

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE



QUESTIONNAIRE FOR COMPLETION BY
PRESIDENTIAL NOMINEES

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PART A - BIOGRAPHICAL INFORMATION

1. FULL NAME: Kenneth Leonard Wainstein
OTHER NAMES USED: n/a

2. DATE AND PLACE OF BIRTH:
February 14, 1962
Palo Alto, California

CITIZENSHIP: U.S. citizen

3. MARITAL STATUS: Married

4. SPOUSE'S NAME: Elizabeth Haynie Wainstein

5. SPOUSE'S MAIDEN NAME IF APPLICABLE: Virginia Elizabeth Haynie

6. NAMES AND AGES OF CHILDREN:

REDACTED

7. EDUCATION SINCE HIGH SCHOOL:

<u>INSTITUTION</u>	<u>DATES ATTENDED</u>	<u>DEGREE RECEIVED</u>	<u>DATE OF DEGREE</u>
University of California Berkeley School of Law	1985-1988	JD	May 1988
University of Virginia	1980-1984	BA	May 1984

8. EMPLOYMENT RECORD (LIST ALL POSITIONS HELD SINCE COLLEGE, INCLUDING MILITARY SERVICE. INDICATE NAME OF EMPLOYER, POSITION, TITLE OR DESCRIPTION, LOCATION, AND DATES OF EMPLOYMENT).

<u>EMPLOYER</u>	<u>POSITION/TITLE</u>	<u>LOCATION</u>	<u>DATES</u>
Café Studios	Host	Washington, DC	2/20 – 2/21
Davis Polk & Wardwell LLP	Partner	Washington, DC	6/17 – present
Burke & Herbert Bank	Member, Board of Directors	Alexandria, VA	4/16 (est.) – present
Bipartisan Commission on Biodefense, sponsored by the Hudson Institute	Commissioner	Washington, DC	12/14 – present
Security Advisory Board, Alclear, LLC (d.b.a CLEAR)	Member	New York, NY	11/14 – present
Cadwalader, Wickersham & Taft LLP	Partner	Washington, DC	3/12 – 6/17
O'Melveny & Myers LLP	Partner	Washington, DC	2/09 – 3/12
Georgetown University Law Center	Adjunct Professor	Washington, DC	1/09 (est.) - present
United States Government Executive Office of the President	Assistant to the President for Homeland Security and Counterterrorism	Washington, DC	3/08 – 1/09
United States Government Department of Justice	Assistant Attorney General for National Security	Washington, DC	9/06 – 3/08
United States Government Department of Justice	United States Attorney for the District of Columbia	Washington, DC	5/04 – 9/06
United States Government Department of Justice	Chief of Staff Federal Bureau of Investigation	Washington, DC	3/03 – 5/04
United States Government Department of Justice	General Counsel Federal Bureau of Investigation	Washington, DC	7/02 – 3/03
United States Government Department of Justice	Director Executive Office for United States Attorneys	Washington, DC	8/01 – 7/02
United States Government Department of Justice	Interim United States Attorney, Principal Assistant United States Attorney, Deputy Chief of the Superior Court Division and Deputy Chief and line prosecutor in the United States Attorney's Office for the District of Columbia	Washington, DC	10/92 – 8/01
United States Government Department of Justice	Assistant United States Attorney in the Criminal Division of the United	New York, NY	10/89 – 10/92

	States Attorney's Office for the Southern District of New York		
United States Government United States District Court	Law Clerk for Judge Thomas Penfield Jackson	Washington, DC	8/88 – 8/89
Gibson, Dunn & Williams LLP	Summer Associate	New York, NY and Washington, DC	6/87 – 8/87
Hunton & Williams LLP	Summer Associate	Washington, DC	6/86 – 8/86
Cleary Gottlieb Steen & Hamilton LLP	Securities Paralegal	Washington, DC	10/84 – 5/85
United States Government US House of Representatives Office of Congressman Carl D. Perkins	Legislative Correspondent	Washington, DC	6/84 – 10/84
United State Government Internal Revenue Service General Counsel's Office	Clerk	Washington, DC	5/83 – 8/83
United States Government Internal Revenue Service General Counsel's Office	Clerk	Washington, DC	5/82 – 8/82
United States Government Department of Defense Office of the Secretary of Defense	Clerk	Washington, DC	5/81 – 8/81

9. GOVERNMENT EXPERIENCE (INDICATE EXPERIENCE IN OR ASSOCIATION WITH FEDERAL, STATE, OR LOCAL GOVERNMENTS, INCLUDING ADVISORY, CONSULTATIVE, HONORARY, OR OTHER PART-TIME SERVICE OR POSITION. DO NOT REPEAT INFORMATION ALREADY PROVIDED IN QUESTION 8).

1. Member of Public Interest Declassification Board (2013 – 2020)
2. Member of CIA General Counsel External Advisory Board (2013 est. – present)
3. Member of Director's Advisory Board of the National Counterterrorism Center (2014 – present)
4. Chairman of the National Security Agency General Counsel Advisory Board (2014 – 2016 est.)
5. Chairman of the New York State Counterterrorism Advisory Panel (2017– 2018)
6. Member of the Judge Webster Commission on the FBI, Counterterrorism Intelligence and the Fort Hood Shootings (2009– 2010)

10. INDICATE ANY SPECIALIZED INTELLIGENCE OR NATIONAL SECURITY EXPERTISE YOU HAVE ACQUIRED HAVING SERVED IN THE POSITIONS DESCRIBED IN QUESTIONS 8 AND/OR 9.

