

# Questions for Jeff Sessions, Nominee to be Attorney General



**The National  
Security Program**

In November, President-elect Donald Trump nominated Senator Jeff Sessions to be Attorney General. His confirmation hearings are scheduled for Tuesday, January 10th and Wednesday, January 11th. This memo provides a brief biography of the Senator and a list of national security related questions Senators could ask him during the confirmation hearing and in private meetings.

## Biography

Senator Sessions received his law degree from the University of Alabama in 1973 and served in the United States Army Reserve from 1973 to 1986, attaining the rank of Captain. He served as Assistant United States Attorney for the Southern District of Alabama from 1975-1977. In 1981, President Reagan nominated him to be United States Attorney for the Southern District of Alabama, and he served in that capacity until 1993. In 1986, he was nominated to be a federal judge, but his confirmation was rejected by the Senate after allegations that he had made racially insensitive comments surfaced. His nomination failed to pass out of committee by a

10-8 vote, with two Republicans joining Democrats in voting against him.

In 1995, he became Attorney General in Alabama, where he served until he began his Senate career in 1997. In the Senate, Sessions has served on the Judiciary Committee for several years. During the presidential campaign, Sessions said he was open to considering Trump's Muslim ban proposal. He's been avidly against immigration reform and supports building a wall on the southern border. Senator Sessions was the first senator to endorse Trump in February 2016.

## **Questions**

### **Russian Hacking**

President-elect Trump has repeatedly denied that Russian operatives were involved in hacking the servers of U.S. politicians and interfering in the 2016 election. However, the overwhelming consensus among the Intelligence Community is that Russian government agencies are the source of such efforts. In the past, you have been a fierce critic of Russian aggression. For example, in a March 19, 2014, speech to a group in Montgomery, AL, you said that the United States must make Russia "feel pain" and you encouraged the imposition of sanctions in retaliation for Russia's aggression in Ukraine. During a March 2015 interview, you reemphasized the need to punish Russia for its belligerence, stating, "It needs to be clear that Russia knows that there will be a high price to pay if this behavior continues."<sup>1</sup> While you have articulated the need to check Russia's expansionism, President-elect Trump has often spoken in glowing terms of Russian dictator Vladimir Putin. For example, in a December 2015 appearance on MSNBC's "Morning Joe," Trump stated that he has "always felt fine about Putin."<sup>2</sup> More recently, the President-elect has been effusive in his praise of Putin on Twitter, stating, "I always knew he was very smart!"<sup>3</sup>

- Were you briefed before the election on Russian interference in the 2016 election? Do you agree with the U.S. intelligence community's assessment that Russia interfered in the U.S. election?
- Do you believe it is acceptable for a foreign adversary to interfere with the process by which Americans choose their leaders? Do you believe that the Russians have a partisan preference, or would they turn against whichever party was in power?
- What is a proportionate response to Russian interference in U.S. elections? Do you support the Treasury Department bringing sanctions against Russian individuals and organizations for their involvement in the hacking? Will you continue to enforce those sanctions?
- Are you concerned by the President-elect's continued public skepticism of the conclusions drawn by our intelligence professionals?
- Your oath of office as a member of Congress and as Attorney General is to protect the US Constitution against all enemies foreign and domestic. How do you intend to protect the Constitution against this foreign threat?

## **Muslim Ban/Registry**

In December 2015, then-candidate Donald Trump proposed a Muslim immigration ban. As the campaign wore on, his policy went back and forth, going from a complete religious ban to a ban on immigration from regions with terrorist activity. During the transition, a Trump adviser—Kansas Secretary of State Kris Kobach—expressed support for a Muslim registry —“extreme vetting”—in the U.S. Senator Sessions, in December 2015 you said you'd be open to considering the Muslim ban proposal.

- The First and 14th Amendments to the Constitution guarantee freedom of religion and prohibit discrimination on religious grounds. Do you believe that the Constitution should favor one religion over another? Do you believe that Islam is a religion?
- How would a ban on Muslims or a registry be consistent with the Constitution?
- Law enforcement professionals have said that a registration system would not stop terrorist activity and would undermine trust between law enforcement and local communities. Do you agree that enforcing blanket religious registries undermines our efforts to combat terrorism?
- Have you been briefed by the intelligence community on how such a registration program would be conducted and on its ineffectiveness? Has the President-elect been briefed by the intelligence community on best practices to combat terrorist attacks on the homeland?

