

Post-Hearing Questions for the Record
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Senator Chuck Grassley, Ranking Member

1. Several weeks ago, an editorial board member of *The New York Times* editorial board appeared on MSNBC and stated that she saw “dozens of American flags” on Long Island pickup trucks, which she described as “just disturbing.” Do you agree that flying the American flag is a way to honor the United States of America? Why or why not?

RESPONSE: Yes. Flying the American flag is one way to honor the United States of America.

2. You failed to include three politically-charged “DOJ Alumni Letters” in your SJQ in section 12(c), as required of all nominees. You failed to include:
 - The DOJ Alumni Open Letter on Protecting Free and Fair Elections on October 1, 2020;¹
 - The DOJ Alumni Letter to Inspector General Michael Horowitz on June 10, 2020;²
 - The DOJ Alumni Statement on Flynn Case on May 11, 2020;³

Of the many nominees who have come before this Committee, only two others have signed the letters: (1) Vanita Gupta, the Associate Attorney General of the DOJ, who was roundly criticized for her partisan activism; and (2) Tana Lin, a judicial nominee to the Western District of Washington, who gained fame through her active resistance to President Trump and his administration.

- a. Do you still stand by the comments in the letters today?
- b. On what factual basis did you reach the conclusions contained in these letters?
- c. How can I be assured that you will not immediately jump to partisan conclusions, given your proclivity to do so, based on your signatures on these letters?
- d. How can I be assured that you will treat individuals who hold beliefs different from yours fairly, given your signatures on these letters?

RESPONSE (2(a)-(d)): I stand by my decision to sign on to these letters. In general, each letter included the factual bases for the statements and conclusions they expressed. I did not view the letters to be partisan. I have served in the Department of Justice under administrations of both political parties. In signing the letters, I joined with hundreds of other former DOJ employees reflecting a bipartisan consensus in support of the points expressed. If confirmed, I will continue to serve in a nonpartisan manner and will respect and listen to the views of all Department employees.

¹ <https://medium.com/@dojalumni/doj-alumni-open-letter-on-protecting-free-and-fair-elections-78bea0575e1a>

² <https://medium.com/@dojalumni/doj-alumni-letter-to-inspector-general-michael-horowitz-8011bb12167b>

³ <https://medium.com/@dojalumni/doj-alumni-statement-on-flynn-case-7c38a9a945b9>

3. I understand that you own a farm in North Dakota. Does this include mineral rights?

RESPONSE: Yes, I have a share of the mineral rights, along with other family members, to our family farm in North Dakota.

4. When we spoke on the phone, you stated that you did not see an “Obama Justice Department” or a “Bush Justice Department.” Did you see a “Trump Justice Department”?

RESPONSE: The mission of the Department of Justice is “[t]o enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.” To carry out this mission and to adhere to the rule of law, the Department of Justice must act independently of political influence. In my experience, the workforce of the Department of Justice holds true to this principle.

5. You authored an op-ed recommending that the government ensure the safety of census data by “retain[ing] a reputable outside cybersecurity firm to audit current plans for data protection, then have this firm either confirm publicly the adequacy of existing cybersecurity protocols or assist the government in addressing any gaps identified.”

- a. Do you plan to fully divest of the securities you currently hold in IronNet Cybersecurity, Inc.?

RESPONSE: In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice’s designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I will enter into with the Department’s designated agency ethics official.

- b. Will you commit to recusing from any situation where your former company, IronNet Cybersecurity, Inc. might profit?

RESPONSE: In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice’s designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I will enter into with the Department’s designated agency ethics official. Consistent with Department policy, I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know

that a person whose interests are imputed to me has a financial interest directly and predictably affected by the particular matter, unless I first obtain a written waiver or qualify for a regulatory exemption.

6. You previously called the immigration crisis at the border, “bogus.” According to statistics provided by the U.S. Customs and Border Patrol, the number of Southwest Land Border Encounters has more than doubled over the last year.⁴ Comparing the statistics for March 2018 and March 2021 shows that the rate of encounters more than tripled for the same month. On the whole, this graph demonstrates that illegal immigrants are entering this country at an unprecedented rate, particularly as compared to the prior three years. Given these statistics, please explain:
 - a. Why this surge does not qualify as a “crisis”?
 - b. Why the situation is not “bogus”?
 - c. Whether you stand by your prior statement.

RESPONSE (6(a)-(c)): In 2019, I wrote an article, along with General Michael Hayden (ret.), the former director of the Central Intelligence Agency and National Security Agency. Based on the available facts and our experience, we stated that there was not a national security crisis along the southern border. We cited reporting by the State Department finding no credible evidence that terrorist groups were sending operatives into the United States via Mexico. We stated that unsupported claims about terrorists crossing the U.S.-Mexico border could potentially distract from the genuine national security threats the country faces.

7. In 2017 you openly supported James Comey.⁵ Since that time we have learned that Comey:
 - repeatedly lied;
 - leaked classified information to a friendly media contact;
 - usurped the role of the Attorney General by announcing that Hillary Clinton would not face criminal charges for mishandling classified information;
 - believed that the FISA process with regard to Carter Page was “handled in a thoughtful responsible way by the DOJ and the FBI”;⁶
 - authored memos about every interaction with the President of the United States in an effort to criminalize his actions;
 - and refused to defer to the judgment of his boss, Sally Yates, during the investigation into Lt. General Michael Flynn, sending agents to interview him and defying the express orders of his superior.

⁴ <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>

⁵ See, e.g., Pam Benson, The Cipher Brief, “The Decision to Fire Comey Doesn’t Add Up,” May 11, 2017, available at: https://www.thecipherbrief.com/column_article/the-decision-to-fire-comey-doesnt-add-up-2

⁶ Comey Remarks to Reporter (Dec. 7, 2018) <https://www.c-span.org/video/?455597-5/fbi-director-comey-remarks-closed-testimony>.

- a. Do you still stand by your support for Comey?
- b. Do you think it is appropriate for a subordinate to defy his or her boss?
- c. Do you agree that the Carter Page FISA application was “handled in a thoughtful [and] responsible way by the DOJ and the FBI”?
- d. Do you plan on authoring memos of every conversation you have (if any) with President Biden?
- e. Is it appropriate for a senior government official to leak classified information to a friendly reporter?
- f. Is it appropriate for a senior government official to leak classified information to a friendly reporter to promote a narrative?

RESPONSE (7(a)-(f)): I stand by my comments 2017 in support of Director Comey. To the extent the remaining questions refer to claims regarding Director Comey’s actions, I do not have sufficient factual basis to express an informed view.

8. ISIS used Obama drone strikes as recruiting propaganda.⁷ Is it fair to say ISIS supported Obama, based on the standard you articulated during your hearing?

RESPONSE: No.

9. Should the DOJ focus on prosecuting the individuals who caused billions of dollars of damage in Portland, Oregon, Seattle, Washington, and Minneapolis, Minnesota during so-called demonstrations last summer?

RESPONSE: Individuals who commit violations of the federal criminal law are subject to prosecution in accordance with the principles of federal prosecution. I agree with the Attorney General the Department of Justice is committed to the fair and impartial prosecution of violations of federal law without regard to ideology.

10. In a statement, you wrote that “We do not tolerate the destruction of our communities or violence, and perpetrators should be arrested and prosecuted.” Do you believe the DOJ has committed enough resources to holding the perpetrators of the destruction of our communities accountable?

RESPONSE: Because I do not currently work in the Department, I am not aware of the resources the Department has dedicated to different enforcement priorities. I believe that the Department is committed to investigating and prosecuting domestic terrorism. I look forward to learning more about these matters if I am confirmed.

⁷ See, e.g., <https://www.theguardian.com/world/2015/nov/18/obama-drone-war-isis-recruitment-tool-air-force-whistleblowers>

11. Is a social worker qualified to respond to a domestic violence call where there is an allegation that the aggressor is armed?

RESPONSE: As a general matter, I believe that trained law enforcement officials should respond to armed aggressors.

