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Senator Dianne Feinstein
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To: Senator Dianne Feinstein
From: Indivisible East Bay
Date: May 7, 2018
Subject: Resisting the Trump Agenda

Torture and 2014 SSCI Torture Report: We thank Sen. Feinstein on behalf of 38 California Indivisible groups for her work to make public CIA director nominee Gina Hapsel's record on torture and present her a thank you letter signed by those groups.

Questions:

- Since Gina Hapsel is currently the Acting Director of the CIA, how will the senator ensure that requests for declassification of documents about Gina Hapsel's involvement in torture will be handled correctly?
- How will the senator fight for the public's right to see the full report of our government's justification, planning, execution and subsequent cover-up of torture [2]?

Immigration: We thank the senator for the letter to the Appropriations Committee, requesting a reduction of funding for ICE and CBP deportation forces: these agencies are exceeding their statutory authority and have terrorized immigrant communities. We'd like to see more of these appropriations based limits on harmful Trump policies or dopey priorities like "the wall" and "the big military parade in DC".

We thank Sen. Feinstein for speaking out about the Central American refugee caravan. We are deeply concerned that the administration is refusing to process asylum applications from the desperate Central American migrants that have arrived at our border. We thank Sen. Feinstein for her TPS bill, but this problem keeps getting worse; over 400,000 legal immigrants have been made illegal by decree [1]. We want her to look for additional solutions until legislation can be passed.

Questions:

- Are there any updates on any of the ongoing investigations of ICE abuses?
- Does the senator have a position on the acceptability of the administration not nominating someone to be Inspector General of such a controversial and non-responsive agency more than a year into the presidency?
- What can she do to be sure that citizens "accidentally" detained by ICE have their cases properly reviewed?

Homelessness: We were glad to hear Sen. Feinstein say that addressing this problem will be one of her top priorities in Congress. How can we help?

Farm Bill: We thank Sen. Feinstein for her letter on harmful environmental provisions and also want her to make sure that this bill protects the SNAP program.

Override of Intelligence Authorization: The White House demanded that language was added to the Jan 22 Continuing Resolution [3] that would allow the intelligence community to skirt decades-old reporting requirements for appropriated funds, prompting SSCI Chairman Burr to raise the issue on the Senate floor [4]:

The vice chairman of the Intelligence Committee and I were notified when the House CR appeared that there was language in it that was different than in the past. The language in section 148 of the CR is of concern to the Intelligence Committee. Let me just read the language:

Sec. 148. Funds appropriated by the Department of Defense Missile Defeat and Defense Enhancements Appropriation Act, 2018 (division B of Public Law 115-96) may be obligated and expended notwithstanding section 504(a)(1) of the National Security Act of 1947.

This language is troublesome for the committee because it would authorize the intelligence community to spend funds "notwithstanding" the law that requires prior authorization by the Senate Intelligence Committee or by the House Intelligence Committee [5]

We are concerned about this exception to one of the few means Congress has to perform oversight of classified IC activities. We are asking the Senator to investigate and if necessary to take action to bring these changes under proper oversight again. We are also concerned because she mentioned in an interview last week that there was a possibility that the IC might have access to hundreds of millions in unaccounted for dollars [6].

Questions:

-Even though we don't see the problematic language in the March Omnibus, we want to know what else is being done (or has been done), by the senator to reassert congressional oversight of how the intelligence community uses appropriated funds.

-Will the senator call for SSCI (or any other appropriate committee) to investigate reports [7] that the administration hired an Israeli private intelligence company to orchestrate a "dirty ops" campaign against former Obama staffers because of their involvement in negotiating the Iran deal? How was this operation funded? How will Congress determine if the Administration is undertaking other "dirty ops" campaigns against current or former officials opposed to its agenda?

-Given the CIA's own history of spying on domestic officials such as the senator's own staff [8] during their investigation into the CIA's rendition, detention, and interrogation program, how will the senator ensure that unaccounted for funds are not/were not used to spy on other domestic government officials or citizens who the administration views as their opposition?

Intelligence Community and Whistleblowers: Thank you for meeting with Dan Ellsberg about threats to our world from nuclear weapons. Publication of the Pentagon Papers was groundbreaking whistleblowing that gave the American people a much needed look inside the doomsday machine that could end life as we know it for the planet.

Questions:

-Will the Senator commit to reforming the Espionage Act[9] to protect modern day Dan Ellsbergs [10] working in our Intelligence Community?

-Will the Senator follow-up with the CIA's general counsel about reports of torture by our UAE allies [11] in Yemen [12], possibly involving DoD or State Department personnel and contractors?

