

SELECT COMMITTEE ON  
INTELLIGENCE

UNITED STATES SENATE



**Additional Prehearing Questions  
for Kenneth Wainstein  
upon his nomination to be the  
Under Secretary for Intelligence and Analysis,  
Department of Homeland Security**

## ***Role and Responsibilities of the Under Secretary for Intelligence and Analysis***

**QUESTION 1.** The Department of Homeland Security's (DHS) Office of Intelligence & Analysis (I&A) mission was established by the Homeland Security Act of 2002, which mandated I&A's responsibility for critical infrastructure analysis, terrorism, and the other missions of DHS more broadly. What is your understanding of the history and purpose, as established by Congress, of the office of the Under Secretary for I&A in DHS?

As Homeland Security Advisor in 2008-09, I saw – and admired – the strong efforts by the leadership and intelligence personnel of DHS to establish and solidify both an intelligence network among our state, local, tribal, territorial, and private sector partners and an integrated intelligence function within the new department. Since that time, I&A has grown into its congressionally mandated role with a robust analytical capability and support to fusion centers in every state. This ability to share information broadly across all partners, including the private sector, protects our critical infrastructure and our national security and is unique among the U.S. Intelligence Community. Over time, Congress enacted revisions to the Homeland Security Act to address evolving requirements such as establishing the role and authorities of the Chief Intelligence Officer and of the DHS intelligence functions within each of its components, known collectively as the DHS Intelligence Enterprise (IE). If confirmed I look forward to working with Congress to explore other potential improvements to I&A and the DHS IE.

The *Homeland Security Act of 2002* first established the Office of Information Analysis, the predecessor to I&A within the DHS's Directorate for Information Analysis and Infrastructure Protection, to improve the coordination, sharing, and analysis of information and intelligence; to ensure inclusion of DHS needs in the U.S. Intelligence Community's determination of the nation's intelligence collection priorities; to exploit the intelligence-related information already being collected by DHS through its operational components; and to facilitate greater access to and cross-mission coordination of information collected by federal, state, and local intelligence, law enforcement, and other agencies.

In subsequent years, Congress amended the Homeland Security Act to provide I&A greater intelligence access, including to raw information, and analytic capabilities to meet a broader range of threats to the United States; to provide intelligence analysis to the Department, to state and local government, and to law enforcement; and for the purpose of preventing terrorist attacks, enhancing border security, protecting critical infrastructure, enhancing emergency preparedness and response, and better informing DHS's research and development activities.

The *Implementing Recommendations of the 9/11 Commission Act* of 2007 also included key changes to I&A's mission aimed at improving information sharing among federal,

state, local, and tribal authorities. In the 9/11 Act, Congress sought to improve the organization and mission structure for DHS-wide intelligence by codifying the role of the Under Secretary for Intelligence and Analysis as the Chief Intelligence Officer for DHS. Congress granted the Under Secretary for Intelligence and Analysis new responsibilities and expanded authorities to drive a common intelligence mission across DHS. Pursuant to authorities provided in this Act, the Under Secretary exercises leadership and authority over the formulation and implementation of intelligence policy and programs throughout DHS, and provides strategic oversight and support to the intelligence-related missions and goals of DHS.

**QUESTION 2.** In addition to statutes, I&A’s strategy was further refined by DHS and Intelligence Community (IC) strategies and guidance, including Vision 2025, the Quadrennial Homeland Security Review, and DHS’s Bottom-Up Review. What do you understand I&A’s current mission to be?

I&A's mission statement is “to equip the Homeland Security Enterprise with the intelligence and information it needs to keep the homeland safe, secure, and resilient,” which effectively captures the critical role that I&A is designed to play in providing quality and timely intelligence to DHS leadership and federal, state, local, tribal, territorial, and private sector partners to keep Americans and their communities safe.

**QUESTION 3.** In your opinion, does I&A have a focused and well-defined mission consistent with the purpose Congress originally intended?

As I understand it, I&A’s mission statement seems to be aligned with Congress’ intent as expressed in the Homeland Security Act. If confirmed, I will carefully examine I&A’s programs and initiatives, and I will make every effort to ensure that they most effectively serve the needs of I&A’s critical partners and are fully consistent with Congress’s vision for the organization.

**QUESTION 4.** What should I&A’s mission be in the present and into the future?

I believe I&A’s current mission statement appropriately represents the agency’s purpose as intended by Congress, and as delineated by the authorities provided in statute. If confirmed, I will focus my efforts on ensuring that I&A is able to effectively perform its mission and execute its unique statutory requirement of delivering intelligence (anticipatory, strategic and operational) to state, local, tribal and territorial and private sector partners and developing intelligence from those partners for DHS and the Intelligence Community.

**QUESTION 5.** Please describe the relative prioritization of I&A’s national intelligence mission and its mission to support DHS? How should resource allocations, administrative structures and long-term planning reflect that prioritization?

While my perspective is currently that of a private citizen, if confirmed I plan to ensure that any long-term planning and resource allocations sufficiently invest the necessary resources to enable I&A to confront an increasingly complex and dynamic threat landscape. To accomplish that mission, I&A must have the resources and capability to support both its Intelligence Community and state, local, tribal, territorial, and private sector partners as well as the components within DHS. With that said, these two functions really complement each other, and I&A's proficiency in one supports its proficiency in the other. For example, the quality of I&A's intelligence analysis in support of DHS should ideally be enriched by I&A's understanding of the intelligence needs of state, local, tribal, territorial, and private sector critical infrastructure customers.

**QUESTION 6.** I&A has been criticized in the past for producing intelligence products that are duplicative of finished intelligence from other IC entities.

- A.** How should I&A's role be distinct from the analytic role played by other members of the IC, such as the Federal Bureau of Investigation (FBI) or the National Counterterrorism Center (NCTC)?

I&A is statutorily required to work domestically across government at all levels and with the private sector, as a statutorily designated element of the Intelligence Community, to conduct intelligence activities supporting both national and departmental missions. I&A has the unique ability to integrate intelligence into operations across DHS components, its partners in state and local government and the private sector to identify, mitigate and respond to threats. This mission is unlike that of the FBI, which is charged with the domestic law enforcement mission for terrorism and counterintelligence, and NCTC, which is more focused on foreign-based or inspired terrorism issues.

- B.** What does I&A add that is missing from other IC production?

I&A can produce strategic intelligence products that leverage Intelligence Community holdings as well as intelligence and information from across DHS. I&A's production is tailored to threats that impact homeland security and it is designed for distribution to a broad customer base that requires production of intelligence at all levels of classification. If confirmed, I will work to ensure that I&A is a value add to the Intelligence Community's production and not a duplication of effort.

- C.** How will you measure and define the success of I&A analytic production? Is I&A currently meeting those standards?

While my perspective is currently that of a private citizen, if confirmed one of my first tasks will be to assess whether I&A's analytic production is sufficiently positioned to meet

the most significant needs of I&A's partners and customers. I will do that by assessing whether I&A's analytic production aligns with its analytic goals, the IC's priorities and standards of analytical tradecraft.

**D.** Which is more important: the quantity or the quality/impact of the reporting?  
Why?

The quantity and quality of the reporting are both important variables when setting key performance indicators and measuring an organization's success against them. However, in the final analysis, quality should be the primary concern, as a large quantity of irrelevant or substandard intelligence reporting may undermine the effectiveness and credibility of the intelligence enterprise. If confirmed, I would focus on ensuring I&A's reporting both meets the highest standards and is generated with sufficient frequency and volume to meet the needs of its customers.

**QUESTION 7.** Does I&A's work reduce the risk of a terrorist attack? If so, please explain how.

I&A was established following 9/11 to provide state, local, tribal, and territorial governments and private sector partners the information needed to anticipate future threats and vulnerabilities within their localities, a critical governmental function that was underdeveloped and understaffed when I was working in the counterterrorism area in the early 2000s. While I have not been privy to the metrics that I&A uses to measure its impact on terrorism risk, it is my belief that I&A has played an important role in the effort to provide valuable operational information to those partners. If confirmed I would look forward to working with DHS leadership, as well as this Committee and others in Congress, to identify the appropriate metrics by which to evaluate I&A's success.

**QUESTION 8.** What unique role should I&A be performing, if any, with regard to countering violent extremism in the United States?

