

January 3, 2017

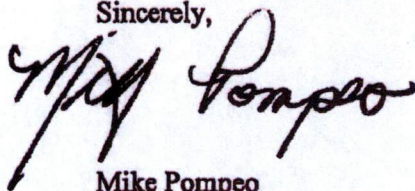
Senator Ron Wyden  
Senator Martin Heinrich  
U.S. Senate Select Committee on Intelligence  
211 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senators Wyden and Heinrich:

Thank you for your letter dated December 23, 2016. As requested, I have completed your Prehearing Questions, and I have enclosed my responses.

I look forward to appearing before your committee on January 11<sup>th</sup>.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Pompeo", is written over the typed name.

Mike Pompeo

Enclosure

**Prehearing Questions for the Honorable Mike Pompeo upon his nomination  
to be the Director of the Central Intelligence Agency**

**Senators Wyden and Heinrich**

**Collection Authorities**

The Committee's questions reference your January 2016 op-ed in *The Wall Street Journal* in which you wrote: "Congress should pass a law re-establishing collection of all metadata, and combining it with publicly available financial and lifestyle information into a comprehensive, searchable database." Please answer the following additional questions.

- Please clarify whether "collection of *all* metadata" was a reference to bulk collection of metadata. If so, what kinds of metadata do you believe should be collected in bulk and entered into a "comprehensive, searchable database"?

I was referring to metadata of the type collected under the then-existing program that was available for review under procedures and conditions reviewed and approved by federal judges.

As noted in the op-ed, I was generally referring to additional publicly available data on the internet or other public databases that can provide important clues in identifying those who would seek to harm America. If confirmed, I will defer to policymakers, including the Congress, on whether it would be appropriate to collect metadata and publicly available data, the exact information to be collected, who would collect such information and appropriate restrictions. I note that such activity would be the responsibility of the FBI or other appropriate organizations. I note also that the Intelligence Community has, for many decades, applied restrictions to minimize information collected on U.S. persons, including in some cases, restrictions carried out under the approval and supervision of federal judges. I believe such minimization requirements are both appropriate and necessary.

- Do you believe metadata for telephony and electronic communications should be treated equally under the law, or should there be more restrictions on the collection of one type of metadata vs. the other?

These are very important questions that merit thorough study. There are a wide variety of constitutional, statutory, and other regulatory rules governing the treatment of different types of metadata. These range, to just name a few examples, from Fourth Amendment considerations, to the Foreign Intelligence Surveillance Act (including items like Pen Register/Trap and Trace provisions), to Federal Communications Commission rules on subscriber data.

If confirmed, and such issues were relevant to the CIA mission, I will consult with legal experts on the appropriate treatment of metadata to include examining the specific metadata at issue, the reasons for collection, and the governing legal framework. The CIA's data collection should always be driven by its statutory mission.



- Please clarify "*publicly available* financial and lifestyle information." What constitutes "publicly available information"? Does it include information provided by or purchased from third parties?

My op-ed was designed to provide general thoughts on the types of information that may be helpful in protecting the country. I did not set forth a specific list of items, but in general was referring to publicly available information, not information purchased by third parties. However, to the extent there is publicly available relevant intelligence information that may be obtained in full compliance with all privacy laws, such information should be considered as appropriate, if necessary to protect the country.

- Please clarify "*comprehensive, searchable database*." Which U.S. government departments and agencies, as well as federal, state, local and/or tribal entities, should have access to the database or to information derived from the database? What restrictions, if any, do you believe should be placed on searches of the database and dissemination of the results of such searches, whether to U.S. intelligence and law enforcement entities or to foreign governments? How long should the information in the database be retained?

My op-ed was designed to provide general thoughts on the types of information that may be helpful in protecting the country. I did not propose a full legislative framework that would govern exact access to such information, the restrictions on searches and dissemination, or retention timeframes. I am aware that intelligence agencies, including the CIA, are subject to Attorney General guidelines and detailed rules governing the access to and handling of U.S. person data.

- Please provide additional detail on the role of the CIA with regard to the "comprehensive, searchable database," specifically whether, in your view, the CIA should have direct access to the database, whether the CIA should conduct or request queries of the database, whether information from the database should be disseminated to the CIA, and what restrictions, if any, should apply to the CIA's use of information from the database.

My op-ed was designed to provide general thoughts on the types of information that may be helpful in protecting the country. I did not propose a full legislative framework that would govern exact access by CIA to such information, the restrictions on searches and dissemination, or restrictions on use of information. I am aware that intelligence agencies, including the CIA, are subject to Attorney General guidelines and detailed rules governing the access to and handling of U.S. person data. Any such program for collection would be governed by rules and law set forth by policymakers that account for the full spectrum of interests and, with respect to U.S. persons, the CIA would be expected to participate only to the extent it was fulfilling its statutory mission set.

- The CIA's minimization procedures with regard to Section 702 of FISA state: "CIA personnel may query CIA electronic and data storage systems containing

unminimized communications acquired in accordance with section 702 of the Act. [REDACTED] Such queries must be reasonably designed to find and extract foreign intelligence information. CIA will maintain records of all such queries, including but not limited to United States person names and identities, and NSD and ODNI will review CIA's queries of content." Other than the requirement that the query be "reasonably designed to find and extract foreign intelligence information," do you believe there should be any limitations on CIA queries of U.S. persons for purposes of reviewing the content of communications? What limitations and reporting requirements do you believe should apply to U.S. person queries of Section 702-derived metadata?