I initially developed my intelligence and national security expertise in the immediate aftermath of the 9/11 attacks. Prior to that point, I had served for 12 years as a federal line prosecutor and supervisor, focusing primarily on criminal justice issues with occasional involvement in prosecutions involving national security issues like export control, international terrorism and espionage. After 9/11, however, my focus turned largely to the counterterrorism effort and the federal government's broader national security program. As Director of the Executive Office of U.S. Attorneys in 2001-02, I coordinated the efforts of the federal prosecutors' offices to reorient their enforcement program toward counterterrorism, integrate their operations with those of the Intelligence Community and generally become more active participants in the counterterrorism effort.

From 2002-04, I served as FBI General Counsel and then Chief of Staff. In those positions, I was centrally involved in the Bureau's efforts to develop its intelligence processes and capabilities and transform itself into a full-fledged intelligence agency. I also worked closely with Director Mueller on the various national security issues that arose during that time frame.

After 2.5-years as the Interim and then the Senate-confirmed United States Attorney in the District of Columbia, I was nominated and confirmed as the first Assistant Attorney General for National Security. In that position, I worked with my colleagues to establish and build the National Security Division, which was the first new DOJ division in about a half century. As Assistant Attorney General, I served as the Justice Department's statutorily-designated liaison with the Intelligence Community. I also worked with my NSD colleagues to, among other things, manage the integration of the Department's national security prosecutors and its intelligence attorneys in the Office of Intelligence Policy and Review into a single division; oversee all of the national security prosecutions around the country; propose and testify about national security legislation; build an enhanced process of oversight of FBI national security investigations; and start an initiative to increase enforcement of export control violations.

In 2008, I was asked by President Bush to serve as his Homeland Security Advisor (Assistant to the President for Homeland Security and Counterterrorism). In that position, I advised and briefed the President on counterterrorism and homeland security matters, convened and chaired meetings of the Cabinet Officers on the Homeland Security Council, and oversaw the inter-agency policy making and coordination process for counterterrorism, infrastructure protection, biodefense and pandemic planning, disaster response and recovery and other homeland security matters.

Since my departure from government service on Inauguration day of 2009, I have remained involved in national security matters, including through the government affiliations listed in Question 9 above. My participation with these governmental national security entities -- along with my membership on various private national security related organizations (see Question 12 below) and my last twelve years of teaching National Security Law and Investigations at Georgetown Law School -- have helped to keep my knowledge and experience current and up to date on the evolving issues in the national security area.

11. HONORS AND AWARDS (PROVIDE INFORMATION ON SCHOLARSHIPS, FELLOWSHIPS, HONORARY DEGREES, MILITARY DECORATIONS, CIVILIAN SERVICE CITATIONS, OR ANY OTHER SPECIAL RECOGNITION FOR OUTSTANDING PERFORMANCE OR ACHIEVEMENT).

College: Phi Beta Kappa (1984)
Graduation with High Distinction (1984)

Law School: California Law Review (1986-88)
Moot Court Board (1986-88)

Department of Justice: The Edward J. Randolph Award for Outstanding Service to the Department of Justice (2008)
Department of Justice Director's Awards for Superior Performance (2) (1997 and 2000 est.)
Special Achievement Awards as an Assistant U.S. Attorney (several) (1990's)

Bar Association of DC Lawyer of the Year Award, Bar Association of the District of Columbia (Est. 2005)

12. ORGANIZATIONAL AFFILIATIONS (LIST MEMBERSHIPS IN AND OFFICES HELD WITHIN THE LAST TEN YEARS IN ANY PROFESSIONAL, CIVIC, FRATERNAL, BUSINESS, SCHOLARLY, CULTURAL, CHARITABLE, OR OTHER SIMILAR ORGANIZATIONS).

Affiliations with governmental organizations are listed above in question #9.

<u>ORGANIZATION</u>	<u>OFFICE HELD</u>	<u>DATES</u>
National Association of Former United States Attorneys	Officer and Board Member	2010-present
Council on Foreign Relations	Member	2011-present
DC Affordable Law Firm	Member, Advisory Board	2019-present
St. Stephen's & St. Agnes School	Member, Board of Governors	2020-present
States United Democracy Center	Member, Advisory Board	2020-present

National Security Institute, George Mason University	Member, Advisory Board	2018-present
The Bar Association of the District of Columbia	Co-Chair of the Committee on National Security Law, Policy & Practice	2009-2018
Old Dominion Boat Club	Member	2005-present
Center of Cyber and Homeland Security at George Washington University	Member, Steering Committee	2010-2017
St. Mary's Catholic Church	Parishioner	1962-present
Old Presbyterian Meeting House	Member	1993-present
University of Virginia Alumni Association	Member	1984-present
Edward Bennett Williams Inn of Court	Barrister	2000 (est.)-present

13. PUBLISHED WRITINGS AND SPEECHES (LIST THE TITLES, PUBLISHERS, BLOGS AND PUBLICATION DATES OF ANY BOOKS, ARTICLES, REPORTS, OR OTHER PUBLISHED MATERIALS YOU HAVE AUTHORED. ALSO LIST ANY PUBLIC SPEECHES OR REMARKS YOU HAVE MADE WITHIN THE LAST TEN YEARS FOR WHICH THERE IS A TEXT, TRANSCRIPT, OR VIDEO). IF ASKED, WILL YOU PROVIDE A COPY OF EACH REQUESTED PUBLICATION, TEXT, TRANSCRIPT, OR VIDEO? Yes

I have tried to recall all writings, speeches or remarks that would be responsive to this question. If additional materials are identified, those materials will be reported to the Committee promptly. Please note that certain such materials may not be available currently in digital form or in hard copy.