I&A has a role of providing timely and actionable intelligence and information to policymakers and state and local partners at the lowest classification level possible. This includes producing intelligence products that provide situational awareness into evolving threats, and which I&A's partners and fellow DHS components can use to inform public safety and security planning efforts to prevent terrorism and targeted violence. My understanding is that I&A has enhanced its ability to analyze, produce, and disseminate products that address violent extremism threats, including domestic violent extremist narratives shared via social media and other online platforms. If confirmed, I will ensure that these efforts continue, and that I&A's role in this space is undertaken in tandem with the Department's overall efforts to address this threat.

**QUESTION 9.** Please describe areas in which you believe I&A's authorities are insufficient, unclear or exceed what is necessary or proper for I&A's mission.

From my current vantage point outside of government, I&A's authorities appear appropriate for its mission. However, having overseen the establishment of the National Security Division in 2006 (the first new Department of Justice division in about 50 years), I know how it can take time for a new government entity to evolve and develop the practices by which it executes on its authorities. That is especially the case in a situation like this, where I&A was relatively recently inserted as a new intelligence agency in a field of agencies with sometimes overlapping authorities and areas of responsibility. If confirmed, I will assess the fit between I&A's authorities and its statutory mission and work with this Committee to address any gaps.

**QUESTION 10.** What unique role should I&A play in supporting the efforts of DHS entities to combat trade-based money laundering, illegal bulk cash transfers, exploitation of money service businesses, and other illicit money flows that support the drug trade and other security challenges?

I&A's Transnational Organized Crime Mission Center is a strategic analytic hub that supports efforts to counter transnational organized crime networks and facilitators. I&A is able to bring data from across DHS together and collaborate with the Intelligence Community, the DHS components, other government agencies, foreign partners, and state, local, tribal, territorial, and private sector partners to produce intelligence that enables operators to identify and mitigate this illicit activity. As a private citizen, I am not yet in a position to evaluate I&A's activities in this area, but if confirmed, I look forward to learning more about the mission and operations of the Center, and ensuring that they are aligned with I&A's overall mission and goals.

**QUESTION 11.** What should be the role of I&A's Economic Security Mission Center: who are its customers; and how does its mission differ from the Treasury Department's Office and Intelligence and Analysis (OIA) and other offices and bureaus tasked with financial intelligence?

As I understand it, I&A's Economic Security Mission Center supports DHS's equities in the economic security space. DHS has significant responsibilities through multiple components as it relates to supply chain security, intellectual property theft, illicit trade and other areas of activity affecting our national economic security. As Chief Intelligence Officer of the Department, the Under Secretary for I&A has the unique ability to combine and synthesize economic-security related data from across Departmental components' intelligence units to support products then disseminated to our state, local, tribal, and territorial, and private sector partners at the lowest possible classification levels. I recognize that the Treasury Department also plays a long-standing and critical role in financial intelligence that dates to 1789 in support of

Treasury's missions, including economic sanctions and stopping terrorism and financial crimes.

If confirmed, I will work to ensure that I&A is effectively coordinating with the Department of Treasury, Department of Commerce, the U.S. Trade Representative, DHS Components, and the Intelligence Community to ensure we are adding value and avoiding duplication of effort. I will ensure that I&A is most effectively utilizing its access to data held by DHS components' intelligence units and its statutory coordination with state, local, tribal, territorial, and private sector partners to provide unique analytic insights for DHS and other policymakers and operators.

**QUESTION 12.** If confirmed, one of the responsibilities you will have as DHS's Chief Intelligence Officer (CINT) is to exercise leadership and authority over intelligence policy throughout the Department. This means you have a role in other, non-NIP, DHS operational components such as Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), Transportation Security Administration (TSA), Coast Guard, and Secret Service, all of which have their own non-NIP intelligence functions.

**A.** Does the Under Secretary for I&A have the authority to integrate intelligence activities and analysis effectively from these various components?

From my understanding as a private citizen, I believe that the Under Secretary for I&A has the needed authorities to accomplish this task. However, if confirmed I will carefully assess the integration of the DHS Intelligence Enterprise and undertake any efforts needed to ensure further synchronization. I would also work with I&A's Congressional oversight committees to ensure that any such assessments are appropriately shared with Congress for their due consideration.

**B.** What is your assessment of efforts to date to improve integration between I&A and the other components?

From my awareness as a private citizen, I believe that significant progress has been made on integrating the DHS Intelligence Enterprise and coordinating I&A's operations with those of the other DHS components. If confirmed I will have the opportunity to assess the level of integration in the DHS Intelligence Enterprise and will undertake any efforts needed to ensure further synchronization.

**C.** Should the positions of Under Secretary for I&A and CINT be separated?

Speaking as a private citizen who has not executed the responsibilities of the CINT or the Under Secretary for I&A, it seems logical that the Chief Intelligence Officer for the Department of Homeland Security would also be the official assigned with leading the organization's primary producer of intelligence. However, if confirmed I will certainly

be attuned to any information – including input from Congress – that may run contrary to that understanding.

### ***Priorities and Performance***

**QUESTION 13.** If confirmed, how will you evaluate whether your tenure as Under Secretary for I&A has been a success?

I am a strong proponent of establishing key performance indicators and feedback mechanisms that enable an organization to continuously evaluate and improve its performance. If confirmed, I will put these performance measurement tools in place; will use them to measure our performance – including my own – and will continuously evaluate the feedback we receive from our customers. At the end of the day, my success as Under Secretary for I&A will be based on (a) how well I have supported and enabled my I&A colleagues to excel in their homeland security intelligence mission and (b) how well the organization delivers for its customers, especially its state, local, tribal, territorial, and private sector partners.

**QUESTION 14.** Have you discussed with the Secretary of Homeland Security his specific expectations of you, if confirmed as Under Secretary for I&A, and his expectations of I&A as a whole? If yes, please describe those expectations.

Yes, I have spoken with the Secretary about his expectations of I&A and me, and he has high expectations for both of us. Specifically, he clearly laid out his expectations that I do everything in my power to support and further develop I&A's ability to identify threats to the homeland and to provide DHS's federal, state, local, tribal, territorial and private sector partners with the timely actionable information and intelligence they need to meet those threats.

**QUESTION 15.** Have you discussed with the Director of National Intelligence her expectations of the relationship between I&A and the Office of the Director of National Intelligence and other elements of the IC? If yes, please describe those expectations.

I have briefly discussed this position with the Director of National Intelligence, and I expect that, if confirmed, I will work closely with her and other elements of the Intelligence Community to ensure that I&A is supporting the national intelligence mission and priorities.

**QUESTION 16.** What do you believe are the most critical analytic priorities for I&A today?

The most critical analytic priorities for I&A relate to the intelligence support we provide to our fellow DHS components and to our state, local, tribal, territorial, and private sector

partners. As Secretary Mayorkas has stated, DHS is fundamentally a department of partnerships. This is at the core of what DHS does, and it cannot be successful in countering threats without strong partnerships both across the federal government and with the local communities it serves. This is especially true for I&A, which was established in part to fill a void that existed within our Nation’s intelligence and information sharing architecture between federal and non-federal partners. If confirmed, I will ensure that I&A continues to strengthen these partnerships, including I&A’s partnerships with the fusion centers and the state, local, tribal, territorial, and private sector community, and to improve on the sharing of timely and actionable information with these partners.

**QUESTION 17.** I&A has many customers competing for analytic capacity. Who are I&A’s top five customers?

Due to the unique nature of its statutory authorities, I&A has one of the most wide-ranging customer sets. From my understanding, the primary customers include the DHS Secretary and components, federal policymakers, the US Intelligence Community, state, local, tribal and territorial officials and the private sector.

### *Workforce*

**QUESTION 18.** What is your plan to address morale at I&A and why is it likely to succeed?

First and foremost, I would like to acknowledge the silent dedication of the I&A workforce. As a prospective future leader of these national security professionals, I believe it is important to register my respect for their expertise and commitment to the American people. I know that job #1 for the next Under Secretary is to provide the workforce with the support and leadership necessary to address any underlying morale issues.

I have held a number of leadership roles in federal law enforcement and national security organizations, and I have always been impressed with the commitment and passion demonstrated by the staffs of these organizations, despite the often trying conditions and circumstances of their work assignments. So long as they are given a clear mission and strong support from their leadership, they have been willing to take any hill in the effort to protect our country. From what I know of the I&A staff, they seem to be made from the very same mold, and I expect that they will respond – and are already responding – similarly to the supportive leadership that Secretary Mayorkas is bringing to the DHS intelligence enterprise.

