and must not be otherwise precluded by federal law or Executive Order.

QUESTION 3: As the General Counsel at ODNI, what steps would you take to ensure that all elements of the intelligence community, including ODNI, operate under U.S. persons procedures as required by Executive Order 12333? More generally, what steps

would you take to ensure activities like the covert surveillance of U.S. persons exercising their constitutional rights of free speech and assembly are properly regulated to avoid abuse?

ANSWER: If confirmed, I am committed to working closely with the Department of Justice and IC colleagues to expeditiously finalize all procedures governing the collection, retention, and dissemination of U.S. persons information that have not already been approved by the Attorney General in accordance with EO 12333. I believe that such guidelines must incorporate specific restrictions on collecting intelligence solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or federal law. I also believe that such guidelines must ensure that authorized IC activities fully integrate the protection of freedoms, civil liberties, and privacy rights guaranteed by the Constitution and federal law. For those IC elements with approved procedures, I will work with their General Counsels to ensure that such protections are fully and consistently implemented.

QUESTION 4: As you are aware, Congress has not yet passed legislation reauthorizing certain sections of the FISA, including the so-called “business records” provision as it was amended by section 215 of the USA PATRIOT Act, in part because of lingering concerns about the use of that provision to spy on Americans’ internet search and web browser histories without a FISC order finding probable cause that the information will yield foreign intelligence information. The House and the Senate have, however, passed separate bills that would restrict the use of section 215 when a person has a reasonable expectation of privacy and a warrant would be required in a criminal context.

- a. Do you think individuals have a reasonable expectation of privacy in their internet search and web browser histories, and do you think a warrant is required to search them? Why or why not?
- b. More generally, as General Counsel at ODNI, what steps would you take to ensure that the provisions of FISA, including the business records provision, are executed by IC elements in a manner consistent with the expectations of the American public when it comes to the protection of their personal information like internet search and web browser histories?

ANSWER: If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law. My understanding is that, under the law as it existed prior to March 15, 2020, the government was only permitted to obtain an order to compel production of business records that could otherwise be obtained through a grand jury subpoena.

ADDITIONAL QUESTIONS FROM SENATOR WYDEN

QUESTION 1: According to a memo from the Acting Administrator of the Drug Enforcement Administration (DEA) to the Deputy Attorney General, the DEA sought the authority to conduct “covert surveillance” in connection with recent protests and to “share intelligence with federal, state, local and tribal counterparts.” Was this authority granted? If so, please describe:

- a. how the surveillance was conducted;
- b. the nature of the information collected;
- c. the authorities under which the surveillance was conducted;
- d. any recipient federal, state, local, municipal or tribal entities;
- e. any minimization procedures that apply to such sharing or dissemination;
and
- f. the use of the information by the recipients’ entities.

ANSWER: I am not familiar with the specifics of this matter. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law.

QUESTION 2: On May 30, 2020, the Attorney General announced that the Federal Bureau of Investigation, the U.S. Marshals Services, the Bureau of Alcohol, Tobacco, Firearms and Explosives, as well as the DEA, were all participating in law enforcement activities in connection with the protests. The Federal Bureau of Prisons has also been involved. For each of these agencies (or any other agencies of the Department involved), please describe:

- a. how the surveillance was conducted;
- b. the nature of the information collected;
- c. the authorities under which the surveillance was conducted;
- d. any recipient federal, state, local, municipal or tribal entities;
- e. any minimization procedures that apply to such sharing or dissemination;
and

f. the use of the information by the recipients' entities.

ANSWER: I am not familiar with the specifics of this matter. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law.

QUESTION 3: The Attorney General's May 30, 2020, statement attributed incidents of violence and property damage to "[g]roups of outside radicals and agitators," adding that, "in many places, it appears the violence is planned, organized, and driven by anarchistic and far left extremists, using Antifa-like tactics, many of whom travel from out of state to promote the violence." On June 1, 2020, President Trump stated that "our nation has been gripped" by, among others, "professional anarchists" and "antifa." President Trump further described violence and property damage as "acts of domestic terrorism." Do you agree with these assessments? If so, please provide detailed and specific information to support them.

