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United States Senate
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John O. Brennan
Assistant to the President for Homeland Security and Counterterrorism
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. Brennan:

Congratulations on your nomination to be the next Director of the Central Intelligence Agency. I appreciated the opportunity to speak to you last week, and I look forward to meeting with you prior to your hearing to continue our discussion in more detail. I would also appreciate your help in providing me with responses to a number of questions that I and others have asked on topics relevant to your nomination.

First, as you may be aware, I have asked repeatedly over the past two years to see the secret legal opinions that contain the executive branch's understanding of the President's authority to kill American citizens in the course of counterterrorism operations. Senior intelligence officials have said publicly that they have the authority to knowingly use lethal force against Americans in the course of counterterrorism operations, and have indicated that there are secret legal opinions issued by the Justice Department's Office of Legal Counsel that explain the basis for this authority. I have asked repeatedly to see these opinions, and I have been provided with some relevant information on the topic, but I have yet to see the opinions themselves.

Both you and the Attorney General gave public speeches on this topic early last year, and these speeches were a welcome step in the direction of more transparency and openness, but as I noted at the time, these speeches left a large number of important questions unanswered. A federal judge recently noted in a Freedom of Information Act case that "no lawyer worth his salt would equate Mr. Holder's statements with the sort of robust analysis that one finds in a properly constructed legal opinion," and I assume that Attorney General Holder would agree that this was not his intent.

As I have said before, this situation is unacceptable. For the executive branch to claim that intelligence agencies have the authority to knowingly kill American citizens but refuse to provide Congress with any and all legal opinions that explain the executive branch's understanding of this authority represents an alarming and indefensible assertion of executive prerogative. There are clearly some circumstances in which the President has the authority to use lethal force against Americans who have taken up arms against the United States, just as President Lincoln had the authority to order Union troops to take military action against Confederate forces during the Civil War. But it is critically

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important for Congress and the American public to have full knowledge of how the executive branch understands the limits and boundaries of this authority, so that Congress and the public can decide whether this authority has been properly defined, and whether the President's power to deliberately kill American citizens is subject to appropriate limitations. I have an obligation from my oath of office to review any classified legal opinions that lay out the federal government's official views on this issue, and I will not be satisfied until I have received them. So, please ensure that these opinions are provided to me, along with the other members of the Senate Intelligence Committee and our cleared staff, and that we receive written assurances that future legal opinions on this topic will also be provided.

Second, as you may be aware, my staff and I have been asking for over a year for the complete list of countries in which the intelligence community has used its lethal counterterrorism authorities. To my surprise and dismay, the intelligence community has declined to provide me with the complete list. In my judgment, every member of the Senate Intelligence Committee should know (or be able to find out) all of the countries where United States intelligence agencies have killed or attempted to kill people. The fact that this request was denied reflects poorly on the Obama Administration's commitment to cooperation with congressional oversight. So, please ensure that the full list of countries is provided to me, along with the other members of the Senate Intelligence Committee and our cleared staff.

Third, over two years ago Senator Feingold and I wrote to the Attorney General regarding two classified opinions from the Justice Department's Office of Legal Counsel, including an opinion that interprets common commercial service agreements. We asked the Attorney General to declassify both of these opinions, and to revoke the opinion pertaining to commercial service agreements. Last summer, I repeated this request, and noted that the opinion regarding commercial service agreements has direct relevance to ongoing congressional debates regarding cybersecurity legislation. The Justice Department still has not responded to these letters. Please ensure that I receive a response, so that I can review this response as I consider your nomination.

Fourth, in December 2010 Senator Feingold and I wrote a classified letter to the Attorney General regarding the interpretation of a particular statute. Early last year, I repeated my request for a response to this letter. The Justice Department still has not responded to these letters. Please ensure that I receive a response, so that I can review this response as I consider your nomination.

I recognize that these requests encompass a substantial amount of information. I would note, however, that all of these requests date back more than one year, and all but one of them date back more than two years. Taken together, these failures to respond start to form a pattern in which the executive branch is evading congressional oversight by simply not responding to congressional requests for information. I ask that you help correct this problem by ensuring that I receive prompt, substantive responses to all of these requests.

I am also attaching a number of more specific questions about the executive branch's legal analysis regarding the killing of American citizens. I hope that these questions are directly addressed in the secret legal opinions, but to the extent that they are not, please ensure that I receive answers to them. I would also urge the executive branch to make all of these answers available to the public as well. As I have noted before, individual Americans generally do not expect to know every detail about sensitive military and intelligence operations, but voters absolutely have a need and a right to understand the boundaries of what is and is not permitted under the law, so that they can debate what should and should not be legal and ratify or reject decisions that elected officials make on their behalf. And I believe that every American has the right to know when their government believes it is allowed to kill them.

Finally, as you know, the Senate Intelligence Committee recently completed a 6000 page report on the use of torture and coercive interrogations by the CIA. Please be prepared to discuss the major findings and conclusions of this report. I am particularly interested in getting your reaction to the report's revelation that the CIA repeatedly provided inaccurate information about its interrogation program to the White House, the Justice Department, and Congress, and your view on what steps should be taken to correct inaccurate statements that were made to the public.

Thank you for your attention to these matters. I look forward to discussing these issues with you further.

Sincerely,



Ron Wyden
United States Senator

Attachment: Specific Questions Regarding the President's Authority to Use Lethal Force Against Americans

- How much evidence does the President need to determine that a particular American can be lawfully killed? Senior Administration officials have stated that the individual must pose a “significant” or “imminent” threat, but how much evidence is required to determine that this is the case?
- Does the President have to provide individual Americans with the opportunity to surrender before killing them? Does this obligation change if the President’s determination that a particular American is a valid target has not been publicly announced or publicly reported?
- Senior officials have stated that the use of lethal force is permitted in situations where capture is not feasible. What standard is used to determine whether it is feasible to capture a particular American?
- Is the legal basis for the intelligence community’s lethal counterterrorism operations the 2001 Congressional Authorization for the Use of Military Force, or the President’s Commander-in-Chief authority?
- Are there any geographic limitations on the intelligence community’s authority to use lethal force against Americans? Do any intelligence agencies have the authority to carry out lethal operations inside the United States?
- The United States Constitution states that no American may “be deprived of life, liberty, or property, without due process of law.” The Attorney General’s 2012 speech at Northwestern University, which addressed the use of lethal force, referred to past Supreme Court cases that have applied this protection, and made apparent references to three cases in particular (*Ex Parte Quirin*, *Hamdi v. Rumsfeld*, and *Mathews v. Eldridge*). However, none of these cases specifically addresses the government’s ability to kill Americans without trial. Given this distinction, what is the rationale for applying these particular decisions to the question of when the President may legally kill an American?
- The Attorney General’s speech also stated that “Where national security operations are at stake, due process takes into account the realities of combat.” This is another apparent reference to the Supreme Court’s *Hamdi v. Rumsfeld* decision. But in the *Hamdi* case the Supreme Court appears to have used a different, more traditional definition of “combat” – the *Hamdi* case involved the rights of an American who had been captured in Afghanistan, but the Attorney General noted that his speech referred to the use of lethal force “outside the hot battlefield of Afghanistan.” What impact, if any, does this broader definition of “combat” have on the applicable legal principles?