

Senator Dick Durbin
Ranking Member, Senate Judiciary Committee
Written Questions for T. Elliot Gaiser
Nominee to be Assistant Attorney General for the Office of Legal Counsel
May 28, 2025

1. The Trump Administration recently formally accepted a \$400 million luxury private jet from the royal family of Qatar.

This gift clearly violates both the Constitution and statutory foreign gift provisions enacted by Congress. Despite the obvious legal and ethical issues presented by a foreign nation offering President Trump a gift worth hundreds of millions of dollars, the Justice Department apparently signed off on such a transaction.

According to public reporting, Attorney General Bondi—in consultation with the Office of Legal Counsel—provided a memo to the White House Counsel’s Office deeming this gift, quote, “legally permissible.”

- a. **Do you agree with Attorney General Bondi that it is legal for the Administration to accept this gift?**

Response: Because I am not part of the Department, I have not reviewed the referenced memorandum of Attorney General Bondi. I strongly support Attorney General Bondi’s leadership of the Department.

- b. **Does the plain text of the Constitution permit such a gift?**

Response: Because I am not part of the Department, I have not reviewed this matter.

- c. **If confirmed, will you commit to providing the Committee with the memorandum the Justice Department produced to the White House Counsel’s Office concluding that acceptance of a \$400 million private jet from Qatar is legally permissible?**

Response: If confirmed, I commit to working to ensure that the Department provides timely and substantive responses to oversight requests from both the majority and minority members of the Committee, consistent with any applicable constitutional, statutory, and regulatory limits on what information the Department should disclose.

2. Pursuant to its constitutional oversight role, the Senate Judiciary Committee has a long history of seeking greater Office of Legal Counsel (OLC) transparency that spans across Assistant Attorneys General and administrations.

During President George W. Bush's Administration, this Committee made bipartisan requests to declassify and access OLC opinions on warrantless wiretapping and preventive detention of enemy combatants. During the Obama Administration, we engaged in similar efforts to obtain memos addressing drone strikes on U.S. citizens overseas.

OLC is also responsible for the infamous, so-called "torture memos." The Committee could not appreciate the full impact of those memos until years after the fact when they were finally disclosed.

a. If confirmed, will you commit to making OLC's opinions more transparent?

Response: If confirmed, I commit to working to ensure that the Department provides timely and substantive responses to oversight requests from both the majority and minority members of the Committee, consistent with any applicable constitutional, statutory, and regulatory limits on what information the Department should disclose.

b. For those that cannot be made public because they include classified or law enforcement-sensitive information, will you commit to providing them to this Committee?

Response: See Question #2(a).

3. On multiple occasions, President Trump has made public comments suggesting that he would like to imprison United States citizens abroad. In discussing one proposal to send convicted U.S. citizens to a prison in El Salvador, President Trump stated: "I'd do it in a heartbeat." He further stated that he has directed the Justice Department to consider the legality of such proposals.

a. Do the Constitution or U.S. law allow for the deportation of U.S. citizens?

Response: I am not at the Department and, thus, have not been involved in the referenced matter to have sufficient information to comment on this question.

b. Do the Constitution or U.S. law allow U.S. citizens to be imprisoned in a foreign country?

Response: Any American who travels abroad is subject to the laws of the country they are visiting. If they violate the local laws of the country they are visiting, they are subject to the local laws and criminal procedures of that specific country.

4. According to testimony she gave the January 6 Select Committee, former White House Press Secretary Kayleigh McEnany stated that, following the 2020 presidential election, you advised her that Vice President Mike Pence had the power to refuse to recognize

electors from some states. She further testified that “before nearly every television appearance that was campaign-related, I would call Elliot, and he would give me the lay of the land as to what was going on.” According to public reporting, you sent McEnany a draft of a speech that was later incorporated into a speech from President Trump in which he falsely asserted that he won the 2020 election.

a. Did President Trump win the 2020 election? Please respond “yes” or “no.”

Response: Former President Joseph Biden was certified as the winner of the 2020 presidential election and sworn in as the forty-sixth President on January 20, 2021.

b. Do you still maintain that the Vice President has the power to refuse to recognize electors? If so, did Vice President Harris have the power to refuse to certify her election loss in January 2025?

Response: I was retained to provide legal advice to President Trump’s 2020 campaign. My ethical duties as an attorney include a duty of confidentiality regarding the advice I provided to a former client.

c. At any point, did you discuss with John Eastman the possibility of Vice President Pence refusing to recognize electors on January 6, 2021, or the legality of such action? Did you discuss with Eastman any other options for overturning the results of the 2020 election?

Response: See my response to Question #4(b).

d. Do you condemn all individuals who illegally entered the Capitol on January 6, 2021, including rioters who violently assaulted law enforcement officers?

Response: Some individuals among the many thousands who demonstrated on January 6, 2021, reportedly engaged in acts of property destruction and violence. I unequivocally condemn all violence.

e. Do you believe such individuals who served prison time and were subsequently pardoned by President Trump deserve financial reparations from the federal government?

Response: I am not at the Department and do not have specific information about the pardons sufficient to comment. Financial compensation for injuries caused by federal government employees in connection with their official duties should be determined by a court consistent with the facts and the law of each case.

5. On multiple occasions, President Trump has suggested that he may seek a third term as president.

Does the Constitution allow Donald Trump to serve three terms as president?

Response: The Twenty-Second Amendment to the United States Constitution speaks for itself.

6. In 2016, you authored an op-ed arguing that an incident in which the spouse of a Kansas Supreme Court Justice engaged in political fundraising “undermined the integrity of the court.” You further argued that the Justice in question should be removed from office.

a. Do you believe that it would similarly undermine the integrity of the U.S. Supreme Court if a Justice’s spouse engaged in political fundraising?

Response: I believe that all judges should at all times abide by their ethical duties.

b. Should U.S. Supreme Court Justices be removed from office when their spouses engage in political fundraising?

Response: See my response to Question #6(a).

