

**Nomination of John Demers to be  
Assistant Attorney General for the National Security Division,  
Department of Justice  
Questions for the Record  
Submitted October 11, 2017**

**QUESTIONS FROM SENATOR FEINSTEIN**

1. On May 9, the President fired FBI Director James Comey. On January 30, the President fired Acting Attorney General Sally Yates. The President made very clear that he will fire individuals who disagree with him or who pursue investigations against his wishes. Kellyanne Conway, one of the President's advisors, stated on May 11 that President Trump "expects people who are serving in his Administration to be loyal to the country and to be loyal to the Administration." Yet if confirmed, you will be called upon to exercise independence and to serve the American people, not the President.

**a. How can this Committee have confidence that you will be independent from the President?**

**RESPONSE:** My loyalty lies with the Constitution and the laws of the United States. This job must be done consistent with the law and the Department's tradition of independence from partisan politics and with a willingness to follow the facts and the law wherever they lead. This independence is safeguarded by the integrity of the Department's career employees and maintained by the policies and practices of the Department, including those concerning contacts by the White House. If confirmed, I will follow these policies and practices, and work closely with the career employees of the Division to maintain the independence necessary to ensure the Division's work is free of partisan influence. That is what I did during my prior service with the Department and, if confirmed, that is my commitment in leading the NSD.

**b. What specific examples from your background offer evidence that you will not reflexively do what the White House wants you to do?**

**RESPONSE:** Throughout my career, I have been called upon to advise clients on many sensitive matters. Although it would not be proper to reveal the details of any particular communications, I believe that I have developed a strong reputation for providing clients with sound, independent legal advice, which has included saying no to proposed courses of actions.

**c. Do you believe it is important for the Assistant Attorney General for the National Security Division to be, first and foremost, "loyal to the Administration?"**

**RESPONSE:** No. I believe the AAG for the National Security Division must, first and foremost, be loyal to the Constitution and laws of the United States and

take actions that are in the best interest of the liberty and security of the American people.

2. President Trump has made public comments suggesting that he would like to bring back waterboarding and “a hell of a lot worse.” **Do you agree that waterboarding and other forms of torture are illegal?**

**RESPONSE:** Yes.

3. **Have you reviewed the Executive Summary of the Senate Select Committee on Intelligence’s Study into the CIA’s Detention and Interrogation Program?**

**RESPONSE:** No, I have not.

4. **If confirmed, will you commit to reviewing the full, classified study before the National Security Division examines legal issues regarding detainee treatment, interpretation of the Convention Against Torture, or the Geneva Conventions?**

**RESPONSE:** I will review the report as part of any examination of the legal issues regarding detainee treatment, the Convention Against Torture or the Geneva Conventions.

5. It’s my understanding that you were an Attorney-Adviser at the Office of Legal Counsel from 2003 to 2005.

- a. **During your time at OLC, did you work on any issues involving torture, detention, rendition, enhanced interrogation, Common Article 3 of the Geneva Conventions, or otherwise related to the War on Terror?**

**RESPONSE:** See response to Question 5(b).

- b. **If so, please explain the nature and extent of your involvement.**

**RESPONSE:** I began my work as a career attorney at the Office of Legal Counsel in the summer of 2003, after, as I recall, the original set of legal opinions on the matters listed above were completed and just before the time that Assistant Attorney General Goldsmith began to reconsider some of the reasoning and conclusions of at least some of those opinions. Little of that reconsideration was visible to me at the time; however, as what I know now to have been part of the process, the Assistant Attorney General gave me, and I believe other attorney advisors, discrete legal questions to research. In particular, I recall two legal research questions—one on the Fourth Amendment and one on case law from the period before the Foreign Intelligence Surveillance Act. Both of these questions related to what I have since learned

was the Terrorist Surveillance program, although I was never read into that program.

6. While you were at the National Security Division during the Bush Administration, you worked on the FISA Amendments Act of 2008, which added section 702 to the Foreign Intelligence Surveillance Act.