ANSWER: I am not familiar with the specifics of the cited statements. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law.

QUESTION 4: On March 31, 2020, President Trump announced that "[t]he United States will be designating ANTIFA as a Terrorist Organization." Please describe the implications of this designation, in terms of policy, resource allocation, or investigative and surveillance authorities.

ANSWER: I am not familiar with actions taken, if any, following the President's statement.

QUESTION 5: Did you play any role or participate in any conversations related to the clearing of Lafayette Square on June 1, 2020? If yes, please describe that role or those conversations.

ANSWER: No.

QUESTION 6: Have you participated in any conversations about the proposed invocation of the Insurrection Act? If yes, please describe those conversations.

ANSWER: The Attorney General has publicly acknowledged conversations on this issue. However, I was not a participant in any such conversations.

QUESTION 7: Do you believe that Section 215 of the USA PATRIOT Act should be used to collect “tangible things” if they do not pertain to:

- a. a foreign power or an agent of a foreign power;
- b. the activities of a suspected agent of a foreign power who is the subject of an authorized investigation; or
- c. an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of an authorized investigation?

If yes, under what specific circumstances do you believe the application for a Section 215 order could be based on the “relevance” standard without satisfying any of the above three requirements for presumptive relevance?

ANSWER: I believe it is important for the IC to use its authorities appropriately against valid intelligence targets. The amendments to Title V of FISA made by Section 215 of the USA PATRIOT Act expired on March 15, 2020 and, to date, have not been reauthorized.

QUESTION 8: Does the government collect web browsing and internet search history pursuant to Section 215? If so, what are or should be any limitations on such collection or the dissemination and use of such information? Does the government collect web browsing or internet search history pursuant to FISA Pen Register/Trap and Trace authorities?

ANSWER: I believe it is important for the IC to use its authorities appropriately against valid intelligence targets. The amendments to Title V of FISA made by Section 215 of the USA PATRIOT Act expired on March 15, 2020 and, to date, have not been reauthorized.

QUESTION 9: During his confirmation process, Assistant Attorney General for National Security John Demers was asked about the prohibition on reverse targeting in Section 702. 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 should this “fact specific inquiry” be implemented through the Section 702 nominations and querying processes of Intelligence Community entities?

ANSWER: My understanding aligns closely with what was communicated by past General Counsels during their confirmations. Section 702 of FISA specifically prohibits intentionally targeting a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States (i.e., reverse targeting). It is my understanding that the determination of whether a particular, known U.S. person has been reverse targeted is fact-specific and necessitates evaluation of a variety of factors. In its 2014 report regarding the government’s use and implementation of Section 702, the Privacy and Civil Liberties Oversight Board noted that if a Section 702 tasking resulted in substantial reporting by the IC regarding a U.S. person, but little reporting about the Section 702 target, that might be an indication that reverse targeting may have occurred. I agree that one possible indication of reverse targeting of a U.S. person could be the existence of substantial reporting about that U.S. person, but little to no reporting about the foreign target. If confirmed, if I become aware of instances of reverse targeting through ODNI’s Section 702 oversight function, I will work with the Department of Justice to determine the cause and implement solutions to ensure the problem does not recur.

QUESTION 10: Do you believe Section 702 of FISA authorizes the collection of communications known to be entirely domestic?

ANSWER: Section 702 specifically prohibits intentionally acquiring any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that collection activities conducted pursuant to Section 702 of FISA are carried out in accordance with the Constitution and applicable Federal law.

QUESTION 11: The 2018 legislation reauthorizing Section 702 of FISA codified limitations on the use of U.S. person information in criminal proceedings.