12. Is it appropriate for protestors to ignore social distancing mandates and gathering limitations to protest racial injustice?

RESPONSE: I believe people should adhere to health guidelines issued by public health experts.

13. Is it appropriate for protestors to ignore social distancing mandates and gathering limitations to protest gun control?

RESPONSE: I believe people should adhere to health guidelines issued by public health experts.

14. Is it appropriate for the government to use law enforcement to enforce social distancing mandates and gathering limitations for individuals attempting to practice their religion in a church, synagogue, mosque or any other place of religious worship?

RESPONSE: I believe people should adhere to health guidelines issued by public health experts.

15. You have stated that “[t]he use of any law enforcement for political purposes is inappropriate” and that the “[i]ndiscriminate use of federal police can drive a wedge between key constituencies, undermine critical partnerships, and undermine our nation’s ability to protect against terrorist threats and criminal activity.” Was the erection of Capitol fencing until last week an inappropriate use of law enforcement power?

RESPONSE: Because I do not have sufficient information about the factors that were considered in providing security to the Capitol, I cannot comment on whether specific security measures were appropriate.

16. According to the Customs and Border Protection, “[f]ederal officials have logged more than 1.1 million apprehensions at the U.S. Mexico border this fiscal year, after another busy month in June.”

- a. Does that number—1.1. million—concern you from a security perspective?
- b. Given that the United States is now dealing with the Delta strain of the COVID-19 virus, shouldn't we be doing more to screen and/or vaccinate these individuals?
- c. Given your status as the Director of Human Rights First, how do you intend to use your position, if confirmed, to combat:
 - i. The rampant sexual assaults happening to women and children?
 - ii. The devastating deaths due to heat exhaustion?

RESPONSE (16(a)-(c)): I have not served in the government for several years and do not have enough information to make judgments about the issues you raise. If confirmed, I will work to ensure that the National Security Division plays an appropriate role in addressing security and other concerns at the border.

17. Yesterday at your SSCI nominations hearing you said that “combating ... the domestic terrorism threat as well as the international terrorism threat is a top priority for the Department of Justice.” What presents a greater threat to national security: domestic or international terrorism?

RESPONSE: I believe the work of the National Security Division is to be vigilant in protecting the national all against all terrorist threats, domestic and international.

18. Is it appropriate for a low-level government official (including law enforcement) to be terminated for ‘liking’ a post on social media that:
- a. Contains views contrary to yours?
 - b. Contains some allusion to violence?
 - c. Contains views contrary to what you perceive to be the prevailing media narrative?

RESPONSE (18(a)-(c)): I do not believe that federal career government employees should be treated differently based on their political views. Any employment decision must be made consistent with all applicable laws, policies, and procedures.

19. Does the president have the power to remove senior officials at his pleasure?
- a. Is it possible that removing someone—as is the President’s power—can be for wholly apolitical reasons?
 - b. Do you still stand by your prior commentary criticizing President Trump for removing several intelligence community senior officials?

RESPONSE: The President is the head of the executive branch and is empowered to remove certain non-career officials at his pleasure. Presidents can and have exercised such authority for wholly apolitical reasons. I stand by my prior comments regarding President Trump’s decisions to remove experienced career intelligence officials from office.

20. Recently, President Biden summarily fired 56 (all but two) Trump-appointed U.S. attorneys on February 10, 2021, *a full month before* President Trump, during his term, fired all of the remaining Obama-appointed U.S. Attorneys on March 13, 2017.

- a. Did you author an op-ed or a letter decrying President Biden’s political move by firing 54 top law enforcement officials?
- b. Was the termination of 54 U.S. Attorneys “destructive of our nation’s ideals”?
- c. Did the termination of 54 U.S. Attorneys “put us all at risk”?
- d. Those districts now operate with an Acting United States Attorney. In an op-ed to the *Washington Post* on March 20, 2020, you criticized the use of acting heads, within the Intelligence Community, stating that:

Now both are gone, to be replaced by as-yet-unnamed acting heads who will undoubtedly know less and who will be more beholden to the intelligence community’s politicized leadership. The next acting heads might or might not be gone themselves in a matter of months if the president’s nominee is ultimately confirmed. In the meantime, who manages the critical security tasks, including watch-listing and ensuring that the government-wide counterterrorism structure remains well integrated?

Are the Acting U.S. Attorneys “more beholden” to the DOJ, which is currently under the leadership of Merrick Garland, Lisa Monaco and Vanita Gupta?

- e. Are you concerned about the direction of law enforcement and criminality within the community given the lack of leadership at the U.S. Attorney Offices nationwide?

RESPONSE (20(a)-(e)): The President and Attorney General have been clear that politics is to play no role in decisions about investigations and prosecutions. I am confident that the message they conveyed is being respected and followed by the Acting U.S. Attorneys as they await the Senate confirmation of presidentially-appointed U.S. Attorneys.

21. DOJ recently announced they will never subpoena reporter records.⁸ If confirmed as the head of the National Security Division, how do you plan to conduct investigations into leaks of classified information given this new policy?

RESPONSE: The government has an important responsibility to safeguard classified information, the unauthorized disclosure of which, by definition, could harm U.S. national security. The Attorney General recently issued new guidance governing the use of compulsory process to obtain information from, or records of, members of the news media. If confirmed, I will ensure that the National Security Division fully complies with this policy. The Department is still empowered, under the new guidance, to discharge its duty to protect classified information and, where appropriate, to conduct investigations into

⁸ <https://www.justice.gov/ag/page/file/1413001/download>

unlawful disclosures. The new guidance expressly “does not ... affect the Department’s traditional ability to use compulsory legal process to obtain information from or records of, for example, a government employee (rather than a member of the news media) who has unlawfully disclosed government information.”

22. Are you planning to engage early on reauthorizing Section 702 of the FISA Amendments Act?

RESPONSE: Section 702 of the FISA Amendments Act is a critical national security tool. If confirmed, I will seek expeditiously to engage with leadership in the Department and the Intelligence Community, as well as members of this Committee and others in Congress, on issues related to the reauthorization of this vital authority.

23. Will the National Security Division continue the very successful China Initiative, to fight Chinese espionage, under your leadership, if confirmed?

RESPONSE: I am aware of the China Initiative generally, but because I am not currently at the Department, I am not familiar with how it is structured or implemented. If confirmed, I am committed to leading the National Security Division to continue to prioritize countering threats from China, and I look forward to learning more about existing efforts and opportunities to do more. I would welcome the opportunity to engage with this Committee on ways to build upon the important work that began under my predecessor.

24. Do terrorists like the Boston Marathon bomber deserved the death penalty?

RESPONSE: Because the case referred to in this question is currently being litigated, it would not be appropriate for me to comment.

25. Are “incels” a national-security threat?

RESPONSE: Recent intelligence community assessments have made clear that the United States faces a heightened threat from domestic violent extremism stemming from a wide range of groups and ideologies. The White House’s “National Strategy for Countering Domestic Terrorism” notes that, among other categories, “domestic terrorists may be motivated to violence by single-issue ideologies related to . . . involuntary celibate-violent extremism, as well as other grievances – or a combination of ideological influences.” If confirmed as Assistant Attorney General for National Security, I will prioritize confronting all forms of domestic violent extremism. I agree with the Attorney General that the role of the Department of Justice is to investigate and prosecute acts of violence and other crimes, regardless of associated ideology.

26. Do you believe legal gun purchases have caused the violent crime spike?

RESPONSE: I do not have a sufficient factual basis to answer this question.

27. Do rogue gun dealers constitute a substantial factor in the amount of crimes committed with firearms?

RESPONSE: I do not have a sufficient factual basis to answer this question. In general, I believe that laws regulating the purchase and sale of firearms should be enforced, and those who violate these laws should be prosecuted.

28. Is Micah Johnson a black racially motivated violent extremist, as the FBI has said?

RESPONSE: I am not sufficiently familiar with the relevant facts to provide an answer.

