

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE



**Post-Hearing Questions for the Record
for Joshua Simmons
upon his nomination to be
General Counsel of the Central Intelligence Agency**

Questions from Senator Wyden:

Domestic terrorism

1. Do you agree that there is no legal basis for the designation of domestic terrorist organizations?

As I stated in my testimony to the Committee, my focus at the State Department has been on foreign terrorist organizations (FTOs). An FTO designation by the State Department pursuant to 8 U.S.C. § 1189 carries several legal consequences, including sanctions, immigration and visa restrictions, and criminal liability for knowingly providing material support or resources to an FTO. Designation of an FTO requires a finding that “the organization is a foreign organization” (8 U.S.C. § 1189(a)(1)(A)), which can involve an assessment of factors such as the base of operation and the nationality and location of leaders and members. While there are other legal frameworks for addressing domestic terrorist groups, I am not aware of a legal basis to designate a purely domestic group as an FTO and would refer further questions related to domestic terrorist organizations to the Department of Justice.

2. If you believe there is a legal basis for the designation of domestic terrorist organizations, please cite the relevant section(s) of the United States Code.

See the response to question 1 above.

Crime control

3. Section 4 of the April 28, 2025, Executive Order (“Strengthening and Unleashing America’s Law Enforcement to Pursue Criminals and Protect Innocent Citizens”) calls on “national security assets” to assist State and local law enforcement. Please confirm that, pursuant to Executive Order 12333, the Central Intelligence Agency (CIA) has no role in supporting the April 28 Executive Order.

I am not aware of the CIA having any role in implementing the April 28, 2025 Executive Order (“Strengthening and Unleashing America’s Law Enforcement to Pursue Criminals and Protect Innocent Citizens”). If confirmed, I would work with Agency leadership and personnel to ensure that CIA activities are conducted in accordance with all applicable law, including Executive Order 12333.

Lethal authorities

4. On July 16, 2010, the Office of Legal Counsel issued a now-declassified memorandum related to the proposed killing of a U.S. citizen assessed to be “a leader of AQAP whose activities in Yemen pose a ‘continued and imminent threat’ of violence to the United States persons and interests.” The memorandum explicitly applied to proposed lethal operations by both the Department of Defense (DOD) and the CIA.

- a. The memorandum applied 18 U.S.C. 1119(b) (“foreign murder of United States nationals”) to proposed DOD operations, concluding that those operations fell within the public authority exception because the target was assessed to be a leader of an organization within the scope of the 2001 Authorization for Use of Military Force (AUMF). The memorandum then concluded that Congress’s intent with regard to Section 1119(b) and the public authority exception also applied to the proposed CIA operation. Do you believe that either DOD or the CIA can legally kill a U.S. person overseas if that person is not within the scope of an AUMF?**

As I stated to this Committee in my response to prehearing question number 48, if an extraordinary circumstance arose requiring the U.S. Government to take action against a U.S. person outside of the normal criminal process, the National Security Council and relevant Executive Branch agencies would work to ensure compliance with applicable law and that any use of force by the U.S. Government against a U.S. person would be contemplated only in the most narrow of circumstances.

I have not reviewed the classified portions of the 2010 Office of Legal Counsel paper referenced here, and the application of its analysis would be highly dependent on the particular facts and circumstances of any contemplated activity. I would refer to the Department of Justice on the application of the Office of Legal Counsel analysis to any specific action and to the Department of War regarding military authorities. The 2010 Office of Legal Counsel paper based its analysis on the understanding “that the CIA, like DoD, would carry out the attack against an operational leader of an enemy force, as part of the United States’s ongoing non-international armed conflict with al-Qaida” and recognized that lethal action may be taken in the context of a specific ongoing armed conflict in a manner that is consistent with the Constitution and other applicable law, including the applicable requirements of the Law of Armed Conflict.

- b. The memorandum stated that “both agencies here have represented that they intend to capture rather than kill al-Aulaqi if feasible, yet we also understand that an operation by either agency to capture al-Aulaqi in Yemen would be infeasible at this time.” Do you believe that either DOD or the CIA can legally kill a U.S. citizen when capture or arrest is feasible?**

See the response to question 4(a) above.

