

**2016 NEW YORK TIMES PRESIDENTIAL CANDIDATES
EXECUTIVE POWER SURVEY LOG**

DEMOCRATS

Clinton	Did not answer questions yet, but provided a statement Jan. 22, 2016
Chafee	<i>Dropped out before deadline</i>
Lessig	<i>Dropped out before deadline</i>
O'Malley	Did not answer questions yet
Sanders	Did not answer questions yet
Webb	<i>Dropped out before deadline</i>

REPUBLICANS

Bush	Did not answer questions yet
Carson	Provided answers Jan. 24, 2016
Christie	Did not answer questions yet
Fiorina	Did not answer questions yet
Graham	<i>Dropped out before deadline</i>
Huckabee	Did not answer questions yet
Kasich	Did not answer questions yet
Jindal	<i>Dropped out before deadline</i>
Paul	Provided answers Dec. 1, 2015
Perry	<i>Dropped out before deadline</i>
Rubio	Did not answer questions yet
Santorum	Did not answer questions yet
Trump	Did not answer questions yet
Walker	<i>Dropped out before deadline</i>

2016 Executive Power Survey of Presidential Candidates

Thank you for participating in this third quadrennial survey of presidential primary candidates about their understanding of the scope and limits of the executive powers they would wield if elected. My intent is to publish your responses, in full, alongside the answers of the other serious candidates from both parties. Please also do not hesitate ask a campaign aide to contact me if one of the inquiries below is unclear or if you have any other questions. – Charlie Savage, savage@nytimes.com, 202-862-0317

1. EXECUTIVE UNILATERALISM

- a. Prosecutorial Discretion: What limits, if any, restrain a president's authority to invoke limited resources and the need to set enforcement priorities to direct the government to enforce laws against only a subset of those to whom statutes apply?
- b. Signing Statements: Under what circumstances, if any, would you sign bills into law while claiming or reserving a right not to enforce or obey provisions in the legislation?
- c. Executive Actions: What limits, if any, restrain a president's ability to use executive orders, presidential policy directives, and other such unilateral tools to effectuate policies he or she could not achieve through legislation?
- d. Treaties and Executive Agreements: When may a president may strike a deal with another nation without submitting that deal for approval by the Senate as a treaty, or for approval by the entire Congress as an executive-legislative agreement?
- e. Commander-in-Chief Override Power: Under what circumstances, if any, does the Constitution empower a president to bypass a (purported) legal restriction in a national security matter? Please specifically address whether the commander-in-chief is bound to obey statutes restricting the transfer of Guantanamo detainees; interrogation limits like the Detainee Treatment Act and anti-torture treaties; surveillance regulations like the Foreign Intelligence Surveillance Act's warrant rule; and the War Powers Resolution's 60-day deadline to terminate combat operations that lack Congressional authorization.

2. CITIZENS ACCUSED OF TERRORISM

- a. Detention Without Trial: Under what circumstances, if any, is it constitutional for a president to hold an American citizen, arrested or captured on American soil, in military custody under law-of-war detention without trial?

- b. Killing Without Trial: Under what circumstances, if any, does the Constitution permit the government to target and kill an American citizen without trial?

3. WAR POWERS

- a. Initiation of War (Constitutional): Absent an imminent threat, under what circumstances, if any, does the Constitution empower the president to direct the military to use lethal force in the territory of another country without congressional authorization?
- b. Initiation of War (statutory):
 - i. Does the 2001 Authorization for Use of Military Force against the 9/11 perpetrators apply to the Islamic State? More generally, as Islamist groups arise in different parts of the world that are not subject to al-Qaeda's direction and control, what is the scope and limit of a president's ability to invoke the 2001 AUMF as standing Congressional authorization to use armed force against them?
 - ii. Are military deployments involving airstrikes, but not ground forces in sustained offensive operations, the sort of "hostilities" regulated by the War Powers Resolution's 60-day limit for congressionally unauthorized combat?

