

November 12, 2013

The Honorable Thomas R. Carper
Chairman, Senate Committee on
Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Tom Coburn
Ranking Member, Senate Committee on
Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Upcoming Confirmation Hearing for Jeh Johnson to be Secretary of the Department of Homeland Security

Dear Chairman Carper and Senator Coburn:

As you prepare for the upcoming confirmation hearing for Jeh Johnson to be Secretary of the Department of Homeland Security, the undersigned organizations strongly urge you to question Mr. Johnson on his role in the United States' targeted killing program, during the period from 2009 to 2012, when he served as General Counsel to the Department of Defense.

For the past several years, the United States has engaged in a program of targeted killing – most commonly but not exclusively through the use of drones. While much about this program remains hidden from the public eye, there is significant public debate over the scope, legality, morality, and efficacy of these practices.

Numerous media reports have described the significant role Mr. Johnson played in the targeted killing program during his tenure at the Department of Defense. These reports also raise important questions about his views on the legal basis for the program, as well as its scope. On September 16, 2011, *The New York Times* reported Mr. Johnson argued for the United States to “significantly widen its targeting” of terrorism suspects beyond al Qaeda. In his book *Kill or Capture*, *Newsweek* correspondent Daniel Klaidman reported that in January 2010, Mr. Johnson wrote a memo specifically addressing the legality of targeting alleged terrorist financiers in addition to militants. Klaidman also described specific targeting decisions in which Mr. Johnson was consulted.

In addition to his role in internal discussions within the Administration, Mr. Johnson also played an important part in helping to shape public knowledge and understanding of the targeted killing program, most notably in a speech at Yale Law School on February 22, 2012. In that speech, Mr. Johnson stated:

[A]s a student of history I believe that those who govern today must ask ourselves how we will be judged 10, 20 or 50 years from now. Our applications of law must stand the test of time, because, over the passage of time, what we find tolerable today may be condemned in the permanent pages of history tomorrow.

Unfortunately, it has been nearly impossible to date to thoroughly assess those applications of law. No Member of Congress has seen all of the Office of Legal Counsel memos that form the claimed legal underpinnings of the program. Further, the American public, in whose name this program is operated, has not been provided any of the actual legal analysis on which the program depends nor the complete set of rules through which it operates.

This committee can significantly help increase transparency and oversight of the targeted killing program as you evaluate Mr. Johnson's nomination. Given the important role of the Secretary of Homeland Security in national security decision making and policy deliberation, particularly as a member of the National Security Council principals committee, **we strongly encourage the committee to seek clarification of Mr. Johnson's views on the legal authority for and scope of the targeted killing program and to request that the administration provide the committee with copies of any legal memos he may have authored or reviewed on this subject.** In order to fully meet their constitutional obligation of providing "advice and consent" on the nomination, Senators should understand this critical aspect of his record, which could have a bearing on his future decisions if confirmed as Secretary.

Earlier this year, during the confirmation hearings for Director of the Central Intelligence Agency, numerous Senators asked John Brennan to similarly clarify his opinions on these matters and for the Administration to provide relevant material related to the targeted killing program. We strongly urge this committee to continue that tradition of oversight and to enhance public transparency and accountability of our nation's national security policies.

Thank you for your attention to this matter.

Sincerely,

American Civil Liberties Union
Amnesty International USA
Appeal for Justice
The Constitution Project
Defending Dissent Foundation
Human Rights First
Human Rights Watch
Peace Action West
Win Without War

cc: All members of the Senate Committee on Homeland Security and Governmental Affairs