7. In 2011, you published a piece in which you criticized Donald Trump’s proposal to impose a 25 percent tariff on Chinese products as “a bad idea.” Specifically, you wrote that “a tax on Chinese imports would make everything more expensive” and that “[i]t won’t be the wealthy CEOs who are downsized, laid off or demoted in pay.” You further lamented that “an immediate increase in the cost of everything would bring new instability to the stock market, affecting our already-languishing retirement funds.” In addition, you wrote, “If you think China threatens us now, wait until the world’s most populous country faces U.S.-imposed economic destruction via a trade war.” Finally, you noted: “[T]he 34 percent tariffs brought by the Smoot-Hawley Act didn’t help Americans compete. They prolonged the Great Depression.”

a. Given these prior criticisms, do you support President Trump’s current tariff policy?

Response: I understand that the Department of Justice is involved in pending litigation involving tariffs. While I am not now at the Department of Justice, the Department of Justice speaks on pending cases through its filings. As a nominee, it would be inappropriate for me to now opine on pending litigation in which the Department is currently involved.

b. When you wrote that “[i]t won’t be the wealthy CEOs who are downsized, laid off or demoted in pay” due to tariffs, who were you suggesting would likely be downsized, laid off, or demoted in pay?

Response: I understand that the Department of Justice is involved in pending litigation involving tariffs. While I am not now at the Department of Justice, the Department of Justice speaks on pending cases through its filings. As a nominee, it would be inappropriate for me to now opine on pending litigation in which the Department is currently involved.

**Nomination of T. Elliot Gaiser
To be Assistant Attorney General for the Office of Legal Counsel
Questions for the Record
Submitted May 28, 2025**

QUESTIONS FROM SENATOR WHITEHOUSE

Please answer each question and sub-question individually and as specifically as possible. Some Department of Justice nominees have on occasion attempted to refuse to answer this Committee's questions because they have not studied the relevant issue closely or not formed an opinion. If confirmed, your job as head of OLC would be to form opinions on legal issues after studying the facts and the law. In addition, as an executive branch nominee as opposed to judicial nominee, you are not prohibited from opining on issues likely to come before you. Thus, to help us fulfill our constitutional duty to advise the President on your nomination, please study the below issues closely before providing complete answers.

1. Have you had any discussions with any member of the Trump administration concerning personnel at the Office to which you've been nominated? If yes, please describe with specificity.

Response: After my nomination to serve as Assistant Attorney General for the Office of Legal Counsel at the U.S. Department of Justice, I spoke with Deputy Assistant Attorney General Lanora Pettit regarding the current personnel serving in the Office of Legal Counsel, as well as the organizational chart.

2. Was the U.S. Capitol attacked by a violent mob on January 6, 2021?

Response: Some individuals among the many thousands who demonstrated on January 6, 2021, reportedly engaged in acts of property destruction and violence. I unequivocally condemn all violence.

3. Were violent rioters who were convicted of assaulting police officers on January 6 political prisoners?

Response: I was not an attorney at the Department and, therefore, was not involved in the prosecutions that you reference.

4. Did Joe Biden win the 2020 presidential election?

Response: Former President Joseph Biden was certified as the winner of the 2020 presidential election and sworn in as the forty-sixth President on January 21, 2021.

5. Your Senate Judiciary Questionnaire states that in 2017 you joined the Teneo Network.

- a. In your own words, what is the Teneo Network?

Response: The Teneo Network is a national network for likeminded conservatives.

b. How did you first hear about the Teneo Network?

Response: I heard about the Teneo Network from Alexandra Gaiser.

c. Why did you join the Teneo Network?

Response: I wanted to connect with likeminded conservatives and other professionals.

6. It has been reported that this Administration has “sidelined” the Office of Legal Counsel by initially refusing to permit OLC to review proposed executive orders for form and legality and, when it has submitted those orders for review, “that consultation is far more limited than in the past.”¹

a. To your knowledge, are OLC career attorneys reviewing and approving draft executive orders for form and legality?

Response: I am not in the Department and do not have knowledge about this matter.

b. What is your understanding of the role of OLC under this Administration?

Response: By delegation, OLC exercises the Attorney General’s authority under the Judiciary Act of 1789 to provide the President and executive agencies with advice on questions of law.

7. In the past, OLC has issued secret opinions that were so shoddily reasoned and results-oriented they had to be withdrawn when they came to light. If confirmed, will you countenance such opinions from OLC? What will you do to prevent the Office from issuing these sorts of opinions to rubber-stamp Trump administration actions?

Response: I am not in the Department and do not have insight in the drafting of OLC’s opinions.

8. OLC officials have repeatedly testified to Congress that “the Fourteenth Amendment . . . place[s] the right to citizenship based on birth within the jurisdiction of the United States beyond question” and that “[a]ny restriction on that right contradicts both the Fourteenth

¹ Charlie Savage, *Trump Sidelines Justice Dept. Legal Office, Eroding Another Check on His Power*, N.Y. Times (Apr. 4, 2025), <https://www.nytimes.com/2025/04/04/us/politics/trump-office-of-legal-counsel-doj.html>.

Amendment and the underlying principle that the amendment safeguards.”² Do you agree with this position? If not, why? If confirmed, would you overturn this position?

Response: I understand that the Department of Justice is involved in pending litigation involving the meaning of the relevant provisions of the Fourteenth Amendment. While I am not now at the Department of Justice, the Department of Justice speaks on pending cases through its filings. As a nominee, it would be inappropriate for me to comment on pending litigation in which the Department is currently involved.

9. OLC’s “long held” position is that “the suggestion that the President has a constitutional power to decline to spend appropriated funds . . . is supported by neither reason nor precedent.”³ Do you agree with this position? If not, why? If confirmed, would you overturn this position?

Response: If I am confirmed, and a question arises that implicates a past OLC opinion, I will carefully evaluate the law and afford past opinions respectful consideration.

10. As of 2023, OLC’s position was that “The Executive Branch should . . . presume that congressional agents are acting pursuant to their constitutional authority and in good faith when evaluating the constitutionality of committee requests for information.”⁴ Do you agree with this position? If not, why? If confirmed, would you overturn this position?