In this context, a "query" involves using a name, phone number, email address, or other term to isolate communications with that term within a larger pool of data that an agency has already lawfully collected. It is important to note that queries do not result in the additional collection of any information.

The Attorney General and the Foreign Intelligence Surveillance Court (FISC) have reviewed and approved CIA's minimization procedures, including its limitations on queries, finding the procedures consistent with FISA and the Fourth Amendment. Those minimization procedures require that "Any United States person identity used to query the content of communications must be accompanied by a statement of facts showing that the use of any such identity as a query term is reasonably likely to return foreign intelligence information, as defined in FISA." I understand that as part of Section 702's extensive oversight, the Department of Justice and the Office of the Director of National Intelligence review all of CIA's U.S. person queries of Section 702-acquired content to ensure each query satisfies the legal standard articulated in the question. Any compliance incidents are reported both to Congress and the FISC.

In terms of U.S. person queries of Section 702-derived metadata, the DNI is required to make publicly available an annual report that provides – among other things – a good faith estimate of the number of U.S. person queries of Section 702-derived content and Section 702-derived metadata.

I believe the outlines of this program to be appropriate to perform the CIA's mission and safeguard fundamental rights.

If confirmed, I will be happy to discuss any specific proposals and their potential effects on CIA's ability to discover and analyze threats once I have been briefed on the Agency's efforts in this area.

- Section 702 of the Foreign Intelligence Surveillance Act prohibits "reverse targeting" of U.S. persons. As CIA Director, what policies would you adopt with regard to nominating targets of Section 702 collection in order to guard against reverse targeting?



I understand there are already Agency policies to prohibit CIA officers from "reverse targeting" U.S. persons and persons inside the United States. If confirmed, I intend to continue those policies. As part of Section 702 oversight, DOJ reviews all nominations for compliance with the targeting procedures and the statutory requirements, including the prohibition against reverse targeting (ODNI reviews a sample).

Bi-monthly reports documenting the results of each review are submitted to Congress as part of the semiannual reports required under 50 USC 1881f. Any compliance incidents discovered in the course of DOJ and ODNI's oversight are reported to the FISC pursuant to Rule 13(b) of the FISC's Rules of Procedure and to Congress in the semiannual reports.

- What differences, if any, do you believe should exist with regard to CIA access to, queries of, and use, dissemination and retention of U.S. person communications collected pursuant to Executive Order 12333 as compared to communications collected pursuant to Section 702?

I understand that all collection and use of U.S. person information is governed by law and policy. The collection of communications under Section 702 occurs under the important, but relatively narrow, circumstances where the communications of a foreign national located abroad may be obtained with the assistance of a U.S. service provider, subject to the jurisdiction of the FISC. The types of targeting and minimization procedures required by Section 702 are generally appropriate to that collection activity because Section 702 collection involves such limited range of collection techniques and because the involvement of U.S. service providers may implicate U.S. person communications to a greater degree in the event of error.

Because CIA activities under E.O. 12333 are strictly focused on collection activities abroad, with very limited exceptions, there is a smaller risk that these activities could implicate U.S. person communications compared with collection under Section 702. Additionally, CIA's E.O. 12333 activities involve a far greater variety of collection techniques, and often occur under circumstances where the collection opportunity is limited, costly, risky, and fragile. Thus, compared with Section 702 collection, the CIA's collection activities under E.O. 12333 require a far greater degree of agility and flexibility to obtain intelligence of sufficient timeliness and reliability. For these reasons, the CIA's access to, queries of, use, dissemination, and retention of U.S. person communications under E.O. 12333 are appropriately governed by broader and more flexible guidelines, compared with those required under Section 702.

- Executive Order 12333 states that the CIA may conduct surveillance within the United States "for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance." How would you ensure that any implementation of this authority does not adversely affect U.S. persons' civil liberties or otherwise result in CIA surveillance of U.S. persons?

Under E.O. 12333, the CIA may not engage in electronic surveillance within the United States except for the purpose of training, testing, or conducting countermeasures to hostile electronic surveillance. Surveillance conducted for those purposes is governed by procedures established by the DCIA and approved by the Attorney General, after consultation with the DNI. In addition, activities that constitute "electronic surveillance" within the meaning of FISA, 50 U.S.C. 1801(f), are subject to the separate statutory requirements set forth at 50 USC 1805(g).

In order to protect the privacy and civil liberties of U.S. persons, these activities are limited in extent and duration to those necessary to accomplish the purpose of the activity and not directed at the communications of a particular person. With respect to testing or training, any information obtained in the course of activity should be retained and used only for purposes of the particular testing or training activities and destroyed as soon as practicable. With respect to countermeasures, any collected information should be used only to protect against unauthorized surveillance or disseminated only to appropriate agencies for enforcement of federal statutes prohibiting such unauthorized surveillance. If confirmed, I intend to continue these protections for the privacy and civil liberties of U.S. persons.

