

**Nomination of Jeff Sessions to be Attorney General of the United States  
Questions for the Record  
Submitted January 29, 2017**

**QUESTIONS FROM SENATOR FEINSTEIN**

1. Significant concerns have been raised by both Democratic and Republican members of the Senate Judiciary Committee regarding President Trump’s Executive Orders, and especially the Executive Order titled “Protecting the Nation from Foreign Terrorist Entry into the United States.” One Republican Senator noted, for example, that this executive order “may do more to help terrorist recruitment than improve our security.”

**Did you read, review, provide legal analysis, or provide any other comments regarding the following Executive Orders before they were issued? If so, please describe in detail what role you played with regard to each Executive Order. Also, please provide copies of any documents reflecting your input regarding the content of the orders.**

- a. Executive Order: “Enhancing Public Safety in the Interior of the United States,” January 25, 2017, text available at <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>
- b. Executive Order: “Border Security and Immigration Enforcement Improvements,” January 25, 2017, text available at <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>
- c. Executive Order: “Protecting the Nation From Foreign Terrorist Entry Into the United States,” January 27, 2017, text available at <https://www.nytimes.com/2017/01/27/us/politics/refugee-muslim-executive-order-trump.html>

**RESPONSE to (a) – (c):** No.

2. According to press reports, the Executive Orders referenced in Question 1 were drafted primarily by your longtime aide Stephen Miller and by White House advisor Steve Bannon. Please describe in detail (including dates) any communications, correspondence, or discussions you had with Mr. Miller, Mr. Bannon, or any other White House official relating to each of the orders listed above.

**RESPONSE:** I have had no such communications.

3. During the 2016 presidential campaign, did you participate in creating documents that resembled or served as the basis for the Executive Orders listed in Question 1? If so, please provide copies of those documents.

**RESPONSE:** No.

4. The Office of Legal Counsel's (OLC's) website states that: "All executive orders and proclamations proposed to be issued by the President are reviewed by the Office of Legal Counsel for form and legality, as are various other matters that require the President's formal approval." However, the Justice Department has declined to comment officially as to whether OLC reviewed the Executive Orders listed in Question 1.
  - a. **Did OLC review the orders before they were issued?**
  - b. **If OLC reviewed the orders before they were issued, who specifically reviewed them?**
  - c. **If not, what officials or attorneys within the executive branch reviewed the executive order to evaluate their form or legality?**

**RESPONSE:** As a United States Senator, I have no knowledge regarding this matter.

5. Executive Order 11030 states in part:

Sec. 2. *Routing and approval of drafts*

- (a) *A proposed Executive Order or proclamation shall first be submitted...to the Director of the Office of Management and Budget...*
- (b) *If the Director of the Office of Management and Budget approves the proposed Executive Order or proclamation, he shall transmit it to the Attorney General for his consideration as to its form and legality.*
- (c) **If the Attorney General approves the proposed Executive Order or proclamation**, *he shall transmit it to the Director of the Office of the Federal Register, National Archives and Records Administration: Provided, that in cases of sufficient urgency the Attorney General may transmit it directly to the President; and provided further, that the authority vested in the Attorney General by this section may be delegated to him, in whole or in part, to the Deputy Attorney General, Solicitor General, or to such Assistant Attorney General as he may designate.*

And 28 C.F.R. § 0.25 states "The following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General, Office of Legal Counsel:

- (a) *Preparing the formal opinions of the Attorney General; rendering informal opinions and legal advice to the various agencies of the Government; and assisting the Attorney General in the performance of his functions as legal adviser to the President and as a member of, and legal adviser to, the Cabinet.*

*(b) Preparing and making necessary revisions of proposed Executive orders and proclamations, and advising as to their form and legality prior to their transmission to the President; and performing like functions with respect to regulations and other similar matters which require the approval of the President or the Attorney General.”*

Based on these documents:

- a. **What is your understanding of OLC’s role in reviewing and approving Executive Orders?**
- b. **Do you agree that OLC has, by law, been delegated the authority to review virtually all Executive Orders?**
- c. **If President Trump issued an Executive Order without allowing OLC to review its form and legality, would the Department of Justice, under your leadership, continue to defend the legality of that Executive Order?**
- d. **If President Trump attempted to circumvent OLC’s role when issuing Executive Orders, how would you respond? Would you resign?**

**RESPONSE to (a) – (d):** My understanding is that Office of Legal Counsel does play an important role in reviewing Executive Orders. If I am confirmed, I would insist that the proper and independent role that OLC has traditionally played in vetting Executive Orders be respected.