Response: I do not currently work in the Department of Justice. If confirmed, I will carefully consider this question if that question arises.

11. Do you believe the president can suspend habeas corpus without congressional authorization?

Response: The President is bound by the terms of his oath, the Constitution, and applicable law.

12. Under what circumstances, if any, could a federal government official legally defy a court order issued in a case to which the official or the government was a party?

Response: Parties who are dissatisfied with a court order have the option to appeal the order to a higher court, up to and including the Supreme Court, and including the option to seek a stay of the court’s order or an injunction pending appeal.

² *Citizenship Reform Act of 1997; and Voter Eligibility Verification Act: Hearing Before the Subcommittee on Immigration and Claims of the House Committee on the Judiciary*, at 19 (June 25, 1997) (statement of Walter Dellinger).

³ *Presidential Authority to Impound Funds Appropriated for Assistance to Federally Impacted Schools*, 1 Op. O.L.C. Supp. 303, 309 (Dec. 1, 1969); *The President’s Veto Power*, 12 Op. O.L.C. 128, 166 (July 8, 1988).

⁴ *Ways and Means Committee’s Request for the Former President’s Tax Returns and Related Tax Information Pursuant to 26 U.S.C. § 6103(f)(1)*, 45 Op. O.L.C. ___, at *22 (July 30, 2021).

13. Must President Trump abide by lower court orders applicable to the federal government?

Response: Please see response to Question #12.

14. Does the 22nd Amendment permit a president to be elected more than twice?

Response: The text of the Twenty-Second Amendment to the United States Constitution speaks for itself.

15. Justice Kavanaugh's concurrence in *Dobbs v. Jackson Women's Health Organization* stated that "the constitutional right to interstate travel" would prohibit a state from barring "a resident of that State from traveling to another State to obtain an abortion." Do you agree with these statements? If not, why?

Response: As Solicitor General of Ohio, I am currently counsel in litigation involving Ohio laws that affect abortion, so it would not be appropriate for me to comment.

16. Under *Trump v. United States*, do you believe that a President would be immune from criminal prosecution for taking a bribe in exchange for issuing a pardon?

Response: I cannot address a hypothetical scenario without studying the specific facts and circumstances of the case. The application of Presidential immunity to potential scenarios involving the Pardon Power is discussed in both Chief Justice Roberts' opinion for the Court and the concurring opinion of Justice Barrett in *Trump v. United States*.

17. Under *Trump v. United States*, do you believe that presidential immunity from criminal prosecution extends to any executive branch official other than the President?

Response: I have not researched or studied this question in detail, and I have not formed an opinion on the potential immunity from criminal prosecution for official acts of officers of the Executive Branch other than the President. I am aware of Supreme Court decisions discussing the immunity from civil liability for official acts of Executive Branch officials other than the President.

18. Can the President indefinitely opt not to enforce a federal law that the Supreme Court has held is constitutional?

Response: The President is bound by the terms of his oath, the Constitution, and applicable law.

19. What obligation is imposed on the President by the Constitution's requirement that he or she "take Care that the Laws be faithfully executed"?

Response: The President is bound by the terms of his oath, the Constitution, and applicable law.

20. Do you agree with the following written testimony from former Assistant Attorney General for OLC Christopher Schroeder to the Judiciary Courts Subcommittee?

- a. “In cases where the government is a party, the final judgment of an Article III court, including a district court, is binding on the government.”

Response: Any order or judgment is binding on the parties according to its terms.

- b. “As the Reagan Memo explains, the policy of the Executive Branch is to comply with information requests from Congress to the fullest extent consistent with the Executive Branch’s constitutional and statutory obligations.”

Response: I believe the Executive Branch should work with Congress to accommodate information requests to the fullest extent consistent with constitutional and statutory obligations.

- c. “Although certain confidential information may be withheld initially as the accommodation process proceeds, the fact that the information falls within a category over which the President might assert executive privilege does not excuse agencies from engaging in good faith in an accommodation process regarding the congressional request.”

Response: I agree that agencies and Congress should engage in an accommodation process in good faith, consistent with constitutional and statutory obligations and duties of confidentiality.

21. As AAG for OLC, will you advise the executive branch that it has an obligation to accommodate requests from members of Congress who are not committee or subcommittee chairs?

Response: Section 1-8.210 of the Justice Manual instructs the Department to use its “best efforts” to respond to Congressional inquiries and expressly states: “[b]ecause it is important that the Department provide timely responses to congressional inquiries when possible, components should make it a priority to assist OLA in this regard.” If confirmed, I will, as appropriate, foster Departmental compliance with Section 1-8.210.

22. Former White House Press Secretary Kayleigh McEnany testified to the House Select Committee to Investigate the January 6th Attack on the U.S. Capitol that you advised her that, “based on [your] own research,” the Vice President of the United States had a “substantive” role in the certification of electors on January 6th, 2021.⁵

⁵ *Deposition of Kayleigh McEnany*, SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL, (Jan. 12, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000036621/pdf/GPO-J6-TRANSCRIPT-CTRL0000036621.pdf>.

- a. Have you ever had an attorney-client relationship with Ms. McEnany?

Response: I was retained to provide legal advice to President Trump's 2020 campaign. The campaign, Donald J. Trump For President, was my client.

- b. If so, did Ms. McEnany's testimony to the Select Committee waive that privilege?

Response: The campaign, Donald J. Trump For President, was my client. Under the Rules of Professional Conduct, only a client may waive attorney-client privilege, absent certain limited exceptions.

- c. Ms. McEnany testified that, when she spoke to you, "it was not to provide legal advice to the President. It was to get information that I could be asked about in a cable television hit, not legal matters that I would go explore with White House counsel," and that she "would purely go to [you] for advice on . . . my TV appearances." Do you dispute Ms. McEnany's characterization of your conversations?

Response: I understand that Ms. McEnany provided testimony under oath, and that testimony speaks for itself.

- d. Did Ms. McEnany tell the truth when she testified that you advised her that the Vice President has a "substantive" role in the certification of electors?