- Do you believe the CIA should be authorized to monitor U.S. persons' social media activities? If so, under what circumstances and subject to what limitations? What legal authority would provide the basis for such monitoring?

The CIA may already collect information related to the social media activities of U.S. persons only in furtherance of its authorized functions, and in accordance with the Constitution, federal statutes, and presidential directives. The collection, retention, and dissemination of information concerning U.S. persons may be undertaken only in accordance with Attorney General-approved procedures.

#### **PPD-28 and Foreign Partners**

The Committee's questions reference the statement in your *WallStreet Journal* op-ed that Presidential Policy Directive-28 "bestows privacy rights on foreigners and imposes burdensome requirements to justify data collection." Please answer the following additional questions.

- What do you see as the possible costs to bilateral relationships, including bilateral intelligence relationships, to eliminating or modifying PPD 28?

The effect of eliminating or modifying PPD 28 will depend on the specific countries involved and the specific nature of any changes. Some countries, for example, have intelligence laws in effect that are somewhat more liberal than the restrictions in PPD 28, and those countries might not object if the U.S. modified PPD 28 to be more in line with their own laws. Other nations might be concerned about a modification to PPD 28 and seek a bilateral agreement with respect to its citizens.



- Concerns about U.S. surveillance activities have led to litigation in Europe that prompted the Court of Justice of the European Union to strike down the Safe Harbor Agreement (which was the legal basis for companies' transfers of data between the EU and the U.S.). As CIA Director, would you support reforms to U.S. surveillance programs in order to address these developments?

These issues affect multiple agencies, as well as the private sector. If confirmed, I will engage with our partners inside and outside of government to ensure we have a holistic understanding of concerns related to U.S. surveillance programs before undertaking changes or reforms, if those are determined to be necessary and applicable.

- Is it ever appropriate for U.S. person information, collected in bulk by a foreign partner, to be obtained, used and disseminated by the Intelligence Community? If so, what limitations should be applied?

I understand that, in full compliance with law and Attorney General guidelines, it may be appropriate for CIA to collect information in bulk. To the extent U.S. person information is involved, CIA follows regulations and Attorney General-approved guidelines in handling of such information. If a foreign partner furnishes U.S. person information, I understand that information would also be handled pursuant to CIA regulations and Attorney General-approved guidelines. At times, U.S. person information may be highly relevant to protection of the country, such as a case where a U.S. person abroad is engaged in armed hostilities or planning for attacks to kill Americans.

#### Economic espionage

- According to the CIA's policies and procedures related to signals intelligence:

*"The collection of foreign private commercial information or trade secrets is authorized only to protect the national security of the United States or its partners and allies. It is not an authorized foreign intelligence or counterintelligence purpose to collect such information to afford a competitive advantage to U.S. companies and U.S. business sectors commercially. Certain economic purposes, such as identifying trade or sanctions violations or government influence or direction, shall not constitute competitive advantage."*

How will you ensure that CIA collection and analysis is not used to advance the competitive advantage of U.S. companies and business sectors in which members of the administration, their families and associates, have an interest?

I understand there are already Agency policies to prohibit CIA officers from collecting or disseminating information purely to provide a U.S. business with a competitive advantage. If confirmed, I look forward to learning more about these policies and evaluating their effectiveness.

## Encryption

- In your *Wall Street Journal* op-ed, you wrote that "the use of strong encryption in personal communications may itself be a red flag." Are there any circumstances in which the use of strong encryption could be a basis for surveillance, particularly of U.S. persons?

CIA is prohibited from conducting electronic surveillance inside the United States, except in limited circumstances. The CIA may conduct electronic surveillance of a U.S. person, who is located outside the United States, if there is probable cause to believe the U.S. person is an agent of a foreign power and upon obtaining a warrant by the Foreign Intelligence Surveillance Court.

In my view, a U.S. person's use of strong encryption would not be sufficient by itself to establish probable cause that the person is an agent of a foreign power. However, if CIA has reason to believe that a named U.S. person has been in contact with known or suspected terrorists, viewed or posted violent extremist propaganda online, expressed a desire to conduct a Homeland attack, and recently started using encrypted communications, his or her use of those communications should be considered in the course of the FBI investigation into the person.

## Interrogation

- The FY 2016 National Defense Authorization Act prohibited any interrogation techniques not listed in the Army Field Manual (AFM). Do you agree that, under current law, the use of interrogation techniques not authorized by the AFM, including the CIA's former "enhanced interrogation techniques," is illegal under any circumstances?

Section 1045 of the National Defense Authorization Act for FY2016 provides that no individual in U.S. custody may be subjected to any interrogation technique or approach that is not authorized by and listed in the Army Field Manual. Executive Order 13491 contains a similar requirement thus rendering the use of such techniques by the CIA illegal. Other statutes, including the Detainee Treatment Act of 2005, the Torture Statute, and the War Crimes Act, would prohibit certain interrogation techniques, alone or in combination.

- If you are confirmed and you are directed by President Trump to authorize interrogation techniques that are not authorized by the Army Field Manual and are therefore illegal, how would you respond?