1. Monthly podcasts of United Security with Lisa Monaco on Café Studios -- 2020-21.
2. Guest podcast appearance on Karen Greenberg's Vital Interests Podcast – May 11, 2021.
3. Guest appearance in 2018 for the National Security Law Today podcast of the ABA Standing Committee on Law and National Security. This is the link to that podcast:
<https://soundcloud.com/nsltoday/answering-tough-questions-with-ken-wainstein>
4. Op-ed with Lisa Monaco on national security leadership – August 21, 2019.
https://www.washingtonpost.com/opinions/america-please-look-beyond-your-self-interest-and-do-your-duty/2019/08/21/1206dd94-c448-11e9-9986-1fb3e4397be4_story.html
5. Op-ed with Lisa Monaco on domestic terrorism – November 5, 2018.
https://www.washingtonpost.com/opinions/weve-declared-war-on-foreign-terrorism-why-not-do-the-same-for-domestic-threats/2018/11/05/707c3d5c-e13a-11e8-ab2c-b31dcd53ca6b_story.html
6. Article I wrote with A. Joseph Jay III for Bloomberg Law, Independent Investigations in Higher Education – July 11, 2016.
7. Article I wrote with A. Joseph Jay III as part of a symposium, *The Unique Aspects of Independent Investigations in Higher Education*, American Journal of Trial Advocacy; Birmingham Vol. 39, Iss. 3, (Spring 2016), 587-94.
8. Speech at the Ethics and Compliance Officer Association Sponsoring Partner Forum on May 9, 2013, Cyber Threat and Response.

9. Speech at The Heritage Foundation on May 8, 2013, The Changing Nature of Terror: Law and Policies to Protect America.
10. Article I wrote for the 2009 NYU Center on Law and Security Magazine, Terrorism Prosecution and the Primacy of Prevention Since 9/11.
11. The University of California, Berkeley School of Law Transcript, The USA Patriot Act, Spring/Summer 2003.
12. My law school comment: *Judicially Initiated Prosecution*, 76 CALIFORNIA LAW REVIEW 727 (1988).
13. Client Alerts: I have been listed along with other attorneys on client alerts about compliance and civil and criminal enforcement issues issued by my law firms over the last ten years.
14. Panels and Conferences: I have spoken on numerous panels and at legal and professional conferences, but I'm not aware of any available transcripts or recordings.
15. Congressional Testimonies over the last ten years:
 - A. Hearing on the Modus Operandi and toolbox of Russian and Other Autocracies for Undermining Democracies Throughout the World, before the Subcommittee on Crime and Terrorism of the Senate Judiciary Committee on March 15, 2017.
 - B. Hearing on Election Interference: Ensuring Law Enforcement is Equipped to Target Those Seeking to do Harm, before the Senate Judiciary Committee on June 12, 2018.
 - C. Hearing on Outside Views on Biodefense for the Department of Defense, before the Subcommittee on Emerging Threats and Capabilities of the House Armed Services Committee on February 3, 2016.
 - D. Hearing on the Reauthorization of the FISA Amendments Act, before the Senate Judiciary Committee on May 10, 2016.
 - E. Testimony in support of Stevan Bunnell in his confirmation hearing for the position of General Counsel of the Department of Homeland Security, before the Senate Committee on Homeland Security and Governmental Affairs on September 18, 2013.
 - F. Hearing on Counterterrorism Policies and Priorities: Addressing the Evolving Threat, before the Senate Foreign Relations Committee on March 20, 2013.
 - G. Hearing on Cybersecurity and U.S. National Security, before the Senate Armed Services Committee on July 14, 2016.
 - H. Hearing on National Security Leaks, before the Subcommittee on Crime, Terrorism and Homeland Security of the Senate Judiciary Committee on July 11, 2012.

PART B - QUALIFICATIONS

14. QUALIFICATIONS (DESCRIBE WHY YOU BELIEVE YOU ARE QUALIFIED TO SERVE AS UNDER SECRETARY FOR INTELLIGENCE AND ANALYSIS).

My qualifications for this position are largely based on my government experience with national security and intelligence matters described above in response to Question 10. That experience has been supplemented during my years in the private sector by my involvement in various national security-related boards and organizations (see

responses to Questions 9, 10 and 12) as well as my numerous representations as a private lawyer that have involved individuals and issues relating to national security and the Intelligence Community.

In addition, it is worth mentioning three other areas of experience that will be important to my effectiveness if confirmed to this position. The first is my management experience. As a government official, I was honored to lead and manage groups ranging from my trial teams as an Assistant U.S. Attorney, to the U.S. Attorney's Office in Washington, D.C., the Executive Office for U.S. Attorneys, the FBI General Counsel's Office, the National Security Division and the staff of the Homeland Security Council. I also gained valuable and directly relevant management experience when I helped Director Robert S. Mueller with the transformation of the FBI into a more effective intelligence agency in the years after 9/11 and when I managed the inter-agency policy-making process as Homeland Security Advisor for President Bush. This management experience will be critically important if I have the honor of leading the Office of Intelligence and Analysis and helping its staff position themselves to meet the intelligence threats and needs of today and tomorrow.

A second area of relevant experience is my long experience with state and local law enforcement. As a line and supervisory prosecutor for a dozen years, I worked hard to foster the working relationship between police and prosecutor that is essential to effective law enforcement. I continued that effort as a senior Justice Department official – and particularly as the U.S. Attorney in DC who, unlike other U.S. Attorneys, is responsible for prosecution of almost all adult crimes in the district and works very closely with the local police (the Metropolitan Police Department). Thanks to that effort – and the reciprocal effort of true professionals like D.C. Police Chief Charles Ramsey and others – I had strong working relationships with state and local law enforcement at every step of my government career. That experience with – and appreciation for -- our state and local partners will prove to be an important asset, given the important role that the Office of Intelligence and Analysis plays in the integration of the federal and state and local intelligence efforts.

