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NOMINATION OF JOHN CHARLES DEMERS TO BE ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY DIVISION

HEARING

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE

OF THE

UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

TUESDAY, OCTOBER 31, 2017

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NOMINATION OF JOHN CHARLES DEMERS TO BE ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY DIVISION

TUESDAY, OCTOBER 31, 2017

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Committee met, pursuant to notice, at 9:35 a.m. in Room SD–106, Dirksen Senate Office Building, Hon. Richard Burr (Chairman of the Committee) presiding.

Committee Members Present: Senators Burr, Warner, Collins, Blunt, Lankford, Cotton, Feinstein, Wyden, Heinrich, King, Manchin, and Harris.

OPENING STATEMENT OF HON. RICHARD BURR, CHAIRMAN, A U.S. SENATOR FROM NORTH CAROLINA

Chairman BURR. I'd like to call this hearing to order. I'd like to welcome our witness today, John Demers, President Trump's nominee to be the next Assistant Attorney General for National Security at the United States Department of Justice. John, congratulations on your nomination.

I'd like to start by recognizing the family that you've brought here with you. I understand your wife, Cindy, is here, as well as your children, Elizabeth and Matthew. Senator Warner will sign a slip for you to take to school and get extra credit.

[Laughter.]

And also your sister-in-law, Sue.

In his statement for the record, John speaks strongly about the support each of you have provided to him over the years. I know from personal experience just how important a supportive family is. And to each of you, I thank you for the sacrifices you make.

Our goal in conducting this hearing is to enable the committee to consider the nominee's qualifications and to allow for a thoughtful deliberation by committee members. Mr. Demers has provided substantive written responses to over 30 questions presented by the committee, and today, of course, members will be able to ask additional questions and hear from him personally in open session.

Mr. Demers is a graduate from the College of the Holy Cross and Harvard Law School, served as a clerk in the United States Court of Appeals for the Ninth Circuit Court, and then for the late Honorable Justice Antonin Scalia.

Mr. Demers served in the Department of Justice National Security Division as Deputy Assistant Attorney General, where he also

served as senior counsel to the Assistant Attorney General. While at the DOJ's National Security Division, Mr. Demers additionally completed a detail as counsel to the Deputy Attorney General.

Following his tenure at DOJ, John joined the Boeing Company, where he served as the Vice President for international affairs, the Vice President and Assistant General Counsel for global law affairs, the Chief Counsel for network and space systems, and currently as the Vice President and Assistant General Counsel for regulatory and government law. John is also currently an adjunct professor at Georgetown University Law Center.

John, you are being asked to lead the Justice Department's division responsible for our national security-related investigations during a period of significant debate about what authorities and tools are lawful and appropriate. As you know, the committee recently reported out a bill that would renew FISA's Title VII authorities for eight years, with additional privacy protections for U.S. persons. I'm hopeful that this bill will pass the Senate and ultimately be signed into law, as it provides the Department and the intelligence community the needed tools and authorities.

I'm also hopeful, moving forward, you'll be in an influential and forceful—you'll be an influential and forceful advocate for those foreign intelligence tools you believe are necessary to keep citizens safe, like Section 702.

As I mentioned to others during their nomination hearing, I can assure you that this committee will faithfully follow its charter and conduct vigorous and real-time oversight over the intelligence community, its operations and its activities.

We will ask difficult and probing questions of you and your staff, and we will expect honest, complete and timely responses. You've already successfully negotiated one hurdle, having been favorably reported out of the Senate Judiciary Committee 20 to nothing on October 19th, 2017. I look forward to supporting your nomination and ensuring its consideration without delay. I want to again thank you for being here.

I would notify members that we're under a fairly tight time frame, so it's my intention to move this nominee as quickly as we possibly can.

With that, now—I now recognize the Vice Chairman.

OPENING STATEMENT OF HON. MARK WARNER, A U.S. SENATOR FROM VIRGINIA

Vice Chairman WARNER. Thank you, Mr. Chairman. And welcome, Mr. Demers. Congratulations on your nomination to serve as Assistant Attorney General for National Security at DOJ. I've reviewed your statement, questions for the record, and testimony before the Senate Judiciary Committee on October 4th. I appreciate your candor and forthright responses to the questions. And I also appreciate the broad amount of bipartisan support you've got from DOJ officials in terms of your nomination.

If confirmed as Assistant Attorney General for National Security, you will lead an organization that was established after 9/11 to ensure that our counterterrorism, intelligence, and counterintelligence activities are properly and sufficiently coordinated across both law enforcement and intelligence communities.

As you're aware, another critical role of this position is to shepherd the Department's review and approval of requests to the FISA Court for surveillance activities, including Section 702. As the Chairman just mentioned, we had, I think, a very productive session on 702 last week. And last week the committee supported a bipartisan bill to reauthorize 702 that seeks to maintain its operational capacities while increasing the privacy and civil liberty protections of U.S. citizens.

This includes strengthening judicial and Congressional oversight of the government's queries of lawfully collected U.S. persons' data. I will be interested in your comments on the 702 program. In particular, I'll be listening closely to your responses to be assured that you recognize the need to conduct reviews in a matter that—in a manner that protects these privacy concerns.

In your written responses to this committee and to the Judiciary Committee, you wrote, quote, that your "loyalties lie with the Constitution and laws of the United States," unquote, and that you would tell the President and Attorney General "No" if asked to perform any task that was contrary to the Constitution or laws of the United States. I very much appreciate these words. And let me assure you, we'll try to hold you to them.

Mr. Demers, I would also like to hear your commitment that you will always seek to provide unbiased, unvarnished, and timely responses to the President, his Cabinet, his advisers and the Congress. Facts are facts, and I expect you to be truthful to them while in service to this nation.

You're also aware that this committee is conducting an investigation into Russian interference in the 2016 presidential election. This morning, and I will ask you during the question and answer session, I want to hear your assurance that you will fully cooperate with this review and provide this committee with all the information requested in a timely fashion.

I will ask you—I will ask that you faithfully inform this committee if you become aware of additional relevant information in your course of your duties, if you're confirmed.

I believe yesterday's indictment of President Trump's campaign manager and deputy campaign manager by the special counsel and the guilty plea by campaign adviser George Papadopoulos is further evidence that these investigations are serious and that this country needs to hold accountable any of those who do a disservice to our nation.

This investigation, let me make clear, is not about re-litigating the election or playing gotcha with the President. It's about following the facts where they lead and ensuring the sanctity of our democratic principles through free and fair elections, untarnished by foreign interference.

Again, congratulations on your nomination. I look forward to this morning's discussion.

Thank you, Mr. Chairman.

Chairman BURR. Thank you, Vice Chairman.

Mr. Demers, will you please stand and raise your right hand?

Do you solemnly swear to tell the truth, the full truth, and nothing but the truth, so help you God?

Mr. DEMERS. I do.

TESTIMONY OF JOHN CHARLES DEMERS, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY DIVISION

Chairman BURR. Please be seated.

John, before we move to your statement, I'll ask you to answer five standard questions the committee poses to each nominee who appears before us. They just require a simple yes or no answer.

Do you agree to appear before the committee, here or in any other venues, when invited?

Mr. DEMERS. Yes.

Chairman BURR. If confirmed, do you agree to send officials from your office to appear before the committee and designated staff, when invited?

Mr. DEMERS. Yes.

Chairman BURR. Do you agree to provide documents or any other materials requested by the committee in order to carry out its oversight and legislative responsibilities?

Mr. DEMERS. Yes.

Chairman BURR. Will you both ensure that your office and your staff provide such materials to the committee, when requested?

Mr. DEMERS. Yes.

Chairman BURR. Do you agree to inform and fully brief to the fullest extent possible all members of the committee on the intelligence activities and covert action, rather than only the Chairman and the Vice Chairman?

Mr. DEMERS. Yes.

Chairman BURR. Thank you very much.

We'll now proceed to opening statements, after which I'll recognize members by seniority for five minutes.

And I would once again remind members that, pursuant to Senate Resolution 400, the committee received this nomination on referral from the Judiciary Committee and we have 20 calendar days within which to report this nominee to the full Senate.

It's my intentions, again, to move to this as quickly as we can in a business session.

With that, Mr. Demers, the floor is yours.

Mr. DEMERS. Great. Thank you very much, Chairman Burr, Vice Chairman Warner and distinguished members of this committee. Thank you for the opportunity to appear before you here today and for considering my nomination.

During my last time at the National Security Division, I worked closely with this committee to draft and negotiate the FISA Amendments Act of 2008. Should I be confirmed, I hope that this hearing will be only the beginning of working with you again on issues critical to the nation's security, issues best addressed when the Congress and the executive work constructively together.

Public service is never an individual endeavor, and I'd like to thank my wife, Cindy, and children, Lizzy and Matthew, who are here behind me and have graciously agreed to join me on this next chapter. Their love and the fun we have together provide me always with a focus and sense of calm I think will be needed.

I'd also like to thank my parents, whose example and encouragement have inspired me to be here today. My sister-in-law and friend, Sue Lim, is here as well, and I'm grateful to her and to the

other close friends and colleagues, here and watching remotely, for their love and support.

And because I come from a family of teachers, I would do well to thank all the teachers I've had along the way. I owe them more than they and I will ever know.

I am grateful for and humbled by this opportunity to return to the Department of Justice and to the National Security Division. Protecting the national security is the highest priority of the Department, and the National Security Division is at the forefront of these efforts.

Although the thinking behind the division may seem obvious now, those of you who have worked these issues since before September 11th know that the reorganization that created the division was revolutionary. It brought together the lawyers prosecuting terrorism and espionage offenses with those working on intelligence investigations, and it created a strong link between the Department and the intelligence community. More broadly, it recognized the effectiveness of this combination of law enforcement and intelligence efforts in combating a variety of threats and the danger and needlessness of drawing lines and building walls between criminal and intelligence investigations.

Since that time, the capabilities and the mission of the division have broadened to confront new manifestations of old threats. The women and men of the division have worked tirelessly with the intelligence community and the other parts of government to help guard our security, regardless of whether the threats come on airplanes or over the Internet.

The dedicated lawyers and professionals of the division understand that without this security the promise of liberty enshrined in our founding documents would be an empty one. They also understand that without liberty, security has no purpose, and they recognize that the guarantor of both is the rule of law. Having worked with many in the division and followed the division since I left, I know this firsthand and would consider it an honor to return to serve with them.

Critical to our security and our liberty are the statutory and other authorities that the investigators and prosecutors use every day. I look forward to working together with you and your colleagues to ensure that the intelligence community and prosecutors have the tools they need, and that these tools keep up with changes in technology and the threats that face us.

I also understand that the only way to keep the confidence of the American people in these tools is to use them lawfully and wisely. Thus, I look forward to furthering the oversight function of the division and supporting the proper oversight conducted by the Congress and the Foreign Intelligence Surveillance Court.

The threats we face are real. The objectives of our adversaries are plain: to weaken our culture, our democracy, our values, our economy and our resolve to lead—indeed, to undermine the very idea of America. I appreciate that you have always taken these threats seriously.

