

United States Senate
WASHINGTON, DC 20510-3703
February 3, 2015

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COMMITTEE ON FINANCE

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder:

As you approach the end of your service as Attorney General, I would like to thank you for your years of service to our country. Your efforts to defend and expand civil rights and reform the criminal justice system will leave a legacy of which anyone would be proud. Before you depart office, I would also like to raise a number of outstanding national security issues which I hope you will be able to help address before your tenure concludes.

You and I have discussed my concerns about government agencies' reliance on secret interpretations of the law. This problem is particularly pronounced in the area of national security, and as I and others predicted it has led to an erosion of public confidence that has made it more difficult for intelligence and law enforcement agencies to do their jobs. The key to restoring public trust is increased openness about the government's interpretation of its own authorities, since this is an essential part of ensuring proper oversight by the American people and their elected representatives. With that in mind, I have four requests.

First, one area of particular importance is the President's authority to use military force outside of declared war zones, and particularly his authority to take lethal action against specific American citizens. In November 2013, Senators Mark Udall and Martin Heinrich and I wrote you a letter asking a number of questions about the limits and boundaries of this authority, and we have not yet received a response to this letter. I ask that you help ensure that we receive a substantive response to the questions in that letter.

Second, I have written to you on multiple occasions about a particular legal opinion from the Justice Department's Office of Legal Counsel (OLC) interpreting common commercial service agreements. As I have said, I believe that this opinion is inconsistent with the public's understanding of the law, and should be withdrawn. I also believe that this opinion should be declassified and released to the public, so that anyone who is a party to one of these agreements can consider whether their agreement should be revised or modified.

In her December 2013 confirmation hearing to be the General Counsel of the CIA, the deputy head of the OLC stated that she would not rely on this opinion today. While I appreciate her restraint, I believe the wisest course of action would be for you to withdraw and declassify this opinion, so that other government officials are not tempted to rely on it in the future. I urge you

to take these actions as soon as practicable, since I believe it will be difficult for Congress to have a fully informed debate on cybersecurity legislation if it does not understand how these agreements have been interpreted by the Executive Branch.

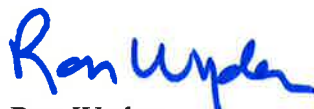
Third, I have asked repeatedly over the past several years for the Department of Justice's opinion on the lawfulness of particular conduct that involved an Executive Branch agency. I finally received a response to these inquiries in June 2014; however the response simply stated that the Department of Justice was not statutorily obligated to respond to my question. I suppose there may not be a particular law that requires the Department to answer this question, but this response is nonetheless clearly troubling. My question was not hypothetical, and I did not ask to see any pre-decisional legal advice – I simply asked whether the Justice Department believed that the specific actions taken in this case were legal. It would be reasonable for the Department to say “Yes, this conduct was lawful” and explain why, or to say “No, this appears to have been unlawful” and take appropriate follow-up action. Refusing to answer at all is highly problematic and clearly undermines effective oversight of government agencies, especially since the actions in question were carried out in secret. For these reasons, I renew my request for an answer to this question, and I hope that you can help provide one.

Finally, as you are aware, the Senate Select Committee on Intelligence recently released the declassified executive summary of the committee's bipartisan report on the use of torture by the CIA, and provided copies of the full classified report to several Executive Branch agencies, including the Department of Justice. During your tenure you have been a strong voice against the use of torture, and you have taken some important actions to ensure that it is not used again. This is why it was very surprising to learn that no one in the Justice Department has read the full classified version of the torture report, and that in fact the report has been locked away in a safe instead of being provided to appropriate officials.

This report provides substantial detail about how the Department of Justice came to reach flawed legal conclusions based on inaccurate information provided by CIA officials. It will be much more difficult to prevent these mistakes from being repeated if no one at the Justice Department understands how they happened in the first place. I strongly encourage you to disseminate this report to appropriate Justice Department personnel before you leave office, as there seems to be no valid reason why this cannot be done immediately.

Thank you for your attention to these matters. Your help in resolving these issues will be much appreciated.

Sincerely,



Ron Wyden
U.S. Senator