4. SECRECY

- a. Executive Privilege: If Congress issues a subpoena seeking internal deliberative information from a department or agency outside the White House, when, if ever, is it legitimate for a president to invoke executive privilege to block compliance with it?
- b. State Secrets: Under what circumstances, if any, would you direct subordinates to invoke the state secrets privilege in court to block an entire lawsuit from going forward, as opposed to withholding some specific piece of classified evidence?
- c. Secret Law: Under what circumstances, if any, is it appropriate for the executive branch to keep secret from the public the government's interpretation of what a law means?
- d. Leaks: To what extent, if any, does the Constitution protect journalists from being compelled by subpoena to provide information about their confidential sources, or from being prosecuted for publishing information about national-security matters the government has deemed secret?

5. WRAPPING UP

- a. Legal Advisers: Who are your campaign's advisers for legal issues?

- b. Bush and Obama: Aside from whether you disagree with the policies of George W. Bush and/or Barack Obama, which of their actions, if any, were unconstitutional in your view? Why?
- c. Candor about Executive Power: Do you think it is important in the American system of democracy for would-be presidents to answer questions like these before voters decide whom to entrust with the office? What should voters conclude about any of your rivals who are unwilling or unable to answer them?

SENATOR RAND PAUL'S ANSWERS

Turned in Dec. 1, 2015

1. EXECUTIVE UNILATERALISM

a. Prosecutorial Discretion: What limits, if any, restrain a president's authority to invoke limited resources and the need to set enforcement priorities to direct the government to enforce laws against only a subset of those to whom statutes apply?

ANSWER: All of the President's authority, including over prosecutorial discretion, can derive only from acts of Congress, or from the Constitution itself. When Congress does not appropriate enough funding for the President to strictly enforce every law, this constitutes a delegation of power to the President to set enforcement priorities. However, the Constitution imposes a duty on the President to "take care that the laws be *faithfully* executed." The Take Care Clause imposes on the President a requirement to act *in good faith*. To use the discretion granted by Congress for the purpose of undercutting the laws enacted by Congress is to act in bad faith. For this reason, the President cannot systematically exclude an entire class of people from enforcement or—as President Obama has repeatedly done—turn individualized discretion into a rubber stamp, effectively exempting millions from the rule of law. These faux-priorities are designed to bypass Congress and such a motive for exercising presidential discretion constitutes bad faith. Moreover, publicly announcing a policy of non-enforcement provides undermines Congress. When Congress enacts a law given limited enforcement resources, it expects that the deterrent threat of prosecution—however unlikely—will compel compliance with the law. For these reasons inaction with the purpose of bypassing Congress and undermining its enactments constitutes an abdication of the Chief Executive's statutory responsibilities, a breach of the separation of powers, and a violation of the President's duty under the Take Care Clause.

b. Signing Statements: Under what circumstances, if any, would you sign bills into law while claiming or reserving a right not to enforce or obey provisions in the legislation?

ANSWER: In general, a president's oath to uphold the Constitution requires him to veto laws that he considers unconstitutional rather than pass the buck to the judiciary. This was one of the original purposes of the veto power and, for many years, was the sole expressed justification for

presidential vetoes. However, an otherwise constitutional statute may have some unconstitutional applications. In such cases, a president may choose to sign such legislation, while reserving the right to use his other constitutional powers—such as his enforcement discretion or his pardon power—to minimize those infirmities.

c. Executive Actions: What limits, if any, restrain a president’s ability to use executive orders, presidential policy directives, and other such unilateral tools to effectuate policies he or she could not achieve through legislation?

