

Congress of the United States
Washington, DC 20515

March 18, 2021

The Honorable Avril Haines
Director of National Intelligence
Office of National Intelligence
Washington D.C. 20511

Director Haines:

We are in receipt of your report titled *Domestic Violent Extremism Poses Heightened Threat in 2021*. We write to raise serious concerns about the production of this document by the Intelligence Community (IC) and to seek clarification of the facts related to its production.

To begin, we note that this report is not an Intelligence Community Assessment and that, as such, it would not have been subject to the rigor normally implied by such an assessment. Since all elements of the IC were not included, and the topic was unrelated to the mission of the IC, we understand why the report was not produced as an ICA. However, despite this important fact, the unqualified statement “the IC assesses” is frequently used in the report. We find this to be misleading and urge you to clarify which elements in the IC concurred with this judgement and the intelligence basis, if any, for that concurrence.

Beyond the deceptive nature of a document on domestic threats purporting to be an IC assessment, we are alarmed by the lack of explanation provided by the authors to justify the ODNI’s production of such a report. In the Scope Note, the authors state:

“As part of the Office of the Director of National Intelligence (ODNI)s mission to lead and support Intelligence Community (IC) integration and deliver insights, the ODNI has leveraged IC components to provide a comprehensive intelligence assessment on domestic violent extremists (DVE). This assessment was prepared under the auspices of the DNI – in consultation with the Attorney General and the Secretary of Homeland Security – and was drafted by the National Counterterrorism Center (NCTC), Federal Bureau of Investigation (FBI), and Department of Homeland Security (DHS), with contributions from the Central Intelligence Agency (CIA) and the Defense Intelligence Agency (DIA).”

The authors further state:

“For the purposes of this assessment, a DVE is defined as an individual based and operating primarily in the United States without direction or inspiration from a foreign

terrorist group or other foreign power and who seeks to further political or social goals wholly or in part through unlawful acts of force of violence... This assessment also does not address homegrown violent extremists based and operating primarily in the United States who are inspired by foreign terrorist organizations, such as al-Qa'ida."

Based on the scope contained in the report, declared IC involvement, classification markings, and ultimately the content itself, we are concerned that IC elements and personnel acted beyond their legal authority in its production. For example, the explicit statement that this report was "prepared under the auspices of the DNI" and "drafted" by the NCTC appears to contravene the express statutory limitation on NCTC's authorities on intelligence pertaining exclusively to domestic terrorism. Under current law, NCTC is authorized only to "receive... retain and disseminate such intelligence."¹

While we acknowledge the seriousness of the domestic violence extremist threat and the need for a coordinated federal response, the involvement of the Intelligence Community in this circumstance should be limited to an examination of potential foreign ties, such as foreign influence, direction or funding of DVEs. There are numerous federal agencies with the requisite authority and subject matter expertise to produce a report on this topic, with appropriate support from the IC.

It is our view that your office, and the elements of the IC for which you are responsible under the auspices of the National Security Act and National Intelligence Program, are subject to longstanding prohibitions against domestic activities. Found in both law and policy, this is clearly intended to constrain IC activity outside of the foreign intelligence and counterintelligence missions. Recognition of these legal and policy constraints has long been one of bipartisan agreement and is a legacy of intelligence community abuses prior to the enactment of reforms in the 1970s. Among them was the passage of the Foreign Intelligence Surveillance Act and the establishment of the Congressional Intelligence Committees.

As Members of the Committee charged with oversight of the IC, we have a number of questions about this matter which will help inform our judgement as we work on the Fiscal Year 2022 Intelligence Authorization Act. Please address the following:

- Do you agree that the Fiscal Year 2021 Intelligence Authorization Act (IAA) and related appropriations govern and therefore limit the use of funds associated with the National Intelligence Program for the duration of the Fiscal Year in which those funds are authorized?

¹ 50 U.S.C.

- Do you agree that the IAA specifically authorizes the expenditure of funds for activities associated with foreign intelligence and counterintelligence and does not include authorization for activities related purely to domestic terrorism when such activities have no links to foreign governments, persons, or organizations?
- Under what authority were National Intelligence Program personnel and resources expended for the generation of a report concerning domestic violent extremists?
- Have you authorized any individuals or elements of the IC to examine foreign intelligence holdings for the purpose of supporting the production of the report on domestic violent extremists? Are you aware of such activity, whether or not you authorized it? If access was authorized, was it limited in any way?
- Did you authorize any individual or element of the IC to search or examine US person information contained within an IC system or database for the purpose of supporting the production of this report on domestic violent extremists? If not, are you aware of any such activities?
- Did you direct any elements of the IC to support production of the report on domestic violent extremists?
- The National Security Act defines the authority and mission of the Director of National Intelligence and associates that authority and mission with the conduct of foreign intelligence and counterintelligence. Is it your judgement that the Office of the Director of National Intelligence may authorize activities, such as the production of assessments, which are unrelated to the conduct of foreign intelligence and counterintelligence?
- Do you recognize any limitations on the ability of the Director of National Intelligence to commission analytical reports or other efforts within the IC that are not related to foreign intelligence or counterintelligence?
- Are there Executive Branch policies which you believe empower your office or any element of the IC to conduct analysis of domestic threats not involving foreign actors?

In addition, please provide a memorandum outlining the legal authorities you believe each IC element has to conduct any activities related to domestic violent extremist threats, to include collection, analysis, dissemination, and operations.

We urge you to respond to these questions expeditiously, and to take immediate corrective action to ensure that IC personnel and resources are not used for activities outside the scope for which they are authorized—namely foreign intelligence and counterintelligence collection, analysis, and dissemination.

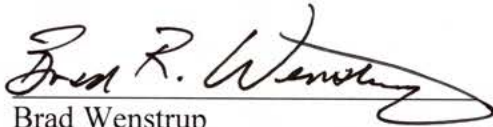
Sincerely,



Devin Nunes
Member of Congress



Michael Turner
Member of Congress



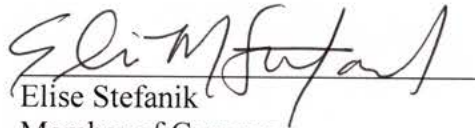
Brad Wenstrup
Member of Congress



Chris Stewart
Member of Congress



Rick Crawford
Member of Congress



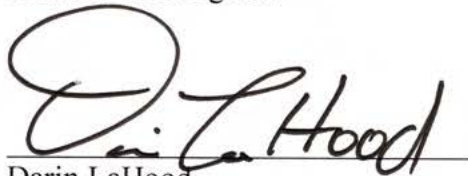
Elise Stefanik
Member of Congress



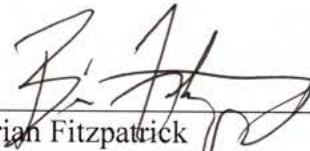
Markwayne Mullin
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