**QUESTION 19.** Do you have a human capital strategy to recruit and retain the “best and brightest” to I&A?

It is my understanding that I&A has made considerable progress in workforce management. If confirmed, I will commit to attracting and retaining the “best and brightest” to I&A. I will also focus on recruiting a workforce that is diverse, which will enrich the depth and quality of the intelligence that I&A provides to its customers. It all begins and ends with putting the right people in the right positions – and then providing them with the necessary training, support and professional development.

In terms of retention, I&A can continue to make progress through the development of additional career paths and through work-life balance policies with flexible work scheduling and a robust and effective hybrid telework program. Additionally, I&A should work to further streamline how intelligence training and professional development is delivered across I&A and continue to enhance the culture of learning and continuing education throughout all parts of the organization. As I understand it, recent efforts along these lines have been largely effective, with I&A seeing historically low attrition rates.

**QUESTION 20.** Are there any reforms you plan to take to improve the skill set and experience profile of the I&A workforce?

If confirmed, I will commit to investing in and building upon current efforts to enhance the skill set and experience profile of the I&A workforce across the employment life-cycle. I&A should focus on developing in-depth entry-level training starting at the onboarding stage. Rotational assignments across DHS and the IC can broaden and deepen the experiences of the workforce. Finally, I&A must focus on identifying and nurturing high performers throughout the organization to develop a cadre of I&A employees prepared for formal leadership roles.

**QUESTION 21.** A significant portion of I&A’s budget has been used for contractor support. What are the appropriate roles for contractor staff within I&A and what, in your view, is the appropriate contractor-to-employee ratio?

It is my understanding that I&A, in direct response to feedback from the Committee, has continued to reduce its reliance on contractor staff. That said, there are skills and capabilities that are often more appropriately and efficiently maintained through contractors, who can often be effectively used to satisfy short-term staffing or mission requirements or provide skill sets that are difficult to maintain due to an extremely competitive labor environment. If confirmed, I look forward to assessing the balance of contractors to permanent employees, and to working with DHS leadership and Congressional oversight committees as appropriate to ensure the appropriate resources for both permanent staff and contract support.

**QUESTION 22.** Do you believe that contractor staff should serve as intelligence analysts? If yes, under what conditions?

From my former government experience with the Intelligence Community, I recognize that it is generally preferable that intelligence analysts are federal employees who are more likely to stay in position over the long term and develop the subject-matter expertise that produces the best analytical product. I also recognize the value of a mixed workforce that includes both contractors and government employees, just like what is found in most federal agencies, and the flexibility that contractors afford the IC to quickly mobilize personnel against evolving operational needs and threats without the red tape and delay that comes with hiring new full-time employees. If I am confirmed, I will closely examine I&A's reliance on the contract workforce and will ensure that it has the right mix of contractors and government employees to optimize its ability to meet its mission objectives with both agility and expertise.

**QUESTION 23.** How will you manage the analysts' career paths to ensure that they have opportunities to serve in DHS or elsewhere in the IC at the senior-most levels?

If confirmed, I will work with training professionals and others across and beyond I&A to support analysts' career paths and will take the steps necessary to develop effective leaders now and tomorrow across I&A – to include analysts – so they are equipped with the leadership competencies and soft skills to advance into more senior positions in DHS or elsewhere in the IC. For example, I&A can support its analysts' careers by supporting rotational assignments that both broaden and deepen knowledge, experience and relationships across DHS and the IC. It must also continue to build career paths for the diverse workforce representing functions well beyond intelligence analysis – to include information technology, management analysis, security and other functions – so that all I&A employees have a clear path for career development and advancement.

**QUESTION 24.** If confirmed, do you plan to provide additional opportunities for I&A analysts to work directly with I&A customer groups to improve the level of collaboration between I&A analysts and the customers they serve?

Yes, I plan to increase the opportunities for I&A employees to work on detail with their IC, the DHS Intelligence Enterprise and our state, local, tribal, territorial, and private sector partners to strengthen coordination, communication, processes, and awareness of customer needs and capabilities.

**QUESTION 25.** I&A has undergone frequent realignments since it was established. Are you satisfied with the current organization of I&A, or do you intend to reorganize the office? If the latter, how would you organize I&A, if confirmed as Under Secretary for I&A?

As a private citizen, I have not had the ability to do a thorough review of I&A's current structure. I recognize that realignments that occur too frequently can be difficult on a

workforce and be perceived as realigning for the sake of it. That said, I have never been reluctant to make organizational changes when needed. However, I have always felt it invaluable to the soundness – and the perceived soundness – of these changes that they happen only after a probing examination of the organization from the inside. If confirmed, I will work with the I&A workforce and senior leadership to expeditiously assess how well I&A’s current structure is functioning and to determine if any additional changes are needed. I would also keep I&A’s Congressional oversight committees fully and currently informed if it is determined that organizational changes are necessary.

### ***Fusion Centers and Information Sharing***

**QUESTION 26.** I&A provides support to state and local Fusion Centers, including with I&A representatives to the Centers.

- A.** Do you believe the current level of Fusion Center staffing by I&A is sufficient? How would you improve the current Fusion Center model?

Fusion centers provide a critical intelligence and information sharing resource to state and local governments, and the presence of I&A personnel at those centers is a critical element of our state, local, tribal, territorial and private sector partnerships. My understanding is that a small number of fusion centers lack a dedicated I&A employee on site, and that those fusion centers would like a dedicated I&A employee onsite. If confirmed, I will quickly assess I&A’s overall deployment across the country and determine where additional resources may advance the agency’s mission.

- B.** How can Congress measure the effectiveness of Fusion Centers? How do you hold them accountable when each one is uniquely structured and operated by a particular state?

My understanding is that since 2011, I&A has led an annual assessment process with the National Network of Fusion Centers (NNFC). The annual assessment is based on self-reported data and evaluates the performance of the 80 state and local fusion centers against a common set of measures related to key outputs and direct outcomes. If confirmed, I will work closely with the NNFC to refine this evaluation process and strive for enhanced consistency and performance across the Nation’s fusion centers.

### ***Management***

**QUESTION 27.** What do you believe are the most important management-related challenges facing I&A today?

If confirmed, I will do a thorough assessment of I&A’s management-related challenges. I expect that the challenges will be to improve employee morale, to continue to build a

culture of teamwork and mission focus, and to ensure that the workforce has the support, resources and policies necessary for I&A to be an impact player in the homeland security effort.

**QUESTION 28.** Does I&A tie budgets and financial planning to requirements through a defined and stable long-term budgeting, planning, and programming process? If so, do you have confidence that the process effectively serves its purpose?

Given the classified nature of I&A's budget, I am not aware of I&A's current budgeting and financial planning. However, I do believe that stable long-term budgeting and planning are critical to effectively running and maturing an organization. If confirmed, I will certainly work with I&A's management team to ensure that I&A's budget is aligned with the national and departmental missions defined by the Secretary, the DNI, the President and Congress.

**QUESTION 29.** Do you believe DHS I&A should have outcome measures for antiterrorism and intelligence-related programs consistent with those measures established by other government agencies? Please explain.

Yes, I support the use of outcome measures for antiterrorism and intelligence-related programs. I believe it is important for any government agency, including I&A, to have outcome-based performance measures. These metrics are a key tool for DHS leadership and the Congress to ensure I&A is making the most effective use of taxpayer dollars in carrying out its intelligence mission. If confirmed, I pledge to ensure that I&A works closely with the ODNI and other IC members to ensure I&A is measuring its programs appropriately and meeting its goals. I will also look for measures that represent best practices by other government agencies that could be applied to the outcome measurement effort at I&A.

**QUESTION 30.** How do you intend to measure financial and human capital processes as a part of I&A's performance measures?

I&A should have a robust data-driven performance analytic capability to measure the full spectrum of I&A personnel functions from recruiting, hiring, personnel action processing, resource allocation and diversity measures. If confirmed, I look forward ensuring I&A has those measures and is leveraging them to understand the health of its personnel functions.

### ***I&A's Relationship with the Intelligence Community***

**QUESTION 31.** I&A has responsibilities for disseminating information from within DHS to the broader IC.

**A. What role should I&A play in disseminating information obtained from other elements of DHS to the IC?**

My understanding is that I&A serves as a critical nexus for information sharing between DHS and the IC. As the DHS agency that is statutorily designated as part of the IC, it is fitting that I&A coordinate and facilitate this information sharing, in full compliance with all applicable laws, policies and guidelines.