29. Should China be sanctioned for the Microsoft Exchange cyber attack?

RESPONSE: In a statement issued on July 19, 2021, the United States, together with its allies publicly attributed “with a high degree of confidence that malicious cyber actors affiliated with PRC’s [Ministry of State Security] conducted cyber espionage operations utilizing the zero-day vulnerabilities in Microsoft Exchange Server disclosed in early March 2021.” In that same statement, the United States made clear that “both this incident and the PRC’s broader malicious cyber activity with senior PRC Government officials ... threaten security, confidence, and stability in cyberspace.” The Department does not have the authority to sanction entities or individual actors, therefore I would defer to the agencies with those authorities to determine whether sanctions would be an appropriate response to this event. However, as a general matter, I would support an all-tools approach to state-sponsored malicious cyber activities, which may include the use of sanctions in appropriate circumstances.

30. What should the Department be doing to thwart attacks which utilize drones/UAVs?

RESPONSE: I understand that drones are increasingly becoming a relatively inexpensive and accessible tool that can allow actors to engage in nefarious activity or even conduct attacks from the air. If confirmed, I will work with Department leadership and other appropriate agencies to address any threat while protecting civil liberties.

31. Is it important for the FBI defensive briefing policy to be free of political and media influences in making the decision who to brief?

RESPONSE: Yes.

32. Is it legal for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity?

RESPONSE: The Supreme Court held in *Terry v. Ohio*, 392 U.S. 1 (1968), that it is constitutional for police to stop and frisk someone based on a reasonable suspicion of involvement in criminal activity. Further questions of legality would depend on the laws of the jurisdiction in question.

33. Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a “living constitution”?

RESPONSE: I am not familiar with Judge Jackson’s statements.

34. As a former prosecutor do you believe it is possible for private parties—like law firms, retired prosecutors, or retired judges—to prosecute federal criminals in the absence of charges being actively pursued by federal authorities?

RESPONSE: The federal government is responsible for investigating and prosecuting federal crimes.

35. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform.

- a. Do you agree with Attorney General Garland, Lisa Monaco, and Vanita Gupta that a member of the Federalist Society should be allowed to serve on front-office staff within the Justice Department?

RESPONSE: Yes.

- b. If so, does that mean you would allow a member of the Federalist Society to serve on the Criminal Division front-office staff?

RESPONSE: If confirmed, I would allow a member of the Federalist Society to serve on the National Security Division’s front-office staff.

- c. Do you agree with Attorney General Garland, Lisa Monaco, and Vanita Gupta that a member of the Federalist Society should be allowed to be promoted to chief, assistant chief, section head, or any other career supervisory position in the Justice Department?

RESPONSE: Yes.

36. As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?

RESPONSE: No.

37. Do you agree with the propositions that some clients don't deserve representation on account of their:

a. Heinous crimes?

RESPONSE: No.

b. Political beliefs?

RESPONSE: No.

c. Religious beliefs?

RESPONSE: No.

38. Should judicial decisions take into consideration principles of social "equity"?

RESPONSE: Judicial decisions should be based on the facts and the law and the interests of justice.

39. Is climate change real?

RESPONSE: Yes, climate change is real. According to NASA, the overwhelming scientific consensus is that the Earth's climate is warming and that climate-warming trends are extremely likely due to human activities. <https://climate.nasa.gov/scientific-consensus/>

40. Is gun violence a public-health crisis?

RESPONSE: Yes. I agree with the President, who described gun violence as a public-health crisis.

41. Is racism a public-health crisis?

RESPONSE: According to the CDC, racism can “affect the well-being of millions of Americans.”

42. Is the federal judiciary systemically racist?

RESPONSE: Based on my experience, I believe there are ways in which the justice system, like many institutions, has been affected by the enduring legacy of slavery and racism in this country. In my experience, however, the individuals who make up the judicial branch strive to treat all people involved in the justice system fairly and without bias.

43. On October 26, 2020, you organized a group of 83 former D.C. federal prosecutors to sign a letter supporting changes to address racial bias. Specifically, the letter “called for implicit-bias training for prosecutors and for a new focus on alternatives to incarceration.”

- a. Do you plan to mandate implicit-bias training within the National Security Division?
- b. How will implicit-bias training improve the work within the National Security Division?
- c. Do you plan to ask National Security Division prosecutors to focus on “alternatives to incarceration”?
- d. Please provide some examples of “alternatives to incarceration” that you think is appropriate for defendants being prosecuted within the National Security Division.

RESPONSE (43(a)-(d)): In October 2020, I helped lead an effort by former members of the United States Attorney’s Office for the District of Columbia to express our support for a working group of Black Assistant U.S. Attorneys in the office, who had proposed a set of reforms to address challenges in our criminal justice system. Because I am not presently at the Justice Department, I am not familiar with the specific training for Department employees. If confirmed, I would welcome the opportunity to learn more about available training and to support appropriate training to improve the work of the National Security Division. I would expect individuals in the National Security Division involved in prosecution decisions or sentencing recommendations—including whether to seek a term of imprisonment or alternatives to incarceration—to act in a manner that is consistent with the facts and the law, Department policy, and the obligation to seek justice.

44. Is the federal judiciary affected by implicit bias?

RESPONSE: I believe that based on our experiences we all develop attitudes or stereotypes that may affect our understanding, actions, and decisions in an unconscious manner. Public officials must seek to avoid allowing any improper bias to influence the execution of their responsibilities.

45. Is the national security division of the DOJ impacted by implicit bias?

RESPONSE: I believe that based on our experiences we all develop attitudes or stereotypes that may affect our understanding, actions, and decisions in an unconscious manner. Public officials must seek to avoid allowing any improper bias to influence the execution of their responsibilities.

46. Assuming that you are confirmed, how will your implicit bias impact the manner in which you carry out your role as the head of the National Security Division?

RESPONSE: I believe that based on our experiences we all develop attitudes or stereotypes that may affect our understanding, actions, and decisions in an unconscious manner. If confirmed, I will seek to avoid allowing any improper bias to influence the execution of my responsibilities.

If confirmed, I will support the implementation of the President's Executive Order directing federal agencies to conduct an internal review and devise plans to address unequal barriers to opportunity in agency policies and programs.

47. Do you have implicit bias? How do you know if it's implicit?

RESPONSE: I believe that based on our experiences we all develop attitudes or stereotypes that may affect our understanding, actions, and decisions in an unconscious manner. If confirmed, I will seek to avoid allowing any improper bias to influence the execution of my responsibilities. I agree with the Attorney General that, "every human being has biases. That's part of what it means to be a human being. And the point of examining our implicit biases is to bring our conscious mind up to our unconscious mind and to know when we're behaving in a stereotyped way."

48. You criticized former Director of National Intelligence, John Ratcliffe, for allegedly "cherry-pick[ing] pieces of classified information, to fit his political narratives." You have made a number of political statements since the election of President Trump, in addition to signing three highly charged "DOJ Alumni Letters." How are your politically charged statements different from former Director Ratcliffe's?

RESPONSE: This question cites an article I co-authored on the website *Just Security*. The quoted sentence reads in full: "If he is to keep the promises he made to the Senate, Ratcliffe will have to safeguard the independence of the Intelligence Community, and fend off the president, who seeks to use every tool at his disposal, even cherry-picked pieces of classified intelligence information, to fit his political narratives." This sentence stated that President

Trump, not Director Ratcliffe, had “cherry-picked pieces of classified intelligence information.”

My prior statements, including letters I signed as a former Department of Justice official, were based on my best understanding of the relevant facts and the law.

49. During your hearing before the Senate Judiciary Committee, you stated that you were supportive of the nature in which the Trump Administration took the fight to ISIS over the past several years. In your expert opinion, within the realm of the National Security Division, what else did the Trump Administration correctly handle?

RESPONSE: I admire and support the work of the career professionals in the National Security Division. Their efforts reflect their dedication, expertise, and commitment to the rule of law. I believe the National Security Division was highly effective in advancing our national security under the leadership of Assistant Attorney General John Demers.

50. Why should the Biden Administration close Guantanamo Bay?

- a. You previously stated that Guantanamo Bay hasn’t been closed “because of the politics around the Guantanamo issue.” Please identify the “misinformation about Guantanamo” that you referred to in your interview.