- a. **Please explain the nature and extent of your involvement in the FISA Amendments Act of 2008.**

**RESPONSE:** As Deputy Assistant Attorney General for the Office of Law and Policy, I was closely involved in the drafting and negotiating of the FISA Amendments Act of 2008. In that capacity, I worked closely with other members of the Executive Branch and with the staff of the Senate Judiciary Committee and the Senate Select Committee on Intelligence to achieve a bipartisan solution to provide the intelligence community with the speed and agility it needed to protect the nation while safeguarding the privacy and civil liberties of all Americans. The work included drafting proposed statutory language, analyzing the impact of proposed language with the Intelligence Community, supporting testimony on this topic by senior Administration members, and engaging on a regular basis with Congressional staff.

- b. **Based on your experience working on the FISA Amendments Act of 2008 and as a practitioner who has appeared before the FISA Court, what if any changes do you believe should be made to FISA as part of this year's reauthorization process?**

**RESPONSE:** I understand from public testimony that Intelligence Community and Justice Department officials have consistently described Section 702 as a critical legal authority that produces foreign intelligence information that is vital to protect the nation against international terrorism and other threats, and that the Administration supports the reauthorization of Section 702. The Privacy and Civil Liberties Oversight Board's comprehensive and independent review of the Section 702 program in 2014 concurred with this assessment of the value of the program. Congress carefully balanced privacy and civil liberties protections when crafting Section 702, and I know from my past experience that lawyers in the National Security Division take very seriously the task of ensuring compliance with the statute. For these reasons, I support reauthorization of Section 702.

- c. **Do you believe there is value in having the FISA Court appoint an amicus to participate in the hearing each time the government seeks court approval to continue Section 702 collection?**

**RESPONSE:** Existing law provides a mechanism for amicus involvement in the Court's review of Section 702 submissions. However, I have not been briefed on the implementation of this newly-enacted provision, and am not in a position to assess in which cases such an amicus would be most useful to the Court.

**d. What is your opinion on the proper role of congressional oversight of the Section 702 program?**

**RESPONSE:** Regular and meaningful Congressional oversight of the use of Section 702 is an important aspect of the program's implementation. I look forward to working with Congress on its oversight of the Intelligence Community's use of this important authority.

**7. Recent media reports described two American citizens apprehended in Syria by Syrian Defense Forces. The article stated that they are being held as enemy combatants and may be transferred to Iraqi custody.**

**a. What is the legal status of an American apprehended while fighting in Syria? Should that individual be returned to the United States for trial or held as an enemy combatant?**

**RESPONSE:** I am 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.

**b. Could a U.S. citizen apprehended in Syria or Iraq be turned over to Iraqi custody if there is well-documented risk that they will be tortured?**

**RESPONSE:** No, the U.S. government could not turn over a U.S. citizen to Iraqi or any other foreign custody if it is determined that it is more likely than not that the individual would be tortured.

**8. Please describe with particularity the process by which these questions were answered.**

**RESPONSE:** These answers are my own and reflect my own views. I discussed my answers and consulted with representatives of the Department of Justice. I understand that the Department will submit my answers to the Committee.

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**QUESTIONS FROM SENATOR DURBIN**

For questions with subparts, please answer each subpart separately.

1. **While you served as an Attorney-Advisor at the Justice Department's Office of Legal Counsel between 2003-2005,**
  - a. **Did you work on memos relating to enhanced interrogation techniques? If so, please discuss the nature of the work you performed.**

**RESPONSE:** See response to Question 1(c).
  - b. **Did you work on issues involving Guantanamo detainee policies? If so, please discuss the nature of the work you performed.**

**RESPONSE:** See response to Question 1(c).
  - c. **Did you work on issues involving warrantless surveillance? If so, please discuss the nature of the work you performed.**

**RESPONSE:** I began my work as a career attorney at the Office of Legal Counsel in the summer of 2003, after, as I recall, the original set of legal opinions on the matters listed above were completed and just before the time that Assistant Attorney General Goldsmith began to reconsider some of the reasoning and conclusions of at least some of those opinions. Little of that reconsideration was visible to me at the time; however, as what I know now to have been part of the process, the Assistant Attorney General gave me, and I believe other attorney advisors, discrete legal questions to research. In particular, I recall two legal research questions—one on the Fourth Amendment and one on case law from the period before the Foreign Intelligence Surveillance Act. Both of these questions related to what I have since learned was the Terrorist Surveillance program, although I was never read into that program.