6. Before the Executive Orders listed above were issued, were they distributed to, or vetted by, the agencies that will be asked to interpret and enforce them?

**RESPONSE:** As a United States Senator, I have no knowledge regarding this matter.

7. A news report<sup>1</sup> has stated that not only was the January 27 Executive Order not reviewed by the Office of Legal Counsel, but in fact, lawyers in other Departments who were concerned about the breadth of the Executive Order were overruled by non-lawyers at the White House:

*“Friday night, DHS arrived at the legal interpretation that the executive order restrictions applying to seven countries -- Iran, Iraq, Libya, Somalia, Syria, Sudan and Yemen -- did not apply to people with lawful permanent residence, generally referred to as green card holders. The White House overruled that guidance overnight, according to officials familiar with the rollout. That order came from the President's inner circle, led by Stephen Miller and Steve Bannon. Their decision held that, on a case by case basis, DHS could allow green card holders to enter the US.”*

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<sup>1</sup> See: <http://www.cnn.com/2017/01/28/politics/donald-trump-travel-ban/>.

- a. **To the best of your knowledge, is this description of the process that led to the issuance of the January 27 Executive Order correct?**
- b. **If you do not have personal knowledge of that process: Do you believe that such a process, if correctly described, is appropriate?**
- c. **What is the legal basis for applying the Executive Order’s restrictions to Lawful Permanent Residents (“green card holders”) from the seven affected countries?**

**RESPONSE to (a) – (c):** As a United States Senator, I have no knowledge regarding this matter. It is also my understanding that there may be ongoing litigation regarding this Executive Order involving the Department and therefore I cannot comment. This standard—refusing to opine on pending legal matters—has been adopted by previous nominees for Attorney General and I believe it is wise to follow this precedent.

8. With respect to the January 27 Executive Order: Is there any legal justification for denying entry to Iraqis who risked their lives serving as translators for U.S. servicemembers?

**RESPONSE:** As a United States Senator, I have no knowledge regarding this matter. It is also my understanding that there may be ongoing litigation regarding this Executive Order involving the Department and therefore I cannot comment. This standard—refusing to opine on pending legal matters—has been adopted by previous nominees for Attorney General and I believe it is wise to follow this precedent.

9. With respect to the January 27 Executive Order: Is there any legal justification for preventing lawful permanent residents of the United States from travelling home because they are nationals of Syria, Iraq, Iran, Sudan, Somalia, Libya or Yemen?

**RESPONSE:** As a United States Senator, I have no knowledge regarding this matter. It is also my understanding that there may be ongoing litigation regarding this Executive Order involving the Department and therefore I cannot comment. This standard—refusing to opine on pending legal matters—has been adopted by previous nominees for Attorney General and I believe it is wise to follow this precedent.

10. With respect to the January 27 Executive Order: There have been reports that the Executive Order is being applied to dual citizens of the seven listed countries, many of whom are also citizens of the United States’ closest allies. What is the legal basis for applying the Executive Order’s restrictions to dual citizens?

**RESPONSE:** As I am not currently the Attorney General, I have no knowledge regarding this matter. It would be inappropriate for me to provide a legal opinion simply relying on unverified reporting and without knowing the facts. It is also my understanding that there may be ongoing litigation regarding this Executive Order involving the Department and therefore I cannot comment. This standard—refusing to opine on pending legal matters—has been adopted by previous nominees for Attorney General and I believe it is wise to follow this precedent.

11. Senators McCain and Graham stated on January 29, 2017 that they believed that President Trump’s January 27 Executive Order “was not properly vetted.” Do you agree or disagree with that statement?

**RESPONSE:** Senators are certainly entitled to their opinions and to voice them. It is my understanding that there may be ongoing litigation regarding this Executive Order involving the Department and therefore I cannot comment. This standard—refusing to opine on pending legal matters—has been adopted by previous nominees for Attorney General and I believe it is wise to follow this precedent.

12. You have been nominated to be the nation’s chief law enforcement official. Senators McCain and Graham have expressed their concern that the Executive Order “may do more to help terrorist recruitment than improve our security.” Do you agree or disagree with that statement?

**RESPONSE:** Senators are certainly entitled to their opinions and to voice them. It is my understanding that there may be ongoing litigation regarding this Executive Order involving the Department and therefore I cannot comment. This standard—refusing to opine on pending legal matters—has been adopted by previous nominees for Attorney General and I believe it is wise to follow this precedent.