RESPONSE (50 and 50(a)): I agree with the assessments of the President and Secretary of Defense Austin that the detention facility at Guantanamo Bay should be closed, including because of its use as a recruiting tool for terrorists and its high costs of operation. In an interview in 2016, I expressed my view that political considerations, rather than national security concerns, impeded the government’s ability to close the facility.

51. Is threatening Supreme Court Justices right or wrong?

RESPONSE: It is wrong to threaten anyone with physical harm or violence, including Supreme Court Justices.

52. How do you distinguish between “attacks” on a sitting judge and mere criticism of an opinion he or she has issued?

RESPONSE: In distinguishing between attacks and mere criticism, I would refer to legal precedents defining “true threats” not entitled to the protections of the First Amendment.

53. Do you think the Supreme Court should be expanded?

RESPONSE: I do not have a developed view on the question.

54. What is the difference between defunding the police and “the divestment/reinvestment approach to policing?”

RESPONSE: I do not have a sufficient factual basis to answer this question.

55. You have advocated that law enforcement officers receive better “training” in the wake of the George Floyd protests last summer. What kinds of additional “training” do you envision these officers receiving?

RESPONSE: I believe it is important that law enforcement officers receive adequate training to carry out all aspects of their responsibilities. In the statement this question references, my co-authors and I referred to de-escalation techniques as among the important tools needed to ensure responsible and just policing.

56. Which country is a bigger threat to our national security—Russia or China?

RESPONSE: Russia and China each present a significant national security threat through their actions, ranging from military conflict to cyberattacks and from espionage to malign foreign influence operations. China remains a leading threat to the integrity of our commercial and military technologies through its use of legal and illegal means to advance its own technological capabilities. Russia presents a significant cyber threat as it refines and employs its espionage, influence, and attack capabilities. Russia also presents one of the most serious intelligence threats to the United States. If confirmed, I will work with Department leadership and the Intelligence Community to ensure that our efforts are prioritized to address these serious national security threats.

57. Is the Cuban Communist Party a threat to national security?

RESPONSE: I am not in government at this time and do not know the current state of intelligence reporting regarding this issue. I believe that support for democracy and human rights must be core components of our efforts to support the Cuban people and their ability to determine their own future.

58. How do you understand the difference, if any, between freedom of religion and freedom of worship?

RESPONSE: I do not have a view on this question.

59. Do you believe that an individual retains an “absolute zone of privacy”?

RESPONSE: The Constitution and other laws generally protect important aspects of individual privacy, such as privacy in the home and the right to be free from unreasonable searches or seizures.

60. Do you believe potential voter fraud or other elections abnormalities are concerns that the Justice Department should take seriously?

RESPONSE: The Department of Justice should take all credible allegations of voter fraud or election fraud seriously.

61. If the Justice Department determines that the prosecution of an individual is meritless and dismisses the case, is it appropriate for a District Judge to question the Department’s motivations and appoint an amicus to continue the prosecution? Please explain why or why not.

RESPONSE: I understand that federal courts have broad authority to appoint amici if they determine that participation of an amicus would aid in the consideration of a case or controversy.

62. Over the course of your career, how many times have you spoken at events sponsored or hosted by the following liberal, “dark money” groups?

- a. American Constitution Society
- b. Arabella Advisors
- c. Demand Justice
- d. Fix the Court
- e. Open Society Foundation

RESPONSE: I am not aware that I have ever spoken at an event sponsored or hosted by the listed organizations.

63. Do you agree that the First Amendment is more often a tool of the powerful than the oppressed?

RESPONSE: I believe the First Amendment guarantees rights for all Americans.

64. What fact-checking organization(s) should the United States government trust to accurately assess information?

RESPONSE: The Department of Justice, the Federal Bureau of Investigation, and other law enforcement and intelligence partners gather facts that may be used in its investigations and prosecutions. Beyond that, I cannot comment on fact-checking organizations.

65. Do you believe that the average citizen is capable of serving as his or her own fact-checker without aid from social media or the media?

RESPONSE: On some issues, a person may be able to determine the accuracy of certain facts (e.g. whether it is raining outside) without reference to outside sources. On other issues, it may be helpful for a person to consult other sources of information, such as reliable media outlets.

Do you believe that the United States government should partner with social media companies to “identify disinformation campaigns and to weed out fake news planted by foreign intelligence services?”

- a. Should the United States government team up with social media companies to identify and silence perceived disinformation campaigns and “fake news” from:
 - iii. National Republican Platforms?
 - iv. Conservative news organizations?
 - v. Individual Conservative influencers or reporters?
 - vi. Children espousing conservative viewpoints?
- b. Should President Biden (or his senior officials) encourage the creation of “lists” containing the names of individuals who spread “disinformation”?
- c. How is the aforementioned act different from the activities of communist China?

RESPONSE (66-66(c)): I support efforts by social media companies to combat misinformation campaigns from foreign adversaries on their platforms, and I believe the federal government can play an important role in those efforts by providing companies with information about these activities. During the prior administration, for example, the FBI launched a Foreign Influence Task Force to identify and counteract malign foreign influence operations targeting the United States. I do not believe the federal government should encourage social media companies to remove speech based on partisan political considerations.

66. Is the failure to teach Critical Race Theory in elementary schools a national security threat?

RESPONSE: In my experience, decisions regarding elementary school curricula do not raise national security concerns.

67. Is the individual right to keep and bear arms a national security threat?

RESPONSE: In general, access to weapons in the United States may increase the threat of violence from terrorism. Any effort to prevent and disrupt terrorism that may implicate constitutional protections—including rights related to speech, association, privacy, or bearing arms—must be consistent with the Constitution and the law.

68. On June 10, 2020, you signed a letter to Inspector General Horowitz criticizing the actions of then-Attorney General Bill Barr and President Trump for an event you described as a “photo op” in Lafayette Square on June 1, 2020 and demanding an immediate investigation into the events. An Inspector General Report released on June 8, 2021, found the following:

that the USPP had the authority and discretion to clear Lafayette Park and the surrounding areas on June 1. The evidence we obtained did not support a finding that the USPP cleared the park to allow the President to survey the damage and walk to St. John’s Church. Instead, the evidence we reviewed showed that the USPP cleared the park to allow the contractor to safely install the antiscale fencing in response to destruction of property and injury to officers occurring on May 30 and 31. Further, the evidence showed that the USPP did not know about the President’s potential movement until mid-to late afternoon on June 1—hours after it had begun developing its operational plan and the fencing contractor had arrived in the park.⁹

- a. Do you accept the results of the independent Inspector General investigation?
- b. Do you regret your disproved comments?
- c. What commitments can you give me that you will not similarly jump to conclusions as the Assistant Attorney General for the National Security Division evaluating cases before you like you did when evaluating the clearing of Lafayette Square?

RESPONSE (69(a)-(c)): I am not sufficiently familiar with the above-referenced report of the Department of Interior Inspector General to comment on the scope of its review or its conclusions. If I am confirmed, I will evaluate all law enforcement matters before me based on the law and all available evidence, and without regard to political considerations.

⁹ Office of the Inspector General, Department of the Interior, “Review of U.S. Park Police Actions at Lafayette Park,” June 8, 2021, available at: <https://www.doiioig.gov/reports/review-us-park-police-actions-lafayette-park>

69. Does illegal immigration impose costs on border communities?

RESPONSE: I am not sufficiently familiar with all of the information that would be necessary to provide an informed answer to this question.

70. Is illegal immigration a national-security threat?

RESPONSE: The United States has important interests in securing our borders. I agree with Secretary Mayorkas. He stated that the United States will “not waver in our values and our principles as a Nation. Our goal is a safe, legal, and orderly immigration system that is based on our bedrock priorities: to keep our borders secure, address the plight of children as the law requires, and enable families to be together.”

71. When was the last time you visited the U.S.-Mexico border?

RESPONSE: I last visited the U.S.-Mexico border in July 2019 in my capacity as a director of Human Rights First.

