

**SELECT COMMITTEE ON
INTELLIGENCE**

UNITED STATES SENATE



Post-Hearing Questions for the Record for

John Andrew Eisenberg

Upon his nomination to be

**Assistant Attorney General for the National Security Division, Department of
Justice**

Questions from Senator Wyden

During your hearing, you stated that you had not had sufficient time to consider my questions related to surveillance. Having now had that opportunity, please respond to the following questions.

QUESTION 1: 50 U.S.C. § 1812 reads, in its entirety:

(a) Except as provided in subsection (b), the procedures of chapters 119, 121, and 206 of title 18 and this chapter shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.

(b) Only an express statutory authorization for electronic surveillance or the interception of domestic wire, oral, or electronic communications, other than as an amendment to this chapter or chapters 119, 121, or 206 of title 18 shall constitute an additional exclusive means for the purpose of subsection (a).

Is this provision absolutely binding on the President and all agencies and departments of the U.S. Government?

RESPONSE: I am not currently in the National Security Division and have not had occasion to analyze this provision closely. Nevertheless, I agree that the President has a constitutional obligation to ensure that the law, including section 1812 of title 50, is faithfully executed.

QUESTION 2: The Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act of 2015 (the “USA FREEDOM Act of 2015”), P.L 114-23, prohibits the bulk collection of tangible things under FISA (Section 103), the bulk collection of pen register and trap and trace device information under FISA (Section 201), and the bulk collection of information pursuant to National Security Letters (Section 502). Are each of these provisions absolutely binding on the President, the Intelligence Community, the FBI, and the Department of Justice?

Response: I am not currently in the National Security Division and have not had occasion to analyze closely the changes made by the USA FREEDOM Act.

Nevertheless, I agree that the President has a constitutional obligation to ensure that the law, including the USA Freedom Act of 2015, is faithfully executed.

QUESTION 3: Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 prohibits the use of any interrogation technique or approach or any treatment related to interrogation that is not authorized by and listed in the Army Field Manual. Is this provision absolutely binding on the President and the Intelligence Community?

Response: I am not currently in the National Security Division and have not had occasion to analyze closely section 1045 of the National Defense Authorization Act for Fiscal Year 2016. Nevertheless, I agree that the President has a constitutional obligation to ensure that the law, including section 1045 of National Defense Authorization Act for Fiscal Year 2016, is faithfully executed.