- a. Do you believe these limitations should be extended to other provisions of FISA?
- b. The limitations include an exception for “transnational crime, including transnational narcotics trafficking and transnational organized crime.” Please describe the full scope of “transnational crime” in this context.

ANSWER: I have not had occasion to consider whether additional changes to Section 702 are necessary or appropriate or to implement the provisions of Section 706 of FISA, as amended. If confirmed, I will consider this question closely throughout my tenure as

ODNI General Counsel and I will work with the Committee to address any areas where amendments to the law may be appropriate.

QUESTION 12: 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 a provider does not comply with a directive, the government may seek an order from the FISA Court to compel compliance. Prior to the reauthorization of Section 702 in 2018, the government stated that it had “not to date sought an order pursuant to Section 702(h)(5) seeking to compel an electronic communication service provider to alter the encryption afforded by a service or product it offers.”

- a. Is that still the case?
- b. Do you believe that the government should inform the FISA Court when it issues 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?
- c. Will you commit to notifying Congress of any such directive?

ANSWER: I have not had occasion to be involved in the implementation of these provisions of FISA. If confirmed, I will consider this question closely throughout my tenure as ODNI General Counsel and ensure that the DNI keeps the congressional intelligence committees fully and currently informed of all intelligence activities, consistent with the requirements of the National Security Act and other applicable federal law.

QUESTION 13: Title 50, section 1812, provides for exclusive means by which electronic surveillance and interception of certain communications may be conducted. Do you agree that this provision is binding on the President?

ANSWER: As set forth in Section 112 of FISA, with limited exceptions, FISA constitutes the exclusive statutory means by which electronic surveillance, as defined in FISA, and the interception of domestic wire, oral, or electronic communications for foreign intelligence purposes may be conducted. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that IC activities are carried out in accordance with the Constitution and applicable federal law.

QUESTION 14: Do you believe that intelligence surveillance and collection activities covered by FISA can be conducted outside the FISA framework? If yes, please specify which intelligence surveillance and collection activities, the limits (if any) on extra-

statutory collection activities, and the legal authorities you believe would authorize those activities.

ANSWER: As set forth in Section 112 of FISA, with limited exceptions, FISA constitutes the exclusive statutory means by which electronic surveillance, as defined in FISA, and the interception of domestic wire, oral, or electronic communications for foreign intelligence purposes may be conducted. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that IC activities are carried out in accordance with the Constitution and applicable federal law.

QUESTION 15: What would you do if the Intelligence Community was requested or directed to conduct such collection activities outside the FISA framework? Would you notify the full congressional intelligence committees?

ANSWER: If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that IC activities are carried out in accordance with the Constitution and applicable federal law. In addition, and as discussed in response to Question 1 in the “Keeping the Intelligence Committee Fully and Currently Informed” portion of this questionnaire, I would work with the Director to ensure that all IC elements comply with their statutory obligation to keep Congress fully and currently informed.

QUESTION 16: Do you believe the Intelligence Community can purchase information related to U.S. persons if the compelled production of that information would be covered by FISA? If yes, what rules and guidelines would apply to the type and quantity of the information purchased and to the use, retention and dissemination of that information? Should the congressional intelligence committees be briefed on any such collection activities?

ANSWER: As Director Ratcliffe stated during his confirmation, elements of the IC are authorized to collect, retain, or disseminate information concerning U.S. persons only in accordance with procedures approved by the Attorney General. Any intelligence activity not governed by FISA would be regulated by the Attorney General-approved procedures that govern the intelligence activities of that IC element. If confirmed, I would ensure that the DNI keeps the congressional intelligence committees fully and currently informed of all intelligence activities, consistent with the requirements of the National Security Act and other applicable federal law.

QUESTION 17: Is it legal for an element of the Intelligence Community to seek intelligence from a foreign partner or source on a U.S. person that that entity is not legally entitled to collect directly?