2. In 2006, Congress enacted the Detainee Treatment Act, also known as the McCain Torture amendment. The McCain Amendment prohibited torture and cruel, inhuman or degrading treatment. Waterboarding, or simulated drowning, is a torture technique that was used in the Spanish Inquisition. During the Bush Administration, the Judge Advocates General, the highest-ranking military lawyers in each of the U.S. military's four branches, each testified unequivocally that waterboarding is illegal. Following World War II, the United States prosecuted Japanese military personnel as war criminals for waterboarding U.S. prisoners.

In a statement following passage of the McCain Amendment, Senators McCain, Warner, and Graham said “Waterboarding, under any circumstances, represents a clear violation of U.S. law. ... anyone who engages in this practice, on behalf of any U.S. government agency, puts himself at risk of criminal prosecution.”

**a. Do you believe waterboarding is torture?**

**RESPONSE:** Waterboarding is unquestionably illegal under current law. It constitutes torture as I understand that term, but I would need to conduct legal research to know whether waterboarding is “torture” as defined in the criminal code.

**b. Do you believe waterboarding is cruel, inhuman or degrading treatment?**

**RESPONSE:** Waterboarding is unquestionably illegal under current law. It constitutes cruel, inhuman or degrading treatment as I understand those terms, but I would need to conduct legal research to know whether waterboarding is “cruel, inhuman or degrading treatment” as defined in the criminal code.

**c. Is waterboarding illegal?**

**RESPONSE:** Yes.

3.

**a. Do you believe the head of the National Security Division should join the Deputy Attorney General in being apprised of the work performed by Special Counsel Mueller?**

**RESPONSE:** Because I am not currently working at the Department of Justice, I am not privy to the details of the investigation and the policies and procedures surrounding the Special Counsel and do not know enough to have an opinion on the question you ask. If I am confirmed, I will follow the Department’s policies and procedures regarding the investigation and if called upon will support the work of the special counsel.

**b. Do you believe that the nominee to head the DOJ Criminal Division, Brian Benzowski, if confirmed, should join the Deputy Attorney General in being apprised of the work performed by Special Counsel Mueller?**

**RESPONSE:** Because I am not currently working at the Department of Justice, I am not privy to the details of the investigation and the policies and procedures surrounding the Special Counsel and am unable to comment.

4. **Have you met with Russian government officials at any point? If so, please describe the meeting attendees, the date and location, the purpose for the meeting, and the outcome of the meeting.**

**RESPONSE:** To the best of my recollection and knowledge, I have never met with any Russian government officials. As part of my responsibilities as head of International Government Affairs with the Boeing Company, I met in Washington, DC with representatives of the Volga-Dneper Airlines, together with other individuals from Boeing to discuss a business deal. In an abundance of caution, I disclosed that meeting as part of the background investigation process.

5. **Do you have any connection with Russian-based Alfa Bank or its leaders, Mikhail Fridman and Pyotr Aven?**

**RESPONSE:** No.

6. **Do you believe that an attorney who represented Russian-based Alfa Bank as recently as this year should recuse himself from any Justice Department matters involving the Special Counsel's investigation into Russian election interference?**

**RESPONSE:** Because I am not currently working at the Department of Justice, I am not privy to the details of the investigation and the policies and procedures surrounding it and am unable to comment. If I am confirmed, and a matter comes before me where I believe recusal might be warranted, I will review the facts, consult with career ethics officials at the Department, and make a decision as warranted by the law and the facts.

7. President Trump told *The New York Times* on July 19: "A special counsel should never have been appointed in this case." **Do you agree with President Trump?**

**RESPONSE:** Because I am not currently working at the Department of Justice, I am not privy to the details of the investigation and am unable to comment.

8. President Trump was asked by *The New York Times* on July 19: "if Mueller was looking at your finances and your family finances, unrelated to Russia...would that be a breach of what his actual charge is?" Trump responded, "I would say yeah, I would say yes." **Do you agree with President Trump?**

**RESPONSE:** Because I am not currently working at the Department of Justice, I am not privy to the contours and details of the investigation and am unable to comment.