ANSWER: Delegation of executive power to his subordinates is inevitable and constitutionally permissible. However, under what is called the “administrative state,” Congress has unconstitutionally delegated broad power to the Executive Branch to make policy decisions through administrative agencies that amounts to a legislative power, despite the first sentence of Article I, Section 1 that specifies that “*All legislative Powers herein granted shall be vested in a Congress of the United States.*” Not some, but “all.” Until Congress reasserts its control over far-reaching administrative decisions—such as through the REINS Act, it is better that a politically-accountable, constitutional officer direct the activities of the administration. Thus, the President ought to exercise the power to direct and shape rule making and priorities within administrative agencies and to issue executive orders consistent with whatever broad delegations of power Congress has granted. If, however, either an executive order or an administrative rule transgresses or undermines Congress’s statutory delegation of power (see previous answer), the President would have no constitutional authority to take such action. In such cases, the President cannot act until both Houses of Congress enact appropriate legislation.

d. Treaties and Executive Agreements: When may a president may strike a deal with another nation without submitting that deal for approval by the Senate as a treaty, or for approval by the entire Congress as an executive-legislative agreement?

ANSWER: The President may enter into “executive agreements” with foreign nations pursuant to existing congressional authorization and subject to its disapproval. Such an agreement only becomes a part of the supreme law of the land, however, if submitted to the Senate as a treaty and approved by “two thirds of the Senators present.” Unlike a treaty, an executive agreement is not the supreme law of the land, and does not impose any duties upon Congress, and cannot deprive any person of life, liberty, or property.

e. Commander-in-Chief Override Power: Under what circumstances, if any, does the Constitution empower a president to bypass a (purported)

legal restriction in a national security matter? Please specifically address whether the commander-in-chief is bound to obey statutes restricting the transfer of Guantanamo detainees; interrogation limits like the Detainee Treatment Act and anti-torture treaties; surveillance regulations like the Foreign Intelligence Surveillance Act's warrant rule; and the War Powers Resolution's 60-day deadline to terminate combat operations that lack Congressional authorization.

ANSWER: Justice Jackson famously wrote in his concurrence in the *Youngstown* steel seizure case that the President's power is "at its maximum" when exercised pursuant to congressional authorization; that it depends "on the imperatives of events and contemporary imponderables" when exercised in the absence of such authorization; and that it is "at its lowest ebb" when its exercise is incompatible with the express will of Congress. The circumstances in which a President would have to bypass congressional restrictions would test the President's independent constitutional authority because his power will be at its lowest ebb. Such power, therefore, must be exercised rarely and with exceeding caution. Only when an imminent and existential threat exists to the nation may the President disregard any of the congressional restrictions described above.

2. **CITIZENS ACCUSED OF TERRORISM**

a. Detention Without Trial: Under what circumstances, if any, is it constitutional for a president to hold an American citizen, arrested or captured on American soil, in military custody under law-of-war detention without trial?

ANSWER: The right to a trial by jury is one of the fundamental civil rights we hold as American citizens. In his speech to Congress proposing our Bill of Rights, James Madison said that although trial by jury "cannot be considered as a natural right," it "is as essential to secure the liberty of the people as any one of the pre-existent rights of nature." I am opposed to indefinite detention without a trial, unless that person was captured while actively engaged in waging war against the United States and is held as a prisoner of war. One of the reasons Congress, and not the President, is given the power to declare war is that such a declaration can alter the legal rights of persons under the law of nations and our Constitution. The Founders withheld such a power from the President, who in the absence of a Declaration of War, can only use military force to repel an attack on the United States or as otherwise authorized by law or Treaty.

b. Killing Without Trial: Under what circumstances, if any, does the Constitution permit the government to target and kill an American citizen without trial?

ANSWER: The Constitution guarantees that no person may be deprived of life or liberty “without due process of law,” meaning that they must first be found guilty in a court of law established by the Congress or by the states. Historically, this protection does not apply to an American citizen who is actively engaged in combat against the United States. For example, if a terrorist who was also an American citizen was actively fighting U.S. troops in Afghanistan, the President or a military commander could order a drone strike without attempting to arrest him.