Powers of an Individual Senator: In her San Diego Union-Tribune interview, Sen. Feinstein discussed her proposed amendment to, and subsequent filibuster-breaking vote for the FISA reauthorization bill. She said that she was discouraged when her amendment only received four votes, and no doubt she worked hard to get more. We were disappointed that she stopped short of withholding that filibuster-breaking vote in order to exert maximum pressure to get her amendment passed. Whether that would have led to more votes for her amendment, some other compromise, or even just more time spend publicly debating the issue of warrantless surveillance, we think it was a stand well worth taking. We aren't saying she should never vote for an imperfect bill, just that she should be more assertive in exhausting all her other options first.

Questions:

-In the future, when she has the deciding vote on a flawed bill, will she be open to withholding her vote as a tactic to address the flaw?

-How can we help her have the confidence to do so?

Climate Change questions:

- Does the Senator have any idea why S.2352 (a carbon cap and dividend bill called the “Healthy Climate and Family Security Act”) has no co-sponsors, whereas its House counterpart, H.R.4889 has 36?
- What are the most effective actions Indivisible East Bay can take at the state and local level to ensure that California’s waiver of Clean Air Act preemption is not rescinded by Pruitt’s EPA?

Puerto Rico:

- What is Congress doing to ensure that FEMA continues to provide emergency housing vouchers beyond **June 30, 2018** [13], for the thousands still displaced Puerto Rican Americans?
- Will she co-sponsor S.2041- Rebuilding Resilient Energy Systems Act to improve, not just replace the electrical infrastructure in Puerto Rico?

Judicial Nominations: We thank the Senator for her statement of 5/4/18 opposing the hearing of Ryan Bounds for the 9th Circuit Court of Appeals since Bounds lacks blue slips from both his Oregon senators. We urge the Senator to work with her colleagues to preserve the blue slip tradition for judicial nominees.

-- **Dog Whistles.** At the 4/24/18 Judiciary Committee hearing, when asked, all the nominees refused to say that *Brown v. Board of Education* was correctly decided. They've been coached by their handlers to do this in order to avoid sticky questions about all Supreme Court cases, especially *Roe v. Wade*. The NAACP Legal Defense Fund has said, " We can't allow this to become an acceptable answer. It's dog-whistle politics. It'd be unacceptable from any person pursuing a position in public life, but it's particularly inexcusable from a nominee to a lifetime seat on the federal bench.[14]" We agree. Whether intentional or not, the nominees are sending a signal to certain groups that racial discrimination and inequality are somehow acceptable and still subject to debate. We're asking the Senator to discuss this matter with her colleagues and to stand against the nominees' refusal to support the landmark case that ended legal segregation in the U.S. This behavior by the nominees is unacceptable.

-- **Flipping Judges.** In March of this year, A. Marvin Quattlebaum, an experienced litigator and Republican stalwart, was confirmed to a federal district judgeship in South Carolina. Only one month down the road Quattlebaum has been nominated for a judgeship on the Fourth Circuit Court of Appeals, covering four states (WV, VA, NC, SC). Did Quattlebaum do much more in that month besides move into his new office and warm his seat in federal district court? While we disagree with Quattlebaum's politics, we thought he was qualified for the district court judgeship and we did not oppose his confirmation. The appeals court is a different story. We believe Quattlebaum should stay where he is at present and gain some work experience as a judge. Prior to his appointment to federal district court Quattlebaum appears to have lacked any judicial experience whatsoever. We're concerned that Quattlebaum may be waved through the confirmation process for circuit court simply because he is a known quantity. A very recent known quantity. He's worn the robes and title of a district court judge for one month. We believe the bar should be set much higher for an appeals court judgeship and that Quattlebaum fails to meet it. We're asking the Senator to vote against the nomination of Quattlebaum for a judgeship on the Fourth Circuit Court of Appeals and to encourage her colleagues to do the same. We're also asking the Senator to speak out against the sudden and inappropriate elevation of district court judges in this manner. It makes a travesty of the judicial selection process, and smacks of court packing by the Republicans before November.

-- **Nomination of Andrew Oldham for Fifth Circuit Court of Appeals.** This nominee is counsel to the Governor of Texas. In that capacity he has been instrumental in helping the Governor implement a conservative political agenda *against* voting rights, immigration rights, environmental protection, consumer protection, efforts to combat climate change, and more. Oldham would have us believe that he was only doing his job. (And where have we heard that excuse before? sometimes in terrible circumstances.) Lawyers may take jobs with which they disagree. True. But would the Governor of Texas hire counsel who had major disagreements with his political agenda and

who could undermine him? Unlikely. From other parts of his record it appears that Oldham and his Governor's conservatism are pretty much aligned. We believe that Oldham's extensive record of partisanship on certain social issues makes him unfit for this judgeship, and we're asking the Senator to vote against this nomination. Since the Republicans say that an attorney can set aside a partisan career history to become an impartial and fair judge, we suggest that they nominate some attorneys from known liberal groups like the ACLU, Planned Parenthood, Sierra Club, and NAACP. These attorneys should also be capable of setting aside biases like their conservative counterparts, and they would make a valuable addition to the federal bench.