Response: I understand that Ms. McEnany provided testimony under oath, and that testimony speaks for itself.

- e. Do you believe that Vice President Mike Pence had the authority to recognize "alternate" electors on January 6th, 2021?

Response: I was retained to provide legal advice to President Trump's 2020 campaign. My ethical duties as an attorney include a duty of confidentiality regarding the advice I provided to a former client.

23. In April 2016, you wrote, "When Trump is wounded, he lashes out . . . at women."

- a. What about President Trump motivated you to write this statement?

Response: In 2016, I initially supported a different candidate for the Republican nomination.

- b. Do you still believe this statement is true?

Response: No. Like millions of other Americans, I have seen President Trump's courage and capacity to deliver results for the country and champion all Americans, including the forgotten men and women of America.

- c. Do you regret writing this statement?

Response: I admire President Trump's courage and leadership and am honored by his trust in me by nominating me for Assistant Attorney General for the Office of Legal Counsel.

- d. Have you apologized to President Trump or anyone in the White House or Department of Justice for this statement?

Response: No.

24. In April 2016, you wrote, "Trump is nothing if not stale. He represents America's not-so-distant Wolf-of-Wall-Street past . . . Both his hairstyle and slogan, 'make America great again,' rely on hopeless nostalgia for a plastic and chrome world that no longer exists."

- a. What about President Trump motivated you to write this statement?

Response: In 2016, I initially supported a different candidate for the Republican nomination.

- b. Do you still believe this statement is true?

Response: No. Like millions of other Americans, I have seen President Trump's unmatched grit and determination in the face of unprecedented weaponization of the justice system against him. He is driven to serve the American people and never give up on all that this great country can be.

- c. Do you regret writing this statement?

Response: I admire President Trump's courage and leadership and am honored by his trust in me by nominating me for Assistant Attorney General for the Office of Legal Counsel.

- d. Have you apologized to President Trump or anyone in the White House or Department of Justice for this statement?

Response: No.

25. In April 2016, you wrote, "Trump and the concept of discipline have never come within miles of each other."

- a. What about President Trump motivated you to write this statement?

Response: In 2016, I initially supported a different candidate for the Republican nomination.

- b. Do you still believe this statement is true?

Response: No. Like millions of other Americans, I have seen his disciplined, single-minded determination to put the interests of the American people first.

- c. Do you regret writing this statement?

Response: I admire President Trump's courage and leadership and am honored by his trust in me by nominating me for Assistant Attorney General for the Office of Legal Counsel.

- d. Have you apologized to President Trump or anyone in the White House or Department of Justice for this statement?

Response: No.

26. In January 2016, you called Donald Trump a "would-be Caesar."

- a. What about President Trump motivated you to write this statement?

Response: In 2016, I initially supported a different candidate for the Republican nomination.

- b. Do you still believe this statement is true?

Response: No. Like millions of other Americans, I have seen President Trump's courage and capacity to deliver results for the country and champion all Americans, including the forgotten men and women of America.

- c. Do you regret writing this statement?

Response: I admire President Trump's courage and leadership and am honored by his trust in me by nominating me for Assistant Attorney General for the Office of Legal Counsel.

- d. Have you apologized to President Trump or anyone in the White House or Department of Justice for this statement?

Response: No.

27. In January 2016, you wrote, "For someone who wants to project strength, he has an astonishing weakness for flattery, falling for Vladimir Putin after a few coquettish bats of the eyelashes from the Russian thug."

- a. What about President Trump motivated you to write this statement?

Response: In 2016, I initially supported a different candidate for the Republican nomination.

- b. Do you still believe this statement is true?

Response: No. Like millions of other Americans, I have seen President Trump's courage. I also admire his strength in defending American interests abroad.

- c. Do you regret writing this statement?

Response: I admire President Trump's courage and leadership and am honored by his trust in me by nominating me for Assistant Attorney General for the Office of Legal Counsel.

- d. Have you apologized to President Trump or anyone in the White House or Department of Justice for this statement?

Response: No.

Senate Judiciary Committee
Hearing on the Nomination of Thomas Elliot Gaiser
to be Assistant Attorney General for the Office of Legal Counsel
May 21, 2025
Questions for the Record
Senator Amy Klobuchar

1. The job of the Office of Legal Counsel (OLC) is to provide impartial and independent legal advice to the executive branch. Its guiding principle makes clear: “OLC must always give candid, independent, and principled advice - even when that advice is inconsistent with the aims of policymakers.”

- If the law conflicts with the policy preferences of the President, how will you ensure that OLC’s work product conforms with the law?

Response: If confirmed, I always will follow the Constitution and applicable law in my work.

- If confirmed, what steps will you take to ensure that the Office of Legal Counsel is insulated from political pressure from the White House?

Response: The Department’s investigative and prosecutorial decisions should be based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual §9-27.000).

2. In his book Jack Goldsmith, who led OLC under George W. Bush, writes that the Office of Legal Counsel has a tradition akin to *stare decisis* regarding prior opinions from the Office. He wrote: “If OLC overruled every prior decision its leader disagreed with, its decisions would be more the whim of individuals than the command of impersonal laws.”

- If confirmed, do you commit to abide by OLC’s tradition of treating prior decisions as precedent akin to *stare decisis* and under what circumstances do you believe it is appropriate to overturn an OLC opinion where there has been no change in law?

Response: As I am not at the Department yet, I cannot comment on prior practices of OLC. It would be inappropriate for me to opine on hypotheticals.

**Nomination of T. Elliot Gaiser to be Assistant Attorney General for the
Office of Legal Counsel
Questions for the Record
Submitted May 28, 2025**

QUESTIONS FROM SENATOR COONS

1. At any point during the process that led to your nomination, did you have any discussions with anyone—including but not limited to individuals at the White House, at the Justice Department, or at outside groups—about your loyalty to President Trump? If so, please elaborate.

Response: No.

2. If President Trump asked you to do something you judged to be illegal or unethical, would you resign? Please answer yes or no.