3. WAR POWERS

a. Initiation of War (Constitutional): Absent an imminent threat, under what circumstances, if any, does the Constitution empower the president to direct the military to use lethal force in the territory of another country without congressional authorization?

ANSWER: The power to declare war was expressly delegated to Congress to prevent elites in Washington from sending American sons and daughters into military conflict without their consent. Unless acting to repel or respond to an act or imminent threat of war against the United States, the president must receive authorization from Congress to initiate the use of military force. The power to declare war is absolutely and without question given to Congress and not to the President.

b. Initiation of War (statutory):

i. Does the 2001 Authorization for Use of Military Force against the 9/11 perpetrators apply to the Islamic State? More generally, as Islamist groups arise in different parts of the world that are not subject to al-Qaeda’s direction and control, what is the scope and limit of a president’s ability to invoke the 2001 AUMF as standing Congressional authorization to use armed force against them?

ANSWER: President Obama has construed the Authorization for Use of Military Force against the 9/11 perpetrators as an authorization to use force against any group the president deems a threat. The Constitution, however, explicitly states that the power to *initiate* military conflict rests in the legislature, which represents the people who will actually be putting their lives into harm’s way. The AUMF should not be construed to delegate to the President the war declaring power which belongs to Congress alone. Just as Congress may not constitutionally delegate its legislative powers to

administrative agencies, neither may it constitutionally delegate its power to initiate military conflicts by declaring war. I would work with Congress to reassert its constitutional authority over both its legislative and war making powers, and reestablish the separation of powers required by our Constitution.

ii. Are military deployments involving airstrikes, but not ground forces in sustained offensive operations, the sort of “hostilities” regulated by the War Powers Resolution’s 60-day limit for congressionally unauthorized combat?

ANSWER: The military belongs to the citizens of the United States, not the president of the United States. Unless repelling an imminent threat, any *initiation* of hostilities by offensive attacks must be authorized by the representatives of the people in the House and Senate of the United States.

4. **SECRECY**

a. Executive Privilege: If Congress issues a subpoena seeking internal deliberative information from a department or agency outside the White House, when, if ever, is it legitimate for a president to invoke executive privilege to block compliance with it?

ANSWER: Executive privilege is an implied presidential power that is recognized by the courts, most famously in *U.S. v. Nixon* (1974). The only legitimate justification for executive privilege is to preserve the separation powers. Under this rationale, four circumstances have been recognized by the Supreme Court as justifying a claim of privilege: 1) presidential communications privilege; 2) deliberative process privilege; 3) national security, foreign relations or military affairs, and 4) an ongoing law enforcement investigation. A claim of privilege is unwarranted when used to obstruct the legitimate power of Congress to oversee the expenditure of funds it has appropriated to be spent by the executive branch, as for example it was attempting to do when investigating the use of funding to operate the Fast and Furious gun-running operation.

b. State Secrets: Under what circumstances, if any, would you direct subordinates to invoke the state secrets privilege in court to block an entire lawsuit from going forward, as opposed to withholding some specific piece of classified evidence?

ANSWER: Only if national security would truly be threatened should the President invoke the state secrets privilege to prevent sensitive material from being used as evidence in a court proceeding. If it is necessary to invoke the privilege, the President should claim it with respect to the most

limited amount of evidence possible. The President must also direct his subordinates to reveal only as much as is absolutely necessary--but no more--to satisfy the judge that national security is likely to be injured by disclosure. However, the President's sole legitimate concern is the preservation of sensitive information. Once that interest is served, it is then up to the court and the parties to decide whether there is sufficient remaining evidence so that the case can proceed. Whether legal proceedings must be terminated is not a determination for the President to make.

b. Secret Law: Under what circumstances, if any, is it appropriate for the executive branch to keep secret from the public the government's interpretation of what a law means?