**B. What kinds of information should be so disseminated, and from what elements of the DHS?**

My understanding is that I&A relies on its subject matter experts in the field and at headquarters to identify and analyze a broad range of information and intelligence from across DHS that relates to threats to the homeland. This includes law enforcement information, suspicious activity reporting information, unique travel and immigration data, seizures data, and cyber intrusion data. Working with partners from across the Intelligence Community, and from the state, local, and private sector, these experts disseminate information to the necessary stakeholders on threats through a variety of mechanisms—including raw and finished intelligence reporting, briefings, and engagements. If confirmed, I will work with component leadership, as well as with headquarters offices including the Offices of Privacy, Civil Rights and Civil Liberties (CRCL), and Strategy, Policy and Plans, to ensure that policies governing information sharing with I&A appropriately protect Americans' private information, while ensuring Intelligence Community access to critical data to support robust and complete analysis and products.

**C. What limitations should apply to such disseminations, if any?**

Specifically, I&A must ensure that disseminations are consistent with the U.S. Constitution, the law, Executive Order 12333 and I&A's Intelligence Oversight Guidelines and are appropriately protective of privacy and civil liberties. As noted above, if confirmed, I will examine this information sharing to ensure the appropriate limitations are in place and effective, and I will work with Congress and DHS leadership to make any necessary changes.

**QUESTION 32.** Please describe areas in which I&A requires assistance from other IC elements.

To be fully effective, I&A must be able to access and leverage both DHS's data and the holdings of the Intelligence Community. Bolstering the information flows and ensuring that I&A is effectively utilizing both IC holdings as well as DHS intelligence and information will be a critical priority moving forward. If confirmed, I believe my previous national security and intelligence experience will prove an asset in establishing

strong working relationships across the IC and advocating for appropriate assistance and collaboration, while deconflicting overlap of mission sets and eliminating unnecessary duplication.

**QUESTION 33.** While the mission of I&A is statutorily unique, the particular program activities carried out at the division and branch levels are not. If confirmed, will you commit to reviewing I&A programs to ensure that they are not redundant or duplicative of any other Federal, state, local, or private efforts?

Yes, I will readily make that commitment, as operational redundancy is a problem that requires constant vigilance by leaders of agencies in the law enforcement and intelligence communities. If confirmed, I will commit to reviewing I&A programs to ensure that they are not duplicating efforts and are instead adding unique value to the intelligence and homeland security communities.

**QUESTION 34.** Do you believe that the relative roles of DHS and the FBI are clear with respect to the sharing of information domestically?

I believe that DHS and FBI have complementary roles with respect to information sharing domestically. As I stated above, however, there is always a need to monitor the implementation of these complementary roles to avoid redundancy or confusion between the agencies. Having worked for many years in and with the FBI, I should be well positioned to undertake that monitoring with I&A's counterparts at the FBI. If confirmed, I will work closely with the FBI to ensure our joint efforts are aligned, clearly defined to our respective stakeholders, and coordinated in a way that supports the missions of both agencies.

**QUESTION 35.** How do you envision the relationship between DHS and FBI in providing intelligence support for law enforcement personnel?

Having previously worked extensively at and with the Department of Justice and the FBI, I have developed an understanding of the FBI and its intelligence operations. If confirmed, I am committed to working closely with the FBI to ensure that I&A's capabilities are used to meet their intelligence needs and that their work supports our mission. Our efforts must be complementary and supportive of each other's respective missions, and we must work together to maximize the intelligence support we provide to law enforcement personnel throughout the country.

### ***I&A's Relationship with State, Local, Tribal, Territorial, and Private Partners***

**QUESTION 36.** What role should I&A play in disseminating information obtained from other IC elements to state, local, tribal, territorial, and private partners?

I&A plays a vital role in that intelligence dissemination. In fact, I&A is charged by statute with delivering intelligence to state, local, tribal and territorial and private sector partners and developing intelligence from those partners for DHS and the Intelligence Community.

**QUESTION 37.** What is the proper role of I&A in framing requests for information from state and local law enforcement officials, as well as retaining such information and disseminating it to the IC?

As noted in the above response, I&A is charged by statute with delivering intelligence to state, local, tribal, and territorial partners, and sharing information bidirectionally with those partners and the federal government. In carrying out both of those roles, I believe it is critically important that I&A personnel be properly trained in the intelligence oversight guidelines and fully understand the policies related to civil liberties and privacy. In addition, any information derived from communications with state and local partners should be thoroughly vetted to ensure the appropriate protection of original content prior to being disseminated to other IC partners in response to a similar inquiry. If confirmed, I am committed to working with the Office of Civil Rights and Civil Liberties, the Office of Privacy, the Office of General Counsel, and other appropriate offices to ensure appropriate training and utilization of applicable guidelines.

**QUESTION 38.** If confirmed, what measures would you take to improve the effectiveness of efforts to share information in both directions?

If confirmed, I commit to working with I&A's partners to improve DHS's intelligence dissemination, including by ensuring that customers are able to consume DHS information across multiple media applications and that I&A has the right communication and dissemination tools and capabilities in place to enable enhanced information sharing in both directions.

**QUESTION 39.** What types of information (e.g. threat information, infrastructure vulnerability, etc.) are appropriate for sharing?

I&A should share as much information as appropriate and possible that is of a quality and timeliness to help policymakers and operators at all levels of government and in the private sector to prevent, protect against, and effectively respond to threats to the homeland. At the same time, information sharing must be balanced with the need to protect investigations, sources and methods, and the privacy, civil rights, and civil liberties of U.S. persons. If confirmed, I will work diligently with I&A's broad set of stakeholders and oversight officials to ensure we are striking the right balance.

**QUESTION 40.** Please provide your view on I&A sharing with private sector customers. If yes, if you are confirmed, what additional steps will you implement to

ensure that I&A private sector customers are provided with timely and relevant intelligence reports?

From my perspective, I&A's partnerships with the private sector are critical to protecting the homeland. The private sector owns and operates the vast majority of our nation's critical infrastructure. If confirmed, I will continue to strengthen I&A's existing private sector partnerships and cultivate new ones. I will also work to ensure that I&A is providing timely and actionable intelligence and information to private sector partners, so they can more effectively protect our critical infrastructure.

In my previous government experience, I was always impressed with the willingness and enthusiasm of private industry to cooperate with the government's national security apparatus, not only for their own infrastructure protection interests, but also for the nation's broader national security interests. The more I&A can solidify that partnership on the intelligence front — especially by providing private sector partners with meaningful intelligence — the stronger those cooperative relationships will become, the more private industry will engage with the homeland security effort, and the more I&A will benefit from reciprocal intelligence and from the tremendous expertise that private industry can bring to the homeland security effort.

**QUESTION 41.** Do you intend to work with I&A customers to determine training needs and requests?

If confirmed, I will work to strengthen partnerships with customers across the DHS Intelligence Enterprise and at the state and local level to identify opportunities to address training needs and requests. I look forward to hearing from these customers, including the fusion centers, to better understand their needs and where we can help address any gaps.

**QUESTION 42.** If confirmed, what assistance would you expect from state, local, tribal, territorial, and private partners?

If confirmed, I commit to strengthening I&A's critical partnerships with state, local, tribal, territorial, and private sector entities. I intend to work with these stakeholders to improve two-way sharing of information and analytical expertise in order to meet our shared goals of a more secure homeland and the protection of critical infrastructure.

### ***I&A's Relationship within DHS Intelligence Enterprise and DHS***

**QUESTION 43.** If confirmed, what assistance would you expect from the rest of DHS, and the other components of the DHS Intelligence Enterprise?

If confirmed, as the Chief Intelligence Official of DHS, I commit to strengthening the DHS Intelligence Enterprise (IE) and working with the IE, via the Homeland Security Intelligence Council (HSIC), to ensure that DHS's national and departmental intelligence functions are being met effectively. While the Chief Intelligence Official lacks operational control over all of DHS's intelligence capabilities, the HSIC is one forum for deconflicting, coordinating, and integrating DHS's intelligence activities. I would expect these components to be active members of the HSIC so that we can have a unity of effort across the DHS IE. I will focus on strengthening the coordination across the IE and ensuring that components share information from unique DHS datasets to enhance our analysis.