Response: The question poses a hypothetical which I do not believe would occur. If confirmed, I will always follow the law, as well as uphold my oath to support and defend the Constitution.

- a. If you would not resign, what would you do? Please explain.

Response: Please see my response to Question #2.

3. Is there ever a circumstance when an executive branch agency may choose not to comply with a federal court order, until such time as that order is stayed or vacated by a higher court?

Response: The question poses a hypothetical which I do not believe would occur. If confirmed, I will always follow the law, as well as uphold my oath to support and defend the Constitution.

- a. What are the remedies available to a litigant who is dissatisfied with a court order?

Response: Parties who are dissatisfied with a court order have the option to appeal the order to a higher court, up to and including the Supreme Court, and including the option to seek a stay of the court's order or an injunction pending appeal.

- b. Would you ever advise a client to disregard a court order?

Response: I will always advise a client, whether in private practice or in government, on how to comply with court orders.

- c. If President Trump instructed you to disobey an order from a federal judge, how would you respond?

Response: The question presents a hypothetical, which I do not believe would occur. If confirmed, I will always follow the law and uphold my oath to support and defend the Constitution.

- d. If Attorney General Bondi instructed you to disobey an order from a federal judge, how would you respond?

Response: Please see my response to Question #3(c).

- 4. How would you respond if your role at the Department of Justice required you to pursue a policy directive that was unconstitutional?

Response: This question presents a hypothetical, which I do not believe would occur. If confirmed, I do not expect my role at the Department of Justice will ever require me to follow a policy directive that is unconstitutional.

- 5. What is the remedy if the President violates his constitutional duty to faithfully execute the laws?

Response: This question presents a hypothetical which I do not believe occur. The Constitution lays out remedies based upon certain facts and circumstances. These remedies could be imposed by Congress, courts, or the electorate.

- 6. As a DOJ lawyer, when is it appropriate to refuse to follow a directive from the President?

Response: I am not currently, nor have ever been employed by the Department of Justice. If I am confirmed, I will always uphold my oath to the Constitution of the United States and act in accordance with all applicable laws and policies of the Department.

- 7. When is it appropriate for the DOJ to decide not to defend a federal law?

Response: Justice Department lawyers should always uphold their oaths to support and defend the Constitution, and act in accordance with applicable laws, regulations, and Department policies.

- 8. Do you agree that the DOJ has an independent obligation to evaluate the legality of the President's policy proposals?

Response: Please see my answer to Question #7.

9. What is your understanding of the DOJ's contact policy regarding interactions between the DOJ and White House officials?

Response: I am not currently, nor have ever been employed by the Department of Justice. If I am confirmed, I will comply with all applicable Justice Manual provisions and other guidance issued by the Attorney General regarding communication with the White House.

10. Since President Trump took office, his administration has discredited judges, even calling for their impeachment. Elon Musk took to social media to call federal judges "corrupt" and "evil." Do you think high-level government officials disparaging judges improves or reduces their safety? Please explain your answer.

Response: Without further context, I do not believe it is appropriate for me to comment on the statements in this question as presented.

11. There have been significant concerns raised about the transparency of OLC opinions, especially longstanding ones that form important precedents to inform agency decision-making that the public does not even know exist, let alone know the contents of. Commentators from across the political spectrum have raised concern that OLC opinions thereby form a kind of "secret law" that is at odds with democratic governance.

- a. Do you see merits in these concerns? Please explain.

Response: Please see my response to Question #6.

- b. If confirmed, would you commit to seeking transparency of OLC opinions to the extent possible?

Response: If confirmed, I commit to working to ensure that OLC makes public its opinions in situations that are consistent with any applicable constitutional, statutory, and regulatory limits on what information the Office and the Department should disclose.

- c. If confirmed, would you consider publishing a rolling index of OLC opinions so that the public is at least aware of which opinions exist and are informing agency decision-making?

Response: If confirmed, I commit to working to ensure that OLC makes public its opinions in situations that are consistent with any applicable constitutional, statutory, and regulatory limits on what information the Office and the Department should disclose.

12. I am concerned by how it appears senior administration officials have conducted official business on personal devices or on commercial messaging applications in ways that violate executive branch responsibilities under the *Freedom of Information Act* and

Presidential Records Act. I am especially concerned by indications that conversations may have occurred concerning classified information on devices not cleared for such use. Do you commit to ensuring that you will not conduct official business in such ways that fail to comply with the *Freedom of Information Act*, *Presidential Records Act*, or safeguarding the sensitivity of classified information?

Response: Please see my response to Question #6.

13. Section 702 of the *Foreign Intelligence Surveillance Act* (FISA) is up for reauthorization this year. Do you think the Constitution requires that law enforcement obtain a warrant before accessing Americans' communications collected pursuant to Section 702?

Response: I am not currently, nor have ever been employed by the Department of Justice. It is essential that the Department of Justice protects the civil liberties of Americans while also protecting the United States against threats to our national security. If I am confirmed, I would use all resources available to provide candid and independent legal counsel related to the Section 702 reauthorization if a related question is presented before the Office of Legal Counsel.

14. Under what circumstances may the President declare an invasion, pursuant to the *Alien Enemies Act*, and what role does Congress play in any such determination?

Draft Response: I do not think it is appropriate to opine on a hypothetical. The President is bound by the terms of his oath, the Constitution, and applicable law.

**Nomination of Thomas Elliot Gaiser to be the
Assistant Attorney General for the Office of Legal Counsel
Questions for the Record
Submitted May 28, 2025**

QUESTIONS FROM SENATOR CORY A. BOOKER

1. Do you believe that involvement in the federal criminal investigations and prosecutions of President Trump alone, without other evidence of wrongdoing, misconduct, or unsatisfactory job performance, is grounds for the demotion, reassignment, or termination of Department of Justice (DOJ) personnel?

Response: Any disciplinary actions towards Department of Justice personnel should be undertaken based on the facts of each specific situation in a manner consistent with Department policies, applicable law, and the Constitution.