ANSWER: Internal opinions authored by executive branch lawyers to counsel the President are not the law, and may be kept confidential to ensure that executive branch lawyers will be candid in their legal advice to the President. However, the executive branch is subject to legitimate oversight by the Congress, and its officials may be called to testify as how the executive branch is interpreting the laws of the United States.

c. Leaks: To what extent, if any, does the Constitution protect journalists from being compelled by subpoena to provide information about their confidential sources, or from being prosecuted for publishing information about national-security matters the government has deemed secret?

ANSWER: Journalists should not be prosecuted for publishing information about national security matters that the government has deemed secret if the journalist or organization obtained the information in a lawful manner (i.e. they cannot steal government documents, but they could publish documents leaked to them by a whistleblower).

5. WRAPPING UP

a. Legal Advisers: Who are your campaign's advisers for legal issues?

ANSWER: In addition to my campaign counsel Matt Sanderson, I seek the advice of members of my Law Professors Advisory Committee:

Randy Barnett, Georgetown Law (Chair)
Josh Blackman, South Texas College of Law
Brian T. Fitzpatrick, Vanderbilt University Law School
Jeremy Kidd, Mercer University Law School
Erik Luna, Washington and Lee University School of Law
Adam Mossoff, George Mason University School of Law
Dale Nance, Case Western Reserve University School of Law
Bradley A. Smith, Capital University Law School
Erin Sheley, Faculty of Law, University of Calgary

Ilya Somin, George Mason University School of Law
Moin A. Yahya, Faculty of Law, University of Alberta

b. Bush and Obama: Aside from whether you disagree with the policies of George W. Bush and/or Barack Obama, which of their actions, if any, were unconstitutional in your view? Why?

ANSWER: I consider indefinite detention, the myriad modifications to Obamacare, and the failure to enforce immigration laws through DAPA unconstitutional.

c. Candor about Executive Power: Do you think it is important in the American system of democracy for would-be presidents to answer questions like these before voters decide whom to entrust with the office? What should voters conclude about any of your rivals who are unwilling or unable to answer them?

ANSWER: Over the last decade we have seen the power of the President increase dramatically by Congress's unconstitutional delegation of power to the executive branch and by unconstitutional claims of authority by the President. Because our Founders recognized that unbridled power can corrupt anyone, they enshrined a system of government separated powers among three co-equal branches and between the federal government and the states, thereby preventing too much power being held in the hands of the few. Because we have strayed far from their design, we are today witnessing the corruption and abuses they sought to avoid.

When the President and executive branch officials employ the discretion that has too often been given to them by Congress – or claim powers that exceed even this vast delegation -- we have moved away from the rule of law and into a government of unrestrained regulation proffered by the unelected elite. If we are to have a truly free, equal, and just society, we must restore the balance of power in Washington.

I am willing to answer these questions because I seek to restore our constitutional system of separation of powers, which allows the American people to decide how they are to be governed and creates a diverse and free nation that empowers individuals to make the most out of their lives as they see fit.

SECRETARY OF STATE HILLARY CLINTON'S RESPONSE

Provided Jan. 22, 2016

Mrs. Clinton did not answer the questions, but her campaign provided this statement:

“As Secretary of State, I was proud to work with the President and our team across the administration to bring our policies into line with our principles and restore America's global credibility as a champion of human rights and the rule of law. Among other things, we banned illegal renditions and torture and turned the page on policies that held U.S. citizens on U.S. soil without access to counsel or trial, and that violated the Geneva Conventions in its treatment of detainees. As President, I would continue that work. Of course, we need to explore all legally available options to protect America's safety and national interests. I would take the fight vigorously to those who would spread terror and fear or harm Americans, but would only appoint officials and adopt policies that are faithful to the law – including U.S. domestic law and our international treaty obligations – and the vigilant protection of human rights.”