The last area of experience to highlight is my background as a federal prosecutor, in which position it was my job to advance public safety and pursue prosecutions, but also to protect the rights and liberties of the criminal defendants in those prosecutions and of any others whose privacy and rights were affected by our investigations and cases. The experience of having that dual obligation during the formative stage of my career resulted in my maintaining an intense focus on civil liberties concerns at every turn throughout my subsequent government career, with a prime example being our establishment of the Oversight Section and program within the National Security Division, which represented the first time that Main Justice attorneys were granted and exercised comprehensive oversight authority over the FBI's national security investigations. I will maintain that focus and deep respect for civil liberties concerns if I am selected to this position in the domestic intelligence process, where constitutional rights can be easily implicated and must be scrupulously observed.

PART C - POLITICAL AND FOREIGN AFFILIATIONS

15. POLITICAL ACTIVITIES (LIST ANY MEMBERSHIPS OR OFFICES HELD IN OR FINANCIAL CONTRIBUTIONS OR SERVICES RENDERED TO, ANY POLITICAL PARTY, ELECTION COMMITTEE, POLITICAL ACTION COMMITTEE, OR INDIVIDUAL CANDIDATE DURING THE LAST TEN YEARS).

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Biden for President	\$2,800.00	2020
Biden for President	\$2,800.00	2020
DNC Services Corp / Democratic National Committee	\$5,600.00	2020
Joe Sestak for President	\$250.00	2019
Ben Sasse for US. Senate Inc.	\$500.00	2018
Dettelbach for Ohio	\$250.00	2018
Dettelbach for Ohio	\$200.00	2017
Steve Dettelbach for Ohio Attorney General	\$500.00	2017
Ben Sasse for US Senate Inc.	\$500.00	2017
Ed Gillespie Campaign Committee	\$1,000.00	2017

Right to Rise USA	\$1,000.00	2015
JEB 2016, Inc.	\$2,700.00	2015
Glenn Ivey for Congress	\$300.00	2015
Ben Sasse for U.S. Senate	\$200.00	2014
Ed Gillespie for Senate	\$1,000.00	2014
Juliette Kayyem for Massachusetts	\$500.00	2014
Friends of Doug Gansler	\$250.00	2014
Friends of Doug Gansler	\$1,000.00	2013
Mike Sullivan for US Senate Committee	\$1,000.00	2013
Whitaker for US Senate Inc.	\$300.00	2013
Friends of Susan Brooks	\$250.00	2012

In addition to the above political contributions, I was a co-founder of the Former Republican National Security Officials for Biden, which was affiliated with 501(c)(4) organization, Defending Democracy Together, and issued statements during the 2020 presidential campaign.

16. CANDIDACY FOR PUBLIC OFFICE (FURNISH DETAILS OF ANY CANDIDACY FOR ELECTIVE PUBLIC OFFICE).

N/A

17. FOREIGN AFFILIATIONS

(NOTE: QUESTIONS 17A AND B ARE NOT LIMITED TO RELATIONSHIPS REQUIRING REGISTRATION UNDER THE FOREIGN AGENTS REGISTRATION ACT. QUESTIONS 17A, B, AND C DO NOT CALL FOR A POSITIVE RESPONSE IF THE REPRESENTATION OR TRANSACTION WAS AUTHORIZED BY THE UNITED STATES GOVERNMENT IN CONNECTION WITH YOUR OR YOUR SPOUSE'S EMPLOYMENT IN GOVERNMENT SERVICE.)

A. HAVE YOU OR YOUR SPOUSE EVER REPRESENTED IN ANY CAPACITY (E.G. EMPLOYEE, ATTORNEY, OR POLITICAL/BUSINESS CONSULTANT), WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

Davis Polk is an international firm with offices around the world and which has represented companies that are state-owned enterprises. Having reviewed my records, it appears that I did work on one occasion for one state-owned enterprise, the Chinese National Offshore Oil Corporation, which is a client of the China office of our firm. At the request of another partner, I supervised an associate drafting a memo summarizing U.S. law. In total, I billed less than 3 hours of work, which was the full extent of my engagement and contacts on the matter.

B. HAVE ANY OF YOUR OR YOUR SPOUSE'S ASSOCIATES REPRESENTED, IN ANY CAPACITY, WITH OR WITHOUT COMPENSATION, A FOREIGN GOVERNMENT OR AN ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE FULLY DESCRIBE SUCH RELATIONSHIP.

As stated above, I have worked in international law firms that represent companies, sovereign wealth funds and other entities that are state-owned enterprises, and as such I have had colleagues (i.e. "associates") in those firms who have done work for those entities.

C. DURING THE PAST TEN YEARS, HAVE YOU OR YOUR SPOUSE RECEIVED ANY COMPENSATION FROM, OR BEEN INVOLVED IN ANY FINANCIAL OR BUSINESS TRANSACTIONS WITH, A FOREIGN GOVERNMENT OR ANY ENTITY CONTROLLED BY A FOREIGN GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

D. HAVE YOU OR YOUR SPOUSE EVER REGISTERED UNDER THE FOREIGN AGENTS REGISTRATION ACT? IF SO, PLEASE PROVIDE DETAILS.

No.

18. DESCRIBE ANY LOBBYING ACTIVITY DURING THE PAST TEN YEARS, OTHER THAN IN AN OFFICIAL U.S. GOVERNMENT CAPACITY, IN WHICH YOU OR YOUR SPOUSE HAVE ENGAGED FOR THE PURPOSE OF DIRECTLY OR INDIRECTLY INFLUENCING THE PASSAGE, DEFEAT, OR MODIFICATION OF FEDERAL LEGISLATION, OR FOR THE PURPOSE OF AFFECTING THE ADMINISTRATION AND EXECUTION OF FEDERAL LAW OR PUBLIC POLICY.