72. When was the last time you visited the U.S.-Mexico border outside of a port of entry?

RESPONSE: I have not visited the U.S.-Mexico border outside of a port of entry.

73. The Justice Department Inspector General’s report on Crossfire Hurricane exposed serious flaws in the Department’s FISA application policy and process. The Foreign Intelligence Surveillance Court has also made its frustration with the Department’s shortcomings very clear. What steps will you take to make sure that the errors and mistakes that occurred with the Carter Page FISA warrant applications and Woods Procedure never happen again?

RESPONSE: For decades since its enactment, FISA has proven to be an indispensable tool for protecting our national security. It is vital that the American public, Congress, and the courts have confidence in its use. The legitimacy of the FISA process depends on the government holding itself to the highest standards in providing the Court with complete and accurate information. I understand that the Department of Justice, including the Federal Bureau of Investigation, has taken steps to address issues identified by Inspector General Horowitz and recommendations based on his recent report. I am not currently in the Department and am not aware of the specific steps, but I have read in public filings that this work is ongoing and both the Inspector General and the FISA Court are carefully monitoring the progress. Additionally, I am aware that the FISA Court commissioned a review from an amicus curiae for further recommendations and that the government generally adopted those recommendations. If confirmed, I will make the implementation of these reforms, and FISA integrity generally, a top priority, working with Department leadership and counterparts at FBI and the rest of the Intelligence Community.

74. Last year, it was reported that the DOJ's National Security Division determined that AJ+, a subsidiary of Al Jazeera Media, must register under FARA. To date, AJ + has ignored this mandate and Al Jazeera has doubled-down on its activities by launching "Rightly," a media platform aimed at conservative Americans. Will you commit to enforcing FARA compliance for AJ+ and Rightly?

RESPONSE: The National Security Division oversees enforcement of the Foreign Agents Registration Act, which Congress passed to promote transparency and accountability regarding entities or individuals who work on behalf of foreign principals to influence U.S. public opinion and policy. Because I am not at the Department, I do not have information related to any pending enforcement actions. If confirmed, I will ensure the Division's important work in this area is appropriately resourced, and I will make sure we bring enforcement actions to compel registration where appropriate.

75. Earlier this year, I reintroduced the Foreign Agents Disclosure and Registration Enhancement Act which authorizes the Attorney General to issue civil investigative demands for the production of information, increases penalties for noncompliance, requires the development and implementation of a comprehensive enforcement strategy, among other things. Will you commit to supporting this bill?

RESPONSE: If confirmed, I look forward to working with you on this bill and to supporting the important work of the National Security Division in this area.

76. On June 29, 2021, I wrote to the Justice Department about a recent National Security Division hire, Susan Hennessey. In that letter, I noted that Ms. Hennessey expressed a clear partisan bias against Special Counsel Durham's investigation. As just one of many examples, she stated,

Durham has made abundantly clear that in a year and a half, he hasn't come up with anything. I guess this kind of partisan silliness has become characteristic of Barr's legacy, but unclear to me why Durham would want to go along with it.

I have concerns about any potential role she may have on Special Counsel Durham's inquiry in light of her public comments. If you are confirmed, will you ensure that she is recused from the Durham inquiry if she currently has a role? If not, why not?

RESPONSE: Ms. Hennessey is highly qualified, and I have confidence in her integrity and abilities. It is my understanding from public reporting that Special Counsel Durham is conducting an independent investigation. If confirmed, I would seek to ensure that every member of the National Security Division strictly abides by the ethics rules, including those governing recusals.

77. If you are confirmed, will you inform this committee whether Ms. Hennessey had, or has, any authorization to access any aspect of the Durham inquiry, including records, and whether she has used that authorization? If not, why not?

RESPONSE: I am not at the Department and I do not familiar with the policies governing access to records. As stated above, my understanding from public reporting is that Special Counsel Durham is conducting an independent investigation. If confirmed, I will ensure the National Security Division cooperates with any ongoing investigations and that all of the Division's law enforcement work is free of improper political influence or bias.

78. Please describe the selection process that led to your nomination to be Assistant Attorney General, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

RESPONSE: I was approached in March 2021 by the White House Office of Presidential Personnel about being nominated to serve as Assistant Attorney General for National Security. I participated in a vetting and screening process, and in May I received a formal notification that the President would nominate me, which he did on May 27, 2021.

79. During your selection process did you talk with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?

RESPONSE: I am not aware of talking with any officials from or anyone directly associated with the organization Demand Justice during my selection process.

a. Did anyone do so on your behalf?

RESPONSE: I am not aware that anyone on my behalf talked with any officials from or anyone directly associated with the organization Demand Justice during my selection process.

80. During your selection process did you talk with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?

RESPONSE: I am not aware of talking with any officials from or anyone directly associated with the organization the American Constitution Society during my selection process.

a. Did anyone do so on your behalf?

RESPONSE: I am not aware that anyone on my behalf talked with any officials from or anyone directly associated with the organization the American Constitution Society during my selection process.

81. During your selection process did you talk with any officials from or anyone directly associated with the website Lawfare, including but not limited to Benjamin Wittes or Susan Hennessy? If so, what was the nature of those discussions?

RESPONSE: During my selection process, I spoke with Susan Hennessey. We discussed opportunities to serve in government. I also spoke with Benjamin Wittes and discussed his decision to write an article sharing his views on Ms. Hennessey. In addition, I communicated with former Department officials, Jack Goldsmith and David Kris, who I understand are also both affiliated with Lawfare.

I am not aware of talking with any other officials from or anyone directly associated with Lawfare during my selection process.

a. Did anyone do so on your behalf?

RESPONSE: I am not aware that anyone on my behalf talked with any officials from or anyone directly associated with Lawfare during my selection process.

82. During your selection process, did you talk with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

RESPONSE: I am not aware of talking with any officials from or anyone directly associated with the listed organizations during my selection process.

a. Did anyone do so on your behalf?

RESPONSE: I am not aware that anyone on my behalf talked with any officials from or anyone directly associated with the listed organizations during my selection process.

83. During your selection process did you talk with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?

RESPONSE: I am not aware of talking with any officials from or anyone directly associated with the Open Society Foundation during my selection process.

a. Did anyone do so on your behalf?

RESPONSE: I am not aware that anyone on my behalf talked with any officials from or anyone directly associated with the Open Society Foundation during my selection process.

84. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding your nomination.

RESPONSE: I do not have a record of those specific dates. The conversations I had occurred between March and May of 2021.

85. Please explain, with particularity, the process whereby you answered these questions.

RESPONSE: The Department of Justice received these questions on July 21, 2021. I worked with Department attorneys, conducted research, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on July 26, 2021.

Post-Hearing Questions for the Record
Matthew G. Olsen
Submitted July 21, 2021

Senator John Cornyn

1. Pursuant to 12(c) of the Senate Judiciary Committee Questionnaire (“SJQ”) you are required to identify “any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.” In reviewing your record, there were public letters—on matters of policy and legal interpretation that you endorsed—that were omitted from your SJQ. Do you believe that you met the requirements of 12(c) in your SJQ?

RESPONSE: In response to question 12(c), I did my best to identify any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that I had issued or provided or that others presented on my behalf to public bodies or public officials. I included numerous references to legal briefs submitted in judicial proceedings and to my testimony before Congress. However, I did not understand this question to include the open letters I had signed.

It appears from your question that I misunderstood the intended scope of question 12(c). I appreciate the opportunity to correct that now. I have attached the five open letters I signed, which were published online.

2. On May 11, 2020, former Department of Justice attorneys signed a public statement on the Michael Flynn case. The public statement criticized the administration’s stance on the Michael Flynn case, and “call[ed] upon Congress to formally censure Attorney General Barr for his repeated assaults on the rule of law in doing the President’s personal bidding.”
 - a. Did you sign this letter?
 - b. If so, why was this letter omitted from your SJQ?

RESPONSE: Please see my response to Question 1.