DR. BEN CARSON'S ANSWERS

Turned in Jan. 24, 2016

2016 Executive Power Survey of Presidential Candidates

Thank you for participating in this third quadrennial survey of presidential primary candidates about their understanding of the scope and limits of the executive powers they would wield if elected. My intent is to publish your responses, in full, alongside the answers of the other serious candidates from both parties, later this year. Please do not hesitate ask a campaign aide to contact me if one of the inquiries below is unclear or if you have any other questions. – Charlie Savage, savage@nytimes.com, 202-862-0317

1. EXECUTIVE UNILATERALISM

a. Prosecutorial Discretion: What limits, if any, restrain a president's authority to invoke limited resources and the need to set enforcement priorities to direct the government to enforce laws against only a subset of those to whom statutes apply?

ANSWER: As the nation's top law enforcement officer, the president should faithfully implement federal law. He cannot, and should not, pick and choose which laws to enforce or ignore based on political interests or personal preferences. While prosecutorial discretion is a longstanding practice that acknowledges the necessity for resource allocation, it does not grant the executive blanket authority to do as he wishes or to overturn congressional statutes by nonenforcement.

Unfortunately, President Barack Obama has repeatedly and mistakenly invoked prosecutorial discretion to make a mockery of his duty to execute the nation's laws faithfully. For example, his executive actions on immigration provide a pathway for a large group of illegal immigrants to avoid prosecution and to receive certain benefits (such as work permits). As a result, the President is claiming not just that he has the discretion to refrain from prosecuting certain crimes due to limited resources, but that his choice of non-prosecution confers legal status on, and grants rewards to, those who have committed offenses that Congress has explicitly made illegal. President Obama's actions are a brazen violation of federal law, the Constitution and the separation of powers.

The President's executive self-aggrandizement has elevated political interests over the executive duty of faithfully enforcing the law. As president, I will exercise prosecutorial discretion while remaining faithful

to the Constitution and our republic's foundational concept of "equal justice under the law." That concept should not mean more justice for those whom the president favors.

b. Signing Statements: Under what circumstances, if any, would you sign bills into law while claiming or reserving a right not to enforce or obey provisions in the legislation?

ANSWER: Under the U.S. Constitution, Congress writes the laws. The president can sign or veto the legislation that reaches his desk, but the Constitution does not grant him the authority to sign the legislation while announcing -- through signing statements -- which provisions he will disregard.

During the 2008 presidential campaign, then-Senator Barack Obama (D-IL) and his allies fiercely decried President George W. Bush's use of signing statements as a violation of the separation of powers. Though Senator Obama promised not to make use of signing statements in the executive branch, President Obama has had no qualms whatsoever in resorting to a practice he once condemned. In fact, when the President released five high-value Taliban prisoners from Guantanamo in exchange for Sergeant Bowe Bergdahl, he did so in clear violation of federal statute. President Obama justified this behavior in part by invoking the statement issued -- and the objections raised -- when he signed the relevant federal statute that he subsequently violated.

Unlike President Obama, I will not piecemeal federal law when I am in the White House. While the Constitution has vested plenary powers in the executive that Congress cannot take away even by passing legislation, I will assert the powers of the presidency by observing the Constitution. If I find certain parts of a legislative measure to be unconstitutional, I will veto it, but I will not use signing statements as a pretext for selective enforcement of federal law that suits my political purposes.

c. Executive Actions: What limits, if any, restrain a president's ability to use executive orders, presidential policy directives, and other such unilateral tools to effectuate policies he or she could not achieve through legislation?

ANSWER: The Constitution established three co-equal branches of government. Executive orders and presidential policy directives should not be used to enact or implement federal policy as a substitute for the president and Congress enacting laws together.

Throughout American history, presidents of both parties have resorted to the use of executive actions. Some of those practices have been more controversial than others. As president, I will issue executive orders to determine how my administration will apply or enforce a certain law, or how executive personnel are to act in the absence of any constitutional or statutory guidance. The goal would be to clarify or implement existing federal law in furtherance of the Constitution, not to engage in the unconstitutional practice of making law through executive action .