I will never consider taking action inconsistent with the law. I also do not accept the hypothetical premise to this question. I have no reason to believe that President Trump will direct me not to follow the law and I will follow the law. I have no expectation of receiving any directions that do not comply with law.



- Will you commit to informing the full Committee of any changes to detention and interrogation policy?

I understand that detention and interrogation issues are of interest to the congressional intelligence committees, and I am committed to keeping you fully and currently informed.

- What is your view of Appendix M of the Army Field Manual (AFM) and its potential for abuse? Would you recommend a rewriting of the AFM in order to authorize coercive interrogation techniques?

I am not aware of abuse related to Appendix M of the Army Field Manual, although I have not consulted with the Department of Defense, which may be better positioned to provide a view. I do not see potential for abuse by the CIA and would expect any such activities to comply with the law under appropriate oversight.

If confirmed, I will consult with experts at the Agency and at other organizations in the U.S. government on whether the Army Field Manual uniform application is an impediment to gathering vital intelligence to protect the country or whether any rewrite of the Army Field Manual is needed. That said, I note that this is a manual originally designed to govern the armed forces and it would be unusual for the CIA to play a significant role in changes to a manual designed to govern the conduct of the Army. If any changes are justified, a fundamental requirement is that such changes fully comply with law, including laws governing the treatment and interrogation of individuals. And any such changes would need to be based on a clear, justified need and carefully implemented by appropriate experts and full oversight. I would expect to consult with the full congressional Intelligence Committees on any differences that are appropriate, including any changes to law that would be required.

- Last August, the High-Value Detainee Interrogation Group (HTG) released its first assessment of interrogation best practices. Have you read this report? If so, what lessons have you taken from it?

Yes, I have read the report. The report is a short overview of selected best practices, including that interrogation is a team effort, interrogations should be planned and organized, and the interrogation team uses strategies and evidence. I took away that the document is a helpful, high level overview of organization and planning strategies. I certainly respect the work that went into the report and consider it a contribution to the debate. I allow for the possibility that others may have different views however.

#### **Committee Study of the CIA's Detention and Interrogation Program**

With regard to the public release of the Executive Summary of the Committee's Study of the CIA's Detention and Interrogation Program, you released a press statement that stated: "It is hard to imagine a sound reason that Senator Feinstein would put American operators and their families at risk.... The sad conclusion left open is that her release of the report is the result of a narcissistic self-cleansing that is quintessentially at odds with her



duty to the country." Although you directed your attack at then-Chairman Dianne Feinstein, your criticisms would apply to all members, from both parties, who supported the release of the Executive Summary.

- Why should your reaction to the Committee's release of the Executive Summary not be interpreted as antipathy toward the role of congressional oversight of the CIA? Do you believe that U.S. Senators, from both parties, who supported the release of the Study acted "at odds with [their] duty to the country"?

My statement did not express antipathy toward the important role of congressional oversight of the CIA. Indeed, I believe that strong congressional oversight is essential and believe that I have been a part of such oversight in my role as a member of HPSCI.

In my responses to the Committee, I have expressed at length my views on the important role of congressional oversight of the CIA and the importance of keeping the Committee fully and currently informed. As a Member of the HPSCI, I understand and have a great appreciation for the role of congressional oversight in our democracy.

No, I do not believe that Senators who supported the release of the report acted at odds with their duty to the country. While I stand by my concerns about the release of the report, I realize this discussion of activities, many of which took place over a decade ago and before I joined Congress, is the subject of significant disagreement, including among Senators and with the Administration.

I feel strongly that intelligence professionals who are asked to do difficult and dangerous things that are on behalf of the country and in full compliance with law, and do so after full consultation with the highest legal officials of the country, deserve our gratitude, not endless investigations and scorn.

- When you made those accusations, had you read the Executive Summary in full? If not, have you read it in full since then? If so, do you stand by your original statement?

When my statement was made, I had reviewed each of the major elements of the Executive Summary, but had not reviewed in full. I have since reviewed in the Executive Summary in full. I stand by my answer above about the statement.

- What lessons have you taken from the Executive Summary? Please detail any disagreements you have with the Executive Summary.

The Executive Summary details activities, as acknowledged by the Agency, that were not authorized. The Executive Summary also discusses the difficulty of standing up an activity quickly that was new to the CIA under a time of tremendous pressure and threat to the country. There were a number of lessons learned that have been acknowledged by the Agency concerning oversight, compliance, and management contained in the report. Regarding concerns, I worried about the effect the release of the report would have on



Americans serving overseas and the message that CIA officers might draw from its conclusions.

The report and the rebuttals are voluminous. A full recitation of the charges and countercharges would be impossible in this format. President Obama's administration has detailed a number of disagreements with the Executive Summary and the conclusions drawn in the report about the intelligence gathered from the activity. I have not carried out my own investigation, but have no basis for disagreeing with the view of the Administration and intelligence professionals who have set forth their view of the value of the intelligence gathered. However, the report is an example of aggressive congressional oversight and I respect the Committee's work, especially its oversight function, which is core to our democracy.

- Have you read the full, classified Study, or portions thereof? If not, will you agree to do so?