ANSWER: No element of the IC may request any person, including any foreign partner or source, to undertake activities forbidden by the Constitution, federal law, or Executive Order, including E.O. 12333. As Director Ratcliffe stated during his confirmation, the IC has a solemn obligation to conduct intelligence activities in a manner that fully protects the legal rights of all United States persons, including freedoms, civil liberties, and privacy rights guaranteed by federal law. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all elements of the IC adhere to these requirements and engage with foreign partners in a manner wholly consistent with U.S. law and with robust protections for the privacy and civil liberties of U.S. persons.

QUESTION 18: 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: No element of the IC may request any person, including any foreign partner or source, to undertake activities forbidden by the Constitution, federal law, or Executive Order, including E.O. 12333. As Director Ratcliffe stated during his confirmation, the IC has a solemn obligation to conduct intelligence activities in a manner that fully protects the legal rights of all United States persons, including freedoms, civil liberties, and privacy rights guaranteed by federal law. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all elements of the IC adhere to these requirements and engage with foreign partners in a manner wholly consistent with U.S. law and with robust protections for the privacy and civil liberties of U.S. persons.

QUESTION 19: 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, Executive Order 12333, PPD-28, and USSID 18.

ANSWER: If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that IC activities are carried out in accordance with the Constitution and applicable federal law, as well as Presidential directives such as Executive Order 12333 and its implementing procedures and PPD-28.

QUESTION 20: NSA Director 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.” Do you believe such limitation should apply to other elements of the Intelligence Community?

ANSWER: If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law. It is my understanding that IC elements' Attorney General-approved U.S. person procedures establish the parameters under which elements may lawfully collect, retain, and disseminate information concerning U.S. persons in a manner that protects privacy and civil liberties.

QUESTION 21: 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 have not had occasion to be involved in the implementation of these statutory provisions. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law.

QUESTION 22: Do you believe it is acceptable to forward a whistleblower complaint determined to be an "urgent concern" by the Intelligence Community Inspector General to the Department of Justice or the White House? If so, under what circumstances?

ANSWER: If confirmed, I commit to ensure that every whistleblower complaint is handled in accordance with all legal requirements and that whistleblowers are afforded the legal protections to which they are entitled.

QUESTION 23: Do you agree that the reports of the Privacy and Civil Liberties Oversight Board should be released to the public?

ANSWER: Consistent with the requirement to protect classified information and sensitive intelligence sources and methods, I support appropriate transparency, including with respect to reports of the Privacy and Civil Liberties Oversight Board, that enhances the public's understanding about the IC's mission; the laws, directives, authorities, and policies that govern the IC's activities; and the framework that ensures intelligence activities are conducted in accordance with the applicable rules.

QUESTION 24: Will you support the declassification and public release of any interpretation of law that provides a basis for intelligence activities but is inconsistent with the public's understanding of the law?

ANSWER: Consistent with the requirement to protect classified information and sensitive intelligence sources and methods, I support appropriate transparency that enhances the public's understanding about the IC's mission; the laws, directives,

authorities, and policies that govern the IC's activities; and the framework that ensures intelligence activities are conducted in accordance with the applicable rules.

QUESTION 25: 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: I have not had occasion to be involved in addressing such a circumstance.

QUESTION 26: 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?

ANSWER: My understanding is that the law governing interrogation has evolved significantly since the CIA last employed enhanced interrogation techniques. Today the law is clear. Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 provides that any individual "in the custody or under the effective control of an officer, employee, or other agent of the United States Government" may only be interrogated (other than by federal law enforcement) using the techniques authorized by the Army Field Manual 2-22.3. I fully support this statute.

QUESTION 27: On February 21, 2020, the Department of Defense announced that the Under Secretary for Intelligence & Security would review Army Field Manual (FM) 2-22.3, Human Intelligence Collector Operations. That review will include consultation with the DNI. Do you agree that the CIA's former enhanced interrogation techniques should be prohibited under the Field Manual and, if so, should that prohibition be explicit?