I look forward to working with you to ensure that this country continues to thrive and that all Americans enjoy both liberty and security under the rule of law.

Thank you again for the opportunity to be here today. I look forward to answering your questions.

[The prepared statement of Mr. Demers follows:]

Statement for the Record of John Charles Demers
Nominee to be Assistant Attorney General
National Security Division
Before the Senate Select Committee on Intelligence
October 31, 2017

Chairman Burr, Vice Chairman Warner, and distinguished Members of this Committee.

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Public service is never an individual endeavor, and I'd like to thank my wife, Cindy, and my children, Lizzie and Matthew, who have graciously agreed to join me in this new chapter. Their love and the fun we have together provide me always with a sense of calm and a focus that I suspect will be needed. I would also like to thank my parents, Pina and Frank Demers, whose example and encouragement have inspired me to be here today. It is they who taught me right from wrong and that I should always aspire to serve something greater than myself. My sister-in-law and friend, Sue Zmijewski Lim, is here as well, and I am grateful to her and to the other close friends and colleagues here and watching remotely for their love and support. And because I come from a family of teachers and am surrounded by them, let me also thank the many teachers I have had along the way. I owe them more than they—and perhaps I—will ever know.

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dedicated lawyers and professionals of the Division understand that without this security, the promise of liberty enshrined in our founding documents would be an empty one. They also understand that without liberty, security has no purpose. And they recognize that the guarantor of both is the rule of law. Having worked with many in the Division, and followed the Division since I left, I know this first-hand and would consider it an honor to return to serve with them.

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The threats we face are real. The objectives of our adversaries are plain—to weaken our culture, our democracy, our values, our economy, and our resolve to lead—indeed, to undermine the very idea of America. I appreciate that you have always taken these threats seriously. I look forward to working with you to ensure that this country continues to thrive and that all Americans enjoy both liberty and security under the rule of law.

Thank you again for the opportunity to be here today. I look forward to answering your questions.

Chairman BURR. John, thank you very much. I'll recognize members based upon seniority for up to five minutes. The Chair would recognize himself first.

Mr. Demers, leaks of classified information are deplorable and put sensitive sources and methods at great risk. I'm increasingly alarmed at the number of individuals who feel they can safely disclose classified details to the press under the cloak of anonymity, which seems to be the most common last name in America today.

How do you plan to proceed with investigations and prosecutions of those who leak classified information?

Mr. DEMERS. Thank you, Senator. I agree with you that the leaks of classified information present serious threats to the national security, as you mentioned, in particular to the sources and methods we use, but also in revealing what we know to others, what we know about them. And let's make no mistake; sometimes those sources are human beings.

The cases themselves, the investigations, need to be pursued fully and on the facts, following those facts wherever they may go. And then, the prosecutions need to be considered carefully as well, taking into account, of course, the equities of the intelligence community, as well as the need to deter—obviously incapacitate folks who are leaking now, but also deter future leakers as well.

I'll work closely with the career attorneys at the Department who have been doing these cases for many years, who continue to focus on them today, and just follow the facts wherever they lead us.

Chairman BURR. Will you commit to communicate with the committee on the progress of investigations and potential prosecutions?

Mr. DEMERS. I think, within the bounds that I can—that is, as long as it's not interfering with the investigation itself—I will.

Chairman BURR. Good.

We mentioned FISA Title VII authorities, including what is well known as Section 702, and they expire at the end of the year. As you're aware, the committee has significant interest in reauthorizing these authorities.

Based upon your experience, how critical is reauthorizing to our nation's national security?

Mr. DEMERS. Well, Senator, I saw the world before the FISA Amendments Act of 2008. I saw what it was like without this authority, and it was very difficult for the intelligence community and it was very difficult for the lawyers at the Justice Department.

And we were focusing a lot of our resources at that time on folks who—you know, non-U.S. persons outside the U.S., folks without constitutional rights. And I saw the very early days of the implementation of this law. I followed it, of course, in the news since then. I understand the intelligence community considers it to be a critical, if not one of the most critical, tools it has in the work that it does.

I've also seen the review that the Privacy and Civil Liberties Board did of this authority, and I take note of the fact that they found no intentional misuses of this authority.

So it strikes me that, as best I can see from the outside, this is a critical authority. I support its reauthorization, and I look forward to working with the committee on that if I'm there in time;

and if not, then working with you on your oversight efforts of the authority, making sure it's used effectively and well.

Chairman BURR. I thank you for that.

Deputy Attorney General Rosenstein called cybersecurity attacks and threats against our nation's security and infrastructure one of the Department's highest priorities. How do you foresee furthering the Department's cybersecurity efforts from within the National Security Division?

Mr. DEMERS. So I think cybersecurity is the area that has changed the most since I was there last, about nine years ago. It now seems to permeate all of the work of the division, whether it's on the counterterrorism side or on the counterespionage side. So whether we're talking about folks who are being radicalized or radicalizing themselves on the Internet, or we're talking about nation-states and the actions that they've tried to take, cybersecurity is there.

I note that in the prior administration they developed a separate unit in the division to focus more squarely on cybersecurity. I support that. I'm going to be looking closely at that to be sure that it's resourced correctly and that the correct focus is on cybersecurity issues. I think they're going to be one of the biggest parts of the job going forward.

Chairman BURR. Great. Thanks, John.

Vice Chairman.

Vice Chairman WARNER. Again, welcome, sir. And, as you're obviously aware, one of the most important investigations this committee is involved in at this point is the Russia investigation into activities in 2016. And I just want to get you on the record. Do you promise to fully and completely cooperate with this committee's investigation of Russian interference in the 2016 election, including by turning over all materials in your possession to the committee, as requested, as promptly as possible?

Mr. DEMERS. I do support the work of this committee and that investigation. I think it's a very important one, and I do pledge to cooperate with you on the investigation, obviously, in terms of turning over everything.

I—from the outside, I don't know all the rules, Senator. I'd have to talk to other folks at the Department about it. But I do support your efforts.

Vice Chairman WARNER. But within the constraints of the rules, obviously.

Mr. DEMERS. I will, yes.

Vice Chairman WARNER. We need that cooperation.

Mr. DEMERS. Yes. And you'll have it.

Vice Chairman WARNER. And we've had it from many. There are some entities that I think we still need—have got a ways to go.

I also just want to—again, I think you've answered this before, but I want to get it on the record here. I think one of the most important functions of the I.C. is speaking truth to power. And can you talk about the assistant A.G.'s role in ensuring that the intelligence community will continue to provide unvarnished assessments to Congress, to the Attorney General and to the President, regardless of politics?

Mr. DEMERS. Well, for sure, Senator. Politics has no place in the work of the intelligence community. Partisanship has no place in the work of the intelligence community, nor in the work of the National Security Division as part of those efforts.

And it is—it's critical for all of us to speak truth to those within the Executive Branch and also here on the Hill. So I pledge to do so and pledge to support the efforts of others to do so.

Vice Chairman WARNER. The Chairman's already raised 702. We had a spirited debate last week on this important tool. I believe that we strengthened 702 in terms of putting additional responsibilities in place, in terms of protections of American—particularly known Americans' privacies.

Some of my colleagues didn't fully agree we went far enough. But I do think it's important, and I'd like to hear your comments about the overwrite—oversight responsibilities of the Assistant A.G. for National Security to ensure that there is that full and robust oversight of the FISA legislation, including 702, and what you're going to do to make sure that representations made by the United States Government to the FISA Court are always accurate.

Mr. DEMERS. So I've not read the bill that came out of committee. But I do support, obviously, the oversight within the bill that—there was, I think, significant oversight in the law as it stands today, as well.

The role of the Assistant Attorney General in the National Security Division when it comes to any FISA collection, whether it's Section 702 or Title I, is of course to conduct that oversight of the use by elements of the intelligence community of these authorities to be sure that the minimization procedures are being followed accurately, that the orders are being followed, and in this case, that the targeting procedures are being followed as well, and then to promptly report any noncompliance both to the FISA Court, which has authorized the use of those targeting minimization procedures, but also to the Congress; and then to look and see to, you know, really do a root-cause analysis of what the reason for that noncompliance is, and to fix it going forward.

Vice Chairman WARNER. Well, I would strongly urge you to please take a look at that legislation. We've added some additional requirements, while not perfect, but I think go a long way, should a known American be in any way queried, to make sure that there is a simultaneous appropriate review. It will add some additional challenges, but I think those challenges are appropriate in terms of balancing the very, very critical privacy protections.

This is a tool, but again I think, as your comments indicated, while there's been no indication of abuse, because there are Americans inadvertently swept up in the 702 foreign-to-foreign contact information, I think we have to go the extra mile, and I would hope that you would do a thorough review of what at least this committee has passed out, and we look forward to getting your comments on whether you think we've struck that right balance.

Thank you, Mr. Chairman.

Chairman BURR. Senator Collins.

Senator COLLINS. Thank you very much, Mr. Chairman.

Mr. Demers, I want to follow up on the questions on Section 702, which have been a matter of great debate before our committee and

ultimately before the full Senate. As you're well aware, if a U.S. person is in contact with a foreign target of Section 702 collection, some of their communications could be collected incidentally to the intent of targeting the communications of a foreigner located overseas.

My—the question that has been a matter of debate is whether the FBI should be able to search the content of the Section 702 database using a U.S. person identifier or search term without first securing a warrant.

I have a couple of questions for you. First, are you confident that such a process does not violate the Fourth Amendment prohibitions against unreasonable searches and seizures? And second, since you have worked in the National Security Division before, could you tell us from an operational perspective what harm you would see if Congress were to require the FBI to get a warrant every single time it sought to query the Section 702 database using a U.S. person's identifier?

Mr. DEMERS. Thank you, Senator.

I think here we're talking about the querying of lawfully acquired information in the government's possession, information which the government acquired by targeting non-U.S. persons outside the U.S. And as you say, you know, it can and does incidentally pick up communications of U.S. persons as well.

As I understand it, every court to consider this has found that there is no Fourth Amendment requirement that the government get a search warrant before looking at this information, before querying this information for a U.S. person identifier. And that's consistent, I think, with the general Fourth Amendment principle that the government doesn't need a search warrant to look at information lawfully in its possession. So I believe that is the state of the case law today.

In terms of the operational question that you posed, again, I'd—it's been a little while. I'd have to talk again to the FBI, but if what we're talking about is getting the equivalent of a FISA order every time you query the database, a FISA order is a fair bit of work, one, to put together, because you have to have probable cause.

So it's not just about the amount of work. It's of course also about at what stage of an investigation you're willing to do this and whether you have enough information to do probable cause. So it's not just, well, it will take X number of hours, but it's can you do it at all based on the information you have to tie that U.S. person to being an agent of a foreign power or a foreign power.

So I think, you know, if you had a warrant requirement, it would slow things and it would also limit the amount of querying that you were able to do.

Senator COLLINS. Thank you.