I've read the unclassified Executive Summary and small parts of the classified study. If confirmed, I will be happy to review parts of the classified Study relevant to the position of DCIA and the SSCL.

- Since the release of the Executive Summary over two years ago, there have been no indications that the release resulted in attacks on Americans. What lessons have you taken from this?

I have not reviewed any assessments about the impact of the Executive Summary on attacks against Americans or other negative consequences from the release. If it is the case that there have been no attacks, we are fortunate.

- You have stated that the CIA's Detention and Interrogation Program was operated "with the full knowledge of Senator Feinstein." Senator Feinstein did not become Chairman until 2009. The CIA has not disputed that it first briefed the full Committee about the program on September 6, 2006, more than four years after the program was initiated. Do you have any additional information to indicate "full knowledge" on behalf of Committee members?

I do not have additional information. I understand that the Administration has released records detailing the briefings provided to numerous members of the congressional leadership and intelligence committees and now understand that briefings did not include the full Committee until 2006.

#### **Rendition/transfers**

The United States recognizes its obligation, 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 would be in danger of being subjected to torture."

- Do you support this prohibition in all circumstances?

Yes, I support complying with current law.

- If the CIA were involved in, or were to provide intelligence or other support to an extradition or rendition, to what extent do you believe the CIA should direct resources to collect on whether there are substantial grounds for believing that the detainee is in danger of being subjected to torture?

I understand CIA directs intelligence resources to understand the practices of other countries, including at times the treatment of detained persons by other countries. As I have outlined in other responses, I understand the U.S. adheres to certain obligations related to American involvement in transfers of a person and CIA would respond to intelligence requirements related to such transfer and obligations pursuant to intelligence priorities and tasking.

- To what extent should the U.S. Government rely on "diplomatic assurances" provided by countries to which detainees may be extradited or rendered? Should such assurances be accepted from countries with established records of committing torture?

I understand that assurances provided by other countries have been a valuable tool for ensuring that detainees are treated humanely. In most cases, other countries are likely to treat assurances provided to the United States government as an important matter. Like any commitment, the credibility of any assurances should be assessed on a case-by-case basis in light of all the relevant factors, including the practices of the country providing the assurances as well as that country's record of complying with similar assurances provided to the United States and other countries.

#### **Guantanamo and military commissions**

- You have made comments indicating that individuals captured by the US abroad should not be prosecuted in federal court, but rather in the military commissions in Guantanamo. Some of your comments were made before many of the problems with the military commissions became apparent and before numerous additional successful convictions of terrorists in federal court. Given these developments, do you still believe that terrorist suspects captured abroad should always be prosecuted in the military commissions or are there circumstances in which it is more appropriate to try them in federal court?

As a policymaker, I spoke publically regarding my belief that military commissions played an important role protecting America and ensuring the prosecution of terrorists captured abroad. In certain situations, federal court may be a suitable venue, depending on the nature of the individual's conduct, the charges, and other circumstances. The decision regarding the appropriate method for detention and prosecution is not made by the DCIA.



- The trials in the military commissions have been delayed in part because of disputes over access to information related to the CIA's Detention and Interrogation Program. How would you propose to resolve these disputes and accelerate the trials? I understand that CIA has provided the Office of the Chief Prosecutor for the Military Commissions access to a large amount of information related to the CIA's former Detention and Interrogation Program in order to meet its discovery obligations and prepare for the pending prosecutions conducted at the U.S. Naval Base at Guantanamo Bay, Cuba. If confirmed, I will be committed to ensuring CIA continues to provide this assistance to the Chief Prosecutor, while also protecting U.S. intelligence sources and methods.
- On July 19, 2013, you stated that none of those who were still in Guantanamo at that time should be released. Since then, the Periodic Review Board has determined that several individuals were detained based at least in part on mistaken identity. In addition, according to Intelligence Community estimates, the majority of released detainees are living peaceful lives. Do these developments change your 2013 assessment? Are there circumstances in which individuals may be transferred to home or third countries?

The Periodic Review Board is an interagency entity responsible for determining whether continued law of war detention of a detainee is warranted in order to protect against a significant threat to the security of the United States. It is vital that the Periodic Review Board consider all relevant intelligence related to a detainee when making its decision. Obviously, if there were to be a true case of mistaken identity – if it were to be determined that a person believed to be in detention was not that person – then continued detention of that person based on the erroneous information should be ended. In every case, the CIA's role regarding Guantanamo detainees is limited.

- Who, if anyone, should be detained in Guantanamo? Please describe the circumstances, including membership in which groups, that would warrant such a detention.

It is my understanding that the CIA does not decide who should be detained at the U.S. Naval Base in Guantanamo Bay. Such decisions ultimately are made by the President and the U.S. Congress. The individuals currently detained at Guantanamo are designated as enemy combatants or persons engaged in hostilities against the United States or its coalition partners during an armed conflict.