- 5. Do you believe that either DOD or the CIA can legally kill anyone (regardless of nationality) when capture, arrest, or interdiction is feasible?**

Any legal assessment of this type of question would involve a careful review of the particular facts and circumstances. In general, the Law of Armed Conflict does not require that enemy combatants be warned or given an opportunity to surrender before being made the object of attack, and states may lawfully use force against individuals when capture or detention is feasible in certain circumstances including against enemy forces on a battlefield or in lawful self-defense. As noted in response to question 4(a) above, I would refer to the Department of War on military authorities or the lawfulness of specific military actions.

- 6. If, in any armed conflict, an adversary were to kill U.S. military or intelligence personnel when it could feasibly capture or arrest them, would that be legal?**

Any legal assessment of this type of question would involve a careful review of the particular facts and circumstances. In general, the same principles of the Law of Armed Conflict noted in response to question 5 would apply to lawful uses of force against U.S. personnel.

- 7. Section 2.11 of Executive Order 12333 states: “No person employed by or acting on behalf of the United States shall engage in, or conspire to engage in, assassination.”**

- a. Under what circumstances, if any, would the prohibition not apply to non-state actors?**

I am not aware of such circumstances, as the assassination ban in Executive Order 12333 applies to any action by or on behalf of the United States Government, regardless of the status of any target.

- b. Under what circumstances, if any, would the prohibition not apply to state actors? Does the target's status as being within or outside the scope of an AUMF factor into the determination?**

I am not aware of such circumstances, as the assassination ban in Executive Order 12333 applies to any action by or on behalf of the United States Government, regardless of the status of any target.

Domestic collection

- 8. Do you believe that the CIA is authorized to collect the content of entirely domestic U.S. communications consistent with the law and Executive Order 12333?**

Given the CIA's foreign intelligence mission, the CIA's role with respect to the collection of U.S. person information is significantly limited by law. The robust framework provided by Executive Order 12333 and the CIA's Attorney General Guidelines provide clear limits on the CIA's authorities with respect to U.S. persons and collection inside the United States. Moreover, Section 702 of FISA prohibits "reverse targeting" – i.e., intentionally targeting a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States. 50 U.S.C. § 1881a(b)(2). If confirmed, I would work with Agency leadership and personnel to ensure that CIA activities are conducted in accordance with all applicable law, including Section 702 of FISA and Executive Order 12333.

Questions from Senator Bennet:

Venezuela

- 9. According to public news reports, the Trump Administration is pursuing a broad campaign aimed at removing Venezuelan dictator Nicolas Maduro. This more aggressive strategy reportedly is relying on intelligence provided by the CIA. While I have long supported bipartisan legislation to impose sanctions on the Maduro regime – with the goal of pressuring it into ceding power to the true winner of Venezuela's 2024 election – that is different than the United States undertaking an operation to install a new regime.**

- a. Would CIA involvement in a policy of regime change in Venezuela meet the threshold for an "intelligence activity" that you would advise the CIA Director must be notified to this Committee?**

I have not been briefed on any such policy, and the application of “intelligence activity” to such a policy would be dependent on the facts and circumstances. If confirmed, I commit to working with Agency leadership and personnel to adhere to the statutory obligation of the CIA to keep the congressional intelligence committees fully and currently informed, consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters. That obligation, pursuant to Sections 502 and 503 of the National Security Act, includes any significant anticipated intelligence activities, any significant intelligence failure, and additional information about intelligence activities as requested by the committees to enable them to carry out their oversight responsibilities.

- b. More generally, if confirmed, would you advise Director Ratcliffe that he needs to keep this Committee currently and fully informed about any CIA activities related to Venezuela – including any potential counternarcotics-related activities?**

As stated above, if confirmed, I commit to working with Agency leadership and personnel to adhere to the statutory obligation of the CIA to keep the congressional intelligence committees fully and currently informed, consistent with the provisions of the National Security Act and consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters.

- c. Do you understand the ban on assassination, contained in E.O. 12333 signed by President Reagan in 1981, to still be in effect?**

Yes.

- d. Is it your understanding that the prohibition in E.O. 12333 that “[n]o person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination” applies to the CIA?**

Yes.