This year's intelligence authorization bill includes a provision that I drafted with Senator Manchin and Senator Lankford that would require you, assuming you're confirmed to your position, to report to Congressional intelligence committees every six months regarding the status of every criminal referral made in the last year from the intelligence community to the Department of Justice about any unauthorized disclosure of classified information.

If you are confirmed and if our provision does become law, do you commit to faithfully reporting the information required by this provision to serve as a deterrent to would-be leakers of classified information?

Mr. DEMERS. Thank you, Senator. Yes, I will certainly follow the law if it's enacted. And as I mentioned to Senator Warner, just be careful that we're obviously not interfering with the investigation itself. But to that—beyond that, yes, to share that information with you.

Senator COLLINS. Thank you.

Chairman BURR. Senator Feinstein.

Senator FEINSTEIN. Thanks very much, Mr. Chairman. I had the opportunity to meet with Mr. Demers before his hearing in Judiciary on October 4, and I have since voted in support of his nomination to be Assistant Attorney General for the National Security Division. And I'm very pleased, sir, that you have prior experience in that division. I think you're well qualified to lead the division, so I assume I am going to vote again for you here.

Having said that, I must tell you I disagree strongly with your answer to Senator Collins' question. Let me try and explain why, and let me preface this with the fact I am not a lawyer, but the 702 reauthorization gave me cause for really serious study.

And as I understood the Ninth Circuit case in Mohamud, what it upheld was that the incidental collection of an American in the program initially did not essentially detract from the constitutionality of the program. No court to my knowledge has played a role in determining whether a second query or a query of that separately by the FBI for a civil criminal case would require a warrant or not. I moved such an amendment in the Intelligence Committee. I was voted—I did not have the votes. I voted for the bill as is, but I very strongly believe that that second part is really open to conjecture and I think some discussion.

Do you have any comment to make, because you spoke about incidental collection? Once that incidental collection is achieved, the use separately is a different item.

Mr. DEMERS. Yes, that's true, Senator. Certainly this question is open for legal discussion and debate. There is no question about that. But I do think that there is a general principle of Fourth Amendment law which is that searching information that is lawfully in the government's possession does not require a court order. Now, perhaps that principle isn't applicable here for some reason that I would have to give some more thought to. But at least as a starting point, that is, as I understand it, the general principle.

Senator FEINSTEIN. I would—I would like to ask that when you are in the job you would follow up on this and perhaps write with your thoughts, because I think this is going to be a problem in the future.

Mr. DEMERS. I will certainly be doing a lot of thinking about this, yes.

Senator FEINSTEIN. Okay. Let me go to one of my written questions. It was question number 7: Recent media reports described two American citizens apprehended by Syria, by Syrian Defense Forces. The article stated they're being held as enemy combatants

and may be transferred to Iraqi custody. That question has come up in the public press recently.

Here is the question I asked in writing: What is the legal status of an American apprehended while fighting in Syria? Should that individual be returned to the United States for trial and held as an enemy combatant? Your response was: "I'm not familiar with the facts regarding these individuals or their detention. I am committed to identifying and considering all legally available options and pursuing the option or options that best protect national security and the liberty interests of Americans."

Well, much more has been said in the press about these two people. What is your view today?

Mr. DEMERS. I don't know that my view is any different, Senator. I don't know the facts of this case. My view is, you know, in general that folks who are detained on the battlefield or captured on the battlefield can be lawfully detained by the U.S. armed forces. But then I think the question becomes, well, what are you going to do in the long run with these folks and especially with an American? And there, you know, you really would need to know all of the facts and circumstances to make that determination.

I'd say when it comes to Americans, my leaning—and this is not a definite rule, but leaning, you know—is that we should, if we can, bring them here and try them.

Senator FEINSTEIN. I'm going to make a small personal request and that is that you—obviously I have voted for you and I am going to vote for you again. However, I would like you to take a look at this and give me an answer in writing, if you can. And after you're confirmed is fine with me. It's not a—I am not doing this to jeopardize my vote.

Mr. DEMERS. Right.

Senator FEINSTEIN. So I would appreciate your advice on that question.

Mr. DEMERS. Sure.

Senator FEINSTEIN. Thank you very much.

Thanks, Mr. Chairman.

Chairman BURR. Senator Lankford.

Senator LANKFORD. Thank you, Mr. Chairman.

Good to get your testimony. I want to be able to press on a little bit on what the chairman brought up earlier about leaks, leaks that not only come to the press, but leaks out to other entities or individuals that may at some point talk to others.

One of the challenges has been prosecution of those individuals. It's one thing to identify the leak and it's one thing to identify the universe of where it came from. It's another thing to actually identify the person and actually prosecute. What can you do or put into place to make sure we move from yes, there's a leak, to we've identified the individual and actually—and are actually prosecuting those individuals?

Mr. DEMERS. Thank you, Senator. Yeah, look, these investigations are difficult to do just to find the facts as you mentioned: Who did the leak, who did they pass it to, and then maybe who leaked it further to the public? But also, there are difficult considerations about whether you move forward with prosecutions, because the

prosecution itself can risk having to use classified information or that classified information or other information would be raised.

So these are—I don't have the answer to your question coming in from the outside. But I do acknowledge the importance of the issue and, you know, this is something I will certainly be working on with those folks in the division who have been doing these cases for some time and with the FBI and others who are investigating these cases.

Senator LANKFORD. Right, so what I'm trying to pursue is how will it be different? What would you do different than what was done in the past? Because what has been done in the past has not been able to close the deal, to actually find those individuals and be able to prosecute?

Mr. DEMERS. I guess the answer to that is, I can't tell you, coming from the outside, what I would do differently at this point.

Senator LANKFORD. We will look forward to that conversation in the future once we put you on the inside to be able to help resolve some of those. Talk to me about your coordination with the Office of Director of National Intelligence. There is a unique role in the coordination there. How do you foresee that with your office and their office?

Mr. DEMERS. Last time I was at the National Security Division I worked a lot with the Office of the Director, with the general counsel who was there, with the chief of staff, the other folks in the general counsel's office who are there, worked a lot, obviously, on the FISA Amendments Act the first time through, but also on other issues as well.

I have met with the Director as part of this process to just begin to establish a relationship with him. And my view of what the role is of the National Security Division when it comes to the Director is that really I'm to be, you know, the main link to the ODNI, but also to appreciate and be the voice of the equities of the intelligence community within the Department, whether we're talking about legislative or policy issues or whether we're talking about again particular prosecutions and what equities of the intelligence community may be affected by a particular prosecution.

So I anticipate regular communications with that office, with the Director, with the chief of staff and with the general counsel.

Senator LANKFORD. Do you anticipate any changes from what we currently have status quo in the relationship between that office and ODNI?

Mr. DEMERS. I think——

Senator LANKFORD. Anything that you look at now and say, I plan to change this or this in it?

Mr. DEMERS. I don't know that I know enough to answer that question.

Senator LANKFORD. Okay, fair enough. Thank you, Mr. Chairman.

Chairman BURR. Senator Wyden.

Senator WYDEN. Thank you very much, Mr. Chairman.

Mr. Demers, thank you for coming by yesterday. I very much enjoyed the conversation and your history with some of the people sitting behind me on 702. Like I indicated, there is absolutely no disagreement, none, about the need for the government to have the

tools to go after threats overseas. 15 people on the committee, everybody's on the program with respect to that.

The question is what happens, particularly as global communications have changed, when law-abiding Americans are swept up in searches? And I will tell you, I'm very troubled by the answer you gave my colleagues Senator Feinstein and Senator Collins on this point. And I'm not going to go into it any further, but your position is at odds with, for example, Mike Morell, the former CIA Director who just said point-blank, wrote a big article about it, the government ought to have a warrant to search for Americans' communications in Section 702 collection, and of course an emergency exception.

So we're going to debate this some more, but I will tell you I find it very troubling that you're now in disagreement with, certainly, what I heard Senator Feinstein and Senator Collins say and the former CIA Director. And as we consider your nomination, I want you to know that.

But I do want to get into the question you and I talked about in the office, and we can call it the bridge guy issue. This is the issue presented by Director Wray. He essentially gave an example of somebody taking pictures of a bridge at night. And according to the Director, the government ought to be able to go directly to reading the content of this American's communications based on what somebody thinks could be suspicious behavior.

Now, I personally think there are legal arguments for why you shouldn't be able to do it, but again from a security standpoint it's unnecessary. The government has a lot of authorities for obtaining information about Americans, including 215 of FISA, which tells the government who that American is talking to. So we're going to know about bridge guy, basically knowing who they're talking to.

There's an emergency provision, so there is no delay, and, as you and I talked about, I put that into every single proposal I've ever had, that there be an emergency exception.

So the question here is, as we talked about in the office, why should the government be reading the content of Americans' communications based on the smallest little sliver of a suspicion when it's got the authority to obtain non-content information first, very significant authority?

Mr. DEMERS. So I found that hypothetical after we spoke last night and I read it and having read it, I do understand your concern, as you've just expressed it, which is that we go from a non-criminal but suspicious act to reading the content of some aspect of this person's communications.

Senator WYDEN. I want to sop you right there because that's encouraging. So you think that that's a valid concern to be just kind of making that leap to reading content?

Mr. DEMERS. I do understand the concern, yes.

Senator WYDEN. Go ahead.

Mr. DEMERS. No, definitely. And then this brings us to, so then if the solution is the warrant requirement, as we also discussed last night and as we've been talking about today, so then, you know, then it just becomes a question, okay, so then we're putting a warrant requirement in to search information that's lawfully collected by targeting non-U.S. persons where, at least as I under-

stand it, no court has held that a warrant is required to do so and where if you—we've been chastised for not connecting the dots in the past and I think that's the worry of the FBI here, but I—you should just let them speak for themselves on that.

And then, and of course if you're ever interested in the American, and really want to surveil the American, you'd have to go get a FISA warrant on that. I guess, I just say that on balance, at least from where I'm coming from here right now, I don't think you should need a warrant to look at those communications that are already in the government's possession.

Senator WYDEN. Well, if the government wants to read the content of communications they can also just use the query. So, we're going to continue to put in these emergency provisions. I think there's plenty of authority under 215. To your credit, you've acknowledged that this is a valid concern. I'm going to want to explore that with you.

I'll also have some—and my time is up. I'll also have some written questions with respect to encryption because, given the fact that Mr. Rosenstein has now got us back in the business of looking at what he calls responsible encryption, which is really requiring companies to build a back door into their products under a different name, I think that's very troubling as well.

Thank you, Mr. Chairman.

Chairman BURR. Senator Heinrich.

Senator HEINRICH. Thank you, Chairman.

And thank you, Mr. Demers, for being here today. I want to start with an issue. In August, the Attorney General announced that the Department is reviewing its policies for subpoenaing reporters, suggesting that current guidelines that are in place and the limits on the practice could be potentially rolled back.

In recent testimony, the Attorney General refused to say whether or not he would actually jail journalists. This is a reversal of the stance of Attorneys General in the last administration, who had said that they would not seek to imprison members of the news media for doing their job.