#### **Relationships with Foreign Partners and U.S. Government Partners**

- Director Brennan's August 6, 2016, letter stated that "[w]hen we choose to continue a liaison relationship despite allegations of human rights abuses by individuals associated with a liaison service, CIA policy requires that we take several steps to inform our U.S. Government partners and to mitigate the risk of future human rights abuses. First, we advise the local Chief of Mission of CIA's concerns and seek the Chief of Mission's input on whether to continue the liaison relationship." Which U.S. Government partners do you believe should be informed when the CIA decides to continue a liaison relationship despite allegations of human rights abuses? What role

should the Bureau of Intelligence and Research and other components of the U.S. Department of State play in considering the policy implications of these relationships?

As is standing practice, if I am confirmed, CIA will continue to coordinate with the local Chief of Mission regarding any credible allegations of human rights violations. I also anticipate CIA continuing to coordinate CIA's intention to continue a relationship with the liaison service in question. In weighing the risk-benefit factor of each relationship, CIA will also continue to take into consideration the Department of State's Annual Human Rights Report for each country. On a select basis, and if appropriate, CIA may also inform other U.S. Government partners of any human rights issues that could affect the equities of the other U.S. Government partner.

- 22 U.S.C. 3927 states that "Under the direction of the President, the chief of mission to a foreign country ... shall have full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country..." Do you believe that, absent direction from the President, the CIA is obligated to cease intelligence activities, including but not limited to liaison relationships that do not have the approval of the chief of mission?

The relationship between the CIA and the Department of State is crucial, both in Washington and in the field. I look forward to working with the Department of State on issues of mutual concern, if I am confirmed as Director. If a disagreement should arise with the Department of State concerning a CIA intelligence activity, I will seek to resolve the disagreement with the Secretary of State or, in the extremely rare circumstances in which the disagreement could not be resolved, seek further guidance from the President.

- Please describe how you would weigh the costs and benefits of working with a liaison service that has engaged in human rights abuses? What limitations do you believe should be placed on intelligence sharing with foreign partners who may use our intelligence to repress political opponents or violate human rights?

Under my direction, if confirmed, each decision regarding the costs and benefits of working with a liaison service alleged to have engaged in human rights abuse will continue to be weighed on an individual basis, balancing the unique utility or specific access a particular liaison service could provide. Any decision to continue a liaison relationship should only be made if the value to the relationship clearly outweighs the risk of future potential human rights abuse. A decision to limit a liaison relationship should be made on a case-by-case basis and will differ from liaison service to liaison service.

#### Accountability

- The CIA's Response to the Committee Study included a recommendation to broaden the scope of accountability reviews "to address any systemic issues revealed by the case, and to expand the scope of the review as warranted to include officers responsible for those systemic problems." Do you commit to implementing this recommendation?

I understand that the CIA has made improvements in this area, which, if confirmed, I will implement. As Director, I will continue to look for ways to improve.

### Russia

- How do you assess the impact on morale at the CIA from the president-elect's comments about the CIA's analysis on Russia and the U.S. election? If confirmed, how would you address this impact?

At this time, I am not in a position to make a judgment on this question. Generally, however, if confirmed, I will make clear to the workforce that their job remains to provide and collect the best intelligence and to analyze it faithfully and objectively.

- Before the election, you wrote that, "[t]he next commander-in-chief must be clear-eyed, steel-hearted, and unflinching in the face of terrorism, Putin's imperialism, and Chinese aggression." How should that posture be reflected in intelligence activities and priorities?

The U.S. has more national security challenges on the horizon than at any other time I can remember. If confirmed, one of my jobs as Director will be to array our collection and analytic resources against these threats to ensure urgency on the most critical threats and global coverage to monitor rising issues.

### The White House and Intelligence Activities

- The Report of the Congressional Committees Investigating the Iran-Contra Affair (November 1987) found that: *"The NSC staff was created to give the President policy advice on major national security and foreign policy issues. Here, however, it was used to gather intelligence and conduct covert operations. This departure from its proper functions contributed to policy failure."*

Do you agree with the dangers of intelligence collection and covert operations conducted by the White House, as described in the Iran-Contra report? How, as CIA Director, will you seek to ensure that intelligence activities are conducted by the Intelligence Community and notified to Congress?

I agree that intelligence activities must be conducted within the comprehensive statutory framework. In addition to the requirement under Section 502 of the National Security Act to keep the congressional intelligence committees "fully and currently informed" of "all intelligence activities," Section 503 requires that the "heads of all departments, agencies, and entities of the United States Government involved in a covert action shall keep the congressional intelligence committees fully and currently informed of all covert actions which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States Government."



### Congressional Oversight

- What would your response be if the President or the White House instructed you to withhold information from the full Committee?

If confirmed, I will commit to keeping the Members and staff of the congressional intelligence committees "fully and currently informed" of the CIA's intelligence activities, "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." As a general principle, I will recommend that CIA brief the full Committee. Note, however, the President, as the head of the executive branch, has authority over the disclosure of properly classified executive branch information. Such authority includes the responsibility to disclose information as the law requires, but also to undertake such measures as deemed necessary to protect national security, and protect the privileges and confidences necessary for the President to fulfill the office's constitutional duties.

- The Committee relies on its staff for assessments of the policy, budgetary and legal implications of intelligence activities. Will you commit to ensuring that all staff, including member designees, are read into all CIA programs?