N/A

PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

19. DESCRIBE ANY EMPLOYMENT, BUSINESS RELATIONSHIP, FINANCIAL TRANSACTION, INVESTMENT, ASSOCIATION, OR ACTIVITY (INCLUDING, BUT NOT LIMITED TO, DEALINGS WITH THE FEDERAL GOVERNMENT ON YOUR OWN BEHALF OR ON BEHALF OF A CLIENT), WHICH COULD CREATE, OR APPEAR TO CREATE, A CONFLICT OF INTEREST IN THE POSITION TO WHICH YOU HAVE BEEN NOMINATED.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's Designated Agency Ethics Official to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I will sign and transmit to the Department's Designated Agency Ethics Official, which will be provided to this Committee. I am not aware of any other potential conflicts of interest.

As laid out in Question 35, I have represented a number of clients – individuals, companies and other organizations – before the federal government in legal matters of various types. To the extent that those representations are not already over, my involvement in them will cease when and if I leave my law firm for this position, and none of them is of a nature that would create any appearance of a continuing conflict of interest. Pursuant to my Ethics Agreement, I will consult with DHS Ethics officials with respect to participating in any matters involving any of my former clients.

20. DO YOU INTEND TO SEVER ALL BUSINESS CONNECTIONS WITH YOUR PRESENT EMPLOYERS, FIRMS, BUSINESS ASSOCIATES AND/OR PARTNERSHIPS, OR OTHER ORGANIZATIONS IN THE EVENT THAT YOU ARE CONFIRMED BY THE SENATE? IF NOT, PLEASE EXPLAIN.

Yes, I will do so consistent with the terms of my ethics agreement with the DHS Designated Agency Ethics official.

21. DESCRIBE THE FINANCIAL ARRANGEMENTS YOU HAVE MADE OR PLAN TO MAKE, IF YOU ARE CONFIRMED, IN CONNECTION WITH SEVERANCE FROM YOUR CURRENT POSITION. PLEASE INCLUDE SEVERANCE PAY, PENSION RIGHTS, STOCK OPTIONS, DEFERRED INCOME ARRANGEMENTS, AND ANY AND ALL COMPENSATION THAT WILL OR MIGHT BE RECEIVED IN THE FUTURE AS A RESULT OF YOUR CURRENT BUSINESS OR PROFESSIONAL RELATIONSHIPS.

The terms of my separation from my law firm and related payments are set out in Part 3 of my OGE Form 278 and in my ethics agreement.

22. DO YOU HAVE ANY PLANS, COMMITMENTS, OR AGREEMENTS TO PURSUE OUTSIDE EMPLOYMENT, WITH OR WITHOUT COMPENSATION, DURING YOUR SERVICE WITH THE GOVERNMENT? IF SO, PLEASE PROVIDE DETAILS.

No.

23. AS FAR AS CAN BE FORESEEN, STATE YOUR PLANS AFTER COMPLETING GOVERNMENT SERVICE. PLEASE SPECIFICALLY DESCRIBE ANY AGREEMENTS OR UNDERSTANDINGS, WRITTEN OR UNWRITTEN, CONCERNING EMPLOYMENT AFTER LEAVING GOVERNMENT SERVICE. IN PARTICULAR, DESCRIBE ANY AGREEMENTS, UNDERSTANDINGS, OR OPTIONS TO RETURN TO YOUR CURRENT POSITION.

I have no plans for employment after I leave government in the event that I am confirmed for this position. Nor do I have any understandings, either explicit or implicit, with any employers about potential employment at that stage of my career.

24. IF YOU ARE PRESENTLY IN GOVERNMENT SERVICE, DURING THE PAST FIVE YEARS OF SUCH SERVICE, HAVE YOU RECEIVED FROM A PERSON OUTSIDE OF GOVERNMENT AN OFFER OR EXPRESSION OF INTEREST TO EMPLOY YOUR SERVICES AFTER YOU LEAVE GOVERNMENT SERVICE? IF YES, PLEASE PROVIDE DETAILS.

N/A

25. IS YOUR SPOUSE EMPLOYED? IF YES AND THE NATURE OF THIS EMPLOYMENT IS RELATED IN ANY WAY TO THE POSITION FOR WHICH YOU ARE SEEKING CONFIRMATION, PLEASE INDICATE YOUR SPOUSE'S EMPLOYER, THE POSITION, AND THE LENGTH OF TIME THE POSITION HAS BEEN HELD. IF YOUR SPOUSE'S EMPLOYMENT IS NOT RELATED TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED, PLEASE SO STATE.

My wife is employed, but her employment has no relation at all to the position for which I have been nominated.

26. LIST BELOW ALL CORPORATIONS, PARTNERSHIPS, FOUNDATIONS, TRUSTS, OR OTHER ENTITIES TOWARD WHICH YOU OR YOUR SPOUSE HAVE FIDUCIARY OBLIGATIONS OR IN WHICH YOU OR YOUR SPOUSE HAVE HELD DIRECTORSHIPS OR OTHER POSITIONS OF TRUST DURING THE PAST FIVE YEARS.

<u>NAME OF ENTITY</u>	<u>POSITION</u>	<u>DATES HELD</u>	<u>SELF OR SPOUSE</u>
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REDACTED

27. LIST ALL GIFTS EXCEEDING \$100 IN VALUE RECEIVED DURING THE PAST FIVE YEARS BY YOU, YOUR SPOUSE, OR YOUR DEPENDENTS. (NOTE: GIFTS RECEIVED FROM RELATIVES AND GIFTS GIVEN TO YOUR SPOUSE OR DEPENDENT NEED NOT BE INCLUDED UNLESS THE GIFT WAS GIVEN WITH YOUR KNOWLEDGE AND ACQUIESCENCE AND YOU HAD REASON TO BELIEVE THE GIFT WAS GIVEN BECAUSE OF YOUR OFFICIAL POSITION.)