Unfortunately, President Obama has made liberal use of executive actions in order to further his political goals. As president, I will reverse or revise all of President Obama's executive actions that are unwise or unconstitutional.

d. Treaties and Executive Agreements: When may a president may strike a deal with another nation without submitting that deal for approval by the Senate as a treaty, or for approval by the entire Congress as an executive-legislative agreement?

ANSWER: The president should have the discretion to make bilateral agreements with other nations on routine matters of state, but in the case of controversial matters, the president should work with Congress -- as President Obama is doing with the Trans-Pacific Partnership. He should not circumvent the Congress, as the President did with the ill-advised Iran nuclear agreement. The two houses of Congress are the collective voice of the American people at the federal level. Engagement with the Congress is imperative. Important international measures, such as those dealing with the long-term national security of our nation, its government and its people, should be concluded with congressional input.

e. Commander-in-Chief Override Power: Under what circumstances, if any, does the Constitution empower a president to bypass a (purported) legal restriction in a national security matter? Please specifically address whether the commander-in-chief is bound to obey statutes restricting the transfer of Guantanamo detainees; interrogation limits like the Detainee Treatment Act and anti-torture treaties; surveillance regulations like the Foreign Intelligence Surveillance Act's warrant rule; and the War Powers Resolution's 60-day deadline to terminate combat operations that lack Congressional authorization.

ANSWER: The president should faithfully enforce the law, including the existing statutes restricting the transfer of Guantanamo Bay detainees, the Detainee Treatment Act and the Foreign Intelligence Surveillance Act. However, serious questions about the constitutionality of the War Powers Resolution have been raised since its enactment over then-President

Richard Nixon's veto. The president's authority to wage war and conduct foreign policy is supreme, and should be exercised according to the limits set out by the Constitution.

2. CITIZENS ACCUSED OF TERRORISM

- a. Detention Without Trial: Under what circumstances, if any, is it constitutional for a president to hold an American citizen, arrested or captured on American soil, in military custody under law-of-war detention without trial?**

ANSWER: It is extremely difficult for me to imagine circumstances where, as president, I would authorize the arrest and detention of an American citizen, on U.S. soil, and order that person detained in a military prison without due process.

- b. Killing Without Trial: Under what circumstances, if any, does the Constitution permit the government to target and kill an American citizen without trial?**

ANSWER: The Fifth Amendment to the Constitution states that no person shall be deprived of life, liberty, or property without due process of law. The president does not have the authority to target and kill an American citizen on American soil without a trial. Having said that, we must acknowledge the reality that the Constitution does not offer American citizens the same due process protections overseas that it does at home. We must also realize that we are facing new realities of asymmetrical warfare in the 21st century, and the president must have the discretion necessary to keep the American people safe from foreign or domestic enemies. The president has been authorized by the 2001 Authorization for Use of Military Force (AUMF) to use force against "persons" who aided in the 9/11 attacks against America and to prevent such future attacks. That authority extends to the targeting of American citizens overseas who have joined terrorist groups to wage war against this country.

In short, the president must carry out his constitutional duty to conduct foreign policy and defend the homeland. This duty remains his very highest priority, even if the choices he makes might be extremely difficult.

3. WAR POWERS

- a. Initiation of War (Constitutional): Absent an imminent threat, under what circumstances, if any, does the Constitution empower the president to direct the military to use lethal force in the territory of another country without congressional authorization?**

ANSWER: It is extremely difficult for me to imagine that as president and absent an imminent threat, I would seek to unilaterally authorize lethal military force in a foreign country without congressional authorization.

b. Initiation of War (statutory):

- i. Does the 2001 Authorization for Use of Military Force against the 9/11 perpetrators apply to the Islamic State? More generally, as Islamist groups arise in different parts of the world that are not subject to al-Qaeda's direction and control, what is the scope and limit of a president's ability to invoke the 2001 AUMF as standing Congressional authorization to use armed force against them?**