**QUESTION 44.** What do you believe are the key barriers to enhanced coordination and integration? If confirmed, what steps would you take to overcome these barriers?

As a private citizen, I have not been able to identify and assess the impact of any existing barriers that may be impeding integration and coordination between I&A and its fellow DHS agencies and other partners. From my experience, however, I know that there are always obstacles of varying degrees when different agencies try to reconcile and align their operations. Those obstacles are the product of the different procedures, policies, priorities and authorities that shape the culture and operational rhythm of each agency. It is critical to openly recognize these obstacles in any joint or collective government enterprise and to develop the common policies, procedures and team dynamics that will align the agencies on their joint mission.

**QUESTION 45.** Do you believe that each DHS component should retain its own law enforcement information gathering and analysis function, or would all DHS components be better suited by having I&A assume these efforts, given its role in facilitating the sharing of law enforcement and intelligence information?

As a private citizen, I understand that DHS has a number of components with discrete law enforcement authorities and responsibilities, and I would estimate that each has developed information gathering requirements and processes that are tailored to its own mission demands. I do not believe that I&A should assume the intelligence functions or efforts of the DHS components, as I&A lacks the resources and sufficient integration into each of the component's operations to do so effectively. Instead, if confirmed as Under Secretary, I will work not to centralize or control all DHS intelligence activities and functions within I&A, but rather to maximize the effectiveness of intelligence across DHS by better aligning efforts across the diversity of departmental missions and capabilities.

**QUESTION 46.** Some DHS components have their own individual, non-NIP, intelligence support units that provide operational support to their field elements. How does I&A uniquely augment these efforts?

My understanding is that the Chief Intelligence Officer, which is the Under Secretary of I&A, works with the DHS Intelligence Enterprise, via the Homeland Security Intelligence Council, to coordinate and streamline efforts across the enterprise on analysis and production, collection, and training, and to ensure unity of effort across the components.

Additionally, while the components are focused on their individual missions, I&A can produce tailored all-source analytic products that support and inform the components' intelligence efforts and run a centralized collection requirements management process that supports inclusion of DHS needs in the formulation of the national intelligence priorities.

**QUESTION 47.** What process is in place to ensure that I&A does not duplicate the efforts of these intelligence support units?

My understanding is that I&A coordinates with the DHS Intelligence Enterprise through the Homeland Security Intelligence Council to avoid duplication of effort. If confirmed, I will review the current mechanisms to identify potential process changes to better resolve de-confliction and coordination challenges.

### ***Domestic Intelligence Responsibilities***

**QUESTION 48.** Please describe any and all intelligence roles I&A and other, non-NIP, DHS components perform, other than analysis.

I&A conducts the full range of activities beyond analysis, to include collection via overt or publicly available sources, carrying out counterintelligence activities at DHS, producing and disseminating raw and finished intelligence, and facilitating information sharing, among others. The components carry out such intelligence activities in support of their specific operational missions.

**QUESTION 49.** What policies should govern I&A's use, retention, and dissemination of U.S. person information? How should these policies differ, if at all, from other IC elements?

Executive Order 12333 requires that elements of the IC collect, retain, and disseminate information regarding U.S. persons only in accordance with procedures established by the head of the element or department and approved by the Attorney General. These procedures are known as I&A's Intelligence Oversight Guidelines, and like the guidelines governing other IC agencies' activities, they apply minimization procedures to U.S. person information. In general, if confirmed, I commit to reviewing current policies governing the use, retention, and dissemination of U.S. person information and

working with DHS leadership, including the Offices of Privacy and Civil Rights and Civil Liberties to ensure consistency with all applicable laws and the Constitution.

**QUESTION 50.** What limitations exist with regard to the collection, retention, and analysis of information related to First Amendment-protected freedoms of speech, association, and religion?

I understand I&A is limited to intelligence activities in support of national and departmental missions. Collection activities are further limited to information collected overtly or through publicly available sources. I&A is prohibited from conducting intelligence activities regarding U.S. persons solely for the purpose of monitoring activities protected by the First Amendment. I&A's intelligence oversight guidelines allow for collection of U.S. person information only where there is a reasonable belief of a nexus between the subject and one or more of I&A's defined collection categories (such as terrorism information, counterintelligence, threats to safety, etc.), and where the information is necessary for the conduct of an authorized I&A mission.

If confirmed, I would make the DHS Office of the General Counsel, the I&A Intelligence Oversight Office, the DHS Chief Privacy Officer, and the DHS Officer for Civil Rights and Civil Liberties some of my closest partners to ensure that all I&A intelligence activities are consistent with the Constitution, our laws, and policies intended to protect First Amendment-protected activities. We can only succeed in our mission if we maintain the trust of the American people.

**QUESTION 51.** What reforms of I&A do you believe are necessary based on the findings and recommendations of the Office of the General Counsel in its January 6, 2021, report on Portland operations? Please address management, command and control, communications, planning, hiring, training, oversight and work climate.

The report made a series of recommendations related to improving management, command and control, communications, planning, hiring, training, oversight and work climate at the Office of Intelligence and Analysis. If confirmed, I plan in my very first days to meet with the Office of General Counsel, my Intelligence Oversight Officer, the DHS Office of Privacy, the DHS Office of Civil Rights and Civil Liberties, and the I&A workforce to better understand what actions I&A has taken since the review and the extent to which recommendations in the report have or have not been implemented, and to identify additional improvements across I&A management and processes as necessary.

I was particularly concerned with the report's finding that some I&A professionals found it difficult to raise concerns they had during the activities of 2020. If confirmed, I am fully committed to providing leadership for the I&A workforce that makes it clear from

the top that I&A values analytic integrity and independence and encourages the generation and consideration of alternative views and perspectives.

**QUESTION 52.** The January 6, 2021, OGC report described the use of “Operational Background Reports” (OBRs, or “baseball cards”).

**A.** Do you believe it is appropriate for I&A to use OBRs for U.S. persons?

While I have a limited understanding of the use of OBRs to date, it would seem that their use could be appropriate under certain circumstances—namely, that any such collection be based on a reasonable belief of a nexus to one or more of I&A’s defined collection categories. With that said, it is clear to me that consistent training, policies, and procedures are critical in order to ensure that any collection of U.S. person information is consistent with I&A’s limited authorities in this space, and is subject to rigorous oversight to guard against inadvertent intrusions into U.S. persons’ privacy, civil rights or civil liberties.

**B.** If yes, under what circumstances and subject to what content limitations?

As the OGC report noted, “OBRs can be a valuable tool to produce the background of a person who poses a threat to the homeland or is accused of committing an act that threatens homeland security or law enforcement officers’ lives.” The report notes, however, that during I&A activities in Portland over the Summer of 2020, there may have been instances where OBRs were misused and that additional training and procedures could benefit both I&A leadership and collectors. If confirmed, I will meet with the Office of General Counsel, my Intelligence Oversight Officer, the DHS Office of Privacy, the DHS Office of Civil Rights and Civil Liberties, and the I&A collectors to better understand how these OBRs are used operationally, to assess any limitations on their use that have been put in place since 2020, and to make any further reforms that may be necessary to ensure that such intelligence activities are conducted appropriately.

**QUESTION 53.** Under what circumstances, if any, do you believe it is appropriate for I&A to conduct custodial debriefings of U.S. persons?

My understanding is that the Office of Intelligence and Analysis is limited in its collection authorities, including on U.S. persons, to that conducted overtly or through publicly available sources, and only in support of authorized national and departmental missions. I&A’s Intelligence Oversight guidelines further require that its collectors use the least intrusive means possible and consult with legal counsel to ensure that adequate notice has been provided to an individual consenting to collection. If confirmed, I will meet with the Office of General Counsel, my Intelligence Oversight Officer, the DHS Office of Privacy, the DHS Office of Civil Rights and Civil Liberties, and I&A collectors to better understand how these limitations have been applied operationally, and I commit

to working closely with this Committee and other oversight entities to ensure that such collection is conducted appropriately.

### ***Open Source Reporting***

**QUESTION 54.** What do you believe are the appropriate metrics for determining the value of I&A's Open Source Intelligence Reports?