While I do not know their specific values, I have received things of value from friends and colleagues over the past five years. I have had many meals with friends and colleagues at which my friend or colleague picked up the tab (as well as many at which I picked up the tab). I have received gifts of wine from two of my law firm partners, and have exchanged holiday and birthday gifts with many friends, though these were likely under the \$100 threshold.

28. LIST ALL SECURITIES, REAL PROPERTY, PARTNERSHIP INTERESTS, OR OTHER INVESTMENTS OR RECEIVABLES WITH A CURRENT MARKET VALUE (OR, IF MARKET VALUE IS NOT ASCERTAINABLE, ESTIMATED CURRENT FAIR VALUE) IN EXCESS OF \$1,000. (NOTE: THE

INFORMATION PROVIDED IN RESPONSE TO SCHEDULE A OF THE DISCLOSURE FORMS OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CURRENT VALUATIONS ARE USED.)

<u>DESCRIPTION OF PROPERTY</u>	<u>VALUE</u>	<u>METHOD OF VALUATION</u>
House in Montrose, Alabama	\$932,731	Baldwin County Real Estate Assessment
Family home in Alexandria, Virginia	\$2,256,717	Alexandria Real Estate Assessment

All other relevant property is listed on the OGE Form 278.

29. LIST ALL LOANS OR OTHER INDEBTEDNESS (INCLUDING ANY CONTINGENT LIABILITIES) IN EXCESS OF \$10,000. EXCLUDE A MORTGAGE ON YOUR PERSONAL RESIDENCE UNLESS IT IS RENTED OUT, AND LOANS SECURED BY AUTOMOBILES, HOUSEHOLD FURNITURE, OR APPLIANCES. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE C OF THE DISCLOSURE FORM OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CONTINGENT LIABILITIES ARE ALSO INCLUDED.)

<u>NATURE OF OBLIGATION</u>	<u>NAME OF OBLIGEE</u>	<u>AMOUNT</u>
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N/A

30. ARE YOU OR YOUR SPOUSE NOW IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION? HAVE YOU OR YOUR SPOUSE BEEN IN DEFAULT ON ANY LOAN, DEBT, OR OTHER FINANCIAL OBLIGATION IN THE PAST TEN YEARS? HAVE YOU OR YOUR SPOUSE EVER BEEN REFUSED CREDIT OR HAD A LOAN APPLICATION DENIED? IF THE ANSWER TO ANY OF THESE QUESTIONS IS YES, PLEASE PROVIDE DETAILS.

No.

31. LIST THE SPECIFIC SOURCES AND AMOUNTS OF ALL INCOME RECEIVED DURING THE LAST FIVE YEARS, INCLUDING ALL SALARIES, FEES, DIVIDENDS, INTEREST, GIFTS, RENTS, ROYALTIES, PATENTS, HONORARIA, AND OTHER ITEMS EXCEEDING \$200. (COPIES OF U.S. INCOME TAX RETURNS FOR THESE YEARS MAY BE SUBSTITUTED HERE, BUT THEIR SUBMISSION IS NOT REQUIRED.)

REDACTED

32. IF ASKED, WILL YOU PROVIDE THE COMMITTEE WITH COPIES OF YOUR AND YOUR SPOUSE'S FEDERAL INCOME TAX RETURNS FOR THE PAST THREE YEARS?

Yes.

33. LIST ALL JURISDICTIONS IN WHICH YOU AND YOUR SPOUSE FILE ANNUAL INCOME TAX RETURNS.

For the 2020 tax year, my spouse and I filed income tax returns in the following states:

1. Alabama,
2. California,
3. Illinois,
4. New York, and
5. Virginia.

In addition, my law firm included me in the following 2020 composite state tax returns:

1. Connecticut,
2. Massachusetts,
3. Minnesota,
4. New Jersey, and
5. Ohio.

34. HAVE YOUR FEDERAL OR STATE TAX RETURNS BEEN THE SUBJECT OF AN AUDIT, INVESTIGATION, OR INQUIRY AT ANY TIME? IF SO, PLEASE PROVIDE DETAILS, INCLUDING THE RESULT OF ANY SUCH PROCEEDING.

No.

35. IF YOU ARE AN ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL, PLEASE LIST ALL CLIENTS AND CUSTOMERS WHOM YOU BILLED MORE THAN \$200 WORTH OF SERVICES DURING THE PAST FIVE YEARS. ALSO, LIST ALL JURISDICTIONS IN WHICH YOU ARE LICENSED TO PRACTICE.

I have an active bar license in the District of Columbia and an inactive bar license in California. My clients over the past five years have been the following:

Affonso, Luis
Agustoni, Emanuel
Ad Hoc Group of McDermott Term Lenders
Ankura Consulting Group LLC
Archdiocese of Washington
Astrazeneca Pharmaceuticals LP
Atairos Management, L.P.
Baier, Marc
Baron Capital, Inc.
Brennan, John O.
Brookfield Real Estate Financial Partner
Caliburn International
Charoen Pokphand Group Company Limited
Chevron Corporation
Citizens Financial Group Inc.
Clapper Jr., James R.
CNOOC Limited [See answer to Question 17 above]
Cohen, David S.