ANSWER: I have already said that, as president, I will ask Congress to declare war on the Islamic State. It was unwise and inappropriate for President Obama to claim that the 2001 AUMF -- which was enacted in the immediate aftermath of the September 11, 2001, terrorist attacks -- authorizes U.S. military operations against the Islamic State in the Middle East today. A new or updated AUMF would grant him the proper authority, but a declaration of war would be a much better avenue for making America's objective clear and for mobilizing the entire country against a foreign enemy. As such, I have urged Congress to declare war against the Islamic State.

- ii. Are military deployments involving airstrikes, but not ground forces in sustained offensive operations, the sort of "hostilities" regulated by the War Powers Resolution's 60-day limit for congressionally unauthorized combat?**

ANSWER: The president and Congress will continue to disagree over this measure. Both have a role in national security matters: the president as Commander-in-Chief and the Congress with its power of the purse. One should keep in mind, however, that the president has plenary power over the conduct of national security matters and overseas military operations.

4. **SECRECY**

- a. Executive Privilege: If Congress issues a subpoena seeking internal deliberative information from a department or agency outside the White House, when, if ever, is it legitimate for a president to invoke executive privilege to block compliance with it?**

ANSWER: Executive privilege should liberally apply to the deliberative process between the president and the president's advisors; however, executive privilege should not extend all the way to the bot-tom rung of all federal departments and agencies. Congress is charged with oversight, so it should be able to effectively oversee the policies that the executive branch is implementing. It will be up to the federal court system to referee disagreements between the two branches over these questions. Of course, disagreements between presidents and Congresses of different political parties have been taking place for a very long time and will no doubt continue into the future.

- b. State Secrets: Under what circumstances, if any, would you direct subordinates to invoke the state secrets privilege in court to block an entire lawsuit from going forward, as opposed to withholding some specific piece of classified evidence?**

ANSWER: There are legitimate state secrets that should not be disclosed, but as with executive privilege, this concept should not be abused.

- b. Secret Law: Under what circumstances, if any, is it appropriate for the executive branch to keep secret from the public the government's interpretation of what a law means?**

ANSWER: In matters of national security, the executive branch must have the discretion to keep the American people safe even if it means not disclosing certain highly-classified information in real time.

- c. Leaks: To what extent, if any, does the Constitution protect journalists from being compelled by subpoena to provide information about their confidential sources, or from being prosecuted for publishing information about national-security matters the government has deemed secret?**

ANSWER: It is up to the federal courts to decide what should happen when highly-classified national security information is publicly disclosed. However, in 2006, a federal judge ruled that the First Amendment does not protect citizens who reveal national security information. It is important to note that regardless of the legality of this issue, it is harmful to the safety and security of the American people and helpful to our enemies when highly-sensitive, classified information is publicly revealed by the media.

5. WRAPPING UP

- a. Legal Advisers: Who are your campaign's advisers for legal issues?**

ANSWER: The campaign utilizes a wide variety of advisors.

b. Bush and Obama: Aside from whether you disagree with the policies of George W. Bush and/or Barack Obama, which of their actions, if any, were unconstitutional in your view? Why?

ANSWER: President Obama exceeded his constitutional powers with his use of certain recess appointments, and the Supreme Court unanimously rejected his actions in its 2014 *National Labor Relations Board vs. Noel Canning* decision.

c. Candor about Executive Power: Do you think it is important in the American system of democracy for would-be presidents to answer questions like these before voters decide whom to entrust with the office? What should voters conclude about any of your rivals who are unwilling or unable to answer them?

ANSWER: The American people have a right to know as much as possible about the people seeking the presidency, but I will let the voters decide which candidate to elect, or which media surveys they find informative. I have faith and trust in the American people and their collective wisdom.