3. On February 16, 2020, former Department of Justice attorneys signed a public letter regarding the “Events Surrounding the Sentencing of Roger Stone.”
 - a. Did you sign this letter?
 - b. If so, why was this letter omitted from your SJQ?

RESPONSE: Please see my response to Question 1.

4. On May 6, 2019, former federal prosecutors signed a public letter stating that “but for the OLC memo, the overwhelming weight of professional judgment would come down in favor of prosecution” of President Trump.
 - a. Did you sign this letter?
 - b. If so, why was this letter omitted from your SJQ?

RESPONSE: Please see my response to Question 1.

5. On October 1, 2020, former Department of Justice attorneys signed a public letter regarding “Protecting Free and Fair Elections.” In that letter, former DOJ attorneys claimed, among other things, that Attorney General Barr had “weaponiz[ed] the DOJ in the service of Trump’s personal interests, thereby doing grave damage to the rule of law.”
 - a. Did you sign this letter?
 - b. If so, why was this letter omitted from your SJQ?
 - c. Do you believe that Attorney General Barr, in his service to our country, undermined the rule of law?

RESPONSE: Please see my response to Question 1.

6. On June 10, 2020, former Department of Justice attorneys signed a public letter calling for Inspector General Michael Horowitz to open a probe into Attorney General Barr’s and the DOJ’s response to the summer protests and riots.
 - a. Did you sign this letter?
 - b. If so, why was this letter omitted from your SJQ?

RESPONSE: Please see my response to Question 1.

Post-Hearing Questions for the Record
Matthew G. Olsen
Submitted July 21, 2021

Senator Tom Cotton

1. Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?

RESPONSE: No.

2. Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?

RESPONSE: No.

3. In September 2020, the Department of Justice ordered Al Jazeera's U.S.-based platform, AJ+, to register as a foreign agent for the Government of Qatar. To date, AJ+ has failed to register under the Foreign Agents Registration Act. If confirmed, will you commit to enforcing the Department's September 2020 ruling?

RESPONSE: The National Security Division oversees enforcement of the Foreign Agents Registration Act, which Congress passed to promote transparency and accountability regarding entities or individuals who work on behalf of foreign principals to influence U.S. public opinion and policy. Because I am not at the Department, I do not have information related to any pending enforcement actions. If confirmed, I will ensure the Division's important work in this area is appropriately resourced, and I will make sure we bring enforcement actions to compel registration where appropriate.

4. Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.

RESPONSE: The Department of Justice received these questions on July 21, 2021. I worked with Department attorneys, conducted research, and answered the questions. I finalized answers to the questions and authorized their transmission to the Committee on July 26, 2021.

5. Did any individuals outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.

RESPONSE: No individual outside of the federal government wrote or drafted answers to these questions or the written questions of other Committee members. See my answer to Q4. above.

Post-Hearing Questions for the Record
Matthew G. Olsen
Submitted July 21, 2021

Senator Mazie Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:
 - a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

RESPONSE: No.

- b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

RESPONSE: No.

2. Last month, Professor Anming Hu stood trial on non-espionage charges under the Justice Department's China Initiative. According to media reports, the FBI presented false information about Hu to university officials and others to cast Hu as a Chinese military operative. Hu was not convicted but he is just one of hundreds of academics and scientists, most of whom are Asian, who are being targeted under the China Initiative. Critics charge that some cases amount to racial profiling and are occurring at a time of increased xenophobia and a rise in anti-Asian hate incidents.
 - a. Are you aware that Attorney General Garland has stated that although the Justice Department will counter hacking and other illegal activity by China, it will take care to avoid negatively stereotyping Asian Americans and citizens of China?
 - b. If confirmed, how will you ensure that the National Security Division counters the real threats posed by China without targeting Chinese Americans and Chinese citizens in the U.S. based simply on their ethnicity?

RESPONSE (2a and 2b): I am aware of and agree with the Attorney General's statements. My first job at the Department was in the Civil Rights Division, and I take very seriously the challenges of discrimination and racial and ethnic bias. I believe any effort to focus investigative resources based on race or ethnicity would not only be inconsistent with the values of the Department, but would also significantly harm our security interests by undermining the AAPI community's trust in the Department and by failing to address the actual serious threats we face. It is imperative for the Department to be thoughtful about how it describes threats and about the potential impacts that those words can have on our communities. For example, in describing espionage threats posed by China, I would strive to make clear that such threats originate from the Chinese government—not Chinese citizens in general, and certainly not American citizens of Chinese origin or descent.

Post-Hearing Questions for the Record
Matthew G. Olsen
Submitted July 21, 2021

Senator Mike Lee

1. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans' religious freedom. It was championed by Senator Ted Kennedy and Senator Orrin Hatch to pass the Senate by a vote of 97-3 and to pass the House by a unanimous voice vote. President Bill Clinton proudly signed it into law in 1993. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit to oppose any legislative or executive action that would alter in any way the Religious Freedom Restoration Act's protection for Americans of all faiths?

RESPONSE: I have not had occasion to consider any potential amendments or alterations to the Religious Freedom Restoration Act (RFRA), and I do not anticipate having such a role if I am confirmed as Assistant Attorney General for National Security. If I am confirmed, I will ensure that the National Security Division carries out its mission in a manner that upholds and secures the right of all Americans.

2. Do you believe that hateful speech alone, without any attendant conduct, should be considered a crime?

RESPONSE: The Supreme Court has made clear that speech alone can only rarely constitute a crime, such as in instances involving true threats or depictions of child sexual abuse. *See, e.g., Virginia v. Black*, 538 U.S. 343 (2003); *New York v. Ferber*, 458 U.S. 747 (1982). The Supreme Court has not recognized hate speech as among the limited categories of speech that are wholly outside the First Amendment's protections. Hateful speech alone is therefore not a crime. However, hateful speech that includes true threats of violence may be punishable by law.

3. We've seen disturbing reports recently of websites posting obscene content involving minors and parents unable to convince or force websites to remove obscene content involving their minor children. Will you commit to prioritize enforcement of our anti-trafficking and child pornography laws against these heinous online actors?

RESPONSE: Although the National Security Division does not enforce anti-trafficking or child pornography laws, I fully support enforcement of these statutes.

4. As an Assistant Attorney General, what will you do if the President takes a position that is contrary to the law or not in the interests of the United States?

RESPONSE: In the event that the President takes a position that I believe to be contrary to the law, I would look to the Attorney General and other Department leadership for guidance. The Attorney General has made clear his respect for the rule of law and the

independence of the Justice Department. Ultimately, if I were convinced that I could not faithfully discharge my duties to uphold the Constitution and the law, I would resign.

5. As a nominee for a position in the Executive branch, do you think there are any limits on the President's use of prosecutorial discretion?

RESPONSE: As the Attorney General stated during his confirmation hearing, prosecutors and other government agencies may exercise discretion about the allocation of limited enforcement resources. However, the executive branch cannot decide to abandon enforcement of a law entirely based on a policy disagreement.

6. Do you believe, if confirmed as an Assistant Attorney General, that you would have a duty to act in line with your moral code? If so, would you agree that it is part of your duty to ensure that the division under your care does not violate that code?

RESPONSE: If confirmed, I will swear an oath to support and defend the Constitution of the United States, and my decisions as Assistant Attorney General would be in keeping with this oath and in furtherance of the Department's mission. The Attorney General and Deputy Attorney General have stated they expect the same of all Department employees and I would have the same expectation of those serving in the National Security Division.

7. Along the same lines, let's assume that someone acting as an agent of the Department of Justice under your control takes actions which contradict your moral code. What responsibility do you feel you would owe for those actions?

RESPONSE: As noted above, if I am confirmed, I will take an oath to support and defend the Constitution of the United States. My decisions as Assistant Attorney General would be in keeping with this oath and in furtherance of the Department's mission. All Department employees also take an oath to support and defend the Constitution of the United States and work on behalf of the American people. If an employee violates this oath, I would address the misconduct and implement measures to prevent future misconduct from reoccurring.