2. Do you believe that involvement in investigations or prosecutions of individuals related to the January 6 Capitol riot alone, without other evidence of wrongdoing, misconduct, or unsatisfactory job performance, is grounds for the demotion, reassignment, or termination of DOJ personnel?

Response: Please see my response to Question #1.

3. Do you believe that political affiliation alone, without other evidence of wrongdoing, misconduct, or unsatisfactory job performance, is grounds for the demotion, reassignment, or termination of DOJ personnel?

Response: Please see my response to Question #1.

4. If President Trump directs you to take an illegal action, how would you respond?

Response: The question poses a hypothetical which I do not believe would occur. If confirmed, I will always follow the law, as well as uphold my oath to support and defend the Constitution.

5. If any official in the Department of Justice directs you to take an illegal action, how would you respond?

Response: Please see my response to Question #4.

6. If any member of the Administration directs you to take an illegal action, how would you respond?

Response: Please see my response to Question #4.

7. President Trump has said, “I have absolute right to do what I want to do with the Justice Department.”¹ Do you agree that a sitting president has absolute power? If yes, please explain the legal basis for this position.

Response: Without further context, I do not believe it is appropriate for me to comment on the statements in this question as presented. The powers of the Presidency are described in Article II of the U.S. Constitution. In the American constitutional order, no coordinate branch of government has absolute power.

- a. If not absolute, how much power do you believe the President has over the Department?

Response: Please see my response to Question #7.

8. Do you believe that there was any basis for the Department of Justice’s investigations and prosecutions of President Trump?

Response: Without further context, I do not believe it is appropriate for me to comment on this question as presented.

9. Please provide your understanding of the Hatch Act.

Response: I understand that the Hatch Act prohibits certain political activities by federal employees. Should a matter arise that implicates the Hatch Act or any other federal statute, I would roll up my sleeve to generate an informed view of that statute.

- a. Do you believe that asking DOJ personnel their views about investigations or prosecutions to assess their political leaning is a violation of the Hatch Act?

Response: Employees who are regulated by the Hatch Act should abide by its provisions. Whether a question to any Department of Justice official constitutes a prohibited act under that or any other statute would turn on the facts of a situation.

10. Will you commit to consulting with career officials at DOJ regarding your potential conflicts of interest?

Response: Yes.

11. Will you follow the guidance of career officials at DOJ regarding your potential conflicts of interest and recusals?

¹ Michael S. Schmidt & Michael D. Shear, *Trump Says Russia Inquiry Makes U.S. ‘Look Very Bad,’* N.Y. TIMES (Dec. 28, 2017), <https://www.nytimes.com/2017/12/28/us/politics/trump-interview-mueller-russia-china-north-korea.html>.

Response: With regards to potential conflicts of interest and decisions on recusal, I will consult with appropriate officials and make decisions based on the facts and applicable law and policy.

12. Have you spoken or corresponded with Elon Musk since November 2024? If yes, provide the dates, mode, and content of those discussions and communications.

Response: No.

- i. At any point, did you discuss DOJ or matters related to DOJ, including personnel matters?

Response: Please see my response to Question #12.

- ii. Did you ever discuss demotions, reassignments, or terminations of personnel, whether specific individuals or generally?

Response: Please see my response to Question #12.

- iii. Did you ever discuss potential personnel to be hired or appointed in any capacity at the DOJ?

Response: Please see my response to Question #12.

13. Under what circumstances would it be acceptable for an executive branch official to ignore or defy a federal court order?

Response: I would always advise a client on how to comply with lawful court orders. When faced with an adverse court decision, a party has a variety of avenues to follow, including making an appeal.

- a. Should an executive branch official who ignores or defies a federal court order be held in contempt?

Response: Please see my response to Question #13.

- b. Can you unequivocally state that executive branch officials must comply with federal court orders?

Response: Please see my response to Question #13.

- c. Can you unequivocally state that executive branch officials must comply with temporary restraining orders and preliminary injunctions issued by federal district court judges?

Response: Please see my response to Question #13.

14. What criteria will you consider when determining whether to publicly release Office of Legal Counsel (OLC) legal opinions?

Response: If confirmed, I commit to working to ensure that OLC makes public its opinions in situations that are consistent with any applicable constitutional, statutory, and regulatory limits on what information the Office and the Department should disclose.

15. What criteria will you consider when determining whether to withdraw or rescind prior OLC legal opinions?

Response: If confirmed, I will faithfully execute OLC's authority to provide the President and executive agencies with advice on questions of law, pursuant to the Attorney General's delegation under the Judiciary Act of 1789.

16. Does OLC play a role in checking executive branch overreach? Please explain your answer.

Response: Pursuant to Department of Justice policies, OLC assists the Attorney General in ensuring that the President and the executive agencies fulfill respective constitutional duties to preserve, protect, and defend the Constitution, and to "take Care that the Laws be faithfully executed".

17. If confirmed, will you commit to ensuring that OLC seeks the views of interested and affected agencies and DOJ components before rendering final advice?

Response: Pursuant to Department of Justice policies, in rendering legal advice, if confirmed, I will seek to provide an accurate and honest appraisal of applicable law. This includes striving to ensure that OLC candidly and fairly addresses the full range of relevant legal sources and significant arguments on all sides of the question.

18. In your Senate Judiciary Questionnaire, you reported that you have been a member of Teneo since March 2017.

- a. Please describe what Teneo is.

Response: The Teneo Network is a national network for likeminded conservatives.

- b. What is Teneo's mission?

Response: I understand the Teneo Network's mission as providing opportunities for likeminded conservatives to network and collaborate professionally and socially.

- c. How did you become a member of Teneo?

Response: Alexandra Gaiser recommended that I get involved in the Teneo Network.

- d. Have you recruited others to join Teneo? If yes, provide the names of those individuals.

Response: I have not recruited anyone for the Teneo Network.

- e. Please provide a list of all events you have attended as a member of Teneo. Provide dates and locations for all events listed and describe the purpose of the event.