Comcast Corporation
Dowdall, John
Energycap, Inc.
Equinix, Inc.
Facebook, Inc.
Federal Deposit Insurance Corporation
Fidelity National Financial
Fomento De Construcciones Y Contratas
Ford Motor Company
Fulcrum IT Services
General Dynamics Corporation
Gustin, David
Hay, Mary
Henderson, Chris
Holmes, David A.
HSBC Holdings Plc
IronNet Cybersecurity
J.P. Morgan Chase Bank, N.A.
Joyner, Christopher
Kapoor, Rakesh
Knight, Ellen
Larose, Scott
Learfield/IMG College
Linklaters LLP
Mansbach, Ross
Mayopoulos, Tim
McGuire, Jason
Mislock, Steven
Morell, Michael
Morgan Stanley & Co. LLC
MyLife
Natura Cosméticos S.A.
NBCUniversal Media LLC
Nefkens, Mike
Oberman, Allan
Odgen, Anthony
Olsen, Matthew
Omise Holdings Pte. Ltd.
Palma, Emanuele
Picchiatti, Phil
Purdue Pharma
RBS Securities Inc.
Renaissance Technologies
Reuss, Mark
Sedaghat, Shawn
Shipcom Wireless, Inc.
Silver Spike Capital
SLM Corporation
SF Motors
State Of New York
Taieb, Eli
The Catholic University of America
Tyab, Naeem
Undavya, Khayati
United Cellular, Inc.
Walmart Inc.

Weiss, Alex
Whitfield, Cong. Ed
Wynn Resorts Limited
Wyss, Andre
Zocdoc

I have also represented four clients during the past five years in non-public matters whose identities I am not disclosing because of bar ethical rules.

36. DO YOU INTEND TO PLACE YOUR FINANCIAL HOLDINGS AND THOSE OF YOUR SPOUSE AND DEPENDENT MEMBERS OF YOUR IMMEDIATE HOUSEHOLD IN A BLIND TRUST? IF YES, PLEASE FURNISH DETAILS. IF NO, DESCRIBE OTHER ARRANGEMENTS FOR AVOIDING ANY POTENTIAL CONFLICTS OF INTEREST.

I do not intend to put our financial holdings in a blind trust. Instead, I have entered into an Ethics Agreement to address any current conflict of interest concerns arising from my financial holdings, and I will follow the advice of the government ethics officials to avoid any conflicts of interest in the future.

37. IF APPLICABLE, LIST THE LAST THREE YEARS OF ANNUAL FINANCIAL DISCLOSURE REPORTS YOU HAVE BEEN REQUIRED TO FILE WITH YOUR AGENCY, DEPARTMENT, OR BRANCH OF GOVERNMENT. IF ASKED, WILL YOU PROVIDE A COPY OF THESE REPORTS?

My last three financial disclosure reports were the last three full years of my government service (2005-08). I'd be happy to provide them, assuming they are on file at the Justice Department.

PART E - ETHICAL MATTERS

38. HAVE YOU EVER BEEN THE SUBJECT OF A DISCIPLINARY PROCEEDING OR CITED FOR A BREACH OF ETHICS OR UNPROFESSIONAL CONDUCT BY, OR BEEN THE SUBJECT OF A COMPLAINT TO, ANY COURT, ADMINISTRATIVE AGENCY, PROFESSIONAL ASSOCIATION, DISCIPLINARY COMMITTEE, OR OTHER PROFESSIONAL GROUP? IF SO, PLEASE PROVIDE DETAILS.

No.

39. HAVE YOU EVER BEEN INVESTIGATED, HELD, ARRESTED, OR CHARGED BY ANY FEDERAL, STATE, OR OTHER LAW ENFORCEMENT AUTHORITY FOR VIOLATION OF ANY FEDERAL STATE, COUNTY, OR MUNICIPAL LAW, REGULATION, OR ORDINANCE, OTHER THAN A MINOR TRAFFIC OFFENSE, OR NAMED AS A DEFENDANT OR OTHERWISE IN ANY INDICTMENT OR INFORMATION RELATING TO SUCH VIOLATION? IF SO, PLEASE PROVIDE DETAILS.

No.

40. HAVE YOU EVER BEEN CONVICTED OF OR ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO ANY CRIMINAL VIOLATION OTHER THAN A MINOR TRAFFIC OFFENSE? IF SO, PLEASE PROVIDE DETAILS.

No.

41. ARE YOU PRESENTLY OR HAVE YOU EVER BEEN A PARTY IN INTEREST IN ANY ADMINISTRATIVE AGENCY PROCEEDING OR CIVIL LITIGATION? IF SO, PLEASE PROVIDE DETAILS.

Yes. In 2016, my wife and I secured a judgment in the General District Court of Alexandria, Virginia against a former tenant in a rental property we owned for her failure to pay approximately \$19,000 in rent. Although we

secured the judgment, we were unable to collect from the former tenant. The case was *Elizabeth and Ken Wainstein v. Nancy Piper*, Case No. GV16001119-00.

42. HAVE YOU BEEN INTERVIEWED OR ASKED TO SUPPLY ANY INFORMATION AS A WITNESS OR OTHERWISE IN CONNECTION WITH ANY CONGRESSIONAL INVESTIGATION, FEDERAL, OR STATE AGENCY PROCEEDING, GRAND JURY INVESTIGATION, OR CRIMINAL OR CIVIL LITIGATION IN THE PAST TEN YEARS? IF SO, PLEASE PROVIDE DETAILS.

No.

43. HAS ANY BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, DIRECTOR, OR PARTNER BEEN A PARTY TO ANY ADMINISTRATIVE AGENCY PROCEEDING OR CRIMINAL OR CIVIL LITIGATION RELEVANT TO THE POSITION TO WHICH YOU HAVE BEEN NOMINATED? IF SO, PLEASE PROVIDE DETAILS. (WITH RESPECT TO A BUSINESS OF WHICH YOU ARE OR WERE AN OFFICER, YOU NEED ONLY CONSIDER PROCEEDINGS AND LITIGATION THAT OCCURRED WHILE YOU WERE AN OFFICER OF THAT BUSINESS.)