While my knowledge is that of a private citizen, I am aware that I&A's authorized missions include efforts to inform about the threats of terrorism and other threats to homeland security, and efforts to protect critical infrastructure and key resources. I believe that I&A should have metrics by which to measure whether its open source collection efforts are effective and appropriate. This could include measures related to how open source reports were incorporated into intelligence analysis and production, the degree to which open source collection met mission priorities and collection requirements, and the compliance issues related to legal and policy requirements that protect privacy, civil rights, and civil liberties, including minimization of U.S. persons.

**QUESTION 55.** What specific substantive expertise should I&A's open source collectors have?

As a private citizen, I do not have substantive knowledge of the current expertise and training requirements for these collectors. However, I recognize the importance of I&A's open source collection mission and, in turn, the importance of having collectors with the expertise and training necessary to do this collection in a targeted and effective manner. Based on the OGC report of I&A's activities in Portland, it is clear that at least one topic of that training and expertise must be the relevant laws and policies relating to protection of privacy, civil rights, and civil liberties, as well as knowledge of I&A's defined collection categories and how to determine their applicability. If confirmed, I will make an assessment of I&A's open source collection capabilities and work with its partners, including the Office of the General Counsel, the Privacy Office, the Office for Civil Rights and Civil Liberties, and other Intelligence Oversight offices, to ensure that the appropriate training and expertise requirements are in place for these open source collectors.

### ***Analytic Quality***

**QUESTION 56.** How would you assess I&A's analytical tradecraft, analyst training, editing, quality control measures, approval procedures, and independence from political considerations?

As a private citizen, I do not have substantive knowledge of the standards in place for each of these measures and procedures. However, if confirmed I commit to working with

partners including the Office of the General Counsel, the Privacy Office, the Office for Civil Rights and Civil Liberties, and other Intelligence Oversight offices to ensure that I&A's efforts in each of these categories is consistent with the expectations set by the Secretary, DHS senior leadership and the DNI. I will be particularly vigilant to make sure that I&A's analytical judgments are completely insulated from political considerations and influence.

**QUESTION 57.** How does I&A ensure that all I&A analytic reports meet well-defined IC analytic tradecraft standards prior to production of intelligence that is disseminated to the IC?

As a private citizen, I do not have substantive knowledge of the analytic tradecraft standards currently in place. However, if confirmed I commit to ensuring that I&A's efforts measure up to the expectations set by the Secretary and DHS senior leadership as well as the standard set by the Director of National Intelligence.

**QUESTION 58.** Should I&A be an intelligence aggregator or a value-added provider of analysis? If confirmed, how will you ensure that I&A reflects your vision?

I do not think this is an either-or proposition. I&A is statutorily mandated to share information with its state, local, tribal, territorial and private sector partners, and over the course of its existence it has been developing the mechanisms and relationships that allow it to expand and deepen that sharing. In addition, I&A has proven that it is well positioned to provide those same partners with valuable analytic products about the threats to the homeland and our nation's critical infrastructure. Given I&A's access to unique DHS data holdings, it is able to provide a more complete picture of the homeland threat environment.

### ***Congressional Oversight***

**QUESTION 59.** Under what circumstances, if any, is it appropriate to brief the Chairman and Vice Chairman and not the full Committee membership?

Intelligence agencies must keep the intelligence committees fully and currently informed of all intelligence activities, in keeping with the obligation imposed on the IC in the National Security Act of 1947. My understanding is that limiting disclosure to the Chair and Vice Chairman is only appropriate when necessary and essential in light of extraordinary circumstances affecting the vital national security interests of the United States, as determined by the President pursuant to Section 503(C)(2) of the National Security Act of 1947. To my knowledge, I&A has never sought such an arrangement.

**QUESTION 60.** If confirmed, do you pledge to provide all of I&A's unclassified and classified intelligence products to this Committee?

I understand that it is the statutory obligation of every intelligence agency to keep Congress fully and currently informed of intelligence activities. If confirmed, I pledge to ensure the Committee has access to intelligence products necessary for full and proper oversight of I&A's intelligence activities.

### ***Unauthorized Disclosures of Classified Information***

**QUESTION 61.** Please describe the actions you will take, if confirmed, to prevent, detect, and report unauthorized disclosures of classified information.

The protection of classified information from unauthorized disclosure is critical to our national security. Throughout my career in law enforcement and national security, I saw all too often how unauthorized disclosures can undermine our ability to protect our communities and our nation. It is my understanding that the Under Secretary of Intelligence and Analysis serves as the Department's counterintelligence lead. If confirmed, I will work with the Department's Chief Security Officer, Inspector General, and other senior officials to ensure that the Department has appropriate processes and sufficient training to prevent the unauthorized disclosure of classified information.

### **Additional Questions from Vice Chairman Rubio**

**QUESTION 1:** You noted in responses to the standard Committee questionnaire that – upon reviewing your records – you “did work on one occasion for one state-owned enterprise, the Chinese [sic] National Offshore Oil Corporation, which is a client of the China office of our firm.” You further characterize the work as supervising “an associate drafting a memo summarizing U.S. law.”

- A. When did you perform this work? Please provide a specific timeframe to include month(s) and year(s).

As I indicated in my Committee questionnaire, I billed 2.8 hours of work to the Chinese state-owned oil company, the China National Offshore Oil Corporation (CNOOC), which is a client of the China office of our firm. This occurred over two days in April of 2018.

- B. What was the general topic of the “memo summarizing U.S. law”?

A Davis Polk partner who does sanctions work was examining the potential U.S. government response to allegations in the then-recently published Section 301 Report by the Office of the U.S. Trade Representative. That report alleged that in 2012, CNOOC had received information from the Chinese intelligence services that had assisted the company in negotiations with U.S. companies.

This allegedly happened on two occasions in 2012, prior to the 2015 agreement by which China and the US agreed not to engage in cyber intrusions to obtain “confidential business information ... with the intent of providing competitive advantages to companies or commercial sectors.”

The sanctions partner was looking into the trade, tariff and other potential civil or administrative responses by the U.S. government. To be complete, he also wanted a summary of any criminal statutes that could conceivably be implicated by the alleged conduct in 2012. He asked me to have an associate in the white-collar group draft a short memo listing and summarizing any such statutes. I supervised and reviewed the associate’s work on that memo.

**QUESTION 2:** In response to Question 13 on the standard questionnaire related to published writings, speeches, and other published materials, you did not list an October 2020 letter you signed and – according to the *Washington Post* “organized initially,” concerning the 2020 presidential election candidates.<sup>1</sup> The *Washington Post* further referenced it as “the letter circulated by Wainstein...”

A. Do you agree with the *Washington Post*’s characterization and attribution of the letter?

You are correct that I did not list the October 2020 letter that was issued and signed by myself and 19 other former United States Attorneys who served under Republican presidents in response to Question 13 of the Committee questionnaire. I did not realize that that question – which asked for “published writings and speeches . . . any books, articles, reports, or other published materials you have authored” – called for group letters that I had signed. For completeness, I have signed several such letters, including ones that were issued in the fall of 2020 by the group called the Former Republican National Security Officials for Biden, which I co-founded and listed in Question 15 of the Committee questionnaire as one of my “Political Activities.” I freely acknowledge those letters, and would be happy to gather any such letters I have signed over the years—at least those which I can recall at this point. Please note I have signed numerous letters in support of nominations of various individuals who have been nominated for positions in administrations of both parties and whom I have known and have worked with over the years.

The *Washington Post* is accurate in its reporting that I “organized” and “circulated” the October 2020 former United States Attorney letter, with the

---

<sup>1</sup> Hamburger, Tom and Barrett, Devlin. “Former U.S. attorneys – all Republicans – back Biden, saying Trump threatens the ‘rule of law.’” *Washington Post*, October 27, 2020, [https://www.washingtonpost.com/politics/republican-us-attorneys-back-biden/2020/10/27/c1b55702-17fd-11eb-befb-8864259bd2d8\\_story.html](https://www.washingtonpost.com/politics/republican-us-attorneys-back-biden/2020/10/27/c1b55702-17fd-11eb-befb-8864259bd2d8_story.html)

assistance of others. It is also correct that I drafted much of the text of the letter, once again with the assistance of others.

B. Did you write the letter?

See answer above.

**QUESTION 3:** The Office of Intelligence and Analysis (I&A) at the Department of Homeland Security (DHS) is charged with performing intelligence activities under Title 50, as well as supporting the mission of DHS, which does not always have a Title 50 connection.

A. Nearly 20 years after I&A's creation, what do you view as I&A's role in the Department and in the Intelligence Community?