Legal Authorities Related to Counternarcotics

10. The CIA has publicly stated that “countering drug cartels in Mexico and regionally is a priority for CIA” and that “Director Ratcliffe is determined to put CIA’s unique expertise to work against this multifaceted challenge.” With that in mind, please respond to the following questions. If necessary to provide a complete response, you may provide an addendum with classified information.

- a. Please explain your understanding of CIA’s operational authorities related to counternarcotics and how those authorities may and may not be applied.**

I have not yet been briefed on the full scope of the CIA’s authorities as they may relate to counternarcotics. If confirmed, I would give that matter careful attention and commit to working with Agency leadership and personnel to ensure CIA’s activities are conducted in accordance with applicable law. For example, Section 503(a)(5) of the National Security Act requires that any covert action finding “may not authorize any action that would violate the Constitution or any statute of the United States.”

- b. Do you agree that the CIA does not have any authority to conduct operations within U.S. borders to counter drug cartels?**

Given the CIA’s foreign intelligence mission, the CIA’s role with respect to domestic activities is significantly limited by law, including the National Security Act, Executive Order 12333, and the CIA’s Attorney General Guidelines. For example, Section 503(e) of the National Security Act defines “covert action” to mean “activities of the United States Government to influence...conditions abroad...” If confirmed, I would work with Agency leadership and personnel to ensure that the CIA’s activities are conducted in accordance with applicable law.

- c. Do you agree that there are limits on the President’s authority to use military force to combat criminal activity, such as drug trafficking?**

There is a robust legal framework that applies to the President’s Constitutional authority to use military force. I would refer to the Department of War on the lawfulness of any specific exercises of military force and to the Department of Justice on the interpretation of the relevant statutory and constitutional provisions.

d. Do you believe that the President has authority to direct military strikes against American citizens who are trafficking drugs?

As stated above, there is a robust legal framework that applies to the President's Constitutional authority to use military force, which is particularly limited in circumstances involving U.S. citizens (such as the example that Senator Wyden provided in question 4 above). In such extraordinary circumstances the National Security Council and relevant Executive Branch agencies would work in coordination to ensure that any use of force by the U.S. Government against a U.S. person is contemplated only in the most narrow of circumstances and is conducted in accordance with applicable law. I would refer to the Department of War on the lawfulness of any specific exercises of military force and to the Department of Justice on the interpretation of the relevant statutory and constitutional provisions.

e. Does the CIA have the authority to conduct operational activities in support of the U.S. military in combatting criminal activity, such as drug trafficking?

I have not yet been briefed on the full scope of the CIA's authorities as they may relate to counternarcotics. I understand that, consistent with the CIA's authorities under the National Security Act and the directives of Executive Order 12333, the CIA may provide limited types of support to military activities and to law enforcement. However, Section 104A of the National Security Act provides that the CIA "shall have no police, subpoena, or law enforcement powers or internal security functions." 50 U.S.C. § 3036(d)(1).

f. Does the CIA have the authority to conduct operational activities in support of Federal, state, and local law enforcement?

As stated above, I understand that, consistent with the CIA's authorities under the National Security Act and the directives of Executive Order 12333, the CIA may provide limited types of support to law enforcement. However, Section 104A of the National Security Act provides that the CIA "shall have no police, subpoena, or law enforcement powers or internal security functions." 50 U.S.C. § 3036(d)(1).

g. Do you believe that the CIA has the authority to direct kinetic strikes or other operations against American citizens who are trafficking drugs?

As stated above, there is a robust legal framework that applies to the President's Constitutional authority to use military force, which is particularly limited in circumstances involving U.S. citizens (such as the example that Senator Wyden provided in question 4

above). In such extraordinary circumstances the National Security Council and relevant Executive Branch agencies would work in coordination to ensure that any use of force by the U.S. Government against a U.S. person is contemplated only in the most narrow of circumstances and is conducted in accordance with applicable law. I would refer to the Department of War on the lawfulness of any specific exercises of military force and to the Department of Justice on the interpretation of the relevant statutory and constitutional provisions. I have not yet been briefed on the full scope of CIA's authorities as they may relate to counternarcotics. As explained in response to questions 8 and 10(b) and (e), there are significant legal limitations on the CIA's role with respect to U.S. person information and domestic activities.