## **Conflict of Interests**

President-elect Trump's international business dealings will saddle him with unprecedented conflicts of interest. Beyond the ethical implications of such conflicts, Trump's business dealings with foreign nations could also violate the Constitution. The Constitution's Emoluments Clause states that "no person holding any office . . . shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state." This language precludes a federal official, when conducting business with foreign governments, from receiving any benefit beyond the fair market value for a product or service, absent the express consent of Congress.<sup>4</sup> The former chief ethics counsel to President George W. Bush said that diplomats attempting to gain Trump's favor by staying at his hotel could be considered a "gift" under the Emoluments Clause.

- Do you believe Donald Trump's current business arrangements create the potential for financial conflicts of interest?
- Will the President-elect divest his assets to prevent conflicts of interest?
- There have been public reports that foreign governments have been pressured to shift their events from other hotels to the Trump International Hotel in D.C. There have been other reports linking the President-elect's congratulatory phone calls to his business interests in foreign countries. Do you believe that such actions are proper?
- How will you assure the public that the President is not making decisions in his personal financial interest, but in the best interests of the nation?
- Will you commit to maintaining a robust public integrity section at the Department of Justice? Given the conflicts of interest between your political appointment and the President-elect's potential conflicts of interest with his business enterprises, would you be willing to appoint an independent prosecutor to monitor and investigate allegations of public corruption?
- The President-elect has said he wants to "drain the swamp" and Harry Truman said, "The buck stops [at the President's desk]." Do you believe the President-elect should set an example on public integrity by divesting his assets?

## **Torture**

During his campaign, President-elect Trump publicly called for U.S. forces to use torture in the War on Terror. This sparked condemnation from our allies and enemies alike. Many intelligence and security professionals have declared that torture is largely ineffective at getting reliable intelligence. But your record shows that you're in favor of

torture and have voted in opposition to anti-torture legislation. You've said, "the CIA and FBI should be able to use all lawful procedures to interrogate individuals who are committed to the destruction of America." <sup>5</sup>

- Do you believe that waterboarding is a lawful interrogation procedure, despite General Mattis's statements that it is counterproductive? Do you agree with the 2002 DOJ memo that approved of enhanced interrogation techniques as long as they fall short of causing organ failure or death?

## **Surveillance**

Senator Sessions, lawmakers on both sides of the aisle have expressed concern with the growth of the "surveillance state" and are worried about its impact on Americans' civil liberties. However, you have consistently opposed efforts to ensure that government surveillance adheres to the requirements of the Fourth Amendment. For example, you voted against the USA Freedom Act, legislation that ended the government's collection of Americans' phone records, and you have voiced your opposition to reforming Section 702 of the Foreign Intelligence Surveillance Act, which allows the FBI to search the communications of Americans without a warrant. <sup>6</sup> If you are confirmed as attorney general, you will be responsible for overseeing some of the most extensive surveillance capabilities ever exercised by a government. Yet your record and stances indicate that you are reluctant to limit the intrusion of government power into the private lives of Americans.

- In a speech in Scranton on July 27, 2016, then-candidate Trump, in referring to Russia's hack of the DNC, stated "I wish I had that power. Man, that would be power."<sup>7</sup> Here, President-elect Trump seemed to be saying that he desired the ability to hack into the private networks of his political opponents. Other presidents, most notably Richard Nixon, have engaged in illegal spying on their perceived enemies. How would you respond to requests from President Trump to spy on his enemies, especially given allegations that he has previously spied on guests at his resorts?<sup>8</sup>
- President-elect Trump has, in the past, expressed his support for restoring the bulk collection of phone data that was outlawed by the USA Freedom Act, a law which you voted against.<sup>9</sup> Would you support such an effort to collect the data of millions of Americans?
- The US government has made repeated representations to our European allies in the context of negotiations over Privacy Shield, the umbrella agreement that enables US-EU data-sharing. Those representations include privacy protections for Europeans and promises of minimization guidelines. Given that the European Court of Justice invalidated the previous agreement, which lacked those guarantees, will you commit to maintaining those guarantees, or consider additional privacy protections, to ensure the free-flow of trans-Atlantic data?

- In a February 2016 statement to Bloomberg News, you voiced your opposition to tech companies' encryption practices.<sup>10</sup> President-elect Trump has also voiced his opposition to encryption practices. Notably, in a February 2016 speech in South Carolina, he encouraged his supporters to boycott Apple until the company provided the FBI with a "backdoor" into its operating system.<sup>11</sup> Do you believe that encryption is an important tool to protect the personal data of Americans, as well as our classified information? Do you think that the US government should insist on a backdoor into all encryption, even if it means that US data is vulnerable? What do you think should be the reach of US law on foreign technology companies that offer encrypted communication tools to Americans? Should legislation be enacted to mandate "backdoors" in software, even if such backdoors leave consumers vulnerable to malicious actors?

## END NOTES

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