By statute, I&A is a member of the Intelligence Community. I&A serves a key role carrying out intelligence activities to further national and departmental missions. This includes providing intelligence assessments to DHS leadership, operational components across the Department, state and local governments, and the private sector. When appropriate, I&A is also able to share information collected from these stakeholders with the rest of the Intelligence Community for analysis.

B. What limitations, if any, do you believe exist on the use of National Intelligence Program (NIP) funds?

My understanding is the National Intelligence Program is defined in law as the programs, projects, and activities of the Intelligence Community, as well as any other programs of the Intelligence Community designated jointly by the Director of National Intelligence and the head of a United States department or agency or by the President. As such, National Intelligence Program funds can be used to support the authorized activities of the intelligence community. If confirmed, I will work with Director of National Intelligence, our attorneys, and the Congressional oversight committees to better understand any additional limitations on the National Intelligence Program and to ensure that we are using it appropriately.

C. Do you believe I&A should continue to be fully funded with NIP dollars?

As a statutory member of the Intelligence Community, I believe it is appropriate for I&A's intelligence activities to be included in the National Intelligence Program.

**QUESTION 4:** Do you believe a foreign nexus needs to be present when using National Intelligence Program funding and authorities to collect and/or analyze the activities of U.S persons?

The Intelligence Reform and Terrorism Prevention Act of 2004 redefined the National Foreign Intelligence Program as the National Intelligence Program and established a new definition of “national intelligence” in statute. National intelligence includes all intelligence, regardless of source, that pertains to United States homeland security. If confirmed, I look forward to working with my leadership, the Director of National Intelligence and the Committee to ensure that funding for I&A activities is used appropriately and as Congress intended.

**QUESTION 5:** The threat assessment issued by ODNI in March of 2021, titled, “Domestic Violent Extremism Poses Heightened Threat in 2021,” is 57 pages in length, most of which is either unclassified, or For Official Use Only (FOUO). Specifically, there are more than 300 footnotes, of which 26 are Secret, 113 are unclassified, and 162 are U//FOUO. At least 40 of the U//FOUO footnotes appear to be news articles available to the public from publications like the *Washington Post*, the *New York Times*, and others. Even though most of this assessment is unclassified, the American public was only able to read a four-page Executive Summary of the assessment.

- A. If confirmed, will you publicly release a redacted version of this threat assessment, which would permit the American public to read the parts of it that are unclassified and based on news stories within the context of the assessment?

If confirmed, I pledge to work with my intelligence community colleagues to ensure information is publicly disclosed when appropriate. Given that the assessment is not an I&A product, I will work with the Director of National Intelligence on determining what can be released publicly. I understand your concern regarding the potential over-use of Controlled Unclassified Information (CUI) markings, in this case FOUO, on information that may be available elsewhere publicly. If confirmed, I commit to working to address that concern where it is possible to do so without doing harm to national security objectives and I&A mission requirements.

**QUESTION 6:** DNI Haines noted that, in working on ODNI’s threat assessment on domestic violent extremism, released in March 2021, “the Intelligence Community did not collect and would not collect, maintain, or assess information concerning U.S. persons solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States.” Analysts at I&A spend a considerable amount of time searching public social media and other open sources for information on potential threats to the U.S. homeland, and U.S. persons are among those whose social media posts are examined.

A. When is a social media post of a U.S. person *not* protected by the First Amendment?

As is most relevant to I&A's activities, the First Amendment does not protect "true threats" incitement to engage in imminent lawless action that is likely to produce such lawlessness. If confirmed, I commit to working closely with Congressional leadership and intelligence oversight bodies to ensure that I&A's policies and procedures respect the First Amendment rights of all Americans.

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

It is abundantly clear to me that it is the determined policy of the Chinese Communist Party to wage and ultimately achieve dominance in an economic, technological, and geopolitical competition with the United States.

**QUESTION 8:** Do you believe that one of the primary goals of the CCP is to displace the United States and rewrite the international-rules based system?

It is equally clear that the CCP is intent on displacing the United States in its leadership role in the world and adapting the international world order to promote China's interests and extend its economic and political power.

### **Additional Questions from Senator Wyden**

#### ***Data Purchases***

**QUESTION 1:** Press stories have indicated that DHS purchases location data from data brokers ("DHS Authorities Are Buying Moment-By-Moment Geolocation Cellphone Data to Track People," BuzzFeed, October 30, 2020; "Federal Agencies Use Cellphone Location Data for Immigration Enforcement," The Wall Street Journal, February 7, 2020).

A. Under what circumstances, if any, do you believe *U.S. v. Carpenter* would apply to the purchase or use of this data?

My understanding is that as a general matter the Supreme Court found that the government needs a warrant to obtain cell phone location records. If confirmed, I would certainly consult with the Department's general counsel and relevant intelligence oversight authorities to ensure that any actions taken by I&A and the Department were done in a way that respects the Fourth Amendment rights of all Americans, and remain

within the bounds of my authorities and my responsibilities as Under Secretary for I&A, and the Department's Chief Intelligence Officer.

- B.** According to the BuzzFeed story, DHS's Office of General Counsel produced a memorandum addressing the legal issues related to the purchase and use of this data. Will you commit to providing Congress that memorandum or any superseding legal analyses?

If confirmed, I would certainly commit to working with the DHS Office of General Counsel to encourage them to provide all appropriate documents to Congress. My understanding is that the document is not an I&A product though, so I would have to consult with the Office of General Counsel on the matter.

- C.** If confirmed, will you commit to providing Congress with a full accounting of the datasets purchased or used by I&A or any element of the DHS Intelligence Enterprise?

It is the statutory obligation of all intelligence agencies to keep the Congressional intelligence committees fully and currently informed of intelligence activities. As such, I would provide the committees with information on the datasets purchased or used.

### ***Border Searches***

**QUESTION 2:** Do you believe DHS has statutory authority to force U.S. persons to unlock their devices and fine them for refusing to do so? If so, are there any statutes specifically relevant to laptops and personal devices?

I understand this issue is currently before the legal counsel for the Department. However, I agree that it is critically important to remain vigilant about protecting the constitutional rights of U.S. persons, including Fourth Amendment protections from unreasonable search and seizures. If confirmed, I would certainly consult with the Department's general counsel and relevant intelligence oversight authorities to ensure that any actions taken by I&A are done in a way that respects the Fourth Amendment rights of all Americans, and remain within the bounds of my authorities and responsibilities as Under Secretary for I&A.

**QUESTION 3:** In 2019, the 9th Circuit's decision in *U.S. v. Cano* limited CBP's authority to conduct warrantless device searches at the border to those involving illegal content. Could this standard be applied nation-wide so that CBP has consistent policies and procedures?

If confirmed, I would certainly consult with the Department's general counsel and relevant intelligence oversight authorities to ensure that any actions taken by I&A were done in a way that respects the Fourth Amendment rights of all Americans, and remain

within the bounds of my authorities and responsibilities as Under Secretary for I&A. With regard to the policy referenced in the question, I would defer to the CBP Commissioner regarding internal CBP policies. However, if confirmed, I would certainly encourage component heads to review their current policies to ensure they are appropriately considering the Constitutional rights of all Americans.

### *Torture*

**QUESTION 4:** In April 2003, when you served as his Chief of Staff, FBI Director Mueller was seeking direct access to at least one detainee in CIA custody. You also served as Assistant Attorney General for National Security during a period of time when the CIA's Detention and Interrogation Program was ongoing.

- A. When were you read into the CIA's Detention and Interrogation Program? Were you read into the fact of CIA detention operations or the use of "enhanced interrogation techniques," or both? Did you have access to the relevant memoranda of the Office of Legal Counsel prior to their public release and, if so, when?

I do not recall if I was read into the CIA's detention program, but I do recall being read into the CIA's interrogation program and its use of enhanced interrogation techniques. I cannot recall exactly when that briefing took place, but it was at some point during my tenure as Assistant Attorney General for National Security (September 2006 through March 2008). As I recall, I was briefed on the program specifically because the National Security Division was given responsibility for assisting in the Military Commission proceedings against a number of terrorism suspects, including several who had previously been subjected to enhanced interrogation techniques. I believe the purpose of the briefing was to ensure that we understood the litigation challenges that would arise from the fact that enhanced interrogation techniques had been used on these suspects. I do not recall if I ever reviewed the relevant Office of Legal Counsel opinions.