So, I want to ask you, Mr. Demers, do you believe that journalists should be jailed for seeking the truth?

Mr. DEMERS. I think that—well, first of all, I would hate to ever have to go down a path like that. And I understand the importance of journalism and of journalists in our political system and the significant First Amendment concerns that are raised by taking an action like that.

I think, you know, at least coming in from the outside, I don't want to say that something could never happen. It always depends on what the facts are of that investigation. I can't imagine it would ever be lightly undertaken. And as I said, I'd be loath to do it. But I hate just in the abstract saying I can't imagine anything that would ever cause the government to go in that direction.

Senator HEINRICH. Do you understand why the suggestion that we should change that policy and raising the specter of jailing journalists has people highly concerned?

Mr. DEMERS. Yes, I can understand why you'd be concerned, and it would be a question of how you applied it and if you changed it.

Senator HEINRICH. Back in 2013, the Justice Department guidelines with regard to the media state that quote, "In light of the importance of the constitutionally protected news-gathering process, the Department views the use of tools to seek evidence from or involving the news media as an extraordinary measure." End quote. And that such tools should be used, quote, "only as a last resort". End quote.

Do you agree with that statement? Does that sort of line up more accurately with your——

Mr. DEMERS. I would say they are extraordinary, yes. And yes, they'd be a last resort or close to a last resort.

Senator HEINRICH. Thank you.

As you note in your testimony, you helped this committee draft Section 702 of FISA and you were working in the Department of Justice as the statute was first implemented, and I understand your support of the statute, in particular Section 702. Obviously, Section 702 collection has grown since the law's passage back in 2008, and we still don't have data just to show how many Americans' communications are being incidentally swept up in that collection. Do you believe there's a potential point at which incidental collection of Americans becomes so preponderant, so significant, that there might be either a policy or a constitutional issue associated with the current query standard?

Mr. DEMERS. Well, I think in the abstract, certainly if the incidental collection was getting so significant that you'd actually think there's been reverse targeting taking place, that would be a serious concern.

Senator HEINRICH. When Congress passed those FISA Amendments back in 2008, do you believe that it was the intent of Congress to use that to be intentionally searching Americans' communications using that, using the 702 section?

Mr. DEMERS. Well, I think that——

Senator HEINRICH. Or is that an afterthought basically?

Mr. DEMERS. I mean, I think the intent of Congress there is just expressed in the language which requires you to use the authority against non-U.S. persons outside the U.S. and not to engage in reverse targeting.

Senator HEINRICH. So since 9/11, obviously, the intelligence community has come a long way in tearing down the stovepipes that kept agencies from sharing information. But we recently heard from the FBI that they cannot simply count how many times FBI agents searched the Section 702 holdings for communications of Americans. And they reference that stovepipe issue and say they'd have to basically rebuild the stovepipes to know that data.

I'm concerned that the FBI is hiding behind that stovepipe argument. I would frankly suggest that it is a fairly mundane technical issue or an I.T. issue. I cannot in a million years imagine Google saying it's impossible to count the number of queries on a particular subject. Do you think that that is data that we ought to be able to see to be able to properly do our oversight role?

Mr. DEMERS. I can't say I'm familiar enough with the concerns expressed by the FBI to comment on those. I think I can certainly see why the committee would want to know the numbers of queries

and U.S. person queries that were being done. But I can't talk to how the computer systems work or any of that.

Senator HEINRICH. Thank you, Mr. Chair.

Chairman BURR. Thank you, Senator Heinrich.

Seeing no additional members here—John, it was pretty easy this morning. But it should be when you're going your second time around. And, Matthew, that tie lasted a lot longer than I thought it would.

[Laughter.]

Chairman BURR. Thank you very much to you and your family for your willingness to come back into government one more time. It's always a tough decision, but you have performed there in an exemplary fashion prior to this.

I know that the folks at Boeing would probably like to keep you there, but to have you at the National Security Division as the chief there certainly is advantageous to the country and to this committee. We look forward to very quickly moving your nomination.

At this point this hearing's adjourned.

[Whereupon, at 10:23 a.m., the hearing was adjourned.]

Supplemental Material

SELECT COMMITTEE ON INTELLIGENCE

UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

SELECT COMMITTEE ON INTELLIGENCE
UNITED STATES SENATE

QUESTIONNAIRE FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART A - BIOGRAPHICAL INFORMATION

1. FULL NAME: John Charles Demers
   OTHER NAMES USED: None

2. DATE AND PLACE OF BIRTH: September 21, 1971; Italy
   CITIZENSHIP: USA

3. MARITAL STATUS: Married

4. SPOUSE'S NAME: Cynthia Marie Zmijewski Demers

5. SPOUSE'S MAIDEN NAME IF APPLICABLE: Cynthia Marie Zmijewski

6. NAMES AND AGES OF CHILDREN:

NAME	AGE
[INFORMATION REDACTED]	

7. EDUCATION SINCE HIGH SCHOOL:

INSTITUTION	DATES ATTENDED	DEGREE RECEIVED	DATE OF DEGREE
College of the Holy Cross	August 1989 – May 1993	B.A.	May 1993
Harvard Law School	August 1996 – May 1999	J.D.	May 1999

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

EMPLOYER	POSITION/TITLE	LOCATION	DATES
The Boeing Company	Vice President & Ass't.General Counsel, Regulatory & Government Law	Arlington, VA	May 2016 – present
	Vice President, Int'l Government Affairs	Arlington, VA	March 2016 – June 2017
	Vice President & Ass't General Counsel, Global Law Affairs	Arlington, VA	April 2011 – May 2016
	Chief Counsel, Network & Space Systems	Arlington, VA	March 2009 – April 2011

Georgetown University Law Center	Adjunct Professor	Washington, DC	2010 – present
National Security Division, U.S. Department of Justice	Deputy Assistant Attorney General	Washington DC	Sept. 2007 – Jan. 2009
	Senior Counsel to the Assistant Attorney General	Washington, DC	Sept. 2006 – Sept. 2007
	Counsel to the Deputy Attorney General (on detail)	Washington, DC	Jan. 2007 – June 2007
Justice Antonin Scalia, U.S. Supreme Court	Law Clerk	Washington, DC	July 2005 – August 2006
Office of Legal Counsel, U.S. Department of Justice	Attorney Advisor	Washington, DC	June 2003 – June 2005
Ropes & Gray	Associate	Boston, MA	Oct. 2000 – May 2003
	Summer Associate	Boston, MA	May 1999 – June 1999
Judge Diarmuid O'Scannlain, U.S. Court of Appeals for the Ninth Circuit	Law Clerk	Portland, OR	Aug. 1999 – Aug. 2000
Simpson, Thacher & Bartlett	Summer Associate	New York, NY	June 1998 – August 1998
U.S. Attorney's Office, District of Massachusetts	Law Clerk	Boston, MA	June 1997 – August 1997
The National Center on Addiction & Substance Abuse at Columbia University	Research Assistant to the President	New York, NY	Aug. 1994 – Aug. 1996

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

   None beyond that listed in the response to question 8.

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

    My most directly relevant experience came during the time I served in the National Security Division, ultimately as Deputy Assistant Attorney General for the Office of Law and Policy. In that capacity, I worked on a variety of national security legal issues, including those involving surveillance law, other investigative authorities including those under Executive Order 12333 and the laws authorizing national security letters, and cyber operations. I was closely involved in the drafting and negotiation of the Foreign Intelligence Surveillance Act of 2008, and worked on internal investigative guidelines. Also in that capacity, I worked closely with various agencies of the Intelligence Community, including the Federal Bureau of Investigation, the National Security Agency, and the Central Intelligence Agency. After I left the Department of Justice, I began to co-teach a class on national security investigations and litigation at Georgetown University Law Center. This provided me with the motivation and opportunity to maintain a working knowledge of, and keep up with changes in, national security law.

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

Attorney General Award for Excellence in National Security (2008)

Intelligence Community Legal Award (2008)

Assistant Attorney General (National Security Division) Award for Special Initiative (2008)

Thomas J. Watson Fellowship, Italy (August 1993 – May 1994)

Phi Beta Kappa (1993)

Alpha Sigma Nu (1993)

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

ORGANIZATION	OFFICE HELD	DATES

None, other than the bar memberships listed in response to question 35. I have not held any offices in the bars of those states.

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

Charles Nesson & John Demers, *Gatekeeping: An Enhanced Foundational Approach to Determining the Admissibility of Scientific Evidence*, 49 HASTINGS L.J. 335 (1998).

Herbet Kleber, Joseph A. Califano, Jr. & John Demers, THE CLINICAL AND SOCIETAL IMPLICATIONS OF DRUG LEGALIZATION, IN SUBSTANCE ABUSE: A COMPREHENSIVE TEXTBOOK 855 (Joyce Lowinson et al. eds., 3d ed. 1997).

Hila Richardson, Joseph A. Califano, Jr., Donna Tapper & John Demers, *Substance Abuse and Public Health in Urban America: Analysis of Costs in New York City*, 2 CURRENT ISSUES IN PUBLIC HEALTH 91 (1996).

Testimony on behalf of the U.S. Department of Justice before the Committee on Foreign Relations, United States Senate, May 7, 2008, concerning the Nuclear Terrorism Convention and an amendment to the Convention on the Physical Protection of Nuclear Material.

Yes, I will provide copies of any of the above if requested to do so.

I have made additional public speeches or remarks in the past ten years but there is no text available of those remarks.

PART B - QUALIFICATIONS

14. QUALIFICATIONS (DESCRIBE WHY YOU BELIEVE YOU ARE QUALIFIED TO SERVE AS THE ASSISTANT ATTORNEY GENERAL FOR THE NATIONAL SECURITY DIVISION AT THE UNITED STATES DEPARTMENT OF JUSTICE).

    I believe that I am qualified for this position because of the prior work I have done in the area of national security, especially as part of the founding leadership team of the National Security Division from 2006 to 2009. During that time, I developed a familiarity with the work of the Division, particularly in the area of intelligence investigations, but also in that of prosecutions. I helped to represent the United States before the Foreign Intelligence Surveillance Court and learned the governing legal framework for national security investigations and prosecutions, from the Foreign Intelligence Surveillance Act to Executive Order 12333 to the internal guidelines that govern the Executive Branch operations in this area. And I learned the constitutional issues, especially those implicating the Fourth Amendment, that arise in intelligence investigations and prosecutions. In addition, my teaching in the area of national security law has allowed me to develop my knowledge of the law in this area. Finally, my years of work at The Boeing Company has given me the experience of managing groups of lawyers, working collaboratively with other parts of a large organization, and providing mission-focused legal advice.

PART C - POLITICAL AND FOREIGN AFFILIATIONS

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

    Boeing Political Action Committee (ex officio in my capacity as Assistant General Counsel for Government Operations)
    $3462 donation, Boeing Political Action Committee, 2016
    $4032 donation, Boeing Political Action Committee, as of October 2017
    $1000 donation, Brower for Congress, 2011
    $2500 donation, Romney Victory, 2012

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

    None.