-- **Nomination of Wendy Vitter for U.S. District Court (Eastern District of LA).** This nominee is a prominent leader for Right To Life in Louisiana, and won an award for her activities. She has received attention for moderating a panel for Right To Life that promoted crackpot ideas about abortion and birth control which have been debunked. She was also Chief of Trials for the New Orleans DA Office at a time when the office was widely criticized for ignoring defendants' rights to exculpatory evidence. This record raises serious questions about Vitter's fitness to be an unbiased and competent judge. We oppose Vitter's nomination and ask the Senator to vote against it.

Congress's Article I Authority and National Defense Authorization Act: Two week's ago (4/26/2018) the House Armed Services Committee had its first markup meeting to set the upper bound for FY 2019's DoD spending authorization [15]. Both the Chair and Ranking member of HASC agreed to the President's budget request of \$716 billion, an increase over the \$700 billion appropriated for FY 2018 [16]. We thank the senator for her strong statement opposing development of new low yield nuclear weapons from March 14, but her letter to DoD and DoE but the administration is pushing forward with authorization for the new warheads, with blessings from the Chairman of HASC.

Questions:

- Does the Senator, as a senior member of that Defense Appropriations Subcommittee, agree with Ranking Member Smith's assessment that this increase in spending authorization for FY 2019 and "notional increases in discretionary budget authority beyond FY 2019" are warranted [17]?
- Will the senator commit to using appropriations committee authority to limit funding for the new low yield nuclear warheads authorized in the 2019 NDAA?
- Will the senator commit to voting NO on any Budget Resolution that seeks to increase spending authorization for the Defense Department after the massive appropriations increase in the recent Omnibus?
- Will the senator vote for the 2019 NDAA if it comes with a \$716 billion price tag?
- Would the senator be willing to vote for \$716 billion in defense appropriations in any upcoming spending bill?
- Has the senator had a chance to read the draft AUMF repeal put forward by Sen. Kaine and Corker?
- Would the senator support a new use of force authority that does not have a sunset?

Iran Deal in Jeopardy: In the event that the president fails/refuses to *certify* the JCPOA by the May 12 deadline, ***we ask that the Senator work to restrain her colleagues from actions that could endanger the existing treaty.*** Do not let the Senate take up snapback sanctions legislation, discourage senate colleagues from attempting any legislative "fixes". Changes to the treaty outside of the 5+1 framework or reimposition of sanctions will signal to Iran and the world that we are not serious about honoring our commitments.

Election Security: We were glad to see that \$380 million was appropriated for election security measures in the last Omnibus[18] but we are concerned that S.2261 - Secure Elections Act appears to be languishing in the Senate [19].

Questions:

- Given the skepticism from the states regarding S.2261, is the senator satisfied with how the states are (electively) utilizing the additional funds that Congress appropriated for election security?
- Does the senator see S.2261 passing in time for the midterm elections? How can we help with this?

Criminal Justice Reform and Algorithmic Bias: We support sentencing reforms in S.1917 - Sentencing Reform and Corrections Act, though we do not think the bill goes far enough. We have concerns that some of the *existing* proprietary systems at best are over-hyped and at worst perpetuate or exacerbate racial bias [20]. Even the vendor of the widely used commercial risk assessment tool, COMPAS, has called for a peer review [21] of a widely cited critique of the accuracy of their system [22] so we feel that the field as a whole should be opened up to peer review and that such critical software systems must be open to the public. To address the issue of “adjusting the Assessment System to reduce such disparities to the greatest extent possible,” S.1917 Sec. 203(a) [23] giving text of proposed 18 USC sec.3621A(b)(1)(D)(ii), we believe it’s necessary to amend the proposed law to include requirements for periodic public review of algorithms and training data used in these risk assessment systems.

Questions:

- Will the senator call for an SJC hearing on algorithmic bias and ways to address it?
- Will the senator move to amend S.1917 - Sentencing Reform and Corrections Act to require that risk assessment systems be open to periodic public audit and review, including source code and training data?
- Would the senator consider prohibiting the use of federal funds (via CJS Appropriations) for risk assessment systems if the vendor does not have a policy of inviting periodic public review of algorithms and training data?

Sexual Harassment in Congress: We thank Sen. Feinstein for her work on this issue. And, to be clear, we are not aware of any particular problems with her staff, but as constituents we see it as our responsibility to address and prevent sexual harassment in the offices of those we elect. As a group inspired by an organization founded by former Congressional staffers, and which works closely with current Congressional staffers, we feel particularly invested in this aspect of our role in holding our representatives accountable.

Questions:

- What can you tell us about sexual harassment (and other employee wellbeing) policies in Sen. Feinstein’s office?
- Is there a written policy we could see a copy of?

Town Hall:

- What are the senator’s plans to hold the next town hall for her constituents?

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