- B. Did you have any concerns about the program or its legality and, if so, what steps did you take to address those concerns, within the government or with Congress?

While I cannot recall the specifics, I learned generally about the CIA's use of enhanced interrogation techniques—but was not fully read into the program—during my tenure at the FBI (2002-04). I had concerns about the techniques and participated in discussions within the FBI, after which Director Mueller decided not to have FBI personnel participate in interviews of detainees who were being subjected to those techniques.

## *Warrantless Wiretapping*

**QUESTION 5:** According to the Department of Justice Inspector General’s review of the Department’s involvement with the President’s Surveillance Program (the warrantless wiretapping program also known as Stellar Wind), the FBI and NSA finalized a Memorandum of Agreement in December 2002 to facilitate co-location of personnel working with the program. Beginning around February 2003, a team of FBI personnel was assigned to the NSA to manage FBI’s participation in the program. You served as FBI General Counsel from July 2002 to March 2003 and subsequently as Chief of Staff to the Director.

- A.** When were you read into the NSA’s “President’s Surveillance Program”/Stellar Wind?

I was read into the President’s Surveillance Program at some point during my tenure at the FBI between July 2002 and May 2004.

- B.** Did you have any concerns about the program or its legality and, if so, what steps did you take to convey those concerns within the government or with Congress?

By the time I learned about the program, I understood that it had been up and running for quite some time, and had been fully vetted and authorized by the Justice Department. I do not recall conveying specific concerns within the executive branch or to Congress.

- C.** Did you have any concerns about the failure to brief the full congressional intelligence committees on the program and, if so, what steps did you take to ensure that the full committees were briefed?

Aside from being aware that it was a highly-classified program, I do not recall what I knew about the limits of knowledge about the program within Congress. As a general matter, I understand that intelligence agencies have a statutory obligation to keep the Congressional intelligence committees fully and currently informed of intelligence activities. If confirmed, I am committed to meeting that standard with the full congressional intelligence committees.

- D.** The Department of Justice Inspector General has stated that the failure to read in FISA Court members and Department officials who work with the FISC “while program-derived information was being disseminated as investigative leads to the FBI and finding its way into FISA applications put at risk the DOJ’s important relationship with the FISC.” Did you share these concerns and, if so, what steps did you take to ensure that the FISC and relevant DOJ officials were read in?

I agree with the Inspector General that the relationship between the FISA Court and the Justice Department is a critical one. The process cannot operate effectively unless the court has complete confidence in the integrity and accuracy of the Department's representations. As such, it is critical that the Department avoid taking any actions that might jeopardize that relationship or the accuracy of its representations and advocacy before the Court. As to this incident, however, aside from being aware that it was a highly-classified program, I do not recall whether I knew the limits of knowledge about the program within DOJ or the FISA Court.

### ***Section 215***

**QUESTION 6:** In September 2009, you testified that “FISA Court orders under Section 215 are significantly more protective of civil liberties than the grand jury subpoenas that are regularly issued by criminal prosecutors around the country.” You further testified that relevance to an investigation – the standard for a Section 215 order – “has to be explained to a FISA court judge and so the FISA court judge reviewing that factual statement as to what that connection was, and if it is clear that it was an obviously innocent day to day interaction, I think you’re going to have some questions from the FISA court judge.” The NSA’s bulk telephony metadata program was brought under Section 215 authority in May 2006, after which you served as Assistant Attorney General for National Security.

- A. Were you aware at the time of your testimony that, unlike grand jury subpoenas, Section 215 had been used to collect millions of innocent Americans’ phone records pursuant to a single court order without any subsequent FISA Court review?

As the quoted text in your question makes clear, I was making the point in my September 2009 testimony that Section 215 orders have a built-in civil liberties advantage over grand jury subpoenas – i.e. they must be approved by a federal judge, whereas grand jury subpoenas can be issued by a federal prosecutor without court approval. At some point, likely during my tenure as Assistant Attorney General, I learned that the FISA Court had authorized a bulk telephony metadata program that used Section 215 authorities to collect the metadata and that the program operated under special handling/minimization procedures. As your question points out, the FISA Court considered and authorized the government’s initial application several months before the National Security Division was established, and I do not recall the FISA Court raising any questions about that authorization or its underlying legal rationale during my tenure as Assistant Attorney General.

### ***DEA’s Bulk Data Collection***

**QUESTION 7:** In March 2019, the Department of Justice’s Inspector General released its “Review of the Drug Enforcement Administration’s Use of Administrative Subpoenas to Collect or Exploit Bulk Data,” a review of a program that operated while you served as Assistant Attorney General. According to the OIG, the failure of the Department to conduct a comprehensive legal analysis of the program was “troubling” because of the “uniquely expansive” use of DEA’s subpoena authorities to collect bulk data without a prior finding that the data was “relevant or material.” The OIG also noted that “several published court decisions have clearly suggested potential challenges to the validity of DEA’s use of its statutory subpoena power in this expansive, non-targeted manner.” There were also “significant legal questions” posed by the use of the data by other federal agencies in non-drug related investigations.

- A.** When were you read into or otherwise became familiar with the DEA bulk collection program?

I do not recall if I was made aware of the DEA bulk data collection program while I was in government service. If I did learn about it, I have no recollection at this point.

- B.** Did you take any steps to ensure that the program was subject to a comprehensive legal analysis?

See answer above.

- C.** Did you have any concerns about the program or its legality and, if so, what steps did you take to address those concerns, within the government or with Congress?

See answer above.

### ***Declassification/transparency***

**QUESTION 8:** You served on the Public Interest Declassification Board (PIDB) from 2013-2017.

- A.** Based on this experience, please describe your views on declassification reform.

I was honored to serve as a member of the Public Interest Declassification Board (PIDB) from 2013-2020. The mission of the PIDB is to promote the declassification of government information that is of public interest and sheds light on government operations. After a 21-year stint of service in the federal government – some of which included involvement in classified national security operations – I was acutely aware of the problem of over classification of

government information. For a variety of procedural, legal, and cultural reasons, certain types of government records – in particular, those relating to national security operations -- are routinely classified and kept from public view, even when there is no operational need for their secrecy. That lack of transparency denies the American people the ability to see what the government is doing in their name, which can in turn undermine their trust in government. I was always troubled by this problem of over classification and was therefore happy to accept the offer to serve as a member on the PIDB and advocate for enhanced transparency.

- B.** Are there any particular subjects or areas you believe are currently overclassified? If so, please describe them.

Despite the strong efforts of the PIDB and other groups devoted to government transparency, declassification reform still has a long way to go. There are a variety of available programs for automated declassification, but it will take a significant commitment of government effort and resources to deploy any of these programs on a scale that will result in a meaningful reduction in the amount of information that remains classified.

**QUESTION 9:** On May 27, 2021, former government officials, including former DNI Clapper, former CIA Director Brennan and former ODNI General Counsel Litt, submitted an *amicus curiae* briefing in support of the petitioner in *ACLU v. U.S.* In their brief, the former officials argued for a qualified right of public access to FISA Court opinions that address significant and novel issues.

- A.** Do you agree with the reasoning of the *amici*'s briefing?

I have read the *amicus curiae* briefing submitted in the *ACLU v. U.S.* litigation that this question references, and I have great respect for the former government officials who signed the brief. Without taking a specific position on the litigation, I am sympathetic with their concern about the consequences of inordinate secrecy around the FISA process.

- B.** Do you agree with those former officials that the excessive secrecy that accompanied post-September 11 surveillance efforts contributed to the conditions that gave rise to leaks?

I agree that excessive secrecy surrounding the government's surveillance operations has contributed to the conditions that give rise to greater leaking of government information, especially in the aftermath of 9/11.

- C. Do you believe there were particular FISA Court opinions that should have been released at the time? If yes, please identify them.

During my service in the FBI and the National Security Division, I developed great respect for the FISA Court judges and attorneys and their devotion to the rule of law. For a variety of historical reasons over the past two decades, however, the operations of the FISA Court have become a subject of public questions and concerns, which have all too often remained unaddressed due to the classified nature of the FISA process. In the interest of addressing those questions and concerns and enhancing public confidence in the FISA process, I agree with those who urge the release of those FISA Court documents, or redacted versions thereof, that can help to explain the Court's decisions and their legal rationale without compromising national security. This is particularly true with those FISA Court decisions on broad legal issues, like those relating to the NSA telephony metadata program, that raise overarching constitutional and privacy concerns.