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Congress of the United States
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HOUSE PERMANENT SELECT
COMMITTEE ON INTELLIGENCE
CENTRAL INTELLIGENCE AGENCY
SUBCOMMITTEE
DEFENSE INTELLIGENCE AND
OVERHEAD ARCHITECTURE
SUBCOMMITTEE
FOREIGN AFFAIRS COMMITTEE
RANKING MEMBER OF THE
SUBCOMMITTEE ON
OVERSIGHT AND
ACCOUNTABILITY

December 20, 2023

The Honorable Avril Haines
Office of the Director of National Intelligence
Washington, D.C. 20505

Dear Director Haines:

On October 7, the world watched in horror as HAMAS terrorists committed appalling atrocities against Israeli civilians. Both before and after that day, the United States has supported Israel in its campaign to destroy HAMAS.

Israel is more than two months into its operations and, as Vice President Harris put it recently, “the scale of civilian suffering and the images and videos coming from Gaza are devastating.” Of the many lessons I learned during my time in the military, two stand out here: first, you cannot destroy a terrorist ideology with military power alone. Second, how we fight—and how our partners fight—matters.

As the White House acknowledged publicly on October 10, the U.S. “continue[s] to share intelligence with [the Israelis] and offer[s] them help in intelligence gathering.”¹ Relevant intelligence sharing guidance—and any changes since the start of the Israeli military operation in Gaza—have not been given to Congress. I requested that guidance on the record at a hearing of the House Permanent Select Committee on Intelligence (HPSCI) on November 6, 2023. In the intervening month, it has not been provided.

In more than two decades since September 11, 2001, the United States has learned hard lessons about the use and limitations of military power. Those lessons are reflected in the October 2022 Presidential Policy Memorandum released by the Biden Administration.² In our lethal strikes outside areas of active hostilities, for example, the Administration requires near certainty that a person being targeted is a member of a terrorist group and near certainty of no civilian casualties.³ Israel’s current strikes are in a different environment, but I am concerned that the widespread use of artillery and air power in Gaza—and the resulting level of civilian

¹ Interview by Bloomberg News with John Kirby, National Security Council Coordinator for Strategic Communications, in Washington, DC (Oct. 10, 2023).

² Presidential Policy Memorandum Governing Direct Action Counterterrorism Operations Outside Areas of Active Hostilities, (Oct. 2023), available at <https://int.nyt.com/data/documenttools/savage-nyt-foia-biden-presidential-policy-memo-ct-direct-action-rules/91583cea8267d704/full.pdf>.

³ *Id.* at 11.

casualties—is both a strategic and moral error. In any event, the Administration’s high standards are equally an expression of our country’s values and a recognition that our interests are best served by restraining and focusing the use of force in counter-terror operations.

From the briefings I have received, I seek to confirm whether our current intelligence sharing sufficiently incorporates our standards and values; I have outlined those questions in detail in a classified annex to this letter.

To fulfill my oversight obligations as a member of the House Permanent Select Committee on Intelligence, I am writing to seek additional transparency and information, recognizing that much of your response may be classified.

As soon as possible, but no later than December 27, 2023, please provide:

1. All guidance that governs sharing intelligence with Israel, including any changes to that guidance following October 7 or subsequently enacted;
2. An explanation of any restrictions the United States has placed on the Israeli government’s use of the intelligence we share, including, but not limited to, any provisions designed to prevent harm to civilians or civilian infrastructure;
3. A detailed description of how each element of the Intelligence Community is sharing intelligence with our Israeli partners;
4. A description of what analysis the ODNI General Counsel’s Office or other U.S. government legal counsel has conducted assessing the exposure of U.S. personnel to liability in foreign or international courts for providing intelligence support;
5. A description of what intelligence ODNI or other elements of the IC have provided to other departments and agencies under the Biden Administration’s Civilian Harm Incident Response Guidance (CHIRG);
6. A detailed response to the classified questions I asked on the record at HPSCI’s 6 November hearing.

I look forward to your prompt response.

Sincerely,



Jason Crow
Member
House Permanent Select Committee on Intelligence

CC: The Honorable William J. Burns, Central Intelligence Agency
The Honorable Ronald S. Moultrie, Department of Defense
General Paul M. Nakasone, National Security Agency
Vice Admiral Frank Whitworth, National Geospatial Intelligence Agency
Lieutenant General Scott D. Berrier, Defense Intelligence Agency
General Brian P. Fenton, U.S. Special Operations Command