17. FOREIGN AFFILIATIONS

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

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

   No.

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

No.

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

No.

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

No.

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

None.

PART D - FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

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

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

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

Yes, with one exception. I will retain my ownership interest in Paulding, LLC, which holds a residential house that my wife and I rent. My wife is the sole managing partner of the LLC.

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

As described in SF-286 and my Ethics Agreement, after my departure from The Boeing Company, I will receive the following:

- a lump sum annual cash incentive payment for the work performed up to the date of my departure from the Boeing Company. This payment will be pro-rated based on service time and will be paid by March 15, 2018.
- payment for accrued, unused vacation
- a portion of my interest in the Supplemental Benefit Plan in a lump sum payment in the January following my departure and the rest in annual installments for ten years after reaching entitlement
- preparation of my 2017 taxes
- payments for already granted performance awards for 2015, 2016, and 2017. These award payments will be paid three years after grant – the 2015 award in 2018, the 2016 award in 2019, and the 2017 award in 2020. These payments will be pro-rated based on service time.
- vesting of Restricted Stock Units (RSUs) in the Boeing Company, which were granted to me as part of the company plans in 2015, 2016 and 2017, as well as an additional supplemental RSU grant given in 2015. This vesting will occur as soon as administratively possible, but no later than 60 days from my separation from the Company. The ordinary 2015, 2016 and 2017 grants will be pro-rated based on service time. The 2015 supplemental RSUs will vest in full.
- payments of Performance Based Restricted Stock Units (PBRSUs). The PBRSU payments will be paid three years after grant – the 2015 award in 2018, the 2016 award in 2019, and the 2017 award in 2020. These payments will be pro-rated based on service time.

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

No.

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

I have no agreements to return to my current position. Following my government service, I expect to return to the private sector either in an in-house capacity or in private practice.

24. IF YOU ARE PRESENTLY IN GOVERNMENT SERVICE, DURING THE PAST FIVE YEARS OF SUCH SERVICE, HAVE YOU RECEIVED FROM A PERSON OUTSIDE OF GOVERNMENT AN OFFER OR

EXPRESSION OF INTEREST TO EMPLOY YOUR SERVICES AFTER YOU LEAVE GOVERNMENT SERVICE? IF YES, PLEASE PROVIDE DETAILS.

N/A

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

My wife is not employed outside the home.

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

NAME OF ENTITY	POSITION	DATES HELD	SELF OR SPOUSE

[INFORMATION REDACTED]

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

None.

28. LIST ALL SECURITIES, REAL PROPERTY, PARTNERSHIP INTERESTS, OR OTHER INVESTMENTS OR RECEIVABLES WITH A CURRENT MARKET VALUE (OR, IF MARKET VALUE IS NOT ASCERTAINABLE, ESTIMATED CURRENT FAIR VALUE) IN EXCESS OF $1,000. (NOTE: THE INFORMATION PROVIDED IN RESPONSE TO SCHEDULE A OF THE DISCLOSURE FORMS OF THE OFFICE OF GOVERNMENT ETHICS MAY BE INCORPORATED BY REFERENCE, PROVIDED THAT CURRENT VALUATIONS ARE USED.)

DESCRIPTION OF PROPERTY	VALUE	METHOD OF VALUATION

Please see my SF-278. Current valuations are the same as those noted on the form, with one exception: the value of the Boeing common stock I hold is now approximately $650,000.

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

NATURE OF OBLIGATION	NAME OF OBLIGEE	AMOUNT

Please see my SF-278.

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

None.

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

2012	2013	2014	2015	2016

[INFORMATION REDACTED]

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

Yes.

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

In addition to our federal income tax returns, my spouse and I also file tax returns in the Commonwealth of Virginia.

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

No.

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

My work as an attorney in the past five years has been exclusively for The Boeing Company.

Bar licenses:

Commonwealth of Massachusetts, March 24, 2000
State of New York, May 22, 2002
Commonwealth of Virginia – August 6, 2009 (as corporate counsel)

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

No.

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

Please see my SF-278. I have filed no other financial disclosures in the last three years.

PART E - ETHICAL MATTERS

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

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

No.

PART F - SECURITY INFORMATION

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

No.

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

Yes. I have had a security clearance in my capacity as an employee of The Boeing Company, and took a polygraph exam as part of the clearance process.

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

No.

PART G - ADDITIONAL INFORMATION

48. DESCRIBE IN YOUR OWN WORDS THE CONCEPT OF CONGRESSIONAL OVERSIGHT OF U.S. INTELLIGENCE ACTIVITIES. IN PARTICULAR, CHARACTERIZE WHAT YOU BELIEVE TO BE THE OBLIGATIONS OF THE ASSISTANT ATTORNEY GENERAL FOR THE NATIONAL SECURITY DIVISION AT THE UNITED STATES DEPARTMENT OF JUSTICE AND THE INTELLIGENCE COMMITTEES OF THE CONGRESS, RESPECTIVELY, IN THE OVERSIGHT PROCESS.

The national security threats the country faces are not short-lived, and much of the activity conducted to counter them is, of necessity, confidential. Thus it is important to maintain, over the long-term, the public trust that counterterrorism and counterespionage operations are conducted legally and prudently and that the tools that the public has given the Executive to fight these threats are used appropriately. Otherwise, these tools will be narrowed or taken away. Congressional oversight of these investigative activities, especially those that are confidential, provides the public with some large measure of that trust and thus is especially important in the area of national security. The Assistant Attorney General must work with the Intelligence Committees of the Congress to make them aware of the legal issues arising out of significant intelligence activities and to ensure that they have the information they need to oversee the use of the tools used by the Executive Branch. The Intelligence Committees themselves must satisfy themselves that the counterterrorism and counterespionage activities are taking place within the bounds of the law, are focused on the most significant threats, and are consistent with the priorities and values of the American people.

49. EXPLAIN YOUR UNDERSTANDING OF THE RESPONSIBILITIES OF THE ASSISTANT ATTORNEY GENERAL FOR THE NATIONAL SECURITY DIVISION AT THE UNITED STATES DEPARTMENT OF JUSTICE.

he job of the Assistant Attorney General for National Security is to oversee those operations of the Department of Justice that were brought together after September 11, 2001, in order to prevent and combat national security threats. These include the counter-terrorism and counter-espionage prosecutors, as well as the attorneys who work with the Intelligence Community on national security investigations. The Division plays an important role in the oversight of the Intelligence Community's use of national security investigative tools, particularly of those used by the Federal Bureau of Investigation in its national security investigations and of the use by any intelligence community element of the Foreign Intelligence Surveillance Act. The Assistant Attorney General is also responsible for being the conduit between the Intelligence Community and the Department of Justice and for ensuring that the interests of the Community are properly represented in the Department. The Assistant Attorney General is responsible for the Department's and the Intelligence Community's relationship with the Foreign Intelligence Surveillance Court, and represents the Intelligence Community before that Court. Importantly, the Assistant Attorney General works closely with this Committee and other parts of Congress in order to ensure that the national security professionals have the tools they need

to protect the country and that the Congress has the information it needs to conduct proper oversight of the use of these tools.

AFFIRMATION

I, JOHN C. DEMERS, DO SWEAR THAT THE ANSWERS I HAVE PROVIDED TO THIS QUESTIONNAIRE ARE ACCURATE AND COMPLETE.

10/13/17 [SIGNATURE] _____
(Date)

[SIGNATURE]
(Notary)

PHAEDRA N STATON
Notary Public
Commonwealth of Virginia
340856
My Commission Expires Nov 30, 2017

TO THE CHAIRMAN, SELECT COMMITTEE ON INTELLIGENCE:

In connection with my nomination to be the Assistant Attorney General for the National Security Division at the United States Department of Justice, I hereby express my willingness to respond to requests to appear and testify before any duly constituted committee of the Senate.

[SIGNATURE]
Signature

Date: 10/13/17

Responses To Additional Pre-Hearing Questions For John C. Demers Upon His Nomination To Be Assistant Attorney General for the National Security Division, Department of Justice

Keeping the Intelligence Committee Fully and Currently Informed

QUESTION 1: Section 502 of the National Security Act of 1947 provides that the obligation to keep the congressional intelligence committees fully and currently informed of all intelligence activities applies not only to the Director of National Intelligence (DNI) but also to "the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities." Section 503 establishes a similar requirement concerning covert actions. Sections 502(a)(2) and 503(b)(2) provide that these officials shall "furnish to the congressional intelligence committees any information or material" concerning intelligence activities or covert actions, including the legal basis for them, that is requested by either of the committees in order to carry out its authorized responsibilities. Finally, 28 C.F.R. § 0.72(a)(l) provides that the Assistant Attorney General for National Security (AAG/NS) shall conduct, handle, or supervise the "briefing] of Congress, as appropriate, on matters relating to the national security activities of the United States[.]"

a. What is your understanding of the obligation of the Attorney General and the Director of the Federal Bureau of Investigation (FBI) to keep the congressional intelligence committees, including all their Members, fully and currently informed?

   RESPONSE: The national security threats posed by our adversaries, be they terrorists or nation states, will continue over long periods of time. And government operations to counter these threats rely on the predictable availability of tools and resources, most of which are provided by the Congress. To support the continued use of these tools, the public needs assurance that they are being used appropriately and effectively. Because certain government operations are necessarily confidential or classified, much of this assurance comes from the oversight conducted by the intelligence committees. Section 502 of the National Security Act of 1947 reflects this reality. It imposes an obligation on the Director of National Intelligence and the heads of all agencies involved in intelligence activities to keep the congressional intelligence committees "fully and currently informed of all intelligence activities . . . including any significant anticipated intelligence activity and any significant intelligence failure." The Act also provides that this responsibility be exercised "to the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters." These obligations apply to intelligence activities undertaken by the FBI and DEA components that are part of the Intelligence Community. The Attorney General, like all department heads, has responsibility for ensuring that Intelligence Community elements within the Department fulfill this obligation with respect to their activities.

b. To what activities of the Department of Justice (Department), including the FBI, does this obligation ordinarily apply?

RESPONSE: The FBI and DEA have obligations to keep the congressional intelligence committees fully and currently informed about their intelligence activities, as set forth in Section 502 of the National Security Act. These pertain to certain activities of the FBI's National Security Branch and the Drug Enforcement Administration (DEA)'s Office of National Security Intelligence, both of which are Intelligence Community elements.

c. What is your understanding of the Attorney General's obligation to provide to the congressional intelligence committees any information or material concerning the legal basis for intelligence activities or covert actions, which either committee requests in order to carry out its legislative or oversight responsibilities?

