

## ***Section 702 of FISA***

**QUESTION 1:** Can the government use Section 702 of FISA to collect communications the government knows are entirely domestic?

**ANSWER:** Section 702 has a number of statutory limitations to ensure that the government only targets non-U.S. persons outside of the United States to acquire foreign intelligence. Please know that I do not have a security clearance and have not had the opportunity to be briefed on the intricate details of the program. If confirmed, I would welcome the opportunity to meet with you personally to discuss this or any other question you have on the implementation of Section 702.

## ***Encryption***

**QUESTION 2:** When the government mandates that companies weaken the encryption of the products used by the American public, it comes at serious cost to the security of Americans. Moreover, recent events such as the Office of Personnel Management breach and election-related Russian hacking have demonstrated that weak encryption is a serious national security problem. If you are confirmed, what will be your position with regard to policies or legislative proposals to permit the government to mandate weaknesses in strong encryption?

**ANSWER:** At this time, I can provide only my preliminary observations. However, I believe that Americans benefit from having their personal information secure and that strong encryption helps secure that information. I also believe that Americans' security depends on the government being able to conduct effective national security and law enforcement investigations. Government access to personal information is sometimes a key component of these investigations. Policies or legislation on this issue should account for both of these points.

## ***Other Surveillance Matters***

**QUESTION 3:** What limitations do you believe should apply to the receipt, use or dissemination of communications of U.S. persons collected by a foreign partner or source? How should those limitations address instances in which the foreign partner or source specifically targeted U.S. persons or instances in which the foreign partner or source has collected bulk communications known to include those of U.S. persons?

**ANSWER:** It is my understanding that the rules governing Intelligence Community elements' collection and subsequent use of information concerning U.S. persons apply whether that information was collected directly by an Intelligence Community element or was collected by an Intelligence Community element from a cooperating foreign partner. These rules include the Attorney General-approved procedures for collecting, retaining, and disseminating information concerning U.S. persons that are established in accordance with Executive Order 12333. Executive Order 12333 also provides, in section 2.12, that: "No element of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order." In other words, we cannot ask our foreign partners to do what we cannot do ourselves regarding the collection of U.S. persons information.

**QUESTION 4:** Do you believe that communications data collected in transit are or should be treated differently than communications data while at rest? Please address any distinctions as they may apply to FISA, Executive Order 12333, PPD-28, and USSID 18.

**ANSWER:** This is an area of policy and law with which I am currently unfamiliar. If confirmed, I expect that I will have the opportunity to consider this question more closely and that my review of it could be informed by additional information. That said, I believe that data should be treated with the appropriate legal and policy protections for individuals' privacy and civil liberties, regardless of whether in transit or at rest.

## ***Detention and Interrogation***

**QUESTION 5:** Do you believe that any of the CIA's former enhanced interrogation techniques are consistent with the Detainee Treatment Act?

**ANSWER:** The current state of the law is clear. Section 1045 of the National Defense Authorization Act for Fiscal Year 2016 provides that only techniques authorized by and listed in the U.S. Army Field Manual on Interrogation may be applied to individuals in U.S. custody. If confirmed, I will seek to ensure that the Intelligence Community follows the law.

**QUESTION 6:** Do you believe that any of the CIA's former enhanced interrogation techniques are consistent with the War Crimes Act?

**ANSWER:** As I stated in my response to question 5, above, the law now governing the CIA's use of interrogation techniques is clear. If confirmed, I will seek to ensure that the Intelligence Community follows the law.

**QUESTION 7:** Do you believe that any of the CIA's former enhanced interrogation techniques are consistent with U.S. obligations under the Convention Against Torture, Common Article 3 of the Geneva Convention and other U.S. treaty obligations?

**ANSWER:** Please see my response to question 6, above.

**QUESTION 8:** The National Defense Authorization Act for Fiscal Year 2016 (P.L. 114-92): (1) prohibited interrogation techniques not authorized by the Army Field Manual; (2) prohibited revisions to the Army Field Manual that involve the use or threat of force; (3) required that the Army Field Manual be public; and (4) required ICRC notification of and prompt access to detainees. Are you fully supportive of all of these statutory requirements?

**ANSWER:** Yes.

## ***Transparency***

**QUESTION 9:** Will you support the declassification and public release of any interpretation of law that provides a basis for intelligence activities but is inconsistent with the public's understanding of the law?

**ANSWER:** I firmly believe in the value of public transparency and am familiar with the Intelligence Community's *Principles of Intelligence Transparency*. In addition, I have met with the ODNI's Civil Liberties Protection Officer who leads the Intelligence Community's transparency efforts to discuss these principles. In providing the public with transparency regarding intelligence activities, however, the Intelligence Community must also protect its sensitive sources and methods. Accordingly, if confirmed, I will support public release of such legal interpretations consistent with the protection of intelligence sources and methods.

## ***Legal Authorities***

**QUESTION 10:** Please describe your view of the legal and policy implications of targeting or otherwise knowingly killing a U.S. person in a U.S. Government lethal operation. What additional public transparency do you believe would be warranted in that situation?

**ANSWER:** The 2001 AUMF provides a domestic legal framework for targeting enemy forces in the context of hostilities. Under long-standing legal principles, U.S. persons who are part of an enemy force are not immunized from becoming targets of lethal operations. However, prior to targeting a U.S. person, I understand that the Department of Justice conducts a rigorous review to ensure that lethal action would be consistent with the Constitution and U.S. law. My understanding is that the role of the Intelligence Community in this process is to ensure that the Department of Justice and operational decision-makers are provided accurate and relevant information to assist in making targeting determinations. If confirmed, I will work with my counterparts in the Intelligence Community and the rest of the executive branch to assess whether additional transparency is warranted, consistent with the protection of intelligence sources and methods.

**QUESTION 11:** On December 2, 2015, now-President Trump stated the following: “The other thing with the terrorists is you have to take out their families, when you get these terrorists, you have to take out their families. They care about their lives, don’t kid yourself. When they say they don’t care about their lives, you have to take out their families.” Do you agree that this would be a violation of U.S. and international law?

**ANSWER:** Intentionally targeting a person not presenting a threat to the United States or its allies, or persons who are not otherwise lawful targets under existing law, would implicate a variety of laws. If confirmed, I will work to ensure that all activities of the Intelligence Community fully and faithfully comply with the Constitution and U.S. law and will assist the Director of National Intelligence in carrying out his obligations under section 102A(f)(4) of the National Security Act, as amended, to ensure compliance with the Constitution and U.S. law.