Response: Since March 2017, I have attended approximately 3-5 Teneo Network events per year. These include holiday parties, social dinners, and book discussions. I do not recall dates and locations, but the purpose of each event has been connecting with likeminded conservatives professionally and socially.

- f. Have you or your spouse made financial contributions to Teneo? If yes, please provide the amounts and dates of such contributions.

Response: I have contributed approximately \$1000 to the Teneo Network in various years.

19. Please respond to the following questions in as much detail as possible.

- a. What is your opinion of abortion?

Response: As Solicitor General of Ohio, I am currently counsel in litigation involving Ohio laws that affect abortion, so it would not be appropriate for me to comment.

- i. How do you define bodily autonomy?

Response: In the Anglo-American jurisprudential tradition, bodily autonomy is a liberty interest protected by law, custom, and good manners. I believe nobody should be deprived of life, liberty, or property without due process of law.

- - b. Under what circumstances, if any, is it appropriate for the government to compel women, including minors, to share information about their menstrual cycle?

Response: Federal and state laws, including the Health Insurance Portability and Accountability Act (HIPAA), generally protect patient information from unlawful disclosures. I am not aware of circumstances where the government compels women to share such information.

- c. What is your opinion of contraceptives and birth control?

Response: The Supreme Court in *Griswold v. Connecticut* and *Eisenstadt v. Baird* found a substantive due process right for married and unmarried individuals to access contraceptives.

- d. What is your opinion of gender-affirming care?

Response: *United States v. Skrametti*, a case involving state laws that regulate medical interventions intended to transition the sex or gender of minors, is currently pending before the Supreme Court of the United States. While I am not currently at the Department of Justice, the Department of Justice speaks on pending cases through its filings. As a nominee, it would be inappropriate for me to opine on pending litigation in which the Department is currently involved.

- e. Is it appropriate for school officials or sports coaches to verify the sex and gender of minor students? If yes, please describe how school officials or sports coaches would verify the sex and gender of minor students.

Response: As Solicitor General of Ohio, I am currently counsel in litigation involving an Ohio law that prohibits males from participating in athletic events reserved for girls and women, so it would not be appropriate for me to opine.

- f. What is your opinion of same-sex marriage?

Response: The Supreme Court in *Obergefell v. Hodges* held that the Constitution protects a right to marriage for same-sex couples.

- g. What is your opinion of miscegenation?

Response: The Supreme Court in *Loving v. Virginia* held that the Constitution prohibits laws against miscegenation.

- h. What is your opinion of racial discrimination?

Response: The U.S. Constitution prohibits racial discrimination by state governments and the federal government. Federal and state civil rights laws prohibit racial discrimination in employment, education, and elsewhere. As Chief Justice Roberts wrote for a plurality opinion of the Supreme Court in *Parents Involved v. Seattle*, “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”

- i. Is there racial discrimination against people of color in the private sector?

Response: Yes.

ii. Is there racial discrimination against people of color in the public sector?

Response: Yes.

iii. Is there racial discrimination against people of color in education?

Response: Yes.

i. Do you believe transgender people are unfit for military service?

Response: I understand that there is currently litigation pending regarding that issue in which the Department of Justice is involved. While I am not now at the Department of Justice, the Department of Justice speaks on pending cases through its filings. As a nominee, it would be inappropriate for me to opine on pending litigation in which the Department is currently involved.

j. Do you agree with Secretary of Defense Hegseth that women should not serve in combat roles?²

Response: I believe the military and its officers, under civilian control, are best situated to decide what policies best ensure military readiness and combat effectiveness.

20. Does the Fifth Amendment of the U.S. Constitution apply to non-citizens present in the United States?

Response: The Fifth Amendment to the U.S. Constitution states: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” U.S. Const. amend. V. This amendment applies to persons and speaks for itself.

21. Is *Griswold v. Connecticut*, 381 U.S. 479 (1965), binding precedent?

Response: *Griswold v. Connecticut* is binding precedent of the Supreme Court.

22. Is *Lawrence v. Texas*, 539 U.S. 558 (2003), binding precedent?

Response: *Lawrence v. Texas* is binding precedent of the Supreme Court.

² Emma Tucker et al., *Trump’s defense secretary pick said women shouldn’t be in combat roles. These female veterans fear what comes next*, CNN (Nov. 14, 2024), <https://www.cnn.com/2024/11/14/us/military-women-pete-hegseth-defense-secretary/index.html>.

23. Is *Obergefell v. Hodges*, 576 U.S. 644 (2015), binding precedent?

Response: *Obergefell v. Hodges* is binding precedent of the Supreme Court.

24. Do you believe that President Trump won the 2020 election?

Response: President Joe Biden was certified and served as the 46th President of the United States.

25. The 22nd Amendment says that “no person shall be elected to the office of the President more than twice.”³

- a. Do you agree that President Trump was elected to the office of the President in the 2016 election?

Response: Yes.

- b. Do you agree that President Trump was elected to the office of the President in the 2024 election?

Response: Yes.

- c. Do you agree that the 22nd Amendment, absent a constitutional amendment, prevents Trump from running for a third presidential term?

Response: The Twenty-Second amendment to the U.S. Constitution speaks for itself.

³ U.S. CONST. amend. XXII.

Senator Peter Welch
Senate Judiciary Committee
Written Questions for T. Elliot Gaiser
Hearing on “Nominations”
Wednesday, May 21, 2025

1. Who won the 2020 presidential election?

Response: Former President Joseph Biden was certified as the winner of the 2020 presidential election and sworn in as the forty-sixth President on January 20, 2021.

2. Do you believe fraud changed the outcome of the 2020 presidential election?

Response: As the Attorney General stated, many Americans continue to share concerns about the integrity of the 2020 election.

3. Did you author any memos, speeches, or other documents before, during, or after the 2020 presidential election that detailed whether fraud changed the outcome of the 2020 presidential election? If so, please provide your rationale.

Response: I was retained to provide legal advice to President Trump’s 2020 campaign. My ethical duties as an attorney include a duty of confidentiality regarding the advice I provided to a former client.