RESPONSE: The congressional intelligence committees in particular have a unique and important role in authorizing and overseeing the Executive Branch's intelligence activities. To facilitate that role, it is important for the committees to receive timely information concerning the legal basis for intelligence activities or covert actions, as Sections 502 and 503 provide. The intelligence agencies themselves are required to provide information or material relating to their own intelligence activities to the committees as set forth in the National Security Act. The Attorney General has responsibility for ensuring that Intelligence Community elements within the Department fulfill this obligation with respect to their activities.

d. The Committee utilizes detailed information on the overall national security threat environment and other intelligence matters to fulfill its intelligence authorization and oversight functions. Do you agree that the Department and the FBI should fully notify and brief the congressional intelligence committees on potential counterterrorism and counterintelligence threats to the United States, as well as FBI intelligence-related activities to thwart such threats?

RESPONSE: Yes. I agree that the Department, including the FBI, should fully notify and brief the congressional intelligence committees on potential counterterrorism and counterintelligence threats to the United States, as well as the Department's intelligence-related activities to thwart such threats.

e. The Committee's legislative and oversight responsibilities include assessing the utility and effectiveness of counterterrorism and counterintelligence authorities, as well as the legality of those authorities as applied. Do you agree that the Department's and FBI's notifications and briefings should include detailed information on these authorities, as well as their use in ongoing and completed investigations?

RESPONSE: Yes. I agree that the notifications and briefings of the Department, including the FBI, should include detailed information on these authorities. These intelligence briefings must be conducted in a way that keeps the intelligence committee fully informed as required, consistent with law enforcement and intelligence

responsibilities. And they provide the public with much of the confidence it needs to know that the authorities are being used appropriately and effectively.

Liaison to the Director of National Intelligence

QUESTION 2: Pursuant to 28 U.S.C. § 507A(b)(2), the AAG/NS "shall serve as primary liaison" to the DNI for the Department.

a. What is your understanding of how past AAG/NS's have performed this responsibility? Describe the principal ways in which the AAG/NS should carry out this responsibility and the principal matters that the AAG/NS should address in performing this responsibility.

   RESPONSE: As the Department's primary liaison to the DNI, the AAG/NS and, by extension, NSD as a whole, works closely with the Office of the Director of National Intelligence (ODNI) and the Office of General Counsel for ODNI. NSD was created to bring together law enforcement and intelligence efforts to counter national security threats. Coordinating and deconflicting these efforts is of great importance, and the AAG/NS plays a critical role in ensuring that intelligence equities are appropriately considered when making decisions in law enforcement matters, and similarly, ensuring that equities related to criminal investigations and cases are appropriately considered when making decisions in intelligence matters. This responsibility is best carried out through regular consultations and coordination with ODNI and its Office of General Counsel, thereby facilitating protection of national security consistent with the law.

b. Have you discussed with the DNI, and with personnel in the Office of the Director of National Intelligence (ODNI), your respective understandings of that responsibility? If so, please describe.

   RESPONSE: During my time as Deputy Assistant Attorney General at the NSD, I worked closely with ODNI, primarily with the Office of General Counsel, on matters ranging from the Foreign Intelligence Surveillance Act (FISA) Amendments Act and the rewrite of Executive Order 12333 to the Attorney General procedures governing the activities of the intelligence community that relate to U.S persons. I was also involved in discussions weighing intelligence community equities in the decisions to prosecute. I have not yet had the opportunity to discuss our respective understandings of this responsibility with the DNI or his staff, but look forward to doing so should I be confirmed.

Priorities of the National Security Division and the Attorney General

QUESTION 3: Have you discussed with the Attorney General his specific expectations of you, if confirmed as Assistant Attorney General, and his expectations of the NSD as a whole? If so, please describe those expectations.

RESPONSE: No, the Attorney General has not conveyed any specific expectations to me, although we have discussed in general terms the need to work to counter the threat from cyber operations, the Department's public announcement to pursue leak investigations, as well as the need for NSD to work effectively with the U.S. Attorney's offices.

QUESTION 4: Based on your experience in, and current understanding of, the NSD, please provide any observations or recommendations related to the strengths or weaknesses of the NSD, including its organization, responsibilities, personnel, allocation of resources, and any other matters that you believe are relevant to strengthening the NSD.

RESPONSE: Having been in the private sector for almost nine years, I do not have any recommendations concerning the organizational strengths and weaknesses of NSD. I am aware that the Division has focused increasingly on cyber since my time there and in light of the growing importance of threats related to cyber, I am looking forward to ensuring that the Division has the right structure and resources to counter those threats.

Oversight of Intelligence Activities

QUESTION 5: Pursuant to 28 C.F.R. § 0.72(17), the AAG/NS shall "[p]rovide oversight of intelligence, counterintelligence, or national security matters by executive branch agencies to ensure conformity with applicable law, executive branch regulations, and Departmental objectives and report to the Attorney General on such activities."

a. What is your understanding of NSD's oversight role, including the manner in which it has been exercised, concerning the FBI's intelligence activities?

RESPONSE: During my time at NSD, the Division created a dedicated Oversight Section in its Office of Intelligence. The Section oversees both the intelligence community's use of FISA and more broadly the FBI's national security investigations. The Section also ensures that the Foreign Intelligence Surveillance Court and Congress are informed of identified instances of FISA-related non-compliance. Furthermore, the Division works to approve the Executive Order 12333 guidelines that govern the U.S. person activities of the Intelligence Community.

b. What is your understanding of the NSD's oversight role undertaken in the offices of United States Attorneys, including the manner in which it has been exercised?

RESPONSE: Based upon my experience as a Deputy Assistant Attorney General for the NSD, my understanding is that NSD is responsible for ensuring that national security activities conducted by United States Attorney's Offices are coordinated as part of a national program. To fulfill that responsibility, NSD supervises the application of most federal criminal laws related to counterterrorism and counterespionage. Through its authority to approve the use of certain statutes in national security prosecutions, NSD seeks to ensure a coordinated and consistent approach in combating national security threats. NSD also ensures that the

Department's national security activities are coordinated with other members of the Executive Branch's national security apparatus.

c. What is your understanding of the NSD's oversight role, including the manner in which it has been exercised, concerning the IC's intelligence activities outside of the Department?

RESPONSE: Based upon my experience as a Deputy Assistant Attorney General for the NSD, my understanding is that NSD exercises its oversight responsibilities with respect to elements of the Intelligence Community outside the Department of Justice in several ways. First, through its role as the government's representative before the Foreign Intelligence Surveillance Court, NSD reviews and submits all FISA applications from outside the Department and monitors compliance by the elements of the Intelligence Community with orders from the FISC. Together with ODNI, NSD reviews acquisition under Section 702 of FISA to ensure compliance with targeting and minimization procedures established pursuant to the statute. Additionally, NSD performs oversight through its role as the liaison to the Director of National Intelligence. In that role, NSD reviews policies that require consultation and approval by the Attorney General under Executive Order 12333. Lastly, NSD, along with other Department components, may participate in National Security Council policy development and decision-making meetings in which intelligence activities are subject to legal and policy discussion.

d. Are there improvements, in terms of resources, methodology, and objectives in the conduct of this oversight that you believe should be considered?

RESPONSE: I cannot comment whether improvements are needed because I have not been with NSD for almost nine years. If confirmed, however, I look forward to managing the important oversight function of the Division and will make any needed changes.

Foreign Intelligence Surveillance Act

QUESTION 6: Pursuant to 28 C.F.R. § 0.72(6), the AAG/NS shall administer the Foreign Intelligence Surveillance Act (FISA).

a. What responsibility does the NSD have with regard to ensuring that representations made to the United States courts, both by other Department elements and by Intelligence Community (IC) elements, are accurate and complete with regard to intelligence activities and other classified matters? What responsibility does NSD have to correct any inaccurate or incomplete representations? Please describe how NSD fulfills this responsibility.

RESPONSE: NSD has the responsibility to ensure that the Department's representations in court are accurate, and to do its best to ensure that the same is true of representations made by the Intelligence Community in matters handled by NSD.

If there are mistakes, NSD must inform the courts promptly and work with the Intelligence Community to correct the mistakes. To fulfill this responsibility, NSD attorneys must work diligently to understand the facts of intelligence activities and other national security-related matters that may be at issue in litigation or other matters for which they are responsible.

b. Based on your experience in and current understanding of NSD, what improvements, if any, would you make to the administration of FISA, in terms of policies, resources, technology, and relations with both the Foreign Intelligence Surveillance Court (FISC) and IC elements?

RESPONSE: I cannot comment whether improvements are needed because I have not been with NSD for almost nine years. If confirmed, I am looking forward to ensuring that the Division maintains a strong relationship with the FISC and that the Division has the appropriate policies, resources and technology.

c. What is the role of NSD in the declassification of FISC opinions? What changes, if any, would you make to this process?

RESPONSE: Because I am not currently working at the Department, I am not privy to the current role of NSD in the declassification of FISC opinions.

d. Title VII of the FISA Amendments Act of 2012 is set to expire on December 31, 2017. Do you support reauthorization for a period of years or making these provisions permanent? Please provide the principal reasons for your support.

RESPONSE: I support permanent reauthorization of this law. During my prior time at the Division, I worked closely with the staff of this Committee to draft this law. I believe the law provides the Intelligence Community with the speed and agility that it needs to counter the serious threats to our national security, and that it contains important protections for the civil liberties of Americans while ensuring appropriate oversight by all three branches of government. My understanding from public testimony is that the Intelligence Community views Section 702 as a critical tool and that, after a thorough review, the Privacy and Civil Liberties Oversight Board determined that there have been no intentional misuses of this authority. Thus, I support its reauthorization.

Protection of Classified Information

QUESTION 7: Describe your understanding of the personnel resources that NSD should devote to the prosecution of unauthorized disclosures of classified information, and how the NSD should divide responsibility on these matters with the Criminal Division. Please describe any recommendations related to prosecutions connected to unauthorized disclosures of classified information with regard to Department policies and resources.

RESPONSE: Unauthorized disclosures of classified information can pose a serious risk to the nation's security, including to its sources of information and methods of information gathering. Effective enforcement of laws forbidding such disclosure has both a specific and general deterrent effect. That said, because I have not been with the Department for almost nine years, I am not privy to the personnel resources the NSD uses to investigate and prosecute unauthorized disclosures of classified information. Nor do I know how responsibility for these matters is shared with the Criminal Division.

QUESTION 8: Pursuant to 28 C.F.R. § 0.72(a)(l), the AAG/NS has the responsibility to advise the Attorney General, the Office of Management and Budget, and the White House on matters relating to the national security. In addition, pursuant to 28 C.F.R. § 0.72(a)(7), the AAG/NS has the responsibility to prosecute crimes involving national security, foreign relations, and terrorism.

a. Describe your understanding of the personnel resources within the NSD that should be devoted to the prosecution of media leak cases, and how the NSD should divide responsibility on these matters with the Criminal Division.

   RESPONSE: Because I have not been with the Department for almost nine years, I do not know what personnel resources the NSD uses to investigate and prosecute media leak cases. Nor do I know how responsibility for these matters is shared with the Criminal Division.

b. Describe your understanding of the role that the NSD has played since its inception in media leak prosecutions in United States district courts and on appeal to the United States courts of appeals.