ANSWER: Please see my response to question 26. I do not support interrogation techniques not authorized pursuant to Army Field Manual 2-22.3.

QUESTION 28: Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 prohibits the use of any interrogation technique or approach or treatment related to interrogation not authorized by the Army Field Manual. Is this provision of law absolutely binding on the President?

ANSWER: Yes, and if confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in strict accordance with the Constitution and applicable federal law, including section 1045 of the National Defense Authorization Act for Fiscal Year 2016.

QUESTION 29: Please describe your view of the legal 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?

ANSWER: As Director Ratcliffe stated during his confirmation, the Federal Government takes matters of use of force very seriously, particularly in the rare instance when a U.S. person has taken up arms against the United States. If confirmed, I will work in partnership with the National Security Council, Department of Justice, Department of Defense, and Intelligence Community colleagues to ensure that use of force against a U.S. person is justified and within our legal authorities. I will work with federal partners to provide as much transparency to the U.S. public as possible.

QUESTION 30: On May 18, 2020, Newsweek ran a story entitled “Trump’s Secret New Watchlist Lets His Administration Track Americans Without Needing a Warrant.” The story described a database of individuals associated with transnational organized crime.

- a. Which entity is responsible for the database?
- b. What is the purpose of the database and what entities are its primary customers?
- c. What is the standard for inclusion in the database?
- d. Are U.S. persons in the database? If so, please provide any guidelines, regulations or Privacy Impact Assessments governing their inclusion.
- e. What information populates the database and what entities provide it? Does the database include classified intelligence, unclassified information, or both?
- f. How is “Transnational Organized Crime” defined for purposes of inclusion in the database?
- g. How many entries are in the database?

ANSWER: I am not familiar with the specifics of this article. If confirmed, I would work with the Department of Justice and the General Counsels throughout the IC to ensure that all IC activities are carried out in accordance with the Constitution and applicable federal law.

QUESTION 31: Does the Terrorist Identities Datamart Environment (TIDE) database include U.S. persons or persons inside the United States who are not known or suspected terrorists? If so, please describe the basis for their inclusion.

ANSWER: My understanding is that by law the ODNI's National Counterterrorism Center (NCTC) serves as the government's central and shared knowledge bank on known and suspected terrorists and international terror groups, as well as their contacts and support networks. As a part of this critical mission, NCTC maintains the Terrorism Identities Datamart Environment (TIDE), which is the government's classified repository for identity information relating to terrorism, created pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004. My understanding, based on information publicly available on NCTC's website, is that TIDE includes identity information regarding individuals who are known or suspected terrorists or who otherwise support or solicit support for terrorists. My understanding is that NCTC operates TIDE under a robust compliance program to ensure the proper handling and protection of any U.S.-person information, consistent with the Constitution, federal law, and Attorney General-approved U.S. person procedures and in furtherance of the IC's overall counterterrorism mission. However, I am not familiar with the details of the operation of TIDE. If confirmed, I look forward to learning more about NCTC's administration of TIDE.

QUESTION 32: The January 2017 Intelligence Community Assessment concluded that Russia interfered in the 2016 election to benefit Donald Trump, an assessment confirmed by the Senate Select Committee on Intelligence. Do you agree with this assessment?

ANSWER: As Director Ratcliffe communicated to the Committee during his confirmation, Russia engaged in unprecedented efforts to interfere in the 2016 U.S. Presidential election to sow discord and undermine faith in our democracy. In addition, as has been publicly reported and as Director Ratcliffe also communicated during his confirmation, active measures by the Russian government included successful hacking and attempts to compromise computer networks of political targets, as well as an extensive disinformation campaign through social media accounts. I am not familiar with the specific intelligence underlying the January 2017 Intelligence Community Assessment or the Committee's confirmation of that assessment. If confirmed, I look forward to the opportunity to review the assessment and the intelligence on which it is based, and to render any feedback to the Committee, if requested.