4. Did you author any memos, speeches, or other documents before, during, or after the 2020 presidential election that detailed whether Vice President Pence could reject votes during the count of the Electoral College? If so, please provide your rationale.

Response: Please see my response to Question #3.

5. Please provide your understanding of the Emoluments Clause?

Response: I understand that Article I, Section 9, Clause 8 of the U.S. Constitution provides, “No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.”

6. Do you believe there is a legal basis for a sitting President to accept a gift of an aircraft from a foreign state without the approval of Congress? If so, please provide your rationale.

Response: The President is bound by the terms of his oath, the Constitution, and applicable law.

7. Should a litigant ever disobey a lawful court order?

Response: I will always advise a client on how to follow a lawful court order.

8. Is the Executive Branch bound by Supreme Court precedent?

Response: The President is bound by the terms of his oath, the Constitution, and applicable law.

9. Is the Executive Branch bound by precedent of the United States Court of Appeals for the Second Circuit when appearing before that circuit?

Response: Parties who are dissatisfied with a court order have the option to appeal the order to a higher court, up to and including the Supreme Court, and including the option to seek a stay of the court's order pending appeal.

Questions for the Record

Sen. Adam Schiff (CA)

Thomas “Elliot” Gaiser, Nominee to be Assistant Attorney General for the Office of Legal Counsel (OLC)

1. Do you agree it would be improper for the President or the White House to direct, task, or otherwise provide input on whether DOJ should initiate or undertake an *investigation* of current or former U.S. government officials or other private citizens?

Response: I commit to following all governing memoranda from the Attorney General, including any addressing White House contacts.

2. Do you agree it would be improper for the White House to direct, task, or otherwise provide input on whether DOJ should pursue *criminal charges* against current or former U.S. government officials or other private citizens?

Response: I commit to following all governing memoranda from the Attorney General, including any addressing White House contacts.

3. Please guarantee in writing to this Committee that any and all decisions you make as Assistant Attorney General during your tenure, if confirmed by the Senate, will be free from any political, partisan, financial, or personal motive, including your own.

Response: The Department’s investigative and prosecutorial decisions should be based on the facts, the applicable law and policies, the admissible evidence, and the Principles of Federal Prosecution (Justice Manual §9-27.000).

4. Whistleblowers play a critical role in calling out waste, fraud, and abuse across government. If confirmed, do you commit to protecting and in no way adversely affecting, or retaliating against, the employment of any employees who report internal waste, fraud and abuse of authority by the Trump Administration, including any activity that may involve you, through the proper channels to DOJ management, to the DOJ Inspector General, and to Congress?

Response: Yes.

5. Have you used Signal or other commercially available messaging applications to communicate with individuals at the White House, DOJ, or FBI regarding ongoing or anticipated reviews or investigations, including law enforcement sensitive information?

Response: No.

6. Do you commit not to use Signal or other commercially available messaging applications that do not comply with federal records retention laws and regulations to communicate with

individuals at the White House, DOJ, or FBI regarding ongoing or anticipated reviews or investigations, including law enforcement sensitive information?

Response: If confirmed, I will ensure that any communications comply with all applicable federal records retention laws and procedures.

7. The Office of Legal Counsel is crucially responsible for ensuring that the executive branch operates within the bounds of the law. It has been publicly reported that OLC contributed to the memorandum signed by Attorney General Bondi asserting that it would be legally permissible for President Trump, either directly or through the U.S. Government, to accept a 747-8 luxury jet from Qatar.

- a. Is it the role of the Office of Legal Counsel to approve proposed directives from the Attorney General or the President, even if they contravene federal bribery and ethics laws?

Response: I am not in the Office of Legal Counsel and, thus, do not have specific knowledge about this matter.

- b. If an action by the President or other officials would violate the Constitution and/or laws enshrined in statute, would you instruct the Office of Legal Counsel to craft a justification to allow the President or others to nonetheless take the action and claim that it is lawful?

Response: The President is bound by the terms of his oath, the Constitution, and applicable law.

- c. Do you believe the President can circumvent the Foreign Emoluments Clause of the Constitution, federal bribery and ethics laws, *and/or* Congress to acquire gifts from foreign nations?

Response: The President is bound by the terms of his oath, the Constitution, and applicable law.

8. On July 21, 2021, then-Attorney General Garland issued a memorandum on the “Department of Justice Communications with the White House,” more commonly referred to as the White House Contacts policy. This policy governs all communications between the Justice Department and White House personnel and is critical to safeguarding the DOJ’s criminal and civil law enforcement decisions and legal judgements from partisan influences. According to public reports in February, the White House updated its own guidance to permit the President and select others to initiate conversations with DOJ about specific criminal or civil cases and investigations.

- a. Do you commit to upholding the Department’s longstanding policy, as outlined in the 2021 memo, not to “advise the White House concerning pending or contemplated criminal or civil law enforcement investigations or cases unless doing so is important

for the performance of the President's duties and appropriate from a law enforcement perspective?"

Response: I commit to following all governing memoranda from the Attorney General, including any addressing White House contacts.

9. On July 19, 2021, then-Attorney General Garland issued a memorandum on the "Use of compulsory process to obtain information from, or records of, members of the news media" to protect the press' ability to investigate and report the news to the American public. On October 26, 2022, following a review completed by the then-Deputy Attorney General and in consultation with relevant internal and external stakeholders, the then-Attorney General codified the provisions set forth in this memorandum in the Department's regulations at 28 CFR 50.10. Attorney General Bondi has since rescinded some of these critical protections of journalistic integrity.

- a. Do you agree that a free and independent press is vital to the functioning of our democracy?

Response: Yes.

- b. Do you believe that the Department of Justice was correct in rescinding protections for journalists' ability to report news to the American public freely?

Response: I am not currently at the Department of Justice to comment. I recognize the essential role a free press plays in our democracy.

10. Yes or no, do you believe it would ever be appropriate to ignore or contravene a district court order or opinion because you believe the Supreme Court will ultimately reverse the lower court's decision?

Response: I will always advise a client, whether in private practice or in government, on how to comply with court orders.