   RESPONSE: I did not work on media leak prosecutions during my last time at NSD, and, because I have not been with the Department for almost nine years, I am not privy to the role that NSD has played in media leak prosecutions in United States district courts and on appeal to the United States courts of appeals.

c. Are there any steps that the Department could take to increase the number of individuals who are prosecuted for making unauthorized disclosures of classified information to members of the news media? If so, please describe.

   RESPONSE: Because I have not been with the Department for almost nine years, I am not familiar with the resources and investigative techniques the Department is utilizing, or other steps the Department may be taking, to combat unauthorized disclosures of classified information. I look forward to learning more about the steps NSD and the Department are taking and further studying this issue to determine whether more should be done.

d. Are there any additional steps that the U.S. government as a whole should take to prevent the unauthorized disclosures of classified information from occurring? If so, please describe.

RESPONSE: Because I have not been in Government or with the Department for almost nine years, I am not familiar with the steps the Department and U.S. government as a whole may be taking to prevent the unauthorized disclosures of classified information. I look forward to learning more about the steps the Department and government are taking and further studying this issue to determine whether more should be done.

e. Are there any additional steps that the U.S. government as a whole should take to prevent the unauthorized removal and retention of classified information from occurring? If so, please describe.

RESPONSE: Because I have not been with the Department for almost nine years, I am not familiar with the steps the Department and U.S. government as a whole may be taking to prevent the unauthorized removal and retention of classified information. I look forward to learning more about the steps the Department and government are taking and further studying this issue to determine whether more should be done.

f. Please describe your understanding of the NSD's prepublication review responsibilities and the administrative and judicial review, which is available to an officer or employee, or former officer or employee, with respect to the Department's exercise of prepublication authorities, including those applicable to the FBI. In answering this question, please provide your evaluation of the extent to which present and former officers and employees of the Department adhere to their prepublication obligations.

RESPONSE: While I was last there, NSD reviewed the manuscripts of several current or former employees before publication to ensure that no classified information was inadvertently released. Because I have not been at the Department for almost nine years, I do not have an understanding of NSD's current prepublication review responsibilities, whether employees are adhering to their responsibilities, or of the administrative and judicial review of the Department's exercise of its prepublication authorities.

Obtaining Approvals from the Department/National Security Undercover Operations

QUESTION 9: In general, if a particular investigative authority has been underutilized because of governmental administrative burdens, are you committed to eliminating unnecessary administrative burdens so that intelligence professionals are more willing to use the authority?

RESPONSE: Yes. If confirmed, I am committed to eliminating unnecessary administrative burdens so that intelligence professionals are more willing to use the authority.

a. What is your understanding of how long it takes for the FBI to obtain authority for exemptions in national security undercover operations?

RESPONSE: Because I am not currently working at the Department, I do not know how long it takes for the FBI to obtain authority for exemptions in national security undercover operations.

b. What additional steps should the Department take to ensure to eliminate unnecessary delays?

RESPONSE: Because I am not currently working at the Department, I do not know the current process, or whether there are additional steps the Department should take to avoid unnecessary delay. If confirmed, I look forward to working on this issue and ensuring that there are no unnecessary administrative burdens.

Counterterrorism Prosecutions

QUESTION 10: Pursuant to 28 C.F.R. § 0.72(a)(8), the AAG/NS has the responsibility to "[p]rosecute and coordinate prosecutions and investigations targeting individuals and organizations involved in terrorist acts at home or against U.S. persons or interests abroad, or that assist in the financing of or providing support to those acts[.]"

a. Describe your understanding of the personnel resources that NSD should devote to the prosecution of terrorism cases.

RESPONSE: The Department's highest priority is protecting our nation against acts of terrorism, espionage and other national security threats, and NSD plays a critical role in achieving that mission. Because I am not currently working at the Department, however, I am not privy to the personnel resources of NSD that are dedicated to the prosecution of terrorism cases and have no views on whether they are correctly allocated in light of competing responsibilities.

b. Describe your understanding of the role that the NSD has played since its inception in terrorism prosecutions in United States district courts and on appeal to the United States courts of appeals.

RESPONSE: Based upon my experience as a Deputy Assistant Attorney General for the NSD, NSD has played a key role since its inception in terrorism prosecutions in the United States district courts. Since I left, the Division has added an appellate capability in national security cases. NSD is responsible for ensuring that national security activities conducted by United States Attorney's Offices are coordinated as part of a national program. To fulfill that responsibility, NSD supervises the application of most federal criminal laws related to counterterrorism. Through its authority to approve the use of certain statutes in terrorism prosecutions, NSD seeks to ensure a coordinated and consistent approach in combating terrorism threats. NSD also ensures that the Department's counterterrorism activities are coordinated with other elements of the Intelligence Community.

c. Describe what role NSD will play, if any, in prosecutions before military commissions.

RESPONSE: NSD attorneys support the work of the military prosecutors before the military commissions, and NSD is responsible for handling related appeals to the U.S.

Court of Appeals for the District of Columbia. I expect that work to continue as the Division seeks justice for those, and the families of those, who died on September 11, 2001, and in other attacks.

Counterespionage Prosecutions

QUESTION 11: Pursuant to 28 C.F.R. § 0.72(a)(7), the AAG/NS has the responsibility to "[p]rosecute federal crimes involving national security, foreign relations and terrorism[.]"

a. Describe your understanding of the personnel resources that NSD should devote to the prosecution of espionage cases.

RESPONSE: I understand that the Department's highest priority is protecting our nation against acts of terrorism, espionage and other national security threats, and that NSD plays a critical role in achieving that mission. Because I am not currently working at the Department, however, I am not privy to the personnel resources of NSD that are dedicated to the prosecution of espionage cases and have no views on whether they are correctly allocated in light of competing responsibilities.

b. Describe your understanding of the role that the NSD has played since its inception in espionage prosecutions in United States district courts and on appeal to the U.S. courts of appeals.

RESPONSE: Based upon my experience as a Deputy Assistant Attorney General for the NSD, NSD has played a key role since its inception in espionage prosecutions in the United States district courts. Since I left, the Division has added an appellate capability in national security cases. My understanding is that NSD is responsible for ensuring that national security activities conducted by United States Attorney's Offices are coordinated as part of a national program. To fulfill that responsibility, NSD supervises the application of most federal criminal laws related to espionage. Through its authority to approve the use of certain statutes in espionage prosecutions, NSD seeks to ensure a coordinated and consistent approach in combating the threat of espionage. NSD also ensures that the Department's counterintelligence activities are coordinated with other elements of the Intelligence Community.

QUESTION 12: For each of the following, describe specifically how your experiences will enable you to serve effectively as the AAG/NS. Include within each response a description of issues relating to the NSD that you can identify based on those experiences.

a. Vice President and Assistant General Counsel, Regulatory & Government Law, at The Boeing Company;

RESPONSE: As a vice president in the law department at the Boeing Company, I have gained valuable experience advising the business on achieving its objectives consistent with applicable law and policy, hiring and managing groups of lawyers, and allocating

resources to meet the organization's top priorities. I have developed a close relationship with the business leaders so that I could provide early and on-going advice and counsel, rather than legal "sign-off" (or not) when a policy or plan is already well formulated. I have participated in a variety of legal matters including investigations, litigation and commercial negotiations. I have also been responsible for trade controls, anticorruption and other compliance matters, which has helped me learn how to design and operate an effective compliance program. These lessons are applicable to compliance in other subject matter areas as well. During my time at Boeing, I have worked on several subject matters areas that will relate to my work at the Division, including export controls and some aspects of cyber security.

b. Deputy Assistant Attorney General for the Office of Law and Policy, and Senior Counsel to the Assistant Attorney General, for the NSD at the Department; and

RESPONSE: My work as a Senior Counsel and Deputy Assistant Attorney General in NSD is most directly relevant to serving effectively as AAG/NS. In that prior capacity, I worked on a variety of national security legal issues, including those involving surveillance law and the Fourth Amendment to the U.S. Constitution, other investigative authorities including those under Executive Order 12333 and the National Security Letter statutes, and cyber operations. I was closely involved in the drafting and negotiation of the Foreign Intelligence Surveillance Act of 2008, and worked on minimization procedures and internal investigative guidelines. I also worked closely with various agencies of the Intelligence Community, including the Federal Bureau of Investigations, the National Security Agency, and the Central Intelligence Agency. As a result of that work, I am familiar with many of the issues facing the Division.

c. Attorney Advisor for the Office of Legal Counsel at the Department.

RESPONSE: This job was my introduction to the Department and how it operates. I was also able to dive deeply into a variety of legal issues, although few that related directly to NSD. My experience at OLC, like that of clerking, trained me to think carefully about specific and difficult legal issues, and how to reconcile competing authorities and views. This is experience that served me well later at NSD when looking at particular legal and constitutional issues involving surveillance law.

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QUESTIONS FOR THE RECORD FROM SENATOR RON WYDEN

Section 702 of FISA

1. In 2015, the Department of Justice issued a memorandum entitled "Restriction Regarding the Use of FISA Section 702 Information in Criminal Proceedings Against United States Persons."

   a. **Do you believe there should be any restrictions on the use of information obtained from Section 702 other than as evidence in criminal proceedings, i.e. as part of criminal *investigations* or as part of administrative or civil investigations or proceedings?**

   RESPONSE: As I was not involved in the drafting of this 2015 policy, I am not aware of what factors the government may have weighed when deciding its scope, and thus am not in a position to assess whether that scope should be changed. Should I be confirmed, I would expect to be briefed further on Section 702, including on the development and implementation of this policy.

   b. **The 2015 policy includes an exception for "transnational crime." Do you support this exception and, if so, what would be included as a "transnational crime."**

   RESPONSE: See response to Question 1(a) above.

2. Section 702 of FISA prohibits the government from targeting a person reasonably believed to be located outside the United States "if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States." Both the foreign target and the U.S. communicant can be the subject of repeated queries and disseminated reporting, and Section 702-collected information on either the foreign target or the U.S. communicant can be used in criminal and other proceedings.

   a. **Assuming the government has a purpose for targeting the foreign target, are there any limits to how extensively the government can query, disseminate and use 702-collected information on the U.S. communicant, relative to the overseas target, before the current statutory prohibition on "reverse targeting" applies?**

   RESPONSE: As I understand it, determining whether a particular known U.S. person has been reverse targeted through the targeting of a Section 702 target necessitates a fact specific inquiry that would involve consideration of a variety of factors. For example, as the Privacy and Civil Liberties Oversight Board noted in

its 2014 report, if a Section 702 tasking resulted in substantial reporting by the Intelligence Community regarding a U.S. person, but little reporting about the Section 702 target, that might be an indication that reverse targeting may have occurred.

b. **If the answer above is no, would you support a change to the law that would require the government to consider the relative extent of queries, dissemination and use of 702-collected information in making a reverse targeting determination?**

RESPONSE: As noted above, under existing law I understand that a reverse targeting determination is a fact-specific inquiry that would involve consideration of a variety of factors. The Privacy and Civil Liberties Oversight Board has found no intentional misuse of Section 702 authority. Nonetheless, should I become aware of instances of reverse targeting through the Division's oversight function, I would conduct a root-cause analysis and consider a variety of approaches to ensure it did not reoccur.