No.

44. HAVE YOU EVER BEEN THE SUBJECT OF ANY INSPECTOR GENERAL INVESTIGATION? IF SO, PLEASE PROVIDE DETAILS.

No.

PART F - SECURITY INFORMATION

45. HAVE YOU EVER BEEN DENIED ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION FOR ANY REASON? IF YES, PLEASE EXPLAIN IN DETAIL.

No.

46. HAVE YOU BEEN REQUIRED TO TAKE A POLYGRAPH EXAMINATION FOR ANY SECURITY CLEARANCE OR ACCESS TO CLASSIFIED INFORMATION? IF YES, PLEASE EXPLAIN.

Yes, I believe I took polygraphs for my employment at the FBI and also possibly in connection with my clearance for membership on one or more of the Intelligence Community advisory boards (NCTC, CIA or NSA).

47. HAVE YOU EVER REFUSED TO SUBMIT TO A POLYGRAPH EXAMINATION? IF YES, PLEASE EXPLAIN.

No.

PART G - ADDITIONAL INFORMATION

48. DESCRIBE IN YOUR OWN WORDS THE CONCEPT OF CONGRESSIONAL OVERSIGHT OF U.S. INTELLIGENCE ACTIVITIES. IN PARTICULAR, CHARACTERIZE WHAT YOU BELIEVE TO BE THE OBLIGATIONS OF THE UNDER SECRETARY FOR INTELLIGENCE AND ANALYSIS AND THE INTELLIGENCE COMMITTEES OF THE CONGRESS, RESPECTIVELY, IN THE OVERSIGHT PROCESS.

As I learned in my government service – and as I have taught my students in my national security law school seminar – Congress plays a critical role in overseeing the operations of the Intelligence Community. It is absolutely vital that the executive branch keep Congress “fully and currently informed” of its intelligence activities, so that Congress can provide the Intelligence Community with valuable guidance and carry out its critical oversight responsibilities. It is also vital that Intelligence Community officials fully cooperate with congressional

investigations in a timely manner, and that they support and protect the rights of whistleblowers to raise their concerns without fear of retaliation.

In terms of respective obligations, it is the responsibility of the Intelligence Committees to demand the relevant information and ask the right answers to perform effective oversight. It is, in turn, the obligation of the executive branch leaders in the Intelligence Community to provide that information, to answer those questions and to encourage those under their charge to be similarly cooperative with Congressional oversight.

During my government service, I was always proud to uphold that obligation in my extensive dealings with the relevant Congressional oversight committees. I testified 10-20 times before Congress, and I routinely provided briefings to interested Members about the national security issues that were front and center during that time. I can assure the Committee that I will continue that cooperative approach to Congressional oversight if I am confirmed as Under Secretary for Intelligence and Analysis.

49. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE UNDER SECRETARY FOR INTELLIGENCE AND ANALYSIS.

The primary responsibility of the Under Secretary is to do everything in his or her authority to advance the mission of the Office of Intelligence and Analysis (I&A). I&A plays a number of vital roles in the nation's intelligence operation. It is the intelligence arm of the Department of Homeland Security, providing intelligence that meets a national or departmental mission to the Department leadership and to policy makers across the federal government. It provides intelligence and intelligence support to the other components of DHS in furtherance of their homeland security missions. It also partners with state, local, tribal and territorial authorities and critical infrastructure, ensuring that those partners receive the intelligence relevant to threats within their jurisdictions and that the intelligence they generate gets appropriately disseminated to the rest of the Intelligence Community.

It is the Under Secretary's job to put I&A and its staff in the position to successfully accomplish that multidimensional mission. First, the Under Secretary must focus internally and support the efforts of the dedicated men and women in I&A, providing the direction and resources they need to maximize their effectiveness. Second, the Under Secretary must also focus externally and work with a variety of constituencies that are critical to the success of the I&A and its mission. That effort entails fostering the key relationships with state, local, tribal and territorial authorities and relevant private sector actors and working to integrate those entities into the broader Intelligence Community; working with leadership of the Intelligence Community to further integrate I&A into its operations; coordinating with other DHS components to ensure that I&A is maximizing its potential as a source of intelligence support to those components and their missions; and engaging regularly with Congress to ensure that I&A is meeting the objectives of the congressional vision behind its creation in the Homeland Security Act and to allow for the meaningful oversight that is critical to maintaining the trust and confidence of Congress and the American people.

The Under Secretary must also remain attuned to the implications that the work of I&A can have on privacy and constitutional rights. He or she must always remember – and must regularly convey to the I&A staff – that the Office has a dual mission of protecting both national security and civil liberties and that the Office is successful only when both missions are accomplished.

Finally, as is the case for any leader in the Intelligence Community, it is the obligation of the Under Secretary to take all steps necessary to shield I&A's intelligence operations from any sort of political influence and to ensure that I&A's intelligence reports are products of the highest analytical quality and objectivity. Like the other IC agencies, the I&A is a staff of true professionals who are dedicated to the apolitical mission of protecting our nation. It will be incumbent on the Under Secretary to emphasize and reinforce – through action and message -- the apolitical nature of that mission at every turn and to prioritize non-partisan professionalism in all aspects of the Office's operations.

AFFIRMATION

I, **KENNETH LEONARD WAINSTEIN**, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

December 3, 2021

(Date)

KENNETH WAINSTEIN SIGNATURE

NOTARY SIGNATURE



TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

In connection with my nomination to be the Under Secretary of Homeland Security for Intelligence and Analysis, I hereby express my willingness to respond to requests to appear and testify before any duly constituted committee of the Senate.

KENNETH WAINSTEIN SIGNATURE

Date: December 3, 2021