If confirmed, I will commit to keeping the Members and staff of the congressional intelligence committees "fully and currently informed" of the CIA's intelligence activities, "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." Note, however, the President, as the head of the executive branch, has authority over the disclosure of properly classified executive branch information. Such authority includes the responsibility to disclose information as the law requires, but also to undertake such measures deemed necessary to protect national security, and protect the privileges and confidences necessary for the President to the office's constitutional duties. His determination that all staff not be read into all CIA programs may well be appropriate in certain limited circumstances.

- What is your view of the "Gang of Eight" provision? Are there any circumstances in which it can be used for other than time-sensitive tactical matters? Can it be used to limit briefings on activities other than covert action and, if so, what would be the statutory basis for such limitations? Are there any circumstances in which it can be used to conceal from the full Committee ongoing programs or significant legal analyses related to intelligence activities?

If confirmed, I will commit to keeping the Members and staff of the congressional intelligence committees "fully and currently informed" of the CIA's intelligence activities, "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." Note, however, the President, as the head of the executive branch, has authority over the disclosure of properly classified executive branch information. Such

authority includes the responsibility to disclose information as the law requires, but also to undertake such measures deemed necessary to protect national security, and protect the privileges and confidences necessary for the President to fulfill the office's constitutional duties.

Regarding covert action, Section 503 of the National Security Act provides that if the President determines that it is essential to limit access to a covert action finding or notification of a change to a previously approved covert action, notification may be limited to the chairmen and ranking minority members of the congressional intelligence committees, the Speaker and minority leader of the House of Representatives, the majority and minority leaders of the Senate, and "such other member or members of the congressional leadership as may be included by the President." When the President determines that notification should be limited, a written statement of the reasons for limiting access will be provided. The Act requires that not later than 180 days thereafter, the President shall ensure that all members of the congressional intelligence committees are notified, or provide a statement of reasons why access to the notification must remain limited. Furthermore, when covert action notification is limited, the Act requires that the President notify all congressional intelligence committee members that notification has been limited to those individuals noted above, as well as provide a general description regarding the finding or notification, consistent with the reasons for not informing all members of the committee.

#### **Designations of Terrorist Groups**

- If confirmed as Director of CIA, you may have some input into government determinations about which groups should be designated terrorist organizations. Please provide details about the criteria you believe should be used to make such a determination. Once a designation is made, how broadly do you believe it should apply to affiliated groups and individuals?

I understand that the criteria used in designating a group a "terrorist organization" depends upon the context in which the designation is being made. The Secretary of State designates "Foreign Terrorist Organizations," for example, in accordance with section 219 of the Immigration and Nationality Act (INA), as amended. The criteria for such a designation are set forth in the statute. The organization must be a foreign organization; it must engage in terrorist activity or retain the capability and intent to engage in terrorist activity or terrorism; and its terrorist activity must threaten the security of U.S. nationals or the national security of the United States. If confirmed, I will ensure that CIA provides the agencies responsible for making designation determinations with the relevant intelligence to help inform their review.

- What measures would you take to ensure that Muslim civil rights and advocacy groups, as well as legitimate charities, are not adversely affected as a result of these designations?



If confirmed, I will ensure that CIA continues to conduct its intelligence mission in a duly authorized and appropriate manner under its current authorities, including Executive Order 12333 and its implementing Attorney General-approved guidelines. I will also ensure that CIA remains focused on its statutory mission and conducts its mission in a non-discriminatory manner.

### Use of Lethal Force

- 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?

In previous conflicts, U.S. citizens fought in foreign armies against the United States, including with the Axis countries during World War II. Today, there are American citizen members of ISIS and al-Qa'ida. Some of them are in Iraq and Syria—where the U.S. Government is bombing. Longstanding legal principles and court decisions confirm that being a U.S. citizen does not immunize a combatant from attack.

However, when the United States knows in advance that the specific object of its attack is an individual U.S. citizen, it proceeds on the assumption that constitutional rights—in particular, the Fifth Amendment's Due Process Clause and the Fourth Amendment's prohibition on unreasonable searches and seizures—attach to the U.S. citizen even while the individual is abroad. Those rights are considered in assessing whether it is lawful to target the individual.

- The Obama administration has made a distinction between lethal strikes that are carried out in places it considers part of "areas of active hostilities," and those that take place outside these areas. Do you support this distinction as well as the application of the standards, requirements, and guidelines contained in the Presidential Policy Guidance (PPG)? If not, please describe any modifications you will suggest.

The 22 May 2013 Direct Action PPG provides policy standards and procedures for undertaking direct action against terrorist targets outside the United States and outside areas of active hostilities. The phrase "areas of active hostilities" is not a legal term of art—it is a term specific to the PPG. For the purpose of the PPG, the determination that a region is an 'area of active hostilities' takes into account, among other things, the scope and intensity of the fighting. Afghanistan, Iraq, and Syria are currently considered to be "areas of active hostilities," which means that the PPG does not apply to operations in those locations. In general, the policy standards contained in the PPG exceed the requirements of the law of armed conflict. Were I to be confirmed, I would plan to participate in any interagency evaluation of the PPG and its implications for the war on terrorism.