9. **In your view, has the United States government taken adequate steps to deter and prevent interference by foreign adversaries in upcoming elections?**

**RESPONSE:** I have read the Intelligence Community's unclassified report on foreign meddling in recent U.S. elections, but I have not had the opportunity to be briefed at a classified level on the full scope of the threat or the U.S. government's response. I am

committed to working with interagency partners to combat interference by foreign adversaries in upcoming elections.



## Questions for the Record

Senator Mazie Hirono  
October 4, 2017

### John C. Demers, Nominee to be Assistant Attorney General for the National Security Division, U.S. Department of Justice

1. I'm concerned about pressure that might be brought to bear on your ability to be independent in the job of Assistant Attorney General of the National Security Division. We have a President who has from the start demonstrated that he does not respect the independence of the Department of Justice. He fired the head of the FBI because he wouldn't swear loyalty. He tried to get the investigation into Russian interference in the election stopped. He humiliated his Attorney General in public.

- a. **If confirmed, will you be able to resist political pressure and tell the President and the Attorney General "no" when the situation requires?**

**RESPONSE:** Yes. The Assistant Attorney General for the National Security Division must, first and foremost, be loyal to the Constitution and laws of the United States, as well as to the mission and integrity of the Department of Justice. Partisan politics and political pressure should play no role in the work of the Division.

- b. **Give an example of when you would say "no".**

**RESPONSE:** I would say "no" if asked to perform any task that was contrary to the Constitution or the laws of the United States.

2. I am also concerned about the issue of the deterioration of standards and procedures at the Department of Justice, and the bypassing of the career professionals. We are hearing that career lawyers at DOJ are being excluded from meetings and decisions they once routinely participated in, and more and more determinations are being made exclusively by political appointees.

- a. **Can you assure me that you will not exclude the career lawyers at the National Security Division, and that you will maintain the tradition of making investigation and prosecutions decisions based on the facts and law alone?**

**RESPONSE:** Career attorneys are the lifeblood of the Department of Justice, including the National Security Division. They provide the experience, expertise and continuity so essential to the mission and work of the Division, and their leadership of, and involvement in, this work provide Americans with assurance that investigations and prosecutions are conducted in

accord with the facts and the law and without regard to partisanship. If confirmed, I look forward to working closely with the career national security lawyers and to learn more about how I can best support their work.

- b. Do you agree there should not be politicization of National Security cases and there should be bipartisan cooperation where appropriate?**

**RESPONSE:** Yes.

- 3. Your predecessors limited the number of political appointees serving in the National Security Division. At least one had no political appointees at all. Can you commit that you will do the same and restrict your staff, in the front office and all of the sections, to career DOJ employees?**

**RESPONSE:** I share your concern that the National Security Division not be politicized and believe that one way to achieve this is to limit the number of political appointees in the front office. I am aware that different Assistant Attorney Generals serving in the Administrations of both parties have had varying numbers of career employees and political appointees. Having spent the last decade outside the Justice Department, I am not certain what the right mix is. While I do not think it is inappropriate to have qualified political appointees of integrity in the front office, I greatly trust and respect the career employees of the Division, including those in the front office, many of whom I have worked with before. I believe they play a critical role in assuring the public that national security investigations are conducted only in accord with the law and the facts, and I look forward to working with them again, if confirmed, to advance the goals of the National Security Division.

- 4. What is your view on using the criminal justice system as one of the tools available to you to prosecute terrorism cases? Are you committed to the “all-tools in the toolbox” approach?**

**RESPONSE:** I believe the criminal justice system has been and continues to be a very important tool in the fight against terrorism. The threat we face is real and it will not recede soon. Thus, I would not rule out the use of any lawful and appropriate option in the fight against terrorism, and believe that we must carefully evaluate, on a case-by-case basis, which option is best suited for the particular situation at hand.

- 5. What about a focus on domestic terror? We’ve seen quite a few examples of domestic terror lately.**

- a. How would you combat domestic terror?**

**RESPONSE:** I would use every lawful tool at our disposal to deter and disrupt the domestic-terrorism threat and bring those responsible to justice.