Encryption

3. When the government mandates that companies weaken the encryption of the products used by the American public, it comes at serious cost to the security of Americans. Moreover, recent events such as the Office of Personnel Management breach and election-related Russian hacking have demonstrated that weak encryption is a serious national security problem. **If you are confirmed as Assistant Attorney General for the National Security Division, what will be your position with regard to policies or legislative proposals to permit the government to mandate weaknesses in strong encryption?**

RESPONSE: Encryption is important to enable the government, the private sector, and our citizens to safeguard private information and strengthen our personal and national security. However, it also poses serious challenges for law enforcement's ability to protect public safety by providing child molesters, terrorists, spies and other criminals with a more confidential way of communicating. I know that the Department of Justice and the FBI have expressed serious concerns, across Administrations, about their inability to obtain electronic information pursuant to lawful court orders because of encryption and other technological issues. If I am confirmed, I would work with all interested stakeholders, including Congress and the private sector, to come up with solutions to this challenge.

4. Under Section 702 of FISA, the government can direct an electronic communications service provider to provide "assistance necessary to accomplish the acquisition."

a. **Does this provision authorize the government to direct a provider to circumvent or weaken the encryption of the provider's product or to insert surveillance-enabling software into a customer's device?**

RESPONSE: Section 702(h) authorizes the Attorney General and Director of National Intelligence to direct an electronic communications service provider to provide "all information, facilities, or assistance necessary to accomplish the" Section 702 acquisition. This language is very similar to that found in Title I of FISA. I do not know whether section 702(h) could be used in the manner you describe, and determining the appropriate scope of such "information, facilities, or assistance" that is "necessary to accomplish the acquisition" in particular cases would involve a fact-based inquiry and could vary based on different service providers and different technologies. A provider is always free to challenge the lawfulness of a directive under this section or to require the Government to file a motion to compel.

b. **If the answer above is yes, should the FISA Court be informed of any such directive?**

RESPONSE: The FISA Court would be provided a Title VII directive for review if a service provider challenged the lawfulness of a directive as permitted under Section 702(h)(4), or if the Government filed a motion to compel a provider's compliance with a directive as permitted by Section 702(h)(5).

Media

5. On July 12, 2013, the Department of Justice released a Report on Review of News Media Policies. **Which aspects of that Review do you agree with and which would you advise be modified?**

RESPONSE: I have not had occasion to review the Department's Report on Review of News Media Policies during the prior Administration, so I am not in a position to comment on whether I would support or propose to modify any policies adopted as a result of that review. As I said at my confirmation hearing, I believe that issuing a subpoena to a journalist is not a decision to be taken lightly and should be a last resort or close to a last resort.

Enemy combatants

6. **Can a U.S. person who is arrested in the United States be held as an enemy combatant?**

RESPONSE: Federal courts have rendered different opinions on the question whether, and if so when, a U.S. person arrested in the United States may be held as an enemy combatant in the conflict with al Qaeda, the Taliban, and associated forces, and the Supreme Court has not addressed the issue. I have not examined this issue closely, but would do so if the question arises. As I stated at my confirmation hearing, my predisposition is that Americans ultimately be tried in Article III courts.

Other

7. Section 4 of PPD-28 calls on each Intelligence Community element to update existing or issue new policies and procedures to implement principles for safeguarding all personal information collected through SIGINT. Those policies and procedures are currently posted publicly by the ODNI.

   a. **Do you support the continuation of these policies?**

   b. **Please describe any modifications you would make to these policies.**

   RESPONSE to 7(a) and 7(b): I have not had occasion to review the policies and procedures adopted pursuant to PPD-28 or to discuss their basis and investigative impact with the Intelligence Community, so I am not in a position to comment on the substance of the policies.

8. **Are there any circumstances in which an element of the Intelligence Community may not conduct a warrantless search for a U.S. person of communications that have been collected pursuant to Section 12333? If so, please describe.**

   RESPONSE: Rules governing U.S. person information collected pursuant to Executive Order 12333 are set forth in guidelines established by the head of the relevant element of the Intelligence Community and approved by the Attorney General in accordance with section 2.3 of that order. Whether a particular query could be conducted would depend on application of any such rules to the circumstances at hand, and I have not had the opportunity to review those rules in many years.

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QUESTIONS FOR THE RECORD FROM SENATOR TOM COTTON

1. **Do you believe the growing presence of Chinese state-owned telecommunications carriers and equipment providers, such a China Mobile, China Telecom, China Unicom, Huawei, and ZTE, in the United States is a national security threat that we will have to deal with?**

   RESPONSE: I believe that the U.S. government must remain vigilant against the national security threat posed by the presence of foreign state-owned or controlled telecommunications carriers and equipment providers in the United States, including from China. I know that the Intelligence Community recently assessed publicly that China will continue to actively target the U.S. government, its allies, and U.S. companies for cyber espionage, and that our communication networks are at risk as our adversaries become more adept at compromising those networks.

2. **Will you commit to reading the latest intelligence on the threat these entities pose?**

   RESPONSE: Yes.

3. **Do you believe U.S. telecommunications providers, such as AT&T, should be wary about partnering in any way with Chinese state-owned telecommunications carriers and equipment providers, such as China Mobile, China Telecom, China Unicom, Huawei, and ZTE?**

   RESPONSE: The U.S. telecommunications sector is part of our nation's critical infrastructure, underlying the operations of all businesses, public safety organizations, and government. As such, I believe U.S. telecommunications providers must have a heightened awareness of the vulnerabilities in the telecommunications supply chain and take into account the security risks associated with doing business with third-party vendors, suppliers, and other partners, particularly those subject to influence by foreign governments. Ultimately, the U.S. government has the responsibility to ensure the security and resilience of the U.S. telecommunications sector, and to use every appropriate authority to address national security risks.

4. **Do you believe that China telecommunications and equipment providers should be allowed to have their equipment incorporated into critical infrastructure, such as first responder networks? Should U.S. government agencies be allowed to purchase phones if they include components produced by Huawei?**

   RESPONSE: I believe the U.S. government has a responsibility to ensure the security and resilience of the U.S. telecommunications sector, which is an essential

part of our critical infrastructure. If confirmed, I would work with interagency partners, including the Intelligence Community, the Department of Homeland Security, and sector specific agencies, as well as critical infrastructure owners and operators to address national security threats to the sector – including threats from telecommunications and equipment providers subject to influence by foreign governments.

5. **If confirmed, will you commit to reviewing and updating any National Security Threat Assessment associated with China Mobile Communications Corporation, Huawei, ZTE, China Telecom, China Unicom, or any other Chinese telecommunications company?**

   RESPONSE: I have not been with the Department of Justice for almost nine years, so I am not aware of what role the National Security Division has played in drafting National Security Threat Assessments associated with the Chinese telecommunications companies you reference. If confirmed, I commit to working with relevant interagency partners to take appropriate steps to address any national security threats posed by foreign-owned telecommunications carriers and equipment providers' operations in the United States.

6. **If confirmed, what other steps will you take in this area? Are there ways the DOJ NSD can better partner with the FCC and NTIA in this area?**

   RESPONSE: I have been away from the Department for almost nine years, and I am not aware of what role the National Security Division currently plays with respect to addressing national security risks affecting the U.S. telecommunications sector. I know that the Division participates in "Team Telecom," an ad-hoc interagency group that assists the Federal Communications Commission (FCC) in reviewing certain license applications and determining whether granting a license to foreign-owned or -controlled entities poses national security risks. If confirmed, I commit to working with relevant interagency partners to take appropriate steps to address any national security risks posed by foreign-owned telecommunications carriers and equipment providers' operations in the United States.

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QUESTIONS FOR THE RECORD FROM SENATOR KAMALA D. HARRIS

1. There has been a troubling uptick in domestic terror attacks targeting ethnic and religious minorities. Prior to the August 12, 2017 "Unite the Right" violence in Charlottesville, on May 20, 2017, FBI and DHS issued a Joint Intelligence Bulletin entitled "White Supremacist Extremism Poses Persistent Threat of Lethal Violence." The report notes that White Supremacist Extremists were responsible for 49 homicides in 26 attacks from 2000 to 2016, "more than any other domestic extremist movement." Additionally, a recent Government Accountability Office report stated that of the 85 violent extremist incidents in the U.S. that resulted in death since September 12, 2001, far-right extremist groups were responsible for 73 percent.

    a. **Would the NSD, under your leadership, commit to dedicating more resources to addressing these incidents of white supremacy and domestic terrorism?**

    b. **If confirmed to head the NSD, what other steps will you take to combat domestic terrorism?**

    RESPONSE: The violence in Charlottesville was reprehensible, and, like all terrorism, domestic terrorism must be prevented and prosecuted. As a private citizen who has been out of the Justice Department for nearly a decade, I am not in a position to assess whether NSD is devoting sufficient resources to the threat of domestic terrorism. I understand from the FBI Director's recent testimony that the FBI devotes significant resources to domestic terrorism investigations, which reflects the gravity of this threat to our national security, and I am committed to working with the FBI and using the full range of our authorities to protect the public against this serious threat. I would use every lawful tool, consistent with the First Amendment, to deter and disrupt the domestic terrorism threat, including terrorist activities by white supremacists, and bring those responsible to justice.

2. Recently, the FBI's Counterterrorism Division released a report entitled, "Black Identity Extremists Likely Motivated to Target Law Enforcement." The report details that in the aftermath of Black Lives Matter protests, the FBI created a new category of extremist for individuals who seek to "establish a separate black homeland or autonomous black institutions through unlawful acts of force or violence."

    a. **The NSD and FBI often work together on national security issues. Please explain the NSD's role in determining whether an individual is categorized as a "Black Identity Extremist"?**

b. **Please explain whether the NSD provides any advice or guidance to the FBI in terms of how to train its officers to deal with individuals designated as a "Black Identity Extremist." If so, what is this guidance? Should this guidance include implicit bias training? Should it include training to prevent racial profiling?**

c. **How will you ensure that this new designation will not be abused to target Americans that are merely exercising their right to free speech and assembly?**

RESPONSE: I am not familiar with this report, and because I am not currently working at the Department of Justice, I am unaware of what role NSD is playing with respect to this issue, including with respect to any training. It is essential that our national security laws and policies both safeguard the American people from a wide range of threats and maintain the individual liberties and freedoms that define American life. I note that the Attorney General's Guidelines for Domestic FBI Operations prohibit investigations of and information gathering on United States persons solely for the purpose of monitoring activities protected by the First Amendment. This is similar the language in FISA with respect to foreign intelligence surveillance. Thus, various laws recognize the sensitivity of the First Amendment issues that may be implicated by terrorism investigations. Together with the career attorneys in the Division, I would ensure that NSD's national security activities are conducted in accord with the law and the facts, and consistent with the constitutional protections for free speech and assembly.

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