8. Recent reports by the Department of Justice's Inspector General found that the government filed inaccurate applications with the FISA Court in the Crossfire Hurricane investigation, which among other things excluded relevant exculpatory evidence, and the FBI failed to follow Woods Procedures in a number of other cases. These have led many Americans, including myself, to conclude that the federal government has abused its authority under FISA. What will you do to stop the government from abusing its authority under FISA and to guarantee that government representations to the FISA Court are accurate and contain relevant exculpatory evidence?

RESPONSE: For decades since its enactment, FISA has proven to be an indispensable tool for protecting our national security. It is vital that the American public, Congress, and the

courts have confidence in its use. The legitimacy of the FISA process depends on the government holding itself to the highest standards in providing the Court with complete and accurate information. I understand that the Department of Justice, including the Federal Bureau of Investigation, has taken steps to address issues identified by Inspector General Horowitz and recommendations based on his recent report. I am not currently in the Department and am not aware of the specific steps, but I have read in public filings that this work is ongoing and both the Inspector General and the FISA Court are carefully monitoring the progress. Additionally, I am aware that the FISA Court commissioned a review from an amicus curiae for further recommendations and that the government generally adopted those recommendations. If confirmed, I will make the implementation of these reforms, and FISA integrity generally, a top priority, working with Department leadership and counterparts at FBI and the rest of the Intelligence Community.

9. Under the now expired Section 215 business records collection authorities, the warrant requirement for collection of business records is “relevant to an authorized investigation,” which is far less stringent than probable cause. If these authorities are reauthorized, would you support raising the warrant requirement to probable cause?

RESPONSE: Because I am not currently at the Department, I do not have all the information I would need to offer an informed view of this issue. As a general matter, prior to its expiration, Section 215 could not be used to obtain information such as the contents of communications, the production of which would require a warrant or order based on probable cause. Rather, Section 215 could only be used to obtain items or information that could be obtained through a grand jury subpoena or court order in an analogous criminal context. *See* 50 U.S.C. § 1861(c)(2)(D). If confirmed, I would work with Congress to address these or any other concerns regarding reauthorization of this authority.

10. Do you believe the President has inherent authority to surveil American citizens without a warrant? What limits, if any, do you think there are on that authority?

RESPONSE: Congress has enacted legislation specifically governing the circumstances in which the government may conduct electronic surveillance of American citizens. In the context of national security investigations and foreign intelligence collection, the Foreign Intelligence Surveillance Act (FISA) regulates electronic surveillance of U.S. persons, including U.S. persons who are overseas. The President is obligated to adhere to FISA in any such collection.

11. In the Senate, Senator Leahy and I have offered an amendment to reform the FISA process by strengthening the amicus curiae provisions and requiring the government to disclose relevant exculpatory evidence to both the FISA Court and amici. This amendment passed the Senate by a vote of 77 to 19. Would you support amendments to FISA to allow greater participation by amici in FISC proceedings?

RESPONSE: I have not had an opportunity to carefully study the amendment referred to in the question. Under current law, the FISC is empowered to appoint an amicus in any

matter the Court deems appropriate and must generally appoint an amicus in any matter that presents a novel or significant interpretation of law. I believe amici play an important role in the current FISA process and help preserve public confidence. If confirmed, I would seek to fully understand how the current system is operating in this respect before forming a view on legislation.

12. Do you believe that the federal government should be able to collect Americans' web browsing or internet search history without a probable cause warrant?
- a. If yes, under what authorities, in what circumstances, and with what limitations?

RESPONSE (12-12(a)): It is essential that in all cases the government meets the predicates for the legal authority needed to obtain information. Under current law, my understanding is that the government typically is not required to obtain a warrant for non-content information. Based on my prior experience, including as a federal prosecutor, my general view is that the existing procedures strike an appropriate balance between providing important investigative tools and protecting Americans' privacy. If confirmed, I will ensure that the National Security Division complies with any present or future statutory requirements, abides by Department policy, and works with Congress in considering any proposed legislative reforms.

13. Do you believe that the federal government should be able to collect Americans' GPS and cell site location information without a probable cause warrant?
- a. If yes, under what authorities, in what circumstances, and with what limitations?

RESPONSE: In *Carpenter v. United States*, the Supreme Court held that a warrant is required in a criminal investigation to collect historical cell site location information over multiple days. The Department of Justice's practices must be consistent with *Carpenter*. Because I am not currently in the Department, I am not aware of the ways in which the Department has interpreted and applied *Carpenter* to other circumstances.

14. From 2011 to 2014, you served as Director of the National Counterterrorism Center. We now know that multiple law enforcement and intelligence agencies have been exploiting a loophole to circumvent the Constitution and Congress by simply buying information that would otherwise require a court order to obtain. When you were Director of the NCTC, did you ever approve or authorize the purchase and/or use of information about people in the United States without a warrant?

RESPONSE: NCTC's use of information concerning United States persons is generally governed by its Attorney General-approved Guidelines, which permit NCTC to access and acquire United States person information for the purpose of determining whether the information is reasonably believed to constitute terrorism information and thus may be retained, used, and disseminated in accordance with NCTC's mission and other applicable laws.

15. During your time at Uber, did the government ever ask Uber for information about a customer who is a U.S. person?

RESPONSE: Yes. Uber recently published its 2020 Government Transparency Report, in which it stated: “Uber is dedicated to protecting the privacy of our users and supporting the growth of cities. Our Government Transparency Report demonstrates our commitment to advancing these goals when it comes to responding to requests for user information.

In this report, Uber is sharing an overview of information that we provided to government regulators, airports, law enforcement agencies, and public health officials in the US and Canada between January 1 and December 31, 2020.”

<https://www.uber.com/us/en/about/reports/transparency/>

- a. If yes, were any of those requests made pursuant to a gag order?

RESPONSE: Uber’s User Notice Policy concerning law enforcement requests for information is published at: <https://www.uber.com/legal/en/document/?name=guidelines-for-law-enforcement&country=united-states&lang=en#kix.ph0d6lp1mcpX>

16. Do you think customers of Uber and other companies have a reasonable expectation of privacy in their location and other data?

RESPONSE: Uber’s privacy notice is published at: <https://www.uber.com/legal/en/document/?name=privacy-notice&country=united-states&lang=en>. Information about Uber’s policies on government requests for user data is published at: https://help.uber.com/riders/article/requesting-data-from-uber/?csid=vNrLINjGSUzESXDA8IA_2w&nodeId=f1ba2cfb-2bd0-4d49-9e68-f980cdb8829&state=ABQwSJUUpPGHoBRWJMtipmyyg4h03fw536RNYOwHadg%3D

Post-Hearing Questions for the Record
Matthew G. Olsen

Submitted July 21, 2021

Senator Jon Ossoff

1. Last Congress, Senators Lee and Leahy offered an amendment to amend the Foreign Intelligence Surveillance Court (FISC) amicus provisions that were passed in the 2015 USA FREEDOM Act. Their amendment would create a presumption that the FISC must appoint an amicus in cases that raise First Amendment or other civil liberties concerns, as well as cases that address new technologies or target political candidates or the news media. The Senate passed the amendment 77 to 19.
 - a. Do you believe the Lee-Leahy amendment would improve the FISC process? Please be as direct, precise, and clear as possible.

RESPONSE: I have not had an opportunity to carefully study the amendment referred to in the question. Under current law, the FISC is empowered to appoint an amicus in any matter the Court deems appropriate and must generally appoint an amicus in any matter that presents a novel or significant interpretation of law. As a general matter, I believe amici play an important role in the current FISA process and help preserve public confidence. If confirmed, I would seek to fully understand how the current system is operating in this respect before forming a view on legislation.

2. It has been reported that in 2017 and 2018 the Department of Justice subpoenaed private companies, including Apple and an internet service provider, to acquire phone and email records of Members of Congress, including members of the House Permanent Select Committee on Intelligence, as well as Congressional staff and family members of Members of Congress.
 - a. Under what circumstances do you believe it is appropriate for the Department of Justice to order the disclosure of such records pertaining to Members of Congress, and, if confirmed, will you provide promptly to the Senate Judiciary Committee all records related to these subpoenas, which represent a potentially grave threat to the separation of powers and the confidentiality of legislative deliberations and Congressional oversight?