**b. How would you combat the problem of the lone wolf terrorist?**

**RESPONSE:** Lone-wolf terrorists who plan and carry out attacks on their own or with limited assistance present particularly difficult challenges to public safety and national security. To disrupt such actors, I would work closely with the FBI and support the use of proactive law enforcement tools. Moreover, I would support and encourage U.S. Attorneys' Offices, the FBI, and local law enforcement to develop relationships with local communities to combat this problem.

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**QUESTIONS FROM SENATOR WHITEHOUSE**

1. **Given what we are learning about the role of cyber-espionage and disinformation in the 2016 election, how will you ensure that the Department of Justice prioritizes cybersecurity threats to our democracy?**

**RESPONSE:** Actions by a foreign country to cast doubt on the integrity of our elections are an attack at the core principal of democracy—the right of the people to choose their own government—and we cannot tolerate them. I have read the Intelligence Community’s unclassified report on Russian meddling in recent U.S. elections, but I have not had the opportunity to be briefed at a classified level on the full scope of the threats or all that is being done to combat them. I believe that cyber issues now permeate all of the most significant threats we face, and I am committed to treating the cyber aspect of such threats as a priority for the National Security Division and to working with interagency partners to combat cyber threats, especially when they affect our elections and democracy.

2. **What is your understanding as to the relationship between the National Security Division and the special counsel’s investigation into Russian interference and related matters? What is your understanding as to contacts between White House and Department of Justice officials, and how would you react should you be contacted directly on an investigative matter by the White House?**

**RESPONSE:** I am not aware of what role the National Security Division is playing in the special counsel’s investigation, but I would be ready to support that investigation, if called upon to do so. The Department has policies in place that govern communications between the White House and the Department. If confirmed, I will follow those policies. If I were inappropriately contacted, I would let the person who contacted me know that I could not discuss the matter and immediately inform the Deputy Attorney General.

3. **Considering the recent Equifax breach and the push, we are seeing from consumers to protect their private data, how can the United States balance privacy interests and national security interests?**

**RESPONSE:** I share your belief that it is critical to balance protecting people’s privacy with the need to gain information to investigate crimes, protect national security, and prevent attacks. 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 do not view this as a zero-sum game – security does

not necessarily mean less liberty, and it is critical that we develop nuanced policies that preserve both interests. How exactly to ensure that neither interest is short-changed is heavily dependent upon the circumstances and will require working together with the Congress and the private sector. We must use only the tools we need and use them to focus on the threats we face. In addition, we must have proper oversight of the tools, both within the Executive and by Congress. If confirmed, I am committed to working to ensure that the Division will follow the Constitution and laws, while doing all it can to keep us safe.

**4. During your time at OLC, what was the extent of your involvement in the memos related to the War on Terror?**

**a. Did you work on anything related to the torture memos?**

**RESPONSE:** See response to Question 4(e).

**b. Did you work on anything related to Guantanamo detainee policies?**

**RESPONSE:** See response to Question 4(e).

**c. Did you work on anything related to warrantless surveillance?**

**RESPONSE:** See response to Question 4(e).

**d. Did you work on any other issues related to the War on Terror?**

**RESPONSE:** See response to Question 4(e).

**e. Regardless of whether you actually worked on memos on these subjects, did you ever informally express an opinion or concerns about OLC's work on these subjects, as Jack Goldsmith and others did while at OLC?**

**RESPONSE:** I began my work as a career attorney at the Office of Legal Counsel in the summer of 2003, after, as I recall, the original set of legal opinions on the matters listed above were completed and just before the time that Assistant Attorney General Goldsmith began to reconsider some of the reasoning and conclusions of at least some of those opinions. Little of that reconsideration was visible to me at the time; however, as what I know now to have been part of the process, the Assistant Attorney General gave me, and I believe other attorney advisors, discrete legal questions to research. In particular, I recall two legal research questions—one on the Fourth Amendment and one on case law from the period before the Foreign Intelligence Surveillance Act. Both of these questions related to what I have since learned was the Terrorist Surveillance program, although I was never read into that program. I do not remember knowing enough about these legal memos to express an opinion on them while at OLC.