

February 12, 2013

John O. Brennan  
Assistant to the President for Homeland Security and Counterterrorism  
The White House  
1600 Pennsylvania Ave., NW  
Washington, DC 20500

Dear Mr. Brennan,

I understand that you are in receipt of my letter dated January 25, 2013, requesting answers to a set of questions relating to your nomination to be Director of the Central Intelligence Agency (CIA), which the Senate Select Committee on Intelligence (SSCI) is now considering, and which the full Senate may soon debate. I hope you are working expeditiously to answer that letter, as I initially asked that you provide a written response before SSCI's initial hearing on your nomination, which was held on February 7<sup>th</sup>.

In addition to the first questions I submitted, I would also like to submit a few more questions in light of the recent release of a Department of Justice (DOJ) white paper on the use of lethal force against those suspected of terrorism:

- Do you believe that the president has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil? What about the use of lethal force against a non-U.S. person on U.S. soil?
- Do you believe that the prohibition on CIA participation in domestic law enforcement, first established by the National Security Act of 1947, would apply to the use of lethal force, especially lethal force directed at an individual on a targeting list, if a U.S. citizen on a targeting list was found to be operating on U.S. soil? What if the individual on the targeting list was a non-U.S. person but found to be operating on U.S. soil? Do you consider such an operation to be domestic law enforcement, or would it only be subject to the president's wartime powers?
- Would such a discovery as described above invalidate any previous secret indictments against a U.S. citizen related to their disposition? In other words, if a U.S. citizen had already been indicted on terror-related charges in secret, could that indictment be used as a basis for lethal force, even if they were later discovered to be operating on U.S. soil?
- One of the criteria outlined by the DOJ white paper as necessary before the use of lethal force would be authorized is that capture must be "infeasible." Therefore, are there any circumstances under which it might be considered "infeasible" to capture a terrorism suspect operating on U.S. soil? Would it matter if it was deemed infeasible to capture a suspect operating on U.S. soil who is also a U.S. citizen?
- How would the criteria for disposition be modified, if at all, if a person on a targeting list was found to be operating on U.S. soil?

- Do you believe that the Posse Comitatus Act, or any other prohibition on the use of the military in domestic law enforcement, would prohibit the use of military hardware and/or personnel in pursuing terrorism suspects—especially those on a targeting list—found to be operating on U.S. soil? If not, would you support the use of such assets in pursuit of either U.S. citizen or non-U.S. persons on U.S. soil suspected of terrorist activity?
- Do you believe that the Insurrection Act provides sufficient legal basis for using military hardware and/or personnel to pursue U.S. citizens on U.S. soil if it is believed they are participating in terrorism-related activities? What if they had previously been placed on a targeting list?
- Have you personally been involved in either the decision to place a U.S. citizen on a targeting list, or the decision to set criteria by which U.S. citizens may be placed on a targeting list?

As I relayed in my previous letter, these issues must be discussed openly so that the American people can understand what constraints exist on the government's power to use lethal force against its citizens. Before you are confirmed to head the CIA, it must be apparent that you understand and will honor the protections provided to every American by the Constitution. For that reason, I request again that you answer the questions I have submitted, both in this letter and the one before it, and I will object to all unanimous consent requests relating to your nomination until you have done so. For your reference, I have included a copy of my previous letter. I look forward to hearing from you soon.

Sincerely,

Rand Paul, M.D.  
United States Senator

Enclosure