RESPONSE: Based on the Attorney General's public statements, I understand that he and the Deputy Attorney General have started a process to evaluate and strengthen the Department's policies and procedures for obtaining records related to members of Congress. Additionally, I understand that the Attorney General has referred the specific matter your question references to the Department's Inspector General. If I am confirmed, I will ensure that the National Security Division cooperates fully in that investigation. I will also work to ensure that this Committee receives information

responsive to its oversight requests, consistent with any applicable legal constraints and the need to protect the integrity of law enforcement investigations.

- b. The Attorney General has stated that he will issue regulations prohibiting the collection of journalists' records in national security leak investigations. Do you support this policy?

RESPONSE: The Attorney General has recently issued a memorandum that bars prosecutors and investigators from collecting journalists' records in leak investigation as well as in other types of investigations, subject to narrow exceptions. If I am confirmed, I will ensure that the National Security Division adheres strictly to this policy.

- c. In your view, should there be a similar policy with respect to Members of Congress?

RESPONSE: As noted in response to Question 2(a), I understand the Department has initiated a process to evaluate and strengthen its policies and procedures for obtaining records related to members of Congress. I believe that efforts by the Executive Branch to obtain records from Members of Congress may raise substantial separation-of-powers concerns and that any policy developed by the Department should take those concerns into account.

- 3. The Supreme Court held in *Carpenter v. United States* that law enforcement officials need a warrant in order to collect historical cell site location information in criminal cases because an extensive and detailed record of a person's physical movements can reveal intimate personal information.
 - a. If confirmed, will you share with this Committee any guidance the Department of Justice has issued to prosecutors about how and whether to apply this *Carpenter* standard in contexts—for example, the collection of GPS data, other location or pattern-of-life data collected from mobile devices or device applications, data purchased from private parties such as so-called “data brokers,” or the collection of cell site information in national security cases? And if there is no such guidance, will you work to produce it and brief the Committee on the progress of such production?

RESPONSE: Because I am not currently at the Department, I am not familiar with the current guidance regarding the *Carpenter* decision. The Attorney General has stated that he will direct the Department's Office of Legislative Affairs to work with this Committee to determine what information the Department can provide on this subject, consistent with its longstanding policies and practices. If confirmed, I will work with Department leadership to understand the Department's current guidance, to identify if additional guidance is needed, and to share the best information possible with this committee.

- b. It has been reported that Federal agencies may be circumventing the requirements established by the *Carpenter* decision, as well as statutory restrictions established by the Electronic Communications Privacy Act, by buying detailed geolocation information from so-called “data brokers.” In your view, does this practice violate Americans’ expectations of privacy and is it consistent with the spirit and letter of the law as established by Congress and affirmed by the Court in *Carpenter v. United States*?

RESPONSE: I am not familiar with the current practices of federal agencies in this area. If confirmed, I will work to ensure that the National Security Division complies with the law, including in a manner consistent with the Supreme Court holding in *Carpenter*. The Assistant Attorney General for National Security is also the Department’s primary liaison to the intelligence community. In that capacity, I look forward to working with the Director of National Intelligence, who has stated that she intends to develop and disclose, to the extent possible, the legal frameworks governing the collection of information.

- c. If confirmed, will you disclose to this Committee all relevant information regarding the DOJ’s purchase of location information and other personal data from private parties such as “data brokers” and a full accounting of how the National Security Division is using such data?

RESPONSE: Because I am not currently at the Department, I am not sufficiently familiar with current practices to know the types of information that might feasibly be shared with this Committee. I am committed to be a true partner to this Committee in its oversight role. If confirmed, I will work with Department leadership to share the best information possible regarding this and other matters of legislative interest.

Post-Hearing Questions for the Record
Matthew G. Olsen

Senator Ben Sasse

1. Since becoming a legal adult, have you participated in any events at which you or other participants called into question the legitimacy of the United States Constitution?

RESPONSE: No.

2. Since becoming a legal adult, have you participated in any rallies, demonstrations, or other events at which you or other participants have willfully damaged public or private property?

RESPONSE: No.

Post-Hearing Questions for the Record
Matthew G. Olsen
Submitted July 21, 2021

Senator Thom Tillis

1. What are your qualifications to serve as Assistant Attorney General for the National Security Division?

RESPONSE: I believe my experience has prepared me to serve as Assistant Attorney General for National Security. For more than two decades I served as a leading government official on national security, law enforcement, and intelligence matters. From 2011-2014, I served as the Director of the National Counterterrorism. Prior to leading NCTC, I was the General Counsel for the National Security Agency.

For 18 years, I worked at the Department of Justice as a career attorney and in a number of leadership positions. I began my public service career as a trial attorney in the Civil Rights Division. For over a decade, I was a federal prosecutor in the U.S. Attorney's Office for the District of Columbia. I also served as Special Counsel to the Director of the Federal Bureau of Investigation, supporting the post-9/11 transformation of the FBI.

I also bring extensive experience in the Division I have been nominated to lead. In 2006, I helped establish the National Security Division and served as the first career Deputy Assistant Attorney General for National Security, managing intelligence activities and implementing Congress's landmark changes to the Foreign Intelligence Surveillance Act. In 2009, I also served as the Acting Assistant Attorney General for National Security.

At every stage of my career, I have been guided by the values of the Department of Justice: devotion to the Constitution, to the search for the truth, and to the pursuit of equal justice under the law. If I am confirmed, I will follow the facts and the law, and I will work relentlessly to advance the security of our nation.

2. Please explain what will be your agenda as Assistant Attorney General, and what are your top priorities if you are confirmed?

RESPONSE: As I have stated in testimony, I would have three main priorities if I am confirmed.

First, as the Attorney General's stated, addressing the threats posed by domestic terrorism must be a top priority. The National Security Division has a significant role to play to combat these threats. Domestic terrorism is a persistent and evolving threat, requiring an urgent, whole-of-government response. I would also seek to ensure that the National Security Division continues to combat the threats of international terrorist groups, like ISIS and al-Qaida. If confirmed, I will work with Justice Department leadership to remain vigilant against all of these threats, without regard to ideology.

Second, the National Security Division plays a critical role in safeguarding our nation's infrastructure and public and private networks against cyberattacks by our adversaries, especially hostile nation state actors. If confirmed, I will work alongside leadership in the Justice Department, the Department of Homeland Security, and the Intelligence Community, as well as with foreign and private sector partners, to deter, disrupt, and prosecute those responsible for these types of attacks.

Third, I would focus on the Division's responsibility to administer the Foreign Intelligence Surveillance Act, including in an oversight capacity. It is imperative that the government maintain the trust of the public, of the Congress, and of the FISA Court in the accuracy and integrity of the FISA process. If confirmed, I will work to ensure that the intelligence activities carried out on behalf of the American public are consistent with our Constitution, our laws, and our values.

3. What are the most pressing cybersecurity threats facing the United States? How will you apply your cybersecurity experience in both the public and private sectors to address this national security threat?

RESPONSE: If confirmed, I look forward to fully supporting the Administration's national security work to address the significant cybersecurity threats we face, including threats to critical infrastructure and the challenges posed by ransomware. My experience in both the public and private sectors has provided me with a deep appreciation of the challenges that the federal government and businesses face operating in a dynamic threat environment, and of the importance of cooperation between the public sector and the private sector in confronting these challenges. I have also gained valuable management experience in both the public and private sectors in leading large, diverse teams driven by a common mission.

**Post-Hearing Questions for the Record
Matthew G. Olsen
Submitted July 21, 2021**

Senator Ted Cruz

1. Do you personally own any firearms? If so, please list them.

RESPONSE: No.

2. Have you ever personally owned any firearms?

RESPONSE: No.

3. Have you ever used a firearm? If so, when and under what circumstances?

RESPONSE: Yes. In 2011, I received firearms training while employed at the National Security Agency.