- Do you support Executive Order 13732 which includes public reporting requirements on "combatant" and "non-combatant" casualties for strikes that take place outside areas of active hostilities; a commitment to review or investigate incidents involving civilian casualties and to consider information from non-governmental organizations in that



review; and a commitment to provide as appropriate ex gratia payments to civilians who are injured or to the families of civilians who are killed in U.S. strikes? If not, please describe any modifications you would suggest.

Executive Order 13732 on United States Policy on Pre- and Post-Strike Measures To Address Civilian Casualties in U.S. Operations Involving the Use of Force describes the U.S. Government's efforts to protect civilians in the context of operations involving the use of force. Any civilian casualty is tragic, and if confirmed, I am committed to ensuring that CIA provides timely intelligence to enable effective counterterrorism operations, while preventing the loss of innocent lives.

- On December 2, 2015, now-President-elect Donald Trump stated the following: "The other thing with the terrorists is you have to take out their families, when you get these terrorists, you have to take out their families. They care about their lives, don't kid yourself. When they say they don't care about their lives, you have to take out their families." Do you agree that this would be a violation of international law?

I understand that a variety of laws, both U.S. and international, would be implicated by intentional targeting of persons not presenting a threat to the U.S., its allies, or otherwise a lawful target under existing law. I understand that a number of laws may prohibit such targeting depending on the specific context (such as considerations of collateral damage that may result from activity directed at a lawful target). As stated throughout my answers, I will always act in accordance with the law should I be confirmed as DCIA.

### Iran

- Director Brennan has said that undoing the Joint Comprehensive Plan of Action (JCPOA) would be "disastrous" and the "height of folly" and would risk empowering hardliners in Iran. What impact do you believe the dismantling of the JCPOA would have on Iran and on regional security and stability?

This is a complicated issue, which deserves a fresh look. I anticipate that the U.S. relationship with the Islamic Republic of Iran, and the full range of Iran's activities, from nuclear and missile proliferation to fomenting instability and supporting terrorism, will be top of mind for the President-elect. Generally, if confirmed, I will endeavor to answer such questions on a strictly objective basis using the best analysis from the Agency. I will be always mindful that the DCIA's role is to inform policymakers, not to make policy.

- Do you believe that the international sanctions regime that existed prior to the JCPOA could be rebuilt in the event of a unilateral U.S. withdrawal from the agreement?

Please refer to my answer above.

- You stated, at a roundtable with reporters, that, "In an unclassified setting, it is under 2,000 sorties to destroy the Iranian nuclear capacity. This is not an insurmountable task for the coalition forces." What do you believe would be the consequences of military operations against Iran?

Certainly, major military action of any kind against Iran would have profound geopolitical consequences for the U.S. and at least in the region where U.S. action would be taken. I certainly subscribe to the view that military action should be the option of last resort and that the U.S. should bring all elements of national power to bear before resorting to force. If confirmed, I will be committed to the DCIA's role in providing intelligence to policymakers, not making policy.

### **Budgetary Matters**

- Where do you believe the CIA, and the broader Intelligence Community, could benefit from increased resources? Where do you believe there is waste, inefficiencies, or areas of lower strategic priorities where there are opportunities for cost savings?

The range, diversity, and immediacy of the issues that the Intelligence Community faces each day is formidable, and it is even more complex with the pace of technological advancements. A stable budget environment is key to enabling the Intelligence Community to make purposeful long term investments necessary to address these challenges. My understanding is that CIA is well postured to take on those challenges. However, additional resources would enable the agency to advance technology at a faster pace and improve the Agency's ability to deal with the uncertainty of the future. The CIA's most important resource to conduct its mission is the agency's workforce, and it must continue to attract, develop, and retain a workforce that is prepared to take on the challenges we face. If confirmed, I will work with the DNI and my colleagues across the Intelligence Community to find the most efficient way of conducting our vital mission. Internal to the CIA, I will drive for the most effective use of our resources and to align them to the highest priorities.

### **Attitudes Toward Islam**

- If confirmed as Director, how would you ensure that our Muslim partners overseas continue to want to work with the United States during this Administration?

Foreign governments and partners, of all types, choose to work with CIA when they view the partnership as in their own national interest. I understand CIA has many areas of mutual interest and concern with partners across a spectrum of issues including political, military, security, economic, terrorism, proliferation, environmental, and technological. In addition to shared intelligence and security challenges, working with the U.S. and CIA brings a combination of resources, capabilities, and status that are not

matched by working with other countries or entities. If confirmed, I will continue the Agency's efforts to build and maintain strong partnerships with foreign governments and partners, including those from predominantly Muslim countries, by focusing on these areas of mutual concern and interests.

- If confirmed as CIA Director, how would you ensure that Muslim CIA employees feel they are protected and valued and that they have an ally in the office of the Director? How would you maintain the ability of the CIA to continue to recruit officers of Muslim or Middle-Eastern heritage amidst the disparaging remarks made by members of the incoming Administration?

If confirmed, I will plan on making it clear to the work force that diversity is critical to CIA's mission. I will otherwise take any suggestion to the contrary very seriously by invoking the appropriate remedial action. Discrimination against any employee based on their religion is deeply objectionable and will not be tolerated.